

A critical juncture for youth justice

Learning lessons and future directions for a post-pandemic youth justice system

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About this briefing

This is the second of a series of three policy briefings by the Alliance for Youth Justice to explore the challenges and opportunities created by the impact of the COVID-19 pandemic on children and the youth justice system.

It draws on a comprehensive [literature review](#); interviews with national stakeholders; consultation sessions with AYJ's [members](#) and Young Advocates; and [a series of research papers](#) based on extensive research by our project partners at Manchester Metropolitan University (MMU).¹ The [first policy briefing](#) focussed on preventing a post-pandemic surge in the criminalisation of children, and the last will examine the children's secure estate.

This briefing considers key challenges for the youth justice system that have been brought about, aggravated or accentuated by the pandemic, highlighting the need for urgent action. It demonstrates how the youth justice system is at a critical juncture, considers future directions for justice for children, and calls for lessons to be learnt from experiences during the pandemic.

About the research project

This research project aims to understand the unprecedented implications that the COVID-19 pandemic has had on each stage of the youth justice system. Delivered in partnership between the Manchester Centre for Youth Studies (MCYS) at MMU and the Alliance for Youth Justice (AYJ), the project is funded by the Economic and Social Research Council as part of the UK Research and Innovation's rapid response to COVID-19.

Introduction

Domestic legislation and the UN Convention on the Rights of the Child set out the need for a distinct approach to children in contact with the criminal justice system. As evidence and understanding of child development and the underlying causes of children's involvement in crime has grown in recent years, significant progress has been made towards the creation of a youth justice system that treats children as children first and foremost. Systems, services and safeguards have been put in place that better recognise and respond to children's needs.

The adoption of the Child First approach to youth justice by the Youth Justice Board (YJB) in 2019 illustrates the commitment across the sector to a vision for youth justice that has protecting children and centring their best interests at its heart. The tenets of Child First justice set out by the YJB include: recognising and prioritising children's particular needs, capacities, rights and potential; promoting children's individual strengths and capacities to empower children and develop pro-social identities; encouraging children's active participation, engagement and wider social inclusion; and minimising contact with the justice system and the associated stigma. While commendable headway has been made, COVID-19 has magnified some of the ways in which the youth justice system falls short of meeting these Child First standards in practice and continues to fail children. The pandemic shone a light on longstanding issues in the system and recent developments that have been negatively impacting children's experiences and outcomes. It has brought about new practices and thrown into question the established ways of working with children in the youth justice system.

The number of children in the youth justice system has fallen dramatically over the last decade, and the landscape has changed significantly. Now is the time to take stock of how well the system is supporting children, and be ambitious about addressing injustices, identifying opportunities, and driving forward positive change for children in contact with the law.

Emerging challenges for youth justice

Justice delayed is justice denied

“Justice delayed is justice denied. I submit that that is even more starkly so in the case of child offenders.” - Rob Butler MP, previously a magistrate, member of the YJB, the Sentencing Council, and non-executive director of HMPPS.²

Delays in the police and courts progressing children’s cases were increasing even before the pandemic and are having life-changing impacts.

“Even before the pandemic, delays and backlogs in the justice system were unacceptable” - HM Crown Prosecution Service Inspectorate³

After a child is arrested for allegedly committing an offence, a charging decision is made based on the evidence and whether it is in the public interest. In order to gather any evidence and see if it is sufficient to charge, police may release arrested children under pre-charge bail, where conditions and restrictions can be imposed, and a decision should be made within 28 days. Alternatively, and increasingly, children may be ‘Released Under Investigation’ (RUI), subject to no conditions, and no time limit for a police decision. If the child is charged with an offence the case goes to court for hearings, trial and sentencing. Post-charge, while awaiting court hearings and potential conviction, children may be subject to bail, be remanded to local authority accommodation, or remanded to custody.

“When you’re fourteen a six months delay is a much bigger proportion of your life than if you’re an adult” – Director, Research in Practice

A delayed criminal justice process is hugely disruptive for anyone, but the impact is particularly felt by children who experience time passing differently to adults, and where uncertainty can leave children in limbo as they hope to move on to the next stages of their lives. Children may grow up, mature and experience significant changes in their development and their lives by the time they are convicted for an offence that took place months or even years ago.

“We should very much be looking at pushing and progressing cases very quickly, whether it be from police station stages, to the youth court, to the crown court, because it’s the young person that’s sat there a lot of the time just waiting, and not really knowing, and it’s

affecting their mental health greatly” - Senior youth solicitor

A range of professionals including legal practitioners, Youth Offending Team (YOT) representatives and civil servants raised concerns about the anxiety that delays to cases cause children, and how children awaiting court outcomes may also be left waiting for support from professionals.⁴ As well as the impact of delays on children’s wellbeing, legal professionals are concerned children will become disaffected with the criminal justice system.⁵

“We’ve had a significant backlog in the throughput of children from where they have contact with the police and go into courts and then are fed through into work with YOT. That group of children has been impacted, obviously, because they are less likely to know what the outcome will be, and it actually prevents their ability to access the type of intervention and support that they will get through the YOT” – Senior Official, YJB

Pre-charge delays

Delays in police processing and charging cases is increasingly leaving children in limbo for months if not years.

“You could have it on you for a year, two years, three years, that this is on your shoulder, and could creep up at any point and destroy your life, basically... It comes back...where they are trying to move on and get a job and trying to lead a normal life, but they still have this on their shoulder.” – Senior youth solicitor

In the years leading up to the pandemic, the time between an offence allegedly taking place and a case going through court increased significantly, and the biggest increase was in the time it takes for a charging decision to be made.⁶ The median number of days between offence to charge more than tripled between March 2011 and March 2020, while the mean number of days more than doubled.⁷ Available statistics show these delays continued to lengthen during the pandemic: between March 2020 and March 2021 the average time between offence to charge increased by 9%, despite the number of cases coming into the system falling, with proven offences by children decreasing 22% in the same year.⁸

“Prior to COVID, we had young people being arrested and investigation going on for almost two years. I can only imagine with COVID, with labs being closed, with a lot of police resources being diversified in other areas, I think we are going to see and start hearing about investigations taking a very long time” – Youth justice lawyer

Regarding the impact of delays on children, national stakeholders and YOT practitioners are particularly concerned about children RUI after an arrest. As there is no time limit on RUI, practitioners witness these cases dragging on ‘forever’,⁹ while there is little information available to YOTs to plan ahead and assess need. Two thirds of all cases that are RUI go on to receive No Further Action.¹⁰

“When you had bail on you, the police were accountable at every step, and now, that’s when the cases rot, because the police are just leaving them. I’ve got one client, bless him, it’s been since May last year, and the police have still got his phone, and I’m chasing them every week.” – Senior youth solicitor

In 2020/21 over 30,000 children were RUI.¹¹ YOT and legal practitioners report that police have become increasingly reliant on RUI, with existing resource constraints having been exacerbated by demands on the police to oversee COVID-19 regulation compliance, and with the practice of RUI relieving pressures on police to progress cases within deadlines.¹² The time children are left RUI is expected to continue growing as police continue to struggle with capacity and face pressures in dealing with the fallout of the pandemic. Practitioners report police have mainly been focussing on business requiring urgent action during the pandemic, and the scale of delays to investigations is unclear.

