

**Prison Reform Trust submission
The Justice Committee Inquiry - Youth Justice
March 2012**

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison 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. We welcome the opportunity to make a submission to the Committee.

SUMMARY:

This submission addresses two aspects of the terms of reference: the use and effectiveness of available disposals, focusing on restorative justice, use of custody as a last resort and the increasing ‘adultification’ of interventions and disposals used with children who offend; and the extent to which the system is able to meet the needs of all offenders, here focusing on children with complex support needs, looked after children and care leavers, black and minority ethnic children, and young adults. We would refer the Committee to our earlier submission for more detail of the Prison Reform Trust’s perspective on the broader themes this Inquiry will be exploring.

The use and effectiveness of available disposals, including restorative justice and custody as a last resort:

1. In 2009, the Prison Reform Trust published [*Making Amends: restorative youth justice in Northern Ireland*](#), exploring the introduction and impact of youth conferencing in 2003. Based on the evidence of its use there and elsewhere, we believe restorative justice has the potential to reduce the number of children who are imprisoned, reduce reoffending rates, and improve victim satisfaction. To date, its use in the youth justice system has been limited. Whilst there are examples of good and innovative practice (Wigan YOS, for example, has taken a whole-systems approach and integrated restorative justice into all aspects of its work), too often there is little restorative about day-to-day interventions – concerns have been raised that the Referral Order, currently the only order with a restorative-element built into it, involves victims or their representatives only in a minority of cases. The Prison Reform Trust would support the adaptation of the existing activity requirement in the Youth Rehabilitation Order menu of options into a restorative programme requirement, as a means of facilitating moves towards a fully restorative youth justice system. As the Youth Justice Board (YJB) is currently investing in

restorative training which will provide every YOT with two restorative justice conference facilitator trainers, YOTs should have capacity to deliver a restorative programme requirement in-house.

2. It has been widely noted that the principle of custody as a 'last resort', as set out in the UN Convention on the Rights of the Child (UNCRC), has no clear definition and is interpreted differently across the country. Figures released in a Parliamentary Question corroborate this, showing the disparity in sentencing across England and Wales in 2010/11 – 12.4% of children appearing in court in Rochdale, for example, were given a custodial sentence, compared to 6.2% in Oldham and 1.7% in St. Helens. In some YOTs, no children were sentenced to custody, whilst nationally the average was 5.5%¹. Across London YOTs, there was a 2% increase in the number of children sentenced to custody, whilst every other region recorded a reduction, ranging from 7% fewer in Yorkshire & Humber, to 50% fewer in the North East. Such disparity is of concern and merits further exploration. Sentencing patterns following the August 2011 public disorder also bear this out, with two-thirds of children appearing in court in London sentenced to custody, compared to 37% in Manchester². That the average sentence given to children involved in the disorder was longer, at 7.9 months, than that given to adults (4.3 months) is of particular concern.
3. Finally, we would draw the Committee's attention to the increasing application of adult-oriented disposals and interventions to children. This not only contravenes the spirit of the UNCRC, (which states that children in trouble with the law should be dealt with by a justice system which is 'distinct and separate' from that for adults) but is also, we believe, incompatible with any stated desire to improve the effectiveness of interventions. Given their age, emotional and physical immaturity and vulnerability, 'what works' with children who offend is likely to be very different to that for adults. Such moves also contradict the principles underpinning the Crime and Disorder Act, which placed recognition of children's different developmental maturity and age appropriate interventions at the heart of youth justice reforms.
4. In 2010, the Government made a "*clear commitment*" to "*give due consideration to the UNCRC Articles when making new policy and legislation.*"³ Proposals outlined in the Legal Aid, Sentencing and Punishment of Offenders Bill, such as those seeking to bring the maximum number of hours and months which a child can be subject to a curfew, and the maximum fine available for breach of the YRO, into line with those for adults (from 12 to

¹<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120209/text/120209w0005.htm#12020967002052>

²<http://www.justice.gov.uk/statistics/criminal-justice/public-disorder-august-11>

³<https://www.education.gov.uk/publications/eOrderingDownload/CM-7981-WMS.doc>

16 hours per day, 6 to 12 months and £250/£1,000 to £2,500 respectively), and to include 16 and 17 year olds within the remit of the newly created offences of threatening with a blade, point or offensive weapon, do not, we believe, take account of children's best interests, nor their differing capacity to comply with punitive orders. The latter proposal, particularly the plan to introduce mandatory minimum 4 month prisons sentences for children found guilty of the new offence, is particularly concerning, not least because the number of knife possession offences committed by children has consistently fallen in recent years, from 1,610 in the last quarter of 2007 to 839 in the same quarter of 2011 (a 48% reduction).⁴ The Prison Reform Trust does not believe mandatory sentences are UNCRC compliant.

