



Commission on Young Lives

Call for Evidence

Response

November 2021

For further information contact

Tyrone Steele, Criminal Justice Lawyer
email: tsteele@justice.org.uk

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7329 5100
fax: 020 7329 5055 email: admin@justice.org.uk website: www.justice.org.uk

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible, and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. JUSTICE has prepared this response to the Commission on Young Live's 'Call for Evidence', based on the evidence and recommendations of a number of our Working Parties.¹ While we set out here a number of their key points, we would encourage the Commission to consider each report in detail.

Question 1 – What leads to vulnerability and crisis and why aren't services as effective as young people and families need them to be:

Criminalisation of children and young people

3. JUSTICE considers that, at present, the Youth Justice System ("YJS") too often prioritises punitive responses, which often increase the risk of reoffending, instead of prioritising the welfare of the child and utilising diversion or deferred-prosecution schemes.² For example, we understand that there is an expectation that police officers must charge if they find drugs on an individual who has three previous cautions.³ However, reducing the number of children charged for cannabis possession, and instead identifying and ensuring their welfare needs, would have a significant, positive impact on children and reduce racial disparity in the youth justice system.
4. Further, the justice system too readily treats Black, Asian, and Minority Ethnic ("BAME") children as inherently prone to criminality.⁴ This inevitably results in an alienating and traumatic experience for children and the communities that they live in. 52% of children in custody are BAME, despite BAME children making up only 18% of the child

¹ For example, see the following JUSTICE reports, 'Legal assistance in the police station', (2018); 'Understanding Courts', (2019); 'Challenging School Exclusions', (2019); 'When Things Go Wrong', (2020); and 'Tackling Racial Injustice: Children and the Youth Justice System', (2021).

² Diversion is a process where those who are arrested are not dealt with through traditional criminal justice mechanisms. Rather, they are 'diverted' to less formal programmes that seek to address the root causes of the behaviour that led to arrest. In this way, the chance of the child reoffending, is reduced - see JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), p.27.

³ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), pp. 25-27.

⁴ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), pp. 14-49.

population.⁵ Years of continued discrimination has meant that BAME children are erroneously associated with serious violence and so-called ‘gang’ culture. Within this context, the criminal justice system has failed to meet the expectations of their communities that they, and their children, will be treated fairly and justly at each stage.

5. JUSTICE therefore recommends building a child-first culture in the criminal justice system, so that all agencies take responsibility for understanding every child’s background and experiences, in line with the core principles we have identified.⁶ This may mean seeking the opinion of the children affected, designing child-friendly procedures or challenging misperceptions that result in children being inappropriately considered more mature than they are.⁷ Moreover, JUSTICE recommends creating a national framework for diversion (see further below).⁸

Education, exclusions and special needs

6. Exclusion from school can be a life changing event for a pupil with profoundly negative consequences for their futures. Pupils who have been excluded are unlikely to reach the same levels of academic achievement as their peers, making it more difficult for them to progress to further study and work,⁹ especially given that the quality of the education which excluded pupils receive in alternative provision is often far below that received in mainstream education.¹⁰ Being excluded also negatively impacts on children’s mental health¹¹ and can increase children’s vulnerability to criminal exploitation, with some pupil referral units offering fertile recruitment ground for gangs.¹²
7. Not all pupils are at equal risk of exclusion – pupils with special educational needs and disabilities (SEND), those of Gypsy, Roma and Irish Traveller heritage, Black Caribbean pupils and pupils eligible for free school meals are all at higher risk of exclusion.¹³

⁵ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.9.

⁶ For more information, see JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), pp. 100-106.

⁷ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.52.

⁸ See para 12-13 below.

⁹ Gill, Quilter-Pinner and Swift, ‘Making the Difference: Breaking the Link between School Exclusion and Social Exclusion’ Institute for Public Policy Research (2017) p. 21.

¹⁰ Timpson, ‘Timpson Review of School Exclusion’ (2019), p.8.

¹¹ Ford et al., ‘The Relationship between Exclusion from School and Mental Health: A Secondary Analysis of the British Child and Adolescent Mental Health Surveys 2004 and 2007’ *Psychological Medicine* (25 August 2017).

