

Debating youth justice:

From punishment to
problem solving?

**Edited by Zoë Davies
and Will McMahon**

Acknowledgements

We are indebted to all our authors for taking the time and effort to respond to Rob Allen's original paper *From punishment to problem solving: A new approach to children in trouble*. In particular, we would like to thank Rob Allen not only for completing this important and thought-provoking report, but also for allowing it to be made the subject of such scrutiny. We are grateful that Rob has engaged in the debate his report has opened up without shying away from criticism and controversy.

We are also grateful to everyone who responded to the report during the consultation period. They are too numerous to list in their entirety but include The Rt. Hon. Hilary Armstrong MP, Nick Clegg MP, Nacro, Professor Gwyneth Boswell, Hallam Centre for Community Justice, the British Youth Council, Thames Valley Partnership, Slough YOT, the British Association of Social Workers, World Health Organization's Health in Prisons Project, Robert Shaw, Alison Newbould and Jacqueline Showers. All responses are available to view in full on the Crime and Society Foundation (a project of the Centre for Crime and Justice Studies) website at www.crimeandsociety.org.uk/projects/youthjustice.html.

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Rob Allen

All articles in this monograph are written in a personal capacity.

Preface

Rob Allen's report *From punishment to problem solving: A new approach to children in trouble* was published by the Centre for Crime and Justice Studies in September 2006 as part of the Centre's *Whose Justice?* project. The report, which is republished as Chapter 1 of this monograph, calls for a fundamental overhaul of the current youth justice system. It identifies the unnecessary criminalisation of young people, the failure of mental health and education services to provide appropriate services to children and young people at risk, the need for a less blame-centred approach and an exploitation of the benefits of recent developments in restorative justice.

The Crime and Society Foundation, which is based at the Centre for Crime and Justice Studies, held a seminar in October 2006 to debate Rob Allen's key recommendations. Rob, who had just stepped down from the Youth Justice Board after serving eight years, allowed his report to be dissected by leading academics, policy makers and practitioners in the field of youth justice. The result was a fascinating and fierce debate. Many of the attendees voiced their interest in continuing the debate and opening it up to others in the field.

A key issue highlighted by the seminar was the importance of engaging and drawing on the experience of those from a range of backgrounds: practitioners, academics and policy makers from a UK as well as an international perspective. Taking this on board, we approached respected individuals in the field of youth justice and requested their responses. These are published in Chapters 2 and 3 in this monograph. We also held an online public consultation aimed at practitioners from health, education and other relevant fields of expertise. We were gratified to have had enthusiastic responses, a range of which are contained in Chapter 4. These contributions and more can be found in full on the Crime and Society Foundation website www.crimeandsociety.org.uk/projects/youthjustice.html.

The aim of the *Whose Justice?* project is 'to offer critical and innovative perspectives on the scope and purpose of the criminal justice system in the UK' and to shed 'new light on old problems'. We hope that this monograph goes some way to meeting these challenges.

Zoë Davies and Will McMahon

ABOUT THE EDITORS

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From punishment to problem solving:

A new approach to children in trouble

Rob Allen

From punishment to problem solving: A new approach to children in trouble was originally published by the Centre for Crime and Justice Studies in September 2006 and is available at www.kcl.ac.uk/ccjs

Executive summary: From punishment to problem solving

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

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

Prevention

With the UK at the bottom of the league table of child well-being in the EU, there is a need for much greater investment in mainstream services

to support children and their families. There is a particular need to tackle exclusion and truancy, which are associated with offending, and to address the growing incidence of mental health problems.

We need:

a) to expand restorative justice programmes in schools and ensure that a proper range of provision is available for young people with special educational needs;

b) a much expanded mental health sector so that needs can be identified early and suitable help provided to young people and their families.

Criminalisation

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

c) The age of criminal responsibility should be raised to 14 with civil childcare proceedings used for children below that age who need compulsory measures of care.

d) Diversion from prosecution should be encouraged, with much more widespread use of restorative conferencing.

e) Specialist prosecutors should be introduced, with the aim of actively diverting cases and identifying cases where local authorities should investigate the need for care proceedings. Youth courts should also consider the case for restorative conferencing and have the power to transfer appropriate cases to the family court.

Serious and persistent offenders

The use of custody in England and Wales has remained high in international terms, despite attempts to introduce alternatives at the remand and sentencing stage. Although the Youth Justice Board has aimed to bring coherence to the range of secure establishments, there is still a jumble of responsibilities across government departments.

Prison establishments, in particular, are ill-equipped to meet the complex needs of young offenders. There is a need therefore to:

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

Governance

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

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

- i) Responsibility for youth justice within government should be moved to the Department for Education and Skills (DfES).

j) The Youth Justice Board should be sponsored by the DfES. It should exercise a stronger leadership role in respect of residential institutions and relinquish responsibility for youth crime prevention.

Introduction: From punishment to problem solving

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

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

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

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

sense of respect in our schools, in our communities, in our towns and our villages’.

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

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

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

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

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

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

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

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

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

Second, we currently define and treat too much misbehaviour by young people as crimes to be punished rather than problems to

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

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

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

Under the DfES, the Youth Justice Board should play a much stronger role in setting standards in secure establishments and promoting alternatives to detention, while giving up its role in prevention. This should be left to local area agreements, preventive efforts integrated and led by mainstream services provided by schools, healthcare and social work with families.

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

Chapter 1: From punishment to problem solving

Making a reality of prevention

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

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

Prevention is certainly central to the international norms and standards governing youth justice. The Council of Europe, in its 2003 recommendation on delinquency, says that the aims of juvenile justice should be to prevent offending and re-offending,

to resocialise and reintegrate offenders and to address the needs of victims. A range of other international standards emphasise prevention – in particular, the UN Convention on the Rights of the Child, the Riyadh Guidelines and the Beijing Rules.

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

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

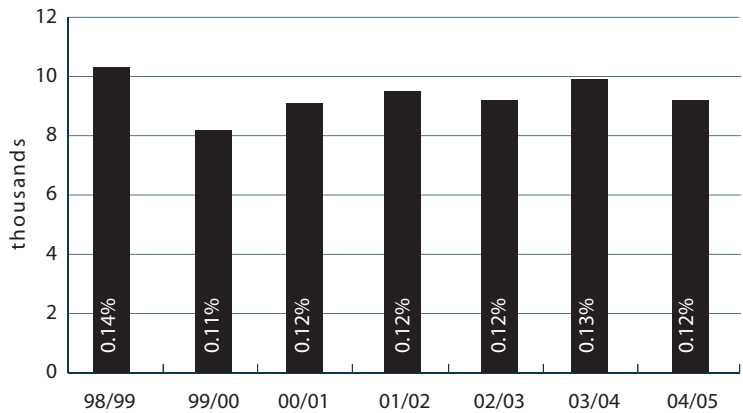
Education

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

Education departments are simply not meeting the needs of children and young people who offend. This is illustrated by the Audit Commission's finding in 2004 that, for the most part, they simply do not know how many school-age young people are not in school. Little progress has been made in tackling truancy and recent levels of school exclusion have remained stubbornly

high. Official figures show there were 9,500 permanent exclusions from primary, secondary and special schools in 2004/05. Although 4 per cent fewer than a year before, the number of ‘fixed period’ exclusions rose 13 per cent, to 390,000. A total of 221,000 individual pupils were suspended at least once, 19,000 more than in 2003/04. Sixty cases involved children aged four or less. Black children were nearly three times more likely to be dealt with by exclusion than young white people (DfES 2006).

FIGURE 1.1: SCHOOL EXCLUSIONS IN ENGLAND, NUMBER OF PERMANENT EXCLUSIONS (AS A PERCENTAGE OF SCHOOL POPULATION)



Source: Annual School Census

Despite the fact that excluded young people are more than twice as likely to self-report offending as other students, government policy in recent years has made it more rather than less likely that young people will be thrown out of school. Tackling poor behaviour has become the priority, and exclusions are now seen as part of the solution, not the problem. Responding to the figures in 2004, School Standards Minister Jacqui Smith confirmed, ‘We want a zero-tolerance approach to disruptive behaviour, on everything from backchat to bullying or violence. I fully back heads who

decide to remove or prosecute anyone, parent or pupil, who is behaving in an aggressive way' (BBC 2005).

Fearful perhaps that such a policy, if implemented literally, would leave few pupils in the classroom, her successor Jim Knight greeted the 2005 figures with a more measured but nonetheless clear message to the minority that 'schools can and will act robustly' (BBC 2006).

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

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

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

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

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

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

While a major DfES-led initiative on RJ in schools would reduce conflict and exclusions substantially, problems sometimes arise because mainstream schools are being asked to cope with children who require much more attention than can be provided. The second area for development is, therefore, the need to ensure that the right kind of provision is available. In particular, it is crucial that the system of special education functions properly. The Education Select Committee published a damning report in June 2006, highlighting 'significant cracks' in an underfunded system that leaves desperate parents without sufficient support (House of Commons Education and Skills Committee 2006). The number of residential places has declined by 7 per cent since 1997, from 1,239 to 1,148, with a decline of 4 per cent in the number in special schools. While residential schools will not be appropriate for many young people, much more specialist support is needed, whether in specialist or mainstream schools. Ofsted has found that each can provide good results (Ofsted 2006).

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

Mental health

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

The scale of child and adolescent mental health problems is large and increasing. The service response is simply inadequate. The 2004 Office for National Statistics survey found that 11 per cent of boys and 8 per cent of girls aged five to 16 had at least one disorder, with conduct and hyperkinetic disorders – the ones most likely to manifest themselves in delinquent behaviour – much more likely in boys than in girls (ONS 2004).

Children from poorer backgrounds, children in care, asylum-seeker children and those who have witnessed domestic violence, are all at particular risk of developing mental health problems.

The British Medical Association has estimated that around 1.1 million children under the age of 18 would benefit from support from specialist mental health services. A recent study suggests that disorders on the autistic spectrum may be much more common than

previously thought, with up to one in a hundred children suffering from them (BMA 2006).

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

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

Conclusions

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

It appears that the concern about child and adolescent mental health in Finland has eclipsed concerns about youth crime. It would follow from this that behaviour that might be viewed as criminal in England and Wales could well be dealt with in Finland, first and foremost, as a psychiatric disorder. The researchers suggest that the use of psychiatric units reflects a philosophy of highly individualised treatment which is out of favour in the UK. However, 'when we consider recent research undertaken in Greater Manchester by the Youth Justice Trust, which reveals that, in 147 randomly selected

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

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

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

How government should best organise services is discussed on page 47. But it is clear that any substantial investment in the assessment and care of children needs to be integrated and co-ordinated centrally and locally.

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

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

It makes sense for the full range of prevention and treatment to be co-ordinated locally through children's trusts and in the children strand of local area agreements.

Chapter 2: From punishment to problem solving

Too many prosecutions

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

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

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

The youth justice system in England and Wales leaves plenty of scope for bad behaviour by children as young as ten to be brought before the courts, and that is what has been happening since 1997. Before the Crime and Disorder Act 1998, the law contained a presumption that those under 14 did not know the difference

between right and wrong and a conviction could only result if the prosecution proved that they did. New Labour considered the so-called doctrine of *doli incapax* an affront to common sense and repealed it, leaving England and Wales with one of the lowest ages of criminal responsibility in Europe.

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

TABLE 2.1: AGE OF CRIMINAL RESPONSIBILITY IN DIFFERENT COUNTRIES

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

Children as young as ten are not, of course, subject to the same sentences as adults. The youth court, which deals with most under 18s, has limited sentencing powers, with detention of up to a maximum of two years available for those aged 12 years and above. Nonetheless, the most serious cases can be dealt with in the Crown Court before a jury, with *adult maxima* available for grave crimes. A good deal of youth crime is dealt with outside the youth court by way of reprimands and final warnings, a system of diversion with which the Crime and Disorder Act replaced earlier cautioning arrangements.

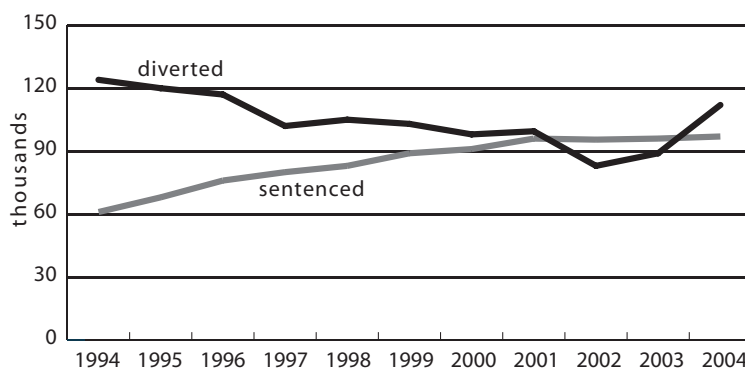
Almost all youth justice systems have some form of diversion so that resources can be concentrated on the most serious and chronic cases. This is necessary on practical grounds because of the sheer range of adolescent misbehaviour that would otherwise overwhelm the courts. But it is also desirable because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

New Labour's reforms, as shown by the title of the White Paper *No More Excuses*, were based on scepticism about diversion. Cautioning had fallen into disrepute partly as a result of well-publicised cases of young people being cautioned over and over again – so-called repeat cautioning – alongside research which showed that diversion became counter-productive if applied too liberally. It is now accepted that a blind acceptance of labelling effects in the 1980s led the Home Office, police and youth justice practitioners to embrace diversion more enthusiastically than the evidence warranted.

But the resulting limits on diversionary options – effectively one reprimand and one final warning, however serious or trivial the offence – has caused leading commentators to suggest that 'in rightly repudiating (as a universal nostrum) the "grow out of crime/leave the kids alone" philosophy, the new English system might have gone too far in the opposite direction' (Bottoms and Dignan 2004). This is supported by evidence from the Scottish longitudinal study which found that being caught by the police had a particularly strong influence on whether young people gave up delinquency entirely: the more times they had been caught by the police, the less likely it was that their level of delinquency would be zero at later stages. The researchers note that this fits with the ideas of labelling theory which holds that people officially labelled

as criminals tend to adopt a criminal identity, and find it very hard to escape from it subsequently (Smith 2006). Certainly the data shows that an increasing proportion of known young offenders are being brought before the courts in England and Wales rather than diverted (see Figure 2.1).

FIGURE 2.1: CAUTIONS AND SENTENCES OF TEN TO 17-YEAR-OLDS, 1994–2004
YOUNG OFFENDERS DIVERTED AND SENTENCED, 1994–2004



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

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

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

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

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

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

How to put it right

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

Raising the age of criminal responsibility

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

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

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

Almost the same proportion of 12 to 15-year-olds was dealt with by community penalties.

Of the 600 who went to custody in 2004, most had committed burglary, robbery or theft, with fewer than one in ten convicted of indictable sexual and violent crimes.

