

How is youth diversion working for children with special educational needs and disabilities?



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Executive summary

Children with special educational needs and disabilities (SEND) are hugely over-represented at all points in the criminal justice system. Evidence suggests that 70–90% of children in the justice system have some form of SEND. Yet the lack of support for their communication needs may make these children's experiences particularly difficult and the impact of educational disruptions as a result of justice system involvement can be particularly severe.

Youth diversion offers many children a pathway out of the criminal justice system. In this informal non-statutory approach, children are offered the chance to partake in a community-based intervention rather than receiving a formal out-of-court disposal or prosecution. Evidence strongly suggests that youth diversion benefits children by reducing their likelihood of coming back into the justice system or getting further entrenched into it.

Youth diversion might be particularly beneficial to children with SEND. However, given the range of communication barriers that children with SEND face in navigating the system, they may be less likely to receive diversion, particularly where communication difficulties are misconstrued as behavioural issues. Unequal access to diversion may create further disparity later on in the youth justice system.

As part of the Centre for Justice Innovation's ongoing interest in supporting effective use diversion, this report aims to understand how diversion is working for children with SEND. In order to research this report, we interviewed children with SEND who had received diversion as well as a range of professionals including youth justice service (YJS) practitioners, police officers and solicitors. We also conducted a survey of YJS practitioners.

We are conscious that 'SEND' is a deficits-focused category that has been criticised for responsabilising children rather than highlighting the system that underserves them, as well as being an all-encompassing label that does not adequately account for differences within it. We have nevertheless chosen to frame our research around 'SEND' rather than using other overlapping categories such as 'neurodivergent' or 'additional learning needs' firstly because this project was in part driven by our response to the Government's Green Paper, '*SEND Review: Right support, Right place, Right time*'. The fact that SEND is still the prevailing term used in the education sector, by the youth justice service and in joint decision-making panels for youth diversion specifically was also a key consideration.

Findings

Based on the experiences shared by children and professionals, we must conclude that many parts of the youth diversion process are not fit for purpose for children with SEND.

Navigating the criminal justice system requires overcoming challenges around understanding, communication, recall, conduct and decision-making that many children with SEND may find insurmountable in its current form. Though needs differ widely between different children with SEND, commonly occurring struggles include communication and understanding of expectations. Those who face communication difficulties may struggle to deliver a logical and sequential account or give poorly elaborated and monosyllabic replies, are unable to make eye contact, and are seen by some practitioners as being deliberately difficult and non-compliant.

There are particular issues with the way that children with SEND are policed. Due to a lack of basic training around SEND, we found that attempts to identify or cater to children's specific needs were rare in police practice. Our findings suggest that it was uncommon for police to consider SEND in either their approach to communicating with and handling children, or in their decision-making around whether children might be eligible for diversion. Use of overly complex language by police officers over the course of arrest and during police interviews was also particularly detrimental to the

understanding of children with communication needs. Arresting practice often included the use of physical force and restraints, which was particularly harmful to certain children with SEND (such as those with autistic spectrum disorder (ASD)). This could often be a factor in leading to unnecessary escalation at this point.

“ As one child we spoke to described: Yeah, they have done that quite a lot. I came home with bruises and everything. They broke my toe once. When you’re even calm and when you say, ‘Yeah’, and you don’t kick off, they still think they have to use force. They feel like everywhere they go, they’ve got to go, ‘Grr’, and slam you to the floor.

Identification of SEND in children with both previously diagnosed and undiagnosed SEND was not taking place effectively in the diversion process. While some YJSs had co-located speech and language therapists (SaLT) or other specialists with expertise to diagnose SEND in their team, many did not. Given that a large proportion of children are entering the system with undiagnosed SEND, this means many are not having their needs taken into consideration during the decision-making process or interventions. In addition, the systems in place to identify diagnosed SEND were at times lacking in coordination and inconsistent across YJSs. Practitioners sometimes relied on children to proactively mention their needs or diagnosis of SEND, which was problematic for many due to the memory and communication skills involved in this, as well as the fact that children were at times not even aware of their own diagnosis or need for support.

“ As one child put it: No one told me I was getting an EHCP plan either. I didn’t even know what it was when I was in [name of old school], but I found out literally when I went to [name of new school].

The processes that influenced children’s access to diversion schemes were also not adapted to account for SEND. Solicitors and appropriate adults lacked training to enable them to adequately support children with SEND in their contact with the police. Solicitors were sometimes advising children with communication difficulties to give ‘no comment’ interviews in cases where it was thought that a child’s input in these could be detrimental to their outcomes. This advice often meant that these children would not directly be considered for diversion (which requires an acceptance of responsibility), and instead be sent to court.

Police were wrongly applying criteria around admission of guilt, acceptance of responsibility and remorse when making decisions around diversion. This was disproportionately impacting children who gave ‘no comment’ in interviews or otherwise failed to display ‘expected’ behaviours. The decision-making around diversion also lacked consistency across YJSs. While joint decision-making panels were common practice in most areas, the level of discretion left in the hands of the police around this was variable. Panels were also not always as multilateral as they should have been, with education and social work often not represented.

In terms of YJS practice itself, we heard of some very positive work around tailoring interventions to the needs of individual children. This included flexibility around timing of sessions, location and content, with several examples of practitioners carrying out programmes in creative ways that included outdoor activities and different types of stimuli to better engage certain children. However, this was not standardised across practitioners and locations, meaning some interventions were not well adapted to cater to children with SEND. Resources within YJS were also not always adapted to children with SEND. Written material was sometimes overly complex and inaccessible to many users coming into contact with the YJS.

Though our findings did find some areas of good practice in the diversion process, there are many parts of it that are currently not working appropriately to provide children with SEND the opportunity to avoid harmful criminal justice system outcomes in the same way as their peers. Work is urgently needed to ensure that processes for accessing and engaging with youth diversion accommodate the commonly occurring needs of children with SEND. Doing so will not only ensure that youth diversion does not compound the disproportionate number of children with SEND in the justice system by denying them access to an off-ramp, but it will also benefit all children in this system by contributing to a culture which is sensitive to their needs.

Recommendations

1. The National Police Chiefs' Council (NPCC) should ensure the policing of children is responding appropriately to the needs of children with SEND.

Our report found significant evidence that police were failing to identify and meet the needs of children with SEND. Action is needed to ensure that arresting practice is not harmful to children with SEND and police communication level is accessible. The policing of children must adequately safeguard the needs of children with SEND and adhere to child-first principles; inspectorates must ensure that these issues are fully captured within their work. The specialised youth justice police role needs to be protected and professional development opportunities must be increased within it to enable this to take place.

2. The NPCC and the Crown Prosecution Service (CPS) should provide clarity on the requirements surrounding admission of guilt, acceptance of responsibility and remorse:

While criteria such as acceptance of responsibility or an admission of guilt are a prerequisite for diversion schemes, work is needed to ensure police apply these criteria in line with existing YJB guidance. Additionally, explicit guidance is needed to ensure that police do not make decisions or assessments of risk based on whether a child is displaying 'adequate' signs of remorse as this is not part of any criteria and may disproportionately impact children with SEND, given their communication difficulties.*

3. Legal regulatory bodies should ensure that children with SEND are receiving adequate and accessible legal advice.

Our findings have shown that children with SEND are receiving legal advice that is putting them at a particular disadvantage for accessing diversion schemes. Duty solicitors should be given specific training in advising and communicating with children, including information around SEND and the diversion process. Children should also be prevented from declining legal advice without proper understanding of its role and significance.

4. The Youth Justice Board (YJB) should carry out or commission additional research to investigate the role of appropriate adults in supporting children with SEND.

There is generally a significant gap in the literature around the practice of appropriate adults. From our limited findings it seems appropriate adults are not equipped to identify SEND or advocate for children's needs and further research is needed.

5. YJSs should develop their diversion processes to ensure they include co-location of SaLTs and balanced joint decision-making panels.

Our report found that there were significant differences in practice between YJSs when it came to identification of SEND and the diversion decision-making process. Very positive practice has been shown in some YJSs who have co-located SaLTs to address the prevalence of children with undiagnosed SEND passing through the system, and this should be extended. Joint decision-making panels have also been shown to be crucial in ensuring equal access to diversion, but greater consistency is needed to address variation in terms of who attends them and how much discretionary power remains with the police from one area to another.

* Even within the new Child Gravity Matrix, displaying a lack of remorse is not an aggravating factor, and conversely showing signs of remorse is not in the table of mitigating factors either.

6. YJB should share good practice between YJSs around adapting interventions for children with SEND.

We found areas of good practice in YJSs, with interventions being creatively adapted to children's individual SEND, but this is often as a result of staff member's initiative rather than a standardised process. Practice sharing is needed to help all YJSs to ensure that the content and delivery of interventions can be tailored to be accessible for the range of needs of children with SEND.

A note on terminology

Our research explores 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 they have a learning difficulty or disability which calls for special educational provision to be made for them. This encompasses any additional education or training provision that is additional to or different from that of their peers in the same age group, which could be a SEND support plan or an education, health and care plan (EHCP). For example, a child has a learning difficulty or disability if they have a significantly greater difficulty in learning than the majority of others of the same age, or has a disability which prevents or hinders them 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 SEND 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.¹ As the SEND Code of Practice explains, many children who have SEND 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 SEND, 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 SEND and the importance of diversion for them.² 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,³ also influenced our choice. Further, youth justice system assessments, including the new diversion assessment tool developed by the YJB, aim to identify SEND and so may provide a useful datapoint.

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.⁴ 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*".⁵ Furthermore, our research is 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*".⁶ We do recognise that 'neurodivergent' and 'additional learning needs' are less stigmatising terms than 'SEND', and that 'underserved' would be the best term to indicate the system's responsibility in not picking up or catering for these needs.

Additionally, the term 'offender' will only be used to describe children in the youth justice system when this is the term used in direct quotations as this stigmatising label conflicts with Child First principles.

Introduction

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*” in the youth justice system as a significant challenge in need of “*urgent attention, and crucially, action*”.⁷

The prevalence of SEND in the youth justice system is especially concerning given the particular harms that justice system involvement can have on children with these needs. 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 through their EHCPs 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 an increasingly well-embedded practice in England and Wales and now forms part of the Youth Justice Board’s National Standards which state that “*point-of-arrest diversion is evident as a distinct and substantially different response to formal out-of-court disposals*”.⁸ As a crucial gateway out of the formal criminal justice system, diversion should play a major role in helping the YJB achieve its commitment to ensuring that “*children are not unnecessarily criminalised as a result of their vulnerabilities*”.⁹ However, the over-representation of children with SEND in the justice system suggests that diversion processes are not working for them. As part of our commitment to ensuring that diversion is better understood, the Centre undertook a research project to explore youth diversion delivery for children with SEND. This piece of research comes as part of the wider work the Centre has been undertaking to ensure equal access to diversion, following on from our work around racial disproportionality in relation to diversion.

