



Standing Committee for Youth Justice

STANDING COMMITTEE FOR YOUTH JUSTICE

**Consultation response to *Breaking the Cycle: Effective Punishment,
Rehabilitation and Sentencing of Offenders***

4th March 2011

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.

Our core principles include that:

- The policies and practices of the youth justice system in England and Wales should be compliant with the UN Convention on the Rights of the Child (CRC), the UN Standard Minimum Rules, and all other relevant international human rights standards, guidelines, treaties, rules and conventions.
- Youth justice arrangements for those below the age of 18 years should be distinct and separate from arrangements for adults.
- The primary focus of the youth justice system should be the reduction of re-offending, with the work of YOTs closely integrated with broader provision for children - prevention more generally conceived is the responsibility of children's services. Joint working at national and local level between youth justice and children's services is crucial.
- Family support work should be provided by mainstream or specialist non-criminal justice agencies.
- Children who offend should be treated as children first and foremost at every stage of the youth justice system.
- The age of criminal responsibility should be raised considerably, as recommended by the UN Committee on the Rights of the Child.
- Diversion from court should be expanded significantly for all children under-18 years.
- Custody should be a measure of last resort, and used for the shortest appropriate period.

- Children have the right to be heard and to participate in all stages of civil or criminal proceedings affecting them.

The Standing Committee for Youth Justice membership includes:

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

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

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PREVENTING OFFENDING BY YOUNG PEOPLE

1. The Standing Committee for Youth Justice (SCYJ) advocates a rights-based approach to working with children in the youth justice system. We believe prevention services should be delivered within a framework of children's rights, underpinned by the United Nations Convention on the Rights of the Child (UNCRC).
2. We believe that children who offend should be treated as children first and foremost at every stage of the youth justice system.
3. SCYJ recognises that the drivers of, and solutions to, most offending by children lie outside the criminal justice system. We welcome proposals outlined in *Breaking the Cycle* to test the concept of community budgets in recognition of the complexity of these drivers, and to incentivise cross-agency working.
4. We believe the youth justice system is only appropriate for the most serious and persistent offenders. The majority of children who offend should be diverted out of the youth justice system, and, where appropriate, into other services, at every opportunity.
5. SCYJ is concerned by proposals to extend the use of Parenting Orders and believes they should be used cautiously, if at all. All criminal courts already have discretionary powers to impose Parenting Orders, where they feel this is appropriate. They should be imposed sparingly, as the use of mandatory orders can alienate parents, and discourage them from seeking help from youth offending teams (YOTs) or other agencies.
6. Anecdotal evidence suggests that, in extreme examples, parents have threatened to stop providing accommodation for their children in order to avoid mandatory court orders. SCYJ would recommend research be undertaken to ascertain how wide-spread this practice is before a decision to extend the use of Parenting Orders is made. YOTs already provide voluntary support for parents and families and we recognise their need for increased support. SCYJ believes help should be delivered to children and

their families in a supportive way which focuses on children's welfare needs, rather than enforcement and non-negotiable intervention.

7. The strength of taking a holistic, whole-family approach to addressing offending by children is apparent from the success of programmes such as Multi-systemic Therapy, Functional Family Therapy and Family Intervention Projects. SCYJ believes that services broadly aimed at preventing offending are better delivered outside the youth justice system. The task of preventing offending is crucial and best delivered by children's services. SCYJ is therefore particularly concerned at the removal of ring-fencing from funding for prevention services. Whilst the focus on early intervention to be delivered through the Early Intervention Grant is welcome, the impact of the removal of ring-fencing and of budget cuts on youth and children's services is already evident, with a recent survey of directors of children's services suggesting budgetary cuts of 13% on average¹. Any reduction in youth crime prevention services is likely to have an impact on the number of children entering the youth justice system further upstream.
8. SCYJ is supportive of proposals to 'put trust in the professionals who are working on the ground' and would support greater professional discretion in the interpretation and enforcement of National Standards. Too often, interventions and enforcement criteria are overly-prescriptive, taking little account of practitioners' experience and individual children's needs. SCYJ believes proposals to increase discretion for practitioners working with adult offenders set out elsewhere in *Breaking the Cycle* should be applied to those working to National Standards in the youth justice system.
9. It is important to note that practitioners are only able to exercise discretion appropriately when adequately resourced to do so. In the current context of budgetary and staffing cuts, SCYJ has concerns that this will not be possible.
10. SCYJ believes it is essential that children who have offended are not set up to fail through the imposition of unrealistic and overly-onerous requirements. We believe the onus should be on sentencers to impose statutory orders which are proportionate

and individually-focussed, and on practitioners working with children who have offended to do everything possible to support them to comply.

11. There are a number of marked absences from *Breaking the Cycle*. SCYJ notes with disappointment that no reference is made to disproportionality within the youth justice system and children's secure estateⁱⁱ, or to the needs of Black and ethnic minority children; children with learning disabilities and/or difficulties; or children with speech, language and communication needs.

Question 48: How can we simplify the out of court disposal framework for young people?

12. The Standing Committee for Youth Justice (SCYJ) supports proposals to simplify and widen the use of out of court disposals for children, and believes that much of the behaviour that is currently criminalised can be dealt with without bringing children before the courts. It is also vital that the police have a proper range of alternative options to prosecution at their disposal, in order to reduce the number of children being criminalised for low level offending.
13. SCYJ would propose establishing a diversionary set of principles, based on the United Nations Convention on the Rights of the Child and related international guidance and rules. These would give prominence to principles of avoiding criminalisation, informality, voluntarism and intervening to the minimum level necessary. The Children Act principle of 'no order unless better than no order' should apply when public protection considerations allow.
14. In particular, a published set of principles or guidelines would ensure consistency across geographical regions. The current system allows very different approaches in different areas as to which children are diverted. For example, some areas will only consider diverting a young person if they have admitted their offence in a police interview. Others have greater flexibility and allow children to be diverted, where appropriate, providing they later admit the offence. Guidelines would also allow

practitioners a greater understanding of the system and enable them to better advise and support children.

