

Justice Committee

Oral evidence: Young adult offenders, HC 397

Tuesday 2 February 2016

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Written evidence from witnesses:

- [Dr Kate Gooch](#)
- [Mr Nick Pascoe](#)
- [Malcolm Richardson JP](#)
- [Fiona Abbott JP](#)
- [Ben Estep](#)
- Michael Caplan QC

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Members present: Robert Neill MP (Chair), Richard Arkless MP, Alex Chalk MP, Alberto Costa MP, Philip Davies MP, Mr David Hanson MP, John Howell MP, Dr Rupa Huq MP, Marie Rimmer MP

Questions 178-314

Witnesses: **Dr Kate Gooch**, Birmingham Law School, and **Mr Nick Pascoe**, Deputy Director of Custody for Young People, National Offender Management Service, gave evidence

Chair: Welcome. Thanks very much for coming. I will ask you to introduce yourselves in a moment. For the record, we have to go through a process in which the members of the Committee declare their interests. Suffice it to say that I am a non-practising barrister. That is my involvement in the criminal justice field. Are there any other declarations?

Alex Chalk: I am a barrister and retain my practising certificate. I should say that Kingsley Napley, the firm of one of the witnesses, Michael Caplan QC, has instructed me in the past. I have also been asked by a professional directory, Chambers and Partners, to opine on the merits of Kingsley Napley, for the purposes of its potential inclusion in that directory. I am likely to say that it is a very good firm. I ought to make that clear at the outset.

Q178 Chair: That's fine. Dr Gooch and Mr Pascoe, would you like to introduce yourselves for the record?

Dr Gooch: I am Dr Kate Gooch. I am a lecturer in law from the University of Birmingham. I have been specialising in prison research for over 10 years.

Mr Pascoe: I am Nick Pascoe. I am the deputy director for the young persons' estate, with responsibility also for young adult policy within NOMS. I am a former prison governor who has governed several young offenders institutions.

Q179 Chair: Thanks. Mr Pascoe, let me start the questions with you. You took up your post fairly recently, didn't you?

Mr Pascoe: On 4 January.

Q180 Chair: We will not expect you to have all the detail of the statistics; I understand that, but perhaps you will be able to help us from at least a general point of view. If there is anything you want to come back on, feel free to say so.

The Ministry has said that "many young adults in custody have similar needs to older prisoners." What is the basis for that assertion?

Mr Pascoe: Recently we published a commissioning strategy document for young adults, which identifies their specific needs. I have to say that it is about a spectrum, not an absolute. They are more likely than adult prisoners to need certain things and they commit slightly different offences, but it is not an absolute. You do not suddenly change from 18 to 19 and 19 to 21. For example, resistance to peer group pressure is considered much more significant in a young adult population than with a more mature adult.

Q181 Chair: I have seen evidence that some of the issues young offenders raise when surveys are carried out are different—the impact of what has happened in education, at school and so forth, the importance of family contact and housing issues. They do not necessarily mirror the issues raised by the adult population.

Mr Pascoe: Yes. On unemployment, lack of skill, not having gone to school and substance misuse there tends to be greater need, but it is not an absolute. It is a tendency to greater need.

Q182 Chair: Hence the spectrum that you mentioned.

Mr Pascoe: Yes.

Q183 Chair: I understand that. Perhaps you can help me with this. There are three dedicated institutions, but otherwise a lot of young adult offenders are held in mixed institutions, for want of a better term.

Mr Pascoe: That is right. About 65% of them are held in mixed institutions. Unless it has changed in the last day or so, there are currently five dedicated young offenders institutions.

Q184 Chair: In those mixed institutions, do they generally have distinct accommodation or are they held physically alongside older offenders—on the same wing, the same landing or whatever?

Mr Pascoe: The majority are in shared accommodation, although they do not share a cell. There are some institutions where they are held in discrete units, but the majority mix in accommodation and in activity.

Q185 Chair: Are some in discrete units simply because of the physical layout of the unit?

Mr Pascoe: It is a varied picture across the country. One or two private prisons do it differently, but not all the private prisons. It is sometimes about matching the numbers to the space available. The tendency in NOMS has been to mix the population, because we believe that is a better strategy.

Q186 Chair: When you do that mixing, what about the views or the wellbeing of the older prisoners? How do you consider that?

Mr Pascoe: Adult prisoners do not always relish the prospect of being surrounded by young adults, who tend to commit more assaults, for example, and to be more difficult. There is a balance of numbers. My experience from setting up the Isis young offenders prison, which was 18 to 24 from the outset, was that 18 to 24 did not seem to be the best strategy, because the young adults tended to dominate. When we changed it to 18 to 30, with a higher percentage of slightly older prisoners, it became much more settled, with less violence.

Q187 Chair: Is that perhaps another reflection of your point that there is not an absolute cut-off?

Mr Pascoe: It is definitely not an absolute cut-off. I look after young people. There are mature 17-year-olds and very immature 25-year-olds.

Q188 Chair: Absolutely; you are quite right. Some of the written evidence from the MOJ pointed out that, within the fairly specific bracket of 18 to 20, young offenders had a higher reoffending rate than adults as a whole.

Mr Pascoe: Yes.

Q189 Chair: I wonder whether it is realistic simply to take that two-year spectrum. Have you any information about the 18-to-25 age range, for example? How do they compare with adults for reoffending?

Mr Pascoe: I cannot say that I have seen some. I have tried to find it. If I can find some after today, I will certainly send it to the Committee. We do not readily identify the 18-to-25 or 18-to-24 group. It tends to be 15 to 17, 18 to 20 and 21-plus. As people get older, they tend to reoffend less.

Q190 Chair: For a number of reasons.

Mr Pascoe: Yes.

Q191 Chair: Do you have a sense as to why that is? Do you want to encapsulate that?

Mr Pascoe: People grow up. They tend to settle down. A key element is finding a partner and stability. They take on responsibility. It is not surprising. The peer group pressure

diminishes. Sadly, a lot of young adults are connected with gangs. If they distance themselves from the gang, they are less likely to reoffend, in my experience.

Q192 John Howell: I am interested in your role as deputy director of custody for NOMS. I understand that that is to look after people up to 21. What is your responsibility for the 22 to 25-year-olds?

Mr Pascoe: I do not have responsibility for them. My prime job is to look after the 15 to 17-year-old discrete group, but I carry policy responsibility for the 18 to 21-year-old group. The 21-plus group sits clearly with the adult policy.

Q193 John Howell: Do you think that you should have responsibility for the 22 to 25-year-olds? You talked about there being no cut-off.

Mr Pascoe: There is a policy issue, and there is an operational responsibility issue. The 18-to-25 group is about 16,000 prisoners. I do not think they can be managed operationally as a separate group. What policy would be necessary for that distinct group is less clear. There are few legal differences between 18 and 25 in the way in which they are treated under the prison rules and the Prison Act. Although we say that a young adult will not share a cell with an adult, there is nothing in statute that says that they cannot.

Q194 John Howell: Can I move you on to the question of training? Can you say something about the training for staff working in dedicated institutions for young adults, as opposed to staff working for young adults in a mixed group?

Mr Pascoe: There are two things. First, in terms of prison officer initial training, there is no distinctive training for young adults, because it is a generic programme. We have recently extended it to a 10-week residential course and included much more about working with families, prosocial modelling and dealing with interpersonal skills. That has been a considerable investment by NOMS.

In terms of the people working in mixed institutions, some of those are local prisons, where the churn of young adults on remand is quite high, as against sentence prisons, where people will be held for some time. It is for governors to look at what particular training they commission in those prisons. For example, some governors have commissioned Leap training. Some have commissioned other training specifically involving the young adult themselves. It is down to the individual governor. We have a generic training programme, which takes on board mental health awareness and a lot of the softer skill stuff we have probably not focused on in the past—that is why we extended the course—but it is down to the individual governor to commission that training, from a list of interventions.

Q195 John Howell: How does that differ in institutions where the population is not mixed?

Mr Pascoe: Prisons like Wandsworth have perhaps 120 young adults, most of whom are on remand and will be there for a relatively short period. There the emphasis is different. It is about awareness training, vulnerability issues and the interpersonal skills involved in handling a young adult for a short-term period. Where you have a sentenced population, the emphasis changes slightly to meet their needs as regards reducing reoffending and the interventions that will be necessary. It depends very much on where you are. On remand as against sentence, for example, is a key difference.

Q196 Mr Hanson: We have been looking particularly at the transition between youth services and adult justice services. We are aware of the fact that two protocols have been produced—one in the middle of last year, for England, and one at the end of last year, for Wales. Are those protocols making any difference in improving the transition between youth and adult prison?

Mr Pascoe: Yes, I think they are. We do not send a young person off to the young adult estate without considerable preparation, involving the young person, the family, the social worker, the YOT worker and the institution, making a decision as to where they should go. There are only four young offenders institutions holding young people, and they are resourced to do that work. Deciding where people should go is not a tick-box exercise; it is much more personal and detailed. It is an assessment based on needs and on the individual, rather than simply a numbers exercise. In some cases, it is quite a jump from 18 to 21, going from a young person's establishment to a young adult establishment, but we are particularly careful about where people go from and to. We do not let it happen by accident.

