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**'Alternatives to custody for young offenders – developing intensive and remand fostering programmes'**

**UK Desk Research Analysis**

**Christos Christophides**  
**British Association for Adoption and Fostering**

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The UK Desk Research Analysis provides an overview of the youth justice legislation/systems and how foster care is used as an alternative to custodial and residential accommodation for young people.

## **1) Legal Youth Justice framework**

In order to understand fully the political momentum for the changes to the legal framework that took place from the late 1990s, it is necessary to revisit some of the debates about youth justice that emerged in the mid- 1990s.

One case in 1993 which changed the direction of youth justice policy and public opinion in relation to young offenders was the killing of the toddler, James Bulger, by two 10 year old boys. The public outcry, (largely media fuelled), that followed this case led to a 'moral panic' about the law-breaking behaviour of children and young people. It is interesting to note that that a similar case in 2009 – the Edlington case – where two brothers aged 10 and 11 tortured two younger victims, (who suffered severe injuries), was described by the judge as 'truly exceptional' and the boys' identities were protected. (The Guardian Society Article, 'Why the Edlington case should not be published in full', 26<sup>th</sup> January 2010, Mike Stein)

Though this was arguably the most notorious crime committed by children since the Bulger case, the defendants did not suffer the same level of public reprehension. Indeed, the main target or recrimination seemed to focus upon the alleged failures of Doncaster Social Services in managing the case of the defendants who were in care due to their violent and anti-social behaviour.

Following the Bulger case, the tide of youth justice turned. Children were no longer pure and corrupt; they were seen as capable of the greatest evils. Media stories about young offenders allegedly being treated 'softly' by the juvenile justice system swayed public and

political opinion towards an era of 'getting tough' on youth criminality. (Hendrick, H., 2002)

Interestingly, the panic about the problem of youth crime appears to make little sense when we analyse the statistical data for that era. According to NACRO (1999), since 1987, the number of male juvenile justice offenders has fallen by 33% and female young offenders by 17%. But the political debates surrounding the run-up to the 1997 general election promised a 'law and order' agenda from all the major parties. The Labour Party's promise to get 'tough on crime, tough on the causes of crime' extended to youth crime. Once in office, they established a Youth Crime Task Force and the momentum for reform of criminal justice continued, with no less than seven consultation papers being released, five of which were directly related to youth justice. (Pickford, J., Dugmore, P., 2012, Sage)

What now follows is an outline of all the key legislation that has formed the current youth justice framework in England. Please see attached appendices:

Overview of the Court System

Table of disposals for Young Offenders

Public Law Outline (26 weeks) flowchart

Almost every European country sets the age of criminal responsibility higher than 10 (in Scotland it is 12), but in the case of the two boys, aged 10 and 11 at the time, who were convicted of abducting and murdering a 2 year old boy, James Bulger, the European Court of Human Rights (1999), 'V v United Kingdom, European Court of Human Rights, Case 2488/94', did not find prosecuting a 10 year old was in itself a breach of human rights (Brayne, H., & Carr, H., 2013, Oxford University Press). So, at the age of 10 a child can be charged with, tried, and convicted of a criminal offence, and in a range of courts including the Crown Court.

But a child under 10 cannot, in English law, commit a crime and therefore cannot be prosecuted (Children and Young Persons Act 1933, s.50). Below that age conduct which would otherwise be criminal must be dealt with informally by the police and/or social services (a telling off and a word with the parents) or through statutory procedures. One might be an application for a 'child safety order' which could put the child under the supervision of a Youth Offending Team (YOT) set up by local authorities and made up of social workers liaising with other local authority workers, police and probation officers; or a 'local curfew order' could be issued; or 'care', 'supervision', or 'emergency protection' orders. The behaviour of the child could be evidence of significant harm under the Children Act 1989, s 31.

Under 18- year olds in most of the legislation are designated children (aged 10 – 13) or young persons (aged 14 to 17). Age is relevant to how children are treated in the justice system, but it is not as simple as applying safeguards to all children under 18:

- Defendants under 18 years are called juveniles (but the old juvenile courts are now called youth courts, part of the magistrates' court system with specially trained magistrates).
- Children under 17 years are considered vulnerable children when being questioned by the police.
- Children under 18 years who are refused bail (i.e. not freed pending the case coming to court) should generally be accommodated by Social Services.
- Available sentences vary according to age of the convicted child (and in some circumstances according to their gender).

- Secure children's homes run by local authorities take child offenders who are 10 to 14, those who have been in care, and those with mental health difficulties.
- Older children may be sent to secure training centres with offer education and training and are run by private companies.
- Young offender institutions, run by the Prison Service or private firms, can take those from 15 to 21, though Social Workers will not be involved after age 18.

Youth justice philosophy – tough on crime or concern for a vulnerable child?

Section 44 of the Children and Young Persons Act 1933(CYPA) make the welfare of the juvenile the number one priority in the criminal justice system, as does the UN Convention on the Rights of the Child (to which the UK is a signatory). From 1933 to 1998 that core principle was taken for granted as the starting point for social workers, magistrates, police, and everyone else. But more recently the 'tough on crime' political mood led to s. 37 of the Crime and Disorder Act 1998 (CDA):

*"It shall be the principal aim of the youth justice system to prevent offending by children and young persons".*

Tied to this, under the CDA, s. 17(1), the local authority must:

*"Exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do*

*all that it reasonably can to prevent, crime and disorder in this area”.*

The wording covers not just social services functions – housing services, for example, must also be managed for crime reduction. Indeed, every local authority (at district, borough or county level, not just those with social service functions), must have a ‘youth justice plan’ (CDA ss 6 and 40) setting out their strategy and targets for reducing crime and disorder.

#### Youth Offending Teams – liaison with police and other agencies:

The Crime and Disorder Act 1998 created a Youth Justice Board (YJB) to set standards and coordinate all parts of youth justice work, and to advise the government on policy. The current Coalition Government has recently transferred the functions of the YJB to a Youth Division of the Ministry of Justice, particularly in the light of the 2011 riots in England, when the ministry considered itself ill-briefed about youth offending.

The YJB is concerned with the funding of local Youth Offending Teams (YOTs), and it was set up under the CDA in 1998. There are 158 YOTs in England and Wales. The Ministry of Justice feels it can better ensure funding to YOTs through its new division.

Social Services Departments are at the heart of YOT, and under CDA s.38, the social services department must secure all necessary youth justice services. It does this, under s.39, by setting up YOTs for its area, or jointly with another area. The



cooperation of the police, probation, health and education authorities is required by statute.

### The social worker in the police station:

A young person may be arrested and taken into the police station, or bailed by the arresting officer with a requirement to attend at a future date. Or the child/young person may attend 'voluntarily'.

What happens when a suspect is held in the police station is governed by the Police and Criminal Evidence Act 1984 (PACE), and the PACE codes made by the Home Office. The important code is Code C on Detention Treatment and Questionnaire, last updated in 2008, and it can be consulted in every police station and at:

[www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c](http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c)

The code recognizes two groups as being vulnerable in the police station. The first is 'juveniles', children under 17. The other is suspects who are mentally vulnerable (Code C, Part 11). Under Code C para 1.5, if the police have any suspicion, or are told in good faith, that a person is juvenile, they must act accordingly unless they have reliable evidence to the contrary. An 'appropriate adult' (usually parent or guardian) should be called to assist the suspect; no questioning should normally take place until an appropriate adult has arrived.

Where a parent cannot or will not come, or is deemed not to be suitable, a social worker will frequently be asked to be the

appropriate adult. A social services department must have appropriate adults available, but there is not statutory duty for one to be sent or for the police to approach a social worker rather than a parent.

#### Police powers of detention:

The only lawful purpose of detention is for the police to obtain evidence to make a decision whether to charge or not – not to obtain evidence to use at trial. They should charge or release as soon as possible, which means as soon as they have enough evidence to decide (s.37, Police and Criminal Evidence Act 1984, and Code C, paragraph 16).

Home Office Circular 60/2003 states that a child should not be detained for more than 24 hours unless the offence is a serious offence of arrest and bails is considered inappropriate. As well as the obvious serious crimes of rape, possessing firearms, or GBH, any offence of arrest can be serious if the consequences are serious, such as causing death or serious injury, or substantial financial gain or loss. Code C says that a detention of a juvenile or mentally disordered person beyond 24 hours will involve consideration of;

- a) Special vulnerability
- b) Listening to any representations made on behalf of the child including those of the appropriate adult; and
- c) any alternatives to custody

The police cannot in any event detain beyond 36 hours after arrival at the police station (PACE, s.41). But a magistrates' court can renew the period for a further 36 hours, and again up to a final total of 96

hours (s.43). (In a terrorism case detention can be extended even longer: currently 28 days). Decisions concerning detention and charge are made by an officer called the custody officer (ss 37 and 38), who must be independent of the investigation.

### Charges, youth cautions, or no action:

At some point during the detention of the juvenile, the police must make a decision. The options are to charge and prosecute, to give a Youth Cautions (under the Legal Aid, Sentencing and Punishment of Offenders Act 2012) (LASPO) s.135, which has abolished the old reprimand and warning system in the Crime and Disorder Act 1998, or to take no further action. With a juvenile, the decision may take time, in which case, police bail should be granted until the decision is made.

A decision to charge must be approved by the Crown Prosecution Service (CPS), which will wish to be sure that adequate evidence is there for a conviction, and that prosecution is in the public interest. But as well as consulting the CPS, if the suspect is a juvenile, the police should consult with the Youth Offending Team. They can only avoid this, if it is obvious, that there should be a charge, because of the seriousness of the offence, or the case is so trivial that no charge is appropriate. In between these clear-cut cases, liaison with appropriate agencies is normal before a decision is made; but the decision is still that of the police and CPS.

Guidance on whether to prosecute in the public interest is found in the Code for Crown Prosecutors, 2010:

[www.cps.gov.uk/Publications/docs/2010english.pdf](http://www.cps.gov.uk/Publications/docs/2010english.pdf)

### Reprimands, warnings, and youth cautions:

The system of reprimands and warnings was formerly governed by the Crime and Disorder Act 1998, ss 65 and 66. These sections have been removed by LASPO 2012 and replaced with sections on youth cautions (new ss 66ZA and 66ZB). Reprimands/warnings last for only two years, but they will be treated retrospectively, as if they were youth cautions.

Reprimands used to be issued for a first offence if it was not too serious; a warning was the next step for a person who had previously been reprimanded, or for a first more serious offence. The new youth cautions can cover both these situations; they may be more flexibly issued, not necessarily for first offences. The Secretary of State has published guidance on the appropriate circumstances for youth cautions. For children under 17 years of age, they have to be given in the presence of the appropriate adult. (Youth Cautions – Guidance for Police and Youth Offending Teams, April 2013, Ministry of Justice)

<http://www.justice.gov.uk/youth-justice/courts-and-orders/disposals/youth-caution>

While a youth caution is not a criminal conviction, for example, for job applications, if a person is later found guilty of an offence, it may be taken into account for sentencing. Under the old system, if someone was convicted of an offence within two years of a warning, the court would not consider a discharge, but moved to a more serious sentence. A warning in relation to a sexual offence resulted in the offender being placed on the register of sex offenders. The same applies to youth cautions.

## Legal advice and representation in criminal cases:

Help from a solicitor out of public funds is governed by the Access to Justice Act 1999, modified by LASPO Act 2012. In the police station, any suspect can insist on seeing a solicitor (PACE, s. 58). The scheme is known as the police station duty solicitor scheme. A move to means test this service through the 2012 Act was withdrawn by the Coalition government under political pressure.

<http://www.legislation.gov.uk/ukpga/1999/22/schedule/2>

A similar scheme operates at court for an accused person who is brought directly to court following police detention or police bail. The court duty solicitor can deal with bail applicants, as for an adjournment, and make a plea in mitigation, if there is an immediate guilty plea and no adjournment reports.

For representation and advice beyond this a specialist criminal solicitor has to be sought. This will normally be a solicitor working in a private firm. Legal aid for representation in criminal proceedings of under 16s, or under 18s without independent income is free.

