Standing Committee for Youth Justice

Standing Committee for Youth Justice (SCYJ) response to Criminal Justice System policy review

Introduction

The Standing Committee for Youth Justice (SCYJ) is an alliance of over 60 not-for-profit organisations campaigning for improvements to the youth justice system in England and Wales. Our members range from large national charities to grassroots service providers.

The following sets out our position and recommendations around priority areas of the youth justice system. We would welcome meetings with the appropriate teams to further discuss our concerns around current provision, and our vision for a youth justice system that actively promotes the welfare and integration of children in trouble with the law.

The UN Convention on the Rights of the Child (UNCRC), which the UK ratified in 1991, defines a child as anyone under the age of 18. Children in contact with the criminal justice system are vulnerable by definition due to their age; compounded by the difficulties many face.

For all children in contact with the criminal justice system, there is a fundamental need to adhere to the principles and standards of the UNCRC and take an approach that is distinct to that of adults, that is welfare-focussed, age-appropriate, and considers first and foremost the context and needs of the child rather than the alleged offence.[1]

Across all aspects of the youth justice system, careful attention must be paid to the existence of institutional racism and structural disadvantage that causes certain groups such as Black Asian and Minority Ethnic (BAME) children to be disproportionately represented and treated inequitably. As well as this, responses must take into consideration that children in trouble with the law are often victims of crime and exploitation, especially in relation to serious violence.

In particular, SCYJ would like to see:

1. The minimum age of criminal responsibility significantly increased

The law around the age of criminal responsibility in England and Wales is out of sync with the rest of Europe. Ten is the lowest minimum ages of criminal responsibility (MACR) in the EU, where the average is 14. Scotland has recently increased its age of criminal responsibility to 12, and the vast majority of cases concerning those under 16 go to Children's Hearings, which use a welfare-based approach.

The current MACR breaches international children's rights. The UN Committee on the Rights of the Child, in its current revision of its General Comment on Children's Rights in Juvenile Justice, has stated the absolute minimum age considered internationally acceptable is 14, and encourages the adoption of higher minimum ages of 15 or 16.[2]

[1] Also relevant are the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Committee on the Rights of the Child General Comment on Children's Rights in Juvenile Justice.

[2] https://ohchr.org/EN/HRBodies/CRC/Pages/DraftGC10.aspx

The current law in England and Wales is inconsistent with evidence on child development. Children, especially those as young as ten, are not developmentally mature enough to understand and assess situations, empathise, regulate impulses, and realise the consequences of their actions, particularly in the long-term. Children are not mature enough to understand the criminal justice process and its implications, and therefore cannot experience it legitimately or effectively participate, violating their rights.

As outlined below, there is clear evidence that drawing children into the criminal justice system at such a young age damages them psychologically, reduces their life chances and increases their risk of reoffending.

The age of criminal responsibility should be increased immediately in line with UN recommendations. This rise should be accompanied by a welfare-focussed response to children who offend.

For more information see: http://scyj.org.uk/2017/09/scyj-briefing-age-of-criminal-responsibility-bill-2017/; http://thenayj.org.uk/wp-content/files_mf/criminalisingchildrennov12.pdf

2. A commitment to maximise diversion and minimise contact with the criminal justice system, in lieu of welfare-based service provision

Many children naturally mature out of crime. Many go through a 'phase' of offending during their childhood and then desist entirely.

There is a growing body of evidence that contact with the criminal justice system is criminogenic.[3] Criminal justice system contact can act as a key moment when behaviour begins to negatively spiral.

Children in trouble with the law are often extremely vulnerable, and their involvement in the criminal justice system may be the result of the failure of other, welfare-based services to identify and appropriately and effectively respond to their needs. They may be victims of crime themselves and their involvement may be associated with exploitation.

Contact with the youth justice system should therefore be minimised. It creates and reinforces criminal identities in children who would often naturally desist from offending, or who have unmet welfare needs. When the justice system intervenes, it is often in place of other non-criminalising support. This results in a response that focuses on the 'offender' rather than the child.

