

# Who should be eligible for youth diversion?

## Evidence and practice briefing

### Introduction

Point-of-arrest youth diversion addresses low-level criminal behaviour by children and young people without putting them through formal criminal justice processes. By avoiding outcomes such as out of court disposals or prosecution, it protects them from negative consequences such as a criminal record or an interruption in their education.<sup>1</sup> Youth diversion involves short assessments and quick referrals into light-touch, voluntary programming. There is strong and ever-growing evidence that youth diversion reduces reoffending, lowers costs, and leads to better outcomes for children and young people.<sup>2</sup>

One key to an effective diversion scheme is ensuring that the right children and young people are eligible for the programme. In this, our third evidence and practice briefing, we will set out which eligibility criteria Youth Offending Teams are using, based on our mapping survey of 115 diversion schemes;<sup>3</sup> hear from practitioners about how these criteria are applied in practice; and consider how they match up against the evidence base on what works.

Based on that evidence base, we suggest that those delivering youth diversion schemes might consider:

- Enabling practitioners to use professional discretion – rather than a blanket policy based on gravity score, offence type or offending history – to determine whether a child or young person is suitable for diversion;
- Enabling children and young people to be diverted if they have accepted responsibility rather than requiring them to make a mandatory admission; and
- Allowing children and young people to be diverted more than once, where appropriate, rather than operating a strict ‘one and done’ policy.

### Offence types and severity

#### What criteria are YOTs using?

One important consideration when determining eligibility is the seriousness of a child or young person’s offending. Seriousness can be quantified in a gravity score which is based on the offence type and accounts for aggravating and mitigating circumstances.

In our survey, 56% of schemes reported having gravity score-based eligibility criteria. Of those schemes, six out of ten reported that they accepted offences with a gravity score of three or less, while almost one in four (23%) report accepting offences scoring four or below and one in six (17%) reporting accepting scores of two or below.

**We suggest that youth diversion schemes should consider:**

- **Enabling practitioners to use some professional discretion when determining suitability for diversion;**
- **Enabling children and young people to be diverted if they have accepted responsibility;**
- **Allowing children and young people to be diverted more than once, where appropriate.**

Aside from gravity scores, some schemes exclude specific offence types. The most common exclusions cited by respondents were indictable offences, serious sexual offences, serious violence and motoring offences, while other exclusions noted include knife offences, hate crimes, and drugs offences. However, 32% of the schemes who answered this question reported no specific exclusions, instead working on a case-by-case basis.

## What do practitioners say?

Mark Patrick, YOS Operations Manager, at Havering Youth Offending Service told us that police help guide youth offending staff in determining what offences are suitable to be referred to their diversion panel. Their rule of thumb is usually gravity 1, 2 or 3 offences, with the majority of offences that come through being gravity 2 and 3. Mark notes that possession of knife offences do come through, and that it is important they do go through a panel, particularly in school settings, so the panel can explore potential reasons behind the young person having the knife.

When asked what offences are eligible to be processed through their youth diversion programme, Samantha Starmer, Service Manager at Cumbria Youth Offending Service, said: *“There is no strict exclusion with regard to what offences may be processed through the Triage system. Usually matters are decided on a case-by-case basis. However, it would be unusual for hate crimes or offences involving a knife to be processed through Triage.”*

## What does the evidence say?

The survey data, together with our experiences in working with schemes, suggest that offence-based eligibility criteria may be used in an attempt to screen out future persistent offenders. However, research in England and Wales has shown that while certain debut offence types are associated with future chronic offending, there are ‘limitations with predicting future criminality from past events.’<sup>4</sup> For example, even in the debut offence category most heavily associated with future chronic offenders – robbery – only 19 per cent of young men went on to a chronic criminal career.<sup>5</sup> This suggests that if schemes wish to avoid diverting children and young people who are at risk of future persistent criminal careers, setting eligibility criteria solely on the basis of offence type may not be the right approach.

That said, offence type does have some role to play in determining suitability of diversion. Major systematic reviews have found strong support for calibrating interventions on the basis of risk.<sup>6</sup> As they focus on light-touch interventions, diversion schemes are most suitable for children and young people with a relatively low risk of reoffending. Indeed, a recent systematic review of diversion supported its use for ‘low-risk youth’.<sup>7</sup> The type of offence that a child or young person has committed is one factor which can be used to assess risk,<sup>8</sup> so there is a relationship between offence type and suitability.

Crucially, however, risk is not wholly determined by offence severity or type. Automatic exclusions based on these factors alone may therefore be too rigid. Indeed, given that the vast majority of children and young people grow out of crime,<sup>9</sup> and that formal criminal justice system processing can have a ‘backfire effect’<sup>10</sup> – actually increasing the chance of further offending – flexibility should be a guiding principle.

*We suggest that gravity score ranges should be used as guidance rather than hard-and-fast rules, preserving the flexibility of practitioners to make judgements on a case-by-case basis where circumstances indicate that a child or young person whose offending is outside that range is suitable for diversion. This more flexible approach acknowledges that while diversion is largely intended for low-level offending, there may be other factors that indicate suitability.*

## Number of previous offences or previous diversions

### What criteria are YOTs using?

Another frequently used eligibility criteria for diversion is the number of previous offences committed by a child or young person. Of the 77 schemes that told us about their policies on previous offences, 40% limit diversion to children or young people with no more than two previous offences, while 60% work on a case-by-case basis.

