



The Standing Committee for Youth Justice

## SCYJ RESPONSE TO THE CARLILE INQUIRY

NOVEMBER 2013

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The Standing Committee for Youth Justice (SCYJ) 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. We advocate 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. [www.scyj.org.uk](http://www.scyj.org.uk)

### 1. INTRODUCTION: SCYJ POSITION.

- 1.1 SCYJ believes that the criminal court is inappropriate for young children. We would like to see the minimum age of criminal responsibility (MACR) raised, preferably to 14 or higher, so that younger children are taken out of the criminal court system altogether. There is a strong body of evidence to support this proposal.<sup>1</sup>
- 1.2 The formality and processes of the court make it difficult for even a typical child to understand and fully participate. Given that the majority of children tried in a youth court have some form of communication disorder, mental health problem or learning disability<sup>2</sup>, their chances of participating meaningfully are minimal.
- 1.3 These chances could be improved by adjustments to the court but such adjustments cannot alter the fact that the court is fundamentally inappropriate and alienating for younger children. Only wholesale reform of the system can genuinely tackle the problem.
- 1.4 We believe that the youth court should be reserved for children over-14 who commit the most serious offences (i.e. that the MACR should be raised to at least 14). Most non-sexual or non-violent offences committed by children should be dealt with outside court. Lower level offences should be dealt with outside the youth justice system entirely in an informal restorative justice setting. Many children will need little more than restorative interventions; some children at high

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<sup>1</sup> See for example The National Association for Youth Justice, 2012, "Criminalising Children for No good Purpose: The age of criminal responsibility in England and Wales". Accessed 4 November 2013 at: [http://thenayj.org.uk/wp-content/files\\_mf/criminalisingchildrennov12.pdf](http://thenayj.org.uk/wp-content/files_mf/criminalisingchildrennov12.pdf)

<sup>2</sup> Mental health issues are three times as common amongst children in the justice system compared to the general population. Over 60% of children who offend have communication difficulties; 25% have IQs of less than 70 and 30% have borderline learning difficulties. McEwan, J (2013), "Vulnerable defendants and the fairness of trials", Criminal Law Review, Issue 2, Page 100.

risk of poor future outcomes are likely to require effective, evidence-based diversionary interventions to address their needs.

- 1.5 Evidence suggests that contact with the youth justice system does not prevent children reoffending. The Edinburgh Study of Youth Transitions and Crime findings suggest that contact with the criminal justice system is criminogenic and exacerbates the risk of further involvement with crime, whereas ‘forms of diversion that serve to caution without recourse to formal intervention ... are associated with desistance from serious offending’.<sup>3</sup>
- 1.6 The majority of the children who come before the youth court have unmet welfare and/or health needs. SCYJ firmly believes that these need to be addressed to prevent reoffending. We advocate the use of effective, evidence-based interventions to address needs and a well resourced early intervention programme to help to prevent such children from escalating through the system and from offending in the first place.

## **2. Role of the youth court:**

*Does the youth court operate effectively to reduce offending and have regard to the welfare of the child and in accordance with the UN Convention on the Rights of the Child (UNCRC)?  
Is there a case for a more holistic approach to dealing with young people that offend but are also in need of welfare intervention?*

- 2.1 The ability of the youth court effectively to have regard to the welfare of the child is compromised by poor assessment tools and a lack of powers to address welfare needs. Sentencing guidelines and sentencers’ understanding of the particular needs of vulnerable children are also factors. Difficulties in addressing children’s welfare needs hampers the court’s ability to reduce offending effectively, as it is unable to tackle root causes. SCYJ is concerned that elements of the youth court are not in-keeping with the UNCRC. We would welcome a more holistic approach to children who offend but do not believe that the necessary reform can be achieved solely through adjustments to the court system.
- 2.2 The Asset assessment tool is used to assess children in contact with the youth justice system and thus determines the information that comes before the court. However, it does not adequately assess children’s health and welfare needs or link to intervention plans. The situation should improve with the introduction of the AssetPlus assessment tool which will be used from next year. However, this tool is still one which primarily assesses risk (to others) and does not focus on the vulnerability and needs of the child before the court. The introduction of the Common Health Assessment Framework in Youth Offending Teams (YOTs) should shortly begin to improve systematic health assessment of all young people entering the youth justice system.
- 2.3 The more significant factor is the youth court’s lack of powers to address a child’s welfare, educational and health needs. The sanctions available to the court are criminal. It has very limited scope to require health or welfare interventions and so tackle the root causes of offending. In addition, magistrates may be able to see that a child before them needs assistance and support but may be advised that it is not their role to raise or address concerns about unmet needs.