¹² See e.g. ‘School Exclusions “Fuelling Gang Violence”’ *BBC News* (30 October 2018); House of Commons Home Affairs Committee, ‘Serious Youth Violence: Sixteenth Report of Session 2017-19’ (2019) paras 163–171; Timpson (see n. 10 above) p. 8.

¹³ Department for Education, ‘Permanent and fixed-period exclusions in England: 2018 to 2019’ (exclusion statistics are available for 2019/20 however, these figures are distorted due to the Covid-19 pandemic).

Children with several of these characteristics are at an even greater risk.¹⁴ A review of exclusions commissioned by the Government concluded that exclusion does not only depend on pupils' behaviour but on factors such as the quality of leadership and culture within schools; how well-equipped schools are to manage disruptive behaviour; and the incentives created by the current performance-monitoring and funding system.¹⁵

8. A JUSTICE report which examined the procedures used to make, confirm and review a decision to exclude concluded that there are serious weakness in these processes, resulting in unnecessary and unlawful exclusions taking place. The Working Party found that school governors / trustees are do not have the necessary knowledge, skills or independence to properly consider head teachers' exclusions decisions. JUSTICE recommends that the first stage of the review process should be conducted by an Independent Reviewer instead. We also recommend that all exclusion appeals should be heard by the First-tier Tribunal (Special Educational Needs and Disability), instead of Independent Review Panels. The tribunal already has exclusions expertise, should be able to remake the decision afresh, direct mandatory reinstatement, and order other remedies such as wiping a child's record of the exclusion. This would create a procedurally fair, robust and accessible review process which would help ensure that no child is unlawfully or unfairly excluded.

Question 6 – Who should be protecting vulnerable young people from exploitation and violence? What do young people at risk need and how can this be delivered at scale?

How effective is partnership working and information-sharing to safeguarding young people at risk of gang-related harm?

9. JUSTICE recognises the value in criminal justice agencies cooperating with one another, especially in addressing complex issues such as crime. However, this must be done in a proportionate and evidence-based manner. In our report 'Tackling Racial Injustice', we examined the Gangs Violence Matrix ("GVM"), and found that it remains deeply problematic even after the recent removal of a number of "gang nominals".¹⁶ For example,

¹⁴ Timpson, 'Timpson Review of School Exclusion' (2019), p. 8.

¹⁵ *ibid*, p. 11.

¹⁶ The "nominals" are ranked as red, amber, or green, with "most likely to commit a violent offence" as "red" and with those classified as "green" deemed to pose the least risk. The GVM has been the subject of reports from the Information Commissioner's Office and the Mayor's Office for Policing and Crime in London, both of which have highlighted biases within the GVM. As a result of these reports, a large number of low-risk individuals have been removed from the GVM. However, large disparities remain. See 'Mayor's intervention results in overhaul of Met's Gangs Matrix', Mayor of London, 16 February 2020; and V. Dodd, 'A thousand young, black men removed from Met gang violence prediction database', The Guardian, 3 February 2021.

the representation of young black males on the GVM is disproportionate to their likelihood of criminality¹⁷ and it unfairly labels children as potentially violent by failing to distinguish between victims of crime and offenders.¹⁸ Further, the Metropolitan Police Service is known to share the names of individuals with other public bodies such as job centres, social services, and schools. This can lead to many of those named on the GVM, as well as their families, being denied housing, excluded from school (pursuant to ‘zero tolerance’ behaviour policies) and refused job opportunities.¹⁹ JUSTICE recommends that the GVM should be abolished.²⁰ Until this is achieved, the GVM should instead be used as a multi-agency safeguarding response, including social care and education, as opposed to a criminal response, which could help to protect children from becoming more vulnerable to exploitation and offending.²¹

10. Against this already concerning background, the Police Crime Sentencing and Courts Bill (the “Bill”) places a new statutory duty on public authorities to collaborate with each other to prevent and tackle serious violence.²² The proposed Serious Violence Duty, which purports to be a public health duty, would risk further criminalising young people, rather than addressing root causes of violence, by being police-led and enforcement driven.²³ For example, local policing bodies will be given the authority to monitor specified authorities’ (including education and healthcare providers) compliance with the duty.²⁴ The Bill contains provisions which mandate data-sharing between different agencies with minimal safeguards, and which have the potential to breach individuals’ data rights and their right to a private life.²⁵ Further, the Bill provides that disclosures will not breach professional duties of confidentiality and other restrictions on disclosure of information. This will erode relationships of trust between frontline professionals and the individuals they work with and hinder the provision of vital services such as health, social care and education.

