

## Exploring the Responsiveness of Youth Diversion to Children with SEND

### Executive Summary

Special educational needs and disabilities (SEND) are widespread in the youth justice system. For example, 71% of children sentenced between April 2019 and March 2020 had identified speech, language and communication needs, and more likely went unrecognised. In their joint policy paper – A Youth Justice System that Works for Children – the Association of Directors of Children’s Services, Local Government Association and the Association of Youth Offending Team Managers highlighted the ‘over-representation of children with special educational needs’ as a significant challenge in need of ‘urgent attention, and crucially, action’.

The over-representation of children with SEND in the criminal justice system is especially concerning given the particular harms that justice system involvement can have on them. For example, the disruption to schooling that results from arrest, court attendance and possible custodial sentence is particularly damaging for those that rely on vital in-school support structures, such as Education, Care and Health Plans and alternative provision services.

Youth diversion gives children the chance to avoid both formal criminal justice processing and a criminal record, in return for the completion of community-based interventions. It is a crucial gateway out of the formal criminal justice system which should play a major role in helping the Youth Justice Board achieve its commitment to ensuring that ‘children are not unnecessarily criminalised as a result of their vulnerabilities.’ However, the overrepresentation of children with SEND in the justice system suggests that the diversion processes are not working for them.

### Barriers to diversion for children with SEND

The existing research flags a number of potential barriers which may prevent children with SEND from being diverted. Diversion is a ‘loosely coupled’ decision-making point, which means it is relatively unconstrained by legal rights and statutory criteria. It is also one which operates on necessarily short timescales and imperfect information, which can lead to reliance on shorthand cues resulting in biased outcomes. Unsupported communication needs and misinterpretation of communication difficulties by practitioners as attitudinal or behavioural issues are likewise barriers to diversion. Furthermore, children may deliberately mask their needs and, in the absence of professional curiosity, this could act as a bar to diversion where, for example, their resulting behaviour does not meet decision-makers’ expectations around responsibility-taking or remorse. Children with SEND may also be especially vulnerable to the well-meaning but damaging, net-widening tendency to divert people as a means of meeting their needs, needs better addressed by welfare agencies.

When children are diverted, research flags that a barrier is making them solely responsible for engaging, rather than the impetus being placed on practitioners to work thoughtfully and effectively with them to foster engagement. Engagement with diversion programmes may be hampered by the choice of intervention modality, with inaccessible verbally-mediated interventions often being the default.

## Improving diversion for children with SEND

The evidence base suggests a range of strategies to help children with SEND access and engage with diversion. These include: timely screening and identification of needs; comprehensive practitioner training; implementing robust accountability measures; co-locating specialists in Youth Justice Services; adjusting communication approaches and environment; making practitioners responsible for engagement; co-producing intervention plans; and empowering families to support engagement.

### Next steps

This literature review has highlighted the over-representation of children with SEND in the youth justice system; youth diversion's crucial role in addressing that over-representation; and the barriers which prevent children with SEND accessing and engaging with diversion. The Centre for Justice Innovation will continue to work in this area over the coming months, engaging with practitioners and children as we prepare an in-depth research report exploring the responsiveness of youth diversion to those with SEND and the options available to improve current practice.

## Introduction

Youth diversion gives children the chance to avoid both formal criminal justice processing and a criminal record, in return for the completion of community-based interventions. It is an increasingly well-embedded practice in England and Wales and now forms part of the Youth Justice Board's (YJB) National Standards which state that 'point-of-arrest diversion is evident as a distinct and substantially different response to formal out-of-court disposals'.<sup>1</sup>

As part of our commitment to ensuring that youth diversion is better understood, the Centre is undertaking a research project to explore youth diversion delivery for children with special educational needs and disabilities (SEND). This paper is a rapid literature review which summarises the evidence around SEND and youth diversion, with a focus on access and engagement. It will be followed, in early 2024, by a research report examining how responsive diversion schemes are to those with SEND, drawing on testimony from practitioners and children themselves.