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<sup>3</sup> McAra, L and McVie, S ( 2007) ‘Youth justice?: The impact of system contact on patterns of desistance from offending’ in European journal of criminology 4(3)

- 2.4 The UN Convention on the Rights of the Child (UNCRC) states that “In all actions concerning children” by courts and others, “the best interests of the child shall be a primary consideration.” Youth sentencing guidelines are clear that the court should have regard to the welfare of the offender when sentencing a child<sup>4</sup> and that, in so doing, a sentence should include “tackling the particular factors (personal, family, social, educational or health) that put the young person at risk of offending”.<sup>5</sup> Practically however, the lack of tools and powers available to address welfare needs make this difficult. Also, sentencing guidelines are not clear on how practically to balance the requirement to have regard to a child’s welfare against the other key elements in determining the sentence.
- 2.5 Insufficient training of magistrates, judges and lawyers (see section four below) can exacerbate the problem as the multiple needs and vulnerabilities of children who offend and the interventions available may not be recognised or understood.
- 2.6 Welfare and health needs are frequently the root cause of offending. Adequate, voluntary early-intervention programmes could help to prevent children from offending in the first place. Where the needs of children who do offend are not addressed, reoffending is likely to occur. The reoffending rates for young people convicted in the youth court speak for themselves. In 2011/12 the Ministry of Justice found that those young people who “received their first-tier disposals had a reoffending rate of 44.7 per cent, those given YROs had a re-off ending rate of 67.7 per cent. Those released from custody had a re-offending rate of 72.6 per cent.”<sup>6</sup> These rates are unlikely to significantly improve until the health and welfare needs of children who offend are properly addressed by effective and evidence-based interventions – currently some of the most effective interventions are used inconsistently across the criminal justice system.
- 2.7 A more holistic approach to meeting the welfare needs of children who offend is certainly required but SCYJ has concerns as to whether the youth court is the most appropriate setting or driver for this integration. As outlined in the introduction, we believe the criminal process should be reserved for older children who commit the most serious offences. A child should not have to be taken to court to have their health or welfare needs met.
- 2.8 Rather, we would like to see a system where: highly engaging, voluntary, evidence-based early interventions are rolled out to address the needs of children at risk of offending early on in their lives; children with assessed needs have those needs met through properly resourced coordinated programmes (this should apply equally to children who offend and those who don’t – many of whom also have unmet needs); any health, educational and welfare needs of younger children and older children who commit all but the most serious offences are dealt with outside court – for compulsory interventions in such cases, offending must be proven or admitted to by the child following requisite legal advice.
- 2.9 In the absence of the latter reforms, current arrangements should be adjusted. For instance, in line with the family court, the youth court could be given the power to require the local authority to undertake an investigation into the child’s health and welfare circumstances. Health screening and support should be more widely available in police custody and the youth court – this is particularly important to ensure reasonable adjustments are made in court so fulfilling

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<sup>4</sup>Sentencing Guidelines Council, “Overarching Principles – Sentencing Youths”. Accessed October 31 2013 at: [http://sentencingcouncil.judiciary.gov.uk/docs/web\\_overarching\\_principles\\_sentencing\\_youths.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf)

<sup>5</sup> Ibid

<sup>6</sup> Ministry of Justice, Home Office, Youth Justice Board 2013: “Youth Justice Statistics 2011/12 England and Wales, Youth Justice Board/Ministry of Justice, Statistics bulletin” Accessed 29 October 2013 at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218552/yjb-stats-2011-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218552/yjb-stats-2011-12.pdf)

obligations under the Equality Act 2010. In addition we would recommend the trial and evaluation of “problem solving” youth courts, which have greater power to hold local services to account.

