

# **The Future of Youth Justice in Wales**

## **An academic reflection**

**Led by Jonathan Evans**

**Edited by Sue Thomas, Howard Williamson and Jonathan Evans**

**September 2024**



**Wales Youth Justice Academic Advisory Group  
(WYJAAG)**

**Informal Review of Youth Justice in Wales**

**led by Jonathan Evans**

**submitted to Welsh Government**

**on**

**30<sup>th</sup> June 2023**

**Edited by**

**Sue Thomas, Howard Williamson and Jonathan Evans**

**September 2024**

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## Contents

<b>Paper</b>	<b>Title</b>	<b>Page</b>
<b>Foreword</b>	Foreword from the Welsh Centre for Crime and Social Justice	<b>4</b>
<b>Preface</b>	Preface to the Publication of Papers in September 2024	<b>5</b>
<b>Preamble</b>	Preamble to Papers 1-3 delivered to Welsh Government on 30 <sup>th</sup> June 2023	<b>9</b>
<b>Paper 1</b>	The Current Youth Justice System in Wales: Strengths, Limitations and Opportunities	<b>12</b>
	Appendix 1	25
	Appendix 2	27
	Appendix 3	30
	Appendix 4	36
	Appendix 5	47
	Appendix 6	48
<b>Paper 2</b>	Options for Change	<b>52</b>
	Appendix 7	94
	Appendix 8	99
	Appendix 9	101
<b>Paper 3</b>	Practical Steps	<b>106</b>

# Foreword

Mae'n bleser mawr bod Canolfan Trosedd a Chyfiawnder Cymdeithasol Cymru (CTCCC) yn gallu darparu llwyfan i'r papurau pwysig hyn gael eu cyhoeddi.

I ddechrau, comisiynodd Llywodraeth Cymru yr adolygiad anffurfiol hwn i gefnogi ei syniadau am y ffordd orau o baratoi am bosibilrwydd datganoli cyfiawnder ieuenctid a'r opsiynau sydd ar gael ar gyfer datblygu yn y dyfodol. Er mwyn casglu amrywiaeth cynhwysfawr o safbwyntiau, ymgynghorwyd â nifer fawr o arbenigwyr (academyddion, ymarferwyr a rhanddeiliaid eraill) ac, o dan arweiniad yr Athro Jonathan Evans a Dr Sue Thomas, daethant ynghyd i ffurfio Grŵp Cyngori Academaidd Cyfiawnder Ieuenctid Cymru (GCACIC).

Hoffem ganmol Llywodraeth Cymru a diolch iddynt am gytuno i ddod â'r papurau hyn i'r parth cyhoeddus. Y gobaith yw y bydd y penderfyniad hwn yn helpu i ehangu a dyfnhau trafodaeth gyhoeddus ar y pwnc pwysig hwn.

Mae pob un o'r papurau'n bwerus iawn, mae'r wybodaeth y maent yn eu rhannu yn amhrisiadwy i unrhyw un sydd am ddysgu am gyfiawnder ieuenctid yng Nghymru heddiw a deall hynny, a sut y gallai ddatblygu i wasanaethu plant a chymunedau Cymru yn well. Mae CTCCC yn falch o allu eu cyhoeddi.

Bydd y Ganolfan yn parhau i gefnogi ymchwil a thrafodaeth ar gyfiawnder ieuenctid a materion cysylltiedig yn y dyfodol trwy GCACIC sydd bellach yn rhan o CTCCC.

**Yr Athro Kate Williams**, Cyfarwyddwr CTCCC

**Dr John Deering** a'r **Athro Martina Feilzer**, Cyd-Gyfarwyddwyr CTCCC

It is with great pleasure that the Welsh Centre for Crime and Social Justice (WCCSJ) can provide a platform for these important papers to be published.

Initially, Welsh Government commissioned this informal review to support its thinking on how best to prepare for the possible devolution of youth justice and the options available for future development. In order to capture a comprehensive range of perspectives a large number of specialists (academics, practitioners and other stakeholders) were consulted and, led by Professor Jonathan Evans and Dr Sue Thomas, came together to form the Wales Youth Justice Academic Advisory Group (WYJAAG).

We wish to commend and thank the Welsh Government for agreeing to bring these papers into the public domain. It is to be hoped that this decision will help both widen and deepen public debate on this important subject.

Each of the papers is very powerful, the information and knowledge they impart is invaluable to anyone wanting to learn about and understand youth justice in Wales today and how it might develop to better serve the children and communities in Wales. The WCCSJ is pleased to be able to publish them.

The WCCSJ will continue to support future research and discussion on youth justice and related matters through WYJAAG which is now part of WCCSJ.

**Professor Kate Williams**, Director WCCSJ

**Dr John Deering** and **Professor Martina Feilzer**, Co-Directors WCCSJ

# Preface to the Publication of the Papers

**Jonathan Evans**

**30<sup>th</sup> August 2024**

**Cardiff**

At the outset I would like to thank the Welsh Centre for Crime and Social Justice for publishing the lightly edited papers produced by the Wales Youth Justice Academic Advisory Group (WYJAAG) for Welsh Government. Apart from minor amendments, corrections and footnotes, the papers published here are the original versions submitted to Welsh Government on 30<sup>th</sup> June 2023. To understand why these documents are being published now, it is helpful to explain their original rationale and the history of how they came to be written in the first place.

With a view to assisting Welsh Government thinking on the possible devolution of youth justice, in late November 2022 I was approached by civil servants and asked if I, along with fellow academics I knew, could provide guidance and advice on the subject. At the time I was Professor of Youth Justice Policy and Practice at the University of South Wales and a member of the Wales Youth Justice Advisory Panel. Although I was due to retire from that post in January 2023, I retained a part-time and much valued affiliation with the Open University. This enabled me to continue to have full access to the institution's library and other resources; a prerequisite for being able to take a lead on the project envisaged by Welsh Government. I wish to record here the Open University's steadfast support for my work on this project.

After consultation with their ministers, Welsh Government civil servants duly set out the terms of reference for the project and requested three policy position/options papers to be delivered by 30<sup>th</sup> June 2023. There was an understanding that initial drafts would be shared in the intervening period alongside progress meetings with civil servants and ministers. The working titles for the three workstreams are set out below.

- 1. The current system in Wales – strengths, limitations and opportunities for improvement**
- 2. What a future vision for the system in Wales could look like**
- 3. What the practical next steps would be for achieving this vision**

It is important to emphasise the point that this project was not funded by Welsh Government. The work by academics was undertaken on a completely voluntary, *pro bono* basis.

In November and December 2022, I contacted a few academics I thought would be interested in engaging in such a project on a voluntary basis and duly scheduled an initial meeting in January 2023 that was kindly hosted by former Children's Commissioner, Professor Sally Holland at CASCADE (Children's Social Care Research and Development Centre), Cardiff University. At this meeting it was agreed that an independent network of academics from across different disciplines should be established to deliver this piece of work for Welsh Government. It was also recognised that in future there was potential for the network to grow

from being an *ad hoc* group into a more substantial forum for discussion, policy analysis and collaborative research.

In the weeks and months that followed, the small nucleus of academics who attended the first meeting snowballed into a much larger network of 28 members (which has since risen to 29). It drew its membership from not only Wales-based academics but also from across the border in England. I would like to express my gratitude to all members of WYJAAG for their work, but special thanks are due to those colleagues based in England who took such a close and active interest in this project. Honorary Welsh citizenship should be conferred on them in due course!

Although I was the Acting WYJAAG Co-ordinator because I was directly accountable to Welsh Government, I endeavoured to work in as democratic and consensual a way as possible. Colleagues were generous with their written contributions, comments on drafts and the time they gave to attending online meetings. Crucially, people were tolerant and accepting of different perspectives and viewpoints. This made it much easier to find common ground. Drafts of the work in progress were also shared with Welsh Government. A passage from the Preamble to the three papers captures this dynamic:.

They would also essentially be live working drafts that could form the basis for discussion. Questions and issues requiring clarification could be raised by ministers and civil servants along with requests for further detail and the identification of lacunae in the papers. This iterative process led to further drafts.

After the final papers were submitted on the 30<sup>th</sup> June 2023, Welsh Government officials indicated they were giving consideration to publishing an edited version of the papers as part of or alongside a Green Paper. This was my understanding of the expectation when I stood down as Acting WYJAAG Co-ordinator in the summer of 2023 and handed over leadership of the network to Professor Kate Williams, who had kindly volunteered to take on this responsibility (with support from Professor Kevin Haines). At the same time, Professor Howard Williamson offered to edit the papers for the format of a Green Paper or alternative source of publication and awaited guidance on the precise specifications required. However, I have since learnt that Welsh Government subsequently decided it would be better for the Welsh Centre for Crime and Social Justice to publish the papers independently. This was probably the right decision as there might have been a perception that WYJAAG's editorial independence was being compromised had they appeared in a Green Paper. In any event, it is against this background that the WYJAAG Papers have finally entered the public domain by being published on the Welsh Centre's website.

A few points should be made about these papers. Firstly, this informal review of the youth justice system in Wales is not as comprehensive as we would have liked. As has already been explained, we were reliant on the goodwill of volunteers and had no money to commission work in those areas where there are gaps.

Secondly, although most stakeholders were very keen to engage with us, some were not. Moreover, our tight timetable did not allow us time to consult everyone. We would, for example, have liked to engage directly with service users.

Thirdly, a total of 23 members of WYJAAG submitted written contributions over the course of the three papers; some individuals drafted substantial passages and sections which, because drafts were shared and agreed with everyone, resulted in collective ownership of the final draft. Nevertheless, because the editorial decision was made not to interfere too much with people's individual contributions, there is inevitably a degree of overlap and repetition as some themes recur; perhaps not surprisingly as those contributing are experts in youth justice and share many common views. The result is that the same issues appear in more than one paper, but this also allows each paper to be examined in its own right.

Finally, the decision to present these papers in the original form they were written reflects our wish to share the actual documents that were submitted to Welsh Government. We believe this is important because it will help readers to understand the dynamic background and context against which Welsh Government has formed its own view and made subsequent policy decisions. For all the imperfections and weaknesses in the papers, we trust readers will also recognise that these papers also possess strengths. Moreover, it is hoped they can be used as a resource to ask further questions and inform further debate.

There have been developments since the papers were submitted to Welsh Government. Some of these developments are captured in the Welsh Government statement below.

The three papers contained a significant number of recommendations for activity that could be taken forward to improve the youth justice system in Wales. While the Welsh Government is not responsible for the youth justice system in Wales, key services such as healthcare and accommodation are devolved, and the Welsh Government is committed to working with the UK Government to deliver the best possible outcomes for children in contact with the justice system.

In particular, the Welsh Government is committed to working with partners in the UK Government, Youth Justice Board and Policing in Wales on the delivery of the Youth Justice Blueprint, which sets out our collective vision for the youth justice system in Wales.

Over the past year, the Welsh Government has been working with the Youth Justice Board Cymru to identify areas within the report where progress could be made in the short to medium term. The Welsh Government is in the process of developing a work programme to take forward this activity, which will complement existing work on the Youth Justice Blueprint and will be considered by the Wales Youth Justice Advisory Panel.

The papers contained a number of recommendations related to the youth court process. Dame Vera Baird, in her capacity as Independent Expert Adviser to the Welsh Government on justice devolution, worked with the WYJAAG to facilitate roundtables across Wales to discuss how the Child First approach could be further embedded in the youth court in Wales. A separate paper summarising the findings from the roundtables will be published shortly.



The Welsh Government has also been able to use the content of the papers to help shape activity related to their Programme for Government commitment to pursue the devolution of justice and policing to Wales. The evidence set out within the papers will form the basis for discussions with the UK government on the devolution of powers related to youth justice to Wales.

We have now entered an interesting period in which discussions will take place between Welsh and UK Governments on the form devolution in youth justice will take. What follows are a few personal reflections on how some of us with an interest in youth justice might try to influence and shape the future. It is right that elected representatives should take the lead in these discussions and negotiations, but democracy should also include civil society. We should therefore be ready to respond when our opinions are sought.

Firstly, it is important to establish clearly identifiable stakeholder groups that Welsh Government, local authorities, the Wales Youth Justice Advisory Panel and others can consult. To be credible, such stakeholder groups need to be broadly representative. For the Wales Youth Justice Academic Advisory Group, for example, that means transitioning from an *ad hoc* 'task and finish' group to an independent and democratic member-led group with a sustainable future in terms of being a forum for discussion and a potential hub for collaboration on research, publication, debate and dissemination. This means having a simple constitution with regularly elected and accountable officeholders; democratic principles that should ideally apply to all stakeholder groups, including the Welsh Centre for Crime and Social Justice. WYJAAG should remain autonomous but could, rather like the Probation Development Group, enjoy a close relationship with the Welsh Centre for Crime and Social Justice. It would, for example, be helpful if the Centre could host a website for the Group.

Secondly, I would make a plea for inclusivity, diversity and disciplinary pluralism in WYJAAG. As someone who arrived in youth justice via social work and probation practice, I recognise that Criminology as a discipline has an important role to play. It should not, however, exclude other disciplines such as Health, Education, Sociology, Psychology, Law, Youth Work and, of course, Social Work. This is particularly important if we are seeking to research and engage with children and young people holistically.

Finally, there should be a shared ambition to create a Welsh Youth and Social Justice Alliance that brings together not only academic stakeholders but also existing autonomous groups representing service users, practitioners and policy analysts. The establishment of such a formation in civil society would help facilitate better communication between the different constituents within the wider youth justice community as well as a significant presence on the policy and practice landscape of Wales.

As I head towards the final phase of retirement when I leave the Open University at the end of September, I would like to wish all my friends and colleagues all the very best for the future. It has been great working with you.

Cofion gorau,

Jonathan

# Preamble to Papers 1, 2 and 3

## Wales Youth Justice Academic Advisory Group (WYJAAG)

30<sup>th</sup> June 2023

Jonathan Evans

### Welsh Government Terms of Reference for Youth Justice Workstreams:

4. **The current system in Wales – strengths, limitations and opportunities for improvement**
5. **What a future vision for the system in Wales could look like**
6. **What the practical next steps would be for achieving this vision**

Following discussion with Welsh Government ministers (Jane Hutt, MS the Minister for Social Justice and Mick Antoniw, MS, Counsel General and Minister for the Constitution) it was agreed that the policy position and options papers would be written in an accessible style. They would also essentially be live working drafts that could form the basis for discussion. Questions and issues requiring clarification could be raised by ministers and civil servants along with requests for further detail and the identification of lacunae in the papers. This iterative process led to further drafts. The documents submitted on 30<sup>th</sup> June 2023 represent the final versions of the papers, but not necessarily the end of the process or the dialogue between Welsh Government and the Wales Youth Justice Academic Advisory Group (WYJAAG).

The three papers in this project have been co-authored by members of WYJAAG (see below for details of contributing authors, Group members and their affiliations at the time the papers were submitted). Its membership comprises academics and others with expertise in the field of youth justice and ancillary domains. The papers are based on available research and other publications. Additionally, the papers have also been informed by conversations with key stakeholders (both on and off the record). The work undertaken has been unpaid and entirely voluntary.<sup>1</sup>

It is acknowledged that the papers are somewhat uneven in terms of content, breadth and depth. There are also lacunae in the papers. As the work has been undertaken on an unpaid basis, we have had to rely on the goodwill and commitment of our colleagues. It has not, therefore, been possible to commission work in all of the areas we would have wished. This project does, however, highlight the need for adequately funded commissioned research in a number of areas.

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<sup>1</sup> We would also draw to your attention the fact that Dr Helen Hodges (Cardiff University), an expert in statistical analysis, has gathered some very useful statistical data. We have not made extensive use of these data within the papers, but they informed our analysis.

A decision has been made to present these papers in the form they were written. They are a preliminary reflection on and examination of the youth justice system in Wales to help to understand how it operates and what some of the functional issues are in terms of practice, policy and governance and how they might be relevant when considered in the context of devolution.

## **List of Authors**

The following authors, presented in alphabetical order, provided written contributions to Papers 1-3:

Tegan Brierley-Sollis, Stephen Case, Zoe Cross, Rod Earle, Jonathan Evans, Martina Feilzer, Stewart Field, Gwyn Griffith, Kevin Haines, Kathy Hampson, Neil Hazel, Brian Heath, Helen Hodges, Sally Holland, Annette Irvine, Robert Jones, Nina Maxwell, Gemma Morgan, Harriet Pierpoint, Ella Rabaiotti, Jo Staines, Sue Thomas and Howard Williamson.

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# **Paper 1: The Current Youth Justice System in Wales: Strengths, Limitations and Opportunities for Improvement**

## **Wales Youth Justice Academic Advisory Group (WJAAG) Paper 1: The Current Youth Justice System in Wales: Strengths, Limitations and Opportunities**

Draft: 30<sup>th</sup> June 2023

**Lead Authors:** Sue Thomas (University of South Wales) and Jonathan Evans (Open University)

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### **Acknowledgements**

Thank you to all those WYJAAG members who made contributions (written and verbal). Every effort has been made to incorporate their comments into this document. Thanks are also given to all of the stakeholders with whom we met and exchanged emails.

### **Note**

Although most local multi-agency youth justice teams are now referred to as Youth Offending Services or Youth Justice Teams, we have used the original legal term: Youth Offending Teams (YOTs).

## Preamble

This paper is based on published research and data that are available in the public domain. Crucially, it draws upon discussions with various individuals and organisations who have an interest and expertise in youth justice. Some of the issues raised build on those identified in the Youth Justice Blueprint for Wales<sup>2</sup> and align with activity undertaken as part of its work programme.

The Blueprint, which is work in progress, lays the foundations for the development of a national youth justice strategy for Wales. This paper, as its title suggests, is focused on the **strengths, limitations and opportunities for improvement** in respect of the current state of youth justice in Wales. It should be read alongside the following six appendices, as they are signposted sequentially in the text.

**Appendix 1: Wider Background and Context** analyses changes in the volume and age-related distribution of offending in England and Wales since 1995.

**Appendix 2: Youth Justice Transitions in Wales** can also be regarded as a bridging document that addresses both the current challenges facing children moving towards adulthood and how the transition to adult services can be better supported.

**Appendix 3: Summary of Key Points from YOT Managers Cymru Meeting on Poverty (24<sup>th</sup> March 2022)**. This document captures a discussion with YOT managers on how best to respond to the poverty experienced by justice-involved children and those at risk of entering the youth justice system.

**Appendix 4: The Future of Youth Justice in Wales (YOT Perspectives)** captures the views of those members of **YOT Managers Cymru** who have participated in a consultation on the broad themes of the work commissioned by the Welsh Government. This document reflects on the current condition of youth justice in Wales whilst simultaneously looking forward to how things might be improved. In a number of respects this document represents a bridge to **Paper 2 (Options for Change)**, which is a more future-focused contribution.

**Appendix 5: Prevention – Aberystwyth University Study** provides a brief overview of an evaluation of a prevention project in Ceredigion.

**Appendix 6: Magistrates Association Comments on Youth Justice in Wales** reports on a survey of Magistrates in Wales in relation to the youth justice system's strengths, weaknesses and areas for improvement.

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<sup>2</sup> [https://www.gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint\\_0.pdf](https://www.gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint_0.pdf)

## Introduction

The main body of this paper considers the strengths and limitations of the current youth justice system in Wales. It also explores some of the opportunities to improve services within the existing devolution settlement. At the outset, though, it is important to acknowledge that the current devolution settlement is essentially unstable and does not serve the best interests of the people of Wales, particularly the needs of children in Wales. As the Commission on Justice in Wales (2019: 10) noted,

In criminal justice there is no overall alignment of policy and spending which is essential if the criminal justice system is to be effective in reducing crime and promoting rehabilitation. Instead, the arrangements for coordination between devolved and non-devolved bodies are overly complex, are expensive and do not provide transparent accountability for effective performance.

Jones and Wyn Jones (2022) have argued that the criminal justice system in Wales departs from the constitutional norms of the Westminster model of governance. This highly anomalous system can be characterised as operating across a ‘jagged edge’ of intersecting competences and responsibilities shared between two governments. The authors point towards three ‘in principle’ problems facing the criminal justice system in Wales: the costs arising from such byzantine complexity; barriers to effective ‘joined-up’ policy making; and poor accountability. The latter is of particular concern given that Wales suffers from several poor outcomes.

In the case of youth justice, the ‘jagged edge’ runs right through the middle of local Youth Offending Teams (YOTs). The statutory partners are divided between devolved services (Children’s Social Services, Education and Health) and non-devolved (Probation and the Police). Despite operating on this challenging constitutional terrain, it should be acknowledged that policy makers, service leaders and practitioners have been creative in finding ‘workaround’ strategies to deal with the untidy constitutional settlement. Wales is a small country in which it has been possible to develop a ‘Team Wales’ approach to cross-cutting policy and practice issues. The fact that Wales is, for the most part, of peripheral concern to Westminster and Whitehall is a mixed blessing. One of the positives of this relationship is that Wales can generally develop its own policy and practice agenda without too much interference from London. Nevertheless, there remain barriers and risks to the effective delivery of justice services. Youth justice is, moreover, delivered locally, albeit within the framework of a common jurisdiction and ‘national’ guidance. Within Wales (and, indeed, England) there has been considerable local variation in practice culture and outcomes for children (Morgan, 2009; Muncie, 2011; Thomas, 2015; and Evans, Jones and Musgrove, 2022).

A comparative study of local penal cultures conducted by Goldson and Briggs (2021), comprising six primary research sites which included two Welsh areas, found that ‘justice by geography’ had not been eliminated: ‘progressive’ and ‘punitive’ penal cultures continued to co-exist. Six themes were identified to account for these differences between localities: leadership; philosophy and service configuration; perceptions of diversion; perceptions of custodial detention; knowledge-informed approaches; and human rights consciousness.

From a Welsh perspective, irrespective of whether youth justice is devolved or not, how best to address the issue of ‘justice by geography’ will need to be given a high priority in view of the risk of differential treatment and the potential wider impact on equality and diversity commitments in a Wales that is committed to anti-racism (Feilzer and Hood, 2004; Welsh Government, 2022a).

The subject of youth justice and devolution has, of course, been reviewed and discussed repeatedly, meticulously and extensively over the years. In many respects the debate over the devolution of youth justice has changed little since at least the Morgan Report (2009). It remains an anomaly that youth justice is the only children’s service for which Welsh Government is not responsible. Morgan (2009: 90) found that most people were in favour of the devolution of youth justice ‘in principle’. The objections or anxieties about devolving youth justice policy were pragmatic concerns about the potential risks. These risks, largely financial, were baked into the nature of administrative devolution; a relationship described by Jones and Wyn Jones (2022) as Wales being a ‘policy taker’ rather than ‘policy maker’. Without control over criminal justice policy and policing, Wales was placed in the vulnerable position of being subject to criminal justice policies and sentencing frameworks imposed by Westminster governments that may not share the values, aims and objectives of Cardiff Bay. In 2009, Morgan concluded that Wales had neither the capacity nor the resources (capital or revenue) to accommodate all Welsh children sentenced or remanded to custody. In the intervening period custodial numbers have fallen dramatically across the jurisdiction of England and Wales. Currently, therefore, it would be feasible for Wales to provide secure accommodation for the small number of children sentenced or remanded to custody. The risk of a punitive turn in UK Government criminal justice policy, however, could potentially undermine Welsh Government youth justice strategy. An increase in custodial numbers in Wales would drain resources from services to children and families in the community into an unsustainably expensive juvenile secure estate. The risk identified by Morgan in 2009 therefore remains.

One of the capacity issues identified by Morgan was the loss of economies of scale in terms of academic, policy and practice expertise. This is arguably less of a concern than it was in 2009.<sup>3</sup> Wales has grown academic and professional expertise in youth justice over the years. Moreover, there are creative ways in which collaborative work can be undertaken across borders and jurisdictions (see Papers 2 and 3).

Notwithstanding some of the obstacles and risks inherent in the current youth justice system in Wales, it is important to emphasise the point that there have been some significant achievements since devolution. Some of these are listed below and revisited in Paper 3.

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<sup>3</sup> In the early days of the Youth Justice Board and ‘new approaches’ to addressing youth offending following the 1998 Crime and Disorder Act, Wales was still classified as a ‘region’, with a Regional Manager. Only after 2002 was the designation changed to National Manager and greater recognition that the role required interpretation of policy initiatives for the specific Welsh context. Nonetheless, the YJB team in Swansea remained small and there was a view that the ‘delegation’ of youth justice was, at the time, preferable to its ‘devolution’: some 200 people in London would apply their expertise to a range of challenges, identifying distinct ‘Issues for Wales’, which could then be considered by both the Welsh YJB team and relevant colleagues within the Welsh Assembly Government.



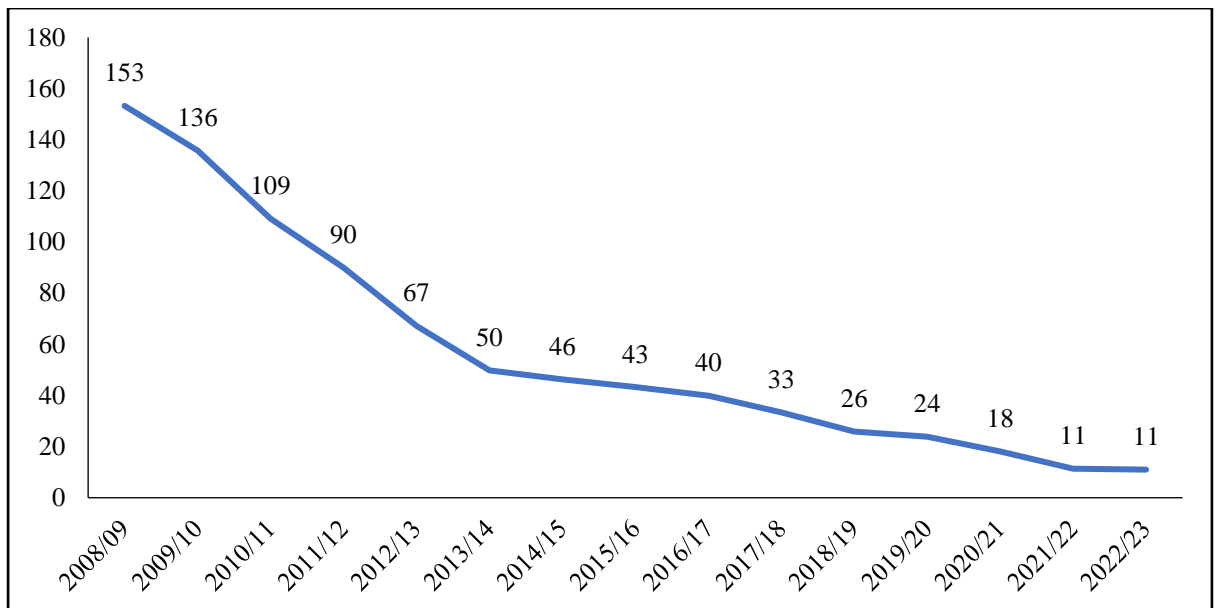
1. A reduction in the number of First Time Entrants (FTEs) into the youth justice system through the development of effective prevention and diversion strategies. Although such reductions can be found across the jurisdiction of England and Wales, it should be noted that devolution provided a supportive environment within which diversion strategies could be promoted. An early initiative to divert children from prosecution and support positive outcomes was the Swansea Bureau. This was a rights- and entitlements-based diversion model that was evaluated positively by researchers at Swansea University (Haines et al, 2013). At the time, Swansea YOT's philosophy and working practices went against the grain of prevailing Youth Justice Board (YJB) orthodoxies. Despite youth justice not being devolved, the Welsh social policy framework and the close working relationship between practitioners, managers, academics and policy makers created an environment within which such innovative practice could be initiated, developed and nurtured.
2. The establishment of YJB Cymru and recognition that the different policy context in Wales required specific consideration.
3. The All-Wales Youth Offending Strategy (Welsh Assembly Government and Youth Justice Board, 2004).
4. Children and Young People First (Welsh Government and Youth Justice Board, 2014) (successor to the All Wales Youth Offending Strategy)
5. Welsh Government support for Trauma-informed practice through its commitment to increasing understanding of the impact of trauma and improving responses to such experiences. *Trauma-Informed Wales* (Welsh Government, 2022b) is a framework that sets out how individuals and organisations can identify and support those who have experienced trauma.
6. Youth Justice Blueprint (Ministry of Justice and Welsh Government, 2019). Work is ongoing on the Blueprint.
7. Social policies based on a philosophy of universalism (e.g., free prescriptions; *Extending Entitlement*, National Assembly for Wales, 2000).
8. Social policies supporting young people in education and training beyond 16 years through Education Maintenance Allowances and the Youth Guarantee.
9. The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 to ensure there is a focus across the public sector on the prevention of abuse and violence, the protection of victims and support for those affected. The Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Blueprint considers the needs of children to ensure service responses are appropriate, harms are prevented and addressed, and there is clarity and cohesion in parallel approaches to safeguarding and VAWDASV.
10. Wales is taking a public health approach to the prevention of serious youth violence with Public Health Wales, the Wales Violence Prevention Unit and Peer Action Collective Cymru working together to inform strategy.

11. Enshrining children's rights in the Rights of Children and Young Persons (Wales) Measure 2011.
12. Increasing numbers of Police Community Support Officers, thereby facilitating the potential for greater community engagement.
13. Children being given the same protection from assault as adults through the passage and implementation of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020.

It is against the above background that the salient features of the current state of youth justice in Wales are summarised in terms of strengths, limitations and opportunities for positive change within the current devolution settlement.