### Waiting for the final hearing – bail or custody?

If a juvenile is charged, he or she should normally be released on bail. Police are not required to liaise with social services on bail conditions, though it is likely they will do so.

Police, like courts, can make bail conditional – for example, requiring that the accused live at a certain address or does not approach a witness. Another person can be asked to stand surety, which means that the person is liable to pay a penalty if the accused absconds. A court can impose bail conditions which have nothing to do with

preventing offending or with securing attendance at court, and under the Bail Act 1976 (as amended in the Criminal Justice Act 2003) s. 3(6), can impose conditions “for his own protection or, if he is a child or young person, for his own welfare or in his own interests” <http://www.legislation.gov.uk/ukpga/1976/63/contents>  
<http://www.legislation.gov.uk/ukpga/2003/44/contents>

A breach of police bail is a criminal offence. It also makes it less likely that the court will grant bail when an application is made.

#### Refusal of police bail:

The police can refuse bail only on grounds set out in Police and Criminal Evidence Act, 1984, s. 38:

- a) the custody officer is not satisfied of the identity or address of the person charged;
- b) the custody officer believes that the person will not answer bail, will interfere with evidence or witnesses, cause injury to themselves or others, or damage property;
- c) the custody officer believes that it is necessary for the person’s own protection; or
- d) granting bail would not be in a juvenile’s interests.

Section 38 does not offer guidance on what the interests of the juvenile are in this situation; but on refusal of bail, the juvenile must be transferred to local authority accommodation, and it will be this transfer pending trial that the police may see as being in the juvenile’s interests.

Under s.38(6), following a refusal of bail, the custody officer and refuse to transfer the detained juvenile to local authority accommodation on one of two grounds:

- a) If the juvenile is 15 or older, the custody officer considers that the juvenile is a danger to the public and that the local authority lacks adequate secure accommodation.
- b) It is not practical to make the arrangements for a transfer. This should be exceptional, e.g. social services are on strike, or the roads are blocked by snow.

The custody officer must give a certificate to this effect and may then detain the juvenile in the same way as an adult until the first court appearance, i.e. in the police station (but not in a cell if this can be avoided)

#### Court bail:

Courts which adjourn before they have completely disposed of a case can either release the accused unconditionally on bail or in custody.

The grounds in the Bail Act 1976, s.4 for a court to refuse bail are almost identical to those for police bail under PACE. Breach of court bail or bail conditions is a criminal offence and will make further bail applications more difficult.

<http://www.legislation.gov.uk/ukpga/1976/63/contents>

#### Court remand into custody:

If bail is refused and the child is at least 12 and below 18 years of age, the remand will normally be to local authority accommodation (formerly under Children and Young Persons Act 1969, s. 23, now under the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012, s.91 and 92).

The court designates a local authority (LASPO, s. 92(3)) which is (a) in the case of a child who is being looked after by a local authority, that authority or (b) the local authority in whose area it appears to the court that the child habitually resides or the offence or one of the offences was committed.

The court can impose conditions on the child and hence under LASPO, s. 93(3) on the local authority (a) to secure compliance with any conditions imposed on the child or (b) requirements stipulating that the child must not be placed with a named person (such as the parent or someone involved in the alleged offence).

Among conditions may be electronic tagging of a child aged 12 or over who is alleged to have committed one of certain serious prison offence and where the YOT has told the court electronic monitoring would be suitable for the child (LASPO, s.94; s.95 for those where the offence gives rise to extradition proceedings).

In the case of serious offences the child may be remanded to youth detention accommodation to protect the public or prevent any further prison offence (LASPO, s.98); or if, additionally, the child has a history of absconding, or there is history of the child committing prison offences, or there is a high likelihood of him or her receiving a custodial sentence (LASPO, s.99). Sections 100 and 101 have similar conditions for cases involving the possibility of extradition.

Serious offences are defined as is a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more.

In the case of remand into youth detention a local authority will be designated for various responsibilities (including potentially the cost of youth detention), and consulted about the detention. The child



will have 'looked after child status', i.e. "is to be treated as a child who is looked after by the designated authority" (LASPO, s. 104(1) – in local authority care or accommodated by the authority under the Children Act 1989 s.22(1).

It is for the authority to decide how to accommodate the juvenile. The considerations are the same as for any child it is looking after.

#### Remand to hospital:

A court can remand any person accused of a criminal offence who may be mentally disordered to a hospital for the purpose of obtaining a medical report, or for a treatment: Mental Health Acts 1983, ss 35 and 36.

<http://www.legislation.gov.uk/ukpga/1983/20/contents>

#### Allocation of the juvenile to youth court, magistrates' court, or Crown Court for trial and sentence:

Most cases involving a juvenile are dealt with in the youth court. The exceptions arise where the alleged offence is serious, or where an adult is co-accused. Where a child becomes an adult during the course of the proceedings, he or she can be sent to the adult court for trial or sentence (Crime and Disorder Act 1998).

#### Supporting a child appearing before the criminal court:

Where the trial takes place in the Crown Court the Lord Chief Justice has published guidelines for measure to reduce formality and stress, such as regular breaks, removal of wigs, access to social workers and guardians (Practice Directions of General Application, Part 1, – Criminal Procedure Rules, 2002, Ministry of Justice).

<http://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/part1> These guidelines are the result of the criticism voiced

by the European Court of Human Rights in relation to the trial arrangements in the James Bulger murder trial, where the young boys on trial had been intimidated by the formality.

A social worker has an important role to support a child through the process of appearing before a criminal court. The Law Society has published guidance on this issue in 'Youth Court Cases – Defence Good Practice' which lawyers can use.

<http://www.lawsociety.org.uk/advice/practice-notes/criminal-procedure-rules-2011/>

### Sentencing of juveniles:

The Criminal Justice Act 2003 (CJA) states at s. 142A that the principal aim of the youth justice system is to prevent offending and re-offending as under the Crime and Disorder Act 1998 s. 37(1). Courts must have regards for the welfare of offenders as under Children and Young Persons Act 1933 s.44. The purpose of sentencing juveniles is:

- Punishment
- Reform and rehabilitation
- Protection of the public, and
- Reparation by offenders to person affected by their offences

The sentencing powers of courts are largely found in the Powers of Criminal Courts (Sentencing) Act 2000 (PCCSA), <http://www.legislation.gov.uk/ukpga/2000/6/contents>, with amendments in the Criminal Justice Act 2003 and LASPO Act 2012.

Central to the government's approach when amending this Act in 2003 was the creation of a Sentencing Guidelines Court. Courts must

refer to the Council's guidelines and must justify any departure from these. Guidelines are available on [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

Pre-sentence reports by social workers must take account of relevant guidelines. An important example is the guideline on offence seriousness which requires the young age of an offender to be taken into account where it affects responsibility for the offence.

When sentencing juveniles, the courts must take account of s. 44 of the CYPA 1933: That is,

“Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regards to the welfare of the child or young person, and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training”.

This does not mean the child's welfare is paramount, because the court has a statutory duty – as do social workers, as parts of the youth justice system – “to prevent offending by children and young persons’ (Crime and Disorder Act 1998 s.37). But welfare must be a factor in deciding on the appropriateness of a sentence, and it gives some leverage to suggest outcomes which would benefit the child as well as punish.

The Court of Appeal in England frequently notes that juveniles should receive shorter custodial sentences than adults, and that reform of the young offender is the best way of protecting society (Easton, S. and Piper, C., 2013).

When sentencing a juvenile offender, a court must not impose a greater penalty than it could have imposed on an adult. An example of this is P v Leeds Youth Court (2006). The conviction was for

criminal damage valued at under £5,000. The magistrates could not send an adult to prison for more than three months, so a youth court sentence of four month's detention and training order was quashed. The Divisional Court pointed out that youth is a mitigating and not an aggravating factor. (Cavadino, M., Dignan, J. and Mair, G., 2013).

#### Sentencing power of the adult magistrates' court:

These powers are strictly limited. This court can sentence a juvenile only where it has already dealt with the juvenile together with a connected adult. It only has power to fine or discharge the juvenile or require parents to enter a recognizance. If it wishes to impose a custodial or community sentence following a conviction, it must send the case to the youth court (Crime and Disorder Act 1998, s. 8)

<http://www.legislation.gov.uk/ukpga/1998/37/contents>

#### Sentencing powers of the youth court:

This court's maximum power is to impose a two years detention and training order.

#### Sentencing powers of the Crown Court:

The Crown Court may deal with a juvenile offender not because the offence is serious, but because it also tried a linked adult. In this case it should not in principle sentence a juvenile but remit the case to the youth court. However, the judge can declare himself or herself satisfied that it would be undesirable to do so, (Crime and Disorder

Act 1998, s. 8), and in practice the judge will do this, rather than delay a sentencing decision by sending the case to a youth court. This also enables the sentences of the adult and the juvenile to be considered together by the court which has heard all the evidence.

If the youth court has sent the case to the Crown Court for trial, this would have been because its maximum sentencing power of a two year detention and training order was considered insufficient, or because it was a charge of murder. Under ss 90 – 92 of the Crime and Disorder Act 1998, the Crown Court then has the power to order detention of the juvenile for a period up to the maximum period that could have been imposed on an adult. So a juvenile can be detained 'during the Her Majesty's pleasure' for crimes which carry out a life sentence. (However, the court must set a target date for eligibility for release. Failure to do so leaves this decision in the hands of the Home Secretary rather than an independent body, and was a breach of the human rights of the juveniles who murdered James Bulger: see *T v UK* (2000); Practice Statement (Juveniles: Murder Tariff), 2000; *Re Thompson and Venables* (Tariff Recommendation 2000).

<http://lexisweb.co.uk/cases/2000/october/re-thompson-and-venables-tariff-recommendations>

### Seriousness and sentencing:

The Courts, unless they are sentencing for murder when there is only one sentence of life imprisonment, can exercise discretion in sentencing decisions. They cannot exceed the maximum penalty, and they must take into account Court of Appeal and Sentencing Council guidelines. They are likely to take into account the Magistrates Court

Guidelines. All of these can be accessed from the Sentencing Council's web site at [www.sentencingcouncil.judiciary.gov.uk](http://www.sentencingcouncil.judiciary.gov.uk)

Below is a simplified step-by step approach to deciding on sentence which mirrors the court's decision making process.

#### Choosing the right sentence:

- a) Does the court have a choice, or is the sentence fixed by law?
- b) How serious is the offence? (Consider issues such as violence; effect on the victim; amount of gain or loss; planning; breach of trust; racial aggravation).
- c) Is it so serious that only custody is appropriate?
- d) If not, is it so serious that only a community sentence involving restrictions on liberty is appropriate? Is such a sentence appropriate for this offence?
- e) If not, is another community sentence appropriate, or a fine?
- f) If not, a discharge should be ordered, unless a Youth Caution was given within the last two years.

#### Custody where the court has no discretion:

The penalty for murder is fixed, even for a juvenile. The Criminal Justice Act 2003 has created the concept of the *dangerous offender*, who also must be sentenced to custody for life. This applies under s. 226 if the offender:

- is under 18
- has committed a violent or sexual offence
- will pose a significant danger to the public
- the offence is a grave offence

LASPO Act 2012, s.124 has created extended sentences for certain violent or sexual offences where there is considered to be serious risk to the public.

The minimum penalty for a number of other offences is fixed, unless there are exceptional circumstances, if the offender has a previous record of such offending. These minimum sentences do not apply to offenders aged under 18. However, juvenile offences will be taken into account if the person is later convicted before the adult court.

#### Custody where the court has discretion:

Children in custody are also children in need under the Children Act 1989, s.17: *Re (on behalf of the Howard League) v Secretary of State for the Home Department (2002)*. The local authority must continue to assess and meet the needs of children whom the courts have locked up in the prison system, in so far as a prison sentence allows.

The minimum period for custody for a juvenile is four months, and it cannot be suspended. There is no corresponding minimum for an adult of 21 or over.

#### Is this unfair on the juvenile?

The idea is that courts are deterred from the idea of a short, sharp shock; the thinking amongst the judiciary appears to be that custody is wrong unless the offence is serious enough to merit longer periods.

