



The Michael Sieff Foundation

Working together for children's welfare

1908 – 2008: The Children Act 100 years on *young defendants today*

REPORT ON THE CONFERENCE HELD ON:

TUESDAY, 28 APRIL 2009

***At Church House, Dean's Yard,
Westminster, London***

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1. BACKGROUND TO CONFERENCE

The purpose of this high level conference was to address important issues relating to children appearing before the criminal courts. Attendance at the conference was by invitation only. Invitations were sent to senior experienced professionals whom the organisers felt would be able to address the shortcomings of our present system and come up with sensible and achievable proposals for improvement.

The conference functioned as a working forum in which specific recommendations in relation to children and the criminal courts were made. The intention is that these will be taken forward by the Michael Sieff Foundation which organised the meeting.

There was an informed debate on these topical issues and we are pleased to publish this report of the conference proceedings.

2. WELCOME FROM CONFERENCE CHAIR

**Conference Chair: Christopher Kinch QC, Head of Chambers,
23 Essex Street**

The Michael Sieff Foundation is dedicated to improving policy and practice for children and young people in need. The Foundation has a formidable track record in challenging society on the way in which it responds to children's problems and to problem children.

The Foundation's conference programme draws speakers and delegates from government, the judiciary, the professions, business, academia, children's services and the voluntary sector. Ideas and practices from Foundation seminars have been adopted in the sphere of child protection, the social re-integration of young offenders, combating cross border paedophile activity and enabling children to give evidence in court.

Today's conference aims at considering the position of young defendants in the criminal justice system. That the conference is taking place is due to the determination and efforts of Barbara Esam and her steering group Michael Bowes QC, Lord Francis Listowel, Liz Lovell and Iryna Pona from the Children's Society, Chris Stanley JP and Dr Eileen Vizard.

If we are to make it a success we will need to work together to consider some difficult issues. We don't want it just to be a talking shop however useful they can be. What we should be striving for is to produce some sensible proposals to improve the way in which young defendants are dealt with in the criminal justice system.

In order to secure that success, I know the organisers are hoping that some of you here might be prepared to help form a working group to take forward any practical proposals that start to emerge today. Please give that some thought as we work our way through the programme.

It is a measure of the importance of the task ahead that one of the country's most senior judges is to open proceedings with a keynote address and we hope he will have time to take some questions.

3. OPENING ADDRESS – FROM THE CHILDREN ACT 1908 TO TODAY - ANY PROGRESS FOR CHILDREN IN COURT?

Address By: The Right Honourable Lord Justice Thomas

INTRODUCTION BY CHAIR: *Lord Justice Thomas, Sir John Thomas, was appointed a Lord Justice of Appeal in 2003 and served until 2006 as the senior presiding judge for England and Wales. He has an honorary fellowship of one English university but he is a Fellow of no fewer than four Welsh universities. He is now Vice President of the Queens Bench Division and deputy head of criminal justice beneath only the LCJ. He is going to pose if not answer the question From the Children Act 1908 to to-day, any progress for children in court?*

Key Points from Presentation

1. The history of the last 100 years shows how much change has been needed. We must not forget the foundations on which all that has been achieved – the Children Act of 1908.
2. The legal status and position of the child had, until the 19th century, remained unchanged for centuries. The Children Act 1908's principle achievement was to consolidate into a single statute all the laws relating to children and establish the principle that juveniles should be dealt with in courts distinct from those dealing with adult criminals.
3. Some key achievements today based on the foundations laid by the 1908 Act are:
 - Training of all who sit in the Youth Court is now of a higher standard.
 - We have the use of unsworn evidence, the removal of the requirements of corroboration and the adoption of video recordings and Livelink.
 - Steps are taken to familiarise young witnesses attending court with what happens at court.
 - Efforts are made, perhaps with not enough success, to ensure that young witnesses are not kept waiting before giving evidence.
 - The range of sentencing options available to a court are considerable.
 - We are also open constantly to review and scrutiny of the system.
4. There is much that we can still do to improve the procedure and practice in the Youth Court and above all prevent youths from becoming 'customers' of that court.
5. We need to examine in more detail the work so far done towards the production of a "Young Defendants Information Pack" – both to support the advocate but also to ensure that the defendant and the parents of the defendant have the right information.

6. Those who question juvenile defendants, should ask questions in a way the witness understands.
7. We must not forget the position of those who are just beyond the scope of the Youth Court. Do we do enough for those in the next years?
8. It really is important to stop children coming to court and that we look at prevention prior to the child appearing in the Youth Court.
9. There can be no doubt that we need to examine all aspects of the Youth Court critically to ensure that it provides a fair, yet firm, means of dealing with those who we cannot prevent from committing crimes when they are young.