- 2.10 The UK has ratified the UNCRC yet the Convention is not incorporated into English law, unlike the European Convention on Human Rights (ECHR). Public bodies are nevertheless bound by the UNCRC in international law and courts should comply with its provisions. However, little training is available for the judiciary on the Convention. As a result, the UNCRC is not embedded in practice in the youth court. SCYJ would like the UNCRC to be incorporated into English Law. Short of that, we want clear guidance and appropriate training on abiding by the UNCRC for all judges and practitioners working in the youth court or with under-18s who offend.
- 2.11 Moreover, fundamental aspects of the youth court mean its operation is not compatible with the UNCRC and may compromise a child’s right to a fair trial. The difficulty the court has in addressing a child’s welfare needs has implications for Article 3 – the child’s best interests as a primary consideration. As outlined in the introduction, the formality of the court impedes children’s ability to understand and so participate fully in proceedings, as can insufficient training, as outlined in Section four below. This has implications for Article 12 of the UNCRC – a child’s right to be heard in judicial proceedings affecting them – and the right to a fair trial as guaranteed by Article 6 of the ECHR.<sup>7</sup>
- 2.12 As outlined above, SCYJ believes that court is fundamentally too formal a setting for young children to engage meaningfully in the proceedings and we advocate young children being removed from the court system entirely. In the absence of such reforms however, adjustments to the youth court could improve the situation. For example, improved training and accreditation for practitioners, as outlined in Section four below and the introduction of intermediaries for child defendants, as recommended by the Justice Select Committee<sup>8</sup> and others. Currently, a court has the power to order that a child defendant has an intermediary (see for example R [on the application of AS] V Great Yarmouth Youth Court) but this is not automatic.
- 2.13 SCYJ is also concerned that “naming and shaming” children is incompatible with UNCRC and domestic provisions to protect the welfare of children. We firmly believe that naming and shaming children is fundamentally wrong – particularly in this age of the internet where information is indelible once revealed. Naming a child involved in criminal proceedings has a negative impact on their ability to be rehabilitated and desist from criminal behaviour. It also contravenes Article 40 b)vii) of the UNCRC which provides for privacy in judicial proceedings. Though default anonymity exists for children involved in proceedings in the youth court, the court has discretion to lift this anonymity. SCYJ believes that this is happening more frequently and the Anti-social Behaviour Crime and Policing Bill, currently being examined by Parliament, would make naming children involved in antisocial behaviour proceedings in the youth court the default position.
- 2.14 Revealing the identities of children involved in criminal proceedings has implications for UNCRC Article 16 – a child’s right to privacy – and Article 8 ECHR. It also compromises Article 3 – the best interests of the child as a primary consideration – and Section 44 of the Children and Young Persons Act 1933 – which requires courts to have regard to the welfare of all children

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<sup>7</sup> See for example, McEwan, J (2013), “Vulnerable defendants and the fairness of trials”, Criminal Law Review, 2013, Issue 2.

<sup>8</sup> House of Commons Justice Committee 2013, “Youth Justice. Seventh Report of Session 2012-13”. HC339, London, The Stationary Office Limited

and young people. The Crown Prosecution Service highlights that “the welfare of the child is likely to favour a restriction on publication.”<sup>9</sup>

- 2.15 SCYJ’s position that children should be dealt with outside the court system for all but the most serious offences is in-keeping with the UNCRC, as is our position that evidence-based interventions should be used to address any unmet need of children who offend to prevent reoffending. Article 40 (3)b states that, where appropriate and desirable, states should have measures to deal with children “without resorting to judicial proceedings”. Article 40(1) highlights “the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society”. It should also be noted in assessing the youth court that Article 40(1) requires those who have breached the law to be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth”.

