



Standing Committee for Youth Justice

**National Standards for Children in the Youth Justice System consultation
The Standing Committee for Youth Justice response
November 2018**

About SCYJ

The Standing Committee for Youth Justice (SCYJ) is an alliance of over 50 not-for-profit organisations campaigning for improvements to the youth justice system in England and Wales.

Summary

SCYJ welcomes the YJB's intentions in revising the National Standards, but has concerns that the proposed Standards will not encourage the provision of quality services. We urge the YJB to rethink and redevelop the new standards. Failing that, we urge the YJB to update the Standards according to our suggestions below, and to pilot them and subject them to a thorough process evaluation before roll-out.

In summary:

- We welcome the child first Principles laid out, but do not feel they are fully reflected within the individual Standards.
- We welcome the YJB's intention to emphasise outcomes rather than describe processes, but do not feel that the new Standards have, as yet, achieved this goal. We also question whether the youth justice system is established enough that process-driven requirements are unnecessary, when key elements continue to be beset by failure.
- The vague, subjective nature of the Standards will cause difficulties in monitoring. Updating the Key Elements of Effective Practice (KEEPs) would help remedy this, although this would still not address the core issue of difficulty in monitoring or holding services to account under the new standards. It also seems that monitoring will become more opaque, and the YJB's process for intervention more unaccountable.
- It is unclear what the Guidance sections will contain, making it impossible to comment fully on the adequacy of the current draft.
- The out-of-court Standards focus on desistance from crime, rather than diversion into more suitable child-focused systems, and the promotion of positive behaviours.
- There is a concerning absence of children's rights in the 'at court' Standards, and we require clarification on certain subjects, including suggestions on victims' statements.
- We are pleased to see a move away from time requirements and the prescription of enforcement and intervention reviews in the 'in the community' Standards, but feel that the standards could be strengthened further.
- The Secure Settings Standards include some welcome recognitions, but we are concerned that the lack of clearly defined processes removes important safeguards for children, potentially making secure settings less safe and less accountable.



- We are pleased to see the introduction of a distinct Standard on transition and resettlement, but believe more requirements should be described.
- The YJB should produce a child-specific version of the standards.¹

General observations

Principles

- We welcome the incorporation of the child first, offender second principle, including the emphasis on minimising youth justice contact, prioritising the best interests of the child, encouraging children’s active participation and promoting their strengths and capacities.
- These underpinning Principles are aspirational and a good basis for all agencies to work from. However, the Principles are not fully reflected within the individual Standards, which seem to take a more pragmatic and less aspirational approach.
- In particular, the primacy of children’s best interests is absent from almost all of the individual standards. All the Standards should be firmly grounded in children’s rights.
- The aspiration within the underlying principles that children should be active participants is similarly much less evident within the Standards themselves, particularly with regards to court, secure settings and transition. The emphasis is instead on ‘providing information’ to children and their carers, or making sure that plans are ‘understandable’ to them. This is not the same as active participation. We recommend that the participation principle is amended to specify children’s active and *effective* participation, with due weight given to the child’s views.

Moving from output to outcomes

As an ambition, SCYJ warmly welcomes the YJB’s intention to emphasise outcomes rather than describe processes. However, we recognise that this is a difficult task and do not feel that the new Standards have successfully achieved this goal, as yet.

The central problem is that these are neither standards and nor are they necessarily about outcomes. They conspicuously fail to identify what quality outcomes are, or to provide quality standards against which services can be held to account. As a result, they will not encourage the provision of quality services. This leads us to question whether quality standards and an outcomes framework can be effectively combined or perhaps should be treated as distinct entities. In attempting to do both, the draft Standards are delivering neither. For this reason, we urge the YJB to rethink and redevelop the new standards to ensure that they provide the meaningful basis for practice that they aspire to. We provide further detail below.

