

Prison Reform Trust response to the Home Office consultation on the Knife Crime Prevention Order (KCPO) guidance – September 2019

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

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Reponse

PRT welcomes the opportunity to respond to the Home Office consultation on the Knife Crime Prevention Order (KCPO) guidance. PRT is a member of the Standing Committee for Youth Justice (SCYJ). We worked closely with the SCYJ during the parliamentary stages of the Offensive Weapons Bill to assist parliamentarians on scrutiny of the bill's provisions. Our work helped to secure the consultation on the guidance on KCPOs as well as the piloting of KCPOs, with a report on the pilot to be laid before Parliament prior to the further roll out of the orders.

We are pleased to endorse the SCYJ's submission to this consultation and request that PRT's submission is counted as a separate and additional endorsement of the points made in that response. In particular, in view of PRT's remit, we would like to highlight our concerns regarding the consequences of breaching an order. Under the current legislation and draft guidance, children as young as 12 could be sent to prison for breaching the conditions or notification requirements of a KCPO.

As the SCYJ highlights, measures that attempt to prevent/address knife-possession that carry custodial sanctions for breach are problematic for three main reasons: there is no evidence custodial sentences deter children or young people from committing crime; the 'public protection' argument is extremely weak for children; and custody is not rehabilitative but deeply harmful, so ineffective at producing the desired result of reducing crime levels.

The importance of prioritising the welfare needs of the child is an underlying principle of the youth justice system, grounded in national and international law:

- The United Nations Convention on the Rights of the Child (UNCRC) states that the best interests of the child must be prioritised, considering their welfare needs first and foremost.
- The Children Act 1989 states that: *“When a court determines any question with respect to: (a) the upbringing of a child; or (b) the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the court’s paramount consideration.”*
- Section 44 of The Children and Young Person’s Act 1933 states that: *“Every court in dealing with a child or young person who is brought before it, either as...an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.”*

We are firmly of the position, in line with the UNCRC, that custody for children must only be used as a last resort and for the shortest possible period of time. The UN recommends that no child under the age of 16-years-old should be sent to custody. We do not believe that breach of a KCPO would come anywhere close to this threshold, particularly where the KCPO has been imposed in a civil court and not upon conviction in a criminal court: If the initial behaviour that led to a KCPO did not pass threshold for criminal prosecution, it is hard to see how a breach could in that event constitute last resort.

During the parliamentary stages of the Offensive Weapons Bill, PRT and SCYJ made representations for custody to be removed as a penalty for breach of a KCPO. Given that custody as a penalty for breach remains on the statute, it is vital that the Home Office uses the opportunity of this consultation on the KCPO guidance to ensure that the approach to breach is fair and proportionate. We therefore draw particular attention to the recommendations made in the SCYJ response in relation to section 9 of the guidance on breaches: offences and sentencing.

Detailed guidance will be required for the police and prosecutors when determining whether an offence has been committed as a consequence of breaching and order and whether it is in the public interest to prosecute. For example:

- In determining these matters, it is vital for the police and Crown Prosecution Service (CPS) to consider the welfare needs of the child and the importance of minimising youth justice system contact.
- The decision whether or not to prosecute must take into consideration the fact that many children involved in knife crime are groomed and exploited. There is emerging evidence regarding the scale of child criminal exploitation, for example the National Crime Agency has identified over 1,000 “county lines”, where exploitation of children is a fundamental part of the drug-dealing model.¹ The response to serious violence must address this, including the absence of support offered to children recognised as victims of trafficking or Modern Slavery, which can increase their vulnerability to being re-trafficked and re-exploited; and affected by serious violence.² In any case where trafficking or exploitation is suspected a referral should be made to the National Referral Mechanism and any decision whether to proceed to a criminal prosecution should be deferred pending the outcome of that process.

¹ [National Crime Agency \(2019\) County Lines Drug Supply, Vulnerability and Harm 2018, London: NCA](#)

² [Field, F. \(2019\) Independent Review of the Modern Slavery Act 2015: Final Report, London: HMSO](#)

- Guidance should specify that where the defendant has a disability, prosecutors determining whether an offence has been committed as a result of the breach of an order must consider whether the court imposing the order made reasonable adjustments to its provisions and whether it is in the public interest to prosecute. For instance, prosecutors should consider whether a defendant with a learning disability breached their order because they did not understand the conditions imposed.
- Furthermore, given that breach of notification requirements is a criminal offence punishable by up to two years in prison, it is vital to ensure that vulnerable defendants are not disproportionately impacted by the provisions. In particular, what reasonable adjustments will be made to ensure that people with mental health needs, special educational needs, literacy and communication difficulties are able to understand and meet the notification requirements? Why is it not possible to determine the name and address of the defendant at the time when the order is imposed in court?