15. The current system of reprimands and final warnings, which escalates children into the court system through the 'two strikes and you're out concept', should be abolished and replaced by a simpler system of cautioning, similar to that in use with adults. SCYJ would support a far more flexible system, with no limit to the maximum number of cautions that can be given to any one offender, and with no bar on children with criminal records receiving cautions if they later commit a cautionable offence.
16. The decision as to whether to caution or prosecute should be taken in line with published guidelines. The current system, which differs from the adult system, results in children being brought before the courts for offences they would have received a caution for had they been adults; SCYJ believes that children should be less likely to be prosecuted than adults rather than vice versa, and it is therefore important that encouragement is given in all cases to divert rather than prosecute.
17. SCYJ would therefore support a system where the decision following an arrest for a criminal offence would be one of three options: to take no further action; to caution; or to prosecute.
18. SCYJ recognises the need for early intervention with children who offend, but would emphasise that this can be done informally rather than as part of a court order. SCYJ would advocate a nationwide approach, where multiple agencies participate in the decision making process, and feed-back suggestions to the police and CPS, where the ultimate decision can be taken as to appropriate action. Engagement in certain programmes or activities or even reparation or restorative justice can be made a pre-condition of receiving a caution or the police taking no further action (within the context of appropriate accountability) where appropriate for that young person, similar to the current system of conditional cautions.
19. There are currently a number of programmes running throughout the country which make good use of restorative justice. A triage programme in Westminster, for example, diverts young people from court into a restorative justice

programme. Where appropriate, the Crown then offers no evidence on the criminal charge. Different models are in use throughout the country, making it something of a postcode lottery as to when and how children are diverted. Some make use of a multi- or inter-agency team to assess, make recommendations and coordinate restorative or other interventions or support services. SCYJ would support the expansion of such a model nationally, to ensure the involvement of all appropriate local agencies, including children's services, in the coordination of restorative justice within each area. SCYJ also proposes delivering triage and liaison and diversion schemes together.

20. Family support work and parenting services in relation to out of court arrangements should be provided by mainstream or specialist non-criminal justice agencies rather than youth offending teams.
21. The process for diverting cases back from court following the start of formal proceedings should be improved considerably. We believe legislation should make clear that, where it appears an appropriate course to relevant agencies, the possibility of diversion should be explored even where a child has been charged.
22. Better guidelines and engagement with other children's services when making the initial decision to prosecute should reduce the need for cases to be diverted back from court, and should also reduce the geographical inconsistencies that exist. However the system can still be cumbersome. West London Youth Court used to have an officer on duty once a month in order to administer the reprimands or warnings. The court would then know who had been reprimanded as it had been done at court, and the children knew when and where to go.
23. Although children have a right for criminal processes to be conducted without unnecessary delay, this can sometimes be counterproductive, and contrary to the child's best interests (which should be paramount), if too much emphasis is placed on speeding up justice where this reduces the quality of assessment and decision making. Too much emphasis on timeliness also inhibits the potential for properly restorative outcomes with informed victim involvement.

Question 49: How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?

24. The Standing Committee for Youth Justice (SCYJ) supports proposals to increase the use of restorative justice throughout the criminal justice system. Careful consideration needs to be given as to how this might be implemented. This response identifies two potential routes which will be discussed in turn: wholesale importation (or adaptation) of the model of restorative conferencing in use in Northern Ireland; or strengthening, and widening the Referral Order to make it a fully restorative disposal available for use with all offenders and all offences.
25. SCYJ believes the existing configuration of the youth justice system in England and Wales is insufficiently restorative, with too great a focus on punitive punishment, and too little on participation, restoration and reparation, despite evidence of the links between victimisation and offending, with many children who offend having themselves been victimised, often repeatedlyⁱⁱⁱ.
26. Where ostensibly 'reparative' schemes are in use (see for example Community Payback and Making Good) reparation is too often indirect, bearing little relation to the nature of offending.
27. In addition, the prescriptive nature of the existing sentencing framework, which emphasises central decision-making, rather than local resolution, does little to foster confidence in the decision-making process or innovation in the content and delivery of sentences.
28. Restorative justice has been defined as 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath...and its implication for the future'^{iv}. In brief, the key principles of restorative justice include:
 - That every victim should have the right to access restorative justice, irrespective of criminal justice outcomes;

- That every offender should be given the opportunity to take responsibility for their actions and to make amends to those harmed; and
 - That voluntarism and informed consent are key.
29. One option for introducing restorative justice into England and Wales might be to learn from, and build on, the model of restorative conferencing used in Northern Ireland. There, restorative youth conferencing is the default disposal both pre- and post-court for many offences, including those within the violence against the person group.
30. Since its introduction in 2003, youth conferencing has been credited with delivering a reduction in reoffending^v, high rates of compliance with conference plans, significant victim participation and satisfaction levels^{vi} and fewer children imprisoned under sentence^{vii}.
31. Whilst conference plans agreed in Northern Ireland are often composed of elements similar to those used within disposals in England and Wales (with activities, apology, reparation and unpaid work being the most popular), it is argued that the collaborative nature of the agreement process, and the young offender's ownership of the process, coupled with face-to-face interaction with their victim, community representatives and family and friends, combine to empower children who have offended to make amends in a way which repairs the harm they have caused and restores them back into their communities.
32. Central to the integrity of Northern Ireland's Youth Conference Service (whose conference plan approval rate of 76% demonstrates high levels of court and prosecution confidence in conference outcomes) is the role played by conference coordinators. Professionals who have completed a 12 month certificate in restorative practice, conference coordinators organise, coordinate and chair every conference from the point of referral to the conference end, acting as the primary point of contact for all participants. This ensures continuity throughout the process and that effective relationships can be built with participants. Their relationship with victims in particular is crucial to delivering the victim participation and satisfaction rates cited above.