Very little mention of specific child outcomes is made within the standards. Whilst there is a brief mention of desistance as a positive outcome, we would like to see more explicit focus on positive outcomes, such as children’s engagement, well-being and

¹ For example, see New Zealand’s Standards for children in the care of the state: <http://www.legislation.govt.nz/regulation/public/2018/0111/10.0/LMS56211.html>

educational/employment achievements. While the aspiration of the new Standards is to be outcome-focused, the irony is that they cohere around processes of assessment and intervention, as well as the role of management boards and youth offending teams (YOTs) in implementing and monitoring these. It is also unclear whether the Guidance sections – referred to but not yet included – will contain the descriptions of processes that were contained in previous National Standards. Some processes are described but others have been omitted, and the rationale for this is unclear. The absence at this stage of such Guidance makes it impossible to comment on the adequacy of the current draft.

Furthermore, by not identifying in any meaningful way the expectations to which LAs, their partners, and YOTs must perform, the new Standards appear to be devolving these responsibilities to the local level. No provision is made in the legislation for such devolution. We would point out that in circumstances of reported widespread national failure, this will mean that the YJB is not meeting its statutory duties under section 41 (5) of the Crime and Disorder Act 1998.

A mature youth justice system?

A key premise of the revised standards is that our youth justice system is now sufficiently established so as to render process-driven requirements obsolete. Yet, as set out in detail below, the evidence is that key aspects of the system, particularly custodial and resettlement provision, continue to be beset by failure. Thus we question whether it is the right time to move to solely outcome-focused standards. In this respect, while the new standards undoubtedly provide greater flexibility for services, our firm view is that this will neither drive the provision of quality services nor address the core youth justice functions.

For SCYJ to support the new Standards, the quality of existing provision must be established. Ideally, there should first have been an objective assessment (made public so that its quality can be assessed by all) that Local Authorities (LAs), youth offending teams (YOTs) and secure settings have now reached a level of quality of outcomes that it is no longer necessary to specify key process standards. As this has not taken place, we would advise that the new Standards are piloted (within services and establishments of ranging quality) and subject to a thorough process evaluation before roll-out.

Monitoring the delivery of the standards

The vague and subjective nature of the draft Standards will make the task of monitoring extremely difficult, especially if there is a reliance on self-assessment. Without meaningful guidance on what a good outcome looks like, measurement will be open to interpretation, risking justice and treatment by geography, and making YOTs less accountable for non-compliance with the Standards, both legally and in terms of reputational risk. To mitigate this, we believe it would be helpful to update the Key Elements of Effective Practice (KEEPs) to reflect the recent evidence of what can support children to achieve positive outcomes. This includes the children first approach, desistance thinking, and the enhanced case management model (encompassing a focus on adverse childhood experiences and working with children to resolve the resultant trauma). However, we are clear that updating the KEEPs alone would not address the issue that the standards offer no clear way of monitoring or holding services to account.

It is unclear exactly how the Standards will be monitored, and what the process will be if they are not adhered to. As it stands, it appears that monitoring will become more opaque. We know that the YJB has a key data set. This includes some broadly outcome-based measures, but in reality they are mainly output-focused. We expect that it will be on the



basis of this information that the YJB will make intervention decisions. However we are concerned that this process will become more remote and unaccountable because these are not included in the national standards.

Related to this, the ambiguity of the new Standards sit in stark contrast to the precise standards on which youth justice provision is inspected upon. It seems likely that this will significantly increase the influence of the national inspectorates (Ofsted, Her Majesty's Inspectorates of Prisons and Probation, the Care Quality Commission and Her Majesty's Inspectorate of Constabulary) on the operation of youth justice, who are arguably less accountable than the YJB.

Language

We welcome the use of the term 'child' throughout the standards. However, we feel it is important that the YJB maintains the consistent use of language in the publications, most importantly, the use of 'children' instead of 'children and young people' or 'young people' (as is sometimes evident in the consultation document).

