



The Michael Sieff Foundation

Working together for children's welfare

Justice for children with SEND & neurodivergence

Independent Review

An independent review into how the current system can fail to prevent children with special educational needs or disabilities (SEND) and neurodivergence from unnecessarily entering into the justice system, how they are dealt with once in the system, what happens when they leave the justice system and how this parlous situation can be cost-effectively dealt with and increase the likelihood that children with SEND or neurodivergence who commit crime go on to become well-functioning, law-abiding adults.

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23 April 2025

Justice for children with SEND and neurodivergence

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Introduction to the Report by the Chair of the Michael Sieff Foundation



The Michael Sieff Foundation

Working together for children's welfare

The Michael Sieff Foundation is concerned with vulnerable children and how to help them to realise their potential and participate fully in society. One of the most notable and potentially challenging manifestations of vulnerability is SEND and neurodivergence. Our Trustees were alarmed to learn that, despite the significant changes brought about by the seminal work of the Carlile Inquiry into Youth Justice in 2014¹ which the Sieff Foundation sponsored, of the children still engaged by the Youth Justice system some 80% are those with SEND or neurodivergence.²

As a result, the Foundation directed its attention to considering why this was the case, setting up a Working Group encompassing all relevant disciplines to examine the pathways for these children in and out of the justice system. We were fortunate to recruit some of the most talented researchers, practitioners and experts in this field, who in turn, under the chairmanship of Professor Cheryl Thomas KC, were able to obtain evidence from many relevant individuals and organisations. We applaud the output, which they have produced. In particular we draw attention to their methodological approach and highly pragmatic recommendations.

We thank all those who have given so generously of their time to produce this report, and hope it will mark a new chapter in how these children can receive constructive and appropriate support and assistance.

John Tenconi
Chair, Michael Sieff Foundation

¹ Carlile (2014) *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* Chaired by Lord Carlile of Berriew CBE QC, Sieff Foundation

² Department of Education and Ministry of Justice (2022)

Note on terminology and definitions in the report

There are a myriad of terms used when describing both those under 18 years of age and their developmental needs. The following provides a guide to how terms are used in this report.

Children

This report refers to any individual under the age of 18 as a child. This corresponds to the United Nations Convention on the Rights of the Child and legislation in England and Wales, and corresponds to the Youth Justice Board’s definition: “The fact that a child has reached 16 years of age, is living independently or is in further education, is a member of the armed forces, is in hospital or in custody in the secure estate, does not change their status or entitlements to services or protection.”³

SEND and neurodivergence

A range of terms are used to refer to the developmental needs of children. They are often used interchangeably in discussions around youth justice, but there are important differences that can impact how children experience the justice system. We have set some of the main terms used below in Table 1. This report uses the term “SEND” (Special Educational Needs and Disabilities) to describe all children with an Education, Health and Care Plan (EHCP) or who receive SEND support or who would fall into these categories if their needs were appropriately assessed. While there can be overlaps between SEND and neurodivergence, not all children with SEND are also neurodivergent, and many children who may be neurodivergent have not been identified as having or do not have SEND.

Table 1: Definitions of relevant terms

Term	Definition
Cognitive/Neuro Disabilities	The NHS defines Neurodisability as “an umbrella term for conditions associated with impairment involving the nervous system and includes conditions such as cerebral palsy, autism and epilepsy; it is not uncommon for such conditions to co-occur.” ⁴
Mental health	Mental health is an individual's cognitive, behavioural and emotional wellbeing ⁵ . It is something we all have - including every child and young person – and does not require a diagnosis. ⁶

³ Youth Justice Board Case Management Guidance. See: <https://www.gov.uk/guidance/case-management-guidance/definitions>

⁴ See: <https://www.england.nhs.uk/wp-content/uploads/2013/06/e09-paedi-neurodisability.pdf>

⁵ NSPCC Learning, “Child mental health” (31 October 2024). See: <https://learning.nspcc.org.uk/child-health-development/child-mental-health>

⁶ *ibid.*

Mental ill health or Mental health issues	The NSPCC use the following definition: “We use the term ‘mental health issues’ to refer to mental health problems, conditions and mental illnesses. These issues may or may not be medically diagnosed.” ⁷
Neurodiversity	Neurodiversity refers to the concept that everyone's brain is differently wired, affecting how we think, move, act, see, hear and process information.
Neurodivergence	Neurodivergence is a complex area, encompassing a range of conditions, with no universally accepted definition ⁸ . Hughes (2015) notes that this includes a range of disorders including: intellectual/learning disability; specific learning disorder; communication disorders; attention-deficit/hyperactivity disorder; and autism spectrum disorders ⁹ . However, a word of caution is noted about over-reliance on clinical diagnoses as basis for a definition, given that many children will not have been assessed and diagnosed in the education and youth justice systems, or they may have levels of impairment that do not meet the criteria for a diagnosis ¹⁰ .
Social, Emotional and Mental Health Needs (SEMH)	SEMH needs are a type of special educational need where a child communicates through behaviour in response to unmet social, emotional or mental health needs. Children with SEMH needs often have difficulties in managing their emotions or their behaviour. They can show inappropriate responses to their emotions. They can feel scared, anxious and misunderstood. ¹¹
Special Education Needs and Disabilities (SEND)	The NHS defines this as follows: “A child or young person has special educational needs and disabilities if they have a learning difficulty and/or a disability that means they need special health and education support, we shorten this to SEND.” ¹²
Speech, Language and Communication Needs (SLCN)	Speech, language and communication needs (SLCN) is the term given to describe the extensive range of needs related to all aspects of communication – from understanding others to forming sounds, words and sentences to expressing ideas and emotions and using language socially. ¹³
Structural Disadvantage	Babaca et al define this as follows: “Structural disadvantage refers to the disadvantage experienced by some individuals or families or groups or communities as a result of the way society functions (how resources are distributed, how people relate to each other, who has power, how institutions are organized)” ¹⁴ .

⁷ *ibid.*

⁸ Criminal Justice Joint Inspection (2021)

⁹ Hughes (2015)

¹⁰ *ibid.*

¹¹ See: <https://livingautism.com/semh-needs/>

¹² See: <https://www.england.nhs.uk/learning-disabilities/care/children-young-people/send/>

¹³ Worcestershire County Council and Worcestershire Health and Care NHS Trust (2011 & 2015)

¹⁴ Babacan et al (2007) 8

Neurodiversity is an umbrella term defined differently by different agencies

Neurodiversity is a relatively new term, and the education system, health professionals and youth justice system all use different definitions for children with neurodiverse needs.¹⁵ There are clinical definitions for neurodevelopmental disorders.¹⁶ However, overreliance on these clinical definitions can be problematic within the youth justice system as many children will not have been assessed, diagnosed or meet the specific criteria for a diagnosis by the time they come into contact with the justice system.¹⁷ National data on neurodivergence in the justice system is not consistently required, defined, collected or maintained.¹⁸ Consequently, neurodivergence prevalence data is complex and often difficult to compare between sources.¹⁹

¹⁵ Kirby (2021) 4

¹⁶ See: American Psychiatric Association (2013) 31

¹⁷ Hughes (2015)

¹⁸ Criminal Justice Joint Inspection (2021) 21

¹⁹ For a detailed analysis see Hughes et al (2012) 22-44

EXECUTIVE SUMMARY

How to achieve justice for children with SEND and neurodivergence

In England and Wales 80% of children cautioned or sentenced within the youth justice system are from the Special Education Needs and Disability (SEND) cohort.²⁰ Children with neuro-disabilities enter custody at higher rates from an earlier age, receive longer custodial sentences and are associated with higher rates of reoffending and more violent crimes.²¹ The Sieff Foundation convened an expert Working Group to examine what practical reforms could be made to the youth justice system to address this parlous situation for children with SEND and neurodivergence. The Working Group considered:

1. How to deal with cases involving children with SEND and neurodivergence more appropriately and cost effectively;
2. How best to coordinate the relevant government departments, public bodies, multi-agency teams, courts and tribunals;
3. How to ensure that the youth justice system achieves the current “Child First” mandate, the UN Convention of the Rights of Children (UNCRC)²² and evolving mental health and disability considerations.

Key findings and recommendations of the Review

There is a misleading impression that all of the youth justice system is functioning well

Significant improvements have been made in the youth justice system in recent years. But because only a relatively small number of children are now prosecuted each year and youth crime has declined substantially over the last decade, this can create the impression that there are no longer any areas of concern in the youth justice system.

- But each year over 100,000 children under 18 have encounters with the criminal justice system, and almost 59,000 are arrested.
- Recent years have seen increases in stop and search of children, arrests of children and children as first time entrants (FTEs) into the justice system.

²⁰ “The proportion of children in England that had been cautioned or sentenced for any offence that had ever been recorded as having Special Educational Needs was 80% and for a serious violence offence was 86%.”, *Education, children’s social care and offending: Descriptive statistics* (March 2022) Department of Education and Ministry of Justice. For the latest dashboard statistics see: <https://explore-education-statistics.service.gov.uk/find-statistics/education-children-s-social-care-and-offending-local-authority-level-dashboard/2019-20>

²¹ British Psychological Society (2015)

²² The UNCRC embodies the idea that every child should be recognised, respected and protected as a rights holder and as a unique and valuable human being. It applies to all persons under the age of 18. One of the key principles underpinning the UNCRC is the “best interests of the child (Article 3)”: whenever decisions or actions are taken that affect children, the best interests of the child must be a primary consideration.

- The proportion of remanded children in custody are at a record high, and almost two thirds of children on remand will not subsequently receive a custodial sentence.

SEND and neurodivergence predominate in children in the justice system, but the justice process and many professionals at key stages of the system have not been equipped to deal with this cohort of children.

- Almost all children in the criminal justice system have special education needs and/or neurodivergence, which can exacerbate challenges in communication, emotional regulation and social interaction and make them more vulnerable to engaging in criminal behaviour and becoming criminalised.
- These children are often misunderstood and inadequately accommodated within the criminal justice system. Key professionals operating within it are not sufficiently trained to deal appropriately with children who have special education needs and/or neurodivergence.

Reforms are urgently needed to prevent the criminalisation of vulnerable children

Reforms, some of which have been recommended for over a decade, are now urgently needed to achieve the objective of preventing offending by and the criminalisation of children.

- The reforms set out in this report are targeted at each stage when a child with SEND and neurodivergence can be helped to avoid offending or reoffending.
- The reforms set out in this report are practical changes that can be implemented without the need for primary legislation.

There are important long term economic and social benefits to these reforms²³

It is estimated that the combined cost to the government of implementing all of this report's recommendations would be £16.3 million per year.

- The report recommendations are estimated to lead to £191 million in economic benefits per year, £72 million of which would be financial benefits to the government.
- This would mean a net financial savings to the government of £54 million (or £3 pounds per £1 spent) and a net economic return to society of £174m (or £10 per £1 invested).

²³ These figures are subject to uncertainty in both directions. On the one hand, the scale of the link between the recommendations and reducing reoffending is untested. But on the other hand, the estimated economic benefits of reducing reoffending are conservative; they do not take into account all relevant considerations, including the broad economic benefits of the contribution to GDP these children would make were they successfully reintegrated into society and able to lead productive and fulfilled lives.

STAGE 1: Preventing children entering the criminal justice system

Findings

- Children with SEND and neurodivergence are more likely to be excluded from school, which makes them at a higher risk of becoming both victims of crime and perpetrators.
- Early identification of SEND and neurodivergence is crucial. However, this is often inadequate due to a lack of awareness, training and resources in schools.
- Family support is crucial in mitigating the risks of offending. However, families often lack the resources and knowledge to support their children effectively.
- Co-location of support services is necessary for better intelligence, interdepartmental communication and emphasis on early intervention, but this rarely occurs.

Recommendations

- Compulsory teacher training in SEND/neurodivergence to help improve early identification.
- Creation of an Independent Reviewer of Youth Justice charged with conducting an annual review of multi-agency coordination (Department of Health & Social Care, Department for Education, Ministry of Justice/HMCTS, Home Office, Youth Justice Board) and communication between families, schools, health services, social services, police, courts and tribunals.

STAGE 2: Improving children's first contact with the criminal justice system

Findings

- The criminal justice system retains a number of outdated features that are harmful to children, particularly those with SEND and neurodivergence.
- There is no universal screening system for neurodivergence among children entering the justice system.
- There is a lack of understanding of neurodivergence among professional in the justice system, including police and legal representatives, who are not often trained in how best to interact with neurodivergent children.

Recommendations

- Mandatory screening of child suspects for SEND and/or neurodivergence at police stations.
- Compulsory training in SEND and neurodiversity in children for police and legal representatives who engage with children in the youth justice system.
- Intermediaries to be present during police interview for all child suspects where mandatory screening has identified SEND or neurodivergence.
- Improved conditions for children detained in police stations.

STAGE 3: Improving the court process for children

Findings

- Court processes are still not well adapted to improve the participation of children with SEND or who are neurodivergent.
- Judges often do not have sufficient specialised training in understanding SEND and neurodivergence in children.

Recommendations

- New mandatory training and authorisation of Circuit Judges and High Court Judges to preside over any cases with child defendants in the Crown Court.
- Enhanced judicial training for District Judges, Magistrates and Legal Advisers in the Youth Court.
- HMCTS to ensure a District Judge or Magistrate trained and authorised to sit in the Youth Court is always sitting in the adult Magistrates' Court if no Youth Court is sitting.
- New preliminary paper hearings in the Youth Court to review cases to ensure SEND and neurodivergence have been adequately considered and appropriate adaptations put in place.
- The Independent Review of the Criminal Courts (Leveson Review) should include implications for all child defendants in any recommended reform to the criminal courts.

STAGE 4: Improving sentencing and custody

Findings

- Children with SEND and neurodivergence do not appear to be consistently recognised by the courts and this may account for harsher sentencing outcomes.
- The secure estate does not currently have a comprehensive approach to neurodivergent children.

Recommendations

- Section 9 reports should be requested of local authorities by the courts in every case where custody or intensive supervision is being considered in both the Crown Court and Youth Court.
- Regular review of community sentences should be available for under 18 defendants in both the Crown Court and Youth Court.

STAGE 5: Exiting the justice system: reintegration, rehabilitation and preventing re-offending

Findings

- Multi-agency collaboration between schools and other educational settings, social services, mental health providers and the youth justice system that create a cohesive support network can ensure that children with SEND receive the support needed for successful reintegration into society.
- Research has shown that multi-agency collaboration can lead to improved academic achievement, reduced behavioural problems and lower rates of recidivism. But this rarely occurs.
- A 5% reduction in offending by children would be associated with an economic and social benefit of £74-217 million.²⁴

Recommendation

- Creation of an Independent Reviewer of Youth Justice charged with (1) overseeing the implementation of this Review's recommendations, and (2) conducting an annual review of multi-agency coordination (Department of Health & Social Care, Department for Education, Ministry of Justice/HMCTS, Home Office, Youth Justice Board) and communication between families, schools, health services, social services, police, courts and tribunals.

ALL STAGES: Improving data collection

Findings

- The UN Committee on the Rights of the Child urges states to systematically collect disaggregated data and recommends regular evaluations of the effectiveness of the measures taken in relation to discrimination, reintegration and patterns of offending.
- Data on the incidence of SEND in the youth justice system lacks important details.
- There is a lack of consistent and recent data from the UK enabling the tracking of the educational pathways of children who become offenders.

Recommendations

- A cross-sector data management system is needed to track children through education, health, social care and justice (using a unique reference number) to be able to more accurately predict pathways and work on prevention routes.
- Annual reporting is needed on the number of children with SEND at each stage of the youth justice system, including custody, and this should be disaggregated by diagnosis and Education, Health and Care Plan (EHCP) status.

²⁴ Around half of youth offending is reoffending, so a 10% reduction in reoffending equates to a 5% reduction in offending.

- Better reporting on both the Youth Court and Crown Court is required, including the numbers of judges authorised to sit, numbers of child defendants, offences, case outcomes and number and range of sentences handed out in Youth Court and in the Crown Court.
- Regularly updated unit costs for the criminal justice system are required to align with the Unit Costs for Health and Social Care annual report.

Chapter 1. The need for a Review

Need to address SEND and neurodivergence for children in the justice system

Government statistics show that 80% of children cautioned or sentenced within the youth justice system are from the Special Education Needs and Disability (SEND) cohort.²⁵ In addition, children with neuro-disabilities have higher rates entering custody from an earlier age, receive longer custodial sentences and are associated with higher rates of reoffending and more violent crimes.²⁶ Given that many children will not have been assessed, diagnosed or meet the specific criteria for a diagnosis by the time they have first encountered the justice system²⁷, it is therefore likely that official estimates of the rates of SEND or neurodivergence in the youth justice system are underestimates. The purpose of this Sieff Foundation inquiry was to examine what arrangements could be proposed for the reform of the youth justice system for children with SEND and neurodivergence to achieve the current mandates of “Child First”, the UN Convention of the Rights of Children (UNCRC)²⁸ and evolving mental health and disability considerations.

Focus of the Review

This Review has looked specifically at:

- How to deal with cases currently in the youth justice system involving the SEND and neurodivergence cohort more appropriately and effectively.
- What changes can be made within the criminal justice system, and services that interface with the criminal justice system, to meet the needs of this cohort of children and yield better outcomes for society, without the need primary legislation.
- How to maximise public safety by increasing the likelihood that children with SEND or neurodivergence who commit crime go on to become well-functioning, law-abiding adults.
- How best to coordinate the relevant government departments, public bodies, multi-agency teams, courts and tribunals.

²⁵ “The proportion of children in England that had been cautioned or sentenced for any offence that had ever been recorded as having special educational needs was 80% and for a serious violence offence was 86%.” Department of Education and Ministry of Justice (2022). For the latest dashboard statistics see: <https://explore-education-statistics.service.gov.uk/find-statistics/education-children-s-social-care-and-offending-local-authority-level-dashboard/2019-20>. This compares with 45% of pupils recorded as ever having special educational needs at some point up to the end of Key Stage 4. See: Centre for Justice Innovation (2023)

²⁶ British Psychological Society (2015)

²⁷ Hughes (2015)

²⁸ The UNCRC embodies the idea that every child should be recognised, respected and protected as a rights holder and as a unique and valuable human being. It applies to all persons under the age of 18. One of the key principles underpinning the UNCRC is the “best interests of the child (Article 3)” which recommends that whenever decisions or actions are taken that affect children, the best interests of the child must be a primary consideration.

While addressing the needs of SEND children who have broken the law requires addressing some broader societal issues (challenges in the education, health and social care sectors), this Review focuses specifically on changes that can be made within the criminal justice system and services that interface with the criminal justice system to meet the needs of this cohort and yield better outcomes for society. These reforms are focused on maximising public safety. The recommendations of this Review aim to increase the likelihood that SEND children who commit crime go on to become well-functioning, law-abiding adults.

Sources of evidence

This Review has drawn on a range of sources of expert evidence. This has included: literature reviews of existing research and statistical reports on children in the education, health, social care (prior to entry into the justice system); literature reviews of existing research and statistical reports of children in the justice system; reviews of current policy and practice in youth justice; and literature reviews of research and statistics on what happens to children after they leave the justice system. These existing sources revealed extensive evidence on children (in general) in the justice system and recommendations for reform made over many decades that have still not been implemented. To obtain additional evidence particularly on children with SEND and neurodivergence, the Working Group issued a call for both oral and written evidence. We are extremely grateful to all those experts, practitioners and interested parties across the UK who provided evidence and made a valuable contribution to this Review²⁹.

Economic evaluation

The Working Group also commissioned an economic analysis of the different recommendations in this report³⁰. This reflects the rigour of this Review's approach and our focus on measures that are economically viable and demonstrated to be cost effective. The economic evaluation draws on government data, with some data also from academic publications and some input and assumptions informed by expert opinion. Where relevant, the anticipated costs³¹ and benefits of the recommendations are divided into the direct financial impact on government spending and the total economic impact from a societal perspective. Key benefits hypothesised for the recommendations are reducing reoffending and reducing the number of children proceeded against at court. The economic benefits of reducing reoffending include the wellbeing benefits of avoiding future victims. It was not possible to include the wellbeing benefits of the recommendations for the children entering the criminal justice system themselves in the

²⁹ A list of those individuals and organisations that provided written and oral evidence is provided in Appendix B.

³⁰ Some recommendations were deemed to have no, or only minor, resource implications, so were excluded from the economic analysis.

³¹ Costs are inflated to 2023, using the Consumer Price Index (CPI).

analysis. This is because there currently exists little to no evidence in relation to this. Additional research in this area is urgently needed.

Children and the justice system

There has been increasing acknowledgement of the need for the justice system to treat children differently from adults. The overarching principles are set out in both international and domestic legislation. The United Nations Convention on the Rights of the Child (UNCRC) sets out a number of key principles, including:

- The best interests of the child must be a top priority in all decisions and actions that affect children (Article 3);
- Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously (Article 12);
- Arrest, detention or imprisonment of a child shall be a measure of last resort and for the shortest appropriate period of time (Article 37);
- States shall treat child offenders in a manner that takes into account their age and the desirability of promoting their rehabilitation and reintegration into society. This includes measures for dealing with children without resorting to judicial proceedings (Article 40).

In domestic law, the Children Act 2004 requires public bodies to safeguard and promote the welfare of children. In addition, domestic law also requires courts to take account of the principal aim of the youth justice system, which is to prevent offending by children³² and have regard to the welfare of the child.³³

Scale of the issue: number of children in the criminal justice system

In comparison to adults, only a relatively small number of children are now prosecuted each year for criminal activity. As a result, the youth justice system is often described as a “success story”³⁴. However, these improvements “mask some very significant challenges in both policy and practice”³⁵ including the over-representation of children with special educational needs.

Each year approximately 100,000³⁶ children under 18 have encounters with the criminal justice system. How those encounters are handled at each stage of the justice process will impact on a very substantial number of children. Of the children who are reported for a crime, the vast majority commit low-level property and drug crimes and are diverted from the justice system

³² Crime and Disorder Act (CDA) 1998 s37(1)

³³ Children and Young Persons Act 1933 s 44(1)

³⁴ Association of Directors of Children’s Services et al (2021)

³⁵ *ibid.*

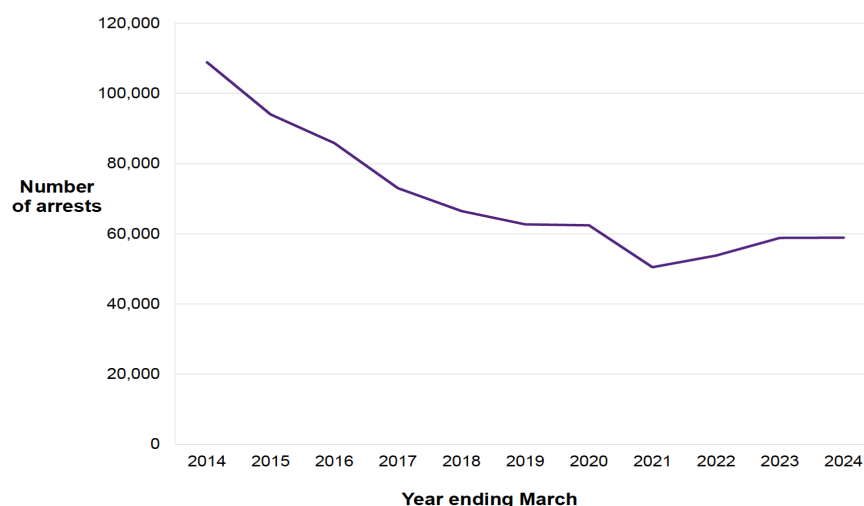
³⁶ In the most recent reporting year 2023-24, there were 103,135 stop and searches of children. See Youth Justice Board (2025)

and given support in the community. However, government statistics are not able to say how many children who come into contact with police are diverted from formally entering the youth justice system through Community Resolutions or other diversionary outcomes as this is not currently captured in recorded data. According to HM Inspectorate of Probation: “Because diversion is not recorded at a national level, there is no national (re)offending data for diverted children. Nor is there any national data on how diversion may have helped children with their unmet needs such as mental or physical health”.³⁷ This is a major information gap that needs to be filled.

