

Time to get it right:

Enhancing problem-solving practice in the Youth Court



Executive Summary

Background

In the last 10 years, there has been a 75% decline in cases coming into the youth court, caused by both falls in youth crime and the youth justice system's success in diverting eligible cases away from court. However, while there are currently fewer court-involved young people, they tend to have more significant welfare and other needs as well as more serious offending profiles than they did a decade ago.

Having fewer court-involved young people to work with gives the youth justice system a golden opportunity to concentrate its energies on further reducing reoffending and preventing future harm. To that end, the Carlile Inquiry in 2014 (in which the current Lord Chancellor participated), the Taylor Review in 2016 and the Lammy Review in 2017 all advised that youth court practice should become more 'problem-solving', to better address children's underlying welfare needs.

Missed opportunities

Our research follows on from these reviews. It looks specifically at current youth court practice through the lens of evidence-led problem-solving justice. It does this by focussing on the procedural fairness of youth court hearings; the specialism of youth court practitioners; how multi-agency youth offending services provide collaborative interventions and supervision to court-involved children and young people; the extent to which youth courts engage in judicial monitoring post-sentence; and the operational environment surrounding youth court practitioners.

Fieldwork was conducted in three sites across England, comprising five youth courts and associated youth offending services, between February and October 2019. During our research, we came across many dedicated practitioners who were committed to improving the support for children and young people appearing in court, and we saw examples of creative and innovative practice being developed locally. One site was trialling a form of post-sentence judicial monitoring (of the type recommended in the Carlile and Taylor reviews) to provide informal, YOS-managed review hearings for young people on Youth Rehabilitation Orders (YROs). A second site was preparing to pilot a similar approach, in which magistrates, in partnership with the YOS, will hold informal, monthly reviews of YROs.

However, we also observed practice which fell short of what is recommended for the youth court: long delays, especially in cases coming to court; lack of availability of professionals with the required specialisms for youth court; limited services to respond to children and young people's speech, language and communication or mental health needs; limited engagement by children's services (understandable given their resource constraints); and generally, a more difficult operational environment, resulting from the twin impacts of constant court modernisation (including court closures and mergers) and reductions in funding.

What we found far too often was an over-burdened system in which practitioners struggled to deliver the services required of them by national government. As a result, vulnerable children and young people coming before the court are not always receiving the treatment they need – making it all the more likely they will offend again.

Time to get it right

What our research has shown is that youth courts need to be enhanced to change outcomes for the vulnerable young people who appear there. We are very aware that the Carlile, Taylor and Lammy review teams have been here before us. Our research has walked in their footprints and, sadly, we have seen that their calls for significant reform have remained largely unanswered. We think it is time to get it right.

1. Tackle pre-court delays and maximise diversion opportunities pre-court

There is urgent need for action to address the delays between offences and the commencement of court proceedings. These delays impact on everyone, including victims, witnesses and defendants. A key problem is delayed charging decisions by the police, which were also shown to disrupt children and young

people's own rehabilitative efforts. While we found strong support for out-of-court resolution of children and young people's cases (and strong support for victim involvement and restorative justice in these disposals), we also found evidence of cases still coming to court that should have been resolved out of court.

We recommend that (i) Her Majesty's Inspectorate of Constabulary, the National Police Chief's Council and the Home Office develop a protocol which limits the amount of time children and young people can be kept under investigation before a charging decision is made (though there may need to be exclusions for the most complex cases); (ii) we recommend that the Youth Justice Board should publish clear national guidance on effective, evidence-based point-of-arrest diversion and out-of-court disposal practice.

2. Improve the procedural fairness and specialisation of youth courts

We found that more can be done to improve the procedural fairness and specialisation of youth court hearings – specifically, by improving the court layout and the communication skills of magistrates to encourage engagement between children and young people and the bench, and strengthening the youth court specialism of defence advocates.

We recommend that (i) Her Majesty's Courts and Tribunal Service (HMCTS) set a goal that all youth court cases should be heard in adapted courtrooms by the end of this parliament; (ii) the Solicitors Regulation Authority and the Bar Standards Board develop a set of standards for accredited training in youth advocacy; (iii) the Legal Aid Agency enables advocates who have completed that accredited training to claim higher rates of remuneration, as applies in a number of other specialist areas; (iv) the Judicial College develop a suite of training resources for youth court magistrates including video guides to good engagement practice; (v) the senior judiciary set a clear expectation that youth court magistrates and judges engage in continuous, monitored professional development.

3. Bolster services to improve collaborative supervision and intervention for vulnerable children and young people

The Youth Offending Services (YOSs) remain a bedrock of youth court problem-solving, providing multi-agency supervision and intervention. In our work, we found consistent support for their multi-agency and child-centred approach. However, we also found that shortages in specialist mental health and wider welfare provision, and the inconsistent engagement by children's social workers (common themes in a long line of reports on youth justice) is undermining the provision of integrated support for vulnerable children and young people.