## A note on terminology

Our research will explore diversion delivery for children with special educational needs and disabilities (SEND). As set out in the Children's and Families Act 2014, s.20, a child has special educational needs (SEN) if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her. A child has a learning difficulty or disability if he or she has a significantly greater difficulty in learning than the majority of others of the same age, or has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions. Children's SEN generally fall into four broad areas of need and support: communication and interaction; cognition and learning; social, emotional and mental health; and sensory and/or physical needs.<sup>2</sup> As the SEND Code of Practice explains, many children who have SEN may have a disability under the Equality Act 2010 (i.e. '...a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities'), which includes sensory impairments such as those affecting sight or hearing, and long-term health conditions such as epilepsy. Children with such conditions do not necessarily have SEN, but there is a significant overlap.

We have chosen to frame our research around SEND – rather than commonly associated and overlapping categories such as speech, language and communication needs (SLCN), or neurodivergence – for a number of reasons. First, this project was in part driven by our response to the Government's Green Paper, 'SEND Review: Right support, Right place, Right time', in which we highlighted the impact of the criminal justice system on children with special educational needs and disabilities and the importance of diversion for them.<sup>3</sup> Next, 'SEND' is used in the education sector, a key partner for youth justice services generally, and in multi-agency decision-making panels for youth diversion specifically. The issue of 'off-rolling' (hidden school exclusions of children who commonly have SEND) and the fact that youth diversion may be a useful tool in disrupting the school-to-prison pipeline,<sup>4</sup> also influenced our choice. Further, youth justice system assessments, including the new diversion assessment tool being developed by the YJB, aim to identify SEND and so may provide a useful datapoint. Finally, we are keen for our research to be informed by youth justice services with the Youth Justice SEND Quality Mark, which recognises high quality work in improving outcomes for children in the youth justice system with SEND. That being said, research on associated categories will be drawn on in this literature review and inform our wider research project.

We acknowledge that the category of SEND has been criticised as deficits focused and likened to the youth justice system's prevailing focus on risk with the attendant problems of labelling, adultification, and responsabilisation of children.<sup>5</sup> We aim to ensure our research is informed by Child First principles, in particular that it looks to 'promote children's individual strengths and capacities.'<sup>6</sup> Furthermore, our research will be cognisant of the social theory of disability which views disability as arising from the relationship between a person and their environment. As Mulvany explains, this theory 'redirects analysis from the individual to processes of social oppression, discrimination and exclusion.'<sup>7</sup>

It is worth noting that, in Wales, the 2018 Additional Learning Needs (ALN) Act and 2021 Code replace the separate systems for special educational needs (SEN) in schools and learning difficulties and/or disabilities (LDD) in further education.

## Prevalence of SEND needs in the youth justice system

In their joint policy paper – A Youth Justice System that Works for Children – the Association of Directors of Children’s Services (ADCS), Local Government Association (LGA) and the Association of Youth Offending Team Managers (AYM) highlighted the ‘over-representation of children with special educational needs’ as a significant challenge in need of ‘urgent attention, and crucially, action’.<sup>8</sup> These needs are indeed widespread in the youth justice system, for example, 71% of children sentenced between April 2019 and March 2020 had identified speech, language and communication needs.<sup>9</sup> Indeed, given the high rates of communication needs among the youth justice cohort, in ‘Sentence Trouble’, the Communication Trust, the Dyslexia SpLD Trust, and the Autism Education Trust advise practitioners to ‘assume that any young person you are working with has communication needs until it is proven otherwise.’<sup>10</sup> In practice, SEND covers a wide spectrum of categories, each of which can vary greatly in how they present in different children, and which can also commonly co-occur.<sup>11</sup> This challenges both the youth justice system and individuals working within it to not only seek out undiagnosed SEND needs but also to recognise that those with the same diagnoses might need widely differing kinds of support.