Recent changes in the historical downward trend in children in the criminal justice system

Policy changes over the last decade have led to changes in the number and characteristics of children in the criminal justice system. Arrests of children have declined substantially over the last decade, from over 100,000 in 2014 to under 60,000 in 2024; child first time entrants (FTEs) into the youth justice system have fallen from over 23,000 in 2014 to just over 8300 in 2024; and the number of children receiving a caution or sentence in 2024 was 67% lower than 10 years ago. However, in recent annual statistics, there has been a change in some of these historical downward trends. As the chart below shows, the number of arrests of children appears to have plateaued since 2019 (excluding the Covid-related fall in 2020-21).

Figure 1.5: Number of arrests of children for notifiable offences, England and Wales, years ending March 2014 to 2024



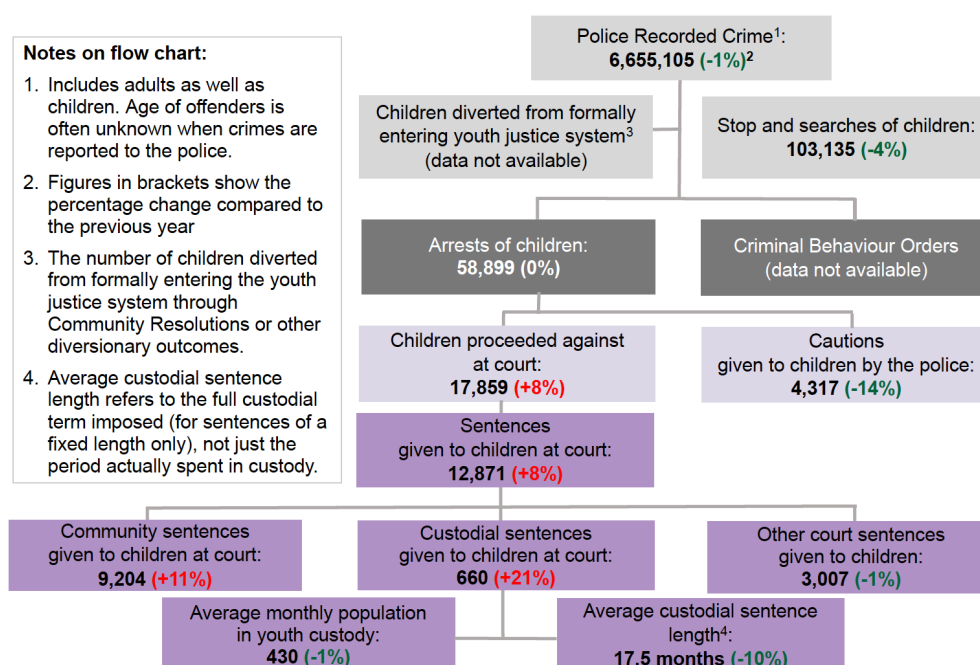
Source: *Youth Justice Statistics 2023 to 2024*, Youth Justice Board (January 2025)

In the most recent reporting year, there was an 8% increase in the number of children proceeded against at court, which was the second consecutive year-on-year increase. There

³⁷ See: <https://www.justiceinspectors.gov.uk/hmiprobation/research/the-evidence-base-youth-offending-services/specific-types-of-delivery/diversion/>

was also an 8% increase in sentences given to children at court. Of these, custodial sentences increased 21% in a single year, which was the first year-on-year increase in custodial sentences in the last decade. Community sentences also increased 11% in the same year. While the latest figures show that the number of children in custody is at its lowest on record (with an average of 430 children detained), children held on remand accounted for 43% of all children in youth custody. And almost two thirds (62%) of these children remanded to youth detention accommodation did not subsequently receive a custodial sentence³⁸.

This increased use of remand for children, the increased use of formal court proceedings against children and increased use of custodial sentences for children indicates a concerning reversal of downward trends in recent years.



Source: *Youth Justice Statistics 2023 to 2024*, Youth Justice Board (January 2025)

Children with SEND and neurodivergence in the youth justice system

Children with SEND are disproportionately represented in the criminal justice system. Research indicates that a significant percentage of child offenders have undiagnosed or unsupported SEND, which contributes to their offending behaviour.³⁹ The prevalence of neurodevelopmental disorders among child offenders is alarmingly high⁴⁰ as illustrated in Table 2.

³⁸ Youth Justice Board (2025) chapter 6.

³⁹ Lang & Kahn (2014)

⁴⁰ Hughes et al. (2012)

Table 2: Prevalence of neurodevelopmental disorders among child offenders.

Neurodevelopmental disorder	Child offenders	General population
Learning Disabilities	23% - 32%,	2% – 4%
Specific Learning Difficulties	43% - 57%	10%
Communication Disorders	60% - 90%	1% – 7%
ADHD	11.7% for males 18.5% for females	1% – 2%
Autistic Spectrum Disorders (ASD)	15%	0.6%- 1.2%
Foetal Alcohol Spectrum Disorders (FASD) ⁴¹	10.9% - 11.7%	0.1% - 5%

Source: Hughes et al., 2012

We received evidence that:

*The prevalence of SEN in the youth justice system appears to be greater than statistics may indicate.... Existing research highlights significant gaps in awareness and training on neurodiversity; limited or patchy availability of tools to identify neurodivergent individuals; and a lack of adapted approaches for neurodivergent suspects in the context of both policing and courts.*⁴²

Reductions in the number of children held in custody mean that the child custody population today predominately consists of those who have committed serious and violent crimes, and are very vulnerable children with complex needs who exhibit high levels of co-occurring physical, mental and social needs. Government statistics state that 80% of children in the criminal justice system either have an Education, Health and Care Plan (EHCP) or receive special educational needs and disability (SEND) support. A much higher proportion of children in the criminal justice system have speech, language and communications needs (SLCN) compared with the general population: 70-90% compared to about 10% of the general population.⁴³ In 2020, of those children sentenced who had a needs assessment, there were concerns in relation to speech, language and communication in 71% of cases.⁴⁴

⁴¹ A study in Western Australia found a high prevalence of foetal alcohol spectrum disorder (FASD) among young offenders. Among those with FASD, the majority exhibited severe neurodevelopmental impairments, including deficits in executive functioning, memory and adaptive behaviour, which hindered their ability to understand and comply with legal processes and rehabilitation programmes. See Bower et al. (2018)

⁴² Dr Tom Smith, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

⁴³ Youth Justice Board and Ministry of Justice (2020); Bryan et al (2007); Bryan et al (2015)

⁴⁴ See HM Inspectorate of Probation report on Youth Courts: <https://hmiprobation.justiceinspectores.gov.uk/our-research/evidence-base-youth-justice/specific-types-of-delivery/youth-courts/>

But it is likely that the proportions of children in the criminal justice system with SEND or neurodivergence is even higher. In the past, studies have shown that neurodivergence is often undiagnosed among children entering the youth justice system. An estimated 400,000 children (around 3% of all children in England) are seeking support from health services for a suspected neurodevelopmental condition. Thousands are waiting more than two years for their first appointment, while others have had to wait over four years for diagnosis and professional support – highlighting stark inequalities in healthcare for some groups of children.⁴⁵

Child defendants in the Crown Court

Of the over 18,000 children proceeded against at court, HM Inspectorate of Probation estimates that two thirds (67%) of these proceedings were for indictable offences, 19% were for summary non-motoring offences and the remaining 14% were for summary motoring offences. The most serious offences involving child defendants will be tried in the Crown Court, but it has not been possible to determine from any government statistics how many child defendants appear in the Crown Court. Despite there being official Youth Justice Statistics⁴⁶, these do not report the number of children tried in the Crown Court. Previous youth justice statistics reported the number of “sentencing occasions” for children in the Crown Court, but now even this is not reported in the official statistics.

What can be gathered from past reporting is that just 4% (around 460) of all sentencing occasions⁴⁷ of children were at the Crown Court. This may be an underestimate as the average time from offence to completion for criminal Crown Court cases is just under a year, so many defendants may become adults between offence and sentencing. This proportion has remained broadly stable over the last ten years, varying between 4% and 6%. The fact that the Crown Court tries the most serious cases is reflected in the types of sentences given. In the year ending March 2023, custodial sentences were given in around half (just under 230) of the just over 460 sentencing occasions of children at the Crown Court⁴⁸.

How the Review addressed wider challenges in public services

Addressing the needs of SEND and neurodivergent children who have broken the law inevitably brings in to play the reduction in public services, predominantly due to austerity, that have been particularly harmful to children. These include:

⁴⁵ Children’s Commissioner (15 October 2024): <https://www.childrenscommissioner.gov.uk/blog/childrens-commissioner-warns-of-invisible-crisis-as-delays-and-inequalities-laid-bare-among-children-with-neurodevelopmental-conditions/>

⁴⁶ Youth Justice Board (2025)

⁴⁷ This is a concept not clearly defined in official statistics, making it unclear whether it is an accurate reflection of the number of individual children sentenced.

⁴⁸ Youth Justice Board (2024)

- increased siloed working resulting in a lack of continuity of care;
- reduction in early help and early intervention;
- court and tribunal backlogs which can mean children spending more time in custody waiting for court cases;
- children waiting for SEND assessments, meaning they cannot access the services they need in a timely manner;
- less time to put in place tailored interventions that meet the needs of individual children.

This report focuses primarily on changes that can be made within the criminal justice system without the need for primary legislation to meet the needs of this cohort of children and yield better outcomes for society. It focuses on improving knowledge and skills amongst the police, legal professionals and judges, as well as improved data collection and analysis. These reforms are focused on maximising public safety and increasing the likelihood that SEND and neurodivergent children who commit crime will go on to become well-functioning, law-abiding adults.

Chapter 2. Preventing children entering the criminal justice system

This chapter addresses children's vulnerabilities before contact with the justice system, the role of schools, health and social care and current challenges in these areas.

Findings

- Children with SEND and neurodivergence are more likely to be excluded from school, which makes them at a higher risk of becoming victims or perpetrators of crime.
- Early identification of SEND and neurodivergence is crucial. However, this is often inadequate due to a lack of awareness, training and resources in schools.
- Family support is crucial in mitigating the risks of offending. However, families often lack the resources and knowledge to support their children effectively.
- Co-location of support services is necessary for better intelligence, interdepartmental communication and emphasis on early intervention prior to contact with the justice system.

Recommendations

- Compulsory teacher training in SEND/neurodivergence to help improve early identification.
- Creation of an Independent Reviewer of Youth Justice charged with (1) overseeing the implementation of the Review's recommendations, and (2) conducting an annual review of multi-agency coordination (Department of Health & Social Care, Department for Education, Ministry of Justice/HMCTS, Home Office, Youth Justice Board) and communication between families, schools, health services, social services, police, courts and tribunals.

How SEND and neurodivergence contributes to and intersects with child offending

The youth justice population is a concentrated mix of vulnerable and complex children who have high levels of co-occurring physical, mental, and social needs.⁴⁹ SEND can exacerbate challenges in communication, emotional regulation and social interaction, making children more vulnerable to engaging in criminal behaviour. Children with SEND frequently encounter significant obstacles in avoiding criminal behaviour due to insufficient support systems, negative educational experiences and socio-economic challenges.⁵⁰ The lack of appropriate support and intervention often leads to school exclusion and subsequent involvement in criminal activities.⁵¹ Teenagers who are permanently excluded from school are twice as likely to commit

⁴⁹ Day (2022)

⁵⁰ Mishna & Muskat (2014)

⁵¹ Dowse et al. (2016)

serious violence within a year of their expulsion than those who were merely suspended.⁵² Many children with cognitive and/or neuro disabilities have often also experienced trauma, abuse and neglect. For example, a recent study examining the pathways of children into custody found that of the 48 children interviewed, 19 had diagnosed/ undiagnosed mental ill health, neuro disability, or SEND and all of them had experienced trauma, abuse and/or neglect in early childhood⁵³. Children with foetal alcohol spectrum disorders (FASD) are more likely to exhibit behaviours that lead to criminal activity, such as impulsivity, poor judgment and difficulties with social interactions. These behaviours are often misunderstood and inadequately addressed within the justice system.⁵⁴

These issues are compounded for “care experienced children”⁵⁵ who face multiple adversity, they are criminalised at higher rates,⁵⁶ often as a direct consequence of their care experience, and have higher rates of SEND and neurodivergence. “Looked after children” are four times more likely to have a special educational need and five times more likely to be permanently excluded from school than any other group of children⁵⁷. Research shows that the care system accelerates children into the youth justice system by criminalising them at a disproportionate rate over and above other children⁵⁸. Living in residential care, running away from care placements, being vulnerable to child criminal exploitation (CCE) and an increased likelihood of homelessness⁵⁹ are all linked to care-experienced children having disproportionate involvement with the justice system. ONS statistics show that 92% of care experienced children who received a custodial sentence by the age of 24 were identified as having special educational needs.⁶⁰

Neurodivergence is now the norm among children in the justice system

Children with neurodivergence often suffer from systemic failures in identification and support, which worsen their conditions and contribute to their involvement in criminal activities.⁶¹ For children in the justice system, childhood traumas often overlay with their neurodivergent conditions and can sometimes dominate the justice system response, without consideration of

⁵² Arnez & Condry (2021)

⁵³ Day et al (2020)

⁵⁴ Bower et al. (2018)

⁵⁵ A term used to describe someone who has spent time in care such as adoption, foster care, kinship care, private foster care arrangement, supervision order, residential care or any residential placement provided by your local authority.

⁵⁶ See: Department for Education, Home Office and Ministry of Justice (2018)

⁵⁷ Department for Education (2018) and (2019)

⁵⁸ Day et al (2023)

⁵⁹ Day et al (2020); Howard League for Penal Reform (2016); Shaw (2014)

⁶⁰ ONS (2022)

⁶¹ Hughes et al. (2012)

how the neurodivergence interplays with the trauma.⁶² Comorbidity of neurodivergence and mental health conditions, such as ADHD and anxiety is common⁶³.

Neurodivergent children in the justice system also tend to be more socially disadvantaged, experiencing poverty and social exclusion at higher rates.⁶⁴ Diagnostic “overshadowing” is common amongst children from lower socioeconomic backgrounds; this is where social, emotional and mental health (SEMH) needs are diagnosed rather than autism or speech and language challenges.⁶⁵ Often the identification of neurodivergence is dependent on the specialism of the person to whom the child is referred; for example, a professional screening for ADHD may not also consider the possibility of a traumatic brain injury despite the similarity of symptoms.⁶⁶

Disproportionality

Research has also highlighted demographic variations in the prevalence of SEND and neurodivergence. Some research has shown that male and Black or Mixed White and Black children more frequently identified with educational difficulties.⁶⁷ Other research has shown that Irish Traveller, Gypsy and Roma pupils had higher incidents of identified SEND compared to the general school population, and that children in care are also significantly more likely to have SEN than their peers.⁶⁸ Studies indicate notable differences in the prevalence of neurodisability among male and female children, with males being more significantly affected.⁶⁹ However, among children who have both neurodisabilities and are involved in multiple systems (such as the child welfare and juvenile justice systems), girls are more likely than boys to have gone through numerous difficult or traumatic experiences during their childhood.⁷⁰ These demographic disparities suggest systemic biases in the identification and support processes, where minority and male students are more likely to be labeled with behavioural issues rather than receiving appropriate support for underlying SEND.⁷¹ Although girls represent a smaller percentage, they exhibit higher rates of mental health issues⁷² and may require different types of

⁶² Kirby (2021) 4

⁶³ Hughes et al (2012) 43

⁶⁴ Ibid. 44

⁶⁵ Kirby (2021) 6

⁶⁶ Ibid. 7

⁶⁷ Blanchett (2006)

⁶⁸ Centre for Justice Innovation (2023) p.5.

⁶⁹ Baidawi & Piquero (2021)

⁷⁰ Research has shown that while males often display higher rates of neuro-disabilities, such as ADHD and autism spectrum disorders, females with a neuro-disability are more likely to have encountered extensive trauma and social disadvantages. See Lang & Kahn (2014); Hughes et al (2012)

⁷¹ Harry & Klingner (2006)

⁷² Cruise et al (2011)

support compared to their male counterparts.⁷³ The intersection of race, sex and disability highlights the compounded disadvantages faced by these groups of children.⁷⁴

Link between school exclusion and offending

The Timpson Review⁷⁵ highlighted that children excluded from school are at a higher risk of becoming victims or perpetrators of crime, and a 2025 study found that teenagers in England and Wales who are permanently excluded from school are twice as likely to commit serious violence within a year of their expulsion than those who were merely suspended.⁷⁶ School exclusion can lead to social isolation and increased susceptibility to negative peer influences, which in turn may contribute to delinquent behavior.⁷⁷ Excluded students often face barriers to accessing alternative education, leading to academic underachievement and limited future opportunities.⁷⁸ Excluded students also frequently experience a lack of stability and support, exacerbating behavioural issues and reducing their ability to engage positively with their communities.⁷⁹ Longitudinal studies have shown that exclusion from school is a predictor of poorer mental health outcomes and increased involvement with the criminal justice system in adulthood.⁸⁰

SEND, neurodivergence and school exclusions

Children with SEND are at a higher risk of being excluded from school due to behavioural issues related to their conditions. Mainstream schools often lack the necessary resources to adequately support these students, resulting in increased dropout rates and exclusions.⁸¹ Schools play a crucial role in socialising and supervising children; thus, exclusion removes these protective factors, heightening the risk of delinquency.⁸² Negative school experiences, such as bullying, insufficient support and academic failure can foster a sense of alienation and frustration, potentially leading to criminal behavior.⁸³ These challenges are exacerbated by the lack of adequate alternative educational provisions, resulting in further marginalisation of these children.⁸⁴

⁷³ Chesney-Lind & Shelden (2013)

⁷⁴ Skiba et al (2002)

⁷⁵ Timpson Review (2019)

⁷⁶ Cornish and Brennan (2025)

⁷⁷ Berridge et al (2001)

⁷⁸ House of Commons Education Committee (2018)

⁷⁹ Children's Commissioner (2012)

⁸⁰ McAra & McVie (2010)

⁸¹ Humphrey et al (2014)

⁸² Arnez & Condry (2021)

⁸³ Dowse et al (2016)

⁸⁴ Guerin & Denti (2014)

For neurodivergent children, behaviours linked to their conditions often result in them being labelled negatively. These labels persist throughout their educational journey, leading to repeated short-term exclusions and, eventually, permanent exclusion. Labeling a child as a "troublemaker" can harm their identity and promote further deviance. This labelling fails to address the underlying needs of the children.⁸⁵ Consequently, the approach of labelling and exclusion does not resolve the core problems but instead perpetuates a cycle of alienation and behavioural difficulties.

Need for early identification and support

Addressing the needs of children with SEND within the educational system is crucial to preventing exclusion and its associated negative outcomes, and early identification of SEND is crucial. However, this is often inadequate due to a lack of awareness, training and resources in schools.⁸⁶ Teachers and school staff frequently lack the necessary skills to recognise early signs of SEND, resulting in delayed interventions that could mitigate long-term adverse effects.⁸⁷ Children with unaddressed SEND are more likely to be subjected to suspensions and expulsions, which remove them from the educational environment and contribute to a pathway into the criminal justice system.⁸⁸ These disciplinary actions do not address the underlying issues and can reinforce negative behaviours, making it even more difficult for these children to return to and succeed in mainstream education.⁸⁹ Neurodivergent children also often go undiagnosed until they exhibit significant behavioural issues, which are then misinterpreted as mere misconduct rather than symptoms of underlying conditions.⁹⁰ The failure to screen for multiple conditions often results in undiagnosed or misdiagnosed neurodivergence, leaving children without the necessary support and interventions.

We received evidence from experienced professionals of the failings of the SEND system:

Resource stripped services are tightening their criteria to the point where that earliest possible intervention is just non-existent. You're now in a situation where the lid is on everything to try to keep difficult and troubled and challenging children under some notion of control. I don't know how you wind back from that to a position where everybody's trained in restorative practice or solution finding or family at the table or group conferencing. I don't know how you do it because it's not cheap and we have stripped public services back to where what we're

⁸⁵ Day (2022)

⁸⁶ Lang & Kahn (2014)

⁸⁷ Department for Education (2015)

⁸⁸ Skiba et al (2014)

⁸⁹ Losen & Martinez (2020)

⁹⁰ Kirby (2021)

*expecting is operation of all of them on the cheap. So what they'll do is the statutory stuff, because they've got to and they won't do the early stuff, which is not statutory but deeply, deeply needed.*⁹¹

Statutory provision for children with SEND

In England and Wales, the statutory provision for children with SEND is organised into several main categories as outlined in the "SEND Code of Practice".⁹² The primary types of needs covered under statutory provision include:

- **Communication and Interaction Needs:** This group includes children with speech, language, and communication difficulties (SLCN), as well as those on the autism spectrum (ASD) who may struggle with social interactions and communication.
- **Cognition and Learning Needs:** This category addresses various learning difficulties, from moderate (MLD) to severe (SLD) and profound and multiple learning difficulties (PMLD). It also encompasses specific challenges such as dyslexia, dyscalculia, and dyspraxia.
- **Social, Emotional and Mental Health Needs:** This includes children who face social and emotional challenges that affect their learning. Conditions in this category might include anxiety, depression, self-harm, ADHD and other related issues.
- **Sensory and/or Physical Needs:** This group comprises children with visual impairments (VI), hearing impairments (HI) or multi-sensory impairments (MSI) that require specialised support and equipment. It also covers those with physical disabilities that need ongoing support and adaptations to participate fully alongside their peers.