We are pleased to see the frequent references to desistance. That said, some areas maintain a risk focus. This may threaten the move towards desistance-informed approaches, particularly given recent evidence that the risk-philosophy and inadequate understanding of desistance-thinking prevails at a local level (Hampson, 2018).

The issue of 'quality' is poorly defined and operationalised in the proposed standards. It relies on a number of poorly-defined indicators such as 'suitable', 'sufficient', 'effective', 'well-informed' and 'YJB-approved'. It is important that these terms are clearly defined and understood by youth justice staff to protect against inconsistent and poor quality practice.

Equality

The Equalities Act 2010 places a duty on the YJB to set out for children using youth justice services their rights to be treated equally and free from discrimination, but these Standards do not describe how this will be done for children with protected characteristics.

Out-of-court

The standards dictate that out-of-court assessment and intervention plans should focus on desistance from crime. However, with the emerging children first ideology of the YJB in mind, it is arguable that the primary objective of the out-of-court process should be diversion from youth justice practice and into more suitable child-focused systems. Furthermore, children first assessment and intervention should prioritise strengths and promotion of positive behaviours and outcomes alongside a focus on desistance from crime.

At court

We are particularly concerned at the absence of children's rights from this section of the Standards. We recommend inclusion of references to the primacy of the best interests of the child, to a child's right to effectively participate in court proceedings and to a fair trial. These principles should underpin the national standards.

The 'at court' standards would also benefit from greater specificity. We recommend clarification and/or revisions of the below court standards:

- a) *'individual reports prepared by the YOT are: shared and understood by the child and parents or carers'*

We recommend that, rather than the report simply being shared with and explained to the child, the YOT should produce a specific version of the report for the child. By writing for the child, the YOT worker is more likely to consider the child's perspective, thus ensuring that the child's views have been given due weight, as required by Article 12, UNCRC.

- b) *'individual reports prepared by the YOT are informed by the victim's view of the offending behaviour'*

We are troubled by this new Standard. Although we are aware that victims' views are included in pre-sentence reports as a matter of course, previous National Standards refer to them being sought only in relation to reparation orders. Therefore we seek greater clarification on precisely which reports are being referred to in the standard and what 'informed by' means. With regard to the latter, we have concerns about the use of victims' views to influence recommendations concerning sentence options. The notion that court reports should be informed by victims (and not by children) is arguably an anathema to the children first approach. We seek assurances that in doing the important work of taking into account victims' views, this is not at the expense of the child. We suggest that the language be amended such that reports are informed by the impact of the offending behaviour on the victim, rather than the victim's views of the offending.

- c) *magistrates and the judiciary have reports which provide them with the required range of recommendations to make informed decisions regarding sentencing and the impact that any pause or change in education progression may have in the sentence*

First, we believe that more detail is needed on what is meant by 'the impact that any pause or change in education progression may have in the sentence'. Second, we would welcome the inclusion of children's rights language so as to read: 'to make informed decisions in the *best interests of the child* regarding sentencing'.

- d) *magistrates, the judiciary (and referral order panel members where appropriate) have confidence in the rigour of recommended supervision of children who offend.*

We are very concerned about the use of the word 'rigour' in this context. Rigour has connotations of toughness and harsh inflexibility and, as such, is unsuitable. We suggest 'effectiveness' as an alternative.

In the community

It is refreshing to see a move away from time requirements as well as the prescription of enforcement and intervention reviews. We are also very pleased to see references to focusing on children's strengths and potential, the importance of prioritising children's best interests and desistance.

However, we feel that the standards could be strengthened further, as specified below. In terms of the standards applicable to YOT Management Boards:



- We feel that partners to the YOT should be required to ensure that children are supported with the necessary resources (as identified by the YOT) to effectively safeguard and support them into a crime free life. Without such a requirement, YOTs will continue to identify need and some needs will not be met. While YOTs must be accountable to YOT Management Boards, the latter must also be required to address the barriers identified by YOT Managers if the desired outcomes are to be achieved. It may be useful to have as part of this standard the requirement for the Management Board to monitor where agencies do not comply with the requirements identified within YOT intervention plans.
- As noted in our response to the 'at court' section, our view is that the use of the term 'rigour' with respect to supervision is inappropriate, and should be changed to 'effective'.
- Where it is required that YOT Management Boards are confident that "children and their parents and carers are provided with appropriate information", it should be clarified that the information is written in language that is comprehensible to them.