**TABLE 2.2: SENTENCES FOR UNDER 18S, BY AGE,
IN 2004 AGE 10–12 AGE 12–15 AGE 10–18**

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

(Source: Criminal Statistics England and Wales)

TABLE 2.3: OFFENCES LEADING TO CUSTODIAL SENTENCES, 2004

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

(Source: Criminal Statistics England and Wales)

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

Encouraging diversion

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

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

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

Prosecution and courts

Finally, some limited reforms should be introduced to the prosecutorial and court system. Initial decisions about young people aged 14 to 18 charged with criminal offences should normally be brought before a young people's prosecutor (YPP). As well as having regard to the evidence and the public interest, the YPP would be required to consider the interests of the young

person and actively look at ways of diverting cases, for example through conditional diversion programmes. The YPP would have the power to make an order requiring a young person to appear before a youth offender panel and undertake any resulting contract for up to a year. The prosecutor would also have the power to require the local authority to investigate the need for civil care proceedings where the young person does not appear to be receiving proper care and supervision.

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

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

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

Chapter 3: From punishment to problem solving

Serious and persistent offenders

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

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

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

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

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

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

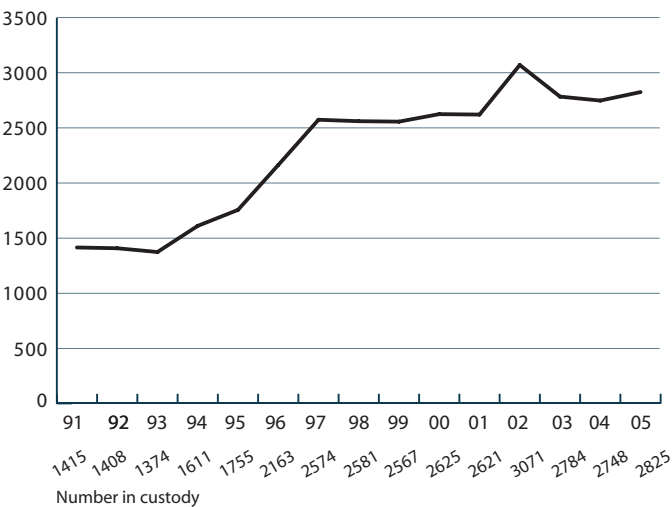
The second is the lack of suitable accommodation for young people on release. Almost all the establishments had tales of young people who did not want to be released, preferring to stay locked up than face a future with nowhere to go or a placement in a bed and breakfast.

Who is in custody?

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

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

FIGURE 3.1: YOUNG PEOPLE UNDER 18 IN CUSTODY IN THE MONTH OF JUNE, 1991–2005



Source: Youth Justice Board

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

The continuing high levels of custody may be occurring because the increasing use of prosecution, described in chapter 1.2, has made more young people eligible for custody. Table 3.1 shows that since 1997 there have been increasing numbers of offenders being processed and therefore arguably more candidates for custody, and that the proportionate use of custody has fallen from 9 to 7 per cent. But most of the additional cases are at a low level of seriousness. It may, of course, be that the criminalisation of young people at a lower age means that more of them are having longer careers in the system and thereby build up the prior convictions which place them at greater risk of custody. But more numbers being sentenced is not the whole answer.

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

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

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

TABLE 3.1: PROPORTIONATE USE OF DIFFERENT SENTENCES FOR UNDER 18S (%), 1994–2004

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

(Source: Youth Justice Board)

Key priorities

There are three key priorities for policy in relation to serious and persistent offenders.

The first is to reduce the numbers locked up. The second is to introduce a more appropriate sentencing framework for those who do need to be held in secure conditions. The third is to overhaul radically the type of placements available in secure institutions.

Reducing the numbers

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

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

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

There is, therefore, a need to ensure that ISSPs are targeting those at genuine risk of custody and not widening the net by providing alternatives to other interventions. YOTs need to be encouraged to work harder to reduce numbers by improving their pre-sentence reports and their communication with sentencers,

by local reviewing of cases where custodial sentences are made, and through the development of an appeals strategy so that the rationale for custodial sentences is routinely tested in the higher courts. Best practice guidelines on compliance with and enforcement of sentences will be needed; otherwise, more and more breach cases will end up in custody at the hands of the proposed National Enforcement Agency.

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

Sentencing framework

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

More fundamentally still, a new form of residential sentence could be introduced to run alongside and potentially replace the

Detention and Training Order. Courts would be able to make a Residential Training Order, a new indeterminate order of up to two years or, in the case of grave crimes, five years. A Residential Training Order should only be made in cases where the offence is so serious that the young person should be removed from home and where the young person has failed to comply with community-based orders.

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

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

Secure reform

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

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

At worst, secure establishments can be a frightening interlude in young lives already characterised by neglect and punishment. Even smaller closed institutions in the local authority or secure training sector struggle to overcome the hostility and alienation

felt by many of the children detained against their will. Equipping their residents to lead more positive lives is also an uphill task without intensive follow-up support and a willingness on the part of schools, social workers and employers to give them a chance on release. It is perhaps not surprising that the results in terms of re-offending for all forms of custody have always been stubbornly high, with four out of every five young people back before the courts within two years.

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

a) Prison

The Prison Service, which accommodates 83 per cent of the juvenile custodial population, is particularly poorly suited to locking up young people. In 1996, Chief Inspector of Prisons, Sir David, now Lord, Ramsbotham recommended that they should relinquish responsibility for all children under the age of 18. Children represent less than 5 per cent of the prison population. An organisation whose key priority is to prevent the escape of dangerous adult criminals cannot be expected to provide the level of care, supervision and support required by teenagers.

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

The regular survey of young people's views conducted for the inspectorate makes for a more sober assessment. The 2004 report found that a third of young people felt unsafe at some time, 8 per cent said they had been assaulted by staff and 24 per cent assaulted by other trainees.

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

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

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

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

Third, the number and type of staff working in YOIs is often not up to the challenge of dealing with disturbed adolescents. They are recruited to work in any prison and basic training contains nothing about the needs of young people, although a mandatory training course has been introduced for those who work with juveniles. The Youth Justice Board vision for the juvenile estate involves 'staff committed to working with children and young people, who are adequately trained in this area of work, and who have completed nationally approved training in effective practice work with young offenders'. The Inspectorate's finding in 2004, that a quarter of young people reported that they had received insulting remarks from staff in prison, shows the scale of the problem.

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

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

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

b) Secure training centres

The four STCs, which have places for 274 young people, are a recent invention. After the 1992 election, Kenneth Clarke asked his Home Office officials to develop proposals for dealing with persistent juvenile offenders who, according to the police, were able to commit large amounts of crime with impunity. The murder of James Bulger in February 1993 by two ten-year-old boys gave a sudden and tragic impetus to this agenda. Although the existing law allowed, indeed required, the two boys responsible for the murder to be detained indefinitely, there were limits to courts' powers to detain juveniles under the age of 15 unless they had been charged with or convicted of the gravest crimes. Under the Criminal Justice and Public Order Act 1994, a new Secure Training Order was introduced for persistent offenders aged 12 to 15. The order was to be served in new, specially designed STCs, which were to be set up by the private, voluntary or public sector.

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

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

TABLE 3.2: COMMISSIONING OF BEDS: COMPARISON SINCE 2002

	2002/03	2003/04	2004/05	2005/06
SCHs	254	297	235	235
STCs	118	194	274	274
YOIs	3,066	2,965	2,800	2,825
Total	3,438	3,456	3,309	3,334

(Source: Youth Justice Board)

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

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

c) Secure children's homes

The 15 SCHs the Youth Justice Board contracts with provide, by some distance, the best level of care among secure establishments. Apart from one unit, which has recently been taken over by the private sector, SCHs are run by local authorities and are subject to licensing and inspection by the DfES. Recent inspection reports by the Commission for Social Care Inspectorate have been very

positive, but the units are expensive and there is no coherent strategy for funding them.

SCHs play an important role in providing secure care for children who are not necessarily offenders but who need to be locked up for their own protection – often children who run away from other placements. There is disagreement as to whether mixed units which accommodate welfare and justice cases are sensible. One of the arguments deployed in favour of establishing the STCs was that they could have an undiluted focus on tackling persistent offending. In fact the underlying needs of almost all of these children are the same: stability; boundaries within the context of warm caring relationships; compensatory education; and skilled help in making sense of traumatic early experiences of abuse and neglect.

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

What to do?

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

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

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

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

Chapter 4: From punishment to problem solving

Putting it into practice

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

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

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

Centrally, a properly joined-up set of measures for young people in England can only really be developed under the aegis of the Children's Department in the DfES. A study of children who present challenging behaviour suggested that, historically, whether the problem child has been cared for, punished, educated or treated has often been a matter of chance, depending on which individuals in which agency happened to pick up his or her case (Visser 2003). A more sensible approach is for responses to children to be made on the basis of what will best meet their needs.

The outcomes for children which drive the work of the DfES – being healthy, staying safe, enjoying and achieving, making a contribution and achieving economic well-being – are as appropriate for young offenders as they are for other young people. Many of the highly successful preventive programmes developed by the Home Office and Youth Justice Board, including Youth Inclusion Programmes and Youth Inclusion and Support Programmes, would much more

appropriately sit within the remit of a department committed to these positive outcomes for children, rather than one whose core purpose is protecting the public.

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

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

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

Policy questions relating to young offenders over the age of criminal responsibility and reforms to the courts structure should be a matter for the Department for Constitutional Affairs. The Attorney General should be responsible for taking forward the development of the YPP.

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

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

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

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

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

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

Conclusion

There are many dedicated and skilled professionals and volunteers who work with young offenders across the country. Among police officers and social workers, staff in secure establishments and Referral Order volunteers alike are thousands of people who are deeply committed to helping the children they work with achieve a better future. All too often, their efforts are let down by the framework and system in which they are working, whether it is unwillingness by a school to offer another chance, long waiting lists for psychiatric help, rigid requirements to prosecute minor cases, lack of appropriate residential placements close to home, or an inability to find suitable accommodation at the end of such a placement.

While some progress has been made in improving performance, and the Youth Justice Board has played an important role in achieving that, this report has argued that something more fundamental is now needed – a new and better framework for youth justice, which genuinely moves from punishment to problem solving.

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2

Responses from the UK

Youth justice with integrity: Beyond Allen's 'new approach'

Professor Barry Goldson and Professor John Muncie

Contemporary youth justice policy in England and Wales is in a parlous state. It lacks any consistent rationale and consolidating principles (Goldson and Muncie 2006a; Muncie 2006). It is excessively politicised and, as a consequence, regularly suffers the ill-conceived whims and knee-jerk reactions from politicians courting populist favour (Pitts 2001). It has precipitated system expansion on an industrial scale, giving rise to one of the most punitive juvenile penal systems in the industrialised democratic world (Youth Justice Board 2004). It has attracted consistently critical attention from authoritative international human rights agencies (UNCRC 2002; Office for the Commissioner for Human Rights 2005) and it fails to stand up to academic scrutiny and rigorous evidence-based analysis (Goldson 2001; Goldson and Muncie 2006b). There is, without doubt, a pressing need for a 'new approach' and, on this level, we welcome Rob Allen's pamphlet *From punishment to problem solving*.

On a different level, however, *From punishment to problem solving* is disappointing. For eight years Allen served as a member of the Youth Justice Board and, as such, surely he must share some

professional responsibility for the current condition of the youth justice system in England and Wales? Since his recent departure from the Board, however, Allen has assumed a more critical position in public. In this sense, his 'new approach' is situated both 'in' and 'against' the youth justice policy community and the attempt to straddle these antagonistic spaces inevitably colours the analysis. The approach is seemingly both apologetic ('some improvements have been made') and critical ('a fundamental shift is needed') and such tensions permeate the pamphlet. Ultimately, the search for a 'solution' that is pragmatically realist and politically palatable on the one hand, yet characterised by a 'fundamental shift' of direction on the other, is intrinsically self-defeating. As a consequence, *From punishment to problem solving* comprises an uneven, inconsistent and incomplete set of alternative prescriptions.

We have no quarrel with Allen's observations that children and young people are criminalised unnecessarily in England and Wales resulting in 'too many prosecutions'. Neither would we argue with the proposals to 'raise the age of criminal responsibility', 'encourage diversion' and 'abolish prison service custody' for children under the age of 16. Furthermore, it is increasingly clear that the organisational fracture of services for 'children in need' and 'children in trouble' is not only conceptually tenuous, but also impedes the development of 'joined-up' approaches. The proposition, therefore, to lever away key areas of youth justice provision from the Home Office and situate them within the Department for Education and Skills makes manifest sense.

Other aspects of 'problem solving' raise key questions, however. Where is the evidence to support the seemingly boundless enthusiasm for restorative justice? Is the synthesis of 'diversion' and school-based 'restorative conferencing' not pitted paradoxically with counter tendencies, most notably the prospect of net-widening and further system expansion? Why limit raising the age of criminal responsibility to 14 when other European countries, including Denmark, Norway, Finland, Sweden, Belgium and Luxembourg, have exceeded this without suffering any discernible negative consequences in terms of juvenile crime rates? What is the basis for holding local authorities responsible

for the cost of penal custody given that custodial expansion and juvenile re-penalisation have been direct consequences of central government policy? Why delay the 'phasing out' of prison custody for 15 and 16-year-old boys for one and two years respectively when the evidence points unequivocally to the corrosive, counter-productive and even abusive tendencies of penal regimes? Why exclude 17-year-olds from such 'phasing out' imperatives given that they too are children? What is the rationale – beyond political palliative – for proposing the introduction of a 'Residential Training Order' and granting the courts 'indeterminate' powers in certain cases; a proposition seemingly forgetful of the severe problems previously associated with the practice of removing children from home via the (not dissimilar) Care Order in criminal proceedings (Thorpe *et al* 1980)?

A further and more problematic defect of *From punishment to problem solving* derives from the narrowly selected body of literature upon which it draws. Indeed, the considerable volume of published research that has emerged from sections of the academic community during Allen's eight-year term of office at the Youth Justice Board is notably overlooked, whereas government department and journalistic sources are privileged. This effectively disqualifies sociological, criminological and policy-based critical scholarship. Such scholarship might well convey 'inconvenient' messages for the architects of the 'new youth justice' in England and Wales, but it is difficult to fathom how any 'new approach' can claim legitimacy without seriously engaging with a more rounded, complete and authoritative corpus of 'evidence'.

A key strand of our work in recent years has involved a critical interpretive synthesis of: evidence drawn from national and international youth justice research and practice; analyses of comparative jurisdictional approaches to youth crime and justice and records of compliance with human rights standards, treaties, conventions and rules (Goldson and Muncie 2006a). This has included a collaborative partnership comprising more than 30 national and international scholars and policy analysts and a detailed scrutiny of youth justice systems in 13 different jurisdictions (Goldson and Muncie 2006b; Muncie and Goldson 2006). Six core

intersecting principles have emerged from this international project and together they inform what we have called a 'youth justice with integrity' or a 'principled youth justice'. The same principles resonate with some of Allen's concerns but they take his prescriptions further; they extend significantly beyond his 'new approach'.

