



The Standing Committee for Youth Justice

The Standing Committee for Youth Justice (SCYJ) www.scyj.org.uk is a not for profit company and membership body which provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and advocates a child focused youth justice system that promotes the integration of such children into society and thus serves the best interests of both the children and their communities.

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Response to YJB consultation on “The new remand framework for children: Allocation of new burdens funding to local authorities”

Introductory comments

1. All children denied bail gaining looked after status

The SCYJ welcomes the move to extend ‘looked after’ status to children denied bail in court proceedings, whether placed in ‘Youth Detention Accommodation’ or other local authority accommodation. The SCYJ would subscribe to the principle underpinning Sir William Utting’s report “*People Like Us*” that **all** children living away from home need to be safeguarded and have their welfare promoted by a set of standards common to all groups. Accordingly the SCYJ believes **all** children deprived of their liberty and placed in youth detention accommodation should have ‘looked after’ status.¹

However the SCYJ seeks clarification over the comments made in para 60 page 20 that:

“We are working with colleagues in the Department for Education and the Welsh Government to review the framework of regulations and guidance so that, in fulfilling their duties, local authorities have scope to be able to apply these in a proportionate way to take account of the needs of this new group of looked after children”

¹ Utting, W (1997) *People Like Us: the report of the review of the Safeguards for Children Living away from home*. Department of Health and Welsh Office

² See for example YJB (2009) *“Fine art of science? Sentencers deciding between community penalties and custody”* YJB, London; Nacro (2011) *“Reducing custody – Bridgend”* London: Nacro; Nacro (2011) *“Reducing custody – Merthyr”* London: Nacro; Bateman, T. and Stanley, C *“Patterns of Sentencing: Differential Sentencing across*

The implications of this paragraph are not clear. However, the SCYJ is concerned that it may lead to a position where not all the guidance and regulations associated with the Children Act 1989 will apply to those denied bail by the courts. The SCYJ does not believe that children deprived of their liberty through the criminal justice process should have reduced rights and safeguards relative to other children living away from home. Moreover, given that those children currently remanded to local authority accommodation (either placed in an open setting or subject to a court ordered secure remand) enjoy the same rights and safeguards as other looked after children, any dilution of the regulations and guidance would represent a worsening of conditions for this group.

2. Funding of places

The SCYJ in 2009 set out its view on the preferred funding structure for the devolution of budgets to local authorities of the national secure estate budget in *“The Funding of Custody for Children”* (available at www.scyj.org.uk/files/FOC_Report_FINAL.pdf). Whilst accepting that as an initial step historical use by each local authority might be a basis for division of the national budget, this was not seen as a valid or sustainable basis for a permanent settlement. It has been demonstrated on a number of occasions that current and historic use of custody may be based on quite arbitrary factors (e.g. sentencing culture, quality of YOT services, and quality of children’s services generally) that have little to do with the real need of children in a particular area.² The SCYJ accordingly believes that settling permanently on an ‘historic use’ approach will reward areas that historically have made a disproportionately high use of custody with a relatively large slice of the budget and penalise areas that have devised community based alternatives which have resulted in a low use.

It is now widely accepted that children in the youth justice system, and particularly those who enter the secure estate, are drawn from the wider cohort of children who have high welfare needs. Accordingly the SCYJ believes that any funding formula that is to be sustainable and reflect the structural ‘drivers’ for the use of custody should be based on a measure that reflects local need and deprivation. The formulae the YJB uses for grant distribution does reflect these but also include offending statistics. Possibly more appropriate a measure would be either that used by the YJB in recent years to place YOTs in families, which comprised 15 variables that drive crime levels including deprivation, social stability and population, or the old Department for Communities and Local Government formula for grants to Children’s Services departments which reflected aggregate welfare needs.

² See for example YJB (2009) *“Fine art of science? Sentencers deciding between community penalties and custody”* YJB, London; Nacro (2011) *“Reducing custody – Bridgend”* London: Nacro; Nacro (2011) *“Reducing custody – Merthyr”* London: Nacro; Bateman, T. and Stanley, C *“Patterns of Sentencing: Differential Sentencing across England and Wales”* London; Youth Justice Board

3. Involvement of local authorities in commissioning of youth detention accommodation

There appears to be something of a contradiction within the consultation. The document states that: *“The Youth Justice Board will also be responsible for commissioning youth detention accommodation, although local authorities will play an increasingly important role in this process”*. Yet the consultation provides no detail about the how the role of local authorities in commissioning will increase. Furthermore, it is difficult to see this being achieved within the proposed framework given that the plans outlined would reduce the role of local authorities in both placement and commissioning decisions:

- a) Placement decision-making responsibility will formally move from local authorities to the YJB placements team. Currently the placement decision-making responsibility for any child remanded into local authority accommodation lies with the local authority named on the warrant. While in practice the YJB places children in the secure estate, since the final decision currently lies with the Local Authority, the removal of this responsibility from them would be a key change.

As local authorities become responsible for the full cost of secure remand placements and for all detained children they are likely to want – and arguably should have – a greater say in both placement and commissioning decisions

Above all, the SCYJ would advocate for placement decisions to be made based on the needs of the child and ideally at a unit close to their home area.

- b) Commissioning of escort services (SCHs and STCs) is also due shortly to move from local authorities to the YJB. Yet, under the consultation plans, local authorities will be financially responsible for escort services without having any apparent control over the commissioning process.

How will this ensure that the role of local authorities is made increasingly important by these changes?