For a copy of Lord Justice Thomas' speech please [click here](#)

Questions and Answers - Summary

1. Chris Stanley (Youth Court Magistrate): commented that the current system is not fit for purpose. There are two separate systems for care and criminal issues, but they often involve the same children. There is a need to bring together the two systems.
2. Thomas LJ: responded that it may be possible to identify those most at risk, but it would be much more difficult to apply the same court process to both situations. There is a fundamental difference in dealing with criminal issues.
3. Shauneen Lambe (Just for Kids Law): commented that the age of criminal responsibility is ten, but competency in family proceedings depends on the individual child: this approach is inconsistent.
4. Thomas LJ: responded that the system fails to take into account the differences in maturity. The criminal law draws a rigid line. It is very important to look at the child and not the abstract notion of a child. But, there is still a question of how you translate that into a sensible system of youth justice. More flexibility is needed in relation to disposals.
5. Penelope Gibbs (Prison Reform Trust): commented that in Scotland there is a single system for children under 16 who commit crime and those with welfare needs.
6. Thomas LJ: responded that there is no problem with having the same people dealing with the children in both contexts, but it would be more difficult to have the same procedure.
7. Professor Sir Al Aynsley-Green (Children's Commissioner for England): Commented that the two main areas of concern for children in the UK are children in the asylum system and children in the criminal justice system. It is important to take their perspective into account. Courts and judges should listen to what children say about their experiences.

8. Thomas LJ: agreed that listening to what users of a system say about it is very important and should inform research.
9. Mary Duff (Magistrates Association): commented that magistrates see family and youth courts as very different. We should be wary of assuming that certain children might become criminals, even if certain risk factors are present.
10. John Graham (The Police Foundation): commented that there is a need to develop a more flexible approach to children who get into trouble. In Germany 18-21 year olds are treated as juveniles. This reflects the difficulties of the transitional period. Are there any suggestions as to how we could be more flexible in the UK?
11. Thomas LJ: responded that the age of responsibility is a very political issue. There is a need to look more flexibly at how punishment relates to maturity.
12. Stephen Jakobi ("Children aren't Criminals"): commented that the debate is very national and seems to be entirely political. Experts all agree that the age of criminal responsibility is disgraceful and causes problems that other jurisdictions do not have.
13. Thomas LJ: agreed that it is important to draw on the experiences of other jurisdictions.
14. Michael Bowes QC (Outer Temple Chambers): asked what guidance could be given to advocates.
15. Thomas LJ: suggested that practice would be the most effective way of learning to deal with young offenders.

[For a full transcript of the Lord Justice Thomas' Q&A session please click here](#)

4. HOW DO WE KNOW IF YOUNG DEFENDANTS ARE DEVELOPMENTALLY FIT TO PLEAD TO CRIMINAL CHARGES – THE EVIDENCE BASE

Presentation by: Dr Eileen Vizard FRCPsych, Consultant Child & Adolescent Psychiatrist, Chair of the Royal College of Psychiatrists Group on Child Defendants

INTRODUCTION BY CHAIR: *Dr Eileen Vizard is a consultant child and adolescent psychiatrist of enormous experience. She is an Honorary Senior Lecturer at University College London and the clinical director (and founder) of National Clinical Assessment and Treatment Service. She is not only an expert witness, she quite literally wrote the book on expert evidence in the form of the Expert Witness Pack. She is currently planning research into treatment for young offenders showing psychopathic traits. She is going to consider the evidence on the developmental fitness of young defendants.*

Key Points from Presentations

1. The relevant evidence base in relation to child development, nature, nurture and resilience, the profiles of young defendants and children's competence in court were covered.
2. Development is a lifespan process. It continues from infancy through to old age. Research now shows that brain development continues into adult life although much development occurs in early childhood and adolescence. Children's development occurs across 4 main areas i.e. physical, intellectual, emotional and social and all of these areas of development interact. Hence a child reared in an abusive or deprived social context may have impaired intellectual and emotional functioning and a neglected child may have delayed physical development. Severely abused and deprived children may show impairment in all areas of their functioning. Hence learning difficulties and serious psychiatric disorders are common in such children who are over represented amongst delinquent children appearing before criminal courts.
3. Throughout adolescence, young people's thinking tends to become more abstract, multi-dimensional, self reflective and with a better understanding of relative concepts. These developing intellectual abilities allow older young people to start to make mature judgments about acceptable behaviours and to learn from their own mistakes by late adolescence. It is well known that adolescence is a time of limit testing and risk taking and these behaviours can be seen as normative.
4. Recent brain imaging studies of normal adolescents show that the functioning of their brains is less mature than that of adults and hence their decision making is unreliable – sometimes good but often veering towards impulsive, exciting choices.