Q197 Mr Hanson: Who is monitoring the objectives that you have set in the two protocols? Who owns those protocols? Who checks them to make sure that they are done?

Mr Pascoe: I carry responsibility within NOMS. The Youth Justice Board also carries responsibility for monitoring that. It has on-site monitors in all four establishments and will monitor our success, in terms of how we transition people.

Q198 Mr Hanson: Do you have a view on this, Dr Gooch?

Dr Gooch: It is fair to say that the transition from the juvenile to the young adult estate is a significant one. There are inevitable resource and regime changes that young people have to come to terms with. It is also apparent that there are a number of legal obligations that change at 18. Local authority obligations change, so there is a level of support beyond the prison that changes and might impact upon the experience in custody.

In our research about the way young people behave when they transition, we found that some are very vulnerable at the point of coming into a young adult YOI, where they perhaps look very green and naive and may be at greater risk of victimisation. On the flipside, it is interesting that some of those who have been in a juvenile YOI have quite a lot of custodial experience when they come into a young adult young offenders institution. There is a degree of sophistication in their behaviour, so they are perhaps more likely to engage in violence and bullying and may come into conflict with staff more. However, they lack real maturity in their thinking and behaviour, which can make them quite a challenging group to respond to in custody.

Q199 Mr Hanson: Mr Pascoe, what is the difference between the English protocol and the Welsh protocol—apart from the translation, presumably?

Mr Pascoe: You have caught me there, I am afraid. There is one establishment in Wales, at Parc, which is a privately managed prison and for which I am not responsible operationally.

Q200 Mr Hanson: Could we have copies of both protocols?

Mr Pascoe: Yes. We can provide them.

Q201 Chair: Did your research find anything around that, Dr Gooch?

Dr Gooch: Around the protocols?

Q202 Chair: Yes, and around any differences between England and Wales.

Dr Gooch: No, not specifically.

Q203 Alberto Costa: Can I turn to the issue of violence, victimisation and bullying, and, specifically, the management of violent behaviour, victimisation and bullying? My first question is to Nick Pascoe. I want to understand the background. Why do you think that bullying and victimisation seem to be particular problems for young adults in prison?

Mr Pascoe: You could say that it is a problem of age and of schools. There is a particular problem with gang-related activities, particularly for young adults coming from the big conurbations. That is a key driver for behaviour and violence in the establishments that hold those young men, such as Feltham and Cookham Wood. It is a problem particularly in London, but there are also a lot of gangs in other large cities. Behaviour is then driven by the gang culture. It is not simply two lads having a scrap any more; it is six lads trying to assault somebody else because they belong to another gang. It is what they call “from the street”. When you ask young adults, “Why did you do it?” they say, “It’s from the street.” It is not from prison; it is something that is imported into prison when they come into custody. Breaking down that culture is really difficult, but it is key to reducing violence.

Q204 Alberto Costa: Do prison staff have this knowledge? Are they aware of the reasons why there might be bullying and victimisation?

Mr Pascoe: Yes. We have a tool that monitors violence and bullying. The violence tool will tell you how, what, where and when—the time of the day, the day of the week, the location where it took place and the reason for it, where known. We have a violence diagnostic that is available for people to look at. They can look for hotspots in the prison—within wings and activity areas—and can look at times of day and what lay behind it. Was it debt, or was it just gang related? Was there a cause that we know? Obviously we do not know every cause, but we monitor it and produce it in a table. I could find a copy, if you were interested in seeing what data we look at.

Q205 Alberto Costa: Is that part of the training, or is there specific training for prison staff to help them to understand how to deal with the factors behind bullying and victimisation?

Mr Pascoe: We train staff to be aware of it and to know what procedures and policies to follow. In the young people’s estate, we would look towards a more restorative justice approach, or we might look to an approach that is about sanctions and incentives. Behavioural strategy is something staff will be aware of, in terms of a number of themes running through the institution, be it incentives and earned privileges, victim support, sanctions, incentives or monitoring and offering support to adult young people who are vulnerable.

Q206 Alberto Costa: Dr Gooch, can I turn to you? Could you explain to the Committee the key findings from your research on bullying and victimisation in relation to young adults in custody? What would an anti-victimisation strategy consist of, in your opinion?

Dr Gooch: I will start with the key findings. One thing that really became apparent to us was that the dynamics of victimisation in young offenders institutions have changed very much in the last two to three years. The availability of illegally held mobile phones and the use of legal highs like Mamba and Spice have changed the way in which young people victimise one another and in which indebtedness causes bullying and violence. We also found, as Nick Pascoe just said, that community conflict very much spills over into the prison estate. Some disputes in prison are not prison disputes at all.

We know that high levels of violence and bullying have been an enduring problem in the young offenders institution estate, both juvenile and young adult, for some time, but we do not feel that that is inevitable. One of our key findings was that you can reduce prison violence and bullying with strong leadership, strong staff-prisoner relationships and a whole-prison approach. In that respect, the small things make a big difference.

Q207 Alberto Costa: Do you have any comments to make about training? You talk about strong leadership. How do you instil strong leadership in those institutions? Do you have any guidance, in terms of actual training, to help with that?

Dr Gooch: One thing that was very clear to us was that governing governors need to be able to drive vision and strategy, but they also need operational grip. By operational grip, I mean that they need to understand what is happening on the ground—on the wings and landings. What is difficult is that the leadership training to be able to perform at that level and do a very complex and demanding job needs to start far earlier. It probably needs to start with supervising officers and custodial managers, so that you can instil leadership training at the right level and at that time. It is difficult for me to comment further on the specifics of the civil service training for governing governors.

Chair: Mr Chalk, would you like to come in briefly on that point?

Q208 Alex Chalk: You may have answered my question at the end. I have heard things like “strong leadership”, “get a grip” and “know what is going on on the wings.” I do not mean to be discourteous, but that is all quite platitudinous. Is there anything specific that you think governors can do or that leadership entails to ensure that victimisation and bullying—a fact of life, by the way—can be kept to an absolute minimum?

Dr Gooch: Absolutely. It comes down to very little details, like how morning meeting is run in a young offenders institution. Morning meeting happens Monday to Friday. First thing in the day, they gather together the senior management team. It is how incidents from the day before are dealt with, debriefed and talked about. It is the decisions that are made about how you use segregation and how you use adjudications, which are the disciplinary hearings within the prison. It is the values that you instil about where the boundaries are and what is appropriate behaviour. When you talk about grip, it is not about punitiveness. It is understanding when to lock down and when to use your security measures to their full potential, if need be—for example, to search a wing or to keep everyone safe by reducing activity for one particular day—as well as about when knowing when to leave it.

Alex Chalk: That is very helpful.

Q209 Richard Arkless: I will stick with Dr Gooch for the moment. Strong leadership, a strong staff-prisoner relationship, proportional security, a focus on safety, security and decency, a rehabilitative culture and positive behaviour are all things that you identified in your research. Did you come across any examples where they exist at the moment?

Dr Gooch: Yes. The young offenders institution where we did the research was very much on a journey to embedding a whole-prison approach and was driven by the desire to create a safe, secure and decent prison, with a rehabilitative culture. One of the driving values of that culture and leadership was about focusing on reward, not punishment—about justice, not punitiveness. That makes a difference in very small ways, but it has a very significant impact on the regime. For example, segregation was a last resort. Adjudications were used to challenge and talk about behaviour, but also to promote more positive forms of behaviour.

We saw initiatives regarding the way family contact was done, so that the family visits environment was changed. In some ways, it is difficult to see how family visits link to victimisation, but families played a huge role in encouraging people to behave in custody. We had examples of prisoners who said, “I don’t want to get extra days by engaging in this assault, because I want to see my child and I don’t want to lose my family visits.” We certainly saw examples where the vision was of a safe, secure and decent prison.

Q210 Richard Arkless: Mr Pascoe, can you tell us how the second phase of the NOMS violence reduction project is progressing, with particular reference to young adults?

Mr Pascoe: There are various strands, one of which is that we have improved our monitoring of violence across the whole institution. We have looked at what has been successful—where we spend money on CCTV, for example. Do we have a strategy for spending it so that it goes where the greatest need is, rather than just who bids best gets it? We are looking at how we design our prisons, to make sure that we design out the spots where people are more likely to be assaulted, to try to make prisoners feel safe by designing the environment differently.

There is a whole range of strategies. They include better engagement with the CPS and the police on victim statements to court, to make sure that where there are serious acts of violence, we prosecute and make it clear that we do not tolerate them. I cite the example of Isis, which piloted the victim statement and has Metropolitan police officers from Trident based there. In London, twice a year we meet the CPS and the Metropolitan police to talk about the strategy. That is not about being punitive; it is about saying that we will not tolerate serious acts of violence. It sends out a very powerful message to staff and prisoners about what we will not tolerate. There is other research into what works in reducing the risk of violence. There are no specific NOMS programmes addressed at that yet. Governors are buying in the shame violence programme, a Leap programme that has been piloted in a number of establishments, but there is work to be done on what works to reduce violence, in particular.

Q211 Philip Davies: We have talked about bullying and victimisation. How much of an issue is radicalisation in prisons? How susceptible are young prisoners to that?