“The number of young people we’ve got RUI’d at the moment is staggering” – YOT worker

Indefinite RUI is leaving children and all those seeking to support them in limbo, without access to support they may need and with the threat of potential criminalisation hanging over them for unknown lengths of time. These children are at a potential turning point in their lives and must not slip off the radar.

Court delays

Backlogs in children’s cases coming to court and receiving an outcome were significant prior to the pandemic, and with courts heavily impacted by COVID-19 restrictions,¹³ delays inevitably grew. The average time between a case being charged, going through court and receiving an outcome increased by 54% between March 2011 and March 2020. Between March 2020 and March 2021, the average time increased by 50%.¹⁴

For children whose cases are heard in the youth court, while existing delays were exacerbated, they have since returned to pre-pandemic levels according to practitioners.¹⁵ However, for children having their cases heard in the Crown Court or in adult magistrates’ courts, for example if charged for serious offences or charged together with adults, national stakeholders report long delays remain.

“The crown courts are listing trials in 2023. It’s an awfully long time for young people to be possibly remanded or with quite robust bail conditions. This will have an enormous detrimental impact with them.” - Chair of youth courts committee for the Magistrates Association

Efforts have been undertaken to ensure children’s cases are prioritised and delays are minimised, including through the newly established Youth Justice Working Group set up to support the HMCTS response to COVID-19.¹⁶ However, there is uncertainty regarding the degree to which this prioritisation has been happening.¹⁷

Long delays in the Crown Courts, coupled with existing concerns about the suitability of the Crown Court for children’s cases,¹⁸ have brought to the forefront longstanding questions about where children’s cases should be heard. National stakeholders have expressed fresh calls for children’s cases to stay in the youth courts, while others are concerned about whether magistrates are equipped to deal with more serious cases if they are increasingly kept down in the youth court.

With courts trying to reduce delays facing pressure to rush cases through, practitioners are concerned about how well courts are handling children’s cases, whether they are making time to make necessary adjustments and properly communicate with the child. Concerns have been reported by some legal practitioners that courts under pressure are keeping cases listed even if a witness falls through, for example, and that children are being pressured to plead guilty to speed things up, particularly

concerning given recent research finds non-pandemic pressures and incentives mean children may be systematically pleading guilty when innocent.¹⁹ There are serious implications to consider for children's effective participation and justice outcomes.

Children turning 18

"If someone commits an offence aged 15, 16 or 17, but do not get to court until after their 18th birthday, they are treated as an adult...It is no exaggeration to say that the consequences can last a lifetime, because in our justice system there is a cliff edge when people reach their 18th birthday, and it is a very steep cliff." – Rob Butler MP, Ten Minute Rule Bill on Youth Courts and Sentencing²⁰

While all children are impacted by having to wait longer for their case to go through court, national stakeholders are especially concerned about children who are approaching their eighteenth birthday, who face a particular injustice.

"His first appearance was on his 18th birthday, and if it had of been the day before we could have dealt with it in the youth court, and it would have been a very different approach. I even called up the officer and said, 'Can you bring the hearing forward by a day?' 'No.' 'Why not? Why has it taken you a year to decide that you're going to prosecute my client, and then you've just picked a date that's come up on a computer system?'" – Senior youth solicitor

Children who allegedly commit an offence as a child but turn 18 before their day in court are treated as an adult, in adult courts, and those convicted after turning 18 face adult criminal justice responses.²¹ Sentencing guidelines highlight the need to take into consideration maturity but, even if courts bear that in mind, these young people don't receive any of the protections and support they should be entitled to, they lose access to youth diversion and youth sentences that may not carry criminal records, they face adult probation, adult prison, and an adult criminal record.

"If you think about what that means when you are 18 years old, you are just starting your life, you are just getting your first job and you have to declare something for twice as long...that really does have a huge impact on your future prospects...but also at a huge cost to society." – Youth justice lawyer

Concerns about children turning 18 before reaching court were growing prior to the pandemic,²² but have greatly increased as the impacts of COVID-19

on courts are felt. While the pandemic has exacerbated the issue, it has also increased recognition and action to deal with the injustice. The Youth Justice Working Group set up during the pandemic helped secure new data collection, raised the profile of the issue with HMCTS, and systems for flagging and prioritising cases where a child was approaching 18 were put in place.

"In the Youth Justice Working Group it was prioritised, and every region had someone looking at young people coming into court so that we could get them into court and get a plea before they turn 18, because that's the critical thing is that you've entered a plea before your 18th birthday then you were treated as a child. Once you're 18 you are placed into the adult system which does not have the adaptations or expertise the Youth Courts have for understanding maturity." – Chair of youth courts committee for the Magistrates Association

Children remanded to custody

Children remanded to custody have been hugely impacted by the delays and uncertainty in their case progression due to court backlogs that have been exacerbated by the pandemic. This is particularly concerning given that three quarters of children remanded to custody in 2020/21 went on to be acquitted or receive a community sentence.²³

"I know of examples of children waiting eighteen months for a court to make a decision... the impact on children not knowing for a significant amount of time is not okay. And then, not being able to have people come and see you because the whole place is on lockdown" - YOT Manager and AYM representative

Children remanded to custody during COVID-19 have seen their court dates pushed back repeatedly and have spent longer on remand.²⁴ Locked away from their support networks, uncertain of their future and of how long they will be kept in custody, practitioners are concerned about the significant impacts on children's mental health. The delays and uncertainty have been particularly difficult for children with complex trauma, mental health needs, and neurodiversity to understand.

"Part of the experience of trauma is feeling out of control, how does that then manifest when you're so out of control in this court environment, and going through all the stresses - that might manifest into mental health implications" – Youth Practitioner

Victims of child criminal exploitation

Backlogs in National Referral Mechanism (NRM) decisions are failing children who are victims of exploitation.

In deciding whether to prosecute a child, the Crown Prosecution Service (CPS) must consider any decisions made through the NRM, the framework for identifying and referring potential victims of modern slavery, including child criminal exploitation (CCE). If a child is deemed a victim, they have a statutory defence against prosecution.²⁵ However, delays in the NRM process are leaving exploited children facing around 450 days on average for a conclusive grounds outcome, with backlogs having grown across 2020.²⁶

These delays are causing huge issues with case progression and the unjust criminalisation of victims of CCE. Children may be tried and sentenced before their victim status is ever recognised, or their case may be delayed to await an NRM decision, only for the child to be kept in limbo, or turn 18.

Children's experiences of courts and sentencing

Children's effective participation in court is too often at risk, and a lack of specialism and understanding of children's needs is impacting children's experiences and outcomes. Changes during COVID-19 have shone a light on this.

Virtual justice and digital engagement

Careful consideration is needed about the impact of new digital ways of working with children going through court, before pandemic practice becomes embedded.