5. The brains of extremely abused and neglected children have been shown to be smaller than those of normal children and structural brain studies show that there may be a delay in cortical maturation of the brain in the most disturbed and prolific young offenders, i.e. those with callous unemotional traits which are associated with the development of later psychopathy. Deficits in this cortical functioning can result in even poorer (than normal adolescent) problem solving and poor empathy for others, notably the victims of their crimes.
6. Taken together this evidence shows that there is an interaction between 'nature' (the hardwiring of the brain) and 'nurture' (the child's environment). This means that the delinquent young person before the courts may well be guilty as charged but may not be fully able to comprehend the seriousness of his criminal behaviour, the impact upon the victim nor the longer term consequences for himself in later life.
7. Well known pathways or trajectories towards general adult criminal behaviours have been described by researchers for several decades and have been confirmed in recent research looking at pathways towards sexual offending and personality disorder. The profile of the delinquent child or young person with the background mentioned above will, typically, have: poor judgment about right or wrong behaviour, he will not have learned law abiding behaviour in the home context nor will he have experienced consistent, firm parenting, he will also be 'thrill seeking' and impulsive with a poor attention span.

In summary there is an overwhelming published evidence base to the effect that most of the children and young people appearing before the criminal courts are developmentally immature, like their non offending peers. However, in addition they suffer from delayed brain development and impaired reasoning ability which in turn have allowed them to make very poor judgements about their delinquent behaviour and which have led them to be prosecuted.

Unfortunately these developmental immaturities in the young person mean that they are often not truly fit to plead to charges against themselves, they do not always have the foresight to consider the long term consequences of putting in a plea of guilty or not guilty and they are usually unable to give informed instructions to their solicitor.

A linked point is that the current age of criminal responsibility in England and Wales is 10 years old. This age was chosen on an entirely arbitrary basis and has no relationship to any scientific evidence base nor any factors which might suggest that a 10 year old is substantially more mature than a 9 year old and, hence fit to plead to charges. The evidence base summarised briefly above shows that the average 10 year old is not equipped, physically, intellectually, emotionally or socially to deal with the rigours of standing trial in an adult court system. It follows that the delinquent 10 year old, guilty as he may well be, is even less equipped to deal with a trial in an adult court system and hence he is unlikely to be able to participate fully and fairly in his own trial.

At present in the UK there is no agreement about the need to provide a developmentally sound assessment of young people facing criminal charges. Other countries such as the USA have frameworks for the assessment of adjudicative competence in juveniles which do alert the court to the possibility that a young defendant may not be fit to stand trial or may have specific mental health needs.

An evidence based framework for assessing the competence of juveniles facing criminal charges in UK courts is urgently needed.

For a copy of Dr Vizard's PowerPoint slides please [click here](#)

5. THE HUMAN RIGHTS OF YOUNG DEFENDANTS

Presentation by: Mark Ashford, Partner, T V Edwards LLP – Solicitors

INTRODUCTION BY CHAIR: *If Mark Ashford was not here to-day, he might very well be in a police cell. As a solicitor Mark has made a speciality of representing young people in police stations and in court. He has written widely on the subject of the youth justice system and has been involved in training lawyers, local authorities and other agencies. The task of the defence lawyer is a difficult and often unpopular one but it is none the less important for all that. We will look to Mark for an insight into the defence perspective.*