Analysis by the Department for Education and Ministry of Justice highlighted that: 80% of children who had been cautioned or sentenced for an offence, 87% of those cautioned or sentenced for a serious violence offence, and 95% of those whose offending had been prolific, had been recorded as ever having special educational needs. This is compared to 45% of the all-pupil population recorded as ever having SEN at some point up to the end of Key Stage 4.<sup>12</sup> The Howard League highlighted that over two-thirds of children in custody have identified special educational needs, while the Office for National Statistics analysis flagged that more than three-quarters (79.8%) of people who went on to receive a custodial sentence had been identified with special educational needs during their schooling.<sup>13</sup> Another common factor in justice-involved young people is Traumatic Brain Injury (TBI). In a UK study of young male offenders, 74% reported a lifetime TBI of any severity, and 46% had experienced a TBI leading to a loss of consciousness.<sup>14</sup> This study and others have identified associations between TBI and aggression and lifelong offending.<sup>15</sup>

There’s further evidence suggesting that SEN is also widespread in children with specific demographic characteristics that also place them at greater risk of coming to the attention of the justice system. One recent study found significantly higher rates of autism diagnosis amongst children in minoritised groups, in receipt of free school meals or living in areas of high deprivation.<sup>16</sup> Drivers of high levels of SEN amongst children in poverty include intergenerational disability and co-occurring factors such as low birth weight, parental stress and family breakdown.<sup>17</sup> There is also emerging evidence suggesting that child maltreatment may be associated with neurodevelopmental disorders, though the mechanism is unclear.<sup>18</sup>

These statistics are given by way of example and are by no means exhaustive. The overwhelming picture is that children with SEND are at significantly higher risk of coming into contact with the justice system. It is also important to note that children in the justice system may well have mislabelled or unrecognised special educational needs, meaning the prevalence of these needs could be even higher than reported. The pervasive nature of these issues highlights that ensuring that the development of a youth justice system which is responsive to the specific needs of children with SEND is an urgent challenge.

## Overlapping needs

In 'Securing better outcomes for children and young people with special education needs and disabilities in the Youth Justice System: Considerations and Reflections', the project team highlight the overlap of SEND, identified or not, with social/structural disadvantage (e.g. poverty, trauma and neglect, gender and race) and physical and mental health and wellbeing issues (drug and alcohol use, mental illness, attachment difficulties).<sup>19</sup> The complexities of the youth justice system cohort was also a recurring theme in the Justice Committee's Inquiry into Children in the Youth Justice System. For example, the Chief Inspector of Probation said: 'Over 54% had a learning or education need, 50% had a drug abuse need, 30% had a mental health need, and 17% had a speech and language need. They have quite profound needs. In cases going through court, those needs are even greater.'<sup>20</sup>

Similarly, in the YJB's analysis of the needs of sentenced children in 2019/20, five of the 19 concerns they looked at were present in more than 70% of children: Safety and Wellbeing (90%), Risk to Others (87%), Substance Use (76%), Mental Health (72%) and Speech, Language and Communication (71%).<sup>21</sup> A study by Baidawi and Piquero found greater cumulative adversity among crossover children (i.e. those with both child welfare and criminal justice system involvement) with neurodisability relative to other crossover children.<sup>22</sup>

The interplay between SEND and other demographic factors demands further attention. The Criminal Joint Justice Inspection report 'Neurodiversity in the criminal justice system: A review of evidence' highlighted the apparent dearth of attention paid to understanding the interaction between neurodivergence and gender.<sup>23</sup> In its report examining the school to prison pipeline, The Traveller Movement highlighted 'high rates of Special Educational Needs and Disabilities (SEND)' as a compounding difficulty Gypsy, Roma and Traveller children face in the education system, noting that in the year 2019-20, 30% of Irish Traveller pupils and 27% of Gypsy and Roma pupils had identified SEND, compared to 12.2% of the general school population.<sup>24</sup> Children looked after are also significantly more likely to have SEN than their peers,<sup>25</sup> with around 70% of children looked after having some form of SEN.<sup>26</sup> Research indicates that children from Black Caribbean and Mixed White and Black Caribbean backgrounds are significantly overrepresented among children with identified social, emotional and mental health needs.<sup>27</sup> More should be done to understand these disparities and their implications.

## Diversion data

Crucially, poor data capture in diversion means the number and profile of children diverted remains unclear. Although Youth Justice Board diversion data requirements were established in 2020, and refined the following year, the data does not yet meet the quality threshold for inclusion in annual youth justice statistics. As flagged in the YJB's Prevention and Diversion Project Final Report, 'the provisional data showed a big variation in the delivery of diversion work across YJSs due to YJS data recording and compliance issues in some areas.'<sup>28</sup> The absence of a uniform diversion assessment tool across youth justice services compounds the lack of clarity and means conclusions about the prevalence of SEND among diverted children cannot be drawn.