The extent to which the system is able to meet the needs of all offenders regardless of age, gender, ethnicity and mental health:

5. It is readily acknowledged that high numbers of children who offend experience impairments. For example:
 - Rates of mental health problems are at least three times higher among children in the youth justice system than within the general population, and are highest amongst children in custody⁵; 43% of children on community orders have emotional and mental health needs.⁶
 - At least 60% of children in the youth justice system have a communication disability, around half of whom have poor or very poor communication skills.⁷
 - Almost a quarter (23%) of children who offend have very low IQs of less than 70 and 36% an IQ of 70-79.⁸
 - A quarter of children who offend have special educational needs identified, of whom around one fifth have a statement of special educational needs, and almost half (46%) are underachieving at school.⁹

6. Despite this, youth justice assessment tools "*do not assess for learning disability [low IQ], for speech, language and communication needs, or for*

⁴ <http://yjbdep.cjs.gov.uk/downloads/knife-possession-bulletin-q4-2011-tables.xls>

⁵ Hagell, A. (2002) *The mental health needs of young offenders - a report commissioned by the Mental Health Foundation* MHF: London

⁶ Healthcare Commission (2009) *Actions speak louder: a second review of healthcare in the community for young people who offend*

⁷ Bryan, K., Freer, K. & Furlong, C. (2007) *Language and communication difficulties in juvenile offenders* International Journal of Language and Communication Disorders, 42, 505-520

⁸ Harrington, R. & Bailey, S. (2005) *Mental Health needs and effectiveness of provision for young offenders in custody and in the community* YJB: London

⁹ Youth Justice Board (2006) *Barriers to engaging in education, training and employment* YJB: London

conduct disorder”, while “...physical health problems are often overlooked and the rate of mental health problems underestimated.”¹⁰

7. In 2010, the Prison Reform Trust published [Seen and Heard: supporting vulnerable children in the youth justice system](#), which found that, whilst youth justice services used a wide range of different screening or assessment tools or procedures to identify when children might have impairments (some of which had been developed locally and had not been validated), most did not use such tools or procedures to identify children with learning disabilities or low IQ, specific learning difficulties, communication difficulties, attention deficit hyperactive disorder or autistic spectrum disorder. Fewer than one in ten youth justice staff said there was an individual at their YOT who held a brief for children with disabilities.
8. Despite the YJB placing a high priority on meeting the mental health needs of children at risk of offending and reoffending, more than one in ten youth justice staff said their YOT did not use screening or assessment tools or procedures to identify children with mental health problems and more than one-fifth said their YOT did not have a mental health worker.
9. Youth justice staff reported that access to specialist staff and service provision was, on the whole, problematic, with gaps in specialist support and service provision. This was especially acute for older children – 16 and 17 year olds – who were frequently ‘too old’ to access children’s services and ‘too young’ for adult services.
10. Youth justice staff wanted greater input from specialist workers to help identify the impairments and particular support needs of children, especially for those who did not reach the ‘threshold’ to access specialist provision; guidance on how best to provide support, such that the child could successfully complete his/her community order; and a more flexible approach by specialist service providers to accommodate the needs of children, including, for example, ‘outreach services’.
11. Fewer than half of youth justice staff said that training was available to help them recognise when children might have impairments, including when to refer children to specialist staff or provision and how to support their particular needs.
12. Pre-sentence reports, which are prepared by youth justice staff, are an important tool in informing sentencing decisions by members of the judiciary.

¹⁰ HM Government (2009) *Healthy Children, Safer Communities* DH: London

Failure to include relevant information concerning a child's impairments and support needs can have serious consequences both during court proceedings and in determining sentence requirements. For example, certain impairments, such as autism spectrum disorder, communication difficulties and learning disabilities/low IQ, will directly affect how a child presents in court. If impairments are not recognised, and appropriate support provided, behavior associated with a particular condition might be construed as non-compliant, insolent, or generally obstreperous. In a survey of magistrates, 80% '*...said that the attitude and demeanor of a young person influences their sentencing decision to a greater or lesser extent.*'¹¹

13. Most youth justice staff who took part in our [research](#) believed that children with impairments who offend were more likely to receive a custodial sentence than were children without impairments who offend.¹²

14. Children in care and care leavers are over-represented in the prison population. The most recent survey of 15-18 year olds in custody found that more than one in four of the boys, and half of all girls were, or had been, looked after.¹³ At a recent conference on improving outcomes for looked after children, the YJB's director of strategy indicated that a survey of children in one secure training centre had found that 58% were or had been looked after. Earlier research from the Social Exclusion Unit suggested that 27% of the adult prison population had been in care at some point as a child. Whilst the Prison Reform Trust report [Care - a stepping stone to custody? The view of children in care on the links between care, offending and custody](#) found that many of the solutions to offending by looked after children lie in the care system¹⁴, there is much that the justice system can do.

