House of Commons

Justice Committee

Children and Young People in Custody (Part 1): Entry into the youth justice system

Twelfth Report of Session 2019–21

Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 3 November 2020

HC 306
Published on 12 November 2020
by authority of the House of Commons

Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The youth justice population has changed significantly in the past 10 years. The number of children entering the youth justice system has decreased by 85% since March 2009, but those children who do enter the system tend to have complex needs.

Children and young people tend to be imprisoned for much more serious offences than was the case 10 years ago, particularly for violence-against-the-person offences. The cohort entering the system are some of the most vulnerable children in society, with many having mental health issues, learning disabilities, and experience of care. The changing nature of the population presents challenges to the youth justice system, and it is not always clear how well the system has adapted to meet the specific needs of children now being dealt with.

Children are diverted from formal processing through the criminal justice system by various means, such as out-of-court disposals, and many attribute the decline in the number of children in the system to the success of such alternate routes. Many consider out-of-court disposals an effective means of addressing lower-level crime, but we are aware of concerns such as an absence of clear evidence of the effectiveness of OOCDs, particularly for community resolutions (where data is not recorded centrally), and of inconsistencies in practice across England and Wales.

Diversion schemes are considered to have played a part in reducing the number of children being formally processed, but White children may have benefitted more than children from Black, Asian and Minority Ethnic (BAME) backgrounds. First-time entrants (FTEs) from a White ethnic background represent 75% of the whole population, down from 85% a decade ago; in the same period, the proportion of FTEs from a Black background doubled from 8% to 16%. Racial disproportionality is prevalent throughout the system: we are concerned that disproportionality appears to have become worse in many areas, despite work to address it.

The minimum age of criminal responsibility in England and Wales, at 10, is among the lowest in Europe. Many who gave us evidence recommended that age be increased. We are not convinced that the case has been made to do so, but we do consider there to be enough evidence to require the Ministry of Justice to review the question.

The youth court system differs from the adult system. In spite of efforts to provide a less formal experience, the court experience can be daunting and difficult for many children and young people. We are unsure how the courts have adapted adequately to meet the complex needs of those who go through the court system.

Some children and young people are processed formally through the courts, but fewer are sentenced there now than was the case 10 years ago. A range of options is available to sentencers, but in light of concern about the appropriateness and flexibility of current sentencing options, we recommend a review of current sentencing options for children.

We note the high number of children held in custody on remand, a significant proportion of whom do not go on to receive a custodial sentence. A number of factors contribute to that. BAME children are disproportionately remanded into custody. We welcome the review of youth remand being conducted by the Ministry of Justice.

1 Introduction

Background to the inquiry

1. The youth justice population has changed significantly in the past 10 years, thus changing demands on the youth justice system. The number of children and young people (aged 10–17) entering the system has decreased by 85% since March 2009. This is a welcome development, with the practice of diverting children away from formal criminal justice processes a substantial factor in achieving it: there is consensus that non-custodial sentences contribute to better outcomes for children. Although significantly fewer children enter the system, the proportion from Black, Asian and Minority Ethnic (BAME) backgrounds is not decreasing at the same pace as that of White children.

2. The cohort entering the system has become concentrated on those with more complex needs. Young offenders tend to be imprisoned for much more serious offences than used to be the case, particularly for offences involving violence against the person where there has been a 10.3 percentage point increase between March 2009 and 2019. Additionally, average custodial sentence lengths have increased by six months from 11.4 months to 17.7 months over the last decade and proven reoffending rates for children remain high.

3. Various aspects of the system have been reviewed in the last five years, most notably in the 2016 Taylor Review which recommended extensive reform. Following that review, the Government set out plans to reform the approach to youth justice. Further to that, the 2017 Lammy Review raised significant concerns about race disproportionality. In the years since those reports, outcomes for children and young people do not appear to have significantly improved, and progress on implementing key reforms has been slow. We acknowledge that proposals in the current White Paper on Sentencing may provide further opportunities to divert young people from entering the youth custody system.

4. Our inquiry into Children and Young People in the Youth Justice System was launched in July 2019, with the following terms of reference:

The Youth Justice Population and entering the system

How has the young offender population changed and what are the challenges in managing this group?

a) What are the characteristics of those entering the youth justice system and how has the mix of offences committed by young people changed?

b) What is the experience of Black, Asian and Minority Ethnic offenders of the youth justice system and secure estate and what progress has been made in implementing the recommendations of the Lammy Review?

c) How effective is the youth justice system in diverting children and young people away from custody and what more needs to be done?

d) Is the current minimum age of criminal responsibility too low and should it be raised?

Suitability of the Secure Estate

Is the secure estate a fit and proper place to hold children and young people?

a) What impact has the changing nature of the population had on the management of the secure estate?

b) What does a good quality custodial place for a child or young person look like and is there sufficient provision across England and Wales?

c) What is the physical condition of the secure estate and is it an appropriate environment to hold children and young people?

d) Do staff receive appropriate training and support and what more can be done to improve this?

e) What other barriers are there to providing safe and decent accommodation in the secure estate and what more can be done to improve this?

f) Is the use of force in the secure estate proportionate and properly monitored?

g) How does the experience of children and young adults differ across the different types of secure custody and what lessons can be learnt ahead of the opening of the new secure schools?

Resettlement and rehabilitation children and young people

Is sufficient support available in the secure estate and community to ensure that children and young people do not reoffend and if not, what more should be done?

a) Are children and young people able to access purposeful activity, education, healthcare and other support as needed whilst in custody?

b) Is there good collaboration between the secure state, Youth Offending Teams, Local Authorities, Social Services and other relevant organisations?

c) Is there effective release planning to ensure that children and young people have access to accommodation, training and education upon release and what more can be done to ensure they do not reoffend?

d) What mechanisms exist to transition young people from the youth to the young adult/adult estate? What challenges does this raise and is more support required?

5. Nearly 60 written submissions were received before the 2019 general election, but time did not permit oral evidence sessions. We have held four sessions since the new Committee decided to resume its predecessor's inquiry and are grateful to all who provided evidence.

6. This is the first report of two on the subject of Children and Young People in the Youth Justice System. This report looks at changes to the population and entry into the system, focusing on diversion from formal criminal justice processing and youth courts. The second report will examine the suitability of the custodial estate and resettlement of children from prison to the community.

2 Overview of the current youth justice system

7. The current youth justice system was established by the Crime and Disorder Act 1998. The Act set out to change the way the system works in England and Wales and established a statutory aim:[1] "to prevent offending by children and young persons". The system differs from the adult system, as set out below.

Youth Offending Teams

8. The Crime and Disorder Act 1998 introduced a requirement that local authorities must establish a Youth Offending Team (YOT) comprised of members of the police, social services, probation, health and education. YOTs, to:

- assist police with out-of-court disposals and arrange for appropriate adults to be present during police questioning;
- provide reports and information required by the courts in criminal proceedings against children and young people; and
- supervise children and young people serving a community sentence and/or released from custody.

9. According to HM Inspectorate of Probation, "Youth Offending Teams supervise 10–18 year olds who have been sentenced by a court, or who have come to the attention of the police because of their offending behaviour but have not been charged - instead, they were dealt with out of court. YOTs also work with young people who have not committed a crime, but are at particular risk of doing so."[2]

Youth Courts

10. Youth courts are a type of magistrates' court for people aged between 10 and 17. They deal with cases such as theft and burglary, anti-social behaviour and drug offences. For serious crimes such as murder or rape, the case starts in the youth court but will be passed to a Crown Court. The youth court can give a range of sentences including community sentences and Detention and Training Orders (carried out in secure centres for young people). The sentencing options available are set out later in this report.

Custody

11. When a child or young person is remanded or sentenced to custody, the Youth Custody Service within Her Majesty's Prison and Probation Service (HMPPS),[3] decides where they should be placed. This will be either at a secure training centre (STC), a secure children's home (SCH) or, for boys aged 15–18 only, at a young offender institution (YOI).[4]

1 Crime and Disorder Act 1998, Section 37: Aim of the youth justice system.
2 HM Inspectorate of Probation, The Work of Youth Offending Teams to Protect the Public (October 2017)
3 The Youth Custody Service was created in April 2017, as a distinct service for youth custody within HMPPS. See: HMPPS, Guidance: Youth Custody Service Partnership Bulletin - March 2018, 29 March 2018
4 HMPPS, Guidance Placing young people in custody: guide for youth justice practitioners

- **Secure Training Centres (STCs)**: Smaller purpose-built establishments designed to accommodate between 60–80 boys and girls aged 12–17. STCs have a higher staff-to-child ratio than YOIs and are used to accommodate young people who are more vulnerable. Until recently, there were three STCs: Oakhill, Rainsbrook and Medway. Oakhill is run by MTC Novo and Rainsbrook by G4S. Medway was run by G4S but was returned to the public sector in 2016. In 2018, the Ministry of Justice announced that the first secure school would be opened at Medway, where the STC would close and the site be used as a secure school. The STC closed in March 2020.

- **Secure Children's Homes (SCHs):** Created by the Children Act 1989. SCHs have a higher ratio of staff to children and are small facilities of between 7 to 38 beds. They are designed to accommodate boys and girls aged 10–17 who are assessed as being particularly vulnerable. There are currently 8 SCHs in England and Wales that detain children on justice grounds. They are operated by Local Authorities. The Department for Education, rather than the MoJ, has responsibility for SCHs.

- **Young Offender Institutions:** Established by the Criminal Justice Act 1998. They are run according to rules set out in a Statutory Instrument, the Young Offender Institution Rules 2000, and by relevant Prison Service Instructions, in particular, PSI 08/2012 'Care and Management of Young People'.[5] There are five YOIs in England and Wales for boys aged under 18: Cookham Wood, Feltham, Parc, Werrington, Wetherby (including the Keppel Unit). Parc is run by G4S and all other YOIs are run by HMPPS.

12. YOIs and STCs are inspected by HM Inspectorate of Prisons (HMIP), jointly with Ofsted (Estyn in Wales) and the Care Quality Commission (or the Healthcare Inspectorate Wales in Wales). HMIP leads inspections of YOIs. Ofsted leads inspections of STCs. Ofsted regulates and inspects children's social care services, including SCHs.[6]

The Youth Justice Board and Youth Custody Service

13. The Youth Justice Board (YJB) is an executive non-departmental public body, sponsored by the Ministry of Justice, responsible for overseeing the youth justice system in England and Wales. Its primary function is to monitor the operation of the system and the provision of services. Its primary responsibilities include (but are not limited to):

- advising the Secretary of State for Justice and those working in the youth justice services about how well the system is operating and how improvements can be made;

- commissioning research and publishing information in connection with good practice;

- making grants, with the approval of the Secretary of State, for the purposes of the operation of the youth justice system and services; and

- monitoring the youth justice system and the provision of youth justice service.[7]

5 Ministry of Justice, Prison Service Instructions 2012, Care and Management of Young People, accessed 08 September 2020

6 Youth Custody, Commons Briefing Paper CBP 8557, House of Commons Library, 31 January 2020

7 Youth Justice Board, About us, accessed 08 September 2020

14. The Youth Custody Service was established in 2017, as a distinct service within HMPPS.[8] Before the youth custody service was created, the Youth Justice Board was responsible for the placement of children into custody and held commissioning responsibility for secure services; delivery rested, as now, with other organisations. The Youth Custody Service is now responsible for placement of children into custody and delivery of secure services (such as secure children's homes, secure escorts, secure training centres, and young offender institutions).[9]

8 HM Prison and Probation Service, Youth Custody Service Partnership Bulletin - March 2018, accessed 08 September 2020

9 HM Prison and Probation Service and Youth Custody Service, The Youth Custody Service Placement Team: Overview of operational procedures (September 2017)

3 The Youth Justice Population

15. The youth justice population has changed significantly in the past 10 years; notably there has been a decline in the number of children and young people (aged 10–17) being dealt with. For the year ending March 2009, there were around 80,000 first-time entrants (FTEs). This figure is now around 11,900 - an 85% decrease.[10] Furthermore, the number of children who have received a caution or sentence has fallen by 83% over the last 10 years from around 130,000 in 2009, to 21,700 in the year ending March 2019.[11] The reduction in the number of children entering the system is also reflected in the number of children in custody. In the year ending March 2009, some 2,625 children were held in custody compared to 737 in the year ending March 2020. At May 2020 the youth custodial population stood at 614, but this is likely to be lower than would have been the case without the coronavirus outbreak as receipts through the justice system were reduced.[12]

Offences and sentence length

16. Along with the decrease in the number of children coming through the system, the type of offences being committed has changed. Young offenders are being incarcerated for more serious offences, particularly for those involving violence against the person. While the number of proven offences committed by children and young people has fallen for all crime types, the proportions for these offence groups have also changed.[13] Figure 1 shows a 10.3 percentage point increase in violence against the person offences between March 2009 and 2019. Those offences have seen the greatest proportionate increase, gradually increasing from 19% in the year ending March 2009 to 30% of proven offences in the last year.