Nevertheless, custody is required in certain circumstances. There are then two regimes for sending children to custody:

- 1) *Custody for murder or grave crimes (Powers of Criminal Courts Sentencing Act 2000*

<http://www.legislation.gov.uk/ukpga/2000/6/contents>

The Crown Court sentences the juvenile to be detained for a defined term or 'during Her Majesty's pleasure', and the place of detention is left to the Home Secretary to determine. It can include detention in local authority accommodation (Children and Young Persons Act 1969, s.30). While the offender is under 21, prison is not used; the offender is held in a young offenders' institution.

2) *A detention and training order.* This comprises a custodial part, which is served in a young offenders' institution or at a secure training centre (STC), and a training part, which is served in the community.

In either case, before a custodial sentence can be imposed on a juvenile, the following statutory criteria must be met:

- the juvenile must be represented (or has refused to apply for legal aid, or it was withdrawn as a result of his or her behaviour); and
- the offence meets one of the following tests:
  - a) it was so serious, on its own or taking into account one or more associated offences, that neither a fine alone nor a community sentence can be justified for the offence; or
  - b) is a violent or sexual offence and only custody will adequately protect the public from serious harm (injury or death); or
  - c) the juvenile refuses to accept the requirements of a proposed community order; or
  - d) the offender fails to comply with an order under s. 161 (2) Criminal Justice Act 2003 to undergo pre-sentence drug testing.



- the court has obtained a pre-sentence report (s.156 Criminal Justice Act 2003)

Even if the court decides that custody is justified, it is still entitled to `consider whether what is known about the offender mitigates the sentence in favour of something non-custodial. Under Criminal Justice Act 2003, s.166, it must always take into account any mental health disorder before considering a custodial sentence, even if the offence is otherwise sufficiently serious for custody.

#### Custody under a detention and training order:

These custodial sentences are governed by ss 102 -7 of the Powers of the Criminal Courts (Sentencing) 2000 (PCCSA). The seriousness and statutory custody criteria must be satisfied. For offenders below the age of 15, the courts also have to find that the child is a persistent offender.

The maximum term is two years. The actual term has to be one of the following: four months; six months; eight months; ten months; twelve months, eighteen months; or twenty four months. Half of the term is served in custody undergoing training, with some reduction for good behaviour. The detention is served in a secure centre, young offenders' institution, or in a local authority secure accommodation.

After release, the offender is supervised for the remaining period by a social worker, probation officer, or YOT member. The offender must comply with the requirements of the supervisor. Breach can be reported to the court, which has the power to fine or to order detention for up to three further months. Committing an offence which requires imprisonment can put the offender back into custody for some or all of the remaining supervision period, with additional

custody for the new offence. New provisions have been added by section 80 of the LASPO Act 2012.

### Referral order under ss 16 – 32 (Powers of Criminal Courts (Sentencing) Act 2000)

A court *must* make a referral to the youth offender panel following conviction for any offence if the following conditions apply:

- the offender is under 18, pleads guilty to all the offences, and has no previous convictions
- the court decides that custody is not appropriate but something greater than an absolute discharge is required. (LASPO Act 2012 s. 79 (1) allows conditional discharge as a further option.)

A court *may* make a referral where such an offender has pleaded guilty to at least one of the offences of which he or she was eventually convicted.

The essence of the order is that the court passes the responsibility to a panel nominated by the local YOT. A new panel is constituted for each offender. Together with that panel the offender works out a contract of behaviour for between three and twelve months (the period is predetermined by the court). The consequence of not agreeing a contract is that the offender will be sent back to court for sentencing. The restorative justice concept can be worked with referral orders, and it will be referred to later in this desk research analysis: [www.justice.gov.uk/youth-justice/working-with-victims/restorative-justice](http://www.justice.gov.uk/youth-justice/working-with-victims/restorative-justice)

A parenting order can be made at the same time as a referral order. These require a parent to attend counselling sessions.

### Principles of community sentencing:

An offender must consent to a community sentence. But refusal is not advisable, as this is a ground for triggering custody and enables the court to bypass the seriousness requirement.

A key feature of the community sentence is that it is a punishment. To count as punishment, the offence must be serious enough to warrant the particular type of community order chosen. Seriousness as a concept has already been discussed in terms of custodial sentences, but s. 148 Criminal Justice Act 2003 repeats similar seriousness criteria for deciding if a community sentence, including a Youth Rehabilitation Order is appropriate.

- 1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence
- 2) Where a court passes a community sentence –
  - a) the particular requirement or requirements forming part of the community order or Youth Rehabilitation Order must be such as, in the opinion of the court, is, taken together are, the most suitable for the offender, and
  - b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- 3) Where a court passes a community sentence which consists of or includes one or more youth community orders-
  - a) the particular order or orders forming part of the sentence must be such as, in the opinion of the court, is or taken together are, the most suitable for the offender, and
  - b) the restrictions on liberty imposed by the order or orders must be such as in the opinion of the court are

commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

Under the Criminal Justice Act 2003, s.151, a juvenile offender of 16 or over with three previous convictions and fines can be given a community order or a Youth Rehabilitation Order, even if the seriousness criteria are otherwise not met.

#### Available community sentences for juvenile offenders:

The Criminal Justice and Immigration Act, section 1 introduced the Youth Rehabilitation Order which is an attempt to combine a number of juvenile community sentences into a single generic sentence with various requirements that may be attached to it. They may include the following requirements, a court can impose them, and they are supervised by probation officers not YOT members:

- Activity Requirement
- Curfew Requirement (up to sixteen hours a day for up to twelve months as amended by LASPO Act 2012)
- Exclusion Requirement
- Local Authority Residence Requirement
- Education Requirement
- Mental Health Treatment Requirement
- Unpaid Work Requirement (16/17 years)
- Drug Testing Requirement
- Intoxicating Substance Misuse Requirement
- Supervision Requirement
- Electronic Monitoring Requirement
- Supervision Requirement
- Prohibited Activity Requirement

- Drug Treatment Requirement
- Residence Requirement
- Programme Requirement
- Attendance Centre Requirement
- Intensive Supervision and Surveillance
- Intensive Fostering

The rules on seriousness in ss 147-8 of the Criminal Justice Act 2003 apply again. That is, any restriction of liberty must be proportionate to the offence. For example, with intensive supervision and surveillance or intensive fostering, the offence must be one where custody would otherwise be warranted as a sentence. Those under 15 must be persistent offenders. Custody may be an option for breach of a Youth Rehabilitation Order, if it could be applied to the original offence or there is 'wilful and persistent' non-compliance and intensive supervision and surveillance or intensive fostering have already been tried.

The Youth Rehabilitation Order (YRO), which courts are not obliged to impose if another penalty (such as custody) is thought to be more appropriate, replaced various community sentences such as supervision orders, community rehabilitation orders, and community punishment orders. The intention is to have available a range of options to suit the situation of the juvenile that may be used several times (possibly with increased levels of severity) when in the past custody would have been likely for a repeat offender. The requirements attached to the Youth Rehabilitation Order should only be those necessary to address risk of serious harm to others and reduce the likelihood of re-offending, and should be proportionate to the offence. The individuals involved must indicate willingness to comply. LASPO Act 2012 ss 81-84 have made some amendments to the YRO regime.

Pre-sentence reports from YOTs will be crucial in deciding whether an individual is suitable for a YRO, in particular whether he or she would benefit from some of the treatments and interventions involved.

When a Youth Rehabilitation Order is imposed, an officer in charge of an individual's YRO will be appointed from a YOT or, 16-17 year-olds, the probation service through a private firm may be the responsible officer if the only requirement is electronic monitoring for a curfew. If an attendance centre requirement is the only imposition, the responsible officer will be whoever is in charge of the centre.

#### Breach of a Youth Rehabilitation Order:

The officer in charge will deal with the failure to comply with a Youth Rehabilitation Order under Sch. 2 to the Criminal Justice and Immigration Act 2008. Two warnings may be given and on the third failure within a 12 month warned period the matter should be referred back to court unless the responsible officer/Youth Offending Team manager considers there are exceptional circumstances. If not, they lay in information seeking a summons or warrant for the individual's arrest. A court may fine someone up to £2,500 (under LASPO Act 2012 assuming it is in force-formerly only £250 for a child under 14, £1,000 for someone older); impose another, tougher Youth Rehabilitation Order including imposing an Intensive Supervision and Surveillance) even if the original offence would not have warranted it; and re-sentence on the basis of other sentences that would have been available originally, including imprisonment. The young person or responsible officer may seek a revocation of a YRO if good progress has been shown. They may apply for variation if circumstances require it (e.g. if the individual subject to a residence

order moves home). If the young person re-offends during the period of a YRO, it may be revoked and the individual may be re-sentenced for the original offence as well as the new one.

### Binding parents over:

When a court convicts a juvenile of under 16, it must normally also bind over the parents (but it cannot bind over the local authority where the child is in care). If the juvenile is over 16, it can still choose to do this. This means the parent or guardian promises to exercise proper control over the child to prevent re-offending (Powers of Criminal Courts (Sentencing) Act 2000, s 150). A sum is fixed by the court, which can be forfeited if a further offence is committed. The maximum sum is £1,000, and the period during which the parent is at risk lasts up to three years, or the offender's eighteenth birthday. The court should take into account whether the parents could have had or will have any influence over the juvenile's behaviour in deciding whether to use its power not to bind over.

A parent can refuse to be bound over, but if the court thinks a refusal is unreasonable, it can fine the parents up to £1,000 on top of any fine imposed for the juvenile's offence.

### Deferred sentence:

Under s. 1, a court can defer (i.e. postpone) the decision on sentence for up to six months. It should do so only if some change is imminent-e.g. leaving school and taking up employment-which the court ought to take into account. The offender must consent, and the court can impose conditions with which the offender must comply pending the return to court. Compliance will usually be monitored by a probation officer, though the court can appoint another person. Breach of any conditions can lead to arrest and

return to the court. All going well, however, a day is fixed for the return to court and the court will sentence in the light of the new circumstances-conduct after conviction, including any appropriate reparations that may have been made and compliance with requirements regarding conduct imposed by the court. It will not normally be appropriate to order custody after deferment, if the offender's circumstances are now looking more stable. The court can only order what the court could have ordered at the time of deferment, so if the offender is now 18, the court cannot use adult powers of sentencing.

### Discharge:

This is an option where in all the circumstances (the offence and the offender's past history) no punishment is appropriate. If the offender had been prepared to admit the offence before charge, it might with hindsight have been more appropriate to reprimand or warn the offender. If the court orders an absolute discharge then, apart from showing on the offender's record, it does not count as a conviction. A discharge can be conditional for a period of up to three years. If the offender commits within that period, the court can sentence for the original offence as well as the new offence. A conditional discharge is available only in exceptional circumstances if an offender has already had a Youth Caution in the last two years under LASPO Act 2012.

### Compensation orders:

Any person found guilty of an offence can be ordered to pay compensation to the victim. (This is one reason why a caution is sometimes inappropriate-there must be a conviction for a compensation order. Indeed, a court must be consider making such an order if appropriate, or give its reasons for not doing so (Powers



of Criminal Courts (Sentencing) Act 2000, s. 130(3)). This order can stand alone, without the court making any other order against the offender, or it can accompany any other order made by the court. As with a fine, the juvenile's means are taken into account; and the parents can be ordered to pay the compensation (but not where they were not in control of the juvenile at the time of the offence-for example, the child was in local authority accommodation. Where the offender has limited means, a compensation order should be made before a fine.

#### Parenting order:

If the appropriate conditions apply, a sentencing court can order the parents of a convicted child to attend counselling sessions to receive support via a parenting order. They involve a parenting skills course or weekly counselling. There may be other conditions applied by the court over a period of up to 12 months, for example, that the parent ensures the child is at home during set hours or ensures that the child attends school on time.

#### Sex offender orders-(Crime and Disorder Act 1998, s.2):

These enable the police to apply to a court to restrict the activities of convicted sex offenders. The police can apply at any point after conviction. In that sense it is not a sentencing power.

These orders could be confused with the sex offenders' register, whereby all convicted sex offenders must register with the police who can use the information to monitor their activities and keep relevant agencies informed. By contrast, the sex offender order is not about monitoring - it addresses an identified risk. The idea is to keep an individual sex offender away from an area where he may commit offences. For example, a convicted sex offender who

represents a danger to school children can be ordered to stay away from school gates.

