Justice Committee

Oral evidence: Children and young people in custody, HC 306

Tuesday 30 June 2020

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Watch the meeting

Members present: Sir Robert Neill (Chair); Paula Barker; Richard Burgon; Rob Butler; James Daly; Maria Eagle; John Howell; Dr Kieran Mullan; Andy Slaughter.

Questions 104 - 198

Witnesses

I: Justin Russell, Chief Inspector of Probation, HM Inspectorate of Probation; Helen Berresford, Director of External Engagement, Nacro; Dr Pamela Taylor, Chair, Forensic Faculty, Royal College of Psychiatrists; and Dr Alexandra Lewis, Chair, Adolescent Forensic Faculty Special Interest Group, Royal College of Psychiatrists.

II: Enver Solomon, Chief Executive Officer, Just for Kids Law; Laura Cooper, Just for Kids Law; Jessica Mullen, Director of Influence and Communications, Clinks; Laurie Hunte, Criminal Justice Programme Manager, Barrow Cadbury Trust; Shadae Cazeau, Head of Policy, EQUAL; and Phil Bowen, Director, Centre for Justice Innovation.

Examination of witnesses

Witnesses: Justin Russell, Helen Berresford, Dr Taylor and Dr Lewis.

Chair: Good afternoon and welcome to this session of the Justice Committee. We are continuing our inquiry into youth justice and this is our third evidence session. I welcome our panel, but before I go to them we have to deal with the formal business of declarations of interests by members of the Committee. I am a non-practising barrister and a consultant to a law firm.

Andy Slaughter: I am a non-practising barrister.

James Daly: I am a practising solicitor and a partner in a firm of solicitors.

John Howell: I am an associate of the Chartered Institute of Arbitrators.

Rob Butler: Until my election, I was a non-executive director of Her Majesty's Prison and Probation Service and the magistrate member of the

Sentencing Council.

Maria Eagle: I am a non-practising solicitor.

Chair: Thank you very much. Mr Burgon has just joined us. We are just dealing with declarations of interest.

Richard Burgon: Before being elected as an MP, I was a practising solicitor.

Q104 **Chair:** I welcome our panel of witnesses. Justin Russell, chief inspector of probation, Her Majesty's inspectorate, is with us. Our guests joining us remotely are Helen Berresford, director of external engagement in Nacro, Dr Pamela Taylor, chair of the forensic faculty at the Royal College of Psychiatrists, and Dr Alexandra Lewis, chair of the adolescent forensic faculty special interest group at the Royal College of Psychiatrists. Thank you all very much for joining us.

Before we start, Mr Russell, I have a very quick topical question. The probation inspectorate has published a report today in relation to the situation of the very highly publicised case of Joseph McCann. Is there anything you want to report to the Committee about the key issues we should be aware of? I know you have made some detailed media statements.

Justin Russell: As you say, we published our report this morning of a detailed independent investigation of the case of Joseph McCann, who committed a truly horrible set of sexual and violent offences in April and May last year. We looked in detail at all the case files. We interviewed some of the staff involved and held a broader series of focus groups with other staff in the south-east and south-west central divisions. I put out a detailed statement on our findings in the full report, and it is available. We found major failings with the way that the National Probation Service supervised Mr McCann over a long period.

Q105 **Chair:** And you make a number of recommendations to have those failings addressed.

Justin Russell: We make a number of recommendations. The key ones are around making sure that the Prison Service, in particular, shares relevant intelligence with both the probation service and the Parole Board, and that probation officers are properly trained to deal with intimidating and complex characters like Mr McCann, and ensuring that there is proper quality assurance of decisions made to recall and, in particular, that decisions not to recall are as important as decisions to recall, and should be properly checked and independently assured.

Chair: Thank you for the update on that. Do members have further questions to raise on that matter?

Q106 **Dr Mullan:** There was recognition in your report that there were failings among staff team members, but I see that since that happened only one person has been subject to demotion and there were no other individual repercussions. I appreciate that it is difficult for you to comment on

individual cases, but in your work reviewing the service do you feel there is a sufficient culture of ensuring promotion or demotion in relation to findings such as yours?

Justin Russell: When we did a previous inquiry into the case of Leroy Campbell, we felt that there was not enough attention paid to disciplinary proceedings taken after those serious further offences. We feel that action is now being taken. The investigations went wider than one member of staff. Two members of staff were suspended before the case and others were dealt with. We felt that aspect of the case was properly dealt with.