Ensuring children can effectively participate in their court proceedings - understanding and being involved - is a core component of the right to a fair trial,²⁷ but is commonly considered at risk with the courts system failing to adequately accommodate for children's young age, developmental immaturity, and the prevalence of vulnerabilities impacting neuro-development and communication.²⁸ Pre-pandemic evidence on virtual justice raises concerns that using video and audio links, rather than appearing in court in person, exacerbates existing difficulties for children.²⁹ In a survey about experiences in criminal courts during the pandemic, three quarters of magistrates believed remote links

“Children who have been referred to the National Referral Mechanism are left waiting. Some cases we have seen are two years old, and those children have neither been prosecuted nor supported in any way. This has always been extremely worrying to the Magistrates' Association, and COVID has only exacerbated the situation” – Chair of youth courts committee for the Magistrates Association

“We know that across the country young people with pending NRM decisions are being dealt with, they're being sentenced without recognition of their vulnerability” - Youth justice lawyer

Those supporting children in court report uncertainty around whether cases can and should be adjourned to await NRM decisions, and it has been particularly difficult to balance the implications during the pandemic given the pressures on courts.

When a child receives a positive NRM decision, they also become entitled to support for their victimisation. Awaiting decisions therefore also means awaiting vital support.

have a negative impact on children's effective participation.³⁰

The roll-out of video links in courts has been greatly accelerated during the pandemic by the need to facilitate the continuance of court business. Data on virtual justice in children's cases is unavailable, and prevalence in non-youth court cases for children is unclear. However, practitioners report in youth courts the majority of cases take place face to face, and a 'strong reluctance' among professionals against virtual justice.³¹ Geographical variation is likely to exist, with practitioners noting different practice between courts and boroughs.³²

“You miss so much when you're looking through a screen.” – Senior youth solicitor

Practitioners share concerns about missing vulnerabilities and body language over video, difficulties in building rapport and trust, issues around ensuring confidentiality, and report children lacking access to technology and the internet.

“Particularly for a young person and maybe for a young person that is struggling, the buy-in, the engagement, you know, there's just too many distractions.” – Crown Prosecutor³³

Concerns are raised about children's ability to concentrate and engage in proceedings, and in practitioners' ability to identify and manage this.³⁴ Magistrates have reportedly been 'alive' to the challenges children would face in effectively participating remotely,³⁵ however Greater Manchester legal practitioners didn't identify a need to adjust their advocacy or representation when dealing with children, and awareness of specific guidance for virtual justice with children is uncertain.³⁶

Where case hearings have been held by video link during the pandemic, some concerning cases have been reported including children ending up exasperated or having cases adjourned due to technical difficulties, and entering pleas or being sentenced in inappropriate circumstances. However, the full nature and extent of these issues is not fully understood at a national level.

"A very vulnerable young person, a 14 year old, charged in relation to county lines...he ended up taking the video link.. from a car and there were a lot of technical issues ...by the time all the tech was sorted, it was already an hour and he was quite visibly distressed...I just thought that was just not appropriate for a 14 year old" – Youth justice lawyer

While in-person court appearances are 'overwhelmingly' preferred for ensuring the most appropriate outcome for children,³⁷ for hearings where children do not need to be present digitisation can be timesaving. Prosecutors may be deployed more efficiently³⁸ and defence lawyers may have increased capacity when appearing remotely. Legal practitioners also highlight exceptional circumstances where they believe it may be in the child's best interest to appear remotely, for example due to overly long distances from court.³⁹

A key concern for legal and YOT practitioners is that the child's lawyer should always be present with the child, whether the child appears in person or remotely. Some practitioners are concerned remote legal advice will become established practice, which may occasionally be appropriate but is particularly worrying where relationships aren't already formed. YOT workers should also be in person with the child in order to effectively advocate for them.

"We always try and be with them. You know, we can't see whether they're upset. We can't see if they're sad. We can't see anything of those sorts of things. We can't see if they're understanding" – YOT practitioner

The pandemic increased digital engagement between children and those supporting them. In police custody for example, including for Video Remand Hearings where children appeared virtually in court while detained by police, lawyers and YOTs may have appeared remotely rather than in person to give legal advice and advocate for the child.⁴⁰ Practitioners are particularly concerned about remote engagement in the police station as it is likely the child will not have had previous contact with those seeking to support them.

"I do think there are huge issues with the use of video link and generally I don't think they should be so easily adopted... it is incredibly challenging to represent someone, in court but especially at the police station" – Youth justice lawyer

Although Video Remand Hearings have stopped for children, and lawyers and YOT workers reported choosing to attend in person rather than remotely to advocate for the child, this is not the case for all children, with many lawyers choosing remote representation.⁴¹

The Police, Crime, Sentencing and Courts Bill will embed the expansion of virtual justice without the necessary evaluation of impact having taken place. The Judicial Review and Courts Bill will make it possible for child defendants to enter pleas online.⁴² In a courts environment where virtual hearings and remote engagement may become the norm, non-specialist lawyers may not realise there are different considerations for children. While there are positives to be learnt from new digital ways of working, practice that is not in the child's best interest must be identified before it becomes embedded.

Quality of advocacy and support

Children's sentencing and remand outcomes are being impacted by a lack of specialism and available support, raising questions about how well children's needs are being prioritised by courts.

Practitioners have mixed reports about whether sentencing and remand decisions changed as a result of the pandemic, taking into consideration the pressures on the justice system and conditions in custody. Some felt courts were making better use of discharge type disposals rather than community sentences, some felt courts were very reluctant to sentence or remand a child to custody. Others felt sure that court decisions were unaffected by the

pandemic. There is however more of a consensus that children who are on the cusp of receiving a custodial sentence or remand may have been more likely to avoid custody than in non-pandemic times.⁴³ While data does show small declines in proportions sentenced or remanded to custody, it is far from conclusive, particularly considering data trends.⁴⁴

“I think what it did was those that were perhaps borderline gave just that other little nudge one way or the other. It would, when something was clearly a custody case, it would be a custody case and the pandemic did not affect that in my view.” – Crown Prosecutor⁴⁵

A key factor in whether the additional impact of a sentence or remand due to the pandemic is taken into consideration by the courts is the quality of advocacy. Practitioners highlight that ‘good’ lawyers were successfully arguing against custodial sentences and remands by making strong arguments about conditions in custody during the pandemic. However, there are longstanding concerns about the quality of advocacy for children in court, given there are no specialist requirements for solicitors to carry out youth court work.⁴⁶ Magistrates and judges who are better versed in youth justice are also more aware of considerations that need to be made, but practitioners raise concerns about an overall lack of familiarity with children due to their relatively small numbers compared to adults coming through court.

“We need specialist legal representation... children deserve better... a lot of people are dealing with children in the same way they’re dealing with adults. There needs to be, just like there is in other areas, in family law and so forth, a recognition of the need for additional training and knowledge to be able to represent children, who are very unique and who have very unique communication needs.” – Youth justice lawyer

Another primary factor impacting sentencing and remand decisions for children is the court’s confidence in what support is available to the child. Practitioners raise concerns that during the pandemic courts have been worried about whether YOTs could safely manage children in the community. Some YOTs reportedly worked hard to strengthen placements to prevent custodial remands. On the other hand, concerns have been raised that where courts have tried to keep children out of custody, this has increased pressures on YOTs dealing with depleted capacity due to COVID-19, highlighting the need for more support for YOTs.