The sex offender order lasts for a minimum of five years and there is no upper time limit. The order specifies activities which the offender must not do. However, it cannot require the person to do anything, such as obtain treatment (though that result might be obtained through an appropriate sentence in the earlier criminal proceedings)

Breach of the order is a criminal offence and can lead to a fine or imprisonment.

## **2) How the Youth Justice system functions:**

Social work practice within the youth justice system in the United Kingdom is complex, challenging and laden with ethical dilemmas. However, it is also one of the areas in which social workers can really engage in significant work with young people in order to effect positive change.

This can involve working with a wide range of service users aged from 10 – 17 (inclusive), as well as working closely with parents and carers from all variety of social and cultural backgrounds. Young people present with many diverse experiences and needs and engage in a whole host of offending behaviour from first-time, trivial criminality to persistent and serious offences.

Social workers in this area have to collaborate closely with a wide group of professionals, including Social Workers who work in multi-agency Youth Offending Teams (YOTs) such as the police, health and education staff. They also liaise with solicitors, judges, magistrates and prison officers.

Youth justice in the UK has been the subject of considerable change over the last 15 years. It seems highly likely that this will continue to be the case as the Coalition government has introduced, and is currently implementing a raft of new legislation in relation to children and criminal justice.

The latest legislative change in England is the 'Legal Aid, Sentencing and Punishment of Offenders Act' 2012 (LASPO), which has reduced and simplified the out of court landscape to provide three types of disposal. That is, community resolutions, youth cautions and youth conditional cautions. It has also made reforms to alternatives to custodial remands, the use of bail, and how to deliver care to

children on remand and looked after children involved in youth justice.

In the United Kingdom a recurrent concern amongst legal and social work practice in youth justice are the ethical dilemmas posed by the tensions between contrasting theories of childhood, youth justice and criminology. That is,

- **Are children born innocent?** (Romantic model of childhood stemming from philosophical ideas of Rousseau). That is, childhood is precious and distinct from adulthood; children should be protected and not corrupted.
- **Are children born with the potential for evil?** (Evangelical model of childhood from religious ideas of Wesley and More). That is, children are born with the 'original sin', thus they need discipline and education to civilise them; they need to be strictly controlled.
- **Welfare approach to young offenders.** That is, children who offend are a product of an adverse family environment. Their delinquency is a manifestation of a deeper problem; treatment and rehabilitation is possible, if disadvantage is alleviated.
- **Justice approach to young offenders.** That is, all people, including young people commit crime due to choice and opportunity. Therefore, young people should be held fully responsible for their actions; any sanctions given are justifiable as deterrents.
- **Criminological theory of positivism.** That is, various factors cause criminality; causes need to be located and risk factors addressed. Individualised treatment is required in order to address the problems that precipitated criminal behaviour.
- **Criminological theory of classicism.** That is, crime is committed out of choice. Humans are rational beings but by nature self-

seeking and hedonistic. The offender knows that their act is wrong, so should take full responsibility for crime and deserves to be punished.

It is clear that the main perspectives of childhood, the dominant theoretical approaches to young offenders, and mainstream criminology, all share characteristics and are mutually supporting. The romantic model of childhood has a lot in common with the welfare approach to youth justice which in turn shares similarities with the school of positivism within criminology.

The evangelical model of childhood is reflected in the justice perspective of youth offending, which is in turn supported by the classical school of criminology.

However, the inability of successive governments in the UK (and indeed public opinion) to develop social policies that have a 'blended approach' continues to cause tensions within youth justice practice.

#### Trends in custodial sanctions:

In England and Wales we lock up more children and young people than almost any other Western Society. NACRO (the largest crime reduction charity in UK), in a policy position paper in 2010 which recommended further reduction to the amount of children and young people being sent to secure units, made the following comments on custodial remands and disposals:

- In England and Wales we incarcerate 4 times more under 18s than France, 10 times more than Spain and 100 times for than Finland. (These are 'per head of population' figures)

- However, during the early months of 2009, the population in 'secure units' fell for the first time since 2000 - this trend has continued and in early 2011, there were approximately 2,100 young people in 'secure units' – at its peak it reached approximately 3, 000. There are several reasons for this which the courts and to some extent our 'coalition government' have now started to acknowledge. That is:
  - Custody is costly but it also has an appalling success rate (75% are reconvicted within one year) and academic evidence by the Prison Reform Trust (2012) suggests that for many young people the use of custody actually increases the risk of reoffending.
  - Reoffending following release from custody is inversely related to age: younger children are more likely to be reconvicted than older teenagers, who in turn are more likely to be reconvicted than adults.
  - A large number of young people who are detained in custodial facilities do not pose a serious risk to the public.
  - Of young people aged 16 – 17 convicted of non-violent offences, 12% are given custodial sentences.
  - Around 40% of the population in secure units for children and young people are classified as vulnerable and one third of children have no educational provision on entering those establishments.

(NACRO, Policy Position Paper, 2010)

### Some examples of youth crime figures in England and Wales:

Youth crime figures peaked in 2007/08 and since that period total offences committed by young people has notably declined, largely as a result of a reduction of first time entrants into the youth justice

system (that is, those receiving their first reprimand, final warning or conviction).

(Youth Justice Statistics, 2007/08, England and Wales, Youth Justice Board).

If we analyse some of the key data published jointly by the Youth Justice Board and the Ministry of Justice (England and Wales) early in 2011, this downward trend is clear. For example,

- There were 198,449 proven offences committed by young people aged 10 – 17 which resulted in court disposals in 2009/10 (for example, simple caution, conditional caution, penalty notice, reprimand (under 18), final warning (under 18)) – this is a decrease of 10% from 2008/09 and 33% from 2006/7. (A disposal is an umbrella term referring both to sentences given by the court and pre-court decisions made by the police. Disposals may be divided into four separate categories of increasing seriousness starting with pre-court disposals then moving into first-tier and community based penalties through to custodial sentences).
- The most common offences resulting in a disposal in 2009/10 were:
  - Theft and handling – 21% of all offences;
  - Violence against the person – 20% of all offences;
  - Criminal damage – 12% of all offences;

In 2009/10 most youth offending in England and Wales was committed by young men.

- 60% of all offences were committed by young men aged between 15 and 17 years. Young males were responsible for 78% of the offences committed by young people.

- There were 155,856 out of court disposals given to young people in 2009/10. This is down from 2006/07.
- These falls followed a period of rapid growth from 2003/04 to 2007/08, when out of court disposals almost trebled.
- This increase was due to the introduction of Penalty Notices for Disorder (PNDs) which coincided with the introduction of a public service agreement target, which took effect in 2002, to increase the total number of offences brought to justice. This target has now been removed.
- Females accounted for 22% of all disposals given to young people in 2009/10. They accounted for 32% of all pre-court disposals given and 17% of all first-tier disposals. (for example, bind overs, discharges, fines and deferred sentences). They accounted for 15% of all community disposals and only 8% of custodial disposals.

(Youth Justice Statistics, 2010/11, England and Wales, Youth Justice Board)

The statistics of young people in the Youth Justice System have continued to reduce in 2011/12. Reductions have been seen in the number entering the system for the first time, as well as reductions in those receiving disposals in and out of court, including those receiving custodial sentences. Since 2008/09 there are 54% fewer younger people coming into the Youth Justice System, 32% fewer younger people (under 18) in custody and 14% fewer re-offences by young people. These figures are based on the average number of re-offences per offender between 2008/09 and 2010/11.



### Arrests and out of court disposals:

In 2010/11 there were 1,360,451 arrests in England and Wales of which 210,660 were of people aged 10 – 17. Thus, 10 – 17 year olds accounted for 15.5% of all arrests but were 10.7% of the population of England and Wales of offending age. (People of offending age are classed as those 10 or older. Office of National Statistics mid-year estimated for 2011)

There were 40,757 reprimands, final warnings and conditional cautions given to young people in England and Wales in 2011/12. This is a decrease of 18% on the 49,407 given in 2010/11, and a decrease of 57% on the 94,836 given in 2001/02.

There were also 5,571 Penalty Notices for Disorder (PNDs) given to 16-17 year olds in 2011/12 and in 2011 there were 375 Anti-Social Behaviour Orders (ASBOs) given to young people. In the last year, the number of PNDs given to young people has gone down by 26% and the number of ASBOs down to 30%.

### Proven offences by young people:

Overall there were 137,335 proven offences by young people in 2011/12, down 22% from 2010/11 and down 47% since 2001/02. In the last year, there has been a notable reduction in offences committed by young people, in particular, criminal damage (down 28%), public order (down 27%), theft and handling (down 23%), and violence against the person offences (down 22%).

### Young people receiving their first reprimand, warning or conviction (first time entrants (FTEs)):

In 2011/12, there were 36,677 entrants (FTEs) to the Youth Justice System. The numbers of first time entrants has fallen by 59% from 2001/02 to 2011/12, and fell 20% in the last year.

Young people receiving a substantive outcome: (a substantive outcome is one where young people have to engage with the Youth Offending Team, this typically excluded reprimands and final warnings)

#### Court disposals given to young people:

In 2011/12 there were 59,335 court disposals (sentences) given for all offences to young people aged 10-17 in England and Wales. The total number of disposals given to young people at the courts has fallen 18% in the last year. The number of custodial sentences fell 6% from 4,182 in 2010/11 to 3,295 in 2011/12. This type of disposal has fallen 48% since 2001/02, when 7,485 custodial sentences were given to young people. The custody rate (this is defined as the proportion of custodial sentences out of all sentences given) was 6.6% in 2011/12. The custody rate has fluctuated between five and eight per cent for the last decade.

#### Young people in custody (under 18):

The average population of young people in custody in 2011/12 (under 18) was 1,963. The average population in custody (under 18) has reduced 4% in the last year, and by 32% since 2008/09. The average custody population including 18 year olds held in the youth secure estate was 2,141.

(The youth secure estate comprises of four sectors: Public Youth Offending Institutions, Private Youth Offending Institutions, Secure Training Centers and Secure Children's homes).

Overall, the average length of time spent in custody decreased by one day, to 77 days in 2011/12, mainly caused by reductions in the sentenced population. For Detention and Training Orders (DTOs), it decreased by four days (from 111 to 107), for remand, it increased by one day (from 41 to 42), and for longer sentences it decreased by 21 days (from 374 to 353).

#### Behaviour management in the youth secure estate:

There were 8,419 incidents of restrictive physical interventions (RPIs) used in the youth secure estate in 2011/12, up 6% from 2008/09 and up 17% per cent since 2010/11. Alongside this, there were 1,725 incidents of self-harm, down 34% on 2008/09, but up 21% on 2010/11. There were 3,372 assaults by young people in custody, down 20% on 2008/09 and down 5% on 2010/11. There were 3,381 occasions where single separation was used in Secure Children's Homes (SCHs), or Secure Training Centres (STCs), down 51% since 2008/09, and down 13% on 2010/11.

#### Serious incidents in the community:

In 2011, there were 20 deaths in the community, where young people under Youth Offending Team supervision died either through murder, suicide or accidental death. (Accidental deaths include those who died in road traffic accidents).

It should be noted that although these people are under supervision of the Youth Offending Team, the supervision is not 24 hours a day and these tragic incidents may happen at home. Of the deaths in the community, two young people were murdered in that period. In 2011, Youth Offending Teams reported that 119 young people under their supervision attempted suicide (the absence of an agreed definition of what constitutes an 'attempted suicide' or 'near-death' means that decisions about which incidents are reported under this heading are subjective). This compares to 167 in 2010 and 113 in 2009. In 2011, there were 25 other incidents reported, where the young person was the victim of an offence. This compares to 21 in 2010 and 15 in 2009.

#### Deaths in custody:

There were three deaths of young people in 2011/12, and there have been 16 deaths in the youth secure estate since 2000/01. The death of a young person in custody is a tragic and rare event.

