



Young offenders: What next?

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Author: Gabrielle Garton Grimwood and Pat Strickland

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The problem of youth crime, and how best to respond to it, has attracted political attention for decades. More than 30 years ago, for example, the 1979 Conservative party manifesto promised to make more use of attendance centres for “hooligans” and to give a “short, sharp shock” to young offenders.

The Labour Government introduced wide-ranging reforms to youth justice, intended to deal with the perceived inefficiency and ineffectiveness of the old system. These included the creation of the Youth Justice Board and a system of local, multi-disciplinary Youth Offending Teams. Evaluations of these reforms identified improvements, but there were also criticisms, with some calling for more prevention work (particularly through other services such as local authority children’s services) and less criminalisation of young people.

The [Coalition document](#), published in May 2010, announced a review of sentencing and the [consultation \(green\) paper](#) on punishment and rehabilitation, published in December 2010, promised to “break the cycle” of reoffending. In February 2013, the Ministry of Justice published a further consultation (green) paper [Transforming Youth Custody: Putting education at the heart of detention](#), which put forward proposals based around the concept of Secure Colleges. That consultation closed at the end of April 2013 and the Lord Chancellor and Secretary of State for Justice, Chris Grayling, has recently said that an announcement on the Government’s plans for rehabilitating young offenders will be made “in the very near future”.

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1 Introduction

The perceived problem of youth crime, and how best to respond to that problem, has attracted political attention for very many years. More than 30 years ago, for example, the [1979 Conservative party manifesto](#) promised to make more use of attendance centres for “hooligans” and to give a “short, sharp shock” to young offenders.

In the ensuing decades, the issues surrounding crime in general and youth crime in particular have received no less attention from legislators and the media. It has been argued, too, that increased crime levels in the 1980s and high profile cases – such as the murder of James Bulger in 1993 – fuelled political competition over sentencing. In 1993, Tony Blair promised the Labour party conference that he would be “tough on crime and tough on the causes of crime”, while Michael Howard told the Conservative party conference that “prison works”.

Certainly, there has been a historically large number of criminal justice acts since 1994 and in this time, the prison population has risen sharply; the Ministry of Justice’s most recent population briefing puts the prison population at 85,828.¹ The growth of the prison population and some of the ensuing questions about reoffending and rehabilitation are discussed in the Library Research Paper 12/71 [Reducing reoffending: The “what works” debate](#).²

The criminologist Lorraine Gelsthorpe offers an account of the changes in youth justice in England and Wales since the *Children and Young Persons Act 1969*. She points to the complex relationship between law, politics and civil society:

Conceptions of offenders and changes in legislation reflect social and political debates and struggles and are inextricably bound up with changes occurring in the social and political order, and with political debates within which that social order (re)produces itself. (...) Thus debates about ‘youth crime’ or ‘juvenile justice’ are rooted in what Antonio Gramsci would call ‘civil society’ ... rather than in the political realm, but the underlying message undoubtedly remains political.³

2 What causes crime?

It has been argued that the long-term rate of crime is affected by three main factors:

- The age structure of the population and specifically the proportion of young males;
- The net benefits of crime, with the number of opportunities for crime and the costs if caught; and
- Social or cultural changes that affect “social investment” in institutions encouraging law-abiding behaviour.

Whether poverty is an underlying cause of crime is contested, although such an assertion has often been made. A longitudinal study in south London found that the peak age of offending was 17-18. The study found that those who had been convicted tended to come from low-income families at the age of 8, and to have low incomes themselves at the age of 32; at 18 they tended to be better-off than their contemporaries.

¹ Including those in NOMS-operated immigration removal centres. [Population and capacity briefing – 18 October 2013](#), from [Prison Population Figures: 2013](#) on gov.uk website

² RP12/71, 22 November 2012

³ Lorraine Gelsthorpe “Recent changes in youth justice policy in England and Wales” in Ivo Weijers and Antony Duff (eds) *Punishing juveniles: principles and critique*, 2002: page 45

Periods of recession and economic growth have both seen increases in crime and, David G Green et al suggest, how one conceptualises crime depends on whether one perceives Man as a rational, self-interested calculator (as did Hobbes) or as a moral agent, guided by conscience shaped by society (as did Aristotle and, much later, David Hume and Adam Smith), whereas Rousseau, on the other hand, characterised Man as a natural altruist, corrupted by society.⁴

3 The purposes of imprisonment

The purposes of imprisonment are often cited as incapacitation, punishment, retribution, deterrence and rehabilitation, but views differ as to the relative importance and priority of each. There is a broad consensus that, for the most serious offences, a custodial sentence is likely to be the most appropriate one. Prison also offers the public some respite, by taking offenders off the streets and so, in that sense, “prison works”. That much is fairly widely agreed.

Much of the academic and political debate in recent decades has centred on imprisonment’s capacity to stop offenders from offending by the simple fact of their incarceration – so-called incapacitation. There is a summary of that debate in section 1.2 of Library Research Paper 12/71 [Reducing reoffending: The “what works” debate](#).⁵

4 The characteristics of young offenders

In its 2009 report, [Locked Up Potential](#), the Centre for Social Justice (founded by former Conservative party leader Iain Duncan Smith) drew attention to some of the characteristics of the young offender population:⁶

- The reoffending rate is still high at up to 75 per cent of young offenders returning to prison within two years. [page 7]
- 70 per cent of those in Young Offenders Institutions are from lone parent families. [page 143]
- Evidence suggests that there has been an increase in the number of people received into prison with learning difficulties. It is already a significant challenge for the youth justice system, particularly the youth custody estate, and it is beginning to impact on the adult prison estate as young offenders move to the adult justice system. The precise number of prisoners with learning difficulties is a disputed point. [page 167]
- A recent study by Professor Karen Bryan found that a high proportion of young offenders, around 60 per cent in one particular Young Offenders Institution, experienced communication difficulties. [page 169]