Recent and upcoming developments around diversion data are therefore very welcome. The Youth Justice Board's revised and extended diversion data recording requirements for 2023/24 were published in March and a standardised assessment tool for diversion cases, integrated into youth justice service case management systems, will also be rolled out shortly. Together, these will provide a much clearer indication of the number and profile of children being diverted, and therefore be key in identifying and addressing over-representation.

## The importance of diversion to children with SEND

The ‘over-representation of children with special educational needs’ in the youth justice system has been highlighted as a significant challenge in need of ‘urgent attention, and crucially, action.’<sup>29</sup> When it comes to tackling over-representation, the question of who has access to diversion at the point of entry to the criminal justice system is important.<sup>30</sup> Children who are diverted avoid the collateral consequences of formal criminal justice system processing, including: labelling; interruption of education, training and employment; and a criminal record. Contact with the justice system can itself be criminogenic, deepening and extending children’s criminal careers, with outcomes generally worse the further they are processed.<sup>31</sup> Diversion limits this contact and the decision whether to divert can therefore drive children’s escalation into, or trajectory out of, the formal criminal justice system.

Moreover, as outlined in the Centre’s consultation response to the Government’s Green Paper, ‘SEND Review: Right support, Right place, Right time’, criminal justice system involvement can be especially damaging for those with SEND, making diversion even more important.<sup>32</sup> For example, the disruption of an arrest, court attendance and possible custodial sentence to schooling is particularly acute for children that rely on vital support structures accessed through their education, such as Education, Care and Health Plans and alternative provision services. Similarly, the negative effects a criminal record has on job opportunities are likely to be more marked for those who already face greater challenges entering the workplace.

It is unsurprising, then, that calls have long been made for diversion to be the default response to offending by children with special educational needs and disabilities. For example, in 2012, the then Children’s Commissioner for England Dr Maggie Atkinson recommended:

*“ The Youth Justice Board, Department of Health and local youth justice agencies should ensure that young people with neurodevelopmental disorders are, wherever possible, diverted out of the youth justice system without criminalisation. Referral should instead be made to specialist services, able to manage risks and meet needs so as to make future savings through investment in early intervention.”<sup>33</sup>*

Perhaps most importantly, diversion is crucial in the realisation of the rights of children with SEND. Guidance on the implementation of the UN Convention on the Rights of the Child (UNCRC) urges that children with developmental delays or neurodevelopmental disorders or disabilities ‘should not be in the child justice system at all’, underlining the importance of diversion.<sup>34</sup> Indeed, a key action recommended by Hughes et al. for ensuring the implementation of the rights of children with neurodevelopmental disabilities in criminal justice systems is: ‘The use of diversion should be prioritised for children identified to have neurodevelopmental disabilities, with individualised interventions specifically tailored for their needs.’<sup>35</sup>

Equal access to diversion upstream is crucial to address the over-representation of certain groups of children downstream. Indeed, guarding against disparities is one of the Centre’s core principles of youth diversion:

*“ Access to, and engagement with, youth diversion schemes should be facilitated in a way that ensures all those suitable can avail themselves of its benefits. Diversion should help address disparities, rather than exacerbate them.*

The Youth Justice Board’s Prevention & Diversion Project Final Report also stresses that the youth justice system must ‘ensure equal access to diversion opportunities for all children.’

## Issues with access to diversion

The YJB's commitment to ensuring 'children are not unnecessarily criminalised as a result of their vulnerabilities and the challenges they face' underlines the importance of the responsiveness of diversion to children with SEND.<sup>36</sup> However, given that the decision to divert can determine escalation into, or trajectory out of, the formal criminal justice system, the very fact of overrepresentation of those with SEND in the youth justice system may point to issues with their access to, or engagement with, diversion.