Detailed guidance will also be required for judges and magistrates hearing cases of breach of a KCPO in order to determine whether the prosecution should have been brought or is an abuse of process and, if the breach is upheld, the appropriate sentencing process and outcome. In determining these matters, it will be vital for judges and magistrates to consider the welfare needs of the child and the importance of minimising youth justice system contact.

As well as judicial guidance on the question of abuse of process, Sentencing Council guidance will be needed on the matters to be considered when sentencing a defendant for breach of a KCPO. As a minimum, we would expect that prior to the sentencing of a child for the breach of a KCPO, a pre-sentence report must be requested from the child's local youth offending team, so that the circumstances and needs of the defendant are understood by the court.

We also draw particular attention to the sections of the SCYJ response on equalities and the pilot, copied below:

Consideration of the public-sector equality duty

- The reference to statutory requirements under equalities legislation is cursory with no reference to how reasonable adjustments to KCPOs are to be made to take account of the needs of protected characteristics.
- We recommend that the guidance is revised to include separate sections on the characteristics and needs of protected groups and how KCPOs are to be adapted to meet them. Particularly important protected characteristics to consider include:
 - Age (especially children and young adults)
 - Race
 - Mental health needs and learning disabilities
 - Gender
- In relation to defendants who are under 18-year-olds, it may be helpful for the guidance to refer to the relevant sections of the Sentencing Council's Overarching Principles – Sentencing Children and Young People.

- We would also encourage inclusion in the guidance of specific consideration to be given to the findings and recommendations of Lord Laming’s review aimed at reducing the criminalisation of looked after children (Prison Reform Trust, 2016), the government’s National Protocol on reducing unnecessary criminalisation of looked-after children and care leavers and David Lammy’s review on the treatment of, and outcomes for Black and Minority Ethnic (BAME) individuals in the criminal justice system.
- We would wish to ensure that the guidance includes protection for children who are criminally exploited (including CSE) to ensure that KCPOs are not applied.

Pilot

The guidance states that:

“The purpose of piloting KCPOs pilot are to test and inform processes for the application of a KCPO. The pilot will provide useful data and feedback on the use and format of the documentation used in the application for an order as well as an opportunity to assess the prohibitions and requirements made in KCPOs and how well these have worked. The pilot will allow for a fuller understanding of the likely costs to be incurred once the orders are introduced in England and Wales. This guidance will be reviewed in light of the findings of the pilot, to ensure that it is updated ahead of introduction of KCPOs across England and Wales.”

The government should publish an equality impact assessment of the orders, to from an important element of the report to be laid before Parliament.

There are a number of outstanding questions regarding how data collection, monitoring and evaluation of the pilot will be undertaken by the Home Office, that need to be addressed:

- Where will KCPOs be piloted?
- In how many areas will KCPOs be piloted?
- What elements of the KCPOs will be piloted?
- What are the timescales of the pilot?
- What data will be collected, monitored and analysed during the pilot?
- What data regarding KCPOs will be published, and with what frequency?
- Which data will be included in the report laid before Parliament?
- How and by whom will data regarding the prohibitions and requirements be collected? Which process and/or outcome data will be analysed to establish how well these have ‘worked’?
- What data will be collected regarding costs incurred by the orders in the pilot areas, and what method of financial modelling will be used to project costs across England and Wales?
- Will the data regarding costs extend to those organisations who are providing assessments, reports and interventions to support KCPOs? These include:
 - Youth offending teams
 - children’s services

- education
- youth services
- voluntary sector organisations, etc.

As a minimum, we would expect the Home Office to collect, monitor and evaluate the use of KCPOs in the pilot phase, based on the following data:

1. Numbers of orders made.
 2. Nature of trigger behaviour.
 3. Whether the court had a report available to it by YOT.
 4. Conditions attached to orders (number and nature).
 5. Number and nature of breaches (i.e. what conditions were breached).
 6. Outcome of breach.
 7. Outcome of KCPOs not breached (12-month tracking).
 8. All of the above broken down by demographic details – age, gender, ethnicity, care status.
 9. All of the above broken down by (i) the police force on whose behalf an application for the KCPO was made; and (ii) the court where the KCPO was applied for and imposed.
- Qualitatively investigating the impact of KCPOs on individuals and communities is also extremely important. Involving young people in evaluation leads to a clearer and more meaningful picture of 'impact'.
 - SCYJ would strongly recommend that this pilot is evaluated by independent researchers and peer reviewed.
 - How will children and young people's experiences of being subject to a KCPO be explored?
 - Is the Home Office planning to commission an independent evaluation of the KCPO pilot? What is the budget for this evaluation?