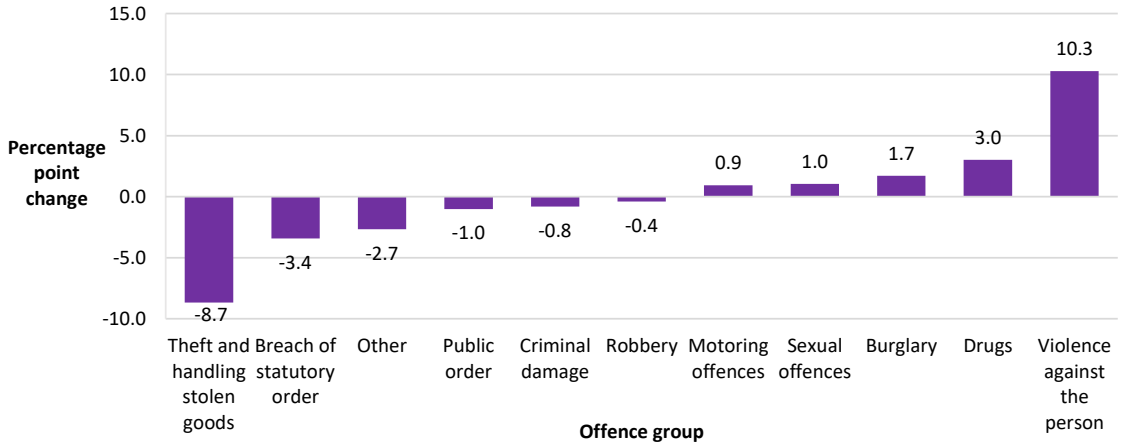
10 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

11 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

12 HM Prison and Probation Service, Youth Custody Data: Youth Custody Report: June 2020 (accessed 08 September 2020)

13 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

Figure 1: Percentage point change in the proportion of proven offences committed by children, England and Wales, between the years ending March 2009 and 2019



Source: Youth Justice Statistics 2018/19, Youth Justice Board and HMPPS[14]

17. The average custodial sentence length for all offences has increased by six months from 11.4 to 17.7 months.[15]

Complexities of the cohort

18. The smaller cohort of children and young people coming through the system tends to be more complex than used to be the case. The YJB told us that: "There is widespread consensus among practitioners in the youth justice sector that a smaller number of children has led to a greater concentration of those who are the most challenging and who have the highest need".[16] The Children's Rights Alliance for England (CRAE) and the Youth Justice Legal Centre, part of Just for Kids Law, said: "Children coming into contact with the criminal justice system are some of the most vulnerable in our society. They have often suffered neglect and abuse, have care experience and high levels of mental health issues or learning disabilities".[17]

19. The Ministry of Justice also acknowledges those complex needs and vulnerability, and notes:

> "Of those children admitted to custody between April 2014 and March 2016: 33% were assessed as having mental health problems; 14% of those in Young Offenders Institutions said they had gang problems; almost half were currently or were previously looked after children.
>
> Of those children sentenced in 2014 who could be matched with education data: almost 25% on sentences of less than 12 months had been permanently excluded from school; 45% of those who received short custodial sentences had Special Education Needs without a statement at the end of their key stage 4 in academic year 2012/13, compared to 17% in the general pupil population.

14 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
15 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
16 Youth Justice Board (YJU0049)
17 Just for Kids Law (YJU0037)

> The proportion of children serving a sentence under Section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (these are given for the most serious offences) has increased from 11% to 25%."[18]

20. Justin Russell, Chief Inspector of Probation, told us:

> " Over 54% had a learning or education need, 50% had a drug abuse need, 30% had a mental health need, and 17% had a speech and language need. They have quite profound needs. In cases going through court, those needs are even greater. A significant proportion are already in the care system. About a quarter of the court cases we look at are children who are looked after by local authorities, and we find that their needs are more pronounced and are not being met as well as other children's."[19]

21. Anne Longfield, Children's Commissioner, added:

> " Children now in custody have higher levels of vulnerability. To give you a few stats, 70% have mental health illness and 70% have communication difficulties. A few years ago, 39% of young people in prison had between 15 and 19 additional needs—not just one or two; and half, 49%, had been in care. That is a figure we need to hold on to—half have been in care."[20]

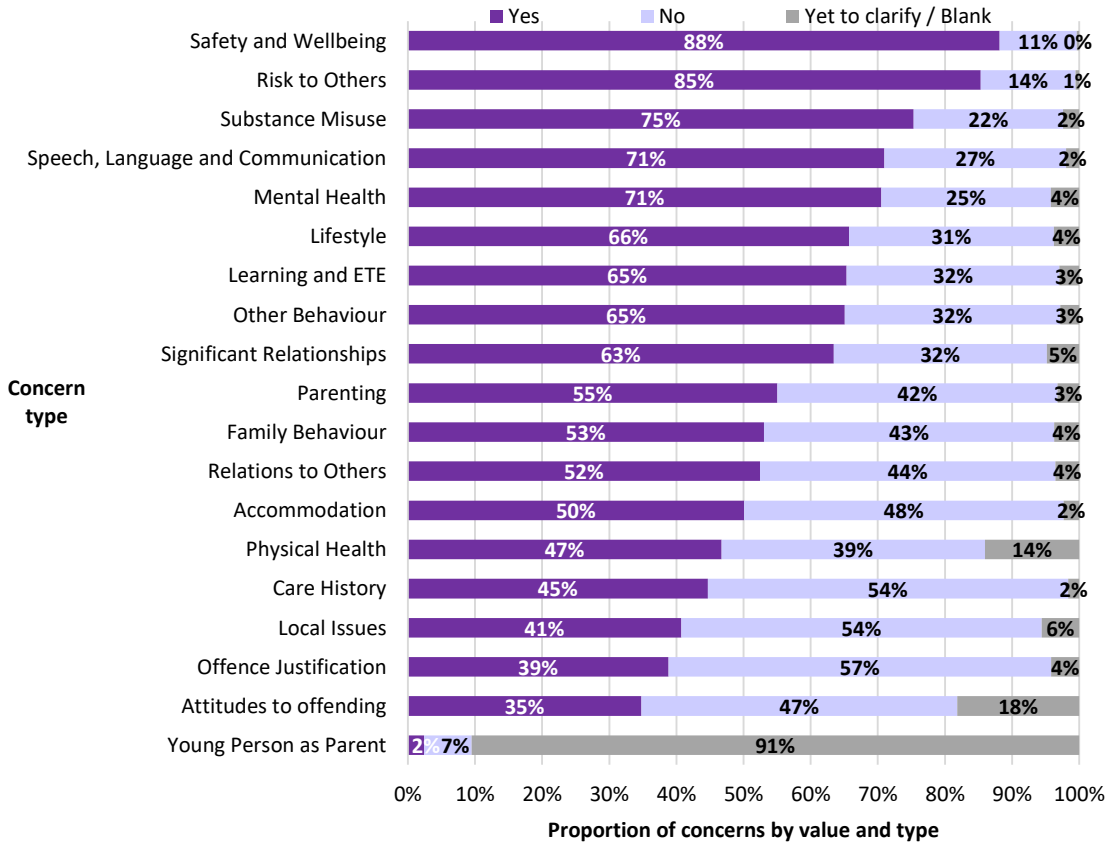
22. The Youth Justice Board's recently published data on the needs of sentenced children in the youth justice system for the year April 2018 - March 2019[21] show that a large proportion of sentenced children assessed[22] had concerns present across most concern types - for five of the 19 concern types, over 70% had a concern present. Figure 2 shows the concerns by type as a proportion of total children assessed. The YJB note that the data collected does not allow measurement of the extent or nature of these concerns, but that the data does give an indication of the vulnerabilities and complex needs of sentenced children within the system.[23]

23. Charlie Taylor notes that failures in the wider system have contributed to the presence of these children in the youth justice system and states:

> "Though children's background should not be used as an excuse for their behaviour, it is clear that the failure of education, health, social care and other agencies to tackle these problems contribute to their presence in the youth justice system".[24]

18 Ministry of Justice (YJU0057)
19 Q112 [Justin Russell]
20 Q208 [Anne Longfield]
21 Youth Justice Board and Ministry of Justice, Assessing the needs of sentenced children in the Youth Justice System 2018/19 (28 May 2020)
22 For this data set, a sentenced child is one who received a Referral Order, Reparation Order, Youth Rehabilitation Order or custodial sentence between 1st April 2018 to 31st March 2019.
23 Youth Justice Board and Ministry of Justice, Assessing the needs of sentenced children in the Youth Justice System 2018/19 (28 May 2020)
24 Charlie Taylor, *Review of the Youth Justice System in England and Wales*, (December 2016), p 2

Figure 2: Concerns by type as a proportion of total children assessed, England and Wales, year ending March 2019



Source: Youth Justice Board, Assessing the needs of sentenced children in the Youth Justice System 2018/19[25]

24. **Although fewer children enter the youth justice system than used to be the case, those who do are more complex individuals. The cohort includes children who have mental health or substance misuse issues. Some have previously been excluded from school; many are, or have been, looked-after children.** ***The complexity of the issues that these children have faced, as shown in the graph above, highlights the need for a whole-system approach involving a range of public agencies beyond those of the criminal justice system, and we recommend that much greater priority be given to this in the development of future policy and practice.***

25 Youth Justice Board and Ministry of Justice, Assessing the needs of sentenced children in the Youth Justice System 2018/19 (28 May 2020)

4 Diversion from formal criminal justice processing

25. The reduction in the number of children entering the criminal justice system is often attributed to the success of schemes that serve to divert children and young people from formal criminal justice processing. Various mechanisms exist.

Out-of-Court Disposals

26. In dealing with any offence committed by a young person under 18, the police have a range of options: no further action; community resolutions; youth caution; youth conditional caution; or charge.[26] Dealing with some cases out of court has been a long-standing approach within the criminal justice system, and the current framework is laid out in the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012.[27] There are two statutory out-of-court disposals (OOCDs) for children - the youth caution and the youth conditional caution. Both count towards a person's being a first-time entrant in the criminal justice system, and both are national recognised formal outcomes which can appear on a Police National Computer (PNC) check.[28] There is also a non-statutory option, often referred to as a community resolution, which has greater variance across the country with a range of names and differing policies and processes. These outcomes do not count the person as a first-time entrant and do not appear on a PNC check.[29]

27. An out-of-court disposal can be considered once three tests have been satisfied: an offence has been committed; the offender has been identified; and the offender has accepted responsibility for the offence. The police are responsible for OOCDs but must inform the local YOT whenever a caution has been given and wherever they are considering a youth conditional caution.[30] YOTs can be involved in decision-making on whether an OOCD is suitable. If a youth caution or community resolution is given, a child is not required to do any work with the YOT, but if a child has been given a youth conditional caution, involvement is mandatory and can be enforced.

28. Community Resolutions can offer an alternative way of dealing with less serious crimes without putting a child or young person through the formal criminal justice process that can result in a criminal conviction. Community resolutions are informal and non-statutory, and should not result in a criminal record.[31] Community Resolutions operate for under-18s in a variety of models across the country and practice is variable; they are sometimes referred to as 'point-of-arrest' diversion.

26 Ministry of Justice and Youth Justice Board, Youth Cautions: Guidance for Police and Youth Offending Teams (April 2013)

27 HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services, Out-of-court disposal work in youth offending teams (March 2018)

28 HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services, Out-of-court disposal work in youth offending teams (March 2018)

29 HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services, Out-of-court disposal work in youth offending teams (March 2018)

30 HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services, Out-of-court disposal work in youth offending teams (March 2018)

31 HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services, Out-of-court disposal work in youth offending teams (March 2018)

29. This type of diversion is not a statutory requirement of youth offending teams. The Centre for Justice Innovation, in their toolkit, 'Valuing youth diversion: A toolkit for practitioners' note that, while point-of arrest diversion schemes are not a statutory requirement, they are a vital part of the effort to prevent offending by children and young people, which is a principal aim of the youth justice system, as set out in the Crime and Disorder Act 1998.[32]

30. The Youth Justice Board's National Standards specify that youth offending team management boards should have mechanisms in place which provide assurance that point-of-arrest diversion is evident as a distinct and substantially different response to formal out-of-court disposals.[33] The YJB further note that "all action should be taken to promote diversion into more suitable child-focused systems, and the promotion of positive behaviour".[34]

31. Phil Bowen, Director, Centre for Justice Innovation, told us that that "the youth justice system in general, through the adoption of things such as pre-court disposals and point-of-arrest diversion, has done a great job, as the previous panel said, in reducing the number of children who come into any form of contact with the criminal justice system."[35] The Association of Youth Offending Team Managers state that "There has been a significant decrease in the numbers of children entering the criminal justice system, especially in areas where the youth offending team is resourced to provide diversion".[36]

Problems with out-of-court disposals

Data

32. In March 2018, HM Inspectorate of Probation and HM Inspectorate of Constabulary and Fire & Rescue Services published a thematic inspection report into out-of-court disposal work in youth offending teams. The inspection found "clear leadership of out-of-court disposals in local partnerships" and found that the "quality of intervention work in out-of-court disposals was good and effective" and that in many cases decision-making was done jointly with the police and YOTs, but it also commented that the voice of the child was not heard effectively in the final decision-making process. The report highlighted a lack of clear evidence of the effectiveness of OOCDs, particularly community resolutions (where data is not recorded centrally). The report acknowledged worldwide evidence that most children who offend will stop by their early 20s, and data suggesting that work done by YOTs to divert children is effective. It said that the cases inspected indicated that short-term reoffending rates were lower following community resolution that involved YOT intervention than those that follow caution or conditional caution, and rates for both were lower than for reoffending following conviction.