Problems in implementing SEND policy

The last 10 years of SEND provision in England saw the implementation of the CFA 2014 and the SEND Code of Practice 2015. The implementation of the new policy faced various challenges, including: an overly complex SEND system that parents, children and practitioners perceive as difficult to navigate and ultimately unfair and ineffective; low quality statutory documents which do not contribute to effective provision; underprepared staff and lack of infrastructure and systems to support multi-agency work, including lack of early childhood intervention; uncertainty of definitions and of a consistent framework to conceptualise SEND. SEND assessment in schools is far from universally good, and EHCPs are limited in number and quality, with particular concerns with regard to the health and care elements.⁹³

⁹¹ Maggie Atkinson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

⁹² SEND Code of Practice (2015)

⁹³ See: Palikara et al (2019). Palikara et al (2018, April) Castro et al (2019); Castro-Kemp et al (2021); Castro-Kemp et al. (2019, July); Crane et al (2023); Boesley & Crane (2018)

There is now a general recognition that the SEND system is in crisis. A 2024 independent report commissioned by the County Councils Network and the Local Government Association concluded that the SEND system is broken and does not work for councils, schools and parents alike⁹⁴. A 2024 National Audit Office (NAO) report also concluded that despite a 140% increase in demand for Education, Health and Care Plans (EHCPs) since 2015 and a 14% increase in the number of those with special educational needs support, the SEND system is still not delivering better outcomes for children or preventing local authorities from facing significant financial risks.⁹⁵ In December 2024 the Parliamentary Education Committee launched a major new inquiry focused on finding solutions to the crisis in SEND provision.⁹⁶

Undiagnosed SEND and child offending

This gap in identification and support can lead to a vicious cycle where behavioural issues escalate, further exclusions occur and opportunities for positive development are diminished.⁹⁷ Delay increases the challenges faced by these children, making it harder for them to reintegrate into mainstream education.⁹⁸ When these needs are not addressed early, students often experience frustration and academic failure, which can manifest as disruptive behavior.⁹⁹ For instance, undiagnosed learning disabilities can lead to a cycle of poor academic performance and low self-esteem, which are significant predictors of school dropout and subsequent delinquent behavior.¹⁰⁰ Furthermore, the lack of early intervention can also result in increased mental health issues, such as anxiety and depression, which further complicate their educational and social experiences.¹⁰¹ These mental health challenges are often intertwined with behavioural problems, creating a complex web of issues that require comprehensive support and intervention strategies.¹⁰²

Key role of schools and educational psychologists

Schools and educational psychologists play a critical role in identifying and supporting students with SEND. Effective intervention can significantly improve educational and social outcomes for these students, yet insufficient resources and training often hinder these efforts.¹⁰³ One expert gave an example of the problems of unidentified needs at school:

⁹⁴ *Towards an Effective and Financially Sustainable Approach to SEND in England* an Independent Report by Isos Partnership Commissioned by the County Councils Network & Local Government Association (July 2024)

⁹⁵ National Audit Office (2024) *Support for children and young people with special educational needs* (24 Oct 2024)

⁹⁶ See <https://committees.parliament.uk/work/8684/solving-the-send-crisis/>

⁹⁷ Astle et al (2018)

⁹⁸ Kirby (2021)

⁹⁹ Sullivan & Sadeh (2014)

¹⁰⁰ Meltzer et al (2007)

¹⁰¹ Emerson & Hatton (2007)

¹⁰² Green et al., 2005

¹⁰³ Mishna & Muskat (2014)

*[There are] the boys predominantly who haven't got a diagnosis, who have unidentified need. And everyone is scratching their heads going "How come we're here?" There was a stable home environment. School was a bit bumpy. They maybe missed a bit of school. There were a few exclusions, but they've not had any assessment of their needs.... A lot of parents that I talked to at the initial stages after having difficulties at primary school and then getting into secondary school and having difficulties will say to me after an EHCP has been issued that their two worries were either their child would be dead or their child will be in prison.*¹⁰⁴

Need for specific teacher and teacher assistant training

A lack of funding and limited access to specialised training means that many school staff are not adequately prepared to recognise or address the needs of students with SEND, leading to gaps in support.¹⁰⁵ Additionally, high caseloads for educational psychologists reduce the time they can spend with each student, impacting the quality of assessments and interventions.¹⁰⁶ We received evidence of the variability in training for educators:

*We know that professional knowledge of SEND, specifically neurodivergence is woefully outdated, deficit based, wildly inaccurate and variable. Prevalence rates of autism alone are estimated to be 1:36. Yet professional knowledge is not proportional to occurrence. ... There should be requirements in terms of CPD [Continuing Professional Development] for those that assess and work with young people with SEND.*¹⁰⁷

*Teachers are under-prepared for spotting a child who is struggling to engage with the written word, the spoken word, the nuances and mores of classroom. ... They are under-trained and under prepared. Mary Warnock said it. And we're still saying it.*¹⁰⁸

*I am always amazed at the different ways schools make provision for these children. Some have excellent separate classes for SEND and EHCP students others do not. Those with good provision are heavily subscribed.*¹⁰⁹

¹⁰⁴ Mary Cartlidge, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁰⁵ Lindsay & Dockrell (2012)

¹⁰⁶ National Association of School Psychologists, 2020

¹⁰⁷ Mary Cartlidge, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁰⁸ Maggie Atkinson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁰⁹ Margaret Wilson, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

*We can't screen every child. But I think if there was more knowledge and understanding of what autistic presentation can look like and training across the board for early identification ... it's four years for some children to get an autism assessment. When we rewind it back, you can see where it starts to fall apart.*¹¹⁰

Recommendation: Training to be provided for teachers and teaching assistants in schools that covers managing the socio-emotional and behavioural needs of all pupils, with particular focus on where these may be linked to school exclusion and/or criminal behaviour. Effective early screening and intervention require a comprehensive approach that includes training educators, implementing routine screening procedures and providing adequate resources for support.¹¹¹ Currently, pre-service training for teachers and early years educators on SEND related issues is very limited, often covering only one session within the entire Post Graduate Certificate in Education (PGCE) curriculum of early years qualification. Teachers and especially teaching assistants (who spend a considerable amount of time with children in the classroom) report feeling unprepared to deal with a variety of needs within mainstream classrooms.¹¹²

Training needs to be far more comprehensive at teacher-training level and then be maintained, as a requirement, throughout their professional careers. It should also be multi-disciplinary, and long-term partnerships with universities could provide a vital role in this training. A focus on “discipline” and “behaviour” as well as “attainment” as priorities of the education system over the past few years are now starting to be questioned, as they may signal a lack of awareness and/or sensitiveness to the diversity of socio-emotional needs of children. Evidence shows that focusing on promoting a sense of belonging via improved teacher-child relationships is the main predictor of long-term positive outcomes for children.¹¹³ Therefore, teacher training (pre-service, in-service and CPD) needs to provide a more in-depth and critical recognition of issues impacting the sense of belonging from the children's point of view.

Need for improved family support

Family support (including corporate parenting¹¹⁴) is crucial in mitigating the risks of offending. Positive family involvement can provide stability and support for children with SEND.¹¹⁵ When families are engaged, children are more likely to experience a sense of belonging and support,

¹¹⁰ Mary Cartlidge, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹¹¹ Cleaton & Kirby (2018)

¹¹² Neaum & Noble (2023)

¹¹³ Allen et al (2021)

¹¹⁴ See: <https://www.gov.uk/government/publications/applying-corporate-parenting-principles-to-looked-after-children-and-care-leavers>

¹¹⁵ Mishna & Muskat (2014)

which can reduce feelings of alienation and promote better behavioural outcomes.¹¹⁶ Effective family involvement includes not only emotional support but also active participation in educational and therapeutic interventions, which has been shown to improve academic and social outcomes for children with SEND.¹¹⁷ Programmes that offer parent training and support groups can help families develop the skills needed to manage their children's needs and advocate for appropriate services.¹¹⁸ Such programmes should be available to all those in corporate parenting roles from foster carers to staff in children's homes and virtual schools.

However, families (and those in a corporate parenting role) often lack the resources and knowledge to support their children effectively.¹¹⁹ Many families face economic constraints, limited access to information and a lack of understanding about SEND, which can hinder their ability to provide the necessary support.¹²⁰ Additionally, systemic barriers such as inconsistent communication between schools and families and a lack of accessible support services further complicate the situation.¹²¹ Research indicates that parents of children with SEND frequently experience higher levels of stress and burnout, which can negatively impact their ability to provide effective support.¹²² This was supported by the evidence we received from experts:

*Many parents appear to be struggling to find the right school for these children. The children's problems can seem huge, but assessments are difficult to obtain, and the parents have no idea how to approach the problem - thus missing out on a suitable placement.*¹²³

Interventions such as early screening for neurodisabilities, mentoring, family therapy and liaison programmes linking families with appropriate support have been found to be effective in many countries in helping families under pressure to cope. As part of the Youth on Track scheme in Australia, case-workers conducted screening of children for cognitive disabilities using a validated tool to determine if further assessment is required. Alongside mentoring and family support, this

¹¹⁶ Loeber & Farrington (1998)

¹¹⁷ Walker et al (2015)

¹¹⁸ Webster-Stratton (2001)

¹¹⁹ Kirby (2021)

¹²⁰ Emerson & Hatton (2007)

¹²¹ Turnbull et al (2011)

¹²² Plant & Sanders (2007)

¹²³ Margaret Wilson, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

*programme demonstrated promising results in terms of improvements in pro-social behaviour and engagement in school or employment.*¹²⁴

Interplay between poverty, family dysfunction and limited support

Children from disadvantaged backgrounds are more likely to face conditions that contribute to criminal behaviour, such as poverty, family dysfunction and limited access to supportive services.¹²⁵ These socio-economic factors significantly impact the development and behaviour of children, often increasing the challenges posed by SEND.¹²⁶ The interplay between poverty and family dysfunction can lead to a lack of stability, inconsistent parenting and exposure to criminal behaviour, further increasing the risk of youth offending.¹²⁷ These factors often intersect with SEND, creating a complex web of challenges that require multifaceted intervention strategies.¹²⁸ The lack of family support is compounded for care experienced children, as the evidence suggests there is an absence of a constant adult figure or stable address (e.g. children often have multiple placements and frequent changes of social worker, create further barriers to accessing support). Children in care and excluded from school therefore face possible double jeopardy, so a coordinated approach involving the social care system, the education system and the health system is needed to ensure that children in all settings have their needs identified early.

The current policy (under the Children and Families Act 2014) expects schools to provide the coordination. But it also expects education, health and social care to work together. One of the main criticisms of this policy since it was put forward in 2014 is that there has been no guidance or systems put in place to facilitate such cross-departmental work. So in practice education is almost always the sector that is expected to pick up assessment and deliver provision. Some local authorities and individual settings manage their own systems and are able to coordinate services with health providers and social care where needed. However, this is rare, and particularly so in relation to social care. This issue is widely discussed in the field of SEND and has been highlighted by practitioners.¹²⁹ It is likely that this lack of coordination is behind the

¹²⁴ Collaborative written evidence submitted to the Sieff Foundation Working Group on behalf of Professor Huw Williams, Dr Hope Kent, Frances Sheahan, Professor Stan Gilmour and Professor Nathan Hughes, chair of the Acquired Brain Injury Justice Network (ABIJN) (March 2024)

¹²⁵ Dowse et al (2016)

¹²⁶ Farrington (2005)

¹²⁷ Murray & Farrington (2010)

¹²⁸ Arnez & Condry (2021)

¹²⁹ Palikara et al (2019)

late detection of needs that might be present in many children ending in the youth justice system.¹³⁰

Need for co-location of support services for better intelligence, communication and emphasis on early intervention prior to contact with the youth justice system

Schools and community organisations should work collaboratively to improve family support by providing resources, education and counseling to help families develop the skills they need to manage their children's needs and advocate for appropriate services. Co-location of support services for better intelligence, interdepartmental communication and emphasis on early intervention prior to contact with the youth justice system requires coordination and joint working between a range of government departments, local authorities, schools and youth support services.

In evidence, Professor Hannah Smithson explained the need for consistency that comes with co-location of services:

What I have found in my work over the years is that when you ask children what they find most frustrating is the numbers of professionals in their lives and the amount of different people they are telling their stories to and that lack of consistency. So it's very simple. What they want is one maybe two trusted professionals in their lives who understand exactly what that child has experienced.

There is also something about joined up provision that is really, really important. And I'm talking about children and social care, education and the youth justice system.... Anything that we do in terms of trying to support neurodiverse children better in the education system, in the criminal justice system, is that it's got to be systemic. One part of the system cannot do this alone.¹³¹

John Drew, former Chief Executive of the Youth Justice Board, explained that:

At a national level it is the responsibility of the Youth Justice Board to advise the respective Secretaries of State on these issues, and how well the current system is serving children (including children who are harmed ['victims']). I am unaware of any forum in which these issues are discussed across government, and this represents an obvious gap that should be filled.¹³²

¹³⁰ See discussion at a Policy Exchange forum on 9 January 2025:

<https://publicpolicyexchange.co.uk/event.php?eventUID=PA09-PPE>

¹³¹ Professor Hannah Smithson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹³² John Drew CBE, Written evidence submitted to the Sieff Foundation Working Group inquiry (15 March 2024)

We received evidence of the success of previous co-location of services:

Under “Every Child Matters”, everybody was co-located - with health, with police and community support officers, with youth workers, with whoever else. You found the biggest building you could get that was usable and had free space, and you deliberately co-located the early intervention teams.... The issue of an expectation to collaborate and cooperate with communities at the centre has never gone away. But what's happened in a resource stripped system is that people have retreated back into their silos. All of them are really struggling to find the time to come around the table to do problem solving. [But when they do] the silo boundaries drop and people come together and do work in teams and kids with needs are spotted early. The teacher who comes across the young man who's just spent a night in the cells and has come to school dirty, dishevelled and all the rest of it, has no idea how to deal with him, with his anger, with his grief, with his worry. And he's got all the special needs that nobody in that police station ever managed to notice because they've not been trained.¹³³

An example of good practice is that most of the Youth Justice Teams in Greater Manchester had seconded CAMHS support. They could have been seconded in for two years, four years. So they were actually part of the team, which meant that they were co-located. What came across very strongly was this co-location of provision. So if you're working with a child who is suffering from any kind of mental health illness, one of the beauties of co-location was that you literally just turn over your shoulder in the chair that you sat in in the office and the CAMHS worker is two chairs behind.¹³⁴

Recommendation: The creation of an Independent Reviewer of Youth Justice.

This individual would be responsible for reporting on how well responsible agencies and government departments (Department of Health and Social Care, Department for Education, Home Office, Ministry of Justice/HMCTS, Youth Justice Board) coordinate with each other and communicate between families, schools, health services, social services, police, courts and tribunals to action coordinated support.¹³⁵

¹³³ Maggie Atkinson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹³⁴ Professor Hannah Smithson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹³⁵ See the approach adopted in Ireland. *Supporting Access to the Early Childhood Care and Education (ECCE) Programme for Children with a Disability, Report of the Inter-Departmental Group* (September 2015): <https://aim.gov.ie/app/uploads/2021/05/Inter-Departmental-Group-Report-launched-Nov-2015.pdf>

Chapter 3: Improving children's first contact with the criminal justice system

This chapter covers current practice in the police, prosecution and legal profession.

Findings

- The criminal justice system retains a number of outdated features that are harmful to children, particularly those with SEND and neurodivergence.
- There is no universal screening system for neurodiversity among children in the justice system.
- There is a lack of understanding of neurodivergence amongst professional in the youth justice system, including, police and legal representatives, many of whom are not often trained in how to best interact with neurodivergent children.

Recommendations

- Mandatory screening of child suspects for SEND and/or neurodivergence at police stations.
- Compulsory training in SEND and neurodivergence in children for police and legal representatives who engage with children in the youth justice system.
- Intermediaries to be present during police interview for all child suspects where mandatory screening has identified SEND or neurodivergence.
- Improved conditions of custody at police stations.

Justice system features that are harmful to children

We received evidence that the criminal justice system in England and Wales retains a number of outdated features that are harmful to children, particularly those with SEND and neurodivergence. Some evidence givers took the view that "*Children with developmental delays or neurodevelopmental disorders or disabilities... should not be in the child justice system at all.*"¹³⁶ Others called for far-reaching change within the youth justice system:

In truth, a radical new system, which is cross cutting and providing early intervention and support for the most vulnerable, such as children in care and those who are permanently excluded from schools, would be the only way to ensure effective and deliverable outcomes. ... An overarching Steering Group of

¹³⁶ Collaborative written evidence submitted to the Sieff Foundation Working Group on behalf of Professor Huw Williams, Dr Hope Kent, Frances Sheahan, Professor Stan Gilmour and Professor Nathan Hughes, chair of the Acquired Brain Injury Justice Network (ABIJN) (March 2024)

*cross government, multi-agency, judiciary and third sector representing individuals responsible for sharing information and strategies and enabling a joined up thinking approach to a new system would be the minimum requirement.*¹³⁷

We received evidence of examples of innovative cross-cutting practice in individual areas of England, but also of large geographical discrepancies in how children are dealt with in the justice system. One example of innovative practice is Youth Court Solutions in Northamptonshire. Dominic Goble JP explained how this wrap around service developed:

Ten years ago in Northamptonshire we started to take a different approach. We started to put in place some innovative practises within the existing legal structure to ensure that the youth justice system is wholly focused on children, and that our sentences are structured in that way and that all the agencies that we were trusting our sentences to were doing all we were expecting them to once the order had been passed. From our sentencing review panels here in Northamptonshire to our problem solving sentencing hearings over the last few years, we've had a wrap-around service called Youth Court Solutions. We've managed to lower the reoffending rate in Northamptonshire from the national average of 31% down to 8%....

It was abundantly clear to me that the children who were coming before the courts ... were being traumatised. And here I speak about all of them, not just the children who offend, not just the victims but also the witnesses. That's why we recognised that everybody who walks in through the front door of a courthouse is experiencing some degree of trauma and is involved in the criminal justice system. And so Youth Court Solutions is there at the front door to greet everybody....

*Up until recently, we were managing to make contact with 80% of the children and young people who are finding themselves in the courtroom. We're now hitting 100%. What we didn't expect was that the effect on reoffending was going to be quite so dramatic [36% reduction in reoffending].*¹³⁸

Other evidence givers highlighted the variability in approach across England.

¹³⁷ Meleri Tudur, Written evidence submitted to the Sieff Foundation Working Group (31 May 2024)

¹³⁸ Dominic Goble, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

*I just wanted to highlight the very massive geographical discrepancies between how things are dealt with in and outside of London, and the CPS guidance that says that if you are under the age limit then a youth conditional caution should be your first port of call. More and more in London, they're not even following their own guidance.*¹³⁹

And even with Youth Court Solutions, Dominic Goble stressed that “*Northamptonshire is a relatively small county. It's still taking a number of years to try and pursue a cultural change*”.¹⁴⁰

Lack of understanding and training

A 2024 study found that, due to a lack of basic training for police around SEND, it was uncommon for police to consider SEND in either their approach to communicating with and handling children or in their decision-making around whether children might be eligible for diversion. The study also found that solicitors and appropriate adults lacked training to enable them to adequately support children with SEND in their contact with the police.¹⁴¹ One constant criticism we heard was the lack of understanding about neurodivergence amongst professionals in contact with children:

*That lack of understanding of neurodiversity among professionals, how to appropriately support neurodivergent children, appropriate interventions and harmful environments all lead to substandard levels of treatment for neurodivergent children in the system.*¹⁴²

This can result in disadvantage in relation to diversion away from the youth justice system. The Youth Justice Board outlined how this can happen:

*The behaviour of neurodivergent children may not be recognised as a manifestation of their condition or may be misinterpreted, which could make them more likely to be arrested, and diversion away from custody and the youth justice system may not be considered.*¹⁴³

¹³⁹ Mel Stooks, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁴⁰ Dominic Goble, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁴¹ McDonald-Heffernan & Robin-D'Cruz, (March 2024)

¹⁴² Youth Justice Board, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

¹⁴³ Criminal Justice Joint Inspection (2021) cited in the Youth Justice Board written evidence submission to the Sieff Foundation Working Group (March 2024)

Youth diversion schemes vary widely across England and Wales and there is large scope for professional discretion to be exercised from decisions about who is eligible right through to what constitutes non-compliance.¹⁴⁴ This can have a disproportionately negative impact on neurodivergent children due to the misinterpretation or misunderstanding of their behaviour mentioned above.¹⁴⁵

Features of police practice that are harmful for children, particularly those with SEND and neurodivergence

No universal screening system for neurodivergence among children in the justice system

While there are a plethora of screening tools used at different justice system stages to identify a variety of needs of neurodivergent children, they are used inconsistently and quite often no screening is taking place at the point a child first comes into contact with the justice system.¹⁴⁶

We received evidence from a range of academic experts and practitioners, which all reinforced the view that: *“there is an urgent need to develop effective and accessible screening tools and support services to identify neurodiverse individuals as early in the process as possible, to ensure appropriate accommodations thereafter.”¹⁴⁷*

A group of experts submitted joint evidence that:

Insufficient professional training and a lack of appropriate assessment and screening tools have been repeatedly shown to limit the identification and support of children with neurodevelopmental disabilities at various stages of the criminal justice system.¹⁴⁸

Their collective recommendation was that:

...children in conflict with the law should be screened for the presence of neurodevelopmental disabilities at the earliest opportunity. Professionals working within the justice system should be supported to identify the indicators of prominent disabilities and to understand the implications for behaviour and engagement, even if diagnosis is not possible. Better still, information about young

¹⁴⁴ Citation in YJB submission

¹⁴⁵ Youth Justice Board, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

¹⁴⁶ Criminal Justice Joint Inspection (2021) 24

¹⁴⁷ Dr Tom Smith, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

¹⁴⁸ Collaborative written evidence submitted to the Sieff Foundation Working Group on behalf of Professor Huw Williams, Dr Hope Kent, Frances Sheahan, Professor Stan Gilmour and Professor Nathan Hughes, chair of the Acquired Brain Injury Justice Network (ABIJN) (March 2024)

*people should be shared between services and professionals that know them best – specifically, assessments and understandings of SEN and neurodiversity in schools should inform justice system responses.*¹⁴⁹

There is confusion regarding who is responsible for assessing a child's fitness to be interviewed at the police station. If detained at the police station, the custody officer should assess the child's physical and mental state but is not required to consider their language and communication skills. The interviewing officer is not required to consider the child suspect's capacity to be interviewed. Appropriate adults are not trained to make any assessment of the child. Legal representatives are also not trained to make such an assessment and will rarely have access at this early stage of proceedings to information held by education, health and social care that could provide them with a better understanding of the child's cognitive state.¹⁵⁰

AssetPlus assessments

Youth Justice Services (YJS) conduct needs assessments of the speech, language and communication needs of children in the justice system, but this screening (AssetPlus) is completed by a youth justice worker for children who have been sentenced or diverted. This means any screening usually takes place after sentence, for a Pre-Sentence Report or as part of an assessment for a diversion panel. It is therefore completed **after** a child has been to the police station and is arguably **too late**. As well as the timing of these assessments, several other aspects of the AssetPlus work against its effectiveness as a current screening tool for children in the justice system. First, it is designed to screen for Speech, Language and Communication Needs (SLCN) and SEND but does not focus on neurodivergence. Second, if issues are identified, then a more in-depth assessment is flagged as required, which would be completed by a speech therapist attached to the Youth Justice Service (YJS). However, many YJSs do not have a speech and language therapist because there is a shortage and they are expensive, which means this in-depth assessment is often not completed.

So at present, this screening is not really being utilised by any other agency other than the YJS. One approach would be for AssetPlus to be adapted and expanded to cover all forms of neurodivergence, and for the assessment to be undertaken as soon as a child enters the justice system (i.e. at point of arrest or when brought into the police station).

¹⁴⁹ Ibid.

¹⁵⁰ Kemp (2023) 69-71

Inappropriate approach of current justice responses to children who commit offences

The youth justice system has historically focused on managing risk and responding to a child's behaviour rather than addressing the underlying needs that cause the behaviour. Within that risk-based framework, neurodivergence is seen as a deficit or risk factor – the manifestation of which needs to be controlled – rather than as a difference or need.¹⁵¹

It was noted in evidence from the Youth Justice Board that:

*Assessments and initial interviews in youth justice services can place a responsibility on children to participate 'actively' and 'positively', which again, can present issues for neurodivergent children, particularly those with communication challenges.*¹⁵²

The Youth Justice Board's "Child First" strategy provides an alternative approach that recognises developmental differences and focuses on meeting unmet needs and building on strengths to prevent offending.¹⁵³ However, research shows that Child First justice is having a limited impact on front line practice, given the continuation of the often contradictory requirement to risk assess and manage children.¹⁵⁴ For example, many frontline and response officers are required to make a minimum number of arrests, with performance measured by a minimum number of "slips" (the paperwork associated with an arrest). Including children within both individual and force-wide performance measures clearly undermines "Child First" policing for SEND and neurodivergent children, which requires an individualised, welfare-based approach where arrest will not always be appropriate or proportionate.