“I think one of the difficulties was what could the youth offending teams offer in a robust support package. Teams often do not have access to the resources to properly support children in the community.” – Chair of youth courts committee for the Magistrates Association

With pressures on courts having increased due to pandemic measures, all those supporting children in court must be equipped to advocate for the child’s needs to be recognised and rights upheld. Lawyers, magistrates and judges need to be live to the specific considerations for children. While the fall in number of children coming to court over the last decade is extremely welcome, it leaves fewer professionals familiar with advocating for children, the youth justice system, and the support that is available.

This is a key issue to grapple, alongside the ongoing question about what type of court is best placed to hear children’s cases. The prospect of renewed efforts to keep cases out of the Crown Court in order to avoid pandemic delays is welcomed by many who feel the youth court is the most child-friendly court and Crown Courts are unsuitable for children. However, it raises questions about how well-equipped magistrates are to deal with more serious cases. On the other hand, judges in the Crown Court may be more highly trained to deal with complex cases, but less familiar with dealing with children, in a less child-friendly environment.

“I appreciate that everybody says that the youth court is the court that cases need to be heard in...they are supposed to get this specialist training... but I don’t necessarily always think it is the right training” – Senior youth solicitor

Dealing with child criminal exploitation in the courts

The justice system response to CCE is failing some of the most vulnerable children, criminalising victimisation and leaving them without the support they need.

“For children who are being criminally exploited, we’re still not in a space where we see them primarily as victims first. They’re still in a space where they’re seen as offenders first.” – YOT Manager and AYM Representative

It is not just delays to NRM decisions that are creating injustice for victims of CCE. Despite the NRM and statutory defence in the Modern Slavery Act 2015 existing, many children fall through the gaps and are criminalised despite being victims of

exploitation. They may never be referred to the NRM, have unsuccessful referrals, or be prosecuted against and convicted despite having an NRM referral either in process or concluded. Legal practitioners report children being convicted for offences carried out as a result of CCE even though the Home Office and court acknowledge victimisation.

“You still have incredibly vulnerable children whose experiences and accounts of what they went through are horrifying. We have young people who have been found with missing teeth, with absolutely soaking wet feet, with their skin peeling off and yet that person, that 14 year old has to go through a criminal trial for a decision, even though the Home Office has deemed them as a victim of human trafficking effectively. I think that’s appalling and I think we can do better there” – Youth justice lawyer

As explored in our first policy briefing,⁴⁷ and the project’s research paper on children’s welfare needs and vulnerabilities,⁴⁸ children have been left at risk of exploitation during the pandemic and usual pathways for identifying children who need support have been disrupted. More children may be coming to the attention of the criminal justice system in coming years as a result of exploitation. However, moves to increase the use of video links in court in the Police, Crime, Sentencing and Courts Bill,⁴⁹ and introduce online plea procedures in the Judicial Review and Courts Bill,⁵⁰ will create additional barriers for professionals to spot the signs that a child is being exploited. While the Nationality and Borders Bill will create new ways to disqualify children from modern slavery support and from receiving victim status through the NRM, if it is perceived there is a ‘threat to public order’ or a claim has been made in ‘bad faith’.⁵¹

Awareness of CCE is growing among youth justice professionals but a lack of statutory definition leaves understanding open for differing interpretations.⁵² Barriers to supporting these children and avoiding criminalisation need to be broken down, not built up.

Racial disparities in courts and sentencing

Children from ethnic minorities are disproportionately more likely to end up in court, due to being more likely to be stopped and searched,⁵³ arrested,⁵⁴ and less likely to be diverted,⁵⁵ and once they end up in court, racial discrimination and bias is evident in sentencing decisions.⁵⁶ YJB research found that for the same offences racially minoritised children are more likely to receive community and custodial sentences rather than out of court disposals and are more likely to be remanded to custody. Black children specifically face harsher court sentences controlling for all variables.⁵⁷

The cumulative impact of racial bias and discrimination is evident in the children’s secure estate, where racially minoritised children now make up more than half of children in custody, and over a third of children remanded to custody are Black.⁵⁸ Racial discrimination and stereotyping have been widely reported by children and young people as shaping their entry to, and experiences of, the justice system⁵⁹:

“*Court system treats you like a criminal more when you’re Black, white people sentences and ours are not the same, we get it worse.*

“*Everyone does not get the same sentence. Certain races get it worse cause of your colour. They say you’re innocent until proven guilty but they treat me like I’m guilty from the start.*

“*It happens in all situations/scenarios but can be more damaging in policing and courts as this can be the turning point a young person’s present and future life.*

The Lammy review of the treatment and outcomes of racially minoritised people in the criminal justice system identified a loss of trust in lawyers among racially minoritised defendants.⁶⁰ Reductions in in-person contact between children and their lawyers may therefore have a disproportionate impact on the ability of lawyers to build relationships with racially minoritised children, a key barrier to ensuring a child’s understanding and participation in court proceedings.⁶¹ Worryingly, research on video links has raised concerns that they may disproportionately impact justice outcomes for racially minoritised children.⁶²

The role of Youth Offending Teams

Practitioners in the youth justice system have had a huge task in keeping the system going during lockdowns, restrictions, and unprecedented uncertainty. Innovative YOT practice will have emerged during the pandemic, and findings from this research project, including a national survey of youth justice professionals, highlight positive perceptions of how well YOTs adapted,⁶³ and the dedication of staff as YOTs' greatest strength.⁶⁴ However, YOTs face significant challenges ahead in responding to the impacts of COVID-19, supporting staff, balancing new ways of working and ensuring they are in children's best interests.⁶⁵

YOTs are navigating these challenges in the context of reduced and uncertain funding, supporting a potentially increasing number of increasingly vulnerable children as police and courts get back up to speed and as the impacts of COVID-19 on children are realised.⁶⁶ This is a critical juncture for YOTs under significant strain, restructuring and rebalancing. With the right support opportunities to learn from the pandemic can be seized.

“Covid collides with the austerity challenge for YOT services...at the moment there is a lot of restructuring activity, a lot of considering about how they best balance what they need to provide etc. which is having an impact on YOTs. We don't quite know where it's all going to land...it's a real risk” – Senior Official, YJB

New ways of engaging with children

There is a need for proper evaluation of new ways of working implemented during COVID-19 before they become permanently embedded.

In response to the pandemic YOTs have developed new ways of delivering services and engaging with children – from 'walk and talks' and other activities in person with children, to delivering interventions online, to increasing their pastoral role in supporting and safeguarding families.⁶⁷

“There are some areas where we've seen improvements in practice, because the practice has actually become much more tailored and individualised” - Senior official, HMI Probation

National stakeholders report positives to new in-person ways of engaging with children, including picking up more about a child's environment, taking more creative and personalised approaches, and feeling children are more open when outside the office. Practitioners also report positives to online engagement, with some children preferring digital

contact, and engaging well with online delivery. However, as with virtual justice, digital poverty is a key concern that leaves children locked out of new forms of online delivery,⁶⁸ relationships can be harder to build remotely,⁶⁹ social cues and body language are hard to read, and practitioners report some children really missing face to face contact.

