

## **Submission to Charlie Taylor's review of the youth justice system**

In September 2015 Charlie Taylor was asked to lead a review of the youth justice system on behalf of the Ministry of Justice. An interim report was published in February 2016. The Association of Directors of Children's Services (ADCS) welcomes the opportunity to make a written submission to this review. ADCS is the professional association for directors of children's services (DCSs) and their senior management teams. Under the provisions of the *Children Act 2004*, the DCS is the chief officer responsible for the discharge of local authority functions with regard to education and wider children's services, including social care.

### **Executive summary**

The number of children and young people cautioned with, or convicted of, committing a crime has fallen significantly over the last decade meaning those now left in the system have a range of increasingly complex and overlapping health and social care needs.

Approximately three quarters of the children who have served a custodial sentence go on to reoffend suggesting that this is not an effective rehabilitation strategy. ADCS believes that a statutory presumption of community resolutions and restorative practices should be introduced in all cases that do not involve the most serious offending behaviours. While this will require a significant investment there are parallels to be drawn with the government's flagship Troubled Families Programme. The idea of developing a network of 'secure schools' for those children and young people who have committed the most serious offences is well worth exploring - education opens up the door to opportunities, such as steady employment.

The commissioning and oversight of mental and physical health services in the secure estate is not yet strong enough and this should be addressed as a matter of urgency - levels of violence and self-harm in custody remain unacceptably high.

The formation of the Youth Justice Board (YJB) brought a welcome focus to this issue. However, national policies and procedures have not kept pace with the realities of frontline practice. The YJB remains too focused on monitoring compliance rather than driving forward innovation and change.

The use of aggressive staff behaviours and inappropriate restraint methods in the secure estate is an issue that endures to this day as the recent events at Medway Secure Training Centre show. Greater transparency and the importance of good governance in the system must be given greater weight going forward. ADCS believes that the youth justice system should be more closely aligned to existing infrastructure and accepted practices in children's services. To this end local systems leaders need additional levers to address concerns about the welfare of children and young people living in nationally commissioned secure institutions in their area.

ADCS believes that children and young people who are in conflict with the law should be treated as children first and foremost. Their behaviours can mask underlying vulnerabilities and trauma including learning difficulties, mental health problems and family dysfunction. This guiding principle should underpin a redesign of the youth justice system.

### **1. The changing profile of young people who offend**

Over the last 10 years or so the number of children and young people cautioned with, or convicted of, committing a crime has fallen by 77%, while the overall number entering the youth justice system is down by 81%. Charlie Taylor's interim report<sup>1</sup> rightly notes that: "*These are startling achievements, and all those who work in the youth justice system deserve enormous credit.*"

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<sup>1</sup> <https://www.gov.uk/government/publications/review-of-the-youth-justice-system>

While it is true that children and young people who have offended are more likely to have experienced dysfunctional or disrupted childhoods, suffered abuse, neglect or maltreatment, have learning difficulties, disabilities, mental health problems or a history of substance misuse (Office of the Children's Commissioner, 2011)<sup>2</sup>, it is unhelpful to think about them as a single, homogenous group.

Many children will, in time, grow out of early offending behaviours. There is, however, a group of persistent offenders with a set of complex individual and family circumstances that can mask a wide range of underlying vulnerabilities. There is also a small number of children and young people who commit very serious offences but are unlikely to reoffend at that level, ever again. A more sophisticated approach to administering youth justice is now needed if the progress made to date is to continue.

It is worth noting the increase in birth rates during the last decade - the number of adolescents is now beginning to rise as a result. This must be factored into future assumptions about the required capacity of the secure estate. The system must also begin to take into account the differing needs and vulnerabilities of girls and young women who offend - they are more likely to self-harm, attempt suicide and to be victims of crime themselves. The specific needs of adolescents who will transition from youth settings to an adult prison whilst serving their sentence similarly requires further attention.

## 2. Youth Offending Teams

Multi-agency Youth Offending Teams (YOTs) were established to address the underlying causes of youth crime, such as poor parental supervision, by targeting specific children for early help and support. This collaborative approach has had a demonstrable impact on the lives of individual children, families and on local communities too. In a report entitled: "Youth offending teams: making the difference for children, young people, victims and communities," the Youth Justice Board (YJB)<sup>3</sup> noted in 2015 that: *"YOTs are the cornerstone of a youth justice system that delivers outstanding successes in recent years in terms of the reductions in the number of children and young people at all stages of the system. The local, multi-agency and multi-disciplinary nature of the YOTs, and the expertise and passion of their staff, make them uniquely qualified to deliver youth justice services."*

Much of the work of YOTs is preventative and community-based. They provide parenting support for anyone not on a formal order but in need of additional help and offer voluntary services for young people who reach the end of their order but are still at risk of reoffending. Engagement with the local Channel Panel or Troubled Families Programme has also enabled YOTs to manage down levels of statutory interventions.