However, during 2010/11, the Office of the Children's Commissioner in England, led by Sue Berelowitz, the Deputy Children's Commissioner, visited 10 establishments on the secure estate and nine other services working in the community with children and young people at the 'heavy' end of the youth justice system. The research sought the views and opinions of 74 children and young people and more than 90 professionals in the youth justice system – managers and front line and specialist staff. The also reviewed current policy and guidance, particularly that relating to the governance and practice in the secure estate.

This examination and the evidence gathered indicated that, notwithstanding improvements over the last decade, there are still great variations, particularly in custodial institutions, in quality of

treatment, attention to promoting emotional wellbeing and standards of care that would best maximise the chances of rehabilitation and reduced offending by children and young people

#### Re-offending by young people:

The overall re-offending rate for young people was 35.8% in 2010/11, with an average of 2.87 re-offences per re-offender. This is a rise in the rate from 32.8% in 2008/09 and 33.3% in 2009/10. The higher rate of re-offending is against a backdrop of a smaller cohort, down 37% from 139,732 in 2008/09 to 88,357 in 2010/11.

As the overall rate of re-offending has risen in the last few years, the number of young people in the re-offending cohort has gone down, with particular reductions among those with no previous offences and those receiving pre-court disposals. Because of this, those young people coming into the criminal justice system are, on balance, more challenging to work with.

#### Perceptions of youth crime and the Youth Justice System:

Public perceptions from 2011/12 Crime Survey for England and Wales <https://www.gov.uk/government/publications/crime-in-england-and-wales-quarterly-update-to-june-2011> emphasise the importance accorded to

rehabilitation, alongside a desire generally for more stringent treatment of offenders by the police and courts.

Nearly half (48%) of the public surveyed felt that 'rehabilitation through help and support' should not be the main aim of the Youth Justice System.

Around two thirds of people (65%) felt that the police and courts dealt with young offenders too leniently. In 2010/11, there was in

increase from the previous year in the proportion who felt that the treatment was 'about right' (from 26% to 32%), whilst this year the figure remains fairly stable at 31%.

Well over half of respondents (57%) were confident that youth crime and anti-social behaviour is tackled effectively in their local area.

### Understanding the flows through the Youth Justice System:

In 2011/12, there were nearly four million crimes reported to the police in England and Wales. At the time of reporting these crimes, the age of person was often known.

The police in England and Wales made nearly 1.4 million arrests in 2010/11, (the data for 2011/12 is not available at the time of writing this desk research analysis), of these 210,660, around 15%, were of young people aged 10 – 17. Not all young people who come into contact with the police formally enter the Youth Justice System; some will be diverted through schemes such as Triage.

The overarching aim of the Triage schemes is to reduce re-offending by young people. More specific aims and objectives associated with Triage schemes include the following:

- To divert cases of low-level offending away from the formal youth justice system, in order to:
  - avoid the unnecessary criminalisation of young people on the fringes of criminal activity;
  - ensure that formal justice processes are focused on relatively serious offences, and can thus resolve these cases more quickly and effectively; and
  - increase the use of restorative processes to make young offenders take responsibility for their actions and to promote confidence in justice among victims, witnesses

and the wider community.

- To ensure that the needs of young offenders are assessed and identified quickly and that appropriate interventions are put in place to address those needs.
- To extend and improve collaborative decision-making between the police, the Crown Prosecution Service and the Youth Offending Service.

Through collaboration between a dedicated Triage worker and the police a decision is made:

- whether to divert young people who have committed minor offences and are assessed as low risk for re-offending out of the youth justice system;
  - which young people require further assessment and interventions; and
  - when to fast-track those committing more serious offences through the youth justice system.
- <http://www.justice.gov.uk/youth-justice/effective-practice-library/triage>

The number of young people who are diverted from the system at this stage is not known. In some cases, no further action will be taken against a young person. The case will be dropped or they are found not to be guilty at court, which is why arrest figures are higher than those of disposals.

Another system that looks to resolve a young person's behaviour without a formal disposal being given is 'restorative justice', 2012.

Restorative justice provides opportunities for those directly affected by an offence – victim, offender and members of the community – to communicate, and agree how to deal with the offence and its consequences.

The basic principles include:

- putting things right and healing relationships - giving satisfaction to victims and reducing reoffending
- ensuring that those directly affected by crime are involved in the process, and that their wishes are given careful consideration
- setting realistic and achievable objectives that benefit the victim, community and young person
- addressing and being sensitive to cultural and special needs, with an understanding and respect for the diversity of different communities.

Restorative justice approaches are most used in Referral Orders. A Referral Order's primary aim is to prevent young people reoffending/ provide a restorative justice approach within a community context.

<http://www.justice.gov.uk/youth-justice/working-with-victims/restorative-justice>

The principle of restorative justice continues to have an impact on youth justice legislation and practice, as evidenced by the Youth Justice Board's review of current restorative initiatives in 2010.

Young people detained in police custody:

It is worthwhile noting that BBC Radio 4 reported on 26<sup>th</sup> January 2014 that hundreds of children in England and Wales have been held under the Mental Health Act 1983,

<http://www.legislation.gov.uk/ukpga/1983/20/contents> and locked in police cells because officers did not have anywhere else to take them. There were 305 detentions of under-18s in the first 11 months of 2013.

Some were detained for more than 24 hours, according to data released under Freedom of Information laws.



(BBC News, 26<sup>th</sup> January 2014) <http://www.bbc.co.uk/news/uk-25900085>

The Howard League for Penal Reform published a Research Briefing 'Overnight detention of children in police custody 2010/2011', which states that, "a total of 86,034 overnight detentions of children in 2010 and 2011. The number of detentions of children in police custody had declined from 45,318 in 2010 to 40,716 in 2011, this is a reduction of 10%. There has been a successful overall decline in the numbers of children detained overnight; however, there were wide variations in practice in the way police areas count and record children held overnight."

The true number of offences committed by young people that come to the attention of the police or other criminal justice agencies may be higher than is shown by the above statistics.

In 2011/12, there were 137,355 proven offences formally attributed to young people. A proven offence is one where a formal outcome, either in or out of court is given. The number of young people in the Youth Justice System and the number of proven offences associated with them differs for two main reasons:

- 1) A young person may receive a formal outcome for more than one offence at a time (for example, a young person sentenced for burglary may have a number of burglaries taken into consideration at the time of sentencing).
- 2) The same young person may be responsible for more than one offence in a given period (for example, a young person may be cautioned for an offence in April and then receive a referral order for a different offence in September).

There are a number of ways proven offences can be formally resolved either outside or inside the courts;

Out of court disposals: For example, Penalty Notices for Disorder (PND), Anti-Social Behaviour Order (ASBO), Youth Cautions.

Court disposals:

There are also more formal disposals that involve a conviction at court, in 2011/12 there were 77,656 cases where young people were proceeded against in the magistrate's courts. Of these 59,335 were given sentences for their offences. Those who were not sentenced may have been found not guilty or had the case against them dropped. Of those that were sentenced;

- 1) There were 16,292 first tier disposals (for example, bind overs, discharges, fines and deferred sentences);
- 2) A further 39,118 community sentences given to young people, including youth rehabilitation orders
- 3) A small number of custodial sentences (3,925) were given to young people accounting for 6.6% of all sentences given. The average custodial sentence given for indictable offences was 13.1 months. The most common type of custodial sentence given was a Detention and Training Order (DTO), where half the time is typically served in custody and the remainder in the community on license and under Youth Offending Team Supervision.

Use of remand for young people:

Key findings:

- There were 31, 716 remand episodes given by the courts for young people in 2011/12, down 4% on 2010/11. Remand decisions that involved people being bailed (conditional or

unconditional bail) accounted for 83% of all remand decisions.

- There were a further 6% of remand episodes where a young person was remanded in the community, including remand to local authority accommodation.
- Only 11% involved young people being remanded to custody (3,621 remand episodes)
- The average population in custody on remand in 2011/12 was 477 young people, accounting for 24% of the average custodial population, compared to 22% in 2008/09.
- While the overall number of young people in custody has fallen 32% between 2008/09 and 2011/12, the number on remand has only fallen 24%.
- For those young people remanded to custody in 2011.12, 60% were not given a custodial outcome following their remand. Of these, 26% were acquitted and 34% were given other court convictions.

Where the court makes the decision to remand a young person, they have a number of options, including custodial remands, community remands, including remand to local authority accommodation or a range of bail options.

In 2011/12, out of all remand decisions for young people, 83% were community remand, 11% were custodial remands and 6% were community remands with intervention. Most young people in custody on remand were there for serious offences, including 29% for robbery, 26% for violence offences against the person, and 15% for burglary offences. However, 8% of young people remanded to custody were in breach of bail, conditional discharge or a statutory order.

Not all young people placed in custodial remand were subsequently given a custodial sentence. Data from the

Ministry of Justice Court Proceedings Database shows the outcomes for young people remanded into custody:  
<https://www.justice.gov.uk/statistics/courts-and-sentencing/judicial-quarterly>

For those young people given a custodial remand in 2011/12, 60% were not given a custodial outcome following their remand. Of these, 26% were acquitted and 34% were given other court convictions (22% community sentences and 12% other sentences).

### Why has the number of young people in custody been falling?

There are a number of factors that may have contributed to this:

- 1) The number of young people in the Youth Justice System has fallen since 2006/07.
- 2) The Youth Rehabilitation Orders introduced in November 2009, offered more flexibility around the interventions given to young people as part of a community sentence. This may have resulted in young people being diverted from custody.
- 3) The peak in the population seen in 2002/03 may be partly due to the Street Crime initiative, which impacted on street crime and disposals for young people
- 4) Over half (58%) of the average population of young people (under 18) in custody in 2011/12 were serving a Detention and Training Order. A further 24% were held on remand. The remaining 18% were serving long-term sentences
- 5) Most young people held in custody in 2011/12 were there for serious offences including
  - 27% for robbery offences

- 21% for violence against the person offences
- 16% for burglary (domestic and non-domestic) offences
- A further 16% were in custody for breach offences

#### Demographics of young people in custody, 2011/12:

- In 2011/12 around 94% of the young people (under 18) held in the secure estate were male. Most (96%) of the young people (under 18) held in the secure estate were aged 15 – 17 years.
- In 2011/12 around 62% of the young people held in custody were from a White ethnic background. Young people from a Black ethnic background accounted for 16% of young people in custody. This compares to 80% and 8% respectively on the overall Youth Offending Team caseload.
- In 2011/12, 21% of young people from a White ethnic background in custody were held on remand, compared to 30% of young people from a Black ethnic background and 27% from an Asian background.

#### Time in custody for young people (under 18) in custody:

Overall, the average length of time spent in custody decreased by one day, from 78 days in 2010/11 to 77 days in 2011/12. With regards to Detention and Training Orders (DTOs), it decreased by four days (from 111 to 107), for remand it increased by one day (from 41 to 42) and for longer sentences it decreased by 21 days (from 374 to 353).

(Youth Justice Statistics, 2011/12, England and Wales, Youth Justice Board/Ministry of Justice)

### Risk factors in youth offending:

The Youth Justice Board in England and Wales (2005) has highlighted four risk factors as being the most influential on youth offending:

- Family, for example, inadequate, harsh or inconsistent parenting.
- School, for example, low achievement, disaffection, truancy or exclusion.
- Community, for example, residence in areas of low community cohesion, crime hot spots or easy access to drugs.
- Personal, for example, being male, mixing with offending peers, poor physical or mental health or misuse of drugs or alcohol.

These vulnerability factors are at the centre of risk assessments undertaken by Youth Offending Teams across England and Wales. The Youth Justice Board has revised the risk assessment tool, 'Asset', which is used to 'score' a young person's risk of further offending using the 'scaled approach' which was introduced in November 2009.

Some academics and practitioners have been highly critical of this move, when comparing the original 'Asset' tool, because the revised 'Asset' can 'up tariff' a young person for welfare issues, its focus is on individual rather than structural factors such as government policy, unemployment and poverty. Some people who are predicted as high risk do not re-offend and vice versa. Calculating the risk of a young person committing further offences cannot be reduced to a mathematical equation because young people often do not act predictably, and their lives are often varied and complex.