First is the principle that policy should *comprehensively* address the *social* and *economic* conditions that are known to give rise to conflict, harm, social distress, crime and criminalisation, particularly *poverty* and *inequality*. The children who are most heavily exposed to correctional intervention, surveillance and punishment within the youth justice system, are routinely drawn from some of the most disadvantaged families, neighbourhoods and communities. Notwithstanding the government's stated 'historic aim' to end child poverty, children without a parent in paid employment continue to face a 74 per cent risk of poverty, the proportion of children in such households in the UK is the highest in Europe and 28 per cent of British children (3.5 million) continue to endure poverty. The corrosive impact of poverty and structural inequality is key to understanding the problems both experienced and perpetuated by identifiable sections of the young, and, in this sense, we share Allen's concerns.

Second, and closely related to the first point, are the principles of *universality*, *comprehensiveness* and *re-engaging the 'social'*. This requires closing the contradictory and antagonistic fractures that have opened between 'every child matters' priorities and the 'no more excuses' imperatives characteristic of youth justice policy and practice in England and Wales. While we concur with Allen's proposed reconfiguration and harmonisation of responsibilities and services across government ministries, we are not persuaded that this alone will suffice. Ultimately, what is required is the conceptual and institutional decriminalisation of social need. 'Normal' social institutions - including families (however they are configured), 'communities', youth services, leisure and recreational services, health provision, schools, training and employment initiatives - need to be adequately resourced and supported. The industrial-scale expansion of the youth justice apparatus in England and Wales should be curtailed with immediate effect and resources redirected to generic 'children first' services and broad-based welfare support.

This is necessary because the very factors that tend to give rise to persistent and serious youth crime are those least amenable to intervention by agents of the youth justice system (Howell *et al* 1995). Furthermore, as Downes and Hansen (2006) have illustrated with their international research, countries that invest in universal welfare provision are least likely to resort to high levels of penal custody. Conversely, above average levels of child poverty and welfare neglect alongside high rates of child incarceration - such as those that prevail in England and Wales - are ethically unsustainable.

Third is the principle of *diversion*. In many respects, this is the antithesis of the interventionist and net-widening tendencies that characterise contemporary youth justice policy and practice in England and Wales. Diversion is not only consistent with key international human rights instruments and the more progressive practice found in certain international youth justice systems, but it has also been shown to be an effective strategy in terms of youth crime prevention. Here we take issue with Allen's caricatured and over-simplified construction of labelling theory, his dismissive critique of cautioning and his presentation of Reprimands and Final Warnings as 'diversionary' mechanisms. Space does not allow comprehensive engagement with this debate here, but we would argue that the theoretical and practical value of the concepts of labelling and social reaction, the effectiveness of strategically applied cautioning (Bell *et al* 1999; Kemp *et al* 2002; Pragnell 2005) and the 'inversionary', interventionist or 'push-in' - as distinct from diversionary - impact of contemporary pre-court responses (Goldson 2000; Home Office 2006a and 2006b) requires more studious consideration. Of course, the most effective diversionary strategy is literally to remove children and young people from the youth justice nexus altogether by significantly raising the age of criminal responsibility. As stated, we are not aware of any criminological rationale that categorically supports Allen's proposal for fixing the age of criminal responsibility at 14. We submit, therefore, that serious consideration should be given to raising the age of criminal responsibility to 16 or even 18.

Fourth is the principle of *child-appropriate justice*. In the minority of cases where formal youth justice intervention is deemed

unavoidable, it should be provided within a child-appropriate context. The intensity and duration of intervention should be proportionate to the severity of the offence and limited to the minimum that is absolutely necessary.

Fifth is the principle of *abolitionism*. Youth justice interventions that are ineffective or, more problematically, that violate international human rights obligations, are known to be damaging and harmful and/or aggravate the very issues that they seek to resolve are profoundly irrational and should be abolished. This applies, in varying degrees to: over-zealous modes of early intervention; the net-widening effect of 'anti-social behaviour' initiatives and, most spectacularly of all, the damaging and counter-productive practices of child imprisonment. The abolition of child imprisonment is more urgent than Allen implies and, it has to be said, the Youth Justice Board has failed in its targets to scale down incarceration. Indeed, the population of child prisoners continues to rise, imposing crisis conditions on the juvenile secure estate. This has led to: compulsory cell sharing; profoundly disturbing 'educational programmes'; the destabilisation of the YJB's 'placements strategy'; bussing of children in cellular vehicles between penal institutions; an increased likelihood of disciplinary breakdown and disorder; and, most problematic of all, the subjection of children to more damaging and harmful penal environments. In any other context this could only be described as institutional child abuse (Goldson 2006). In such circumstances, the proposals outlined in *From punishment to problem solving* - to introduce limitations on the use of penal custody within one and two years - are manifestly inadequate.

Sixth are the related principles of *depoliticisation* and *tolerance*. The reactive politicisation of youth justice policy in England and Wales not only negates evidence and distorts policy formation, it is also underpinned by a skewed reading of public opinion itself. Public attitudes to youth crime and justice are complex, multilayered and even contradictory. The public tends to have a more pessimistic view of youth crime than is justified by the official crime statistics, yet people are also significantly less recriminatory and punitive than is often supposed (Hough and Roberts 2004). A youth justice with integrity must challenge crude statements of 'toughness' and

engage instead with more sophisticated and rationally defensible approaches. This requires applying research evidence, national and international practice experience and critical analysis towards depoliticising youth crime and justice. The development of a more progressively tolerant, effective and human rights compliant youth justice is the ultimate objective. The 'new approach' promised by *From punishment to problem solving*, however, is fatally compromised by its intrinsic pragmatism and its apparent attempt to retain political acceptability. 'Problem solving' in this way is itself problematic and, in order to theorise, comprehend and resolve the formidable challenges that confront contemporary youth justice in England and Wales, it is necessary to look beyond it.

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Helping young offenders is protecting the public

Bob Reitemeier

There is much to commend in Rob Allen's paper, which I strongly welcome and support. A paper such as Rob's generates valuable debate, which invariably raises comments about what was not mentioned in the paper as well as reactions to the viewpoints and recommendations which were included. I feel this is a very helpful contribution to the growing demand for policy and practice changes in Britain's youth justice system.

It is important to start by clarifying the extent of change needed in the youth justice system. Where on the spectrum of minor modification or 'tinkering' to full scale overhaul do we feel it lands? At The Children's Society, we have been calling for a full-scale review and overhaul of the system for some time, and it is important to state this upfront. In Britain, we are simply not delivering on the objectives of a youth justice system, which should combine public protection with understanding and meeting the needs of the young people who find themselves in trouble with the law so that they stop their offending behaviour.

Concerning public protection, everyone involved in youth justice is frustrated by the fact that, although the number of indictable offences committed by young people under 18 has fallen from

143,000 in 1992 to 112,900 in 2004, a decrease of 21 per cent, there is great scepticism by large sections of the public about whether this is in fact true (Nacro 2006). This, combined with a genuine fear by many people of 'youth' in general, has led to a situation where the government feels that it must respond harshly and convincingly to bad behaviour by young people with increasingly punitive measures. This does not work, as punishment alone without appropriate support does not lead to sustainable changes in the causes of crime and therefore behaviour.

Concerning the importance of understanding and meeting the needs of young people in trouble, this is a subject that could easily be the basis of its own paper. That may be the reason why Rob spent little time referring to the linkages between poverty, disadvantage, abuse, inequality, self-esteem and family circumstance to youth crime. If we look at the young people who currently end up in custody as an example, we know, and it has been said by many people before, that each one of them has a story to tell, a story that will explain how they have been subject to serious disadvantages and that we should not be at all surprised that they end up breaking the law. To change this, to actually reach the depths of understanding and trust necessary to help a very troubled young person change their behaviour, requires long-term and often quite intensive support. The youth justice 'system' is more a collection of short-term interventions that may be kept shorter than the child's welfare needs would dictate, precisely because they are given primarily as 'punishment' rather than with the purpose of meeting needs. To change the system to one that responds safely and effectively to need, rather than punishing as a response to wrong-doing, requires an overhaul rather than minor modifications.

Prevention

Rob is right to call for investing heavily in prevention. Across children and young people's services there is a clear understanding of the importance of early intervention and the Sure Start/ children's centres programmes, aimed at the zero-to-four-year-old age group, are a hallmark of this approach. But the evolution from Sure Start to children's centres may be a good example of how a

valuable intervention can be compromised by lack of resources. The same level of financing that went into Sure Start programmes is not being duplicated in the roll out of children's centres, which are due to reach 2,500 in number next year. Some organisations that delivered positive results for children and their families in Sure Start programmes are reluctant to run children's centres because they will not be able to deliver the quality needed within the resources offered by government.

The financial issue in the area of prevention is, at one level, a simple one: pay now or pay later. Rob points out the increasing importance of tackling exclusion and truancy in schools and addressing the significant mental health needs of young people. When combining this with the alarming number of children with autism, behavioural or attention deficit or hyperactivity disorders, or other special education needs, we are confronted with tens of thousands of young people and their families who require immediate and often intensive support. Without the right support, these young people can cause havoc in a classroom or any gathering where some order is required to facilitate participation by all. But to exclude them as a means to restore order is a social injustice. As a society, we will be judged by how we treat those most disadvantaged, and exclusions are not the answer. We must provide the support necessary to assist their inclusion.

However, the levels of support needed will not become available without greater recognition of the importance of shifting resources to this group. A critical element of this concerns workforce development. Trying to manage a classroom (or children's centre or scout group or drama club) with a minority of disruptive young people can be a trying experience, even with proper training and an understanding of the clinical or behavioural conditions of the young people. Without any training or understanding, it really is asking the impossible.

Rob also promotes the use of restorative justice programmes in schools (and more widely). The Children's Society has valuable experience in running restorative justice projects, and in our view

this approach should be actively and strongly supported. One of the most telling reactions, by both the victims and the perpetrators involved, is the acknowledgement of the lack of understanding of the other person's situation prior to the crime (or inappropriate behaviour) as well as the impact of the crime. The young offenders can grasp, often for the first time, how damaging and destructive their behaviour is, and the victims are often very surprised by the life story of the young person, many of whom have suffered great disadvantage. In these cases, a restorative justice approach can go a long way towards breaking down generational barriers and misunderstandings.

The risk with restorative justice programmes is that, in our pursuit of 'quick fixes', they become de-professionalised. Organisations conduct restorative justice exercises in minutes, on the spot, rather than taking the days needed for preparation, implementation and follow-up. We must ensure that restorative justice maintains high standards of performance.

Criminalisation

A major plank of The Children's Society's youth justice programme is actively to support raising the age of criminal responsibility to 14. From our point of view, there is little to add to Rob's own position on this matter, which we fully endorse. One aspect worth mentioning, however, is the political climate for such a change. Despite a welcome commitment in the Liberal Democrats 2005 election manifesto, it is readily acknowledged that there is currently very little political pressure or wider support for changing the age of criminal responsibility. In our view, that is why it is vitally important for charities, academics, think-tanks, interested parties in the court system and many others to campaign continually for this change. We may be in for a longer haul than we desire, but the blatant inconsistency in which we treat children must be addressed. To live in a society where you must be 16 years old to make an informed decision to have sex and 18 to drink alcohol but at ten can be held criminally responsible makes no sense at all.

One aspect of the increasing criminalisation we are currently witnessing is the need to address the relationship between the

'looked after' system and the youth justice system. Around 43 per cent of children who reach custody will have some history of being in care (HMIP 2004). But it is also the case that children in care are likely to end up in court for really very minor matters and that the police are called to children's homes in situations that, had they had occurred in a private family home, would not have involved the police, such as damaging furniture or breaking mirrors. Behavioural management in care homes must address this issue so that minor matters are handled, as they should, by care staff themselves. We must also ensure that the Green Paper, Care Matters, helps us improve this situation.

Diversion from prosecution is a critical element in combating the criminalisation of children and young people. We sometimes tend to overuse the term 'labelling' children, but the Children's Society's experience working with some of the most disadvantaged children in the country indicates that, in cases of potential prosecution, it is a very important factor. Most children know very well that they have done something wrong, and given appropriate guidance and support, will work to correct this. Being labelled a criminal reinforces the distance between the young person and society, rather than helping to reunite that person with a productive role in the community.

Serious and persistent offenders

The record numbers of young people in custody is a disgrace and something that shames our country. Worse still, as Rob points out, it doesn't help a bit in reducing re-offending. Two aspects of this which did not receive much attention in Rob's paper I feel should be addressed here are the disproportionate number of black and minority ethnic people in the system, and the importance of effective and co-ordinated resettlement programmes.

We cannot avoid the cries of institutional racism when one in ten mixed race young offenders and one in 12 black young offenders are sentenced to custody, compared to one in 40 white young offenders. This cannot be the result of the sentencing element of the young justice system alone; rather, it must permeate the whole of the procedure, from prevention programmes all the way through

to resettlement. Workforce development across the young justice spectrum is a critical element of addressing this, but we also need to take a more 'continuous improvement' approach rather than hoping that one-off or occasional interventions will be sufficient. Institutional racism or discrimination of any kind is, by its nature, embedded in our sub-conscious, and it requires sustained efforts to understand, acknowledge and overcome. This requires strong leadership from the very top of the criminal justice system and a long-term commitment to action.

The Children's Society fully supports Rob's statement that prisons are fundamentally the wrong places for the under 18s. We have repeatedly said that we accept that some young people should be in secure accommodation for reasons of public safety or for their own safety, but prison is not the answer. Until we are all successful in achieving this change, however, resettlement from prison remains a critical issue. Just as prevention is important in addressing the needs of children and young people at an early age to help them avoid involvement in crime, resettlement is critical in helping young people avoid returning to crime.

Resettlement work should begin as soon as custody begins. Most people in the prison service are clear that once a person's liberty is taken away, no further punishment should be applied and all work should concentrate on the rehabilitation of the offender. However, with prisons literally bursting at the seams, any focus on rehabilitation can become meaningless because of the need to maintain security.

The main planks of rehabilitation and resettlement involve education, employment and accommodation. We need to ensure that the training programmes in custody are effective and meet the needs of the young people. The main objective should be to enhance the young person's ability to secure employment or re-enter mainstream education as soon as possible after release. Rob points out the importance of suitable accommodation for young people on release. But, beyond accommodation (and the probation services), I believe that more needs to be done in terms of individualised support to the young person once they are back in their community - support during

the important period of transition, when everything is at stake for the young person. To think that these young people, who generally have had a history of offending and troubled backgrounds, will, without day-to-day support, make all the right choices which lead them away from a life of crime is wishful thinking.

There is a role here for the voluntary sector, which has experience in developing positive relationships with some of the hardest to reach children and young people. We need to develop a non-stigmatised approach to this type of support, so that the young person has someone to turn to who is not seen to be part of the 'enemy'. However, this type of support is not a statutory service, and will only receive backing if there is sufficient political will behind it.