Often youth justice interventions focus on cognitive behavioural techniques, requiring children to reflect on their own thinking processes to identify unhelpful beliefs and modify behaviours. But these are not appropriate for many neurodivergent children. Similarly parenting courses may be detrimental if they utilise reward and consequence techniques that are counter-productive for neurodivergent children. This can cause them to disengage and become at greater risk of criminalisation, for example by breaching court orders.¹⁵⁵ Other mechanisms, like diversion before criminalisation, require a child to admit personal responsibility and guilt.¹⁵⁶

¹⁵¹ Day (2022) 6

¹⁵² Youth Justice Board, Written evidence submitted to the Sieff Foundation Working Group (March 2024)

¹⁵³ Youth Justice Board (2022)

¹⁵⁴ Day (2023); Hampson (2018)

¹⁵⁵ Hughes (2015) 9

¹⁵⁶ Day (2022) 4

Justice processes such as these assume typical levels of verbal and cognitive competence and serve to disable and further criminalise neurodivergent children.¹⁵⁷

Problems with diversion requiring admission of guilt

We heard evidence of problems with accessing out of court disposals (diversion) without an admission of guilt. In order to be eligible for a youth caution or youth conditional caution, a child has to make admission of guilt. Similarly informal diversion such as community resolution requires an acceptance of responsibility. This means that if children are advised by their lawyer to give a no comment interview, that can render them ineligible for diversion.

*Some officers feel that not only do they need an admission of guilt, but they need remorse as well in order to divert. And so there is a sticking point there that takes them into an adversarial process. In the police interview, we need that problem solving approach that's occurring at the Magistrate's Court and in the Youth Court earlier. We need it to happen at the point when an officer is thinking of arresting a child.*¹⁵⁸

“Outcome 22” (deferred prosecution) is an informal diversion, where a child does not need to make an admission of guilt. But this option is only available for less serious offending, and it is not available in all police areas. We heard evidence that some police forces have not adopted it because it is not considered a solved crime for their statistics.

This reflected wider evidence we received that a lack of police knowledge of SEND and neurodivergence was hampering diversion and charging decisions:

*Diversions are discretionary matters for the police. It's the police exercising their inherent discretion to provide a community resolution. You kind of want to understand why the child acted like that as opposed to just making an assumption. You've got to really look at what's going on here. And that is an area that needs quite deep knowledge or deep professional expertise. The chances of that being available a few hours later in the police station are pretty slim under the current system.*¹⁵⁹

The police should be compelled to work with youth offending teams, to find out about children before a prosecution decision is made.... The youth offending teams have to be involved when the police are called because we've got a

¹⁵⁷ Hughes (2015) 10

¹⁵⁸ Dr Miranda Bevan, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁵⁹ Anthony Hill, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

*massive delay between arrest or being brought in to speak to the police and coming into court. And that's just such a missed opportunity for referral to a youth offending team for getting children back into school when they're not in school. We wait too long before we start looking at the child.*¹⁶⁰

Lack of information about SEND and neurodivergence when making charging decisions

We heard evidence from the CPS that they frequently only receive information about a child's SEND or neurodivergence once a case reaches court, and this new information could have been presented a lot earlier and the case diverted. The CPS told us that as a result they had developed a new tool (CPS Children's Form) which they plan to launch shortly. It is designed to bring together information in one place so that a police officer is better equipped to capture as much information about that child at the earliest opportunity.¹⁶¹

*On that form, we now do have sections which ask about special educational needs and disabilities and asks about a child's experience of trauma, any other vulnerabilities, exploitation. So when that form comes to them, they have that knowledge and understanding of what that means for them and their decision making.*¹⁶²

*I shouldn't be going through that process at the door of court or a few days before court. We need to have the right information at the right time. So making sure we have the right information at the right time means we're more likely to get the decision right at an earlier stage. Adverse child experiences is something that we'd want to understand a lot better, whether that relates to the crime or it just relates to the child as a person.*¹⁶³

The new CPS Children's Form appears to be a welcome improvement. But it is focussed on diagnosed vulnerabilities, and it would not pick up unidentified SEND or neurodivergence.

Lack of police training in how to best interact with SEND and neurodivergent children

There is a lack of awareness, understanding and confidence regarding neurodivergence among frontline police.¹⁶⁴ No specific training or guidance on neurodiversity is provided by the College of Policing.¹⁶⁵ Yet neurodivergent children often encounter the police. For example, 86

¹⁶⁰ Naomi Redhouse, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁶¹ Jasbinder Sidhu, Melissa Maybanks and Anthony Hill (CPS), Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁶² Melissa Maybanks, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁶³ Anthony Hill, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁶⁴ Criminal Justice Joint Inspection (2021) 8

¹⁶⁵ *ibid*: 33

percent of surveyed families of an autistic child reported that the police had visited their home at least once and over half said their autistic child had been cautioned by the police at least once.¹⁶⁶

We heard evidence from academic experts that the lack of police training in SEND and neurodivergence was a crucial issue to address:

*If you are interviewed as a child in the police station, you are interviewed by a person who may have absolutely no training at all. It has such a knock on effect in terms of whether those children find themselves in the later and more formal youth justice process. ... I spend quite a lot of time talking to frontline officers in my research - response officers, neighbourhood officers and officers who deal with children in police custody. Almost without exception, they have received no training in relation to dealing with children broadly, but in particular in relation to neurodivergence and those common developmental issues that the children we're talking about have, who are the majority of those who come to the attention of the police. So there's a desperate need for an understanding of this cohort at that early stage in the process.*¹⁶⁷

Being held in a police cell is especially hard on neurodivergent children, heightening symptoms associated with ADHD and anxiety, for example. Children can be held for up to 24 hours, often for much of this time on their own in a police cell without the support of an appropriate adult or a lawyer.¹⁶⁸ Efforts to improve conditions of police custody for neurodivergent children can be hampered by negative attitudes towards detainees held by custody staff.¹⁶⁹ Not being able to understand questions during police interviews due to difficulties with communication and comprehension can result in false admissions or “over sharing”, which can affect their defence; and if a child struggles with reading or concepts of time, they may also struggle to comply with written court date notifications.¹⁷⁰

Professor Hannah Smithson highlighted the need for enhanced police training:

There is a lot of evidence out there from academic research that police officers, if there are any that are trained to work in specialist ways with neurodiverse children, it remains the few. It isn't something that the police are trained in. So when that child goes to the police station at first arrest like anyone else who's

¹⁶⁶ National Autistic Society (2022) 21

¹⁶⁷ Miranda Bevan, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁶⁸ Kemp (2023) 56

¹⁶⁹ Ibid. 64-66

¹⁷⁰ Kirby (2021) 7

*arrested, it depends who the custody sergeant is at the time. So in terms of simple things - specialist police training. These things are not rocket science.*¹⁷¹

Dr Miranda Bevan contrasted this lack of police training for dealing with children and the fact that “*police officers on response received two weeks of vehicle training even before they start doing blue light training.*”¹⁷²

The evidence we received stressed the need for such training amongst new recruits:

*We need to get the training in at the very early stage at the College of Policing level before they're even released into the world as police officers. ... A very basic level of training for very junior officers about communication and child-related issues should be part of their formal training that can then be built upon depending on which areas they then go into.*¹⁷³

*We have an extremely young cohort of officers at the moment. In light of the departure of many officers after 2012 and then the recruitment of 20,000 officers very, very swiftly. They're very young in service. Many of them who are encountering children on the street don't have very much time for training. They do want to know how to do this better. It needs to come from senior officers. ... We need somehow to persuade the police that this is a very important area and it's senior officers and the College of Policing. This needs to be what they consider a high risk area so that they roll out mandatory training.... It's hugely complex for the officer on the ground who wants not to arrest that child to know what to do next. Different areas are taking different approaches,*¹⁷⁴

Recommendation: Compulsory training of police in SEND and neurodivergence

It is recommended that custody suites always have a police officer on duty who has received specialist training on working with children with SEND. This training would include a basic understanding of how children with SEND and neurodivergence may present in the police custody suite; an awareness of how their own interactions and the police environment may be triggering and traumatic for children with SEND and neurodivergence; and safeguarding training to identify vulnerable children. This would scale-up local pilots to a national practice so that all custody sergeants dealing with children must have had this training and ensure that

¹⁷¹ Professor Hannah Smithson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

¹⁷² Miranda Bevan, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁷³ Mel Stooks, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁷⁴ Miranda Bevan, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

unnecessary additional trauma is avoided where possible for children during interactions at the police station.

Economic evaluation

The proposal is to provide a new one-day course for police on working with children with SEND and neurodivergence.

Costs: It is estimated that 2600 sergeants and PACE officers would require training in a new one-day course. This equates to a total cost of £1m per year¹⁷⁵.

- The cost of a police sergeant for a year is £90,000, making the cost per hour of £56. The annual cost of an inspector is £112,000, making the cost per hour of £70¹⁷⁶.
- Officers would be entitled to £50 of expenses¹⁷⁷.
- A five-day course for police officers delivered by the Royal College of Policing costs £3,259 per officer, implying a cost of £650 per day or £786,500 for providing a new one-day course on working with children with SEND and neurodivergence for 2600 police officers¹⁷⁸.
- The training would be valid for 3 years.
- This equates to a total cost of £1m per year.

Benefits: It is anticipated that this recommendation will help to ensure that some of the other recommendations are followed regarding meeting the needs of children with SEND.

Recommendation: Mandatory screening

It is recommended that all children brought into police custody undergo a mandatory screening check for SEND and neurodivergence at police stations before interview. Where possible, a child may be de-arrested to attend a voluntary police interview¹⁷⁹ or bailed¹⁸⁰ to allow the interview to be delayed and facilitate the screening. If delaying the interview is not considered to be in a child's best interests, then it will be important to ensure the screening is conducted in circumstances that minimise unnecessary trauma, by placing the child somewhere outside the police cell¹⁸¹ and with an appropriate adult present. The screening would be conducted by a YJS worker, a child specialist liaison and diversion worker, police officer or custody sergeant

¹⁷⁵ 'Police workforce, England and Wales, as at 31 March 2024'; data tables, Table F1

¹⁷⁶ See: <https://www.london.gov.uk/who-we-are/what-london-assembly-does/questions-mayor/find-an-answer/police-officer-costs-1>

¹⁷⁷ See: <https://www.judiciary.uk/about-the-judiciary/judges-career-paths/terms-of-service/judicial-expenses/>

¹⁷⁸ See: <https://www.college.police.uk/career-learning/courses/training-essentials-programme-tep>

¹⁷⁹ National Police Chiefs' Council Voluntary Interview Guidance (2024)

¹⁸⁰ PACE 1984, s37(3)

¹⁸¹ PACE Code C, para 8.8

who has been trained in neurodivergence awareness and how to complete the screening tool. As noted above, the current assessment tool (AssetPlus) could be adapted and expanded to cover all forms of neurodivergence and used for this mandatory screening. This would mean that, following mandatory screening, those children with specific needs would be referred to a qualified speech and language therapist prior to police interview, who would identify whether a child needed to be assisted by an intermediary. The outcome of the screening and assessment could then be taken into consideration by the police during interview and by the police or CPS when making a decision to charge (and information from the screening would be used when completing the new CPS Children's Form).

Economic evaluation

It is proposed that each child undergoes a SEND screening test that takes an average of half an hour and is conducted by a YJS worker, a child specialist liaison and diversion worker, police officer or a trained custody sergeant.

Costs: In 2023-24 there were approximately 60,000 children arrested¹⁸². There are 500 police stations, of which 210 have custody suites, suggesting on average 0.9 children brought into each custody suite each day. The cost of an hour of a police sergeant's time is estimated to be £56¹⁸³, based on a total cost of employment of £90,000 (inflated from £76,000). The cost of this proposal is estimated at around £1.6m per year.

Benefits: It is anticipated that this will help police officers to identify children with SEND and neurodivergence so that they can make necessary adjustments. It will also help them to identify when they need to make referrals to specialist services, reducing the risk of these children slipping through the cracks.

Recommendation: Intermediaries to be present during police interview for children who, following screening, are identified as needing an intermediary for questioning

It is recommended that an independent intermediary is always present for questioning of a child with identified SEND, SLCN and/or neurodivergence. Currently, in England and Wales, intermediaries are only routinely available for child witnesses in the police station. These intermediaries should be trained professionals (YJS workers or SEND professionals) and should be in addition to an appropriate adult. At present child **witnesses** in England and Wales receive

¹⁸² See: <https://www.gov.uk/government/statistics/youth-justice-statistics-2022-to-2023/youth-justice-statistics-2022-to-2023-accessible-version#children-cautioned-or-sentenced>

¹⁸³ See: <https://www.london.gov.uk/who-we-are/what-london-assembly-does/questions-mayor/find-an-answer/police-officer-costs-1>

intermediary support from the Registered Intermediary Scheme.¹⁸⁴ It is recommended that the Registered Intermediary Scheme be extended to child **suspects** at the police station and for the police to access intermediaries for child suspects as they would for child witnesses

Based on her research, Dr Miranda Bevan highlighted the need for specialist intervention at the police station:

The major issue that arises is that issue of inequity; inequity between how we deal with children who are prosecution witnesses or complainants in criminal offences, and those who come to the system as suspects and defendants. I think particularly about the SEND community when I think about those adjustments which are available for children who are on the prosecution side, thinking about ABE interviews and intermediary access, and the lack of that for child suspects and defendants....

There's a desperate need for an understanding of this cohort at that early stage in the process and also to bring specialists into that early stage of the process, youth justice specialists at the point of police decision making through and into the Youth Court. We need proper processes for identifying and supporting those children who will have difficulty participating in more formal processes for the range of different needs and capacities. The police are quite often left holding the baby, so to speak, and are inadequately supported by their local authority and other external partners, including CAMHS and healthcare. That's not always the fault of those external partners. We have very siloed funding arrangements and a failure to share information across those bodies.¹⁸⁵

Northern Ireland approach to intermediaries for children

Since intermediaries were introduced by the Youth Justice and Criminal Evidence Act 1999, two distinct systems have emerged in Northern Ireland and in England and Wales. In England and Wales, priority has been given to the use of intermediaries for child **witnesses**. In contrast, Northern Ireland introduced a unitary system which allows intermediaries for child **defendants and witnesses**. Registered intermediaries are available in Northern Ireland for suspects and defendants as well as victims and witnesses. Importantly, registered intermediaries are routinely available at the police station to support suspects with communication problems who are under 18 years old.¹⁸⁶ If the police or the defence solicitor considers a child may have communication

¹⁸⁴ See <https://www.gov.uk/guidance/ministry-of-justice-witness-intermediary-scheme#:~:text=A%20Registered%20Intermediary%20is%20an,or%20physical%20disability%20or%20disorder>.

¹⁸⁵ Dr Miranda Bevan, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

¹⁸⁶ See: <https://www.justice-ni.gov.uk/articles/northern-ireland-registered-intermediary-scheme>

problems, they can ask for a registered intermediary to speak with the suspect and assess their communication abilities. The assessment will be used by the police to help them when they interview the suspect. The registered intermediary is present at the interview to advise and help with communication. Research has shown that the Northern Ireland system provides better equality and support for child defendants than the current model in England and Wales.¹⁸⁷

Economic evaluation

It is recommended that an independent intermediary is always present for questioning of a child.

Costs: In 2023-24 there were around 60,000 children arrested¹⁸⁸. The cost of an hour of YJS worker's time is estimated to be £44¹⁸⁹, based on the cost of an unqualified social worker¹⁹⁰. The average length of police questioning is one hour. This yields a total estimated cost of £2.6m.

Benefits: This will help to ensure that children are able to effectively communicate and understand the questions they are being asked. This will improve procedural justice and may reduce the number of children being unnecessarily and inappropriately proceeded against at court.

Interconnected recommendations for police

Our recommendations for the police are interconnected. First, police would have compulsory training so they can ensure their interactions and the police environment are more neurodiverse. This will also inform (and should be a precursor to) completion of a mandatory screening tool. Second, the mandatory screening tool would alert the police at the earliest point of contact that a child may have SEND and/or be neurodivergent, which would then necessitate further investigations with other partner agencies (as well as addressing whether an intermediary is required). Third, these actions would be able to inform the police completion of the new CPS Children's Form in making any decision about charging and prosecution. This form should be completed for all offences, even when the charging decision is made by the police.

Recommendation: Improve conditions of police custody for children (when custody is necessary for public safety).

Currently, when children are held in police custody, they are invariably detained in police cells designed for adults. Children have reported that they have found this environment to be very

¹⁸⁷ Taggart (2021)

¹⁸⁸ *Youth Justice Statistics 2023 to 2024 (2025)*

¹⁸⁹ Jones et al (2024)

¹⁹⁰ Witness intermediary Scheme Annual Report (2023)

frightening and intimidating, stating that the loud banging, bright rooms, cold conditions, lack of materials to occupy them and limited checking on their welfare leaves them feeling scared, tired and traumatised. The National Police Chiefs' Council (NPCC) recently committed to ensuring that all elements of policing are child centred¹⁹¹. Our recommendation is that children are not held in police cells and that police hold children in secure rooms other than cells, which make reasonable adjustments that accommodates the specific and complex needs of children (as required by PACE Code C para 8.8). Rooms should be available within a police station and staffing arrangements should exist to enable police officers to supervise these children outside the police custody suite to accommodate this legal requirement. As such it is not deemed to be associated with any additional costs to implement.

Additionally, local authorities should have safe space/accommodation available where a police officer can take children who are unable to return to their home address and there is no other person available to provide them with accommodation. For example, where an autistic child requires respite care or a child who has been the victim of grooming by county lines gangs and is arrested away from their home area. On those rare occasions when the high threshold for a child to be detained in a police cell is met, cells should be adapted to accommodate children with thicker mattresses, activities, materials, appropriate meals and drinks and suitably qualified staff to support them. Where possible, children should be processed within custody without coming into contact with adults, having a separate entrance and reception area.

Recommendation: Compulsory training for legal representatives

Legal representatives are also not required to undergo specialist training in youth justice, SEND, communication needs or neurodivergence in children. They also rarely meet with the child until just before the police interview.¹⁹² Over the last decade there have been numerous calls for specialist training for lawyers representing children. A decade ago in 2014, the Carlile Inquiry called for all legal practitioners representing children at the police station and practising in youth proceedings to be accredited.¹⁹³ In 2015, the Bar Standards Board (BSB) Youth Proceedings Advocacy Review found evidence of variable practice at the Bar and that not all children were being adequately represented.¹⁹⁴ The BSB took regulatory action and now require barristers and pupils working in the youth court to register and declare that they have the specialist skills, knowledge and attributes necessary to work effectively with children.¹⁹⁵ In 2019, the Solicitor's Regulation Authority (SRA) consulted on whether solicitors in the youth

¹⁹¹ National Police Chiefs' Council (2024)

¹⁹² Kemp (2023) 73, 78

¹⁹³ *Carlile* (2014), p.37

¹⁹⁴ Bar Standards Board and the Chartered Institute of Legal Executives (2015)

¹⁹⁵ Bar Standards Board (2017)

court should be required to have higher rights of audience when representing children charged with serious offences (offences that would be indictable only for adults).¹⁹⁶ Following the consultation, the SRA did not implement this proposal but are continuing to keep advocacy standards in the youth court under review, including mandatory training or accreditation.¹⁹⁷

In 2020, the Centre for Justice Innovation (CJI) and the Institute for Crime and Justice Policy Research (ICPR) highlighted the need for youth court practitioners to be specialists: “[m]ore needs to be done to incentivise defence advocates working in youth court to develop their skills in communicating with children and their understanding of the distinctive features of the youth court.”¹⁹⁸ In 2023, a report by the Youth Justice Legal Centre (YJLC) and ICPR highlighted the range of complex needs and vulnerabilities of children coming into contact with the criminal justice system, and that children need and must be entitled to specialist legal representation:

*There is no requirement for solicitors representing children in the criminal justice system to have any specialist training before entering a youth court or representing children at a police station. It therefore falls to individual solicitors to identify their training needs. Children end up with worse outcomes than they should as a direct result of lawyers being unaware of guidance and special protections available to children.... The situation would be significantly improved if solicitors who represent children undertook regular training on key youth justice topics. More children would be diverted away from formal criminal justice processes, they would be better supported through legal processes and the risk of reoffending reduced. Put simply, children must have better.*¹⁹⁹

Most recently in March 2024 research by the Centre for Justice Innovation found that:

*[C]hildren with SEND are receiving legal advice that is putting them at a particular disadvantage for accessing diversion schemes. Duty solicitors should be given specific training in advising and communicating with children, including information around SEND and the diversion process. Children should also be prevented from declining legal advice without proper understanding of its role and significance.*²⁰⁰

¹⁹⁶ Solicitors Regulation Authority (2019)

¹⁹⁷ Solicitors Regulation Authority (2020)

¹⁹⁸ Centre for Justice Innovation (CJI) and the Institute for Crime and Justice Policy Research (ICPR) (2020)

¹⁹⁹ Youth Justice legal Centre (2023)

²⁰⁰ McDonald-Heffernan & Robin-D'Cruz, (March 2024)

The judiciary has also identified the need for training for advocates in cases involving children. In 2017 the then-Lord Chief Justice, Lord Thomas, stated that “it would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training”.²⁰¹ And in November 2023, the Chief Magistrate, Paul Goldspring, also called for compulsory training for lawyers representing children.²⁰²

We also received evidence from the CPS that specially trained advocates would improve charging decisions:

*Having an advocate that understands the legal system and in particular understands children could make a real difference because they would know what to rate. They'd understand the public interest criteria and our guidance and the things that we're likely to take into account in making a decision. So I do absolutely think that this process we're talking about works better if you've got somebody experienced and trained advocating for the child in custody because you know, for an adult, it's not an easy experience to navigate on your own. Far more so for a child.*²⁰³

Economic evaluation

It is recommended that legal executives, solicitors and barristers working on cases that involve children receive specific training. The training would cover the law as it affects children and specifically how to work with children with SEND and neurodivergence. This training could be a voluntary quality mark or panel system. Barristers are self-employed so would fund the training themselves, and employed counsel, solicitors and legal executives would have the training paid by their employers. It is expected that this would be counterbalanced by increases in pay for relevant cases.

Costs: It is estimated that 500 accredited barristers and 2,500 accredited solicitors would be required to represent all relevant children. This would include representing children in the Crown Court, Youth Court and police station. The economic cost of relevant barristers is around £600 per day²⁰⁴, whilst the economic cost for relevant solicitors is around £480 per day²⁰⁵. Each would undergo an initial 3-day training course, then a 1-day refresher course every three years. It is estimated that the initial 3-day course

²⁰¹ *R v Grant-Murray* [2017] EWCA Crim 1228

²⁰² Quality of Advocacy Working Group (2023)

²⁰³ Anthony Hill, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

²⁰⁴ See: <https://www.gov.uk/guidance/solicitors-guideline-hourly-rates>

²⁰⁵ See: <https://www.legislation.gov.uk/ukxi/2013/422/schedules>

would cost around £500 per attendee to deliver, and the refresher course would cost £167 per day. This was informed by a comparison with existing courses on related topics²⁰⁶. The combined cost of this recommendation is estimated to be approximately £1m. It is recommended that this is funded by the individuals/their employers and is compensated by the increased fees proposed in the next section.

Benefits: The key benefit of this recommendation would be ensuring that a child's lawyer is able to communicate appropriately with their child client, recognise the relevance and significance of any SEND or neurodivergence and ensure that the court process is comprehensible to the child accused. The primary benefit of this would be increasing the right to a fair trial and procedural justice, which has been shown to reduce reoffending by enabling children to feel they understand the process that is taking place; have a voice in the process; feel they have been treated with respect; and trust in the neutrality of the process²⁰⁷.

Recognition and remuneration for Youth Court work

There have also been consistent calls for legal expertise in the Youth Court to be properly recognised and remunerated. Charlie Taylor's 2016 Review of the Youth Justice System recommended that:

*the Ministry of Justice reviews the fee structure of cases heard in the Youth Court in order to raise their status and improve the quality of legal representation for children, and when this is complete, that the Bar Standards Board and the Solicitors Regulation Authority should introduce mandatory training for all lawyers appearing in the Youth Court.*²⁰⁸

The Taylor Review also recommended there should be a presumption that children receive free legal representation at the police station.²⁰⁹ The Law Society's 2019 report on the criminal justice system recognised that there were expert lawyers in the Youth Court and recommended they be properly remunerated.²¹⁰

²⁰⁶ See: <https://www.unitas.uk.net/child-first-epa>, <https://datalawonline.co.uk/cpd-course/children-law/children-law-accreditation-2024>

²⁰⁷ Tyler (1997)

²⁰⁸ Taylor (2016) para 104

²⁰⁹ *ibid*, para 69.