6. MORNING PANEL DISCUSSION

Summary of Questions and Discussion

1. Gareth Crossman (The Adolescent and Child Trust): commented that there is a lack of training for solicitors in the Youth Court. The process starts at the point of arrest, and therefore Article 6 is engaged at that point, but there is no process for dealing with young defendants in police stations.
2. Mark Ashford (TV Edwards): commented that in some US jurisdictions there are juvenile bureaux in police forces. There is no equivalent here, but this could be a way of funnelling expertise.
3. Also, since the abolition of doli incapax (according to which a child under 14 needed to know that what they had done was seriously wrong to be held responsible) there is no consideration of the issue of moral understanding as opposed to dishonesty when dealing with young offenders.
3. John Taylor (The Adolescent and Child Trust): commented that at a policy level, the link between abuse and serious crime among young offenders is avoided. This is a serious impediment to policy development and progress. This link is not mentioned in youth crime consultations.
4. Eileen Vizard: responded that, while trauma has a central role, it is not causal, but rather one of a number of documented risk factors. It should be seen in the context of other risk factors. There is a need to involve other disciplines to consider these risk factors at an earlier stage in the criminal justice process.
5. Mark Ashford (TV Edwards): commented that it is not just at a policy level that the issue of abuse is ignored. There is lots of funding for particular programmes such as drug programmes, but these don't address the underlying issues such as abuse, and staff do not have the training or expertise to deal with these things.
6. Barbara Esam (NSPCC): commented that assessment is a particularly pressing issue, especially the issue of how to get the amount of information that court/ police need, and what level of expertise is necessary. Had proper assessments been made and put before the court in SC v UK, this would have assisted the young defendants and their advocates.
7. Eileen Vizard: stated that the Royal College of Psychiatrists addressed the issue of assessment in their report. In the case of young defendants charged with serious crimes, there should be a full assessment as a default position. This needs to be carried out at an early stage and should be done by mental health professionals; the results must be reliable. The psycho-social context should be considered. The bulk of less serious crime can be dealt with separately. There will be learning disability in a large number of cases.

8. Mark Ashford (TV Edwards): commented that creating a completely separate tier of the court system would require legislation. There should be systematic modifications and a separate set of procedural rules for trying young defendants. The issues should not need to be considered afresh each time. Anything that costs money is unlikely to be feasible, so there is a need to change presumptions.
9. Michael Bowes QC (Outer Temple Chambers): commented that nothing has changed since Thompson and Venebles, and asked that people consider how political will can be created and how the resource implications can be addressed.
10. Shauneen Lambe (Just for Kids Law): commented that experts are often reluctant to give an age equivalent for an IQ test, but this is helpful for lawyers who understand these terms. There is also the problem of the Legal Services Commission refusing to fund the necessary experts.
11. Eileen Vizard: Agreed that mental age equivalents make the point clearly to non-clinical professionals. The chances of grasping abstract concepts are very small for those with low IQs. It would also be possible to look at the percentile ranking of defendants' IQs. The court context is not set up to deal with children. Those with profound difficulties will never be able to understand. The Royal College of Psychiatrists recommended a working group in the Legal Services Commission to look at expert report funding. There needs to be funding for both psychologists and psychiatrists.
12. Mark Ashford (TV Edwards): commented that in the current financial climate things are likely to get worse.

For a full transcript of the morning panel discussion please [click here](#)

7. SHOULD WE RETAIN THE PRESENT COURT SYSTEM FOR YOUNG DEFENDANTS?

Presentation by: Sally O'Neill QC, Immediate past Chairman of Criminal Bar Association

Sally O'Neill QC is one of the foremost criminal silks in the country. She has prosecuted and (more frequently) defended in many cases involving young and vulnerable defendants and witnesses. She was a very popular Chair of the Criminal Bar Association between 2007 and 2008 a period in which her regular media appearances did nothing but good for the image of barristers. Sally may have hoped that things would quieten down after her term of office but I suspect they have not. We are in the best of hands to consider the question of the present court system for young defendants.

Key Points from Presentations

1. The number of cases involving young defendants being tried for such serious offences that they are committed for trial to the Crown Court even if no adults are tried with them has increased greatly over the last few years. There is a level of disengagement from the whole process and they are being tried in an environment which is entirely unsuited for the trial of young defendants however serious the charge.
2. We have one of the youngest ages of criminal responsibility in Europe. 10 is very young indeed and the repealing of the doli incapax provisions has not helped.
3. Since the case of Thompson and Venables, it is recognised that young defendants cannot be treated in the same way as adult defendants. There is a practice direction which deals expressly with how trials involving young defendants should be adapted. However much effort is put into attempting to comply with the Practice Direction, it is practically impossible to comply with it on the most basic levels. There is simply not room to have even 7 or 8 year olds sitting in the well of the court with a parent or social worker next to them or even just next to their solicitor. There is good reason for trying to achieve it because it is about the only way you can try to ensure they will pay attention and whether they are getting tired and need a break.
4. Problems arise where young defendants are held in establishments in different parts of the country. No matter what young defendants are alleged to have done, the importance of maintaining family relationships, however superficially inadequate, cannot be overemphasised.

5. Trial by jury is a fundamental right for anyone charged with serious crime regardless of age.

Does a right to be tried by jury mean that it has to be in a dedicated Crown Court or is there potential for a middle tier dealing with serious youth crime? Could existing centres be utilised to minimise costs?