## Discretion

Practitioners have significant discretion in deciding who gets access to youth diversion. Diversion is a 'loosely coupled' decision-making point in the youth justice system, i.e. one relatively unconstrained by legal rights or statutory criteria.<sup>37</sup> The decision to divert is ideally made by a multi-agency panel, ensuring appropriate expertise is brought to bear, decisions are scrutinised, and the risk of one agency gatekeeping access to diversion is countered. However, in 'Equal diversion? Racial disproportionality in youth diversion', we found that in practice, even where a panel is in place, individual decisions to divert may turn on frontline police discretion, exercised with a high degree of autonomy.<sup>38</sup> As our mapping exercise highlighted, youth diversion schemes vary widely across England and Wales and there is large scope for professional discretion to be exercised from decisions about who is eligible right through to what constitutes non-compliance.<sup>39</sup> If this discretion is exercised in a biased way, diversion schemes risk exacerbating over-representation.

One of the benefits of youth diversion, administrative efficiency – seen in its police burden reduction and cost avoidance potential – may impact equality of access. The resulting short timescales, imperfect information, and relatively unfettered discretion can lead to reliance on simplifying heuristics (shorthand cues) for decision making. These may operate to the detriment of children with SEND, whose responses are already prone to misinterpretation.

## Communication and (mis)interpretation

By virtue of their young age and (im)maturity, children may struggle with the communication skills needed for meaningful participation in the criminal justice system, even one ostensibly tailored to them. Indeed, Sowerbutts notes that even participation in the youth justice system 'requires considerable proficiency in language' and children 'must navigate a succession of challenging verbal interactions'.<sup>40</sup> A lack of understanding on the part of children was a key theme in our research on both youth courts (e.g. "I didn't have a clue."; "they use words that I don't understand, posh words"; "I'm trying not to give a bad impression, so I keep quiet.")<sup>41</sup> and on diversion (e.g. "Not sure what I got."; "I don't know how long I have left.")<sup>42</sup> Such struggles are likely to be especially pronounced for some of those with SEND. Indeed, the Royal College of Speech and Language Therapists' briefing, *Speaking Out*, lists articulation, perception, listening skills, recall, expression, and interaction – all important in navigating the criminal justice system – as key competencies children with communication difficulties may need support around.<sup>43</sup>

As summarised by Kirby in a recent HMIP Academic Insights paper, research has linked poorer outcomes for children with neurodevelopmental disorders to them finding it harder to understand the behavioural expectations and consequences of: a police interview, being cautioned or charged, bail conditions and court orders.<sup>44</sup> They may, for example, be more likely to plead guilty to an offence without fully understanding the impact on their case and future life chances. Similarly, research highlights that delivering a narrative account logically and sequentially, something demanded in police interviews and at court, may be difficult for those with speech, language and communication needs.<sup>45</sup> This can lead to children being unfairly excluded from diversion schemes.

The failure of practitioners within the criminal justice system to understand and respond appropriately to the needs of children with SEND may negatively impact their access to diversion. For example, in its report 'Experiences of autistic young people in the youth justice system', the National Autistic Society notes that:

*“ The behaviour of autistic and other neurodivergent people may not be recognised as related to their condition, or may be misinterpreted, which could make them more likely to be arrested. As a result, diversion away from custody and the criminal justice system may not be considered.”*<sup>46</sup>

Communication difficulties may be misinterpreted by practitioners as attitudinal or behavioural issues, affecting criminal justice outcomes. Snow & Powell note that such difficulties may result in 'monosyllabic, poorly elaborated and non-specific responses' together with 'poor eye-contact and occasional shrugs of the shoulders.' Rather than arousing professional curiosity, they suggest that '[s]uch responses are likely to have a confirmatory effect on the biased impressions that many authority figures already hold about marginalised young people',<sup>47</sup> with attempts at engagement misconstrued as 'deliberate rudeness and wilful non-compliance'.<sup>48</sup> In a similar vein, our research report on youth courts – 'Time to get it right: Enhancing problem-solving practice in the Youth Court' – highlighted a concern among some youth justice practitioners that the substantive outcome of a case could unjustly hinge on the child's 'performance' in court.<sup>49</sup>

Furthermore, children may deliberately mask their needs. In a briefing on speech, language and communication difficulties, Nacro highlighted that children may be 'proficient in covering up their speech, language and communication problems by avoiding engagement or being disruptive since this serves to distract attention from their difficulties.'<sup>50</sup> Where the reason for it is not explored, such behaviour could act as a bar to diversion, for example if it does not align with the decision-maker's expectations around responsibility-taking or remorse.