33. SCYJ believes consideration should be given to exploring the merits, or otherwise, of wholesale adoption (or adaptation) of the Northern Ireland model^{viii}.
34. As its use in Northern Ireland has demonstrated, restorative justice approaches are most effective, and deliver the best results, when instituted system-wide and made available for use at all tiers of the justice system, as both a diversionary tool and a formal sentence, with most (if not all) offenders, and for most offences.
35. To that end we believe a restorative justice approach should be the default response to youth offending in England Wales: both out-of-court for minor, low-level offending and within the sentencing framework for more serious offending.
36. Proposals to strengthen the Referral Order set out in *Breaking the Cycle* provide an alternative to the Northern Ireland model for the introduction of restorative justice into the youth justice system in England and Wales.
37. At present, the Referral Order is the default disposal for most first-time offenders who plead guilty. In addition, since the introduction of the Criminal Justice and Immigration Act 2008, youth offending teams have also had the option to recommend it in exceptional circumstances for children receiving their second conviction (though not where a Referral Order was given for their first). The Referral Order Intensive Contract, meanwhile, is designed to provide youth offending teams with additional, robust capacity when making sentence proposals in cusp-custody cases.
38. Whilst designed to enable children who have offended ‘to repair the harm caused by the offence and address the causes of offending behaviour’^{ix} by bringing them face-to-face with community members and their victims (where appropriate), practice has shown the Referral Order to be less than reparative, with minimal victim involvement^x.
39. SCYJ believes that the existing framework of the Referral Order could be strengthened to make it a fully-restorative disposal akin to the Youth Conference Order in Northern Ireland. This would involve removing the current restrictions on its use, making it the default court disposal for most offenders and offences (where applicable), boosting

the skills of panel members, and formally instituting the victim's right to participate in every panel hearing, as is the case in Northern Ireland. Where the victim chooses not to participate, or no direct victim is identified, victim or community representatives should be sought. Only when panel meetings are truly participatory, involving victims and their representatives as a matter of course, can the voice of the victim be placed at the heart of proceedings, and children who offend gain a true understanding of the impact of their behaviour on others, and make amends in a meaningful way.

40. The Referral Order Intensive Contract could be retained for cusp-custody cases, with the onus on YOTs to propose its use wherever applicable. Though the content of contracts would remain the decision of the conference process, participants could be given an additional suite of 'intensive' components from which to select, which would sit alongside any reparative or other activities agreed. Given that YOTs are already funded to deliver such intensive components under ISS, it is envisaged that retaining the Referral Order Intensive Contract would have minimal cost implications.
41. SCYJ supports plans outlined in *Breaking the Cycle* to "increase panel members skills and confidence in using restorative justice in Referral Orders", which could be achieved in several ways – by training them to deliver restorative conferencing themselves, or by giving restorative justice-trained staff already attached to youth offending teams a role as panel chairs, with responsibility for managing all pre-panel organisation (including contacting and building relationships with victims and victim representatives) and the panel process itself. Whether panel chairs are professionals or volunteers, it is essential that they are properly trained in restorative justice techniques.
42. To ensure sentencers have full confidence in panel procedures, and in the veracity of the contract agreed by participants, a mechanism for oversight should be built in to this process. This could take the form of the panel chair reporting back to the court on contract content at the end of each conference, or of the return of the panel contract to the court for formal approval, as happens in Northern Ireland, whether through a formal court appearance or as a paper exercise.

EFFECTIVE SENTENCING FOR YOUNG OFFENDERS

43. As outlined by the UN Convention on the Right of the Child, SCYJ believes custody should only be used as a measure of last resort, and then only for the shortest appropriate period.
44. We believe the use of the Conditional Discharge in youth courts should be widened to mirror its availability with adult offenders. Sentencers should be given greater discretion both in deciding when to impose the order, and its length, with options including a 3 and 6 month order.
45. SCYJ notes with disappointment that whilst *Breaking the Cycle* states that “too many young people whose offences are not the most serious and whose behaviour does not pose a risk to the public are sent to custody”, it contains no specific proposals regarding the custody threshold, nor the age of criminal responsibility.
46. SCYJ advocates both a higher custody threshold for children^{xi}, and raising the age of criminal responsibility. These changes would not only help achieve *Breaking the Cycle*’s stated aim of reducing the number of children in custody, but also bring the UK into line with its international obligations, including the United Nation Convention on the Rights of the Child.
47. We believe that effectively engaging children subject to statutory orders, in conjunction with their families wherever possible, is essential to securing compliance and to building community confidence in the youth justice system.
48. SCYJ believes that imprisoning children for technical breaches of statutory orders is wrong and should be outlawed.
49. The number of children sentenced to custody more than tripled between 1991 and 2006, with the child custody population in England and Wales increasing by 795% from 1989 – 2009. Despite a recent drop in the number of children imprisoned for criminal offences, England and Wales has one of the highest rates of child imprisonment in Western Europe. SCYJ believes the most effective way to ensure a

continued fall in the population of children in custody is to use primary legislation to raise the custody threshold.

Question 50: How can we increase the effective enforcement of youth sentencing?