Mr Pascoe: Clearly they are a group that can easily be influenced. NOMS has spent quite a lot of time looking at the issue and has employed experienced and trained imams to lead religious services and to provide the faith lead within establishments. Muslim prisoners do not report good outcomes in terms of the way they perceive they have been treated, as per the inspectorate reviews, but we put a lot of effort into trying to make sure that we treat them decently and pay respect to their religion. On the pathfinder scheme, we monitor prisoners we believe are at risk of extremism, so a small number of prisoners will be engaged with and monitored more closely.

In some institutions, there are significant numbers in attendance at Friday prayers. In a place the size of Feltham, 150 prisoners attend Friday prayers. Not every Muslim is an extremist. It is the exception—a very small percentage—but we have put resources into that strategy, in terms of both monitoring engagement with the police and other forces and engagement with experienced imams, to give a strong lead on faith in their institution.

Q212 Philip Davies: Dr Gooch, do you have anything to add?

Dr Gooch: I agree absolutely with Nick Pascoe. We found that Muslim prisoners identified with one another as a relatively cohesive group and, for example, attended Friday prayers together in large numbers, but that was not about radicalisation. There were no concerns about radicalisation, in the main. It was a form of solidarity, to do with peer group alliances and friendships. Radicalisation is probably more of a concern in other areas of the estate, such as the high-secure prison estate.

Q213 Philip Davies: One of the common themes of the evidence that we have had is that there is very little evidence and data on what works to reduce reoffending by young adults, particularly young BAME adult offenders. Is that fair? Would you concur with that?

Mr Pascoe: Yes, I probably would. The key document, if you have not seen it, is “Better Outcomes for Young Adult Men”. That gives some clues, but it does not provide anything specifically about black and minority ethnic prisoners. There are local initiatives on engagement with the community, and trying to engage the community in the reducing reoffending strand, but it is a piece of work that needs developing.

Q214 Philip Davies: What is NOMS doing to develop that piece of work?

Mr Pascoe: We have introduced improved monitoring of systems. The commissioning strategy document says that there is more work to be done, but it is a question of what is needed specifically for black and minority ethnic prisoners. Are they more likely to be involved in x than y? We know that a high percentage of gangs in London, in particular—about 80% of the Trident gang members—are from a black and minority ethnic population. That suggests that if we can tackle the gang problem we will be tackling a key issue, but it is not just one facet.

Q215 Philip Davies: Dr Gooch?

Dr Gooch: The difficulty at the moment is that there is not the range of services and interventions that might be necessary to help young adults to address their offending. In some ways, we do not know what works, but we are not trying to put in place any interventions to help to form a view about what the evidence might be on what

programmes might work. We found that age-specific offender management programmes were very limited.

It is also fair to say that some of the multi-agency work around young adults needs to improve. A substantial proportion of the population you are dealing with will be looked-after children, but all the support and the legal obligation ceases at 18. There needs to be greater development of the interventions, programmes and services around young adults, to help us to begin to think about what might work with regard to reducing reoffending and desistance.

Q216 Philip Davies: Mr Pascoe, in your opening answer to me you acknowledged that you were aware that there was a perception among young black and Muslim men, in particular, that they were discriminated against in the criminal justice system and labelled. Is there any accuracy in that perception, or would you reject it completely?

Mr Pascoe: I think that is their perception.

Q217 Philip Davies: Is there any justification for it?

Mr Pascoe: They are over-represented in the criminal justice system. The HMCIP reviews of the treatment of black, minority ethnic and Muslim prisoners would suggest that they feel disadvantaged. They feel that they are not treated as well.

Q218 Philip Davies: We all know that. I am asking you whether or not you feel that there is any justification for their perception within the criminal justice system.

Mr Pascoe: There is clear evidence that they are over-represented in things like adjudications and segregation. The question is, why is that? We dig deep into those statistics—

Q219 Philip Davies: So why is that?

Mr Pascoe: We monitor with range-setting. If you look at the use of force, a lot of violence is related to gang activity. According to the Metropolitan police, 80% of gangs come from a black and minority ethnic background. The more fights there are, the more force will be used to separate them.

If you are in an institution that is 75% or 80% black and minority ethnic prisoner, I guess that you feel that it looks unfair, because you are over-represented as against the street—the people in the community. In some of our institutions—particularly in the south of England, coming out of London—there is a very high percentage of black and minority ethnic prisoners. If you are a white English prisoner, you are in the minority. Although 25% of staff in London are from a black and minority ethnic group, it is not as high as the population, and in the provinces it will be a much lower percentage.

Q220 Philip Davies: From a NOMS perspective, you are satisfied that there is no discrimination against people from ethnic minorities.

Mr Pascoe: I cannot say that there is no discrimination. Is it systemic? No, I do not think it is. We have put a lot of effort and time into trying to ensure that we treat black and minority ethnic prisoners fairly, in terms of catering to their religious, dietary and cultural

needs. It will take some time before we can demonstrate that that is having a significant impact.

Q221 Philip Davies: Dr Gooch, are you persuaded by what Mr Pascoe has to say?

Dr Gooch: To be honest, it is difficult for me to form a strong argument, because we did not really investigate the specific responses of ethnic minority prisoners. More generally, we did not see any evidence of direct or systematic discrimination, but we cannot rule out that possibility. We just did not investigate it.

Q222 Chair: On a separate point, Dr Gooch, you suggested testing various interventions. To help us, do you have an idea as to what sort of interventions might usefully be tested?

Dr Gooch: One thing that we very much noticed was that there was almost nothing to address violence and bullying in prison. We thought that that was quite a gap, because the norms and values that informed the use of violence in prison were very much an overflow from the norms and values that prisoners had in the community. What they believed about the use of violence in the community was no different in prison.

Nearly all the prisoners we interviewed, without exception, had absolutely no empathy for victims. Typically, victims were blamed for their own victimisation. In some ways, that is a reflection of the fact that there is limited victim empathy in the community. It is probable that—perhaps even in the juvenile secure estate—they have been referred to programmes like anger management. One prisoner told me, “If you say to me, ‘How would you feel if you got punched?’ I would say, ‘I’m not going to like it’ but it’s not going to stop me punching someone else, if I think it’s necessary.” There is certainly a gap around victim empathy and attitudes towards violence. There is also a gap around communication skills. Both the perpetrators and the victims we interviewed often had very poor social skills. That could make some of the victims even more vulnerable to victimisation, because they could not interact with the rest of the population.

Those are some of the interventions I would start with. We also have to recognise that there are some very enterprising young people in custody, who unfortunately turn that enterprising nature to criminal activity and can accrue vast sums of money in custody. There is an element of working out how we can engage those young people in positive forms of leadership and entrepreneurship. It is about having an innovative approach to young adults and the specific stage of development they are at.

Q223 Chair: The logic is that, if there is no empathy for the victim, there may be little sense that they have done anything wrong.

Dr Gooch: Exactly.

Q224 Chair: It is just bad luck that I got caught.

Dr Gooch: Yes.

Chair: I understand that.

Q225 Marie Rimmer: Can we look at purposeful activity and the incentives programme? My first question is for Mr Pascoe. Dr Treadwell and Dr Gooch stated that the lack of

purposeful activity can lead to victimisation, bullying and substance abuse in custody. Do you agree with that statement?

Mr Pascoe: On the principle that idle hands lead to trouble, yes. Young adults are less likely to get into trouble if they are actively engaged in something and are doing something purposeful. That seems to be common sense. Our target is 10 hours out of cell and six hours of purposeful activity a day; that is the national standard that applies to young adults. Delivering it is quite a challenge. In some establishments that are short-staffed, it has been more challenging than in others. If people are engaged with others—with teachers and instructors—and are talking to other people, there is a role model aspect that comes across. It has to be common sense to keep them busy and occupied and give them a sense of purpose.

The level of substance misuse in custody among young adults is not as great as one would think. We cannot currently measure for NPS—legal highs—but for other drugs the level is relatively low, compared with the adult estate. On NPS, it is less clear, but it will become clearer as we introduce testing for them. The general principle of keeping young adults occupied and engaged in learning skills and acquiring experience has to be common sense. It is not just about gaining qualifications—it is about being engaged, behaving and maturing. To my mind, it is less about the actual certificate than about being able to sit and engage with people without misbehaving and being antisocial. The issue is not the lack of qualifications per se, but the fact that they cannot behave. A lot of people will go to work in service industries. If you cannot treat the customer reasonably, it does not matter how well qualified you are—

Q226 Marie Rimmer: Are you saying that it would lead to more rehabilitation and a more effective life outside prison for the young people?

Mr Pascoe: Yes.

Q227 Marie Rimmer: Do you agree with all of that, Dr Gooch?

Dr Gooch: Absolutely. Nick is entirely right about the rates of substance misuse. What we saw was that the real problem with substance misuse is not necessarily the number of young people who misuse substances, but the problem of indebtedness when they do. They borrow to purchase NPS or, to a lesser extent, cannabis and are unable to repay. That is then doubled again and again and they quickly find that they owe hundreds and, sometimes, thousands of pounds. Sometimes the way out of that is that they are assaulted, or family members may be coerced into sending money.

Q228 Marie Rimmer: I was just going to ask about that. Have you come across evidence that family members have been coerced?