Professor Phil Scraton of the Institute of Criminology and Criminal Justice at Queen’s University Belfast has suggested that other factors too may be at play:

Political and economic marginalisation – particularly the ‘race’ – class intersection; gender roles and expectations; legacies of racial, ethnic and sectarian conflict; the impact of poverty in a society of immense wealth, acquisition and privilege; differential

⁴ David G Green, Emma Grove and Nadia A Martin [Crime and Civil Society: Can we become a more law-abiding people?](#) 2005: page 25

⁵ RP12/71, 22 November 2012

⁶ Centre for Social Justice [Locked Up Potential: A strategy for reforming prisons and rehabilitating prisoners](#) March 2009

education or work opportunities; under-resourced welfare; institutionalised pathologisation – personal, cultural and social.⁷

A statistical overview can be found in Library Standard Note SN/SG/5277 [Youth Crime and Punishment in England and Wales](#) (19 January 2010), with more recent, detailed statistics for 2011/12 available in [Youth Justice Statistics 2011/12](#).⁸

5 Concerns about youth crime and youth justice

Some commentators have argued that the changes to the approach to young offenders and the youth justice system have been driven by or reflect a “moral panic” over children’s criminal behaviour. Clearly, “moral panic” is in the eye of the beholder; one person’s well-grounded measure is another person’s knee-jerk response.

Phil Scraton (2007) has argued that the killing of James Bulger “unleashed a level of adult vindictiveness unprecedented in recent times”. The sustained media coverage typified (he has suggested) a sense of moral outrage and a desire for revenge and retribution; the case became a metaphor for “lost innocence” and a generation was deemed to be lacking in basic morality.⁹ The *Crime and Disorder Act 1998* – introduced by the recently-elected Labour government and creating antisocial behaviour orders and parenting orders – was, according to Phil Scraton, a creation of this moral panic:

The institutional backlash against children and young people has brought egregious breaches of international conventions and standards, undermining the ‘best interests’ principle, presumption of innocence, due process, the right to a fair trial and access to legal representation. Also significant are: separation from parents; freedom of expression; freedom of association; protection of privacy. Naming and shaming seriously compromises child protection, and imprisonment for breaching civil orders abandons the principle of custody as a last resort.¹⁰

Writing more recently about the murder of James Bulger and the conviction of Jon Venables for further offences, Blake Morrison¹¹ has also argued that some parts of the media are perpetuating the notion of irredeemable evil:

The tabloid script requires this image of irredeemable evil – the monster cackling over his wicked crimes – so that it can continue to vilify the Bulger killers: whether in prison or not, they will always serve a life sentence in the media. But the picture of Venables that emerged last week doesn’t suggest a Iago or Macbeth but a sad loner, immature and out of his depth, struggling to cope with adult life.¹²

In a speech in November 2010 to the Howard League for Penal Reform, Dr Maggie Atkinson, the Children’s Commissioner for England, spoke of the “demonisation” of young people and of her role in representing the voices and views of children:

⁷ Phil Scraton “The neglect of Power and Rights: A Response to Problem Solving” in Zoë Davies and Will McMahon (ed) *Debating Youth Justice: From Punishment to Problem Solving* 2007: page 74

⁸ Youth Justice Board / Ministry of Justice Statistics bulletin, 31 January 2013

⁹ Phil Scraton “The neglect of Power and Rights: A Response to Problem Solving” in Zoë Davies and Will McMahon (ed) *Debating Youth Justice: From Punishment to Problem Solving*, 2007: pages 76-7

¹⁰ Phil Scraton “The Neglect of Power and Rights: A Response to Problem Solving” in Zoë Davies and Will McMahon (ed) *Debating Youth Justice: From Punishment to Problem Solving*, 2007: page 80

¹¹ Blake Morrison’s book *As If* (1998) discusses the murder of James Bulger and the trial of Robert Thompson and Jon Venables.

¹² Blake Morrison “[Jon Venables is not yet beyond redemption](#)” *Guardian* 27 July 2010

We seem to have some difficulty in having a calm debate about children – all those under 18, as the UN defines them – especially those in trouble with the law. The reasons appear complex. We have, as the former journalist who is Secretary of State for Education said at the Children and Young People Now Awards last week, a media that in parts tells the majority, we whom we could label “frightened but fine” as the medics call us the “worried well,” that we have an entire generation up to no good. Prejudice breeds suspicion (...) ¹³

It has thus often been argued that the UK’s approach to young offenders is too punitive and a new approach is needed. Nick Clegg, when Liberal Democrat home affairs spokesman, also argued for change:

The case for phasing out prison custody for 15 to 16-year-olds is a very strong one. The number of children that are currently kept in our prison system is deeply concerning and a review of how such young offenders are dealt with is long overdue. ¹⁴

Others have expressed concern about the effectiveness of the youth justice system. The think tank Policy Exchange, for example, pointed out in 2010 that, in a Ministry of Justice survey, only 24 per cent of respondents had confidence in how young people accused of crime were treated. Policy Exchange argued that most people felt let down by the system:

Max Chambers, Research Fellow in Policy Exchange’s Crime and Justice Unit, said:

“After years of being promised by the previous Government that they were being tough on crime and the causes of crime, it’s clear from this survey that most people still feel as if they are being let down by the system, and that in particular it’s young offenders who aren’t being dealt with effectively. ¹⁵

The Centre for Social Justice in 2012 published another report *Rules of Engagement: Changing the heart of youth justice*. This too identified failings in the youth justice system:

- The youth justice system continues to function as a backstop: sweeping up the problem cases that other services have failed, or been unable, to address;
- The system is often operating in a way which promotes rather than reduces offending;
- There continues to be too much focus on functional process at the expense of life changing outcomes; and
- The importance of relationships to preventing offending and facilitating rehabilitation, emphasised to us consistently in our evidence hearings, continues to be overlooked. ¹⁶

6 Government policy before 1979

Before the 19th century (Lorraine Gelsthorpe remarks) the criminal justice system made little distinction between adult and juvenile offenders. The identification of juvenile delinquency as a distinct social problem, the expansion of summary jurisdiction and the creation of Reformatory and Industrial schools all led to change, as embodied in the *Probation of*

¹³ Dr Maggie Atkinson [Address to Howard League AGM, 24 November 2010](#)

¹⁴ Quoted in Zoë Davies and Will McMahon (ed) *Debating Youth Justice: From Punishment to Problem Solving*, 2007: page 139

¹⁵ Policy Exchange [Three quarters of public have 'no confidence' in how youth offending is being tackled](#) 18 August 2010

¹⁶ Executive Summary, 16 January 2012: page 1

Offenders Act 1907 (which endorsed the principle of supervision in the community) and the *Children Act 1908* (which established the principle of dealing with juvenile offenders separately from adult offenders). The *Crime Prevention Act 1908* set up the first Borstal.¹⁷ The statutory principle of the court having regard to the welfare of the child or young person was introduced by the *Children and Young Persons Act 1933*. The age of criminal responsibility was raised from eight to ten by the *Children and Young Persons Act 1963*.

7 Policies of the Conservative Government from 1979 to 1997

The Conservative Governments of 1979 to 1997 adopted various approaches to youth offending. As already mentioned, the manifesto on which Mrs Thatcher's first Government was elected promised a "short, sharp shock". Over time, the emphasis shifted from a broadly welfare-based approach to one based on crime control.

Lorraine Gelsthorpe argues that the *Criminal Justice Act 1982* reflected a notion that was then taking hold, that young offenders are responsible for their actions and, even with some measure of welfare, punishment is important in deterring others. The Act created three new powers of disposal at court: youth custody, care orders with certain residential requirements and community service for 16 year olds. In summing up the 1980s, Lorraine Gelsthorpe suggests that the Conservative Government was seeking to counter the supposed permissiveness of the 1960s with a return to "Victorian values", an approach criticised by some for ignoring social disadvantage.

In the 1990s, the implementation of the *Children Act 1989* and the *Criminal Justice Act 1991* together led to a separation of the systems for dealing with children in need of care (to the family courts) and those charged with criminal offences (to the youth court). The 1991 Act — which created the youth court with its maximum age of 18 years — was based on notions of "just desserts" and aimed to make the penalty proportionate to the crime. Lorraine Gelsthorpe argues that the increased age limit for the youth court (for the juvenile court which preceded it, the maximum age had been 17) did not represent any "softening"; instead, adult penalties were transferred down. She too points to the influence of moral panic after the James Bulger murder, and some well-publicised incidents of joy-riding, and the resulting toughening-up of public attitudes and criminal justice policy with an emphasis on deterrence. The *Criminal Justice and Public Order Act 1994* doubled the maximum sentence in a young offender institution (YOI) from one year to two and made provision for parents of young offenders to be bound over to ensure their children carried out their community sentences.¹⁸

In 1994, the Prison Service initiated two trials of "boot camps" at Thorn Cross YOI and at the Colchester Military Corrective Training Centre. These were intended to provide an intensive regime for young offenders, with an emphasis on self-discipline, strict rules and hard work.¹⁹ An evaluation of the so-called high intensity training (HIT) at Thorn Cross showed that, after a year, participants were less likely to be re-convicted than had been predicted — the improvement was estimated as 10 per cent — but, after two years, the HIT participants fared

¹⁷ Lorraine Gelsthorpe "Recent changes in youth justice policy in England and Wales" in Ivo Weijers and Antony Duff (eds) *Punishing juveniles: principles and critique*, 2002: pages 47-8

¹⁸ Lorraine Gelsthorpe "Recent changes in youth justice policy in England and Wales" in Ivo Weijers and Antony Duff (eds) *Punishing juveniles: principles and critique*, 2002: page 51ff

¹⁹ David G Green, Emma Grove and Nadia A Martin *Crime and Civil Society: Can we become a more law-abiding people?* 2005: page 145ff

no better than predicted. At Colchester, an evaluation found no evidence of a reduction in re-offending, whether after one year or two.²⁰

8 Policies of the Labour Government from 1997 to 2010

8.1 A need for change?

Labour's 1997 manifesto pledged to "halve the time it takes to get persistent young offenders from arrest to sentencing; replace widespread repeat cautions with a single final warning; bring together Youth Offender Teams in every area; and streamline the system of youth courts to make it far more effective".²¹

Once elected, the Labour Government soon made wide-ranging changes to the youth justice system. There had been a number of criticisms – for example, that prosecution through the courts was too slow, not enough was done to prevent or address offending behaviour and that the agencies involved were insufficiently co-ordinated – and the Audit Commission had concluded in a 1996 report that it was inefficient, expensive and failing both young offenders and their victims.²² Some commentators described Labour's white paper, *No More Excuses*,²³ published within six months of coming into office, as marking a more punitive approach to dealing with young offenders.²⁴

8.2 New roles, powers and interventions

The *Crime and Disorder Act 1998* specified that the principal aim of the youth justice system was to prevent offending by young people.²⁵ Information on the current youth justice system, created by this and subsequent Acts, can be found on the [Youth Justice Board page](#) of the Government's Justice website.