50. SCYJ believes that ‘turning lives around’ and successful intervention can take time and be incremental. It can be counterproductive to impose too rigorous standards for enforcing community penalties. It is important that the professionals supervising children subject to statutory orders are trusted with helping them to comply, and that there is flexibility in the system.
51. SCYJ is concerned that compliance panels applied across the system could reduce flexibility in the system, and increase breach action where there are minor or technical breaches. We believe breach action and re-sentencing should mainly occur where there have been wilful breaches. Many children breach orders when there is other turmoil within their lives, for example within the family or education. It is vital that the professionals working with them can make the correct choice between punishing them for the breach or, where appropriate, giving them more support with particular aspects of their lives to facilitate compliance.
52. SCYJ supports the use of panels at the point where there is complete or wilful failure to comply, and where breach proceedings may be necessary, but we remain concerned that robust enforcement will simply fail the children who most need positive intervention in their lives.
53. We believe the first step to ensuring proper compliance is the passing of realistic sentences that do not set children up to fail. The use of specialist assessment tools should be based on need and not applied roughshod in all cases. The ‘scaled approach’ should be abandoned or revised to ensure that it does not disadvantage the disadvantaged and does not result in disproportionate requirements or interventions. Too many children are given more intensive sentences because they fall into certain ‘at risk’ categories, rather than because of the criminal offences they have committed. SCYJ believes that more emphasis should be placed on ensuring proportionate

sentencing, and that courts should be encouraged to consider whether it is realistic to expect a child to comply with the proposed sentence.

54. Finally it is important that proper support is given to children to comply with orders, not least because more than a quarter of children in the youth justice system have a learning disability^{xii} which may interfere with their ability to understand and comply with the terms of statutory orders. It is noted that children who regularly breach orders are often those who do not have proper family support or who have other problems at home. SCYJ also believes that, where extra support is offered to assist the child, this should not be an enforceable part of an order. Children who need extra support should not be punished by having many more appointments to attend, that they will in turn be punished for if they miss. Such children should be offered extra support or welfare services as an addition to the court order on a voluntary basis.
55. Any breach of an order needs to be seen in the context of the child's life, and it is only where the breach is part of a failure to work towards the main, achievable aims and objectives of supervision that re-sentencing should be considered. Difficulty in keeping to what can be complex diary and travel arrangements, without good adult support or in the face of domestic stress, should not be criteria for re-sentencing unless there is also a wilful intention to be non-compliant with the main objectives of the plan.
56. SCYJ believes Youth Rehabilitation Orders should focus on whether the child is making progress and the aims of the order are being achieved, rather than whether there have been technical breaches. A good example can be seen with the use of Drug Rehabilitation Orders for adults, where often specialist drug courts allow a great deal of flexibility when dealing with recovering addicts, as it is understood that the road to recovery can be a difficult one, and the important aim is that the offender makes good progress dealing with their addiction. Equally most children are going through a process of maturation, during which mistakes are made and support needs to be offered. The courts should be more concerned with progress made in the child's life such as re-engagement with education, dealing with family issues, or showing signs of maturity, rather than with occasional missed appointments.

57. We propose that National Standards be revised accordingly and that when cases are returned to court, problem solving and re-integrating approaches hold sway over retributive ones.
58. SCYJ also believe that prevention activities, services and 'interventions' should be led by mainstream services (children's services, education, youth services, health services, VS) with appropriate input and involvement from 'criminal justice' agencies (YOT, police, probation).
59. SCYJ also notes the proposal to review the sentence of Detention for Public Protection. We believe such preventive and indeterminate sentences are not appropriate for children and are contrary to children's rights principles. They fail to take into account how quickly children change and mature as they get older, and are based on the false premise that a child can have a fixed personality or type, and therefore be classified as dangerous. To that end, SCYJ believes the sentence of Detention for Public Protection for children should be abolished and is disappointed *Breaking the Cycle* does not propose this.
60. SCYJ supports proposals to review the Rehabilitation of Offenders Act outlined in *Breaking the Cycle*, and welcomes the Government's commitment, made during the recent passage of Lord Dholakia's Rehabilitation of Offenders (Amendment) Bill, to introduce amending legislation at the earliest opportunity.
61. In line with amendments to the Rehabilitation of Offenders Act, we would also propose a careful review of the arrangements that deal more specifically with children convicted of Schedule 1 offences.

Question 51: How can we succeed in reducing the need for custodial remand for young people?

62. SCYJ welcomes proposals to amend the Bail Act 1976 to include a condition prohibiting remands into custody unless there is a significant chance that the young person will receive a custodial sentence. However, whether a trial is likely to result in

conviction or what the likely sentence will be can be difficult to predict at the time of the bail application. Whilst this has the potential to reduce the number of children on remand, we would also advocate amending the Bail Act to only allow custodial remand where there would be a significant risk of further offences causing serious harm were the child to be released on bail.

63. In addition, as outlined above, SCYJ advocates raising the custody threshold, which would, in turn, have a noticeable impact on custodial remands.
64. Practice changes could also help reduce custodial remands: the presence of a bail support officer at every court is vital, for example, to ensure appropriate bail support packages which address the concerns of sentencers can be proposed immediately.
65. As with breaches of community orders, breaches of bail conditions need to be looked at in context. The use of electronically monitored curfews is becoming increasingly popular as both a sentence and bail condition. Some repeat offenders therefore spend months or even years subject to tagging. Further, many children who offend come from complex family backgrounds, and problems often arise when they are forced, or feel they have, to leave the family home. Breaches of bail therefore need to be seen in these contexts, with it being emphasised to the courts that where a breach of bail occurs, custodial remand should still only be used if the court is concerned that in breaching bail the child poses a significant risk of committing offences that will cause serious harm.
66. The same criteria should be considered when deciding whether to grant bail at the police station.
67. Current arrangements whereby a shorter period is allowed on bail/remand for the preparation of pre-sentence reports on persistent offenders compared to the period allowed for less serious cases, is entirely perverse and contributes considerably to the over-use of custodial sentences. Time spent on bail should be sufficient to allow for quality assessment and testing of the young person's compliance and to access services that had been lacking (e.g. educational or health).