In considering the UK youth justice system in relation to international legislation and conventions, there are international human rights laws which should offer protections for young offenders, from unlawful justice practices, if provisions are adhered to at a domestic level. The most significant examples include:

- United Nations Convention on the Rights of the Child (1989).
- United Nations Rules for the Administration of Juvenile Justice (1985) (Beijing rules).
- 
- United Nations for the Protection of Juveniles Deprived of their Liberty (1990).
- United Nations Guidelines for the Prevention of Juvenile Delinquency (1990) (Riyadah guidelines).

However, as previously state, one of the most striking features in international juvenile justice is that the UK has one of the lowest ages of criminal responsibility, age 10.

For example, in Belgium and Luxembourg the age of criminal responsibility is 18.

In March 2010, England's children commissioner, Maggie Atkinson, called for the age of responsibility to be raised. She argued that most children under the age of 12 did not fully understand their action. However, the Ministry of Justice said those aged 10 and over knew the difference between bad behaviour and serious wrong doing, and that the age should not be raised. Therefore, there is still a marked difference in comparison with Europe, where the average age is 14 or 15 years.

### 3) Remand and Intensive fostering:

Before answering this question, it is useful to briefly outline the different types of foster care which exist in the United Kingdom. That is,

- **Emergency** - where children need somewhere safe to stay for a few nights.

- **Short-term** - where carers look after children for a few weeks or months, while plans are made for the child's future.

- **Short-breaks** - where disabled children or children with special needs or behavioural difficulties enjoy a short stay on a pre-planned, regular basis with a new family, and their parents or usual foster carers have a short break for themselves.

- **Remand fostering** - where young people in England or Wales are "remanded" by the court to the care of a specially trained foster carer. (Scotland does not use remand fostering as young people tend to attend a children's hearing rather than go to court. However, the children's hearing might send a young person to a 'secure unit' and there are now some schemes in Scotland looking at developing fostering as an alternative to secure accommodation).

- **Long-term and permanent** - not all children who cannot return to their own families want to be adopted, especially older children or those who continue to have regular contact with relatives. These children live with long-term foster carers until they reach adulthood and are ready to live independently.



- **"Family and friends" or "kinship" fostering** - where children who are looked after by a local authority are cared for by people they already know, a 'connected person'. This can be very beneficial for children, and is called "family and friends" or "kinship" fostering. If they are not looked after by the local authority, children can live with their aunts, uncles, brothers, sisters or grandparents without outside involvement.
- **Foster to adopt** – Temporary approval to foster a child is given to prospective adopters, so that they can look after a child on whom there is a plan for adoption, whilst care and placement order proceedings are completed in court.
- **Private fostering** - where the parents make an arrangement for the child to stay with someone else who is not a close relative and has no parental responsibilities, and the child stays with that person (the private foster carer) for more than 27 days. Although, this is a private arrangement, there are special rules about how the child is looked after. The local authority must be told about the arrangements and visit to check on the child's welfare.

Children involved in the criminal justice system may be provided with a foster care placement whilst they are on remand (remand fostering), as part of a Supervision Order or Youth Rehabilitation Order (intensive fostering) or post-custody (for example, while on licence from a Detention and Training order).

There have been limited academic research studies or evaluations of the use of foster care in any of these situations, but the research that has been conducted (for example, Lipscombe, J., 2006, Halsey, K.,

2010, Biehal, N. *et al* 2012, Youth Justice Board, 2012) generally demonstrates favourable results for the children and young people placed, particularly when compared with custodial, secure and residential placements

### Intensive Fostering:

Intensive fostering was announced as part of the Anti-social Behaviour Act 2003.

<http://www.legislation.gov.uk/ukpga/2003/38/contents>

It made provision to include foster care as a requirement of a Supervision Order. It is intended to be a specialised, highly-intensive response for a serious and persistent young offender facing custody, whose home environment is directly contributing to their offending behaviour, and where fostering would provide a clear benefit to that young person.

Intensive fostering is now one of the requirements that can be added to a Youth Rehabilitation Order which was introduced by the Criminal Justice and Immigration Act 2008.

Under the Act, the threshold for a Youth Rehabilitation Order (YRO) with Intensive Fostering provisions is that the offence/s must require being sent to prison, and it is so serious that if a YRO with Intensive Fostering was not available, then a sentence of custody would be appropriate. In addition, for under 15-year-olds the young person must be a persistent offender.

A Youth Rehabilitation Order with an Intensive Fostering requirement must be for a minimum of six months. Intensive fostering is intended to be an alternative to custody for children aged 12–18, and is a highly structured foster care programme based on a the 'Multidimensional Treatment Foster Care (MTFC) programme developed by the Oregon Social Learning Centre in the USA.

This programme has been used successfully with offenders in Oregon since the 1980s , (Chamberlain, P., 1990, Chamberlain, P, and Reid, J., 1998), and has been piloted by the Department for Education as multidimensional treatment foster care in England (MTFCE), 2010.

Intensive fostering was piloted from 2005/6 to 2008/9 in three areas (Staffordshire, Hampshire and London) with very limited numbers of placements being available during the course of the pilot study. The pilot scheme was funded by the Youth Justice Board and evaluated by a research team from the University of York; the evaluation and its recommendations are discussed below:

Initial placements were intended to last for 12 months, including a period of preparation for moving-on/returning home, but they may be shorter under the requirements of the Youth Rehabilitation Order (although the minimum length of the order, and therefore the foster placement, must be six months). In practice, the placements ranged from one week to nearly 17 months, with a mean length of 260 days; there was a disruption rate of 35 per cent, similar to that found in other studies of adolescent foster placements (Biehal, N., *et al*, 2012; Farmer, E., *et al*, 2004).

The foster care environment is very restrictive, particularly in the first three weeks. However, as “points” are earned for good behaviour, the child “graduates” to the next level and gains privileges accordingly.

A support team is employed to work with:

- The child or the young person, in developing their social skills and changing their behaviours and attitudes.
- The birth family, by offering a range of support, including family therapy, counselling and parenting skills.
- The foster carer, by providing daily contact with a supervisor to discuss the young person’s behaviour patterns and ensure that

any potential problems are identified before they become critical.

Each child has a programme supervisor, a skills trainer and an individual therapist, while their birth family has a family therapist. No other professionals are involved - even if the child has drug, alcohol or mental health problems.

All intensive fostering carers are assessed, registered and trained by the local authority and require specialised in-depth training in the 'MTFC' model as well as knowledge of offending behaviour, the legal framework and the work of youth offending teams. Carers should also receive training on understanding child/adolescent development, methods of communicating with young people, dealing with challenging behaviour, risk management and drug misuse.

Intensive fostering aims to rehabilitate young people more effectively than a custodial sentence by:

- Providing the young person with close supervision.
- Providing the young person with fair and consistent limits and consequences around behaviour and discipline – and consequences for breaking these.
- Providing a supportive relationship with the young person.
- Minimising association with peers who may be a bad influence.
- Working with the offender's family around discipline, behaviour and how to encourage the young person to more positive behaviour.

The foster carers involved in each of the pilot study sites meet as a group with the programme supervisor weekly, and the meeting is videoed and emailed to the Oregon Social Learning Centre for advice and support.

The evaluation of intensive fostering (Biehal, N., *et al*, 2012; Youth Justice Board, 2012) found that, in the year after entry to the fostering placement, young people were significantly less likely to be reconvicted than those sentenced to short periods of custody and those sentenced to a Supervision Order with an Intensive Supervision and Surveillance Programme (ISSP).

Similarly to Lipscombe's (2003, 2006, 2007) research on 'Remand fostering', it was concluded that this reduction in reconviction rates was largely due to the increase in supervision, limited unstructured or unsupervised time, diversion from negative peer influences, increased engagement in education, training and leisure activities.

However, as with remand fostering and MTFCE, it was difficult for young people to maintain the positive changes in their behaviour after the intensive fostering placement due to a lack of support and inappropriate follow-on accommodation. The young people tended to return home after the placement, re-engaging with their former anti-social peers, having their education disrupted again (often not being able to remain at the schools they attended during the foster placement due to the change in location and not being accepted at alternative schools close to their homes), and not being able to maintain positive leisure activities. Birth parents were also reluctant to engage with the birth family therapists, which meant that, too frequently, the young people returned to disharmonious family situations and poor parenting.

Intensive fostering is dependent on adequate resourcing, recruiting the right families, and support from social services, particularly in finding appropriate move-on accommodation and support. The Youth Justice Board (2012) evaluation found that recurrent staffing difficulties within the pilot programmes compromised the aftercare support provided by the teams, which contributed to the likelihood of the young people re-offending.

There is also a concern that courts will use intensive fostering in addition to custody instead of as an alternative to it, as happened with the Intensive Supervision and Surveillance Programme. Another problem envisaged with any national rollout of the pilot schemes is the potential difficulty in recruiting suitable foster carers, especially given the national shortage of foster carers.

However, the Youth Justice Board recommended (YJB), after the evaluation of the pilot programmes, that the Intensive Fostering programme should be continued as the outcomes for young people suggest that fostering may be a better alternative to custody. The YJB also recommended that aftercare support should be improved, access to education, during and after placement, should be enhanced and non-compliance with intensive fostering should be reviewed to limit the number of young people being “up-tariffed” due to breach of sentence.

#### Fusion Fostering:

A variation of intensive fostering, known as ‘Fusion Fostering’, was briefly trialled as a pilot project supported by the Local Government Association and the Howard League for Penal Reform, as part of the evaluation of the ‘Children in Trouble Programme’ (Halsey, K., 2010, Local Government Association & Children Services Research Programme).

The aim was to provide a similar, but shorter-term foster placement for children facing a short period of custody (four to six months); again, the project was based on the Oregon MTFC model. There were initial reservations amongst Youth Offending Team staff about the value of a short-term placement, (Lipscombe., J., 2006) because young people were also reluctant to accept a foster placement as an alternative to a custodial sentence.

Although three young people were placed (with varying levels of "success") a lack of funding meant that the scheme did not develop as anticipated and this project is no longer operational.

The evaluation of multidimensional foster care in England (MTFCE) found that, whilst MTFC had no discernible advantages over the "usual alternatives" for fostered children and young people as a whole, young people who had been involved in offending behaviour did benefit from the approach (Biehal, N., *et al*, 2012).

The evaluation concluded that, if MTFC is to continue in England, it should be focused on young people involved in offending and/or anti-social behaviour, giving further support to the continuation of intensive fostering within the youth justice system.

There are other challenges to Intensive Fostering programmes. For example, the differences in the UK context compared with the USA, delivering MTFC is expensive, so cases are likely to be complex and with the most challenging young people, there can be referral and matching issues and adhering to the fidelity of the Oregon model needs considerable caution and supervision.

However, some local authorities in England are continuing to use Intensive Fostering Programmes, for example, Manchester, Wessex and Staffordshire. Further research is needed in the UK to examine further the degree of effectiveness that these programmes can provide to young people involved in youth justice.

### Remand fostering:

Until the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act, 2012, remand foster-care in the UK was an essential element of Youth Offending Teams' remand

management strategies, with foster-carers providing placements for children and young people awaiting trial by Crown Courts or sentence by Youth Courts.

Remand foster care provides foster placements for children and young people, aged 10-16, who are remanded to local authority accommodation, or those aged 17 bailed to reside as directed by magistrates, whilst awaiting trial or sentence for alleged criminal behaviour.

Placements tend to be short term, lasting on average only seven or eight weeks, yet can be hugely influential for the child or young person, and can have a lasting impact on their offending behaviour, attitudes, education and/or employment and family relationships. Some placements may last considerably longer (in some instances six months or more), particularly if the young person is being tried in the crown court or alongside an adult.

The use of foster placements for children remanded to local authority secure accommodation increased from the 1990s until recently, and is an important part of youth offending services' remand management strategies in most areas of England and, albeit to a lesser degree, Wales. Placements for those on remand are often part of local authority's general foster care pool, although some authorities and youth offending teams have arrangements for specialist foster care schemes working specifically with children on remand; these schemes may be managed by Youth Offending Teams, Local Authority Children's Services, Independent Fostering Agencies or charitable organisations.