6. How can the time to travel to court for young defendants be minimised? These problems largely arise as a result of young defendants being kept in custody. Can the problems be better dealt with by allowing more young defendants conditional bail in homes/hostels etc which are close to the trial court? Can the local authority help with this?
7. Is there a role for better liaison with the family courts where there are concurrent proceedings?
8. If you compare the way young defendants are treated with the way young complainants are treated, the injustices are obvious. The ABE interview for complainants differs significantly from the interview of the defendant by a police officer and a significant adult, and yet young defendants are just as vulnerable e.g. to leading questions.
9. Do we need a complete overhaul of the youth justice system? In my opinion, we do and it needs to be how we deal with young defendants from the very first moment they come into the criminal justice system. To do otherwise is really to perpetuate a system within which young defendants are disengaged from the system which is not only judging them and where appropriate punishing them but is also hoping to prevent them from re-offending which is in everybody's interests.

For a copy of Sally O'Neill's speech please [click here](#)

Question and Answers - Summary

1. Stephen Jakobi (Children aren't Criminals): suggested that there is a need to organise an all party group to address the bigger problem – i.e. the age of criminal responsibility. It is not possible to look at the problems in isolation.
2. Michael Bowes QC (Outer Temple Chambers): asked where a jury trial involving young defendants would take place ideally, were the money available.
3. Sally O'Neill QC: responded that ideally there would be purpose built courts, in which the young defendants would be compelled to participate. These could be converted from existing buildings.

4. Peter Wedge (UEA): suggested that instead of children being tried in the adult courts, adults could be tried in the youth courts. This would lead to a focus on the needs of the young defendants, rather than trying to tag them on to adult prosecutions.
5. Joyce Plotnikoff (Lexicon Ltd): commented that intermediaries are only provided if the young defendant is to give evidence, but not during the course of the trial. This is because of limited funding.
6. Sally O'Neill QC: agreed that intermediaries are needed for court but also for the interviewing process. But there would be big resistance to it because the public are hostile to young defendants. There should be the same special measures as are available for young witnesses.
7. Eileen Vizard: Asked whether the system for assessing competence is adequate.
8. Sally O'Neill QC: responded that at present young defendants are not necessarily assessed, as there is no system in place.

For a full transcript of Sally O'Neill's Q&A session please [click here](#)

8. CAN THE COURTS PROVIDE A MORE HOLISTIC RESPONSE TO DEVELOPMENTALLY IMMATURE YOUNG DEFENDANTS WITHOUT COMPROMISING JUSTICE?

Presentation by: The Right Honourable Lord Justice Toulson

Lord Justice Toulson, has been a Lord Justice of Appeal since 2007. Before that he served for nearly 5 years as Chairman of the Law Commission. As well as academic rigour he will bring to our discussions hard experience of the difficult path from bright idea to policy and reform of the law. On the Court Service Website which now boasts photos of many of the members of the senior judiciary, the mugshots are usually set against a regulation backdrop of law reports and text books. Sir Roger Toulson's photo features him in a smart skiing jacket on a snow covered slope somewhere. We are fortunate that this conference is in late April and Sir Roger is able to be here to address us on the objectives the courts should have in mind in dealing with young defendants.

Key Points from Presentation

1. The answer to this question is yes, but only if Parliament permits it and if at a practical level there are systems in place to enable it to be done. An appropriate starting point is to consider the proposals currently before Parliament to amend the law of murder and, in particular, the partial defence of diminished responsibility.
2. The Law Commission recommended a re-grading of murder and manslaughter by dividing murder into first and second degree murder; and it recommended that the definition of diminished responsibility should be amended so as to make it clearer and better able to accommodate developments in expert diagnostic practice. However, the Coroners and Justice Bill proposes more limited amendments to the law, and there is a significant omission of developmental immaturity in a defendant under the age of 18.
3. It is unrealistic and unfair to assume that all children aged 10 or over who kill must have had the kind of developed sense of judgement, control and understanding that makes a first degree murder conviction the right result. It should be for the jury to decide in the individual case whether the defendant had such a sense of judgement, control or understanding. Moreover, it will be for the defendant to prove that his or her capacity for judgement, control and understanding was substantially impaired by developmental immaturity.
4. Offenders under the age of 18 commit a very small proportion of the 850 or so homicides that occur each year (around 4%). The Law Commission's recommendation is, likely to affect only a very few cases, and only by reducing the crime from top-tier homicide to middle-tier homicide.