68. SCYJ tentatively welcomes the proposed Single Remand Order, though this is dependent on the provision of further detail. A single order based on the straight remand in custody, for example, would be regressive, inappropriate and contrary to children's rights. We believe all children in custody, whether on remand or under sentence, should have some form of legal status that is based on safeguarding, meeting needs and promoting health and well-being.
69. The current system, which results in some younger children being afforded 'looked after' status, does, to some extent, safeguard their needs. There are a number of ways children's rights can be safeguarded whilst on remand under the new system. One method would be to grant 'looked after' status to all children on remand, including 17 year olds. Alternatively, all children on remand could be designated 'children in need', therefore ensuring that they undergo an assessment, with those for whom it was appropriate being granted 'looked after' status, and others still afforded some protection. Another option could be to introduce a new status identifying the services, support, duties and responsibilities which should rest on the local authority and its partners – the corporate duties and responsibilities. Children, and their parents, could be usefully consulted on what would be the most suitable legal provisions.
70. Whatever method is used, SCYJ strongly believes that children in custody need some legal status to ensure their rights and needs are appropriately safeguarded. We support the inclusion of 17 year olds in such a system, and note that this would ensure compliance with the UNCRC.
71. Remand to local authority accommodation (RLAA) remains a crucial option for the court and should be retained, with local authorities actively encouraged to provide robust, adequately supervised accommodation options for children. Efforts should be made to ensure the current statutory framework, in essence a good one, is properly understood by both police and local authorities.
72. In line with proposals to bring bail legislation into line with the UNCRC, the Police and Criminal Evidence (PACE) Act must also be amended to ensure 17 year olds in the police station have the same rights as other children.

73. National failure to comply with statutory arrangements for the transfer of children detained overnight by the police to local authority accommodation under PACE must be addressed. Anecdotal evidence suggests that the detention of children in police cells overnight, in contravention of the spirit of PACE, increases the risk of custodial remand when they appear in court the following day.

74. The use of secure accommodation under the Children Act 1989 (s25) should be studied with a view to applying its principles and procedures in the criminal courts for remand purposes. In particular, the stress on the role of the local authority to fully assess the need for detention, and to provide evidence of that to the court, is our preferred new model for remands.

YOUTH JUSTICE FUNDING AND PAYMENT-BY-RESULTS

Devolving custody budgets

75. In July 2009, the Standing Committee for Youth Justice (SCYJ) published a discussion paper entitled *The Funding of Custody for Children: devolving the budget*^{xiii} setting out ways in which we believe the delegation of custodial budgets to local authorities could lead to a reduction in the use of custody.
76. In that paper we recommended that:
- Budgets should be devolved to children’s trusts;
 - Budgets should be devolved on a notional basis, with refund and recharge mechanisms, and an accounting period of several years;
 - The formula for distributing budgets should be based on the aggregate need of children rather than historic use of custody, although it may be necessary to have transitional arrangements in the short term which recognise the historic use of custody in particular areas;
 - The individual cost of custody should be calculated as the average cost of places in Secure Children’s Homes, Secure Training Centre and Young Offender Institution combined, to protect against perverse incentives in placement policies;
 - Any savings made by an authority should be reinvested in children’s services, not allocated to wider budgets elsewhere;
 - The change should be piloted in a small number of trusts which wish to pilot the new arrangements;
 - ‘Bridging funding’ should be made available to the pilot areas, to help kick start the new arrangements.
77. Much of this aligns with what is put forward in *Breaking the Cycle*, including, for example, proposals to devolve custody budgets to local authorities. Although not every local authority will continue to plan and commission its children’s services through a children’s trust, the reciprocal duty to cooperate to improve the well-being of children [s.10 Children Act 2004] will remain in place. In addition, a new

cooperative arrangement will develop as part of the establishment of Health and Well-being Boards set out in the Health and Social Care Bill. Because both of these partnership arrangements are the responsibility of the local authority, SCYJ supports the proposal to devolve the custody budget to local authorities, though we suggest they should also have an advisory role within the context of placement decisions.

78. We believe a formal appeals process should be instituted to ensure youth offending teams and local authorities can challenge placement decisions where they differ from their own recommendations. Where a youth offending team's placement recommendation is overridden, and an appeal is unsuccessful, a written explanation should be provided setting out the reasons for the placing authority's decision.
79. SCYJ has concerns about devolving the custody budget to youth offending teams, for the simple reason that this represents far too narrow a conception of custody avoidance services, and will not encourage the development of early prevention services for children in need (who may be unknown to the YOT) and at future risk of custody. After all, *Breaking the Cycle* – while expressing welcome support for prevention and early intervention services – also suggests that youth crime prevention become the remit of the local authority rather than the YOT and tap into the already over-committed and non ring-fenced Early Intervention Grant. We believe that a devolved custody budget, which is linked to a clear intention to reduce the use of custody through the introduction of financial risks and incentives, requires the oversight of the broader children's services and partnership arrangements outlined above via the local authority. SCYJ supports the intention to pilot the proposals first.

Payment-by-results

80. *Breaking the Cycle* states that payment-by-results will be based on two measures: compliance with the sentence; and reduction in reoffending. Additionally, payment-by-results is intended to not only cover services that lead to a reduction in the use of custody, but also services that reduce demands on the criminal justice system as a whole. It suggests that YOTs, secure establishments, and agencies commissioned by YOTs would be the types of bodies working under this system.