### **3. Use of the Crown Court for Children:**

*To what extent is it the best venue for children and young people who commit serious offences?*

- 3.1 SCYJ has serious concerns about the use of Crown Court proceedings for children, an environment that is intimidating and complex even for adults. If children have to be dealt with in the criminal court, we can see no reason why even the most serious offences could not be heard within the less formal environment of a youth court.
- 3.2 Though there is a compelling case for legal practitioners and sentencers to have youth specialist experience (see Section four below), the Centre for Social Justice (CSJ) found that the overwhelming majority of Crown Court judges have not received such training<sup>10</sup>. In addition, CSJ found a great variation in the extent to which Crown Courts followed guidelines on adapting the court for children and in the groups it considered to require such adaptations.<sup>11</sup>
- 3.3 The more intractable problem is the fundamentally intimidating environment of the court. The European Court on Human Rights found that the Crown Court trials of Jon Venables and Robert Thompson for the murder of James Bulger violated the right to a fair trial, citing the intimidating and confusing processes of the Court.<sup>12</sup> The Crown Court should now make adjustments for children. However, they are still intimidating places, for example, because of the presence of spectators and a sizeable jury.
- 3.4 The CSJ, Independent Commission on Youth Crime<sup>13</sup> and Lord Justice Auld’s review of the criminal courts system<sup>14</sup> all shared the view that the Crown Court was too intimidating an environment for child defendants. The Equality and Human Rights Commission 2012 Human

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<sup>9</sup> Crown Prosecution Service, “Reporting Restrictions – Children and Young People as Victims, Witnesses and defendants”. Accessed November 4 2013 at: [https://www.cps.gov.uk/legal/p\\_to\\_r/reporting\\_restrictions/](https://www.cps.gov.uk/legal/p_to_r/reporting_restrictions/)

<sup>10</sup> Centre for Social Justice, 2012, “Rules of Engagement Changing the heart of youth justice”, page 84. Accessed 29 October 2013 at:

[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf)

<sup>11</sup> Centre for Social Justice, 2012, “Rules of Engagement Changing the heart of youth justice”. Page 88. Accessed 29 October 2013 at:

[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf)

<sup>12</sup> T. v. the United Kingdom and V. v. the United Kingdom [1999] 30 EHRR 121.

<sup>13</sup> Independent Commission on Youth Crime and Anti Social Behaviour, “Time for A Fresh Start”. [http://www.police-foundation.org.uk/uploads/catalogerfiles/independent-commission-on-youth-crime-and-antisocial-behaviour/fresh\\_start.pdf](http://www.police-foundation.org.uk/uploads/catalogerfiles/independent-commission-on-youth-crime-and-antisocial-behaviour/fresh_start.pdf)

<sup>14</sup> 2001, “A Review of the Criminal Courts of England and Wales by The Right Honourable Lord Justice Auld”. <http://webarchive.nationalarchives.gov.uk/+http://www.criminal-courts-review.org.uk/auldconts.htm>

Rights Review found that children who are tried in Crown Courts are at risk of breaching Article 6 of the ECHR as insufficient consideration is given to their age and maturity.<sup>15</sup> The SCYJ agrees that the youth court is the more appropriate setting to try children who commit serious offences. However, moving all youth cases to the youth court removes the possibility of trial by jury. Consideration would need to be given to the most appropriate alternative to a jury, for example, a crown court judge and district judge sitting with two magistrates.

- 3.5 A significant proportion of children tried in the Crown Court are likely to be there because they have been jointly charged with an adult, not because the seriousness of the charge necessarily requires it. Most of these children could and should be tried in the youth court. A mechanism should be found to split such children off at an early stage in the proceedings to ensure that they are promptly dealt with in the youth court. At the very least, no child jointly charged with an either-way offence should be tried in the Crown Court.

#### **4. Specialisms in the youth court and Crown Court:**

*Is there a need for legal practitioners and sentencers in youth criminal justice to have youth specialist expertise? If so, how could this be achieved?*