## Identifying needs

Hughes et al. note that diversion can be a 'very effective response' for children with neurodevelopmental disabilities, but flag that the specialist support required to effectively identify and respond to these disabilities is often unavailable.<sup>51</sup> This means that diversion can 'fail to adequately address underlying difficulties related to offending behaviour... undermining the potential benefits of a diversionary response'.<sup>52</sup>

It is important to note the role of Liaison and Diversion (L&D) workers who assist custody officers in triaging detainees, and have the skills and remit to identify neurodivergent issues, learning disabilities and other vulnerabilities when people first come into contact with the criminal justice system.<sup>53</sup> However, L&D services are not always utilised and needs can go unidentified. As the National Autistic Society noted in their Youth Justice Report, 'such services are reliant on police officers recognising the possibility that someone is autistic.... Despite it being clear that these services can be incredibly useful, the majority of the autistic people we asked had not accessed them.'<sup>54</sup> In 'Neurodiversity in the criminal justice system: A review of the evidence', the Criminal Justice Joint Inspectorate concluded that '[t]here is certainly no guarantee that a neurodivergent person coming into contact with the CJS will have their needs identified – let alone met – at any stage of the process.'<sup>55</sup> This is not a problem unique to the adult system, children in contact with the justice system, as highlighted by the Howard League, 'often have special educational needs that are mislabelled, unrecognised and unmet'.<sup>56</sup> For example, in a study by Winstanley et al, 60% of participants, who were all relatively new to the youth justice system, were identified as having developmental language disorder (DL),



although their DLD was undiagnosed.<sup>57</sup> Similarly, in a study by Holland et al., over half of those with identified SLCN had no previous diagnosis that would indicate a support need.<sup>58</sup>

As special educational needs may provide useful context for offending behaviour and may indicate the appropriateness of diversion, they should ideally be identified in initial criminal justice assessments. While it is best practice for an assessment to take place prior to the decision to divert, and for this to be made jointly, diversion's relatively short timescales and light-touch assessments means there is a risk of children with SEND having their needs go unidentified. Short timescales may allow for a tick box assessment around SEND and SCLN, for example, but not necessarily the facility for screening for these where concerns are present. However, these assessments should not be considered the panacea and needs may not be identified: the child may be unaware, unwilling or unable to disclose these; their behaviour may be misinterpreted; they may have developed ways of masking their needs; their needs may not meet clinical thresholds for diagnosis; or their needs may have gone unrecognised by other agencies (e.g. education).

### **Net-widening**

As well as the risk of children with SEND being improperly denied the opportunity of diversion, there is also a danger of net-widening. For example, the Government's plan to co-locate youth justice services in alternative provision settings in schools as part of a multi-disciplinary team, as announced in the SEND Green Paper, risks drawing even more children with SEND into the justice system through closer contact. It is a core principle of youth diversion that schemes should avoid net-widening by operating as an alternative to the formal justice system, rather than as a supplement to it. Children with SEND may be especially vulnerable to the well-meaning but damaging tendency to divert people as a means of meeting their needs, needs better addressed by welfare agencies.

## Improving access to diversion

Several recommendations from our report ‘Children and young people’s voices on youth diversion’, which had a particular focus on racial and ethnic disparity, would also serve to advance diversion access for those with SEND.<sup>59</sup> These include: providing children with relevant and accessible information about legal processes and diversion; building the capacity of solicitors to support children in accessing diversion; establishing protocols to facilitate diversion cases which have reached court inappropriately; and making effective use of data to monitor local disparities.