²¹⁰ Law Society (2019)

Following the CPS pay review in 2019, agent prosecutors in the youth court are now paid a higher rate than in the adult Magistrates' Court.²¹¹ Lord Bellamy's 2021 Criminal Legal Aid Independent Review recommended an accreditation scheme for Youth Court work and increased criminal legal aid fees to reflect the importance of this work and the seriousness of the young defendant's situation.²¹² In December 2024, the government implemented a new Youth Court fee scheme which enhances the payment in all indictable cases in the Youth Court by £598.59 per case.²¹³

We welcome this investment of £5.1 million in additional funding to the Youth Court which means that legal representatives in the Youth Court will be paid nearly double for serious cases when compared to legal aid rates in the adult Magistrates' Court. It should be noted, however, that these increased fees are for representing children charged with offences which would be tried in the Crown Court if the child were aged 18 or over and that Youth Court advocates are still remunerated less favourably than advocates in the Crown Court. In addition, the Criminal Legal Aid Advisory Board (CLAAB) in its first annual report in 2024 recommended separate payment for Youth Court work (whether by increased use of Certificates for Counsel or otherwise) for the work done by solicitors and the Bar undertaking this important and often complex work.²¹⁴ This would help to ensure access to the highest quality advocacy for many child defendants in the Youth Court.

Recommendation: The government is encouraged to introduce the recommendation of the Criminal Legal Aid Advisory Board (CLAAB) to introduce a separate system of payment for the work done by solicitors and the Bar and use of the Certificate for Counsel. This will ensure barristers are available and properly remunerated to undertake this important and often complex work. It is also recommended that defence legal representatives in legal aid criminal cases involving child defendants receive a 15% uplift in legal aid rates, to recognise the additional complexity of these cases and the increased expertise and additional training required to undertake a case involving a child defendant.²¹⁵ We have based this

²¹¹ Magistrates' Court Agent day rate is £345/half day rate £172.50; Youth Court Agent day rate is £460/£230 (some cases will attract a higher Special Fee and cases may also be paid under Very High Cost Criminal Cases - VHCC arrangements); source: Source: *CPS Fees Bulletin No.3 of 2023 – Magistrates & Youth Court Fees, 2023*.

²¹² Bellamy (2021) para 11.7 and 11.10

²¹³ See: https://assets.publishing.service.gov.uk/media/675086962956d2d4b1632aeb/Specification_-_version_6_current_version___effective_from_6_December_2024_.pdf

²¹⁴ See: <https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024/criminal-legal-aid-advisory-board-claab-annual-report-2024#summary-of-key-recommendations>

²¹⁵ The only offence where a legal aid uplift is already payable under the Crown Court 'Advocates' Graduated Fee Scheme' (AGFS) is for child defendants aged 16 and under who are defence charged with murder / manslaughter – this increases the categorisation to band 1.2. Source: MoJ, *Banding of Offences in the Advocates' Graduated Fee Scheme (AGFS) v1.1* (2018). We would propose Band 1.2 categorisation is extended to all children under 18 at the date of offence. The 15% would therefore

recommendation on the uplift paid to specialist family lawyers who are on the Law Society's Children Law Panel.

Economic evaluation

Costs: It was estimated that the increased rates would apply to 900 Crown Court cases and 16,000 Youth Court cases. The recommendation would apply to four people for the average Crown Court case (a CPS lawyer and advocate who may be instructed counsel and a defence solicitor and two barristers). For Youth Court cases there is a shared fee for the defence, which is sometimes split between a solicitor and advocate (a barrister instructed to represent the child in court). Around 500 Crown Court cases and 11,500 Youth Court cases result in sentencing hearings for children²¹⁶. It was assumed that an average Crown Court hearing involving a child takes 2 days and an average Youth Court hearing takes 1 hour²¹⁷.

- It was estimated that the average cost of a barrister for a day in court is £600²¹⁸. This would equate to an average total spend on lawyers of £6,720 for an average Crown Court case involving a child.
- Following the recent uplift, the fee for a Youth Court case is £1,197 for an indictable only or either-way offence. The total cost of increasing the lawyers' fees for all these cases by 15% was estimated to be £3.4m.
- It is assumed that designated funding for advocates appearing in the Youth Court is net neutral, as these advocates would currently receive a share of the solicitor's fee.

Benefits: The benefits of this recommendation are closely tied to the previous recommendation, as the increased pay will incentivise these barristers and solicitors to engage in specialist training. Further, it will incentivise the development of a cohort barristers and solicitors who are specialists in criminal cases involving children. This will help to foster expertise, which will contribute to the right to a fair trial and procedural fairness. It is also hoped that the increase payment will enable barristers and solicitors to contribute adequate time to these cases, which is vital in ensuring the needs of children are met, particularly those with SEND and/or neurodivergence.

not apply to murder/manslaughter but be reflected by extending the categorisation to 17 year old defendants (based on age at date of offence).

²¹⁶ In 2019, 61 per cent of child defendants in the Crown Court pleaded guilty (58 per cent at their first hearing), and 47 per cent of child defendants in the Youth Court pleaded guilty at their first hearing. See Helm (2021)

²¹⁷ See: <https://assets.publishing.service.gov.uk/media/5a7cae53e5274a2f304ef70e/strengths-skills-judiciary-2.pdf>

²¹⁸ See: <https://www.gov.uk/guidance/solicitors-guideline-hourly-rates>

Chapter 4: Improving the court process for children

This chapter examines current practices in both the Youth Court and Crown Court and recommends a number of areas for reform.

Findings

- Court processes are still not well adapted to improve the participation of children with SEND and neurodivergence.
- Judges often do not have sufficient specialised training in understanding SEND and neurodivergence in children and are not using all the tools available to them to ensure proper plans are in place for any children sentenced.
- An increasing number of children with very complex needs are being tried in the Crown Court where there is no compulsory training for judges in dealing with children with SEND and neurodivergence, despite recommendations for this over a decade ago.

Recommendations

- Enhanced judicial training on SEND and neurodivergence in children should be provided for District Judges, Magistrates and Legal Advisers in the Youth Court.
- New mandatory training and authorisation should be required of Circuit Judges and High Court Judges in order for them to preside over any cases with child defendants.
- A District Judge or Magistrate trained to sit in the Youth Court should always be sitting in the adult Magistrates' Court and in busier court centres.
- New preliminary paper hearings should be instituted in the Youth Court to review the needs of child defendants prior to trial.
- Judges should use their existing legal powers to compel Section 9 Reports in all cases where custody or intensive supervision of a child is being considered.
- Any reform of the criminal court system being considered to address the current Crown Court backlog should take into account any proposals' impact on the functioning of the Youth Court and how children are dealt with in the Crown Court.

Child defendants and the courts

Most cases with child defendants are dealt with in the Youth Court, which are Magistrates' Courts constituted under the Children and Young Persons Act 1933 s.45 to sit for the purpose of hearing any charge against a child or young person (those under 18 years of age). Youth Courts sit either with or 1 District Judge (Magistrates Court) sitting alone or a panel of 2 or 3 Lay Magistrates. However, some child defendants are not tried in the Youth Court but in the adult

Crown Court. Children charged with murder, attempted murder and manslaughter must be sent straight from the Youth Court to the Crown Court. Also children who are co-accused with adults may be tried in the Crown Court if their adult co-defendants are tried there (although the courts have a power to sever the child's case and remit it to the Youth Court). These trials in the Crown Court will be jury trials with greater formality and complexity, and the proceedings are open to the public, whereas Youth Court trials are closed proceedings.

Courts in England and Wales are required to take account of the principal aim of the youth justice system, which is to prevent offending by children and young people²¹⁹ and have regard to the welfare of the child.²²⁰ Over a quarter of a century ago, the courts recognised that “it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings”.²²¹ Later the courts said that “‘effective participation’ in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed”.²²²

In relation to sentencing, the Court of Appeal has recently made it clear that “It is categorically wrong to set about the sentencing of children and young people as if they are ‘mini- adults’... sentencing children requires a ‘root and branch’ difference of approach”.²²³ This includes the importance of expert and pre-sentence reports when sentencing children for serious offences, which should include the possibility of mental health issues, learning difficulties, the possibility of brain injury or traumatic life experience, speech and language difficulties and any communication issues, vulnerability to self-harm and the effect of past loss, neglect or abuse.²²⁴

Judicial qualifications and training to try child defendants

Youth Court judges (Magistrates and District Judges)

District Judges (Magistrates' Courts) and Lay Magistrates may only sit in the Youth Court if they have been authorised to do so by the Chief Justice, a process usually referred to as “ticketing”. Magistrates and District Judges can apply for tickets to sit in the Youth Court. The Magistrates

²¹⁹ Crime and Disorder Act (CDA) 1998 s37(1)

²²⁰ Children and Young Persons Act 1933 s 44(1)

²²¹ *Venables v UK* (1999) 30 EHRR 121, 84

²²² *SC v UK* (2005) 40 EHRR 10 at [29]. The Court of Appeal ruled recently that a child defendant's autism and attention deficit hyperactivity disorder were relevant to the jury's understanding of whether the child could reasonably have been expected to draw common sense conclusions from another person's actions. *R v Sossongo* [2021] EWCA Crim 1777

²²³ *R v ZA* [2023] EWCA Crim 596

²²⁴ See *R v Meanley* [2022] EWCA Crim 1065 and *R v PS and others* [2019] EWCA Crim 2286 [20]

Association says that “if a magistrate is assessed to have the right attributes”, they can be appointed to the youth panel in their local justice area. There are 75 local justice areas in England and Wales, each led by a bench chair. However, no figures are publicly available on how many magistrates are currently authorised to sit in the Youth Court, nor are there publicly available statistics on how many of the 124 District Judges (Magistrates Court) in England and Wales are authorised to sit in the Youth Court.

Any Magistrate or District Judge who is accepted to be qualified to sit in the Youth Court must undertake compulsory induction training and compulsory continuation training every 3 years²²⁵. Training is provided by the Judicial College of England and Wales, although Magistrates and District Judges are trained in separate courses. Youth Court Legal Advisers (which advise a bench of lay magistrates) are also required to undertake Judicial College training additional to the training for Legal Advisers who advise in the adult Magistrates’ Court²²⁶. Magistrates Youth Court training covers: communicating with children in the Youth Court; the impact of learning and communication difficulties; different remand and sentencing decision-making procedures and outcomes; a child first, non-punitive approach to sentencing; and different court procedures for children.²²⁷

Judges in the Crown Court

In contrast to the authorisation and mandatory training required of Magistrates and District Judges in the Youth Court, judges presiding over the more serious cases with child defendants in the Crown Court are neither specially authorised nor trained for this specialised work. Any Circuit Judge or Recorder is deemed qualified by their judicial appointment to be qualified to conduct trials with child defendants.²²⁸ High Court Judges also are deemed by appointment to the High Court bench alone to be qualified to conduct trials of child defendants in the Crown Court with no specialised training or authorisation required.

Authorisation and compulsory training for judges to try cases with child defendants in the Crown Court was strongly recommended a decade ago in the Carlile Report.²²⁹ But this was not acted upon. And while there have been a number of resources developed to assist judges in the

²²⁵ See: <https://www.magistrates-association.org.uk/about-magistrates/jurisdictions/youth-court/>

²²⁶ See Judicial College 2023-24 prospectus for details of the following courses: Magistrates Consolidation and Magistrates Continuation training; Presiding Justices in the Youth Court training, Legal Adviser Youth Consolidation training; District Judges Youth Court update; District Judges Youth Court Serious Sexual Offences training: <https://www.judiciary.uk/wp-content/uploads/2023/11/Judicial-College-Prospectus-2023-2024.pdf>

²²⁷ See: <https://www.magistrates-association.org.uk/about-magistrates/jurisdictions/youth-court/>

²²⁸ Courts Act 2003, s.66(2)(3)

²²⁹ Carlile (2014) 34

Crown Court when presiding over cases with child defendants²³⁰, there has been little judicial training for this highly specialised area of Crown Court work. There is only limited coverage of child defendants in current Judicial College criminal continuation courses for Circuit Judges and Recorders (also sometimes attended by High Court Judges). There are currently two sessions (totalling 1 hour) devoted specifically to dealing with children in the Crown Court in the Access to Justice: Procedural Fairness in the Crown Court course. However, this is not a compulsory course for any judge sitting in crime in the Crown Court. At a recent Access to Justice Course, almost half of the Crown Court judges attending (Circuit Judges, Recorders and High Court Judges) said they had conducted trials with child defendants in the previous 12 months.²³¹

In the 2023-24 Judicial College Prospectus for Crown Court judges sitting in crime there was only a limited mention of “vulnerable defendants” in any courses and no mention of SEND or neurodivergence. In the Judicial College 2021-2025 strategy, there is no mention of children or the Youth Court²³². There is an opportunity in the Judicial College’s forthcoming strategy for 2026 and beyond to address this important area for judicial criminal court training.

Evidence recommending improved judicial training

Those providing evidence to this Review stressed that “*Judicial officers should be trained and supported to understand the ways in which neurodevelopmental disabilities might affect a child’s capacity to engage in justice processes.*”²³³ One experienced legal representative said “*one of the greatest problems that I see is a lack of education and training in relation to the SEND cohort who do make up most of the people I meet at the police station and at court.*”²³⁴

Those experienced in the SEND tribunal system recommended judicial education and training on the special educational needs system in England:

Magistrates and District Judges (Magistrates Courts) should be required to undertake specific training to understand the SEN system in England and in Wales separately, since these systems are now very disparate. They should be required to undertake a module on the meaning of diagnoses and presentation of common conditions so that they can understand the ways in which children and young

²³⁰ See for instance *Youth Defendants in the Crown Court Benchbook* and the *Crown Court Compendium (Part II: Sentencing)*

²³¹ Thomas (2024) unpublished survey findings

²³² See: https://www.judiciary.uk/wp-content/uploads/2022/07/Judicial_College_Strategy_2021-2025_WEB.pdf

²³³ Collaborative written evidence submitted to the Sieff Foundation Working Group on behalf of Professor Huw Williams, Dr Hope Kent, Frances Sheahan, Professor Stan Gilmour and Professor Nathan Hughes, chair of the Acquired Brain Injury Justice Network (ABIJN) (March 2024)

²³⁴ Mel Stooks, Oral evidence session with the Sieff Foundation Working Group (22 April 2024)

*people are affected. Such knowledge would inform what type of additional reports might be required in individual cases to inform of the culpability and possible remediation of behaviour leading to the charges. It might also lead to a more enlightened approach to sentence, to include more appropriate provision or development of skills to enable the individual child to address issues in the future.*²³⁵

Recommendation: Judges should be trained and supported to understand SEND and neurodevelopmental disabilities and the ways in which these might affect a child's capacity to engage in justice processes.

Recommendations for improved Judicial Training

Magistrates and District Judges (Magistrates' Court)

- Improved training for authorised lay Magistrates and District Judges (Magistrates' Court) sitting in the Youth Court, with an increased focus on SEND and neurodivergence in children. This would be a curriculum addition to the existing courses.
- New judicial training in this area for District Judges (Magistrates' Court) and Magistrates should cover: understanding SEND and neurodivergence amongst under 18 year old defendants; the SEND tribunal system and other public services' role in SEND and neurodivergence assessments for children; procedural justice for child defendants with SEND and neurodivergence.²³⁶

Crown Court Judges

- Formal authorisation should be required for judges sitting in the Crown Court before they can hear appeals from the Youth Court, conduct a jury trial in the Crown Court with a child defendant and sentence child defendants. This is likely to only require authorisation of a relatively small number of Circuit Judges, Senior Circuit Judges and High Court Judges.
- It is proposed that each Crown Court centre (71) has at least one judge who is specially authorised after receiving training on how to work with children with SEND and neurodivergence. This cohort could be made up of either Resident Judges at each court or a Circuit Judge nominated by a Resident Judge at their court. In addition, a number of High

²³⁵ Meleri Tudur, Written evidence submitted to the Sieff Foundation Working Group (31 May 2024)

²³⁶ See <https://www.justiceinspectorates.gov.uk/hmiprobation/research/the-evidence-base-youth-offending-services/specific-types-of-delivery/youth-courts/#:~:text=The%20most%20serious%20offences%2C%20including,case%20will%20also%20be%20transferred.>

Court (KB) Judges would need to undertake this training in order for them to preside over cases with child defendants in the Crown Court.²³⁷

- Authorisation of judges sitting in the Crown Court with child defendants would require compulsory training of this cohort and then refresher training once every three years to maintain this authorisation.
- The training would comprise a two-day residential course, equivalent to the training undertaken by judges who are authorised to hear homicide cases or serious sexual offences cases.

Scope of training

Judicial training in England and Wales maintains a core principle of judicial training “by judges for judges”, and there is existing expertise amongst judges and judicial office holders that sit in the SEND tribunal which could usefully contribute to this new judicial training. SEND tribunal judges and tribunal members could contribute to the training to Crown Court and Youth Court judges on:

- the nature of SEND and neurodivergence in children;
- children with and without ECHP plans and the process of assessment;
- what the SEND tribunal does and how this has relevance to any criminal processes.

There are also legal and other experts that the Judicial College already draws on in other criminal court training that could assist in delivering this training:

- Criminal lawyers with expertise in SEND and neurodivergence and the youth justice system;
- Judges with notable knowledge/experience of working with child defendants;
- Medical and other academic experts in SEND and neurodivergence in children, the experience of children in the justice system and communicating with children in the justice process.

Delivery of training

For judges trying cases with defendants under 18 years of age in the Crown Court, this should be a dedicated residential training course that mirrors the existing compulsory judicial training courses required to obtain authorisation to preside over homicide and serious sexual offences cases. These are 2-day residential courses that need to be repeated every 3 years for judges to retain their authorisation. One option would be the development and implementation of a completely new course within the Judicial College Criminal Continuation Course curriculum.

²³⁷ Note that most recent serious and high profile cases with child defendants in the Crown Court have been presided over by High Court Judges – who do not have any specialised training to hear these cases.

Another option would be for these elements to be incorporated into the existed Crown Court Crime Continuation training. These are all 2-day residential courses that are already offered several times each year. There could be scope to change the focus of one of these existing criminal courses, for example by offering a course on “Children in the Crown Court”.

The Review understands that the Judicial College is currently considering the introduction of a new 1-day non-residential course on child defendants in the Crown Court for a limited number of Circuit and Senior Circuit Judges. This would be offered starting in 2026. This is a welcome sign of improved judicial training for judges in the Crown Court. However, the Review's recommendation is for the compulsory training for any judge to preside over a case in the Crown Court with a child defendant to be on a par with other compulsory Crown Court training for homicide and serious sexual offences (2-day residential course), and that this compulsory training and authorisation should also apply to High Court Judges. Cases in the Crown Court with child defendants involve some of the most difficult cases heard in the Crown Court. A 1-day non-residential course would not be sufficient to ensure that judges had received the necessary specialised knowledge and skills to oversee these cases appropriately.

Economic evaluation

Authorisation and training of judges to try child defendants in Crown Court

The following is based on the authorisation and training of either all Crown Court Resident Judges in all Crown Court Centres (70) or a Circuit Judge at each Crown Court Centre nominated by a Resident Judge, plus a number of High Court Judges nominated by the President of the King's Bench Division. This would make a cohort of approximately 90 judges.

Costs:

The costs are based on initial and then refresher training for an estimated 90 judges every three years (2 courses provided in a year to encompass the whole cohort).

Approximate costs for two-day residential judicial training courses are calculated at £600 per judge including: facility hire and catering, accommodation, travel reimbursements and speaker fees.

Option 1: Adaption of existing Crown Court Criminal Continuation training course

The cost of delivering the training was estimated to be £75,000 for the first year to cover the whole cohort. Judicial time out of court to undertake training would not arise, as the training would be undertaken as part of the judges' annual training requirement. There would then be no recurring costs to the Judicial College for 3 further years when refresher training would be compulsory for the cohort. This means the total cost per year over the 3-year period would be £25,000.

Option 2: Creation of a separate Crown Court Criminal Continuation training course

If a completely new course was created for this purpose and additional judicial time out of court to undertake training (outside of the annual training requirement) is costed into the training, this would add in £296,000 to the above costs. This means the total cost would be £370,000 over 4 years or £92,500 per year.

Benefits: The key benefit of this recommendation would be ensuring that the court process is comprehensible and fair to the child accused. The primary benefit of this would be increasing the right to a fair trial and procedural justice, which has been shown to reduce reoffending by enabling children to feel they understand the process that is taking place; have a voice in the process; feel they have been treated with respect; and trust in the neutrality of the process.

Recommendation: Enhanced training for Magistrates and District Judges in the Youth Court

It is proposed that all Magistrates, Legal Advisers and District Judges presiding over cases in the youth court undergo specialist training on working with children with SEND and neurodivergence. Current training for Magistrates to sit in the Youth Court involves one 3-hour training session; the enhanced training would add an additional 3-hour session to this training.

Costs: As of April 2024, there were 14,576 **Magistrates** in post across England and Wales²³⁸. Data are not available on the number of Magistrates appointed to sit in the Youth Court. However, the number of Youth Court cases is small relative to the total number of Magistrates Court cases (0.3%), and District Judges will preside alone in some of these Youth Courts. It is therefore assumed that the number of Youth Court qualified magistrates that would need the enhanced training in SEND and neurodivergence in children would be small. The costs are based on approximately 400 magistrates that would receive the training, which would be valid for three years. The cost of the enhanced training for Magistrates would be £75,000, of which £60,000 relates to the cost of delivery.

There are approximately 1000 **Legal Advisers** working in magistrates courts in England and Wales. However only a small proportion will be authorised to advise magistrates working in the Youth Court (although exact figures were not available). There are 150 Magistrates' Courts, and the follow economic evaluation is based on the enhanced training for one Legal Adviser in each court (150). The cost of the enhanced training for Legal Advisers would be £53,000, of which £24,000 relates to the cost of delivery.

²³⁸ See: <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2024-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2024-statistics>

In 2024 there were 124 **District Judges** sitting in the Magistrate's Courts. Data are not available on the number of these District Judges who sit in the Youth Court. As an upper bound, it is assumed that 40 District Judges would receive the enhanced training each year, which would be valid for three years. This would mean that the entire District Judge (Magistrates Court) cohort would receive enhanced training over a 3-year period. The cost of the enhanced training for District Judges would be £20,000, of which £8,000 relates to the cost of delivery.

Benefits: The anticipated benefits of this recommendation are ensuring that the court process is comprehensible to the child accused. The primary benefit of this would be increasing the right to a fair trial and procedural justice, which has been shown to reduce reoffending by enabling children to feel they understand the process that is taking place; have a voice in the process; feel they have been treated with respect; and trust in the neutrality of the process.

Current court processes

Criminal Procedure Rules on case preparation and progression require that the court takes every reasonable step to facilitate the participation of any person, including the defendant, and this applies to defendants under 18.²³⁹ More detailed requirements are set out in the Criminal Practice Directions²⁴⁰ including the need to ensure that the defendant can comprehend and participate effectively in the trial process.²⁴¹ Additionally, in the Youth Court the Preparation for Effective Trial (PET) form for the Youth Court prompts the court to consider adaptations to proceedings, including an intermediary for the child defendant. The Crown Court Plea and Trial Preparation Hearing (PTPH) form has a separate drop down menu setting out the various ways in which the needs of child defendants are able to be accommodated.