The Youth Justice Board

The 1998 Act established the Youth Justice Board (YJB) which works to prevent offending by children and young persons, and also commissions and purchases secure accommodation for juveniles on remand and in detention.²⁶ The YJB also monitors the youth justice system; advises on its operation; identifies and disseminates good practice; and commissions research. In 2012/13, its net expenditure was £336.9 million.²⁷

The key aims of the YJB are:

- preventing offending
- reducing reoffending
- increasing victim and public confidence and
- ensuring the safe and effective use of custody.

²⁰ David G Green, Emma Grove and Nadia A Martin *Crime and Civil Society: Can we become a more law-abiding people? 2005*: page 150-3

²¹ Labour Party, *New Labour because Britain deserves better*, 1997

²² Audit Commission, *Misspent Youth*, 1996

²³ Home Office, *No More Excuses – A new approach to tackling youth crime in England and Wales*, Cm 3809, November 1997

²⁴ As discussed by Enver Solomon and Richard Garside. *Ten years of Labour's youth justice reforms: an independent audit*, May 2008: p16

²⁵ Section 37(1)

²⁶ Section 41, *Crime and Disorder Act 1998*

²⁷ Youth Justice Board, *Annual Report and Accounts 2012/13*, July 2013, p30

Community sentences and other disposals

The previous Government also introduced a range of new interventions and sentences, including:

- a final warning scheme, designed to end repeat cautioning and provide a progressive response to offending behaviour, ensuring that those who do re-offend after the warning are dealt with quickly through the courts; and
- new community orders, including reparation orders requiring young people to make reparations to victims, and parenting orders designed to reinforce and support parental responsibility.

Further remedies were then added to these, such as referral orders, which were introduced in 2002. The result was a wide range of possible disposals. The *Criminal Justice and Immigration Act 2009* rationalised these with effect from November 2009. Part 1 of this Act replaced many of the existing orders with new Youth Rehabilitation Orders, which gave the court a menu of different requirements to impose upon the young offender.²⁸ These included requirements to participate in certain activities, to undergo supervision or to obey a curfew. Most of them were modeled on existing provisions, although there were some modifications. Further background to the changes can be found in Library Research Paper 07/65, [The Criminal Justice and Immigration Bill](#) (9 August 2007) which was prepared for the Bill's second reading.

Custody

Young people may be sentenced to a period of imprisonment under a Detention and Training Order (DTO) or under "Section 90/91"²⁹ which covers murder and other very serious offences. The DTO can be given to 12 to 17 year olds and the length of the sentence can be between four months and two years. The first half of the sentence is spent in custody while the second half is spent in the community under the supervision of the Youth Offending Team (YOT).

Detention may take place in Prison Service YOIs, privately-run secure training centres (STCs) or Local Authority Secure Children's Homes (LASCHs).

Prevention

YOTs are multidisciplinary teams who co-ordinate youth justice in their area. They provide services and programmes designed to reduce youth offending.

YOTs use a range of assessments to identify the needs of young people, the risk they present to themselves and others, and the likelihood of them offending or reoffending. They work with children and young people who have been identified as being at risk of offending to try to prevent them being drawn into the youth justice system. Following assessment, young people may be placed on a prevention programme, such as a Youth Inclusion Programme, or one of a number of parenting interventions to reduce the likelihood of them becoming an offender.

8.3 The Youth Crime Action Plan

In 2008, the previous Government launched the [Youth Crime Action Plan](#), setting out what it described as "a 'triple track' approach of enforcement and punishment where behaviour is

²⁸ Section 1

²⁹ Of the Powers of the Criminal Courts (Sentencing) Act 2000

unacceptable, non-negotiable support and challenge where it is most needed, and better and earlier prevention.” Updates listing achievements under the plan were published in 2009³⁰ and 2010.³¹

9 Evaluations of Labour’s youth justice reforms

A National Audit Office evaluation in 2004 noted improvements which the Youth Justice Board had brought about, but pointed to weaknesses in the management of sentence delivery and the development of the custodial estate.³² Also in 2004, the Audit Commission found that the system was a considerable improvement on the old one, with young offenders being dealt with more quickly and being more likely to receive an intervention, although it also made some criticisms.³³

In 2006 the Centre for Crime and Justice Studies (CCJS) based at King’s College London called for a “fundamental shift” in approach. The new approach, it argued, should comprise:

- greater prevention, with an emphasis on addressing the educational and mental health difficulties underlying much offending behaviour;
- limits on the way we criminalise young people and a more appropriate system of prosecution and courts;
- a wider range of community-based and residential provision for the most challenging young people and a phasing out of prison custody;
- new organisational arrangements, with the Children’s Department in the Department for Education and Skills in the lead.³⁴

In May 2008, the CCJS published a further audit of Labour’s Youth Justice reforms, which suggested that problems still remained:

Despite the huge investment, self-reported youth offending has not declined and the principal aim of the youth justice system set out in the 1998 Crime and Disorder Act, ‘to prevent offending by children and young persons’, has yet to be achieved in any significant sense.