We recommend that (i) Government urgently raise the level of spending on specialist support for vulnerable children and young people to better meet demand; (ii) the Department for Education and the Association of Directors of Children's Services ensure that children and young people in local authority care are accompanied by a social worker when attending court; (iii) youth courts should be encouraged to use existing powers to order the local authority children's service to investigate whether a child is at risk of suffering significant harm.

4. Extend and evaluate trials of the innovative judicial monitoring 'problem-solving' review model

In line with the evidence base on problem-solving justice, a key recommendation of the Carlile, Taylor and Lammy reviews was for the court to regularly review, post-sentence, how children and young people on community sentences were progressing. While there has been no nation-wide adoption of these recommendations by Government, we did find areas using informal, review hearings which include magistrates, for young people on Youth Rehabilitation Orders.

We recommend that the Youth Justice Board extend the use of these reviews to more pilot sites and assess their impact through an independent evaluation of pilot projects.

In addition, the Ministry of Justice should give these pilots the powers to review Youth Rehabilitation Orders to check on children's progress and amend sentences where necessary, by extending Schedule 1 paragraph 35 of the Criminal Justice and Immigration Act 2008.

5. Improve the operating environment to guarantee fairer outcomes

This report was due for publication just as the Covid-19 pandemic hit the UK. It is too early to know the full impact that this will have on our court system, but we do know that coronavirus is already significantly changing the way court proceedings are being heard - for instance it has led to an accelerated use of remote hearings. These experiences will undoubtedly shape future discussion about how the system is restored post Covid-19. This moment presents an opportunity to reform and improve the system, and this report will be a vital resource for understanding how to do this.

The HMCTS programme of court closures and cuts to funding for local authorities have undermined the relationship between youth justice agencies and the court. More broadly, we have observed the lack of a national strategy focussed on improving the quality of justice in youth court. Moreover, it is unclear which agency or set of agencies sees it as their job to improve how youth courts operate.

We recommend that (i) the Ministry of Justice and Department for Education use the next Spending Review to ensure that youth justice and children services are adequately resourced; (ii) the Ministry of Justice commissions an independent review of the impact of court closures and bench mergers on the quality of youth justice; (iii) the Ministry of Justice, HMCTS and the senior judiciary identify and resource a single Government body to be responsible for identifying, sharing and promoting innovation and better practice in youth courts.

This Government, elected with a substantial majority in December 2019, has a real opportunity to make a bold move to enhance how our courts deal with young people's offending. In doing so, the Government can improve outcomes for some of the most vulnerable and marginalised individuals in society and protect victims from greater harm and give them a bigger voice in justice. But they need to get it right this time.

This report was due for publication just as the coronavirus pandemic struck the UK. Covid-19 has already had a profound impact on individuals, families, and the systems examined in this report. With an accelerated move towards remote hearings in our courts, concerns regarding effective engagement and participation in proceedings are ever more present. Whilst the final analysis of how the crisis has affected the youth court has not yet been written, our hope is that this report will help better understand the system as it was operating, for better and for worse, on the eve of the crisis.

We would like to thank all those who gave up their time to be interviewed for our study. We are especially indebted to the youth offending services in our fieldwork sites who assisted the research throughout, and to the court staff who facilitated our court room observations. We are grateful to the Judicial Office and Her Majesty's Courts and Tribunals Service for supporting the research and facilitating access to the courts, and to our Advisory Group for their guidance and input. Our special thanks go to the young people and their families and the victims of crime for sharing their experiences with us.

Finally, we would like to thank the Nuffield Foundation for funding this research and for kindly allowing us to use their offices for research meetings and events as part of this project.

Centre for Justice Innovation
Institute for Crime and Justice Policy Research

The Nuffield Foundation is an independent charitable trust with a mission to advance social well-being. It funds research that informs social policy, primarily in Education, Welfare, and Justice. It also funds student programmes that provide opportunities for young people to develop skills in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Nuffield Council on Bioethics and the Ada Lovelace Institute. The Foundation has funded this project, but the views expressed are those of the authors and not necessarily the Foundation. Visit www.nuffieldfoundation.org



Written by:

Gillian Hunter, Claire Ely, Carmen Robin-D'Cruz and Stephen Whitehead

Thanks to:

All the young people, magistrates, professionals and other participants who contributed their experiences and insights to our research. We are especially indebted to the youth offending services in our fieldwork sites who assisted the research throughout, and to the court staff who facilitated our court room observations. We are grateful to the Judicial Office and Her Majesty's Courts and Tribunals Service for supporting the research and facilitating access to the courts, and to our Advisory Group for their guidance and input. Our special thanks go to the young people and their families and the victims of crime for sharing their experiences with us. Finally, we would like to thank the Nuffield Foundation for funding this research and for kindly allowing us to use their offices for research meetings and events as part of this project.