- 4.1 Specialist practitioners and sentencers are crucial if justice is to be delivered and the needs and rights of children in the justice system are to be met. Sometimes the prosecution, judiciary, defence lawyers and legal advisers in court have little or no specialist knowledge of, for example: youth defence law; engaging with children with complex needs; adapting court processes to the needs of children; alternatives to custody; support services available; or child development (which is important if practitioners are to understand the context of the child's behavior). Significant decisions can be made in this context. Inevitably legal mistakes are made and the ability of children to participate in proceedings is severely compromised.
- 4.2 Crown Prosecution Service representatives in the youth court are "usually" youth specialists meaning they have "at least two years' experience as a Crown prosecutor and that they have undertaken the CPS youth offender specialist training".<sup>16</sup> Defence lawyers in the youth court are not required to be specifically trained. This is a marked contrast to the family court where children are represented by specialist and accredited lawyers.
- 4.3 Barristers and solicitors learn very little, if any, youth court law at undergraduate level or through professional qualifications, and are never taught how to interact with vulnerable adolescents. Youth defence law is very different to adult criminal law – it is a discrete legal system with, for example, different sentences and criteria for remand. Child criminal cases make up small proportion of the work of most lawyers and barristers. The requisite knowledge is therefore difficult to acquire. Most children are therefore represented by lawyers who do not have the knowledge or the skills they need to understand them or to represent them effectively. SCYJ believes that defence lawyers representing children should complete mandatory specialist youth training.

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<sup>15</sup> Equality and Human Rights Commission, Human Rights Review 2012, viewed 11 November 2013 at: [http://www.equalityhumanrights.com/uploaded\\_files/humanrights/ehrc\\_hrr\\_full\\_v1.pdf](http://www.equalityhumanrights.com/uploaded_files/humanrights/ehrc_hrr_full_v1.pdf)

<sup>16</sup> Youth Justice Board 2009, "Making it Count. Second Edition." Accessed 30 October 2013 at: <http://www.yjb.gov.uk/publications/Resources/Downloads/Making%20it%20count%20in%20court.pdf>

- 4.4 Increasing training of sentencers has been found to contribute to a fall in the use of custody and an increase in conditional and absolute discharge.<sup>17</sup> Training will also help them to adapt to the significant difficulties many children have in engaging with court proceedings.<sup>18</sup> Without such adaptations the court will compromise its compliance with the Equality Act 2010 and the child's right to a fair trial.
- 4.5 District judges and magistrates practicing in the youth court are expected to have some initial training and are encouraged to attend ongoing training. Concerns have been raised that the content of the district judge and magistrate training is not sufficiently thorough and a higher level of training has been requested, for example, on adolescent behaviour, and underlying factors related to crime.<sup>19</sup> SCYJ supports this view.
- 4.6 The Prison Reform Trust report that Crown Court judges in a Youth Justice Board sentencing study "had received little, if any, formal training in relation to sentencing young people".<sup>20</sup> The CSJ found that the overwhelming majority of Crown Court judges have not received youth specialist training<sup>21</sup>. There have been calls for Crown Court judges dealing with youth cases should be 'ticketed' following youth specific training. SCYJ supports this view, if youth cases are to be heard in the Crown Court at all.

## 5. The merits of a non-adversarial approach:

*Is there a case for a non-adversarial approach instead of the present adversarial system?*

*To what extent is there a need for additional court powers to require investigation?*

*Are there viable alternatives to the criminal courts system for children and young people?*

- 5.1 SCYJ has concerns about the adversarial system and its impact on children.
- 5.2 Firstly, the system may distort the evidence children provide. Children are more open to influence and more compliant. This can lead to them relaying incomplete or distorted versions of events or making false testimonies. The Centre for Social Justice (CSJ) found that "removing the bias of the questioner is crucial to reducing the influence of these tendencies, yet one-sidedness is a core feature of the adversarial system."<sup>22</sup> The risks are greater for children with disabilities or developmental difficulties (such as autistic spectrum conditions). These children may be even more open to suggestibility and influence requiring a qualitatively different approach to questioning in court.