### **Strengths**

1. Significant reductions have been achieved in the number of children entering the youth justice system since 2008, due to prevention and diversion activity. This has resulted in reduced court and custodial populations. Please see below a table that represents the number of children from Wales in custody between 2008/09 and 2022/23 (further statistical information on the youth justice system in England and Wales is published annually by the Youth Justice Board at [www.gov.uk](http://www.gov.uk)). An authoritative account of trends and developments in youth justice in England and Wales prior to the Covid-19 pandemic has been undertaken by Bateman (2020). His analysis charts a rise of almost one third in First Time Entrants (FTEs) to the youth justice system between 2003 and 2007. This can be attributed in large part to the Sanction Detection Target set by the UK Government which created a perverse incentive to draw more children into the youth justice system. Following the abolition of that target, there followed a steady decline in FTEs. This is not, of course, to say that this is the only explanation for the decline in FTEs. As Bateman (2020: 12) has commented, 'assessing the extent of offending is not like measuring the volume of a material object since crime is a "social construct"'. Statistics reflect not only the 'current state of legislative prohibition', which can fluctuate over time, but also the prevailing practice culture. So, for example, official statistics can tell us as much about policing behaviour as offending behaviour. In order to capture a rounded understanding of the underlying trends of offending, it is necessary to triangulate data from reported crime, victimisation surveys (Office for National Statistics, 2022) and self-report studies on offending (see, for example, an overview by McAra, 2018, on self-reported offending by young people in the Edinburgh Study of Youth Transitions). Please also see Appendix 1 **Wider Background and Context** for Gwyn Griffith's perspective on the available statistical data.



**Welsh children in custody: 2008/09 – 2022/23**

2. The multi-agency nature of YOTs, which have a range of statutory agencies contributing to the prevention of offending by supporting children on the periphery of the youth justice system and those on statutory orders, is regarded as an effective model for service delivery (Deloitte, 2015; HMIP, 2023). Their multi-agency composition is unique as it combines criminal justice with welfare focused services. YOTs have a broad range of expertise which enable them to support children to access the services they need and assist them to understand the consequences of their actions and the implications of acquiring a criminal record.
3. The location of YOTs varies across local authority structures. Currently, the preferred locations of the YOT in Welsh local authorities are Education or Children’s Services. Effective partnership-working requires effective links, relationships and good communication, which in many cases YOTs have demonstrated they are able to achieve, and which span community safety, criminal justice and safeguarding arrangements. Of the non-statutory partners, Youth Work could potentially be a valuable partner (in the YOT structure), enabling a blend of statutory and voluntary preventative work to be formally co-located. This arrangement already exists in some local authority areas of Wales.
4. The introduction of the YJB’s Key Performance Indicators (KPIs) was regarded as generally positive (although being overburdened with data collection was also noted) as it would help to provide a more comprehensive picture of YOT activity. The ‘Working in Partnership’<sup>4</sup> lever was potentially helpful in monitoring partner engagement in YOT management boards. However, some felt there should be a dataset that is specific to the Wales context and landscape, which would be more meaningful as some of the KPI measures are less relevant.

<sup>4</sup> Key performance indicators for youth justice services - GOV.UK ([www.gov.uk](http://www.gov.uk))

5. Diversionary practice is well established. It needs to be maintained and resourced as it is key to maintaining the lower number of children in the youth justice system in Wales.
6. There has been significant work in developing Trauma-informed practice, which needs further development and evaluation (Glendinning et al, 2021).

## Limitations

1. Whilst the YOT as a model is broadly successful in terms of different local authority services co-operating with one another, there are problems in some of the partnerships in ensuring all the statutory agencies are fully engaged. Health representation can be problematic, along with equity of health provision across YOTs. This leads to the wider question of what this should look like and how it can be achieved. The partnership with Education can also be variable, which is a concern as engagement with education and learning is identified as a key protective factor for children.  
In terms of local governance, it should be noted that a county council's capacity to exert influence over schools is constrained by the autonomy granted to headteachers/school leadership teams and their governing bodies. Thus, within the same local authority area some schools might operate in inclusive and restorative ways with comparatively low rates of exclusion; others, however, might enforce rigid rules on school uniform, impose exclusions for relatively minor breaches of discipline and/or be reluctant to enrol looked after children. Calling to account deviant behaviour by schools can represent a challenge for local authorities.
2. There needs to be a better understanding of the journey of children on the periphery of the justice system, particularly in response to anti-social behaviour, to strike the right balance between safeguarding children and keeping communities safe.
3. There is tension between national guidance and what happens at a local level and the ethos that Wales has in relation to Child First, children's rights, prevention, and taking trauma-informed approaches. This can hinder the development of a more coherent child-centred approach; for example, in relation to the use of Referral Orders (national guidance is punitive). Restorative approaches do not work well with children who cannot comprehend them. Meanwhile, local failures to reduce school exclusion and/or entry into the looked after system will impact negatively on positive outcomes for children (including increasing the risk of involvement with the criminal justice system). Applying the most appropriate and effective levers to influence local practice remains a challenge.
4. Transitions to adult services do not always work well for children, including resettlement from custody as well as transfer to Probation Service supervision and other adult services (see Appendix 2 **Youth Justice Transitions in Wales** for a more detailed consideration of the issues).

5. The source, amount and protection of funding is always a risk, and this therefore represents a weakness. This includes whether grants are ring-fenced or not, short or long term, and what the requirements of funding are (particularly in terms of reporting). This makes it difficult to plan services, provide a broad range of interventions and retain staff. A further potential risk is whether YOTs would lose the opportunity for UK Government funding through devolution (e.g., not be eligible for initiatives such as Turnaround<sup>5</sup> and thereby become disadvantaged compared to their counterparts in England).<sup>6</sup> Sixteen out of the 17 YOTs in Wales have received Turnaround funding for the next three years.<sup>7</sup> The problems that Welsh Government face in terms of 'spend to save' initiatives should also be acknowledged. Welsh Government can spend money on preventing children from entering the youth justice system for those savings to be picked up by other non-devolved services. Such savings ideally need to be reinvested in services for children, families and communities.
6. All local authority services are stretched in terms of what they can provide, which becomes more problematic when combined with staffing difficulties (recruitment and retention, which is not specific to youth justice). This also links to funding and the ability to develop sustainable services and interventions in the long term.
7. The national 'jagged edge' between (a) devolved and non-devolved services and (b) local 'jagged edges' between devolved services (e.g., between health, children's services and education) mean that lines of accountability are often crossed or unclear. Whilst acknowledging that there is some good practice in this area, there is nevertheless need for effective and co-ordinated scrutiny at both local (local authority scrutiny panels) and national (Senedd) levels.
8. Little is known about the experiences of the youth justice system by minority ethnic children in Wales. We know, however, that the 'biggest concern' in Lammy's review (2017: 4) was the youth justice system. The need to capture fully the experiences of young people, families and communities from minority communities has yet to be undertaken systematically.

### ***Opportunities for improving the youth justice system***

1. Prevention should be embedded and recognised as a core youth justice service function. However, more clarity is required in relation to the role of YOTs in prevention (identifying and working with children on the periphery of the youth justice system). The youth justice system provides a targeted rather than universal service, but its role and function require greater understanding in terms of how it fits with other local authority (and preventative) activity. The Youth Justice Blueprint has developed a draft Prevention Framework which could start to inform this work.

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<sup>5</sup> A programme to engage and divert children from the youth justice system

<sup>6</sup> During his time (2001-2008) as a member of the Youth Justice Board, Howard Williamson emphasised the need for 'parallel and equivalent' funding for youth justice in Wales; funding did not have to derive from the same source, but the overall budget for YOTs or wider interventions needed to be proportionately the same.

<sup>7</sup> It is understood at the time of writing (September 2024) that this may now have been reduced to two years.

2. There needs to be a greater understanding of Child First, children's rights and trauma-informed approaches and practice across other agencies who work with children and the youth justice system, which translates into taking child-centred action (this includes schools and the police). The potential to take a genuinely Child First approach is apparent, but the ethos needs to be understood and embedded across all partners.
3. The composition of YOTs and management boards could be reviewed to establish whether the statutory membership should be extended to housing and youth work in particular.
4. There is scope to examine how YOTs and their partners undertake local assessments of children's needs and how the outcome of the assessment relates to the demand for services, and what type of services, particularly for health related and youth justice preventative activities.
5. There is need to develop children's participation (learning from Youth Work) and obtain meaningful information from children about their lives, concerns and what makes them happy. The expectations of gathering data from children should also be considered in terms of how far it can genuinely inform service delivery and development and how it fits with acting in the best interests of the child.
6. There is need to develop a comprehensive Framework around policing in Wales which is linked to the Child Centred Policing Policy Framework (National Police Chiefs' Council, 2021). This should consider Child First, children's rights and what a trauma-informed approach looks like in practice. Work has been undertaken by the Youth Justice Blueprint to develop Principles and Guidelines for diversion and out of court disposals, which is a step in this direction. However, it does not address some of the wider issues of police engagement with children, protecting children and others from harm, use of police custody, etc. Further, the range of out of court disposals being used needs to be widened and greater use should be made of No Further Action (Outcome 22<sup>8</sup>). This was also identified by the Youth Justice Blueprint work. In addition, the role of Scrutiny Panels could be extended to encompass all children who have had police contact (e.g., Stop and Search, particularly regarding illegal substances) and those Released Under Investigation.
7. The All Wales Protocol for reducing the criminalisation of care experienced children and young adults<sup>9</sup> needs to have a higher profile with safeguarding boards, community safety and corporate parenting boards. There needs to be a comprehensive picture of what work is being undertaken at a local level to support it and to ensure that criminalisation is reduced for this vulnerable group (Hunter et al, 2023).
8. Addressing secure accommodation needs is problematic. There is support for the Welsh Government's proposal to develop accommodation for children with complex needs, which should scope in the needs of children in the justice system (e.g., as a remand option and for those needing a safe and stable environment in which to live).

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<sup>8</sup> A Home Office code for police officers to use when no further action is taken. It is an alternative to an out of court disposal and requires the child to engage voluntarily in a diversionary intervention and does not require an admission of guilt.

<sup>9</sup>[All Wales Protocol \(gov.wales\)](https://gov.wales)

9. There is continuing support for a more therapeutic form of custody, but it is not clear what action has been taken or the plans to progress this.
10. The option of developing a specialist multi-agency team for young adults (18 to 25 years of age), which includes mental health provision, needs to be explored.
11. Health and education transitions require improvement. There is need for more detailed examination of what is not working well and how potential problems can be identified and addressed.
12. YOTs are required to produce an annual youth justice plan. The plan requirements should be more reflective of the Welsh context and landscape, with more scope for Welsh Government input.
13. There should be an exploration to see if there is a real opportunity to review funding streams for the youth justice system and to look at whether they could be better aligned, for example if grants should be hypothecated and create the opportunity for better reporting. This could potentially relate to the YJB, Welsh Government and Police and Crime Commissioner funding streams.
14. A review could be conducted to align local (local authority) and national (Senedd) scrutiny processes.
15. There needs to be more research conducted on the outcomes and experiences of children from minority ethnic communities, including how Outcome 22 is being applied.
16. A Poverty Awareness Practice strategy should be developed that takes account of the additional barriers created by involvement with the youth justice system (see Appendix 3 **Summary of Key Points from YOT Managers Cymru Meeting on Poverty**).

## **Concluding Comments**

As has already been noted, the points made above represent those issues that have emerged from published research and those identified by the stakeholders with whom we have engaged. There is clearly a need to interrogate some areas in greater depth and detail.

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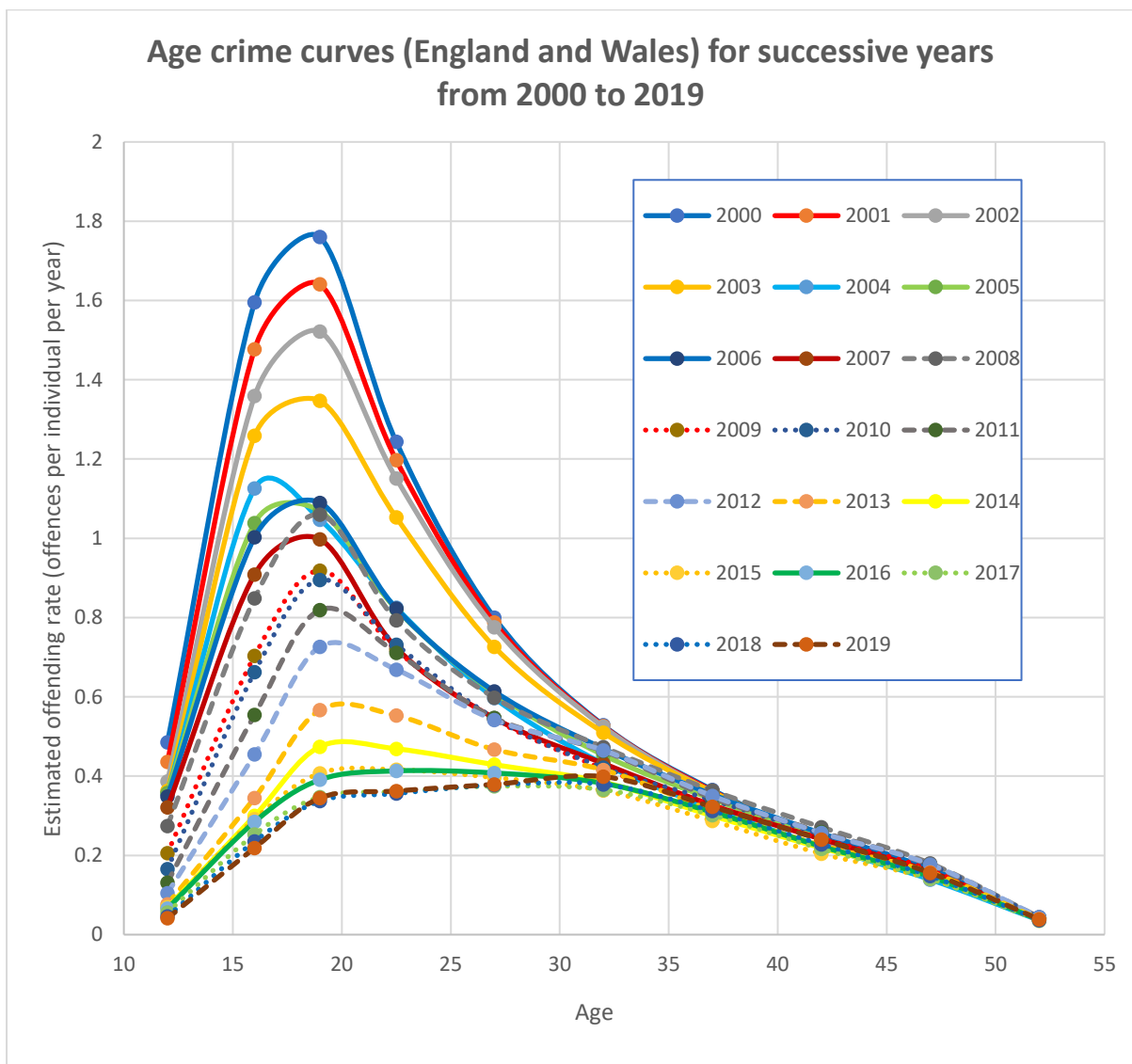
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# Appendices - Paper 1

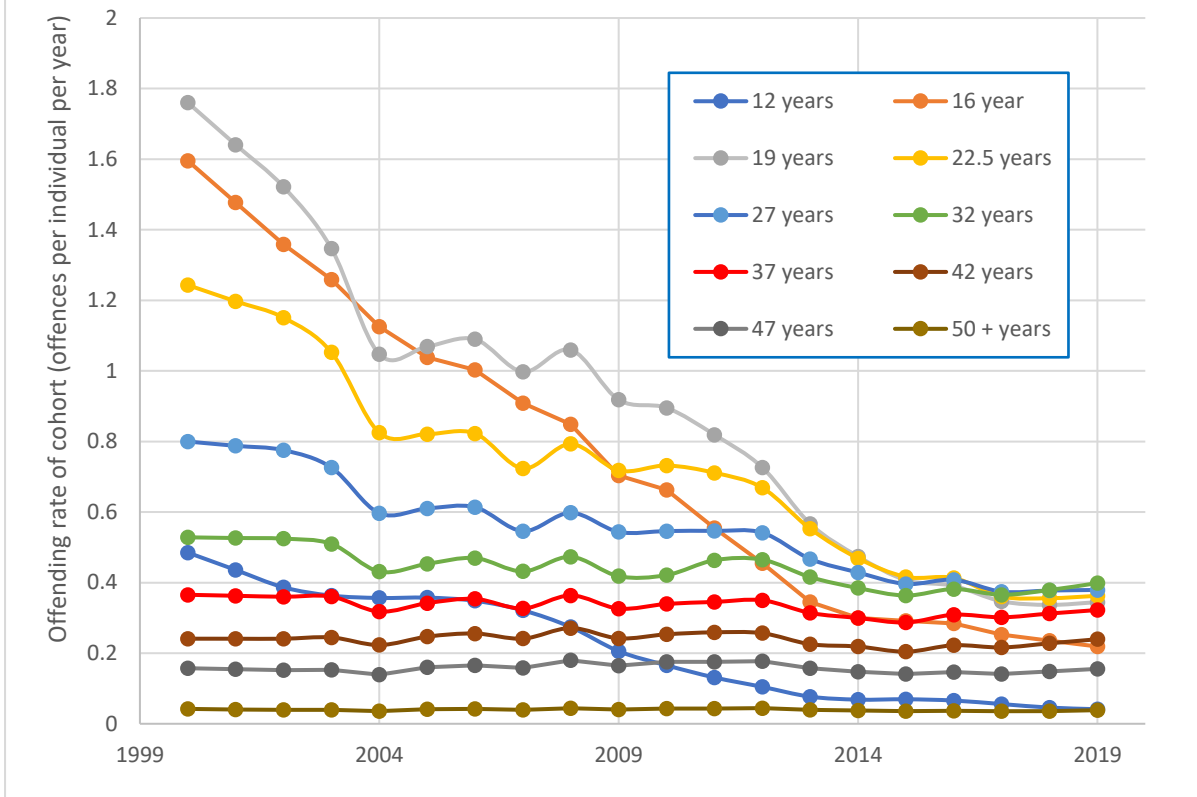
## Appendix 1: Wider Background and Context analyses changes in the volume and age-related distribution of offending in England and Wales since 1995.

**Author:** Gwyn Griffith (Aberystwyth University)

There have been dramatic changes in the volume and age-related distribution of offending in England and Wales since 1995. There is currently no evidence available to suggest that the trends in Wales differ substantially from the England and Wales trends illustrated below.



**Trends in the offending rate of different age groups England and Wales (2000 to 2019).**



The illustrated age crime data for England and Wales was extracted from Home Office/Ministry of Justice data on Criminal Justice Statistics and Proven reoffending using previously developed methodology (Griffith & Norris, 2000). The post 1995 reduction in offending in England and Wales has been mainly due to a reduction in offending by children and young people, especially those aged 14 to 21 yrs. Following a period of rapid decline, the rate of reduction of offending rates has slowed and since 2014/15 there has been little change. Offending in England and Wales may now be dominated by “Lifetime Persistent” offending rather than “Adolescent Limited” offending (Moffitt, 1993). These trends are reflected in the case loads of YOTs with typical caseloads now being dominated by more complex cases many of which have been victims of repeated and serious trauma (see below).

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## Appendix 2: WYJAAG Youth Justice Transitions in Wales (13.02.23)

*This outline paper is based on a discussion between Annette Irvine, Ella Rabaiotti (note taker), Gwyn Griffith and Nina Maxwell on 02.02.23, who considered and developed the initial points shared by Sue Thomas in relation to transitions in youth justice as part of her wider draft paper on youth justice (dated 29.02.23). Following the discussion the notes were shared and updated by the group.*

### Scope/ Definitions

- Consideration of all young people in conflict with the law up to 25, not just those moving from youth justice to probation.
- Recognition that using chronological age can be unhelpful where emotional or educational development is much younger.
- Transitions for looked after children – identifying care leavers and assisting them to receive their entitlements.
- Other transitions relevant – child to adult services etc – any to focus on specifically? Note can be different age boundaries in transitions across sectors.

### Current arrangements

- Whilst some arrangements in place for young people to move to adult services, there are gaps e.g. if break in offending around 18<sup>th</sup> birthday and young person will not be treated as a transition case.
- Some transition workers but challenge of resourcing specialist roles.
- Inconsistency in local authority practice, resourcing, partnership arrangements.
- Probation not routinely accessing YOT records unless formal transition.
- Transitions result in a marked decrease in service provision as children move to adult services.
- YOT does not prepare young people adequately for the adult environment.
- The All Wales Protocol to reduce the criminalisation of care experienced children and young adults<sup>10</sup> is in place.

#### Intersections of young people

- Particularly attention needs to be given to certain groups of young adults – care leavers, those who have been exploited, mental health, Special Educational Needs and Disabilities (SEND), homeless etc.
- Small group of young people (experience of serious and repeated trauma and abuse) who go on to future offend (rather than desist as they mature). This group highlighted within Multi-Agency Public Protection Arrangements (MAPPA), Integrated Offender Management (IOM) processes. Issues around diagnosis and transition support for those with personality disorders. (See Jones, 2023)
- Need more specialist psychological support needed.

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<sup>10</sup> [All Wales Protocol \(gov.wales\)](https://gov.wales/all-wales-protocol)

## Pathways

- Better support needed for this age group - Housing (availability and suitability of accommodation); Health; Further/Higher education (more ambitious); employment opportunities (Business start-ups; apprenticeships and tackling barrier of criminal records).
- Need individualised plan / pathway across needs.
- Youth support services available until 25 – can more be drawn on to provide transitional support?

## Probation

- Stark difference in systems – organisationally, culturally, practice wise.
- Transition to Probation is problematic – children move from the nurturing support of the YOT to considerably less support from the Probation Service.
- Probation challenges – staffing, caseload size etc, not likely to be a youth specialist. Amount of time they have for individuals, work does not tend to include the wider family<sup>11</sup> and they may not have the knowledge to connect people to local services. Lack of trauma informed work.
- Integrated Offender Management response to young adults is Probation and Police led, including supervision, interventions and enforcement approach.
- Rates of offending are high and offending behaviour may continue into adulthood. YJB work on impact on 18 to 21 cohort – need to find out more.

## Opportunities

- Welsh youth policy is up to the age of 25 – should there be specialist multi agency teams for young adults – not based solely on risk levels such as in Integrated Offender Management but focused on maturity level, with an emphasis on providing continuing support and preventing re-offending? Youth Services, YOTs, social service leaving care teams and National Probation Service (NPS) should be an integral part of this multi-agency team.
- Extend protocol to reduce criminalisation of young adults (care leavers) – to certain groups (SEND, Mental Health, Victims of exploitation) and all young adults?
- Cross service transitional worker (a YOT, youth, social or other worker who had established a relationship with the young person who would link with the multiagency transition team) – consistent relationship.
- Centralised monitoring and legislative change to ensure support for ‘transitioners’.
- Better commissioning of specialist services beyond one year.
- Clinical supervision/practitioner support.

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<sup>11</sup> In Nina Maxwell’s research, parents expressed frustration as they were the only ones advocating for their child but they were kept out of the loop - their child had to consent to sharing information. Some parents, as a result, didn't even know, for example, if their child was still in prison or engaging with services (Maxwell 2022).

- Funded research to understand this cohort and their needs (some research underway).
- Link to any developing ideas for probation in Wales (including Probation Development Group papers).

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## **Postscript: Comments by Gwyn Griffith**

I think the Transition paper as it stands is good and captures many of the points made in discussion. I have some additional thoughts and possible recommendations:

Perhaps we need to define more precisely what we mean by transition cases. Are we talking about individuals aged 17 to 25 who are at significant risk of offending? How are these individuals identified – what are the important indicators? There are likely to be two groups of transition individuals at risk of offending, those that will naturally desist as they mature and those that will continue to offend (dual taxonomy- Moffitt). There is some evidence that the latter group have experienced significant, repeated, and serious trauma. Given that resources are limited should the focus be on identifying and providing additional transitional support to the latter group, especially given the possible risks of labelling and criminalising the former group. If the focus is on providing additional assistance to the traumatised group (potential lifetime persistent offenders) what are the specific skills that those providing the assistance should have, and what type of assistance is likely to be most effective (probably specialist support?). These are the factors that should determine who provides the support. I think there is a lot of scope for more research on all of the questions raised above. I suspect that since 2015 transition caseloads have been dominated by individuals in the traumatised group and that many of these individuals have experienced a gap in any effective support over the transition period.

I think there needs to be a drive to characterise and quantify the actual volume of transition cases in Wales. Ultimately there probably needs to be a Pan-Wales agreed and effective mechanism to identify cases that need support. There also needs to be agreement about what constitutes effective support and who is best placed to provide it (which should be informed by the evidence base). Initially at least there therefore probably needs to be some official body/group set up at national level whose remit is to promote and co-ordinate activity in this area.

## **Appendix 3: Summary of Key Points from YOT Managers Cymru Meeting on Poverty (24/03/2022)**

**Notes by** Jonathan Evans (University of South Wales & Open University)

### **Introduction**

The briefing for the discussion is included at the end of this Appendix. The briefing provides the background and context to the discussion as well as the three questions around which it was envisaged the discussion would be structured:

- 1. How do youth offending services *currently* respond to children and families experiencing poverty?**
- 2. How *should* youth offending services respond to children and families experiencing poverty?**
- 3. How would you like Welsh Government and/or the Ministry of Justice to help you work more effectively with children and families experiencing poverty?**

Unsurprisingly the discussion moved back and forth between the three questions.

The summary below does not attempt to ‘minute’ the full discussion, which lasted approximately 50 minutes, but instead highlights the main points raised and seeks to identify the salient issues. The bullet points are grouped under notional sub-headings. It is important to emphasise the point, however, that there are connections between the different areas

### **Poverty: Preliminary Points about Background and Context**

1. Poverty is a structural feature of an unequal society. It is therefore the responsibility of those with political power to redistribute wealth, resources, and opportunities more equitably.
2. Poverty and the visibility of social inequality are drivers of crime. Youth offending services attempt to mitigate the worst effects of low income on individual children and their families.
3. The effects of long-term poverty have impacted profoundly upon families (leading to inter-generational poverty) and the social fabric of many communities.
4. Changes in social security and housing benefits (first introduced in 1988) impacted negatively on children (aged 16-17 years old) and young adults (18-24 years old). The differential treatment of children and young people was described in the discussion as age discrimination. Child benefit changes have also impacted on families with more than two children. At a time when adolescent young people are negotiating the transition to adulthood, they are challenged by severe financial constraints. This affects all young people, but particularly those from low-income backgrounds.

5. The impact of austerity budgets on public services since 2008 has been profound and affected adversely the wider support available to young people. Rising inflation is now also eroding the value of the money people are receiving.
6. A sense of managers feeling overwhelmed by the scale and depth of poverty was articulated in the discussion. Nevertheless, there was a strong commitment to supporting children and families affected by poverty (the majority on YOT caseloads). As one manager commented, service users are not simply asked to report to the office. YOT workers make home visits and are in the homes of young people. Consequently, they are aware of home conditions, the state of the carpets and the clothes being worn by family members. The need to respond to the needs of service users is therefore pressing and a priority for YOT staff.

### **Community-Level and Multi-Agency Responses to Poverty**

1. The response to poverty at community/neighbourhood/local authority level varies across the country. Concerns were expressed about the efficacy of some local anti-poverty strategies (being described as fragmented and barely touching the surface of the problem). Notwithstanding the expression of these concerns, it was clear that even in areas where the local authority response was under-developed, there were examples of good practice. Some areas, moreover, seemed to have quite well-developed strategies (although even these were viewed as inadequate because of the extent of unmet need in the community). The crucial point is that every local authority has all the right people sitting in the room to discuss (a) how best to respond to local conditions and (b) provide clear signposting to services and resources for those who needed them, including those provided by children's services and education (school uniform grants, free school meals, etc.). In one local authority area the management board provided a forum where the critical issues could be discussed. In another it was a 'NEET's Project Management Board with the Welsh Government funded Engagement and Progression Co-ordinator taking the leading role.
2. Following on from the above point, whichever forum made the most sense locally, it was agreed that collaborating with key strategic partners was essential. These could include the DWP (considered extremely helpful in providing funds for young people in one area, but not in another), third sector organisations, the Duke of Edinburgh's Award, colleges, Careers, and schools. It was important to have all those with access to pots of money and opportunities sitting around the same table and talking to one another.
3. Youth justice and the concerns of youth were considered by some to be marginalised with the emphasis being on families. It was pointed out that many of the young people with whom the YOT engages are not living in families and do not benefit from the sharing of resources within a household. The protective factor of family life is not only absent in such cases, but very often young people in the 16-17-year-old age group are living in unstable and inappropriate accommodation (some, of course, will be care experienced).



4. One local authority that covers a substantial rural area has undertaken a detailed analysis of poverty. This has included mapping pockets of deprivation which consider the seasonal fluctuations in income due to reliance on tourism in the local economy. It also identified the challenges being faced by working parents, a point echoed by another manager who said they were now working with the children of families who were unused to navigating their way around the various sources of support (e.g., food banks). The manager who described the mapping exercise was initially sceptical about its value, but now thought it extremely helpful. How to respond to the data analysis had not been worked out by the local authority, but the involvement of the senior officers' group in the exercise meant there was political weight behind the council's work.
5. One manager who worked in an urban area, reported how a community-based approach was being developed. It was overseen by a panel that was reminiscent of the YISP partnership/panel. Given the shortage of funds in local government, the strategy was targeted on a low income, high crime neighbourhood (within which gangs operated). The aim was to divert young people from crime and anti-social behaviour by meeting needs (through, for example, food banks, or 'simply' advice) and simultaneously opening up opportunities for them (such as sport, including a football tournament; or allotments for young people). One important feature of this community development approach was engagement with the local business community (it being in the interests of businesses to reduce crime and anti-social behaviour, and it being in the interests of the local community that businesses should not migrate from the area).
6. Whilst not being raised explicitly as an issue, local governance arrangements for youth offending services and related services are likely to influence the response to poverty and other issues affecting young people. The Directorate within which the YOS is located may, for example, influence the way in which youth services are deployed (one YOT manager was responsible for both the YOT and youth services). In another local authority, children's social work services may be more salient resulting in greater emphasis on contextual safeguarding.
7. It was considered important to ensure that youth services were retained in the most deprived wards.

## **Practice**

1. Advocacy in relation to benefits and housing was considered important. Sometimes this was provided in-house and in other cases it was by partners with expertise in these areas. The importance of the 'no wrong doors' approach was acknowledged as was the need to undertake systematic assessments of the finances of young people and their families so that incomes could be maximised. Some areas benefited from hub-based universal services that provided advice and guidance to all young people and their

families. One manager identified the 'Info Shop' as being a vital local resource to provide help with benefits and a route to access to wider children's services.

