



Standing Committee for Youth Justice

Mr George Barrow
Lammy Review Lead, Ministry of Justice
Via email: george.barrow@justice.gov.uk

CC:
Colin Allars, Chief Executive, Youth Justice Board: Colin.Allars@yjb.gsi.gov.uk
Laura Beaumont and Abigail Plenty, Deputy Director Youth Justice Policy, Beaumont-Plenty@justice.gsi.gov.uk

04 December 2017

Dear George

The Lammy Review and the Youth Justice System

I am Chair of the Standing Committee for Youth Justice (SCYJ), an alliance of almost fifty not-for-profit organisations working to improve the youth justice system in England and Wales. We advocate a child-focused, fairer youth justice system that promotes the integration of children in trouble with the law into society and tackles the underlying causes of offending. Our members range from national charities, to service provision organisations and academics. Together, we have expertise across the system as a whole.

I understand you are currently considering how to implement the recommendations of the Lammy Review into the experiences of and outcomes for Black, Asian and Minority Ethnic (BAME) individuals in the criminal justice system. As experts in the youth justice system (YJS), SCYJ wanted to highlight how some recommendations might impact on, and intersect with, the wider aims, ethos and direction of the system, particularly where we have concerns. Our thoughts on this are set out below. In addition, we highlight evidence from the youth justice system which we believe should guide implementation of Lammy's recommendations.

Overall, SCYJ enthusiastically welcomes the Lammy review, having long recognised BAME over-representation as a key issue within the YJS. Overall, we are pleased to see so many robust recommendations, and strongly support a number of them, including all those around increased use of data collection, analysis and publication. Though a minority of recommendations are specific to the YJS, many, if implemented, would help both to address BAME disproportionately in the YJS and generate system-wide improvements.

Recommendation 10: Recommendation 10: The 'deferred prosecution' model pioneered in Operation Turning Point should be rolled out for both adult and youth offenders across England and Wales. The key aspect of the model is that it provides interventions before pleas are entered rather than after.

SCYJ sees the merits of Lammy's 'deferred prosecution' model as a genuine alternative to prosecution rather than an alternative to an out of court disposal or diversion. However, we have concerns about its practical implementation, and how it fits with wider youth justice approaches.

We would advocate the following: the principle of minimum intervention to guide all decisions; that there be no up-tariffing (children on the programme should not be given more

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serious interventions than they would get in criminal proceedings and it should not be used as an alternative to out of court disposals and diversion); that there be no requirement to admit guilt; and that there be no criminal record implications to participating.

We would also seek clarification as to what happens when a child does not complete a programme and goes on to criminal proceedings. How is participation in the deferred model viewed by the court and would a child who has already participated in interventions, in effect, face a “double punishment” once sentenced by the court?

Recommendation 17: *The MoJ and DH should work together to develop a method to assess the maturity of offenders entering the justice system up to the age of 21. The results of this assessment should inform the interventions applied to any offender in this cohort, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity.*

We welcome the recognition of the distinct needs of young adults. However, while supporting an approach to young adults that takes account of their maturity, we do not believe that it is appropriate to extend the YJS to this age group. It is important to keep the YJS for children and to have a separate and distinct approach to young adults.ⁱ The UN Convention on Rights of the Child (UNCRC) requires distinct child-specific approaches. This is the long-standing approach in England and Wales, reflecting the unique status of the child. We note also, that much of the young adult work suggests assessments of maturity up to the age of 25, rather than 21ⁱⁱ.

Recommendation 18: *Youth offender panels should be renamed local justice panels. They should take place in community settings, have a stronger emphasis on parenting, involve selected community members and have the power to hold other local services to account for their role in a child’s rehabilitation.*

Similar recommendations to Lammy’s proposals for referral order panels and greater parental involvement have been made in recent youth justice inquiries including the Taylor Review and Lord Carlile’s Parliamentarian’s Inquiryⁱⁱⁱ.