“There is a place for a virtual world still with some of our children and young people. I know that for some children and young people who find it difficult to meet face-to-face, they have actually found that really helpful” - YOT Manager and AYM representative

“You can imagine the traditional, we go out, we're face-to-face, we sit down with them, we see the social cues, we read the body language, so to try and do that over a social media platform can be really difficult” - YOS Managers Cymru Chair

Overall there are mixed reports about children's levels of engagement, and mixed thoughts about how well digital delivery could meet children's welfare needs.⁷⁰ Children themselves also report mixed experiences of remote contact.⁷¹ Some aspects of service delivery, for example counselling, and speech and language work, in particular are more challenging to deliver remotely.⁷² Practitioners feel face to face work with children is still vitally important and should be the 'default' with online delivery an addition. A blended approach combining online and in person engagement has developed.⁷³

“Particularly when we're talking about working with people, there's a real trick to pull off here that, yes, we can do more virtual working, but we cannot lose the relational in our journey towards the digital. So that balance around how you do good child-centred, professionally grounded hybrid working” – Director, Research in Practice

Ultimately the pandemic has thrown into question what meaningful engagement with children actually looks like. In the diversity of approaches from YOTs, there will be many opportunities to identify good practice, but there is a challenge in ensuring new models of service delivery are of a high standard, protect the relational value of YOT work, and are in the child's best interest before they become the norm.⁷⁴

“Is it the best interests of the child or is it easiest for everyone involved?” - YOS Managers Cymru Chair

Partnership working

The pandemic has highlighted the importance of good cross-agency working relationships and strong partnership working to support each other and children in the face of unprecedented challenges. At the same time, it has put these partnerships under strain.

A key value of the YOT model is its multi-agency approach, working with statutory partners and commissioning and working with local authorities, schools, police, health and mental health services and others. YOTs take a variety of shapes but often share office space with partners and have seconded officers. Virtual working has enabled better communication and attendance at multi-agency meetings in some ways, for example making it quicker and easier for partners to meet online to discuss a child.⁷⁵ But in other ways it has impeded partnership working. Staff working from home and therefore no longer being co-located is a key concern, hindering informal information sharing, general communication levels, and joint working practices.⁷⁶

“We know that YOTs work because of that co-location, so the ability as a social worker to sit opposite the police officer or a nurse, and say, “I’ve got this child, can we just have this discussion about this child?” That is absolutely, certainly the benefit of being able to do that. And it’s those corridor conversations, or while you’re having your lunch, in the office together, that you might have some of those conversations.” - YOT Manager and AYM representative

The shift in practice due to the pandemic presents a timely opportunity to re-assess partnership working.⁷⁷ But it comes at a time when YOTs and their partners are under strain. With other services like CAMHS under particular pressure in the fallout of the pandemic,⁷⁸ there is a risk that working with youth justice partners will slip down their list of priorities and in-kind provision of staff into YOTs may be withdrawn.

“Partnership contributions, access to appropriate CAMHS support and the statutory in-kind provision of staff into YOTs, there’s potentially a risk where all services withdraw or think about working differently as a result of what Covid has left us all in.” – Senior Official, YJB

The vulnerabilities prevalent among children on YOT caseloads have been greatly exacerbated by COVID-19,⁷⁹ and children’s mental health was one

of the biggest challenges ahead identified by YOTs in the national survey undertaken as part of this project.⁸⁰ YOTs dealing with increasingly vulnerable children in coming years must be able to refer them into mental health, speech and language services and any other support they need. However, during COVID-19 some provision has not been easily accessible, and there are concerns that these services will struggle to meet demand.⁸¹

Practitioners also report increases in child-to-parent domestic abuse,⁸² attributed to children facing increased pressures in the home,⁸³ and there are increasing risks of CCE,⁸⁴ and concerns around whether there are appropriate services available to support these children. YOTs need to think about future commissioning in this COVID-19 context.

“I think at the moment there is no support that exists for children who are deemed victims of child criminal exploitation... quite often we have non-statutory bodies carrying out these functions and they are not statutory rights so it becomes quite challenging” – Youth justice lawyer

As YOT work has become increasingly remote, and with the majority of practitioners surveyed in November 2021 still not working from a dedicated YOT office,⁸⁵ practitioners are concerned about YOTs losing their office spaces. There are reports of local authorities looking to make cost savings in light of the pandemic, for example, reviewing their building stock and closing venues down. These decisions must not be made when services are still adapting to new ways of working post-pandemic, when evaluation of new models of engagement has not taken place. Relationship-based practice with children, and co-location with partners, are two important parts of YOT work. Without dedicated spaces for YOTs to work and meet children, this puts maintaining the benefits of current YOT partnerships at risk, but more importantly it may deprive children of a safe space to be seen.

“Whether there will continue to be access to building or dedicated spaces in which children can be seen, means that that whole ability to establish a relationship with a child so that you can impact on the things that contributed to their offending are a potential risk for the future, because those safe spaces are being minimised, in part, as a response to organisations understanding that we can work in a more virtual or hybrid manner” – Senior Official, YJB

Experiences of racially minoritised children

Recent research by HM Inspectorate of Probation and User Voice found ‘significant deficits’ in the quality of work YOTs and partner agencies carry out with Black and mixed heritage boys.⁸⁶

The research found a lack of local understanding of what is driving over-representation, and plans to address it; as well as deficits in exploration and efforts to address specific challenges faced by Black and mixed heritage boys, including racial discrimination.⁸⁷ Boys reported facing specific challenges like racial profiling and repeat stop and search, as well as specific influences from peer groups, but that these issues were not tackled by YOTs.⁸⁸ The research also found that despite their disproportionate representation, there are few services commissioned to work with YOTs that are specifically for Black and mixed heritage boys.⁸⁹

Inspectors also found evidence of ‘adultification’, whereby racially minoritised children are prejudicially perceived to be older than they are and more

culpable for their actions, experiencing racial discrimination and harsher treatment:

"If practitioners attribute inappropriate maturity to a child, then their difficulties with or anxieties about engaging with services, which are not unusual given their young age, are more likely to be interpreted as ‘choosing not to engage’ or not wanting help."⁹⁰

If racially minoritised children already perceive that YOTs are failing to understand and meet their needs, new ways of working that are increasingly online and potentially less relationship-based may create additional barriers to ensuring engagement. As YOT partnerships evolve and commissioning is reconsidered, there is an opportunity to improve the availability of specialist support that is tailored to meet the needs of local communities. Importantly, consideration should be given to prioritising support that is delivered by voluntary and community organisations led-by-and-for Black and racially minoritised communities that have been disproportionately impacted by COVID-19.

A youth justice system fit for the future

Addressing injustice

The pandemic has emphasised and exacerbated current injustices in the youth justice system. In particular, it has highlighted the need to tackle system delays and their impacts and prevent the unjust overcriminalisation of particular groups of children.

Reducing the overall criminalisation of children would relieve pressure on the system and contribute to addressing these failures. The pandemic has therefore created an additional incentive to stop the criminal justice system from responding to social issues, intervening when welfare support should be in place instead. It highlights the need to have support services available, and to stop minor matters or victims of exploitation being dragged into the system. As explored in our first policy briefing, welfare services are under severe strain, exacerbated by COVID-19, increasing the risk of a post-pandemic surge in the criminalisation of children, and urgent action is needed to support vulnerable children and prioritise diversion.⁹¹

Beyond aiming to keep children out of the justice system, particular action must be taken to address injustices that fail to meet Child First standards, and maximising opportunities presented by the pandemic and current policy developments to do so.