There is positive practice in the diversion of children from the formal justice system, but provision is inconsistent. This practice involves identifying vulnerable children who come into contact with the criminal justice system and diverting them to services that can respond to the child's needs, rather than prosecuting them. When done correctly, it has a positive benefit on the child, reducing the likelihood that they will come into contact with the criminal justice system again.[4] Professionals should be trained to spot signs of vulnerability, including exploitation.

Investment should be made to ensure that effective diversion schemes are consistently available across all areas of the country, providing a range of services that meet underlying needs. Consistency does not mean that provision should be uniform. It should respond to the local population in both content and in decisions around who is best placed to deliver the services. Interventions should be tailored to address the individual needs of the child being diverted.

[3] http://journals.sagepub.com/doi/abs/10.1177/1477370807077186

[4] https://campbellcollaboration.org/library/police-initiated-diversion-to-prevent-future-delinquent-behaviour.html; https://justiceinnovation.org/sites/default/files/media/documents/2019-02/mapping-youth-diversion-in-england-and-wales-final.pdf; http://thenayj.org.uk/wp-content/uploads/2018/05/NAYJ-Child-friendly-youth-justice-May-18.pdf

Opportunities for diversion should be continuously explored each time the child comes into contact with the criminal justice system, not just at the first instance, and the need for diversion should be assessed at each stage a case progresses through the criminal justice system.

Where children come into contact with the police, all engagement must take into consideration the child's age. Children must have access to an appropriate adult, an intermediary, and high quality legal support and advice, all of whom must be appropriately trained in youth criminal justice and children's vulnerabilities. Children under police care should never be subject to full searches, excessive use of force, including the use of spit-hoods and Taser, pain-inducing restraint, or overnight stays in police cells. These points are all fundamentally important for contributing to the maintenance of a fair, legitimate system that is also felt to have legitimacy amongst those subject to it.

3. Investment in community-based, child-centred responses to children in trouble with the law

Where children do become involved in the formal youth justice system, all responses must consider the best interests of the child, in line with article 3, UNCRC, and seek to address any unmet welfare needs. Responses must be distinct from adult interventions and children must be kept separate from adults in the criminal justice system at all times. All professionals must be appropriately trained to work with children and identify vulnerabilities.

The intention of an intervention must never be punishment. The focus must be on rehabilitation, reintegration, and maximising welfare. The level of intervention must be proportionate to the seriousness of the offence and should focus on increasing the child's strengths and capacities. Interventions must include a trusting, meaningful supervisory relationship, as there is widespread evidence of its importance in rehabilitation.

Children's understanding, engagement and active participation must be encouraged, in line with article 12 UNCRC. Engagement and participation of the child's family in the process should also be promoted as far as possible.

Responses should consider individual characteristics, paying particular attention to vulnerabilities we know to be common amongst children in trouble with the law, including mental and physical ill-health, Special Education Needs, literacy and communication difficulties and more. They should take into consideration the overrepresentation of certain groups, such as BAME children and looked after children.

The measure of success of interventions should be based around positive outcomes including education, development, and wellbeing, rather than narrowly measured using reoffending rates.

It is vital that investment is made into youth offending teams so that children have access to this holistic support and tailored rehabilitative programmes. There must also be investment across support services to build capacity and allow for better multi-agency working.