SCYJ strongly supports Lammy’s recommendation to rename ‘Youth Offender Panels’ as a step towards removing the stigma associated with a young offender label, which the evidence suggests is damaging and criminogenic. However, the proposed new name of ‘Local Justice Panels’ while positively reflecting their connection to the community may create disengagement by children for whom the word ‘justice’ suggests power and authority, and so is neither inclusive nor empowering. Given that language is a key barrier to engagement, SCYJ suggests renaming them as ‘Local Community’ or ‘Local Engagement’ panels.

Lammy is absolutely right to recommend that youth offender panels need to involve key local services. SCYJ recommends that local voluntary sector organisations, be involved too, particularly where they are already engaged with a child and are BAME led and focused. It is critical that panel members are representative of the local community. However we are not aware of any information on panel member make-up, and would recommend that research is





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undertaken to fill this gap. Lammy makes no mention of victim involvement in panels despite the fact that a key element of a referral order is, and should continue to be, the principle of reparation, which requires de facto involvement of a victim.

The privacy of the child is an important principle in youth justice. The UN convention on the Rights of the Child (UNCRC) protects the child's right to privacy (Article 16), particularly at all stages of legal proceedings (Article 40 2)b)vii). Rule 8 of the Beijing Rules clarifies that privacy is important to prevent harm to the child by the process of labelling. In-keeping with this principle, it is imperative that panels remain closed.

Parenting orders

Lammy's recommends that youth courts make better use of parenting orders to challenge and support parents and suggests that the Ministry of Justice review the effectiveness of them, and if necessary replace them with well-designed, clearly evidence-based alternatives. While more parental involvement may be beneficial for many children in the youth justice system, the Lammy Review does not present evidence that this a specific issue for BAME children, that lack of parental involvement drives disproportionality in the system, or that greater parental involvement would address disproportionality in the system.

While SCYJ recognises the need to provide support to parents of children whose behaviour is problematic, parenting orders are not the most effective way to achieve this this. The most recent evidence, while finding reduced reconvictions rates and number of offences committed amongst children whose parents are subject to a parenting order, concluded that it was impossible to attribute this to the programme itself.^{iv} Parenting orders are under-used, likely because they are coercive. Youth offending services want to keep parents on-side in order to keep children engaged. Voluntary support is usually best; no service wants to criminalise a child's parents for non-compliance with a parenting order.

SCYJ would prefer to see investment in supportive non-stigmatising approaches, ideally provided by mainstream welfare services who could offer evidence-based support such as Functional Family Therapy, or Multi-systemic Therapy, or failing that, from parenting professionals working as part of Youth Offending Teams.

Recommendation 19: *Each year, magistrates should follow an agreed number of cases in the youth justice system from start to finish, to deepen their understanding of how the rehabilitation process works. The MoJ should also evaluate whether their continued attachment to these cases has any observable effect on reoffending rates.*

SCYJ see the merits of this recommendation (which is similar those made in previous high-profile inquiries^v) although some of our members have serious concerns about magistrates' increased involvement. Enabling magistrates to follow cases through the YJS could facilitate a deeper understanding of the unique circumstances and vulnerabilities that underpin much of childhood offending and reoffending. However, careful consideration must be given to ensure that magistrates' involvement does not formalise the process. In the case of panels, there is currently a push to make them more informal, more community focused and more inclusive for young people so that they are empowered to own the proceedings and their actions.





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Recommendation 33: *The YJB should commission and publish a full evaluation of what has been learned from the trial of its 'disproportionality toolkit', and identify potential actions or interventions to be taken.*

More action is needed by the Youth Justice Board (YJB) to tackle the serious issues that Lammy has identified. SCYJ recommends the YJB develops a specific strategy to support improved outcomes for BAME children to ensure that the gains made amongst the wider population of young people are translated to BAME children. This approach could include bespoke culturally sensitive interventions and staff training and could be delivered by key voluntary sector and specialist BAME organisations.