32 Centre for Justice Innovation, Valuing youth diversion: A toolkit for practitioners, accessed 08 September 2020
33 Ministry of Justice and Youth Justice Board, Standards for children in the youth justice system 2019, accessed 08 September 2020
34 Ministry of Justice and Youth Justice Board, Standards for children in the youth justice system 2019, accessed 08 September 2020
35 Q172 [Phil Bowen]
36 Association of Youth Offending Team Managers (YJU0008)

33. Justin Russell told us:

> "There is no national data on how many community resolutions are being given out and there has been no national evaluation of their effectiveness either. They are an increasingly big proportion of all the YOT case loads we are looking at. We estimate that about 40% of all out-of-court disposals are now informal community resolutions."[37]

Mr Russell added that more evaluation was required: " We should be looking at impacts on reoffending rates and at interim outcomes such as the young person's health or their involvement in education or other services. At a local level, some YOTs are able to provide us with data on that, and, anecdotally, it seems quite encouraging. We have been saying for years that we need a proper national evaluation of their impact and effectiveness."[38]

34. Others have also raised concern over the lack of data. The Centre for Youth and Criminal Justice note: "While Diversion is of course the right approach, as evidenced by ESYTC [Edinburgh Study of Youth Transitions and Crime] there is very little evidence that says the interventions we have for Diversion are effective. More research is needed to evaluate and evidence the alternative services available to children."[39] Phil Bowen, Director, Centre for Justice Innovation, notes that "the Youth Justice Board does no national data reporting on diversion cases, so at the moment we do not know enough about who the kids are and what their outcomes are".[40]

35. The Magistrates' Association has concerns about the appropriateness of OOCD use, however, noting:

> "We are particularly concerned about the use of OOCDs in relation to violent offences, such as knife crime, and would argue that crimes of this nature are more appropriately dealt with by a court. As identified in a recent joint inspectorate report on OOCD work in youth offending teams, whilst work to divert children away from entering the criminal justice system is commonly recognised as a success story, it is difficult to prove this empirically due to the lack of systematic monitoring."[41]

36. **We recognise the important role that out-of-court disposals, both formal and informal, play in diverting children from formal criminal justice processes and consider them an integral part of the youth justice system. We note that data collection on the effectiveness of such schemes is patchy at best, particularly for informal, non-statutory diversion schemes, which make up around 40% of all out-of-court disposals. Although data is collected on formal out-of-court disposals, we have an incomplete picture of how many children are diverted from entering the criminal justice system.**

37. ***We recommend that the Ministry of Justice and Youth Justice Board work together to start collecting data centrally on non-statutory, informal diversion schemes, including (but not limited to) data on how many complete a diversion scheme, the impact on reoffending, health outcomes and education outcomes.***

37 Q139 [Justin Russell]
38 Q140 [Justin Russell]
39 Centre for Youth & Criminal Justice (YJU0051)
40 Q188 [Phil Bowen]
41 Magistrates Association (YJU0011)

38. ***We agree with the Chief Inspector of Probation's recommendation that a national evaluation of the impact and effectiveness of out-of-court disposals be carried out. We recommend that the Ministry of Justice commission such an evaluation, which should consider the impact and effectiveness of formal and informal out-of-court disposals.***

Inconsistencies in practice and provision

39. Crest Advisory note that "the diversion of children away from custody has been far more successful in some areas than others".[42] Barnardo's note that diversion provision remains inconsistent.[43] The Standing Committee for Youth Justice adds: "There is much existing positive practice in the diversion of children from the formal justice system, and the numbers of First Time Entrants has reduced by 80% across the last twelve years. But diversion provision is inconsistent".

40. Regarding non-formal diversion schemes, the Centre for Justice Innovation mapped out the provision of youth diversion schemes across YOTs in England and Wales. Their research found that 115 of 152 YOTs in England and Wales operate a point-of-arrest diversion scheme. Some 18 had a diversion scheme but did not provide details. Nineteen confirmed they had no diversion scheme.[44] The research showed that youth diversion is widely available but variable: 31% of the responding schemes do not require the child to admit guilt to be eligible for diversion; 24% allow children who accept 'responsibility' rather than 'guilt' to be diverted; and 39% divert for low-level offences only.[45] Commenting on this research, the Youth Justice Legal Centre, part of Just for Kids Law, state:

> "The mapping of the various diversion schemes that operate across England and Wales has shed light on an area which has previously been a bit of an enigma. The fact that 19 YOTs don't have diversion [point-of-arrest] schemes at all is shocking and supports the notion that outcomes for children in the criminal justice system are to some extent a postcode lottery".[46]

41. HM Inspectorate of Probation in its *Annual Report: inspection of youth offending services (2018–19)*, note that "the lack of national guidance on how to work with children and young people 'out of court' results in an inconsistent approach across the country. This does children and young people a disservice".[47] HM Inspectorate of Probation further state that: "We would support development of a national approach to the decision making and scope of out of court disposal schemes".[48] The Centre for Justice Innovation also recommend the development of national guidance:

> "We now call on national policymakers to take action to strengthen youth diversion by promoting clearer national guidance that reflects current best evidence; additional examples of good practice, a funding system that

42 Crest Advisory (YJU0058)
43 Barnardo's (YJU0055)
44 Centre for Justice Innovation, Mapping youth diversion in England and Wales (January 2019)
45 Centre for Justice Innovation, Mapping youth diversion in England and Wales (January 2019)
46 Youth Justice Legal Centre, Youth diversion schemes researched in England and Wales, 31 January 2019
47 HM Inspectorate of Probation, Annual report: inspection of youth offending services (2018–2019), October 2019
48 HM Inspectorate of Probation, Annual report: inspection of youth offending services (2018–2019), October 2019

> properly reflects youth diversion work; and a new set of data recording standards and systems to accurately record and publish youth diversion activity."[49]

42. **We note that there are inconsistencies in the provision and practice of diversion schemes across England and Wales.** ***We recommend that the Ministry of Justice and Youth Justice Board work together to set out national guidance on out-of-court disposal work. As suggested by the Centre for Justice Innovation, this guidance should include an evidence base for out-of-court disposals, examples of good practice and a framework for data recording.***

Funding

43. Another issue identified is the availably of funding to youth offending teams for informal diversion schemes. Phil Bowen, Director of the Centre for Justice Innovation, told us: "One of the issues is that currently the funding formula for YOTs does not recognise all the work they are doing on pre-court informal diversion. One of the conversations that we are currently having with the Ministry is how that work is represented in how they are funded, because we certainly know that in some areas some of those schemes have suffered from a lack of funding."[50]

44. The Prison Reform Trust note: "Proper diversion, as against simply ignoring low level offending amongst children, is not cheap. Youth Offending Teams across the country report a reduction in local funding for this work, and the government's own funding, which is channelled through the Youth Justice Board's youth justice grant to local authorities, has similarly been subject to very significant reductions that have seen it halved in real terms over the past decade".[51] The Standing Committee for Youth Justice state that "Further investment is needed to ensure a full range of diversion services are available that are tailored to meet underlying needs of individual children as well as communities."[52]

45. The Youth Justice Board also raise the issue of funding:

> "Despite reductions in funding, YOTs' statutory requirements have remained the same and the non-statutory work to support prevention and diversion, has increased in demand. In 2017, a survey of youth justice services: prevention of offending identified long term budget cuts to YOTs and children's services as having an adverse impact on their ability to deliver key preventative work.
>
> "Investing in prevention and support upstream**,** allows individuals who would otherwise not meet the support thresholds for statutory services to get the support they need earlier. Investment in early interventions produces savings later by reducing the need for individuals to access statutory services, and would, most importantly, positively impact the lives of children, families and the wider community."[53]

49 Centre for Justice Innovation, Strengthening Youth Diversion, (January 2020)
50 Q188 [Phil Bowen]
51 Prison Reform Trust (YJU0027)
52 The Standing Committee for Youth Justice (YJU0044)
53 Youth Justice Board (YJU0049)

46. **There is significant support for diversion and demand for informal, non-statutory services. For diversion schemes to function well, they need to be sufficiently funded. Investment in upstream service provision should be prioritised.** ***We recommend that the Ministry of Justice work with the Youth Justice Board to review current funding arrangements and ensure that funding adequately reflects the pre-court diversionary work being carried out by youth offending teams.***

Liaison and Diversion

47. The Ministry of Justice state that "Diverting children away from the Criminal Justice System is a priority and interventions should take place as early as possible".[54] As well as out-of-court disposals, other notable diversion schemes include Liaison and Diversion services which are an all-age service operating at police stations and courts across England, with 100% coverage.[55][56]

48. Additionally, in 2019, NHS England commissioned 13 new regional Community Forensic Child and Adolescent Mental Service (Community FCAMHS) Teams, covering the whole of England.[57] The Royal College of Psychiatrists note that "These are tertiary referral services accessible to all agencies (e.g. CAMHS, social services, YOTs, prisons, courts, solicitors, education, health commissioners etc.) within a region that may have contact with young people exhibiting behaviour that puts them at risk of contact with criminal justice system or with young people in the youth justice system who have mental health difficulties."[58]

49. In regard to the Youth Liaison and Diversion Service, the Ministry of Justice state that "they help the judiciary divert vulnerable offenders to the most appropriate place of treatment at sentencing, which might include community treatment not custody".[59] The Royal College of Psychiatrists state that:

> "Further downstream on the pathway to custody, Youth Liaison & Diversion Services (YL&DS) aim to improve early identification of a range of vulnerabilities, (including but not limited to mental health, neurodevelopmental, substance misuse, personality disorder and learning disabilities), in people coming into contact with the criminal justice system. This often involves seeing young people whilst they are in Police custody or engaging with them soon after police contact.
>
> Following assessment by a YL&D worker, individuals can be referred to appropriate treatment services so contributing to an improvement in health and social care outcomes, which may in turn positively impact on offending and re-offending rates."[60]

54 Ministry of Justice (YJU0057)
55 Ministry of Justice (YJU0057)
56 Q285 [Lucy Frazer]
57 The Royal College of Psychiatrists (YJU0029)
58 The Royal College of Psychiatrists (YJU0029)
59 Ministry of Justice (YJU0057)
60 The Royal College of Psychiatrists (YJU0029)

50. The Ministry of Justice state that, "In 2018/19, 12,685 children and young people were seen by L&D services. Of these 5,616 children and young people were identified as having a mental health issue and 951 referrals for mental health support for children and young people were made."[61] The Committee questioned Lucy Frazer QC MP, Minister of State for Justice, on why just under 17% of those identified as having a mental health issue were referred for mental health support as a consequence of the liaison and diversion schemes. She stated that "it is likely to be the case that they do not reach the threshold for support".[62] Caroline Twitchett, Children's Quality Lead, NHS England and NHS Improvement further stated that:

> "One of the issues with young people is that the liaison and diversion schemes have quite acute antennae for multiple vulnerabilities, and one of those is related to psychological wellbeing and mental health. When it says that, it is actually about a successful transfer or referral to the community child and adolescent services. A lot of them will not meet those thresholds; we accept the fact."[63]

51. Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists, told us:

> "One of the problems we find is that many of the young people who come into contact with the criminal justice system have multiple needs, but those needs might be sub-diagnosis; they might not reach the threshold to get a diagnosis. If you are just sub-threshold for three or four different diagnoses, perhaps autism and ADHD, and you come from an impoverished background, and you are out of school, the sub-threshold diagnoses become relevant, but they do not meet the criteria to be seen by generic child and adolescent mental health services. That is quite a big gap. We have children with needs, but nobody is picking them up."[64]

52. The effectiveness of Youth Liaison and Diversion Services and how many people have been diverted as a consequence of these services is currently unknown. Lucy Frazer told us that research was being carried out, but it is related to the adult and not youth estate.[65]

53. **We agree with the Ministry of Justice's priority of diverting children away from the criminal justice system and support early intervention work such as Liaison and Diversion schemes. *We are aware that Youth Liaison and Diversion schemes may not be included in the current evaluation taking place of adult liaison and diversion schemes and recommend that the Ministry of Justice commission an evaluation into the effectiveness of Youth Liaison and Diversion schemes. This evaluation should include the number of children who have been diverted away from the criminal justice system as a result of such schemes.***

61 Ministry of Justice (YJU0057)
62 Q290 [Lucy Frazer]
63 Q290 [Caroline Twitchett]
64 Q114 [Dr Alexandra Lewis]
65 Q286 [Lucy Frazer]

54. **We are aware that children coming into contact with the criminal justice system may not meet the criteria for generic child and adolescent mental health services, despite presenting with multiple needs.** ***We recommend that the Ministry of Justice increase access to mental health support for all children and young people who need it. The Ministry should set out how this will be achieved and resourced.***

5 Minimum age of criminal responsibility

55. The age of criminal responsibility (ACR) in England and Wales is 10.[66] In Scotland, the Age of Criminal Responsibility (Scotland) Act 2019 raised the age from eight to 12.[67]

56. As part of this inquiry, the Committee sought to understand different views on the minimum age of criminal responsibility. A number of submissions raised concerns about the current age, many noting that it is not in line with the age in many other countries.[68] The Equality and Human Rights Commission said: "The age of criminal responsibility in England and Wales is inconsistent with accepted international standards. The UN Committee on the Rights of the Child has recommended that states increase their minimum age to at least 14. The UN Committee Against Torture has also expressed concern about the UK minimum age, and called for it to be raised."[69] The Equality and Human Rights Commission says:

> "The age of criminal responsibility in England and Wales assumes that children of 10 years and older are mature enough to stand trial and be accountable before the law in the same way as adults. Due to a better understanding of brain and behavioural development in childhood these assumptions are now being questioned. A report by the Royal Society, for example, notes that the brain is developmentally immature at 10 years and continues to undergo important changes related to regulating behaviour, and therefore that the minimum age of criminal responsibility may be "unreasonably low". The UN Committee on the Rights of the Child has similarly reported that maturity is still evolving in children aged 12 to 13 and they are therefore "unlikely to understand the impact of their actions or to comprehend criminal proceedings".[70]

57. The Royal College of Psychiatrists note:

> "The Adolescent Forensic Psychiatry Special Interest Group (AFPSIG) asserts that, at 10 years old, the MACR in England and Wales is incompatible with current research understanding of brain function and the challenges facing children by dint of their immaturity… Adolescence represents a phase of increased impulsivity and sensation-seeking behaviour and a heightened vulnerability to peer influence, all of which have an impact upon decision-making. Adolescents are known to seek peer acceptance to a greater extent than adults or indeed younger children".[71]