In regard to managing an effective sentence:

- Given the widespread evidence for the centrality of a meaningful, trusting supervisory relationship to effective supervision (Johns et al, 2017; Drake et al, 2014; McNeill et al, 2005), we believe this should be explicitly reflected in the community standards.
- SCYJ is disappointed to see the Scaled Approach included within the new Standards. We recognise that the approach is included in Assetplus as an indicator for intervention level, under Pathways and Planning. However the inherent risk-focus of the Scaled Approach sits at odds with the children first principle. Furthermore, as only an 'indicator' for intervention levels, prescription of its use is out of kilter with the aspiration of the Standards to afford flexibility and be outcomes-focused.
- The importance of explaining the child's rights and responsibilities under the terms of the order should be prioritised in the list (becoming the second bullet point), with clarification that the information must be conveyed in a way that is comprehensible to them. This would more effectively demonstrate the importance that YOTs should place on ensuring the child understands what is happening to them and why.
- The lack of reference to working with the child's parents and/or carers, including provision of parenting support, is a significant gap. Effective parenting and engagement with their child's order is fundamental to successful supervision.²
- It would be constructive to add detail to the standard around the regularity of reviews, rather than leaving these only to be updated when there is a 'significant change' in circumstances. For example, by providing a non-exhaustive list of what 'significant change' means.

In secure settings

² Beyond Youth Custody's recommendations around co-creation apply here. Beyond Youth Custody (2017) "[Now all I care about is my future](#)" *Supporting the shift*. London: Beyond Youth Custody.

SCYJ endorses several aspects of this section. We are glad to see recognition that supporting ‘desistance’ is an important goal for those working with children in custody, and that their environment must be both ‘rehabilitative and safe’ if this is to be achieved. The fact that staff are expected to motivate children to engage in opportunities is encouraging, recognising the importance of staff attitudes and their ability to form positive relationships with the children in their care. We also welcome the acknowledgement that the restriction of liberty has an impact on children and must be taken into account when designing services.

That said, given that the secure estate for children has recently been deemed ‘unfit for purpose’³ and unsafe⁴, SCYJ questions whether this is the right time to move to outcome-focused standards. Clearly defined processes provide important safeguards. For example, the previous National Standards specified which agency was responsible for assessing any risks to a child entering the secure estate, the timescale for such an assessment and the action that should be taken. The draft Standards have removed this specificity and appear to devolve responsibility to YOT management boards and secure establishment providers. Under the new standards it will be harder to legally challenge failures to comply with processes and undertake assessments in a timely manner. Potential legal challenges and the reputational risks associated act as incentives for establishments to carry out their responsibilities promptly.⁵ Overall, the new Standards have the potential to make secure settings less safe and less accountable than they currently are.

We set out below a number of specific areas for improvement:

- We are disappointed that the aspirational principles that are meant to underpin the Standards are not evident in the section on Secure Settings. Rather than an expectation that the service will prioritise children’s ‘best interests’ and recognise their ‘needs, capacities, rights and potential’, there is only mention of the need to work with children’s ‘needs and risks’. This is further diluted by the fact that there is little further mention of the children’s ‘needs’. The suggestion of what will help them to change is to engage in a ‘routine’ and in ‘education and training’. There is no clear statement within the Standards about the need to address the causes of a child’s offending behaviour and any unmet social, emotional, health or educational needs.
- This lack of aspiration is also evident in the statement that strategic partnerships and secure providers should ‘have confidence in the quality of services and in the rigour of supervision of children’. This falls short of the principle that youth justice services should prioritise children’s ‘best interests’.
- The detailed processes within previous National Standards specifying which agency is responsible for which actions when a child enters secure care have been largely omitted – presumably because of the intention to move towards a focus on outcomes. Some processes are described, however, and it is unclear what the rationale is for this. This could be taken to mean that these are the only ones that matter and that others can be abandoned.