Recommendation 34: *Our CJS should learn from the system for sealing criminal records employed in many US states. Individuals should be able to have their case heard either by a judge or a body like the Parole Board, which would then decide whether to seal their record. There should be a presumption to look favourably on those who committed crimes either as children or young adults but can demonstrate that they have changed since their conviction.*

SCYJ welcomes Lammy's recommendation in recognition of the detrimental impact of a criminal record on rehabilitation. SCYJ believes fundamentally that the current system is disproportionate, damaging, and at odds with the aims of the youth justice system. Children should have the opportunity to move on from the mistakes they have made, and the system must be reformed.

There is evidence to indicate that criminal records may be a particular problem for BAME children. A study of young adults from Milwaukee looked at whether criminal records disadvantage job applicants. It found that criminal records "presents a major barrier to employment." Crucially however, black candidates were significantly more affected than white candidates, with the effect of a criminal record on positive responses to job applications being "40% larger for blacks than for whites".^{vi}

Lammy's proposals reflect our own campaign for a reformed criminal records system, however our approach to achieve that aim is distinctive. We have set out our own recommendations for reform of the system, including our rationale, on our campaign report, *Growing Up, Moving On*.^{vii} Amongst other things, we believe the filtering system should be greatly expanded to prevent disclosure of irrelevant childhood criminal records to employers.

Recommendation 35: *To ensure that the public understands the case for reform of the criminal records regime, the MoJ, HMRC and DWP should commission and publish a study indicating the costs of unemployment among ex-offenders.*

While we broadly support the principle behind this recommendation, we believe that there is already a significant body of evidence which supports the case for immediate reform of the criminal records regime. This includes the recent findings of the Justice Select Committee inquiry into the Disclosure of Youth Criminal Records^{viii}, and the evidence set out in our report, *Growing Up, Moving On*.^{ix} While a cross-department study would be interesting it is not a necessary precursor to reform.





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Other issues to consider:

Prevention: Little consideration is given by Lammy to the role of prevention in addressing disproportionality. SCYJ proposes that the role of prevention be considered further, particularly in relation to the social factors explored in the review.

Diversions: Given the strong evidence that contact with the criminal justice system is criminogenic, SCYJ supports the diversion of children from the criminal justice system where appropriate.^x Evidence-based, tailored interventions are key to tackling children's offending and Children's services, health, or the voluntary and community sector, including grassroots and community-based organisations can deliver such work. The programmes offered must be grounded in principles informed by the evidence, a summary of which is included in the Centre for Social Justice report, *Rules of Engagement*.^{xi}

A consultation carried out by Clinks suggests that diversionary paths are not offered to BAME, as stereotyping means they are more likely to be labelled as high risk by police and professionals.^{xii} We recommend further consideration be given to ensuring that BAME children are able to access diversionary routes. We propose that the decision-making processes around diversion be re-assessed and consideration given to overcoming barriers such as stereotyping, which police and practitioner training could counteract.

Education in Prison: Finally, though the Lammy Review highlights the most severe injustices faced by the BAME prison population, it does not examine the educational experiences of BAME prisoners, which can be influential on future outcomes. Interrogation of data around access to learning opportunities within prisons could ensure that BAME children have equal access to education in custody.^{xiii}

I hope that you find this helpful. We would welcome the opportunity to discuss these issues further with the implementation team. Please do get in touch if you would like to meet, or if you require more information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ali Wigzell', with a horizontal line underneath.

Ali Wigzell
Chair, The Standing Committee for Youth Justice

ⁱThis includes ensuring that young adults and children are kept separate, for example, in court, pending trial, or in detention, as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), see: <http://www.yjlc.uk/wp-content/uploads/2015/01/Beijing-rules.pdf>

ⁱⁱ House of Commons Justice Committee, 2016, "The treatment of young adults in the criminal justice system - Seventh Report of Session 2016-17", accessed 04 December 2017 at: <https://www.t2a.org.uk/wp-content/uploads/2016/10/justice-committee-report-on-young-adults-in-the-CJS-October-2016.pdf>

Howard League for Penal Reform, T2A, & Barrow Cadbury Trust, 2017, "Judging Maturity Exploring the role of maturity in the sentencing of young adults", accessed 04 December 2017 at: <https://www.t2a.org.uk/wp-content/uploads/2017/07/JudgingMaturity.HowardLeague.pdf>