Fundamental questions need to be asked about whether the youth justice agencies can really address the complex economic and social factors which are the cause of so much youth offending. ... Are more effective solutions to be found outside the youth justice system in the delivery of co-ordinated services through mainstream local authority children’s and young people’s provision and more effective children’s services?³⁵

A major review of the governance and operating arrangements of the Youth Justice Board, by Dame Sue Street (formerly Permanent Secretary at the Department for Culture, Media

³⁰ Home Office, *Youth Crime Action Plan One Year On*, 2009

³¹ DCSF, *Youth Crime Action Plan Update* 2010

³² National Audit Office, *The Delivery of Community and Custodial Sentences*, HC 190 2003-04, 21 January 2004,

³³ Audit Commission, *Youth Justice 2004 A review of the reformed youth justice system*, 2004, pp 2-6

³⁴ Rob Allen, *From punishment to problem solving: A new approach to children in trouble*, Whose Justice? Series, Centre for Crime and Justice Studies, 2006

³⁵ Enver Solomon and Richard Garside. *Ten years of Labour’s youth justice reforms: an independent audit*, May 2008

and Sport) and YJB Chair Francis Done was published in March 2010. This argued that much had changed and much had been achieved, but the YJB should be strengthened:

To make future progress, build on its success, and adapt to the changing world in which it operates, the YJB needs to take a firm grip of its responsibilities, provide clearer leadership and direction on the delivery of youth justice and prioritise public protection alongside the welfare of young people. This means having a strong YJB with clarity of role and relationships, delivering better outcomes for young people and their communities, using its unique position between central and local government to provide trusted and expert advice to Ministers.³⁶

The then Justice Secretary, Jack Straw, responded to the report in a written ministerial statement³⁷ and David Burrowes, then shadow Justice Minister, gave a response for the Opposition.³⁸

10 Conservative and Liberal Democrat policies in opposition

There are a number of policy papers and speeches which show the development and themes of Conservative party policy.

In *Prisons with a Purpose* (a policy 'green paper' published in March 2008), the Conservatives described the need for reform to the prison system which should, they said, be in the spirit of Jeremy Bentham and Elizabeth Fry.³⁹ However, youth crime and the needs of young offenders would (the paper said) be considered separately.⁴⁰

The Conservative party published its *contract for young people* in May 2010. In the section on crime, the contract promised to focus support on prevention and intervention to tackle youth crime in the most deprived communities.

In its *manifesto*, the party again referred to the importance of rehabilitation as a means of reducing re-offending and suggested that young offenders would receive specialist support in education, mentoring and drug rehabilitation:

To reform our system of rehabilitation further, we will:

- apply our payment by results reforms to the youth justice system;
- engage with specialist organisations to provide education, mentoring and drug rehabilitation programmes to help young offenders go straight; and,
- pilot a scheme to create Prison and Rehabilitation Trusts so that just one organisation is responsible for helping to stop a criminal re-offending.⁴¹

The Liberal Democrats, in their manifesto for the 2010 general election, set out proposals which would "[make] the justice system work to rehabilitate criminals and reduce crime". These proposals did not distinguish between adult and young offenders.⁴²

³⁶ Department for Children, Schools and Families, *Safeguarding the Future*, March 2010, pp3-4

³⁷ HC Deb 25 March 2010, cc63-5WS

³⁸ David Burrowes, press statement, March 2010

³⁹ Conservative Party *Prisons With A Purpose: Our Sentencing And Rehabilitation Revolution To Break The Cycle Of Crime* March 2008: pages 2-3

⁴⁰ Conservative Party *Prisons With A Purpose: Our Sentencing And Rehabilitation Revolution To Break The Cycle Of Crime* March 2008: page 102

⁴¹ *Invitation to Join the Government of Britain: The Conservative Manifesto 2010*: page 58

⁴² *Liberal Democrat Manifesto 2010*: page 74

11 Government policy since May 2010

The [Coalition document](#) published on 20 May 2010 spoke of the Government's aims for the justice system. It made no explicit mention of young offenders but did announce a review of sentencing.⁴³

However, one change that was made quickly after the Government took office was the assumption of the Ministry of Justice of all responsibility for youth justice – a responsibility which had been shared between the Ministry of Justice and the Department for Education.⁴⁴ In announcing the change, the Ministry of Justice suggested it would increase clarity and accountability.⁴⁵

11.1 The Youth Justice Board

Shortly after the Government came to power, there was speculation that the Youth Justice Board might be abolished as part of moves to save money.⁴⁶ In October 2010, the Government stated in its Cabinet Office publication *Public Bodies Reform – Proposals for Change* that it would be abolishing the Youth Justice Board (YJB) “as part of wider criminal justice reforms.”⁴⁷ An article in the journal *Children and Young People Now* summarised reactions to the announcement.⁴⁸

The [Public Bodies Bill \[HL\] 2010-11](#) was introduced in the House of Lords on 28 October 2010.⁴⁹ The Bill was enabling legislation, giving ministers the power, by Order, to abolish, merge and transfer functions to and from certain public bodies listed in the Schedules to the Bill. The YJB appeared, with many other bodies, in Schedule 1 to the Bill, “[Power to abolish: bodies and offices](#)”.

The House of Lords, though, inflicted a defeat on the Government, by voting to remove the YJB from schedule 1. Introducing the amendment to remove the YJB from the schedule, Lord Warner stated:

The nub of the Government's argument is that the YJB has done its job and youth justice can be left to local youth offending teams and Ministry of Justice civil servants and Ministers. (...) Depending on locally financed YOTs, unaided at this time of severe financial retrenchment, is a recipe for youth justice sinking once again to the bottom of the pile, in terms of priorities, which is why the Youth Justice Board was set up in the first place.⁵⁰

The then Lord Chancellor and Secretary of State for Justice, Kenneth Clarke then made a ministerial statement on 23 June 2011, confirming his intention to abolish the Youth Justice Board and bring its key functions into the Ministry of Justice.⁵¹ The statement said that the Ministry of Justice would consult on the YJB's inclusion in the Bill over the summer of 2011.