Context

Youth diversion in England and Wales

Diversion is a set of informal, non-statutory practices which enable children to avoid formal criminal justice system processing – a statutory out-of-court disposal or a court prosecution – and the attendant negative consequences such as a criminal record, labelling, and interruption of education, training or employment. In order to access diversion, children usually receive a short assessment before being referred into light-touch, supportive interventions. These schemes operate for under-18s in a variety of different models across the country.

This project uses the Youth Justice Board’s definition of diversion:

“ *where children with a linked offence receive an alternative outcome that does not result in a criminal record, avoids escalation into the formal youth justice system and associated stigmatisation. This may involve the YJS delivering support intervention that may or may not be voluntary and/or signposting children (and parent/carers) into relevant services. All support should be proportionate, aimed at addressing unmet needs and supporting prosocial life choices.*¹⁰

The Crime and Disorder Act of 1998 makes clear that it “*shall be the principal aim of the youth justice system to prevent offending by children and young persons*”.¹¹ Youth diversion schemes are a vital part of that effort. Although youth diversion is not a statutory requirement of any public body, it is increasingly well-embedded in England and Wales. Efforts to chart diversion activity by the YJB in 2021 found it to be available in almost every local authority in England and Wales, with 128 out of the 154 YJSs delivering a scheme.¹² The average caseload of youth justice services for prevention and diversion work has been reported as 52%.¹³ Indeed, youth diversion is now part of the Youth Justice Board’s National Standards, which require that “*point-of-arrest diversion is evident as a distinct and substantially different response to formal out-of-court disposals*”.¹⁴

Diversion is a central tenet of Child First, the Youth Justice Board's strategic approach and central guiding principle for the youth justice sector. Child First means all youth justice services should “*promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system*”.¹⁵

What outcomes can be part of diversion?

When dealing with offences committed by children the police have a range of outcomes available that avoid criminalising them, as per sections 135–138 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. Although there may be variation in local terms used by YJSs and police to describe these, available outcomes include:

- **Community Resolution (Out-of-Court Disposal):** A diversionary police outcome that can only be used when children have accepted responsibility for an offence. It is an outcome commonly delivered, but not limited to, using restorative approaches.
- **No Further Action:** An outcome used when the police decide not to pursue an offence for various reasons. This may be because there is not enough evidence, or it is not in the public interest. Voluntary support may be offered to children to address identified needs.
- **No Further Action – Outcome 22:** A diversionary police outcome that can be used when diversionary, educational or intervention activity has taken place or been offered, and it is not in the public interest to take any further action. An admission of guilt or acceptance of responsibility is not required for this outcome to be used.
- **No Further Action – Outcome 21:** A diversionary police outcome used when further investigation, that could provide sufficient evidence for charge, is not in the public interest. This includes dealing with sexting offences without criminalising children.

Youth Justice Board (2021). Definitions for Prevention and Diversion

The evidence base around SEND and youth justice

Prevalence of SEND among children in the youth justice system

A growing body of evidence shows the disproportional prevalence of SEND and overlapping speech, language and communication needs within the youth justice system. According to the national statistics published by the Ministry of Justice and the Youth Justice Board, 71% of children sentenced between April 2019 and March 2020 had identified speech, language and communication needs.¹⁶ Analysis by the Department for Education and Ministry of Justice showed that 80% of those 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.¹⁷

Given this disproportionate representation, 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*”.¹⁸ 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.¹⁹ 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 higher than reported. This challenges the youth justice system, and individuals working within it, to both seek out undiagnosed SEND needs and recognise that those with the same diagnoses might need widely different kinds of support.

There is further evidence suggesting that SEND is widespread among children with specific demographic characteristics that may 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 among children in ethnic minority

groups, in receipt of free school meals, and living in areas of high deprivation.²⁰ Factors driving these high levels of SEND among children in poverty include intergenerational disability and co-occurring factors such as low birth weight, parental stress and family breakdown.²¹ There is also emerging evidence suggesting that child maltreatment may be associated with neurodevelopmental disorders, though the mechanism is not yet clear.²² Looked after children are also significantly more likely to have SEND than their peers,²³ with statistics suggesting this is around 70%.²⁴ Research indicates that children from Black Caribbean and Mixed White and Black Caribbean backgrounds are significantly over-represented among children with identified social, emotional and mental health needs.²⁵ More should be done to understand these disparities and their implications.

Considering there is no available data to break down specific types of SEND in children in the justice system, the national SEND statistics, based on the general population of children at school may be relevant to look at. Speech, language and communication needs are the most prevalent, followed by social, emotional and mental health needs, then moderate learning needs, and then autistic spectrum disorder.²⁶

Improving our understanding of the accessibility of youth diversion to children with SEND would require comparing how prevalent these needs are in diverted and formally processed cohorts of children. Unfortunately, data capture around diverted children and their profiles is currently poor, making this comparison difficult for the time being. The breakdown of children with different types of SEND receiving out-of-court-disposals and those with statutory outcomes requires further data capture before exploring its relevance to this research.

The importance of diversion

Criminal justice system involvement can be especially damaging for children with SEND, making diversion even more important for them.²⁷ As mentioned above, the disruptive impact of an arrest, court attendance and possible custodial sentence is particularly acute for children that rely on support structures through education. Similarly, the negative effects of a criminal record on job opportunities are likely to be more marked for those who can already face greater barriers to entering the workplace.

It is unsurprising, therefore, that calls have long been made for diversion to be the default response to offending by children with SEND. In 2012, the then Children's Commissioner for England, Dr Maggie Atkinson, recommended that "*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*".²⁸ 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.²⁹

The diversion decision-making process

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.³⁰ 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 researching our earlier report '*Equal diversion? Racial disproportionality in youth diversion*', we found that in practice, even where a panel is in place, individual decisions to divert may rely on frontline police discretion, exercised with a high degree of autonomy.³¹ Youth diversion schemes vary widely across England and Wales, and there is large scope for professionals to exercise discretion around diversion, from decisions about who is eligible for it to what is considered non-compliance.³² If this discretion is exercised in a biased way, diversion schemes risk exacerbating over-representation.

The newly updated Child Gravity Matrix includes a table of 'vulnerability factors' which list "*any known emotional, maturity or understanding or mental health difficulties / learning difficulties / disability (including Neuro disability) / speech, language or communication needs*"³³ as a mitigating factor to be considered in police decisions made about outcomes. This is a step towards diversion decision-making more in line with the Child First approach, though here again, the guidance recommends rather than requires police to seek out this information from the YJS if it is not readily available.

One of the benefits of youth diversion is the administrative efficiency that can result from the potential reduction of police burden and cost avoidance. However, the short timescales, imperfect information, and relatively unfettered discretion that are associated with this efficiency 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, and therefore impact equality of access.

Barriers faced by children with special educational needs in the youth justice system

Navigating the youth justice system places high demands on communication skills, putting children with special educational needs at a significant disadvantage. Indeed, the Royal College of Speech and Language Therapists' briefing, *Speaking Out*, lists articulation, perception, listening skills, recall, expression and interaction as key competencies for navigating the criminal justice system which children with communication difficulties may need support around.³⁴ As summarised in a recent HM Inspectorate of Probation Academic Insights paper, research has linked the difficulties children with neurodevelopmental disorders face in understanding the behavioural expectations and consequences of situations such as a police interview, being cautioned or charged, bail conditions and court orders.³⁵ 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.³⁶ This can lead to children being unfairly excluded from diversion schemes.

Communication difficulties may be misinterpreted by practitioners as attitudinal or behavioural issues, affecting criminal justice outcomes. Snow and 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"*,³⁷ with attempts at engagement misconstrued as *"deliberate rudeness and wilful non-compliance"*.³⁸ 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"*.³⁹ 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.

It is also important to consider how special educational needs affect children's ability to engage with the diversionary interventions on offer. Engagement can affect 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. 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.⁴⁰ 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"*.⁴¹

Research design

Research questions

The findings from our literature review informed the research questions of our exploratory qualitative research:

- How responsive, in terms of **access**, are youth diversion schemes to children with SEND?
- How responsive, in terms of **engagement**, are youth diversion schemes to children with SEND?
- What **changes to practice** should be made to ensure youth diversion schemes are more responsive to children with SEND?

Qualitative research

Practitioner interviews

Semi-structured interviews were undertaken with a range of practitioners, primarily across three sites, though these were supplemented with a minority of practitioners from other locations. Those interviewed included defence solicitors, police and youth justice service professionals with roles ranging from speech and language therapists to education officers to diversion caseworkers. The interviews themselves were conducted remotely via video call and were roughly 40–60 minutes in length. Practitioners were asked, among other things, about their general understanding and training received in relation to SEND; their perception of the barriers and accessibility of diversion decision-making with regard to children with SEND; and the appropriateness of diversion interventions for children with SEND.

A total of 22 practitioners were interviewed across the following groups:

- eight YJS diversion caseworkers
- six YJS specialist workers
- six police officers (YJS officers)
- two defence solicitors

The three sites were recruited through our practice team who put an advertisement in our youth diversion bulletin and received responses from these sites. Two of the sites were within a racially diverse metropolitan area, the third site was within a more racially homogenous non-metropolitan area. Additional practitioner interviews were carried out to supplement site practitioner interviews and to provide greater insight into variation in practice. These additional interviewees were primarily recruited following attendance at the online seminar for the project's literature review.

Analysis of the qualitative data gathered was undertaken using a coding framework devised through consideration of findings in the literature review and the emerging themes from initial interviews.

Practitioner survey

The interviews were supplemented with a survey of youth justice service practitioners to allow us greater insight into the variation in practice around youth diversion and SEND, to help us sense check interview findings, and enable us to highlight more examples of best practice. This survey included a mix of open- and closed-ended questions around training received; the existence of barriers to access and engagement with diversion schemes; strategies to overcome these; and recommendations for improvements.

The survey was disseminated through the Centre's bulletin, as well as through the networks of the YJB, AYM and Alliance for Youth Justice, and received a total of 43 responses from YJS professionals and police. The open answer questions were coded along a similar framework to the practitioner interviews.

Interviews with children

Recruitment of child interviewees was undertaken in conjunction with User Voice, a charity working directly with service users in the criminal justice system. Children were approached through their YJSs, who identified and facilitated the coordination of interviews with those they thought would be happy to take part. Children were then given the choice as to whether they would be interested in taking part, and written consent was also obtained from parents of those aged under 16. Those choosing to take part were remunerated for their time with a £20 voucher, to recognise the effort this took, particularly for children for whom concentration for the length of the interview was more demanding.

Recruitment criteria was open to those with both diagnosed and undiagnosed but suspected needs to reflect the prevalence of both in the YJS cohort. All those recruited were on some form of diversion. Those we spoke to came from three separate sites, which differed from the practitioner interview sites, and were all in different metropolitan areas.