## What do practitioners say?

Mark Patrick, Youth Offending Service Operations Manager, London Borough of Havering, told us that they take a flexible approach to diversion for young people with previous convictions. He said: *“it’s open ended, a decision is made on a case-by-case basis. Again, through the panel process a young person’s history will be looked at. Having already participated in diversion does not create a barrier for the panel, but it will inform considerations. To date we have never had more than two turns at youth diversion, but that doesn’t rule it out.”*

Similarly, Samantha Starmer, Service Manager, Cumbria Youth offending Service, said: *“Young people who have previously participated in the Triage scheme may be considered for Triage a second time depending on the offence and/or personal circumstances. It may be decided that it would be beneficial for them to go through another Triage.”*

Kate Langley – Service Manager, Prospects Services, Gloucestershire Youth Support Team – advised that having a formal conviction does not exclude a child or young person from participating in their youth diversion scheme. She said whether a child or young person with a criminal record is considered suitable for diversion is considered on a case- by-case basis. Prospects Services settled on this criterion by looking at the research. They take the view that someone who has previously been on a court order and is doing quite well may still benefit from diversion.

## What does the evidence say?

A significant body of evidence has demonstrated that only a small proportion of children and young people who offend – even those who do so more than once – will become long-term persistent offenders. The vast majority of children and young people who offend grow out of doing so by their late teens or early 20s, with or without criminal justice system interventions.<sup>11</sup> Furthermore, research into recidivism probability – the likelihood of committing further offences based on the number of previous offences – suggests that only after a fourth offence does this probability become stable, signalling a small group of persistent offenders.<sup>12</sup> Similarly, a research study of youth offending in Northamptonshire found that diversion continued to outperform formal processing through at least a young person’s fourth involvement with authorities.<sup>13</sup>

Given this, automatically barring children and young people from diversion because of small numbers of previous offences is likely to be unnecessarily rigid. The need for flexibility is acknowledged by the Youth Justice Board in its case management guidance. The guidance cites examples of circumstances when diversion may appropriately be offered as a repeat option, including where ‘the second offence is a considerable time (over six months) after the initial offence’ and ‘if the second offence, though also low gravity, is of a different type than the first.’<sup>14</sup>

*We suggest that previous offending and diversion(s) should not be an automatic bar to diversion, but should rather be considered on a case-by-case basis when determining the suitability of diversion. This more flexible approach acknowledges the nature of childhood offending and the potentially criminogenic effects of formal criminal justice system processing.*

## Accepting responsibility versus mandatory admission

### What criteria are YOTs using?

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 requires that a child or young person make a formal admission before being cautioned. Many areas have extended this requirement to their youth diversion schemes. 57% of schemes who reported on this area told us that they require children or young people to admit the offence(s) in order to be eligible for diversion while 43% did not.

### What do practitioners say?

Kate Langley – Service Manager, Prospects Services, Gloucestershire Youth Support Team – explained the importance of some acceptance of responsibility in their diversion scheme: *“There can’t be a complete denial. If a child does a no-comment interview, it rules them out from participating in the diversion scheme, as it is seen as equating to no acceptance of responsibility.”*

*“There is a full time sergeant dedicated to children first, who prepares everything for the weekly panel. The sergeant reviews all matters in the inbox. Often the sergeant will be looking for whether the evidential threshold has been met. Children who pop up in court who haven’t had legal representation, can now be sent back to the panel.”*

Another youth offence service practitioner advised: *“They have to admit the circumstances, but the word guilt is not used. In practice sometimes they won’t accept full responsibility. We don’t necessarily need them to admit all of it.”*

## What does the evidence say?

Echoing sentiments of practitioners we have worked with, commentators have suggested that a mandatory admission criterion for youth diversion is an ‘onerous and sometimes unhelpful pre-condition for many young people who commit low level offences’, and may be ‘one of the primary reasons for young people entering the formal criminal justice system unnecessarily.’<sup>15</sup>

In particular, requiring mandatory admissions may have a disproportionate impact on Black, Asian and Minority Ethnic (BAME) children and young people. It is striking that the welcome advancements in the youth justice system over the past decade have been less likely to benefit BAME children and young people. For example, while the number of white children and young people entering the justice system for the first time fell by 57% between 2013 and 2018, black first time entrants fell by only 26%.<sup>16</sup> BAME children and young people are more likely to escalate through the system: they make up 31% of arrests, 35% of prosecutions, 53% of custodial remands, and 51% of the custodial population.<sup>17</sup>

Models which reward cooperation with the system, such as schemes which offer diversion only to children and young people who admit the offence(s), may play a role in this disproportionality. Research shows that BAME citizens have significantly lower trust in the justice system than their white counterparts, and that they are less likely to admit an offence or plead guilty at court. This can close off opportunities for diversion, formal out of court disposals and sentencing discounts.<sup>18</sup> To help address this, The Lammy Review into BAME people in the justice system recommended trialling pre-court diversion schemes that do not require a mandatory admission.<sup>19</sup> This recommendation has been taken forward by the Ministry of Justice’s Chance to Change pilots. Similarly, Outcome 22, a new police outcome for diversionary activity, does not require admission of the offence.