58. Dr Pamela Taylor, Chair, Forensic Faculty, Royal College of Psychiatrist told us that the current minimum age of criminal responsibility is unacceptable, "in part because it puts England and Wales out of sync with the rest of the United Kingdom. It

66 Ministry of Justice, 'Age of criminal responsibility',(accessed 09 September 2020)
67 Age of Criminal Responsibility (Scotland) Act 2019, section 1
68 See for example: The Standing Committee for Youth Justice (YJU0044) and The Children's Society (YJU0043)
69 Equality and Human Rights Commission (YJU0020)
70 Equality and Human Rights Commission (YJU0020)
71 The Royal College of Psychiatrists (YJU0029)

is now 12 in Scotland. It puts us out of sync with the rest of the world and, indeed, with recommendations".[72] Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists, further states:

> "Previously, it was thought that the most significant period of brain maturation was in the first five or possibly eight years. We now know that a second critical period takes place in adolescence and is a very dramatic development of the frontal lobes, which are, essentially, responsible for decision making, planning, consequential thinking, getting ideas about ourselves and social interaction… We know from Covid that science accumulates gradually, but now we have reached a point where nobody is saying any different, and everybody understands that brains are not mature by the age of 10. They are not mature by the age of 13 or 15. It is a much longer process than anybody thought, so it does not make sense to treat somebody at 10 the same as an adult, because they are fundamentally quite different in their decision-making abilities."[73]

59. The Youth Justice Board believes that there is sufficient evidence to conduct a review of the age of criminal responsibility in England and Wales[74] and notes:

> "Evidence on brain and childhood development is finding that children have a concept of right and wrong from a young age, but other aspects of their development limit the possibility of criminal intent. Behavioural and emotional development means younger children typically have more difficulty controlling impulsive actions or resisting the influence of peers. These faculties normally develop during adolescence, and into early adulthood.
>
> "Serious offending by 10- and 11-years olds is extremely rare. Evidence suggests the majority of children who commit serious offences also have complex welfare needs. Given the small numbers of children, it would not be a huge resource burden to make alternative provision through welfare interventions for younger children who commit serious offences and we believe this may be a more effective response for them and their families, than a custodial sentence."[75]

60. Justin Russell, Chief Inspector of Probation told us:

> "I think the system itself realises how inappropriate it is to bring children into the criminal justice system anyway. The average age of children being supervised by YOTs has gone up, and the average age of children in custody has gone up… On the point about maturity, there are significantly older offenders who lack the maturity to really understand what is going on. There are 18, 19 and 20-year-olds who could probably be managed in a different way, and spotting that maturity at whatever age we are talking about it an important thing to build into the system".[76]

72 Q130 [Dr Pamela Taylor]
73 Q130 [Dr Alexandra Lewis]
74 Youth Justice Board (YJU0049)
75 Youth Justice Board (YJU0049)
76 Q136 [Justin Russell]

Arguments against reducing the age of criminal responsibility

61. There are also many organisations and individuals who do not think the age should be increased. The case of James Bulger, in which two boys then aged 10 murdered a two-year-old is cited: if the age of criminal responsibility had been 12 in 1993, Jon Venables and Robert Thompson would not have been criminally liable and would not have served custodial sentences.[77]

62. The Ministry of Justice told us:

> "The Government believes that children aged 10 and over are able to differentiate between bad behaviour and serious wrongdoing, and it is right that they can be held accountable for their actions. Setting the age of criminal responsibility at 10 provides flexibility in dealing with children and allows for early intervention in a child's life, with the aim of preventing subsequent offending. The majority of younger children who enter the youth justice system are dealt with by way of an out of court disposal. From 2014 to 2018, the number of cautions issued to 10 to 11-year olds decreased from 450 to 159, and the number of convictions decreased from 76 to 37. No 10 to 11-year olds have received a custodial sentence since 2010".[78]

63. Lucy Frazer QC MP, Minister of State for Justice told us: "I am aware that there is disparity across a number of jurisdictions, and we have one of the lowest in that regard. At the moment, we are focusing our attention on ensuring that we divert people away from the justice system and we are looking very carefully at sentencing provision."[79] The Minister also said: "I do not expect that we will be changing the age of criminal responsibility".[80]

64. **The age of criminal responsibility in England and Wales is a contentious issue with substantial arguments in favour both of the status quo age of 10 and an increase in that age. We are not persuaded that it should be immediately increased, but given the arguments in favour of raising it and the fact that the age in England and Wales is lower than in broadly comparable countries, we consider there is a case for reviewing the age of criminal responsibility.**

65. ***We recommend that the Ministry review the age of criminal responsibility, considering the data available from Scotland and from broadly comparable European and other jurisdictions in which the age is higher than 10 at which it stands in England and Wales. We recommend that the Ministry report on the implications of raising the age in England and Wales to 12 and to 14, including the likely effect on reducing the number of children in custody and alternative methods of disposing of children beneath those ages who have committed serious offences. We recommend that if it concludes that 10 should remain the age of criminal responsibility, the Ministry set out the evidence and reasoning to justify an approach the Minister of State recognises as one that differs from the average.***

77 Old Baily Solicitors, 'The Age of Criminal Responsibility - Should it be increased?', accessed 09 September 2020
78 Ministry of Justice (YJU0057)
79 Q322 [Lucy Frazer]
80 Q321 [Lucy Frazer]

6 Racial Disproportionality

66. Racial disproportionality in the youth justice system has been raised repeatedly throughout this inquiry. In this chapter we examine disproportionate rates of change within the youth justice population, racial disparity in diversion from formal criminal justice processing and the use of remand for children from a Black, Asian and Minority Ethnic (BAME) background.

The youth justice population

67. The number of children entering the system has continued to fall, but has not done so at the same rate for children of different ethnicities. The YJB state that:

> "The number of White children receiving a caution or conviction decreased by 79% in 10 years, compared with a 55% decrease for BAME children over the same period. These different rates of decrease mean that the proportion of BAME children in the YJS is almost double what is was 10 years previously (27% in the latest year compared with 14% 10 years ago)".[81]

68. The latest statistics show that the proportion of Black children cautioned or sentenced has been increasing over the last 10 years, from 6% in the year ending March 2010, to 11% in the year ending March 2019. The proportion of Black children given a sentence or caution is almost three times higher than the proportion of Black children in the 10–17 population, who make up 4% of the population. Children from a Mixed ethnic background are also over-represented compared to the general 10–17 population - they account for 8% of those receiving a caution or sentence compared to 4% of the general 10–17 population.[82]

69. Offences committed are given a gravity score, depending on their seriousness, between 1 and 8. Table 1 shows the proportion of proven offences by gravity score band and demographic characteristics.

Table 1: Proportion of proven offences by gravity score band and demographic characteristics, England and Wales, year ending March 2019

		Gravity score band		
		Less serious: 1 to 4	Most serious: 5 to 8	Total
Age	10-14	90%	10%	100%
	15-17	86%	14%	100%
Ethnicity	Asian	78%	22%	100%
	Black	77%	23%	100%
	Mixed	83%	17%	100%
	Other	86%	14%	100%
	White	89%	11%	100%
Gender	Girls	95%	5%	100%
	Boys	85%	15%	100%

Source: Youth Justice Board, Youth Justice Statistics 2018/19[83]

81 Youth Justice Board (YJU0049)

82 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

83 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

70. As of May 2020, 51.9% of the youth custodial population were from a BAME background (29% Black, 11.7% Mixed, and 11.2% Asian and Other[84]), compared to 27% in 2009.[85] The general 10–17 population is 82% White, 4% Black, 4% Mixed and 10% Asian and Other.[86] [87] Justin Russell, Chief Inspector of Probation told the Committee that:

> "Very few young people of any ethnic group end up in the criminal justice system now. Fewer than 1% of all young people are on the case load of any YOT, and that is fewer than 1% of both BAME and white children. For those young people who are on the case load, there is disproportionality in a significant number of YOTs, and that disproportionality increases as you get further into the system. The proportion of out-of-court disposals that are BAME is about a quarter, whereas, as you said, 50% of the custodial population are now from a BAME background.
>
> "Over the last 10 years, we have seen a number of indicators coming down. The number of arrests of young people of all races has been coming down, as has the number of cautions and the number of young people going into custody, but it has been coming down much quicker for white children than it has for BAME children, in particular for black boys. That is a real concern. Somehow the system seems to be better at diverting white children away from the formal criminal justice system than it is for BAME children and young people. That is the big thing that needs exploring, I think, going forward".[88]

71. In 2017, David Lammy MP, published his review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. He wrote:

> "My biggest concern is with the youth justice system. This is regarded as one of the success stories of the CJS, with published figures showing that, compared with a decade ago, far fewer young people are offending, reoffending and going into custody. YOTs were established by the 1998 Crime and Disorder Act, with a view to reducing youth offending and reoffending and have been largely successful in fulfilling that remit. Yet despite this fall in the overall numbers, the BAME proportion on each of those measures has been rising significantly".[89]

72. The Ministry of Justice told us of work done to address points raised in the Lammy Review:

> "In April 2018 the Ministry of Justice created a dedicated youth disproportionality team focused on explaining or changing disproportionate

84 Ethnicity was 'Not known' in 7 cases.
85 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
86 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
87 HM Prison and Probation Service, Youth Custody Data: Youth Custody Report: June 2020 (accessed 08 September 2020)
88 Q119 [Justin Russell]
89 David Lammy MP, The Lammy Review: An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the Criminal Justice System (September 2017)

> outcomes for BAME children in the justice system … . The Youth Custody Service has identified addressing disproportionality as a priority for 2019/20. They have put in place an Equality Delivery Plan to investigate disproportionality and identify where reforms can be made if any disparities cannot be adequately explained".[90]

73. The commitment to "explain or reform" was widely welcomed, but some have raised concern that it has not gone fair enough. EQUAL told us that "The Lammy Review made it clear that if the CJS could not explain racial disparities they must reform in order to rectify them (explain or reform). However, there are a number of departments that have failed to do so… This lack of willingness to embrace the principle of explain or reform is evident in the lack of positive data two years on from the Lammy review".[91] Laurie Hunte, Criminal Justice Programme Manager, Barrow Cadbury Trust, told us "One of the things it [the Lammy Review] did was to point a way forward for the explain or reform principle. I do not believe enough organisations have really embraced that as a priority".[92] The Standing Committee for Youth Justice note that:

> "The Lammy Review recommended criminal justice agencies must adopt the principle of 'explain or reform' for addressing disparities between treatment and outcomes of ethnic groups. But there is little evidence the principle has been adopted, particularly in relation to custodial sentencing and placements. There has been no explanation for the increasingly disproportionate child custody population, and the situation continues to worsen."[93]

74. **We are aware of the work the Ministry of Justice and Youth Custody Service have done since publication of the Lammy Review to address disproportionality. The youth justice population has changed considerably in the past 10 years, but children from BAME backgrounds continue to be disproportionately represented, with outcomes getting worse in some areas. We are particularly concerned about the disproportionate number of children held in custody who are from BAME backgrounds - 51.9% of the whole cohort as of May 2020. *Race disproportionality is significant and fundamental, visible in every part of the youth justice system. We recommend that the Ministry of Justice set out what resource has been allocated to addressing disproportionality. We are not convinced that disproportionality has satisfactorily been "explained or reformed". The Ministry should also provide the Committee with detailed research setting out why these communities are so disproportionately represented in each part of the system, including the cause of their disproportionate imprisonment. The Ministry should set out what action is being taken and resources allocated.***

Race and diversion from formal criminal justice processing

75. Diversion schemes have played a part in reducing the number of children being formally processed in the criminal justice system, but some note that this has disproportionality benefited White children, compared with their Black, Asian and Minority Ethnic counterparts. The latest youth justice statistics show that first-time

90 Ministry of Justice (YJU0057)
91 EQUAL: written evidence
92 Q178 [Laurie Hunte]
93 The Standing Committee for Youth Justice (YJU0044)

entrants (FTEs) from a White ethnic background represent 75% of the whole population, down from 85% a decade ago; in the same period, the proportion of FTEs from a Black background doubled from 8% to 16%. The proportion of FTEs from an Asian background has increased from 5% to 7% over the same period, whereas the proportion of FTEs from 'Other' ethnic backgrounds has remained stable at 1%.[94]

76. It is difficult to point to a single factor that has contributed to this disparity, but Clinks, Barrow Cadbury Trust and EQUAL, in their joint evidence submission to the Committee, raise concerns about the challenge the criminal justice system faces in diverting Black, Asian and Minority Ethnic children from formal criminal justice processing and state that:

> "The extension of stop and search, an emphasis on the gang narrative defining young black people as a risk, as well as the mandatory custodial sentencing aimed at deterring knife crime - which as SCYJ highlight, leads to many children imprisoned for possessing, but not using knives - has made it harder for organisations to deliver prevention and early intervention work that is aimed at minimising contact with the justice system. These policies are also damaging to any trust that the justice system would try to build with BAME children making them less likely to engage and impacting how their 'attitude' is perceived by staff, reinforcing unfair and punishing treatment."[95]

77. Jessica Mullen, Director of Influence and Communications, Clinks, told us: "We know from feedback from voluntary sector organisations working in that space that they see black and minority ethnic children more often overlooked for diversionary routes, and they perceive that to be because those children are perceived as risky and unmanageable. Then we see the statistics of over-representation lengthen throughout the later stages of the system."[96] However, without centrally collected data on diversion rates, it is difficult to know who is getting diverted and who is not.