Dr Gooch: You see a range. Some family members are complicit, in the sense that there is a degree of willingness to pay off debts. For example, for one prisoner, that was just what happened in the community as well. When he had drug debts, they were paid by family members. On rare occasions, we saw examples where family members were directly victimised by prisoners asking for money to be sent in. It places family members in a difficult position, because their loved one is in custody and they know that there could be a

real risk to their safety if they do not send in the money. At the same time, it is a significant amount to pay in some cases.

Q229 Marie Rimmer: Dr Gooch, in evidence submitted to the Committee, you and Dr Treadwell criticised the IEP scheme. Why? What sort of IEP scheme would you like to see developed?

Dr Gooch: One reason why we felt that the IEP scheme was in need of reform was that it is too inflexible a tool for young adults. The evidence tells us that the adolescent brain responds to rewards, not punishments. If you impose sanctions, they need to be quick and immediate; there also needs to be the possibility of changing your behaviour. What tends to happen under the IEP scheme is that, if a young person is demoted to basic regime, they can find it very difficult to change their behaviour. It can take such a long time to get to enhanced that for some prisoners that is off-putting and can simply be disengaging.

One thing that we noticed was that, although perpetrators who were very significant in terms of adjudications, violence and segregation changed their behaviour, they did not change because they were punished but because a staff member took an interest in them, encouraged them and told them, “Look, this is what you need to do to get better. This is how we will support you.” They gave them an opportunity—took a risk, in some cases—to do better. By the end of the research, we saw those prisoners taking on positions of responsibility very well within the young offenders institution, behaving and really engaging with staff.

That tells you that they need to be in an environment where rewards, not sanctions, are encouraged, where there is encouragement to do better and where there is relationship work—where someone takes an individual interest in a prisoner and says to them, “Look, this is what you need to do to change your behaviour.” It is about rewarding small achievements, because often it can be very small steps initially. To give you an example, the governor of the YOI we were in would often say, “He might have smashed the glass door of his cell 15 times yesterday, but if he did it six times today, that is an improvement.” You recognise that achievement. It can be very difficult when you are dealing with a very challenging individual who is constantly damaging things or being very uncompliant. It is about trying to recognise that they are immature, they do not necessarily have strong consequential thinking and they need support to engage and do better.

The IEP scheme that I would like would be one where there was much more flexibility—where you could reward more quickly, sanction more quickly and remove those sanctions if there were small changes in behaviour. If the small changes are rewarded, you get the big changes.

Q230 Marie Rimmer: Are you saying that it should be tailored to the individual and that a trusting relationship should be built with staff members?

Dr Gooch: Absolutely. It has to be built on those relationships. The balance is that you need consistency. There need to be clear boundaries about what is and is not tolerated. It is about balancing discretion with consistency and having a just approach to what you are doing.

Q231 Marie Rimmer: Would you agree with that, Mr Pascoe?

Mr Pascoe: Broadly speaking, yes. The Secretary of State has launched a review of the IEP scheme. Sometimes you have to take a leap of faith, particularly with an adult young person, because they will box themselves into a corner where it is all punishment, they see no way out and it becomes just about upping the ante. It is about intervention, often by individuals who want to make a difference with a young person or even an older prisoner; it is not exclusive to young adults.

Young adults do not think first. Part of the core issue is getting them to improve their thinking skills, but they tend to have a higher drop-out rate from the cognitive behaviour thinking skills that we do. It is quite a challenge even to deliver that, because it is not quite as successful in terms of completion as it is with the older population. Generally I would agree with Dr Gooch.

Q232 Marie Rimmer: Dr Gooch, do you believe that therapeutic support in custody is important for all young adults, or is it something that should be just for those on the ACCT programme?

Dr Gooch: It needs to be assessed in terms of need. I would not go so far as to say that all young people in custody need therapeutic support, but we need to think beyond those on an ACCT document. An ACCT document really focuses support on those who are at risk of self-harm or suicide. There are a number of people in custody who will be vulnerable in other ways but may not engage in self-harm or attempt suicide; for example, they may decide to assault someone else, to flood their cell, to damage their cell in other ways or to make various protests.

One thing that we think could really improve is the level of therapeutic support. That extends to counselling. It was very apparent to us that trauma, loss and bereavement carried on in custody. Often young people had experienced it in their childhood. In custody, they carried on experiencing it, in the sense that they would lose siblings, their own children and parents, but there was almost no support or counselling opportunities. That was not necessarily the fault of the prison, because it is commissioned through the NHS, but if we are talking about parity between the community and custody, that is quite a gap in provision. We need to think quite broadly about therapy, but it must also be needs-assessed.

Q233 Chair: Dr Gooch, do you think that there has been any improvement in the quality of the ACCT—assessment, care in custody and teamwork—process since that review?

Dr Gooch: It is difficult for me to make a strong statement about that, because it is not something that we investigated specifically. The ACCT process is important and it works for some young people. We have seen examples where it has certainly made a difference and has put in support at the right time to prevent self-harm escalating or more serious attempts at suicide.

Q234 Chair: Mr Pascoe, Lord Harris's report highlighted the issues around bereavement—sense of loss and so on—in not dissimilar ways to the work of Dr Gooch and her colleague Dr Treadwell. What is the Prison Service's response to that?

Mr Pascoe: For the young adult population, there is the mental health service for young people—CAMHS. For young adults and adults, it tends in my experience to be something that we leave to somebody in the chaplaincy to organise, by and large.

Q235 Chair: Do you think that it is adequate to leave it to the chaplain?

Mr Pascoe: First, the chaplain may access somebody else. They have a lot of links to the outside community. It may be something that is better done by somebody who is brought in, and the chaplain can do that. Chaplains are much more community based than they used to be, with strong links to their local community. It is about trying not to medicalise it, by turning it into a healthcare issue. It will then depend on the strength and interest of the chaplains and the chaplaincy team and their particular skills. They will have some experience of that.

Q236 Chair: Shouldn't it be an integrated part of the ACCT process? It sounds a bit hit and miss.

Mr Pascoe: A healthcare professional will be present at the ACCT review. They can look at what support may be needed. Bereavement counselling is quite specific. There are about 2,000 people on an ACCT on any one day. In some establishments, we have taken it forward to what we call a complex case review, where we focus on the top end—the most difficult people. They might not just be vulnerable; they might be challenging, vulnerable and difficult. That is a newer concept that is focusing on the hardest-to-reach people.

Q237 Chair: Are you happy with the quality of the ACCT process that you have seen?

Mr Pascoe: You can always look for better. When I look at an ACCT document, I am not looking for a 15-minute entry to say that somebody has been seen and observed; I am looking to see what the interaction is, what contact they have had and what interventions we have put in place. It is not just a tick-box system.

Q238 Alex Chalk: Can I move on to the topic of neurodisability? We have heard a lot of evidence to suggest that part of what underlies vulnerabilities and misbehaviour in prison among youths in custody can be related to brain injuries. To what extent do you think that the prison estate is properly set up to investigate and treat those conditions?

Mr Pascoe: There is work being done—I do not have the specific details with me, but I think it was piloted in the Yorkshire area, with a health charity—that looks specifically at people who have been trauma-damaged. That is work that we have been encouraged to roll out across the country. It is fairly new and it is work with a charity, rather than the NHS. I can provide the Committee with some specific details on that.

Q239 Alex Chalk: Basically, your point is that it is early days.

Mr Pascoe: It is early days, but we have woken up and realised that this is an area we should be getting involved in. One of my colleagues has led work on that. I can provide the Committee with some detail.

Q240 Alex Chalk: Dr Gooch?

Dr Gooch: I agree that it is certainly early-days work. It was very apparent to us that disabled prisoners—using the word disability broadly—were over-represented in

adjudications, in the use of force and as victims and perpetrators of physical violence. There are some easy ways to make some quick wins. It is quite apparent that in the young adult estate you do not have SENCOs—special educational needs co-ordinators—for education, as you might in the juvenile estate. The same reasonable adjustments are not made with learning and skills. Some of those things can make a difference in terms of their engagement with the regime.

It also requires a sense of individual support and case management, to recognise that sometimes, when young people present in particular ways, it is not because they are being non-compliant but because they are struggling to cope with the situation. The other quick win would be more prison officer training around disability and what that looks like, how people would present in custody and what things they might find difficult. For example, an autistic young person might find the use of force particularly difficult, because of the physical contact, and escalate the situation. If you do not know that the young person is autistic or what the likely manifestations of that are, you will not necessarily recognise that when you are using force.

Alex Chalk: The issue of understanding young people's lives has been dealt with already. Thank you; that is all.

Q241 Chair: Mr Pascoe, the inspectorate found that the purposeful activity outcomes in establishments holding young adults were particularly poor. Why?

Mr Pascoe: There is no obvious reason for that. Site by site, it might be related to a particular recruitment issue in a particular area. Some young people are not particularly motivated to do certain activities, such as education. If you take the population of young people, which is a little younger, 80% have not gone to school until they finished—either they have been excluded or they have self-excluded. When you try to get people back into education, you probably need to adopt a different approach. You have to get to young adults by a different route, not just by classroom activity. There is significant emphasis on maths and English—rightly so—but there are different ways of teaching them. There is something yet to be done about how we deliver education that looks a bit different from the traditional, which they have failed to achieve in the community.

