

# Care and crime together?

## Merging youth and family courts



Retired magistrate Chris Stanley, trustee of the Michael Sieff Foundation, presents the case for addressing the issue of children who offend by combining the youth and family courts

**It is now unimaginable that a 15-year-old girl would be prosecuted for offences relating to prostitution. But children involved in county lines drug supply cases are still brought before the court and we are concerned that the processes in place to identify their exploitation do not always work in practice.**

Children are sentenced in the youth court (YC) for criminal behaviour. Often, they come from very dysfunctional families with a multitude of problems. The first principle of sentencing in the YC is to reduce offending; the second principle is the welfare of the child. However, we would argue that a criminal court without the powers to compel investigation, as enjoyed by the family court, does not have the means to identify and tackle the underlying problems that are the main contributors to offending. Only by addressing these problems can we hope to start reducing offending. If the YC cannot address the underlying issues, this raises the question of whether the YC is an appropriate venue to deal with the criminal behaviour of children and young people.

This article reports on the *Independent Parliamentarians' Inquiry into the Youth Court* (the Carlile Inquiry),<sup>i</sup> which recommends addressing the problem of children who offend by combining the youth and family courts (FCs). It will begin by outlining how the treatment of children who offend has varied, before going on to describe the Carlile Inquiry and presenting some of the main recommendations.

### Background

Many countries, including Scotland, have a holistic approach to dealing with children who are troubled or are in trouble. Some countries have inquisitorial systems. In England and Wales, the approach has varied over the years.

In 1908 the Children Act established the juvenile court, with provision for specially trained magistrates to deal with children and young people's criminal behaviour and their welfare needs, separate from adults.

Over subsequent decades the pendulum has swung between welfare and punishment. The Children and Young Persons Act 1933 emphasised welfare and treatment, creating the principle that the child's welfare was of paramount importance. This principle remains with us today, reinforced by the Criminal Justice and Immigration Act 2008. The Children and Young Persons Act 1969 raised the age of criminal responsibility to 14 and encouraged care rather than criminal proceedings. However, much of the Act was not implemented by the incoming Conservative government in 1971.

The 1980s saw another swing. The Criminal Justice Act 1982 replaced borstals with youth custody, and restricted custodial sentences. Until the end of the 1980s, the holistic approach to children and young people continued, the juvenile court being the venue for care and crime.

However, everything changed with the Children Act 1989. This radically altered the approach to children and young people which had existed for more than 80 years. It separated welfare and crime by splitting the jurisdiction into the youth court (crime) and the family proceedings court (care). The English and Welsh YCs have some of the most complex legislation of any jurisdiction. Much of the law is adult law passed down, often inappropriately, to the YC.

### The Carlile Inquiry

Because of concern over how well the YCs addressed the needs and offending of children and young people, the Michael Sieff Foundation, working with the National Children's Bureau, supported a parliamentarians' inquiry into the youth court, chaired by Lord Carlile of Berriew CBE QC. Its stated aim was to determine whether the system of criminal courts for children was achieving its objectives of preventing offending and having regard for the welfare of the children who appear before them. The Inquiry reported in September 2014 and its main recommendations are outlined below.

The Sieff Foundation has sought to ensure that the report's recommendations would be actively promoted and implemented over the ensuing years through meetings with the Ministry of Justice, the Youth Justice Board, youth offending teams and other key stakeholders, including the judiciary, the Crown Prosecution

Service and criminal defence lawyers. Seminars were convened to discuss the recommendations and those of subsequent reports which explored issues related to youth justice, including the Charlie Taylor Report 2016,<sup>ii</sup> the Laming Report 2016<sup>iii</sup> and the Lammy Review 2017.<sup>iv</sup>

The seminars were organised with support from the Nuffield Foundation and reported on the Sieff Foundation website. The summary report identified pressing and necessary changes to statute, guidance and practice in order to implement the recommendations from the Carlile Inquiry and other reports. It is hoped that the well-evidenced recommendations will promote a more positive and 'can-do' attitude towards their implementation. Since each would result in improved functioning within the youth justice system, better safeguarding for victims and more effective risk prevention and public protection measures, the benefits to society could be considerable.

## Carlile Inquiry recommendations

The Inquiry report recommended that the youth and family courts should be brought under a single jurisdiction: 'Given that children who offend and are in the child protection system are a similar and overlapping population, our long-term aspiration is that their problems are responded to within the same jurisdiction'. The Inquiry report states this should be a long-term aim. In the medium term, district judges and magistrates should be trained to sit in both youth and family courts. This would bring the courts closer together, prior to a full integration.