³ Youth Custody Improvement Board (2017) [Findings and recommendations of the Youth Custody Improvement Board](#). London: MoJ.

⁴ Her Majesty’s Chief Inspector of Prisons (2016) [Children in Custody 2015-16](#). London: HMIP.

⁵ N Whitty (2011) *Human Rights as Risk: UK Prisons and the Management of Risk and Rights* Punishment and Society 123.



- The only agencies mentioned in relation to specific processes are YOTs and staff within secure establishments, which could be taken to mean that other agencies do not have any responsibility for the safety and well-being of children while they are in secure care. Important omissions are the Youth Custody Service, NHS, Children's Social Care and Advocacy services. Where processes are described, these lack specificity about who should undertake them, by when, how they link to other aspects of the child's journey etc. For example, previous Standards stated that children should be assessed as soon as possible by a Doctor or Nurse, including completion of the CHAT, and that they must evidence that they have read previous assessments of the child. They then specified how to manage any immediate risks. The draft Standards say simply that there should be a 'health and well-being assessment'. Safeguarding responsibilities are similarly vague, saying simply that establishment and YOT staff must 'instigate appropriate safeguarding procedures where necessary'.
- While it is stated that all views should be taken into account, including those of the child, when formulating sentence plans, this is not the same as active participation. Article 12, UNCRC, requires that 'due weight' is given to the child's views – i.e. it is not enough just to 'take views into account' and dismiss them, the child's views must inform the outcome.
- The description of what an 'effective sentence' should consist of is somewhat limited and does not set out expectations of the role of secure settings in supporting children's development. In fact, it implies that the task of developing a 'pro-social identity' is the responsibility of people in the community. This does not reflect the statement within the Principles that all work should be based on supportive relationships that 'empower children to fulfil their potential'.
- Similarly, the description of resettlement planning says nothing about what outcomes a good plan should achieve but just describes various procedural considerations, such as whether home detention curfew is indicated. It should also be explicitly stated that resettlement planning must start at the beginning of the child's sentence.

Transition and resettlement

SCYJ is pleased to see the introduction of a distinct standard on transition and resettlement. We also welcome the broad scope of the list of bodies that the YJB believe must provide 'a tailored plan for children in the youth justice system, who make a transition' and the grouping of children to whom this requirement relates.

However, as above, we have concerns about the movement to outcome-based standards, given that many Local Authorities and YOTs fail to meet even the most basic resettlement requirements of: visiting a child in custody; starting planning for their release on day one of their admission to custody; developing a resettlement plan including the identification of where the child will live and what work or education they will experience, at least four weeks before release. Our member, Nacro through its 'Beyond Youth Custody' programme set out detailed guidance in the five key characteristics for effective transition. These could easily be converted into quality standards.

Furthermore the only requirement actually described as yet in this part of the National Standards is that YOTs (and where applicable, secure establishments) should produce a *tailored plan* for children in the youth justice system caught up in the seven circumstances described. Yet, this itself is an output measure and not a measure of outcome. In this regard, the new National Standards are therefore little different in type to the National Standards that have come before.

While this would be an advance for those children who do not have a *tailored plan* (although this is not further defined so the phrase is of little actual use) there are other key issues that could and should have been added. For example, the plan must be produced promptly; it should be produced with active engagement from the child and their family; it should set out the outcomes that it is designed to achieve; it should identify the child strengths and capacities (and those of the wider community around them) and set out how these factors will impact upon the activities and be built into a full desistance plan; and it should be the subject of regular and joint review. These are basic entitlements that would go some way not only to improving practice but also achieving improved outcomes.