A total of 12 children were interviewed, with ages ranging from 13 to 18. Interviews were carried out face-to-face in spaces within the community, such as youth centres, by a researcher from The Centre for Justice Innovation and a partner researcher from User Voice with previous lived experience in the youth justice system. The environment of the interviews aimed to put children at ease, using sensory toys such as fidget spinners and giving children the option to have their YJS practitioner present, in order to keep children engaged and create a more comfortable atmosphere. Interviews lasted between 20 minutes to 1 hour and were semi-structured and informal. The topics covered focused primarily on children's experiences with the police, with their solicitors and with the diversion intervention itself. We used some visual prompts as well during the interviews, which consisted of emojis representing different emotions with an associated word to describe them (for example, 'confused') and pictures of a police station and solicitor's office. These were placed on the table in front of children and were there to help stimulate and support communication, though not all children made use of them.

Analysis of the qualitative data gathered was undertaken using a coding framework devised through consideration of findings in the literature review, from practitioner interviews and from the emerging themes from initial children's interviews.

Practitioner perspectives

Prevalence of SEND in the youth justice cohort

The disproportionately high rate of SEND among children in the youth justice service was mentioned by all practitioners interviewed. Those who had worked in the YJS for an extended period of time were particularly likely to emphasise the prevalence of needs and the fact that they often drove or contributed to the offences that were bringing children into the system. Many professionals expressed frustration and incomprehension when discussing how frequently they came across children whose additional needs they were able to quickly recognise but which had not been identified in education.

“ I mean, it’s huge. I cannot tell you, as a case manager, the amount of times I’ve worked with, sort of, 16-year-old boys, and they’d been kicked out of school, and within two weeks of me seeing them, and completing the speech and language screeners, or CAMHS screeners, I’ve identified that there’s definitely something. And then they’ve gone on to be assessed, and they’ve been diagnosed. And things had just been missed, and then you sort of well, you wonder why... Obviously, they haven’t survived in mainstream education, and they’ve been kicked out. So that’s a slight frustration.

YJS diversion practitioner

Several practitioners suggested that undiagnosed SEND needs may be more prevalent than diagnosed needs in the youth justice system. Some reported this as the bigger issue with the system, as undiagnosed needs are much less likely to be accounted for in the diversion decision-making process.

“ Yeah, so locally we would say about 70% of young people have some difficulty in some area that hadn’t been identified before, so that’s matching up with the research.

YJS specialist practitioner

“ So often children are undiagnosed when they hit the criminal justice system. Then you, as a lawyer, might be looking at getting a diagnosis, because it’s quite obvious to you that there’s something going on, but you’re not the expert, so you can’t diagnose, and you don’t know exactly what. But you’ll need to get a diagnosis in order for the criminal justice system to treat them appropriately.

Defence solicitor

Different types of practitioners had varying perceptions on the prevalence and severity of SEND needs. Police were generally more likely to assume that needs were minor and that support was already in place and less focused on the prevalence of undiagnosed needs. Given that police officers are not expected to have this expertise and do not receive formal training on SEND then the difference in knowledge is perhaps not surprising. Practitioners also reported that they felt police did not take certain types of SEND, namely attention deficit hyperactivity disorder (ADHD) diagnoses, seriously. YJS staff spoke about more of a range of SEND in the children they came across, giving examples of children with more severe levels of autism, social and emotional needs, and different types of speech and language needs among other things. This view is in line with the evidence in the literature noted above.

“ I would say most maybe have some sort of minor need there. I wouldn’t know percentages or numbers, but I would just say that have they some sort of additional support and a support team in place normally.

Police officer

“ You speak with their family, and straightaway the family say they’ve got ADHD. I think it’s so common now, that I don’t even think the police care about it. I don’t think they recognise it as a disability. I do think it’s because ADHD is a condition, which I think is so popular now, I think it’s seen as the norm. It’s seen as the norm, which is unfortunate. I think, as a result of

that, maybe the necessary care that should be taken is not actually done. Whether it would be by the police, whether it would be the solicitors, whether it would be by the court.

Defence solicitor

Among the practitioners we spoke to, there was not a clear consensus around whether diverted or formally processed cohorts had a higher proportion of children with SEND in them, nor which type of SEND would be more prevalent in the different pathways. Some suggested there would be higher levels of need among the latter cohort as more severe needs could lead to more extreme offending or contended that there was a higher prevalence of diagnosed needs in this group compared to more undiagnosed needs in the diversion cohort. Police and some YJS workers said they felt there may be a higher proportion of those with SEND in the diversion cohort as these needs would be picked up and accounted for in the decision-making process.

“ I mean, if anything, we’re probably going to engage more and do kind of more out of court stuff, with someone who has got a need, because that need is there and it’s identified, and sometimes it can be, you know, a huge contributing factor, as to why they’ve done what they’ve done. So, you know, certainly when we sit on the joint decision-making panel, needs are very much discussed.

Police officer

“ I feel that’s something we should have probably been keeping track of because I think the research would say that the more severe difficulties are with severe more extreme offending.

YJS specialist practitioner

Identification of SEND

Timely identification of SEND is crucial if needs are to be considered a mitigating factor at the appropriate points in the decision-making process, and to inform how practitioners should adapt their approach and communication with a child. However, even within the limited sample of YJSs we spoke to, we noted significant variation in the process of screening children for diagnosed and undiagnosed SEND.

Generally, the procedures in place to pick up on previously identified SEND in a timely manner were seen as efficient. All children who came into the YJS typically had full background checks done to flag any additional needs. Databases were checked where they were available, and partner agencies were usually contacted alongside inquiring with parents and children themselves. YJS specialist education practitioners were most often best placed to contact education links to become aware of any existing EHCPs, and specialist health practitioners were able to scan through prior records that may have included diagnoses. In that sense, it seemed the process for identifying needs that had previously been picked up were positively thorough.

“ So, when I send out the allocation email, I cc all the specialists in to it, and I will ask them to do their checks, if the young person is known to their system. So I think SaLT and CAMHS, they can’t give us full information without parental consent, but they can say, ‘This young person is previously known to us.’ We also have an education worker, who sends out a request for information to the school, and one of those questions, I think, is around if they have an EHCP, behaviour concerns, SEND, etc. So we have quite a few streams of getting this information. If they do have a history of speech and language, then the case manager will make the telephone contact with the parent and ask for consent.

YJS diversion practitioner

However, there were still some barriers involved with flagging diagnosed SEND to the YJS team before the decisions around an outcome had to be made. One YJS diversionary worker mentioned that outside of term times it could be particularly difficult to get hold of schools and find out about any EHCPs in place for a child. Another practitioner mentioned that the overall process, as it was quite disjointed and dependent on different databases, could sometimes rely on the child to point to what professionals have been involved in their lives to identify possible SEND.

“ Sometimes, summer is a bit difficult if you’re allocated a case, because schools are on holiday, or you get restricted contact, because there are not as many people, and they’re busy trying to prepare for the next term.

YJS diversion practitioner

“ It can be quite fragmented just because of all the different systems that are using the different services that are all involved, that can be quite tricky I think. And then you’ve got this young person at the centre and sometimes there’s quite a lot of onus on that young person to tell us what is going on and who’s involved. But actually a) they’re a young person and b) if they’ve got SEN or they’ve got speech language needs then they’re probably not going to be able to remember.

YJS specialist practitioner

When it came to screening for undiagnosed needs, practice differed significantly between YJSs and depended on specialist staff resourcing and availability. In some locations, speech and language therapists (SaLT) formed part of the YJS team and carried out systematic assessments on children with the ability to provide diagnoses. This was extremely beneficial, as it avoided long wait times for official diagnoses to be made and allowed the process to be much more streamlined. In other areas, liaison and diversion (L&D) teams were also available to carry out assessments for SEND and other vulnerabilities at police stations. L&D practitioners aren’t as specialised as SaLT with respect to SEND, but it is still within their skills and remit to identify SEND, though this seemed to be often overlooked.

Indeed, in some areas where there were no SaLT staff, the system for identifying undiagnosed needs seemed very ad hoc, and relied on a practitioner noticing a potential need and advising the child to get assessed through community health pathways. In these scenarios, wait times for assessments meant that it would not be possible to complete them within the timeframe of decision-making and therefore would be very unlikely to be taken into account. Some practitioners mentioned that long wait times mean it can take up to years to get an appropriate SEND diagnosis. For this reason, where a YJS did not have SaLTs in their team, this was one of the main recommendations from practitioners for improving diversion responsiveness to SEND. There was no mention of L&D teams here, which points to the fact that they were not always being used to identify SEND in instances where there was no SaLT available. It was not clear whether L&D services were not available or simply not being called upon in these cases.

“ So, from my point of view, I think it would be great if we had a speech and language therapist within our service. I think that is the role we are missing. We’ve got a clinical psychologist and we’ve got other health workers within our service, but we don’t have anyone around the learning needs. We don’t have anyone that can really assess that, or speech and language assessments. There is such a high number of children within our service that do have those worries, but we don’t have anyone to assess them. The waiting lists are really long, as we know, so I feel like that’s something we’re missing.

YJS diversion practitioner

“ But then you’ve got the assessment process and the waiting list for that is horrific. So, you sometimes get kids, as you well know, maybe showing signs of being on the autistic spectrum, who are 13. By the time they get to be assessed they might be 15 and a half.

YJS diversion practitioner

Even with YJSs who had a SaLT in their team, the screening process was not always flawless. Many practitioners reported that children would often not be assessed by speech and language therapists until after the outcome decision was made due to time constraints and resource scarcity. Furthermore, although all children were eligible to have this assessment in theory, in practice this relied on police or other practitioners flagging the names of children who were thought to have potential undiagnosed SEND to the SaLT. Both of these complications mean that children with undiagnosed SEND are missing chances to have a diagnosis by the time the decision about their outcome is being made and losing the potential to have this diagnosis considered as a mitigating factor. It also shows how some children are falling through the gaps altogether and may have needs that are not being picked up by the YJS at all.

“ We have a good offer in comparison to some areas but still struggle to screen and assess all CYP [children and young people] who require it.

- Survey answer

“ In my ideal world [SEND screening] would come before [outcome decision-making], but just time-wise we just don't— and I think it's just about knowing the names because I think a lot of the time they don't get these names until a bit late, yeah, it's just trying to line it all up really... So, yeah, the screening then tends to happen after the decision.

YJS specialist practitioner

“ So speech and language is saying, 'Can you refer all of them to us?' We will do it, but officers are picking and choosing who they feel should do it, but the offer is open to every child.

YJS specialist practitioner

Access to diversion for children with SEND

Knowledge and training across the system

Ensuring that the youth justice system accounts for SEND in its diversion process rests on practitioners' awareness and understanding of what SEND is and of its effect on behaviour and communication. However, we noted large variation in the frequency and quality of training provided to different types of practitioners in this area.

YJS practitioners were typically receiving regular training on SEND and speech, language and communication needs. Those with co-located SaLTs within their team would often have sessions run by these specialists and tended to have the most comprehensive and frequent training. Of those we spoke to, practitioners from one site reported that they ran training sessions relating to special educational needs every two months. At another site, it was mentioned that their clinical team put on training sessions on a range of topics every fortnight, and many of these focused on speech and language. The topics usually covered in these sessions ranged from explaining different labels or diagnoses to recognising signs that may indicate an additional need to understanding the kinds of strategies that could be used to overcome communication barriers.