*We suggest that the more flexible criterion of ‘accepting responsibility’ could be preferable to requiring a mandatory admission. This still safeguards against criminal justice interventions being undertaken with innocent children and young people, while helping address racial disparity and unnecessary escalation.*

## Concluding thoughts

The vast weight of evidence on offending by children and young people offers two clear messages. Firstly, the bulk of children and young people who offend tend to grow out of crime on their own. And secondly, formal criminal justice processing can have a ‘backfire’ effect, leading to further offending. Taken together, these two observations make a strong case for the value of diversion with a broad spectrum of children and young people. This is why the first of our effective practice principles for youth diversion reads simply: ‘you should set eligibility criteria for your scheme as broad as possible.’<sup>20</sup>

However, we understand that, in practice, eligibility criteria must strike a balance between: avoiding unnecessary criminalisation; a sense of what would be acceptable to the public; and the views of partner agencies. The tension between these three is apparent in the range of criteria employed by different diversion schemes. Our research confirms that practitioners are well aware of these challenges when designing their own eligibility criteria.

Given the evidence base, we suggest that practitioners should operate on a case-by-case basis using their professional discretion to determine whether a child or young person is suitable for diversion, rather than operating a blanket policy based on gravity score, offence type or offending history or level. We also suggest that schemes should consider enabling children and young people to be diverted if they accept responsibility, rather than requiring them to make a mandatory admission. Furthermore, the evidence points to not operating a strict ‘one and done’ policy, but rather allowing children and young people to be diverted more than once, where appropriate.

## Endnotes

1. For low-level offending, instead of being arrested, children and young people are increasingly being taken to a place of safety and undertaking a voluntary interview. As such, 'point of arrest' is not always meant literally, but rather indicates that a threshold of offending has been reached.
2. See, for example: Wilson, D, Brennan, I, Olaghere. (2018). 'Police-initiated diversion for youth to prevent future delinquent behaviour'. *Campbell Systematic Reviews*; Wilson H, Hoge R (2013). The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review. *Criminal Justice and Behavior*, 40(5), 497-518; and McAra, L, McVie, S (2010). 'Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime'. *Criminology and Criminal Justice* 10(2): 179-209.
3. Centre for Justice Innovation (2019). Mapping youth diversion in England and Wales. Of all 152 YOTs we contacted, 115 confirmed they operate a point-of-arrest diversion scheme and have responded to our questionnaire (or been interviewed). 18 indicated that they do operate point-of-arrest diversion but have not yet responded to our questionnaire. 19 informed us that they do not have a point-of-arrest diversion scheme. For ease, we will refer to the 115 schemes who have responded as 'the responding schemes'. Not all questions were answered by all respondents.
4. Owen, N, Cooper, C (2013). The Start of a Criminal Career: Does the Type of Debut Offence Predict Future Offending? Research Report 77, Home Office.
5. Ibid
6. Bonta, J, Andrews, D (2007). Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation. *Public Safety Canada*.
7. Wilson, D, Brennan, I, Olaghere, A (2018). Police-initiated diversion for youth to prevent future delinquent behavior. *Campbell Systematic Reviews*.
8. One prominent example of offence type being used as a determinant of risk for young people is YOGRS, the youth justice system specific version of the Offender Group Reconviction Scale.
9. Bottoms, A (2006). Crime Prevention for Youth at Risk: Some Theoretical Considerations. Resource Material Series No. 68, 21-34.
10. Petrosino A, Turpin-Petrosino C, Guckenberg S (2010). Formal System Processing of Juveniles: Effects on Delinquency. *Campbell Systematic Reviews*.
11. Moffitt, T.E (1993). 'Adolescence-Limited and Life-Course Persistent Antisocial Behaviour: A developmental Taxonomy'. *Psychological Review* 100(4): 674-701.
12. Zara, G, Farrington, D (2015). *Criminal Recidivism: Explanation, Prediction and Prevention*. UK: Routledge.
13. Kemp V, Sorsby A, Little M, Merrington S (2002). Assessing responses to youth offending in Northamptonshire. Nacro Research briefing 2.
14. Youth Justice Board (2019). Guidance: How to use out-of-court disposals: section 1 case management guidance.
15. Cushing, K (2014). Diversion from Prosecution for Young People in England and Wales – Reconsidering the Mandatory Admission Criteria. *Youth Justice*, 14 (2), p140-153.
16. Youth Justice Board (2019). The journey of the child: exploring racial disparity in the youth justice system.
17. Ministry of Justice (2019). *Statistics on Race and the Criminal Justice System, 2018*.
18. Centre for Justice Innovation (2017). Building Trust: How our courts can improve the criminal court experience for Black, Asian, and Minority Ethnic defendants.
19. Lammy, D (2017). 'An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System'.
20. Centre for Justice Innovation (2016). Valuing youth diversion: A toolkit for practitioners.

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