⁴³ HM Government *The Coalition: Our Programme for Government* May 2010: pages 23-4

⁴⁴ Youth Justice Board [News: Ministry of Justice takes sole responsibility for youth justice](#) 20 May 2010

⁴⁵ Ministry of Justice news release [Justice Ministers' Responsibilities Announced](#) 20 May 2010

⁴⁶ “[Youth Justice Board could face axe as government seeks to slash costs](#)”, *Children and Young People Now*, 18 May 2010

⁴⁷ 14 October 2010, p22

⁴⁸ “[Youth Justice Board is abolished](#)”, *Children and Young People Now*, 14 October 2010

⁴⁹ For further information, see Library Standard Note SN/PC/5609, [Quangos](#) and Lords Library Note LLN 2010/027, [The Public Bodies Bill \[HL\]](#)

⁵⁰ [HL Deb 28 Mar 2011 c956](#)

⁵¹ [HC Deb 23 Jun 2011 c27WS](#)

In November 2011, the House of Commons Justice Committee concluded that there was likely to be further debate about whether the YJB should remain as an arm's length body or should be absorbed into the Ministry of Justice, but (it noted) if it was absorbed into the Ministry then four principles should apply:

- It should not be part of the National Offender Management Service (NOMS)
- It should have a genuinely and visibly independent advisory board
- It should improve dissemination of practice and
- It should oversee YOTs with a light touch.⁵²

It was also reported in November 2011 that the Government had decided not to pursue the YJB's abolition as part of the *Public Bodies Bill*.⁵³ In a ministerial statement on public bodies reform on 15 December 2011, Kenneth Clarke confirmed this position.⁵⁴ More recently, the Lord Chancellor and Secretary of State for Justice, Chris Grayling, has insisted that it was never the intention to abolish the functions of the YJB:

There is no and has never been any intention to abolish the functions of the Youth Justice Board. It has been a question purely of what the best corporate structure is for it.⁵⁵

11.2 Changes to out of court disposals for young people

Changes to out of court disposals for young people were made by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*, which abolished reprimands and warnings and introduced youth cautions.⁵⁶

The [CPS legal guidance on youth offenders](#) summarises the changes and explains how youth cautions may be used:

A youth caution is a formal out-of-court disposal as set out in sections 66ZA and 66ZB of the Crime and Disorder Act 1998 the [Ministry of Justice/Youth Justice Board Guidance on Youth Cautions \(April 2013\)](#) , the [Ministry of Justice/YJB Youth Out-of-Court-Disposal Guide for Police and Youth Offending Services \(April 2013\)](#) and ACPO Youth Offender Case Disposal Gravity Factor System (March 2013)

Youth cautions are intended to provide a proportionate and effective response to offending behaviour and can be used for any offence provided that the statutory criteria are satisfied:

- the police are satisfied that there is sufficient evidence to charge the youth with an offence;
- the youth admits the offence to the police;
- the police do not consider that the youth should be prosecuted or given a youth conditional caution for the offence.

⁵² Justice Committee [The proposed abolition of the Youth Justice Board](#), HC1547 2010-12, 23 November 2011

⁵³ See for example, "Youth Justice Board saved from quango cull", *BBC News*, 23 November 2011 and "Youth Justice Board saved before expected Lords defeat", *The Guardian*, 23 November 2011

⁵⁴ [HC Dec 15 Dec 2011 c129WS](#)

⁵⁵ [HC Deb 8 October 2013 c15](#)

⁵⁶ Section 135 (1)

The police cannot issue a youth caution for an offence that is indictable only in the case of an adult without the authority of the CPS.

There is no statutory restriction on the number of youth cautions that a youth can receive, and a youth may receive a youth caution even if he or she has previous convictions, reprimands, warnings, youth cautions and youth conditional cautions.

[Library research paper RP11/53](#) on the *Legal Aid, Sentencing and Punishment of Offenders Bill* discusses out of court disposals for young people at section 12.7.

12 Breaking the Cycle

In its December 2010 consultation (green) paper on punishment, rehabilitation and sentencing – which promised a “rehabilitation revolution” – the Government set out its plans for tackling offending by young people. It drew attention to the unacceptable level of re-offending⁵⁷ but also pointed to some positive developments.⁵⁸

The main planks of *Breaking the Cycle*'s approach to preventing and tackling offending were:

Preventing more young people from offending and diverting them from crime

The paper pointed out that many prolific adult offenders started offending when very young and so early intervention was the key. Parents too must (the paper argued) shoulder their responsibilities.

Protecting the public and doing more to make young offenders pay back to their victims and communities

The green paper foresaw an increased role for restorative justice.

239. To increase the use of restorative justice we will build on the role currently performed by volunteer youth offender panel members and ensure that referral orders have a strengthened restorative approach. We will support panel members to increase their skills and confidence in using restorative justice in referral orders where the victim wishes to participate. Restorative justice is already a key part of youth justice and we want to encourage this across the youth justice sentencing framework as a whole, drawing on the experience of youth conferencing in Northern Ireland.

Ensuring the effective use of sentencing for young offenders and simplifying out of court disposals

Here, the paper argued for simplification and greater use of discretion by police and prosecutors.

Developing more effective governance by abolishing the Youth Justice Board and increasing freedoms and flexibilities for local areas

The paper advocated a localised but integrated approach.

⁵⁷ Ministry of Justice *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Cm 7972, December 2010: page 12

⁵⁸ *Ibid*: page 67

The Government also intended to use payment by results as an incentive for local partners to reduce youth offending and re-offending.⁵⁹

13 Transforming Youth Custody – Putting education at the heart of detention

The Government's next consultation (green) paper – *Transforming Youth Custody – Putting education at the heart of detention* – was published in February 2013.