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<sup>17</sup> Centre for Social Justice, 2012, "Rules of Engagement Changing the heart of youth justice", page 86. Accessed 29 October 2013 at:

[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf)

<sup>18</sup> See for example, Prison Reform Trust 2009, "Vulnerable Defendants in the Criminal Courts". Accessed 11 November 2013 at: <http://www.prisonreformtrust.org.uk/uploads/documents/courtreport.pdf>

<sup>19</sup> Independent Commission on Youth Crime and Anti Social Behaviour, "Time for A Fresh Start". [http://www.police-foundation.org.uk/uploads/catalogerfiles/independent-commission-on-youth-crime-and-antisocial-behaviour/fresh\\_start.pdf](http://www.police-foundation.org.uk/uploads/catalogerfiles/independent-commission-on-youth-crime-and-antisocial-behaviour/fresh_start.pdf)

<sup>20</sup> Prison Reform Trust 2009, "Vulnerable Defendants in the Criminal Courts". Page 53. Accessed 11 November 2013 at: <http://www.prisonreformtrust.org.uk/uploads/documents/courtreport.pdf>

<sup>21</sup> Centre for Social Justice, 2012, "Rules of Engagement Changing the heart of youth justice", page 84. Accessed 29 October 2013 at:

[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf)

<sup>22</sup> Centre for Social Justice, 2012, "Rules of Engagement Changing the heart of youth justice", page 203. Accessed 29 October 2013 at:

[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf)

- 5.3 The system is also highly intimidating, abstract, combative and is not conducive to a child's meaningful participation. Lawyers often appear to duel with legal arguments over the heads of the clients. There are few meaningful ways in which a child can participate in the process, ask questions or give their views. The combative "winner takes all" approach may not be in the child's best interests. For instance, a lawyer securing a not guilty judgement on a technical legal argument will not lead to the root causes of the child's offending being addressed.
- 5.4 Finally, the system does not consider and therefore address the root causes of offending. The focus of the adversarial system is a defendant's guilt or innocence of a particular offence and on the sentence imposed. The child's background is barely considered. It may not therefore be conducive to tackling the root causes of offending and thus reducing reoffending.
- 5.5 By contrast, an inquisitorial approach may be more holistic and focus on the best outcome for the child. Inquisitorial approaches may be used alongside adversarial systems. For example, in Northern Ireland, an adversarial system is used alongside the Youth Conference Service.
- 5.6 As set out in our introduction, SCYJ believes that there are viable alternatives to criminal courts for children and young people who offend. We would like to see younger children and those committing non-violent offences dealt with by way of interventions which are more likely to help them understand the consequences of their actions as well as deal with welfare and health needs. This could include a much wider use of restorative practices and of proven interventions focused on the family and systems around children presenting with challenging behaviour.<sup>23</sup>

## **6. The delivery of the welfare principle in criminal justice proceedings in the youth justice system:**

*How engaged are children's services in England (and social services in Wales) in meeting the welfare needs of children who offend?*

*To what extent are children and social services addressing the welfare needs of children who offend and are involved in criminal proceedings?*

- 6.1 The extent to which children and social services are engaged in meeting the needs of children who offend will depend on the child's circumstances. The Children and Young Persons Act 1969 and Children Act 1989 give local authorities responsibility for preventing offending. However, the very fact of offending suggests that needs are not being adequately addressed. Likewise, high reoffending rates following involvement in criminal proceedings, particularly for those receiving a custodial sentence, could indicate that welfare needs are not being adequately met amongst children who offend and who are involved in criminal proceedings. It is crucial too to consider the health needs of such children and, in considering health and welfare needs, to consider the impact of and access to early intervention.
- 6.2 Looked after children are significantly over represented in the youth justice system. A Prison Reform Trust survey of a sample of children sentenced to custody found that 27% had been in care<sup>24</sup> and children in care are twice as likely to be cautioned or convicted as other children.<sup>25</sup> Such children will by definition be engaged with children's or social services.

<sup>23</sup> Lee, S., Aos, S., Drake, E., Penucci, A., Miller, M., & Anderson, L. (2012, April). Return on Investment: Evidence-Based Options to Improve Statewide Outcomes: April 2012 Update. Retrieved January 23, 2013, from <http://www.wsipp.wa.gov/rptfiles/12-04-1201.pdf>

<sup>24</sup> Prison Reform Trust 2010, "Punishing Disadvantage a profile of children in custody". Accessed 31 October 2013 at: [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Punishing\\_Disadvantage\\_Summary.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Punishing_Disadvantage_Summary.pdf)

<sup>25</sup> House of Commons Justice Committee 2013, "Youth Justice. Seventh Report of Session 2012-13". Page 9. HC339, London, The Stationary Office Limited