Governance

Political will is critical in dealing with all issues concerning youth justice. There will not be any sustained decreases in the numbers of children in custody without strong political will and leadership not only from Home Office ministers but also from ministers across departments and from 10 Downing Street itself.

Sustained political support is critical to making positive changes to the youth justice system. The pattern of ministerial changes every few years (or even months) is counter-intuitive to sustained change. The proposal to give responsibility for youth justice to the Department for Education and Skills therefore makes good sense at one level – one department would be responsible for the full spectrum of work concerning children (leaving the question of refugee and asylum-seeker children aside for the moment). However, I am not confident that structural change alone will result in some type of panacea for youth justice or the needs of these troubled young people. If we speak of governance, then I think we need to speak of a clear political commitment from the very top to helping the most disadvantaged in our society, and this includes those in prison and in trouble with the law. Structure can then follow strategy.

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The neglect of power and rights: A response to 'problem solving'

Professor Phil Scraton

Introduction

Rob Allen's title suggests that the classical punitive approach to children in conflict with the law has persisted and a non-criminalising, innovative approach is necessary. This he characterises – but never defines – as 'problem solving'. What or who constitutes 'the problem' or whose responsibility it is to provide practical and material means to secure its solution are implicit. They are given no structural context beyond a brief, limited critique of state institutions. Allen (Allen 2006) rightly criticises education, by which he means schooling, as 'not meeting the needs of children who offend'. Challenging school exclusions as a response to truancy and 'misbehaviour in schools' he proposes a 'wide range of restorative and problem-solving techniques' for resolving 'conflicts between pupils and pupils and staff' (*ibid*). Presumably the emphasis shifts from institutional disengagement through punishment and exclusion to engagement through mediation and counselling.

Allen's second concern is the 'simply inadequate' mental health services that leave problems 'undetected or untreated' (*ibid*). He then

considers criminal justice: raising the age of criminal responsibility; promoting diversion; avoiding criminalisation; reducing prosecution. His unquestioning acceptance of family group conferencing and restorative justice appears central to his 'problem-solving approach'. It seems straightforward: 'aim to require the young person to accept responsibility for their conduct, make an apology to the victim and to undertake appropriate forms of reparation' (*ibid*).

For 'serious and persistent offenders' the priorities are: reduction in the imprisonment of children and young people; residential training in open conditions; placements in health and educational facilities. Secure facilities would be radically reformed to 'provide a safe and positive experience' in 'child-centred regimes' (*ibid*). Other proposals include: ending of prison custody for 15 to 16-year-olds; introduction of special units for 17-year-olds; coherent and integrated management leadership. In aspiring to a 'more sensible approach for responses to children', Allen looks to DfES 'positive outcomes': 'being healthy, staying safe, enjoying and achieving and economic well-being' (*ibid*). Extending these outcomes to 'offenders' presents the challenge of 'integrat[ing] both prevention and rehabilitation' with 'mainstream' children's services (*ibid*).

Allen notes that young people in conflict with the law are typified by 'low educational attainment, disrupted family backgrounds, behavioural and mental health problems ... alcohol and drug misuse' (*ibid*). Remarkably, given available critical research, he ignores: 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 educational or work opportunities; under-resourced welfare; institutionalised pathologisation – personal, cultural and social. He makes only a passing comment on the contribution of media representation and political opportunism to the criminalisation of children and young people.

Moral renewal

In June 2006 the Prime Minister spoke on the 'future' of the nation and criminal justice, 'the culmination of a personal journey'

(Blair 2006: 85). Representing the interests of 'ordinary, decent law-abiding folk' (*ibid*: 86), who 'play by the rules' (*ibid*: 92), he bemoaned the 'absence of a proper, considered intellectual and political debate' on liberty and the urgent need for a 'rational' return to 'first principles' (*ibid*). Critical analyses from left academics amounted to 'intellectual convulsions' proposing recidivism as 'entirely structural'. The 'political right' considered crime 'entirely a matter of individual wickedness'. Between these extremes 'rational' analysis had emerged; the 'conventional position' of 'New Labour' (*ibid*: 89). To achieve its mission, a 'complete change of mindset' was required, an 'avowed, articulated determination to make protection of the law-abiding public the priority' measured 'not by the theory of the textbook but by the reality of the street and community in which real people live real lives' (*ibid*: 93). Despite calling for an informed, intellectual debate, Blair caricatured those who research and work in communities as theorists detached from reality.

Blair noted the dissolution of society's 'moral underpinning' (*ibid*: 88) and the abandonment of the 'fixed order community' (*ibid*: 89) through 'loosened ... ties of home', changes in 'family structure', increased divorce rates, single person households and a reduction in the 'disciplines of informal control'. New Labour's 'tough on crime' agenda has been driven consistently by a moral imperative, embodying dubious assumptions that traditionally personal hardship was matched by collective benevolence. Men 'worked in settled occupations', women 'were usually at home' and social classes 'were fixed and defining of identity' (*ibid*). They constituted the bedrock on which community spirit and civic responsibility were built, reproducing social discipline through 'informal codes of conduct and order' (*ibid*: 88). This portrayal of law-abiding, compliant and responsible communities socialising children into the values of decency, obedience and respect does not bear scrutiny.

Earlier Blair (2002) outlined the 'Britain' inherited by New Labour: 'crime was rising, there was escalating family breakdown, and social inequalities had widened'. Neighbourhoods were 'marked by vandalism, violent crime and the loss of civility'. The 'mutuality of duty' and the 'reciprocity of respect' had been lost; 'the moral fabric of community was unravelling'. The criminal justice system

was outmoded, courts were slow and out of touch. Welfare considerations were prioritised over victims. An 'excuse culture' permeated youth justice. With police overburdened by peripheral duties, petty crime and anti-social behaviour had escalated. Interagency initiatives were neither efficient nor effective and punishments no longer reflected the seriousness of offences. Four years on Blair (2006: 94) regretted that new laws had 'not been tough enough' necessitating further legislation 'that properly reflects the reality'. Only by remedying imbalances, by addressing low-level crime and broadening the definitional scope of anti-social behaviour, could 'social cohesion' be restored to 'fragmented communities'.

The message affirmed the primary responsibility of parents and other individuals in achieving safe communities, reducing crime and protecting law-abiding citizens. Taking responsibility for challenging, intimidatory and abusive behaviour would secure a return to 'informal controls' and safer, integrated communities. At the hub of this idealised notion of 'community', families and interagency partnerships would work together. In the ideology of moral renewal, the corrective for crime, disruptive or disorderly behaviours is two-dimensional: first, affirming culpability and responsibility through criminal justice due process, incorporating the expectations of retribution and remorse; second, reconstructing and supporting the values of positive families and strong communities.

For Blair, community required 'responsibilities as well as entitlements' (Gould 1998). Rights, including access to state support and benefits, are the flip-side of civic responsibilities - social transactions between the 'self' and others where self-respect is attained. Blair's heir apparent, Gordon Brown, recalled his 'moral compass' being set by his parents: for 'every opportunity there was an obligation' and for 'every right there was a responsibility'.

Media representation

In February 1993 the killing of two-year-old James Bulger on Merseyside unleashed a level of adult vindictiveness unprecedented in recent times. Two ten-year-old boys were charged with murder. Tried and convicted in an adult court, the sustained media coverage encapsulated and reflected an adult nation's demand for revenge, a

sense of moral outrage closely aligned to the demand for retribution. The case became a metaphor for children's 'lost innocence' and the triumph of 'evil' over 'good'. While Prime Minister John Major urged the nation to 'condemn a little more and understand a little less' the Shadow Home Secretary, Tony Blair, warned of an imminent 'descent into moral chaos' while committing to being 'tough on the causes of crime'.

The climate in which an exceptional and tragic killing became illustrative of twin crises in the family and in childhood is well illustrated by the language of the media directed towards a generation: 'amoral childish viciousness'; 'the Mark of the Beast'; 'the Satan bug'; 'devoid of innocence'; 'undeniably corrupt'; 'savages'; 'nation of vipers'. This constituted the sharp end of a continuum of child rejection most appropriately described as child-hate, in the same vein as race-hate, misogyny or homophobia. An atypical event was recast as typifying a generation deficient in basic morality, discipline and responsibility; the atypical had transformed into the stereotypical.

In this hostile climate, New Labour was elected, rushing through the 1998 Crime and Disorder Act (CDA) and establishing responsibility for crime prevention within all public agencies. The objective was early intervention - targeting children's potentially criminal behaviour while encouraging 'appropriate' parenting. To this end the CDA introduced Anti-Social Behaviour Orders (ASBOs) and Parenting Orders. Rob Allen (1999: 22) identified the net-widening potential, warning that the Act 'could end up promoting rather than tackling social exclusion'. It proved prophetic.

The authoritarian imperative

'Moral panics' combine 'heightened emotion, fear, dread, anxiety and a strong sense of righteousness' resulting in 'tougher or renewed rules, more intense public hostility and condemnation, more laws, longer sentences, more police, more arrests and more prison cells' (Goode and Ben Yehuda 1994: 31). The now strengthened CDA epitomises the draconian potential of legislation conceived and enacted in a climate of moral panic. Our research established the punitive context under which the rhetoric

of 'prevention', 'early intervention', 'positive action' and 'multi-agency strategies' became submerged. Targets were 'problem estates', 'inadequate parents', 'chaotic families', the 'Hot 100' (child offenders) and the 'Tepid 400' (associates of offenders). The initiative was undermined by: an overarching emphasis on crime and antisocial behaviour reduction; definition, assessment and management of 'risk' via 'criminogenic' indicators; tensions between proactive, welfare interventions and reactive, criminal justice interventions; failure to address poverty and under-resourced services; underqualified staff and inexperienced management; short-term, insecure projects.

An anti-social behaviour unit co-ordinator in a district with low crime rates noted the 'massive pressure' exerted on the unit to achieve its first ASBO. His colleague stated, 'the more evictions and ASBOs I get, the better I'm doing'. Similarly, a city's anti-social behaviour unit strategy document claimed it 'enjoy[ed] notable success as a reactive punitive service'. As the government's anti-social behaviour strategy unfolded there was little ambiguity in its authoritarian imperative to 'name and shame' children. The Home Office argued, endorsed by the courts, that media publicity formed a 'necessary' element in enforcement. Blair (2006: 88) confirmed this commitment: 'Our anti-social behaviour legislation ... deliberately echoes some of our moral categories – shame, for example, that were once enforced informally.' In the North of Ireland, young people are beaten by paramilitaries, their families exiled and their names written up on gable-end walls as the chilling extreme of 'informal' enforcement.

Children as young as ten have been photographed, named and shamed in the media, on local authority leaflets and in shop windows. Headlines include: 'THUG AT THIRTEEN'; 'FIRST YOBBO TO BE BARRED'; 'GET OUT AND STAY OUT'; 'YOUNGEST THUG IN BRITAIN'. Our research noted that solicitors and magistrates had little understanding of procedures, particularly regarding reporting restrictions. Threats were made arbitrarily by local authority officials, police officers and community wardens to intimidate children. They feared being 'fitted up' and struggled to keep the conditions imposed.

Families lived in fear of being reported by neighbours, of being evicted should their children breach conditions imposed by the courts. And many children now go to prison never having been convicted of a crime other than breach.

These disturbing developments astonished Alvaro Gil-Robles, European Human Rights Commissioner. He expressed 'surprise' at official 'enthusiasm' for the 'novel extension of civil orders' (Gil-Robles 2005). Likening ASBOs to 'personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community', he questioned 'the appropriateness of empowering local residents to take such matters into their own hands' (*ibid*: 35). Disproportionately used against children, ASBOs brought children to the 'portal of the criminal justice system'. Their subsequent stigmatisation, imprisonment for breach and inevitable alienation risked entrenchment of 'their errant behaviour'. Widespread publicity of cases involving children was 'entirely disproportionate' in 'aggressively inform[ing] members of the community who have no knowledge of the offending behaviour' and had 'no need to know'. He 'hoped' for some respite from the 'burst of ASBO-mania' with civil orders 'limited to appropriate and serious cases'.

'Problem solving'?

Despite Rob Allen's intention to seek effective solutions, his 'new approach' is clothed in 'old' theoretical, methodological and political constructions. Proposals for policy reform, practices and interventions in a vacuum deny the realities and dynamics of endemic exploitation, violence and despair endured in increasingly marginalised and impoverished communities. As with New Labour, emphasis is directed towards personal and social responsibility, inevitably pathologising individuals, families and communities. Blair's concept of 'strong community' is rhetorical and aspirational, neglecting conflict in communities riven and dislocated by deep, structural inequalities evident in poverty, racism, sectarianism, misogyny and homophobia. Reconfiguring governance, focus and direction of public services, however radical, deals only with surface issues.

Yet the full spectrum of disruptive behaviours is spawned and ignited by political-economic marginalisation and criminalisation. The combination of material deprivation, restricted opportunity, access to drugs and alcohol, conflict and violence directed against the self and others damages self-esteem and destroys lives. Significantly, children and young people witness the rhetoric of inclusion and stakeholding, knowing that they are peripheral, rarely consulted and regularly vilified. They experience disrespect as daily reality.

Allen's proposals for policy reform in schooling, mental health and criminal justice carry positive outcomes for some children and their families. Yet children's petty offending, truancy and anti-social behaviour can be addressed only through community development work responsive to their lack of power, rights and participation in decisions that affect their lives. It is instructive that children's rights, economic and social, civil and political, have no part in Allen's 'new approach'. This reflects a growing political dissociation with rights as foundational. While rights discourse, provision and implementation cannot redress endemic structural inequalities, a 'regime of rights is one of the weak's greatest resources' (Freeman 2000).

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. In the North of Ireland context, harsh measures, alongside the realities of paramilitary beatings and the conflict's legacy, endangers children's right to life while failing to protect against trauma, abuse and neglect. Together these breaches reveal a serious lack of concern for children's rights and no affirmation of their rights to consultation and participation in decisions determining their destinies. Without addressing power differentials and rights abuses central to the marginalisation and exclusion of children in conflict with the law, Rob Allen's 'problem

solving' and New Labour's 'moral renewal' are each inherently deficient.

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A letter sent in reply to *From punishment to problem solving: A new approach to children in trouble*

Rt. Hon. Beverley Hughes MP

Thank you for your letter of 18 October, enclosing your report *From punishment to problem solving: A new approach to children in trouble*. I understand you have also written a similar letter to Helen Edwards, Chief Executive, National Offender Management Service. The Home Office and Department for Education and Skills (DfES) liaise closely on matters of prevention of youth offending and re-offending.

I will attempt to answer each of your points in turn. First, you recommended greater investment in services to support children with mental health problems. Following the government's investment of an additional £300 million over the three-year period to 2006, Child and Adolescent Mental Health Services (CAMHS) have expanded and improved in all areas across the country. For some, these improvements have started from a low base and there is still a long way to go. We are determined to ensure a full range of services are accessible in all areas and support is now focused particularly on

those where progress is weakest. We recognise the need to address the mental health issues that children and young people face.

