



The Michael Sieff Foundation

Working together for children's welfare

The Future of the Youth Court Round Table

Background paper

At: Nuffield Foundation, 28 Bedford Square, London WC1B 3JS

On: 5th February 2019 from 2.00 - 5.00 pm

Organised by: The Michael Sieff Foundation and Nuffield Foundation

Background and aims

Working with the National Children's Bureau the Michael Sieff Foundation sponsored the 2014 Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court (the Carlile Inquiry). Subsequently the Foundation obtained funding from the Nuffield Foundation to promote implementation of the recommendations of the Inquiry Report. Since then the Charlie Taylor Report, the Laming Report, and the Lammy Report have all explored issues related to youth justice, and specifically the Youth Court. The Foundation has organised a series of seminars and met with the Ministry of Justice and the Youth Justice Board to consider proposals. It has also set up an Alliance for Youth Court Reform to ensure continuing consultation with interested agencies.

The Michael Sieff Foundation now considers it necessary to formulate a new agenda for the development of work in youth justice and is keen to establish the thinking of the Ministry of Justice and the Judiciary. At the suggestion of Sir Ernest Ryder (Trustee of the Nuffield Foundation) the Michael Sieff Foundation and Nuffield Foundation facilitated this round table event to discuss where Parliament, Government and the Judiciary is planning to go or should be going next on Youth Justice, particularly in relation to the Youth Court.

The round table gave leading policy makers, the judiciary, and other key practitioners an opportunity to discuss their current thinking. The intended outcome was to establish broad agreement on matters to be taken forward. These could in turn lead to identifying key areas for improvement within the youth justice arena for future development and research.

Format of the meeting

Sir Ernest Ryder chaired the event and introduced a set of themes and issues for discussion, based on the various recent reviews of this area. Some attendees were invited to offer a short response, and then the event was opened up to wider discussion.

Some key questions for consideration included:

- What do attendees think should be the priorities for Youth Court reform in (a) next 12 months and (b) the next 5 years?
- What needs to be done to implement those priorities, and how?

- What do they see as the main barriers to those reforms and how might they be overcome?

The meeting was held under the Chatham House Rule.

A necessary requirement was to differentiate between areas for development that will require further legislation and those that could potentially be implemented through changes in practice.

Introduction

The purpose of this paper was to set the scene for discussion by providing a brief overview of the current understanding of youth justice in particular in light of the Carlile, Taylor and Lammy Reports. Subsequent to those reports the Michael Sieff Foundation has organised seminars to engage in further discussion on their recommendations. During 2018 specifically questions relating to trial venue and the relationship between the Youth Court and the family court were considered. The overarching conclusion of all these meetings has been that there is further work to do. (See: <http://www.michaelsieff-foundation.org.uk>)

This paper sets out some ideas for consideration. Whilst it acts as a point of reference, the discussions expanded beyond this, establishing a number of shared core aims allied to positive next steps.

Demographics

The number of children who appear before the court has fallen hugely in the past decade (in line with a reduction in the numbers of children entering the youth justice system) and continues to decline: the latest available statistics (for 2016/17) show that 35,200 children (aged 10-17) were proceeded against at court that year, and 25,700 were sentenced – a fall of nearly three-quarters since 2006/07. The vast majority of cases are dealt with at the magistrates' court: just 4% of those sentenced were dealt with at Crown Court.

The number of children given custodial sentences has fallen markedly over the past decade (around 1,600 children were sentenced to immediate custody in 2016/17). The proportion of those given a custodial sentence has remained unchanged over this period, at 6-7%, although the average length of sentence for indictable offences (but not for summary offences) has increased by almost 40%, to 16 months in 2016/17. Over two-thirds of all children sentenced are given a community sentence, mostly referral orders.

As the total number of children appearing at court falls, there are signs of greater concentration of complexity, vulnerability and disadvantage among those who remain. The average number of previous convictions for those convicted or cautioned has increased over time (although not in the past few years), and an increasing proportion of total cases involve violence or drugs offences. The upsurge in serious violence by and against children and young people is prompting widespread concern. There is also evidence of increasing disproportionality in the youth justice system: BAME children now make up one-third of those sentenced for indictable offences, and a higher proportion still of those in custody.