5. The proposed legislation in the Coroners Bill produces the bizarre result that if a 25 year old killer has the developmental age of a 12 year old, that is something which the jury may take into account because it would be a recognised medical condition; but if a 12 year old killer has the developmental age of a 12 year old, it is apparently not something which the jury can take into account. This is particularly significant since we have one of the lowest ages of criminal responsibility of the western world.
6. It has been estimated that 50% of young people in custody have lived in care or had previous involvement with Social Services, compared with 3% in the general population. 83% of young people in custody have been excluded from school (compared with 6% of young people in the general population), 86% have engaged in substance misuse (compared with 21%), and 31% have a recognised mental disorder (compared with 10%).
7. Research has consistently identified a range of factors regularly present in the background of juveniles who commit offences: low family income, poor housing, poor employment records, low educational attainment, early experience of violence or abuse and the misuse of drugs.
8. The rate of reconviction within 1 year after release from custody over the period between 2000 and 2006 varied from 73-77%.
9. Long term policies for dealing with juvenile crime are liable to be knocked off course by immediate worries about particular forms of crime and a belief in the value of deterrent sentences which is particularly questionable in the case of immature young offenders.
10. I believe that the number of young people in custody could be significantly reduced without putting the public in real danger. In the case of those who have to receive custodial sentences either because they represent a real danger or because of the sheer gravity of their offending, the time when the majority are most likely to re-offend is within a short period of release. Common sense suggests that everything which is done with the offender while in custody should be directed towards that time.

For a copy of Lord Justice Toulson's speech please [click here](#)

9. AFTERNOON PANEL DISCUSSION

Summary of Questions and Discussion

1. Gwyneth Boswell (UEA): commented that finance is the most likely way to engage the Government. Criminalising and locking up fewer children would save money.
2. Lord Francis Listowel (House of Lords): suggested that a way to ensure that parliamentarians have greater knowledge and understanding of young people in the criminal justice system would be to provide more access in order to make it easier for them to see what is going on.
3. Sally O'Neill QC: agreed that this would be a good idea if achievable as most parliamentarians have no idea what is going on. One problem is that the issue is very political: there is still the spectre of Thomson and Venebles, for example in the public reaction to the two boys recently charged with attempted murder in Doncaster. The issue is not politically attractive.
4. Roger Toulson LJ: commented that at commons level the issue is split between three departments and select committees, and at Lords level there are no specialists. It might be possible to organise something at an informal level.
5. Howard Riddle J (Sentencing Advisory Panel): Stated that the SAP report received a lot of support for the proposition that children should almost always be tried in the youth court. Why is there a need for a jury?
6. Sally O'Neill QC: responded that the jury is central to the way that the criminal justice system is viewed. Public involvement is important and juries should be maintained for the most serious crimes throughout.
7. Eileen Vizard: asked what the role of expert evidence is in a jury trial, for example in relation to developmental immaturity?
8. Sally O'Neill QC: responded that it is relevant as a preliminary part of the trial, for example in the same way as in relation to the capacity of a child witness. However, expert evidence can sometimes distract from the fact finding role of the jury.
9. Chris Stanley (Youth Court Magistrate): commented that the youth court deal with some serious cases, but advocates are rarely trained. However, in the family division more specialism is required. Would it be possible to have a more similar system?
10. Eileen Vizard: commented that the training issue is very important for all disciplines. There is a big difference in knowledge and understanding on the criminal and family sides. This makes things difficult in relation to instructing experts. There is also an issue in relation to legal representation; it might be possible to have a single solicitor to deal with criminal and welfare issues.

11. Sally O'Neill QC: responded that one of the dangers of too much specialism is that no one can deal with both sides of the situation. However, a training course would help.
12. Chris Kinch QC (23 Essex Street): asked whether training would increase the scope for drawing the two jurisdictions closer together.
13. Sally O'Neill QC: responded that a lot of work would need to be done to get the two jurisdictions to run together. The same legal representation for both would help.
14. Nick Crichton (District Judge): suggested that it might be possible to build a bridge between the two jurisdictions, but that the skills required for family are completely different from those required for criminal.
15. Stephen Jakobi ("Children aren't Criminals"): commented that the only way forward would be to have a cross party support body in Parliament.
16. Peter Wedge (UEA): asked whether evidence exists about the occurrence of miscarriages of justice caused by the issues identified. There is a need to capture public opinion.
17. Eileen Vizard: responded that one might say that the whole system opens the door to miscarriages of justice.
18. Chris Stanley (Youth Court Magistrate): asked whether the panel would support a review of the way we deal with under 18 year olds, for example using an inquisitorial, rather than adversarial, system.
19. Sally O'Neill QC: suggested that there may be more mileage in looking at defendants aged 10-14, as this is politically more attractive.
20. Eileen Vizard: commented that very young children are often the ones that come to public attention as they are the most disturbed children.
21. Roger Toulson: commented that there may be Article 8 issues in relation to young defendants who are remanded in custody a long way from their families.
22. Lord Francis Listowel (House of Lords): suggested that the children's all party parliamentary group could look at the issue, with the help of Lord Ramsbotham.