2. Poverty of aspiration and the material constraints on opportunity need to be addressed in some cases by providing additional funds. For some young people to engage with activities it meant finding money for trainers, clothes, equipment, and transport (the latter being particularly important in rural and post-industrial areas where the transport infrastructure is poor). Such enabling budgets were crucial.
3. The need to provide services outside of 9.00-5.00 on weekdays was identified. Some local authorities do provide this, but others do not. Services included youth work (attributed to changes in the terms and conditions of services) and Emergency Duty Teams.
4. As one manager expressed it, YOT workers must 'be all over the place' in the community and 'help to turn the wheels' to make things happen for young people and their families. Practitioners need to be proactive, resourceful, and creative.
5. Receiving help and support should not be experienced as embarrassing. These are entitlements and rights. Young people and their families are citizens.
6. Keeping young people out of the formal justice system was regarded as one of the most important aims of youth offending services. Prevention and diversion services are therefore vitally important if young people are not to be stigmatised by criminal records (a criminal record representing a major barrier to engagement with education, training, and employment). It should be noted that law-breaking is fairly normative amongst young people, but those from the poorest families and neighbourhoods are more likely to be apprehended and criminalised.
7. Much YOT work is essentially social work with children and families. To help the young person one must help the family. Thus, Families First and Children in Need funding can be important (although it was noted that the thresholds for Children in Need have been raised). As noted earlier, though, there are other young people who need additional support because they are not living in family settings (strengthening links with LAC and care leaving services could be important in some cases).
8. The relationship between poverty and school exclusions was noted (those from low-income backgrounds being most likely to be excluded). One manager reported that his YOT was much involved in the provision of education for those who had been excluded. He wondered whether youth justice as a sector could play a more proactive role in helping schools to address the school exclusion agenda.
9. The challenges and dilemmas of pre-sentence report writing. Assessments for Pre-Sentence Reports (PSRs) are driven by Asset Plus (now just Asset), which is comprehensive but does not frame economic need in terms of poverty. There is a dilemma about how to represent poverty in PSRs. To do so explicitly runs the risk of alienating sentencers who may harbour stereotypical views about the poor, which could result in negative labelling and the punishment of disadvantage. The option of

using synonyms or euphemisms for poverty may be preferred to silence on the subject, but this also has its risks (e.g., referring to ‘budgeting problems’ or ‘budgeting challenges’ risks shifting responsibility on to the young person or family). This is a practice issue that could be given further consideration.

### **What could Welsh Government, UK Government and other key agencies do to help address the poverty issue for youth justice service users?**

1. Just as HMIP and ESTYN quite rightly commission thematic inspections on such subjects as care-experienced children, they need to commission thematic inspections on working with children from low-income backgrounds and neighbourhoods.
2. The benefits system should be reviewed and changed to liberate young people to be able to ‘earn and learn.’ The current barriers disincentivise some young people from taking up educational, training and employment opportunities (e.g., money and/or accommodation/supported lodgings can be lost).
3. Following on from the above point, it should be recognised that for some young people caught in this situation, there are opportunities to earn significant amounts of money in the shadow economies of stolen goods and drug distribution. The risks of county lines, for example, are either not understood fully or are under-estimated by children vulnerable to criminal exploitation. Once involved in county lines or other drug distribution business models, debt bondage can tie young people into modern slavery. Thoughtful consideration therefore needs to be given to developing prevention strategies (reducing the risk of recruitment) and safe exit strategies for those already involved in these more serious criminal networks.
4. It was reported that young people being fined by the courts has increased over the past three years. This needs to be addressed.
5. Raising the age of criminal responsibility is one of the most effective diversionary measures that could be taken to avoid stigmatising young people with criminal records. As has been mentioned previously, a criminal record represents a major barrier to social inclusion.

### **Conclusion**

The above points represent a very brief summary of the points discussed with YOT Managers. Nevertheless, they highlight many of the salient issues that affect the young people and families with whom youth offending services engage. This is a population that should be treated as ‘children first’ rather than stigmatised as ‘young offenders,’ but it should also be recognised they have additional needs which need to be considered within the wider child poverty strategy.

## Briefing and Questions YOT Managers Cymru

### Discussion on Child Poverty and Youth Justice Meeting on 24<sup>th</sup> March 2022

#### Preamble

Thank you in advance for agreeing to discuss the issue of child poverty and youth justice. This agenda item has emerged following recent discussions about 'poverty aware practice' on the Wales Youth Justice Advisory Panel and in dialogue with Welsh Government.

Managers and practitioners in youth offending services know that children from low-income households and poor neighbourhoods are over-represented in the youth justice system. Tackling poverty and related issues of structural disadvantage are, quite reasonably, considered to be primarily the responsibility of government. To that end, child poverty policies and strategies are currently in the process of being reviewed and redrafted by Welsh Government. Nevertheless, it has been acknowledged by Welsh Government that generic child poverty policies may not always reach children in, or on the cusp of, the youth justice system. It is acknowledged, for example, that young people with criminal records face additional barriers to education, training, employment, accommodation, and leisure. It is therefore recognised that there is need to develop more specific policies and strategies for these children.

#### Discussion at the YOT Managers Cymru Meeting:

The discussion will be structured around three questions:

- 4. How do youth offending services *currently* respond to children and families experiencing poverty?**
- 5. How *should* youth offending services respond to children and families experiencing poverty?**
- 6. How would you like Welsh Government and/or the Ministry of Justice to help you work more effectively with children and families experiencing poverty?**

These are broad questions and can be answered in any way that you think most appropriate. Areas of practice on which you may wish to reflect, however, could include the following:

1. Income maximisation.
2. Advocacy.
3. Community work.
4. Representations of poverty in assessments, including PSRs.
5. How practitioners view the relationship between ACEs and poverty.
6. Systemic obstacles/barriers and how to overcome them.

I look forward to meeting with you on 24<sup>th</sup> March. In the meantime, please don't hesitate to contact me if you have any queries. My email address is [jonathan.evans1@southwales.ac.uk](mailto:jonathan.evans1@southwales.ac.uk)

Best wishes,

Jonathan Evans (University of South Wales)

## **Appendix 4: The Future of Youth Justice in Wales (YOT perspectives)**

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**Sub-Editor:** Jonathan Evans (Open University)

### **Introduction**

This document captures the key points that emerged from a consultation with members of YOT Managers Cymru and contains various questions which were posed which merit further consideration. Some of these themes appear in Paper 1, as this is one of the sources from which it was drawn.

### **Youth Justice Ethos**

- If the ethos of the youth justice system in Wales was to become more child centred, trauma-informed, relationally based and more firmly embedded within a children's rights framework, what should it look like? Ensuring that there is adequate access to health (i.e. Child and Adolescent Mental Health Services (CAMHS) and psychology provision that can respond to complex needs). Also, key is how trauma informed approaches are being developed by partners: what is happening and whether it is meaningful?
- The age of criminal responsibility should be raised. Ten- and eleven-year-old children in particular are very small in number and should be dealt with outside of the criminal justice system. The United Nations Committee on the Rights of the Child recommends that the minimum age of criminal responsibility should not be lower than 14 years of age.<sup>12</sup>
- Implementation of more out of court options, particularly the use of No Further Action (police Outcomes 8, 21 and 22), as common practice to ensure a wide range of options is available to divert children away from the youth justice system and formal cautioning.
- Prevention should be embedded and recognised as a core youth justice service function.
- Align with and build on the ethos and ambitions of the Youth Justice Blueprint.

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<sup>12</sup> [General comment No. 24 \(2019\) on children's rights in the child justice system | OHCHR](#)

## Youth Offending Teams

- YOTs are regarded as a successful model: research studies support this, but there are alternative successful models that could also be considered.
- Should the statutory composition of the youth justice system be looked at, are any key partners missing and what impact is that having? Potentially key agencies which are currently not statutory partners are housing and Youth and Community Work (supporting children to access their entitlements).
- A main and consistent difficulty has been getting a health representative into the statutory membership of the YOT; health provision varies from service to service, as does the range of health services (e.g., primary care, Child and Adolescent Mental Health Services, speech, language and communication (SLC) and psychology<sup>13</sup>). There are inconsistencies in resources across local authority and Health Board footprints (resulting in access to health services by geography). There needs to be a greater understanding of where the demand is for mental health services and to obtain the necessary resources and services. There should be better access to SLC therapy/support generally and for YOTs that do not have this service. Children in the youth justice system often have additional learning needs which are not always adequately responded to (e.g., when they have SLC problems. There are long waiting lists for children with Autistic Spectrum Disorder, resulting in some getting into trouble, which is evident through Channel<sup>14</sup> referrals (children being drawn into extremism).
- The partnership with education is not always as strong as it should be strong operationally and strategically. It depends on where YOTs sit within local structures. It is strong when the YOT is placed within an Education Department, but difficult to know what the position is in local authorities when this is not the case. Depending on where the YOT is situated, extra effort has to be made to ensure there is good communication with other departments which are essential to the delivery of youth justice services (not just education). YOTs tend to drive the partnership agenda to make the necessary links.
- Does it matter where the YOT is located in the Local Authority and its impact on the relationship with Children's Services, Early Help and Education? Location can make a big difference and can influence funding and access to services. It matters from the perspective that close links with all partners is central to providing prevention and early intervention services. However, location may be less important than strong communication links. One YOT suggested the YOT should be located in Education as it is a protective factor; therefore a strong relationship with education providers is critical to children's long-term outcomes and being based within an Education Department helps with this. The relationship with Children's Services also needs to be

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<sup>13</sup> The source was a mapping exercise that YJB Cymru did of health provision in YOTs in Wales, as part of Blueprint activity.

<sup>14</sup> [Channel and Prevent Multi-Agency Panel \(PMAP\) guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/channel-and-prevent-multi-agency-panel-pmap-guidance)

very strong and it requires good leadership to make this happen, regardless of what department the YOT sits in. Location with Children's Services doesn't always mean the ethos and principles of Child First and trauma-informed practice is shared. The question is how this can be enhanced and made better.

- Should the YOTs be co-located with other services which support children (e.g., Youth Work, Play Work, adolescent safeguarding services, services for children aged 16 years and over)? Most YOT managers have multiple responsibilities. Are some services better co-located than others? YOT Managers are becoming overloaded with more expansive portfolios due to financial considerations. There is value in the co-location of offices (YOTs can appear a little isolated or separate); youth justice and Youth Work positioned together are a particularly good alliance. Where there is a good fit that works it is largely attributable to leadership and ensuring that the YOT is not seen as an add-on, regardless of what department it sits in. In one YOT the education, training and employment (ETE) worker is based in another team to give it more influence with schools. This has worked much better than having the ETE worker managed solely within the YOT. The YOT multi-disciplinary team is a very good model but does benefit from being allowed some flexibility in its organisation. Maintaining partner engagement is a continuous challenge.
- The ratio of YOT work has changed. It is now focused on the front end of the system, rather than statutory cases (those on court orders). All work undertaken (prevention and diversion) needs to be accounted for (see Appendix 5 **Aberystwyth University study**). Although prediction is not an exact science, it is possible to identify some children who are likely to get into trouble. Interventions should be triggered in response to certain behaviours occurring that could lead to a raft of negative outcomes and form part of local preventative strategies. Prevention activity is unseen and undervalued. YOTs receive referrals from Children's Services, possibly because they do not have the capacity to work with some children and their families. YOTs can offer solid interventions and have the expertise to address harmful sexual behaviour when social workers do not have the capacity to do so. This is critical to demonstrating what is arguably the most important work the YOT does: referrals – interventions – outcomes. The Out of Court Disposals KPI is a good start (see footnote 1), but more consistency is required across prevention services and how the journey of the child is captured via the civil or criminal routes. Anti-social Behaviour was considered likely to increase substantially following Covid, the impact of the cost of living crisis, less training available, fewer employment opportunities, school absenteeism, etc. Inevitably there is pressure for some agencies to be reactive when ill feeling within communities is high and politicians become involved. Is everyone aware of what should happen? What are the expectations? How do we make it fair for all children and ensure we don't fast track them into Civil Injunctions or Criminal Behaviour Orders? Is the understanding of Child First properly shared? How can this be done better? How effectively do Community Safety Partnerships connect with Safeguarding Boards and YOT Management Boards to achieve greater understanding of desired

outcomes, proportionality, etc? How are perceptions regarding safeguarding children altered whilst trying to keep communities safe?

## **Children in the youth justice system**

- There is an argument that children in the youth justice system have more complex needs. This is difficult to substantiate fully, with limited references in literature and data gathered not providing separate breakdowns for England and Wales. There has been little published comment about operational or strategic responses. All services are reporting greater complexity. However, the debate about complexity is not always helpful and needs to stop. Children with high level needs have always existed in the youth justice system and to some extent these needs have become more apparent in statutory cases due to the reduction in that cohort, although YOTs are also seeing a similar range and breadth of needs in prevention populations. With a Child First approach YOTs look at the individual and/or group needs. What makes children seem more complex is the fact that YOTs are dealing with limited resources to address varied and wide ranging needs and can feel overwhelmed and left holding issues they are not trained to address. The management board and its partners need to understand exactly what the demand is, what themes are evident and how resources are used to help children much earlier to prevent being overwhelmed by what appears to be greater complexity. This also relies on the quality of partnership working.
- All YOTs should be required to undertake a joint strategic assessment of children's needs with statutory partners to define current and future needs and demand for services and what type of service. All local authorities are set up differently. For example, one locality has a Prevention and Early Help Partnership that will have oversight of children's needs, including those needing youth justice services and will utilise its data alongside data collated by other service providers to determine the most appropriate service for the child. It would be better to utilise these strategic partnerships, rather than require the YOTs to take the lead on this.
- A further question is what should participatory practice look like from a youth justice perspective? There is a lot to learn from Youth Work, as they are experts in this area. Participation exists in different contexts, the child, family and domestic context, partnerships, etc. A good starting point would be to explore what YOTs do with the feedback they receive from children on routine basis and whether it is simply recorded or systematically collated into themes to establish what is emerging. Further considerations are whether children's voice and views should be the platform on which all individual interventions are based which shape interventions for the wider cohort and what children collectively say about social change and their lives in the here and now. Should participation and what it tells us be more fluid rather than simply a snapshot? Many opportunities are missed to listen and convert what is learned daily into improved practice and services.



## Targeted Prevention

- Defined as work with children either at risk of entering the system, those who have offended who may not warrant an out of court disposal (no further action) or available to children on completion of statutory orders in need of ongoing voluntary support. (See *YJB definition*<sup>15</sup>)
- YOT Prevention activity in Wales is supported by the Welsh Government's Children and Communities grant. Prevention provides a more graduated approach to children and more opportunities to keep them away from the formal system, which a Child First position would support.
- However, there are various views on the role of YOTs in undertaking preventative work with children who have not offended, whether this work should be located in Children's Services or retained as targeted activity by YOTs because of their expertise in dealing with this group of children. What is the preferred position? Children's Services refer children to YOTs due to their own capacity issues. The cases referred are often complex but seemingly do not meet the thresholds for children in need of care and support. This needs further exploration and discussion as the youth justice system has evolved into this role and it provides benefits, but it needs to explore if it is duplicating the support provided by others (e.g., the Youth Service). There is also a risk that prevention is seen by some 'referrers' as something with which to threaten and frighten young people into behaving. This is why YOTs gatekeep referrals to ensure they are appropriate and being made for the right reasons. Many of the referrals received may be more appropriate for other services to deal with. Striking the right balance between knowing when to intervene and to what extent so that it is proportionate and that YOTs are not doing too much given the circumstances, which risks stigmatising children or escalating what is often low-level behaviour into being perceived as more serious because of the involvement of the YOT.
- There is no comprehensive data on YOT prevention activity. There is a lot of work going on in the wider prevention arena (e.g., Team Around the Child, targeted youth services, Family Support Teams, etc.).

## Police

- Are there any views on what the Child Centred Policing Policy and Framework should look like in Wales and how it should relate to the policing of children (e.g. engagement, trust in the police, criminalisation, use of police custody, children who have experienced the care system, protecting children and preventing harm, and generally taking a more radical/trauma informed approach to dealing with children). It would benefit from being brought together in a comprehensive Framework covering all areas. (NB *Principles and Guidelines for diversion and out of court disposals have been developed by the pre-court workstream of the Youth Justice*

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<sup>15</sup> [YJB interim style guide \(yjresourcehub.uk\)](https://www.yjresourcehub.uk)

*Blueprint and make a variety of recommendations for a more cohesive approach (and framework) across Wales).* Also, clearer and updated guidance is needed in relation to the non-criminalisation of children (the All Wales Protocol in relation to are experienced children and young adults fulfils this function to some extent), trauma-informed approaches and being more explicit regarding how these principles are reflected in the YJB Strategic Plan and at a local level the Youth Justice Plan (this also relates to the points made about Anti-social Behaviour in Paper 1). Child First and trauma-informed practice takes a significant amount of time to embed in agencies (from YOT experiences). A question for the future is how knowledge and understanding can be developed across the YOT and youth justice system partnership and how can decisions be better made about children with constructive challenge/compromise when needed. However, there are some good examples (in Cwm Taf) of a police sergeant, working closely with the YOT, using diversion processes (Outcome 22) within the out of court arena effectively. This isn't happening consistently across Wales or the South Wales area (see also the comment below about Principles and Guidelines for Diversion).

### **Diversion and out of court disposals**

- There is well-established diversionary activity in Wales, which when combined with prevention activity has a sustained impact on first time entrant levels. There is a need to preserve this to ensure the numbers entering the system are minimised and children are diverted into mainstream services. This ultimately impacts on court populations, community orders and custody, as does policing policy.
- Is there more of a role for the Police and Crime Commissioners in collectively determining the direction of diversionary practice in Wales in terms of governance, practice and developing nationally agreed datasets? There should be an approach that is recognisable across Wales for children. Alternatively, is this something that the YJB should coordinate with the Police and Police and Crime Commissioners as part of its strategic work? Guidance has evolved that is not cohesive across the various agencies.
- Should the role of Scrutiny Panels be extended to monitor Stop and Search data and the numbers of children Released Under Investigation in each locality, as this is important data to collect and fits with comments above regarding the journey of the child on the periphery of the justice system and there needing to be more trust of the police by children and young people. Monitoring Stop and Search for positive or negative experiences regarding illegal substances found on children is one option.
- How is the All Wales protocol for reducing the criminalisation of care experienced children and young adults is being implemented? Is there anything more which needs to be done to maximise its effectiveness? There is work going on in this area, but is enough known about it? For example, there is a regional policy in place in Dyfed Powys- there are meetings to embed it- but there is work to do to ensure that care homes/foster cares utilise the policy and that the Police use it in practice.. The

Protocol needs to be emphasised at Community Safety Partnership, Safeguarding and Corporate Parenting Boards.

## Court processes

- Youth Panel magistrates are concerned they are becoming de-skilled because of the reductions in children appearing in court and therefore a loss of expertise. Children should not have to appear in Court (unless a high level serious offence has been committed). Other options/models need to be explored.
- The availability of bail options to prevent a remand in custody: are there any current challenges? For example, lack of ability to access local authority accommodation remains a barrier and can lead to remands into custody. There is not enough suitable accommodation to accommodate riskier/more vulnerable children. Accommodation is an ongoing challenge and what is provided is sometimes against the recommendations of the YOT.
- The Welsh Government were looking at accommodation for children with complex needs. Should remand beds be included in this if still active? The location of any beds is likely to be crucial to be able to properly meet needs and to ensure that children in different parts of Wales are not disadvantaged because of a lack of suitable provision. This work needs to be undertaken to improve provision for children.

## Community Orders

- Statutory caseloads are significantly smaller (e.g. referral orders, youth rehabilitation orders and custody). Referral Orders take up a lot of resources. There is a debate to be had about them as there are tensions between the YJB case management guidance<sup>16</sup> (which was revised in 2022) and the Referral Order Guidance<sup>17</sup> which promotes a different ethos, leaving children subject to Referral Orders exposed to more rigid/ punitive/boundaries than peers on 'higher end' orders.
- Use of alternatives to custody. The judiciary need to be confident about the availability of such options (e.g., intensive supervision and surveillance (ISS)). Intensive fostering is not available in Wales or most areas of England. ISS places significant expectations on children. Positive aspects are that it can prevent custody and is intended to be an alternative to it and negative aspects relate to the ability or capacity to comply with those expectations, leading to breach and custody after all. Should anything else be considered to ensure YOTs have the resources they need? Significant and sustainable resources should be provided to enable YOTs to provide this function to be able to effectively manage children in the community. Is this where the resource<sup>18</sup> should be used more effectively, rather than in the prevention arena?

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<sup>16</sup> [Case management guidance - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/case-management-guidance)

<sup>17</sup> [Referral Order Guidance \(mailchimp.com\)](https://mailchimp.com)

<sup>18</sup> After the initial resource commitment to ISSP, ISS is now a very small part of what YOTs do. Dedicated, bespoke funding disappeared years ago. ISS now is – and should be – part of the portfolio of services available, delivered with local discretion about how best to deploy the resources at a YOT's disposal. The

- There has been a significant emphasis on developing trauma informed practice. Is there anything more that should be done? This is probably straightforward to achieve in YOTs but the challenge comes from achieving the same approach in other agencies being trauma informed, which they are not, so the system does not currently support it (e.g. schools exclude: they may be 'trauma aware', but this does not translate into actual practice). The Trauma Informed Wales Framework is intended to promote a consistent approach across Wales.<sup>19</sup>
- What is the place of restorative justice (RJ) and restorative practices (RP)? What is the role for the use of electronic monitoring (and GPS monitoring) and other approaches in a child centred approach? RJ/R is more effective if children, families and victims are properly prepared and supported.. To engage meaningfully with direct reparation, a child needs specific executive functioning skills (this is outlined in the YJB case management guidance). The majority of children referred to Referral Order Panels have experienced Adverse Childhood Experiences and trauma, have complex overlapping needs and do not have the capacity to engage in restorative justice (a key component of the process). The Youth Justice Blueprint has promoted a trauma informed approach. The strong focus on restorative justice in Referral Orders conflicts with this approach. Electronic monitoring is not part of a Child First approach, but if it helps to keep children out of custody, when utilised with appropriate interventions, then it has its uses, but other ways of supporting children also need to be explored/developed.
- How should re-offending rates be measured? It is a binary measure that does not capture desistance trajectories. Moreover, it does not reflect good or bad practice. What other measures could be considered? Use of localised datasets would also help to provide a more comprehensive picture of activity. Gravity scores (for the index offence) should be published to provide some context.

## Custody

- What should the secure estate in Wales look like? The Blueprint advocated for a more therapeutic approach. Secure provision should be centres of excellence for therapy / psychology / health / family therapy / relationships / resilience / trauma / life skills / preparation for independent living etc. Multi-systemic Therapy could also be used.
- Is the vision for the secure estate in Wales and plans to progress it sufficiently stated? Whilst it is evident that plans were in place (as part of Blueprint activity), there is a lack of awareness of progress made and what the current position is.

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package of support available through ISS is now, moreover, provided more through the expertise of different YOT team members rather than by one individual.

<sup>19</sup> [Trauma-informed Wales framework - Search \(bing.com\)](#)

## Resettlement

- Resettlement relies on access to mainstream services, namely accommodation, education, training or employment, and other activity such as family support.
- There has been previous exploration about whether Reintegration and Resettlement panels/partnerships should be introduced into Welsh legislation to provide improved access to services. This was revisited for the Blueprint, with the conclusion that existing powers should be utilised rather than introducing new regulations.
- Are there any other activities which could improve resettlement?

## Transitions

- Transition to the Probation Service is problematic. Children move from the multi-agency support of the YOT to working with a single Probation Officer, who is not a youth expert.
- Should there be specialist multi agency teams for young adults (e.g. 18 to 21 or 25 years), with an emphasis on taking a more trauma-informed approach to prevent re-offending (rather than the risk led approaches of the Probation Service and Integrated Offender Management etc) and ensure young adults receive appropriate services? This should be the case for 18-25 years based on maturation, all of the brain development research and with a focus on trauma informed practice. This should be aligned with mental health services for this age range and any other services where there is an automatic cut off at 18 years.
- Health and education transitions also need to be focused on to improve outcomes for children. Years 6-7 are critical. Key stage 3-4 also spikes. Moreover, there needs to be greater emphasis on vocational education for children in the youth justice system.
- See also Appendix 2 **Youth Justice Transitions in Wales**.

## Governance

- Youth justice management boards: an effective management board is crucial to the effective functioning of the YOT. All statutory partners need to regularly and consistently attend. This is crucial and relevant to understanding functioning of YOTs and the youth justice system, KPIs and responsibilities of partners. Partners at Board level need to be clear that they represent the management board and not just their own agencies when they attend. HMIP Inspections in Wales have not always rated governance and management board functioning very well. Education attendance is crucial, as has previously been identified. And other statutory partners, such as housing and youth work, have already been suggested.
- Is there the appetite to develop an agreed dataset for Wales, which reflects the Wales context and landscape? How far will the new YJB KPIs (introduced from 1 April 2023) do this? The YJB KPIs are a snapshot; Welsh YOTs could access richer data that is more pertinent to Wales and aligns more with policy. Not everyone agrees with an extended

data set. The comment was made that ‘we are going to drown in indicators if we are not careful’.

- Disproportionality, equality and diversity issues are not always being addressed adequately. This needs to be considered in the Welsh context for ethnic minority children, for girls, looked after children, Welsh speakers and those from lower socio-economic status backgrounds.
- Youth justice plans should be more fully reflective of the Welsh context (e.g., Well-being of Future Generations (Wales) Act 2015, Children’s Rights and the United Nations Convention on the Rights of the Child). The Welsh Government could influence more. Youth Justice Plans should definitely reflect the policy landscape in Wales which should be understood by the YJB and the Ministry of Justice. The issues which arose with Turnaround (lack of understanding by the Ministry of Justice, the funder, of the policy context and how it should be reflected in the delivery plans) should not be repeated. There continues to be a lack of understanding of the devolved policy context in Wales.
- The biggest funders of YOTs in Wales are the Local Authority, YJB and Welsh Government. The YJB funding contribution varies between YOTs from 13 to 33% of the total make-up of their budgets (on average around 25%). The Promoting Positive Behaviour grant (from the Welsh Government) should be a ring-fenced grant again rather than being part of the Children and Communities Grant, particularly if devolution is under consideration to protect the youth justice system in Wales. Grants could be hypothecated. The same could be said for funds from Police and Crime Commissioners. Separate grants create bureaucracy, but it is also acknowledged that that the funds available support different activities. The remand budget is paid to the local authority and not the YOT.
- New funding was made available from the Ministry of Justice for Turnaround, a hybrid prevention/diversion initiative for three years (now likely to be reduced to two years). A more devolved system would lose these opportunities, so would there be resources available to replicate such opportunities in future? This is a risk. The Barnet formula should deal with this. The Welsh Government would need to ensure that they provided funding directly to YOTs to protect services.
- More broadly, any significant reduction in resources would leave YOTs re-trenching to deliver statutory services only. Potentially, this could result in an increase in the youth justice cohort, impacting on court and custodial populations, and thus be more costly to manage. The question of resources is therefore an issue that needs to be addressed. This also goes back to the question of YOT role in prevention – what exactly does that look like?

## Other

- What could be the advantages and risks of devolving youth justice? Are the risks and opportunities going to be fully assessed? Funding streams could be better aligned, be less complex, and create the opportunity for better reporting.
- Raise the age of criminal responsibility. Greater alignment with Welsh Government policy, more reflective of the Welsh context and become genuinely Child First, with this ethos embedded across other devolved areas such as education, etc.
- What could be the possible disadvantages and risks of devolving youth justice? A key risk is finance, where will it come from and how it could be protected. Also, would it mean fewer opportunities for UK Government funded initiatives such as Turnaround? Funding gaps, poorer cross-border working with English counties and loss of intelligence sharing are potential risks.
- Currently, some of the main obstacles to delivering youth justice services are not enough finance and staff. Child First/trauma Informed systems are not well developed across other areas of Children's and Education Services. Funding contributions from statutory partners are insufficient. Mental health/speech, language and communication support is insufficient. There is also a lack of resources to provide interventions to those who are at risk of entering the youth justice system.
- What are the Welsh Government's thoughts on how a devolved youth justice system should be configured in future (e.g., building on the existing model of provision or developing a new system and what type of devolution)? This needs some work: a thorough options appraisal is one way in which it could be examined. This should build on the best of what Wales has, but also explore other systems and create one that suits Wales.

## Concluding Comment

It should be noted that at the time of writing YOT Managers Cymru had plans to establish a Standing Group on Devolution and Youth Justice. Future engagement by Welsh Government with this Group is recommended if it has been developed and if not something similar should be established to assist in considering and progressing some of the issues raised here and others that will emerge as the journey towards devolution develops.

## Appendix 5: Aberystwyth University Study provides a brief overview of an evaluation of a prevention project in Ceredigion

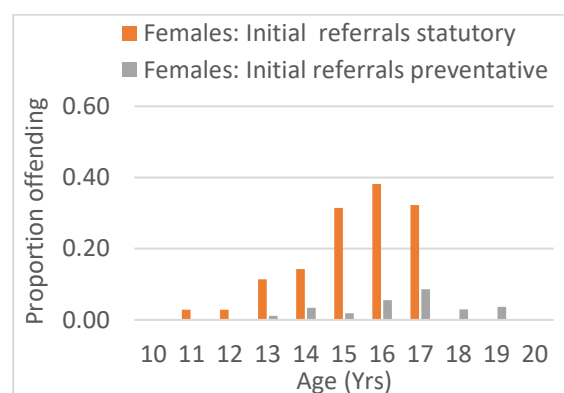
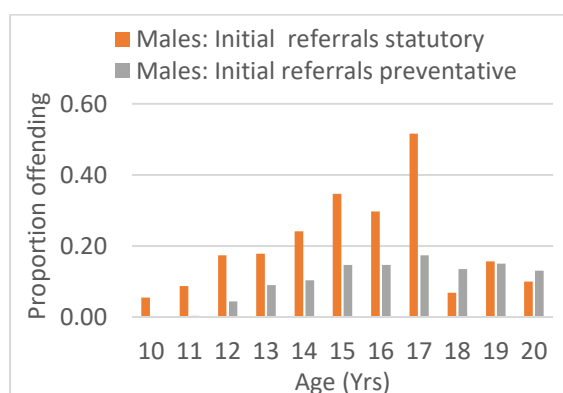
**Author:** Gwyn Griffith (Aberystwyth University)

### Introduction

There is some evidence that YOTs can deliver highly effective prevention services: data collected by Ceredigion YOT on all the children (aged 10 to 17 yrs) that were open to the service between 2014 and 2018 (616 cases) have been analysed by Aberystwyth University. Cases were sorted into two groups: (1) **Initial preventative referrals (Treatment group)**. Children whose first referral to the YOT was for prevention services. These children had not, prior to the referral, been dealt with by the police for any offending behaviour. (2) **Initial statutory referrals (Comparison group)**. Children first referred to the YOT by the police after them having an offence (or offences) dealt with by the police (some of these were notification only referrals). A risk assessment tool previously developed and validated by the YOT and Aberystwyth University was used to determine the risk of future offending at initial referral point of all the individuals in both groups (Norris, Griffith & West, 2018).

