



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

### **SALLY O'NEILL – QUESTION AND ANSWERS – FULL TRANSCRIPT**

STEPHEN JAKOBI: Stephen Jakobi, 'Children Aren't Criminals' Pressure Group.

As I explained earlier, as a marker we are basically using the age of criminal responsibility to get all the questions posed earlier this morning, and later, as a peg that is fairly easily understood. If I can give a little potted history as to the problems of our very new group in getting political action, it might assist everyone to understand the difficulties of getting reform.

Essentially, we started the group on the back of an appalling case, where, bluntly, children were sentenced to prison in a case that should never have reached the adult court anyway. The Court of Appeal decided that they weren't guilty of the charge, but nobody noticed that anyway on the way through. It involved 10 and 11 year old children tried at the Old Bailey.

We sent a letter to The Times and we got a response from government and political parties, and in the course of this, government promised us an examination of international evidence on the age of criminal responsibility. They then waited for the European Council Report on Age of Criminal Responsibility and the UN Age of Criminal Responsibility, and as soon as they realised nobody was taking much notice, withdrew the promise --

CHAIRMAN: I'm sorry to interrupt you, but I think we can probably see where you are going with the analysis --

STEPHEN JAKOBI: I'm almost there, really.

CHAIRMAN: What message do you seek to draw from the inaction or the difficulty of getting governments to take notice? What is the message?

STEPHEN JAKOBI: The message is that you cannot approach these things directly; that one needs to organise an All Party Group to examine the bigger problem of young children treated as youths and everybody being treated as adult under the criminal justice system essentially, and criminal justice procedures. It needs to be looked at in the context that very young children of 10 are not 17 year olds, and what may be appropriate for youths is not appropriate for younger children. What are we going to do about it?

So there does need to be a politically directed inquiry which will give some ammunition for everyone to coalesce around.

At the moment, I cannot see how far we can go that way, and until we get there, there's going to be no political activity at all.

I hope that is helpful.

CHAIRMAN: Thank you, that is a rallying call to arms, I think.

I don't know if Sally or Michael want to comment on that?

SALLY O'NEILL: I suspect it's a rallying call to arms that you have made a number of times in the past, Steven, and you feel at the moment is still falling on deaf ears. But you can do nothing but keep trying. I mean, it's something that needs dealing with.

MICHAEL BOWES: May I ask something? Your proposal would still be to retain trial by jury?

SALLY O'NEILL: Yes.

MICHAEL BOWES: So you would still need a Crown Court judge to take part in that. Imagine we had the money to do it; how would that work? Where would it take place?

SALLY O'NEILL: Ideally you would have purpose-built buildings for them so that you can at least provide the physical environment in which such a trial could take place, all on the same level: I suppose really an enlarged youth court with room for a jury, so not expensive accommodation or furniture-wise, but just one which is designed so that they can actually almost be forced to participate in the process, rather than as they do at the moment, sitting there twiddling their thumbs in the dock, playing with their friends and grinning up at the public gallery all the time, and getting into trouble because the judge can see them and we cannot. It is absolutely hopeless at the moment, and they don't do themselves any favours at all, but actually half the time it's not really their fault because they are not part of the process.

Those are the sort of buildings that we would be talking about, and probably some of them could be converted from existing buildings, because I don't think you need anything very complex: it's simply how they are designed and where everybody is sitting.

PETER WEDGE: I am Peter Wedge from the University of East Anglia. Just to follow up on that immediate point, do you think it would help the cause that we are all discussing if, instead of juveniles being dealt with in adult courts in these situations, adults were to be dealt with in these revised juveniles courts? It would help focus attention on procedures which would be appropriate for juveniles, rather than trying to attach them to procedures which have been designed for adults.

SALLY O'NEILL: Yes, that might work. I suppose to an extent, if you are going to have this sort of relook at the whole thing then you might as well just indulge in a bit of blue sky thinking and see what's best for everyone. Although there's a cut-off point for young defendants at 18, you can get 18, 19, and sometimes 20 year olds who seem just as useless at maintaining concentration

and getting involved in what is going on as some boys -- I say 'boys' because they mostly are -- much younger in age.

So yes, I think that there probably is some mileage in just looking at the whole thing from scratch. We are geared into the system of the layout of the court that we have had for donkeys years, even with the new courts, and maybe we should just look at it all again. It is sometimes fantastically inconvenient not to be able to see your client, for instance, and what they are doing behind you. Perhaps we should be able to.

JOYCE PLOTNIKOV: Joyce Plotnikov, researcher. Would you comment on the practice guidance for intermediaries for young defendants about only paying for the appointment if the young defendant is going to give evidence, but not for the presence of an intermediary during the course of the trial, to make sure that the intermediary works with the defendant to understand the proceedings?