4. A significant reduction in numbers of children deprived of their liberty, and the closure of all penal custodial establishments

Custody must only be used as a last resort, for the shortest possible period of time, reserved for the most severe cases where it is required for public protection. The UN recommends that no child under the age of 16 should be sent to custody.[5]

[5] https://ohchr.org/EN/HRBodies/CRC/Pages/DraftGC10.aspx

We do not believe custody is currently used as such. This is especially true for mandatory minimum custodial sentences, children on remand, and where children are imprisoned for breaches of Criminal Behaviour Orders or Civil Injunctions, which have been shown to be ineffective. The number and proportion of children in custody who are on remand is increasing, and almost two thirds of children on custodial remand go on to be acquitted or given a community sentence.[6] While we welcome the recent reductions in custody numbers, this could be reduced significantly further, and we are concerned that the reduction has been driven primarily through the reduction of the white custodial population. We are also concerned that the current government response to serious violence risks reversing progress.[7]

Sentencing children to custody is not effective at rehabilitating children. It has been shown to increase reoffending[8]. It is extremely harmful, and evidence shows it cannot be justified on the grounds of deterrence, which it should not be used for anyway.

Children in custody experience a lack of education provision and trauma-informed care, disruption through lost accommodation and interrupted education, and emotional distress and loss through separation from friends and family. Children are kept segregated, left in their cells for the majority of the day, and subject to pain-inducing restraint and use of force. These practices must cease immediately. The deliberate infliction of pain on children breaches the European Convention on Human Rights and the UNCRC. It is damaging to children, causes unnecessary harm, and is a fundamentally flawed model of how to resolve conflict and develop trusting relationships between staff and children.

Custodial sentencing thresholds must be raised, precluding the use of short custodial sentences. We believe imprisonment should only be used for the most serious crimes, which would attract a sentence of life imprisonment in the case of an adult. Even in such cases, the court should be satisfied that there is sufficient risk to the public that no other sentence is appropriate.[9]

For the small number of children for whom deprivation of liberty is deemed necessary, it should be in non-penal, small settings, in line with recommendations by the End Child Imprisonment Campaign. Girls should only be placed in secure children's homes.[10] A commitment should be made for the closure of all Young Offender Institutions and Secure Training Centres within a fixed timeframe. Significantly reducing the number of children in custody will create savings. The small number of children in custody must have their needs met and any surplus savings should be retained by local authorities and reinvested into community interventions.

Regarding resettlement, the *'Beyond Youth Custody'* programme set out detailed guidance for effective transitions, which we endorse.

For more information see: http://scyj.org.uk/wp-content/uploads/2018/09/FINAL-SCYJ-Offensive-Weapons-Bill-evidence-submission.pdf; http://justforkidslaw.org/wp-content/uploads/2019/04/ECI-

[6] http://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf
[7] For more information on serious violence and the appropriate response see: http://scyj.org.uk/wp-content/uploads/2019/06/SCYJ-Position-on-the-response-to-Serious-Violence-2019.pdf
[8] See for example: https://whatworks.college.police.uk/Research/Documents/Knife_Crime_Evidence_Briefing.pdf; http://thenayj.org.uk/wp-content/uploads/2019/02/State-of-Youth-Justice-report-for-web-Sep17.pdf; http://journals.sagepub.com/doi/abs/10.1177/1477370807077186; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706597/do-offender-characteristics-affect-the-impact-of-short-custodial-sentences.pdf
[9] http://scyj.org.uk/wp-content/uploads/2014/03/Raising_the_custody_threshold_FullDocAug10_FINAL.pdf
[10] https://www.thegriffinssociety.org/outnumbered-locked-and-overlooked-use-penal-custody-girls-england-wales

Principles-and-Minimum-Expectations-FINAL-pub-18-April-2019.pdf; http://www.beyondyouthcustody.net/wp-content/uploads/Now-all-I-care-about-is-my-future-Supporting-the-shift-full-research-report.pdf

5. Criminal records and anonymity law reformed to promote reintegration

Children must be allowed to grow up, move on with their lives and integrate into society. Their right to privacy under the UNCRC must be respected.

The childhood criminal record system in England and Wales remains overly punitive and disproportionate. A recent Supreme Court judgment reaffirmed this.[11] There's evidence to show that the system acts as a barrier to employment, education and housing, interfering with rehabilitation and reintegration. In relation to comparable international jurisdictions, it is by far the most punitive system.