78. **It is not clear whether diversion schemes disproportionately benefit White children compared with their BAME counterparts, nonetheless, the figures on first-time entrants to the system are concerning. Without centrally collected data on diversion rates, we cannot gain an accurate picture on who is being diverted and who is not, and it is therefore difficult to understand whether diversion schemes are being disproportionately used. *In adopting our previous recommendation that the Ministry of Justice and Youth Justice Board work together to collect data on informal diversion schemes, the two bodies should include demographic information in that data.***

BAME children and Remand

79. Children from Black, Asian and Minority Ethnic (BAME) backgrounds are a high proportion of those remanded to custody. As with other aspects of the system, concerns

94 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
95 Clinks (YJU0042)
96 Q177 [Jessica Mullen]

have been raised about the disproportionate nature of the figures.[97] For the year ending March 2019, 57% of children in youth custody on remand were from a BAME background.[98] The latest statistics on youth justice show that "over the last 10 years the proportion of children from a White background remanded in youth custody has seen a general downward trend, falling from 62% to 43%, the lowest level in the last ten years."[99] The proportion of children from a Black ethnic background has increased to 33% compared to 22% a decade ago.[100]

80. Witnesses were asked what was contributing to the high levels of BAME children being remanded to custody; Shadae Cazeau, Head of Policy, EQUAL told us:

> "The bail grounds that the court uses when thinking about bail are whether the person will surrender or fail to do so, and whether they will commit further offences or interfere with witnesses. As I said earlier, if we think about risk perception, if the court feels that a person is risky, and if that unconscious bias is interpreted by the judge to perceive the person as risky, the chances are they will perceive them as somebody who will not surrender to bail, or who will interfere with witnesses or potentially commit further offences. That may lead to them being remanded as a result.
>
> "You can see the link between what the grounds are for bail and potentially how that impacts on a judge. A young black male, for example, who is accused of being involved in a specific type of violent incident, might be perceived as somebody who needs to be remanded. It is the grounds and the risks associated with them that have an impact on disproportionality in remand."[101]

81. Enver Solomon, Chief Executive Officer, Just for Kids Law, stated that:

> "If you think about the disproportionate numbers of those with a BAME background who also come from disadvantaged backgrounds, who are less likely to have good-quality legal representation, there might be poorer-quality decision making. It might be less likely for a case to be made for the young person to be released under investigation and less likely that the YOT is pushed forward with a robust package on bail. Those are all factors that contribute."[102]

82. Transform Justice, asked: "Are more BAME children pleading not guilty? Is there unconscious bias in decision-making? Are the offences of which BAME children are accused particularly likely to attract remand? These questions beg urgent answers from

97 See for example: Children's Commissioner (YJU0052); Clinks (YJU0042); Justice Studio (YJU0010); Association of Youth Offending Team Managers (YJU0008); Transform Justice (YJU0007); School for Policy Studies, University of Bristol (YJU0003)

98 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

99 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

100 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

101 Q191 [Shadae Cazeau]

102 Q191 [Enver Solomon]

the government and judiciary."[103] The Youth Justice Board note: "we have commissioned research to better understand why disproportionality occurs at the points children are remanded or sentenced. This research is due to be finalised at the end of August 2020."[104]

83. **BAME children are disproportionately remanded to custody and some of the children remanded to custody, will not then go on to receive a custodial sentence.** ***The Youth Justice Board should update the Committee on the findings of their commissioned research. We agree with Transform Justice, that the disproportionate use of remand has not satisfactorily been explained, and we recommend that the Ministry of Justice provide an explanation of why the levels of BAME children being remanded to custody are disproportionately high. This explanation should include comparative data on the numbers of BAME children and other pleading guilty and differences in the types of offences of which BAME children and others are accused, in particular where they are likely to result in remand in custody. The Ministry should also set out the steps it is taking to prevent unconscious bias in decision-making.***

103 Transform Justice (YJU0007)

104 Youth Justice Board, Written Evidence, 14 July 2020

7 Youth Courts and Sentencing

84. A youth court is a type of Magistrates' court for people aged between 10 and 17. Youth courts deal with cases such as theft and burglary, anti-social behaviour and drug offences. For serious crimes such as murder or rape, the case starts in the youth court but will be passed on to a Crown Court.[105] The Youth Justice Legal Centre summarises how a youth court operates:

> "Youth courts are less formal than adult courts. Children are called by their first names and the judge or magistrates will speak directly to the child and may ask questions.
>
> "Youth courts are specially designed to make it easier for children to understand what is happening and feel less intimidated by their surroundings. Cases can be heard by one district judge or three lay magistrates.
>
> "Children under 16 must attend with a parent or guardian. Sixteen and seventeen year olds may attend with a parent, guardian or someone to support them. The parent, guardian or supporting adult should sit next to their child and remain seated throughout the proceedings.
>
> "Most children will go to the youth court unless they have been refused bail by the police and there is no youth court available, in which case they will be taken to the adult magistrates' court for a decision on bail, and sent from there to the next youth court."[106]

Sentencing options for children

85. A number of sentencing options are available to sentencers including community and custodial sentences. However, sentences for children are different from those given to adults.[107] The Sentencing Council set out and summarise the sentencing options available to courts; community options available include (but not limited to):

- **Referral Order**: this requires the offender to attend a youth offender panel (made up of two members of the local community and an advisor from a youth offending team) and agree a contract, containing certain commitments, which will last between three months and a year. The aim is for the offender to make up for the harm caused and address their offending behaviour. A referral order must be imposed for a first-time young offender who has pleaded guilty (unless the court decides that another sentence is justified) and may be imposed in other circumstances.[108]
- **Youth Rehabilitation Order:** this is a community sentence which can include one or more of 18 different requirements that the offender must comply with

105 Ministry of Justice, 'Criminal Courts', accessed 09 September 2020
106 Youth Justice Legal Centre, 'Youth Court', accessed 09 September 2020
107 Ministry of Justice, 'Community sentences', accessed 09 September 2020
108 Sentencing Council, 'Types of sentences for young people', accessed 09 September 2020

> for up to three years. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements.[109]

86. Children and young people can also receive custodial sentences. The Sentencing Council note that custodial sentences "will only be imposed in the most serious cases. When they are given, they aim to provide training and education and rehabilitate the offender so they don't reoffend. Sentences can be spent in secure children's homes, secure training centres and young offender institutions."[110] The main custodial sentence available for children and young people aged between 12–17 is a Detention and Training Order (DTO) - this can be given in the Crown Court and youth court.[111] A DTO can last between four months and two years.[112] Longer-term detention is available for more serious offences in the Crown Court.[113]

87. The Ministry of Justice says: "Custody should only be used as a last resort for children, where an offence is so serious that neither a community sentence nor fine can be justified."[114] In their guidelines *Overarching Principles - Sentencing Children and Young People*, the Sentencing Council state that:

> "Domestic and international laws dictate that a custodial sentence should always be a measure of last resort for children and young people and statute provides that a custodial sentence may only be imposed when the offence is so serious that no other sanction is appropriate … . It is also important to avoid "criminalising" children and young people unnecessarily; the primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish".[115]

88. In the year ending March 2019, there were just over 19,300 occasions where children were sentenced at all courts, which is 78% lower than 10 years ago, with a 16% fall in the latest year.[116] Of the 19,300 sentencing occasions of children for all types of offences in all courts, just under 1,300 were sentences to immediate custody (7% of all sentences), with most (76%) of these being Detention and Training Orders. Around 12,800 were community sentences (66% of all sentences), of which 65% were Referral Orders and 34% Youth Rehabilitation Orders.[117] For the year ending March 2019, an average of just under 860 children were in custody at any one time - a fall of 70% compared with 10 years ago.[118]

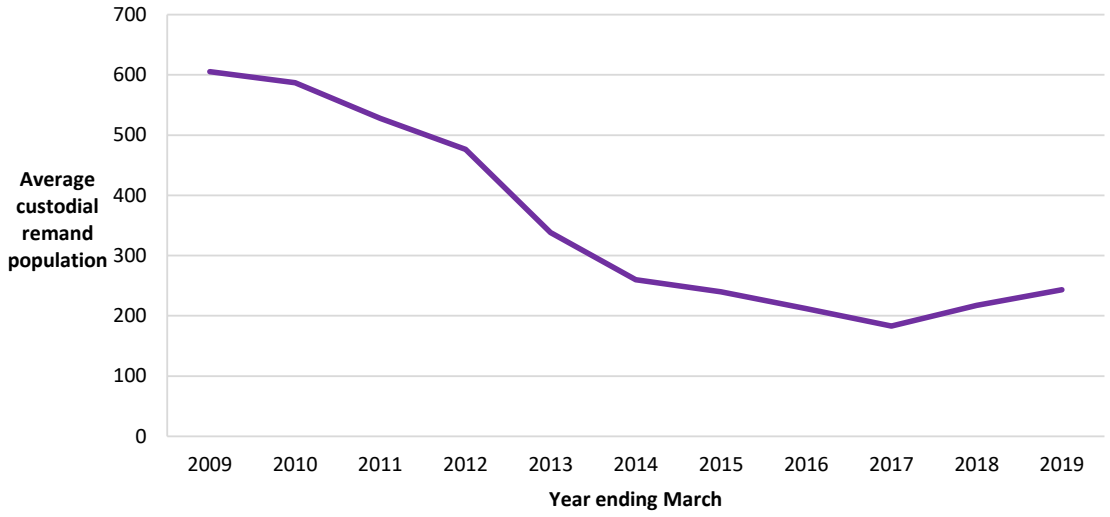
109 Sentencing Council, 'Types of sentences for young people', accessed 09 September 2020
110 Sentencing Council, 'Types of sentences for young people', accessed 09 September 2020
111 Sentencing Council, 'Types of sentences for young people', accessed 09 September 2020
112 Sentencing Council, 'Types of sentences for young people', accessed 09 September 2020
113 Sentencing Council, 'Types of sentences for young people', accessed 09 September 2020
114 Ministry of Justice (YJU0057)
115 Sentencing Council, Overarching Principles - Sentencing Children and Young People, (1 June 2017)
116 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
117 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
118 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

Use of Remand

89. In spite of that substantial reduction, some question whether custody is always used as a last resort. An increase in the proportion of children being held on remand has been cited as evidence that the principle of last resort is not being adhered to.[119]

90. For the year ending March 2019, 11,000 remands were given to children, of which the majority (83%) were bail remands, 11% were remands to youth detention accommodation, and 6% were community remands with intervention.[120] On average, just over 240 children were remanded in youth custody at any one time that year, some 60% less than 10 years ago.[121] However, the figure had increased 12% increase compared with the 2018, and the number had also risen in 2017, after a consistent decrease from 2009 to then.[122] Figure 3 shows the average monthly population of children in youth custody on remand from 2009 to 2019.

Figure 3: Average monthly population of children on remand in youth custody, youth secure estate in England and Wales, years ending March 2009 to 2019



Source: Youth Justice Board, Youth Justice Statistics 2018/19[123]

91. Children remanded in youth custody accounted for over a quarter (28%) of the average custody population in the latest year, an increase from 24% in the previous year.[124] This is the highest proportion seen in the last 10 years. Before 2019, the proportion of the total custody population represented by children remanded to youth custody fluctuated between 21% and 26%.[125] In the year ending March 2019, the majority (66%) of outcomes for children remanded to youth detention accommodation at some point during court

119 See for example: The Standing Committee for Youth Justice (YJU0044) and Transform Justice (YJU0007)
120 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
121 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
122 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
123 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
124 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)
125 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

proceedings did not subsequently result in a custodial sentence.[126] Of the 66% of outcomes which did not result in a custodial sentence, over half (52%) resulted in a non-custodial sentence with 48% resulting in acquittal.[127]

92. We sought to understand why the number of children on remand had increased in the latest year for which statistics are available. There appeared to be no single reason. Common themes amongst witness responses included: increase in serious violence; lack of credible community alternatives; and limited time to put together alternative bail packages. Colin Allars, Chief Executive Officer, Youth Justice Board, told us:

> "As far as we are able to draw any potential rationale for that, we think there may be a couple of things that are playing into it. One factor is likely to be the rise in serious violence and the attention attached to serious violence. In 2010–11, around 30% of those on remand were there for an offence related to violence against the person. By 2018–19, it was double that. There is clearly something about the serious violence aspect and children being remanded in custody because of that.
>
> "The other thing I find more difficult to put a figure against, but I hear anecdotally, and a lot from youth offending teams in particular, is that youth offending teams are finding it quite difficult to find suitable and appropriate accommodation in the community to provide a community-based alternative to custody during the remand period. That may be a reflection of changes in the availability of local services and money within local authorities."[128]

93. Linda Logan, Chair of the Youth Courts Committee, Magistrates' Association, told us:

> "In respect of the remand of young people who then do not go on to get custody, in the area where I sit we did some local work fairly recently, before the pandemic, and one of the issues that we discovered—I think it is probably appropriate across England and Wales—was that, if there was a placement for a young person out of area, the youth offending team very probably would have been able to put together a substantial bail package that would have allayed their fears and the court's fears, but there is a real difficulty about placements that are not in your own area. There is a massive gap.
>
> "Another issue we identified is that for many young people, when they finally come to court, the Crown Prosecution Service has often downgraded the original charge and, therefore, the new charge is not a charge that would attract a custodial sentence. This is not a cop-out, but, at the end of the day, magistrates and judges can only deal with the information in front of them. If, for example, the youth offending service has a robust intensive supervision and surveillance programme [a high intensity, direct alternative

126 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

127 Youth Justice Board, Ministry of Justice and the Office of National Statistics, Youth Justice Statistics 2018/19 (30 January 2020)