DfES published guidance on promoting mental health in schools in 2001 and a range of other support to help strengthen schools' work in this area is now underway, for example, emotional well-being is a core element of our National Healthy Schools Programme. Social and Emotional Aspects of Learning curriculum materials are being rolled out nationally across primary schools with similar approaches being piloted in secondaries. Specialist training and accreditation is now being offered to some 500 staff who have particular responsibility for pupils with behavioural, emotional and social difficulties; and Extended Schools and Children's Centres are providing readier access to a range of support and advice for their pupils.

You also recommended greater investment for other young people at risk. The government is committed to supporting children in trouble or at risk of offending and we are investing in a range of services to achieve this aim. DfES is currently developing targeted youth support arrangements which are central to our strategy for addressing the needs of children and young people who are at risk of poor outcomes and whose needs cannot be met by universal services. This includes young people at risk of offending, and those who have offended. We aim to implement targeted youth support services in all local authorities by 2008.

DfES, the Home Office and other departments are also working on a wider range of other prevention activities such as Safer Schools Partnerships (police in schools), and are implementing new work to improve outcomes for particular groups at risk such as looked after children. In addition, local Youth Offending Teams (YOTs) provide a range of targeted services for children and young people at high risk of offending, such as activity-based Youth Inclusion Programmes for 13 to 16-year-old young people at risk of offending, truancy, or social exclusion. YOTs also provide support and referral to mainstream services through Youth Inclusion and Support Panels which are multi-agency planning groups. Every Child Matters reforms underpin all this work as

they shift the focus of general children's services towards early intervention and prevention.

Your second recommendation was for more restorative justice programmes. I agree that restorative approaches can play a positive part in improving behaviour in schools and I know that some schools are using a range of approaches of this kind to good effect. However, there are risks associated with such approaches if they are not implemented properly. Schools need to reach a certain stage of development to be ready for such techniques. I therefore believe the decisions on whether to use restorative approaches should be a matter for individual schools.

Increasing use of restorative justice can also have real benefits in the community, particularly in cases of low-level offending and in preventing further offending. To this end, the Home Office has built this into its pre-court diversion scheme and is actively looking at other ways to expand it. The government is also considering 'street restorative justice' which could provide a route for dealing with low-level anti-social behaviour. That work is developing in partnership with the Youth Justice Board.

Third, you recommended the introduction of a new type of specialist prosecutors. I understand that there are already Crown Prosecution Service prosecutors who specialise in youth work and agree that their role is important. Whilst we must work to keep young people out of the criminal justice system where possible, custody is sometimes the most appropriate course of action where crimes have been committed. We are therefore happy to consider how to address welfare issues referred to the family court but that should happen once the criminal matters have been resolved. That should not prevent welfare issues being addressed once they become apparent.

Finally, you suggest use of Prison Service custody could be phased out, and a new sentencing framework introduced including a new residential training order. As you know, the Detention and Training Order (DTO) introduced a major change in youth sentencing, with the aim of using custody to try to address some of the difficulties faced by young offenders, followed by a

supported and supervised transition back into the community. The government continues to believe that provides an excellent template for dealing with young people whose offending is serious enough to require custody.

But as you also know, delivering the DTO package is far from easy and requires a range of agencies to work closely together if the aim of replacing offending with a more positive future for the young person is to be achieved. We firmly believe we need to continue to work to improve the delivery of the DTO.

The Youth Justice Board's (YJB) Strategy for the Secure Estate for Children and Young People makes practical proposals for raising standards in the under-18 estate. There is a particular focus on enhancing provision for more vulnerable young people within the Prison Service estate. We believe this should continue to be a major priority. The diversity of the secure estate has the advantage of providing different types of establishment for young people with different needs and the Prison Service has a part to play in that.

I am confident that with the cross-government arrangements in place taking forward Every Child Matters and Youth matters, DfES, Home Office and the YJB can continue very successful joint working towards supporting children and young people and preventing offending whether they are in or outside the youth justice system.

Thank you for your report, which is a valuable contribution to ongoing debate about the future of the youth justice system, particularly towards encouraging appropriate and timely interventions which challenge, engage and support children, young people and families in need or at risk.

Beverley Hughes
Minister for Children, Young People and Families
1 December 2006

ABOUT THE AUTHOR

Before entering Parliament in 1997, Beverley Hughes had a number of careers as a probation officer, an academic and local councillor, becoming leader of Trafford

Metropolitan Council in 1995. She was appointed Parliamentary Private Secretary in 1998 and Minister for Local Government and Housing in 1999. At the Home Office, she was Parliamentary under Secretary of State for Prisons and Probations and the Minister of State for Immigration, Citizenship and Counter – Terrorism. In 2005, she was appointed Minister of State for Children, Young People and Families at the Department for Education and Skills.

Nothing to lose

Rebecca Palmer

Rob Allen's article and subsequent recommendations raise a number of key questions for all of those concerned with youth justice. First, with a wealth of research available on the impact of personal experiences and wider social factors in facilitating social exclusion, why does the government favour punishment and control and focus on individual responsibility and what are the consequences of this more punitive approach? Second, should children and young people should be imprisoned? And third, will the reforms Rob is arguing for make a real difference? In this article I will discuss these questions and make suggestions for how to ensure any reform achieves the aims set out by the report.

Our punitive society, government priorities and the consequences

Apart from the 'hangers and floggers' who can be found in the tabloid press, few would deny the link between the individual and their social circumstances. Why, then, have such considerations become so removed from any solution to the growing number of young people and children in prison? The focus of government policy since 1997, which originally recognised the link to wider social factors through the notion of social exclusion, has been reduced to a punitive campaign with Home Office spin doctors driving a debate in the press that reflects government policy. The consequence is our current record number of incarcerated young people.

The incarceration of children and young people not only causes them emotional and physical harm, but also does little to bring peace of mind to local communities. The passing of a series of laws governing behaviour has resulted in increasing numbers of young people finding themselves in the criminal justice system without hope and on a slippery slope to a 'label for life'.

The issue of labelling goes beyond any single young person. As a practitioner I see not only so-called 'at risk' young people feeling completely powerless, but many other young people feel angry at harsh government policies which feeds negative media coverage aimed at 'middle England', with little or no opportunity for young people to challenge it publicly or change it. A democratic deficit of substantial proportions is developing.

The rationale the government gives for its punitivism is that 'this is what communities want' - that is, that it is popular. Of course, this does not make it the correct policy approach. However, the punitive approach draws on and directs feelings of desperation and demoralisation within some communities, where cuts in government spending on the welfare state have led to communities turning in on themselves and blaming each other for the situation they face. This 'blame culture' is supported by the anti-social behaviour agenda.

Real problems

Even where there has been a perceived problem of anti-social behaviour many of those in support of ASBOs still cite the lack of youth provision as the key problem; the reality is often stark, with less and less money spent on housing, youth facilities, training and job opportunities and more allocated per head on criminalising young people.

When and where funding does exist it is short term and restricted by government-driven targets rather than the very complex and long-term needs of those who the funding is supposed to help. There is no real local choice about where and how the money is allocated apart from a divisive process of deciding who is the 'most deserving' from a list of probably some of the most vulnerable

and needy in the community. This simply helps to reinforce divisions by creating competition between the most deprived and discriminated against.

The dwindling provision of youth services sends young people a clear message. As a society we care little about their needs and drive them onto the streets as they have few places to go. In this context, the measurement of 'young people hanging around' as a sign of 'anti-social behaviour' in the British Crime Survey amounts to the adult society 'setting up' low income young people.

Real solutions

Reclaiming the right for young people to associate on the streets, as many of them do without causing harm, would be an important step in building more tolerant communities. Establishing your own space and a place to be yourself with your friends is an important part of growing up and developing friendships and other social skills.

Resourced properly, the problems described by government as 'anti-social behaviour' could be challenged by communities working together in a more positive and constructive way through establishing the 'needs' that have to be met and bridging the generational gap. Much of this would involve challenging the negative images of young people, the fear of crime and the reality and as result change people's views of each other.

When government policy documents discuss the 'hard to reach', what is missing is that it is the services that are hard to reach; we know where to find the young people. Many young people I have worked alongside have expressed concern that, although they see gun crime, drug abuse and teenage pregnancy as serious issues, they are never asked their opinion about the wider social problems they face, such as poor housing or poverty. Would it not be better to try and resolve many of the underlying causes that drive some young people to try to establish some control over their lives, even if that control is exercised in a negative way? One young person put it to me like this: 'If you haven't got a home, you haven't got a life, so you might as well take the risk. After all, you've got nothing to lose.'

None of the arguments above underestimate the effect that crime and some behaviour by a minority of young people has on the quality of life for people in some local communities. But to resort to imprisonment for anyone under the age of 18 is not a solution. Prison is dehumanising and brutal. For young people who have mental health issues or severe behavioural problems, prison offers little or no support and this has led to some taking their own lives. The United Nations' Convention on the Rights of a Child states that anyone under the age of 18 is still classed as a child. This should be our benchmark - no child should ever be in prison. Incarceration is destroying some young people's right to a childhood. Some of those unfortunate enough to find themselves incarcerated are often placed in inappropriate environments, their behaviour is under far more scrutiny than adults and they have little or no opportunity to challenge policy. The rates of re-offending in themselves prove that the system is not working.

In my experience there are very few young people, classed as 'at risk' who, with the right support, cannot live within communities. Many pupil referral units (PRUs) cite young people who have been excluded from school and attend the PRU and not only achieve academic success but achieve it with 'added value'. Yet Britain has one of the worst records in the whole of the western hemisphere for the number of young people who leave school at 16 and do not go on to any education, employment or training. What does this tell us about the self-esteem and low expectations of not just a small minority but a sizable group in society? Is it not a measure of the inadequacy of our society that there are more young black males in prison than attending university?

Children's experiences in 2007

For young people today the pressures are immense. We live in a commodity-driven, designer-dominated society, where who you are is judged not by your contribution to your community but by what you own and how expensive it is. I have attended many award ceremonies and events where the role models who are held up as positive examples are not ordinary people doing ordinary things for those around them but entrepreneurs and famous people. This creates the impression that you can only be something by

becoming famous or by owning your own business. Out of reach for most of us - and not necessarily the best example of success.

There is constant talk of children and young people taking 'responsibility' for their actions but for this to mean anything to the majority of young people and children they would have to feel that they have a stake in society and role to play in decision-making. The reality is that even the most confident and capable young people have little faith in any of the processes that exist. They have little or no representation locally or nationally. The majority of young people and children are not even informed of their rights whether it is the United Nations' Convention on the Rights of the Child or police 'stop and search' operations, yet still they are expected to take responsibility.

Conclusion

The reforms that Rob argues for are important because we have to start somewhere, but what is required is to take a step back and look at the bigger picture. Reforming the prison and judicial system without tackling some of the wider issues will make only a small difference. Any challenge to current government policy should be underpinned by the following steps:

- the negative perception of young people as 'hoodie-wearing jobs' should be concerted challenged;
- the age of criminal responsibility should be raised to 18 and ASBOs should be abolished;
- no child should be in prison and alternatives should be sought;
- properly funded processes involving children and young people in shaping policies should be established;
- there should be an increase in welfare state spending focused on service provision and income levels for young people;
- a Royal Commission into the state of the juvenile justice system should be set up.

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Youth crime prevention - the role of children's services

Dr Raymond Arthur

Introduction

Rob Allen's report, *From punishment to problem solving*, is a timely reminder of the failings of our current system to deal with the many young people who present with challenging behaviours in our society. He argues for reforms and legislative changes that he feels will provide us with a fairer system which prevents offending behaviour, criminalises young people less and meets more of their needs.

In this piece, and with particular reference to the preventative agenda detailed in Allen's report, I will argue that it is the Children Act 1989 that has the potential to deter young people from becoming involved in crime as it compels local authorities to improve the chances for youth to lead healthy, productive, crime-free lives. I will examine how this legislation provides extensive powers and duties in relation to tackling the familial and social problems that compel young people into a life of crime or social exclusion. I will then investigate if these powers and duties have been implemented effectively in order to respond to the needs of

young people. Finally, I will argue that no changes in legislation are required to achieve these goals.

The Children Act 1989: The duties and powers of children's services departments

The Children Act 1989 recognises the importance of intervening early in high-risk families in order to prevent delinquency and youth offending. Schedule 2 of the 1989 Act requires local authority children's services departments to take reasonable steps to encourage children in their area not to commit criminal offences (Children Act 1989 S2 Para7). Guidance suggests that this might involve advice and support services for parents, the provision of family support services, family centres, day care and accommodation, health care and social care, structured nursery education, support in schools, positive leisure opportunities and better employment and training opportunities (DoH 1991). Children's services are thus provided with the opportunity to positively influence the quality of life for young people and their families, help parents overcome problems with childcare, and prevent the difficult behaviour exhibited by some young people from deteriorating to the point of delinquency.

The primary responsibility of the local authority children's services department in relation to identifying and supporting children at risk of offending does not diminish the role of other agencies and the need for interagency and multi-agency co-operation. The Children Act 1989 section 27 provides children's services departments with the statutory mandate necessary to call upon other departments within local government, such as any other local authority, any local education authority, housing authority, youth offending team and any health authority, primary care trust or NHS trust, to assist them in their duties to provide services for children and to prevent youth crime. Local authorities not only need to collaborate internally to fulfil their youth crime prevention role, they may also facilitate the provision of family services by others, in particular voluntary organisations (Children Act 1989 S17(5)). The Children Act 2004 reinforces the need for closer joint working and better information sharing between the various agencies involved with children. It also establishes a duty for the

key agencies that work with children to put in place arrangements to make sure that they take account of the need to safeguard and promote the welfare of children when doing their jobs. Guidance stresses that safeguarding and promoting the welfare of children is an essential part of preventing youth offending (DfES 2005).

Thus the Children Act 1989, and 2004, empower children's services to pursue youth crime prevention practices that are: child-centred; take account of children's vulnerability; prevent their exclusion from school; prevent their abuse and neglect; tackle poverty and social exclusion; and create opportunities for young people's participation in the community. These are wide-ranging and ambitious programmes that enable a great deal of supportive, preventive and rehabilitative work to be undertaken by the local authorities.

Providing children's services: Does it work in preventing youth crime?

Evidence confirms that providing families with the types of support examined above and encouraging parents to make use of children's services will help to reduce the risk of young people engaging in crime and anti-social behaviour (Olds *et al* 1997, Welsh *et al* 2001). Programmes combining early family support and education, serving low-income families and involving both a child-focused educational component and a parent-focused informational and emotional support component, have been proven to represent a promising method of preventing the early onset of chronic juvenile delinquency (Farrington 1996, Yoshikawa 1994).

