



Report on the Future of the Youth Court Round Table

5 February 2019

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. The meeting was held under the Chatham House Rule and as a consequence the comments made, and recorded, here are unattributed.

Rob Street, Director of Justice at the Nuffield Foundation welcomed attendees and introduced Sir Ernest Ryder, Trustee of the Foundation, who chaired and opened the meeting.

Central principle: *Putting Children First*

The priority themes now emerging, for action over the next 3-5 years, appear to be:

- identification of children's needs and tailored planning for them by professionals who know them and their needs
- improvement in court procedures
- accurate, user defined quantitative and qualitative data collection which is gathered, suitably analysed and circulated to key stakeholders
- education for decision makers and children
- defining key solutions and the support and leadership necessary to implement them

Important to all of this is the Youth Service Design Working Group Report, which has 70 recommendations and sets out the HMCTS's vision of youth justice. They are 12 months in to a six year reform programme.

a) practice implementation

Identification of child's needs

The trend of diverting more cases from the Youth Court means that it is increasingly left with a group of children that display a wide range of complex needs. This is exacerbated by limited communication skills which may be hidden and will continue to be a core restriction on successful outcomes. There is a need to identify children's vulnerabilities and to establish clear, effective communication with them, pitched at an appropriate level. Currently there does not appear to be any valid quantification of communication needs, posing the question: "*Who is walking in to court?*"

Parents were often on the periphery; magistrates reportedly showed pleasant surprise if they turned up. A 'risk deficit' model, whereby children are blamed for their problems and challenges, remained dominant.

The Centre for Justice Innovation (CJI) had done a review of diversion practices across England & Wales [see: <https://www.justiceinnovation.org/publications/mapping-youth-diversion-england-and-wales>]. Only 19 YOTs did not have schemes but many were hanging on given current squeezed resources. Improved intelligence is required (based on good quality data) in order to determine which cases to divert and what additional services would be needed. Implementation of this approach does not require new legislation but will require additional funding and care.

Responsibility: YJB, YOTs

Court procedures

Youth cases were generally taking longer to get to court. This is partly a problem of the police, prosecution, and defence having to deal with complex evidential material (eg digital information) but the effect remained the same: that a child could be a year or even two older than when the alleged offence was committed by the time the case was heard. A contributory factor in this could be when children are released on bail "under investigation" and the cases get lost in the system. In addition there is often a fear of going to court too early, before diversionary measures have been fully explored, but this can lead to an eventual prosecution being redundant if actioned too late.

Whilst it was agreed that timeliness was important – not too fast to court and not too slow - the overriding concern was that the time taken to deal with a case was a reflection of the child's needs rather than the system's default.

Children still go into the dock at some courts, sometimes behind a glass screen, where they can often not hear what is happening in the court. It is the default provision if they are brought from the cells, although 'dock-jumpers' were rare and foreseeable. Court cells are often "Dickensian".

Anecdotal evidence suggests improved communications between the actors in a youth hearing leads to improved outcomes. Efficiency of communication can be affected simply by the layout and court room, for example children with special needs could still

be 12 yards from the bench. Language needed to be used which reflected the needs of the child.

More cases were retained in the youth court but it was not unusual for the magistrates to go into court and find that prosecuting and defence counsel had agreed that the case should be sent to the Crown Court. Looked after children are still appearing in court. There was a recent case where a child had been in custody two nights pending a hearing.

Listing and timing of cases remains a problem.

CJI are now researching the problem solving approach, which is currently operating in Northampton Youth Court and elsewhere. The problem solving approach could be introduced universally through the encouragement of a change in mind-set of the key stakeholders, as evidenced by Northampton.

Responsibility: HMCTS, MA

Use of data: collection, exchange and circulation

The infographic published recently on youth justice statistics for 2017/18 (see: <https://www.gov.uk/government/collections/youth-justice-statistics>) provided basic information on how the YJS is operating, but more granular analysis (eg at an individual court level) is needed.

The MoJ is working with the Home Office on the Youth Endowment Fund and diversion from crime and improving life chances. In addition they are working with the Home Office to reduce violent crime.

HMCTS has an Insight and Data Team. Data is starting to come through but it needs analysis. Could there be a ESRC funded platform? To date the MoJ has favoured one-off data collection (being more manageable).

Courts are not being provided with relevant and timely statistics to address the question of outcomes. Offence specific guidelines are not supported by current data analysis or relevant statistics.