Underlying considerations

The changing population (both in terms of size and characteristics) of children appearing at court offers both opportunities for and challenges to reform of the Youth Court, eg the incidence of BAME children, those with mental health and special educational needs, as well as the upsurge in violence and knife crime.

Reforms to the Youth Court can be both structural/procedural, including those where powers exist but have not been implemented, and cultural/practical, such as problem solving approaches.

The Youth Court is just one part of the judicial and youth justice system. Any potential changes need to be considered in the context of the current court reform processes (such as digitisation, changes to court personnel and the court estate), and in relation to other elements of the system, such as the adult courts, policing, pre-court diversion and prosecution decisions, and the care and management of children on court orders, whether community or custody.

There are well articulated financial and political difficulties. In addition, there are problems involving silo activities and thinking, cross agency education and training, motivation to bring about change and legal aid provision.

Underlying principles

There are some underlying principles, which have drawn broad acceptance, and bear repetition.

- Young people who may or do appear before the Youth Court are likely to be children in need. They should be treated as such. It is an apt phrase that they should be: *'Children First, Offenders Second'*. Diversion from the court system should be seen as the starting point for children who have offended, although there will always be instances where the nature of the offending involved means it will be appropriate for a case to proceed to court.
- The Youth Court has a statutory duty to prevent offending and to have regard to the welfare of the child. Proceedings should be conducted so as to prioritise those outcomes. Both in and out of court there should be a relationship-based approach to working with the young person, which requires consistency of personnel in every part of the system.

Existing Proposals

There is a range of existing proposals and opportunities for reform. Areas that the Michael Sieff Foundation has particularly focused on, related to the Youth Court, include the following (others are listed in Appendix B):

- The Carlile Report recommended that problem solving approaches in the Youth Court should be explored. [The Centre for Justice Innovation](#) has obtained funds (from [The Nuffield Foundation](#)) to scope and potentially research pilot projects. This work started at the end of 2018.
- The Michael Sieff Foundation organised: [Care and Crime Together? closer integration between the Family and Youth Courts](#), a seminar supported by the

Nuffield Foundation on 14 June 2018 to discuss the merits of and barriers to closer integration and collaboration between these two jurisdictions dealing with cases involving under 18s. For presentations and conclusions see:

<http://www.michaelsieff-foundation.org.uk/care-and-crime-together-closer-integration-between-the-family-and-youth-courts-in-the-uk/>

- There was broad agreement that improved awareness, knowledge and understanding of the Youth Court and the family court across both jurisdictions would be welcomed. Data sharing, in particular about children appearing in both courts, would be beneficial. Improved communication and information sharing between agencies ([Cafcass](#), children's services, [Youth Justice Board \[YJB\]](#) and Youth Offending Teams [YOTs]) would be beneficial for agencies and the judiciary.
- [Schedule 1 paragraph 35 of the Criminal Justice and Immigration Act 2008](#) should be brought into force to enable courts to review youth rehabilitation orders to check on children's progress, amend sentences where necessary and ensure partner agencies are providing the required support to aid desistance.
- Youth courts should consider using the existing power contained in section 9 of the [Children and Young Persons Act 1969](#) to request a local authority to investigate and provide information relating to the home surroundings, school record, health and character of the young person before the court. Following work with the Magistrates' Association there is some anecdotal evidence that more use has been made of this provision, though it is apparent there is still progress to be made.
- Youth courts could be given power (as under [s.37 Children Act 1989](#)) to order the local authority children's service to investigate whether a child is at risk of suffering significant harm, and whether the local authority should intervene to safeguard and promote the child's welfare ([s.47 investigation under the Children Act](#)). See: [The Provision of Local Authority Reports to The Youth Court Report](#), published by The Michael Sieff Foundation, 24 September 2013. This would require statutory amendment.

23 January 2019

The Michael Sieff Foundation