An area excluded by Allen's report but shown to be effective in preventing future offending is the delivery of pre-school programmes and day care. These have been shown to lead to decreases in youth offending and anti-social behaviour, school failure and other undesirable outcomes (Farrington 1996). One of the most successful delinquency prevention programmes has been the well-documented Perry Preschool Programme carried out in Michigan (Schweinhart *et al* 1993). The results become more compelling when viewed in the context of ten other pre-

school programmes followed up in the US (CLS 1993). With quite impressive consistency all studies show that pre-school programmes have long-term beneficial effects on offending behaviour (Webster-Stratton 1989). Furthermore, research suggests that the influence of pre-school education in disadvantaged children extends into adolescence and beyond, improving their chances of employment success and decreasing the risks of youth offending (Sylvia 1994, Utting 1994).

After-school clubs also ensure that children are properly and safely supervised and can exert a direct influence on attitudes, achievement and behaviour. This is another area where Allen fails to exploit the benefits. By engaging young people in constructive leisure activities and providing opportunities to do homework, such clubs can tackle low achievement in school and early involvement in youth offending. Research in Canada has demonstrated the potential value of after-school schemes. PALS (Participative and Learning Skills), an after school recreation programme for young people aged five to 15 years living on a large socially disadvantaged estate in Ontario offered a wide range of leisure pursuits that involved learning a skill. An evaluation found a significant decrease in juvenile arrests by police and complaints to the police about delinquent behaviour also declined significantly (Jones *et al* 1989 France *et al* 1996).

Most surprising of all in *From punishment to problem solving* was the absence of any reference to the benefits that can be gained from supporting the parents of young people. Ghate *et al* evaluated the effectiveness of parenting programmes in the UK. Around 800 parents and 500 young people provided information for the national evaluation (Ghate *et al* 2002). The young people involved reported improved supervision and monitoring by their parents, reduction in the frequency of conflict with their parents and improved relationships with their parents. In the year after the parents left the programme the reconviction rates of young people had fallen by over 30 per cent, offending had dropped by 56 per cent and the average number of offences per young person reduced by 50 per cent. Scott *et al*'s study also showed that parenting programmes improved several aspects of parenting

in important ways, including increasing sensitive responding to children, improving the use of effective discipline and decreasing criticism. The study showed that the intervention had lasting effects on the parent-child relationship for at least six months after the intervention had ended (Scott *et al* 2006). It seems that the parenting programmes helped to 'apply the brakes' on a downward course for young people.

All of the forms of support examined above provide sound foundations for developing youth offending preventive interventions: they pre-date any formal contact with the criminal justice system; they improve parenting skills, children's physical and mental health; and they reduce many of the multiple early risk factors for offending. The Children Act 1989 and related legislation give a framework for local authorities to provide these established types of support and services to youth at risk of engaging in offending behaviour and their families. Thus the evidence suggests that the Children Act 1989 allows local authorities to develop a holistic preventive approach to youth crime.

Allen's focus in terms of prevention, however, is on addressing the educational and mental health difficulties that 'underlie' so much offending behaviour. His main solution is the implementation of restorative justice techniques in schools, appropriate special educational needs provision and an expanded mental health sector. These are useful and important changes; however, it is disappointing that Allen fails to make use of the wealth of research available about other effective preventative programmes.

The Children Act in practice

Although the Children Act 1989 represents the linchpin for the development of an effective early intervention multi-agency youth crime prevention strategy, its effectiveness is limited by the all-embracing vagueness of the provisions that leave it to each local authority children's services department to define and finance the work they undertake. Such conditions have allowed for the youth crime prevention principles of the Children Act 1989 to be undermined because the family support aspirations and provisions of the 1989 Act are being implemented partially

and not prioritised. Various Social Services Inspectorate studies have observed that in all areas, staff are concerned at the limited resources to provide support to families under stress. This is a finding which is confirmed in the consultation document *Youth Matters* (Secretary of State for Education and Skills 2006) in which the government admits that existing social services for teenagers do not amount to an adequate system of support for young people and that not enough is being done to prevent young people from drifting into a life of crime or poverty. For example, the Social Services Inspectorate Inspection of Children's Services found that arrangements to deliver child and adolescent mental health services on an integrated basis were poorly developed (Cooper 2002). Allen is right to point to the lack of mental health services available for children and young people. In July 2006 the Department of Health conceded that only half of primary care trusts are able to provide access to mental health specialists for teenagers with learning disabilities and that there is no emergency help for teenagers suffering a psychotic crisis or severe depression (Revill 2006). These findings are of concern because, if such problems are not addressed at an early stage, the children and young people in question may find themselves precipitated into care or into juvenile offending systems. Concern has also been expressed that Sure Start is failing to help the most disadvantaged and excluded families. The first evaluation of Sure Start found that children in areas where the Sure Start programme runs do less well than children in poor areas without the scheme (DfES 2005). In response to this, a programme of new children's centres is being rolled out across the country as part of Sure Start. However, there are fears that this expansion will dilute the original purpose of Sure Start, leading to what its architect, Norman Glass, has called 'a severe cut in the funding per head' from £1,300 per child to just £25 (Glass 2006).

The National Evaluation of the Children's Fund (NECF) in its detailed case studies of 18 Children's Fund Partnerships highlighted the tensions within local authorities between balancing responses to immediate pressing needs with longer-term preventive strategies (DfES 2004). This report highlighted that there was still 'a road to travel in influencing the wider preventive agenda in the local

authority'. The NECF found that, despite the Children's Fund being a ring-fenced preventive programme, partnerships still needed to work hard to keep prevention high on the local agenda and avoid services being pulled towards meeting only the most acute needs. The picture which emerges is of child protection issues taking increasing priority over childcare, with family support and preventive services viewed as some kind of optional extra to be offered if resources allow rather than part of the same package of services for vulnerable children. In these circumstances the issue of youth crime prevention has become marginalised.

Staff shortage is also a serious problem, undermining the delivery of services to young people at risk of engaging in offending behaviour. The second Safeguarding Children report found regular difficulties in recruiting and retaining skilled and experienced social workers (DfES 2004). Similarly, the Green Paper Every Child Matters reported that vacancies in children's services are up to four times as high as any other public service (Chief Secretary to the Treasury 2003). As a result of the shortage of resources, children's services are having to operate high thresholds and small safety nets, turning away people who desperately need help. Several studies drew attention to the fact that families were sometimes offered services inappropriately, drawing from a pool of existing services that did not meet families' needs rather than providing services based on assessment of needs (Staham *et al* 2001). This pattern might be called a 'sticking plaster' approach to assessment, based on what services might be in the medicine box (Aldgate *et al* 2001). The Social Services Inspectorate also found that all departments inspected undersold family services (SSI 1998). Children's services departments were failing to ensure that those who might benefit from the services receive information relevant to them, reflecting many managers' fears of a deluge of service requests. Improved information would enable families in need of services to select the most appropriate resources to meet their needs and allow families to approach departments before they reached a crisis.

Another significant problem is the lack of co-operation between agencies responsible for the welfare of young people. Health

services have been slow to recognise the contribution they can make to providing support to young people. The Audit Commission report *Children in Mind* found that 25 per cent of health trusts delivering Child and Adolescent Mental Health Services (CAMHS) had no joint working arrangements with GPs (Audit Commission 1999a). More than 33 per cent of CAMHS trusts disclosed that joint working with the youth justice system was inadequate and 66 per cent of youth offending service managers reported problems gaining access to mental health services (Audit Commission 1999b). Only 14 per cent of referrals to CAMHS came from children's services and education combined (Audit Commission 1999a). Overall support for other agencies involved just 1 per cent of mental health professionals' time. Research also indicates a lack of communication and co-ordination between education and children's services departments (Harker *et al* 2003). Many children's services departments do not hold central records of the schools that 'looked-after' children attend, and schools are unaware that they may have 'looked-after' pupils attending or whom to inform if they have concerns about the performance and behaviour of 'looked-after' pupils (SSI 1995). Better interagency collaboration and joint planning is needed to respond to the needs of children and young people.

Conclusion

An effective youth crime reduction and prevention philosophy is one that addresses the life experiences of children and in which prevention is promoted through the collaborative and integrated activities of a range of services. It is evident that the Children Act 1989 and related legislation represent a catalyst for the development of an effective multi-agency response to young people with needs. While the Children Act 1989 is not a panacea for youth offending, it nonetheless requires local authority children's services to provide interventions that improve parenting skills, children's physical and mental health and reduce the risk of children engaging in offending behaviour. The evidence examined emphasised that the child welfare interventions and family strengthening policies of the Children Act 1989 are effective as youth crime prevention strategies. However, the reality is that the Children Act 1989 has been seriously under-resourced. Facing

scarce resources, children's services departments are misdirecting too many resources to cure rather than prevention. What is required is the development of a well-resourced network of family support services which would encourage professionals to take a wider view, to work alongside other agencies and organisations and to strengthen and support families, rather than leave untreated families with an unsatisfactory parenting style.

Allen is right to highlight the need for preventative services; however, he fails to acknowledge the importance of the many other preventative strategies which can impact positively on the lives of at risk children and young people. He fails to consider the importance of pre-school, after-school and parenting programmes and places too much reliance on restorative justice techniques.

If we are serious about tackling youth offending and the unnecessary criminalisation of children and young people, a new legislative framework is unnecessary; instead, attention should be paid to the proper resourcing of the current system.

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3

International responses

Whose problem?

A view from the United States

Dr Jeffrey A. Butts

Rob Allen's critique of youth justice and his suggestions for reform are just as relevant on this side of the Atlantic. In the United States too, the most innovative approaches to youth justice rely on a problem-solving framework. Rather than simply responding punitively to the criminal behavior of youth, we try to resolve the problems that generate criminal behavior - but whose problems? We Americans are biased in how we identify problems and choose solutions. We like to explain our social problems in a way that conforms to a predetermined set of affordable solutions. Inevitably, these solutions are based on the premise that it is cheaper to manage the individual reactions to an adverse environment than it is to mend the environment.

We know that the frustrations and rage brought on by school failure lead some youth to see crime as a path to self-worth. Rather than correct our bad schools, however, we provide remedial help to the youth most affected by their bad schools. We know that the surest method of keeping someone away from crime is to engage them in meaningful and rewarding work. Yet, we fail to intervene when young people are systematically excluded from the labor force. We know that the prolonged use of alcohol and other drugs is associated with a criminal lifestyle, but instead of finding other

ways for youth to get the fun and excitement they obviously crave, we offer them counselling and treatment.

The youth justice system in the United States suffers from the same flaws and inadequacies identified by Rob Allen. Like the UK, the US system relies (even more excessively) on incarceration as a crime reduction tactic. It is based largely on the premise that the threat of future prosecution is an effective deterrent for 14-year-olds. It does not provide an adequate response for youth who are diverted from prosecution, and it does not pursue crime prevention consistently or creatively. Youth justice authorities do not co-ordinate their efforts with schools and our strategies for addressing the public health problems associated with crime are haphazard at best. Worst of all, the youth justice system in the US largely ignores a basic lesson of developmental science - the forces most likely to keep youth from pursuing a lifetime of criminal behavior are positive ties to pro-social adults, educational achievement, occupational success, access to recreation and physical activity, community recognition, and civic engagement. In short, healthy adolescent development is the best cure for crime.

There are many reasons for this shortcoming. First, many practitioners and policy makers harbor a belief that youthful offenders are not 'normal', and that they need to be controlled and overpowered rather than encouraged and developed. Admittedly, among the total population of youth offenders, some are so violent and anti-social that even the most optimistic youth advocate would see little hope for their rehabilitation. Fortunately, this description applies to very few youth; certainly not more than one in 20.

Another reason the youth justice system fails to draw upon developmental science is our inability to link practice to theory. Programs for young offenders are not designed to address the full range of factors identified by theory as leading youth to engage in illegal behavior. Our program models are plagued by our 'psychological reductionism', or the tendency to view the causes and solutions to social problems in strictly psychological terms. Numerous intervention models have been developed for youth whose delinquency is thought to originate with psychological

troubles, drug abuse, and family violence. Far less attention is paid to the majority of youth - those who commit crimes for other reasons, including a fear for their own safety, a desire for greater social status, economic need (or greed), negative peer associations, defiance of conventional authority, and simple thrill-seeking.

Developing effective intervention strategies for these youth is not easy. By definition, resources to support such models have to be neighborhood and volunteer-based. Youth courts and youth justice agencies cannot implement these strategies independently. They have to operate as one component in a diverse network of co-operating entities, and the network cannot be dominated by professionals. Services, supports and opportunities for youth have to be built and nurtured by neighborhoods and communities. Developing and sustaining these resources is difficult and time-consuming. If communities depend on government or professional service providers, they will end up with more professional services instead of genuine community-based resources and opportunities for youth.

In addition, key components of the youth justice process have to change in order to pursue an authentic youth development strategy. As in any effort to change organizational cultures and practices, one of the most difficult challenges is changing the routine activities of workers. Particularly in a jurisdiction where youth workers see themselves as members of law enforcement, they will be reluctant to adopt a framework that asks them to become community organizers and case managers rather than investigators and enforcers. In many American communities, youth justice workers are members of labor unions and getting them to agree to sweeping changes in their job duties is time-consuming at best.

Instead of adopting a developmental approach, the youth justice system in the US continues to move ever closer to the approach of the criminal (adult) justice system. With few exceptions, youth justice policy in the US appears to have lost its moorings during the past 20 to 30 years. Sadly, it is now innovative to suggest that the youth justice system should help to solve the problems that lead youth to become involved in crime and delinquency. I write these words from an office at the University of Chicago, a few

kilometers from Hull House, the most famous settlement house in the US and the birthplace of numerous municipal reform efforts during the late 19th and early 20th centuries. Led by Jane Addams, who was inspired by her visits to England's Toynbee Hall, the social workers and community activists at Hull House sparked a host of policy reforms that changed the social landscape of Chicago and ultimately the United States as a whole. One of their most publicized accomplishments was the founding in 1899 of a separate court to respond to the criminal offenses of children and youth. The original purpose of Chicago's new juvenile court was explicitly to solve the problems that lead to crime, not simply to punish the youth caught up in crime. Addams and her contemporaries saw the solutions to delinquency as better schools, community organizations, public health measures, and family support. If designed and managed properly, a youth justice system based upon the principles of problem-solving justice could return America's juvenile justice system to a condition Jane Addams might admire.

A problem-solving framework begins with the premise that people who break the laws of their community should be held accountable for their behavior. Problem-solving justice, however, asks the legal system to do more than simply punish people for past crimes. It asks the justice system to work in concert with social welfare authorities to prevent future social harm. This means the job is not done when drug sellers are caught and sentenced; legal authorities should ensure that such offenders gain useful skills for future employment. It means that dispensing anti-social behavior orders to disruptive youth is not enough; justice officials should work with community leaders to engage those youth in substitute activities that are able to compete with the appeal that bothersome behaviors hold for adolescents. Problem-solving justice asks for more than accurate fact-finding and prompt punishment. It asks police, prosecutors, courts and custodial authorities to act in a way that helps to maintain the social health of communities.