128 Q37 [Colin Allars]

> to custody], it is an alternative to custody… but the Magistrates Association youth membership are aware that there are parts of England and Wales that cannot provide an intensive supervision and support programme; therefore, if that is the only alternative to custody, sentencers' hands are often tied."[129]

94. Andy Peaden, Chair, Association of Youth Offending Team Managers also pointed to an issue with the intensive supervision and surveillance programme, stating that: "ISSP is our most resource-intensive programme. It is 25 hours a week for young people. We see it as a valuable package to do good work with young people, but some smaller services find it increasingly difficult to deliver on expectations after the sort of reductions in resource they have experienced over the past few years."[130]

95. Helen Berresford, Director of External Engagement at Nacro noted that:

> "It is really clear, particularly when two thirds do not go on to receive a custodial sentence, that there is an over-use of remand. There are a number of suggestions as to why that is. Some of it is to do with detention in police custody and the time available to get together an alternative bail package. Some of it is around there not being enough alternative accommodation. Of course, there are decisions about risk that are taken as well in the court system."[131]

96. Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists told the Committee that children and young people may be remanded to custody pending a psychiatric report, she states that:

> "Young people should not be remanded for psychiatric reports. We still see that even now. There are plenty of forensic child and adolescent psychiatrists in the community who are capable of doing that work. There is no need to remand somebody to custody. It is not being suspended in animation; it is actually a toxic environment where you lose your education or placement, your home and connections. All that continuity goes, so it is not a neutral act to remand somebody. Sometimes people think it is a kindness that you are remanding them for a psychiatric assessment. There is no need to send somebody into custody for that."[132]

97. The Committee asked the Minister of State for Justice what the Government were doing to avoid remanding children to detention where possible. Lucy Frazer QC MP responded: "we have far too many people on remand in the youth custody estate. We have a significant number in the adult estate as well, and that is why we are undertaking a review at the moment of youth remand, which we will report on in due course."[133] She outlined what work was being conducted as part of the review, noting that: " … we have looked at the data and figures in relation to the make-up of remand, and we are currently

129 Q81 [Linda Logan]
130 Q87 [Andy Peaden]
131 Q145 [Helen Berresford]
132 Q147 [Dr Lewis]
133 Q272 [Lucy Frazer]

looking at options for how we could reduce that and what measures we could take, whether legislative or otherwise. We are scoping those and will be looking at them more extensively over the coming months."[134]

98. **We note that the number of children on remand is high and that two thirds of children given a remand to youth detention accommodation did not subsequently receive a custodial sentence. Multiple factors appear to contribute to these numbers: an increase in serious violence; lack of credible community alternatives; and limited amount of time available to put together an alternative bail package may all be contributing factors.** ***We welcome the MOJ's current review of youth remand, but request more detail on what that review is covering. The Ministry should also set out the timeframe in which they intend to complete the review and publish its results and any action plan.***

99. **We were concerned to hear reports of children being remanded to custody pending psychiatric reports. Evidence received suggested that this is unnecessary and potentially damaging for a child.** ***We ask the Ministry of Justice to set out how many children have been sent to custody pending a psychiatric report. We recommend that the Ministry set out what steps it is taking to prevent this from happening.***

Issues with current sentencing options

100. When sentencing children, the court has a statutory duty to consider the welfare of the child, and the principal aim of the youth justice system, to prevent offending by children and young persons.[135] Charlie Taylor, the previous Chair of the Youth Justice Board, in his Review of the Youth Justice System in England and Wales, found that courts were ill equipped to achieve this:

> "The youth justice system has a statutory aim to prevent offending, but the criminal courts are not equipped to identify and tackle the issues that contribute to and prolong youth offending… Courts do not have the time or means to direct and supervise the essential work that is needed to help these children break the cycle of offending. Equally, the availability of sentencing options lack the flexibility and rigour to respond to the complex and changing needs of children who offend.
>
> "Magistrates frequently report that they impose a sentence without having a real understanding of the needs of the child, and they rarely know whether it has been effective."[136]

101. For most children and young people who have committed an offence for the first time and have pleaded guilty to an imprisonable offence, the only sentencing options currently available are a Referral Order or custodial sentence.[137] The Magistrates' Association has pointed to some limitations with current sentencing powers:

> "It is also important that sentencers are given flexible sentencing options to avoid custody where possible. For example, there are current restrictions

134 Q273 [Lucy Frazer]
135 Ministry of Justice (YJU0057)
136 Charlie Taylor, *Review of the Youth Justice System in England and Wales*, (December 2016), p 28
137 Sentencing Council, Overarching Principles - Sentencing Children and Young People, (1 June 2017)

> in place for some cases where the only option is a Referral Order (RO) or custody. As a result of the successful early intervention work to divert CYP from court where possible, it is very common for those appearing in youth court to have a significant history of out of court disposals. However, the current statutory provisions create a binary choice for magistrates between custody and a RO where a CYP pleads guilty. The availability of other disposals would be beneficial in these cases to ensure court have the flexibility to respond appropriately. So, allowing sentencers to consider the appropriateness of a Youth Rehabilitation Order (YRO) would be sensible."[138]

102. Linda Logan, Chair of the Youth Courts Committee, Magistrates' Association, told us: "If it is your first offence and you plead guilty, you could get a referral order or custody, and there is no sentence in between those two points. That needs addressing in my personal opinion. You have a cohort of people who can slip through because of that."[139] Speaking about the binary options for sentencers, Laura Cooper, Just for Kids Law, stated: "One practical issue is that, if a child is pleading guilty to a first offence, there is only the option of a referral order or custodial sentence. That is why it is essential that youth offending services have the resources to put robust alternatives in place for an individual."[140]

103. **Referral Orders may be appropriate in some circumstances, but there appears to be consensus that more flexible sentencing options would be beneficial.** ***We recommend that the Ministry of Justice review current sentencing options for children with a view to introducing a Youth Rehabilitation Order as a sentencing option for first-time offenders pleading guilty.***

104. Other concerns have been raised about alternatives to custody, and the absence of a feedback loop between sentencers and Youth Offending Teams. The Magistrates' Association state:

> "We also believe that providing sentencers with the powers to review community sentences can support rehabilitation, and ensure appropriate interventions are in place. The legislation to allow this in respect of YROs exists in Paragraph 35 of Schedule 1 of the Criminal Justice and Immigration Act 2008 and we call on it to be enacted… Providing a formal process for reviews of YROs would ensure full transparency, producing subsequent positive impacts on procedural fairness, legitimacy and confidence for all parties. It might also be helpful to consider introducing powers for sentencers to review Referral Orders (ROs). Our members have expressed concern that in some areas there are considerable delays in convening RO panels, which is obviously detrimental to the orders themselves."[141]

105. When we asked about the lack of feedback loop and sentencer confidence in non-custodial sentence, Phil Bowen, Director, Centre for Justice Innovation, stated that:

> "In our research, we have had youth court magistrates say that it is like being a surgeon who operates on a patient and does not get to see whether the patient lives or dies. That does not seem right. We saw some youth offending

138 Magistrates Association (YJU0011)
139 Q86 [Linda Logan]
140 Q193 [Laura Cooper]
141 Magistrates Association (YJU0011)

> teams doing a really good job trying to provide youth court magistrates with some sense of that, "Of the cases you have seen over the past three months, this is what has happened," but there isn't a feedback loop, and magistrate-led review hearings are a way of binding both the young person and the magistrates into the realities of community supervision."[142]

106. Others agreed that giving magistrates a reviewing role could be a welcome development. Dr Pamela Taylor, Chair, Forensic Faculty, Royal College of Psychiatrists, told the Committee that: "The reviewing role is very important, particularly if the courts can have some sort of relationship with the individual and engage them in the process. I think that is an extremely helpful step forward."[143]

107. Lucy Frazer QC MP, Minister of State for Justice, said she would take that suggestion away: "Any concepts that allow for maintained control of what is happening and reporting back is something that is worth reviewing and is very interesting".[144] [145]

108. **We agree that the introduction of a feedback loop between the Youth Court (magistrates and district judges) and Youth Offending Teams and the young person may help improve transparency and support rehabilitation. *The Ministry of Justice should review current sentencing options, with a view to introducing a feedback loop.***

Delays and the timing of court proceedings

109. Delays in the court system can have profound impacts on children and young people. The effect of delays is most evident on those who are turning 18 whilst waiting for trial. If a young person commits a crime at the age of 17, but does not make their first court appearance until they are 18, that young person will be dealt with as an adult throughout the court and sentencing process. Enver Solomon, Chief Executive Officer, Just for Kids Law, told the Committee that:

> "Delay impacts on those who turn 18 between the point of entering the criminal justice system and the point of prosecution. It means that they committed an offence as a child, yet they will be dealt with in court as an adult. That raises all kinds of issues about fairness, about being treated appropriately and about the disproportionate outcomes they will have to face as a consequence of turning 18, through no fault of their own, but simply as a result of delay in the system. There needs to be urgent attention focused on these matters."[146]

110. The Magistrates' Association also raise their concerns about system delays, noting that:

> "One area of concern that has been raised by our members relates to the impact of current delays in the criminal justice system on CYP specifically. Any delays have a disproportionate impact on CYP due to their age, and dealing with cases expeditiously is a key aim of youth justice. However there

142 Q193 [Phil Bowen]
143 Q164 [Dr Taylor]
144 Q281 [Lucy Frazer]
145 Q282 [Lucy Frazer]
146 Q168 [Enver Solomon]

> is a specific problem with delays between the time of the alleged offence and charging decisions where a CYP turns 18 during the delay, and consequently is dealt with in the adult jurisdiction by the time the case comes to court. This is very concerning, and we believe it should be a priority to resolve this issue."[147]

111. Just for Law Kids, in their report *'Timely Justice: Turning 18'*, set out the consequences of turning 18 before appearing at court; young people are likely to be dealt with as adults, meaning that access to the benefits of the youth justice system are lost, for example consequences include: "loss of anonymity, reduced likelihood of diversion, only being eligible for adult sentences, longer supervision periods (heightening the risk of breach), and much longer rehabilitation periods which reduce employment prospects and prevent people moving on with their lives"[148]

112. The Crown Prosecution Service (CPS), in its *Legal Guidance: Youth Offenders* states that "All cases involving youth offenders must be dealt with expeditiously and avoid delay, which has at its core the principle that there is little point in conducting a trial for a young offender long after the alleged commission of an offence when the offender will have difficulty in relating the sentence to the offence. To maximise the impact on the youth offender, the case must be dealt with as soon as possible."[149] However, while guidance states that delays must be avoided and cases dealt with expeditiously, recent statistics show that the average number of days taken from offence to completion for youth criminal cases in England and Wales has gone up, from 101 to 154 in the years ending March 2011 and 2019.[150] The number of defendants has however decreased over the same period, from 99,881 to 32,601. Although there are fewer young people coming through the system, cases are taking longer to complete.

113. The United Nations Committee on the Rights of the Child state that: "child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process."[151] However, a number of children will turn 18 whilst awaiting proceedings to commence, and thus face the prospect of being dealt with as an adult. Specifically, on the extent of the issue, Just for Law Kids note that: "The data available indicates that each year approximately 2%-3% of proven offences are committed by children who turn 18 prior to conviction. This corresponds to 2,500 offences for the twelve months ended March 2017 and 1,400 offences for the twelve months ended March 2018".[152]

114. Delays also have significant impact on other parties to court proceedings, Enver Solomon, Chief Executive Officer, Just for Kids Law told the Committee that: "We should not underestimate the impact that delay has on the lives of defendants, victims, families, and all those affected by crime, who get caught up in the criminal justice system."[153]

147 Magistrates Association (YJU0011)
148 Just for Kids Law, *Timely Justice: Turning 18,* (June 2020),p 1
149 Crown Prosecution Service, 'Youth Offenders', (28 April 2020)
150 Ministry of Justice and Youth Justice Board, Youth Justice Statistics: 2018 to 2019 additional annexes - Table E.1, (30 January 2020)
151 United Nations Committee on the Rights of the Child (2019) General Comment No. 24 on children's rights in the child justice system, para 31.
152 Just for Kids Law, *Timely Justice: Turning 18,* (June 2020),p 1
153 Q168 [Enver Solomon]

115. **Delays have a fundamental impact on all those involved in proceedings. The Ministry of Justice and HMCTS should set out what is being done to specifically address delays in the youth justice system and manage any existing backlogs. The Ministry should include details on what the current capacity is in the youth courts, and what plans exist to increase capacity.**

116. **Under the principle that punishments should fit crimes, we are concerned that children who turn 18 while waiting for proceedings against them to begin are then dealt with and sentenced as adults. In particular, this is alarming when it happens simply because of delays in bringing cases to court. Defendants may have no control over delays, but may face profoundly different outcomes simply because a birthday has passed. There is significant potential for injustice here, and we believe that proceedings and sentencing should be carried out on the basis of the circumstances prevailing at the time the offence was committed, including the age of the offender. *We recommend that the Ministry of Justice legislate to ensure that those who turn 18 while waiting for proceedings against them to begin are automatically dealt with in the youth justice system and sentenced as children.***

Youth Experience of Court

117. The youth court system differs from the adult system and is intended to provide a less formal experience. Concerns have been raised, though, that the system does not adequately meet the needs of children and is not fit for purpose. The Children's Commissioner is concerned that "the youth court system fails to deliver the best possible outcomes for children. Children are often not adequately supported to participate in the process and not enough is done to ensure that their needs are fully understood… our recent visits to youth courts have shown the system continues, at times, to be dysfunctional".[154] Phil Bowen, Director, Centre for Justice Innovation, though children "found the adversarial court process difficult to understand, and they did not always receive the interventions they needed".[155] Nadine Smith, Young Adviser on Criminal Justice told the Committee of her personal experience of going through the court system:

> "Speaking from personal experience, I went to the youth court when I was 15. It was a really weird situation because everyone was using big words and nothing much was broken down for anybody; everything was jargon-based. You feel very intimidated. I would not have been putting across the best reflection of myself because I would have been overwhelmed. Time needs to be taken with young people to understand, ideally before the court process, why the offences have happened and what the background was."[156]

118. Joshua Kilembeka, Young Adviser on Criminal Justice, told the Committee that: "Young people going through the youth courts need a young advocate, someone who can speak for them, because not a lot of young people understand the jargon. I understand that they have a solicitor, but they need someone who is trauma-informed and can guide them, like a peer navigator or peer worker who really understands them."[157]

154 Children's Commissioner (YJU0052)
155 Q170 [Phil Bowen]
156 Q209 [Nadine Smith]
157 Q210 [Joshua Kilembeka]

119. The Royal College of Speech and Language Therapists point out that: "evidence suggests that how a young person presents in court, their attitude and demeanour, influences sentencing decisions. Young people who are inarticulate or lack understanding are especially disadvantaged in court and at risk of inappropriate sentence."[158] The College further noted that defendants with communication difficulties are offered limited support to understand and participate in proceedings, although Section 104 of the Coroners and Justice Act 2009 expanded the Registered Intermediary Scheme to vulnerable defendants with communication difficulties.[159]

120. Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrist reiterated this point, telling the Committee that:

> "There is a high level of neurodevelopmental disorder and communication disorder among the young people coming in front of the youth courts. If they were witnesses or victims, they would be supported through the criminal justice process and court process by having a registered intermediary, to aid with communication between the court and the young person, and vice versa. As a defendant, you do not have that right, but vulnerability is vulnerability, and it is in everybody's interests to get the best-quality evidence possible. There needs to be a change so that a vulnerable defendant is treated like a vulnerable witness and has a right to a registered intermediary to support the process."[160]

An intermediary is a communication specialist who facilitates two-way communication between a vulnerable person and the other participants in the legal process.[161]

121. Laura Cooper, Just for Kids Law, told the Committee that:

> "… Although youth courts are designed specifically for children, we feel that still not enough is being done to make sure that they are active participants in what is happening to them. There is the sense that it is good enough, but it is not good or great.
>
> A quick example can be demonstrated in a recent Court of Appeal case that Just for Kids Law took around the use of intermediaries. A judge refused the use of an intermediary for a child with communication difficulties, on the basis that it was a lawyers-only case. We were concerned about that, as it seems to infer an acceptance that the child does not have to fully understand everything that is happening to him or her in the trial. That is really concerning."[162]

158 Royal College of Speech and Language Therapists (YJU0039)
159 Royal College of Speech and Language Therapists (YJU0039)
160 Q152 [Dr Lewis]
161 Youth Justice Legal Centre, *Intermediary: Use of intermediaries for child defendants*, (September 2016) p 1
162 Q172 [Laura Cooper]

122. Allocation of a Registered Intermediary for a vulnerable defendant is at the discretion of the Judge.[163] Both the Royal College of Speech and Language Therapists and the Royal College of Psychiatrists recommend that every child and young person should have the right to access a Registered Intermediary, whether witness, victim or defendant.[164]

123. Speech, Language and Communication needs are prevalent among sentenced children. In their experimental statistics bulletin, *Assessing the needs of sentenced children in the Youth Justice System*, the YJB and MoJ found that the proportion of the total children assessed who had a Speech, Language and Communication concerns was 71%.[165]

124. **Children and young people going through the court system have very distinct needs, many having neurodevelopmental and communication needs. They may not fully understand proceedings. Every opportunity must be made to ensure that children are not unfairly disadvantaged; everyone should be able to understand and fully participate in proceedings.**

125. ***We agree with the Royal Colleges' recommendation that the Registered Intermediary Scheme be made available to vulnerable child defendants. We recommend that the Ministry of Justice set out how it will extend this scheme to ensure that children have access to adequate support. The Ministry should also set out how all children, regardless of specific needs, are supported through the criminal justice process to ensure that they fully understand the process and are able to participate in an informed and full manner.***

Magistrate Recruitment

126. Issues have been raised about magistrate expertise in the youth courts. All magistrates who wish to serve in the youth court must first serve in the adult court; once they have gained experience, they can decide to undertake more training to sit in the youth court.[166] There is no direct route to becoming a youth magistrate.

127. We asked witnesses whether more specialised child experts should be involved in the youth court system—for example, via direct recruitment to the youth magistracy. Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists agreed that direct recruitment to the youth magistracy would be "helpful, if accompanied by appropriate training".[167] Helen Berresford, Director of External Engagement, Nacro stated that: "Courts are an alien environment for many people, particularly for children, and the skills and expertise needed for everyone involved in a court case with a child are pretty specific. It is important to get training and have specific skills around that."[168]

163 The Advocate's Gateway, 'Intermediaries', accessed 09 September 2020

164 See: Royal College of Speech and Language Therapists (YJU0039) and The Royal College of Psychiatrists (YJU0029)

165 Youth Justice Board and Ministry of Justice, *Assessing the needs of sentenced children in the Youth Justice System 2018/19,* (28 May 2020)

166 Magistrates Association, 'Becoming a Magistrate', accessed 09 September 2020

167 Q153 [Dr Lewis]

168 Q154 [Helen Berresford]

128. We asked the Young Advisers on Criminal Justice whether magistrates were the right people to hear youth cases. Joshua Kilembeka said:

> "I feel that because magistrates also deal with young adults the terminology is not fit for people with special educational needs, people who are disadvantaged, people with disabilities or people who are dyslexic. It is not really fair. For it to be fair, there should be people who understand young people, so having a peer support worker there would help the young person feel more confident to speak for themselves.[169]

129. Nadine Smith, Young Adviser on Criminal Justice, told the Committee that:

> "I do not think they are the right people to hear youth cases, because the majority of them are of a certain age. I feel like times have changed very much … If magistrates have to be there, a youth advocate instead of a youth offending officer would be perfect to break down everything for them and have that conversation."[170]

130. **The youth criminal justice system can be complex to navigate for children and young people, particularly as children reach court proceedings.** ***We recommend that direct recruitment to the youth magistracy be introduced, which would allow magistrates to specialise in the youth justice system from the outset. We also recommend that the Ministry of Justice and Her Majesty's Courts and Tribunal Service consider enabling peer advocates to have an increased role in youth court system.***

Covid-19 and the courts

131. We reported recently on *Coronavirus (Covid-19): The impact on the courts,*[171] but many of the issues raised there and, in this chapter, have been exacerbated by the Covid-19 pandemic, particularly in relation to court delays, remand and the court experience.

132. Enver Solomon, Chief Executive Officer, Just for Kids Law, told us: "Our team of lawyers has cases that are being adjourned to dates late in 2021. Imagine if you have to wait that length of time, those months, for your case to come to court. It is not good enough."[172] Linda Logan, Chair of the Youth Court Committee, Magistrates Association said: "there are a lot of youths who have not come to court. One of the things concerning us most is the cohort of young people who will turn 18 and may not get a change to have youth court disposal because many things in the youth court have just been remanded off and off."[173]

133. Justin Russell, Chief Inspector of Probation, states: "I have been talking to YOT managers who say that during Covid they have been able to make good arguments to avoid the use of remand, but they are worried about children who were on remand [in custody] before lockdown started, who are now very severely delayed in waiting for trial dates or sentencing."[174] Mr Russell further notes concern about how long remanded cases wait to

169 Q211 [Joshua Kilembeka]
170 Q212 [Nadine Smith]
171 Justice Committee, Sixth Report of Session 2019–21, *Coronavirus (COVID-19): The impact on courts,* HC 519
172 Q168 [Enver Solomon]
173 Q61 [Linda Logan]
174 Q147 [Justin Russell]

be heard.[175] Linda Logan, Chair of the Youth Court Committee, Magistrates Association, raised concerns about the impact of Covid-19 on those waiting to be sentenced: "There is also a cohort of young people who are in the system waiting to be sentenced. They have either pleaded or been found guilty at some point, and they have not received their sentence as yet. To add to that, as the lockdown has released a little, we are noticing that offending rates are starting to go up already, and we have not cleared the existing backlog."[176] Phil Bowen, Director, Centre for Justice Innovation states:

> "We found lots of YOT professionals and youth court magistrates dedicated to doing the best they could in difficult circumstances, but very often they were operating in a difficult operational environment, especially given court closures and the moves towards merging of benches and reductions in funding. Our assumption is that that is only likely to have got worse. As the Committee probably knows, we do not know yet what the backlog is specifically for young people under the age of 18, because the Courts Service does not produce data on backlogs specific to youth courts."[177]

134. In *Coronavirus (Covid-19): The impact on courts*, we recommended that the "Ministry and HMCTS confirm whether this data is collected and if not, why not. If this data is collected, the Ministry and HMCTS should publish this data separately from data relating to the adult court system."[178] **We reiterate the importance of data collection here; backlogs have a knock-on effect on the system, and it is imperative that we understand what the current situation looks like if we are to address it going forward.**

135. In response to Covid-19, there has been an increased transition to digital court proceedings, via video link for example. Concerns have been raised about the effect remote hearings may have on the court process for children. Justin Russell, Chief Inspector of Probation, notes: "Some of the YOTs I spoke to earlier on in the lockdown felt that they were being squeezed out of the process by not having access to the video links, or by not being allowed into some of the video conferences they were running. I think they prefer to be there in person to do face-to-face assessments in court."[179]

136. Dr Pamela Taylor, Chair, Forensic Faculty, Royal College of Psychiatrists, told us that "diagnostically, there are some things we cannot do by video link; there are subtleties we cannot pick up, but we could use video interviewing as a supplement perhaps, and we could extend the amount of work that we do with young people. Once we are no longer driven by circumstances, now that we have improved technology, we should have a radical review as to how we could use it to help in this situation, but not replace the clinical interview."[180] Phil Bowen, Director, Centre for Justice Innovation also raised concern about remote hearings, noting:

> "We have real concern about how young victims, witnesses and defendants experience remote hearings. Unlike for family and civil cases, there has been no review of the evidence around the use of remote hearings during Covid-19 for the criminal courts. Our worry is that remote hearings could

175 Q150 [Justin Russell]
176 Q62 [Linda Logan]
177 Q170 [Phil Bowen]
178 Justice Committee, Sixth Report of Session 2019–21, *Coronavirus (COVID-19): The impact on courts,* HC 519
179 Q161 [Justin Russell]
180 Q161 [Dr Taylor]

> become standard before we know for whom they work and for whom they do not work in our criminal courts. In my view, just as with the right to jury trial, we cannot let the necessary steps that we have had to take during the Covid-19 pandemic determine what the future of our justice system looks like."[181]

137. In our report *Coronavirus (COVID-19): The impact on courts*, we raised our concerns that "as yet there has been no judicially or government commissioned, review of the increased use of remote hearings in criminal cases in either the magistrates' courts of the Crown Court during the pandemic".[182] We recommended that "the Ministry of Justice commission and urgent review that evaluates the effect Covid-19 measures in the magistrates' courts and the Crown Court".[183]

138. **The Covid-19 pandemic has affected every area of the criminal justice system, including youth justice. The Committee appreciate that Covid-19 has presented the youth courts with numerous challenges. Delays affect all participants in court proceedings; defendants awaiting trial will spend longer in custody on remand or on bail in the community, and victims will wait longer for justice. *We invite the Ministry of Justice to set out the number of outstanding cases in the youth courts and what steps are being taken to ensure that cases are dealt with expeditiously.***

139. **Covid-19 has necessitated a shift to remote hearings, but we have heard concerns from witnesses about their use. We accept that this is a necessary interim measure in response to the pandemic, but *the Ministry of Justice should set out what work is being done to ensure that all parties to a proceeding are adequately supported during remote hearings. We reiterate our previous recommendation, that the Ministry should urgently commission a review that evaluates the effect of Covid-19 measures in the magistrates' courts and the Crown Court. This review should also consider the specific effect Covid-19 measures have had on access to justice and fairness of outcomes for children and young people.***

181 Q170 [Phil Bowen]

182 Justice Committee, Sixth Report of Session 2019–21, Coronavirus (COVID-19): The impact on courts, HC 519, para 62

183 Justice Committee, Sixth Report of Session 2019–21, Coronavirus (COVID-19): The impact on courts, HC 519, para 65

Conclusions and recommendations

The Youth Justice Population

1. Although fewer children enter the youth justice system than used to be the case, those who do are more complex individuals. The cohort includes children who have mental health or substance misuse issues. Some have previously been excluded from school; many are, or have been, looked-after children. *The complexity of the issues that these children have faced, as shown in the graph above, highlights the need for a whole-system approach involving a range of public agencies beyond those of the criminal justice system, and we recommend that much greater priority be given to this in the development of future policy and practice.* (Paragraph 24)

Diversion from formal criminal justice processing

2. We recognise the important role that out-of-court disposals, both formal and informal, play in diverting children from formal criminal justice processes and consider them an integral part of the youth justice system. We note that data collection on the effectiveness of such schemes is patchy at best, particularly for informal, non-statutory diversion schemes, which make up around 40% of all out-of-court disposals. Although data is collected on formal out-of-court disposals, we have an incomplete picture of how many children are diverted from entering the criminal justice system. (Paragraph 36)

3. *We recommend that the Ministry of Justice and Youth Justice Board work together to start collecting data centrally on non-statutory, informal diversion schemes, including (but not limited to) data on how many complete a diversion scheme, the impact on reoffending, health outcomes and education outcomes.* (Paragraph 37)