Q242 Chair: Yes—before they came into custody. I understand that. The other difficulty is that if they are locked up a lot of the time—I think that something like 36% of young adults spend less than two hours out of their cell on a weekday—that rather inhibits the opportunity for purposeful activity, however we deliver it.

Mr Pascoe: It does.

Q243 Chair: What is your objective? How will you set about reducing that percentage?

Mr Pascoe: The ideal is to get them out of their cell—that is clear. There are more novel ways of trying to engage with young people in cell. I am not saying that that is a perfect world, but you can use technology more. NOMS is exploring that; a private prison has already piloted it. There have to be more exciting ways. Young people learn differently from how they did a generation ago. We probably have to think about less chalk and talk and a different way of doing it.

Q244 Chair: I get the sense that you agree with that, Dr Gooch.

Dr Gooch: Absolutely. There is certainly a need for innovation around the kind of activities that are offered, the support that is offered and the way in which basic skills are embedded.

Q245 Chair: Thank you very much for your time and evidence. We are very grateful to you. Feel free to leave or stay, as you wish, but we appreciate your evidence to us. We look forward to working with you, Mr Pascoe, and may see you again.

Mr Pascoe: I am the duty gold commander for the Prison Service this week. Somebody is covering in case there is an incident, so I feel obliged to leave. It is nothing personal.

Chair: I understand entirely. Thanks for your time.

Witnesses: **Malcolm Richardson JP**, Chairman, Magistrates Association, **Fiona Abbott JP**, Chair of the Youth Court Committee, Magistrates Association, **Ben Estep**, Youth Justice Programme Manager, Centre for Justice Innovation, and **Michael Caplan QC** gave evidence.

Q246 Chair: Good morning, everybody. Thank you very much for coming to give evidence and assist us. Would you like to introduce yourselves?

Fiona Abbott: I am Fiona Abbott, a magistrate in the adult and youth courts. I am also chairman of the youth court committee at the Magistrates Association.

Malcolm Richardson: I am Malcolm Richardson. I am chairman of the Magistrates Association.

Michael Caplan: I am Michael Caplan. I am in private practice, principally as a defence lawyer. I sit on the Sentencing Council and in the Crown court as a recorder, but I am here in my private capacity.

Q247 Chair: Indeed. I understand that your evidence is in that private capacity.

Michael Caplan: Yes.

Ben Estep: I am Ben Estep. I am youth justice programme manager at the Centre for Justice Innovation.

Q248 Chair: Thank you very much. Ms Abbott, perhaps you would like to start. What do you think adult courts could learn from youth courts in the way they approach young adults? We have heard a lot of evidence that there is not a simple cut-off, but there are different processes and procedures in some ways. What do you think are the learnings that can be taken across?

Fiona Abbott: The youth court operates within a completely different legal framework. That must not be forgotten. It is not just a case of taking across certain practices. The practices in the youth court are designed to achieve what the legislation wants within the youth court. Of course, that focuses on preventing reoffending and having regard to the young person. The youth court is not just a courtroom that has young people in it; the whole process is different—the way the young people are addressed in court and the way magistrates engage with them. In an adult court, magistrates do not engage as a matter of course. In a youth court, we are encouraged to talk not just to the young person but to the families. I know that the CJI's report looked at adopting that in the adult court, but there is

no legislative framework within the adult court to do it. It is about looking at how that could be achieved, and whether it is just a matter of behaviour within a court or whether it is designed to achieve a certain outcome.

Q249 Chair: To some extent, it is simply a less adversarial ethos. Mr Richardson, can you do that without a legislative framework?

Malcolm Richardson: Yes. Magistrates are very enthusiastic about the concept of a more problem-solving approach, and are encouraged by the move that the Lord Chancellor has made suggesting that he wants to move in that direction, too. We support anything that enables us to engage more. There are things that we can learn from the youth court in terms of the language and the way we engage with people in the magistrates court, for adults of any age group, but most particularly for the cohort you are concerned with now.

There is some frustration at an ever more target-focused environment, where there are amounts of time that are assumed to deal with a particular matter when it comes before court. The concept of problem solving is a little out of kilter with that sort of approach, because we should be trying to deal with each case as appropriately as possible. It does not necessarily fit into a tick box.

Q250 Chair: I understand. Mr Caplan, I know that you sit as a recorder. Do you get much time to appear as an advocate?

Michael Caplan: Not as much as I would like.

Q251 Chair: Because of the burdens of seniority in the practice, I imagine.

Michael Caplan: As it happens, when I sit as a recorder, sometimes I am sitting with magistrates from the youth courts on appeals. Things like language are very important. There is the fact that in the youth court the defendant is referred to by their first name, which is easier for them. That is not the case for adult defendants in the Crown court. There are small matters. Do not use the word “remorse”; use “sorry”, because the young person is more likely to understand that. There is also the general ambience of a court. A youth court is perhaps less severe than an adult court. Those are the factors the senior courts could learn from.

Q252 Chair: It strikes me that it is not dissimilar to explaining something to a jury. You say “sorry” rather than “remorse”. It is the same sort of thing.

Michael Caplan: Absolutely. Perhaps sometimes we are all guilty of not realising that fact.

Q253 Chair: That is a fair point. Mr Estep?

Ben Estep: As Fiona referenced, the CJI recently completed a feasibility study, supported by the Transition to Adulthood Alliance, looking at exactly this question. We found that there are a number of adaptations that it would be feasible to adopt from the youth court in a young adult setting. We are particularly interested in the environment and the process in which young adults are sentenced. It is not about changes in sentencing options or powers; it is about the process and how it is experienced.

Q254 Alex Chalk: Could you put flesh on those bones? What do you have in mind? So far I have heard about calling them by their first name—okay, maybe—but what specifics do you have in mind?

Ben Estep: They are outlined in our response to this inquiry, and are discussed in more detail in our subsequent report, which I am happy to share with you. There are a number of adaptations, including the use of specialist listing for young adult cases.

Q255 Alex Chalk: Specialist listing?

Ben Estep: Essentially, it is case allocation of young adult cases in a single setting.

Q256 Chair: In a single setting. Can you explain what you mean by that?

Ben Estep: The idea is that there would be a specialist, set-aside listing for young adults, much as there is in the youth courts already. Further, youth-ticketed magistrates or district judges could hear those cases and use for young adults the same training and experience that they already have in dealing with youth.

Q257 Alex Chalk: What does that mean? You have special listings, so you say, “It is Monday morning. We will have a whole load of 18-to-21s.” Fine. When they come in, we call them Johnny, not Mr Bloggs. Fine. What else?

Ben Estep: You would take steps, as youth-ticketed magistrates already do, to ensure that young adults understand and comprehend the process. That includes changing some of the ways you engage with them—things like avoiding the use of “yes or no” questions, which, we know from evidence, tend to elicit responses that may not reflect actual comprehension in the case of young people.

Q258 Alex Chalk: Advocates would be required to ask questions completely differently for 18-to-21s, as opposed to older people.

Ben Estep: Not necessarily completely differently. For instance, asking, “Do you understand what just happened? Yes or no?” is not the same as saying, “What questions do you have about the proceeding right now?”

Q259 Alex Chalk: Are you saying that there would be no closed questions?

Ben Estep: Avoiding “yes or no” questions as a general principle seems like a good idea. It is something that seems to be supported by the evidence base.

Q260 Alex Chalk: Hold on a minute. I find this really concerning. You could have on a jury 18-year-olds deciding whether someone is guilty or innocent of a crime—

Ben Estep: I am sorry, no. This is—

Q261 Alex Chalk: This is purely in the magistrates court.

Ben Estep: It is purely in the magistrates court.

Q262 Alex Chalk: You can have 18-year-old magistrates.

Ben Estep: I am not sure about 18-year-old magistrates.

Q263 Alex Chalk: You can. You are saying that you have to change the way advocates ask questions of an 18-year-old.

Ben Estep: We focused principally on the interaction directly between magistrates or the bench and defendants. Advocates would be part of that. Backing up slightly, the idea is that procedural fairness is important. We are talking about the perception of the process, as experienced by defendants.

Q264 Chair: What is your take on that, Mr Caplan? You are an advocate. Is it realistic or deliverable?

Michael Caplan: There are difficulties with it. I can well see the view that you set up a body of, in this case, magistrates who are specially trained to hear a particular type of case. In the same way, as you probably know, there is a particular type of court—I think they are called drug courts—in west London. You have certain judges who have a specialism—they are known as ticketed judges—and can hear certain cases. Unfortunately perhaps, they find themselves hearing only that type of case.

It is also fair to say that, because the criminal justice system has become so complicated, there are a number of advocates who have to specialise in particular fields. Those who take on serious sex cases have to specialise in that, both because of the law and because of the way you ask questions, so I can well see that you should have specialist magistrates. There is always a danger of over-specialism, but we are clearly moving that way.

As regards the way in which you ask questions, we should bear in mind that there are very stringent protocols for the way you cross-examine young children. You have video links and things like that. There is a danger of over-specialism. Mr Chalk makes a very fair point. A person can sit on a jury when they are 18, 19 or 20, in the most complex cases—at least, the public think they are complex cases; sometimes the issue may be only whether someone is dishonest, intentionally or whatever—but they will not have the benefit of questions being asked in the same way. There is a danger of over-specialism, in my view.