For all child defendants, the expectation is that there will be a ground rules hearing²⁴² to identify requirements appropriate for their needs. These include the need to sit in a court in which communication is more readily facilitated, an out of hours court familiarisation visit prior to trial, the use of intermediaries and live link to give evidence, sitting with family members/supporting adult during the trial, timetabling of breaks, removal or robes and wigs by legal professionals, security staff without uniform and protection from the public or media.²⁴³

²³⁹ Criminal Procedure Rules 2020 (amended April 2024), Rule 3.8 (3)(b)

²⁴⁰ Criminal Practice Directions (CrimPD) 2023, 6.1.1

²⁴¹ CrimPD 2023, 6.4.3

²⁴² CrimPD 2023, 6.4.1

²⁴³ CrimPD 2023, 6.4.2

Criminal Practice Directions also recognise that communication needs are common to many defendants under 18 (such as short attention span, suggestibility and reticence in relation to authority figures) and that the criminal courts need to adapt the trial process to address such needs.²⁴⁴ This may be through the use of intermediaries:

*Assessment by an intermediary should be considered for witnesses and defendants under 18 who seem liable to misunderstand questions or to experience difficulty expressing answers, including those who seem unlikely to be able to recognise a problematic question (such as one that is misleading or not readily understood), and those who may be reluctant to tell a questioner in a position of authority if they do not understand.*²⁴⁵

Court processes are still not adapted to improve the participation of neurodivergent children

A decade ago it was found that children often struggled to understand court proceedings, especially Crown Court proceedings, which are more formal and include complex legal language.²⁴⁶ Despite the improved procedural rules, courts today are still not accommodating neurological differences in children.²⁴⁷ Children with communication and comprehension difficulties can struggle to understand a charge, caution, bail and court orders. The consequence of this is that children may plead guilty to an offence without fully understanding the lifelong consequences of that guilty plea.²⁴⁸ The 2023 HM Inspectorate of Prisons Report on Youth Courts found that neurodivergent children have more acute difficulties understanding and following the court processes, that their specific needs may not have been disclosed to the court, the defence or the YJS, and that court processes involving children with SEND and neurodivergence needed to be adapted to ensure procedural fairness.²⁴⁹ It was recommended that Youth Courts be “inhabited” by a diverse group who are willing to work collaboratively to establish a fair and inclusive court culture and practice.

Of concern is the continued high use of custodial remand against children²⁵⁰. There have been several attempts to reduce the use of custodial remand by tightening up the criteria (Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Police, Crime,

²⁴⁴ CrimPD 2023, 6.2.8

²⁴⁵ CrimPD 2023, 6.2.9

²⁴⁶ Carllie (2014) 39

²⁴⁷ Clasby et al (2022)

²⁴⁸ Kirby (2021) 7

²⁴⁹ HM Inspectorate of Probation (2023)

²⁵⁰ Youth Justice Board (2024)

Sentencing and Courts Act 2022). However, recent figures show that 63 per cent of remanded children either did not go on to receive a custodial sentence on conviction or were acquitted²⁵¹.

Scottish Children's Hearing System

We heard evidence of the different approach to court procedures with children adopted in Scotland from Alistair Hogg, Head of Practice & Policy, Scottish Children's Reporter Administration:

We concluded decades ago in Scotland that the children who are causing harm are the same children who have been harmed at certain points in their life and who have incredible challenges throughout their lives. We know that children really struggle when they appear in a criminal court or any court for that matter. We know that they have particular issues around speech and language and communication and their understanding of proceedings. The challenges to them are enormous.

*Throughout the [Scottish Children's Hearing] system the welfare of the child is the paramount consideration. It is actually a higher test than is contained within UNCRC. So it is a very high test that we all have to adhere to. The views of the child must always be considered. Then there is the minimum intervention principle. So we must only intervene in so far as is necessary, and no order shall be made unless to do so is better than not to do so. One of the foundational principles is that we consider all children, no matter their circumstances.*²⁵²

When a Children's Reporter arranges a children's hearing:

*they will be aware of the special needs of the child who is coming to the hearing, and they will arrange the hearing and set it up in the best way possible to meet those needs. On the day of a children's hearing, the three panel members must reach a decision and decide whether the child requires compulsory measures of supervision. If they do, they will make a decision that is a legal order. It's binding on the child, but it also places duties on the local authority to provide the support and necessary protections for the child. A compulsory supervision order can contain a range of conditions: anything that the hearing considers is necessary in the best interests of the child.*²⁵³

²⁵¹ Ibid. 35

²⁵² Alistair Hogg, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

²⁵³ Ibid.

A wide range of personal and professional individuals involved with the child attend the hearing:

*We would invite to the hearing anyone who has a meaningful contribution to make to the discussion. So that would be anybody who has any kind of close contact or who supports the child in any way. So there would always be a social worker at the hearing because, in pretty much 100% of the cases, they would be the key worker.... If the child is of school age or nursery age, we would expect someone from the school or nursery to attend. If they have a health visitor, we would invite them to the hearing. If they have a family support worker, we would invite them to the hearing. The child can also bring with them somebody that is important to them to support them through the process. The child also has access to an advocacy worker, and the child also can instruct a legal representative to ask the relevant persons as well. There's a kind of statutory expectation on local authorities that they must retain children within school unless for really exceptional reasons, and then there must be an alternative.*²⁵⁴

The Scottish system also places a strong emphasis on the role of the family:

*The Children's Hearing System is very much about the family. And part of the foundations of the system is a recognition that, in order to meet the best interest of the child and to improve the welfare of the child, the family need to come with you in that journey. One of the areas that we're really closely developing in Scotland is around family group decision making, which is an approach to ensuring that the family are all part of the solution and the action plan for the child, but that the family owned that plan.*²⁵⁵

*So whilst the child will be notified and required to come to a children's hearing, if they're a very young child or if there are reasons that would be detrimental to them to attend, also required to come would be their parents and relevant persons. This would be anybody who has parental responsibilities and parental rights, but also people who have a significant influence in the upbringing of the child. So that might be a parent's partner or it might be a close relative who has close day-to-day contact with a child. The family are very much part of the discussion and also part of the solution in many situations.*²⁵⁶

²⁵⁴ *ibid.*

²⁵⁵ *ibid.*

²⁵⁶ *ibid.*

Recommendation: A Youth Court District Judge or a Youth Court panel of Magistrates are always sitting in adult Magistrates Courts when no Youth Court is sitting.

The recommendation is that HMCTS ensures a District Judge authorised to sit in the Youth Court is always sitting in the adult Magistrates' Court if there is no Youth Court sitting, and in busier court centres that there is a Youth Court authorised Magistrates' Bench available. This would ensure that when children appear overnight in an adult Magistrates' Court because no Youth Court is sitting or where children appear jointly charged with adults, they would always have their cases heard by a child specialist District Judge or panel of Magistrates.

Economic evaluation

Costs: The cost to train these judges and magistrates is accounted for elsewhere, meaning this recommendation does not have an explicit cost. It is a matter of deployment.

Benefits: The expected benefits of this recommendation include:

- Reduction in use of remand to youth detention accommodation. The most recent statistics show that there were 837 children remanded to custody in 2023-24, of which 25% are remanded for 7 days or less²⁵⁷. Government research suggested that all of these cases could be avoided if the above recommendation were implemented²⁵⁸. The cost of keeping a child in custody for a week is £1,814²⁵⁹. Thus, this recommendation could yield cost savings of £380,000.
- Increase in severing of child cases from adult cases and remittal to Youth Court. This should result in trials being completed in shorter time and trials taking place in a more child-appropriate court.
- Early identification of neurodivergence issues by specially trained judges.

Recommendation: New pre-trial safety net meeting

Youth Courts do not have systematic processes in place to identify SEND or neurodivergence needs among child suspects. It is proposed that, before any child officially attends court, a safety net meeting takes place between professionals involved with the child to identify their needs and ensure reasonable adjustments are made. The child would not be required to attend, and it would be a virtual hearing to capture all relevant background information about the child.

²⁵⁷ *Youth Justice Statistics 2023 to 2024 (2025) Supplementary Table 6.2*

²⁵⁸ Costs inflated to 2023. See: <https://hmiprobation.justiceinspectores.gov.uk/inspections/thematic-youth-remand-23/>

²⁵⁹ See: <https://questions-statements.parliament.uk/written-questions/detail/2018-05-15/144303>

The conference would be attended by a District Judge, both advocates, a member of the Youth Justice Service (YJS) and the social worker if the child is in care or a child in need. The Crown Prosecution Service (CPS) “Children’s Form” should be disclosed to all attendees ahead of the meeting, The YJS would provide a YJS report on suitability for diversion/out of court disposal, and the social worker would provide a report if the child is in care. The meeting would ensure the CPS have had the opportunity to review all background material before a child is required to attend court. Where needed, the CPS could request a delay to the first hearing for a review to consider the public interest in proceeding and referral for an out of court disposal. A former Youth Court judge told us “the court should have the power to refer to the CPS for reconsideration of prosecution.”²⁶⁰ This would result in robust decisions to charge and would avoid unnecessary delay, wasted court hearings and children unnecessarily being exposed to court processes where their case is not proceeded with or diverted. The meeting would also be an opportunity for professionals to consider the child’s welfare and decide on whether any adaptations to the court processes are required in order to meet the needs of the child.

This meeting would take place for all children where the screening suggests that they may have additional learning needs and/or speech, language and communication needs. This recommendation only applies to the Youth Court.

Economic evaluation

Costs: There are around 16,000 cases that take place involving children in the Youth Court, some are overseen by a panel of Magistrates and some overseen by a District Judge. It is assumed that the preliminary hearing will take an additional hour, and that half of the cases are overseen by District Judges and half by Magistrates. The cost of an hour of a District Judge’s time is around £100. The cost per hour for a legal aid advocate is £100 to £200, and if the cost of an unqualified social worker is used as a proxy for the Youth Justice Service worker that cost is £44 for an hour. The cost of an hour of sitting time for a case with a panel of three magistrates is calculated to be £191. This would mean a total cost of £5.5m. It is assumed that all of these costs are borne by the government, as the additional legal work required would be accounted for by increased legal aid rates.

Benefits: The anticipated benefits of this recommendation are increased diversion, improved procedural justice and improved safeguarding. This would reduce the number of wasted hearings that occur where children are currently being diverted once the case reaches court. It would also ensure that the court process is designed in a way that is

²⁶⁰Naomi Redhouse, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

aligned with the needs of children. The key economic benefits would be reducing the number of children who are proceeded against at court.

Tools and guidance for judges in the Crown Court trying cases with child defendants

Youth Defendants in the Crown Court Benchbook

The *Youth Defendants in the Crown Court Benchbook*²⁶¹, drafted for judges conducting jury trials with a child defendant in Crown Court, states that effective participation will not be achieved unless the defendant understands what is happening. This is a welcome and helpful document for judges. But it does not cover SEND or neurodivergence amongst child defendants in any substantive way. It has only one mention of special educational needs and this only relates to “Looked after children”.²⁶²

The *Youth Defendants in the Crown Court Benchbook* states that: “Where limitations [on questioning] are imposed, the judge has a duty both to ensure that they are complied with and to explain those limitations, and the reasons for them, to the jury in advance of questioning”²⁶³, and that in addition to the normal jury directions, where a youth defendant is on trial, the judge should give additional directions to the jury.²⁶⁴ However, neither the *Youth Defendants Benchbook* nor the *Crown Court Compendium* (for all jury trials in the Crown Court) currently provide specific jury directions for judges trying cases with child defendants in the Crown Court.

In *R v Grant-Murray*²⁶⁵ the Court of Appeal stressed the importance of focusing on the needs of a young or vulnerable defendant at the earliest possible stage in the proceedings. And the *Youth Defendants Benchbook* reminds judges of their legal obligations to assist young defendants in understanding the court process. This includes:

- At the beginning of proceedings, ensuring that what is to take place has been explained to a young defendant in terms that they can understand. In particular, the court should ensure that the role of the jury has been explained.
- The requirements for clear, concise and “non-legal” language not just to the questioning of the defendant, but throughout the trial including counsel speeches.

While guidance is available on “Communicating Sentences to Children” in Appendix II of the *Crown Court Compendium Part II: Sentencing*, there is currently no specific **child-accessible**

²⁶¹ Judicial College (2023)

²⁶² *ibid.* 2-1, para 13; 15-1, para 3

²⁶³ *ibid.* 13-5, para 78 (citing CrimPD.6.1.9)

²⁶⁴ *ibid.* 14-6, para 40

²⁶⁵ [2017] EWCA Crim 1228

information available for judges in either the *Youth Defendants in the Crown Court Benchbook* or the *Crown Court Compendium* on how to conduct trials and provide jury directions in trials with child defendants.

Recommendation: The *Youth Defendants in the Crown Court Benchbook* and/or *Crown Court Compendium* to include sections on:

- SEND or neurodivergence amongst child defendants;
- specific child-accessible information to assist judges in communicating with child defendants;
- specific example jury directions for judges trying cases with child defendants in the Crown Court.

Economic evaluation

Costs: Both documents are revised on a regular basis by judicial and academic editors. There are minimal costs to revisions, costing at £200 per day per editor. Estimated costs would be 2 days of drafting (£400) by 2 editors (£800) from each editorial team (£1600).

Benefits: The anticipated benefits of this recommendation are ensuring that the court process is comprehensible to the child accused. The primary benefit of this would be increasing procedural justice, which is known to contribute to the reduction in reoffending, as a result of the child understanding the process better, feeling their voice has been heard and having a better understanding of the changes to their behaviour that are required.

Recommendation: Current proposals for criminal court reforms should take child defendants into account. In 2024 the government commissioned two “once-in-a generation” reviews of the criminal justice system to report in Spring 2025: the Leveson Review of the Criminal Courts and the Gauke Review of Sentencing. Not including child defendants in these reviews is not just a missed opportunity but has the potential to lead to unintended negative consequences for Youth Justice.

The dangers of not taking into consideration child defendants when considering the Crown Court backlog was highlighted in 2021 when the National Audit Office reported on the Ministry of Justice and HMCTS plans for reducing the backlog of cases in the criminal courts²⁶⁶. At the time the Youth Justice Legal Centre explained that:

²⁶⁶ National Audit Office (2021)

[There is] a vulnerable group of children and young people who are awaiting trial in the Crown Court. Not only are this group already vulnerable by virtue of their age, and without the protections afforded by the Youth Court, but they may now be waiting over a year to have their trials heard, either in custody, or whilst subject to restrictive bail conditions which may be limiting their ability to attend education, training or employment and also to take part in the normal aspects of life necessary for social development. On top of this, many of those children and young people awaiting trial in the Crown Court will cross a significant age threshold between the date of the commission of the offence and trial, meaning that if they are convicted, they may receive a harsher – in some cases adult - sentence than if their trial had been heard without delay. This is both arbitrary and unfair.²⁶⁷

The Leveson Review is tasked with considering measures to reduce the backlog in the Crown Court. One option being considered is the creation of a new intermediate tier of criminal courts for adults where cases would be decided by District Judges (Magistrates Court) or Circuit Judges sitting with 2 lay magistrates. As discussed earlier in this chapter, there are a limited number of District Judges (Magistrates Court), and this small cohort already serves as the pool of Youth Court Judges. The 2024 UK Judicial Attitude Survey revealed a looming recruitment and retention crisis in the next 5 years, with more Circuit Judges and District Judges (Magistrates Court) planning to leave by 2029 than Recorders and DDJ(MC)s who plan to apply for a salaried post²⁶⁸. This Review has stressed the urgent need for more specially trained and authorised judges to handle child defendant cases in both the Youth Court and Crown Court. The deployment of District Judges (Magistrates Court) and/or Circuit Judges to an intermediate court is likely to have a negative impact on the number of such judges available in future to handle cases with child defendants. This is a matter that should be considered explicitly in the Leveson Review. Not including child defendants in that review means consideration will not be able to be given to the impact of any changes to the Crown Court on the efficiency of the Youth Court and on the ability of the Crown Court to appropriately handle cases with child defendants.

²⁶⁷ Youth Justice Legal Centre (2021)

²⁶⁸ Thomas (2025)

Chapter 5: Improving child sentencing and custody

This chapter considers reforms to the sentencing process for children, including those with SEND and neurodivergence.

Findings

- Courts can judge children with SEND and neurodivergence more harshly.
- The secure estate does not currently have a comprehensive approach to neurodivergent children.

Recommendations

- Section 9 reports should be requested of local authorities by the courts in every case where custody or intensive supervision is being considered in both the Crown Court and Youth Court.
- Regular review of sentences should occur for under 18 defendants in both the Crown Court and Youth Court.

Sentencing children

When it comes to judicial sentencing of children, research has suggested the children with poor communication skills may be treated more harshly by judicial decision-makers when they lack information about any communication needs.²⁶⁹ The Sentencing Council Guidelines for Children and Young People now recommends that the court consider a child's speech and language difficulties when sentencing and:

*The court should consider the reasons why, on some occasions, a child or young person may conduct themselves inappropriately in court (e.g. due to nervousness, a lack of understanding of the system, a belief that they will be discriminated against, peer pressure to behave in a certain way because of others present, a lack of maturity etc).*²⁷⁰

For all defendants convicted of a crime, courts are required by statute to give reasons for sentences "in ordinary language"²⁷¹ and to explain their sentence in a way that the offender can understand.²⁷² In recent years resources have been developed to assist judges required to

²⁶⁹ Maras et al (2019)

²⁷⁰ Sentencing Council Guidelines (2017), section 1.15

²⁷¹ Sentencing Act 2020, Section 52

²⁷² CrimPR 25.16(7)(b)(iii)

sentence young defendants. These include the Sentencing Council's guidance on *Sentencing Children and Young People*²⁷³, the *Youth Defendants in the Crown Court Bench Book* and guidance on "Communicating Sentences to Children" in the *Crown Court Compendium*²⁷⁴. But in the 2023 case of *R v ZA*, Mrs Justice May, Judicial Lead for Youth Justice, set out why sentencing children requires a "wholly different approach" to sentencing adults²⁷⁵. The judgment made it clear that the reasons for sentencing should be explained to a child in words that they understand²⁷⁶, and that the court's welfare duty²⁷⁷ requires consideration of "any speech and language difficulties and the effect this may have on the ability of the child or young person to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction".²⁷⁸

Our two recommendations for practical reforms to sentencing are designed to help judges sentencing children to take this child-centre approach, to reduce the use of custody for children and reduce reoffending.

Section 9 Reports

Section 9 of Children and Young Persons Act 1969 provides that where a local authority is notified that someone under 18 is alleged to have committed an offence and proceedings are being brought, the authority should provide the court with information about the home surroundings, school record, health and character of the child. The local authority has a duty to provide this information if it is requested by a court. A Section 9 Report would include information from health services, children's social care and education. To date the courts have not been able or willing to ensure local authority compliance with requests for Section 9 Reports prior to sentencing where custody is being considered. One judge described the reality of ordering Section 9 Reports: "*I have long since stopped directing these as there is no sanction against a local authority for noncompliance. They are never completed.*"²⁷⁹

²⁷³ *ibid.*

²⁷⁴ "Communicating Sentences to Children", Appendix II, *Crown Court Compendium Part II: Sentencing* (2024)

²⁷⁵ *R v ZA* [2023] EWCA Crim 596

²⁷⁶ *R v ZA* [2023] EWCA Crim 596

²⁷⁷ Children and Young Persons Act 1933, s44(1)

²⁷⁸ Sentencing Council (2017) para 1.12

²⁷⁹ Email correspondence from District Judge (Magistrates' Court) Karen Hammond to the Sieff Foundation Working Group (19 September 2024)

Recommendation: Section 9 Reports should be requested by the court in every case where custody or intensive supervision is being considered.

It is recommended that Section 9 Reports are requested in court cases where the court is considering a custodial sentence or a Youth Rehabilitation Order with intensive supervision to ensure all background information is available to the court.

Economic evaluation

Costs: There are approximately 660 custodial sentences for children per year and 700 Youth Rehabilitation Orders with intensive supervision and surveillance²⁸⁰. It was estimated that 75% of children proceeded against at court are found guilty. This means that there may be around 3,000 cases where a custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance is anticipated. It is anticipated that the Section 9 Report will take half a day of professional time to compile and 15 minutes of a judge's time to review. It is assumed not to require additional court time. The cost of professional time required to compile the report is costed at £44 per hour (based on using an unqualified social worker as a proxy). The cost of an hour of a judge's time is £100²⁸¹. This yields an estimated total cost of £380,000.

Benefits: It is anticipated that these reports will help to ensure that judges/magistrates have all relevant information at their disposal when making decisions, including the SEND or neurodivergence needs of the child. This will improve procedural justice and may reduce the number of children given inappropriate sentences, including unnecessary custodial sentences.

Recommendation: Regular review of sentences

The recommendation is that the courts should have the power to regularly review the progress of children on Youth Rehabilitation Orders with intensive supervision. This would implement a 2008 provision²⁸², which is on the statute books but has never been brought into force. Regular review meetings usually would be monthly for the first three months and then quarterly. The meetings would usually be led by District Judges in the Youth Court (and Circuit Judges in the Crown Court), and attended by a YJS member and one other professional working with the child. These would usually be short meetings (average of 15 minutes), with an additional 15 minutes for preparation and follow up.

²⁸⁰ See: <https://www.gov.uk/government/statistics>

²⁸¹ See: <https://assets.publishing.service.gov.uk/media/636927508fa8f521d3e798f9/judicial-fee-schedule-2022-2023.pdf>

²⁸² Criminal Justice and Immigration Act, Schedule 1 para 35

Costs: There are around 700 Youth Rehabilitation Orders with intensive supervision per year. Data are not available on the average length of a Youth Rehabilitation Order²⁸³; they can last from 6 months to 3 years. A 2-year average was assumed, equating to 10 meetings in total. It is assumed that this meeting would take place with a judge, costed at approximately £100 per hour²⁸⁴ and with a YJS professional costing £44 per hour²⁸⁵. The total estimated cost to deliver this would be up to £660,000 per year.

Benefits: It is anticipated that the existence of regular reviews of sentence would assist the judiciary in imposing intensive youth rehabilitations orders (community-based sentences) as an alternative to custody. The expected benefit is a reduction in reoffending as Youth Rehabilitation Orders have a lower re-offending rate than custodial sentences.²⁸⁶

Child custody

For the year ending March 2024 there was an average of 430 children in custody.²⁸⁷ There are three settings that hold children in custody: young offender institutions (YOIs), secure training centres (STCs) and secure children's homes. In 2024 almost all children in custody (87%) were in YOIs or STCs²⁸⁸, despite past government promises that all YOIs and STCs would be closed and replaced with secure schools. Only 14% of children in custody were held in secure children's homes²⁸⁹, which are childcare establishments run by local authorities focused on providing intensive, expert multidisciplinary care and support to children and their families. In 2024, the first secure school, Oasis Restore, was opened²⁹⁰. Once it reaches full capacity it will be able to accommodate 49 children.

A major review in August 2024 concluded that child imprisonment in England had failed and was beyond reform²⁹¹. It called for the end to child imprisonment, and that responsibility for children who have to be deprived of their liberty be transferred from the Ministry of Justice to the Department for Education. The report provided evidence that children are being cared for by

²⁸³ See: <https://www.gov.uk/government/statistics/youth-justice-statistics-2023-to-2024>

²⁸⁴ See: <https://assets.publishing.service.gov.uk/media/636927508fa8f521d3e798f9/judicial-fee-schedule-2022-2023.pdf>

²⁸⁵ Jones et al (2024)

²⁸⁶ Youth Justice Board (2025)

²⁸⁷ *ibid*, Section 7.1

²⁸⁸ *ibid*, Section 7.2

²⁸⁹ *ibid*, Section 7.2 reported that the proportion of children in custody held in Young Offender Institutions (YOIs) was 69%, 18% in Secure Children's Homes and the remaining 14% in Secure Training Centres (which adds up to 101%)

²⁹⁰ See: <https://www.oasisrestore.org>

²⁹¹ *Why Child Imprisonment is Beyond Reform: A Review of Evidence* (August 2024), a joint review by Alliance for Youth Justice, Article 39, Centre for Crime and Justice Studies, Child Rights International Network, Howard League for Penal Reform, Inquest, Just for Kids Law and the National Association for Youth Justice

staff who are untrained and poorly managed, and that despite the pledge to provide support in custody to enable the children to thrive on release, “outcomes for children leaving custody remained, with a few exceptions, poor”²⁹². It also found that particular groups of children – including those from minority ethnic communities, girls, disabled children and looked after children – endure additional harms in prisons. A particular area of concern noted by the report was that imprisoned children receive far less than the promised 30 hours a week of education and purposeful activity.