### Findings

It was found that on initial referral 44% of **initial preventions referrals** were at medium/high risk of future offending compared to 24% of **initial statutory referrals**. Despite this post referral offending was substantially greater in the **Initial statutory referral** group. For male children, offending at the peak age of offending (17 years) was reduced by 67% in the **initial preventative referral** group. For female children, offending at the peak age of offending (16 years) was reduced by 84%. (Wilcoxon signed rank test for matched paired samples. For male groups:  $T = 6$ ;  $n = 11$ ;  $P < 0.05$ ; effect size large ( $r = 0.82$ ). For female groups:  $T = 2$ ,  $n = 8$ ;  $P < 0.05$ ; effect size large ( $r = 0.89$ )).



Norris G., Griffith G.S. & West M. (2018). Validation of the Ceredigion Youth Screening Tool. *International Journal of Offender Therapy and Comparative Criminology*, 62: 3727-3745.



## Appendix 6 Magistrates Association - Comments on Youth Justice in Wales

### Written evidence for Senedd on Youth Justice in Wales April 2023

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We made inquiries of magistrate leaders in Wales to inform our response. This short paper collates the views of magistrates in Wales on the current state of the youth courts and the youth justice system more widely.

#### Strengths of youth justice in Wales

**Specialised youth panels.** The ability to work with young people requires empathy and training and good background experience. The need for specialised youth courts presided over by magistrates who are specially trained in youth court skills as well as the different legal frameworks which apply to children are essential. Youth panel magistrates are particularly trained in communicating effectively with children and young people. Members told us that magistrates in Wales have developed their practice by ensuring that they take a holistic view of the child's circumstances and regularly speak to parents, carers and children themselves to ensure they fully understand the child's situation and can fully consider the best options for the child. The specialisation of youth panels also provides continuity both for children appearing in court and for partner organisations.

The specialisation of the youth bench also has ripple effects for the adult bench. The additional training on different communication needs, neurodiversity and direct engagement are skills that youth court magistrates can utilise in adult courts. For example, Saturday courts and remand courts are not specialist youth courts and therefore do not require three youth magistrates to sit. However, where magistrates sitting on Saturday courts are also youth court magistrates, they can advise colleagues and legal advisers as to the different approach required for children who appear in Saturday courts.

**Commitment of judiciary and staff in youth justice system.** The overpowering strength of youth justice in Wales is down to the excellent team working and dedication by staff and judiciary on the front lines, often in very difficult circumstances. The commitment of youth justice service staff is very high despite significant challenges and under resourcing. The aim of all people involved in the youth justice system in Wales is always to achieve the best outcome for the child. Small benches and few legal advisers mean that commitment is crucial but also allows for staff and judiciary to be intimately familiar with the workings of local youth justice services.

**Child first.** There is a strong commitment to the principle of child first in youth justice systems in Wales and the principle of reducing criminalisation of children where appropriate and possible is embedded into the youth justice system in Wales. Wales has very low custody rates in both sentencing and custodial remand. The embedding of child first principles has led to a significant decline in criminalisation of children.

## Weaknesses of youth justice in Wales

**Lack of holistic approach to health, education, family problems and children coming into contact with youth justice.** The youth panels in Wales are concerned that the drivers of offending behaviour are not sufficiently addressed earlier on in a child's life before they appear in court. Members have raised issues such as pressure on the education, health and care systems as well as a lack of pre-emptive support for parents which are drivers of offending behaviours in children.

**Magistrate morale.** The magistracy is the foundation of the adult criminal, youth and family justice systems in Wales. Volunteers drawn from local communities provide an important service for the public by sitting as magistrates but are under resourced, underappreciated and experiencing a significant morale decline. The Magistrates' Association published a [report](#) in 2022 covering magistrates' morale and the costs associated with volunteering which provides further detail, data and examples.

**Turning 18.** Youth court magistrates in Wales actively monitor the progress of cases and outcomes for children in their area. They are therefore acutely conscious of the impact of delays which are outside of the control of the court which see young people lose the opportunity to be dealt with in the youth court prior to their 18th birthday. Where children turn 18 before they enter a plea, the case is transferred to the adult court and heard by adult magistrates who are not specially trained. This is an ongoing and growing topic of frustration and concern. See Appendix 8 **Turning 18 and the Youth Jurisdiction**.

**Release under investigation.** The use of the power to release children under investigation results in delay which is not in the best interests of children and prevents important intervention work being ordered and risks children turning 18 before their case can be dealt with by the specialised youth court.

**A fragmented system with poor feedback loops.** Members commented that the system is a fragmented one where judicial bench, police forces and youth justice services do not correspond with one another making information sharing complex and often poor with inconsistencies of approach and services offered.

Members mentioned in particular the lack of information the courts receive about out of court disposals when children appear before the youth court making the task of assessing risk more difficult for magistrates. Information sharing between all the organisations involved in the youth justice system is essential as well as greater involvement for children who have experienced the system themselves. The Magistrates' Association has commented more broadly on the use (and lack of consistency) of out of court disposals in our recent [report](#). Three points of particular concern are:

- Lack of consistent scrutiny and lack of magistrate involvement in scrutiny. Youth out of court disposals should be considered distinctly from adult out of court disposals. Scrutiny panels must be in place in all police force areas and youth court magistrates should be involved in scrutiny panels.
- Lack of information about type, number of or efficiency of out of court disposals. At present youth court magistrates often deal with adjournments for consideration of

out of court disposals but receive no further information about the efficacy of such disposals.

- Non-linear powers of police and courts. The increased use of out of court disposals and the types of offences for which they may be used has increased with little strategic oversight in recent years. The result is that police can sometimes issue out of court disposals which go above and beyond what magistrates would have been able to impose had the case come to court. This is a worrying extension of police powers with a lack of judicial oversight. This is covered in greater detail in our [report](#). The availability, provision and administration of out of court disposals varies between youth justice services and police forces which also leads to inconsistency and a lottery for children in Wales who interact with the youth justice system.

There are some areas such as West Glamorgan and Cardiff where out of court disposals are scrutinised and magistrates are involved in this scrutiny. In areas which have active scrutiny panels magistrates report that this is welcome and provides them with a greater understanding of the whole youth justice system and allows them to monitor overall trends.

**Shortages of legal advisers.** Legal advisers are essential to the efficient operation of youth courts. Many of our members have reported shortages of legal advisers across the jurisdictions with retention becoming increasingly difficult due to the more lucrative opportunities skilled legal advisers have in other organisations. Recruitment of legal advisers in rural areas is also particularly difficult. A large proportion of the legal advisers currently in post are also undergoing training which reduces the actual capacity for legal advisors to be in court as well as placing additional burdens on fully qualified legal advisers who must supervise trainees. Some areas only have one specialist youth court legal adviser for relatively large youth courts.

**Ongoing IT issues.** The Court Reform programme has been criticised by the National Audit Office and we are aware that the deadline for reforms has been pushed back to March 2024 which is intended to relieve some of the pressure felt by court staff. However, the impacts of problematic IT systems has a large impact of legal adviser and magistrate morale and caused problems for the day-to-day operation of the youth court.

**National Referral Mechanism.** The NRM can cause undue delay in youth court cases. It is essential that the NRM is used effectively and efficiently to identify victims of exploitation. The pilot programmes, which have allowed for local decision making on the NRM are promising and should be further expanded.

**Cuts to organisations which interact with and support the court process such as youth justice services.** Members also commented on the need to properly resource youth justice services to ensure they can provide the best service for children who interact with the youth justice system. Youth Justice services are a vital source of support for children and their families and must be resourced and funded to reduce offending behaviour in the community.

**Reduced youth courts and de-skilling.** As the number of children entering the youth justice system has declined over the past decade, the number of youth court sittings available has also declined. The reduced frequency of youth court sittings can lead to magistrates becoming

de-skilled in youth court matters. This is not in the best interests of the children who appear in the youth court. The decline in criminalisation of children is extremely welcome but the impact on the skills of the youth panel must be considered. There are a number of ways in which deskilling could be addressed including improved training offers, a reduction in the number of youth magistrates who form part of the youth panel or finding alternative roles for youth panel magistrates in order to retain and improve their skills such as convening court user groups.

### Moving forward: initial thoughts for improvement

**Improved resourcing and funding for youth justice services and social care services.** It is crucial that the care system and the youth justice systems are seen as a whole. Care experienced children are more likely to interact with the youth justice system and adequate support for social care services must be part of the solution for reducing the criminalisation for children.

**Monitoring youth panel levels.** The number of magistrates needed to provide a 'full complement' of youth court magistrates should be kept under review. It is important that benches are sufficiently deep for sittings to be at fully capacity and avoid cancelling courts which is not in the best interests of children. However, this must be balanced against the potential risks of deskilling youth court magistrates. Creative solutions should be considered such as acknowledging youth court magistrates work on scrutiny panels as 'sittings' or improved training offers, for example with youth justice services, which can supplement skills where sittings are not available.

**Re-thinking legal adviser numbers.** Legal advisers as a profession are currently experiencing a very high turnover, a high proportion of legal advisers in training and difficulties with retention and recruitment, particularly for rural areas or areas with a high cost of living. Specialising in youth court matters also requires additional training, high turnover results in significant skills losses. We consider that HMCTS should reconsider what a 'full complement' of legal advisers looks like including ensuring that they account for the high proportion of legal advisers in training and the need to have additional training to specialise in the youth court.

**CPS specialists.** It is vital that all people involved in the youth justice system are specialists including prosecutors in CPS. We consider that CPS should also review the potential for staff turnover and ensure they have enough trained and specialised prosecutors to account for any loss of staff in a particular geographic area.

## **Paper 2: Options for Change**

**Wales Youth Justice Academic Advisory Group (WYJAAG)**

**Workstream 2 Paper: Options for Change**

Draft: 30<sup>th</sup> June 2023

**Lead Author and Editor:** Jonathan Evans (Open University)

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## Introduction

This paper follows on from Paper 1, which considered the current youth justice system in Wales in terms of its strengths, weaknesses and opportunities for improvement. The second of the three terms of reference asked us to identify ‘**what a future vision for the system in Wales could look like**’ and should be read alongside the following appendices:

Appendix 7: **International Framework of Children’s Rights Relevant to Youth Justice**

Appendix 8: Magistrates Association -**Turning 18 and the Youth Jurisdiction**

Appendix: 9: **Wales Youth Justice Academic Advisory Group (WYJAAG) Workstream 2 Paper – Wrexham Glyndwr University Contribution (Dr Tegan Brierley-Sollis)**

The nature of this paper is altogether more discursive and is aimed at exploring options for change. A few preliminary points need to be made before proceeding to a more substantive discussion.

Firstly, it should be acknowledged that whilst ‘visionary’ texts can be inspirational and uplifting, they are often criticised for being detached from political reality. Exercises in Utopian thinking, however, can be helpful in terms of clarifying long-term aims and establishing a direction of travel. As Oscar Wilde commented,

A map of the world that does not include Utopia is not worth even glancing at, for it leaves out the one country at which Humanity is always landing. And when Humanity lands there, it looks out, and, seeing a better country, sets sail. Progress is the realisation of Utopias.

(Wilde, cited in Young, 1992)

Principled pragmatism seeks to navigate a course that will not run aground on the rocks of insufficient resources or public and political opposition to policy proposals that might be regarded by some as being over-idealistic or ‘soft on crime’. On the latter point, research suggests that - when provided with more contextual information to the background of offending - most people are less punitive than is often assumed (Case et al, 2011; Hough and Roberts, 2004). Indeed, there is emerging evidence of growing support for raising the age of criminal responsibility (Pierpoint, 2021). Nevertheless, in an often changeable and febrile political atmosphere, in the age of social media, soundbites and robust political campaigning, the hazards of targeted negative campaigning should not be under-estimated. Navigating a journey towards any ‘Utopian’ destination is, of course, the responsibility of politicians rather

than the authors of this paper. The terms of reference for the Workstream 3 paper require us to deal explicitly with the practical steps for moving in the direction of this vision. Nevertheless, although this paper is not primarily concerned with cartography, we do make a few tentative marks on the map because we consider it important to acknowledge some of the risks and hazards that lie ahead.

The second point to make is that the authors represent a range of different disciplines and perspectives. It is therefore unsurprising that there will be different views on what a future youth justice system should look like. In order to accommodate these different views, various policy and practice options are contained within the paper. It is important to emphasise the point, however, that there is broad agreement on the principles which should animate any youth justice model that is eventually adopted. This paper duly delineates these principles.

Thirdly, although Welsh Government's terms of reference for the second paper refer to a 'future vision for the system in Wales', we would argue that practice underpinned by clear and evidence-based principles is more important than moving the institutional furniture around. This is a particularly important point to make when resources are scarce. That said, the creation of new structures and systems can certainly help facilitate and sustain good practice. In order to avoid disrupting good practice, though, the priority should be to plan carefully any proposed changes to the system of youth justice. The radical 'year zero' approach taken to youth justice by New Labour in its first term has been widely critiqued and need not be reprised in detail here (early examples of trenchant critical accounts of the 'new youth justice' include Haines and Drakeford, 1998; and Goldson, 2000). Suffice to mention here that the incoming Labour Government's failure to evaluate critically and dispassionately the evidence on the benefits of constructive diversionary practice led to the introduction of a net-widening strategy that drew considerable numbers of children into the youth justice system and for a period this resulted in the imposition of extremely high rates of youth custody. It is acknowledged that these were unintended consequences, but equally it should be recognised that the consequences for children in conflict with the law were profoundly deleterious. The Crime and Disorder Act 1998 also sought to institutionalise multi-agency working through the creation of Youth Offending Teams (YOTs). This was, no doubt, a well-intentioned move because good multi-agency working is an aim that is rightly and widely shared. However, developing and sustaining an effective community of practice across different disciplines and occupations did not necessarily require the creation of a new agency where police officers, probation officers, social workers, health workers and education specialists would need to belong to the same agency. Leaving aside the risk of 'partnerships of the powerful' working against the interests of children and their families (Drakeford and McCarthy, 1998: 103), there was need for these diverse professionals to build trust with one another and negotiate a new practitioner culture (Cross, Evans and Minkes, 2002; Souhami, 2007). This took time and, in the intervening period, many children were criminalised and many deprived of their liberty. Youth Offending Teams (now typically rebranded Youth Offending Services or Youth Justice Services) have come a long way since those early years: they have changed many of their practices (including the rediscovery of constructive diversion) and matured into well respected centres of practitioner expertise, particularly in relation to those children who can be characterised as presenting both complex needs and challenging behaviour. This is not to

suggest that we are content with the status quo. The options include, at one end of the spectrum, adding enhancements to the current structures and systems and, at the other end, radical reform. The lesson of recent history, though, is that change must be planned carefully and, in all likelihood, incrementally. Disrupting existing good practice can result in profoundly negative outcomes for children, families and the communities in which they live.

The fourth preliminary point is that youth/juvenile justice cannot be considered in isolation from the other services delivered to children and young people. Children and young people should be considered holistically. Moreover, child and youth services should encompass all young people, not just those young people who offend or are assessed as being 'at risk' of offending. Such services are not only about 'preventing' offending, but also about maximising positive outcomes. The initial route of referral (e.g., health, education, social care and criminal justice) will, however, often determine how a child is assessed, labelled and processed. Youth justice practitioners will know that whilst the initial referral relates to the commission of an offence, a subsequent assessment may reveal more pressing concerns about family, a looked after placement, health, education, poverty and/or toxic neighbourhood dynamics. Accordingly, it is important that rather than being a detached and discrete silo of specialist expertise, youth justice should be part of a wider service of support for children and young people, including universal youth, education and health services. The interface between youth justice and the infrastructure of services delivering child welfare policy should be aligned. While it is important not to idealise the Nordic model, the foundational principles are worth restating:

Nordic youth justice must be seen in the framework of the Nordic Welfare State. It is an integral element of a wider system of universal social services which the state provides to all people as an entitlement. It follows that all children are covered by this system. Youth justice falls under the child welfare system, but the reach of the child welfare system extends well beyond problems related to youth crime and embraces all elements relevant to the well-being and safe development of the child (Lappi-Seppala, 2019, pp.104–105)

Likewise, the interface between services to children and young adults also needs to be considered. The cliff-edge between children's services and services to adults is both vertiginous and perilous for young people in social transition. The need to provide adequate and appropriate support services for these young people is an important element in any youth justice strategy. Youth justice policy should not end at the attainment of adult status.

The fifth point concerns recognition of the need to respond to the needs of the victims of crime. Many of these victims will, of course, be other children. Victims will often also be from the most deprived and disadvantaged backgrounds. *Child First* approaches in youth justice are sometimes misunderstood as being solely about the young perpetrators of crimes and harms. Services and support for victims, which may - when appropriate - include restorative approaches, should therefore be an element in any future youth justice strategy. A youth justice strategy based on *Child First* principles is unlikely to be sustainable unless it builds support for those most affected by crime and the corrosive effects of what is popularly termed 'anti-social behaviour'. A binary distinction between 'victims' and 'offenders' should, of course, be avoided; not least because many of those who perpetrate harm will also have experienced victimisation. Although not without its challenges, the potential exists for



building a community of interest between perpetrators and victims. Constructive and respectful public engagement that takes account of people's genuine anxieties - of the sort witnessed in Wales ahead of the removal of the defence of 'reasonable punishment' - can go a considerable way to allaying community concerns and help counteract populist political and media discourses about youth crime. The guiding principle should be to tell people what they need to know rather than tell them what we sometimes imagine they want to hear.

Finally, it is vitally important that youth justice is not exclusively about tackling offending by children and young people. It is also about social justice. Those most likely to come to the attention of the criminal justice system are also those most likely to be from the most disadvantaged families and deprived communities. Many will also have experienced discrimination on the basis of gender, ethnicity, postcode and public care status/history. For such young people, bringing a measure of social justice into their lives is an essential element of youth justice. Youth justice should therefore be anti-oppressive and poverty-aware. Moreover, families are too often at risk of being failed by services and support to which they should be entitled (Lammy, 2017). The governance of youth justice is therefore not a peripheral constitutional issue of little interest to practice. It is, rather, the means by which essential services for children and young people are held to account. In short, social justice is an ethical and practical prerequisite for an effective youth justice strategy.

## Principles

Before summarising the principles that should underpin the youth justice strategy, it is worth revisiting and restating the reasons why children in conflict with the law should be treated differently to adults. Four main reasons are adduced.

Firstly, children's cognitive competences are in the process of developing (Haines et al, 2021). The child and adolescent research, including the neuroscience, suggests that the maturation process is generally not completed until the early to mid-twenties (Delmage, 2013). Thus, competences are developing throughout this period of development in such areas as cognitive skills, impulse control, social skills, moral awareness and emotional self-regulation. Traumas such as abuse and bereavement, along with adverse childhood experiences such as poverty, can also delay development (Evans *et al*, 2020). Whilst recognising that young people possess agency and strengths, the concept of the competent rational actor (a familiar ideal-type in discussions on criminal justice) should be modified in relation to children.

Secondly, power relations between children and adults are inevitably skewed in favour of the latter. Children rely on adults, including services provided by adults, for not only the key necessities of life but also guidance, resources and opportunities. Children possess independent agency, but do not always possess the means to express their views or implement the decisions they would wish to take.

Thirdly, youth justice in the jurisdiction of England and Wales is subject to human rights principles enshrined in international conventions that relate to children, most notably the United Nations Convention of the Rights of the Child (1989) and the Council of Europe's (2011) guidance on *Child Friendly Justice*. Human Rights are living instruments that develop over time

through the process of judicial interpretation in case law, the recommendations that emerge from the UN reporting cycle, the General Comments issued by the UN Committee on the Rights of the Child, and the publication of critical commentaries by national Children's Commissioners and Ombudspersons. Crucially, the children's human rights conventions cited in Appendix 7 (**International Framework of Children's Rights Relevant to Youth Justice**) (represent a recognised framework in international law. Unless incorporated in domestic law, however, there is often a significant gap between aspiration and implementation. In Wales, of course, the Rights of Children and Young Persons (Wales) Measure 2011, which – along with the removal of the defence of 'reasonable punishment' in respect of common assault/corporal punishment (passed in 2020 and implemented in 2022) – goes some way to protecting and promoting children's rights. The UNCRC has also been incorporated into some relevant laws, placing duties on practitioners and public bodies in relation to social care and education (Social Services and Wellbeing (Wales) Act 2014, Additional Learning Needs and Educational Tribunal (Wales) Act 2018, Curriculum and Assessment (Wales) Act 2021). In the absence of full incorporation of the UNCRC into domestic law, however, it is desirable that the local state translates international children's rights into citizenship rights for children and young people. Ideally, these citizenship entitlements need to be offered in the form of tangible packages of support and opportunity with mechanisms of accountability being made available if they are not delivered. In its landmark policy for children and young adults, *Extending Entitlement* (National Assembly for Wales, 2000) went some way towards providing a charter of rights-based welfare and other entitlements to its young citizens.

Finally, it should be recognised that law-breaking is fairly normative amongst children and young people across the social class spectrum, but most desist as they get older; perhaps partly as a result of the maturation process and partly because they are making successful social transitions into early adulthood. As has already been noted, those most likely to come to the attention of the criminal justice system are from the poorest backgrounds. According to the Edinburgh Study of Youth Transitions and Crime (McAra, 2018; McAra and McVie, 2010, 2012, 2016, 2018 and 2022), the four 'key facts' that emerge from tracking a cohort of approximately 4,300 young people across the social class gradient are summarised below:

- i. Persistent serious offending is associated with victimization and social adversity
- ii. Early identification of at-risk children is not a water-tight process and may be iatrogenic
- iii. Critical moments in the early teenage years are key to pathways out of offending
- iv. Diversionary strategies facilitate the desistance process.

(McAra and McVie, 2010: 180)

Contact with the criminal justice system, meanwhile, appears to increase the likelihood of further offending and thereby extend criminal careers (McAra, 2018; Motz *et al*, 2020). This has implications for the way in which youth justice strategies are delivered. If, counterintuitively, entry into the formal youth justice system is likely to entrench offending

and increase victimisation, serious consideration needs to be given to alternative ways of addressing and managing offending behaviour. As a direction of travel, the ultimate aim should be to remove children from the formal criminal justice system (Case and Haines, 2021).

## Principles into Practice

Youth justice work in Wales should be aligned with the principles that flow from compliance with international children's human rights (see Appendix 7 **International Framework of Children's Rights Relevant to Youth Justice**, for further details) and should interpret and apply the latest guidance issued by the UN Committee on the Rights of the Child (see, for example, United Nations Committee on the Rights of the Child, 2019) and the Council of Europe (2009 and 2011). The overarching principles of the UNCRC comprise the best interests of the child being a primary consideration, non-discrimination, the right to thrive and develop, and the need to listen to the child's voice in all matters that concern them.

A Children's Rights approach should be enhanced by the adoption of a *Child First* perspective. It should be recognised that versions of Child First principles have long been influential in guiding social work practice with children, young people and their families. Those principles are broadly the same, or at least compatible with, those that have been developed in the domain of youth justice. Additionally, it is envisaged that our vision for youth justice will be aligned with the essential principles of the Children and Young People's Plan (Welsh Government, 2022). The core aims of Welsh Government's approach are set out below.

Core Aim 1 - have a flying start in life

Core Aim 2 - have a comprehensive range of education and learning opportunities

Core Aim 3 - enjoy the best possible health and are free from abuse, victimisation and exploitation

Core Aim 4 - have access to play, leisure, sporting and cultural activities

Core Aim 5 - are listened to, treated with respect, and have their race and cultural identity recognized

Core Aim 6 - have a safe home and a community which supports physical and emotional wellbeing

Core Aim 7 - are not disadvantaged by poverty.

In the youth justice context, The *Child First Offenders Second* approach was initiated by practitioners in dialogue with researchers in the 1980s, and was later codified and developed by Haines and Drakeford (1998). It has since been updated and reframed by Haines and Case (2015) as *Positive Youth Justice*. Latterly, Case and Browning (2021) have undertaken further work on a *Child First* approach. The Youth Justice Board of England and Wales have identified

four key principles or tenets of *Child First*. The evidence base for these tenets has been provided by Case and Browning (2021: 4) and are cited below.

**See children as children:** Prioritise the best interests of children, recognising their particular needs, capacities, rights and potential. All work is child focused, developmentally informed, acknowledges structural barriers and meets responsibilities towards children.

**Develop pro-social identity for positive child outcomes:** Promote children's individual strengths and capacities to develop their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.

**Collaboration with children:** Encourage children's active participation, engagement and wider social inclusion. All work is a meaningful collaboration with children and their carers.

**Promote diversion:** Promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system.

We would further argue that a *Child First* approach should not only 'acknowledge structural barriers' but take active steps to remove them. Anti-oppressive youth justice practice should therefore address directly the obstacles and discriminatory processes that constrain the development and future prospects of children and young people.

## **Setting a Direction of Travel: Translating Principles into Policy and Practice**

At the outset it should be acknowledged that the terminology used in youth justice is derived largely from the domain of adult criminal justice (e.g., prevention, diversion, supervision, and alternatives to custody). In the absence of an alternative lexicon, these terms are used in this paper. It is to be hoped that alternative terms will, in due course, emerge. Indeed, we would commend the idea of establishing a working group to develop such a lexicon.

The way that the above-mentioned principles are translated into practice will depend in part on the policy decisions taken by Welsh Government. Nevertheless, practitioner culture will also come into play as will the extent to which children and young people are involved in the process of developing best practice. The participation of children and young people in co-producing models of intervention and supervision is, indeed, essential (see, for example, work undertaken in Greater Manchester by Smithson, Gray and Jones, 2021). In Wales, many public services including government departments, are using the Children's Commissioner for Wales's Children's Rights Framework (2019) to apply these principles in practice.

Summarised below are areas in which some of the policy and practice options are considered.

## **Prevention**

The first tier of prevention is to ensure that children, young adults and their families/carers receive the universal and specialist services to which they are entitled. The unique structural differences of Youth Justice Services, as embodied by YOTs, currently set young people apart from their ostensibly 'law-abiding' peers (Gray, 2005). Support for all children, including those in conflict with the law, should be provided by universal support services to prevent the labelling/stigmatisation of young people as offenders and thereby improve social inclusion (McAra and McVie, 2007a; 2007b; and 2010). Universal services can support those who are unlikely to re-offend in a way that minimises the risk of them being isolated from their communities, as well as supporting young people who are 'prolific offenders' with complex needs. Social integration is essential to support young people and coincides with Taylor's (2016) recommendations for more service integration (McNeill et al., 2012). Lucas and Staines (2022) have commented that there is limited research looking at younger children known to YOTs (8-13 year olds) and limited intervention programmes that specifically address the needs of this age group. They highlighted the need for more research into this area (interventions), as well as research into models of restorative justice or mediation appropriate for younger children, including when perpetrators and their victims are in close relationships.

In order to help avoid contact with the criminal justice system, children need to be made aware of not only their rights under the UNCRC, but also their status when reaching the age of criminal responsibility here in Wales. They, and their parents/carers, need to be made aware of the law, their legal rights and how to access appropriate support and advice. Research currently being undertaken suggests that this is an area in which more work needs to be undertaken (Hampson, Forthcoming).

As far as possible, the aim should be to 'dragonise' youth justice and probation services in Wales by aligning them with the five principles of Welsh social policy outlined by Drakeford (2010). Two of those principles seem to be particularly relevant: a commitment to progressive universalism; and the relationship between the state and the individual being characterised by one of citizenship. In practical terms, this means connecting – as far as possible – service users and their families with universal services. Secondly, as citizens in Wales they should have access to a range of entitlements. Thus, for example, having access to safe and stable accommodation should be framed as a right and a social good rather than on whether it is likely to reduce reoffending. This mindset and the language used is important and constructs the identity of service users as citizens with social rights rather than as 'offenders' (such relabelling is an important element of the desistance paradigm).

On the specific issue of housing, it is important that there are objective measures of accommodation suitability (including issues such as overcrowding, quality of housing conditions, etc.) alongside the current 'practitioner judgment' test that is applied. For example, a practitioner may quite rightly make the assessment that a young person is appropriately placed with a supportive sibling, even though the young person is sleeping on a sofa. In such a scenario, though, it is equally important that an objective measure of housing need is also recorded in order to enhance the prospect of healthy and sustainable housing (i.e., overcrowded conditions can place a strain on family relationships). The option of transitioning to independent housing when the young person reaches the age of 18 years could also be better planned with the formal involvement of housing in the YOT partnership.

There are areas of social justice policy in which all service users should be able to access their entitlements as Welsh citizens. Youth justice and probation services have a crucial role in ensuring this happens. The Welsh Government's anti-poverty strategy is one such area. Given that 41% of adult defendants sentenced in Welsh Crown Courts reside in the twenty most deprived neighbourhoods in Wales (Jackson et al, 2022), the need to address poverty issues at both individual and neighbourhood levels is important. The Welsh Government strategy includes the following measures: maximising take-up of benefits (including Welsh benefits); food poverty initiatives; the warm homes programme; signposting sources of support for managing household costs (especially utilities); the Winter Fuel Programme; the Discretionary Assistance Fund for emergencies; and debt advice services. Recent further initiatives include the Basic Income Pilot for care leavers and universal free school meals. Meanwhile, a significant proportion of the probation caseload will be aged below 25 years. This group, with whom youth and community workers could also engage as mentors, will have additional Welsh citizenship entitlements under the Youth Engagement and Progression Framework. The Young Person's Guarantee makes an offer of education, training, or employment. However, thought will need to be given on how to negotiate the barriers created by a criminal record. Care Leavers, who also form a significant proportion of the probation caseload, can access local authority Leaving Care support through personal advisors up to the age of 25 years in such areas as accommodation, education, training, and mentoring. Access to mentoring, advocacy and support for all young people needs to be established, though. The need to strengthen live and meaningful partnerships between youth justice, probation and local authorities across Wales should be a priority. Youth Work is a key area of work which is important in encouraging children to engage in positive activities by trusted agencies which seek to engage children and young people to help them lead positive lifestyles.