“ So we've had training sessions on autism, ADHD, communication. We've had the Talking Mats training, how to use that to support young people and families that may have communication needs. General training around communication needs, and different types. Yeah, quite a lot. And they're also very open to any suggestions. So if we've found that there's something that we're lacking, or we're not sure about, they're quite happy to, sort of, formalise a little in-house training around that. So I would actually say our speech and language, in particular, is incredibly strong, the support that they offer.

YJS diversion practitioner

As is elaborated in this example, training was also, at times, tailored to the group of practitioners receiving it and focused on gaps in their knowledge that they wanted to fill. Practitioners highlighted how beneficial these sessions were to their work. Training related both to increasing the ability to spot potential additional needs, thus improving the likelihood of considering them in the decision-making process, as well as arming practitioners with the skills to better adapt interventions to specific needs of children.

“ I recently attended speech and language training, and although that might sound really obvious, it's not until you get into the training that you kind of pull at these threads and all these different theories unravel, about why, how children communicate. Verbally, if you like, there's pitch, tone, there's obviously body language and all of these little things. These little nuances you have to pick up on when you're working with children and young people, and the families as well, and try and read kids as best you can, to try and gear that intervention and tailor that, specifically, to that child.

YJS diversion practitioner

In areas with no co-located SaLT in the YJS, training seemed to be less systematic and fell in the hands of more ad hoc initiatives. This sometimes relied on a member of the health team having connections with an external SaLT who could run the training, and sessions were, consequently, less regular. One practitioner from a site with no co-located SaLT reported that they often took it upon themselves to keep up to date with training, including on SEND, and felt their team did not always do the same, as it was not mandatory. Survey participants' responses were mixed in this regard, with some affirming that YJS staff received systematic training on SEND, while others reported that training was insufficient in their YJS. As turnover of staff was often quite high, regular training was an important part of ensuring practitioners had a robust understanding of SEND. Furthermore, a few practitioners suggested the training they received had limitations, describing for instance that content could be quite repetitive and that it didn't always cover what would be most useful to them.

" I think as we progress as practitioners, in gaining more access as to what might influence a young person's behaviour, we need access to that new learning and new training, rather than just going round the same cycles of training and learning, that we've done for many, many years and doesn't really change things for young people.

YJS specialist practitioner

" A lot of the time, they don't even understand their needs. So when you're coming in and doing a piece of work that is maximum three months long, you almost need training in, 'Right, how can I assess their needs very quickly and make a plan that allows me to meet their needs?' That isn't there, that would be useful.

YJS diversion practitioner

Overall, YJS practitioner training, despite its limitations in certain areas, was reported to be quite comprehensive and to have a positive impact.

Police training around SEND on the other hand was often extremely limited or entirely non-existent. Police officers that were on response teams and working on the street, in particular, reported receiving no specific training on speech and language or neurodivergence. Some were aware of how this was affecting their interactions and understanding of children at the point of arrest or during interviews and reflected upon this. They spoke about how this made it difficult to interpret children's behaviour at times. Responses from the survey by and large focused on the need to increase police training as one of the most important priorities for improving responsiveness of youth diversion to SEND.

" On the whole, we don't really get training as such as how to deal with a child if they don't look at you. Is it because they've got autism or Asperger's and they don't like holding eye contact or if there's someone laughing? So, yes, we don't really get... Or I haven't really been taught.

Police officer

" Offer police more training.

Survey answer

Some of the police officers we spoke to who had more specialised roles, notably police assigned to YJS services, sometimes had a higher degree of understanding of children with SEND. This still, however, did not come from formal training, but instead from gaining experience in specialised areas, such as spending time as a school officer. One police officer said he had only developed knowledge on neurodivergence and trauma when he had joined the Safer Schools programme; he had had no previous training in these areas despite serving in the force for over 25 years. Another mentioned they had received a small amount of training in this area as a YJS police officer, mostly as a result of being proactive in seeking this out but was sceptical that other divisions would get any training at all.

" So, most of my knowledge and insight has come from working with those teachers, who are working with SEN every day. I've never— I don't think I've ever been sent on a specific training course, not by [the police force they are part of], for anything like that.

Police officer

“ I’m in a specialist role, solely working with young people and we get a small amount of that training, most of which we’ve had to organise ourselves. When I think about my colleagues on response, they probably don’t get any at all.

Police officer

This knowledge gap has a significant impact on the police’s ability to both identify needs and respond to them appropriately. As police tend to rely upon children proactively mentioning any SEND they may have in order to adjust their approach, it is unlikely that they pick up on many needs at the point of arrest or interview – both diagnosed and undiagnosed. Consequently, police were often not adapting their practice to account for the needs of children with SEND.

“ But I think they sometimes forget that, you know, certain language they use, we’ve got all our jargon...Just a bit of a reminder, I think, to recognise that young people, especially those with additional needs, may not understand everything that’s going on, and as a result, that can lead to them maybe acting in a certain way, that leads to either arrest, or some additional sort of use of force, or intervention, that maybe could’ve been avoided.

Police officer

Overall, police training on SEND was identified by both the police staff we spoke to as well as other practitioners as a key priority area for improving practice around diversion in relation to SEND.

Diversion decision-making and police culture

Different youth justice services tended to have differing processes around decision-making for diversion, which varied as to how multilateral they were. Certain elements were standardised, such as the existence of a joint decision-making panel, but the professionals sitting on this panel, as well as the amount of influence they had, was variable. Some panels were able to include SaLT, education specialists, L&D practitioners, and even social services; while other YJSs may not have all these specialists on team or they may not have been able to dedicate their time to sitting on the panel. In many cases, it seemed the joint decision-making panel had more of an advisory role and that final decisions were ultimately in the hands of police; while in others it seemed decisions were more truly multilateral. This impacted, for instance, what happened when the panel did not arrive at a consensus, whether it meant that police could override the panel or that a YJS manager would review all the opinions in the panel and balance them into a final decision.

“ And I’ve had a couple of times where I’ve gone, ‘I can’t agree with what the panel wants’ and I have to go my sergeant and he will then make the deciding, like, you know, he will look at it and then he will make the decision.

Police officer

“ The panel will then even make a decision. Or if they can’t agree on a decision, it will be escalated to a manager in the Youth Justice Service. Then they will look at everyone’s opinion and then come to a decision.

YJS diversion practitioner

“ It does depend on area to area, but it does seem that the police have the final say.

Defence solicitor

Scrutiny panels, which conduct randomised checks on decisions that have taken place in joint decision-making panels, seek to support some level of standardisation around diversion decision-making. These did seem to constrain police discretionary power to a certain degree, but in practice they also varied in terms of frequency. The knowledge that any given case may be chosen for review, however, did provide some level of limitation to the idea of police discretion, and heightened rigour around the process.

“ We hold a twice-yearly scrutiny panel for our out-of-court disposals. We get membership from [an OPCC], the Youth Justice Board, CPS, the judiciary, and then the case workers and the local authority and the police will sit on that, as well, and we discuss, sort of, nine cases for each borough, to scrutinise those decisions.

Police officer

Another counterbalance to unilateral police decision-making, was the confidence that YJS workers often displayed in actively challenging decisions they felt were not fair. YJS practitioners would often question decisions and put their insight forward both in joint decision-making panels and outside of them where it was necessary.

“I think sometimes it’s a case of you need to clarify what a person’s professional understanding is about whichever educational need... You know, mental health and police don’t always sit happily together. I think it’s something you definitely need to gain some experience in to have that confidence and ability to be able to address, recognise and challenge those types of issues.” YJS specialist practitioner

The tensions within the diversion decision-making process typically resulted from the difference in approaches and perspectives between the police and the YJS. There was some evidence that police attitudes were often not in line with the Child First principles of the youth justice system, which negatively impacted their willingness to respond to SEND. This is not wholly surprising given that police are not specialised in working with children, as the YJS are, and child-centred policing is still a relatively new concept that is still in the process of becoming a recognised practice. Generally, police reported being much less tolerant of repeat offences, and some mentioned that they believed diversion to be an outcome reserved for those who had never been offered any sort of diversion previously. The tendency from police was to push for a more formal outcome, as they were less trusting and informed about diversionary outcomes.

“ Social care and YJS are more cuddly... There’s no point flogging a dead horse, I suppose, and just keep on doing voluntary interventions if none of them are working, so then, probably, the police are more robust in wanting things, to see things escalate.

Police officer

“ So if a young person is known, I think that can sometimes have an impact on how comfortable the police feel with down-tariffing a young person to a community resolution. Even though, technically, they haven’t been charged or found guilty of anything, you know.

Police officer

Some police professionals indicated that there was still work to do within their forces in creating buy-in to the effectiveness of diversion and shifting attitudes to become attuned to the Child First approach. The mentality of certain officers was still very much entrenched in the dichotomy of ‘offender’ vs ‘victim’ without accounting much for the age of the offender or mitigating circumstances leading to their behaviour. This did not leave much space for the consideration of SEND needs and other vulnerabilities in the decision-making process, as some saw this as falling outside of the scope of their role. Indeed, one described that they felt their focus had to be solely on the victim of the crime and gathering evidence around this to push for prosecution, and that any focus on the ‘child offender’ was incompatible with this.

“ I think the biggest problem the police have is... I’m trying to figure the right political way to put this, but if I just say it how it is, there are officers that need to believe that diversion works.

Police officer

“ That’s going to be the police officer’s perspective and so they’re not so much bothered about the trauma that the suspect has gone through. They are victim focused. They’re trying to... And are investigation, offence focused. If I’ve got a GBH and I’ve got victim with no teeth, I want to prove, if I think it is you that has done it, that you have, indeed, done it. I want to find: does the evidence exist that you have done it? I’m not bothered, possibly, about all the reasons why you may have done it.

Police officer

Compounding this was scepticism around the idea that some children may struggle to understand and communicate effectively with police, and the resulting tendency was to place the onus on children. Certain police officers we spoke with said that the times where children were not engaging with them or answering questions were a result of wilful non-compliance. They did not seem aware of the possible impacts of SEND on children's behaviours or of the research into the ways in which children may be masking their needs by avoiding engagement. Other practitioners also described how police were frequently failing to adapt their approach at the point of arrest to the likelihood of speech and language needs in the child.

“ They can normally answer the questions or choose, make the decision not to answer the questions.

Police officer

“ There does feel to sometimes be a lack of understanding around the impact of SaLT needs, or any trauma, on how the young people behave. So, quite often, we've had young people that have come to us on a diversion for an assault of a police officer, and you read the situation of where it occurred, and you read about the young person's speech and language needs, and the fact they've had significant trauma. And you think, 'Well, 12 of you stormed into the house and arrested them and shouted in their face. They don't know how to respond. They're not going to calm down.'

YJS diversion practitioner

As outlined above, this lack of awareness can often lead to unnecessary escalation, which may have been avoided if consideration had been given to adapting the approach to the likelihood of SEND. Ultimately, the lack of understanding or thought given to language and communication needs could lead to police misconstruing certain behaviours as wilful non-compliance which would then preclude the child from being given a diversion. This may be particularly exacerbated where a child is already at risk of adultification, as is the case for many children from racial minorities, who would feel the effects of disproportionality become intensified by intersectional discrimination. This would be particularly exacerbated in areas where police had more power and discretion over decision-making.