¹⁷ The GVM’s demographic breakdown shows approximately 90.1% being non-White, of which Black individuals make up the majority. See JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.35.

¹⁸ The GVM seeks to identify those at risk of victimisation and can include individuals who have simply been victims of serious violence themselves, with no prior convictions. See JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.35.

¹⁹ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.36.

²⁰ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.101.

²¹ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.34.

²² See: ‘Serious Violence Duty’, Part 2 of the Police, Crime, Sentencing and Courts Bill.

²³ JUSTICE, ‘Joint Briefing For House Of Lords Ahead Of Committee Stage Of The Police, Crime, Sentencing and Courts Bill’, October 2021, p.2.

²⁴ *Ibid.*

²⁵ JUSTICE, ‘Joint Briefing For House Of Lords Ahead Of Committee Stage Of The Police, Crime, Sentencing and Courts Bill’, October 2021.

Question 7 – How can the criminal justice system work more effectively to improve outcomes for vulnerable young people?

What would help Youth Offending Teams improve outcomes for young people?

11. JUSTICE considers that restorative practices, which looks at the root causes of problematic behaviour, should be used to better understand and engage with children in the YJS. This focuses on preventing social ills, by improving human behaviour, restoring relationships, and repairing harm.²⁶ For example, the Restorative Engagement Forum, which convenes circles between police officers and children and young adults from Northamptonshire and Gloucestershire, facilitates participants' self-expression, ensuring due focus on the impact of actions rather than on the blameworthiness of individuals. This gives children the opportunity to explain to police officers what their experience of policing feels like, thereby fostering opportunities for the development of trust and mutual understanding.²⁷ JUSTICE recommends that criminal justice agencies should pilot and evaluate the use of such restorative practice circles.²⁸ These should be tailored to local needs and implemented by relevant Youth Offending Teams and include police, CPS, defence lawyers, magistrates, and the judiciary.²⁹ Should evaluation show positive results, restorative practice circles should be embedded within the YJS as part of regular engagement efforts by these agencies.

How could the court process protect and support young people better?

12. Legal processes are often confusing and distressing for those involved.³⁰ Our 'Understanding Courts' report found that there was persistent dissatisfaction and confusion among lay court-users, leading to them feeling excluded from the court process.³¹ Further, more than one third of court users thought that the information they received was not good enough and that there was a need for increasing visibility of the process.³² To remedy this,

²⁶ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), p.54.

²⁷ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), pp. 54-55.

²⁸ This should be a circle where everyone can safely and openly discuss their experiences within the YJS, including harmful experiences, without feeling challenged.

²⁹ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), p.57.

³⁰ Ipsos MORI, conducting interviews with 508 legal professionals, found that "88% of legal professionals agreed that 'The court process is intimidating to the general public'", see Hodge Jones & Allen, 'Innovation in Law Report 2014', p.16. This tallies with the findings of a recent report, based on interviews with professional and lay court users, that the Crown Court experience has "many distressing, stressful and perplexing aspects" for court users, which "extend far beyond...readily definable vulnerabilities", see J Jacobson, G Hunter & A Kirby on behalf of the Criminal Justice Alliance, 'Structured Mayhem: Personal Experiences of the Crown Court' (2015), pp.3 and 5, which draws upon research from J. Jacobson, G. Hunter and A. Kirby, *Inside Crown Court: Personal experiences and questions of legitimacy* (Policy Press, 2015).

³¹ JUSTICE, 'Understanding Courts', (2019), p.7.

³² JUSTICE, 'Understanding Courts', (2019), p.17.