For a full transcript of the afternoon panel discussion please [click here](#)

10. RECOMMENDATIONS

The conference recommends that the following topics and issues merit further exploration; development and prioritisation into short, medium and long- term goals by the Working Group which will be set up to take this work forward:

- There is a need for more specialised training for all those involved in dealing with young defendants including training in how to ask questions so that they can be understood. This could include an exploration of whether there is a role for specialised advocates dealing with youth crime which could operate like the solicitors' Children Panel in family cases. Specialisation in the form of ticketing for judges should also be considered.
- Children should be tried only in the youth court (except where charged with an adult). However it is critical that jury trials are maintained, particularly for the more serious offences, whatever the age of the young defendant. This might require special court adapted buildings for jury trials for youths. Youth courts should only be held in buildings for youth cases, not in adult court buildings.
- There is a need to develop links between the criminal division and the family division for youth cases and to give consideration to how other jurisdictions deal with this, including Scotland. This should include consideration of how s37 of the Children Act 1989 could be used in youth criminal cases where appropriate.
- The majority of young people in custody have not actually committed a crime of violence. Reducing the numbers in custody would be better for children and would save money.
- Children need to be assessed at an early stage to determine whether they are intellectually and emotionally able to understand what they are facing and how to deal with it. This would have to include assessment of whether they are competent to take part in proceedings. Young defendants who commit the most serious crimes to have a fully funded expert assessment to consider issues of diminished responsibility and fitness to plead.
- Consideration should be given to seeking a Royal Commission or other review of the way under 18s are dealt with in the criminal justice system. This could include an examination of whether the adversarial system is appropriate for youth crime cases; a focus on 10-14 year olds; a review of the current age of criminal responsibility, at age 10 years old one of the youngest ages in Europe. This is in contrast with the Gillick competence test in family courts which looks at individual children, rather than chronological age. Attention should be given to what already exists including the Independent Commission on Youth Crime and Anti-Social Behaviour, which is funded by Nuffield and hosted by the Police Federation. It should also be noted that the Children's All-Party Group's work for next year will be on children in a secure estate.

- When children are put into custody or secure accommodation long distances from their family, relations with the family rupture and this raises Article 8 issues. There is a need to explore options for safe but non-custodial accommodation for conditional bail.
- Systems need to be set up to ensure that Parliamentarians have a greater knowledge and understanding of young defendants in the criminal justice system through better communication, including direct communication with young defendants.
- There is still a need for a Young Defendants' Pack for young defendants and for parents.
- s. 6 and SC v UK need to be considered.
- Consider revisiting the recommendations in the Auld report.
- What about young adults aged 18-21.
- There is a need for equality re special measures for young defendants which are there for young witnesses, including the use of Intermediaries at the point of charge, not just at the point of trial.
- What more can be done to prevent youth crime?
- Getting children's voices in to learn from them. We need to hear what young defendants say about their experiences of the criminal justice system.
- Standard procedures for all young defendant cases need to be developed.
- Lord Ramsbotham should be involved as a resource for this work.
- Work should be undertaken with the Judicial Studies Board to develop a training programme for sentencing Judges who work with young defendants in the criminal courts. With a view to introducing ticketing for Judges who work with young defendants.
- Joint training sessions should be developed for youth court magistrates, defence and prosecution solicitors and barristers who work with young defendants. This training should cover issues such as normal development in children, developmental immaturity, mental health problems in young defendants and how to enable young people to participate fully and fairly in their trial proceedings, etc.
- The work of the voluntary sector and local projects working around youth justice, youth crime and with young defendants as well as the evidence base from child mental health is explored so that appropriate expertise and knowledge can be harnessed.

- Key interested organisations such as 11 Million, the Independent Commission on Youth Crime and The Michael Sieff Foundation work together to develop protocols for youth courts including recommendations on physical environment to ensure it is conducive to the engagement of young people in their trial proceedings.