Chair: I understand. You were not here at the time, but both Mr Chalk and I declared that we are barristers. He is still practising, and I was, so I take your point about the protocols.

Q265 Alex Chalk: I also confessed in your absence that KN had instructed me. That is on the record, so don't worry.

Michael Caplan: I am pleased to hear that, Mr Chalk.

Q266 Chair: He is certainly instructed by Chambers. Whether it was a return or directly, I do not know. I take your point about the types of court. Mr Richardson, you seemed to be nodding in agreement with some of the points.

Malcolm Richardson: With some of them, certainly. Like all of these things, a lot of it is about balancing some purist view of a very specialist court that deals with individual cohorts and, for example, accessibility to justice. Sitting here in Westminster, a lot of these things seem possible. If you are sitting out in Cornwall, Leicestershire or north Wales, things look very different. Sometimes the issue is being able to allow someone to get to court reasonably and having everyone who engages with them understand that they are an

individual and dealing with them as an individual, whether they are 18, 58 or 88. We get very few in that last category, I have to tell you.

Magistrates are part of the community. We engage with people of all different types all the time. I hope that at a fundamental level we can be trusted to recognise the communication abilities of different people who come before us, whether they are defendants, witnesses or even advocates. That is not to say that I do not recognise that there are some really strong skills that youth magistrates have the opportunity and, indeed, the requirement to learn and to deploy that it would be really valuable for more magistrates—I would say all magistrates—to have the opportunity to learn. That comes into the whole training question, which gets us into a very different space.

Q267 Mr Hanson: Haven't we tried some of these things before? I want to get to the nub of what Mr Estep means, particularly with the new concept of a different type of court experience. I have been to north Liverpool and seen the experiences there. I have been to Salford magistrates court and seen the youth justice scheme there. Aren't the points that you have mentioned about specialist judges, family involvement and using plain language just good practice that should be embedded in the system? What is the blockage to that happening?

Ben Estep: We think that those things are important to everybody, but they may be particularly important for young adults. What it comes down to is the idea that a process that people perceive to be fair is likely to be one that results in increasing adherence to the law in the future and increases compliance with court orders.

Q268 Mr Hanson: Give us some examples. I go back to Mr Chalk's question. What is meant by a specialist judge? Does it mean somebody who deals just with young people, or does it mean somebody who has an interest in the continuum of one case and the welfare of the person they are dealing with?

Ben Estep: Not necessarily, although we are interested in that as a concept. For the purposes of the feasibility study, we did not look at anything like that. When I say specialist, essentially I mean extending the remit of youth court magistrates to deal with cases involving young adults. For the same reason that that benefits young people, we think that it would benefit young adults.

Q269 Mr Hanson: What does family involvement at court mean, in practical terms?

Ben Estep: As in the youth court, where it is deemed to be appropriate and helpful, the family could be encouraged to attend court hearings.

Q270 Mr Hanson: Apart from attending court hearings, what is the engagement with the prosecution, the defence, the sentencing and dealing with the young person? How does that work? The family might turn up at court but have no interest. They might be compelled to go to court—

Ben Estep: They would not be compelled to go to court, under current legislative constraints. That is not a line that we cross in the feasibility study.

Q271 Mr Hanson: But what does family involvement in court mean?

Ben Estep: It means that the family, where deemed appropriate, can be encouraged to attend the court hearing.

Q272 Mr Hanson: What difference does that make to the young person?

Ben Estep: The difference that it makes is ultimately what we are interested in testing. We are talking about the introduction of changes that are already in place in the youth court and seeing whether they make a difference to young adults.

Q273 Mr Hanson: Okay. Going back to Mr Chalk, what about specialist listing? I am not decrying it—these may be positive things—but what I am trying to get to is this. If we do this next year and there is a quantifiable assessment two years down the line, what difference will it make to the outcome of reducing reoffending or preventing offending in the first place?

Ben Estep: Our hope is that it will do both of those things. If this is piloted—we have plans to begin a pilot over the next year—the idea is to embed an evaluation that will be able to answer those questions.

Q274 Alex Chalk: I understand what you are saying. If somebody is on trial for the theft of a Mars bar—it does not matter what it is—and they are 19 or 20 years old, the court has to reach a fair adjudication: are they guilty or not guilty of that crime? Where is there evidence to suggest that the process by which you get to a conviction will make any material difference to that person's life chances? The key thing is whether the court has reached a fair adjudication—has it got it right? Beyond that, the things that are important are how they are treated in custody, how they are punished and all that kind of stuff. Are we really focusing on the right thing? Is whether or not we call them Johnny or have a special listing really relevant?

Ben Estep: There is quite a lot of evidence—in fact, the Lord Chancellor referenced this recently—that procedural fairness matters in the experience of the court process.

Q275 Alex Chalk: Could you help with that? Why should this be the focus of what we are doing?

Ben Estep: The experience of the court process itself—apart from the outcome, which obviously we agree should be fair and just—plays a part in people's compliance with court orders. That is more or less established in criminological evidence.

Q276 Alex Chalk: Do we think that we are getting it wrong? Are the courts reaching unjust verdicts?

Ben Estep: It is not about verdicts. We think that we can make a process that is more comprehensible, that supports engagement and in which young people feel that they have a voice. That is totally apart from what the sentence might entail; it is about feelings of legitimacy towards the process itself. We know that where people view the justice system as legitimate, they are more likely to comply with the law in the future.

Q277 Mr Hanson: There is nothing to decry in all of that. There might be positive benefits; we are here to assess that. However, an argument has been put to us that, for example, the simple matter of taking into account the maturity of the individual at the time of their appearance before the court would be much more effective than some of the changes you

have argued for. Does anybody have a view on that? At the moment, in a sense, there is no legislation demanding a view on the maturity of the individual. You can have an immature 24-year-old versus a very mature 18-year-old.

Fiona Abbott: Maturity is looked at very carefully in the youth courts. Although the youth court deals with people between 10 and 17, within that it is broken down even further—between 10 and 14 and 15 and 17. We look not just at age but at maturity, and when we are looking at sentencing, that plays a major part. It does not seem to make sense to say that suddenly it does not count at all when you are dealing with an 18-year-old.

Of course, maturity is part of the mitigation and part of our sentencing guidelines. In an adult court, when we are looking at sentencing, we look at maturity. As I am sure you have heard before, unless we are given the evidence on which to base it, we cannot make a decision. We cannot make a decision based on a snapshot of seeing somebody before us in court. If there are real concerns about maturity, they need to be evidenced and put before the sentencers, so that they can make an appropriate decision. The MA welcomes the fact that the guidelines seem to be changing and that probation reports will have to include identification of maturity. That will certainly help to inform decisions on sentencing.

Q278 Chair: How often do you sit in the youth court? Once a week? Twice a week?

Fiona Abbott: Once a week or so.

Q279 Chair: What is your observation, from your experience, on these suggestions about procedural changes and whether or not it is comprehensible or fair?

Fiona Abbott: In the youth court or in the adult court?

Q280 Chair: We have heard what Mr Estep was suggesting, for example. What is your take on it?

Fiona Abbott: On procedural fairness, in the youth court part of the reason for engaging and communicating with young people is to ensure that they are and feel part of the process. It is also to ensure that they start to take responsibility for their action. That is part of the sentencing process and the rehabilitation process. There are two parts to it.

Mr Chalk identified the issue of how you deal with advocates in the youth court. The chairman on the day of a youth court must intervene if they feel that the way the lawyer is behaving is not appropriate to enable a young person to understand, or is intimidating. You may be aware that recently the Bar Standards Board did a research study that looked at advocacy in the youth court, because it has been identified that there is no specific requirement for training in that. It is up to the chairman on the day to ensure that the process is understood by all parties, and not just by the young person, but by the family. Mr Estep mentioned the family. It is not just helpful to have a family in the youth court; it is necessary. The family have to be there, if a child is under 16, and they have a responsibility—a financial responsibility—when fines are levied against a young person. Court orders can be put against the family—parenting orders—to help them to support and look after their young person. It is a very different framework.

Q281 Chair: We cannot do that for a young adult, for legal reasons.

Malcolm Richardson: What Fiona has just said illustrates one side of the 18-year divide. When you move into the adult court, so-called, which deals with everything over the age of 18—some of us might argue about whether anyone is really adult at the age of 18, but that is not our remit today—there is a huge difference. It is not just about behaviour in the courtroom, which magistrates in the magistrates court can do a lot to assist and help with; it is about the whole framework. It is about what support the magistracy is given in the sentencing process. There is a huge difference between what YOTs can and must do to support the court in the sentencing process, for example, or even in understanding the circumstances of the individual, and what the probation service is required and enabled to do, without any of the complications of getting into CRCs and the rest of the piece around that. We need to consider all of that.

Q282 Dr Huq: I have a related question for the Magistrates Association, on legitimacy. Are magistrates conscious of the importance of how the defendant views the sentencer for their perception of the outcome of the case—the sentencer-sentenced relationship?

Malcolm Richardson: The one-word answer is yes. As regards procedural fairness—or however you describe it—when anyone appears before a court in which we are privileged to have been appointed to adjudicate, we must be very aware of how everyone perceives what we do and the fairness of it.