It is clear that data collected is analysed and used differently in the various parts of the youth, care, and family justice systems. Data collected by different agencies is generally used for distinctly different purposes. In general, given the complexities of different cases, whilst the youth justice system requires good quantitative data analysis, for practitioners looking to understand how to bring about the best long-term outcomes, qualitative data (such as case studies) can be more illuminating.

Data collected tends to fall into two types: performance data and operational data. In order to determine “who is walking through the door” both types of data require some form of aggregation (possible through the implementation of a relational data mechanism). The long term aim should be a mechanism for: “Linking criminal justice data together”. However any schema needs to consider in detail that views of data vary between agencies, for example views can be made in terms of cases, individuals, or collectives. This is further exacerbated because up to 25 agencies may contribute to any collected data set. That suggests silos, leading to the possibility of data communication failure.

CAFCASS found that children may not return to the criminal courts but they could still appear in the family courts. The family justice and the youth justice systems were not joined up. In general courts are not sufficiently supported by other related child services

(eg. health and education). There must be a holistic view of what is needed by both the child and the family allied to an understanding of additional influencing factors such as mental health or special needs. Allied to this, how children are effectively tracked, and by whom, needs to be identified in order to establish a holistic approach. The importance of relationships in driving positive change was emphasised.

A better understanding of what helps YOTs and Courts in working together needs to be fully articulated. An agreed roadmap may assist in establishing a consensus solution that could be successfully implemented.

Problem solving requires different data collection and analysis than is currently the norm. The measurement and analysis of Youth Justice performance and Adult Justice performance should be disaggregated.

There is a Judicial Delivery Group. This needed to disaggregate adult and youth statistics as their combined data could be misleading.

Responsibility: Senior Presiding Judge, CAFCASS, HMCTS, YJB, YOTs

Education

Magistrates and Judges needed to be fully aware when imposing sentences of the potential consequences of their decisions. Appropriate sentence versus effectiveness is a fundamental consideration particularly when dealing with young people. There is a potential for courts to take more interest in outcomes, for example through problem solving.

Responsibility: Magistrates Association, Judicial College

Advocacy

In general the quality of advocacy within the Youth Justice system has to be improved. The standard of advocacy is highly variable: in some cases outstanding but in others remains poor. More cases were retained in the youth court but there is a significant issue relating to pay. As an example, for a two day trial for robbery the advocacy fee in the youth court is £500 whereas in the Crown Court it is £1200. It was important to get a certificate for an assigned advocate. It might prove helpful for there to be judicial guidance on the granting of certificates.

The Bar Standards Board had introduced an accreditation system. The Youth Justice Legal Centre is engaged in discussions with the Law Society and the Solicitors' Regulation Authority with regard to youth advocacy and related specialist training.

There was concern that the CPS had stopped providing expert prosecutors to the youth court but were utilising assistant prosecutors, who were not lawyers. The CPS said that they were committed to youth specialism and to training for it but if they used an agent they could not bind them. It was unclear why this should be the case.

Responsibility: CPS, JfKL, YJLC, BSB, Law Society, SRA

Police

Significant problems are apparent when considering the holistic approach mentioned earlier. For example, there can be up to 32 different documents school staff are required to consider in order to decide whether they should call the police to an

incident. There are guidelines (see for example: <https://www.cps.gov.uk/legal-guidance/cautioning-and-diversion>) for reducing criminalisation but it was not known by attendees whether there is an implementation plan or whether recommendations were further developed following publication.

The Police are actively developing the concept of a single trusted common brand with a common message across all police forces, reducing fragmentation and developing a unified approach to best practice. Like other agencies, they increasingly understood the impact of adverse childhood experiences (ACEs) on children's behaviour.

b) Legislation

Venue / Estate

There has to be a suitable 'estate' in which Youth Court services are provided. There could be alternative locations for court hearings.

Responsibility: HMCTS, MoJ

Section 37 of the Children Act 1989

Northampton Youth Court has been using a problem solving approach. Section 9 of the Children and Young Persons Act 1969 had proved helpful but tended to be reactive. A provision directing investigation and report to the court, similar to that available to the Family Court in section 37 of the Children Act 1989, would avoid delay and be better due to being more proactive. The Association of Youth Offending Team Managers (AYM) had been supportive.

Sieff has made repeated requests over six years for the introduction of a provision similar to section 37 of the Children Act 1989 as a power for the youth court. (See: <http://www.michaelsieff-foundation.org.uk/content/Youth-court-to-acquire-Family-Court-Powers.pdf>)

Responsibility: MoJ, YJB

Schedule 1 Paragraph 35 of the Criminal Justice and Immigration Act 2008

This provision has never been implemented. It would empower a court making a youth rehabilitation order to provide for the order to be reviewed periodically. Youth court practitioners consider that the provision would be useful. The provision should be implemented and encouragement given to its use nationally.