Reductions in central funding have significantly impacted on the work of YOTs as well as the provision of wider early help and support services. In response to such pressures a growing number of local authorities, including Surrey, Kent, Hertfordshire and Gloucestershire County Councils, have integrated their YOTs with wider support services for young people in recognition of the overlapping health and social care needs of children and young people who are in conflict with the law. In these areas a smaller number of professionals are able to address issues relating to unemployment, poor emotional and mental health, homelessness, offending, unhealthy relationships, family dysfunction and substance misuse. Building and sustaining positive relationships is routinely prioritised in policies and accepted practices for other vulnerable groups e.g. 'Staying Put' in foster care, yet no such discourse exists in youth justice. By integrating support services in this way local authorities have recognised that authentic and positive relationships can form between key workers and young people.

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<sup>2</sup> [https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Response\\_to\\_the\\_Ministry\\_of\\_Justice\\_consultation\\_-\\_Breaking\\_the\\_cycle.pdf](https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Response_to_the_Ministry_of_Justice_consultation_-_Breaking_the_cycle.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/yjb-board-report-on-yots>

### **3. Community resolutions and use of restorative practices**

There is limited evidence that shorter custodial sentences are an effective intervention in terms of changing behaviours. According to the Howard League for Penal Reform (2010)<sup>4</sup>, the reoffending rate for children who have been in custody is approximately 75%, suggesting that this is not an effective rehabilitation strategy. According to Hanson and Holmes (2014)<sup>5</sup>, young people can adapt to hostility - as is often found within some custodial settings - by isolating themselves, becoming hyper-vigilant and using pre-emptive aggression. This places them at risk of further offending and social exclusion in the longer term. Community resolutions should therefore be adopted for persistent offenders committing relatively minor crimes.

Responses to children who have infringed the law must reflect their status as a child, not their offending behaviours. ADCS believes that children and young people who have offended should be encouraged to confront the consequences of their actions via restorative conferencing. This approach has been used for many years in Northern Ireland and has resulted in further reductions in reoffending, higher rates of compliance with conference plans, significant victim satisfaction levels and the use of fewer custodial sentences.

Whilst the development of a restorative model would require a significant upfront investment, there are parallels with the government's flagship Troubled Families Programme. The total savings to the public purse could be very significant in the longer term and there are other benefits too; adopting a presumption of restorative processes would effectively end the long-running debate about the age of criminal responsibility in this country. When taking a restorative approach one of the first actions would be to determine, in each case, whether the child or young person understood, in real time, the consequences of their actions. ADCS would welcome further discussions on this matter.

### **4. Serving custodial sentences – current picture and future proposals**

While youth offending rates have consistently fallen, pressures in the wider criminal justice system has resulted in unconvicted children and young people spending increasing lengths of time on remand awaiting trial. These experiences can reinforce an offending identity and be particularly destructive if community sentence is ultimately awarded by the courts.

The delivery of education in the secure estate is frequently constrained by security concerns meaning children and young people do not receive satisfactory experiences. This not only impacts on soft and hard skill acquisition, mental health and wellbeing but long term employment opportunities as well. The keen focus on education in Charlie Taylor's interim report is therefore welcome, as is the emphasis on aspiration: *"We should be ambitious for young offenders and seek to maximise positive outcomes by promoting education and training opportunities as part of the rehabilitation process and encouraging the development of other strengths and skills."*

The decision to deprive children and young people of their liberty should not be taken lightly and ADCS believes a custodial sentence should only be passed down by the courts when the child or young person is deemed to be at serious risk of harm or poses a serious and significant risk to others.

Charlie Taylor's interim report introduced the concept of 'secure schools' as an alternative to secure training centres (STCs) and young offenders institutes (YOIs) on the basis that a smaller youth custodial population made up of the most persistent and serious offenders requires a range of high quality services, especially education, to break the cycle of offending. This focus is well placed and exploring the characteristics of the best alternative provision schools is worth pursuing. ADCS would welcome further discussions on this point and the importance of good governance given the history of institutional abuse in community homes with education.

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<sup>4</sup> [https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Response\\_to\\_the\\_Ministry\\_of\\_Justice\\_consultation\\_-\\_Breaking\\_the\\_cycle.pdf](https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Response_to_the_Ministry_of_Justice_consultation_-_Breaking_the_cycle.pdf)

<sup>5</sup> Hanson and Holmes, (2014), *That Difficult Age: Developing a More Effective Response to Risks in Adolescence*, Research in Practice

Strong oversight will be required if this proposal is taken forward by the government. ADCS members are unsure if free schools and multi-academy trust arrangements are suited to this task or sufficiently robust at this time. Local authorities hold a range of duties in relation to safeguarding children and young people, particularly the most vulnerable, and offer democratic accountability, too.