Q283 Dr Huq: I turn to the CJI. In your evidence, you said that procedural fairness is more acute for young adults and that they feel more unfairly treated in the whole system, compared with older defendants. Why do you think that?

Ben Estep: Notions of fairness and respect are embedded in the court process, but it is also the case that the proceedings are complex; they can be technical and, necessarily, can use quite complicated language. Feelings of confusion, frustration and intimidation in that setting are particularly common among young adults. They have aged out of the youth court jurisdiction, which has a mandated focus on engagement. However, as the Committee has heard from a number of experts, there is no real reason to think that they are fully mature adults, magically, at age 18. Young adults in courts can be particularly exposed to a process that may challenge their own notions of fairness. At the same time, there is empirical evidence that young people can be particularly attuned to dimensions of procedural fairness. They are especially attuned to signals of respect and perceptions of unfairness, just because of where they are on the maturity scale.

Q284 Dr Huq: The idea is that it feels a bit threatening.

Ben Estep: Right.

Q285 Richard Arkless: We have been concerned as a Committee to hear both formal and informal evidence of disproportionate stereotyping of BAME young people throughout the criminal justice system. Does that accord with your perception? The question is open to all of you.

Malcolm Richardson: The Magistrates Association would like to add to the clarification that was given by one of your previous witnesses on another day, Raheel Mohammed, the director of Maslaha, regarding his comments to you, in which he incorrectly stated: “In

our interviews with the Magistrates Association, we were told that magistrates would give more punitive sentences to young Muslim men, compared with non-Muslim men.” He attributed that to my predecessor as national chairman, Richard Monkhouse. Very fairly, Mr Mohammed has corrected that statement. Richard Monkhouse did not make that statement, nor did any representative of the MA. The statement does not in any way reflect the position of the association. We are glad that Mr Mohammed has clarified his error. I will broaden that, if I may, to try to answer your question.

Q286 Richard Arkless: That would be very helpful. Please go on.

Malcolm Richardson: We are concerned by any evidence of disproportionality for ethnic minorities within the criminal justice system. Undoubtedly there is some evidence of it. We are delighted by the weekend’s announcement by the Prime Minister that he has asked Mr Lammy to look into it. We will be very happy to co-operate with that inquiry in any way that we can.

The one thing that we would say is that we are not aware of any evidence anywhere that suggests that sentencing is part of the cause of that disproportionality. It is undoubtedly a complex issue, otherwise it would have been sorted out before now. There are many different factors that apply. For example, the issue of knife crime has been raised. That has not been disaggregated to see whether the sentencing was for a first or subsequent offence, what sort of knife crime it was, and so on. Until that is properly analysed, we just do not know what the situation is. That is the position. We welcome the inquiry. We are concerned by the issue too, but until we have some evidence of how, if at all, we can assist with the resolution of it, we welcome getting further information.

Q287 Richard Arkless: Would anybody else care to comment? Is it your perception that there has been disproportionate stereotyping?

Michael Caplan: Certainly there are perceptions, which, frankly, are often fuelled by the media—

Q288 Richard Arkless: What do you think?

Michael Caplan: What I was going to say was that I am quite satisfied that, when I am involved in an individual case, I am dealing with it as an individual case and the court is doing the same. It is looking at the circumstances of what has taken place, the circumstances of the defendant, the circumstances of the victim and how it has to sentence, taking into account the aggravating and mitigating factors. I have not come across any evidence where I thought that the court was stereotyping. There is a danger—I do not say it critically for one moment—that when people look at a particular case, especially in the media, they will immediately jump to a conclusion. That is dangerous.

If I can put on another hat for a moment, when you come to sentence, you are very anxious that you sentence the person in front of you and only the person in front of you, following the sentencing guidelines for that, if there are guidelines. I have no evidence of stereotyping.

Ben Estep: We need a much better understanding—informed by data, as Mr Richardson said—of exactly where in the system this is taking place, in terms of stage-to-stage

differences and differences between localities. Hopefully, the Lammy review will take us some way towards that.

Q289 Alex Chalk: I hope that this may be of assistance to the Committee. I did a case in the Court of Appeal where the defence suggested that they, as Muslim defendants convicted of terrorism offences, were more harshly sentenced than, for example, far-right extremists. There is certainly a perception of stereotyping among certain sections of the community. The Court of Appeal rejected that, but it is right to say that it is a perception.

Chair: That is very helpful. I want to move to issues around maturity, the custody threshold and so on.

Q290 Marie Rimmer: You have noted that you need evidence on maturity. Could the Magistrates Association advise what information and evidence about the maturity of defendants is provided to the court? What do magistrates look for to assess for themselves levels of maturity?

Malcolm Richardson: First, really to get anything we need to have the probation service engaged. We need to be at the degree of seriousness where we have passed the community sentencing threshold, in order to engage the probation service in the first place. As we have indicated before, at the moment there is no duty on probation to provide us with any information at all. We understand that the guidance will change imminently and that they will be required—at least for 18 to 24-year-olds, I think I am correct in saying—specifically to address that in any report back to us. That will certainly give us more framework and insight.

Q291 Marie Rimmer: Can you give us the proportion of cases on which you get probation reports? Are there any statistics?

Malcolm Richardson: Something like three quarters of all—

Q292 Marie Rimmer: Is it not very often? Has it deteriorated?

Malcolm Richardson: I do not know. I certainly would not say that it has deteriorated. About 75% of the cases that come before court are dealt with by a financial penalty anyway, so we are already down to only a quarter of cases. I am sure those data are available, but they are not here. We can certainly let you have that information, Ms Rimmer.

Of course, reports are then divided into two categories. There are those that can be delivered verbally, on the day or very shortly afterwards, where we are talking about fairly low-level offending that has still passed that barrier, and there are the fuller reports, which typically take three weeks to prepare and are called on in very specific cases, either more serious cases or, for example, cases of domestic abuse, where there are certain protocols. Typically, we would always put those back for a full report. There are those two categories.

We did a straw poll of the members of our policy committee about the adult court. That is a dozen magistrates, but they represent all the regions of England and Wales. They certainly did not see the issue of maturity as something that was regularly raised with them

in court. I am not in any way denying that there is an issue, but it is not something that anyone seeks, as a generality, to bring to the attention of sentencers.

Q293 Marie Rimmer: What training do magistrates in adult courts have to deal appropriately with young adult offenders, including those with communication difficulties and acquired brain injury?

Malcolm Richardson: Specifically within the adult court, it is pretty limited in the core training that is provided. There would be more training in the youth court, because that aspect of focusing on the offender would be covered much more fully than in the adult court.

Q294 Marie Rimmer: In the adult courts you are asked infrequently to consider maturity and are not given information or training on maturity.

Malcolm Richardson: You are not given training explicitly on maturity. If I suggested that it was often brought to our attention by anyone in the court, I am sorry—I have misled you. I was intending to communicate that maturity is very rarely brought before us as a factor for us to consider.

Q295 Marie Rimmer: Would you consider it? Is it generally asked for?

Malcolm Richardson: I cannot answer that question.

Q296 Chair: What about the youth courts? What is the position there?

Fiona Abbott: Maturity is at the centre. In a youth court, you are immediately focused on dealing with young people and children. When a young person is identified in a youth court, it is not only by their name and date of birth but by their age. That is very different from an adult court. You actually say that the person is 14, 15 or 16; you are focusing on an age-related young person.

We expect young people to have a certain level of maturity, or not, but we have representations on maturity in the context of a peer group. Quite often we are told that someone is particularly immature for a 15-year-old and is easily led, so it is quite often used as mitigation. It will be focused on by the lawyers and will be something that the magistrates will consider in the sentence. In an adult court, it is not something that is immediately focused on, I would suggest, unless it is particularly out of the norm. You are not looking specifically at a person's age.

Q297 Chair: Mr Caplan, suppose there was a requirement in the adult court that, when sentencing a young adult, you had to have regard to maturity. Would that be a useful step? Would it concentrate the mind of sentencers and advocates, or would it be pointless?

Michael Caplan: I think that it would be. Can I make this point on the discussion that has taken place? Maturity is not just a legitimate point to make in mitigation; an advocate is under a positive duty to tell the court whether someone is mature or immature. Where does he get that evidence? In this circumstance, he is perhaps in a different position from the magistrates, who will see the case for only a few minutes or a limited time. He has met the client and will form his own view, which I will come to in a moment.

If it is one of the stronger points that he wants to put forward, he may well call—or I may well call—testimony to show what it is, by way of character evidence. It does not have to be a report. There may be a report as well, but sometimes as an advocate you try to get away with saying to the court, “This is what I have observed. Attach what weight you want to that.” That is one aspect. The second aspect, of course, is the pre-sentence report. I have found, both in practice and sitting, that it usually covers the question of maturity. That is very important, too.

Can I sound a word of warning about the pre-sentence report? Although I see what has been said, you will know, I am sure, that better case management is coming in the Crown court—efficiency and all of that. One aspect of that will be that, if there is not a viable alternative to a custodial sentence, there will not necessarily be a pre-sentence report. That is a concern for those who practice. You will have a tension between saying, on the one hand, that maturity should be considered and, on the other, that we must get cases through more quickly and make the best use of time, funds and all those things. I sound that word of warning.