Youth justice in Wales should be embedded within the original philosophy of *Extending Entitlement: supporting young people in Wales* (2000), subsequent legislation and commitments to children's rights. All young people in Wales – as young citizens – should be entitled to access a package of opportunities and experiences that will support them in their transition to adulthood. Public policy needs to *reach* out to those who do not or cannot access such entitlements by other means; if we fail to do so, we should not be surprised that those we miss turn out to create future problems for themselves and present challenges to residents living in their communities. An opportunity-focused approach to youth policy that constitutes both a set of 'rights' and a form of 'early intervention' should form the basis of a 'prevention' strategy (in respect of offending and other negative traits and behaviours). Children's rights can also be translated into age-appropriate Welsh citizenship entitlements for those aged below 18 years, but the principle of citizenship entitlements should be broadened for those entering young adulthood.

Prevention, as indicated above, takes many forms and is wide-ranging. A tiered approach to prevention which considers access to universal rights and entitlements is a population wide-right. However targeted prevention is also necessary for those requiring particular assistance or support. YOTs are key in this space in supporting children identified as vulnerable to offending. Whilst the child might come to the attention of the criminal justice system, the response to those concerns lies outside of it (the role being to access support via mainstream

provision). Further initiatives such as the All Wales School Liaison Core Programme is a preventative programme aimed at promoting positive citizenship and tackling ‘anti-social behaviour’, substance misuse and problems associated with personal safety through an educative approach. Additionally, the relationship between the YOT, school initiatives and Youth Work (in some areas co-located with the YOT) needs to be considered within the wider youth justice prevention framework for Wales.

### ***Diversion from Prosecution (including the Age of Criminal Responsibility)***

The importance of diversion from the formal criminal justice has already been underlined. For many children the lightest brush with the criminal justice system followed by a clear but informal response will be sufficient to dissuade them from further involvement in offending. Others, though, will need more involved and constructive forms of diversion.

When children come into contact with the youth justice system there is an opportunity to assess whether they and their families/carers are connected with the services, support, resources and opportunities to which they are entitled. There is an opportunity, in other words, to conduct a ‘Rights and Entitlements’ check. As has been noted, there is a risk of children and their parents/carers being overly-responsibilised when services to which they are entitled are not forthcoming. It was this deficit in the governance and accountability of services that presumably underpinned Drakeford’s (2018: 33) interest in, and leadership manifesto commitment to, Local Justice Panels being established in each area that would ‘...discharge an accountability remit, including holding to account those services provided by adults which have an impact on the lives of young people.’ How such Panels would be constituted and operationalised requires further work, but the twin aims of determining diversion outcomes and holding service providers to account would be animated by the principle of social justice as well criminal justice considerations. The experience of other models of diversion, such as the Swansea Bureau (Haines et al, 2013), could help to inform future developments. In the meantime, it should be noted that Draft Principles and Guidelines for diversion and out of court disposals have been developed as part of the Youth Justice Blueprint for Wales (Ministry of Justice and Welsh Government, 2019). The document considers some of the associated issues and considerations to make processes more Child First in orientation, setting out a series of principles which might assist with this.

Prevention and diversion activity and the principles associated with them, are key factors in impacting on court populations, the numbers of children under community supervision and those in custody. The Welsh Government currently funds significant activity in this respect through the Children and Communities Grant (which needs to be preserved).

One of the main ways in which children can be diverted from the formal youth justice system is by raising the age of criminal responsibility. As has already been mentioned, any move towards raising the age needs to be planned carefully. As Lappi-Seppala (2015: 68) has pointed out, in the Nordic context, where the age of criminal responsibility is 15 years, ‘... the exclusion of children from criminal justice could be achieved only by establishing a concomitant child protection system that could take charge of misbehaving and mistreated children’. Any move

to raise the age of criminal responsibility should therefore be preceded by careful planning, the reconfiguration of services, appropriate staff training and adequate funding of both universal and targeted services as it is likely to increase demand for welfare-based provision from Children's Services and Early Help in particular, which are already under significant pressure<sup>20</sup>.

As has also been noted, the current advice from the UN Committee on the Rights of the Child (2019) is that the age of criminal responsibility should be no lower than 14 years. This is guidance that should be considered sympathetically and, in our view, followed. Currently, the numbers of ten and eleven year olds in the system are extremely small and children of that age should not be in the criminal justice system. It is a concern, though, that children in this age range can be brought into the system as a result of a Serious Incident Report. In the intervening period, before the age can be raised, it is possible to implement practices that reduce the risk of children under 14 years being prosecuted, restoring the protection once afforded by the rebuttable presumption of *doli incapax* (Pierpoint, 2021). This is, in effect, generally happening in Wales, but where possible issuing practice guidance can help to embed such trends. In the jurisdiction of Jersey where the age of criminal responsibility is also 10 years, practice guidance issued by the Attorney General on the island makes it extremely unlikely that any child below the age of 14 years is prosecuted (Evans, Raynor and Heath, 2022). In Scotland. Of course, children below the age of 12 can no longer be charged or arrested.

In recognition of the 'sliding scale of maturity' (Commission on Families and Wellbeing of Children, 2005), Delmage (2013) has mooted the possibility of a sliding scale of criminal responsibility. For example, the absolute age of criminal responsibility could be set at 14 years, but there could be a rebuttable presumption that children aged 14 and 15 years would not be prosecuted. There could, moreover, be a rebuttable presumption that children aged 16 and 17 years would be prosecuted.

Until Welsh Government is empowered to raise the age of criminal responsibility, efforts should be made to ensure that an appropriate and consistent approach is taken in respect of Outcome 22 (a reference to the Police National Computer outcome that reads 'diversionary, educational or intervention activity, resulting from the crime report, has been undertaken and it is not in the public interest to take any further action'). The use of Outcome 22 needs to be monitored closely to ensure that a postcode lottery is not in operation nor biases against particular social groups.

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<sup>20</sup> It is important to recognise that raising the age of criminal responsibility can place young people at increased risk of child criminal exploitation. This is not an argument against raising the ACR but it is an argument for ensuring that sufficient contextual safeguarding and other protective measures are put in place prior to raising the ACR. Children in other countries have paid a high price on account of policy frameworks with a higher ACR but weak child welfare systems.



Consideration could also be given to empowering courts to extend children's rules and proceedings into early adulthood cases where young people are particularly vulnerable. This option exists in some other jurisdictions (e.g., in Germany up to the age of 25 years; whilst in Japan there appears to be discretion and flexibility available in terms of the age boundaries). In Victoria, Australia, meanwhile, 18-21-year-old young people are assessed for maturity to see whether the continuation of a custodial sentence should be in the juvenile or adult estate. Until such measures can be introduced in Wales, the possibility could be explored of ensuring the presence of Youth Court magistrates sitting in cases involving young adults.

### ***Policing***

We are conscious of the fact that there is a discrete workstream on policing that has been commissioned by Welsh Government and have therefore not considered this area in depth or detail. Although policing has not been formally devolved, there are signs that policing policy and practice are diverging from England (Jones, Harrison and Jones, 2022). As the police are the initial gatekeepers to the criminal justice system, how they interact with children and young people is of great importance. As mentioned in Paper 1, the implementation of the Child-Centred Policing Policy Framework needs to be monitored closely. It is important that children are able to participate effectively from first contact with the police, ensuring they understand and can contribute to processes happening to them. The importance of safeguards to assist participation, including mandatory legal advice (Pierpoint, 2011 and 2020b) where appropriate, should be an integral part of policing practice. As Morgan (2009: 61) has pointed out, 'Article 37(b) states that it is not merely detention and imprisonment of a child that should be used as a measure of last resort, but arrest (and by implication criminalisation) should be avoided also.'

More widely, young people's voices need to be heard and listened to in relation to not only the experience of being policed but also in terms of what they consider to be policing priorities. This could be included in a more general review of the governance of policing in Wales. The introduction of Police and Crime Commissioners was intended to introduce clearer and more effective democratic accountability of policing. It may be timely to review these governance arrangements.

### **Courts, Tribunals and/or Problem-Solving Fora**

The devolution of the youth court (or an alternative model) is worthy of consideration, although this has implications for how the sentencing framework is adjusted to a devolved context. If the Court system is not devolved then it will, of course, operate according to England & Wales rules and legislation. This could lead to conflict and gaps at the interface with Youth Justice services. Much can be achieved without devolving Youth Courts, including providing the best possible service to the reduced number of children coming before them. Nevertheless, devolution could assist better decision-making and outcomes if the Courts' hands are not tied. Stepping around the issue through a welfare-based system such as Children's Hearings or a similar tribunal-based alternative could avoid that issue. Such models are not focused exclusively on offending behaviour but consider a range of health, welfare

and educational issues that relate to children. There may well be capacity and resourcing issues that would, in the short-term, prevent a major restructuring along the lines of Scottish or Nordic models; although it should be noted that devolved administrative tribunals already operate in Wales (e.g., education), so there might be scope to pilot less intimidating and more participatory forms of welfare and justice for young people. Another option is to review the practice protocols between local authority Children's Services and Youth Offending Services in respect of welfare issues. It should be recalled that, in an interesting passage, Morgan (2009: 83-4) considered this issue.

...insofar as children coming before the youth court often display multiple welfare needs it would be possible for Welsh YOTs and children's services to agree to liaise with each other, the police and the CPS, such that the likelihood of children with such problems (particularly parental neglect) being criminalised and/or prosecuted is significantly reduced and the family court route taken more frequently than is currently the case. Dame Elizabeth Butler-Sloss, former President of the Family Division, argued for precisely such an approach, the police and social services jointly invoking the Children Act 1989, which allows the court to direct social services to carry out an assessment and consider whether to apply for a care or supervision order as an alternative to prosecution.

Morgan (2009: 84) reflects further on this line of argument:

Changes in operational policy can be as much a reflection of the encouraged and changing exercise of professional discretion as amendments to the law. The WAG<sup>21</sup> could use its new responsibilities to offer guidance to not just YOTs but child-related services generally to this end. It could also support that advice with grants to set up projects designed to model good practice.

Although Youth Courts in Wales generally appear to be child-focused, this is not necessarily the most child-friendly or effective forum in which to engage and deal with young people in conflict with the law (in terms of child participation, public protection and ensuring appropriate services are provided). We are grateful to the Magistrates Association for sharing their perspective on Youth Court matters. This included a summary of the key themes that emerged from a survey the Association conducted in Wales (see Appendix 6 to Paper 1). One concern is that because so few Youth Courts sit, the numbers of trained and experienced specialist Youth Court magistrates are in decline. Another issue raised by the Magistrates Association concerns those young people who commit offences below the age of 18 years but are prosecuted as adults because they have reached their 18<sup>th</sup> birthday by the time their cases reach court. The situation has, in all probability been exacerbated by Covid-related court delays (but also system delays more generally). This is viewed as being unacceptable by the Magistrates Association (see Appendix 8 **Turning 18 and the Youth Jurisdiction**). We agree.

Consideration should be given to a review of the various models that could facilitate problem-solving approaches and maximise the potential for children's participation in the processes

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<sup>21</sup> WAG (Welsh Assembly Government) was the term used at the time Morgan was writing. Subsequent developments in devolution, including constitutional enhancements and the transfer of further powers, has resulted in this term being replaced by 'Welsh Government'

which deal with them. It is worth noting that, in evidence to the Justice Commission, the Magistrates' Association indicated being open to problem-solving courts. The possibility of initiating pilot schemes based on that review might be a way forward.

Ideally, the Youth Court should be equipped to deal with all children's cases. Thought does, however, need to be given to how appeals would be managed. The devolution of the youth court to Wales is a complex issue which we were asked to consider by the Counsel General. Some initial reflections on the issue are set out below.

### ***Challenges***

Devolving Youth Courts without devolving the courts as a whole would rule out for the immediate future the possibility of reuniting civil and criminal jurisdiction in relation to young people to deal with relevant issues more holistically. But it also poses real institutional challenges. At the moment, appeals from the Youth Court go to the Crown Court on matters of fact and law and to the High Court on matters of law only. Furthermore, not only serious offences by young people such as homicide and grave crimes currently go to the Crown Court at first instance, but also cases where there is an adult co-defendant. To enact legislation giving jurisdiction for these cases in Wales to a devolved Youth Court could be politically sensitive, not least in the fact that defendants would lose their right to jury trial and the sentencing powers involved in such crimes go well beyond current Youth Court powers. Could the Crown Court hear such cases in Wales sitting in a special configuration and/or ensure that Judges are either specially trained or are supported by appropriately trained personnel? This would require some significant and complex institutional innovation. The appeal question would also require careful consideration, although it should be noted that appeals from devolved administrative tribunals in Wales are heard in the Court of Appeal and the Supreme Court.

### ***Opportunities for reform in a devolved Youth Court***

We have seen that youth justice is a network in which various actors often have to coordinate and cooperate without powers of direction. If devolution were to be seen as an opportunity to build a distinctive and coherent Welsh youth justice service built on Child First principles and delivered by local authorities and YOTs, then one issue that needs to be considered is how YOTs might negotiate with other centres of local power within the youth justice system to achieve 'buy-in' for those principles. One key centre of such power is the lay magistrates operating in the Youth Court. They have substantial discretion to determine sentences: YOTs may advise and inform but cannot dictate solutions except insofar as that they determine the locally available programmes for intervention. Local magistrates have traditionally defended their discretion to administer criminal justice in accordance with their sense of the values of the local community. As a result, for YOTs, building their credibility and that of their interventions in the eyes of local magistrates is essential to ensuring that sentencing reflects the values and principles of a devolved Welsh youth justice.

To a significant extent, the autonomy of Youth Courts is a necessary consequence of judicial independence. One way to facilitate cooperation if the Youth court were to be devolved, would be to reconsider its composition. Currently this consists of three lay justices advised by a legal adviser for most cases and occasionally a single district magistrate. Such lay magistrates have some claims to specialist expertise: they have to apply to sit in the Youth Court, they receive special training and often (though not always) they will have professional experience with children. But their claims to expertise and experience are weakening as fewer cases come to Youth Court. One possibility that might be considered is creating a special class of professional youth justice magistrate for the Youth Court in Wales sitting alongside two lay wingers. This would provide the legal expertise that would make the role of legal adviser unnecessary. That would create a specialist judicial expertise. And the recruitment and training of these professional magistrates would provide an opportunity for reinforcing distinctive Welsh values and philosophy in the approach to youth justice.

Such professional magistrates could also take charge of all pre-trial proceedings relating to young people (such as bail proceedings) and (post-sentence) proceedings relating to breach of orders. This might reinforce continuity and consistency in applying underlying values and principles across the youth justice system as a whole. One of the strengths of youth justice practice in countries like Italy and France is the existence of a cadre of trained specialist youth justice magistrates operating throughout the system (pre-trial, trial and post-sentence). This would be done while maintaining the input from local magistrates as representatives of the local community: two magistrates would sit alongside the professional magistrate in youth court hearings.

Another possibility is to rethink procedures within the Youth Court. Currently, despite serious attempts by magistrates to engage young people in meaningful dialogue about their conduct, the formalities and rigidities of adversarial proceedings make this difficult. Devolved youth courts might be a possible opportunity to pilot problem-solving approaches or a more informal dialogic approach to proceedings constructed to support and sustain greater participation by defendants and other affected citizens. Another (not necessarily alternative) possibility would be to develop this more dialogic approach in preliminary hearings. That might be a place, *inter alia*, to follow up on the Lammy Review's (2017) recommendations to develop 'deferred prosecutions.' Deferred prosecution refers to a practice whereby those thought to have committed offences may agree to participate in a programme of rehabilitative interventions. That agreement leads to a pause in the prosecution of the offence. If the programme is successfully completed, the prosecution may be abandoned or less serious disposals like cautions or conditional cautions may be adopted. If the programme is not completed, the prosecution may be resumed. Unlike most schemes which aim to divert offenders away from charge and prosecution, the offender does not have to admit the offence to participate. In other countries, such as Italy, deferred prosecution is an important and established part of the youth justice landscape (primarily used in preliminary hearings) which enables intervention while reducing significantly the likelihood of young people getting a

criminal conviction and record. At the moment there is discussion in Wales of the use of Outcome 22 (deferred prosecution) in youth justice but its use is limited and variable with uncertainties as to how it fits within the broader diversionary landscape. Preliminary hearings with deferred prosecution as an option might provide an institutional location for the development of consistent practice differentiated from earlier diversionary practices (located in YOT Triage and Bureau). It might add another opportunity for support and intervention without conviction.

All of these are ideas for using the devolution of the youth courts as an opportunity for institutional innovation. Some of the proposals will be perceived as quite radical and would need significant consultation over a period of time to establish practicality and buy-in from the various youth justice actors. But they might provide a means for defining a clear 'value added' for including diversion in relation to the youth court when youth justice is devolved.

### **Restorative Practices, Conflict Resolution and Victims of Harm**

Victims of crime and harm, which will include children in many cases, should be provided with appropriate services and support (the Victim's Charter provides guidance on what this should look like). The role of restorative practices should also be considered both in terms of preventing escalation into the criminal justice system, but also because diversionary activity and requirements of court orders generally contain a restorative element. Restorative practices can play an important role in diverting children from school exclusion, by addressing behavioural issues (in respect of children and adults) and conflicts (including the rigid application of school rules), which could lead to negative consequences and in some cases entry into the criminal justice system. The same is also true of the application of restorative practices in children's residential homes. Care experienced children have a significant presence in the youth justice system and can be criminalised for incidents which would not attract the same attention had they occurred in a family home.

The appropriateness of using restorative practices in youth justice is contested largely on child development grounds (Suzuki and Wood, 2018), but if such practices are to be used then they should be developmentally informed, children's rights compliant, and ensure that the responsibility for reintegration into the community is borne by the adults responsible for running services for children and young people. This, incidentally, addresses one of the important criticisms made of restorative justice by Lammy (2017). The consideration here is how restorative practices fit with a Child First, children's rights and trauma-informed youth justice system that recognises the impact of systemic discrimination and bias. Based on research conducted in London, Spacey and Thompson (2022) report on how practice can be adapted to respond to these tensions.

More widely, restorative practices need to be developed in such a way as to re-balance power relations in terms of not only children and adults, but also in respect of structural disparities on the basis of income, ethnicity, gender and sexual orientation. At best, a key principle of restorative justice is social justice. There is an opportunity, therefore, to discuss the

application of restorative principles and processes of conflict resolution as part of a constitutional/national reformation as has been the case in Aotearoa/New Zealand and Northern/North of Ireland. Establishing a working party on applying restorative principles that go well beyond the narrow confines of criminal justice is worthy of consideration.

## **Children Receiving Community Supervision**

There are currently two community sentences: referral orders and youth rehabilitation orders. The referral order provides the opportunity to develop a contract with the child to carry out agreed activities and to receive support based on their assessed needs. It can be used more than once if certain criteria are met. The youth rehabilitation order offers a menu of 18 conditions which can be attached to the order to support the child and provide appropriate interventions. There is little evidence on what conditions are used to what effect, which makes it difficult to assess effectiveness. However, having a menu of options available is potentially positive as it means the order can be tailored to the needs of the child. That said the conditions and requirements were developed over a decade ago and the landscape of youth justice has changed considerably, suggesting they should be revisited, as should the conditions attached to each. This would provide the opportunity to take a more focused look at how devolved services in Wales can support children on court orders.

Two of the conditions, intensive supervision and surveillance (ISS) and intensive fostering, are designed specifically to be alternatives to custody, which can include bail packages to reduce the likelihood of remand. It is important that alternative community sentences exist in the youth justice framework to minimise the use of custody and to provide the courts with what they regard as a credible alternative. YOTs may not use ISS for a variety of reasons: it has been criticised in the past on the grounds that it led to a high level of breach because the programmes were so demanding (although more recently the rules on breach have been relaxed). It should be noted that ring-fenced funding no longer exists to ensure that ISS can be provided. It is therefore important to emphasise the need for a range of resources to be available to YOTs to ensure children can be kept out of custody. Intensive fostering does not, incidentally, exist in Wales and is therefore currently not an option.

Community supervision should be delivered through a Child First, poverty-aware and trauma-informed perspective. However, YOTs still require assistance in interpreting what this means and the ethos and expectations need to sit in a less risk driven framework to one that sees children who offend as vulnerable, often with significant well-being and safeguarding needs. This is a relevant consideration when considering how breach is used, as it has been a significant driver of custody in the past.<sup>22</sup>

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<sup>22</sup> Community-based statutory supervision orders should be used sparingly and only if there are compelling reasons for doing so. Overloading statutory orders with conditions increases the risk of minor breaches being returned to court, with all the attendant costs and risks of escalation into custody. As far as is reasonable, judgments about effective supervision should be made by practitioners and their managers.

## **Deprivation of Liberty**

In line with the principles enshrined in international conventions, children should only be deprived of their liberty as a measure of last resort. However, in cases where children are held in secure accommodation, we would recommend that such accommodation should have the following features: a nurturing, homely physical environment in which trauma-informed practices and restorative approaches are used alongside high quality education and health provision. Small-scale settings should be available at more than one location in Wales. The proposals set out in the Youth Justice Blueprint for Wales continue to be pursued in developing secure provision that is therapeutic, nurturing, trauma-informed, has the full range of health provision (including psychology and family therapy), helps children to develop resilience, healthy relationships and prepares them for independent living. The model of delivery in the Kibble Safe Centre in Scotland has these features. The Small Homes project is potentially the vehicle through which this can be explored and developed. The Welsh Government's (2021) current position on the subject, which is broadly consistent with what has been described here, was set out in *The vision for Welsh Children in the Secure Estate*.

If custody is to be used as a measure of last resort, then the overall cost implications should not be overly expensive as there are currently very few places required. However, as children would then be more likely to be further from home, robust arrangements will need to be put in place for family to be supported in visiting. There will also need to be effective use of Release on Temporary Licence and well-planned resettlement processes beginning at the earliest stage. No children should be released without suitable accommodation, appropriate education/training/employment plans and strong support in place (including mentoring).

It is important to note that some children can be deprived of their liberty as a means used to 'protect' them from exploitation (for example in relation to criminal exploitation), but this will often be experienced as punishment for having been exploited. The emphasis should therefore be on removing the risk from young people rather than removing young people from the risk. There is a danger that criminalising children is perceived as the only way of removing them safely from exploitation.

## **Resettlement**

We know from HMIP inspections and research that there is room for improvement in this area. The Youth Justice Blueprint for Wales has undertaken such work and encourages YOTs to adopt the YJB's Constructive Resettlement Approach, which is an evidence-based model of practice. Crucially, resettlement relies on access to mainstream services. This includes accommodation, education, training or employment, other activities based on children's interests and, where possible, family support. There has been previous exploration about whether Reintegration and Resettlement panels/partnerships should be introduced into Welsh legislation to provide improved access to services. This was revisited for the Blueprint, with the conclusion that existing powers should be utilised rather than introducing new regulations. Constructive Resettlement could potentially be examined further (in the same way as diversion was for the Blueprint) to identify what would work best in the Welsh context.

Ideally, resettlement practice should be collaborative and constructive (Pierpoint and Hoolachan, 2019), which includes being family-focused (where possible and appropriate) and trauma-informed. It is vitally important that the assessment and process of resettlement begins as soon as the child enters custody: everything which happens on the 'inside' should be concerned with what happens on the 'outside'. As Taylor (2016) observed, resettlement is key for rehabilitation and the reduction of reoffending. This requires a coordinated approach between the secure establishment, education, health, housing, social care and youth justice sectors. Good practice has been identified as being collaborative, strengths-based, customised, consistent and co-ordinated (Hazell et al, 2017; Youth Justice Board, 2018). It is argued, moreover, that practitioners need to be identity-aware and diversity-aware. Taken together, such an approach (adopted by YJB as the Constructive Resettlement Plan) can not only meet practical needs, but also help to effect identity shifts in children and young people whereby they cease to think of themselves as 'offenders' (Constructive Resettlement, ND). The process of peeling off the criminal label can be achieved here. An interesting example of resettlement in action is the London Accommodation and Resettlement Pathfinders and London Accommodation Pathfinder (2023).

Constructive Working (CW) is the policy/practice framework outlining what contemporary research shows is essential to help children develop positive outcomes for crime resistance or desistance (e.g., Hazel *et al*, 2020). CW is the 'theory of change' for Child First (Tenet 2), and its adoption has led to practice considered 'outstanding' by YOTs (e.g. see Swindon YOT's 2023 inspection). CW recognises the role all youth justice services as supporting the child to develop their 'pro-social identity', which then informs positive behaviour. The CW framework has four main elements: 1) *Constructive Casework*, where personal support focuses on guiding pro-social identity development to ensure that structural support is engaging and relevant; 2) Providing children with *FreshAIR* to develop their pro-social identity through targeted Activities, Interactions and Roles; 3) A *5Cs checklist* of good service provision – Constructive, Co-Created, Customised, Consistent, Coordinated; 4) *Identity Awareness* – ensuring that staff are aware of the identity messages communicated to children, and how interactions may underline or undermine pro-social identity development.

It should be noted that one of the factors that has led to the emergence of child criminal exploitation has been the lack of suitable accommodation. This has meant that vulnerable care-experienced young people were housed with those leaving custody in England (Andell and Pitts, 2013). Meanwhile, in cases where vulnerable young people have had their own tenancies, they have been at risk of being 'cuckooed'. This involves exploiters befriending them and, ultimately, effectively taking over their accommodation. The UK Government is seeking to clamp down on cuckooing by making it a criminal offence. For the criminally exploited, however, young people who are too frightened to engage can end up being criminalised.



## **Social Transitions to Adulthood**

Technically, in Wales a degree of fluidity and flexibility beyond a cut-off at 18 years is highly desirable; perhaps up to 21 and ideally up to 25 (the Learning and Skills Act 2002 threshold for Extending Entitlement). There are too many cliff edges for young people to fall off before then, though (e.g., CAMHS, social care, youth training and, of course, criminal justice). A strengthened 'citizen entitlement' can be introduced here for those with multiple and complex needs who are linked one way or another to the youth justice system.

Criminal justice transitions from youth to adult provision (whether the Probation Service or in custody) are often problematic for young people as they lose their links to the professionals who have supported them and have to develop new relationships which they might not find easy. The probation service also tends to adopt a more risk driven and less flexible service. One option could be to consider whether there should be specialist multi-agency teams for young adults (e.g. 18 to 21 or 25 years), with an emphasis on taking a more trauma-informed and desistance-led approach to prevent re-offending (rather than the risk led approaches of Integrated Offender Management) and ensure young adults receive appropriate services that are commensurate with their levels of maturity and cognitive ability. The nature of the assessment conducted and the interventions delivered should also be reviewed. It is recognised that this might be a difficult option for the Probation Service, which currently has a significantly different practitioner culture and continues to experience staffing challenges.

It is important to adopt a developmental rather than a chronological approach to supporting children's social transition to adult status. For example, if they were excluded from school, it is likely that, in cognitive terms, they will remain roughly at the age at which they were excluded.

The experience of exploitation, and the inherent indoctrination that accompanies such relationships, also reduces the capacity of such children and young people to consent and make decisions for themselves, whatever their age. It is important to understand that young people exploited as children will not have the capacity or ability to function as adults on their 18<sup>th</sup> birthday. Criminal exploitation can result in severed ties with family. Services are therefore needed to help children and young people rebuild these relationships so that they have supportive networks into and during adulthood. Hence, whole family approaches are vital. Thus, services step back, but parents and family members stay with them (see Well-being of Future Generations (Wales) Act 2015). A transition service that takes account of this group of young people should be available to meet their needs and support them into adulthood and independence (see Appendix 2 (**Youth Justice Transitions in Wales**) for Paper 1 for further details).

## **Young People Vulnerable to Over-representation and Discrimination**

We know that some social groups are vulnerable to over-representation and/or discrimination within the criminal justice system. The Blueprint work being undertaken in relation to girls and women in the justice system should clearly inform the youth justice workstream. An

appreciation of intersectionality is key here; especially where numbers are small. There is a tendency to focus on the dominant 'label' rather than the multiple impacts of intersectionality (e.g., gender + ethnicity + care experience). Having acknowledged that, attention needs to be drawn to any child with a protected characteristic under the Equality Act 2010 as well as those with experience of public care. The Lammy Review (2017) in respect of children from minority ethnic communities and the Laming Report (Prison Reform Trust, 2016) on care experienced children both address issues of overrepresentation for these respective groups and recommend systemic reforms. Other important research on the processes that lead to the criminalisation of children in the Looked After system has been undertaken (Staines, 2016), including that of black and minority ethnic children (Hunter, 2022). Strategies for disrupting the routes between care and custody have been identified in respect of girls and young women (Fitzpatrick et al, 2022). Research on YOT support for care experienced girls is also due to be published shortly (Staines, forthcoming). The YJB and HM Inspectorate of Probation both stress the need for YOTs to understand the profile of children they are working with to be able to ensure they can adequately meet their needs in relation to their education, health (including mental and emotional health), housing and social care needs. Included in this is the need to monitor diversity and disproportionality, and to understand if and why any groups of children are being disadvantaged. This could be addressed by requiring all YOTs to undertake a joint strategic assessment of children's needs with statutory partners to define current and future needs.

The Welsh Government's anti-racist plan (Welsh Government, 2022b) sets out action to reduce racism in every aspect of life whilst the Criminal Justice Anti-Racism Plan for Wales (Welsh Government, 2022c) identifies a series of actions to end the over representation of minority ethnic people in the criminal justice system. It would be useful to establish a common dataset for Wales so that this could be properly monitored and assessed.