4. *We agree with the Chief Inspector of Probation's recommendation that a national evaluation of the impact and effectiveness of out-of-court disposals be carried out. We recommend that the Ministry of Justice commission such an evaluation, which should consider the impact and effectiveness of formal and informal out-of-court disposals.* (Paragraph 38)

5. We note that there are inconsistencies in the provision and practice of diversion schemes across England and Wales. *We recommend that the Ministry of Justice and Youth Justice Board work together to set out national guidance on out-of-court disposal work. As suggested by the Centre for Justice Innovation, this guidance should include an evidence base for out-of-court disposals, examples of good practice and a framework for data recording.* (Paragraph 42)

6. There is significant support for diversion and demand for informal, non-statutory services. For diversion schemes to function well, they need to be sufficiently funded. Investment in upstream service provision should be prioritised. *We recommend that the Ministry of Justice work with the Youth Justice Board to review current funding arrangements and ensure that funding adequately reflects the pre-court diversionary work being carried out by youth offending teams.* (Paragraph 46)

7. We agree with the Ministry of Justice's priority of diverting children away from the criminal justice system and support early intervention work such as Liaison and Diversion schemes. *We are aware that Youth Liaison and Diversion schemes may not be included in the current evaluation taking place of adult liaison and diversion schemes and recommend that the Ministry of Justice commission an evaluation into the effectiveness of Youth Liaison and Diversion schemes. This evaluation should include the number of children who have been diverted away from the criminal justice system as a result of such schemes.* (Paragraph 53)

8. We are aware that children coming into contact with the criminal justice system may not meet the criteria for generic child and adolescent mental health services, despite presenting with multiple needs. *We recommend that the Ministry of Justice increase access to mental health support for all children and young people who need it. The Ministry should set out how this will be achieved and resourced.* (Paragraph 54)

Minimum age of criminal responsibility

9. The age of criminal responsibility in England and Wales is a contentious issue with substantial arguments in favour both of the status quo age of 10 and an increase in that age. We are not persuaded that it should be immediately increased, but given the arguments in favour of raising it and the fact that the age in England and Wales is lower than in broadly comparable countries, we consider there is a case for reviewing the age of criminal responsibility. (Paragraph 64)

10. *We recommend that the Ministry review the age of criminal responsibility, considering the data available from Scotland and from broadly comparable European and other jurisdictions in which the age is higher than 10 at which it stands in England and Wales. We recommend that the Ministry report on the implications of raising the age in England and Wales to 12 and to 14, including the likely effect on reducing the number of children in custody and alternative methods of disposing of children beneath those ages who have committed serious offences. We recommend that if it concludes that 10 should remain the age of criminal responsibility, the Ministry set out the evidence and reasoning to justify an approach the Minister of State recognises as one that differs from the average.* (Paragraph 65)

Racial Disproportionality

11. We are aware of the work the Ministry of Justice and Youth Custody Service have done since publication of the Lammy Review to address disproportionality. The youth justice population has changed considerably in the past 10 years, but children from BAME backgrounds continue to be disproportionately represented, with outcomes getting worse in some areas. We are particularly concerned about the disproportionate number of children held in custody who are from BAME backgrounds - 51.9% of the whole cohort as of May 2020. *Race disproportionality is significant and fundamental, visible in every part of the youth justice system. We recommend that the Ministry of Justice set out what resource has been allocated to addressing disproportionality. We are not convinced that disproportionality has satisfactorily been "explained or reformed". The Ministry should also provide the Committee with detailed research setting out why these communities are so*

disproportionately represented in each part of the system, including the cause of their disproportionate imprisonment. The Ministry should set out what action is being taken and resources allocated. (Paragraph 74)

12. It is not clear whether diversion schemes disproportionately benefit White children compared with their BAME counterparts, nonetheless, the figures on first-time entrants to the system are concerning. Without centrally collected data on diversion rates, we cannot gain an accurate picture on who is being diverted and who is not, and it is therefore difficult to understand whether diversion schemes are being disproportionately used. *In adopting our previous recommendation that the Ministry of Justice and Youth Justice Board work together to collect data on informal diversion schemes, the two bodies should include demographic information in that data*. (Paragraph 78)

13. BAME children are disproportionately remanded to custody and some of the children remanded to custody, will not then go on to receive a custodial sentence. *The Youth Justice Board should update the Committee on the findings of their commissioned research. We agree with Transform Justice, that the disproportionate use of remand has not satisfactorily been explained, and we recommend that the Ministry of Justice provide an explanation of why the levels of BAME children being remanded to custody are disproportionately high. This explanation should include comparative data on the numbers of BAME children and other pleading guilty and differences in the types of offences of which BAME children and others are accused, in particular where they are likely to result in remand in custody. The Ministry should also set out the steps it is taking to prevent unconscious bias in decision-making.* (Paragraph 83)

Youth Courts and Sentencing

14. We note that the number of children on remand is high and that two thirds of children given a remand to youth detention accommodation did not subsequently receive a custodial sentence. Multiple factors appear to contribute to these numbers: an increase in serious violence; lack of credible community alternatives; and limited amount of time available to put together an alternative bail package may all be contributing factors. *We welcome the MOJ's current review of youth remand, but request more detail on what that review is covering. The Ministry should also set out the timeframe in which they intend to complete the review and publish its results and any action plan*. (Paragraph 98)

15. We were concerned to hear reports of children being remanded to custody pending psychiatric reports. Evidence received suggested that this is unnecessary and potentially damaging for a child. *We ask the Ministry of Justice to set out how many children have been sent to custody pending a psychiatric report. We recommend that the Ministry set out what steps it is taking to prevent this from happening.* (Paragraph 99)

16. Referral Orders may be appropriate in some circumstances, but there appears to be consensus that more flexible sentencing options would be beneficial. *We recommend that the Ministry of Justice review current sentencing options for children with a view to introducing a Youth Rehabilitation Order as a sentencing option for first-time offenders pleading guilty.* (Paragraph 103)

17. We agree that the introduction of a feedback loop between the Youth Court (magistrates and district judges) and Youth Offending Teams and the young person may help improve transparency and support rehabilitation. *The Ministry of Justice should review current sentencing options, with a view to introducing a feedback loop.* (Paragraph 108)

18. Delays have a fundamental impact on all those involved in proceedings. The Ministry of Justice and HMCTS should set out what is being done to specifically address delays in the youth justice system and manage any existing backlogs. The Ministry should include details on what the current capacity is in the youth courts, and what plans exist to increase capacity. (Paragraph 115)

19. Under the principle that punishments should fit crimes, we are concerned that children who turn 18 while waiting for proceedings against them to begin are then dealt with and sentenced as adults. In particular, this is alarming when it happens simply because of delays in bringing cases to court. Defendants may have no control over delays, but may face profoundly different outcomes simply because a birthday has passed. There is significant potential for injustice here, and we believe that proceedings and sentencing should be carried out on the basis of the circumstances prevailing at the time the offence was committed, including the age of the offender. *We recommend that the Ministry of Justice legislate to ensure that those who turn 18 while waiting for proceedings against them to begin are automatically dealt with in the youth justice system and sentenced as children.* (Paragraph 116)

20. Children and young people going through the court system have very distinct needs, many having neurodevelopmental and communication needs. They may not fully understand proceedings. Every opportunity must be made to ensure that children are not unfairly disadvantaged; everyone should be able to understand and fully participate in proceedings. (Paragraph 124)

21. *We agree with the Royal Colleges' recommendation that the Registered Intermediary Scheme be made available to vulnerable child defendants. We recommend that the Ministry of Justice set out how it will extend this scheme to ensure that children have access to adequate support. The Ministry should also set out how all children, regardless of specific needs, are supported through the criminal justice process to ensure that they fully understand the process and are able to participate in an informed and full manner.* (Paragraph 125)

22. The youth criminal justice system can be complex to navigate for children and young people, particularly as children reach court proceedings. *We recommend that direct recruitment to the youth magistracy be introduced, which would allow magistrates to specialise in the youth justice system from the outset. We also recommend that the Ministry of Justice and Her Majesty's Courts and Tribunal Service consider enabling peer advocates to have an increased role in youth court system.* (Paragraph 130)

23. We reiterate the importance of data collection here; backlogs have a knock-on effect on the system, and it is imperative that we understand what the current situation looks like if we are to address it going forward. (Paragraph 134)

24. The Covid-19 pandemic has affected every area of the criminal justice system, including youth justice. The Committee appreciate that Covid-19 has presented

the youth courts with numerous challenges. Delays affect all participants in court proceedings; defendants awaiting trial will spend longer in custody on remand or on bail in the community, and victims will wait longer for justice. *We invite the Ministry of Justice to set out the number of outstanding cases in the youth courts and what steps are being taken to ensure that cases are dealt with expeditiously.* (Paragraph 138)

25. Covid-19 has necessitated a shift to remote hearings, but we have heard concerns from witnesses about their use. We accept that this is a necessary interim measure in response to the pandemic, but *the Ministry of Justice should set out what work is being done to ensure that all parties to a proceeding are adequately supported during remote hearings. We reiterate our previous recommendation, that the Ministry should urgently commission a review that evaluates the effect of Covid-19 measures in the magistrates' courts and the Crown Court. This review should also consider the specific effect Covid-19 measures have had on access to justice and fairness of outcomes for children and young people.* (Paragraph 139)

Formal minutes

Tuesday 3 November 2020

Members present:

Sir Robert Neill in the Chair

Paula Barker	Maria Eagle
Richard Burgon	Kenny MacAskill
Rob Butler	Dr Kieran Mullin
James Daly	Andy Slaughter

Draft Report (*Children and Young People in Custody (Part 1): Entry into the youth justice system*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.
Paragraphs 1 to 139 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 10 November at 1.45 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 02 June 2020

Peter Clarke, Chief Inspector, HM Inspectorate of Prisons; **Angus Mulready-Jones**, Lead for children and young adults, HM Inspectorate of Prisons; **Keith Fraser**, Chair, Youth Justice Board; **Colin Allars**, Chief Executive Officer, Youth Justice Board	Q1–23

Tuesday 16 June 2020

Peter Clarke, Chief Inspector, HM Inspectorate of Prisons; **Angus Mulready-Jones**, Lead for children and young people, HM Inspectorate of Prisons; **Keith Fraser**, Chair, Youth Justice Board; **Colin Allars**, Chief Executive Officer, Youth Justice Board	Q24–58
Andy Peaden, Chair, Association of Youth Offending Team Managers; **Linda Logan**, Chair of the Youth Court Committee, Magistrates Association; **Pippa Goodfellow**, Director, Standing Committee for Youth Justice; **Hazel Williamson**, Vice-Chair, Association of Youth Offending Team Managers	Q59– 103

Tuesday 30 June 2020

Justin Russell, Chief Inspector, HM Inspectorate of Probation; **Helen Beresford**, Director of External Engagement, NACRO; **Dr Alexandra Lewis**, Royal College of Psychiatrists; **Dr Pamela Taylor**, Royal College of Psychiatrists	Q104–166
Phil Bowen, Director, Centre for Justice Innovation; **Shadae Cazeau**, Head of Policy, EQUAL; **Laurie Hunte**, Criminal Justice Programme Manager, Barrow Cadbury Trust; **Jessica Mullen**, Director of Influence and Communication, Clinks; **Enver Soloman**, Chief Executive Officer, Just for Kids Law; **Laura Cooper**, Just for Kids Law	Q167–198

Tuesday 14 July 2020

Anne Longfield OBE, Children's Commissioner for England, Office of the Children's Commissioner for England; **Rose Dowling**, Chief Executive, Leaders Unlocked; **Josh Kilembeka**, Young Adviser on Criminal Justice; **Nadine Smith**, Young Adviser on Criminal Justice; **Jhanzab Khan**, Young Adviser on Criminal Justice	Q199–241
Lucy Frazer, Minister of State, Ministry of Justice; Helga Swidenbank, Executive Director, Youth Custody Service; **Caroline Twitchett**, Children Qualities Lead, Health and Justice, NHS England; **Phil Douglas**, Director of Youth Justice and Offender Policy, Ministry of Justice	Q242–322

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

First Report	Appointment of Chair of the Office for Legal Complaints	HC 224
Second Report	Sentencing Council consultation on changes to magistrates' court sentencing guidelines	HC 460
Third Report	Coronavirus (COVID-19): The impact on probation services	HC 461
Fourth Report	Coronavirus (COVID-19): The impact on prisons	HC 299
Fifth Report	Ageing prison population	HC 304
Sixth Report	Coronavirus (COVID-19): The impact on courts	HC 519
Seventh Report	Coronavirus (COVID-19): the impact on the legal professions in England and Wales	HC 520
Eighth Report	Appointment of HM Chief Inspector of Prisons	HC 750
Ninth Report	Private prosecutions: safeguards	HC 497
Tenth Report	Sentencing Council consultation on sentencing guidelines for firearms offences	HC 827
Eleventh Report	Sentencing Council consultation on the assault offences guideline	HC 921
First Special Report	Prison Governance: Government Response to the Committee's First Report of Session 2019	HC 150
Second Special Report	Court and Tribunal Reforms: Government Response to the Committee's Second Report of Session 2019	HC 151
Third Special Report	Transforming Rehabilitation: Follow-up: Government Response to the Committee's Nineteenth Report of Session 2017–19	HC 152
Fourth Special Report	Coronavirus (COVID-19): The impact on probation systems: Government Response to the Committee's Third Report of Session 2019–21	HC 826
Fifth Special Report	Coronavirus (Covid 19): The impact on the legal professions in England and Wales: Government Response to the Committee's Seventh Report	HC 898