“ So I think if the police are at a point of arrest or a point of interview, and if there is no understanding of what is happening with the young people in terms of how they understand conversation needs, language, if there's no understanding of that, then in terms of the outcomes and the disposals that they're going to get, it's going to up-tariff them. So the diversions wouldn't happen.

YJS specialist practitioner

Requirements for admission of guilt and remorse

Based on previous research, we know that eligibility requirements for diversion schemes can include varying criteria around formal admission of guilt and acceptance of responsibility.⁴² From the accounts of those we spoke to, all participating sites understood that they required some form of acceptance of responsibility for the case to be sent to the decision-making panel at all. If an admission or acceptance of responsibility was not given, and namely in the case of 'no-comment' interview, cases would generally be sent straight to court. This process seemed to be understood by police and YJS practitioners as stringent and not allowing much scope for discretionary decision-making.

“ So for us to give any out-of-court disposal, whether it's triage, community resolution, or a youth caution or youth conditional caution, we need just a full admission.

Police officer [Note: This quote is factually incorrect as community resolutions only require an acceptance of responsibility, not a full admission of guilt, while Outcome 22 does not require either.]

“ If someone was to go, 'no comment' then we would be very hard-pushed to go down the route of that diversion.

Police officer

“ So, yeah, in theory, we can't use community resolution if there's not been an admission of guilt. So, even if, evidentially, we've got all the evidence we need but that young person isn't admitting the offence, then we can't use community resolution.

Police officer [Note: This quote is factually incorrect as community resolutions only require an acceptance of responsibility, not a full admission of guilt.]

These findings are striking given that, as confirmed in a recent report by HM Inspectorate of Constabulary and Fire & Rescue Services, there is no requirement for acceptance of responsibility before an Outcome 22 is used.⁴³ Our research suggests that police are systematically applying a criterion which is not based in policy.

Previous research has highlighted how imposing eligibility criteria around admitting guilt affects racial disproportionality in diversion.⁴⁴ For children with SEND, an admission of guilt or acceptance of responsibility can be especially problematic as communication with police, particularly in the pressurised setting of an interview, poses additional difficulties. Recalling events in a sequential order and being able to tell a coherent story or narrative from memory can be extremely demanding for some, especially when their account will be scrutinised. The evidence from the literature, as outlined above, shows that children with neurodevelopmental disorders have more difficulty than their peers in understanding behavioural expectations as well as the consequences of their interactions with police. They are therefore less likely to take into account how an admission of responsibility will affect their outcomes and more likely to depend on solicitors and appropriate adults to guide them in what to say and how to act. Some practitioners spoke about the barriers posed by communication needs when being able to recount and accept responsibility for behaviour.

“ So we know for a number of reasons children with speech and language communication needs can really struggle with that narrative, so being able to sequence their thoughts and ideas. And sometimes then they'll get into trouble for lying or not remembering or pretending they haven't remembered when actually, they just can't get their thoughts in order.

“ YJS specialist practitioner

Furthermore, a lack of expression of remorse was also identified as a reason to exclude children from the offer of diversion. Although this was not as systematic as the requirement for admission of guilt, and some expressed that it was not a prerequisite at all, it did tip the balance away from diversion in certain instances. YJS practitioners were more understanding of the reasons for which a child might not be expressing remorse or admitting responsibility, and some saw this specifically as a reason to work with them in a diversionary intervention. This was also a disadvantage for children with SEND as some types of neurodivergence and speech and language needs make it difficult for them to put themselves in the shoes of others and therefore grasp the impact of offending behaviour on a victim.

“ You do get the odd one where the police will just kind of charge to court on the basis of well you know, you read things, don't you and it says like: 'non engagement interview, no remorse shown and charge them to court.

YJS diversion practitioner

“ In order to qualify for an out-of-court disposal, they have to fully admit the offence and ideally show some sort of remorse.

Police officer

The frequent police misunderstanding and misuse of criteria around the acceptance of responsibility is a disadvantage for children with SEND and is further compounded by poor advice given to them by those assisting them, as will be explored later on.

Expectations around communication from children

As mentioned previously, engagement with diversion schemes was generally seen as more challenging for children with SEND as a result of previous negative experience with professionals. This was true for the assessment part of the intervention as well as the intervention itself. One practitioner described how she often sees children, as a result of the challenges posed by unmet SEND, developing strategies to mask their needs or to avoid negative situations, which often involve refraining from engaging in the first place.

“ *The whole thing is quite traumatic, because there are teachers involved who haven’t understood them. Then there’s police involved that haven’t understood them, and then potentially a lawyer as well. So, there’s going to be a lot of trauma from the whole process already. Then that child is then having to work with the youth justice service who they see as part of this whole traumatic process as well. I guess that’s another real barrier to engagement.*

Defence solicitor

“ *So this feeling of, ‘Well, I’m just not going to understand it and therefore... but I can’t say that, I don’t want to sound stupid therefore I’ll just exit, that’s my strategy,’ which we see quite a lot of just, yeah, ‘I’ll just remove myself from that situation’.*

YJS specialist practitioner

However, there were still strong expectations that children show a ‘willingness’ to engage in the assessment process and this fed into decision-making. The onus of responsibility for engagement in this part of the process was placed on children. Indeed, both police and YJS practitioners indicated that if children were not perceived to be engaging properly in the assessment process, or not speaking with YJS practitioners at this stage, this could lead to precluding them from diversion schemes and possibly up-tariffing them instead. Given the longer time it may take to engage and build a relationship with a child with SEND, and the tendency for needs-masking to manifest as non-engagement, this has the potential to disproportionately restrict their access to diversion.

“ *We really have to think carefully about if they are motivated to engage on a voluntary basis because if they’re not then diversion is not the place for them because we can’t mitigate that risk.*

YJS diversion practitioner

“ *But I’d say it’s more a willingness to engage and work with us that is more important because, again, they might not feel very sorry about it when they’re initially arrested and interviewed at the police station and stuff. They’ve, perhaps, not had time to think about it, and that can... I think that needs to be given the opportunity to happen, but if they’re refusing to talk and engage with YJS, then that’s a much more problematic factor.*

Police officer

Advice from solicitors and appropriate adults

The difficulties faced by some children with SEND in meeting the communication challenges required to be offered diversion by police can be further compounded if their solicitor advises to give a ‘no comment’ interview at the police station when this might not be in the best interest of the child. Often this comes from well-intentioned attempts to protect the child from further incrimination as a result of the difficulties they may have with expressing themselves, but ultimately can lead to some cases being sent directly to court which otherwise could have been resolved out of court.

“ *We have been made aware that some children have been advised to make a no comment interview in the police station, potentially because their solicitor or appropriate adult feels this is a ‘safer’ option for the child as they may incriminate themselves further if they talk to police (due to receptive and expressive language difficulties); appear like they are lying (due to expressive language difficulties); or have difficulties engaging with the police (due to attention and listening difficulties or social communication differences). When children provide a no comment interview this limits the options that are available via the diversion pathways.*

Survey answer

One defence solicitor explained that they will often advise children to give ‘no comment’ interviews where they feel they may not be able to communicate an admission effectively, and subsequently, will write a written representation to the court stating that this was done under the solicitor’s advice for those reasons. They will then try to get the case referred back for a diversion from this point.

“ *In practice, they want you to do it at the police station, but the truth is, in my reps to the— my written reps, I will always say, ‘Look, this person has whatever special needs,’ and I explain as to why he may not have admitted it, but he’s admitting it now. We give what we call Section 10 Admissions, where you list the admissions and the youth signs that.*

Defence solicitor

This, however, draws children unnecessarily further into the justice system with the associated poorer outcomes and also runs the risk of the court not sending the case back for diversion, instead moving forward with prosecution. One of the defence solicitors we spoke to also expressed concerns about the strategy of advising children to give a ‘no comment’ interview because of the additional trauma that the court experience could cause. This is especially true for children with SEND who may have a more difficult experience understanding expectations at court, as noted in a recent HMIP Academic Insights paper.⁴⁵ This solicitor suggested that a more apt approach would be for a lawyer to write representations to the police about their concerns regarding a child’s ability to take part in a full interview, and reflected that an acceptance of responsibility through a prepared statement would be the best course of action. Furthermore, it was also mentioned that the majority of duty solicitors at police stations are not trained or specialised in advising children, and receive no training on SEND specifically, so they may not feel as confident choosing this course of action over the advice to give ‘no comment’.

“ *I think a lawyer needs to make representations to the police at that point. Ideally, you would want a professional who can advise on that child’s condition and the impact that has on their ability to accept responsibility, or to understand even what they’re being accused of.*

Defence solicitor

Ultimately, children with SEND may be more likely to be given advice that could preclude them from accessing diversion schemes.

An additional safeguard that is assumed to be in place at the point of police questioning is the appropriate adult. Although this was one of the gaps within this project, as we did not directly interview appropriate adults – an under-researched group in youth justice – we did hear from practitioners who had extensive experience of working with appropriate adults. The appropriate adult role is primarily to safeguard the interests, rights, entitlements and welfare of children who are suspected of a criminal offence, ensuring that they are treated in a fair and just manner, and are able to participate effectively. Flagging needs to police or raising concerns about a child’s ability to communicate effectively when questioned are assumed to fall within this role, but in practice this seems limited.

For children, the appropriate adult role is often undertaken by a parent, carer or legal guardian. One practitioner described that parents and legal guardians were often not well placed to be giving advice to children about diversion and that children with SEND would often be more likely to take this advice without understanding implications.

“ *I find youths with special needs are either very dependent on their mother, or whoever’s the influential person in their household. Sometimes that person is not the best person for them in that position. Decisions are made, where you think to yourself, ‘Well, that’s not the decision that should be done’. Let’s say the father doesn’t get on with the police... A parent who doesn’t know me, who says, ‘Well, no, we’re going no comment.’*

Defence solicitor

There are also some cases where children are supported by a trained appropriate adult from a local scheme. However, the majority of the work of trained appropriate adults is with vulnerable adult suspects. As the provision of an appropriate adult scheme is locally led, there is no framework for training which often does not focus on receiving specific training around SEND or meeting the needs of children. It was reported to us in this research that trained appropriate adults are not generally familiar with diversion processes and may not be aware of their requirements, namely around the acceptance of responsibility.

“ *Appropriate adults aren’t really clear on when and where we’re accessing [diversion schemes], or how. So I think those pathways are still a bit unclear, and the consistency isn’t quite there, with some of them.*

YJS specialist practitioner

Trained appropriate adults were also reportedly not confident in bringing up any perceptible undiagnosed communication needs with a custody sergeant at the interview stage. It was said by a practitioner that many felt this was beyond their role, as the decision as to whether an interview should go ahead was not ultimately theirs to make. The lack of specific knowledge and training around SEND was also at play here in creating the sentiment that the identification of potential speech and language needs was strictly reserved for SaLT, L&D or other relevant professionals and could not be flagged as a possible concern by appropriate adults.