Children and young people living in the secure estate have looked after status. All other children in the care of the local authority have a personal education plan (PEP) in order to track achievements and their progress towards meeting long term goals. ADCS believes young people serving a custodial sentence should be offered a PEP to ensure a continuing focus on personal development and skill acquisition with the ultimate aim of sustaining future employment. This is absolutely central to breaking the cycle of repeat offending behaviours. ADCS would be keen to explore the practicalities of building a clearer link between secure schools and virtual schools in the future - each local authority employs a virtual school head to promote the educational achievement of children in care and challenge providers to do their best for learners.

Earlier this year the Home Secretary<sup>6</sup> proposed new powers for police and crime commissioners to open free schools to support 'troubled children,' including those on the cusp of crime. ADCS is concerned that this early labelling could undermine the excellent progress made by multi-agency partners in diverting young people away from the criminal justice system. It is also important that the very real possibility of incarceration creep is borne in mind with the creation of secure schools; they must not be seen as a 'soft' option.

## 5. The importance of mental health provision

ADCS remains concerned that the commissioning and oversight of mental and physical health provision in the secure estate is not yet strong enough. A disproportionately high number of young people who have offended have emotional and behavioural disorders overlaid with significant traumas, such as the loss of an immediate family member. Levels of violence and self-harm in the secure estate remains unacceptably high underlining the clear link between this trauma, poor emotional wellbeing and behavioural presentation. Official YJB statistics<sup>7</sup> show that there were 1,315 incidents of self-harm in custody in the year ending March 2015. While this is slightly lower than the previous year, the number of incidents has actually increased due to falling custody numbers. In 2014/15 there was a monthly average of 7.7 incidents per 100 young people, compared with 6.6 in 2013/14 and 5.2 in 2012/13.

ADCS believes greater consideration must be given to the integration of health services in secure school settings. In 2010, the Independent Commission on Youth Crime and Antisocial Behaviour<sup>8</sup> put forward the concept of 'Young Offenders Academies.' These education, training and health facilities would provide secure and supported non-secure accommodation whilst working with young people who have offended living in the community. The Commission also suggested that the high proportion of emotionally and behaviourally disturbed children and young people in custody underlined the need for staff to be trained to a high minimum standard and equipped with specialist skills and knowledge.

## 6. Approaches to rehabilitation

Adolescence is one of the most dramatic stages of life development (Hanson and Holmes, 2014)<sup>9</sup> and the risks young people face are complex and wide-ranging, from substance misuse and radicalisation to gang affiliation. Many of the children served by the youth justice system have experienced multiple breakdowns in key relationships, from family estrangement to school exclusion, and serving a custodial sentence can further add to this pattern given the uneven geographical spread of the existing secure estate. Families, parents and carers must be more centrally involved in the rehabilitation process in the future. The automatic allocation of looked after status to children and young people on remand requires further consideration. ADCS members would welcome greater

<sup>6</sup> <http://www.theguardian.com/uk-news/2016/feb/04/may-wants-elected-commissioners-to-set-up-free-schools-for-troubled-children>

<sup>7</sup> <http://www.cypnow.co.uk/cyp/news/1155750/self-harm-in-youth-custody-on-the-rise>

<sup>8</sup> <http://www.police-foundation.org.uk/youthcrimemission/>

<sup>9</sup> As before

flexibility in the allocation of a key worker or lead professional based on the best interests of each individual child or young person. Often an established relationship exists with a YOT worker. This move can also, at times, act as a disincentive to positive parenting.

A recent thematic inspection led by HMI Probation<sup>10</sup> recognised the obvious strategic overlap between the aspirations of the Troubled Families Programme and the day-to-day work of YOTs as well as the potential for much greater gains from closer collaboration. The dominant discourse in youth justice policy for the last two decades has been one of risk management (Byrne and Brooks, 2014)<sup>11</sup>. In the future, building on young people's capacity, and that of their families, rather than their deficits, could bring further rewards. However, this will require the devolution of further powers to local areas from various central government departments and agencies.

## **7. Safeguarding the health and wellbeing of children in the youth justice system**

Directors of children's services (DCSs) have a duty to secure the very best outcomes for the children and young people by acting as a champion and an advocate. An important part of this role is holding a whole range of partners to account, yet there are limited opportunities for the DCS to do this on behalf of those living locally in the secure estate at this time. Similarly, confusion exists around the role of the local safeguarding children board (LSCB). The services delivered in the secure estate sit, for all intents and purposes, outside of the regulatory framework of the *Children Act 2004*, which places the legal responsibility for ensuring that safeguarding arrangements are effective with the DCS and the LSCB. Local systems leaders urgently require greater levers to address welfare concerns arising in nationally commissioned secure institutions.