Additional points that need to be considered are summarised below:

- Care leavers are at risk of 'adultification' (Maxwell and Wallace, 2021). Professionals tend to see them as more mature and 'street-wise' and therefore less vulnerable than their peers. It should be noted that children and young people in care have less freedom than their peers (e.g., permission for sleepovers can be difficult to obtain, etc.). This may render them more susceptible to exploitation and the perceived adventure and excitement of the 'lifestyle'.
- Asylum seekers and those with uncertain citizenship are more vulnerable to criminal exploitation, including cuckooing.
- The gendered use of language in relation to the exploitation of children and young people should be noted: girls tend to be 'GROOMED' into Child Sexual Exploitation (i.e., they are represented as victims), whereas boys are RECRUITED into Child Criminal Exploitation (i.e., agency is assumed and there is often a corresponding belief that a lifestyle choice has been selected). Girls tend to go under the radar, but we know more girls are being criminally exploited. 'Plugging' is abuse, yet boys

are not safeguarded. Instead, they tend to be perceived as criminals who know exactly what they're doing.

## **Child Criminal Exploitation and Modern Slavery**

Children in certain circumstances are victims of various forms of exploitation and harmful behaviour. Whilst offending has brought them to the attention of the criminal justice system, there may be significant underlying issues which need exploration and could have a bearing on outcomes. For example, the National Referral mechanism exists for this reason as do the Wales Safeguarding Procedures (Welsh Government, 2023). YOTs have the expertise, are integrated into relevant partnerships (particularly with social care) and are able to identify where there are wider concerns about a child's safety and wellbeing and what action needs to be taken. A key principle should be the avoidance of criminalisation where it is evident the child is also a victim (certain forms of exploitation are by their very nature also criminal acts). There is legislation and guidance which supports this and which needs to be well understood by all partners (particularly the police) to ensure that whilst some children come to attention because they are classed as perpetrators, they may also be victims. A related area in this respect is harmful sexual behaviour and what happens to the child in certain circumstances. It is well-established that children who are perpetrators are also likely to have been victims of inter or intra familial sexual abuse. Understanding these issues through a trauma-informed lens and developing therapeutic responses should be something with which youth justice services are concerned.

In many respects, Wales is ahead of other UK nations in respect of child criminal exploitation. Crucially, it has a definition of child criminal exploitation. Moreover, the definition clearly states that it is a form of child abuse which warrants a safeguarding response in line with the All Wales Practice Guide for Child Criminal Exploitation (Welsh Government, 2023). Youth justice services play an important role in working with children who are unknown to children's services ('ghost children'), those known to the police, and those who have been charged and/or convicted. They fill a gap in provision as many professionals lack knowledge about child criminal exploitation. Consequently, they need training and should develop new ways of working that enable consideration of vulnerability to criminal exploitation at the individual, interpersonal, community and societal levels. This must include the impact of poverty, social capital and the exploiter's (empty) promise of easy money to young people.

This lack of understanding coupled with dichotomised notions between victims and offenders means that criminally exploited children are often criminalised rather than safeguarded. Child criminal exploitation is a cross-cutting issue and, as such, multi-agency responses are vital for safeguarding children and young people. Such responses are hindered/disjointed in Wales due to differences between devolved and non-devolved services. This can include a lack of awareness by the courts regarding available care and support services delivered through children's services.

Many criminally exploited children and young people do not engage with statutory services due to the culture against 'snitching', previous negative experiences with statutory services, and/or fear of repercussions from exploiters to themselves and their families. Further, children and young people are often unaware or unwilling to accept they are being used and manipulated due to the way they are groomed. For some vulnerable young people exploiters may offer them a sense of belonging and a 'family' whereas for others they offer a sense of worth, reputation and kudos. Once exploited they are often subjected to serious violence and forced to stay in squalid 'trap houses' with substance misusers (where they find themselves effectively detained). Some have high levels of debt which in turn accrues high levels of interest ('debt bondage') to retain them within the exploitative relationship. Nevertheless, criminally exploited young people do not meet service thresholds for care and support as current children's service systems do not include responses for extra-familial harm. For example, 'plugging', where children and young people may be held down so that drugs can be inserted or removed from their vagina or rectum, is not classified as sexual abuse. Further, when young people are exploited, they may be forced to exploit others. They are often found with tangible evidence of their criminality and they do not present as stereotypically sympathetic 'ideal victims' (Christie, 1986). This means there has been a tendency to criminalise them. What is needed is a youth support service that is able to offer a package of support to young people with time to develop relationships, build trust and identify their unmet needs over and above the criminal exploitation. The forthcoming All Wales Practice Guidance (WSP PT1) says that existing child protection processes should be followed, but where child criminal exploitation is suspected, Maxwell's (2021) Complex Safeguarding Wales Toolkit should be used to guide responses. In doing so, it highlights the need to use the same processes for extra-familial harm and intra-familial harm.

In her evidence to the All-Party Parliamentary Group for Child Criminal Exploitation and Knife Crime (2023), Maxwell recommended drawing on the learning from the Violence Against Women, Domestic Violence and Sexual Abuse (Wales) Act 2015 in three main ways, two of which are of relevance to developing youth justice responses. First is the need to provide a specialist package of ongoing (rather than time-limited services), that should include youth workers and specialist staff equipped with the skills necessary for working with traumatised young people and their families. To do this, more secure, longer-term funding is needed for specialist service provision. Second, Prevention Orders akin to the Domestic Violence Prevention Orders are needed which protect victims from perpetrators for a defined period of time. This would give practitioners the time to develop relationships with young people and their families and support them safely away from exploitation (Maxwell is currently working with Action for Children to do something similar in Scotland: AfC call them 'Exploitation Orders').

Youth justice practitioners and probation officers must share information so that risks to young people from older adults leaving the secure estate and/or Serious Organised Crime offenders can be identified. They should also be alert to young people who are in a relationship with an older peer or adult and relationships with older peers or adults who are controlling or restricting the young person's activities or engagement with services. The early signs of child criminal exploitation are difficult to detect, especially as some young people are groomed into

thinking that the exploiters are their friends and care about them. Youth justice practitioners must use their professional curiosity to embed safeguarding into routine practice.

Links between the Youth Justice Service and probation are also needed as young people may continue to be exploited beyond the age of 18. This requires transitional safeguarding to be embedded into practice. Youth justice practitioners should be aware that when young people are criminally exploited at an early age, they will be unable to safeguard themselves from persistent abuse. Therefore, consideration should be given as to Transitional Safeguarding so that youth justice practitioners continue to work with young people and their parents when young people are over 18. Parents play a critical role in safeguarding their children as they remain caring and are in a position to advocate for the young person into adulthood.

## **Models for Service Delivery to Children and Young Adults**

The existing Youth Offending Team model has strengths, limitations and risks (in respect of the latter, not least framing and assessing children primarily in terms of their law-breaking). Consideration should therefore be given to whether the existing model needs enhancements or more radical reform. There could, for example, be movement towards an adolescent/young adult service that takes this group out of the criminal justice domain. A youth support service could, perhaps, work with children and young people who have a range of presenting issues that need to be addressed. There are examples of this in England where several child/young person focused services have been grouped together, but within those structures retain their specific expertise, as statutory guidance defines their roles, responsibilities and parameters of operation. However, this would need to be examined in the Welsh context and an assessment of what would work for services, irrespective of whether they are situated in rural or urban localities. In Wales most YOT managers are responsible for more than one service. A natural alliance would be to co-locate Youth Work and Youth Justice.

In the meantime, the following points should be considered:

- Action for Children's (nd) SideStep project has specialised youth workers who provide bespoke support to children involved or at risk of serious organised crime. Their proof of concept study has promising findings. Unfortunately, it looks as though the service will end in September 2023. Nevertheless, we have existing initiatives on which to reflect. We do not necessarily need to launch pilot studies of new approaches in all areas.
- Can we enhance by service delivery by adding a youth work stream? This would support the existing work of the statutory arm. With some parent advocacy / support workers (explicitly focusing on mothers AND fathers as well as staff trained in children looked after, which would work with foster and adoptive parents).
- We need to mention softer outcomes (e.g., opening door and engaging, improved confidence, etc. as well also focusing on school / college attendance, securing training and employment, etc.).

## Practice

As has already been mentioned, youth justice practice should be children's rights-based, Child First, anti-discriminatory and animated by the principle of social justice. An important element of the social justice dimension of practice involves the development of poverty-aware practice (BASW & CWIP, 2019; Krumo-Nevo, 2020). YOT managers in Wales shared some of their experiences and ideas on this at a meeting in 2022 (see Appendix 5 to Paper 1). This is, however, an area that needs to be developed.

It will be noted that reference has been made to Adverse Childhood Experiences (ACEs). ACEs research, based on public health epidemiological studies, is helpful in the development of population-level policy, but less useful in terms of individual-level interventions. A misuse of ACEs research would be to treat them as predictive risk factors. The tendency of some to concentrate exclusively on ACEs that take place solely in households not only ignores the pernicious impact of racism on children but can also lead to pathologizing the poorest parents and families. A systematic review of the literature conducted by Walsh et al (2019) found a strong association between lower childhood socio-economic position and exposure to adverse childhood experiences and maltreatment. Given that contextual poverty can overwhelm the best efforts of parents and carers, the implications for practice are clear. To its credit, Welsh Government's review of its ACEs policy (2021b) has been very clear about contextual factors such as poverty. In her foreword to the Report, Julie Morgan, MS, Deputy Minister for Health and Social Services, summarises the Welsh Government's position.

- Adverse Childhood Experiences are not inevitable. Where possible, the focus of ACEs work should be on preventing childhood adversity from happening in the first place. However, we cannot ignore the need to provide sympathetic responses and trauma informed support to those who have already been impacted by ACEs or the importance of adopting a strengths based approach and building resilience.
- Our approach to raising awareness of childhood adversity should support parents and must avoid unintended consequences, like stigmatisation or increasing preventable statutory interventions. A narrow focus only on parental behaviours should also be avoided. Preventing adverse childhood experiences requires attention to the wider social and economic contexts of family life.
- We need to be careful in our use of the term 'Adverse Childhood Experiences (ACEs)', as well as the language we use to describe adversity, and be mindful of its impact. ACEs should never be viewed as being deterministic.
- The 'ACE score' should not be used with individuals to determine risk or whether or not to offer an intervention or the type of intervention which should be offered.
- Work on adverse childhood experiences should reflect that ACEs are more concentrated in deprived areas. It needs to recognise that poverty and multiple deprivation are causal factors in at least some of these adversities.

- We should recognise, support and promote the contribution that community based, self-help and peer support approaches can make in preventing childhood adversity and mitigating its impact.

Given the association between ACEs and poor outcomes (including the development of health-harming behaviours and contact with the criminal justice system), it is against this background that interest in trauma-informed practice has developed (see Appendix 9 relating to trauma-informed practice and approaches: **Wreccsam Glyndwr University Contribution**). The development of such practice initiatives is in compliance with Article 39 of the UNCRC and there is emerging evidence of promising practice (e.g., Glendinning et al, 2021). In some cases, however, care needs to be taken to define ‘trauma’ more clearly. There is, as ever with such practice initiatives, also need for further evaluative research.

It is important to understand that a trauma-informed lens asks what has happened to a person rather than what they have done. Wales has made significant developments in understanding trauma and how to respond to it, which aligns to the objectives of the Well-being of Future Generations (Wales) Act 2015 by aiming to prevent the inter-generational transmission of adversity and poor outcomes. The development of trauma-informed approaches was a key feature of the Youth Justice Blueprint for Wales and offers the opportunity to develop more sympathetic and Child First ways of dealing with children in the youth justice system who have significantly negative experiences. Further, there are emerging suggestions (McCartan, 2020) that assisting children to recover from trauma can enhance the process of desisting from offending.

## **Practitioner Skills and Implications for Training**

If a robust community of practice is to be developed, it is important to identify the roles to be played by the respective professionals and the knowledge, skills and values they will need to work with individuals, families and communities. Skills in community development and street-based detached youth work need to be included in a review of the skills required for effective engagement. This clearly has implications for training. It should be acknowledged, though, that the YJB has developed considerable resources (see YJB Resource Hub), training and qualifications for the sector and worked with Skills for Justice, Unitas and the Youth Justice Institute to examine and meet the needs of the youth justice sector. Pre-Covid there were several practitioner forums which operated across Wales which enabled the sharing and comparison of practice. A consideration going forward is how to provide and support such activity which could benefit the youth justice sector in Wales and particularly how the secure estate in Wales (Hillside SCH and Parc YOI) can be involved in this.

More broadly, any work *with* young people needs to be responsive to their individual characteristics, needs and strengths (intrinsic responsivity) and be carried out by skilled staff (extrinsic responsivity). Responsive practices, which can be aligned with Child First principles, are of particular importance when working with young people who have more complex needs and vulnerabilities and/or would be deemed as being at ‘high risk of reoffending’.

### ***Intrinsic Responsivity***

Coinciding with Child First principles, intrinsic responsivity places responsibility on the practitioners to understand the child in front of them and respond to their characteristics, strengths and abilities appropriately (e.g., learning styles and bio/psycho/social factors - gender, race, age, developmental, neurodiversity, poverty, trauma etc.) to provide *individualised* support (Herzog-Evans, 2017; Bourgon and Bonta, 2014). Part of responding to the child requires an understanding of their development stage, and social circumstances, favourable or adverse, in order to ensure that practitioners address barriers to learning, engagement, motivation and inclusion (Bourgon and Bonta, 2014; Skuse and Matthews, 2015). Young people's basic needs must be met in the context of positive and collaborative relationships and with a focus on their strengths and capabilities (extrinsic and intrinsic responsivity) (McNeill, 2012; Ward and Maruna, 2007; Bourgon and Bonta, 2014).

### ***Extrinsic responsivity***

Extrinsic responsivity is concerned with the skills of the practitioners and their ability to create supportive environments for young people. Supervision skills (also known in some parts of the literature as core correctional practices) are core to extrinsic responsivity. Several studies have revealed that practitioners often fail to effectively employ supervision skills (Dowden and Andrews, 2004; Bonta et al., 2008; Mason and Prior, 2008; Ipsos MORI, 2010; Adler et al., 2016; Ugwu-dike and Morgan, 2017; 2019). The limited use of Core Correctional Practices is problematic as several studies reveal that utilising supervision skills increases engagement and reduces re-offending (Andrews and Kiessling, 1980; Bonta et al. 2011; 2017; Chadwick et al. 2015; Dowden and Andrews, 2004; Durnescu, 2012; Raynor et al, 2014; Robinson et al. 2011; Trotter, 2009; 2013a; Trotter and Evans, 2012; Trotter et al, 2015). Supervision skills Include:

- Effective use of authority
- Anti-criminal modelling and reinforcement (also known as pro-social modelling)
- Problem-solving
- Structured learning procedures for skill building
- Use of community resources
- Quality of interpersonal relationships (relationship skills)
- Cognitive restructuring
- Motivational interviewing

Recommendations worthy of consideration are summarised below:

- Develop and implement child-friendly 'intrinsic responsivity' screening tools.
- Develop and deliver further training for staff to understand and respond to intrinsic responsivity factors.



- Develop and deliver further training to adapt support/interventions to the key characteristics of the young people.
- Regular supervision skills training and clinical support for staff.

Other points for more specialist training include the following areas:

- A designated safeguarding lead to deliver on duties under the Social Services and Well-being (Wales) Act 2014.
- Parent advocacy.

Leaving aside the specific weaknesses and limitations of the current assessment form used in youth justice (Hampson, 2018; Deering and Evans, 2021), there is a case for developing a common assessment informed by Child First principles that is also aligned with the National Practice Framework currently being developed by Welsh Government. Such an assessment can then follow the child into different domains and agencies.

## **Governance and accountability**

The specific complexities that relate to governance in the Welsh context have already been outlined. However, even if responsibility for criminal justice were to be wholly devolved to Wales, there would remain important governance issues requiring careful consideration. Such issues are not peculiar to Wales; indeed, they are shared by all democratic societies that seek to deliver good and accountable public services.

The balanced judgment that needs to be made is captured by Field (2015: 170):

How far should practice be seen as something that is shaped by central government and implemented from the top by legislative and administrative command? How far should practice be seen as more localised between relatively autonomous groups of practitioners in which relationships with the centre are more diffuse and indirect and where influence runs in both directions?

Criminal justice in England & Wales is largely founded upon, to use Damaska's (1986) terms, 'coordinate' rather than 'hierarchical' institutional relationships. Assuming that Wales would wish to maintain 'coordinate' institutional relationships, how can Welsh Government deliver a recognisably 'national' youth justice service? What levers of power are available? Rhodes (1997) identifies five sources of political influence that can be exerted:

- a) legal/constitutional
- b) hierarchical
- c) financial
- d) information and expertise
- e) political authority.

This model of analysing political influence informs the discussion that follows.

### ***Background: current structure***

Youth justice in Wales is legally structured as a network which involves the coordination of the work of different agencies and institutions (mostly organized at a sub-national level) that in legal terms are largely autonomous. Thus, this is far from being a system with a single unified institutional hierarchy that is, or could be, directed from the top. The key actors – Welsh Government, the Youth Justice Board, local authorities, Youth Offending Teams, police services, Police and Crime Commissioners, local benches of youth court magistrates – have no effective statutory powers to direct each other what to do. The Crime and Disorder Act 1998 sets a framework for the provision of youth justice services that formally places great discretion at a local level. It is local authorities that have the statutory duty to ensure that a specified range of youth justice services are provided. They have to establish youth offending teams (YOTs) to coordinate those services and to formulate a ‘youth justice plan’ for YOTs to deliver. That plan must set out how the services are to be provided and the YOT organised and financed. But the statute itself says no more than that. Thus, the formal legal power to determine practice on the ground is largely vested in local authorities and their YOTs. Local authorities can determine where to locate youth offending services within their institutional structures and how they should be financed. This means that, subject to any requirements in the youth justice plan, individual YOTs can decide what kinds of programmes to provide in the community (for example, particular offending-related programmes or support and treatment in relation to addiction or mental health). They can decide whether to do this directly, in co-operation with other YOTs, or to sub-contract provision out to the voluntary or commercial sectors. Similarly, the balance of spending between interventions for children in conflict with the law and general social crime prevention is also formally a matter for local authorities and YOTs.

This means that the broader coordination of youth justice services across Wales by institutions operating at a national level cannot be achieved by the exercise of direct legal powers or of hierarchical power within an organisation. National coordination is currently pursued through more indirect levers of influence such as targeted additional finance for specific purposes, provision of information and expertise and the exercise of symbolic political authority. The key actors here are WG, YJB and (sitting between them) the key stakeholder group, the Wales Youth Justice Advisory Panel (WYJAP). These actors have agreed a national strategy since 2004 (*All Wales Youth Offending Strategy*). Several iterations of the strategy have been followed by a Youth Justice Blueprint and implementation plan. But the primary levers to influence practice on the ground remain those of influence rather than direction. Both the YJB and WG offer funding to support specified initiatives and priorities and set criteria that they use to monitor YOTs’ performance in spending those monies. The YJB cannot direct YOTs and local authorities, though it has significant levers of information and expertise that it uses to set, monitor and report on standards and define and disseminate good practice. WG influence flows not just from offering targeted funding but also its political authority. This is difficult to measure but the principles of the AWYOS and the Youth Justice Blueprint are stamped with

the public legitimacy and authority that is associated with national democratic election. No doubt this carries significant persuasive weight for YOTs.<sup>23</sup>

But just to understand national governance of youth justice in Wales as the exercise of levers of influence would be to miss something essential. National coordination of youth justice practice is partly perceived by actors within the network as a matter of genuine co-production of policy and practice (see earlier references to a 'Team Wales' approach). The distinctive institutional arrangements generated by devolution combine with the smaller scale of the relevant networks to enable policy makers and advisers, practitioners and academics to get to know each other in ways which do open up the possibility of genuine partnership (or at least sustained dialogue) between them. Different actors and institutions often share common values and views of the proper aims of youth justice practice in a way that enables them to adopt common approaches rather than just arrive at compromises on the basis of respective power and influence. The YJB itself has acknowledged (at least in particular contexts) that a strong culture of partnership exists in Wales. There are good examples of collaborative partnership working between academics, policy-makers and practitioners (for example in the development of trauma-informed case-management systems).

### ***Governance: issues of principle***

The governance structures for a devolved youth justice will need to negotiate competing tensions along two related axes. First, there is the national/local axis. One ambition for a devolved youth justice is that it should further develop and reinforce a sense of a distinctively Welsh youth justice built on 'Child First' principles which delivers a consistent quality across the nation. Yet there is a need for practice to reflect local knowledge, conditions and resources. The second related axis concerns the institutional processes by which strategy is translated into policy and then into practice. Should there be more powerful levers of national direction in a devolved youth justice system? It was suggested in Paper 1 that 'the lines of accountability are complicated and YOT managers report being pulled in different directions'. There are areas of local variation in the location of youth offending services within the broader institutional architecture of local authorities and variations in local authority funding. It is not clear that all variations in local practice are the product of variation in local conditions and resources. Some may be based on local personalities and quality of relationships. If a key value-added of devolution is a distinctive but coherent and consistent Welsh approach based on Child First principles, the question arises as to how to (re)construct appropriately national levers of influence and coordination. That question is all the more pressing given that the relationship between Wales and the YJB (the key standard setting body at an England & Wales level) would surely need to change after devolution.

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<sup>23</sup> Though it is of course recognised that local authorities, within which YOTs sit, also enjoy their own democratic legitimacy.

### ***Some possible starting points***

The current system places responsibility for delivery on local authorities and their youth offending services. A radical approach to achieving national consistency and coherence would be to transfer the responsibility for youth justice delivery to a new all Wales institution or agency. But there are strong arguments for continuing to locate the primary duty for delivery with local authorities. The ambition should surely be to develop further a Wales-inflected Child First approach and a strategic emphasis on seeing crime prevention as something that flows naturally from a broader concern for positive outcomes for young people (especially those disadvantaged in various ways). If local authorities deliver most, in not all the related services that would be needed to promote those positive outcomes (social services, youth services, education and some responsibilities for health), does it make sense for youth justice services to be located elsewhere and constituted differently? One approach might be to require local authorities to provide a united youth service with specialist sections and expertise within it for 'justice' matters like pre-trial diversion, court support and sentence supervision.

Placing the statutory responsibility for delivery on local authorities and their YOTs then raises the question of how to construct the levers of influence at national level that would ensure consistency of standards and the implementation of a distinctively Welsh approach. In short (to use the common analogy) if 'rowing' were to remain at a local level, what coordinating mechanisms would be needed for 'steering' at a national level?

Given the desire for devolution to address the 'jagged edge' issues and reinforce a distinctive Welsh approach, it seems inconceivable that responsibility for monitoring and standard setting could be left with the London-based England & Wales YJB. One solution would be to create a national statutory body exercising those functions in Wales and cooperating with WG and WYJAP in the development and review of youth justice strategy. This is not so very dissimilar to the functions that the YJB Cymru has performed in the recent past, working with those other institutions to agree strategy and its more detailed policy implications. The relationship between the new institution, WYJAP and WG could be defined in statute in terms of a tripartite dialogue with WG having the ultimate sign off on national strategy.

One of the questions that would need detailed consideration would be whether the powers and responsibilities of the new all Wales institution should mirror or go beyond those of the current YJB at England & Wales level. YJB's statutory functions under the Crime and Disorder Act 1998 are primarily defined in terms of monitoring practice and advising Ministers (for example in relation to national standards) and promoting good practice, (*inter alia* by using grant-making powers, setting standards, giving advice on and disseminating and promoting best practice). Thus, YJB Cymru has been able to work with YOTs in Wales using its grant-making powers, establishing and agreeing criteria with WG and WYJAP on how to allocate funds and set criteria for evaluating outcomes. Similar powers and responsibilities could be vested in the new institution. Consideration, however, could be given to strengthen its

capacity to encourage national coordination of practice by adding further powers and responsibilities. It would make sense for such a national agency to continue to have a strong cooperative relationship with YJB which would govern youth justice in the rest of the jurisdiction. Consideration could be given to making that cooperation a statutory responsibility for both bodies. But beyond that, if it was felt important to strengthen the institution's capacity to encourage a coordinated approach across Wales, then new levers of influence could be introduced. For example, the new institution could be given statutory responsibilities for training and accrediting youth justice workers in Wales. That would give significant opportunities to embed a working culture that reflects distinctive national strategies and principles. There is also the question of how to allocate responsibility for inspection. Could or should this be a function that remains with Her Majesty's Inspectorate of Probation or should it be a statutory responsibility for the new institution? Could it be defined as a shared responsibility if transfer was thought too demanding for the new institution? Such levers would give a new institution stronger powers to ensure that consistent standards were met and that the priorities of national strategy were respected.

There are other means by which a statutory framework could strengthen powers of national coordination while leaving delivery at a local level. For example, we have noted variation in local authority funding and in the institutional location of youth justice services within the broader local authority framework. WG legislation or guidance could establish a national formula for minimum local authority funding standards and require youth (justice) services to be organised within local authorities in a common way. For example, this could establish the proposed idea above of specialist youth justice sections located within a unified youth service at local authority level. It might also make sense for the new national agency to be given powers to encourage and facilitate cooperation and shared services between local authorities. The relevant legislation could also go further in establishing the duties of other local agencies (such as health and education) to cooperate with youth justice service teams. At the moment there is merely a requirement to cooperate and to provide a member of the team. More detail could be provided aimed at ensuring consistent cooperation across the nation.

## **Economic Costs and Benefits**

There will, no doubt, be anxiety about the potential costs of reform. It is important, therefore, to conduct an economic analysis of the impact of any potential reforms, for two reasons.

Firstly, there will be cost savings from many reforms. For example, 10 years ago it was estimated that the introduction of the diversionary Bureau model in Swansea saved as much as £3 million pounds in one financial year (Haines et al, 2013).

Secondly, reforms can involve making savings. Depending on other demands on the budget, a proportion of those savings can be reinvested in services that support children, families, victims and communities. Moreover, by avoiding the criminal justice processing of children and by promoting child first methods, children (as has been demonstrated by research) will

mature into more responsible adults who will not only make fewer demands on the state but will also actively contribute to the quality of their own lives, that of their families and wider society.

## Conclusion

Although some various options for change have been mooted in this discussion paper, Paper 3 attempts to address some of these practical steps more explicitly. The aim is to move towards an improved youth justice system in Wales that is aligned with the values underpinning Welsh social policy.

In summary, the journey needs to be planned carefully if some of the ambitious ideas detailed here are to be realised. The experience of developing a 'Team Wales' approach can help us with that challenge. However, the need for properly funded research and expert guidance, must also be recognised.

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# Appendices – Paper 2

## **Appendix 7: International Framework of Children’s Rights Relevant to Youth Justice**

### **International Conventions on Children’s Rights**

#### **United Nations**

United Nations Convention on the Rights of the Child (1989)

The Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985)

The Directing Principles for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990)

The Rules for the Protection of Juveniles Deprived of Liberty (The Havana Guidelines) (1990)

The Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) (1990)

The Economic and Social Council Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) (1997)

#### **Council of Europe**

European Rules for Juvenile Offenders Subject to Sanctions or Measures (2009)

Guidelines on the Committee of Ministers of the Council of Europe on child-friendly justice (2011)

### **United Nations Convention on the Rights of the Child**

#### **Article 2: 1-2 (Non-discrimination):**

‘States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.’

‘States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.’

**Article 3.1 (the ‘best interests of the child’ principle):**

‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

**Article 9.1 (separation from family):**

‘States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.’

**Article 12.1-2 (seeking the views of the child):**

‘States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.’

‘For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.’

**Article 15: 1-2 (Freedom of association and assembly):**

‘States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.’ ‘No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.’

**Article 18:1-3 (appropriate assistance to parents):**

‘States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.’ ‘For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.’

‘States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.’



**Article 37: a-d (cruel, inhuman and degrading treatment; and the deprivation of liberty):**

‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.’

‘No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’

‘Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances’

‘Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance...’

**Article 39 (recovery from trauma and reintegration):**

‘States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.’

**Article 40.1 (promotion of child’s sense of dignity and worth; promotion of reintegration into society):**

‘...recognise the right of every child as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child assuming a constructive role in society.’

**United Nations Committee on the Rights of the Child: General comment No. 24 (2019) on children’s rights in the child justice system**

This publication provides the most recent comprehensive guidance on the implementation of the United Nations convention on the Rights of the Child.

## **Beijing Rules**

### **Fundamental perspectives:**

- 1.1: To further the well-being of the juvenile and his or her family.
- 1.2: To develop conditions that will ensure a meaningful life in the community for the juvenile.
- 1.4: To make the administration of juvenile justice an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles.

### **Age of Responsibility:**

- 4.1: To not fix the beginning age at too low an age level, bearing in mind the facts of emotional, mental, and intellectual maturity.

### **Aim of juvenile justice:**

- 5.1: To emphasise the well-being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstance of both the offender and the offence.

### **Scope and discretion:**

- 6.2: To make efforts to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

### **Protection of privacy:**

- 8.1: To respect the right to privacy at all stages to avoid harm being caused by undue publicity or by the process of labelling.
- 8.2: To not publish any information that may lead to the identification of a juvenile offender.

## **The Riyadh Guidelines Guidelines (underpinned by diversionary, early intervention and non-punitive principles within a multi-disciplinary framework)**

Para. 2: 'the successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents'

Para. 5: 'formal agencies of social control should only be utilised as a means of last resort'

Para. 54: 'no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions'

## **The Havana Rules**

Summary of Key Principles:

Independence of the judicial process and the diversion from prosecution below the age of 18 years. Deprivation of liberty should be a disposition of 'last resort' and only used 'for the minimum period' and in such cases the principles, procedures and safeguards provided by international human rights standards must be seen to apply as minimum and non-negotiable benchmarks.

## **Tokyo Rules Standard Minimum Rules for Non-custodial Measures:**

Summary of Additional Key Principles:

The Rules call attention to the need for greater community involvement and community-based responses to crime.

## **The Vienna Guidelines Economic and Social Council Guidelines for Action on Children in the Criminal Justice System:**

Summary:

The guidelines highlight and re-emphasise the young person's rights to be respected and that states should strive to establish and maintain a child/youth-oriented system.

## **Council of Europe (2010) Child Friendly Justice**

A summary of the key principles:

'the minimum age of criminal responsibility should not be too low and should be determined by law';

'alternatives to judicial proceedings... should be encouraged whenever they may serve the child's best interests';

'respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings' (section IV(B): paras. 23-26); and

'any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time' (section IV(A): para. 19).