15. YOTs can support children's services in delivering a restorative justice-based response to minor offending occurring in children's homes, to prevent children in care being criminalised for behaviour, such as breaking a cup¹⁵, that would be dealt with differently in a family context. Given that children in care are more than twice as likely to be cautioned or convicted as other children, and

¹¹ Audit Commission (2004) *Youth justice 2004: a review of the reformed youth justice system* Audit Commission: London

¹² 59% said that children with learning disabilities who offend were more likely to receive a custodial sentence than children who offend without such impairment; 53% said so for children with communication difficulties; 68% said so for children with mental health problems or ADHD; and 52% said so for children with low literacy levels.

¹³ HM Inspectorate of Prisons/ Youth Justice Board (2011) *Children and Young People in Custody 2010-11 An Analysis of the experiences of 15-18 year olds in prison* HMIP: London

¹⁴ Children cited loss of contact with family and friends; poor relationships with carers and social workers; frequent placement change; and peer pressure as risk factors in offending.

¹⁵ http://www.thelancasterandmorecambecitizen.co.uk/news/9451477.Lancashire_runaway_children_costing_police_and_taxpayers_5m/

that this disproportion is most marked for those placed in children's homes and other residential settings¹⁶, there is significant scope for reducing the number of looked after children who end up in the youth justice system. We understand that some YOTs are providing restorative justice-oriented training to residential care staff, or delivering informal restorative approaches directly in individual children's homes. Other areas have gone a step further, and have introduced an assumption against charging a looked after child unless the seriousness of the offence merits it, mirroring CPS guidance on prosecuting offences in residential homes¹⁷. We would like to see this approach rolled out nationally.

16. Improved identification of children in care at pre-sentence report stage would ensure sentencers have all relevant information in front of them when a looked after child appears before them. This would enable them to ensure such children are appropriately accompanied in court and that any questions about the child's placement or care plan can be answered. More broadly, YOTs and the secure estate have a role to play in ensuring local authorities fulfil their duties towards looked after children in custody, by visiting them and planning for their release. Children in care should never be released from custody not knowing who will be meeting them at the gate or where they will be staying that night, as sometimes happens at present¹⁸.

17. Whilst this inquiry is focused on the youth justice system, we would like to take this opportunity to highlight the needs of care leavers (those under the age of 18, and those aged 18-21) in prison. Despite accounting for a significant proportion of the adult prison population, care leavers have, to date, been a vulnerable yet neglected group. More needs to be done to ensure they are supported, both whilst in custody and on release. The duty on local authorities to continue to provide support to care leavers up to the age of 21 (and up to the age of 25 for those wishing to undertake a programme of education or training), for instance by visiting those who end up in custody¹⁹, could go some way to ensuring this. There is little evidence to suggest these duties are currently being fulfilled. The Prison Reform Trust would welcome renewed focus on this group in the justice system, and would appreciate the Committee's consideration of ways in which this might be achieved.

18. The Prison Reform Trust is also concerned that sustained efforts to reduce the number of children who are imprisoned, which have seen the average

¹⁶ Department for Education statistics – Offending of children who have been looked after continuously for at least 12 months by characteristics of care, England year to 31st March 2010

¹⁷ http://www.cps.gov.uk/legal/v_to_z/youth_offenders/#a21

¹⁸ HMIP (2011) *The care of looked after children custody - A short thematic review* HMIP: London

¹⁹ Department for Education (2010) *The Children Act 1989 Guidance and Regulations Volume 3: Planning transition to adulthood for care leavers* DfE: London

child custodial population fall by more than a third in recent years (from 3,085 in September 2007 to 1,969 in January 2012), do not appear to have had an equal impact on children of all ethnicities. We would like to draw the Committee's attention to the fact that, whilst the average number of white children in custody fell by 46% over this period (from 2,181 to 1,176), the respective figures for black and minority ethnic children were 713 and 572 - a 20% reduction. At January 2012, BAME children accounted for 29% of the child custodial population²⁰.