“ The responsibility lies, ultimately, with the custody sergeant, on deciding whether an interview is proportionate, appropriate, and justified, at that time, and how they meet that criteria, it changes, client to client. I think an awareness for appropriate adults to know what constitutes as SEND, what constitutes as SaLT, and how to engage with that, is fine and good, but I feel it’s beyond the role of the AA [appropriate adult] to be deciding.

YJS specialist practitioner

Therefore, the safeguards in place to ensure that children were being offered equal treatment at the police custody stage are, to some extent, failing. The adults whose role it is to act as these safeguards often did not seem aware that they could alleviate the barriers posed by SEND, or flag potential SEND to police at this stage.

Engagement with diversion interventions

On the whole, the youth justice services running diversion schemes accounted for the experiences of children with SEND to a much greater extent than police and other practitioners involved in the decision-making stage. YJS practice around fostering engagement with diversion interventions was thus much more apt at considering SEND, but some of the processes here still had their limitations.

Timescales

The time lapse between the point of arrest and the beginning of the intervention is a wider systemic issue within the youth justice service but could have particularly negative effects on the engagement of children with SEND. The key delay is normally between the point of offence and the diversion decision-making. After this point, the intervention usually begins quite quickly. When a case is first sent to court and then referred back to the decision-making panel, this delay takes even longer. As mentioned above, evidence suggests that the benefits of diversion are only effective if it takes place in a swift and timely manner. For a child with SEND, issues with recall and memory may be especially prominent and they may have more trouble linking the point of offence to the intervention than another child. Some practitioners explained that the time lapse and having an offence brought back up much later in time could sometimes even be harmful to a child who has worked to move forward and look past their offence.

“ I think, sometimes, they don’t actually understand, and because it also might take a few months to get to us, they may have forgotten what’s even happened, and it’s gone out of their mind. To bring it back up, sometimes, it could, potentially, be a little bit damaging, especially if they’ve proceeded to do well, they’re not doing anything that’s causing any concern, it’s bringing them back to where they were, when that incident happened.

YJS diversion practitioner

“ So, from arrest to serving can be as quick as four to five weeks, maybe, four to six weeks. But, obviously sometimes they have to get charged, and then they go via court to come back to us for an out-of-court disposal, and that’s obviously a much more lengthy procedure.

Police officer

Furthermore, the timeframes of interventions themselves were identified by some as hampering the effective engagement of children with SEND. Practitioners mentioned it could sometimes be difficult to build trust and relationships within the limited duration of the intervention. Others mentioned that these short timescales can also cause YJS caseworkers to be more reluctant to involve specialist workers in the intervention. As a result, children may miss out on valuable input and support that they need from SaLT workers, for example, or education specialists.

“ *Diversion interventions are typically short pieces of work. For children with SEND, it may take them longer to build rapport with their case managers or longer to understand the service/interventions. Children with SEND may also have complex case histories which take time for staff to fully understand and gather relevant information. By the time this relationship is established and assessments/info gathering is complete, the diversion intervention may be finished. There can then be a feeling that we haven't been able to provide a full diversionary programme.*

Survey answer

“ *Timescales to complete the interventions might become a barrier as often additional time is needed to build relationships with the child and shorter sessions are needed to accommodate their needs so the intervention can take a lot longer.*

Survey answer

“ *We do a lot of work around trying to promote making referrals to us, making their jobs a lot easier, and therefore making the interventions for the young people more robust, because they're getting appropriate support, rather than it being just the one person's knowledge base.*

YJS specialist practitioner

This, however, is at odds with the imperative to keep interventions short and light-touch to avoid the negative impacts of prolonged contact with the criminal justice system for the child. As highlighted in the Centre's briefing, *'Ensuring Effective Referral into Youth Diversion'*, interventions must refrain from becoming protracted, as extended engagement with the criminal justice system goes against the very justification for diversion.

Facilitation of engagement with interventions

There was generally an awareness from YJS workers around the barriers to engagement with interventions for children with SEND. Linked to this was a consensus that the responsibility for fostering engagement in diversion interventions lay with the professionals. Many described how they saw non-engagement as a challenge for them to try to overcome and spoke about the different ways they would try to re-engage children when they were having difficulties, with a particular emphasis on relationship-building and creating trust. This seemed to be a very positive area of practice as the onus of responsibility was not placed on children, and consideration was given to the impact of SEND, as well as other factors, on the ability to engage.

“ *I think, the barriers they may face would be, definitely, around engagement, anxiety, poor mental health, depression, feelings of shame and guilt, complete lack of confidence and self-esteem. They're the barriers that we have to overcome as professionals. It's not for the children to overcome.*

YJS diversion practitioner

We did, however, note some limitations in these efforts made to facilitate engagement with diversion schemes. One of these was the lack of consistency across YJSs in the format and accessibility of information and resources that catered to children with SEND specifically. Though some practitioners we spoke to reported that they had accessible leaflets and written materials, others did not. This could be a barrier in helping a child understand what a diversion scheme is, who the YJS are and other important information that could motivate them to engage.

“ *I think when things are really wordy, if you look at a leaflet that's given to a young person from the YJS, even I struggle with them. There are so many words and they're big words. When you're talking about justice stuff it's big words and I don't think we have leaflets that are particularly child friendly. We don't have leaflets for children with things like global delay. We could have a 16-year-old walking in our office to do work with us but they might have a mind of a 4-, 5-year-old and we'll give them the same leaflet, everyone gets the same leaflet. So, I don't think we have that in place.*

YJS diversion practitioner

Specific usability of written resources for children with SEND could mean considering, for example, the difficulty some may have with reading dates spelled out in certain ways or telling the time. When YJSs have sent children home with a date for their next appointment written entirely in numbers, or relied on them to recall a time given without additional support, this could lead to a child missing their sessions.

“ Yeah, telling the time and being able to read the short date. It sounds really silly but actually some children find that really difficult, so if you’re given a letter with that on they’re just not going to know, unless they’ve got the support to do that.

YJS specialist practitioner

Tailoring of interventions

Practitioners had varying levels of flexibility in how they delivered diversionary interventions in different YJSs. Flexibility is an important factor in tailoring interventions to the needs of children who may struggle to learn or absorb information in more mainstream or conventional ways. On the whole, some of the practice here was positive, and some left room for improvement.

Where practice was good, caseworkers described how they were able to adapt both the activities themselves as well as the environment that the sessions took place in. This usually involved a higher degree of creativity from practitioners, and using a variety of tools for interventions, from different types of media, recordings and videos instead of reading and writing to using games. Specialised speech and language resources were also useful for some types of SEND children when engaging in conversations about sometimes difficult topics. Talking Mats were used in some instances, along with drawing on the expertise of SaLTs where they were available.

“ How long the session’s for, whether it’s visual, whether it’s videos, whether it’s activity based. You know, we’ve got quite a lot of flexibility around that, so that’s what we try to work towards.

YJS diversion practitioner

“ But how they’re delivered would be tailored around their learning style, their learning needs, if we need to do more Talking Mats style sessions.

YJS diversion practitioner

“ It might be a recording, so rather than the young person having to write thing down, if they struggle with that they can record it. So, it’s just looking at different tools.

YJS specialist practitioner

When it came to adapting the environment, some practitioners were also able to have flexibility in either adapting spaces for sessions or going to different spaces. Examples of this included changing the lights of a room according to the sensory needs of a child or running the session in a space where the child would feel more comfortable, such as outside or at a café. Ultimately, it was suggested that failing to consider these factors and the specific needs of a child would render the sessions less useful, as there was a risk the child would not engage at all.

“ If they’ve got sensory problems, do we need to have a really quiet room where there are no noises? Certain colours, I know some people don’t like certain colours, if there’s busy walls, lots of pictures, stuff like that.

YJS specialist practitioner

“ Some young people I’ve had, that really struggle to do face to face, sitting across a room, so you might do it in the community, you might do it in a cafe, you might do it sitting next to them.

YJS diversion practitioner

Other positive strategies for tailoring interventions included incorporating input from children and parents, as well as adapting to shorter sessions where it was beneficial. Many practitioners mentioned that they were able to change the amount of time spent in each session to what worked for the child and their concentration levels. This ranged from having slightly more frequent sessions but making them shorter, to completely adapting to the frequency and timing that was most beneficial to the child. The majority of practitioners we spoke to also said that having input from the children and their families into what the intervention would involve was key to successful engagement. For some, this was limited to input around goals, while other practitioners also included children in how the intervention would actually be delivered.

“ Sessions might need to be 30 minutes, instead of an hour, because they just can't concentrate.

YJS diversion practitioner

“ I mean, there should definitely be consultation with the child and the family as part of the putting together of the plan. And that isn't just putting together what they're going to do, it's also how they're going to do it and what's going to work best for them.

YJS diversion practitioner

However, despite good practice in some areas, others felt they were limited in the amount of tailoring and flexibility they could offer in their delivery. This was for a number of reasons, including not having the material and resources available, caseworkers feeling stretched and not able to put in time and creativity for each child, or feeling as though adapting environments may pose a safeguarding issue. Practitioners described that the content they were using for sessions as well as the format in which they were delivering sessions were not very suited to children with SEND and were therefore not effective in fostering their engagement.

“ I do find sometimes our sessions are a lot of telling. For instance, if you've got a young person that's stolen some stuff from a shop the case managers will go out with a book and it'll be like, 'We've got to work through this book over the next couple of sessions because this is all about stealing and the consequences to people and why you shouldn't do it'. It's all very much either written in handbooks or telling, telling, telling. It doesn't take into account learning styles, let alone SEN.

YJS diversion practitioner

Overall, there was some good practice in the tailoring of interventions to the needs of children with SEND, but in some areas there was much more to be done for this to be effective.

Perspectives of children with SEND

Background and experience of SEND

The children we interviewed had a range of SEND, with ADHD and autism being the most prevalent. Other reported needs included dyslexia, 'chromosome 22' (not specified further), and hearing impairment. Some of these children had overlapping needs that encompassed several different labels, some were described as currently 'unlabelled' but with indicators of suspected needs, and others were on waiting lists for specific diagnoses.

For the children themselves, awareness of their own SEND and ability to recall and articulate this when prompted during the interview was varied. A few of them were able to describe what kind of additional support they needed or whether they had had a specific diagnosis or suspected need. One child had initially forgotten to mention that they had a hearing impairment when first asked about what support they required at school. This indicated, in line with previous research, that children should not be solely relied upon to flag their own needs to relevant professionals.

" No one told me I was getting an EHCP plan either. I didn't even know what it was when I was in [name of old school], but I found out literally when I went to [name of new school].

Child

" [when asked about whether they received any specific support at school] I don't really know, to be honest.