Q107 **Chair:** May we come to the immediate matter in hand? There is a fairly straightforward general question to all of our witnesses to start with. We are particularly concerned, as well as with the broader issues of the youth justice system, with the immediate pressures from the Covid-19 pandemic. Can each of you give a sense from your differing perspectives, so far as you can—it may have affected some of your organisations more or less than others—of the effect that Covid-19 has had on the youth justice system as a whole? Since you are in front of us and you have an overview as inspector, what is your take on that, Mr Russell?

Justin Russell: It has had a very profound effect. We have just started a national thematic inspection on the impact of Covid on local YOT teams. We are looking in detail at seven different youth offending teams around the country and analysing a sample of 70 cases. We started the remote interviews for that last week.

I sat in on focus group and video interviews with four different YOT teams, and a number of themes have started to come through. In particular, they have done the best job they could to keep normal services going. They have transferred a lot of the work they were doing to either phone contact or video contact. They are continuing to run referral order panels, out-of-court disposal panels and risk panels virtually, and are finding that is working reasonably well. They are working hard to make sure the welfare of the children is being looked after. A number of YOTs have started to run food banks or deliver food parcels. There is an awful lot of work going on.

The two areas that are coming up as issues are, first, around the work of youth courts, where there are delays in bringing young people to trial or for sentencing, which is increasing the amount of time being spent on remand. There were early issues with video access to courts for YOT workers, who therefore were not able properly to assess young people or present to sentencers.

The second issue is around education, and the real concerns about the very small number of children on YOT case loads who are in education. I talked to one service manager last week, who said that only one of the 99 children on their case load was in education at the moment. That is even though, as vulnerable children, many of them are eligible to attend school.

Q108 **Chair:** Is there any movement to ease up on that at the moment?

Justin Russell: As schools start to return more to normal, there will be more opportunities for children to return. One of the YOTs employs two full-time teachers as part of its staff, so it has been able to deliver a better service, but in other areas they do not have that facility.

There is an issue around the digital divide. Young people do not have the laptops that they need to benefit from an online educational offer. The city of Newcastle reported that 2,000 to 3,000 families lack a laptop to be able to deliver that service, and many of the children on YOT case loads fall into that group.

Q109 **Chair:** That is helpful. Ms Berresford, I know you deal with a lot of clients in the system. From Nacro's point of view, what is your assessment of the situation?

Helen Berresford: The only thing I would add to what the chief inspector has just said is to refer to children who are in custody. Lots of children are currently locked up for 23 hours a day; they have had no face-to-face education for over three months, and no visits from family or friends. It has a huge impact on an already incredibly vulnerable group of children. I think we will start to see the longer-term impacts of that.

It is important that whatever we do now is focused on increasing support and engagement for the group of children who are in custody. To reference what the chief inspector said about them being a vulnerable group in the community, there has been a decision in the community to prioritise education for vulnerable children and allow them to have face-to-face education in school settings. That has not been the case in custody. There is a real challenge for a group who are already incredibly disadvantaged, to make sure they have the support they need going forward.

Q110 **Chair:** Dr Taylor or Dr Lewis, do you have any observations from your perspectives, as clinicians predominantly?

Dr Lewis: One of the things that has become apparent in forensic child and adolescent mental health teams in the community is that, initially, there was a bit of redeployment of staff, because it was not considered to be a priority area. That was changed when forensic child and adolescent mental health services were re-designated as an essential service. Because of their consultation and advice nature, they have been able to switch quite easily to video consultation, but there has been a problem with internet and tech poverty among the young people they are trying to work with, and that has led to some difficulties.

Youth liaison and diversion workers have had difficulties seeing young people in police custody. That has made it harder for them to have very early contact. When they have been relying on telephone contact, that is difficult because sometimes the police need to hold on to young people's telephones, so it is difficult to get hold of them, and it requires a number of different calls to try to reach the young people.

The issue that has come up is that with video consultations you can miss some more subtle mental health signs and it is not as good as face-to-face contact. Within the youth custody service, there are mental health teams, but the increased time spent in cells has meant they have had less access, so fewer complete assessments have been able to be done.

Q111 **Chair:** That is very helpful. Anything from your end, Dr Taylor?

Dr Taylor: The main thing is to keep reminding ourselves that the situation will keep changing. There is the initial impact of lockdown and isolation. There is then the potential impact of longer periods of isolation, but we must not forget that the process of release from that isolation is also going to be quite threatening for a lot of young people. We need to monitor and support them through that release process as well.