APPENDIX 1

List of Delegates

Name	Job Title / Organisation
Mark Ashford	Partner, T V Edwards LLP - Solicitors
Sally Averill	Senior Policy Advisor, Crown Prosecution Service
Prof. Sir Al Aynsley-Green	Children's Commissioner for England, 11 Million
Prof. Gwyneth Boswell	Director, Boswell Research Fellows / Visiting Professor, School of Allied Health Professions, University of East Anglia
Michael Bowes QC	Barrister, Outer Temple Chambers & Trustee of the Michael Sieff Foundation
Nick Crichton	District Judge, Inner London FPC
Gareth Crossman	Executive Director of External Affairs, TACT (The Adolescent and Children's Trust)
Joanna Dawson	Research Assistant, Law Commission
Mary Duff	Chairman, Youth Courts Committee, Magistrates' Association
Barbara Esam	Lawyer, NSPCC & Trustee of the Michael Sieff Foundation
Jon Fayle	Acting Head of Children Law UK, TACT (The Adolescent and Children's Trust)
Penelope Gibbs	Prison Reform Trust
John Graham Director	The Police Foundation
Dr Kathryn Hollingsworth	Lecturer in Public Law, King's College London
Prof. Jeremy Horder	Law Commissioner for England and Wales, Law Commission
Harry Ireland	Chief Crown Prosecutor Staffordshire & National Lead for Youth Justice Matters, Crown Prosecution Service
Stephen Jakobi	Retired Lawyer / Sponsor, "Children aren't Criminals" Campaign Group
Christopher Kinch QC	Head of Chambers, 23 Essex Street
Shauneen Lambe	Director, Just for Kids Law
Lord Francis Listowel	Treasurer of the All Party Parliamentary Group on Children, House of Lords & Trustee of the Michael Sieff Foundation
Liz Lovell	Policy Adviser, The Children's Society
Angela Neustatter	Commissioner, Independent Commission on Youth Crime and Antisocial Behaviour
Sally O'Neill QC	Immediate past Chairman, Criminal Bar Association

Joyce Plotnikoff	JP & Researcher, Lexicon Limited
Judge Howard Riddle	Member of Sentencing Advisory Panel
Natasha Richards	Strategy Adviser, Youth Justice Board
Chris Stanley	Advisor to NACRO, PRT on Youth Justice, Magistrate
Lord Justice Thomas	Royal Courts of Justice
Mike Thomas	Chair, Association of YOT Managers
Lord Justice Toulson	Royal Courts of Justice
Lucy Turner	Developmental Psychologist, Triangle
Dr Eileen Vizard	Consultant Child & Adolescent Psychiatrist / Chair, Royal College of Psychiatrists Group on Child Defendants & Trustee of The Michael Sieff Foundation
HH Judge Philip Wassall	Member of Criminal Sub Committee (special responsibility for Young Offenders), Council of Circuit Judges
Peter Wedge	Emeritus Professor, University of East Anglia
Richard White	Solicitor / Honorary Visiting Professor, Cardiff Law School & Secretary of the Michael Sieff Foundation
Kevin Williams	Chief Executive Officer, TACT (The Adolescent and Children's Trust)

APPENDIX 2



The Michael Sieff Foundation

Working together for children's welfare

1908 – 2008: The Children Act 100 years on *young defendants today*

ACKNOWLEDGEMENTS / THANK YOU

The Michael Sieff Foundation would like to extend a thank you to members of the conference steering group for their support and contribution to the planning and organisation of this event.

STEERING GROUP MEMBERS

Michael Bowes QC	Outer Temple Chambers / MSF Trustee
Barbara Esam*	Lawyer, NSPCC / MSF Trustee
Lord Francis Listowel	House of Lords / MSF Trustee
Liz Lovell / Iryna Pona	The Children's Society
Joyce Plotnikoff	Independent Consultant, Lexicon Ltd
Chris Stanley JP	Advisor to NACRO / Magistrates' Association
Dr Eileen Vizard	Consultant Child & Adolescent Psychiatrist / NSPCC / MSF Trustee

- *Chair of Conference Steering Group*

MEDIA RELATIONS

The Trustees would also like to thank the NSPCC media team for their support with the publicity for the conference.



APPENDIX 3

Useful / Relevant Reports *(included in conference delegate packs)*

1. Psychiatry Journal article – ‘*Emerging Severe Personality Disorder in Childhood*’, Sept 2009 by Dr Eileen Vizard.
2. Royal College of Psychiatrists Child Defendants Report produced March 2006.
3. Youth Court Centenary Timeline by Chris Stanley.
4. Young Defendants Pack: Scoping Study Executive Summary – produced by Joyce Plotnikoff and Richard Woolfson.
5. Jersey Review – A review of the Jersey youth justice system: report introduction and recommendations by The Howard League for Penal Reform.
6. Independent Commission seeks blueprint for an effective and sustainable response to youth crime – Independent Commission on Youth Crime and Antisocial Behaviour.