However, the Prison Reform Trust (Gibbs, P., and Hickson, S., 2009), has reported anecdotal evidence of a decline in the use of specialist remand fostering. Some areas have found that demand and supply are not always synchronised, so that at some times placements



remained unfilled, whilst at other times demand outstripped supply. The expense of maintaining empty placements can make specialist remand fostering schemes appear too costly to be an effective use of resources. However, the success of remand fostering placements for many children suggests that a wider perspective, not just based on cost, but on the benefits to young people, should be adopted.

The effectiveness of remand fostering builds on the premise that adults who take a supportive interest, closely supervise, positively reinforce and use consistent sanctions can exert a positive and lasting influence over the behaviour of young people. Carers' intensive contact with a child gives them a unique opportunity to engage with the child but the carers must be recruited, assessed, approved, trained and supported by both the Youth Offending Team and local authority Children's Services.

Carers should have training in more traditional areas of foster care, such as child and adolescent development, and in aspects of youth justice and the role that carers will play within the penal system. Carers can be role models and advocates, encouraging a child's emotional and behavioural development, and can play a key role in multi-agency preventive work, provide support with education, training or employment, and work with the birth family.

Research (Lipscombe, J., 2003, 2006, 2007) has shown that remand foster care can be effective in preventing offending during the remand period, when compared with placements in local authority residential units. The majority of young people appreciated the individual attention, and the chance to "sort themselves out" away from negative pressures.

Although tempered by a lack of accommodation and support after the placement (which is also problematic for custodial placements, intensive fostering and multidimensional treatment foster care), the benefits of remand foster care can continue beyond the remand

period itself, with a third of the research sample having avoided crime for several months after the placement, and more than half saying that the experience had helped them change for the better.

Advice should be given to Youth Offending Teams (YOTs) and the judiciary about who would benefit from foster care. For example, although not prohibitive, there may be particular difficulties in finding placements for children who are accused of violent or sexual offences.

Children charged with serious offences, including attempted murder, arson and indecent assault have all been successfully placed in remand foster care, as have those facing less serious charges. Although specialist schemes are not a cheap alternative, many children remanded in custody have not been considered for a foster placement, yet it is vital for the safety and well-being of children on remand that it is considered in every case.

Careful management by youth justice professionals of the conflict between care and control can enable the effective use of remand foster-care. It is essential that remand foster care continues to be researched, debated and explored, so that some of its challenges can be overcome, and it can continue to achieve better outcomes for children and young people. There have been few studies of foster-care for young people on remand, and little is currently known about the process of looking after young people on remand or about the skills or needs of the carers who foster them.

#### Post-custody fostering:

Post-custody fostering may be provided for young people who are completing the second half of a Detention and Training Order, which is served in the community under supervision. Such foster care

placements may be provided as part of local authority's general foster care pool, although some authorities and Youth Offending Teams have arrangements for specialist foster care schemes working specifically with children on release from custody; these schemes may be managed by youth offending services, children's services, or independent fostering agencies.

Much less has been published about post-custody fostering, in terms of research, guidance and legislation, than either remand fostering or intensive foster care.

### Role and duties of social worker in intensive, remand and post-custody fostering:

The role of the social worker varies depending on whether the child being fostered is subject to remand, intensive or post-custody fostering, and whether the foster care placement is being provided by social services, a youth offending team, or an independent fostering agency.

The role of the social worker during intensive fostering placements is extremely limited, as the programme support team is structured in such a way as to provide for all of the child and their family's needs.

The role of the social worker in remand fostering and post-custody fostering placements provided by social services will be either to support the young person placed or to support the foster carers (as with mainstream and other specialist foster placements). If the foster placement is provided by an independent fostering agency, the role of the social worker is typically to support the young person placed, as support for the foster carer will be provided by the independent agency.

It is important that the social worker enables the young person to raise any issues or complaints (whether formal or informal) about

his/her care, as they may feel unable to talk to their foster carer or Youth Offending Team worker for fear of jeopardising the placement and/or affecting the outcome of their trial or the completion of their sentence.

The social worker should ensure that all looked-after children assessments, plans and reviews are conducted in line with statutory requirements. The social worker also needs to liaise closely with the Youth Offending Team in order to meet the needs of the child with regards to his/her family relationships, education, substance misuse counselling, mental health support and so forth, during the placement.

A crucial element of the social worker's role is to co-ordinate and organise suitable move-on accommodation and support for the child or young person when the placement ends.

#### User perspective:

As yet, there is little documented evidence on user perspectives of post-custody fostering. More is known about the views of those involved in remand fostering, (including Youth Court Magistrates, who decide whether to order a remand to local authority accommodation, namely with remand foster carers) and intensive fostering.

#### Magistrates:

Magistrates play a crucial role in remand fostering in that they decide whether or not to order a remand to local authority accommodation, as opposed to granting bail or ordering a secure or custodial remand. However, research shows that many magistrates are unaware of remand foster care schemes that may exist in their areas, how to access them, or what the potential benefits are to the young people placed. (Staines, J., 2008)

Magistrates clearly have a duty to consider the protection of the public when making remand decisions and need to be assured that remand foster care can provide a safe environment for a young person, whilst ensuring that they attend trial, do not commit offences whilst on bail or interfere with witnesses.

Of the magistrates interviewed by Lipscombe, J., (2006), those who were aware of the local remand fostering scheme had positive views of it overall. They recognised that the additional support offered by dedicated foster carers to the children and young people placed could make a significant difference during the remand period and could impact upon the sentence the child or young person ultimately received.

Key issues for the magistrates were the lack of available foster care placements, the perceived rate of placement breakdown, and the lack of appropriate accommodation and support once the remand placement had ended.

#### Foster carers:

Research (Lipscombe, J., 2007) indicates that remand foster carers are often motivated to work specifically with children and young people involved in the criminal justice system, as opposed to providing mainstream or other specialist foster care placements. Particular difficulties for foster carers included being expected to provide a child with a placement at very short notice (often only a few hours) with limited information about the child, their offending behaviour or their family situation; helping the young person to negotiate family relationships and manage contact with family members; accessing appropriate education or employment opportunities for the child or young person; and accessing psychological, psychiatric or other mental health support services for the placed young person.

Problems in accessing services are exacerbated by the relatively short timeframe for the majority of remand placements: often the assessment processes and procedures cannot be accessed during the placement, yet the child or young person clearly demonstrates a need for additional support.

Foster carers are aware of the dire shortage of appropriate move-on support and accommodation for the young people and can become demoralised when they see the achievements made by the young person being undermined when the placement ends and support is not forthcoming.

The foster carers employed by the intensive fostering pilot programmes generally felt they had received sufficient support from the Intensive Fostering team, although the inadequacies in respite provision (due partly to staffing difficulties and a lack of respite carers) could lead to dissatisfaction (Youth Justice Board, 2012).

#### Children and young people:

The majority of children and young people interviewed by Lipscombe J. (2006) could see significant benefits in being placed with remand foster carers, both in the short-term and the longer-term. They acknowledged the negative effects that custodial and secure remands could have on their attitudes and offending behaviour, and the positive influence that foster carers could have in helping them to address the difficulties in their lives.

As with the magistrates and foster carers, the children and young people were only too aware of the lack of suitable accommodation and support for them after the placement ended and some admitted having “slipped back into their old ways” because they felt unsupported or, for example, became homeless or vulnerably housed after the placement.

However, even the children and young people who had been involved in further offending or antisocial behaviour could see that they had made considerable achievements during the placements, and thought that they would be able to draw on the positive experiences of foster care in their future lives.

An evaluation of the short-lived pilot of Fusion Fostering (Halsey, K. 2010) found that some young people declined a foster placement, preferring a custodial sentence. This may be due to the "street cred" of a custodial sentence or due to the belief that a foster placement may actually be harder than going to prison, because of the rigid regimes within intensive fostering placements and the difficulties of adjusting to living with a new family.

Conversely, the evaluation of the national intensive fostering pilot programmes (Youth Justice Board, 2012) found that only two of the young people thought that custody would be preferable to foster care; most took a relatively pragmatic approach to their placements and the system of points and levels, particularly if they had previously spent time in an institution.

#### Parents:

The evaluation of the intensive fostering pilot programmes (YJB, 2012) aimed to interview parents about their involvement in the programme, but found it difficult to recruit parents to the research. Those who were interviewed had mixed views about the birth family therapy provided, some believing it was little more than a matter of liaison and others being reluctant to engage with work on parenting.

Working therapeutically with parents seemed to be one of the most difficult aspects of the programme to implement. Parents were also

dissatisfied by the lack of follow-up support for themselves and their child, once the placement ended (Biehal N. et al, 2012).

### Organisations and service providers:

#### [Action for Children](#)

Action for Children (formerly known as NCH) is a leading provider of family and community centres, children's services in rural areas, services for disabled children and their families, and services for young people leaving care as well as providing remand, intensive and post-custody foster care placements.

#### [Barnardo's](#)

Charity and provider of foster care and adoption services.

#### [British Association for Adoption and Fostering](#)

BAAF supports, advises and campaigns for better outcomes for children in foster and adoptive care across the UK.

#### [Catch 22](#)

Catch22 is a national charity that works with young people who find themselves in difficult situations, such as being involved in the criminal justice system, leaving care, becoming homeless or being excluded from school. Catch22 was formed by the merging of Crime Concern and Rainer in 2008.

#### [Fostering Network](#)

The Fostering Network provides information, advice, training and support for those involved with foster care in the UK.

#### [Howard League for Penal Reform](#)

The Howard League is a penal reform charity that works for a safer



society where fewer people are victims of crime. In particular, the Howard League campaigns for reforms in the youth justice system.

### [NACRO](#)

Nacro, a crime reduction charity, aims to make society safer by finding practical solutions to reducing crime, including working with young people involved in the criminal justice system.

### [Projects:](#)

These projects have been chosen as a representative sample of projects engaged in working in this field, but the list is not exhaustive.

### [Action for Children](#)

Action for Children runs two of the intensive fostering pilot studies: Wessex Community Placement Project in Hampshire, and Broad Options in London. The Wessex Community project also provides remand fostering and post-custody foster placements.

### [Barnardo's Albion Court](#)

Barnardos runs a remand fostering service, in partnership with Warwickshire County Council.

### [Staffordshire Youth Offending Service / Care4Child Staffordshire County Council](#)

Staffordshire Youth Offending runs one of the intensive fostering pilot studies, through the three Youth Offending Teams operational in the county and Care4Child (Staffordshire Fostering and Adoption Services).

### [Multidimensional Treatment Foster Care in England](#)

MTFCE is a pilot project, funded by the Department for Education / Department for Children, Schools and Families since 2002. As with Intensive Fostering, MTFCE is based on the Oregon MTFC model, and

provides foster placements for children and young people with high levels needs who have experienced the disruption of multiple care placements. There are three separate MTFCE programmes, for adolescents (aged 11-16), children (aged 7-11) and a prevention programme for young children (aged 3-6). The evaluation of the pilot was called the Care Placement Evaluation (CaPE) and was conducted jointly by the Universities of Manchester and York; The evaluation was completed in July 2010. It was published by Biehal N., *et al*, 2012.

### Journals:

#### [Adoption and Fostering](#)

##### [BAAF](#)

Quarterly journal covering practice and research perspectives on legal, policy and theory developments in adoption and fostering.

#### [British Journal of Social Work](#)

##### [BASW](#)

The journal covers every aspect of social work, with papers reporting research, discussing practice, and examining principles and theories. It is read by social work educators, researchers, practitioners and managers who wish to keep up to date with theoretical and empirical developments in the field.

#### [Child and Adolescent Social Work](#)

##### [Springer](#)

This journal focuses on clinical social work practice with children, adolescents, and their families. The coverage addresses current issues in the field of social work drawn from theory, direct practice, research, and social policy.

#### [Child and Family Social Work](#)

##### [Blackwell](#)

This journal provides a forum where researchers, practitioners,

policy-makers and managers in the field of child and family social work exchange knowledge, increase understanding and develop notions of good practice.

### [Children and Society](#)

#### [Blackwell](#)

Published on behalf of the National Children's Bureau, this interdisciplinary journal publishes research and debate on all aspects of childhood and policies and services for children and young people.

### [Howard Journal of Criminal Justice](#)

#### [Blackwell](#)

The journal provides in-depth academic analysis of contemporary criminal justice issues.