19. The recent, tragic deaths of two children in young offender institutions, 17 year old Jake Hardy and 15 year old Alex Kelly, have once again brought the vulnerability of children in custody back into sharp focus. In 2010, the Prison Reform Trust published [Punishing Disadvantage](#), a census of approximately 6,000 children imprisoned over a 6 month period. Detailed analysis of the ASSET files of 200 of these children found that:

- 76% had an absent father;
- 47% had run away or absconded;
- 39% had been on the child protection register or had experienced abuse or neglect;
- 33% had an absent mother;
- 28% had witnessed domestic violence;
- 27% had been looked after at some point;
- 14% had a parent with physical or mental health problems or learning disability; and
- 12% had experienced the death of a parent, sibling or both.

20. Whilst we believe every child who ends up in custody is made vulnerable by virtue of their exclusion from friends, family and communities, the findings from *Punishing Disadvantage* show that many children in custody have life experiences which make them doubly vulnerable. The complex intersection of these different indicators of disadvantage raises questions about the appropriateness of custody for this age group, particularly given high rates of reoffending post-release.

21. The Prison Reform Trust and INQUEST will shortly be publishing a briefing which seeks to draw out the learning from the deaths of the 6 children and 163 young people aged 18-24 who died in custody over the period 2003-2011. Initial findings suggest there are a number of areas of significant concern, including: the placement of children in prison service accommodation which is unable to meet their needs; information-sharing

²⁰ <http://www.justice.gov.uk/statistics/youth-justice/custody-data>

across agencies both outside, within, and between the secure estate and accurate and timely identification of children and young people who have mental health, learning disability, speech, language and/ or communication needs or who may be at risk of harm; the training of staff who are tasked with keeping children and young people in custody safe; and the appropriateness of prison custody for children and young people with acute mental health needs and the mechanisms in place to transfer such children and young people into appropriate specialist treatment and accommodation in the community.

22. Whilst it is too early to draw any conclusions from the deaths of two children in January this year, it is clear from our analysis that many of the children and young people who died during the period covered by our briefing should not have been in custody. With recently published plans for the children's secure estate proposing a greater use of specialist units within young offender institutions for children who "*display complex needs and risks*"²¹, rather than secure children's homes or secure training centres, and broader questions about commissioning in the children's estate ongoing²², the Prison Reform Trust believes the time is right for a fundamental rethink of the use of custody for children.

23. We would be happy to forward copies of our briefing to Committee Members as soon as it is finalised for consideration as part of this inquiry.

24. In our original memorandum, we drew attention to the comparative success of the youth justice system in reducing offending compared to the experiences of young adults. Most observers recognise that many young men are no more mature at 18 years old than they were at 17, and yet the adult justice system offers them just a fraction of the support provided to children who offend. For example, Her Majesty's Chief Inspector of Prisons has raised concerns about the experiences of young adults sentenced to detention in a young offender institution (DYOI), describing his impression of "*young men sleeping through their sentences*" in HMYOI Rochester²³, and a lack of engagement in work, education and training opportunities across the YOI estate²⁴.

25. In the six months since that submission, both the House of Commons and the House of Lords have held debates on amendments to the Legal Aid,

²¹ Youth Justice Board (2012) *Developing the secure estate for children and young people in England and Wales – Plans until 2015* YJB: London

²² <http://www.cypnow.co.uk/news/1115129/Further-cuts-secure-childrens-home-places-announced/?DCMP=ILC-SEARCH>

²³ Report of an announced inspection of HMYOI Rochester, HMCIP (June 2011)

²⁴ HMIP (2011) *HM Chief Inspector of Prisons for England and Wales Annual Report 2010/11* HMIP: London

Sentencing and Punishment of Offenders Bill designed to extend the successful approach with children to young adult offenders. In response, the Prisons Minister, Crispin Blunt MP, acknowledged that *“we need to ensure that, given the colossal cost of failing to turn this particular age group around, we find ways to get interventions and investment into it, which will then deliver savings to the Ministry of Justice, because of the huge advantage of getting these people better and making them pro-social members of society.”*²⁵

26. Disappointingly, Ministers have not taken any specific action since that debate to address the difficult challenges posed by this age group. It has been left to the YJB and individual probation trusts to try to develop better procedures for managing the transition of juvenile offenders into the adult system. While welcome, this is far from the strategic approach needed. As a result, much of the good work undertaken with children who offend goes to waste once they reach the age of 18.

27. We hope the Select Committee will share the concern of members of the Transition to Adulthood alliance at this ‘cliff edge’ for services and encourage the Ministry of Justice to put a greater emphasis on addressing reoffending amongst young adults.

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²⁵ Legal Aid, Sentencing & Punishment of Offenders Bill – Public Bill Committee, 13 October 2011: column 800-801