Non-disclosure of children's criminal records (138).

## **Appendix 8: Magistrates Association - Turning 18 and the Youth Jurisdiction**

Date **22 February 2021**  
Position statement **Turning 18 and the youth jurisdiction**

At the MA's 2020 Annual General Meeting, a motion was passed with an overwhelming majority which stated:

'if an offence is committed before a young person's eighteenth birthday, their case should be dealt with in youth court, even if they turn 18 before it gets to court.'

Following the AGM, the Youth Courts Committee discussed how to prioritise this motion as a policy for the MA. It was agreed that the MA believes that children and young people (CYP) who commit an offence before they reach their 18th birthday should be dealt with in the jurisdiction appropriate to their age at the time of their alleged offence, regardless of their age by the time their case reaches court. This change would mean that youth justice principles and the structured decision-making of the youth jurisdiction would be followed, giving CYP the opportunity to have their welfare taken into consideration and access specialist services aimed at reducing youth reoffending.

Currently, defendants are dealt with by the legal structures that align with their age at the point of charge or first hearing, depending on the decision being made. Therefore, if a suspect turns 18 before they are charged by the Crown Prosecution Service (CPS), the CPS will have to take account of their age but they will be charged as an adult, and then the case will progress to adult court. Even where a suspect is charged before their 18th birthday, if they turn 18 before a plea is taken at a first hearing, then the case will be dealt with in adult court. This means that for the cohort of young people who are under the age of 18 years at the time an alleged offence is committed, but who have their 18th birthday before the case comes to court, they are then dealt with in adult court, rather than youth court. This has two main impacts relating to the court process and outcomes, such as remand or sentencing decisions.

Firstly, the court process in adult court is very different to youth court – it is more formal, and adjustments are not necessarily made in response to the young age of the defendant. While youth court practitioners have training, expertise and experience in dealing with youth matters, such as considering defendants' needs and welfare and engaging with them to ensure they fully understand the proceedings, this is largely unlikely to be available in the adult court in the same way.

Secondly, although remand and sentencing decisions in adult court should take account of the age of the defendant, the legal structures and principles followed are very different. The principal aim of the youth justice system is to prevent offending by children and young people, and the court must also have regard to the welfare of children and young people in accordance with the Children Act 1989. Crucially, cases should also be expedited where

possible. In the adult criminal justice system, the aims of sentencing are distinct and focussed on punishing offenders, reducing crime (including through deterrence), reforming and rehabilitating offenders, protecting the public, and the making of reparation by offenders. Adult courts are therefore unable to use the sentences available to the youth court even in cases where they may wish to do so, and those who turn 18 before their first court appearance receive harsher treatment, regardless of their age when they committed the offence.

We believe that cases where a suspect is due to turn 18 should be prioritised to be dealt with expeditiously so that a plea is taken in youth court, rather than adult court.

Current delays in the system may make it difficult to ensure pleas are taken before defendants turn 18, with recent data showing that it can take up to 2 years from arrest to trial for some serious cases: a significant period of time for a person as young as 18. These delays have been exacerbated by Covid-19, and are likely to remain for some time. For serious offences, this can mean defendants going to Crown Court instead of youth court, at a time when some trials for Crown Court are listing as far ahead as two years. With variation in delays and listing across areas depending on local court capacity, it can also mean that CYP potentially face a 'postcode lottery' in terms of their access to youth justice.

Where it is not possible to prioritise such cases because of delays in the system, we believe these cases should still be heard in youth court, which must consider the welfare of the CYP. It is unfair to penalise young people for delays in the court system which are not their fault. We believe that it is a matter of fairness that people are sentenced according to the law at the time the offence occurred; new laws cannot be applied retroactively, as this would go against the principle of foreseeability. If a person commits an offence at the age of 17, they would expect to be dealt with by a youth court. To appear before the adult court for an offence allegedly committed while the defendant was still legally a child triggers a range of consequences which can seriously affect their future, including education and job prospects and the loss of anonymity, which is afforded to defendants in youth court.

It is acknowledged that most young people, if given the support and opportunities to change their behaviour, do just that. Young people change quickly in terms of maturity, youth offending is often brief and with the right support young people can become productive members of society. If they remain in the youth jurisdiction, this cohort of CYP will still have the chance to access youth diversion schemes intended to provide support to reduce reoffending. We believe that it is unjust for children to come before an adult court because of delays in the system which they have no control over, meaning they lose out on the opportunity to have their case heard in a youth court, where their welfare must be considered.

## **Appendix 9: Wales Youth Justice Academic Advisory Group (WYJAAG) Workstream 2 Paper – Wreccsam Glyndwr University**

**Contribution:** Tegan Brierley-Sollis

General comments regarding youth justice in Wales and trauma-informed approaches taken from Brierley-Sollis, T. (2023) – in press.

### **Introduction**

The emphasis on children's rights has seeped into YJ practice within Wales via the YJ Blueprint 2019, the All Wales Youth Offending Strategy (Welsh Assembly Government and YJB, 2004) and Children and Young People First (WG and YJB, 2014). Thus, demonstrating that the centralisation of children's rights is a key consideration of policy and practice in relation to YJ in Wales. The YJ Blueprint 2019 sets out four key principles including taking a multi-level Trauma-Informed (TI) approach, incorporating TI approaches into community and custodial practice, a child-first approach, and the aligning of devolved and non-devolved services via shared values to create a whole system approach (Ministry of Justice and Welsh Government, 2019). The ambition of the YJ Blueprint 2019 is to aspire to a system that is rights-based and TI to foster favourable outcomes. However, changes at strategic level have not been fully weaved into the fabric of YJS. Instead, various models of practice underpinned by distinct theories are used by YOTs resulting in differences in provided provision (Smith and Gray, 2019).

### **Victims of Harm and Restorative Practices**

Children who interface with the criminal justice system may also be victims of harm themselves, thus their needs should be taken into consideration. Correlation between childhood trauma and offending behaviour in later life was established by Widom (1989) and has been internationally emulated by studies which confirm such findings (Baglivio et al, 2015; Malvaso et al, 2015; Smith et al, 2008). This suggests trauma should inform practice within the justice system.

Victim needs should be a central tenet of the justice system, however, restorative practice may contradict trauma-informed approaches due to focus moving away from the needs of the child which should remain a priority (Case and Haines, 2015). According to Contemporary Trauma Theory, emotional capacity impairment may arise in individuals who have experienced trauma (Goodman, 2017). The self-regulatory system of an individual may be compromised as a result of the influence of trauma on the functional versatility of both the brain and limbic system (Salovey and Sluyter, 1997). When emotion regulation is impaired via trauma, individuals may experience difficulty in understanding emotions in themselves and others (Salovey and Sluyter, 1997), thus, the process of restorative justice may prove difficult particularly when conducted without first considering the cognitive and emotional baselines which the children are operating from (Skuse and Matthew, 2015).

Alongside this, one of the principles of trauma-informed practice is to actively resist re-traumatisation (SAMHSA, 2014). The process of restorative practice could unintentionally cause the child to be re-traumatised if they have experienced trauma relating to their criminal offence. It has been increasingly acknowledged that individual who commit offences, particularly those which are violent and sexual, may develop PTSD as a result of their own actions (Evans et al, 2007; Gray et al, 2003; Welfare and Hollin, 2015). Offence related trauma can include intrusive re-experiencing of the event, guilt, hyper-arousal and avoidance of offence-related prompts (Pollock, 2000). The shame and guilt which correspond with offence related trauma can influence emotional processing and heighten trauma symptoms (Crisford et al, 2008) which can lead further unfavourable outcomes in the future (Gray et al, 2003). Whilst it is appreciated that not all offences correlate with offence related trauma, it should still be a consideration with regards to restorative practice as the child may carry shame cognitions and therefore struggle their emotions around such events.

## **Social Transitions to Adulthood**

It is understood that the cognitive development and maturation rate of children who interface with the justice system may be compromised due to trauma (De Bellis and Zisk, 2014), therefore, the aim of YJS is to operate in a way which is conducive to providing supportive and nurturing relationships to children with complex needs (Price, 2020). When transitioning to adult services at 18, the child is expected to adapt to the differences including no longer having additional practical/emotional support provided via the multi-agency design of the Youth Justice Service (Roberts et al, 2019).

A further important consideration to make exists in the relational space shared with a child and their case manager/key worker. Strong and consistent child-practitioner relationships are fundamental (Roberts et al, 2019) However, relational contact between individuals and their probation officer has been described as minimal (Price, 2020). The relational transition is arguably one of the most important considerations to make and should be carefully managed to avoid increased vulnerability amongst those transitioning to adult services (Price, 2020).

## **Practitioner Skills and Implications for Training**

The Youth Justice Blueprint for Wales includes the guiding principle of embedding trauma-informed practice throughout the various layers of the service whilst ensuring the system is strengths-focused (Ministry of Justice and Welsh Government, 2019). Central to embedding trauma-informed practice is the building of empathic relationships between children and practitioners.

When an empathic relationship is built, the child may begin to process their experiences and related emotions, thus, share detailed trauma narratives with the practitioner; a healing process included within many trauma-based interventions (Kaminer, 2006). Indeed, children who have experienced relational/attachment trauma require relational repair and healing (van der Kolk, 2005). However, working within an empathic, relational space does carry risks

to the practitioner, namely vicarious trauma. Vicarious trauma refers to negative and unique changes in those who are exposed to detailed trauma narratives (Possick et al, 2015). Vicarious trauma may result in cognitive (Aparicio et al, 2013), emotional (Sansbury et al, 2015) and physical (Wagaman et al, 2015) negative reframing and lead to negative cognitive changes, avoidance behaviour and intrusive imagery (Mishouri et al, 2014). Further consideration is needed in order to support practitioners in recognising symptoms and the impact of vicarious trauma which could be offered through training in order to upskill in this area. Similarly, consideration must be given to resourcing to prevent vicarious trauma. There have been prevention attempts within the ECM which recognises the importance of clinical supervision for staff (Glendinning et al, 2021) alongside recommended supervision and peer support (Iqbal, 2015; Tosone et al, 2012). However, due to a number of reasons (lack of resourcing, crisis management, time constraints etc.), such support mechanisms are not always possible (Branson, 2019). Alternatives (psychoeducation, alternative therapies, recreational programmes, mindfulness interventions etc.) should also be considered in order to appreciate individuality amongst the workforce.

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# **Paper 3: Practical Next Steps**

**Wales Youth Justice Academic Advisory Group (WYJAAG)**

**Workstream 3 Paper: Practical Next Steps**

Draft: 30<sup>th</sup> June 2023

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## **Introduction**

It will be recalled that the Welsh Government's terms of reference for this project on preparing for the possible devolution of youth justice are as follows:

- 1. The current system in Wales – strengths, limitations and opportunities for improvement;**
- 2. What a future vision for the system in Wales could look like; and**
- 3. What the practical next steps would be for achieving this vision**

This paper, which attempts to map out the 'practical next steps' for achieving the vision outlined in Paper 2, is probably the most challenging because of the uncertain political terrain and the piecemeal, incremental nature of what is likely to be the next stage of the devolution process.

It is against this background of uncertainty that this paper attempts to do three things.

1. Summarise the principles on which our vision of youth justice should be based.
2. Summarise the opportunities and risks of devolving youth justice to Wales.
3. Summarise the practical measures that could possibly be taken, identifying those measures that are likely to require legislation and those which can be reviewed or delivered without recourse to statute.

The content of what follows should not be a surprise to those who have read Papers 1 and 2, although there are some additional measures and courses of action recommended because our thinking has developed during this process. On the whole, though this paper simply highlights and summarises more concisely points that have been made previously.

Along with 'prevention is better than cure', the phrase 'dealing with problems upstream' is one that is often used in relation to young people and the justice system. Arguably, the use of ecological metaphors (France, Bottrell and Armstrong, 2012) in relation to youth justice can be regarded as apposite. In order to avoid disaster downstream, water courses can be 'diverted', dams and canals constructed, and – if successful – flood plains can be replanted. Potential and actual problems are addressed at source, which can in turn reduce both the level of human distress and the financial costs. This metaphor is reflected in the work undertaken by WYJAAG.

## **Preliminary Considerations and Practice Principles**

Although there may be differences of view on the best policy options to pursue, there is broad consensus amongst WYJAAG members on the practice principles that should shape our vision of youth justice. These are discussed in Paper 2 and summarised below alongside other relevant considerations.

1. Promoting, nurturing and sustaining good practice is more important than moving around the institutional furniture. The priority should be to create a high quality 'community of practice' in which a common understanding of how best to work with

children and young people is shared across different agencies. It is equally important, though, to review whether institutional arrangements need to be reformed in order to facilitate the development of good practice.

2. Youth Justice practice should adhere to Child First principles. Although there are different interpretations of this approach, Case and Browning (2021: 4) summarise the broadly agreed tenets as follows:

**See children as children:** Prioritise the best interests of children, recognising their particular needs, capacities, rights and potential. All work is child focused, developmentally informed, acknowledges structural barriers and meets responsibilities towards children.

**Develop pro-social identity for positive child outcomes:** Promote children's individual strengths and capacities to develop their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.

**Collaboration with children:** Encourage children's active participation, engagement and wider social inclusion. All work is a meaningful collaboration with children and their carers.

**Promote diversion:** Promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system.

3. Youth Justice should be underpinned by the framework of children's human rights as outlined in the relevant international conventions (see Appendix 1 of Paper 2). Children in Wales possess inalienable human rights. The United Nations Convention on the Rights of the Child (1989) and youth justice specific human rights conventions (United Nations and Council of Europe) are of particular importance. Such human rights, however, should ideally be translated into citizenship rights and tangible entitlements that are not disapplied if they break the law and become regraded as less deserving.
4. Youth justice should never be considered in isolation from other children's services. Many justice-involved children will present not only behavioural challenges but also high levels of need, including sometimes complex needs. Children should always be considered holistically. This includes consideration of care experienced children, the impact of disproportionality on children from minority ethnic communities and those with protected characteristics.

5. A 'Child First' approach means, *inter alia*, that children should not be labelled by their referral routes. The crude binary distinction between 'young offenders' and 'children in need' should be abandoned. The delivery of youth justice specialist services should therefore be aligned with, if not fully integrated into, wider children's services and child welfare policies under a Child First and children's rights umbrella.
6. The difficult transition between childhood and young adulthood should be considered carefully, particularly in terms of aligning services to ensure the current cliff-edges in such areas as criminal justice, social care and health are reduced by removing unnecessary barriers and supporting young people appropriately.
7. Youth justice is not solely about addressing offending and harmful behaviour. It is also about social justice. Those most likely to come to the attention of the youth justice system are from the most disadvantaged families and deprived communities. They are also most likely to be the most marginalised and will have experienced discrimination. Youth justice should therefore be anti-oppressive, poverty-aware and trauma-informed. It should hold to account those services that have failed in their responsibility to support children, families and communities who were entitled to expect such support.
8. Children should not be treated as 'mini-adults'. Full account should be taken of child and adolescent development in terms of cognitive skills, impulse control, social skills, moral awareness and emotional self-regulation. The maturation process is generally not completed until the early to mid-twenties. Traumas such as abuse and bereavement, along with contextual adverse childhood experiences such as poverty, can also delay and impair development (i.e., by not having access to a full and healthy diet: Food Foundation, 2019). Whilst it is important to recognise that young people possess agency and strengths, the concept of the competent rational actor (a familiar ideal-type in criminal justice discourse) should be modified in relation to children and young people.
9. Power relations between children and adults are skewed in favour of the latter. Children rely on adults, including services managed by adults, for not only the key necessities of life but also for guidance, resources and opportunities. It is therefore important that the weight of responsibility for children and young people should be borne by adults. When a young person breaks the law, the question of whether adults have fulfilled their responsibilities should be posed.
10. Law-breaking is fairly normative amongst children and young people across the social spectrum, but so too is desistance. Entry into the criminal justice system tends to extend criminal careers whilst diversionary strategies facilitate the desistance process. This means that, as far as possible, children should be diverted from the formal criminal justice system and the deprivation of liberty should be applied only as a measure of last resort. Critical moments in the early teenage years provide key

opportunities to develop pathways out of offending. The approach should be relationally based and provide access to their rights and citizenship entitlements to enable them to lead happy, healthy and crime-free lives.

11. Those children and young people who are most likely to come to the attention of the criminal justice system are male and those from the poorest households and neighbourhoods. There is also significant over-representation of neurodivergent children, care-experienced young people and those from certain minority ethnic communities. The latter group are also over-represented in the public care system, which highlights how the issue of intersectionality can compound disadvantage. It is therefore important to address the issues of disadvantage and discrimination: social justice should be a core principle of youth justice practice.
12. Whilst small in number, the girls who enter this essentially androcentric youth justice system are hugely disadvantaged, discriminated against, and stereotyped. There is a risk that they will be escalated up the out-of-court and sentencing tariff far more quickly than their male counterparts. In terms of their welfare needs they tend to be under-supported and, in terms of their experience of the criminal justice system, are over-controlled and over-punished (Sharpe and Gelsthorpe, 2015; Bateman, 2020; Fitzpatrick *et al*, 2022). Tackling discrimination and developing appropriate services and support for girls needs to be part of a holistic approach to children who come into contact with justice services.
13. Persistent serious offending is associated with victimisation and social adversity. Tackling the social adversity experienced by both perpetrators and victims should be a priority.
14. Individualised support for victims, which includes children, should be an essential part of youth justice strategy and planning with consideration given that all children are vulnerable. It should also be borne in mind that whilst the commission of an offence can bring a young perpetrator to the attention of the criminal justice system, many will also be victims of crime and/or distressing circumstances beyond their control.

## **Context, Opportunities and Risks**

The context of the ragged constitutional settlement and the ‘jagged edge’ resulting from criminal justice not being devolved to Wales is well-known. Notwithstanding the institutional obstacles and challenges inherent in this settlement, it is important to acknowledge that there have been some notable achievements in youth justice and related policy areas since the arrival of democratic devolution in 1999. These include:

1. A reduction in the number of First Time Entrants (FTEs) into the youth justice system through the development of effective prevention and diversion strategies. Although such reductions can be found across the jurisdiction of England and Wales, it should

be noted that devolution provided a supportive environment within which diversion strategies could be promoted. An early initiative to divert children from prosecution and support positive outcomes was the Swansea Bureau. This was a rights and entitlements based diversion model that was evaluated positively by researchers at Swansea University (Haines et al, 2013). At the time Swansea YOT's philosophy and working practices went against the grain of prevailing YJB orthodoxies. Despite youth justice not being devolved, the Welsh social policy framework and the close working relationship between practitioners, managers, academics and policy makers created an environment within which such innovative practice could be initiated and nurtured.

2. The establishment of YJB Cymru and recognition that the different policy context in Wales required specific consideration.
3. The All-Wales Youth Offending Strategy (National Assembly for Wales and YJB, 2004)
4. Children and Young People First (Welsh Government and YJB, 2014) (successor to the All Wales Youth Offending Strategy).
5. Welsh Government support for Trauma-informed practice through its commitment to increasing understanding of the impact of trauma and improving responses to such experiences. *Trauma Informed Wales* (Welsh Government, 2022) is a Framework that sets out individuals and organisations can identify and support those who have experienced trauma.
6. Youth Justice Blueprint (2019). Work is ongoing, though less prominent than earlier, on the Blueprint.
7. Social policies based on universalism (e.g., free prescriptions; *Extending Entitlement* (National Assembly of Wales, 2000) philosophy).
8. Social policies supporting young people in education and training beyond 16 years through Education Maintenance Allowances and the Youth Guarantee.
9. The Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 to ensure there is a focus across the public sector on the prevention of abuse and violence, the protection of victims and support for those affected. The Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Blueprint<sup>24</sup> considers the needs of children to ensure service responses are appropriate, harms are prevented and addressed, and there is clarity and cohesion in parallel approaches to safeguarding and VAWDASV.
10. Wales is taking a public health approach to the prevention of serious youth violence with Public Health Wales, the Wales Violence Prevention Unit<sup>25</sup> and Peer Action Collective Cymru<sup>26</sup> working together to inform strategy.

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<https://www.gov.wales/violence-against-women-domestic-abuse-and-sexual-violence-blueprint-high-level-action-plan-htm>

<sup>25</sup> [Violence Prevention Unit \(violencepreventionwales.co.uk\)](https://www.violencepreventionwales.co.uk)

<sup>26</sup> <https://peeractioncollective.com/>



11. Enshrining children's rights in the Rights of Children and Young Persons (Wales) Measure 2011.
12. Increasing numbers of Police Community Support Officers, thereby facilitating the potential for greater community engagement.
13. Children being given the same protection from assault as adults through the passage and implementation of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020.

Paper 1 sets out the strengths, limitations and opportunities of youth justice in the present context. Summarised below are the salient opportunities and risks presented by the prospect of devolving youth justice to Wales.

### ***Opportunities***

1. Youth Justice is the one children's service that remains non-devolved. This is an anomaly. Devolution of youth justice would enable it to be integrated within, or aligned with, child welfare policy and the other services on which children depend. Such services include health, education, social services, youth work and leisure.
2. Devolution of youth justice would provide an opportunity to implement a fully formed and comprehensive set of 'Child First' and human rights compliant policies and practices.
3. Devolution would provide an opportunity to align youth justice delivery with the principles of social justice and progressive universalism.
4. Devolution would provide an opportunity to reform structure and governance at the levels of both national and local delivery. At a local level the YOT model could, following properly evaluated pilots, be replaced or reformed. However, the evidence to date suggests that on balance it is a successful model (Deloitte, 2015; HMIP, 2023a) and any changes would require careful consideration.

Furthermore, the role of the YOT management board needs to be taken into account, as it is part of the current youth justice structure and plays an important role in oversight at a local (authority) level. The youth justice function could more formally be reconstituted and rebranded as universal Support Services for Children and Young People, alongside other services which are working with some of the same children; particularly youth work, local authority preventative services and services for care experienced children, which would deal with the full range of young people's needs, rights and opportunities (family-related matters, education, training, employment, health, accommodation, community development and youth justice).

Alternatively, the current YOT functions and structure could be maintained but enhancements added to the statutory membership and management boards (for example, housing, youth work, community development). It is important that any reform of YOTs should not be seen as an efficiency exercise by national or local

governments. Existing expertise and funding should be incorporated fully into any new integrated structures for supporting young people.

5. Given that it is hoped Probation will also be devolved, there is the opportunity to manage the transition between youth justice and probation services more effectively and sensitively. Various models of transitional service delivery could be piloted (see Appendix 2 **Youth Justice Transitions in Wales** of Paper 1 for possible models) and evaluated. One example might be to form a single service for children and young adults within which there could be specialist teams to manage the different legislative and rights frameworks that apply to these service user groups. In respect of young adults, this could include a multi-agency dimension to service delivery in such areas as adult mental health, substance misuse, housing, debt and benefits advice. Care does, of course, need to be taken to avoid pushing the cliff-edge to transition from young adulthood to adulthood. Forward planning should therefore be undertaken across the life course. Nevertheless, given the particular vulnerabilities of the young adult population, it is reasonable that Welsh Government should prioritise support for the transition from childhood to adult status.
6. Although administrative devolution would locate criminal justice policy making in London, there could be an opportunity for negotiating a *modus vivendi* in which different practices and conventions are established in Wales. The extent to which such local inflections of practice could be protected and institutionalised would need to be explored in detail and depth, but it is important to recognise that there are already precedents for such arrangements and conventions. For example, there has in the past been a memorandum of understanding between the YJB and Welsh Government, revisiting and revitalising this would be an important first step.
7. Governance of the system would require consideration in any context involving devolution of any kind in terms of transitional, hybrid or other arrangements which whilst presenting some difficulties would also present an opportunity to look at what that might mean in a more Child First orientated system.

### **Risks**

1. A core risk of administrative devolution of youth justice is that Welsh Government is a 'policy taker' rather than a 'policy maker'. Being unable to control criminal justice policy could result in Wales having to implement policies with which Welsh Government disagreed. The decisions of Welsh sentencers would also be constrained by legislation and sentencing guidelines made outside Wales. Home Office Policy, too, might conflict with the Welsh Government approach in such areas as policing and anti-social behaviour. In the latter case, for example, in May of this year the Home Office (2023) completed a consultation on anti-social behaviour proposals that include introducing stronger powers which could detrimentally affect children by reducing the age in which Community Protection Notices can be issued. This highlights the risks of not having adequate control of the criminal justice and anti-social behaviour policy agenda.

2. The financial risks of devolution should not be under-estimated. If, for example, there were to be a punitive turn in UK Government youth justice policy, this could lead to more children entering the system, appearing in court and an increase in community and custodial sentences. This would have profound economic costs in terms of public expenditure (both capital and revenue) and would demand a potentially larger youth justice workforce, which would have implications for local authorities and other statutory partners. Further, as the previous papers have identified, preserving the youth justice system so that it can effectively operate and has the resources it needs is one consideration; another is whether and how new funding streams could be made available to enhance activity (e.g. such as the Ministry of Justice's Turnaround project) so that Wales is enabled to continue developing innovative practice and not be disadvantaged by financial constraints; and whether Welsh Government policy would ring-fence funding to YOTs to preserve activity or continue to implement the existing policy of pooling resources from several grants within the local authority to enable local flexibility (notably through the existing arrangements which apply to the Children and Communities Grant), which could present a risk to YOT resources specifically.
3. There is a risk that Welsh Government will not be able to exert a positive influence on those local authorities that are failing to deliver on national objectives. There has long been local variation in the practice culture and related outcomes for children in such areas as education and social work services. Poor performance in relation to reducing school exclusions and/or admissions to the care system obviously has implications for the youth justice prevention and diversion agendas. Added to this, there continue to be differences between localities in police practice (use of diversionary options specifically), sentencing practice (justice by geography) and YOT culture, resources and services. Devolution of youth justice would not, in itself, resolve these problems. Further engagement would be required with HM Inspectorate of Probation regarding inspection arrangements for Wales, particularly the strategic and operational focus would lean more towards a Child First and rights informed system in Wales.
4. A risk cited over the years concerns the comparative lack of capacity in expertise that exists in Wales, especially in relation to research and policy making. Whilst the loss of economies of scale remains an issue, there is actually significant academic expertise present in Wales (see affiliates to the Welsh Centre for Crime and Social Justice). Moreover, Welsh-based academics obviously collaborate with colleagues across UK and international borders. That said, universities rely on funding for research and there are questions about how Welsh Government or YJB Cymru (or an equivalent body) would access expertise from YJB England and Wales in London or elsewhere. These are far from being insurmountable obstacles as research can be conducted and secondments negotiated provided funds are available. The risk of loss of expertise therefore depends on whether adequate resources can be made available. Currently,

it would seem that the resources are not forthcoming. Would the financial settlement for devolution change this situation in a positive way?

5. A further point in relation to capacity is what a partially or fully devolved youth justice system in Wales would require to support it (e.g., in terms of developing or interpreting policy for Wales through a Child First lens, providing operational and strategic guidance and standards, promoting good practice and workforce development). The YJB has approximately 100 employees who carry out these functions across England and Wales and whilst some of the oversight is specific to England, that still leaves a sizeable number who carry out the overarching activities and functions laid out in the Crime and Disorder Act 1998. The question of future functions and by whom they should be discharged also needs to be addressed.

## Next Steps

Given that Welsh Government does not have full control over criminal justice and policing, consideration needs to be given to how it can best influence an area of policy in which governance arrangements are best described in political science terms as 'coordinate' rather than 'hierarchical' (Damaska, 1986). The levers of influence can be summarised as follows:

- a) legal/constitutional
- b) hierarchical
- c) financial
- d) information and expertise
- e) political authority.

Welsh Government undoubtedly possesses political authority, although this needs to be weighed against the political authority of local authorities, Police and Crime Commissioners and the UK Government: all are in possession of democratic mandates. It is important to make the point, though, that Welsh Government has the political authority to use its convening powers to invite key stakeholders to sit around the table and agree memoranda of understanding. Financial incentives, along with information and expertise, could also be used to shape national policy and practice frameworks.

The Youth Justice Blueprint for Wales has been included as a potential vehicle through which some of the actions could be taken forward (some build on work already started by the Blueprint). It is understood the Blueprint is not the youth justice system in Wales, but it has been a vehicle through which it has been possible to take a more focused look at certain aspects of policy and practice. It is recommended it could have a specific role in this respect (if funding for it continues), failing this, the Welsh Government and YJB Cymru may need to consider where the recommended actions for the Blueprint are best located.

## **Governance**

1. Establish a Shadow Commission on Youth Justice and Probation which could oversee the plans and transitional arrangements for the devolution of these two areas of criminal justice. This could be supported by the establishment of a network of key stakeholders (such as WYJAAG and YOT Managers Cymru) and reference groups representative of key service providers and users at operational and strategic levels. Such reference groups could also include those with specialist expertise (e.g., young people with relevant lived experience; youth justice lawyers and legal academics; practitioners and academics in Education; and social work practitioners, policy experts and academics). Task and Finish Groups drawing upon the available expertise could take 'deeper dives' into policy and practice areas needing to be developed or requiring transitional arrangements.

**Action: Welsh Government**

2. Commission a review of youth justice governance at national and local levels (including the role and composition of YOTs and their Management Boards). See the Governance and Accountability section of Paper 2 for further guidance on the possible options available. As has already been identified in Section 3 of this paper (under the sub-heading of Opportunities), there is scope to pilot and evaluate different models of local youth justice. Given the possibility of Probation also being devolved, this could include various models of integrating and/or aligning criminal justice services to children and young adults. See Appendix 3 (**Wreccsam Glyndwr University Contribution** on trauma informed practice and approaches) of Paper 2 for some examples of possible models that are available. Again, this would be a suitable area in which to commission pilot studies.