### [Youth Justice](#)

#### [Sage](#)

Quarterly, international peer-reviewed journal that engages with the analysis of juvenile/youth justice systems, law, policy and practice and comprises of articles that are theoretically informed and/or grounded in the latest empirical research.

#### **4) Foster care systems and foster care services:**

- a) What is the role of foster care in the UK? What do foster carers do?

Fostering is a way of providing a family life for children who cannot live with their own parents. It can be a very temporary arrangement, one which lasts for several months or years, or for large parts of their childhood. Some children enter and leave foster care several times over a year. This makes it hard to know exactly how many children and young people are fostered every year in the UK but it is estimated that it is around 50,000.

There are different people caring for children and young people. Some choose it because they enjoyed bringing up their own family and feel they still have lots to offer; some feel they have a wealth of professional or personal experience they can draw upon; and some say that they simply love having children in their lives.

In the past, fostering was often seen as a way of putting a roof over a child's head, and that giving a child "love" was all that was needed. But today it is recognised that the important role of a foster carer is to help children cope with difficult and painful experiences, regain their lost confidence, and prepare for the future. Therefore, fostering agencies expect foster carers to work very closely with social workers, children's birth parents, and other professionals, in order to carry out an agreed plan for each child. Some foster carers choose to work as paid professionals whilst others retain the status of volunteers. There are also many relatives and friends of children in the UK who are approved as foster carers. All carers receive a payment to cover the costs of having a child in their home.

b) Is foster care enshrined in national law?

Children who need fostering are in the care of local authorities which use their own fostering team or a voluntary or a independent agency to find foster carers. The way that all foster agencies operate is governed by law, guidance and regulations.

The main piece of legislation governing fostering in England and Wales is the Children Act 1989, and in Scotland it is the Children (Scotland) Act 1995. In England and Wales there are also Fostering Services Regulations (2011 and 2013), National Minimum Standards and Statutory Fostering Guidance, (2011); in Scotland there are National Care Standards for Foster Care and Family Placement Services (2005)

In England and Wales some children needing foster placements will be looked after by their local authority under a court order made under the Children Act 1989. (Please see in appendices the 'Public Law Outline', England, flowchart.

A Care Order allows the local authority to make decisions affecting the child and their child's future, even if the parents are not in agreement with this (although it is important to try and get the parents' agreement, wherever possible).

In Scotland, Children's Hearings make supervision requirements for children, where there are concerns of child protection issues. Supervision requirements may have conditions attached to them, for example, that the child lives with foster carers.

Parents can also ask that their children be looked after, because of problems in the family or because the parent is unwell and has no one else to care for the child. This is a voluntary agreement – often referred to as "accommodation". This is covered by the Children Act

1989 (England and Wales) and the Children (Scotland) Act 1995. Parents can take their children home whenever they wish – although wherever possible, it is good to plan for the child to return home. In Scotland, a parent has to give 14 days' notice of their intention to do this, if the child has been accommodated for more than six months.

c) What information is available on the size and demography of the foster care sector, i.e. numbers of approved fostering households and numbers of placements?

There were a total of 42,951 fostering households, as at 31 March 2013. This was around a 5% increase from last year's figure. Of these two thirds were registered with LAs and one third were registered with IFS.

On 31 March 2013, there were 82,393 approved foster places, compared to 75,634 the previous year; a rise of nine per cent. There were 76,563 foster care places, excluding those for short-breaks. This was about a 16% increase from the previous year (66,180).

At the same point in time, there were 5,830 short break places. This was a substantial decrease (38%) from the number of short break places in 2011-12, at 9,454. While the local authority numbers have fallen from 4,362 to 3,628, or 17%, the Independent Fostering Services numbers have fallen from 5,092 to 2,202, or 57%.

<http://www.ofsted.gov.uk/resources/fostering-quality-assurance-and-data-forms-2012-13-first-statistical-release>

There are similar figures available for local authorities in Wales

Local Authority	Number of approved foster parents on the local authority register at 31 March	Number of places specified in respect of these approvals at 31 March
Wales	2,553	4,407

Placements:

<https://www.gov.uk/government/publications/children-looked-after-in-england-including-adoption>

Of children looked after at 31 March 2013, 50,900 were cared for in a foster placement. The number of children placed in foster care has increased by 16% since 2009, a higher rise than the rise in overall numbers of looked after children. This is reflected in the percentage of children looked after who are placed in foster care, this has increased each year since 2009. The percentage of looked after children cared for in foster placements was 72% in 2009, in 2013 it has increased to 75%

### **Foster Care Placements (2012/13)**

England	50,900
Northern Ireland	2,112
Scotland	5,279
Wales	4,440
<b>Total</b>	<b>62,731</b>

d) What are the rates of foster care placement breakdown?

Between 1 April 2012 and 31 March 2013, there were 4,328 unplanned endings of placements; 4,292 (5%) children were subject of these unplanned endings. This meant that some children had more than one unplanned ending during the year.

e) Who offers the foster care service?

Many fostering agencies are based in local authority children's services departments in England and Wales, and in social work departments in Scotland. They usually want to place children close to their families, school and communities. Local authorities hold responsibility for all looked after children in their care, and they will consider foster families they have recruited first as placements for these children. They will sub-contract to independent fostering providers (IFPs) to recruit families for children they have found hard to place.

Most Independent Fostering Providers have developed in the last 25 years. Some are run on a profit making basis, others will have



charitable status. They may recruit over a wide area and will be less tied to local authority boundaries.

Voluntary agencies are a type of independent fostering provider. They include large children's charities and other organisations, many of which will have charitable status. Some of them, like Barnardo's and Action for Children have been involved in fostering for over 100 years.

f) Who can be a foster care parent in the UK?

Fostering agencies look for people who can provide a safe, warm, secure and caring environment for children and young people who are separated from their own family. They recruit a wide range of people, single, married, lesbian, gay, because every child is different and children of all ages need foster carers. They also need people from different walks of life, from different cultures and communities, who can reflect and understand a child's heritage, ethnicity, language and religion.

g) What is the process for granting approval to foster carers?

Fostering service providers often recruit new carers through publicity campaigns or newspaper or radio advertisements. They may also have information stands in public places.

People who want to become foster carers need to go through thorough preparation and assessment.

- They attend groups where they learn about the needs of children coming into foster care.
- Alongside this, they receive visits from a social worker.
- The social worker will then prepare a report that is presented to an independent fostering panel, which recommends whether this person/family can become foster carers.

- Training does not stop when a person becomes a foster carer. All carers have an annual review and any training that's needed to ensure they are suitable to continue fostering.
- Training is linked to the training and development standards for foster carers set out by the Training, Support and Development Standards (TSDS), 2012, which have to be met by the end of first year of fostering.
- There are slightly different expectations for family and friends carers and short break carers.
- Foster carers are supported to continue to attend training following approval and they reviewed annually.

h) What are the leading research groups/universities in foster care research in the UK?

- British Association for Adoption and Fostering  
[www.baaf.org.uk](http://www.baaf.org.uk)
- The Fostering Network  
[www.fostering.net](http://www.fostering.net)
- Rees Centre for Research in Fostering and Education  
[www.education.ox.ac.uk/research/rees-centre](http://www.education.ox.ac.uk/research/rees-centre)
- Fostering Information Exchange – Knowledge Hub
- <https://knowledgehub.local.gov.uk/web/fosteringinformationexchange>
- International Foster Care Organisation  
<http://www.ifco.info>

i) What are the biggest challenges for foster care placements in the UK?

In the 21<sup>st</sup> century, the voices of fostered children have begun to be heard: the first step in creating a service that properly places the child's views at the centre. In summary of 'Fostering Now' (Sinclair, 2005), Berridge (2005, p.6) notes that,

“the studies reveal that children want their views to be taken seriously; they want a normal family life without conflict between their birth family and foster families; they want the same opportunities that other children have; they do not want to be made to feel uncomfortable by being singled out, such as at school”.

Being Fostered (Morgan, 2005) was the result of a national survey that included the views of 410 children and young people in foster care. Over a thousand were sent the questionnaire and the response rate was 37%. The youngest was 4 years old and the oldest was 18 years. The average age was 13, so children under 10, as the report acknowledges, are less well represented.

However, the numbers of replies made this one of the largest polls of what fostered children think. The findings are of great interest but also they are a challenge to fostering services. They provide an authentic child's voice that remarkably echoes messages that are emerging from contemporary fostering research. The report's 'top findings' are:

- A third of foster children said they were not told enough about their current foster family before they went to live there. Children said they wanted much more information about their future carers (including, for some, information about their race and religion). They also wanted information about other children who would be living in the foster home

- Two thirds of foster children had had no choice in the decision of which foster home they were placed in
- Over a quarter of the foster children said they were not asked about what their care plan should say. Over a quarter did not know what their care plan said.
- The ‘best things about being fostered’ were ‘the care and support you received, the opportunities it gave you, liking your foster family, and living in a family rather than another sort of placement’ (p.8)
- The ‘worst things about being fostered’ were ‘missing your birth family and past friends, the rules and punishments in your foster home, and feeling you are the odd one out because you are in care’ (p. 8). A third of children said ‘nothing’ is the worst thing about being fostered.

The report notes that ‘the most usual worry for foster children about the future was about what sort of support they would be getting when they left care’ (p. 9). It is a telling remark that reminds us that as young people in foster care grow up, making plans for when they are ‘discharged’ – with all this term’s connotations of the state being relieved of an obligation – remains a huge priority

The suggestions by Berridge (2005) in his summary of ‘Fostering Now’ (2005) continue to be the key messages for fostering providers and practitioners in 2014:

- **Normality:** fostering should be as ‘normal’ as possible. For example, arriving at school in a taxi could be a source of embarrassment
- **Family Care:** to feel that children belong in the foster home and that they are treated the same as other children: “They valued treats, opportunities for their hobbies and, in most cases, a room of their own’ (Sinclair, 2005, p. 50)

- **Respect for their origins:** children had different opinions about the relationships they wanted with their birth families and with whom they wanted to be in touch. These views should be respected.
- **Influence:** children wanted greater attention paid to their views and to have some influence over future plans
- **Future opportunity:** foster children mainly had the same aspirations for their future as other children: to do well at school, get a good job, have a happy family and children. Foster care should provide a springboard to get their lives back on track and provide an opportunity for these achievements, which most take for granted.

## 5) Conclusion:

The UK Desk Research Analysis on 'Alternatives to Custody – Developing Intensive and Remand Fostering Programmes' has sought to outline social work practice within the field of youth justice by considering the different types of the youth justice system, the work undertaken by social workers in Youth Offending Teams and how intensive, fusion, remand and post custody fostering services have tried to help young offenders.

Working and caring for young people in youth justice brings together many different aspects of social work practice and foster care issues. This report hopefully helps the reader to gain an understanding of the legal and theoretical framework in which alternatives to custody could be developed. Offending by children is a politically contentious issue that attracts considerable public opinion and concern. The use of foster care as an alternative to custodial and residential accommodation for young people on remand can have a positive impact on their lives and it needs to be developed and expanded further.

The care system in the UK has proved to be effective in providing good care to children from backgrounds of abuse and neglect, promoting security, resilience and pro-social values. However, prior to care, most looked after children have experienced many risk factors, such as adverse parenting and abuse, that also lead to offending.

Schofield et al ( 2014) argue that if children in care from these backgrounds do not have stable placements with sensitive caregivers and do not have appropriate professional support, they will be at risk of a range of poor outcomes, including an increase in offending behaviour. They go on to say, “an additional risk factor for looked after children is inappropriate criminalisation through police and court involvement as a response to challenging behaviour or minor offences in their placements (pp 211 – 212).

What appears to be significant is entry into care during adolescence and transitions from care to independence. These are windows of opportunity for positive change through intensive and remand fostering, but they also carry risks. However, if the systems work effectively at these crucial turning points, they can build resilience, self-security and could ameliorate offending behaviour in young people which should be the goal of all interventions.

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## **Appendices**

**1) Overview of the Court System**

**2) Table of disposals for Young Offenders**

**3) Public Law Outline (26 weeks) flowchart**