Responses to specific questions

These will be grouped together as some responses are applicable to more than one question.

Question 1 – Do you agree that funding for remands to under-18 young offender institutions should be distributed on the basis of historic usage of this type of accommodation for 15 – 17 year olds averaged over the three most recent years for which data are currently available?

Question 2 – Do you think a different formula should be used? If so what should that formula look like?

Not as a permanent arrangement. Any formula should take account of local deprivation factors for the reasons set out above and in the SCYJ paper *“The Funding of Custody for Children”*.

Question 9 - Do you agree that funding for local authorities to meet their new duties to treat all remanded children as looked after should be distributed on the basis of historic usage of this type of accommodation for 15 – 17 year olds averaged over the three most recent years for which data are currently available?

Question 10 – Do you think a different formula should be used? If so what should that formula look like?

Not as a permanent arrangement. Any formula should take account of local deprivation factors for the reasons set out above and in the SCYJ paper *“The Funding of Custody for Children”*.

Question 3 – Do you have any comments on the proposal relating to the costs of remands to secure children’s homes and secure training centres?

The SCYJ sees the statement in para 31 *“There will be no transfer for the costs of remands to secure children’s homes and secure training centres as this is not a new burden”* as difficult to understand. It is clear that there **will** be an increased burden on local authorities owing to the cessation of the 1999 agreement, which linked the financial assistance given to local authorities to the average cost of a residential place, and provided for the re-imbusement of any costs above this.

Furthermore, the SCYJ sees potential tension between:

- a) The local authority having responsibility for the child as one that is ‘looked after’.
- b) The local authority being made responsible for the full cost of secure remand placements.
(And as a result of a) and b) local authorities are likely to want a greater say in both placement decisions and secure estate commissioning)
- c) Local authorities not being given a greater say in placement decisions and, furthermore, experiencing the removal of their formal decision-making ability of where to place their securely remanded ‘looked after’ child (i.e. their legal responsibility for doing so).

It could currently be argued that local authorities are to a large degree ‘compensated’ for their lack of control over the costs of placement. Yet under the plans being consulted upon they will have total financial responsibility for a decision over which they have little control.

Question 4 – What are your views on the Youth Justice Board recovering the costs of remands to youth detention accommodation from local authorities using ‘sector prices’?

Accepting that ‘actual cost recovery’ would be administratively problematic and expensive, the same is true of the concept of ‘sector prices’ because of the variation in what is and is not included in each ‘sector bed night price’. Such debates appear to become somewhat detached from reality when attempts are made to compare ‘apples with oranges’ and raises the question of whether resources should have the same items included when devising a ‘sector cost’ base i.e. the cost base is one that is common to all secure facilities. It could also mean that a local authority would have to pay for a placement in its own resource if it possessed a secure unit with beds contracted to the YJB and had a child remanded to youth detention accommodation.

Question 5 – Do you agree there should not be a centrally held budget to meet the cost of ‘spike’ events?

Question 6 – If you think there should be a centrally held budget; how much funding should be retained by the Ministry of Justice for this budget? And, what definition of spike event should be used?

The SCYJ believes that if the three major ‘spike’ events since 2000 are considered – that is: the rise in custody following the ‘street crime’ initiative in the early 2000s; the stubborn level of custody during the Offences Brought to Justice and the resultant period of target driven policing; and the rise in custody following the disturbances of 2011 – it is questionable that the drivers were in any way in the control of local authorities. Instead they lay in operational policing, requirements of central government, and sentencing. This would suggest it would be desirable for there to be some form of contingency provision. The recently announced withdrawal of Birmingham from the Youth Justice Reinvestment Pathfinder Initiative, citing the August 2011 disturbances as the reason for activating a ‘penalty free’ release clause, provides further support for the need for some form of contingency funding.³

However, given that the purpose of devolution is to encourage local authorities to invest in alternatives to custody, it is clear that it could undermine the supposed mechanism if every time custodial remand numbers rise due to ‘spike’ events, they receive compensation from a central fund. This is particularly true if a broad definition of ‘spike’ events is used.

To mitigate against this risk, the SCYJ would advocate for a narrow understanding of ‘spikes’ that includes only very short-term, ‘freak’ events (such as the August 2011 riots, or unexpected, major football match disturbances), which, within reason, cannot be foreseen. In practice this would mean the provision of a very small centrally held budget that would be available in exceptional circumstances only.

Question 7 – Do you agree that the proposals set out above offer a pragmatic approach to dealing with the costs of remand journeys to and from all types of youth detention accommodation?

Question 8 – If not what arrangements should be put in place?

The SCYJ consider this somewhat complicated. Meeting the SCH and STC transport costs by a **deduction** from the budget transfer to local authorities to pay for a contract the YJB has established may cause some concern to local authorities. Again there may be a perception amongst local authorities that resources are being spent ‘on their behalf’ with no control over who is commissioned to provide a service for their looked after children and, more importantly, no control of the quality of such a service. How will local authorities be able to satisfy themselves that children being transported are treated in line with all Children Act guidance and regulations?

³ Neil Puffett, *Birmingham quits devolved youth custody budget scheme*, Children and Young People Now, October 25th 2012 (available at http://www.cypnow.co.uk/print_article/cyp/news/1075105/birmingham-quits-devolved-youth-custody-budget-scheme)

The SCYJ would have concerns if children were at any time transported to and from any form of youth detention accommodation in the company of adults and would seek assurances that these new arrangements will preclude this.

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.