Again, the Government set out the case for change and argued that

The principle aim of the youth justice system is to prevent offending by children and young people, and it should do this through a combination of preventative early intervention, punishment for those who break the law, and rehabilitation to get young offenders back on the right track.⁶⁰

The system, the paper argued, was failing, particularly in the context of youth offending and reoffending:

22. However, the system is failing when it comes to those young people who do break the law and end up in custody. 73% of young offenders who are released from custody reoffend within 12 months. This is unacceptably high, and the worst anywhere in the criminal justice system. It suggests that the vast majority of those in youth custody are already set upon a life of crime, and a period in detention is currently having little or no impact on the likelihood they will break the law again. This has got to change.

(...)

24. The boys and girls in youth custody are some of the most complex and disengaged in society, and their behaviours have often become entrenched despite the hard work of some dedicated practitioners. But that is not an excuse, either for them or for the youth justice system, not to do better. Custody may well represent a rare period of stability in otherwise chaotic lives, and as such presents a key opportunity to set these young people on a different track. This is time that can and should be used to put them on the path to a better life, combining the education and wider support that motivates, challenges and achieves results with young people, and which can be continued and built upon after release.⁶¹

This, the paper said, called for a significant programme of cross-Government reform. In making the argument for change, the Ministry of Justice pointed to:

13.1 A focus on improving education

The paper remarked that the vast majority of young people in custody had at some point been excluded from school and about half of those entering YOIs had literacy or numeracy levels well below those expected at their age. The quality of education in the youth secure estate was (the paper pointed out) patchy and young offenders often missed out on the required hours of education. Poor educational achievement and engagement were linked to an increased risk of offending and so education was central to the response to this problem.

⁵⁹ Ministry of Justice *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, Cm 7972, December 2010.: page 67-9

⁶⁰ Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, February 2013: page 12

⁶¹ *Ibid*: page 12

The *Children and Families Bill* would introduce Education, Health and Care Plans for young people with the most complex needs and would place duties on local authorities and YOTs to work together when assessing the needs of young offenders with special educational needs.⁶² YOTs would therefore be involved when local authorities drew up Education, Health and Care Plans for young people who had been in custody.⁶³

13.2 Reducing costs

The paper argued that with such disappointing results, the costs of youth custody – at an average cost of £100,000 per annum per place – were far too high. Efficiencies were expected to yield savings across the youth secure estate by 2014/15, but a new approach could drive down costs still further.⁶⁴

13.3 A chance for change

The case for change was (the paper argued) compelling. Contracts for many secure training centres and secure children's homes, as well as for education provision in public sector YOIs, were due to expire in 2013 and 2014. The Ministry of Justice was continuing to adjust the capacity of the youth secure estate, to match demand. These factors meant that now was a good time (the paper suggested) to take a fresh look and to consider a “truly transformative” new approach.⁶⁵

The paper's “vision for reform” therefore proposed that

- Education would be at the heart of the radical reforms to youth custody.⁶⁶
- Building on the reforms brought about by the Free Schools and Alternative Provision and Special Free Schools programmes and the Government's curriculum reforms, Secure Colleges – to be provided by a diverse range of providers, drawing in both education expertise and security experience (perhaps in strategic partnerships) – would have education at their heart.⁶⁷
- Education would be tailored to young people in custody. Depending on the young offender's background and prior experience, this might encompass basic educational skills such as literacy and numeracy, higher level qualifications or vocational skills. With the raising of the school participation age to 17 from 2013 and 18 from 2015, post-16 provision should reflect mainstream provision.⁶⁸
- There should be structure and rigour in the education provided, which might be delivered in classrooms, vocational workshops or through music, sport or catering at mealtimes.⁶⁹

13.4 The wider needs of young people in custody

The consultation paper also observed that young people in custody (some of whom would be looked-after children or care leavers) often had social, emotional and health needs which

⁶² [Library Research Paper RP13/11](#) (21 February 2013) provides briefing for the Bill's second reading and [Library Research Paper 13/32](#) provides the Committee stage report.

⁶³ Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, February 2013: page 13

⁶⁴ *Ibid*: page 14

⁶⁵ *ibid*: page 15

⁶⁶ *Ibid*: page 16

⁶⁷ *Ibid*: page 17

⁶⁸ *Ibid*: page 18

⁶⁹ *Ibid*: page 18

needed to be taken into account; without that, they might not make educational progress. Health providers and those who could help offenders develop thinking skills and improved emotional wellbeing could play a part here in helping young offenders to turn their lives around.

The paper remarked too that the comparatively small number of girls in the custodial population had many complex needs and some aspects of custody impacted differently on them. It was crucial that custody met their needs.⁷⁰ Specialist provision should continue to be available for those children in custody who were especially damaged and in need of support services.⁷¹

13.5 The physical environment and meeting demand

The paper observed that “... a custodial sentence is a punishment, and often essential for the protection of the public. The physical environment and regime should reflect that ...” The environment should not, though, be intimidating and must be conducive to effective education and rehabilitation. Views were invited on how YOIs, STCs and SCHs might be used or adapted as Secure Colleges.⁷² The paper also noted that the difficulty of helping offenders to maintain links with their families at a time when the youth custodial population was falling and the estate had to serve all of England and Wales was unlikely to go away. Providers were therefore invited to suggest ways of overcoming these competing demands.⁷³

13.6 Closing the gap between custody and the community

The average time spent in custody for DTOs is just over three months and so (the paper argued) custody should be integrated with the time after release. Progress achieved in custody during the first half of the sentence should be sustained during the second half of the sentence, in the community.⁷⁴

Secure Colleges, looking inwards to young people in custody and outwards to those in the community, might aid the transition between custody and the community and might integrate with the work of YOTs, so increasing continuity. The best Pupil Referral Units might be suitable models.