Q298 Chair: Would the logic of that be that, even if there is no alternative to custody, maturity might influence the level of the sentence?

Michael Caplan: It most certainly will, because it is a factor that must be taken into account. It is not just the individual in front of you, but why he did this, what involvement he had and all those factors, so we have to be slightly careful. That is a worry.

Fiona Abbott: Another major point of difference is that in the youth court the youth offending teams have a key role in assisting the court. Generally, as a principle—whether or not it always happens—they see young people before they come into court on a first appearance or at a trial. They are looking at that young person before they have even come into court, talking to the CPS and talking to the lawyers. It is not the same in an adult scenario. The youth offending team, with their expertise and experience, can also advise the court and the lawyers on the person’s maturity.

Malcolm Richardson: Of course, any defendant in a youth court will have a lawyer, which increasingly is not the case in the magistrates court.

Q299 Alex Chalk: It is important to note—picking up something that Mr Caplan said—that if a judge has to sentence a 20-year-old for an offence of assault, they have to apply the definite guideline on assault, which means that they must consider “Age and/or lack of maturity where it affects the responsibility of the offender.” That is something that the judge is already exhorted to take into account. That is right, isn’t it?

Michael Caplan: Absolutely. It is a factor.

Q300 Chair: Of course, you have to be fair to all concerned.

Michael Caplan: Yes.

Q301 Marie Rimmer: You have not touched on what factors you would consider in trying to assess maturity yourselves, as magistrates.

Fiona Abbott: As we have already said, magistrates act based on the evidence that has been given to us by youth offending teams, defence lawyers and the CPS—whoever can assist in the youth court. We also look at the body language, demeanour and behaviour of a young person in court. We are not psychiatrists, psychologists or behaviourists, but we are trained to understand why certain mannerisms and so on need certain assistance. We take lots of breaks in the youth court. We pause, we clarify and we make sure that the young person gets the support they need in order to be able to engage properly. We receive training in how to pace the youth court and how to interact, but we do not get specialist medical training in identifying every potential difficulty that may occur.

Q302 Marie Rimmer: You mentioned the importance of the youth offending team and families being present. Are families and the youth offending team always present in youth cases?

Fiona Abbott: The youth offending team is always present. Hopefully, they see the young person before court, and they are there during the process and post-court. Immediately the young person leaves the court, if they are subject to a court order, the youth offending team meets them to talk to them and their family. A young person under 16 should always have family, a guardian or a carer with them. It would be exceptional for the court to go ahead without that, because that young person needs the support and it is a legal requirement. For somebody over 16, the court can make a decision on the individual circumstances.

Q303 Marie Rimmer: Has there been any increase in responsible adults appearing—someone from the children’s section of the local authority—when families have not turned up?

Fiona Abbott: I cannot give you definitive figures on that. It would depend on whether the young person was in care and the local authority had a requirement to be there.

Q304 Marie Rimmer: Do you have any training that includes consideration of the communication difficulties of young people with acquired brain injury?

Fiona Abbott: We do not have specific training on that. We have general training on behaviour and the ways that is manifested in the court. If a young person had an injury or some sort of disability that affected their ability to be in a courtroom, we would have to rely on an expert to say that to the court.

Q305 Marie Rimmer: Lord Harris told us in evidence: “Sometimes prison will be necessary and appropriate, because of the nature of the offence and of the individual, but it should be the last resort.” Is that a suitable principle for sentencing young adults?

Fiona Abbott: It is the last resort; that is a requirement. Even if the custody threshold has been reached, it is a last resort. Magistrates would look to see what alternative provisions can be put in place in the community.

Malcolm Richardson: The Criminal Justice Act 2003 makes that very clear.

Q306 Marie Rimmer: How frequently would you say that maturity is raised as a mitigating factor for young adults by defence or probation? How frequently is it taken into account by sentencers?

Chair: We have probably dealt with that.

Malcolm Richardson: Less often in a really concrete way, partially because more and more defendants, including young adult defendants, are not represented. If there is someone advocating on their behalf, I am sure that any advocate would make clear that you understood what the age of the person was and some aspects to do with their background. I do not know whether that really constitutes maturity. In my view, maturity is a difficult concept to define specifically. It is more an accumulation of things, all the way from, at one end, someone who perhaps should never have been in court in the first place; you talked about brain injury.

We absolutely welcome the liaison and diversion services. The Magistrates Association is trying hard. We have 75% coverage across the country of mental health champions on the benches, making sure that their colleagues are aware of the issues and liaising with local services so that everyone can be aware of what is available locally, because that can be very different in different places, as I am sure you are well aware. At that end, we want to make sure that we understand as much as possible. It is not formal training, but it is awareness. We are very pleased to see that as part of our charitable objectives, to make sure that magistrates have that understanding.

Chair: Of course, there is also the issue of the attitude of the prosecutor. Mr Chalk, you wanted to take that up.

Q307 Alex Chalk: Mr Caplan, do you think that considerations of maturity should play any part in the decision as to whether or not to prosecute—that is to say, maturity of the suspect at that stage?

Michael Caplan: Yes, they should.

Q308 Alex Chalk: How should they?

Michael Caplan: As a public interest point. The CPS, who conduct the vast majority of considerations of whether to prosecute, would say that at the moment maturity is a factor they look at. I say that with some hesitation, but no criticism of them, because at the moment they are normally able to rely only on what they are told by the police as to the maturity or otherwise of a person they are looking at whether to prosecute. Again, this is not meant as any criticism, but the police are not necessarily experts in the area.

It is most certainly a factor, in my view. If I am making representations on behalf of someone as to why you should not prosecute, in my view it is not only legitimate but it is my duty to say, “Look, this chap is not particularly mature. He may have age x, but in fact his maturity is less than that. Take those factors into consideration.”

Q309 Alex Chalk: In your experience, is that a compelling representation? I am sure that frequently you persuade the authorities not to proceed against your client. Do you find that they rely on the issue of maturity, or does it tend to be something else that makes the difference?

Michael Caplan: One difficulty is that when I read letters of representation I always think, “They are pretty compelling to me,” but it does not mean that they will be to them. Often they will not be over-specific as to the reasons. In fairness to the CPS, it will be one of the

factors. I do not think that they are likely to say, other than in extreme cases, “That was the deciding factor.”

Q310 Chair: Academics talk in terms of brain development and neurodisability. Frankly, I suspect that that is not something that comes across the horizon to the advocate, the sentencer or the prosecutor.

Michael Caplan: No.

Q311 Chair: Finally, I want to move to the whole question of transforming rehabilitation, in so far as it has had an impact. The Magistrates Association gave some evidence in writing about that. Mr Richardson, you said that it was really too soon to comment on the impact of transforming rehabilitation on the transition we have been talking about. From the information that you have had from your members, can you comment on the sorts of rehabilitative services that the CRCs are providing now? Have you been able to gather anything around that?

Malcolm Richardson: I do not think that we have got further along than when we put in our written evidence, in terms of being able to give you anything substantive. We have talked to our members and sought to get a point from which we can compare, as we go forward. Talking about awareness of what local services were available and so on, 46% of our members said that they did not get enough information, but 41% said they did. About three quarters of them said that more information about the effectiveness of sentences would be helpful to them. It is fair to say that there are some challenges in trying to get at that information, and that those challenges have not been helped by the splitting of NPS from the CRCs. There are concerns on the part of some as to how far judicial independence will allow us to go down the road of engaging with some of those bodies.

Q312 Chair: Are any of you aware of any assessments going on about the impact of transforming rehab, through-the-gate services and so on?

Ben Estep: A recent HMIP report on transition arrangements for young adults indicates that those arrangements have deteriorated over the last couple of years, but it also points out that there are examples of good practice around the country to learn from.

Q313 Chair: The final question is this. Some people have suggested to us that part of the solution to transition and maturity issues may be to legislate to extend the remit of the youth courts up to 20, 21 or whatever. What is your take on that? Does that help, or is it just a procedural device that will create another barrier at a different point?

Ben Estep: Our standpoint is that it is an idea worth piloting. It is something we hope to work on over the next year, with local areas that are interested in it, to adapt the approach upwards to an age limit to be set by them, in consultation with us as to the specific needs in their area. It is an idea that is worth exploring.

Michael Caplan: I would need to be convinced. You have to draw a line. The other factor, in this day and age, is: where will the money come from?

Malcolm Richardson: Our answer would be a pragmatic one, too. The pragmatic advantages that we could get from just extending some of the practices from the youth court to the adult court could get us a significant benefit for not significant cost. I am not

gainsaying the suggestion that you might get more if you spent more, but that is pretty true in every aspect of society and is unlikely to be achieved today.

Q314 Chair: Would you disagree with that, Ms Abbott?

Fiona Abbott: It is not just what happens in the court; it is the service providers outside. You would have to look at the Youth Justice Board and how youth offending teams would manage an increase in the age—how they would mix a 21-year-old with a 14-year-old. That is a very practical point to consider.

Chair: Thank you very much for your time and for coming to give evidence to us. The bells have nothing to do with the fact that the evidence session is ending; it is not a comment on any of the evidence that we have heard. We are very grateful to you.