81. The government's commitment to improve outcomes by making providers accountable for work with offenders is an important development. SCYJ has been campaigning for many years to ensure that interventions are evidence informed and based on principles that are best suited to meeting the needs of children who often have multiple health and welfare problems. However, we have a number of concerns about the payment-by-results (PBR) model and how it can be made to work.
82. Firstly, it is important to recognise that there is no simple cause and effect between an intervention and the path to desistance from an intervention. This means that it is inevitably difficult to demonstrate that a particular intervention has led to a decline in offending. In addition it is also important to recognise that children do not simply stop offending in a linear fashion. The nature of their cognitive and social development means that they will go through different stages of growing out of crime and may desist for a period but not have entirely ended their involvement criminal activity.
83. Secondly, it is very important to recognise that outcomes should not just be framed as reductions in reoffending. There are a number of softer outcomes that are equally important and reflect progress in moving away from involvement in offending. For children, progress in their relationships with family and peers, engagement in education and training, and improvements in emotional wellbeing are equally important.
84. Thirdly, our concerns relate to how PBR can be made to work for the voluntary sector. Most VCS organisations do not have the capacity to carry the risk involved in entering into a contract that would only lead to financial rewards if particular results are delivered. Furthermore, they do not have the capacity to put robust systems in place to capture outcomes based on their interventions unless they are given sufficient investment in advance. In reality, many innovative programmes are delivered by small or medium-sized charities that are not in a position to enter into a PBR contract even though their work is critically important to improving the lives of the children they work with. It is vital that Government supports voluntary and community sector organisations to compete for contracts.

85. It is essential that a distinct approach to responding to children who offend is retained within the design and delivery of service contracts. Payment-by-results models in use within the adult justice system should not be adapted for use in the youth justice system unless there is evidence that they adequately meet the age- and offending-specific needs of children.
86. Additionally, we wish to make the point that budget delegation and financial incentives alone are not the only way to tackle the overuse of custody. There are additional and complementary approaches that SCYJ promotes and encourages, including:
- Raising the age of criminal responsibility;
 - The establishment of a custody threshold in law, which would need to be passed every time a child is sentenced to custody. This could be seen as defining the UNCRC concept of 'last resort' in law; and
 - Making use of s.34 of the Offender Management Act 2007 which allows children sentenced to Detention and Training Orders to be placed in non-custodial institutions.

Question 52: How do you think we can best incentivise partners to prevent youth offending?

87. Any consideration of incentivisation must also weigh the potential risks linked to funding delegation and the introduction of payment-by-results to the youth justice system.
88. The most obvious risk is of significant financial over-spend. The main difficulty for the local authority is the fact that it would be responsible for managing a budget over which it has no direct control, with sentencers (magistrates, District Judges and Crown Court judges) making the decisions that would lead to expenditure from the budget. It is essential that practitioners and sentencers are encouraged to work closely together, given evidence of the impact positive working practices can have on sentencer confidence in the delivery of community orders.

89. Local risk may be reduced by liaising with sentencers in planning for the change, and ensuring they understand the objectives of budget devolution. This is not to seek to challenge the judicial independence of sentencers, but to establish a shared understanding and commitment to ensuring that custody is only used as a genuine last resort, and to maximise the use of custody-avoidance alternatives.
90. While, as noted above, SCYJ supports measures to reduce perverse incentives, it has significant reservations about the proposal to make payment by results a fundamental feature of the youth justice system for a number of reasons.
91. There is a risk that poor performing areas will be trapped in a cycle of a reduction in levels of resources leading to ever worsening outcomes for children in conflict with the law.
92. In the event that the 'reduction of reoffending' outcome measure excludes 'low risk' and 'high risk' children – as suggested at one point in *Breaking the Cycle* – there is a danger of 'cherry picking', though SCYJ would support proposals to exclude those children deemed to present the lowest risk. Risk of reoffending is currently attributed on the basis of *Asset* score. Where there is a strong financial incentive to reduce offending for a particular cohort, there may be an inevitable tendency to manipulate scores so that lower risk children are included and those who would otherwise be towards the top end of the 'medium risk' bracket are escalated into the 'high risk' group. Such practice would clearly undermine the credibility of the system of rewards while having the unintended - and counterproductive - consequence of attributing higher levels of risk than are warranted by the child's circumstances.
93. A similar dynamic ensures that the proposed outcomes measures for the youth justice system are in tension with each other. A reduction in first time entrants for instance, would filter children who are less likely to reoffend out of the system. A service provider focused on reducing reoffending of the population within the system would have a perverse incentive to increase the number of first time entrants.
94. Each of the proposed targets is incremental in the sense that they are characterised by reductions against a baseline. This inevitably increases the risk of not achieving

incentives over time. If targets are met, 'the bar must be raised. Thus all parties are locked into a narrative of perpetually increasing productivity'^{xiv}.

95. While SCYJ understands the rationale for the government moving from the measurement of processes to outcomes, the result is to hold agencies accountable for decisions and behaviour that are not totally within their control. While this is true for the first time entrant and custody reduction targets, the measure in relation to reoffending is particularly problematic. As the National Audit Office has recently pointed out, three-quarters of YOTs find it difficult to 'find evidence of what works for certain areas of their work'^{xv}. This perception was endorsed by the finding that the performance of the top- and bottom-rated YOTs was not in any ways related to the outcome measures preferred by the government.
96. In some respects this is unsurprising since 'those factors that appear to be most closely associated with persistent and serious youth crime, like disadvantaged neighbourhood, poverty...are least amenable to intervention by agents of the youth justice system'^{xvi}. Moreover, reoffending is likely - at least in part - to reflect broader patterns of offending within England and Wales. It has been suggested for instance that the recent recorded falls in reoffending of juveniles is partly explained by the 27% fall in detected youth crime since 1992 rather than any particular impact of the youth justice system'^{xvii}.
97. In the event that youth crime were to rise, it appears likely that reoffending would also. To reward or penalise agencies on the basis of such outcomes may therefore do little to improve effectiveness of interventions. In these circumstances, SCYJ would prefer different outcome measures that focus on 'distance travelled' for the child. This would have the added advantage of directing agencies to positive outcomes rather than the absence of lawbreaking.
98. Because of economies of scale, large organisations within the private sector are better placed than public or voluntary sector providers to bear the risk of not achieving the rewards associated with meeting the outcome measures. This lack of equality would be exacerbated in the event that 'rewards' for performance were paid in arrears. At

the same time, the impact of competition between such large providers may be to inhibit sharing of good practice since each will have an incentive to win contracts for which competitor organisations will also wish to compete.

IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN THE YOUTH JUSTICE SYSTEM

99. SCYJ welcomes the government's desire to improve transparency and accountability in the youth justice system. Since the youth justice reforms of 1998, youth offending teams have been overseen by the Youth Justice Board and inspected by H.M. Inspectorate of Probation and what is now Ofsted. SCYJ agrees that the performance management system has at times appeared over-complex and burdensome.
100. SCYJ is particularly concerned that YOT staff spend an increasing amount of their time filling in forms and less working directly with children on orders. Thus we agree with the proposal for lighter touch performance management. SCYJ acknowledges that the government has made a decision to abolish the YJB. We will make no comment on that decision but will focus on its implications.
101. SCYJ proposes introducing the multi-agency inspection framework in use for youth offending teams into the inspection framework for the secure estate.
102. SCYJ regrets the demise of the Joint Youth Justice Unit (JYJU) which straddled the Ministry of Justice and what was the Department for Children, Schools and Families, and the inter-agency/cross-departmental approach to addressing offending by children this fostered.

Question 53: How can we deliver a performance management and inspection regime that achieves our aim to reduce burdens and increase local accountability?

Performance management

103. Accountability for youth justice performance management is now the responsibility of the YJB. When the YJB is disbanded that responsibility should be transferred to the Ministry of Justice. SCYJ supports a performance management regime focused on outcomes, rather than processes. We agree that oversight should focus on three key outcomes: reducing the number of first time entrants, reducing offending and reducing custody numbers.

104. Only three outcomes should be actively monitored centrally, but it is still important that other data be collected from YOTs. The Ministry of Justice needs to collect high quality data on the use of remand, on the prevalence of particular offences and on the profile of children in the system. Policymakers and practitioners need national and local information on the ethnicity, looked after status and health profile of children in the system, in order to assess trends and improve practice.

National Standards

105. The YJB is responsible for national standards in the youth justice system. Currently, these standards cover almost every part of the system. SCYJ believes that standards are important but that current standards are over burdensome and restrictive. Standards on breach for example are over-rigid and may have contributed to an increase in breach proceedings and in the number of children imprisoned for breach.

106. Standards should be revised in consultation with practitioners such that they provide a framework that supports good and innovative practice, and ensure that children's rights are respected and adhered to. All children have a right to participate in the court process and in any sanction which is imposed on them. This means national standards should include the need to screen and assess all children for learning difficulties, disabilities, speech, language and communication difficulties and mental health problems, as identified by research into youth offending teams' approach to working with vulnerable children^{xviii}.

Inspection

107. Inspection of YOTs and the secure estate should be continued. As referenced above, SCYJ advocates importing the multi-agency inspection framework used for YOTs into that used in the secure estate. SCYJ agrees that 'inspections should incentivise continuous improvement and encourage local authorities and wider services to improve'. Currently YOT inspections can impose a big burden of preparation on YOTs, with some of the inspection criteria oriented towards process rather than outcomes.

108. We suggest the inspection framework be revised so that it aligns with three key outcomes and is consistent with the UNCRC and other relevant human rights legislation. Inspection should also focus on the quality of interventions and staff engagement with children. A new inspection framework should be developed in consultation with practitioners, children and experts.
109. Given that children in the youth justice system are vulnerable and have welfare needs, SCYJ would prefer that inspection of YOTs be carried out by a body, and by individuals, with expertise in vulnerable children as well as in criminal justice. SCYJ agrees that if a YOT undergoes a successful inspection, subsequent inspections should be less frequent.

Question 54: What are some of the ways we might be able to further involve local communities in youth justice?

110. One of the best ways of involving communities in youth justice is to further restorative justice. Restorative justice involves the victim, the victim's family and/or the community affected by crime helping the offender to understand the impact of their actions and to make amends to those harmed. As part of the plan for making amends, offenders often agree to literally repair the harm they have caused – to clean up graffiti, or to pay compensation for items stolen. All major evaluations of restorative justice have found victims to be more satisfied by this process than by the mainstream criminal justice process.
111. As it stands, local communities are involved as volunteers on referral panels, which are sometimes restorative, and as magistrates working in the youth court. We advocate more involvement of victims in referral panels. Whilst volunteers are not used to run conferences in the Northern Ireland restorative justice model, if the conference system were introduced here we could envisage a greater role for them. The latter could be part of a restorative justice conference panel, with the panel chaired by a trained conference coordinator.

112. Another key role for local communities is in suggesting suitable reparation projects for offenders to do to benefit their local communities. At the moment there are two schemes working in parallel to achieve this end – a pilot programme run by the Youth Justice Board entitled *Making Good*, and the Community Payback scheme, run by local probation trusts. We are supportive of the principle behind both these schemes, that local people should have an opportunity to advocate for certain projects and that they should have confidence that offenders do make amends for some of the harm they cause. In practice, however, these schemes are often less than reparative. For schemes to be fully reparative and to deliver meaningful opportunities for children who have offended, SCYJ advocates placing an emphasis on projects that aim to build on children’s strengths and enhance their skills without being demeaning.
113. However we are concerned that the difference between the two schemes may be confusing to the public, given that the kind of reparation projects proposed for under-18 year olds and adults are very similar. We would propose that under-18s should be included for public and promotional purposes in the Community Payback scheme, with probation and YOTs liaising to decide which proposed projects are most suitable for particular age groups. This change would enable YOTs throughout the country to benefit from community engagement with reparation. YOTs would still be able to communicate the success of projects done by young offenders within their community and thus improve the confidence of those communities in the youth justice system.
114. To ensure community confidence in restorative justice is not compromised, it is vital that members of the public understand the important distinction between restorative justice and community payback-style reparative schemes. We recommend the Ministry of Justice set out clear parameters on the use of restorative justice to prevent confusion and make sure that, where restorative justice schemes are in use, they are truly ‘restorative’.
115. What happens in the youth justice system is frequently a mystery to local communities. As well as involving local people as volunteers, it is important to increase awareness of the work done by YOTs, courts and police. All agencies need to