Where orders were in force magistrates cared about how they were working. They had redesigned the court to make it more like a meeting room, so as to increase child (and advocate) engagement.

Responsibility: MoJ, HMCTS

Short term sentencing

There is consideration of abolishing short custodial sentences but there needed to be robust alternatives. Anecdotal evidence suggests that short sentences are no benefit,

since no additional education is provided during the time in custody and the child often returns to the community in a worse position. Figures suggested that about one-third of children given a custodial sentence were actually detained for less than three months, excluding those remanded.

The Justice Report (<https://www.gov.uk/government/statistics/justice-data-lab-statistics-january-2019>) published 10 January 2019 raised similar issues. In Guernsey no children were held in cells, secure accommodation was not used and short sentences had been stopped.

Responsibility: MoJ

c) Longer term

Age of criminal responsibility

Raising the age of criminal responsibility should remain on the agenda (although it would obviously require legislation). Continual appearances of children in court starting from an early age tend to lead eventually to custodial sentences, as they more quickly go up the sentence tariff.

Court system

The question as to whether the magistrates' youth and family panels be combined proved to be a contentious issue, and was seen as something unlikely to happen in the foreseeable future.

It was now unimaginable that a 15 year old girl charged with offences relating to prostitution would be in court but children involved in County Lines drug supply cases are still brought unsuitably before the court, not recognising that they have been exploited too.

There needed to be a more detailed examination of the type of court or tribunal that would be most effective. Consideration should be given to its coordination or amalgamation with the family court, including the use of youth and family panels within the magistrates' court, and possibly with immigration in so far as it involved children. It would be helpful to examine the workings of the Scottish Hearing system and the Child Youth and Community Tribunal in Guernsey. It might be that an Inquiry could be set up for this purpose.

School exclusion

Exclusion from school is recognised as a major problem and is increasingly reported upon. The problem is that exclusion can lead to entry into the criminal justice system, as distinct from involvement in crime leading to exclusion. Approximately 1000 children are currently believed to be off the school register and said to be in unregistered home education. Data relating to school exclusions is patchy and poorly recorded.

Subsequent to the roundtable meeting the Timpson Report on School Exclusion was published in May 2019. It is to be the subject of further consultation.

Gangs and violence

The changing nature of youth offending was flagged, and concern was expressed that problems associated with serious violence would develop over the next five years (including peer on peer sexual violence). All stakeholders with a role in, or allied to, the youth justice system need to identify who is being punished and for what purpose, particularly given the role that exploitation and coercive control were clearly playing in much of this violence. The capacity of the child and youth support and police services to address these problems was limited given the current level of funding due to austerity measures.

Noted that the Government's Serious Violence Strategy (published April 2018 and updated June 2018) is an important document: See:

<https://www.gov.uk/government/publications/serious-violence-strategy>

Recommendations and Conclusion

The key recommendation stressed throughout the event was the need to understand better what was already happening in the YJS and then to take action to improve. Part of that should be to make better use of existing data sources. This approach – perhaps supported by more formal environmental scanning – should help identify both good and poor practice, which should then be shared. While there are important reforms that require more significant system change and possibly legislation, there was much positive that could readily be done though adopting a practical, problem-solving approach. Encouraging a cultural shift in the system, reflected in and led by changed language (eg referring to children, rather than young offenders), was an important part of all this.

John Tenconi concluded by saying that Sieff and Nuffield did not want to sit on their hands and wait for Government to act. Those things which did not require primary legislation should be implemented within twelve months. Civil servants should be urged to press for these changes. An early slot in the next Parliament should be obtained for those changes which required legislation. Local leaders could and should act.

Both the Michael Sieff Foundation and the Nuffield Foundation would consider next steps.

Glossary of acronyms

BSB - Bar Standards Board
CJI - Centre for Justice Innovation
CPS - Crown Prosecution Service
ESRC - Economic & Social Research Council
HMCTS - HM Courts & Tribunals Service
JC - Judicial College
JfKL - Just for Kids Law
LS - Law Society
MA - Magistrates Association
MoJ - Ministry of Justice
SRA - Solicitors Regulation Authority
YC - Youth Court
YJB - Youth Justice Board
YJLC - Youth Justice Legal Centre

YJS - Youth Justice System
YOTs - Youth Offending Teams

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