JUSTICE recommends placing lay users, especially children and young people, at the heart of legal process, so that every effort is taken to enable them – according to their role – to understand and effectively take part in the legal process. This could be achieved through court familiarisation visits, the provision of information on the court process in child appropriate formats, and the adaptation of language for children appearing in court.³³

13. Outside of the criminal justice system, JUSTICE has an ongoing Working Party which is looking at access to justice for separating families in the private family courts. It has a particular focus on child participation.³⁴ Currently, children feel unheard or confused about what is happening throughout the court process, particularly where parents are unable to keep children informed through their own lack of knowledge. How the child receives (consistent) information from parents who are in a legal dispute with each other is a concerning further factor, as is the way in which the child's voice is heard by the court (since only a third of cases receive a welfare report by the Children and Family Court Advisory and Support Service (Cafcass)). The Working Party will report in Spring 2022 with recommendations for improvements to the private family justice system, including those aimed at improving child participation and ensuring their needs and rights are supported.

Are there models of remand that would improve outcomes for young people?

14. JUSTICE considers that custody should always be the last resort for children, be that in decisions to arrest or to remand. Remanding a child in custody unnecessarily risks incurring serious physical and psychological damage to the child.³⁵ Chronic underfunding of the YJS exacerbates these concerns, with the current court backlog resulting in children remaining in custody for significant periods of time; deprived of their liberty absent a finding of guilt. At present, there remain inconsistent practices on the decision to detain a child.³⁶ JUSTICE recommends that decisions regarding remand should be determined with the same seriousness, care, and consideration as sentencing, supported by a commensurate breadth and quality of information, and possibly referred to district judges with sufficient

³³ JUSTICE, 'Understanding Courts', (2019), pp. 107-112.

³⁴ JUSTICE, 'Improving Access to Justice for Separating Families'. The Working Party is chaired by Emeritus Professor Gillian Douglas and includes members from Cafcass, the judiciary, academia, the legal profession, and the Nuffield Family Justice Observatory. We are taking evidence from consultees with even wider experience of the system, such as domestic abuse charities and litigant in person support organisations, and we are also speaking to those with lived experience – parents and children – who have been through the process.

³⁵ JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), p.80.

³⁶ For example, children often have to wait in police custody for many hours before being interviewed. See JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), p.80.

experience and who can be appropriately trained, rather than lay magistrates.³⁷ This would help achieve the Government's objective to make remanding to custody a last resort.³⁸

Question 8 – The Commission on Young Lives will design a national strategy to prevent crisis and help young people to succeed. We want to learn more about the systemic issues that drive risk and what you think can be done to reform the system nationally and locally

National Diversion Scheme

15. Diversion is a key moment in the journey of a child through the YJS where ensuring children are treated equally and fairly makes all the difference to their future prospects. Yet, BAME children are less likely to be diverted than their White counterparts.³⁹ The reasons underlying this include feelings of distrust on the part of such children that the criminal justice system will act unfairly and so the required (and perhaps unnecessary) “admission” generally required to access diversion is not forthcoming. JUSTICE therefore calls for the *equal and fair* use of diversion to mitigate disparate outcomes for BAME children.⁴⁰
16. Further, initial indicators are that diversion schemes are highly effective at turning people away from crime.⁴¹ However, access to diversion remains a post code lottery.⁴² Each local area has a different way of doing it, if indeed it does it all. There is, therefore, a clear need for consistency in how diversion operates in England and Wales. JUSTICE therefore recommends creating a national framework for diversion, to ensure children everywhere can receive specialist support not prosecution. The process should be mandatory and followed by all those who are part of the diversion decision-making process, including the police, Youth Offending Team, and the CPS.⁴³ The underlying objective of this framework is to strengthen the existing presumption in favour of diversion for children and for this

³⁷ For example, we have heard that police officers and magistrates see custody as a place of safety for children. See JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.80.

³⁸ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.84.

³⁹ Statistics for first time entrants suggest that more White children are offered diversion than BAME children JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.62.

⁴⁰ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), pp 61-63.

⁴¹ A number of police forces have adopted this approach, see: ‘Checkpoint’ in Durham, ‘The Drug Education Programme’ in Avon and Somerset, and the ‘Youth Drug Diversion Scheme’ in the Thames Valley – see JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.28.

⁴² This differing practice means that children in different parts of the country will have better or worse outcomes simply because of where they live.

⁴³ JUSTICE, ‘Tackling Racial Injustice: Children and the Youth Justice System’, (2021), p.63.

presumption to be properly embedded and consistently applied in all criminal allegations involving children.

JUSTICE

30 November 2021