- 6.3 Many other children in the youth justice system have come to the attention of social services prior to offending. For example, the Prison Reform Trust found that of a sample of 200 children in custody: 48% had been excluded from school; 47% had run away or absconded; and 39% had been on the child protection register and/or experienced abuse or neglect.<sup>26</sup>
- 6.4 The significant number of children who have been engaged with children's or social services before going on to offend indicates that this engagement has not adequately addressed their health or welfare needs. With well-resourced, evidence-based interventions, these children might have been prevented from offending in the first place.
- 6.5 Other children will have had little or no engagement with children or social services or health services before offending. Arguably however, a significant number of them should have done. Research has found more unmet need amongst children in the community than those in custody.<sup>27</sup> Many children who offend have unmet health needs.<sup>28</sup> Behaviour is the primary means by which children communicate distress, frustration and problems in their environment or development. Behaviour problems are also one of the most common childhood mental health problems. When children's behaviour falls outside healthy norms, we know they face some of the worst and most costly health and social outcomes as adults.<sup>29</sup> Yet many do not reach the threshold for Child in Need support, Special Educational Needs support or Specialist Mental Health treatment and thus do not get the help they need and spiral into crisis.
- 6.6 Improving early identification and responding with evidence-based early interventions can drastically help to improve the life chances of many children who go on to offend.<sup>30</sup> Entry to the youth justice system and to courts should not be the starting point for this work. However, these settings should act as a safety net triggering multi-sector and integrated support for those missed or not responding to earlier intervention.
- 6.7 High reoffending rates, cited in our response in section two, could indicate that children's health and welfare needs are not adequately addressed following involvement in criminal proceedings. The difficulties the courts have in identifying and addressing those needs would be relevant here and highlights the need for the youth justice system to have means to help to ensure that the underlying causes of offending are addressed where early interventions have not been successful.
- 6.8 YOTs will engage with young people who offend. However, even as multi-agency teams, they cannot address the complex health and welfare needs of young offenders alone and other parts of children's services, educational and local health services may not be engaging or investing in

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<sup>26</sup> Prison Reform Trust 2010, "Punishing Disadvantage a profile of children in custody". Accessed 31 October 2013 at: [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Punishing\\_Disadvantage\\_Summary.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Punishing_Disadvantage_Summary.pdf)

<sup>27</sup> Chitsabesan et al. (2006). Mental health needs of offenders in custody and in the community. *The British Journal of Psychiatry*, 188: 534-540.

<sup>28</sup> See: Office for Children's Commissioner. (2011). 'I think I must have been born bad': emotional well-being and mental health of children in the Youth Justice System. London: Office for Children's Commissioner; Prison Reform Trust. (2010). *Seen and Heard: supporting vulnerable children in the criminal justice system*. London: Prison Reform Trust.

<sup>29</sup> Centre for Mental Health. (2009). *Chance of a lifetime*. London: Centre for Mental Health; Centre for Mental Health. (2012). *A Chance to Change: delivering effective parenting programmes to transform lives*. London: Centre for Mental Health.

<sup>30</sup> National Institute for Health and Care Excellence, 2013. *CG158 Antisocial Behaviour and conduct Disorders in Children and Young People. Recognition, intervention and management. National Clinical Guideline Number 158.*, London: NICE.

the team sufficiently or effectively. This may be particularly the case with health services.<sup>31</sup> Links between YOTs and children's services/health can be fractious and children's services appear to be seconding fewer staff to YOTs.<sup>32</sup> The CSJ found evidence that other services may relinquish responsibility for young people who become involved with YOTs<sup>33</sup> and cuts to children's services are also likely to be having an impact.