As highlighted, the identification of special educational needs early is important in securing access to diversion in all appropriate cases. In its response to the SEND Green Paper Consultation, the YJB listed ‘timeliness of identification’ as an important aspect of national standards.<sup>60</sup> Day stresses that ‘[s]creening for neurodivergent conditions should form part of the assessment of children at entry point into the youth justice system’.<sup>61</sup> Similarly, Kemp et al. recommend a digital screening tool for police that includes questions on a child’s ‘specific learning difficulties, developmental delays or neurodevelopmental disorders and disabilities’, triggering a more detailed assessment by L&D and referral to external agencies where necessary.<sup>62</sup> Screening should form part of the work to understand and respond to the specific learning and communication needs of individual children and should be allied with an awareness that even those without specifically identified SEND may still benefit from tailored support.

The robust implementation of the NPCC’s child-centred policing best practice framework, based on the four tenets of procedural fairness, would also help ensure those with SEND are diverted where possible.<sup>63</sup> The framework flags avoiding unnecessary criminalisation as a priority, stressing that often offending by children is ‘a symptom of other challenges’ demanding ‘professional curiosity’. It requires officer training in engaging with children and ‘recognising vulnerability’. Moreover, the framework limits the scope for bias and discretion by demanding decisions to divert are made by a multiagency panel, and local disparity around ‘neurodiversity and differently abled children’ is scrutinised.

‘A Youth Justice System that Works for Children’ – recognising the need for more child-centred police decision making – reiterated the Taylor Review’s calls for mandatory child-specific training for custody sergeants, and charging decisions to be informed by health screening assessments and local authority information-sharing.<sup>64</sup> Kemp et al. recommend specific training for custody staff on ‘developmental disorders, learning disabilities and other challenges commonly experienced by children who find themselves in police custody’.<sup>65</sup> In its Youth Justice Report, the National Autistic Society recommended the Government ‘make autism training mandatory across all criminal justice professionals.’<sup>66</sup>

## Barriers to engaging with diversion

Engagement with diversion – how children who have been diverted engage with both the youth justice service and any intervention which is offered – is important. Engagement can affect, for example: how useful the interventions are in addressing the underlying drivers of their offending; their future chances of diversion (lack of engagement can bar this option again); and their perceptions of the fairness of, and therefore their future compliance with, the system. Potential issues around engagement with diversion for children with SEND are considered below.

As highlighted in our previous research on both youth diversion and youth courts, the justice system can place a responsibility on children to engage with practitioners in a way which elicits approval, rendering their capacity to do so a significant driver of outcomes. Given the communication difficulties many children with SEND experience, such expectations around engagement may set them up to fail. Case et al criticise the ‘adult-centric practitioner bias’, which can unhelpfully frame children’s communication difficulties or attitudes as the main factors driving disengagement.<sup>67</sup> In this way, children are made solely responsible for engaging, rather than the impetus being placed on practitioners to work thoughtfully and effectively with them to foster engagement and meet them where they are.

Engagement with diversion programmes may also be hampered by the choice of intervention modality. Indeed, in their Justice Evidence Base, the Royal College of Speech and Language Therapists highlight a ‘mismatch between the literacy demands of programmes and skills level of offenders, which is particularly significant with respect to speaking and listening skills.’<sup>68</sup> Research suggests that ‘around 40% of offenders find it difficult or are unable to benefit from and access programmes which are verbally mediated, such as anger management, substance misuse or drug rehabilitation’.<sup>69</sup>

## Improving engagement with diversion

Implementing effective communication practices is a recommendation in our latest youth diversion research report, 'Children and young people's voices on youth diversion', and is a key means of promoting engagement.<sup>70</sup> The children we interviewed valued clear means of communication and wanted professionals to use active listening and take a respectful, caring and non-judgemental approach. In 'Sentence Trouble', the Communication Trust, the Dyslexia SpLD Trust and the Autism Education Trust outline a number of effective communication practices for criminal justice practitioners to support children with communication needs. These include: using simple language; speaking a little slower than you would normally; asking the child to repeat back in their own words what you have said; giving an overview first; giving extra time for the child to listen and process; using visual aids to support understanding; giving reminders of appointments; asking them what would help them; and making written materials simple and clear.<sup>71</sup> Considering the prevalence of communication needs among the youth justice cohort, practitioners are also advised to 'assume that any young person you are working with has communication needs until it is proven otherwise.'<sup>72</sup>