Rehabilitation periods are lengthy, and disclosure is widespread. Records of under-18-year-old's offences are retained for life, and there is no distinct system for children other than reducing certain timeframes. Even minor convictions, cautions or police intelligence can be disclosed for life on certain criminal record checks.

The whole system should be subject to a full review. We would like to see: rehabilitation periods significantly reduced; the breadth of disclosure on DBS checks significantly reduced; a presumption against the disclosure of police intelligence relating to children; and the ability to delete or wipe records introduced.

For more information see: http://scyj.org.uk/wp-content/uploads/2019/06/Childhood-criminal-records-Westminster-Hall-debate-briefing-March-2019.pdf; http://scyj.org.uk/publication/growing-up-moving-on-our-campaign-to-reform-the-law-on-childhood-criminal-records/

There are many barriers to rehabilitation that arise from a child's anonymity not being maintained during or after their involvement with the law, as a suspect or defendant.

There are two major weaknesses in the law that must be urgently addressed. The first is a loophole that anonymity only applies once an individual has been charged. Pre-charge, rumours, names and photographs can circulate widely through social media. The second is that reporting restrictions expire when a child turns 18.

All children involved in criminal and civil proceedings should be granted automatic and lifelong anonymity.

For more information see: http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf; http://scyj.org.uk/wp-content/uploads/2014/10/Anonymity-amendments-122A-139-Criminal-Justice-and-Courts-Bill-Report-Stage-1.pdf

6. Child-centred courts that promote understanding and participation

Children should never appear in adult courts, nor in the Crown Court. Where the nature of the offence is deemed to require a judge or jury, proceedings should be held in a reformed youth court. However, we support taking a less adversarial approach, ensuring all involved are working to support the welfare and best interests of the child. Children's courts should be more closely aligned to family court systems rather than adult criminal courts.

[11] http://www.unlock.org.uk/judgment-supreme-court/

Court rooms and processes should be adapted to maximise the understanding and participation of children, including the provision of intermediaries.

Advocates and sentencers must be specialists in youth justice and properly trained to understand the nature of childhood offending, the range of child-specific disposals available, and the need to consider children's welfare first and foremost.

Although we support the modernisation of courts, the needs of children must be considered. Court closures must not go ahead without due consideration to the impact on children.

We are concerned that video links erode levels of communication and support between child defendants, their lawyers, youth offending teams and family, exacerbating issues children already experience with understanding and appropriately engaging with court processes: the effective participation of child defendants is put at risk.

Children should not appear in court via video link for non-administrative hearings. Rather than place children on video links, other adjustments should be considered, for example "pop up" courts.

For more information see: http://scyj.org.uk/wp-content/uploads/2018/04/SCYJ-Child-defendants-and-video-links.pdf

Conclusion

All responses to children in trouble with the law must be grounded in the principles set out above, and guided by the evidence around the nature of childhood offending, and what works to help children desist.

Interventions must have the best interests and welfare of the child at their heart, and pay particular attention to the UNCRC.

Responses should take into consideration the context of the child; the presence of any vulnerabilities and trauma; the possibility of victimisation, grooming and exploitation; and underlying social injustices experienced by the child. Special consideration should be paid to overrepresented groups such as BAME children, looked after children, and children with Special Educational Needs (SEN) or Social, Emotional and Mental Health needs. Support for such vulnerable children should extend beyond the age of 18.

There must be commitment to this principled, child-focussed response even in the face of pressure from the media, politicians or public around punitive responses to childhood offending. This is particularly important if the response to violence affecting children and young people is to be effective.

For more information see: http://scyj.org.uk/wp-content/uploads/2019/06/SCYJ-Position-on-the-response-to-Serious-Violence-2019.pdf; http://thenayj.org.uk/wp-content/uploads/2019/02/NAYJ-Child-friendly-youth-justice-May-18.pdf

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