Q112 **Rob Butler:** We have just touched on very short-term changes as a result of coronavirus. Could I lengthen the time period a little and ask all the witnesses how you feel the youth justice system has adapted over the last three to five years to meet the needs of children who are entering the system now?

Justin Russell: As everyone knows, there has been a huge reduction in the volume of young people coming into the system. That is everything from arrest right through to caution and custody. There is a general recognition that the young people who are coming through have more complex needs.

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

Q113 **Rob Butler:** Do you feel that the youth offending teams you inspect have acted appropriately to meet those changing needs?

Justin Russell: I would point out two key things. The first is that the location of local youth offending teams has increasingly changed over time. When they started off, they were usually in community safety parts of local authorities. They are now very much embedded in children's services, sitting alongside early help, looked-after children and adolescent services. They benefit from those joins because those services share many of the children in common.

The other thing they are doing is starting to bring specialist workers into the YOT team itself. We increasingly see child and adolescent mental health, sexual health and substance abuse workers in YOTs. There has been a recent trend for bringing in speech and language experts. Those are really positive trends, but they rely on a local authority being willing

to put in the extra resource if they want a decent amount of time from those specialists.

Q114 **Rob Butler:** Dr Lewis, what is your view about how the changing needs have been dealt with and adapted to?

Dr Lewis: In 2019, NHS England commissioned 30 regional community forensic child and adolescent services across England. There is also one in Scotland, one in Wales and one in Northern Ireland. They had two remits: to try to deal with young people with mental health difficulties whose behaviour is putting them at risk of coming into contact with the criminal justice system; and to deal with those who are already in contact with the criminal justice system. They work to assist the general child and adolescent services to formulate risk. They do a lot of co-ordination of all the different agencies involved, and they undertake specialist risk assessments. That is quite a big development in children's mental health within the criminal justice system.

Youth liaison and diversion has expanded as well. We have youth liaison and diversion mental health trained staff dealing with young people at first point of contact, hopefully, when they come into contact with the police. There are not enough of them, so sometimes they are seen by an adult liaison and diversion worker, and sometimes they are seen shortly after coming into contact with the police. They are supposed to flag up communication difficulties and mental health needs that might be relevant to charging decisions and process them through the criminal justice system.

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

Q115 **Rob Butler:** How do you suggest that gap be filled?

Dr Lewis: There needs to be more commissioning for child and adolescent mental health services, so they can be more flexible about who they see. It is quite hard now to be seen by child and adolescent mental health services because the demand massively outstrips the resource, so boundaries have to be put somewhere. For this particular vulnerable group of young people, there need to be lower thresholds for those who do not meet certain scores or thresholds.

Q116 **Rob Butler:** Dr Taylor, do you agree that there should be more emphasis on children as regards mental health?

Dr Taylor: Yes. It is very important. One of the changes that is perhaps a slightly unforeseen side effect of the welcome reduction in numbers is

the concentration of people with much more serious problems. In the past, young people could almost be co-therapists and supporters, to a much greater extent than they are now. Now they are too unwell and disrupted for the most part to be able to take any of that role.

One of the key things for me is that we need to be very careful about calculating the number of prison staff and probation staff as well as healthcare staff. When it looks as though numbers are coming down and, in theory, we might be able to cut numbers of staff, because of that concentration somehow we have to maintain numbers; it is a very different form of working when there is such serious disorder and the disruption is so concentrated.

Q117 **Rob Butler:** What is your experience of how the youth justice system has adapted over recent years to meet those changing needs?

Dr Taylor: My experience is more at the borderlands because I have tended to work mainly with people as they are turning 18. I have worked with an age band between 18 and 25. My main contact directly with young people has been research in relation to suicidal behaviour in prisons. We have recently done a survey of who uses forensic adolescent consultation and treatment services in Wales.

Q118 **Rob Butler:** Ms Berresford, what is your experience of the adaptations, or not, that have been made to deal with this changing cohort?

Helen Berresford: We are an education provider in custody and, over recent years, we have seen an increasing number of children coming into custody with diagnosed learning and social and emotional mental health needs and/or an increasing number with undiagnosed learning needs. That is a really important point. People manage to get all the way to custody before they receive a diagnosis of autism or some significant learning need. In many cases, the behaviour has been classed as a criminogenic factor rather than looking at the learning need underneath it. We do not have the response right to identify that much earlier, because those young people should never have got to custody without that assessment of needs in place.