Although its focus is the adult system, the adjustments flagged in 'Neurodiversity in the criminal justice system: A review of evidence' by the Joint Inspectorate are instructive when looking to promote engagement with youth diversion schemes. Environmental adjustments, designed to lessen sensory overload, included dimming lights, and using quieter, less busy spaces; while communication adjustments included offering verbal or written text explanations as preferred, explaining slowly and checking comprehension, and using concrete not abstract wording.<sup>73</sup> The report also highlights the importance of criminal justice system staff making 'full use of their "soft skills" – listening, empathy and compassion.'<sup>74</sup> These strategies are likely to provide benefits for children whether or not they have specifically identified SEND needs and can be adopted widely.

Training of justice practitioners is vital. Hughes et al. suggest justice officials 'should be trained and supported to understand the ways in which neurodevelopmental disabilities might affect a child's capacity to engage in justice processes'.<sup>75</sup> Placing responsibility on practitioners for fostering and facilitating children's engagement with diversion will also help advance engagement. Recognising the importance of effective relational work between youth justice service practitioners and children is also important. Evidence suggests that, in terms of desistance, a positive relationship between the child and the professional could be more important than the intervention(s) delivered.<sup>76</sup> Developing an effective relationship-based practice framework, which identifies the necessary practitioner values, skills and knowledge, can encourage and sustain engagement and give children a stronger voice. The integrated relationship-based practice framework of Stephenson and Dix (2017), developed specifically for youth justice practitioners, is a useful resource.<sup>77</sup>

Co-producing tailored intervention plans with children, another recommendation from our latest youth diversion research report, would also help promote engagement. In keeping with the principles of the Child First approach which promotes collaboration, this would empower children with SEND to shape diversion interventions and their mode of delivery, in the way most fitting for them. Such co-production would help advance the child's participation from 'object' or 'subject' to 'actor' in Aldridge's participatory model.<sup>78</sup>

Achievement for All and partners highlighted the 'co-location of specialist professionals, especially Speech and Language Therapists (SaLTs), within YOTs' as an enabling factor in securing better outcomes for children with SEND in the youth justice system.<sup>79</sup> The YJB's case management guidance encourages staff to draw on in-house expertise,

including speech and language therapists, when designing and delivering intervention programmes. The guidance also signposts staff to resources such as Sentence Trouble from The Communication Trust and The Box from RCSLT, aimed at improving engagement for children with communication needs.

Families can play an important role in helping children to engage with youth diversion. A range of studies have identified the importance of parents in protecting children from offending. Positive parenting practices such as monitoring of children's behaviour have been shown to reduce risk whereas psychological control or rejection increase risk.<sup>80</sup> Parents' involvement is widely understood to be an important component of effectiveness in the child and adolescent mental health and education sectors but their involvement in youth justice systems can be hampered by a lack of clearly defined mechanisms for that involvement.<sup>81</sup> Emerging research suggests that involving parents in youth diversion can strengthen parent-child relationships, and provide an opportunity for parents to help their children resist the labelling that can come with youth justice system involvement.<sup>82</sup> There is little research to date on the experiences of children with SEND in diversion, but evidence from the education sector suggests that engaging with their parents is particularly important, promoting parents' confidence and fostering their engagement<sup>83</sup> which is associated with positive outcomes for children.<sup>84</sup>

## Conclusion

Given the over-representation of children with special education needs in the youth justice system – and youth diversion's crucial position as a gateway out of the system – a research project to explore the responsiveness of youth diversion delivery for those with SEND is much needed. The existing research points to potential issues around access to diversion for children with SEND, including unsupported communication needs, misinterpretation of behaviour, unfettered discretion, failure to respond to co-occurring needs and risks of net-widening. Issues with engagement may include responsabilising children, and untailored interventions. The evidence base posits strategies to overcome these issues, including: encouraging professional curiosity, implementing accountability measures, adjusting communication, responsabilising adults, and co-producing intervention plans. The pervasive nature of SEND amongst children involved in the justice system challenges us not only to implement these strategies, but also to ensure that they are made the norm.

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### About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.