Child

The majority of children we spoke to had faced very difficult times at school, having often been permanently excluded from mainstream education establishments, some from several mainstream schools. One child recounted having been excluded from their school 32 times and being made to switch schools three times. Several children reported being out of education at the time of the interview, either waiting to be admitted into an alternative provision, being excluded from school following their GCSEs or, in one case, having funding withdrawn from their alternative provision meaning that they were left in limbo for three months. Many also described enduring severe bullying at school, which had sometimes led to exclusion following non-attendance. The overarching impression that children had of their education provision was that schools were consistently failing to identify or to account for their SEND, instead branding them as 'naughty' and deserving of negative reinforcement. It became clear many of these children were lacking support that they needed from schools, and that they generally did not view them as a safe space. This meant that their experience to date with the professionals that they were in the most contact with, their teachers, was a negative one.

" I didn't get much help there either, I was just put down as a— I was just a naughty kid, really.

Child

" When I was in secondary school, the headteacher put it down just to naughty behaviour, I had nothing wrong with me. Primary, they thought there was something, but they couldn't tell. So eventually, my mum just went to the paediatrician and found out I had autism.

Child

" In secondary school, I got kicked out in Year 7. And then I went to an AP [alternative provision] school, and I stayed there, but I was only doing half days, so only two hours a day. Then I got to my GCSEs and I failed all my GCSEs. And then I went to college, and then I got kicked out of college because they didn't know how to handle people with ADHD and that, so they just kicked me out.

Child

In addition, several of the children we spoke to were also facing adverse experiences in their personal lives outside of school. Two had recently experienced the death of one of their parents, while another described that their father had recently been sent to prison. Others implied adverse domestic situations, abuse in the household and difficulties associated with supporting a sibling with severe additional needs. Various children had also been in situations where they were being groomed or exploited into committing offences by older children. These factors, alongside SEND for some children, interacted to contribute or lead to their contact with the police.

“ I went up to the shop and I pulled a carpet knife out and I had it up to the man’s throat in the shop and I was saying, ‘Give me everything, all you’ve got.’ But I wasn’t really thinking then, I was just stupid. That was recently after my mum died, I went on the train to [location] with my mate and that happened. Then I don’t know how long ago, later or if it was earlier but I accidentally set my room on fire with petrol.

Child

“ My dad used to get done... not done but he used to get accused of loads and loads of things. He was nearly stabbed due to someone said words about him online. He was a postman, he was a postman and loads of people seeing him and then he got murdered basically.

Child

“ [I don’t like the police] because they sent my dad to jail.

Child

“ I looked at him like he was my older brother and all of that stuff. He was sometimes being a dickhead and that, and I just followed in his footsteps. So basically, I couldn’t say no, I just kept on saying, ‘Yes, yes, yes, I’ll do it, I’ll do it, I’ll do it.’ At one point I said yes to it and that got me arrested.

Child

Experiences with police

Upon arrest, it was very rare for a police officer to ask children about whether or not they had SEND. It was therefore entirely reliant on children to proactively mention their needs if they were to be taken into account in police conduct or decision-making. At the time of interview, it was also uncommon for police to ask about this, or when they did, children reported that they had only asked about a specific type of SEND. One child with diagnosed autism was only asked about and offered support relating to dyslexia. They were offered no additional support or understanding relating to their ASD upon arrest, and experienced distress because they felt the police officers were not answering a specific question they had, which as a result of their ASD led to increased agitation.

“ They asked me if I was dyslexic or owt, but I’m not sure. I’ve never actually been diagnosed with it because I had three answers, inconclusive, yes and no. So I never knew if I had it or not. So they asked if I wanted that support, but no other support, just that.

Child

In a few instances, children had told police upon arrest that they had a certain type of need and had asked for specific accommodations, such as having handcuffs loosened, for example. Police officers were receptive to these requests on some occasions, but not in others.

“ They cuffed me to the rear but I told them it’s uncomfortable because I’ve got ADHD and autism, they were like, ‘Oh yes, we get that’. So they just took one hand off and I was just moving my hands so much because I’m like, ‘It’s so painful’. They just put it like that... They started to, like, understand why I’m stressed out and angry all of a sudden.

Child

The practice around arrests could be very damaging to children with SEND, particularly in relation to the use of force. Various children we spoke to, some as young as 13 years old, reported being harshly physically restrained by the arresting officers, which sometimes caused them minor injury. For children who had ASD, they reflected that this experience of physical handling was made worse for them by their particular sensitivity and aversion to physical touch. Others also described the use of handcuffs to be painful and challenging for them, and officers did not always loosen them upon request.

“ *The first time I ever got arrested I thought that they wouldn’t be so harsh about it, and they actually dragged me out of the house.*

Child

“ *Yeah, they have done that quite a lot. I came home with bruises and everything. They broke my toe once. When you’re even calm and when you say, ‘Yeah,’ and you don’t kick off, they still think they have to use force. They feel like everywhere they go, they’ve got to go, ‘Grr’, and slam you to the floor.*

Child

“ *They got my hands like this, and then they grabbed my legs and lifted me up into the air and carried me out like that... Yeah. And then I got into the police car, I hit my head off the door because they were being rough, and they did the handcuffs so tight I had marks on my wrists after. And I asked them, Can you loosen them a little tiny bit?*

“ *They were like, ‘No’. And I was like, ‘Whatever’ So I was just booting the door.*

Child

In the context of police interviews, there were examples of some limited support provided to children who were able to proactively articulate what they needed. One child with a hearing impairment described that officers spoke a bit louder, and another with dyslexia was provided with some support during their interview.

“ *Yeah, they said, do I have anything wrong with me, I said I’ve got ADHD. After that though, they understood a bit more.*

Child

However, others felt they were ignored or dismissed when they or their parents/guardians had mentioned to the police that they had SEND. The majority of children felt that they did not understand everything police were saying to them in interviews or were confused at parts of the process. Some mentioned inaccessible language being used while others said that things were not being explained to them properly.

“ *Yeah, 100%. I think they knew that I couldn’t know what the big words were.*

Child

“ *In a way, I wasn’t understanding what they were telling me and what they were saying. I didn’t understand all of it.*

Child

“ *My mum had told them before [about her ASD and ADHD], that they had to be careful with me...They aren’t that bothered. Police don’t care.*

Child

It was clear even in carrying out the research interviews with the children that many struggled with processing and recalling information, and some answered many of the questions about their experience with ‘I don’t know’ or ‘I can’t remember’. Questions often had to be broken down or explained in simpler contexts to be understood properly. Thus, it is easy to see how where there is no cognisance of SEND or associated communication needs, these responses become misconstrued as indifference or non-compliance.

Overall, children had very minimal trust in the police. Some of this came from poor family relationships with police, perceptions of police in the media, and for reasons the children could not always describe, but it was clearly deepened by first-hand experience. One child said they refused to take any food or drink offered to them at the police station as they believed police might have spit in it as they saw something about this online. Many felt that the police's relationship with them was one-sided, being responsive when it came to arresting them but not when it came to situations in which they were calling for help. Several stated that if they were being harmed or in a scenario where they needed urgent help, they would not call the police.

“ [when asked about whether they had any trust in the police] Don't make me laugh. Oh, and here's another thing as well about the police. So, the amount of times I've called the police on my mum for being abusive or whatever, there's no records. They just can't find any records about it, but I know I've definitely called the police. The police have been out to my house many times for it, they've took me to my sisters and everything, but there's just no records about it... But when my teacher rang, they came in seconds.

Child

“ Zero. It's always been zero trust.

Child

“ And I'll tell you why. Because even though I— I've rung the police myself because my mate got battered by an older person. And I rang the police and they didn't do anything, they didn't even come. And then we got a stranger to ring them and they came out like that... Yeah. So I know full well, if I was ever getting kidnapped or anything, they would be the last person I would call.

Child

The children we spoke to did not always have legal representation during their interviews, as several had declined the option to have a duty solicitor. When asked about this choice, they often did not have much to add. One child stated that they were not given the option to have any legal aid during their interview. For those that did have representation, the advice was overwhelmingly to give 'no comment' interviews. One child was able to describe that their solicitor had gotten them to write a prepared statement for the interview and then advised them to give 'no comment'. However, for the rest it was unclear if this had been the case or not.

“ No, they didn't ask if I wanted a lawyer or anything. They just went, 'Do you want any help?' I went, 'Well, I don't know'. That was all they asked.

Child

“ I got on with my solicitor all right, they just told me to say no comment for the whole thing and that's what I did.

Child

Experience with youth justice services

On the whole, the children we spoke to felt that they had gained valuable support from their YJS workers and had very positive relationships with them. They spoke about how their engagement with the YJS had provided them with an outlet for speaking about things they had on their mind or issues they were experiencing. Sessions sometimes centred around offending behaviour, and addressing things such as drug use or emotions they felt had been contributing to this. In other cases, however, they just served as a more general point of support for children. It seemed that for many, the YJS worker was playing a significant role in children's lives. This was positive for the duration of the intervention but could make exit strategies difficult. A few children reported being nervous or sad about the idea of ending contact with their YJS worker, with one saying that they hoped their YJS worker would stay working with them until they were 30. This was testament to the work of individual YJS workers, but also points to the gap around high quality and consistent support in children's lives.

“ I get really excited when I know I’m gonna see [YJS worker]. On Mondays I’ll be in a really good mood coz I know I’m gonna see [YJS worker] the next day and I know I’m gonna be able to express how I feel. I don’t know [YJS worker]’s just a fucking G ain’t she.

Child

“ I feel understood a lot more than I do when I’m speaking to anyone else.

Child

“ If I could make it last forever I genuinely would. It has honestly helped so much. And the fact that I’ve got [YJS worker] there to remind me how much I’ve changed and how much I’ve grown and matured and got on better.

Child

YJS staff were generally well equipped to recognise and react adequately to children’s SEND. All of the children we spoke to had had some assessment to check for existing diagnoses of SEND at the beginning of their interventions, and some with suspected needs were helped by YJS workers with pushing forward the process of getting diagnosed. One child also described how their YJS worker had helped them work through negative preconceptions they had about what ADHD was and enhanced their understanding of some of the positive aspects of it. Looking at children’s experiences of their YJS workers, it seemed that professionals had put considerable effort into relationship building, informed by an awareness that for some children trust would be gained gradually.

“ Yeah, she showed me videos and stuff. Because obviously I just thought it was a bad thing, people assume you’re different. And she just built my confidence up and said, ‘It’s not, look at all these famous people who have got it’ and then just talked about it.

Child

“ She took me home and I found out we had the same taste in music and I thought yea she seems alright ... she wasn’t rushing me to say anything, she gave me the option to talk about what I wanted to talk about.

Child

The children we spoke to described sessions with YJS workers as being adapted to respond to their SEND. YJS professionals adapted location, content and length of sessions to what would be beneficial for the child. Children with ADHD who were not able to concentrate for extended lengths of time were able to have sessions lasting less long than the hour that was set out, for example. Another child who was working on making a poster around antisocial behaviour but who struggled with reading and writing was prompted to print, cut and stick information together instead, and was able to do the work and enjoyed the activity. Several YJS workers carried out sessions while engaging in an activity with the child, such as badminton, to keep them concentrating for longer. Interventions were being adapted to meet the needs of children and to the format that would benefit them. However, in practice, the application of flexibility and adaptability seemed to lie more with individual YJS workers rather than being implemented as standard practice.