Of course, the idea of problem-solving justice is not new. The underlying goals of law and justice have always been to solve social problems, prevent future harm, and restore the well-being of communities. The emergence of problem-solving justice is

not significant because it represents a revolutionary way of thinking. It is significant because it returns the justice system to its foundational principles and a focus on community safety rather than law and order.

Rob Allen is correct to note that focusing youth justice on punishment has not been a successful approach to ensuring public safety. In the United States as well as in the United Kingdom, policy makers shifted youth justice strategies dramatically during the 1990s to be more punitive. Yet, trends in the incidence and severity of youth crime have not mirrored these policy changes. Some crimes are up and some are down; some cities are still seeing falling crime while others are experiencing growing rates of youth crime and violence. If enhanced punishment were the best path to improved public safety, we would know it by now.

Allen's provocative report is an important contribution to youth justice policy and practice in the United Kingdom. It is also an additional link in the growing chain of cross-national exchanges between the UK and other (especially English-speaking) countries, including the United States. We are increasingly learning from one another and adopting each other's best ideas in child and youth policy. From the Scottish system of children's hearings, to the restorative justice models of Australia, and the community justice concepts of New Zealand, there is a growing trade in alternative justice frameworks. We can only hope for an increased rate of exchange in ideas for building a developmentally appropriate, problem-solving justice system for youth.

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Reforming youth justice and youth sanctions

A view from the Netherlands

Professor Josine Junger-Tas

Rob Allen's report is considerably more than a critical review of the present juvenile justice system in Great Britain. It sets an agenda for the future, and it is this agenda that is most interesting for foreign colleagues working in the field. Like the UK, most EU countries badly need to reform their juvenile justice systems, which are often based on outmoded psychological notions of punishment and treatment. My comments here therefore mainly address Rob Allen's proposals for a reformed juvenile justice system.

My first point relates to certain characteristics of the English system mentioned in the report that can be found in most Western countries, including the Netherlands. In all of these countries, there has been a shift from the principle of 'rehabilitation' to that of 'protecting the public'. In addition, and because of the emphasis on a young person's responsibility for committing an offence, the particular circumstances relating to the offence and the young person's life situation, for example, may receive inadequate attention from the court. I believe that it is this shift, along with the way that the media report on crime and pressure from public opinion, which has led to a climate both in the UK

and other Western countries of 'being tough on crime' and to the 'increasing criminalisation' of petty crime, targeting young people in particular. As the report mentions, this has led to a very worrying increase in custodial sentences. Let me refer to the situation in the Netherlands. Between 1990 and 2004 the number of institutional places increased from 300 to 1,100 for a youth population of approximately 1 million (Eggen and van der Heide 2005), and every year we seem to need more places. Our institutionalised population has grown exponentially, from 2,988 detentions in 1997 to 5,902 in 2004 (Eggen and van der Heide 2005). This significant growth is greater than that seen in many other European countries.

Of the offences committed by young people in the Netherlands in 1999, 27 per cent committed a property offence without violence, 41 per cent had no police contact before being sentenced to custody and 46 per cent had committed just one or two offences before being placed in the institution. Looking at the period following custody, 70 per cent of these children were reconvicted after four years. Why therefore do we send so many children to custody? We desperately need to answer this question because a growing number of studies show that extended time spent in the company of other problematic young people has a negative influence on an individual's development and their likelihood of staying out of trouble (Dishon et al 1999; Warr 2002, Gifford-Smith et al 2005, Cho et al 2005). In addition, there are an inadequate number of effective treatment programmes, and those that do exist are rarely used by institutional staff.

It is clear that we need seriously to reconsider the function of detention. While detention certainly has a penal function, that function can be exercised in many different ways. Recidivism studies in every country prove that we are expecting far too much of detention, both in terms of punishment and in terms of rehabilitation. So what are the essential elements for reform?

First and foremost, the focus should be on prevention, with an emphasis on addressing social issues. We know that young offenders often suffer from serious health and welfare problems. They have proportionally more accidents (in traffic, by drowning,

by fires), are more often hospitalised, have more psychosocial and psychiatric problems (depression, schizophrenia), are more often unemployed and dependent on benefits, and have unstable marriages (Farrington 1995; Ferguson and Lynskey 1995, Junger et al 1995). The costs to society in terms of both the economy and human misery are therefore considerable and should prompt us to take action. However, the effectiveness of prevention will depend on a broad effort, in which the health service, social services, education system, employment services, police and child protection collaborate.

Prevention starts with state and local authority initiatives relating to good housing, safe communities and accessible health and welfare services. A number of specific programmes for parents (parent training), young children (early education) and older children in school (special training and social competence) are also available (Yoshikawa 1994). Both England and the Netherlands have a range of services for young mothers. In the Netherlands, both the physical and psychological health of young mothers and their babies are examined (93 per cent coverage) and this is followed by assistance from a psychologist (early detection). The Scandinavian countries and the Netherlands also have so-called 'Large schools', where all services related to children are united under the same roof, making early assistance and intervention much easier. Early education is available in a number of primary schools, mainly located in deprived areas (the 'High scope' programme), which gives a basis for a successful school career. However, owing to budget cuts, the programme is not yet administered in all primary schools in the relevant areas.

The conclusion should be obvious: if we want to have a healthier, more productive, happier youth population we need to invest heavily in many types of preventive activities in the coming years.

I should now like to comment on the issue of prosecution. What are most needed are intermediate approaches that fit between doing nothing and sentencing to custody, which is often seen as the easiest solution - getting young people 'out of the way'.

In many European countries, juvenile judges are now often willing to impose intermediate sanctions. However, the effectiveness of most of these sanctions in reducing recidivism still need to be evaluated. More research is also needed to develop new community sanctions. Some, such as functional family therapy and multi-systemic therapy, exist already. These sanctions look at the treatment of the young person in the context of their family and friends and their school-career. Other sanctions include restorative justice, electronic detention, specific training projects leading to employment, different forms of alcohol and drug treatment and programmes to reduce aggression.

All the programmes that are developed need intensive supervision. This requires a shift from social work within institutions to social work in the outside world, and this implies a need to review the training of social workers. Implementing specific programmes in the community rather than in penal establishments requires a different set of qualities and skills. In addition, social workers should be trained in implementing treatment programmes that have demonstrated their effectiveness. Since most treatment programmes in the community are individualised, more social workers will be needed and, consequently, more financial resources.

My last comments concern institutions. Although I tend to agree with Rob Allen that we need a wider range of residential placements, I would plead above all else for reducing the number of placements and replacing these with community sanctions. Considering the nature of most offences committed by young people, one could reduce the detained population by eliminating those who commit non-violent property offences, those who do not commit a serious offence and those who commit only a small number of 'not too serious' offences. If this measure were implemented, only a small number of secure units for seriously delinquent young people would be required. We should also aim to set up psychiatric clinics for young people. Psychiatrically disturbed young people do not belong in a detention facility where they risk deteriorating because staff are not qualified to treat them. In the Netherlands, we have such clinics for mentally disturbed adult criminals, but these do not as yet exist for young people.

Even in secure units, young people have the right to effective treatment. A number of such treatment programmes, mainly based on learning and behavioural therapy, exist. However, it is assumed that staff are trained in administering these programmes and know how to apply them. One-off training is not sufficient: social workers come and go and training newcomers needs to be a continuous process. It is clear that the spread of a wider range of effective programmes - whether in the community or in the juvenile justice and child protection system – require continuous training programmes and considerable investment. It should be noted, however, that these costs will always be lower than the costs of institutionalisation.

When custody is the only option, the length of detention needs to be as short as possible. In the Netherlands, most young people serving a sentence have the opportunity to attend a specialist training programme. This is followed by practical work in the community and, after completing the sentence, by employment. A period of six-months aftercare is then carried out by the institution itself. Several EU countries participate in this programme, which is subsidised by the European Social Fund; it started under the name of 'Work Wise' and is now called 'Match'. This example of 'best practice' has already had encouraging results, and it teaches us the importance of an adequate aftercare system. Research shows that even if treatment within an institution has measurable effects, these are quickly lost when a young person returns home and is placed in their original environment with its related risk factors.

In conclusion, it is clear that juvenile judges should be encouraged, when sentencing to custody, to place the young person for the minimum period and combine this with an elaborate community service, restorative or treatment programme, proposed and developed by the Youth Justice Board. This must take place under the guidance and close supervision of a social worker. Specific instruments which evaluate the nature of the risks presented by the offender are now available to assist judges in making their decisions and directors of institutions in their assessment. This is not necessarily a negative development, so long as the instrument also measures the child's needs for treatment and care so that

all intervention and treatment is focused on those needs. If differentiated treatment is adapted to the nature and seriousness of the child's problems, one might expect to see a range of effects in terms of rehabilitation. To see the most benefits from collective treatment programmes, institutions need to ensure that groups have a favourable ratio of educators to children. We might look to the Scandinavian countries for guidance on this issue.

An important matter that also requires our attention is the contact detained children have with their parents. This is a neglected issue in many countries. However dysfunctional the family, for most people the tie with their parents remains strong throughout life. We should find ways to make frequent parental visits available and affordable, to include parents in the treatment of their children and - if required - to offer assistance and guidance to the family. All this will help to modify the character of detention facilities into treatment institutions and maximise favourable outcomes of the detention period. I agree with Rob Allen's argument that clear standards should be set in secure establishments, and would add that children's rights and complaint procedures should these rights not be observed should also be established. In this way, we may contribute to lessening the 'growing intolerance of teenage misbehaviour' in society.

Finally, I would like to comment on Allen's proposal to place juvenile justice and child protection in the Department for Education and Skills instead of the Home Office (Ministry of Justice in other EU countries). The proposal is based on the argument that the priority for the Home Office is 'protecting the public' rather than the interests, well-being and future of children. This argument needs serious consideration. In many EU countries child protection is already placed within the various Departments of Education and Social Work, but this is not the case with juvenile justice. The Netherlands has recently held elections and we will soon have a new government. There is a strong movement calling for a special Youth Ministry to cover and co-ordinate all aspects of youth policies, including education, welfare, health, employment, protection and justice. This would certainly be a step in the right direction - let us hope!

ABOUT THE AUTHOR

Professor Josine Junger-Tas was employed by the Dutch Ministry of Justice in its Research Institute. In 1989 she was appointed as director of the Institute and received the Sellin-Glueck Award from the American Society of Criminology. In 1994 she was appointed professor of Youth Criminology at the University of Lausanne in Switzerland and she is now visiting professor at the University of Utrecht. She is member of the Council for the Administration of Criminal Law and the Protection of Juveniles, an independent consultant body for the Minister of Justice. In 2000 the University of Lausanne awarded her an honorary doctorate.

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4

Themed responses

Raising the age of criminal responsibility

The report has been considered in detail by the Association's Criminal Justice Committee (England) and members concur with the arguments put forward and support most of the recommendations, in particular the proposals to raise the age of criminal responsibility to 14 years.

Ian H Johnston, Chief Executive, British Association of Social Workers (BASW)

We agree entirely that there is a requirement for an urgent review of the age of criminal responsibility and that measures need to be taken to address the increase in the prosecution, rather than diversion from prosecution, of young offenders. However, we assert that raising the age of criminal responsibility is not, in itself, sufficient. Without a more fundamental review of the issues of net-widening and increased surveillance of young people, there is a serious risk that any positive impact from raising the age of criminal responsibility would be negated or seriously compromised.

Professor Paul Senior, Director; Simon Feasey, Deputy Director; Ann Robinson, Senior Lecturer; Paul Hine, Senior Lecturer; Shawna McCoy, Senior Lecturer; Linda Meadows, Senior Lecturer; Katherine Wilkinson, Researcher

(henceforth known as)
Hallam Centre for Community Justice, Sheffield Hallam University

Raising the age of criminal responsibility to 14 will make the police handling of situations completely different and victims will continue to feel that nothing is getting done or can be done... therefore apathy will preside...every police officer I speak to states this proposal is ludicrous and will cause them problems.

Alison Newbould, ASB Co-ordinator, Safer York Partnership

I do not concur that the age of criminal responsibility should be raised to 14. We should not be afraid to say that someone of 12 or 13 is responsible for their actions. However, this does NOT mean that I want to criminalise children, and I would accept a different label for this. I do not think that a debate about labels should distract us from what we should DO.

Laurence Nasskau, CTC Co-ordinator and North Neighbourhood Manager, Raven Housing Trust

I can see great merit in the idea that we can push young criminals into a more solid self-identity of BEING a criminal and that does not help them or society. But the way forward is not to let 13-year-old knife wielders or thieves off the hook but to help them transform their identity whilst still protecting society.

Bob George, Clinical Psychologist

Nacro agrees that the age of criminal responsibility should be raised but questions whether there should be a campaign to seek its being raised to a definite age. What happens if, for example, it is raised to 14? Is there to be a campaign for a further raising of the age? This is a complex and important issue which calls for a comprehensive review in line with Children in Trouble: Time for Change. Such a review, which includes the age of criminal responsibility in general, perhaps involving a Royal Commission, would be more likely to attract cross-party support and more support generally.

Nacro

Re-raising the age of criminal responsibility from 10 to 14. Are you having a laugh? What planet do you people inhabit? Have you ever seen 12, 13, 14-year-old kids terrorise others? No of course you haven't 'cos you don't live there. Get off your utopian high horse and see the real UK.

Anon

There is no psychological or social reason for raising the age of criminal responsibility to 14; if it is to be raised, it needs to be raised to 16 for the following reasons:

- few children acquire the cognitive skills to reason in an adult way until their mid teens;
- 14 is not the boundary of any psychological stage;
- 14 is not the boundary of any social stage (it used to be the age when boys left school, went into long trousers and started to smoke but it no longer carries that social significance);
- 16 is an accepted social boundary in many areas;
- the House of Lords judgment in the Gillick case established the principle that children under 16 can make decisions that they understand.

Robert Shaw, Consultant

Incarcerating young people

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.

Nick Clegg MP, Liberal Democrat Shadow Home Secretary

It is a reality that prison does not work. However, sometimes it is the sad fact that only a custodial sentence is appropriate, considering society and the victim.

Jacqueline Showers, Police Constable and Deputy Officer in Charge of York Mixed Attendance Centre, North Yorkshire

It is ludicrous that children as young as 12 are put into prisons in a civilised society.

Ursula Smartt, School of Law, Thames Valley University

Slough YOT continues to support the aim to encourage diversion through the preventative agenda. However, at the same time, there exists a need to balance diversion with sanctions via the criminal justice system. If this does not occur,

the message being given to the public and young people in general will be that crime is acceptable. By maintaining this balance young people can be held accountable for their behaviour.

Slough YOT

While we support moves to decrease numbers of young people in custody, we feel that there is a significant omission in the report's recommendations in the provision for dangerous 15/16-year-olds who may require a secure setting.