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ⁱⁱⁱ Taylor, C., 2016, "Review of the Youth Justice System in England and Wales", Ministry of Justice, accessed 04 December 2017 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf

Carile, A., 2014, "Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court", accessed 04 December 2017 at: http://michaelsieff-foundation.org.uk/content/inquiry_into_the_operation_and_effectiveness_of_the_youth_court-uk-carlile-inquiry.pdf

^{iv} Centre for Social Justice, 2012, "Rules of Engagement – Changing the Heart of Youth Justice", "page 37, accessed 04 December 2017 at: [http://www.icpr.org.uk/media/32915/CSJ_Youth_Justice_Full_Report_WEB%20\(2\).pdf](http://www.icpr.org.uk/media/32915/CSJ_Youth_Justice_Full_Report_WEB%20(2).pdf)

^v Lord Carile's review, and the Centre for Social Justice 'Rules of Engagement' report which both advocated twice-yearly visits to youth custodial institutions and community services for those that had passed sentence on children. A similar recommendation in the Taylor review proposed that the lay magistrates on Children's Panels. (Taylor, C., 2016, "Review of the Youth Justice System in England and Wales", Ministry of Justice, accessed 04 December 2017 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf; Carile, A., 2014, "Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court", accessed 04 December 2017 at: http://michaelsieff-foundation.org.uk/content/inquiry_into_the_operation_and_effectiveness_of_the_youth_court-uk-carlile-inquiry.pdf; Centre for Social Justice, 2012, "Rules of Engagement – Changing the Heart of Youth Justice", "page 37, accessed 04 December 2017 at: [http://www.icpr.org.uk/media/32915/CSJ_Youth_Justice_Full_Report_WEB%20\(2\).pdf](http://www.icpr.org.uk/media/32915/CSJ_Youth_Justice_Full_Report_WEB%20(2).pdf)

^{vi} Pager, D., "The mark of a criminal record", AJS Volume 108 Number 5 (March 2003): 937–75, accessed 04 April 2017 at: http://scholar.harvard.edu/files/pager/files/pager_ajs.pdf

^{vii} SCYJ, 2017, "Growing up, Moving on A report on the childhood criminal records system in England and Wales", accessed November 22 2017: <http://scyj.org.uk/wp-content/uploads/2017/07/Growing-Up-Moving-on-A-report-on-the-childhood-criminal-record-system-in-England-and-Wales.pdf>

^{viii} House of Commons Justice Committee, 2017, "Disclosure of Youth Criminal Records – First Report of Session 2017-19", accessed 22 November, <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/416/416.pdf>

^{ix} SCYJ, 2017, "Growing up, Moving on A report on the childhood criminal records system in England and Wales", accessed November 22 2017: <http://scyj.org.uk/wp-content/uploads/2017/07/Growing-Up-Moving-on-A-report-on-the-childhood-criminal-record-system-in-England-and-Wales.pdf>

^x See, for example, McAra, L and McVie, S (2011) 'Youth Justice? The Impact of System Contact on Patterns of Desistance' In: Farrall, S and others (eds) (2011) *Escape Routes: Contemporary Perspectives on Life After Punishment*. London: Routledge, 81-106.

^{xi} Centre for Social Justice, 2012, *Rules of Engagement: Changing the heart of youth justice*, accessed November 22 2017, at <http://www.centreforsocialjustice.org.uk/library/rules-engagement-changing-heart-youth-justice>

^{xii} Clinks, 2017, "Clinks' submission to the review of the youth justice system", accessed 04 December 2017 at: https://www.clinks.org/sites/default/files/basic/files-downloads/clinks_taylorreview_final.pdf

^{xiii} Nina Champion, FE Week, September 8th 2017, "Education is the missing piece in David Lammy's race review puzzle", accessed 04 December 2017 at: <https://feweek.co.uk/2017/09/08/education-is-the-missing-piece-in-david-lammys-race-review-puzzle/>