Reducing pre-court delays

Concerted effort is needed to reduce pre-court delays, which are leaving children feeling abandoned, in limbo, uncertain of their future.

Analysis needs to be undertaken to understand exactly what is causing delays to investigations, and how to reduce them. In particular the practice of Release Under Investigation (RUI) without time limits on case progression needs to be addressed.

The Police, Crime, Sentencing and Courts Bill will amend legislation to remove the legal presumption against pre-charge bail. This presumption has contributed to an increase in use of RUI in recent years, and the government’s stated aim is that the reform will reduce the use of RUI, in favour of pre-charge bail.⁹² However, children on pre-charge bail may be subjected to severe restrictions, and unless

system pressures that are creating delays to investigations are identified and tackled, children will spend months on bail awaiting decisions.

The issue is not the use of RUI itself, which is a useful tool, but the disparity between having time limits for charging decisions when a child is on pre-charge bail, while there are no time limits for children RUI. This creates adverse incentives, particularly where resources are stretched, for police to use RUI to relieve pressure to meet deadlines, and to deprioritise RUI cases, increasing delays.

To address this disparity and ensure RUI cases progress more quickly, time limits on charging decisions should be imposed on cases that are RUI similarly to those in place for pre-charge bail.

A fairer system for children turning 18

Children who turn 18 while waiting for their day in court face harsher sentences, lost protections and repercussions for the rest of their lives. Delays in the system, exacerbated by COVID-19, mean an increasing number of children are experiencing this through no fault of their own, increasing the urgency with which this injustice needs addressing.

National stakeholders we spoke to highlighted systems that were adopted during the pandemic for flagging and prioritising cases where a child was approaching 18. Measures like this should be evaluated and continued, and consideration should be made to imposing time limits or stricter standards for case progression. However, delays outside of the courts control, including pre-court delays, will continue to leave children turning 18, and this is subject to a postcode lottery.

Reforming the system such that children are dealt with according to the date of their alleged offence rather than the date at which they appear in court or are convicted would allow for fairer, more equitable and age-appropriate justice. There is widespread support across parliamentarians and the youth justice sector for doing so.⁹³

The youth justice system rightly aims to recognise the maturity and needs of children accused of committing crimes and respond appropriately, and there is a cliff edge at age 18.⁹⁴ This is contrary to the growing evidence base that suggests brain development and maturation continues into mid-twenties. Better support should be in place for those transitioning between youth to adult systems, with a distinct approach for young adults.

Preventing the criminalisation of exploited children

Victims of CCE are often not identified and are treated as criminals by statutory agencies rather than receiving an effective safeguarding response and the appropriate support.⁹⁵ Many children end up being prosecuted, taken to court and criminalised whether victimisation is identified or not.

Delays to the National Referral Mechanism (NRM) need to be addressed to ensure children aren't going through court without recognition of victimisation, and to remove the quandary for courts and those supporting children around whether a case should be adjourned pending the conclusion of an NRM decision, subjecting the child to longer delays and uncertainty. A recent Court of Appeal judgement in [R v Brecani \[2021\] EWCA Crim 731](#) ruled that conclusive grounds decisions are not admissible as expert evidence in criminal proceedings,⁹⁶ affirming the importance of securing an NRM decision before a decision to prosecute is made. The policy for CPS and courts around handling these cases needs clarity.

“The key question is how do we make sure that the criminal justice process that runs alongside that civil process [NRM] accounts for the needs of that individual child whilst not completely disregarding any offence that they might have taken part in, it needs to be a judgement that's made in context of why and how.” – Senior Official, YJB

The Home Office is currently piloting devolving decision making around whether children are victims of modern slavery to local existing safeguarding structures.⁹⁷ This could very well be a welcome development, improving the decision-making process, particularly if it reduces NRM delays. It could also be an opportunity to ensure greater support is available for safeguarding children when they are recognised as victims.

A statutory definition of CCE would help ensure a unified understanding of CCE among all those dealing with children, helping to improve early identification of exploitation among welfare services and the police. This would allow for an improved safeguarding response to these children, who are increasingly at risk of falling through gaps in support due to the pandemic,⁹⁸ and would help prevent inappropriate arrest, prosecution and sentencing.⁹⁹

Explaining or reforming racial disparities

The Lammy Review in 2017 highlighted racial inequality in the youth justice system as its ‘biggest concern’ and called for a new requirement across the justice system to ‘explain or reform’ racial disparities.¹⁰⁰ At every stage of the justice system, and particularly at critical decision-making points such as diversion, sentencing, and children on the cusp of receiving custodial sentences or remands, there is a critical need to employ this rule.

However, since the Lammy Review’s publication, racial disparity in the youth justice system has worsened.¹⁰¹ The government has stated that addressing racial disparity is a priority, but measures in the Police, Crime, Sentencing and Courts Bill come with an explicit acknowledgement that they will exacerbate existing inequalities, and the recent report by the Commission on Race and Ethnic Disparities neglected to engage with critical issues in youth justice or call for the meaningful action that is necessary to address them. It is unclear where accountability and oversight sit for addressing racial injustice in the youth justice system, and this must be rectified.

A report by a working party convened by JUSTICE on tackling racial injustice for children and the youth justice system¹⁰² makes 45 positive, practical

recommendations for change across policing, prosecution, courts and sentencing, that must be considered. In order to fully understand the impact of the pandemic, recommendations regarding the collection and sharing of data that can shed light on disparities are particularly important.

YOTs must undertake concerted efforts to address the findings of the thematic inspection into the experiences of Black and mixed heritage boys, to ensure interventions are tailored and plans are individualised, and address the profiling and discrimination that racially minoritised children experience in their lives and throughout the justice system. Commissioning and partnership decisions should consider working with the voluntary and community sector to improve engagement and service delivery for these children.¹⁰³

No justice can be achieved without racial justice. Cumulative discrimination before, during and after involvement in the youth justice system, impacting access to education, employment, housing and healthcare, all of which impact reoffending, must be addressed. The criminal records system further perpetuates racial inequalities, creating additional barriers for racially minoritised children and young people.

Future directions for the youth justice system

The pandemic has in many ways shed light on where the youth justice system is being successful in centring the needs of children, and where it is not. It is over 30 years since the Criminal Justice Act 1991 created youth courts as we know them, and almost 25 years after the Crime and Disorder Act 1998 created the youth justice system as we know it including the YOT model and the YJB. In examining children’s experiences during the pandemic, and considering the ‘recovery’ of the system, COVID-19 presents a momentous opportunity to think ambitiously about what is next for youth justice.

Taking time to evaluate and learn from pandemic practices

“There are, obviously, opportunities in the innovation that Covid has allowed us to use across the justice system, but that just needs to be balanced with the appropriateness of the use of that innovation for the needs of individual children.” – Senior Official, YJB

There is a huge amount to be learnt from practices that have been adopted across the youth justice system during COVID-19. While innovation brought about or accelerated out of necessity due to public health concerns and lockdown restrictions could be an opportunity to springboard youth justice practice forward, and enhancements should be retained, there is also a risk that new ways of working won’t be in the child’s best interests. Evaluation and oversight is needed to ensure temporary, emergency measures, such as remote engagement and online service delivery, improve children’s experiences and outcomes before they become permanently embedded.