Hallam Centre for Community Justice, Sheffield Hallam University

Moving the YJB into the DfES

We were opposed to youth justice being moved from the Department of Heath to the Home Office in the 1990s. We are not entirely persuaded, however, that the DfES would be the most effective home for all youth justice and Youth Justice Board management. We think that this proposition should be tested with young people and with organisations working with children and young people and in youth justice.

National Youth Agency

I think it is an excellent idea to bring youth justice into the same department as children's services and education. I have noticed a trend over the last few years which I find worrying and destructive:

- On the one hand, there is an increase in serious incidents in schools/amongst the young and (or so it seems) the adults in the community are too scared to sort it out;
- On the other hand, there is a tendency to overreact, even criminalise relatively minor matters. The sort of things that brought a 'boys will be boys' comment 30 years ago, are now unacceptable.

Juliet Rix, Magistrate, journalist and parent of two boys

National approaches to local circumstances both take responsibility away from local communities and discourage the development of local initiatives to deal with local circumstances. In other words, I see no need for a Youth Justice Board.

Robert Shaw, Consultant

The Youth Justice Board is relatively new but the idea that youth crime responsibility should be organised as part of children's services is inappropriate and unnecessary. The YJB has made significant improvements to the system, so what would be the point? The YJB is aware of the resources that are available and can tap into them when required.

Alison Tadiello, Chair, West Herts Youth Panel

Nacro agrees with this proposal, as indeed it would have had the suggestion been made that responsibility be transferred to the Department of Health. However, better still would be a Children's Ministry. Whatever the model, the DfES and the government as a whole should start to show commitment to the UNCRC. This is particularly the case for children in trouble.

Nacro

The British Youth Council believes young people should be involved in decisions that affect their lives and recognises young people have positive contributions to make to their communities. We are therefore disappointed that the CCJS report fails to raise the issue of diversification of the Board to include younger people. The suggestion that the Board be moved to the DfES implies a greater pastoral role. Yet there is no mention of the need to ensure that any policy made in its new guise be more richly informed by the vital perspectives that young people can bring.

British Youth Council

Diversion to the care system

I am very uneasy about what the risks might be in terms of using care proceedings to respond to what in the first instance are presenting behaviour problems in the broader community.

Andy Campbell, Head Office Team, Lincolnshire YOT

Even for the worst offenders, consigning them to the dustbin of the care system is an absolutely damning sentence, and should never be the preferred option.

Oliver L. Shaw, retired teacher

My concerns in relation to the proposals are that one of the primary indicators for current substance misuse (and criminality) is that the client is involved with social services and especially if the young person is placed within a children's home...the way forward in my opinion is to offer a wide range of services in line with current practice but to fund them so that the young people in secure establishments have more meaningful access to care and support.

Laurie Yearley, retired police officer, Aylesbury Addaction, Bucks YOT

Prevention

The report reflects a current focus in youth justice of an emphasis on preventing re-offending, rather than preventing entry into the criminal justice in the first place. The result of this is that there is no broad conceptualisation of what prevention might really mean and a missed opportunity to encourage a more fundamental review of prevention in the context of youth justice.

Hallam Centre for Community Justice, Sheffield Hallam University

Youth 'crime prevention activity' should not be the work of YOTs but should be seen as mainstream work of children and young people's trusts - and government targets and performance management should reflect this.

Thames Valley Partnership

Young people are being criminalised by the present Home Office policies, and the police performance-related culture, ensuring that for the smallest offence young people will most likely receive a final warning.

**Jacqueline Showers, Police Constable and Deputy Officer in Charge of
York Mixed Attendance Centre, North Yorkshire**

General

We support the recommendations...we would however like to suggest that you add a greater stress and expectation on the health services as part of the multidisciplinary approach to addressing the personal, social and education deficits which underlie so much offending.

**Dr Alex Gatherer, Consultant to the World Health Organization (WHO)
Health in Prisons project**

I agree with all the recommendations, especially the one about addressing educational and mental health problems...There is no doubt that these noble intentions fulfil liberal humanism's standard ethical criteria. However, the problem I have is that they seem to exist in a politico-cultural vacuum. In an unstable economy and an attendant consumer culture that encourages competitiveness, aggression, self individualisation, anomie, cynicism and nihilism, it is no longer possible to posit young people as inherently 'innocent', even though whatever 'guilt' they might be accused of is of course not the product of their own free will or intrinsic 'wickedness'...Constantly lobbying for the humanism of the youth justice system without acknowledging the reality of the problem and the underlying contextual conditions which give rise to it...simply hands

ammunition to the punitive classical liberal and conservative Right, and thus discredits our own cause.

Dr Steve Hall, Senior Lecturer in Criminology, Northumbria University

I wholeheartedly agree with your key arguments. I would only add: abolish ASBOs for under 18s.

Elizabeth Burney, Senior Research Fellow, Cambridge Institute of Criminology

Partners of Prisoners believes that the support for young people available in families needs to be taken into consideration at the stage of sentencing. Families should be offered or referred to an appropriate support agency at arrest and this agency should be involved at the point of sentencing to give an assessment as to whether a community-based licence would work for that young person.

Zoë Gan-Rankin, Corporate Development Manager, Partners of Prisoners and Families Support Group

The youth justice system should be brought into line with the Scottish Children's hearing system where the Social Work (Scotland) Act of 1968 diverted children from the courts to a community justice type system; this has worked well, and has involved members of the community at all levels to deal with deviant children at a very early stage.

Ursula Smartt, School of Law, Thames Valley University

I think that your department should come down from the clouds and read the opinions of people who live within the real world.

David Pilcher

BYC believes the report sets out excellent proposals for a radical rethink of the youth justice system.

British Youth Council

We support the suggestion of a greater use of restorative justice including restorative conferencing and family group conferencing. Our experience however shows that this is not a cheap option and there needs to be a real investment in skills and time to deliver high quality restorative approaches – not simply ticking the box on RJ meetings or victim contact.

Thames Valley Partnership

To raise the age of criminal responsibility to 14 is inappropriate and the take-up of restorative justice has been negligible. Young people know the difference between right and wrong before the age of 14. Statutory reprimands and the final warning system have been set up with youth offending teams to deter young people from criminal activities and prevent court proceedings. Any young children in danger of being involved in the criminal justice system can be included in the Youth Inclusion Support Programme. No one wants to prosecute young people and measures are already in place to deal with this.

Alison Tadiello, Chair, West Herts Youth Panel

Whether the paper's proposals succeed in moving the official response to children who commit offences into a different, more appropriate arena or not, what is critical is that there should be a holistic framework for these children. Frequently they are offender and victim all in one. A more constructive policy framework aimed at covering the totality of young people's experience could embrace areas such as poverty, education, unemployment, housing, mental and sexual health, family life and peer groups.

Finally, as the Riyadh Guidelines suggest, the media could be engaged in a long-overdue campaign to portray positive images of young people, and to exercise its social responsibility to minimise the promotion of violence, pornography, material acquisition, drugs, alcohol, and abusive power relations generally.

Professor Gwyneth Boswell, University of East Anglia

Our members take issue with the assertion that much offending and anti-social behaviour in young people has its roots in mental health problems (this can be the case of course, but applying this label too swiftly can mean other problems and issues are not addressed).

British Association of Social Workers (BASW)

I am very supportive of Rob Allen's pamphlet. However, I think it is important that we correctly interpret Tony Blair's phrase of needing to be 'tough on crime and tough on the causes of crime'. The causes of youth crime are much more than just psychosocial and environmental. The importance of the vulnerability created by mental health conditions particularly AD/HD, because of its biological lack of self-control, i.e. impulsiveness, must be understood. This in no way diminishes the importance of the other educational, familial and psychosocial causes that are well-documented in international literature. The causes of crime are clearly much more than have been recognised thus far in the pamphlet. Much more emphasis must be given to the pre-existing and underlying mental health and educational issues.

**Dr G D Kewley, Director, Learning Assessment and Neurocare Centre,
Horsham**

We very much welcome Rob Allen's pamphlet and congratulate your Foundation for stimulating this necessary re-think and discussion.

Dr Alex Gatherer, Consultant to the WHO Health in Prisons project

5

A final word

A final word

Rob Allen

Whatever its merits, *From punishment to problem solving* has succeeded at least in stimulating a wide range of responses from academics, practitioners and the public. This endpiece cannot pretend to do justice to the wealth of suggestions and comments it has generated but offers instead some observations on the most significant and recurrent themes in the commentaries - both those published in this volume and others.

It seems sensible first to say something about what the paper is trying to achieve. In their responses, Phil Scruton on the one hand and Barry Goldson and John Muncie on the other describe the problem-solving approach as 'inherently deficient' and comprising 'an incomplete set of alternative prescriptions'. I have much sympathy with their arguments that the roots of delinquency lie in poverty and disadvantage and that the long-term solutions require social transformation of the kind they recommend. The purpose of the paper was however narrower than its title perhaps suggests, focusing not on the structural causes of crime but on the set of responses that are made to individual young people who cause social harm. It is an attempt to put forward a system which is more humane, effective and consistent with international norms than the one we have at present. The paper does refer to the shameful fact that the UK is at the bottom of the league of child well-being in the European Union, and argues for much greater investment to support struggling families. But I readily accept that it does not

adequately address fundamental issues of political and economic marginalisation, poverty, racism, and conflict in communities. It is, to use Jeffrey Butts' formulation, about 'managing individual reactions to an adverse environment' rather than mending the environment. But even if Scraton is right that 'reconfiguring governance, focus and direction of public services, however radical, deals only with surface issues,' it is nonetheless important, not least for the 200,000, mostly poor, children processed by the system each year.

Second, my interest in writing the paper was in bringing about changes in law, policy and practice. To that end, the paper tries to develop a package of proposals that a present or future government could plausibly implement. To that extent I welcome Goldson and Muncie's view that the paper is 'fatally compromised by its intrinsic pragmatism and apparent attempt to retain political acceptability'. They ask, for example, 'Why delay the phasing out of prison custody for 15 and 16-year-old boys for one and two years respectively when the evidence appoints unequivocally to the corrosive, counterproductive and even abusive tendencies of penal regimes?' The answer is that without a realistic alternative policy supported by a timetable for planning and implementation, changes simply do not work or last. In October 1992 the government abolished detention in a Young Offender Institution for 15-year-old boys. Within a year they were legislating to introduce new custodial sentences for children as young as 12.

In an era of media-driven politics, efforts to develop realistic alternative policy in criminal justice have to take account of popular punitivism - a genie that it is seemingly difficult to return into the bottle. I have argued elsewhere that 'with the right leadership, a sustained effort to inform, influence and involve (the public), a change of emphasis and perhaps orientation may be possible.' (Allen 2002) While Rebecca Palmer is right to say that 'the punitive approach draws on and directs the feelings of desperation and demoralisation within some communities,' youth justice reform is not entirely contingent on addressing poverty, inequality or the 'power differentials and rights abuses central to the marginalisation of young people' as suggested by Phil Scraton. Modest though the

proposals in the paper are, they have met with limited enthusiasm from the Children's Minister who it is proposed should assume greater responsibility for youth justice provision. It is fanciful to suppose that going beyond the new approach would engender greater support.

Turning to the paper's substantive proposals, the one which caused most controversy when the paper was launched relates to the age of criminal responsibility and the commentaries reflect this. Some consider the proposal too timid, suggesting 16 or even 18 would make more sense. Others, particularly police officers and the public, felt strongly that any raising would send out entirely the wrong message to young people who are already out of control. One police officer argued that children understand right from wrong at the age of two and 'from the police point of view the sooner they are in the system the better'.

As the paper suggests, there is a strong argument in logic for the age of criminal responsibility to reflect the age at which we no longer require children to receive full time education - 16 and perhaps in the future 18. The choice of 14 may reflect something of 'a political palliative'. As one commentator pointed out, 'it used to be the age when boys left school, went into long trousers and started to smoke but it no longer carries that social significance'. It is however the age which applies in a large number of countries, including Germany, Italy, Spain, Japan and Russia.

Perhaps a more interesting question is how you deal with youngsters under a raised age of criminal responsibility whose behaviour requires some form of intervention. Several commentators counselled against relying on a care system which struggles to provide positive services for its current clientele and whose track record with young offenders has been mixed at best. Bob Reitemeier points out that 43 per cent of children who go to custody in our current system have had some experience of being in care. Some commentators regretted the paper's lack of discussion of the system in Scotland where, although the age of criminal responsibility is eight, most children in trouble are dealt with through the system of reporter and children's hearings where punishment plays no part.

It is certainly true that a new system would need to avoid a return to the 1970s when over-zealous use of care proceedings resulted in large numbers being placed in residential care homes that became in Spencer Milham's famous phrase 'an expensive ante-room to the penal system'.

The key point the paper seeks to make is that the appropriate legal framework for intervening in the lives of children should not be based on the values and requirements of criminal justice but rather on those of child welfare, health and education. It is possible that amendments to the existing childcare law may be needed to take account of an expanded role with delinquent children. But, as the paper points out, a recent study of children who present challenging behaviour suggested that, historically, whether the problem child has been cared for, punished, educated or treated has often been a matter of chance, depending upon which individuals in which agency happened to pick up his or her case.

It is certain that the infrastructure of services available for children would need to be organised in a more coherent way. While Josine Junger-Tas tends to agree with the paper's recommendation that that we need a wider range of residential placements, she pleads above all 'for reducing the number of placements and replacing these by community sanctions'. For her, 'what are most needed are intermediate approaches that fit between doing nothing and sentencing to custody'.

In the light of all the comments received, added significance attaches to the paper's recommendation for a fundamental review of the range of open and secure facilities which might be available to young offenders and the ways in which they are managed and paid for.

A bigger surprise was perhaps the questioning by some commentators of the evidence base for restorative approaches. Several suggested that this was being promoted as a panacea for all ills rather than being used selectively as part of a portfolio of approaches aimed at meeting the needs of each young person. Raymond Arthur suggests the importance of pre-school, after-

school and parenting programmes. Mentoring, family therapy, multi-systemic therapy, cognitive behavioural approaches, and competitive team sports were among other approaches put forward by commentators. The World Health Organization have emphasised a greater role for health services.

The reason for suggesting a central role for restorative justice is that it provides a balanced framework which can accommodate measures not only to meet the interests of the child but also the victim and broader community. It offers a more appropriate way of making children aware of the consequences of their actions than does prosecution and conviction, and an opportunity for putting things right.

Without requiring some element of responsibility and reparation, it is difficult to see a new approach proving acceptable to the parents, neighbours, friends and victims of young people in conflict with the law, let alone to politicians. But combining a restorative approach with genuine efforts to meet the needs of children and their families produces an approach that promises effectiveness, humanity and political viability.

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Rob Allen has been Director of the International Centre for Prison Studies (ICPS) at King's College London since 2005. Before then, he ran Rethinking Crime and Punishment, set up by the Esmée Fairbairn Foundation to change public attitudes to prison. He has previously worked for Nacro and the Home Office. He was a member of the Youth Justice Board for England and Wales from 1998 to 2006.

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