The question as to whether the magistrates' youth and family panels be combined is a contentious issue. But this could be the solution to the important issue of FCs that are terribly busy and YCs that are under used. YC magistrates are losing their experience and competencies, as the numbers passing through the YC have dropped dramatically in recent years. Using family centres for all children, with a combined panel trained in youth and family law and child development, may be a solution to this urgent problem.

Lord Carlile made a number of recommendations for effective improvements in process, procedure and structure, which, pending a merger between the jurisdictions, would put the child first.

These included youth courts having the power to transfer cases of children and young people with overwhelming welfare needs to the FC, where family issues could be addressed. This would be a useful initial step towards merging the two jurisdictions.

Currently, under section 37 of the Children Act 1989, the FC is able to request a local authority to investigate and provide information with regard to a child's welfare and the authority has a duty to comply. Giving comparable powers to the YC, to be able to order an investigation into whether a child is suffering or at risk of suffering significant harm, would be more effective and more satisfactory than the current piecemeal use of the less effective section 9 of the Children and Young Persons Act 1969 to request information.

There is a potential for courts to take more interest in outcomes, for example through problem solving. The problem solving approach could be introduced universally through the encouragement of a change in mind-set of the key stakeholders, as evidenced by the approach currently operating in Northamptonshire (see pages 8-9) and elsewhere. Implementation of paragraph 35 of Schedule 1 of the Criminal Justice and Immigration Act 2008 would assist since it would enable courts themselves to review youth rehabilitation orders and check on the young person's progress.

## The future: putting care and crime together

The Michael Sieff Foundation is not alone in thinking that changes are needed. Sir James Munby, then president of the Family Division, gave the 2017 Parmoor Lecture<sup>v</sup> to the Howard League for Penal Reform. He called for a 'problem court that included the whole family', extending across immigration and asylum, and the health, education and social care chamber.

Consideration should be given to coordination or amalgamation of the YC with the FC, including the use of youth and family panels within the magistrates' court, and, possibly, with immigration where it involves children. It would be helpful to compare the workings of the Scottish Hearing system, the Child, Youth and Community Tribunal in Guernsey and the Crossover Courts in New Zealand.

Children and young people who commit crimes are often the same children who are abused and neglected. Without compromising public safety, their welfare needs to be put first. To do this, they need to be dealt with in one jurisdiction as we did for the 80 years after the implementation of the 1908 Children and Young Persons Act.

***This article reflects the views of the Michael Sieff Foundation and is a result of its continuous work in this area over the last six years.***

## References

i *Independent Parliamentarians' Inquiry into the Youth Court*, Lord Carlile, 2014 <http://bit.ly/magistrate2140>

ii *Review of the Youth Justice System in England and Wales*, Charlie Taylor, Ministry of Justice, 2016 <http://bit.ly/magistrate2141>

iii *In care, Out of trouble* An independent review chaired by Lord Laming, 2016 <http://bit.ly/magistrate2142>

See also: *The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers*, Department for Education, 2018 <http://bit.ly/magistrate2143>

iv *The Lammy Review*, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, David Lammy, 2017 <http://bit.ly/magistrate2144>

v *Crossover Courts in New Zealand Children Across the Justice Systems*, Sir James Munby, The Parmoor Lecture, 2017 <http://bit.ly/magistrate2145>

*What is Family Law? Securing social justice for children and young people*, Sir James Munby, 2018 <http://bit.ly/magistrate2146>

All other references can be found at [www.michaelsieff-foundation.org.uk](http://www.michaelsieff-foundation.org.uk)

## MA comment

The MA is very grateful to the Sieff Foundation for writing this article: we hope it fosters healthy discussion about what can be done both short- and long-term to improve youth justice. The MA agrees that a more problem solving approach should be taken in the youth court, with a focus on the welfare of the child or young person (CYP) as well as supporting a reduction in reoffending. However, MA policy is that we do not support the specific long-term aim of merging youth and family jurisdictions, or dealing with criminal matters involving under-18s in the family court. We believe there is generally sufficient flexibility to allow youth courts to take a child-centred view, with youth offending teams being well placed to take a multi-agency, problem solving approach to address the needs of CYP. We do agree that more can always be done: specifically, we would like Paragraph 35 of Schedule 1 of the Criminal Justice and Immigration Act 2008 enacted to allow courts to review youth rehabilitation orders.

We also think it is important to consider likely challenges to introducing the specific proposal of merging jurisdictions, including the fact that very different legal frameworks are followed in each jurisdiction, with different underlying principles. We would also note that the current workload in the family court is already stretching capacity to its limits, with particular pressures on Cafcass/Cafcass Cymru.