**Action: Welsh Government-led review with possible pilots for Youth Justice Service models and Young Adult / Youth Support Teams. This could include Youth Work and Housing joining statutory partnerships. Depending on the evaluation of the pilots, it is possible that legislation would be required at some point to tie new partners into a statutory relationship with these teams. For example, youth work and housing for youth justice service and the development of an expanded multi-agency approach with adult services for Young Adult/Youth Support Teams.**

3. A limitation of the work undertaken to date relates to the need to examine fully the implications of the interface with the Youth Custody Service (YCS). The YJB's responsibility for custody was transferred to this new service, which was created in 2017. It has responsibility for purchasing and placing children in the secure estate in England and Wales (young offender institutions, secure children's homes and secure training centres). Primary legislation has not changed. This requires particular consideration in its own right: how the interface in a devolved justice system would work and whether and to what extent the secure estate would feature in any devolved arrangements. There are implications for commissioning and purchasing secure beds

in the different types of establishment, what the secure estate would look like in Wales, how that fits with national policy and the operational implications for courts and YOTs specifically.

**Action: Welsh Government to open negotiations on the implications of transfer of YCS responsibilities to Wales. Legislation may be required.**

4. Given some of the policing issues that have been identified and the fact that it has been over a decade since the passage of the Policing and Social Responsibility Act 2011 which abolished local Police Authorities and replaced them with Police and Crime Commissioners (PCCs), it may be appropriate to review the governance and accountability arrangements. Although a radical change in governance arrangements would require primary legislation, there is scope to issue guidance on how to strengthen and diversify the composition of Police and Crime Panels. At a time when confidence in the police is low, such a review could consider how young people's voices could be heard in respect of not only their experiences, but also in relation to what they regard as important policing priorities and how engagement and confidence in the police can be improved.

**Action: Welsh Government to lead a review in consultation with local authorities, Police and CCs, police leaders and young people.**

5. Welsh Government should make representations on making annual Youth Justice Plans (a statutory document) more reflective of the Welsh context and social policy landscape.

**Action: Welsh Government.**

6. Welsh Government should undertake a review of existing funding streams to youth justice services (e.g., YJB, WG and PCCs) and make recommendations on how they can be protected and aligned. The biggest funder of YOTs in Wales are local authorities, followed by the Youth Justice Board and Welsh Government. It should be noted, however, that the funding profile varies across localities in Wales.

**Action: Welsh Government.**

7. A review should be undertaken on how local (local authority-led) and national (Senedd-led) scrutiny processes can be aligned.

**Action: Welsh Government and WLGA to work together on a review.**

8. Given the increasing demands likely to be placed on the Youth Justice Blueprint Team, there is need to assume the lead in project management. A designated project manager with support should be appointed. If this were based within Welsh Government it would be helpful to build existing capacity in the preparation for devolution and ensure that where Welsh Government policies are intended to impact on outcomes for children, there is effective implementation. Further, the role of the Blueprint as a 'change' programme in current planning requires detailed attention.

**Action: Welsh Government.**



## **Prevention and the Promotion of Positive Outcomes**

1. Children's human rights need to be translated into tangible citizenship rights and entitlements. To some extent this has already been done in Welsh statute and policy (see Paper 2), but there is need to review, refresh and embed the philosophy and policy and practice implications of *Extending Entitlement: supporting young people in Wales* (NAfW, 2000). Such a review includes clarifying and detailing the age-appropriate entitlements available to both children and young adults. Consideration should also be given to how such citizenship entitlements can be enacted and enforced in practice. Rights frameworks are useful in defining desired outcomes, but O'Neil (2002) makes the powerful point that duties and obligations are the 'business end' of declarations of rights. Devolution of youth justice should be taken as an opportunity to clearly define and allocate the duties and obligations of the state and other bodies that are the counterparts to those rights. For example, there is no point talking about a right of young people to participate in processes that affect them without defining who needs to be facilitating this and how. This is all about 'REACH', which is, of course, a core - often undeveloped and undelivered - aspect of Extending Entitlement. Similarly, the interrelations between the responsibilities of agencies need to be carefully thought through and defined in law. It should also be borne in mind that usually exercising rights on an individual basis is a very expensive way of enforcing them and most don't have the resources to pursue. Institutional inspection may therefore be a more powerful way of ensuring service provision meets the appropriate standards than individual rights claims.

**Action: Welsh Government to establish a review of Extending Entitlement followed by a refresh and relaunch of the policy.**

2. There is need to develop a tiered Prevention Framework that embeds the principle of universalism (including services provided by the local authority) which would ensure all young people receive their citizenship entitlements, but also includes more targeted work with young people on the periphery of the youth justice system (and those who need continuing support at the end of a statutory order). Such work could include detached youth work and community development in low-income neighbourhoods where the risks of contact with the police are likely to be greatest. An approach to anti-social behaviour strategy that addresses both the concerns of residents and safeguards children's welfare also needs to be part of such a Framework. Engagement with the All Wales Anti-Social Behaviour Practitioners Group could be a first step to minimise the impacts of Home Office policies that might conflict with the Welsh youth justice strategy. Contextual safeguarding (HMIP, 2023b) is, moreover, particularly important in areas where there is a high risk of extra-familial harms to young people, particularly where more serious criminal networks operate. As the Blueprint is currently developing a Prevention Framework, this would seem to be the obvious workstream where this could be developed.

**Action: Allocate work to the Youth Justice Blueprint Team**



3. It is important that there are objective measures of accommodation suitability (including issues such as overcrowding, quality of housing conditions, etc.) alongside the current ‘practitioner judgment’ test that is applied. For example, a practitioner may quite rightly make the assessment that a young person is appropriately placed with a supportive sibling, even though the young person is sleeping on a sofa. In such a scenario, though, it is equally important that an objective measure of housing need is also recorded in order to enhance the prospect of healthy and sustainable housing (i.e., overcrowded conditions can place a strain on family relationships). The option of transitioning to independent housing when the young person reaches the age of 18 years could also be better planned with the formal involvement of housing in the YJS partnership.

**Action: Welsh Government, YJB and local authorities to work on developing a more objective measure of housing need.**

4. Welsh Government must continue to work with local authorities to reduce the number of school exclusions.<sup>27</sup> Lack of engagement with education can be one of the most significant factors in children’s lives and prevent them thriving and reaching their full potential.

**Action: Welsh Government to work with local authorities on improving performance in this area.**

5. Welsh Government must continue to work with local authorities to reduce the number of care experienced children entering the youth justice and adult criminal justice systems (see also Point 5 in the section on Diversion from Prosecution and the Promotion of Positive Outcomes).

**Action: Welsh Government to work with local authorities to improve performance in this area and to evidence good practice.**

6. In order to help them avoid contact with the criminal justice system, children need to be made aware of not only their rights under the UNCRC and other relevant conventions, but also their status and legal rights when reaching the age of criminal responsibility. This is work that needs to be undertaken initially in primary schools and reinforced in secondary schools. This could be embedded in the new curriculum. This work should be part of a wider review of the early education of children around ‘crime related issues’, including police interventions in school that conceptually align with the Child First and children’s rights practice principles being espoused here.

**Action: Welsh Government to work with local authorities on embedding this element into the new curriculum.**

7. More needs to be done by criminal justice agencies to ensure that children are not only advised of their rights but also understand them fully (e.g., when in contact with and detained by the police, as interactions with the police can also have a significant bearing on outcomes). Children should be able to participate effectively in processes

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<sup>27</sup> For many years, officially registered exclusions have concealed the depth of other forms of exclusion and non-participation in education. Wales pioneered research on young people now depicted internationally as ‘NEET’ (Not in Employment, Education or Training). Greater transparency as to its prevalence has to be a prerequisite for more concerted and effective policy intervention.

happening to them directly. The importance of safeguards to assist participation is paramount.

**Action: Welsh Government, local authority children’s services and police representatives and Police and Crime Commissioners to review how this can best be actioned.**

8. Whilst recognising the progress that has been made in Wales on child criminal exploitation, child sexual exploitation and modern slavery, the following recommendations are made:

- (a) Provide a specialist package of ongoing (rather than time-limited services) that should include youth workers and specialist staff equipped with the skills necessary for working with traumatised young people and their families.

**Action: Welsh Government to work with local authorities and health boards and health-related services to develop such a service.**

- (b) Prevention Orders akin to the Domestic Violence Prevention Orders are needed which protect victims from perpetrators for a defined period of time. This would give practitioners the time to develop relationships with young people and their families, and support them safely away from exploitation. This would also include developing exit strategies from the condition of debt bondage.

**Action: Welsh Government to introduce and enact appropriate legislation.**

### ***Diversion from Prosecution and the Promotion of Positive Outcomes***

1. Given that that entry into the criminal justice system is likely to extend criminal careers and potentially attenuate positive and pro-social community links, diversion from prosecution is a vitally important element in the youth justice strategy. A national framework for diversion should be established, within which there will be scope for local diversity. This should also align with the Prevention Framework (see above) so there is a continuum of support for children on the cusp of the criminal justice system. The Youth Justice Blueprint commissioned work to examine diversionary practice across Wales and produced *Principles and Guidelines for Diversion and Out of Court Disposals in Wales* (Thomas, O’Grady and Henderson, 2023), which could be the starting point for taking this forward. Wales could also adopt a presumption in favour of prevention and diversion which would accord with Child First thinking (see page 2). The Child Centred Policing Framework and Principles can also form the basis for developing a more bespoke approach in Wales. It should be noted that the Principles are based on the UNCRC. The form that diversion takes will depend upon such factors as the maturity of the young person, whether there is experience of victimisation (Young, Greer and Church, 2017), the nature and seriousness of the offence, and whether it can be dealt with satisfactorily outside of that formal justice system. If it can be dealt with outside the justice system, then diversion should ideally be non-criminalising, reintegrative and include a ‘rights and entitlements’ check to establish whether a young person should be re/connected to appropriate services. In cases where rights and entitlements have not been honoured, then the relevant services

should be held to account. This could be undertaken by local justice panels (for example through an extension of Scrutiny Panels currently used for diversion, but with an added emphasis and a broader membership than is currently the case). As far as possible, light touch assessments should be conducted. Ideally, they should not be perceived or experienced by the young person as criminalising. Diversionary measures should follow the principle of minimum sufficient intervention by criminal justice agencies and personnel. The aim of all interventions should be to maximise opportunities and experiences that produce positive outcomes for the young person. They should be relationally based, as a significant amount of diversion requires voluntary interactions from children and their families. Interventions will vary and could include: non-stigmatising educational/awareness courses (e.g., an e-scooter/motorised bike awareness course could be designed along the lines of a speed awareness course); referral to universal mainstream or specialist services; bespoke restorative activities and practices; mentoring; and/or more intensive support and guidance.

**Action: Work to be undertaken by Youth Justice Blueprint Team in consultation with police representatives.**

2. One of the most effective ways of diverting children from the criminal justice system is raising the age of criminal responsibility (ACR). Powers to raise the ACR are unlikely to be granted in the short-term, so in the intervening period efforts should – in line with UN Committee on the Rights of the Child (2019) guidance - be made to prevent children below the age of 14 years entering the formal youth justice system. This could be achieved through establishing protocols and practices that deal with such children outside the youth justice system. This could include referral to the Family Court. As was mentioned in Paper 2, it should be recalled that Morgan (2009: 13) considered this issue:

...insofar as children coming before the youth court often display multiple welfare needs it would be possible for Welsh YOTs and children's services to agree to liaise with each other, the police and the CPS, such that the likelihood of children with such problems (particularly parental neglect) being criminalised and/or prosecuted is significantly reduced and the family court route taken more frequently than is currently the case. Dame Elizabeth Butler-Sloss, former President of the Family Division, argued for precisely such an approach, the police and social services jointly invoking the Children Act 1989, which allows the court to direct social services to carry out an assessment and consider whether to apply for a care or supervision order as an alternative to prosecution.

It is recommended that national guidance be developed on the subject of diverting children of all ages from criminal prosecution, but particularly those aged below 14 years. It should include children who currently enter the system via Serious Incident Reports (SIR). The inclusion of children in this category is prompted by a recent SIR which involved a child's arm being fractured in a primary school playground. Neither the school nor the victim or his family wished the matter to proceed to court, but it

did and it has resulted in a child (at the time aged 11 years) receiving a criminal record. Further, more could be learned from the approach taken in Scotland, whereby children under the age of 12 can no longer be charged or arrested. Whilst this was introduced via the Age of Criminal Responsibility (Scotland) Act 2019 a similar approach could be piloted in Wales with the agreement of all relevant parties.

**Action: work to be undertaken by Youth Justice Blueprint Team, local authorities and police representatives.**

3. There is need to develop a comprehensive Framework on policing that is linked to the Child Centred Policing Policy Framework and Principles (National Police Chiefs' Council, 2021). Although work has been undertaken by the Blueprint to develop Principles and Guidelines for diversion and court disposals, this is not being followed consistently. It should be noted that concerns have been expressed by both YOT managers and Magistrates. There is, moreover, a need to address some of the wider issues of police engagement with young people. These include protecting children from harm, disproportionality and the use of stop and search, arrest, police custody and Release Under Investigation (which has the potential to leave children in limbo). It should be remembered that Article 37(b) of the UN Convention on the Rights of the Child does not only refer to detention and imprisonment being used as a measure of last resort, but also arrest. Even though prosecution may not flow from an arrest - some evidence suggests the majority of cases do not (University of Nottingham, 2023) - the experience risks beginning the process of criminalisation involving both the attribution and internalisation of a criminal identity. The sense of powerlessness and alienation that can be engendered by repeated police questioning, stop and search, and arrest should not be under-estimated or the trauma which may result from the experience of police practices and detention (McClanahan and South, 2020). Furthermore, the role of Scrutiny Panels should therefore be extended to encompass all children who have had police contact (e.g., Stop and Search, particularly in relation to illegal substances) and those Released Under Investigation.

**Action: work to be undertaken by Youth Justice Blueprint Team and Policing representatives.**

4. The range of out-of-court disposals needs to be widened, particularly in relation to the greater use of No Further Action (Outcome 22 on the Police National Computer). This provides the opportunity for 'diversionary educational or intervention activity', which could enable non-criminal justice agencies to undertake agreed activities, thereby distancing children from the criminal justice system. It also defers prosecution and gives the child the opportunity to engage with support which can assist them and as such is an important diversionary option. The *Principles and Guidelines for Diversion and Out of Court Disposals in Wales* previously mentioned identifies this as being an issue that police forces in Wales need to consider.

**Action: work to be undertaken by Youth Justice Blueprint Team and Policing representatives.**

5. The All Wales Protocol on reducing the criminalisation of care experienced children and young adults needs to be given a higher priority with safeguarding, community safety and corporate parenting boards. A comprehensive review of the level of support for the Protocol needs to be undertaken and what action has been taken at a local level to deliver it.

**Action: Welsh Government and Local Authorities.**

6. In line with the guidance of the UN Committee on the Rights of the Child, the age of criminal responsibility should be raised to 14 years. Above this age the starting point should be a general presumption of diversion and a more explicit understanding of when it would not be appropriate (e.g., when there are public protection concerns). A sliding scale of responsibility should be established: there should be a rebuttable presumption that children aged 14 and 15 years will not be prosecuted; for children aged 16 and 17 years, the principle of diversion should still apply, with clear steps that include the use of deferred prosecution where appropriate, and differing diversionary options which include the options of voluntary and non-voluntary engagement to avoid escalation into the court system, with a rebuttable presumption of children being prosecuted when all other options have been explored and exhausted or there are serious public protection concerns.

**Action: Welsh Government to introduce a new statute when the necessary powers are transferred.**

### ***Tribunals and Courts***

1. Given the fact that Wales currently does not have control over criminal justice policy, the risk of a punitive turn in policing practice and/or sentencing needs to be addressed. The possibility of influencing police practice has previously been discussed, but a local inflection in the application of the sentencing framework within Wales to take account of the different youth justice and social policy landscape should also be explored.

**Action: Review led by Welsh Government in consultation with the Sentencing Council for England and Wales .**

2. The possibility of establishing Children's Tribunals should be explored. Such tribunals, facilitated by those with professional expertise in children's matters (health, education, criminal justice, social work, etc.), could provide a child-friendly forum within which a problem-solving approach could be applied. This would be particularly useful in complex cases where children are presenting not only challenging/offending behaviours but also experiencing problems relating to family, education and/or health issues (including mental health). Where best to locate such tribunals, possibly between diversionary measures and the Youth Court, would need to be considered carefully. Additionally, as the YOT is a multi-agency entity which has the capacity to address a wide-range of problems through its collective expertise (compared to the lone worker position of the probation officer), consideration should be given in terms of what additional benefits it might bring and which agencies would need to be directly involved. If established, consideration should be given as to what they should be

called. 'Tribunal' does not quite have the evocative or connotative power of the Scottish Children's 'Hearings', which implies the act of listening. This is a matter that needs to be given further thought.

**Action: New legislation required.**

3. Although the Youth Courts are, quite properly, independent of YOTs, it is important that magistrates are aware of the youth justice work being undertaken by practitioners and the issues with which they are confronted. Dialogue between the youth justice sector (including YOTs) and sentencers at both national and local levels is vital. Although communication currently takes place, there should be a review on how dialogue can be enhanced and co-ordinated and how that is managed and maintained with diminishing youth court populations.

**Action: YJB Cymru, Welsh Government and the Magistrates Association**

4. Attention should be given to the possibility of ensuring that at least one Youth Justice Magistrate sits in the adult Magistrates Court in cases where young adults appear.

**Action: Consultation with Magistrates' Association led by Welsh Government.**

5. The Courts as a whole should be devolved. This would allow for the possibility of reuniting civil and criminal jurisdictions and thereby allow for young people to be dealt with more holistically across a range of issues.

**Action: New legislation required.**

6. Ahead of, or instead of, the wholesale devolution of the court system, the Youth Courts should be devolved. There would, of course, need to be extensive consultation with key stakeholders on the major institutional challenges this would pose. The need to establish Crown Court hearings in a special configuration and the appeal question would need to be settled; although on the latter issue it should be noted that appeals from Welsh administrative tribunals are already heard in the Court of Appeal and Supreme Court.

**Action: new legislation following consultation.**

7. Currently, the Youth Court consists of three lay magistrates advised by a legal advisor in most cases and occasionally a single district magistrate. Although magistrates will be experienced and have received some specialist training, they are not required to possess professional qualifications or experience of working with children. Consideration should therefore be given to creating a special class of professional youth justice magistrate sitting alongside two lay 'wingers'. This would provide legal expertise that could make the role of legal advisor unnecessary. Consideration could also be given to the profile and training of the two lay 'wingers'.

**Action: new legislation following consultation with sentencers.**

8. Given the procedural formalities and rigidities of adversarial proceedings that prevail in the current Youth Court, the proposed devolved and reformed youth courts should introduce more informal, inquisitorial, problem-solving and dialogic approaches that would support greater involvement by children and other participants. Another possibility would be to develop this more dialogic approach in preliminary hearings.

This could follow on from Lammy's (2017) recommendation to develop 'deferred prosecutions'. This refers to the practice whereby those thought to have committed offences may agree to participate in a programme of rehabilitative interventions (use of Outcome 22 is one such example and arose from the Lammy recommendation). That agreement leads to a pause in the prosecution of the offence. If the rehabilitative interventions are deemed to be successful, the prosecution may be abandoned or less serious disposals may be adopted. Unlike most schemes which aim to divert people away from charge and prosecution, the 'defendant' does not have to admit the offence to participate. In other countries, such as Italy, deferred prosecution is an important and established part of the youth justice landscape (primarily used in preliminary hearings) which enables intervention while reducing significantly the likelihood of young people receiving a criminal conviction and record. Preliminary hearings with deferred prosecution as an option might provide an institutional location for the development of consistent practice differentiated from local diversionary practices. This proposal would add another opportunity for support and intervention without conviction.

**Action: Consultation with sentencers and a possible pilot, possibly followed by legislation.**

9. Young people who commit offences below the age of 18 years should not be prosecuted as adults just because they have reached their 18<sup>th</sup> birthday by the time the case gets to court. The law/legal practice should be changed accordingly to instead reflect the date of the offence.

**Action: change in legislation.**

10. In the courts, children's rules and proceedings should be extended into early adulthood in cases where young people are assessed as being immature and/or vulnerable (e.g., care leavers, those with mental health problems and difficulties associated with neurodiversity and language) (Akister, Owens and Goodyer, 2010; Fitzpatrick and Williams, 2017).

**Action: Change in legislation following consultation with sentencers.**

### ***Community Sentences***

1. A review of community-based statutory orders should be undertaken, in particular how the two current options - referral orders and youth rehabilitation orders - are meeting children's needs, are being delivered by YOTs in Wales, and supporting desistance.

**Action: Review by academic experts. This could, in due course, be followed by a new statute when Welsh Government has the power to legislate in this area.**

## **Deprivation of Liberty, Secure Accommodation and Resettlement**

1. The deprivation of children's liberty should continue to be a measure of last resort. As far as is practicable in the current devolution settlement, for those children who are given custodial sentences or remanded to secure settings, such accommodation should be consistent with the Youth Justice Blueprint for Wales and Welsh Government's (2021) stated position on the subject. It should be noted, however, that commissioning and setting standards within secure accommodation is currently the responsibility of the non-devolved Youth Custody Service (see Governance section for recommendation on YCS).

**Action: Youth Justice Blueprint Team.**

2. Progress needs to be made on implementing *The Vision for Welsh Children in the Secure Estate* (Welsh Government, 2021). Although there is support for the Welsh Government's proposal to develop accommodation for children with complex needs (non-secure accommodation), which includes the needs of children in the justice system (e.g., as a remand option for those needing a safe and stable environment), Welsh Government currently does not have the power to make progress on establishing secure small homes in which therapeutic and individualised educational provision is available. It is imperative that Welsh Government is empowered and resourced to make the required progress on its plans. The Welsh Government should develop a detailed and long-term strategy for the secure estate in Wales (considering the implications for Parc YOI and Hillside SCH) and how it can best be achieved by working with HM Prison and Probation Service and the Youth Custody Service. This includes the capital and revenue cost implications, how placements inside and outside of Wales would be managed, and how the different needs of children could be safely managed.

**Action: Welsh Government in consultation with YJB, YCS and MoJ.**

3. Effective resettlement following a period in secure accommodation is crucial. Hazel *et al* (2017) and the Youth Justice Board (2018) have characterised the required approach as being collaborative, strengths-based, customised, consistent and co-ordinated (known as Constructive Resettlement). The planning for that resettlement process should commence as soon as the child enters a secure environment<sup>28</sup>. Robust arrangements need to be put in place for family to be supported in visiting. There also needs to be effective use of Release on Temporary Licence (ROTL). Both of these matters are under the control of the Youth Custody Service in policy terms and implemented by each secure establishment; the police are also involved in ROTL decisions. The possibility of establishing Reintegration and Resettlement Panels/Partnerships through Welsh legislation has been considered; the outcome being there are sufficient powers to implement good practice, including through the YJB's Constructive Resettlement Approach (as previously mentioned) which has been informed by the work of Hazel *et al* (2020) on Constructive Working. Practice on the

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<sup>28</sup> It is acknowledged that this is not so possible for those facing long sentences because so many issues are likely to change prior to their release; it is, however, imperative for those on shorter custodial sentences.



ground does, however, need to be kept under review. Moreover, awareness needs to be raised about the risks of vulnerable young people being exploited and ‘cuckooed’ when they are allocated their own tenancies. This should be addressed through any assessment of accommodation to which the young person on licence is being released.

**Action: Youth Justice Blueprint Team.**

### ***Transitions: Child to Adult Status***

1. Any work undertaken on the transition between child and young adult criminal justice services needs to be complemented by corresponding work on improving transitions in such areas as health (including mental health), social care, education and training. The role played by the voluntary sector would be important (HMPPS, Probation Service and YJB, 2021). Transitional plans should also be live documents, flexing as the needs and strengths of the child/young person changes, develops and grows in confidence. A national multi-agency working party on Transitions should be established.

**Action: Establish a Working Party led by Welsh Government. This could potentially be a Youth Justice Blueprint activity.**

2. Transitional safeguarding strategy needs to be developed to support young people who are 18 years and above. Such a strategy would enable youth justice workers to continue to work with young people after their 18<sup>th</sup> birthday.

**Action: Welsh Government.**

### ***Children and Young People Vulnerable to Over-Representation and Discrimination***

1. It is well known that some groups of children and young people are particularly vulnerable to discrimination, and in many cases over-representation in the youth justice system. There is need to ensure that close monitoring and good practice guidelines should be applied in respect of all children with protected characteristics under the Equality Act 2010 and those who are care experienced (information is collected through YOT case management systems). An understanding of the dynamics of intersectionality is important here (e.g., gender + ethnicity + care experience). A review should be established in order to identify what plans look like to address disproportionality at a local level, how this feeds into any local authority initiatives, what engagement there is with relevant community groups, existing training arrangements and how agencies can work effectively to ensure equality and fair treatment. The YJB has introduced a toolkit which measures disproportionality for minority ethnic groups on an individual YOT basis.

**Action: Welsh Government and YJB Cymru.**

2. Little is known about the experience of the youth justice system by Black and Minority Ethnic Children (including the Gypsy Roma Traveller community) in Wales. There is need to commission research in this area and establish a broadly representative reference group (including children and young people who have experience of the system). The research and consultation should include a review of how Outcome 22 (No Further Action) is being applied in relation to ethnicity and postcode. It was introduced specifically to address disproportionality.  
**Action: Welsh Government with support from academic experts and stakeholders.**
3. The Criminal Justice Anti-Racism Action Plan for Wales needs to be integrated into the Youth Justice Blueprint, if the work of the Blueprint is to continue and it is to form the basis of a more bespoke Child First youth justice system in Wales.  
**Action: Welsh Government and Youth Justice Blueprint Team.**
4. The Women's Justice Blueprint (on girls and women in the criminal justice system) needs to be integrated into the Youth Justice Blueprint, in particular in developing appropriate responses to girls and transition arrangements.  
**Action: Youth Justice and Women's Justice Blueprint Teams.**
5. Good practice guidelines on working with Welsh-speaking children and Welsh language resources should be integrated into the Youth Justice Blueprint and YJB Cymru's work in Wales (e.g., through Hwb Doeth<sup>29</sup>).  
**Action: Welsh Government and Youth Justice Blueprint Team.**

### **Practice Issues**

1. There is need to initiate an information campaign, awareness raising and training programme on Child First and Trauma-Informed practice for all services that work with children as it is important to cultivate a shared community of practice across agencies and services. It is recognised the YJB and local authorities have made some progress in this respect and the Welsh Government (Welsh Government, 2022) has published *Trauma-informed Wales* to promote a greater collective understanding and application of trauma informed approaches.  
**Action: Welsh Government.**
2. Commission a review of assessment practices with a view to aligning and co-ordinating the assessments of partner agencies.  
**Action: Welsh Government with local authorities and the academic community.**

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<sup>29</sup> An academic and youth justice practitioner forum in Wales [DP fora and Hwb Doeth - Youth Justice Resource Hub \(yjresourcehub.uk\)](https://www.dpfora.org.uk/)

3. Develop a Framework to maximise the participation of justice-involved children and young people on issues that relate to not only the youth justice system and its agencies, but also services and wider concerns that affect them, drawing in and utilising the expertise of various existing groups (e.g., with the assistance of the Children's Commissioner's Office).

**Welsh Government, YJB Cymru and the Children's Commissioner's office.**

4. A Poverty Aware Practice Strategy in relation to children and young people should be developed that includes a workstream on youth justice and young adults on Probation caseloads (see Appendix 5 of Paper 1 for ideas). This workstream/theme should include the following: systematic assessments of the finances of young people (and, where appropriate, their families) followed by income maintenance and maximisation plans; access to specialist advocacy services; targeted youth and community development projects in deprived neighbourhoods; and how poverty is represented in assessments and pre-sentence reports. It is also important to establish a Working Party on how to remove the obdurate barriers to housing, education, training (including local authority apprenticeships) and employment that have been erected as a direct result of young people's criminal records, enhanced criminal record checks and police 'intelligence'.

**Action: Welsh Government Child Poverty Strategy Team, Youth Justice Blueprint Team and Hwb Doeth.**

5. Supervisory practice in the community should be informed by research evidence, including properly evaluated pilot studies. It is essential that academics, practitioners and service users, including children and young people, are involved in such knowledge production and dissemination. It is recommended that a properly funded research and dissemination strategy for youth justice is established alongside adequate financial support for the important work of Hwb Doeth. It is understood that Welsh Government has limited resources and funding will need to be accessed from a variety of resources. Nevertheless, Welsh Government should commit resources and take a leading role in devising this strategy.

**Action: Welsh Government in consultation with WYJAAG, the Welsh Centre for Crime and Social Justice, and the Youth Justice Board.**

6. A working party should be established to explore how restorative principles and practices, including conflict resolution processes, can be applied in ways that are developmentally-informed and compliant with children's human rights and Child First principles. This should not be confined to criminal justice contexts, but also educational, social care and neighbourhood settings (including revisiting the role of the police within schools). The reintegrative and social justice principles so often neglected in the jurisdiction of England & Wales should be given greater salience in the terms of reference. This includes recognition of, and some form of redistributive reparation for, the cumulative harms inflicted by the social injustices arising from histories of exploitation, structural discrimination and disadvantage.

**Action: Welsh Government with the support of the academic community and Restorative Justice practitioners.**

7. A practitioner training strategy needs to be established and updated regularly as the devolution of justice continues over time. This will include specialist youth justice qualifying training for all those working in the sector (social workers, probation officers, education specialists, health practitioners, housing advice workers, substance misuse workers, youth workers, etc.). It will also include in-service training. The YJB has had a comprehensive workforce development strategy for some time which has options available for non-youth justice staff. Consideration needs to be given to how this could be used as part of the transitional arrangements. Further consideration should be given, though, to workforce strategies used in other jurisdictions. There are models in continental Europe that work across different professional boundaries and these would be worthy of further exploration.

**Action: Welsh Government in conjunction with the YJB.**

### ***Miscellaneous Issues***

1. Throughout this process there is need to develop a coherent media management and communications strategy as this is a politically sensitive policy area. Lessons can be learnt from the campaign to remove the defence of physical punishment.

**Action: Welsh Government**

2. The economic costs, opportunities and benefits of any youth justice reforms would, as a matter of course, be analysed by Welsh Government. Such analyses should, however, be disseminated widely and publicised.

**Action: Welsh Government**

### **Concluding Comments**

This document is an attempt to bring together the recommendations that flow from Papers 1 and 2. It is recognised that this is a long 'shopping list' and Welsh Government would need to select, prioritise and reject some of these proposals. It may also wish to add proposals that we have not considered. We would welcome feedback, further discussion and requests for clarification.

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