We support the position that child imprisonment should be ended in England and Wales. But while children remain in YOIs and STCs in England and Wales this report sets out important changes that need to be instituted.

Some evidence providers were of the view that deprivation of liberty for children should be a measure of last resort:

*Deprivation of liberty should only be used as a measure of absolute last resort. Detention facility employees, probation officers, social workers, and others engaged in a child's support and rehabilitation should be aware of a child's disability and provide appropriate support to ensure that their rights are respected, protected, and fulfilled. Where deprivation of liberty is deemed necessary, alternative forms of residential support should be developed, rooted in the therapeutic principles of treatment, education, support and protection, and connection to family and community.*²⁹³

The secure estate does not currently have a comprehensive approach to neurodivergent children

All three forms of the secure estate are supposed to screen children within ten days of admission using the Comprehensive Health Assessment Toolkit (CHAT), which includes questions regarding neurodivergence.²⁹⁴ However, this screening is not often conducted by a professional with specific training in speech, language and communication skills despite the need to make a professional judgement about onward referral based on the child's presentation.²⁹⁵ Once assessed, the findings do not generally inform the daily practice of staff,

²⁹² *ibid*, p.28 citing Criminal Justice Joint Inspection (2019)

²⁹³ Collaborative written evidence submitted to the Sieff Foundation Working Group on behalf of Professor Huw Williams, Dr Hope Kent, Frances Sheahan, Professor Stan Gilmour and Professor Nathan Hughes, chair of the Acquired Brain Injury Justice Network (ABIJN) (March 2024)

²⁹⁴ Criminal Justice Joint Inspection (2021) states: "Since 2014 all entrants to young offender institutions (YOIs), secure training centres (STCs) and secure children's homes (SCHs) should be screened using the Comprehensive Health Assessment Toolkit (CHAT)." AMD has questioned whether CHAT is actually being used across all settings and believes it is only used within YOIs.

²⁹⁵ Turner et al (2019) 15

and the neurodivergence needs of children in custody are not often met.²⁹⁶ They are also not shared with defence legal representatives who may benefit from this screening information in helping to accommodate child defendants' needs in court.

In young offender institutions, education is provided by an external contractor. To varying degrees, education provision within young offender institutions suffers from a lack of teachers, the use of unqualified teaching staff and poor staff retention. It is also severely limited by operational staff shortages, "keep apart" lists that disrupt the escort of children to and from classes, and lessons are routinely cancelled. If a child is unable to leave their cell, generic "work packs" can be provided, but these are largely not tailored to a child's learning needs or objectives. HMIP and Ofsted inspections rate the education provision in young offender institutions as inadequate.²⁹⁷

Most children held in custody have been identified as having SEND and/or neurodivergence needs. For example, 59% of children in Werrington have an Education, Health and Care Plan (EHCP) compared with 4.9% of the general population of 15-17 year olds²⁹⁸. However, the additional funding normally attached to children with SEND does not follow them into the young offender institutions. Instead, when students enter young offender institutions, their EHCP is put on hold and the local authority ceases funding. There is no extra funding to support them once in a custodial setting. When they are released it can take up to a year to draft and implement their EHCP. While some young offender institutions have a speech and language therapist on staff, they do not necessarily collaborate with those providing education. In addition, when a young person leaves youth custody to be transferred into the adult prison estate, a discharge plan containing any assessment findings and intervention records should be transferred with them. However, this transfer of information is not consistently happening.²⁹⁹

Physical and psychological Impact

The physical toll of custody is significant. Busy, noisy living units and disruptions to daily routines within custody can be especially stressful for neurodivergent children. The use of restraints, segregation and limited time out of their rooms also disproportionately impact people with ADHD and autism.³⁰⁰ Arrests are often heavy-handed, and the use of force can be unnecessary and excessive. Children, particularly girls, are frequently able to escape physical restraints, which then necessitates stronger measures, causing further distress.³⁰¹ Excessive

²⁹⁶ Day (2022) 4

²⁹⁷ His Majesty's Chief Inspector of Education, Children's Services and Skills (2024)

²⁹⁸ Independent Monitoring Board (2024) para 4.4

²⁹⁹ Criminal Justice Joint Inspection (2021) 56

³⁰⁰ Day (2022) 4

³⁰¹ Bevan (2022)

use of force and physical restraints can lead to physical injuries and long-term psychological trauma, including post-traumatic stress disorder (PTSD).³⁰² We received evidence that:

*Young people with neurodisability appear to be at greater risk of being subject to restraint techniques, due to a lack of understanding of the influence of functional deficits on compliance. Similarly, young people with neurodisability appear to be at greater risk of bullying, and self-harm or suicidal thoughts.*³⁰³

The experience of harsh physical treatment in custody can also erode trust in the justice system, making children more resistant to authority and rehabilitation efforts.³⁰⁴ The deprivation of liberty and isolation from family and friends creates intense anxiety and distress among child suspects; and the lack of stimulation in custody leads to severe boredom, magnifying existing vulnerabilities and leading to maladaptive behaviours.³⁰⁵ Prolonged isolation can have severe adverse effects on mental health, leading to depression, anxiety and suicidal ideation.³⁰⁶ All of these aspects of custody can exacerbate behavioural problems, making it more difficult for children to adapt to structured environments post-release.³⁰⁷

Recommendation: Every child sentenced to custody should receive a clear treatment plan

At present a CHAT (Comprehensive Health Assessment Tool) is completed for all children who are sentenced to custody in a YOI. The criticism of CHATs has been that once the YOI has information related to the child's health needs (including neurodisability), this does not lead to any meaningful change.³⁰⁸ The Working Group recommendation is that once a CHAT is complete, the prison be required to demonstrate how it has led to meaningful changes in how the child is interacted with in the prison environment to meet the child's needs. This would mean building on the CHAT assessment that already takes place, by having healthcare staff use the CHAT to put together a treatment/healthcare plan and ensure prison staff abide by it.

³⁰² Smith (2015)

³⁰³ Talbot (2010); Gooch & Treadwell (2015) and Critsabesan et al (2015)

³⁰⁴ Robinson (2016)

³⁰⁵ Bevan (2022)

³⁰⁶ Haney (2003)

³⁰⁷ Bovell-Ammon et al (2023)

³⁰⁸ Hughes (20XX)

Economic evaluation

Costs: This recommendation would not require additional funding. It would instead require prison staff to ensure that clear treatment plans are in place, that there is prison governor oversight of and accountability for the plan's implementation.

Benefits: Reduced time in custody and reduced reoffending. Improved resettlement and improved safeguarding.

Chapter 6: Exiting the justice system and avoiding reoffending

This chapter highlights gaps and challenges for children after involvement in the justice system, including reintegration, rehabilitation and preventing reoffending.

Findings

- Multi-agency collaboration between educational institutions, social services, mental health providers and youth justice systems that create a cohesive support network can ensure that children with SEND and neurodivergence receive the support needed for successful reintegration into society and lower rates of recidivism.
- There is very little research on pathways to desistance for SEND and neurodivergent children who commit crime. But reoffending rates are significantly higher among children with a developmental language disorder (DLD) than for children without a DLD, supporting the claim that interventions targeting SEND and neurodivergence have a greater likelihood of reducing reoffending.
- Youth reoffending accounts for around 50% of youth offending. Reducing child reoffending rates by 10% would have an economic and social benefit of £74m-£217m.

Recommendations

- Establishment of an Independent Reviewer of Youth Justice charged with conducting an annual review of multi-agency (Department of Health & Social Care, Department for Education, Ministry of Justice/HMCTS, Home Office, Youth Justice Board) coordination and communication between families, schools, health services, social services, police courts and tribunals for all children leaving the justice system.

Exiting the youth justice system

Children and young adults with SEND face numerous challenges when exiting the justice system. Involvement in the justice system can have long-term negative impacts on education, employment, and overall wellbeing. The stigma associated with a criminal record often results in diminished opportunities for higher education and stable employment, which are crucial for successful reintegration into society.³⁰⁹ Additionally, the experience of incarceration itself can lead to psychological issues such as depression, anxiety and PTSD, further hindering the reintegration process.³¹⁰ The disruption of education due to involvement in the justice system often leads to lower educational attainment, which in turn limits future employment prospects

³⁰⁹ Uggen et al (2005)

³¹⁰ Haney (2003)

and economic stability.³¹¹ The lack of comprehensive support systems further exacerbates these challenges, as many reintegration programmes do not adequately address the multifaceted needs of young people with SEND and neurodivergence.³¹² However, with appropriate support, many young people can successfully reintegrate and lead productive lives.³¹³ This support includes providing individualised education plans, targeted job training and ongoing support to help with the transition back into their communities.³¹⁴

Role of education, vocational training and support services

Educational and vocational training programmes are essential for successful reintegration. These programmes provide the skills and qualifications needed for meaningful employment, which is a critical factor in reducing recidivism among children with SEND.³¹⁵ Tailoring support services to meet the specific needs of these children is crucial. This includes not only academic instruction but also life skills training, career counseling and social-emotional support.³¹⁶ Effective programmes recognise the diverse needs of children with SEND and neurodivergence, and offer flexible, individualised approaches to education and training.³¹⁷ Vocational training programmes, in particular, have shown significant positive outcomes for children and young people with SEND. These programmes provide practical skills and hands-on experience, which are highly valued in the job market,³¹⁸ and when accompanied by mentoring and job placement services they can further help in the transition from training to employment.³¹⁹

Avoiding reoffending

There is little research on desistance for neurodivergent children who commit crime

Desistance is the process of abstaining from crime by those with a previous pattern of offending³²⁰. It should be noted that the concept of desistance being applied to children, whose brains are still developing, is controversial. In general, the desistance process involves dynamic

³¹¹ Hirschfield (2009)

³¹² Winn (2011)

³¹³ Humphrey et al (2014)

³¹⁴ Davis et al (2014)

³¹⁵ Lang & Kahn (2014)

³¹⁶ Walker & Granville (2015)

³¹⁷ Belfield et al (2014)

³¹⁸ Davis (2013)

³¹⁹ Lerman (2010)

³²⁰ See *Desistance – general principles*. HM Inspectorate of Probation:

<https://www.justiceinspectorates.gov.uk/hmiprobation/research/the-evidence-base-probation/models-and-principles/desistance/#:~:text=Desistance%20is%20the%20process%20of,some%20false%20stops%20and%20starts.>

changes to a person's psychological state, developmental capacity and social contexts, each of which is impacted by neurodivergence.³²¹

We know that when defendants believe that the justice process is fair they are more likely to comply with court orders and the law generally, even when the outcome is not favourable to them.³²² Justice interventions that take neurodivergence into account – such that the process is more transparent and understandable, and neurodivergent children can more effectively participate – are likely to have more positive long-term outcomes. Other factors most positively influencing desistance among sentenced children are “Learning and Education, Training or Employment (ETE)” and “Family and Wider Networks”. Those most negatively influencing desistance are “features of lifestyle” and poor “thinking behaviour”.³²³

Continuous support and exit plans

Continuity of care frequently breaks down as children move through different phases of the justice system, including during transitions from youth to adult services. Continuous support is vital to prevent reoffending and to promote positive outcomes. This includes mental health services, educational support and social services.³²⁴ To address this issue, it is crucial to ensure that care plans are seamlessly carried over during these transitions.

Recommendation: Youth justice teams should work with local partners to ensure that an appropriate exit plan is put in place for all children with SEND or neurodivergence.

It is difficult to say for certain that every YJS has an exit plan that is fit for purpose and meets the needs of children with SEND or neurodivergence. However, children's underlying SEND and neurodivergence are in most cases not picked up or detected until they receive the support of a YJS. At this point, wraparound support and advocacy is provided to ensure that a child is adequately assessed and support is provided that is individually tailored to their needs. Often, the period of supervision with a YJS is 12 months or less, and as such exit planning commences at the start of the supervision period. This often involves linking children in with universal services such as support from CAMHS, education, and third sector groups.

Recommendation: Establish an Independent Reviewer of Youth Justice to ensure multi-agency collaboration to support children exiting the youth justice system

Research has shown that collaborative efforts between educational institutions, social services, mental health providers and youth justice systems can create a cohesive support network for a

³²¹ Hughes et al (2012) 14

³²² Tyler (1997); Bowen (2015) 5, 26

³²³ Youth Justice Board (2021) 11-12

³²⁴ Dowse et al (2016)

child offender.³²⁵ For example, integrated service delivery models have been associated with improved academic achievement, reduced behavioural problems and lower rates of recidivism.³²⁶ They facilitate the sharing of information and resources, enabling agencies to respond more effectively to a child's needs³²⁷ and help to ensure that interventions are consistent and continuous, reducing the risk of service fragmentation and gaps in support.³²⁸ An Independent Reviewer of Youth Justice with the purpose of reporting on multi-agency collaboration would help focus attention on the provision of linked up support for children exiting the justice system.

Economic benefits of reducing child reoffending

Even though the crime rate in England and Wales is falling, crime continues to have a substantial economic impact on individuals, businesses and the state. A proportion of this total relates to crimes committed by children under 18. A study found that reoffending rates were significantly higher among children with developmental language disorder (DLD) than for children without DLD, supporting the claim that interventions targeting SEND have a greater likelihood of reducing reoffending. The following provides an estimate of the economic benefit of reducing crime committed by children and reoffending amongst child offenders.

Assessing the costs of child reoffending

A Home Office report estimated the total economic and social impact of crime in 2015/16 to be £59 billion.³²⁹ This includes costs for individuals, businesses and the state. The costs for individuals include the well-being impact of crime on victims, estimated using the £20,000 per Quality-adjusted Life Year (QALY) rate used by NICE. This is equivalent to £79 billion in 2024 pounds. A similar analysis, using these estimates found that around 30% of the costs relate to the criminal justice system, 6% relate to the health system and 64% relate to society (including the impacts on the victim's health and wellbeing).³³⁰

Estimating child offending and reoffending

Between 2015/16 and 2023, the estimated number of criminal offences committed in the UK fell from around 7 million to 4 million per year, a reduction of 43%.³³¹ It is not known exactly what proportion of these crimes are committed by children. There are two possible proxies.

³²⁵ Hughes et al (2012); Farmer (2014)

³²⁶ Lloyd et al (2001)

³²⁷ Sloper (2004)

³²⁸ Frost et al (2005)

³²⁹ Heeks et al (2018)

³³⁰ Grimsey Jones & Harris (2022)

³³¹ Office for National Statistics (2023)

1. One option is to use the proportion of proven offences committed by children. In 2022/23 there were 34,000 proven offences committed by children, out of a total of around 1 million proven offences³³². This means that around 3% proven offences were committed by children. This may be an underestimate, as offending children may be less likely to result in a proven outcome.
2. Another option is to use the proportion of first-time entrants who are children. In 2022, around 10% of first-time entrants to the justice system were children.³³³ This is likely to be an overestimate of the proportion of crime that is committed by children, because someone who is a first-time entrant as a child may go on to commit further crimes when they are an adult.

Using these two proxies in combination gives a range of estimates for the economic impact of reducing offending by children. The Ministry of Justice defines a reoffence as a proven crime committed within a year of prison release or conviction (for non-custodial sentences). The reoffending rate amongst children was 32.2% in 2022.³³⁴ This compares with an adult reoffending rate of 25%. This was consistent across age groups (from 11 to 17 years old).

Children who reoffend commit an average of 4 reoffences.³³⁵ (The data do not currently include reoffending that occurs after the first year, this prevents analysis of the benefits of interventions that reduce longer term reoffending.) Table 3 shows that 34,000 proven offences were committed by 14,000 child offenders, and 18,000 reoffences were committed by 4,000 reoffenders. This means approximately 50% of crimes committed by children are reoffences. These data relate to proven crime only.³³⁶

³³² Youth Justice Board (2025)

³³³ *ibid.*

³³⁴ *ibid.*

³³⁵ *ibid.*

³³⁶ It is not possible to know who commits unproven crime, so this is a necessary limitation. In order to extrapolate from these data to total crime, it is assumed that the proportional mix of unproven crime and proven crime is the same, such that the proportion of unproven crime committed by children reoffenders is the same as the proportion of proven crime committed by child reoffenders. Further, this analysis assumes that the severity of the offending is the same for proven and unproven offences, and for reoffences and non-reoffences alike. In reality, it is likely that proven offences are more severe than unproven offences, and that reoffences are more severe than crimes that are not reoffences.

Table 3: Child offending and reoffending rates in 2022

Offenders and Offences	Number
Proven child offenders	14,000
Proven child offences	34,000
Proven child reoffenders	4,000
Proven child reoffences	18,000

Source: Youth Justice Board (2024)

Economic impact of reducing child reoffending

Table 4 presents the estimated economic and social impact of reducing child **offending**. The total economic cost of offending is estimated to be £1.5m - 4.5bn. A 20% reduction in offending by children would be associated with an economic and social benefit of £309-900m.

Table 4: Economic impact of reducing offending by children

Reduction	Lower estimate	Upper estimate	Home Office estimate
20%	£297 million	£867 million	£754 million
10%	£148 million	£434 million	£377 million
5%	£74 million	£217 million	£188 million
2%	£30 million	£87 million	£75 million

Table 5 presents the economic impact of reducing child **reoffending**. Child reoffending accounts for around 50% of child offending, meaning total child reoffending is estimated to cost £750m to £2.2bn. A report by the Home Office estimated the total economic impact of reoffending by children in 2016 was £1.48bn (£1.9bn in 2023 pounds). This estimate falls within the range calculated by this research, supporting its validity.

Table 5: Economic impact of reducing reoffending by children

Reduction	Lower estimate	Upper estimate	Home Office estimate
40%	£297 million	£867 million	£754 million
20%	£148 million	£434 million	£377 million
10%	£74 million	£217 million	£188 million
4%	£30 million	£87 million	£75 million

The results suggested that reducing child reoffending rates by 10% would reduce the overall quantity of crime committed by children by 5% (Table 5). This would have an economic and social benefit of £74m to £217m. At the upper end, reducing child reoffending rates by 40% would have an economic and social benefit of £300m to £900m.

The portions of these totals that specifically relate to government spending are presented in Table 6. This shows a 10% reduction in child reoffending would save between £27 and 78m in government spending, and a 40% reduction would save between £107m and £312m in government spending.

Table 6: Financial impact for government of reducing reoffending by children

Reduction	Lower estimate	Upper estimate	Home Office estimate
40%	£107 million	£312 million	£271 million
20%	£54 million	£156 million	£136 million
10%	£27 million	£78 million	£68 million
4%	£11 million	£31 million	£27 million

Limitations

There are a number of limitations associated with these calculations. Taken as a whole, they suggest the above calculations are conservative. These estimates:

- have been calculated by combining several different datasets, introducing uncertainty in the accuracy of the estimates.
- include the impact of crime on victims, but not the impact of offending on offenders' wellbeing, such as the harms of being imprisoned.
- do not include the broader economic impacts of reducing reoffending by children, in that it increases the likelihood of them becoming economically active, well-functioning and productive adults.
- do not include crimes not involving direct causation of harm to the victim, such as possession of a weapon or drug dealing (including county lines drug dealing). The cohort in question is often associated with these crimes of indirect causation. Therefore these estimates can be considered conservative.
- assume that each crime is independent. So avoiding one offence is not associated with avoiding future offences. In reality, rates of reoffending are high, suggesting that reducing offending now will also reduce offending in the future. It is logical that this would be particularly true for children.
- assume that the proportional mix of unproven crime is the same as for proven crime.

In addition:

- The Economic and Social Costs of Crime report does not include “crimes against society”, such as drug use, underage drinking or underage sex. In reality, these crimes may well have a social and economic impact, including on the perpetrator.
- Part of the benefit of reducing youth offending is that it increases the likelihood of these individuals achieving employment as adults, and that is not accounted for in this analysis as the issues are very complex. Again, this results in the benefits identified being conservative.

Chapter 7. Improving data collection in the youth justice system

This chapter addresses the data collection and reporting needs across the whole justice system in relation to all children as well as those with SEND and neurodivergence.

Findings

- Data on the incidence of SEND and neurodivergence in the youth justice system in England and Wales is lacking detail.
- There is an urgent and overall need to improve data collection and disaggregation of reporting on the youth justice system.

Recommendations

- A cross-sector data management system is needed to track children through education, health, social care and justice.
- Annual reporting on the number of children that are excluded from the judicial process through diversion is required.
- There should be annual reporting on the number of children with SEND at each stage of the youth justice system, including custody, disaggregated by diagnosis and EHCP status.
- Better reporting on both the Youth Court and children in the Crown Court is required.
- Regularly updated unit costs for the criminal justice system are required to align with the Unit Costs for Health and Social Care annual report.

Urgent need to improve data collection for youth justice

Data on the incidence of SEND and neurodivergence in the youth justice system in England and Wales is lacking detail, and there is an urgent and overall need to improve data collection and disaggregation of reporting on the youth justice system. Evidence to the Working Group highlighted that: “The State is under an obligation to develop appropriate indicators and sufficient qualitative and quantitative collection of data on the state of children’s rights implementation and to make this publicly available.”³³⁷

Specifically within the Youth Justice System, the UN Committee on the Rights of the Child urges States to systematically collect disaggregated data and recommends regular evaluations ‘in particular of the effectiveness of the measures

³³⁷ UN Committee on the Rights of the Child in General Comment no. 5 (2003): *General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5

*taken, and in relation to matters such as discrimination, reintegration and patterns of offending, preferably carried out by independent academic institutions.*³³⁸

*Article 31 of the UN Convention on the Rights of Persons with Disabilities requires States to ensure that ‘appropriate information, including statistical and research data’ is collected to enable the development of relevant evidence-based policy and to ‘identify and address the barriers faced by persons with disabilities in exercising their rights.’*³³⁹

These data are required to be collected and recorded in a specific way in order to enable reliable analysis:

*Different kinds of information and data should be collected that includes details of children’s age, gender, any impairment, family and community background (for example, regarding parental incarceration, nature of housing, level of household poverty etc) and the kind of adjustments and supports that are needed at different stages of the justice process. This will help to expose the extent of any inequality or disadvantage children with neurodisabilities encounter. It will also be useful in making decisions about targeting resources effectively and efficiently and assist in recognising new patterns and vulnerabilities.*³⁴⁰

Education and social care data

There is a need for a cross-sector data management system enabling the tracking of children and young people through education, health, social care and justice, using the same unique reference number, to be able to more accurately predict pathways and work on prevention routes. There is a lack of consistent and recent data enabling the tracking of the educational pathways of children who become offenders, including the needs and care events for children before they enter the youth justice system.³⁴¹

The National Pupil Database (NPD), held by the Office for National Statistics (ONS), is a population-wide dataset which records the pathways through education of all students using a unique reference number to retain anonymity. This database includes details on SEND support as well as statutory support where it exists, including the type of need and the presence of an

³³⁸ UN Committee on the Rights of the Child (2019). General Comment no. 24 (CRC/C/GC/24): *Children’s Rights in Juvenile Justice*

³³⁹ Collaborative written evidence submitted to the Sieff Foundation Working Group on behalf of Professor Huw Williams, Dr Hope Kent, Frances Sheahan, Professor Stan Gilmour and Professor Nathan Hughes, chair of the Acquired Brain Injury Justice Network (ABIJN) (March 2024)

³⁴⁰ *ibid.*

³⁴¹ Hunter et al (2023)

Education, Health and Care Plan (EHCP). Linking youth justice to the NPD would enable valuable understanding of cross-departmental issues and outcomes.