The local authority designated officer (LADO) investigates allegations that a child has, or may have, been harmed by anyone who works with children. Their role and the resourcing of this important service in areas that house a secure institution might usefully be considered as part of this review. The BBC's exposure of aggressive staff behaviours and the use of inappropriate restraint methods at Medway STC by G4S employees underlines the need for greater transparency and external scrutiny<sup>12</sup>. It remains unclear how the YJB is held to account and what its responsibilities are when an organisation it commissions to deliver services fails to safeguard the vulnerable children and young people in their care. This is unacceptable.

ADCS members believe that, as a matter of principle, the provision of these services should not be predicated on sustaining a profitable business model and that the long term involvement of the for-profit sector in this area should be carefully considered; sadly the events in Medway are not an isolated occurrence. It has recently come to light that up to five times as many children and young people suffered injuries in custody than was previously declared. According to the YJB's official statistics, 318 incidents occurred in STCs between 2010 and 2014 yet figures quoted in parliament show that the actual number of injuries caused by restraint in STCs over that period was 1,506. The figure for YOIs was 631, compared with a 'new' total of 2,755 (Observer, 13 February 2016)<sup>13</sup>. Safe restraint training is commissioned nationally. ADCS is concerned that this has been impacted by austerity and urges this investment is prioritised in the future in order to safeguard the health, safety and wellbeing of vulnerable children and young people.

## **8. Performance management**

Charlie Taylor's interim report recognises the overlap between the work of HMI Probation and Ofsted in the regulation of YOTs. Each inspectorate has a role to play in the assurance of these services and ADCS would be keen to explore the merits of a joint inspection framework, which may usefully include the Care Quality Commission, too.

<sup>10</sup> <http://www.justiceinspectors.gov.uk/ciji/wp-content/uploads/sites/2/2015/01/Troubled-Families1.pdf>

<sup>11</sup> Byrne and Brooks, (2014), *Post-YOT Youth Justice*, Howard League for Penal Reform

<sup>12</sup> <http://www.bbc.co.uk/news/uk-england-35281097>

<sup>13</sup> <http://www.theguardian.com/society/2016/feb/13/young-offenders-institution-restraint-injuries>

The government's measures of success are binary. Increasing weight is placed on reoffending rates. However, ADCS feels that the severity and frequency of reoffences should be taken into account in the future to provide a more sophisticated picture of impact and progress over time.

## **9. Resources and devolution**

YOTs are operating against a backdrop of unprecedented funding pressures. In a 2015 report, the YJB noted that: *"We are concerned that reducing central government funding without understanding the potential impact risks undermining the successes achieved by the youth justice system in recent years."*

Transformation of local services is being driven by the need for greater efficiencies but the restrictions and sanctions that have characterised the transfer of responsibility from central government, and its agencies, to local areas has inhibited the development of a truly child-centred approach to youth justice to date. Central prescription should be scaled back and local areas should be given greater flexibility over the design of services and use of resources in the future.

The wider devolution agenda offers, in principle, a chance to revisit established ways of working. ADCS welcomes opportunities to devolve greater control of the youth justice system, and the associated funding, to local or regional areas. This move would facilitate consortia of local partners to pool resources and experienced staff to create a single offer for the most challenging children and young people in conflict with the law or commissioning multi-systemic therapy interventions.

## **10. Role of the YJB and government in the future**

The formation of the YJB brought a welcome focus on youth offending, however, national governance structures have not kept pace with the realities of local service delivery. Rather than monitoring compliance from a distance, a national body should drive innovation via the exchange of local knowledge and the commissioning of new research to underpin the development of innovative new policies.

There remains a critical role to be fulfilled in terms of commissioning intensive, therapeutic support in order to break ingrained patterns of offending. This low incidence, high cost activity is best undertaken at a national level to achieve economies of scale and on the basis that effective interventions for this population have the potential to influence children and young people away from an adulthood of offending.

In the same way that local partners are working ever more closely together, greater inter-departmental collaboration is needed. ADCS believes the development of shared performance standards between the relevant government departments – Justice, Education, Health, Communities and Local Government and the Home Office - should underpin the transformation of the youth justice system. This move would also encourage continued buy-in from the relevant multi-agency partners at a local level.

ADCS would be pleased to welcome Charlie Taylor, or members of his review team, to return to a future meeting of the Families, Communities and Young People Policy Committee to discuss any of the points raised in this submission in further detail.

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