Across national stakeholders, there is a general consensus that while there may be pros and cons to new virtual ways of working, and there will always be exceptions, face to face work with children is preferred, and digital should be a helpful addition, rather than a replacement. Before evaluation and analysis specific to children is undertaken and made available, and while the system is still adjusting to

post-pandemic operation, it is inappropriate for the government to pass legislation embedding the expanded use of virtual justice, for example, or for local authorities to make decisions around changing YOT premises.

There are positives to new ways of partnership working in the courts highlighted by practitioners that should be explored, for example Legal Advisors acting as an intermediary between prosecution and defence to improve case management and progression.¹⁰⁴ The continuance of other pandemic practices, like tiered time slots for court case listings, put in place to avoid too many people sat waiting together for their hearings, should be carefully considered given mixed reflections on their impact.¹⁰⁵

The establishment of the Youth Justice Working Group during the pandemic, set up to support HMCTS work to minimise delays,¹⁰⁶ is a key opportunity to identify and drive forward improvements. More data and research is needed to shed light on children's experiences both in court and before. The group can provide oversight of children's experiences, push for more data collection and publication, and advocate to HMCTS on key issues including pre-court delays, diversion, turning 18, and the NRM.

The future for children in court

Concerns about children's access to justice during the pandemic give cause for renewed consideration of what support children need to effectively participate in court, and where and how children's cases should be heard.

"I think it's made me acutely aware of those interactions with young people and that sort of like, you know, that reading of a young person's specific needs. And I think since then we've probably had more intermediaries involved with young people" – YOT practitioner

There is an ongoing debate about where children's cases should be heard – in the youth court, Crown Court, or outside of court or in a new form of court altogether. Arguments are made for better aligning or altogether merging family and youth courts, given family courts take a welfare-based approach,¹⁰⁷ although there are reservations if merging is not accompanied by a wider transformation in youth justice arrangements.¹⁰⁸ Charlie Taylor in his 2016 review of the youth justice system recommended the creation of Children's Panels to develop and oversee a plan for the child, with cases to be heard in court only to establish guilt if it is contested. Problem-solving courts are being explored¹⁰⁹ and

piloted for adults through the Police, Crime, Sentencing and Courts Bill.

"Do we need to revisit that separation of youth courts and family courts, given what we now know about the interface between extra-familial harm and in young people coming ensnared in criminal or offending behaviour?" – Director, Research in Practice

Charlie Taylor's view, echoed by Lord Carlile's Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court and many across the sector is that the Crown Court should be avoided wherever possible for children, with a presumption that all cases should be heard in the youth court, 'with suitably qualified judges being brought in to oversee the most complex or serious cases'.¹¹⁰ However, some legal practitioners also raise concerns about how well the youth court actually functions.

"There needs to be a full review of youth courts, whether they're working and how they could be improved because what we saw was not working" – Senior civil servant

The pandemic has prompted court hearings taking place outside of traditional court buildings, including Nightingale courts,¹¹¹ similarly to recommendations in the Carlile review.¹¹² It has demonstrated that creativity is possible, and creates a timely opportunity to review the evidence and think more radically about a welfare-based, trauma-informed court process for children. This is particularly important given the need to address the balance between the smaller numbers of children coming to court nowadays with ensuring child-specialisation. In line with the UN Convention on the Rights of the Child, everyone in court has a duty to have the best interests of the child as a primary consideration,¹¹³ the onus to advocate for the child should not just be on the defence solicitor as is often currently the case. Alternative approaches should be explored with this in mind.

Whatever the future for children in court should look like, national stakeholders are united in calling for improved quality of advocacy. Many have called for mandatory and on-going training or accreditation for all lawyers representing child defendants, for child-specialist workforces in court,¹¹⁴ and improved training for magistrates and judges including on children's needs, trauma, prejudice and discrimination. To bring the Crown Court closer in line with current youth court requirements, calls have been made for Bar Standards' Board youth proceedings competency requirements to be extended to all those representing and prosecuting children in the Crown Court.¹¹⁵

The future of YOTs and the role of the YJB

With the youth justice landscape having changed significantly since the inception of YOTs, not least during the pandemic, it is time to consider the next iteration of YOTs.

“I think it’s about making sure that we really do learn from this and think about how we deliver services in a way that’s unique, that’s tailored, that’s specialised, that delivers what it needs to deliver, and not just revert back to how things were” - Senior official, HMI Probation

The aim for YOTs ‘recovering’ from the pandemic should not be to ‘return to normal’. There are opportunities to capitalise on the diverse responses during the pandemic to innovate, and there are challenges ahead as YOTs may face increasing caseloads and more vulnerable children,¹¹⁶ whose access to specialist services and interventions is disrupted and delayed.¹¹⁷ Taking into consideration the impact of the pandemic on children,¹¹⁸ YOTs need support to focus on social, emotional and mental health, diversion, exploitation, and disparities. Given upcoming challenges, partnership working and the commissioning of services should be re-assessed.¹¹⁹

“As YOT Managers, we do need to think about, have we got the right services now to meet our families’ needs, based on their experiences during Covid?” - YOT Manager and AYM representative

Localised responses to the pandemic have created opportunities for innovation. But while there is a clear need for flexibility in YOT approaches, strong leadership and national oversight is needed to ensure appropriate infrastructure is in place, identify and share best practice, and provide clear guidance. Practitioners have been frustrated by a lack of direction from the YJB,¹²⁰ and national stakeholders feel there is room for the YJB to take on a more active role as a centre for excellence in youth justice, focussing more on holding policymakers to account and advocating for YOTs.

“There are definitely opportunities, but it’s how we use some of that learning though, isn’t it? And I’m not sure it’s being done, because we haven’t got a national review, it’s not being done in a very coordinated way.” - YOT Manager and AYM representative

YOTs and the YJB have matured, and the landscape has changed. The role of Police and Crime Commissioners has changed, Violence

Reduction Units have been created, and as explored in our previous policy briefing a number of initiatives around child and adolescent safeguarding and prevention are developing.¹²¹ It is a timely opportunity for rethinking the role of YOTs within this landscape, reformulating support and the role of the YJB, including reconsidering what government department should hold responsibility.

Conclusion

The pandemic has out of necessity brought about the most significant changes in practice since the youth justice system as we know it was created in 1998. It has highlighted and exacerbated ways in which the youth justice system is failing children. This has not only made reform in key areas more urgent, but by throwing into question established ways of working it has created a momentous opportunity to think more radically about what justice for children should look like.

The youth justice system is at a crossroads. Action is needed now to address the issues aggravated by the pandemic, learn from adaptations, and identify new practices that are in the best interests of children, and those that are not. The challenges and opportunities that have been presented must be grasped before the system settles back into pre-pandemic norms, or ways of working that were developed during the pandemic become embedded without fully understanding or considering the longer-term impacts of these changes. Prioritisation, oversight and ambition from government and the YJB is required to set the direction of change on the right track, towards a youth justice system that is truly Child First and fit for the future.

