

Dear Jack Straw,

Your Crime and Disorder Bill seems to be a great success, although, inevitably, the professionals are worried about who will pay for it. I am less worried about the money however, than the fact that some of the new youth justice provisions may well be repeating past mistakes. As I understand it, your youth justice strategy has four key elements:

- *The anticipation of future criminality* and early intervention, via child safety, anti-social behaviour, child curfew and parenting orders.
- *The 'dejuvenilisation' of the youth justice system* by the abandonment of the principle of *doli incapax*, allowing some 'naming and shaming' and reducing the age at which a lone juvenile may be tried in an adult court.
- *Earlier intervention* via final warnings backed up by programmes of restorative justice, cognitive/behavioural change and parental education and more robust 'mid-tariff' interventions in the form of an action plan order and a revamped supervision order.
- *Extending the powers of the bench* to remand youngsters to security and placing no additional legal or administrative constraints upon their powers to sentence to custody.

While early intervention makes sense, using the law to do it does not. Now, a breach of a Child Curfew Order will provide grounds for the imposition of a Child Safety Order which, when breached, may well result in the imposition of a Care Order. As such the Child Curfew Order will become a 'fast-track' to Care, and quite possibly Secure Accommodation. Before the free market experiment of the 1980s put them out of business, adventure playgrounds, play centres and detached youth workers did the job for which the Child Curfew Order is designed, but they did it without alienating and stigmatising the children of the poor.

You plan to abandon the principle of *doli incapax* because you wish to make the system 'tougher'. Yet, as recently as 1990, the *Crime Justice and Protecting the Public* white paper argued that the principle of *doli incapax* should be retained because it made 'proper allowance for the fact that children's understanding, knowledge and ability to reason are still developing'. The UK now has the lowest ages of criminal responsibility in Europe (8 in Scotland and 10 in England and Wales). *Doli incapax* has served to reduce the yawning discrepancy between the ages of criminal responsibility in the UK and mainland Europe. Now, the UK will stand alone.

You also want the power to 'name and shame' young people in trouble by publishing their names in the press. Beyond the well-founded fear that such public stigmatization might compound rather than arrest their criminal careers, this move will almost certainly serve as a green light for the scores of would-be vigilantes who inhabit the most crime prone neighbourhoods.

You plan to shift 18 year olds back into the adult courts is justified on the grounds that youth courts offer neither adequate retribution for serious youth crime nor effective deterrence. Yet in the USA, where 'dejuvenilisation' began in 1978, the research shows that the 'going rate' for any given offence by young people with similar antecedents is similar in both jurisdictions and that the deterrent effect is also identical (Fagan 1991).

The final warning, and the programmes which accompany it, will probably deter around 70% of the young people who enter the system. It is unlikely to stop the remaining 30% because most of them will come from troubled backgrounds which give them no real 'stake in conformity'. They will enter the youth court where, in the absence of the conditional discharge, they will attract an Action Plan Order or a revamped Supervision Order. If they breach these orders, not only are they likely to receive a custodial sentence or a 'residence requirement', they will also have used up their last non-custodial option. I thought you had abandoned Michael Howard's 'three strikes' strategy.

As the Heath, Wilson and Callaghan administrations of the 1970s discovered, early intervention in a youth justice system which does not 'manage' the sentencing process, will draw youngsters further into it, and accelerate their progress through it. In 1965, 21% of convicted young offenders were dealt with in attendance centres, detention centres and Borstals. By 1977 this proportion had risen to 38%. As these populations grew, so the youngsters sentenced to these facilities became less and less problematic.

All your predecessors have discovered that if you hand more power to the bench, or even hint that you wish them to make greater use of existing powers, they will. You recently remarked that prison was a 'demand-led service' and if sentencers wish to impose custodial sentences, it was your job to provide the places. Leon Brittan said something similar in 1983 and between May 1983 and May 1984 the Youth Custody population rose by 65%. Subsequently, Home Secretaries Hurd, Waddington and Baker took to sending the bench unequivocal messages about sentence lengths and the use of alternatives to custody, in an attempt to inject some rationality and proportionality into sentencing in the youth justice system.

The new legislation will increase, substantially, the numbers of 12-15 year olds entering security or custody and, in consequence, more and more 15 year olds will be pushed up into Young Offenders Centres. Optimists say that this problem will get worse before it gets better. They remain vague about why or when it will get better.

Your office is at pains to stress that 'vulnerable' 15 year olds will remain in local authority accommodation. Yet anybody who knows the YOCs, and this includes successive chief inspectors of prisons, also knows that the very act of committing a 15 year old to these institutions may render them vulnerable to drug addiction, anal rape, violent intimidation and suicide. Indeed, were it not for the fact that the provisions of the Children Act (1989) do not cover YOCs, the bulk of under 18s inside them would probably be on a Child Protection Register.

Many of us voted for you because we wanted a government which was pragmatic, intelligent and compassionate in its dealings with young offenders and their victims, not just 'tough'. Intelligent and effective policies and political popularity are not necessarily incompatible but in the present political climate it will take a bit of political nerve to push them through. But as Harold Wilson once observed, 'you know it makes sense' so, go on Jack, do the right thing.

Yours sincerely, John Pitts

Professor of Socio-Legal Studies, University of Luton

Reference:

Fagan J (1991) *The comparative impacts of juvenile and criminal court sanctions on adolescent felony offenders*. Final Report, Grant -JJ-CX-4044 to the National Institute of Justice, Washington DC: US Department of Justice.