promote their work and, in particular, their success stories in local media and when meeting local people. SCYJ supports the Local Crime Community Sentence programme run by magistrates and probation officers and would like the programme to be extended to cover children in trouble with the law, and to involve youth justice practitioners and magistrates.

Question 55: How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

116. When the main functions of the Youth Justice Board are taken over by the Ministry of Justice, it is essential that there remains a unit or directorate within the Ministry of Justice dedicated to under-18 year olds. Under-18 year olds are classified as children under the UN Convention on the Rights of the Child. The Convention says that any justice system should treat children differently to adults. In order to abide by this, it is important that staff, resources and management within the Ministry of Justice should be dedicated to children and their distinct rights, needs and circumstances. This means also that Ministry of Justice staff should have access to expertise and advice on vulnerable children and be mindful of the importance of meeting the welfare needs and the rights of children involved in the criminal justice system.
117. We are particularly concerned that two current responsibilities of the Youth Justice Board – commissioning a distinct secure estate, and placing children in custody – should be fulfilled by Ministry of Justice staff working within the youth justice unit or directorate, rather than within the National Offender Management Service (NOMS). The commissioning and placing of children in the secure estate should remain the responsibility of central government but children’s needs are distinct and are not well met by current YOI provision. The children’s secure estate team within the Ministry of Justice must be separate from that dealing with adult custody, so they have the independence needed to make custody truly appropriate for the needs of vulnerable children.

118. These concerns notwithstanding, SCYJ hopes that bringing delivery of the youth justice system into the Ministry of Justice serves to improve transitions for teenagers moving from the youth to adult justice system.
119. The Ministry of Justice research unit should ensure a distinct programme of research into children in the youth justice system is continued.
120. The Ministry of Justice should make a commitment to improving the collection and dissemination of good practice examples of working with children in the youth justice system. Practitioners should be encouraged to innovate and to share local knowledge of what works in a systematic way.

ENDNOTES

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- ⁱ <http://www.cypnow.co.uk/BigIssues/Details/89322/funding-cuts/Article/1050883/Exclusive-survey-youth-services-childrens-centres-worst-hit-cuts-average-13-per-cent-one-year/>
- ⁱⁱ See <http://www.cypnow.co.uk/bulletins/Youth-Justice/news/1056343/?DCMP=EMC-YouthJustice> 'Proportion of minority ethnic children in custody rises' *Children and Young People Now*, 22nd February 2011 and <http://www.cypnow.co.uk/bulletins/Youth-Justice/news/1026205/?DCMP=EMC-YouthJustice> 'Black and mixed-race children treated more harshly by youth justice system, research confirms' *Children and Young People Now*, 3rd September 2010
- ⁱⁱⁱ Victim Support (2007) *Hoodie of Goodie: The link between violent victimisation and offending in young people* London: Victim Support
- ^{iv} Marshall, T. (1999) *Restorative justice: an overview* London: Home Office
- ^v Results from the 2006 cohort show the combined conference order had a reoffending rate of 37.7%.
- ^{vi} During 2008/9, victims were involved in two-thirds of conferences – in the same year, victim satisfaction surveys found that 89% expressed satisfaction with conference outcomes, with 90% saying they would recommend a conference to other victims
- ^{vii} Prison Reform Trust (2009) *Making amends: restorative youth justice in Northern Ireland* London: Prison Reform Trust and Police Foundation (2010) *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour* London: Police Foundation
- ^{viii} One model for how this might be achieved is set out in JUSTICE/The Police Foundation, *Time for a new hearing*, December 2010, available from www.youthcrimecommission.org.uk
- ^{ix} <http://www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements/ReferralOrder/>
- ^x According to the 2006/7 joint inspection report of youth offending teams, in only 8% of referral order cases analysed were victims involved in panel meetings.
- ^{xi} http://www.scyj.org.uk/files/Raising_the_custody_threshold_FullDocAug10_FINAL.pdf
- ^{xii} Department of Health (2009) *Healthy children, Safer Communities – A strategy to promote the health and wellbeing of children and young people in contact with the youth justice system* London: DoH
- ^{xiii} The full text of this paper can be found at http://www.scyj.org.uk/files/FOC_Report_FINAL.pdf
- ^{xiv} Davies, K and Gregory, MJ (2010) 'The price of targets: audit and evaluation in probation practice' in *Probation Journal* 57(4): 400-414
- ^{xv} National Audit Office (2010) *The youth justice system in England and Wales: reducing offending by young people*. London: NAO
- ^{xvi} Bateman, T and Pitts, J (2005) 'Conclusion: what the evidence tells us' in Bateman, T and Pitts, J (eds) *The RHP Companion to Youth Justice*. Lyme Regis: Russell House publishing. P248-259

^{xvii} Bateman, T (2010) 'Reoffending as a measure of effectiveness of youth justice intervention: a critical note' in *Safer Communities* 9(3): 28-35

^{xviii} Prison Reform Trust (2010) *Seen and heard: supporting vulnerable children in the youth justice system*
London: Prison Reform Trust