Q119 **Paula Barker:** I would like to look at racial disproportionality in the youth justice system. We know that the population of children in custody has changed over the past 10 years, with fewer children entering the youth justice system. However, the number of children from a black, Asian and minority ethnic background is not decreasing at the same pace as it is for white children. As of March this year, just over 50% of children in custody were from a BAME background. Why has disproportionality continued to increase despite the Lammy review?

Justin Russell: Very few young people of any ethnic group end up in the criminal justice system now. Fewer than 1% of all young people are on the case load of any YOT, and that is fewer than 1% of both BAME and white children. For those young people who are on the case load, there is disproportionality in a significant number of YOTs, and that disproportionality increases as you get further into the system. The

proportion of out-of-court disposals that are BAME is about a quarter, whereas, as you said, 50% of the custodial population are now from a BAME background.

Over the last 10 years, we have seen a number of indicators coming down. The number of arrests of young people of all races has been coming down, as has the number of cautions and the number of young people going into custody, but it has been coming down much quicker for white children than it has for BAME children, in particular for black boys. That is a real concern. Somehow the system seems to be better at diverting white children away from the formal criminal justice system than it is for BAME children and young people. That is the big thing that needs exploring, I think, going forward.

Q120 **Paula Barker:** Do any of the other witnesses want to add anything?

Dr Lewis: I would like to say something about that. It is quite hard sometimes to get a neurodevelopmental diagnosis such as autism or ADHD if you are not white. There seems to be more of a tendency for the presenting features to be interpreted as bad behaviour rather than some kind of neurodevelopmental need. The National Autistic Society did a survey, and it found that it was much harder for non-white children to get a diagnosis of autism. We have to think very hard about why that is. What is it about our services that makes it very hard for people to engage?

It is quite hard for everybody, because the average waiting time to get a diagnosis for autism is over two years. That is a lot of waiting around and hanging around. That is true for adults as well as for young people, but two years out of a child's life is an enormous proportion. Similarly, ADHD can be interpreted differently. There are different subtypes of ADHD and some are more subtle than others. They tend to be missed in girls and missed in the BAME community as well.

CAMHS—child and adolescent mental health services—sometimes are not seen as warm and receptive, and as places where parents want to take their children. That might be particularly true for BAME parents. That is a problem as well. I was very struck by a 17-year-old I met in a young offenders institution, a tall black guy. He had autism and he said to me, "The problem is people don't look at me and think I'm vulnerable." That showed great self-awareness, because, yes, externally he looked completely together, but he had vulnerabilities, and he was labelled as dangerous rather than vulnerable. Unless you know what you are looking for, you are not going to pick that up.

At Feltham Young Offenders Institution, where I worked for 14 years, we did a marvellous piece of work as an offenders institution as a whole, where we all worked to try to ensure that everybody there knew what the presenting features were of an autistic spectrum condition. That led to much quicker picking up of people coming in. Helen is absolutely right that most people who are autistic do not have a diagnosis of autism when they are in the criminal justice system, so you need to know what to look

for. We had some amazing reception staff who would be on the phone very quickly to say, "Can you come and have a look? I think this might be somebody who would benefit from some input." They were nearly always correct. Improving the training of frontline staff in neurodevelopmental disorders benefits everybody.

Q121 **Paula Barker:** That is interesting because my next question was going to be about the role youth offending teams play in addressing race disproportionality. Could those sorts of early diagnoses in situations like that play a wider role?

Dr Lewis: Definitely. Once you get a label, you tend to live up to that label. If you are labelled as difficult and disruptive, even if you do not quite understand why you appear difficult and disruptive, you will act into that role, so early diagnosis is absolutely key.

Justin Russell: Youth offending teams potentially have a very important local role to play as members of local criminal justice boards in being able to bring people's attention to that. One of the things we are doing in our reports now is publishing data on levels of disproportionality in YOT case loads compared with the local population, and then challenging YOTs: "What have you done about this? Have you raised it with other criminal justice partners? Have you identified where the problem is? Do you have an action plan to deal with it?"

I think it is rising up the agenda and some YOTs are paying a lot of attention to it. Essex YOT, for example, spotted that it had a disproportionality problem in part of the county, brought it to the attention of the county criminal justice board, and started to get some action taken on it. YOTs are in a crucial position to bring attention to it and get action taken.