Recommendations

Addressing injustice

Reduce the criminalisation of children

- Reduce pressure on the youth justice system, cut delays, and the number of children impacted by injustices set out in this briefing, by working to improve preventative support and ensure maximum diversion – as set out in recommendations in our first briefing¹²²

Reduce pre-court delays

- Home Office to review cases on police books, to identify what is causing delays to investigations, and how to reduce them
- Home Office to work with police forces to implement time limits for children's cases that are Released Under Investigation, similarly to those applied to pre-charge bail.¹²³

Fairer justice for children turning 18

- HM Courts and Tribunals Service to evaluate, with a view to keeping, measures implemented during the pandemic for flagging cases where the child is approaching their 18th birthday, in order that they can be prioritised for listing
- Government to reform courts and sentencing legislation so that young people are dealt with and sentenced according to their age at the date of their alleged offence.¹²⁴
- Government to reform the Rehabilitation of Offenders Act 1974 so the relevant date for rehabilitation periods is the date of commission of the offence, rather than date of conviction.¹²⁵
- Ministry of Justice to conduct a review of measures aiming to smooth the transition at 18 and improve justice for young adults, such as allowing young adults access to Referral Orders, and giving YOTs greater flexibility and funding to continue working with young adults beyond 18.¹²⁶

Preventing the criminalisation of exploited children

- Government to introduce a statutory definition of Child Criminal Exploitation¹²⁷
- Home Office to publish evaluation of NRM devolved decision-making pilot, setting out impact on time taken for decisions to be reached, impact on outcomes, and on the safeguarding support provided to children, and take urgent action following the pilot
- Home Office to publish clear guidance for the Crown Prosecution Service, judiciary and legal practitioners regarding how cases with awaiting NRM decisions should be handled
- Home Office to evaluate and publish information on the support currently available to children with positive NRM decisions and consider developing a national action plan that is informed by the findings.

No justice without racial justice

- MoJ to set out clear information on who is responsible for addressing racial disparity in the youth justice system, how progress on explaining or reforming racial inequalities is being monitored, and held accountable.
- MoJ to carefully consider recommendations made in the JUSTICE working party report on tackling racial injustice for children and the youth justice system, and set out whether each recommendation has been accepted and progress that has been made.
- YJB to support and review work undertaken by YOTs to address the findings of the thematic inspection into the experiences of Black and mixed heritage boys, and hold YOTs accountable for progress.

A youth justice system fit for the future

The future for YOTs

- YJB to conduct and publish an evaluation of new practices and the impact of the pandemic on YOTs and children on YOT caseloads. Bringing together findings from YOT Business Continuity Plans, Recovery Plans, and the most recent Youth Justice Plans, the evaluation should identify and share innovative practice that has emerged, trends in changes to partnerships and commissioning needs, and upcoming challenges including the availability of spaces.
- YJB to share clear guidance with YOTs that informs localised approaches, outlining parameters and standards for what appropriate levels of virtual engagement with children and partners looks like.
- YJB to support YOTs to reassess partnership working and the commissioning of services to ensure specialist support is available to meet children's post-pandemic needs,¹²⁸ and to meet the needs of racially minoritised children.
- Ministry of Justice and the YJB to invest additional resources to be able to respond to added pressures posed by the pandemic and children's increased needs.

The future for children in court

- HMCTS to commission a review of how and where children's cases are heard in court post-pandemic, taking into consideration the reduced numbers of children in the justice system, new practices that have evolved, exploring alternative welfare-based and trauma-informed approaches to dealing with children's cases.
- HMCTS to publish disaggregated data, and conduct and publish ethnographic and outcome research, on virtual justice for children
- HMCTS to publish clear guidance for courts and legal practitioners on the use of remote hearings and legal advice specific to children.
- HMCTS to continue facilitating regular Youth Justice Working Group meetings to oversee and drive progress for children's experiences in court
- Bar Standards Board and Solicitors Regulation Authority to introduce mandatory training on children and the youth justice system for lawyers representing child defendants.¹²⁹ As a minimum, Bar Standards' Board to extend its youth proceedings competency requirement to all pupils and barristers representing and prosecuting children in the Crown Court.¹³⁰
- MoJ to improve training for magistrates and judges on the characteristics and needs of children coming into contact with the justice system, trauma, and prejudice.

Further information

For more information or if you are interested in arranging a meeting to discuss this briefing, please contact AYJ Policy Manager, Millie Harris: millie.harris@ayj.org.uk

For further information about the project please contact Professor Hannah Smithson: h.i.smithson@mmu.ac.uk

Policy briefings:

[A perfect storm for children at risk? Preventing a post-pandemic surge in the criminalisation of children](#)

Blog series:

A series of blogs that accompany these policy briefings can be found [here](#)

Research papers:

[Youth Offending Teams' Adaptations to Practice and Service Delivery: Research Paper](#)

[Children's Welfare Needs and Vulnerabilities: Research Paper](#)

[Partnership Working: Research Paper](#)

[YOTs' Adaptations and Challenges to Service Delivery: A national picture: Research Paper](#)

[Introduction to the Youth Courts: Research Paper](#)

[Court Adaptations: Research Paper](#)

Literature review:

[The Youth Justice System's Response to the COVID-19 Pandemic: Literature Review](#)

[The Youth Justice System's Response to the COVID-19 Pandemic: Executive Summary](#)

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About the Manchester Centre for Youth Studies (MCYS)

The MCYS is an award-winning interdisciplinary research centre at MMU, specialising in participatory, youth-informed research that positively influences the lives of young people. MCYS believes young people should have the opportunity to participate meaningfully in decisions that affect them and employs participatory approaches to engage with young people across a range of issues. As an interdisciplinary research centre, the MCYS team brings together academics and practitioners from a range of disciplines. In addition to collaborating with young people and their communities, MCYS works with agencies and organisations across the public, private and voluntary sectors, both in the UK and internationally.

About the Alliance for Youth Justice (AYJ)

The AYJ brings together over 70 organisations, advocating for and with children to drive positive change in youth justice in England and Wales. Members range from large national charities and advocacy organisations to numerous smaller grassroots and community organisations. The AYJ advocates for distinct systems, services and support that treat children as children first and foremost - underpinned by social justice, children's rights and a focus on positive long-term outcomes. AYJ aims to promote widespread understanding about the underlying causes of children coming to the attention of the criminal justice system, and champion approaches that enable them to reach their full potential.

References

- ¹ Project research carried out by MMU included 74 YOT professionals, 14 legal professionals, and 21 members of staff from the secure estate taking part in interviews. A total of 27 children took part in interviews and workshops. A national survey was completed by 433 youth justice professionals from 89 (58%) of YOTs in England and Wales, which provides insight into how practice evolved during the pandemic and challenges moving forward. Project research carried out by AYJ included 24 interviews with national stakeholders, 3 consultation sessions with AYJ members, and sessions with the [Young Advocates](#).
- ² <https://hansard.parliament.uk/commons/2021-02-23/debates/E44E4233-AED4-46D8-AD7C-D4F169099CF4/YouthCourtsAndSentencing>
- ³ <https://www.justiceinspectorates.gov.uk/hmcpsj/wp-content/uploads/sites/3/2021/04/2021-03-05-COVID-pressures-accessible.pdf>
- ⁴ https://www.mmu.ac.uk/media/mmuacuk/content/documents/mcys/COVID-19_and_Youth_Justice_Paper_5.pdf
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