SALLY O'NEILL: Do I detect a degree of inequity here, Joyce, in the way that young defendants are treated compared with the way that complainants are treated, in the provision of intermediaries and the payment of them?

JOYCE PLOTNIKOV: That is my understanding.

SALLY O'NEILL: I think that intermediaries can be a fantastically useful facility for both sides. I suspect that young defendants would need them very much more than any of us imagines at the moment, but again, going back to what I was saying about having to look at the process right from the beginning, if an intermediary is necessary for a young defendant, then it is very likely to be needed in the interviewing process as much as anything, so that they are engaged in it right the way through.

In the same way that you consider special measures, any sort of special measures for complainants, almost from the outset now people are getting into that attitude, they probably ought to do the same for young defendants. There will be a huge resistance to it, because those people will say "Look what

they have done", "Look at what they are supposed to have done. They're little toerags, they don't need this sort of help, all this liberal stuff, you know, just get on with it." It is most unfair. It is actually ultimately extremely unproductive as well, and I think that they certainly should be provided with the same facilities as are complainants. We have only just fairly recently, though, been able to use TV link rooms for defendants to give their evidence, and that has taken years to achieve.

But keep on plodding away at it, Joyce. We will get there.

BARBARA ESAM: I'm just thinking about what you said, Sally, in relation to liaising with the local authority, and you mentioned the possibility of getting some kind of accommodation so the children wouldn't have to be locked up somewhere in some secure accommodation within the prison service.

Along the same sort of lines, this morning we had a little bit of a flurry with the idea of going back to the idea of a family court rather than a youth court, and welfare issues being dealt with elsewhere.

I don't think Lord Justice Thomas was very keen on the idea of going back to a combined family court, but one kind of middle way there might be to have section 37 from the Children Act available to judges in criminal courts. This is something that has been discussed a bit before now.

I just wondered what you think about that? In section 37 in the Children Act, the family court can order the local authority to do an investigation and come back to the court saying what order needs to be made, or, if they think no order needs to be made, why not. Then they go on with the proceedings.

The same thing could be available to the criminal courts, where they see that there's a problem here that is a serious welfare problem that they think needs investigating.

SALLY O'NEILL: I cannot see any harm in it at all. It's another facility which is available which might obviously have the result of getting some youngster off the slippery road they are on, by somebody being proactive in dealing with them.

I think the difficulty with it is, though, the sort of cases I'm talking about, the youngsters on the whole are charged with really serious offences, and if they are convicted, then custody is going to be the only outcome. It's obviously going to be a real problem. However much the judge, on reading everything that he has read, thinks that it's the family that needs intervention as much as the young defendant, it's not going to be a practical solution for them.

But I think for the middle range offences, then certainly that's a power which I think certainly judges who sit regularly on these sort of cases would welcome having. I'm all for the judges having as many powers and as much discretion as they can in trying to deal with the problems that they face with young defendants.

So I think that's a good idea.

EILEEN VIZARD: I'm interested to know whether you are satisfied, in terms of the present court system, with what we have available to assess the competence -- if you like the adjudicative competence -- of young defendants. Do you feel that we have an adequate system in place whereby they could be assessed to know whether they are really fit to go through the trial process? And if you don't feel that, what do you think could be put in its place?

SALLY O'NEILL: I am not aware -- I have read your paper in the package but I don't actually know that any of the young defendants that I have been involved with have been assessed in any particular way as far as competence is concerned, you know. As long as they can talk and answer a few questions, then they are okay. I don't think there is any system for actually assessing

their competence. They would be quite often sentenced without anything probably much more than a presentence report. That's how they go into the system.

The short answer, I think, is that there is nothing there, so anything that can be done and should be done would be very welcome.

It comes back to money, doesn't it? It's always money. It's always money. I know at the Bailey they have set a system in place of having a psychiatrist on call -- I think one day a psychiatrist, and a psychiatric nurse available most days a week. That is for the benefit of defendants and indeed defendants' families, which is quite a useful thing to have. This is adult defendants, mostly it's not the young defendants really, but it's just to provide them with immediate easy access to some sort of psychiatric help or assessment.

I suppose at a push the same sort of process could be made available to young defendants, but it doesn't sound very satisfactory to do it for the first time in court. In reality, unless it happens in court it is very unlikely to be made available to them. It should, of course, one would have hoped, have been made available to them at the lower courts as well, so it is there in the process right from the beginning. But it's going to be money, I'm afraid.

CHAIRMAN: Thank you very much. We hope you will be able to stay for a bit, but we understand if you have to leave to get back to the Old Bailey, but thank you.