“ I remember [YJS worker] taking me to the park, the park where I’m always hanging out... I had to draw down all the antisocial behaviour. And then after, he told me to run around the whole park, trying to tire me out.

Child

“ I think even within our service, I think it comes down to individual staff as well where some will be very strict and say, ‘I’ve booked an hour with you, we’re doing an hour. That’s not going to work, there’s no point me chatting away for an hour if you’re not listening’. So I’d rather do 10 minutes that works than an hour that’s a waste of time, basically.

YJS worker accompanying a child at the research interview

Conclusion

This research has investigated how well diversion is adapted to children with SEND, who make up the vast majority of those entering the youth justice system. Though we found areas of good practice and motivated practitioners, our report identified a number of shortcomings in the process. Taken together, our findings suggest that the system is not working adequately to account for the needs of these children and requires intrinsic changes that cater to the most common needs arising from SEND, which would benefit all children coming into contact with the process.

Police training and practice were found in need of vast improvement. Excessive use of force such as physical handling and restraint in handcuffs upon arrest were found to be prevalent and particularly harmful for children with certain types of SEND, notably ASD. This was identified as a common cause of unnecessary escalation, which could lead to precluding a child from diversion. The communication from police officers at this point and during subsequent police interviews was also overly complex and inaccessible to many children. Despite provisions in place to ensure multilateral decision-making, such as joint decision-making panels, police forces in some areas retain disproportionate discretion about which children are diverted. Officers are exerting this discretion by regularly misinterpreting criteria of admission around guilt and acceptance of responsibility and remorse. Evidence suggests this is particularly challenging for children with certain types of SEND.

Findings from this research suggest police and other practitioners at the point of arrest are not taking responsibility for identifying SEND needs in children. The onus is often placed on the child to proactively mention their own needs to the police, which is ineffective as children with SEND often have difficulties remembering or articulating their needs, as well as tendencies to mask or hide these needs for various reasons. Overall, a lack of police training around SEND suggests that police officers are not identifying specific needs, nor adapting practice to account for most common needs. Ultimately police are approaching arrest, interviews and decision-making in a way that is disproportionately detrimental to children with SEND.

The processes in place to identify SEND when children are entering the youth justice system are currently insufficient and notably variable across YJSs. Some YJSs include co-located speech and language therapists in their teams, which is crucial in picking up on undiagnosed SEND, while the majority do not and have to rely on long waiting lists in the community to follow up on suspected need, if they happen to be identified.

Our findings also suggest that the safeguards in place to ensure fair treatment of children in the youth justice system, notably defence solicitors and appropriate adults, are not always equipped to support children with SEND or to mitigate the ways in which their access to diversion is affected. While intermediaries such as speech and language therapists and L&D practitioners are technically also supposed to be available to children during police interviews – though not in statute – it does not seem that they are playing much of a role in this. Ultimately, training of those responsible for supporting children in their contact with the police, or better yet, specific provision of speech and language expertise, is critical to ensuring fair treatment of children with SEND by police.

In terms of diversion interventions themselves, we found many instances of good practice, with efforts made to tailor them to the needs of individual children. This was in the structure, length, location, timing and content of sessions, with many interweaving activities into specific pieces of work to increase concentration, for example. The main focus of improvement here is in the sharing and standardisation of positive practice internally within YJSs and externally through the YJB. The waiting times between first contact with police and diversion interventions, however, could often be very long, which evidence suggests lessens its benefits and may even lead it to become detrimental to children, and children with SEND in particular.

The findings of this research identify a range of areas in need of improvement to respond appropriately to the needs of children with SEND and to ensure their equal access to diversion. However, the application of this feeds more widely into the treatment of children in the justice system as a whole, notably in terms of the policing of children more generally.

Recommendations

The youth justice system should be universally adapted to be geared toward children with SEND as their primary user. Accounting for the common needs arising from SEND will address disproportionality, improve experience for all children and be more in line with the Child First approach. Beyond the criminal justice system, vast improvements are needed in the community to address the chronic under diagnosis of SEND, which has left the YJS with this significant gap to fill. While these would be the real changes needed for the issues arising in this report to be addressed in England, our recommendations will focus on more directly implementable suggestions.

1) Ensure the policing of children is responding appropriately to the needs of children with SEND

Our report found significant evidence that police were failing to identify and meet the needs of children with SEND. Despite recommendations in the Child Gravity Matrix that police proactively seek out SEND diagnoses from relevant parties, including YJS, parents, appropriate adults and solicitors, this is not taking place in practice. As a result, arresting practice is often detrimental to children with SEND, escalating situations unnecessarily through use of force and lack of consideration given to children's specific needs. The lack of police training around SEND was also identified as a key issue. Ultimately, the policing of children is not adequately safeguarding their needs or adhering to Child First principles, and not currently being inspected to a sufficient level of scrutiny.

We therefore recommend that:

- The NPCC should adapt guidance on child-centred policing to include SEND.
- The NPCC should deliver specialist training around SEND to YJS police officers and basic training around SEND to all officers.
- The NPCC should develop guidance around de-escalation and use of force that accounts for SEND to sit alongside Child Centred Policing framework.
- The NPCC should require, rather than recommend, that police check for a SEND diagnosis through the Child Gravity Matrix.
- The NPCC should protect the YJS police role and increase professional development opportunities within the role.
- The policing of children, from arrest to investigation, up until the outcome of a case, should be the topic of a future joint thematic inspection by HMICFRS and HMIP, with SEND (and other protected characteristics) included throughout.

Additionally, many children had a lack of trust in police, often before they have even had any contact with them. Lack of trust is a systemic issue across the justice system and we are under no illusions that this will be resolved by recommendations made in the report. However, in this research and in our previous report on disparity in diversion, we found that some small steps can lead to positive change and recommend that:

- The NPCC and local police forces should provide relevant and accessible information about a child's rights and legal processes when they are arrested or have any interaction with police.

Given the lack of trust and some of the distressing experiences of arrest shared by the children we spoke to, we recommend that police based in schools need to be reviewed:

- Oversight of the use of police in schools sits between a number of departments and organisations including the Department for Education (DfE), Home Office, NPCC and YJS. We therefore recommend a cross government framework to reviewing this approach to explore whether it is appropriate and effective.

2) Provide clarity on the requirements surrounding admission of guilt, acceptance of responsibility and remorse

While some areas do require acceptance of responsibility or an admission of guilt for diversion schemes and Out of Court Resolutions (OOCRs), a lack of clear definitions for these terms mean that police are inconsistently and inappropriately applying these criteria. Additionally, police continue to employ considerations of whether a child is displaying ‘adequate’ signs of remorse when making decisions (for example, which outcome they receive, their risk of reoffending, etc.). Demonstration of remorse is not part of any criteria for diversion and may unfairly impact children with SEND.

We therefore recommend that:

- The NPCC should ensure that YJB guidance around admission of guilt and acceptance of responsibility is embedded in policing of children.
- The NPCC and CPS should ensure that it is explicit in the Child Gravity Matrix that showing remorse is not required when making a decision to charge, divert or issue an OOCR. This should also be included in the updated Child Centred Policing plan.

3) Ensure that children with SEND are receiving adequate and accessible legal advice

Our findings have shown that children with SEND are receiving legal advice that could be putting them at a particular disadvantage for accessing diversion schemes. Duty solicitors lack specialised training in advising and communicating with children and can lack knowledge around SEND and the diversion process. On top of this, children are declining legal advice without proper understanding of its role and significance.

We therefore recommend that:

- There should be a presumption of the provision of legal advice and a rule that a child can only waive this right if they first speak to a lawyer in person, who can advise them on what legal advice could do for them (in recommending this we echo Dr Vicki Kemp’s report on the interrogation of young suspects).⁴⁶
- The Solicitors Regulatory Authority (SRA) and the Bar Standards Board should develop a set of standards for recognised training in youth advocacy, including specific training on SEND.
- The SRA, the Bar Standards Board and the Legal Aid Agency enable advocates specialising in youth case practice to claim higher rates of remuneration, as happens in a number of other specialist areas.

4) Carry out additional research to investigate the practice of appropriate adults in supporting children with SEND

There is generally a significant gap in the literature around the practice of appropriate adults. From our limited findings it seems that trained appropriate adults may not be equipped to identify SEND or advocate for children’s needs.

We therefore recommend that:

- Local authorities should deliver specialist training for appropriate adults around SEND and implement quality assurance.
- The YJB carry out or commission further research into appropriate adult practice.

5) Expand youth justice services' diversion processes to include co-location of speech and language therapists and balanced joint decision-making panels

Our report found that there were significant differences in practice between YJSs when it came to identification of SEND and the diversion decision-making process. Very positive practice has been shown in YJSs who have co-located SaLTs to address the prevalence of children with undiagnosed SEND passing through the system. L&D workers were found not to be involved enough to support the identification of children's needs at police stations, as the role is intended to do. It was unclear whether this was due to the services being underused by police at the station or whether the issue was with availability of L&D workers. This should be an area of future investigation. Joint decision-making panels have also been shown to be crucial in ensuring equal access to diversion but vary in terms of who attends them and how much discretionary power remains with the police from one YJS to another. Attendance of key partners such as social work and education at joint decision-making panels is also key to facilitating exit strategies, particularly given the difficulty of exit planning where YJS interventions have filled significant gaps in children's lives.

We therefore recommend that:

- Local authorities co-locate speech and language therapists in each YJS.
- In line with the aims of the service, L&D should play a bigger role in identification of children's needs at police stations.
- Local authorities and police forces should ensure they are implementing joint decision panels in line with the YJB's case management guidance.
- Local authorities and Early Help should engage with joint decision-making panels as set out in the YJB's case management guidance.

6) Share good practice between youth justice services around adapting interventions to children with SEND

We found areas of good practice in YJSs, with interventions being creatively adapted to children's individual SEND, but this is often as a result of a staff member's initiative rather than a standardised process. Spaces used for YJS interventions are not always adept at catering for sensory or other needs, and written resources within YJS also do not cater enough to SEND.

We therefore recommend that:

- The YJB and YJSs share examples of practice within individual YJSs and on the YJS resource hub for adapting diversion interventions for the range of SEND.
- YJSs should adapt resources and space to cater to more common needs that arise through different types of SEND, such as providing sensory toys, engaging spaces that include simultaneous activity with conversation and providing easy to read written information.

Interpreting our findings:

As is always the case in qualitative research, conclusions have been drawn from a small sample which is not intended to represent all professionals working in and children coming into contact with the justice system. However, the findings provide important insights in relation to SEND and diversion which we hope will be a useful starting point to spark positive change.

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This research has been made possible by the generously support from the Esmée Fairbairn Foundation and the Hadley Trust.



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Thanks to:

Claire Ely, Stephen Whitehead and Vicki Morris. We would also like to thank the youth justice services and the children that kindly made this research possible as well as our advisory group for their input.

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