Q122 **Paula Barker:** How do we make all YOTs more effective and proactive, rather than reactive?

Justin Russell: It is partly about bringing attention to the data. That is partly why we are now publishing the data. It would be helpful if there was national data on disproportionality published at local level. We find big variation between areas in how much disproportionality there is. In about a third of YOTs, there isn't disproportionality, but there may be 10 or 15 where there are twice as many BAME young people in their case load as there are in the general population. We certainly should be focusing on those areas and asking what is happening there.

There is not necessarily a particular pattern. There are some urban YOTs and some county YOTs. They are spread across the county. There are some that have very big BAME populations and others that do not. There is no particular pattern, but there is clearly something going on in some local areas that needs to be addressed.

Dr Taylor: There are two things that may help. One is that it is not helpful to talk about black and ethnic minorities as if they are a homogenous group. They are very different, and some groups, indeed,

have fewer people in any custodial situation than white groups. We need to be a little more discriminatory about who is disadvantaged in that respect.

The other thing is that it is just possible that we could take advantage of the Covid crisis and notice where particular disadvantage and poverty is arising. We referred earlier to the difficulty that some young people and families have no access to electronic devices. We could use that perhaps to map where the particular disadvantage is. I have a sense that it is as much to do with poverty and financial disadvantage as it is with anything else when people cannot access services, and indeed, almost get into a learned helplessness situation. Their will to access services when life is so difficult can be quite diminished.

Helen Berresford: What is really important, and has been highlighted in all of those responses, is that to tackle this we need a cross-government approach. The criminal justice sector and the Ministry of Justice play a really important role, as Lammy set out in his recommendations. On the subject of mental health access, we produced a report a few years ago with the Race Equality Foundation and Clinks. It was for adults, but it showed and reinforced the fact that people from BAME backgrounds were far more likely to access mental health support through criminal justice pathways than in the community. We need to look at why people are not getting access to mental health support in the community in the first place. There is a whole range of factors that play into this and there needs to be a joined-up and co-ordinated approach.

Q123 **Dr Mullan:** This covers what Helen has just said. We know that disproportionality is greatest at the point of arrest, at the start of the process. Even David Lammy talks about the fact that a lot of the causative factors are pre the criminal justice system. To what extent and how effectively do you think youth offending teams tend to engage with broader agencies in their areas to try to tackle issues when they identify them in the justice system?

Justin Russell: YOTs are very well placed to do that because they are statutory partnerships not just between criminal justice agencies but with education, health and local authorities. They bring all those agencies around the table at quite a senior level on their management boards, and they are in a good position to talk about the much wider picture. Again, there is a really important role for them in doing that.

Q124 **Paula Barker:** My final question for this session is to Mr Russell and Ms Berresford regarding reoffending rates, which have consistently been highest for black children and young people over the last decade. In the last year, 47% of black children and young people reoffended, which was an increase compared with 10 years ago of just over 4.5%, although we have seen a slight reduction in the percentage points in the last year. What is contributing to that reoffending?

Justin Russell: Reoffending rates are constructed in the same way as disproportionality, so they reflect the differential actions of police and

other agencies in deciding which particular young people they arrest in the first place, and then whether to divert them from a formal process or bring them into the criminal justice system. Those decisions start to generate the reoffending rate. It is part of the same issue rather than something separate.

Helen Berresford: I absolutely agree with that. All the factors we talk about that impact on the criminalisation and the over-representation of children from black and minority ethnic communities in the justice system impact on reoffending as well. The attitudes to risk, the use of stop and search and targeted policing, and all the issues around trust that have been highlighted, all play out in exactly the same way.

Q125 **John Howell:** I have a question about the criminal record system. The first element is to get an idea of what your view of the criminal record system is.

Helen Berresford: Across the board, our criminal record system is incredibly complex, at times very arbitrary, and very difficult to navigate, if I am honest, and that is true for both children and for adults. When looking specifically at children, it is true that if you receive a criminal record when you are a child it can have a huge impact on your chances throughout life for accessing education and employment opportunities in the future.

Q126 **John Howell:** May I interrupt you? You mentioned its impact. Could you explain the impact for a child?

Helen Berresford: We run a criminal record advice service, so we have people contact us and call us about their criminal record, with inquiries about them. We have examples of people who had a conviction or a caution when they were a child and have now had an offer for university or college withdrawn, because it has shown up and the college or university is worried about that.