## **7. The use of diversion from the criminal court system:**

*To what extent is the use of pre-court diversion, triage, conditional cautions etc effective at preventing young people from entering the criminal courts system?  
Is there a case for the use of diversions to be extended still further?*

- 7.1 Pre-court diversion can divert from court only (e.g. Youth Conditional Caution) or from the youth justice system entirely (e.g. informal warnings, some restorative responses, Triage activity and health screening at point of arrest). Both types of diversion by definition prevent people from entering the criminal court system for the offence under consideration.
- 7.2 With regards to its longer term impact, Petrosino's review of research in this area revealed that children who had contact with the formal youth justice system were more likely to re-offend than those diverted away from the system entirely.<sup>34</sup> For most children, total diversion had preferable outcomes to diversion to services or interventions. Australian research revealed a similar pattern of poorer outcomes for children in contact with court systems compared to control groups. The majority of these children re-offended less when diverted away from courts. However, a small proportion (those with histories of maltreatment – a risk factor for early behavioural problems) had higher likelihood of re-offending compared with peers regardless of whether they were diverted or not.<sup>35</sup> This suggests that the vast majority of young people can be managed most successfully through diversion from the youth justice system and from future offending with minimum intervention but a small number may need more intensive integrated and wraparound support (often focused on parents and systems) to reduce the risk of re-offending.
- 7.3 SCYJ fully supports the diversion of children from the youth justice system for lower level and other less serious offences. For many children, diversion to restorative justice will suffice. However, where children have unmet health and welfare needs, diversion should go hand in hand with voluntary, engaging, effective early intervention approaches. Children should be screened briefly for needs and integrated, evidence-based health and social support delivered where relevant.
- 7.4 Diversions from court are generally welcome when they are accompanied by well-resourced effective engagement to address the underlying high needs. However, where unmet needs are not addressed, it is likely that diversion will be ineffective in preventing young people from

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<sup>31</sup> Commission for Healthcare Audit and Inspection and Her Majesty's Inspectorate of Probation, 2009, "Actions speak louder: A second review of healthcare in the community for young people who offend". Accessed at [http://www.hmcpsi.gov.uk/documents/reports/CJJI\\_THM/OFFM/Actions\\_speak\\_louder\\_200903252650.pdf](http://www.hmcpsi.gov.uk/documents/reports/CJJI_THM/OFFM/Actions_speak_louder_200903252650.pdf)

<sup>32</sup> House of Commons Justice Committee 2013, "Youth Justice. Seventh Report of Session 2012-13". HC339, London, The Stationary Office Limited

<sup>33</sup> Centre for Social Justice, 2012, "Rules of Engagement Changing the heart of youth justice", page 203. Accessed 29 October 2013 at:

[http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf)

<sup>34</sup> Petrosino, A., Turpin-Petrosino, C., & Guckenburg, S. (2010). Formal System Processing on Juveniles: effects on delinquency. Massachusetts: The Campbell Collaboration.

<sup>35</sup> Australian Institute of Criminology. (2006). Trends and issues in crime and criminal justice: police cautioning in Queensland: the impact on juvenile offending pathways. Canberra: Australian Government.

entering the youth court system in the longer term. Interventions need to be relevant – that is shaped by the child’s needs and circumstances – effective and evidence-based.<sup>36</sup>

- 7.5 There are however questions about the process surrounding diversions from court. For example, some children may not fully understand that certain disposals will show up on their criminal record or how this might impact their future. It is important that a child’s informed consent is secured before such diversion. Such consent should only be given with the assistance of an adult, preferably a lawyer but at the very least an appropriate adult.
- 7.6 Diversion, used properly, should be used consistently. This is not currently the case and use of court and youth justice system diversion varies widely across the country.<sup>37</sup> This is not acceptable.

***‘The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ’***

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<sup>36</sup> Lee, S., Aos, S., Drake, E., Penucci, A., Miller, M., & Anderson, L. (2012, April). Return on Investment: Evidence-Based Options to Improve Statewide Outcomes: April 2012 Update. Retrieved January 23, 2013, from <http://www.wsipp.wa.gov/rptfiles/12-04-1201.pdf>

<sup>37</sup> Centre for Social Justice, 2012, “Rules of Engagement Changing the heart of youth justice”, page 203. Accessed 29 October 2013 at: [http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ\\_Youth\\_Justice\\_Full\\_Report.pdf](http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/CSJ_Youth_Justice_Full_Report.pdf) and House of Commons Justice Committee 2013, “Youth Justice. Seventh Report of Session 2012-13”. HC339, London, The Stationary Office Limited