Diversions

Government statistics are currently not able to say how many children who come into contact with police are diverted from formally entering the youth justice system through Community Resolutions or other diversionary outcomes. This is a crucial stage in the youth justice system, and there is an urgent need for reliable data on diversion. This includes details on: how many children are diverted; what are their characteristics, including the prevalence of SEND and Neurodivergence; and what is the prevalence of reoffending amongst those children who are diverted.

Court and policing data

The Working Group's examination of both the Youth Court and children in the Crown Court has highlighted a lack of data collection and/or accessibility about the number of children in the court system, their characteristics and case outcomes. For example, the most serious offences involving child defendants will be tried in the Crown Court, but it has not been possible to determine how many child defendants appear in the Crown Court. Despite there being official Youth Justice Statistics, these do not report the number of children tried in the Crown Court. All that has been reported in the past are the number of "sentencing occasions". This does not have a clear definition, and it also provides information only on those children convicted in the Crown Court not acquitted or where other outcomes occurred.

Such court data should be disaggregated to show the flows of children through the system based on their age at the date of the (alleged) offence, so that those turning 18 and becoming young adults due to the backlog in both the Magistrates' Court and Crown Court and other delays in the justice system are still recognised as being children who offended. Longer term data on reoffending (beyond Year 1) would also be helpful in determining the lifelong benefits of preventing reoffending.

Recommendations

- A cross-sector data management system is needed to track children through education, health, social care and justice (using a unique reference number) to be able to more accurately predict pathways and work on prevention routes.
- There should be annual reporting on the number of children that are excluded from the judicial process through diversion.

- There should be annual reporting on the number of children with SEND at each stage of the youth justice system, including custody, disaggregated by diagnosis and EHCP status.
- Better reporting on the Youth Court is required including: How many Magistrates and District Judges sit in the Youth Court? How long do the cases take in court time? What sentences are handed out in Youth Court and in the Crown Court?
- For the Crown Court: How many defendants under 18 are involved in proceedings in the Crown Court per year; age at date of offence and age at outcome of proceedings; what are they charged with; how many cases proceed to jury trial; what are the outcomes of these cases; what are the number and range of sentences issued by the Crown Court in these cases?
- Regularly updated unit costs for the criminal justice system are required to align with the Unit Costs for Health and Social Care annual report.

Chapter 8. Conclusions

Justice for children with SEND and neurodivergence

The youth justice system is often described as a “success story” because of the dramatic fall in the last decade in the amount of recorded crime committed by those under 18 years old. But all in the youth justice system is not well. SEND and neurodivergence predominate in children in the justice system, affecting at least 80% of all children sentenced or cautioned. What this Review found was that the justice process and many professionals working within it are ill-equipped to deal with this group of children. Our proposed reforms, some of which have been recommended for over a decade, are urgently needed to achieve the objective of preventing offending by and the criminalisation of these children. Our priority in this Review has been on identifying ways of ensuring that children with SEND or neurodivergence who come into contact with the justice system have the best chance to go on to lead well-functioning, fulfilled and productive adult lives.

The crucial importance of understanding and training

There is overwhelming evidence that almost all children in the criminal justice system have special education needs and/or neurodivergence. This can make them more vulnerable to engaging in criminal behaviour. And when these children come into contact with the justice system, they are often misunderstood and inadequately accommodated within it because key professionals are not sufficiently trained to deal appropriately with children with special education needs and/or neurodivergence.

The criminal justice system retains a number of outdated features that are harmful to children with SEND and neurodivergence. There is no universal screening system for SEND and neurodivergence among children in the justice system, and court processes are still not well adapted to improve the participation of these children. There is a lack of understanding of SEND and neurodivergence amongst professionals in the youth justice system, including, police, legal representatives, judges and staff in secure settings, most of whom are not often trained in how to best interact with neurodivergent children and those with SEND.

Training, above all, is what is needed in this specialist area. As one expert witness told us: “*What’s needed is training across the board. Training, training. I always recommend training across the board. That’s the magic wand*”³⁴². We have set out a clear programme of enhanced training for teachers, police, legal representatives and judges that is both practical and

³⁴² Mary Cartlidge, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

affordable, as well as recommendations for improved assessment tools and guidance materials for these professionals.

Need for better information

In conducting the Review, it also became clear to the Working Group that there is a need for far better information on children with SEND and neurodivergence in the justice system. The UN Committee on the Rights of the Child urges states to systematically collect disaggregated data and recommends regular evaluations of the effectiveness of the measures taken in relation to discrimination, reintegration and patterns of offending. Data on the incidence of SEND in the youth justice system in the England and Wales lack many of these important details and hinders robust policy evaluations. While statistics are published annually by the Youth Justice Board, information on key programmes such as diversion is lacking and data collection is particularly poor in the courts. There is a lack of consistent and recent data to track the educational pathways of children who become offenders. We have set out a blueprint for better data collection, including a cross-sector data management system to track children through education, health, social care and justice.

Independent Reviewer of Youth Justice

Multi-agency collaboration between schools, social services, mental health providers and the youth justice system is vital to both ensuring that children with SEND and neurodivergence avoid entering the justice system and, where they do offend, that they receive the support they need for successful reintegration into society. But we heard time and again that such cross-agency coordination rarely happens. For this reason, we have recommended that an Independent Reviewer of Youth Justice be appointed to oversee the implementation of this Review's recommendations, reporting annually on multi-agency coordination (Department of Health & Social Care, Department for Education, Ministry of Justice/HMCTS, Home Office, Youth Justice Board) and communication between families, schools, health services, social services, police, courts and tribunals for this particularly vulnerable group of children.

Practicality of our recommendations

Too often reviews such as this end up recommending impractical changes because they would require primary legislation, are prohibitively costly or both. All of our recommendations can be implemented without delay and without the need for primary legislation. They are practical and affordable. From the outset we were determined to ensure that any recommendations made were appropriately costed. We have carefully assessed both the costs and benefits of all of our recommendations, and we have provided evidence to show that they would result in a net financial savings if implemented. We estimate that the combined cost to the government of

implementing all this Review's recommendations would be £16.3m per year.³⁴³ These recommendations could in turn lead to £191m economic benefits per year, of which £72m would be direct financial benefits to the government. This would mean net financial savings to the government of £54m (£3 pounds per £1 spent) and net economic returns to society of £174m (£10 per £1 invested).³⁴⁴

Political will needed

The professionals and experts who provided evidence to our Review were clear about the need for political consensus in this important area:

*Some of these things are not particularly palatable to the policymakers who are making the decisions. There are certain government departments that still very much need to see cause and effect, and sometimes it's messier than that, and it takes a long time to see what you've put in place and the impact and the outcomes that it's had. So I think there needs to be political will, but somehow also a depoliticising of that.*³⁴⁵

The current system is failing to prevent children with SEND and neurodivergence from unnecessarily entering into the justice system, and it is not currently able to deal appropriately with them if they do enter the justice system. Every child matters and deserves the best chance they can have to live a healthy, happy and productive life in our society. That is a measure of a civilised society. Some children, however, are extremely vulnerable, and that is clearly the case for children with SEND and neurodivergence.

This Review's recommendations are designed to break the debilitating cycle of offending and reoffending, which can become endemic after a first encounter with the youth justice system. We appreciate that this involves a complex set of interactions among a number of different agencies, and it requires effective and continuing oversight and accountability to ensure success. We have fully costed a set of recommendations designed to promote early intervention in a cost-effective way to support these children while saving considerable sums of public money for years to come. We hope this will help generate the cross-party political will to ensure

³⁴³ The total economic impact is complicated somewhat by the fact that some of the additional government spending would represent cash transfers to the legal profession. However, all of these cash transfers are anticipated to relate either to increase time requirement for lawyers, or increased training requirements.

³⁴⁴ These figures are subject to uncertainty in both directions. On the one hand, the scale of the link between the recommendations and reducing reoffending is untested. On the other hand, the estimates for the economic benefits of reducing reoffending are conservative, because they do not take into account all relevant considerations, including the long-term benefits of children involved in the criminal justice system achieving happy and productive lives in the long term.

³⁴⁵ Hannah Smithson, Oral evidence session with the Sieff Foundation Working Group (2 May 2024)

that children with SEND or neurodivergence have the best chance of avoiding contact with the justice system, and that those who encounter the justice system are able to go on to lead productive, fulfilled and law-abiding lives as adults.

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Terms of Reference

1. To produce a report on dealing with children with SEND & neurodivergence in the Youth Justice System better to ensure that children and young adults are constructively and fully engaged in the process.
2. To consider the viability of this cohort of children being dealt with through the SEND tribunal system.
3. To call for evidence from:
 - (a) Government and other public bodies involved in dealing with children with SEND and neurodivergence to determine that the proposals are capable of implementation and are in line with current thinking on the treatment of SEND and neurodivergent children in the youth justice system and that an effective transition from current practice could be made.
 - (b) Judges, retired judges, non-judicial office holders and administrators from the SEND tribunal system and from other parts of the courts and tribunals judiciary to ascertain whether this forum is appropriate for consideration as an alternative to the current youth justice system and would better serve the desired outcomes of “Children First”.
 - (c) Legal practitioners and organisations working in the youth justice and SEND fields
 - (d) Parents and others with direct involvement with children with SEND and neurodivergence
 - (e) SEND and neurodivergent children and young people
 - (f) Specialists in SEND and neurodivergence
 - (g) Academics specialising in SEND, neurodivergence, youth justice, courts and tribunals
 - (h) Experts on cost benefit analysis to assess the cost effectiveness of any recommendations of the Working Group.
5. To engage with other stakeholders active in the field throughout the process to ensure their views are appropriately considered.
6. To share the Working Group findings with all interested groups and parties.

Working Group Members

Kate Aubrey-Johnson	Barrister, Garden Court Chambers and Executive Director, Child Rights and Youth Justice
Sir Robert Buckland KC	Barrister, Foundry Chambers; Lord Chancellor and Secretary of State for Justice (2019-2021)
Dr Susana Castro-Kemp	Associate Professor of Psychology and Human Development and Director of UCL Centre for Inclusive Education (CIE), Institute of Education (IOE), UCL Faculty of Education and Society
Frank Grimsey Jones	Research Fellow in Health Economics and Health Policy, PenTAG, University of Exeter
Dr Anne Marie Day	Lecturer in Criminology, Manchester Centre for Youth Studies, Manchester Metropolitan University
Professor Cheryl Thomas KC (Chair)	Professor of Judicial Studies, University College London (UCL) Faculty of Laws and Director, UCL Judicial Institute

Researchers

Dr Dora Kokosi	Lecturer in Psychology and Human Development, Institute of Education (IOE), University College London (UCL) Faculty of Education and Society
Selena Teji	Research, Data & Operations Lead, Child Rights and Youth Justice

Sieff Foundation observers to the Working Group

John Tenconi	Chair, Sieff Foundation
Lord (Alex) Carlile	House of Lords
Richard White	Trustee, Sieff Foundation

Secretariat to the Working Group

Maria Diaz	Manager, UCL Judicial Institute
David Hitchcock	Secretary, Sieff Foundation

APPENDIX B: Evidence Providers

The Working Group is extremely grateful to all of those organisations and individuals who provided written and oral evidence to the Review. We have benefited from and appreciate all of these submissions whether or not they were cited formally in the report.

Written submissions

Organisations

Association of Youth Offending Team Managers

Youth Justice Board for England and Wales

Centre for Justice Innovation

Collaborative submission from the following group of experts:

Professor Nathan Hughes	University of Sheffield and Chair of the Acquired Brain Injury Justice Network (ABIJN), part of the UK Acquired Brain Injury Forum (UKABIF)
Professor Stan Gilmour	Honorary Professor of Practice in Policing, Keele University
Dr Hope Kent	University of Exeter
Professor Huw Williams	University of Exeter
Frances Sheahan	Independent consultant on justice for children

Individuals

Tanya Adkin	Autism Specialist and Social Work Assistant - ND Social Care
Disan Buteera	Open University England (2020) with T90 Certificate of Higher Education Open
Mary Cartlidge	Specialist Independent Social Worker - ND Social Care
John Drew CBE	Social Justice Advisor and Campaigner
Baroness Hollins	House of Lords
Mark Johnson MBE	
Samantha Silver	CEO, Action-attainment CIC
Dr Tom Smith	Associate Professor in Law, University of the West of England
Judge Meleri Tudur	Health, Education and Social Care Chamber
Margaret Wilson OBE	JP Retired, Youth Justice

Oral evidence

Professor Maggie Atkinson	Honorary Professor, Keele University, Keele Institute for Social Inclusion (KISI) and Trustee, Sieff Foundation
Dr Miranda Bevan	Dickson Poon School of Law, King's College London
Mary Cartlidge	Specialist Independent Social Worker and Autism Specialist, The Nurturing Social Care Programme
Dominic Goble JP DL	Deputy Lieutenant of Northamptonshire; Magistrates' Leadership Executive, Midlands Region Youth Panel Representative; Youth Court Solutions
Anthony Hill	Head of Policy, Crown Prosecution Service
Alistair Hogg	Head of Practice & Policy, Scottish Children's Reporter Administration
Melissa Maybanks	Policy Officer, Crown Prosecution Service
Naomi Redhouse	District Judge (Magistrates' Courts) now retired, and former Director of Studies (Youth Court and Serious Sexual Offences) for the Judicial College of England and Wales
Jasbinder Sidhu	Senior Policy Adviser, Crown Prosecution Service
Professor Hannah Smithson	Manchester Centre for Youth Studies, Manchester Metropolitan University
Mel Stooks	GT Stewart Solicitors & Advocates and the Youth Practitioners' Association (YPA)

APPENDIX C: Additional information on the Review's economic evaluation

Frank Grimsey Jones

Research Fellow in Health Economics and Health Policy, PenTAG, University of Exeter

Economic benefits of proposals to reduce the number of court proceedings against children

One hypothesised benefit of these interventions is to reduce the number of children proceeded against at court. The below calculation focuses only on the costs relating to the court process. This assumption is valid if it is assumed that all the cases that are avoided would be proceedings that would not result in sentencing. If proceedings are avoided that would have resulted in a sentence, this would result in additional savings in relation to the sentence, e.g. avoiding the cost of facilitating a custodial sentence.

The cost of a day of crown court time was estimated to be £2,860 in a previous piece of research (inflated from £2,700 in 2017 pounds), or £572 per hour assuming five hours of sitting. This estimate represents only Department of Justice spending, and does not include the economic costs of juries, advocates and other staff attending court cases. It is calculated top down, based on the overall budget of the Department of Justice, meaning it may be higher than bottom-up estimates as it will incorporate a large range of back office/fixed costs faced by the Department of Justice.

The estimate was validated using a bottom-up approach. The cost of a day of crown court judge time is £500 to £600 per day or £100 to £120 per hour, assuming 5 hours sitting time. The cost per hour for a legal aid advocate is £100 and the cost of an unqualified social worker is used as a proxy for the cost of a clerk (£44). It is also used a proxy for the at least one additional professional working with the child likely to be present. Building costs are £159 per hour. This gives a financial cost of £500 per hour. There is also an economic cost of the juries' time (the average wage of £17.61 is applied). This gives a total economic cost of £700 per hour. There is likely to be a low estimate as there may be other costs, e.g. in relation to additional professionals in attendance or witnesses giving evidence.

The average duration of a Crown Court case with a trial is 13 hours. This is for all Crown Court cases, the vast majority of which will have adult defendants, but is the only data available. This means there would be a financial saving of around £6,600 per Crown Court case avoided, and an economic saving of £9,300.

The cost of an hour in Youth Court is estimated to be slightly lower, where a District Judge is sitting, as they have slightly lower fees (£500 to £600 per day). The estimated cost per hour of Youth Court time where a District Judge is presiding was £507.

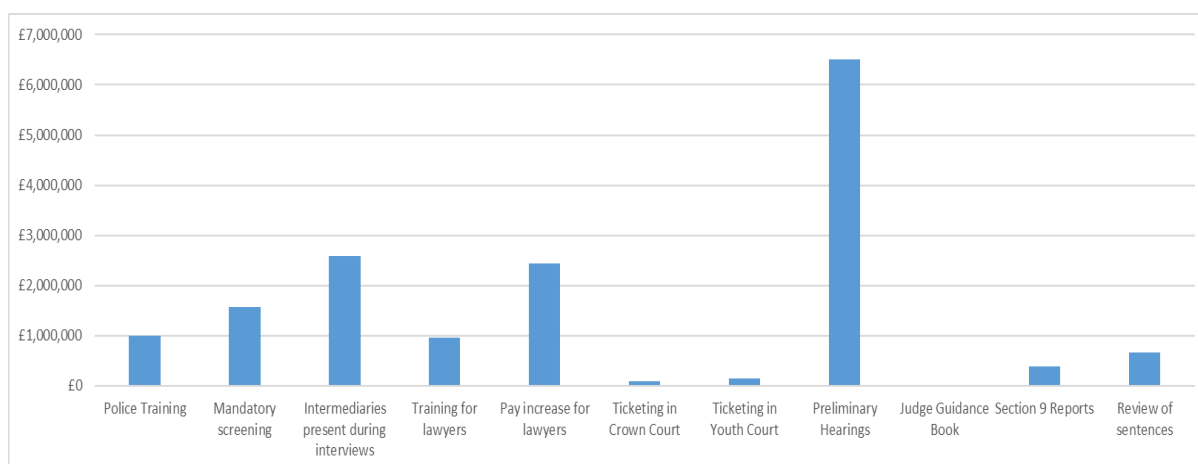
Experts advised that Youth Court cases range from 2 minutes to an hour, so an average length of 30 minutes per Youth Court case was assumed. This gives an average financial saving per Youth Court case avoided of £254, where a District Judge is presiding.

For a Youth Court case presided over by magistrates, the average wage is used to represent the economic value time volunteered by the magistrates (£17.40), which is used instead of the cost of the judge. This gives an hourly financial cost of £372 per hour and an hourly economic cost of £424 per hour. This gives an average financial saving per Youth Court case avoided of £186 and an average economic cost of £212, where a magistrate is presiding.

Combined economic impact

The modelled economic cost of implementing all the recommendations was £10.9m. The modelled direct financial cost to the government was £10.8m. The remaining economic cost of implementing the recommendations of £0.2 million related to the value of time volunteered (Figure C1).

Figure C1: Total economic cost to implement recommendations

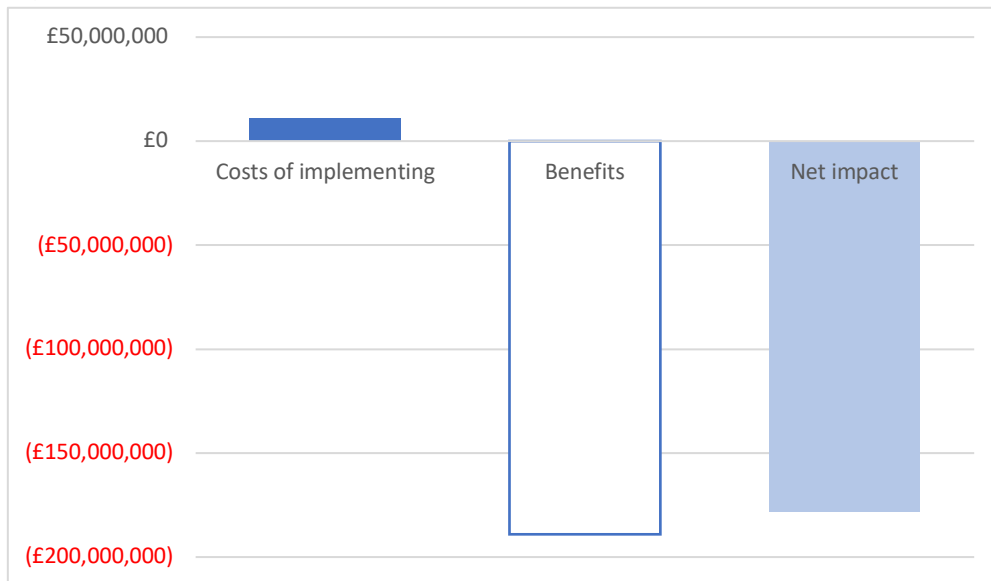


Under the base case assumptions, we assumed the following:

1. 10% reduction in youth reoffending
2. 10% fewer children are proceeded against at court

This yielded modelled financial benefits of £68m and non-financial benefits of £121m, giving total economic benefits of £189m (Figure C2). That means £178m economic benefits net of investment.

Figure C2: Net economic costs and benefits of recommendations



There was an economic benefit to cost ratio of £16 economic benefits per £1 invested. There was a financial benefit to cost ratio of £5 per £1 invested. Reductions of 5% and 15% were tested as part of sensitivity analysis. This yielded financial benefits of £24m to £103m, with a financial benefit-to-cost ratio of £2 to £9 of savings per £1 invested. The net economic impact was a benefit of £84m to £273m with an economic benefit-to-cost ratio of £9 to £25 per £1 invested.

The vast majority of the economic benefits relate to reducing reoffending. Reducing the number of children proceeded against at court has a smaller financial and economic impact. For the economic impact to be neutral, the recommendations would need to reduce reoffending by 1.5%. For the recommendations to be cost neutral (from the perspective of government spending), they would need to reduce reoffending by 3.5%.

Limitations

- This analysis represents a hypothetical assessment, with many assumptions, that aims to help the reader to understand the relationships between the costs and benefits of a set of proposed criminal justice reforms, and aims to inform future evidence generation, including pilot studies.
- There were substantial limitations in the published data, meaning that a number of assumptions had to be made to inform key variables. If data become available in future, this will help to strengthen the analysis.
- A number of the modelled benefits do not include important sequelae. For example, the modelled benefits of reducing reoffending focus only on a one-year time horizon, when

in reality there are likely to be benefits over the child's lifetime. Likewise, a key impact of reducing the number of children proceeded against at court is that it may reduce the likelihood that they are criminalised and that offending escalates in the future. However, there is not sufficient published evidence to support this in a format that could be incorporated within an economic evaluation.

- It is possible to incorporate the wellbeing benefits to victims as part of the economic benefits of reducing crime. It is not possible to incorporate the wellbeing benefits to offenders of reducing reoffending or reforming the criminal justice process, because there is not sufficient relevant evidence.

APPENDIX D: Additional resources

The following provides a list of additional resources on this topic that are not included in the References section of this report. It is meant to be an indicative not exhaustive list of the large body of scholarship and policy work in this subject area.

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The Michael Sieff Foundation is a registered charity that is dedicated to improving policy and practice for the well-being of children and young people by bringing together people with wide ranging responsibilities for vulnerable children and young people, resulting in action being taken in practical ways. Since research shows the best outcomes for children depend on multi-disciplinary work, the Foundation encourages multi-agency collaboration.

Since 1987 the Foundation has made a significant contribution to policy and practice in the sphere of child protection, the social re-integration of young offenders, combating cross border paedophile activity, improving the conditions for children giving evidence in court, work with early years' children and the welfare of children in primary schools.

On conclusion of a cycle of conferences from 2008 to 2011 the Foundation decided to work in partnership with other like-minded organisations in order to build on our reputation for promoting conferences and our resources for networking. The Foundation offers internal expertise on specific subject matter, database pooling, assistance in Parliamentary promotion where appropriate and subsidy or underwriting. We focus on areas where we have historical knowledge and emotional capital and where there is a reasonable likelihood of a successful outcome.

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