Families and carers would have an important and constructive role to play, in providing continuity and structured boundaries before and after release. GPS electronic monitoring and non-secure residential facilities (collocated with Secure Colleges) might also play a part.

The paper also asked whether there was a need to change the way in which DTOs operate, to provide more flexibility.⁷⁵

13.7 A focus on outcomes

The paper invited views on how tangible educational progress could best be measured (including by qualifications) and how Secure Colleges might be made subject to payment by results or an incentive approach.⁷⁶

⁷⁰ Ministry of Justice, *Transforming Youth Custody: Putting education at the heart of detention*, Consultation Paper CP4/2013, February 2013: page 19

⁷¹ *Ibid*: page 20

⁷² *Ibid*: page 22

⁷³ *Ibid*: page 23

⁷⁴ *Ibid*: page 20

⁷⁵ *Ibid*: page 21

⁷⁶ *Ibid*: page 24

The consultation closed at the end of April 2013. Chris Grayling said in October 2013 that an announcement on the Government's plans for rehabilitating young offenders would be made "in the very near future".⁷⁷ Meanwhile, the junior minister for prisons and rehabilitation, Jeremy Wright, has said that successful resettlement is the key to achieving sustainable outcomes for young offenders:

Reducing reoffending and better rehabilitation of young offenders are key priorities for the Government.

(...)

For those leaving custody, successful resettlement is key to achieving long-term sustainable outcomes for young people. We are considering options to improve resettlement outcomes for young people leaving custody, including ensuring that the resources already in place within Youth Offending Teams, local authorities and wider partners are being used effectively.

Latest statistics on reoffending are available here:

www.gov.uk/government/publications/proven-re-offending-statistics-october-2010-to-september-2011⁷⁸

14 Responses to *Transforming Youth Custody*

In its submission to the consultation, the Howard League for Penal Reform argued that

- The reform of the secure estate should be broadened to recognise that the welfare needs of children need to be addressed in a holistic approach, alongside any changes to education
- The detention and training order is an ineffective sentence, both for the short term that children are incarcerated and overly punitive restrictions it places on children when released, which creates barriers to successful reintegration and positive futures
- For the few children who require a period in a secure environment, secure children's homes provide a model of best practice that should be built upon.⁷⁹

The Prison Reform Trust agreed that radical change was needed:

Given the structural limitations of the youth secure estate as it is currently configured, and the poor record of YOIs in delivering positive outcomes for children, we are encouraged by Ministers stated desire to take a different approach.

Nonetheless, the Prison Reform Trust expressed concern that a new emphasis on education might encourage sentencers to impose custodial sentences where previously they might not, or to impose longer sentences:

The Prison Reform Trust is concerned that both an increase in custodial sentencing and greater use of longer sentences could be unintended consequences of the proposals outlined in this consultation. If sentencers view a custodial sentence as a means of accessing education provision which isn't readily available in the community

⁷⁷ [HC Deb 8 October 2-13 c15](#)

⁷⁸ [HC Deb 22 October 2013 c135W](#)

⁷⁹ Howard League for Penal Reform *The Howard League for Penal Reform's submission to the green paper consultation – Transforming Youth Custody: Putting education at the heart of detention* 30 April 2013

there is a risk they may impose custody in cusp cases which would previously have received a community sentence, or move up the sentence tariff more readily. When coupled with the risk of longer sentences being handed down as a way of addressing limitations to what can be achieved in short periods in custody (both in terms of education and challenging entrenched behaviour) there is a real danger that hard-won gains made in recent years could be lost.⁸⁰

The Prisoners Education Trust too warned of the potential perverse effect of Secure Colleges' attractiveness to sentencers leading to a reversal of the recent decrease in the number of young people in custody. It also expressed concern about quantitative targets for qualifications obtained:

Targeting particular educational qualifications, however much they may be of value in themselves, can drive the system to pursue its own numerical targets in ways that fail to meet the real needs of children or to engage them effectively;⁸¹

NACRO highlighted the need for education in custody to be linked with that in the community, so that education was not interrupted:

Crucially, for Nacro, plans to improve education in custody must have an impact on reoffending. To do this there must be clear links between education provided in prison and the community, so that courses can be continued post-release. At the moment, fewer than half of young offenders say they know where to get help with continuing their education when they leave prison. For older children, education should also link to realistic employment opportunities, so that young people can feel positive and optimistic about their life outside of prison.⁸²

In its response to the consultation paper, Clinks (an umbrella organisation for voluntary organisations working with offenders) welcomed the commitment to education, training and employment:

At a time when young people who have offended are subject to considerable stigma in the media, it is important to convey the message that young people in the custodial estate are still children entitled to an education.

Clinks argued, though, for a broad interpretation of what education for young offenders could comprise:

Education for young people in custody should be as much about personal development as the acquisition of skills or knowledge. Government should therefore define 'education' as broadly as possible in Secure Colleges and avoid replicating systems and structures which have already failed to engage young people outside the custodial estate. (...)

There is a large amount of evidence to suggest that, by including more creative approaches to learning and opportunities for personal expression and development alongside traditional literacy, numeracy and vocational training, Secure Colleges can considerably heighten their potential to engage with troubled young people. (...)⁸³

⁸⁰ Prison Reform Trust *Prison Reform Trust submission: Transforming Youth Custody: Putting education at the heart of detention* April 2013

⁸¹ Prisoners Education Trust *Transforming Youth Custody: Putting education at the centre of detention* April 2013

⁸² NACRO *NACRO's response to Chris Grayling's youth custody green paper* 14 February 2013

⁸³ Clinks *Clinks response to Ministry of Justice consultation: 'Transforming Youth Custody: Putting education at the heart of detention'* April 2013