When people apply for courses with placements, or courses in social care or health or any of those kinds of employment pathways, there are challenges when the criminal records show up. It can even have a huge impact on housing in the future as well. Our view is that we need to review the whole system and look at a more proportionate balance between protecting the public and making sure that people can move on in their lives.

Q127 **John Howell:** Does it get the right balance on which offences are disclosed?

Helen Berresford: Our view would be not at the minute. There are lots of challenges with the filtering system and all the different disclosure periods. As I said, it is incredibly complex. We have specialist advisers on our advice line, and it is complex for them as well to navigate the system. It is an important point to remember that somebody who is taking, for example, a youth caution may not at that time have had it explained or understand the implications of it, and that its disclosure might have an

impact later on. Many people say it is just a caution, so it is not going to have an impact. There is a huge area where we have to increase knowledge and review it so that we have a much simpler system that is much easier to navigate.

Q128 **John Howell:** Do the other witnesses have a view on that?

Dr Lewis: To come in on what Helen has just said, there is a really important point about accepting a youth caution. If you have ADHD, you are impulsive and you do not think through the consequences. You are more likely to say, "Yes, yes, yes," because you want to get out of the system and on to the next thing, so you accept without understanding the implications, and you should be supported through that decision.

Q129 **Chair:** Are there any different views on that?

Dr Taylor: I do not have a different view, but one thing that we do not have available in this country is the option whereby people can go to court and get into a programme that can mitigate their offending to the point that the offence is not recorded. I have been doing a lot of work in relation to reviewing the equivalent of community sentences with treatment requirements for adults.

In England, of course, we do not make those available for people under the age of 18. In Scotland they do, but we do not in England. In America, they have a kind of intermediate position, whereby if people admit to their offence and agree to that kind of supervised order, they can, with mental health support, avoid the conviction altogether. It might be helpful to think about whether that could be a possibility in this country, too. Obviously, it would take a lot of thought and it would take legislation, but it might be something to think about, because I absolutely agree that, once you have a criminal record as a young person, it tends to blight your life.

Chair: They use the phrase that it is sealed or something of that kind in the States. I have come across that.

Q130 **Rob Butler:** A similar or related theme is to find out your view on the current minimum age of criminal responsibility. Dr Taylor, perhaps I could start with you since you were just on that point about records. Do you think the current minimum age of criminal responsibility at 10 is appropriate?

Dr Taylor: No, it is clearly unacceptable, in part because it puts England and Wales out of sync with the rest of the United Kingdom. It is now 12 in Scotland. It puts us out of sync with the rest of the world and, indeed, with recommendations. I would like to ask Alex to respond more fully in terms of the cognitive development of young people and the inappropriateness of it. She can take you through that very clearly.

Dr Lewis: It is not compatible with what we know now about brain maturation. Previously, it was thought that the most significant period of brain maturation was in the first five or possibly eight years. We now know that a second critical period takes place in adolescence and is a

very dramatic development of the frontal lobes, which are, essentially, responsible for decision making, planning, consequential thinking, getting ideas about ourselves and social interaction.

We know about that period because of the latest developments in brain imaging. There has been a huge amount of information that has accumulated over the last 20 years, initially at NIMH in the States, but the UK has been a real leader. We have incredible centres at UCL, King's and Cambridge that have pioneered the work. Now it seems that there is a real scientific consensus. We know from Covid that science accumulates gradually, but now we have reached a point where nobody is saying any different, and everybody understands that brains are not mature by the age of 10. They are not mature by the age of 13 or 15. It is a much longer process than anybody thought, so it does not make sense to treat somebody at 10 the same as an adult, because they are fundamentally quite different in their decision-making abilities.

Q131 **Rob Butler:** What would the implication of that be for where you would fix the age at which somebody should take responsibility in a criminal context?

Dr Lewis: That is a huge discussion. Capacity is decision related. You might have the capacity to make a minor decision but not a major decision. One of the things that I mentioned in my written evidence was the decision about the oral contraceptive pill. You are not considered mature enough to make a decision about that until you are 14, but you are considered mature enough to make a decision about an offence at 10. That does not make sense because your brain is much more advanced at 14 than it is at 10. It needs a much wider review, as I think would be the recommendation from the Royal College of Psychiatrists, looking through to a unified idea about capacity, addressing capacity for health and social care decisions as well as for criminal decisions.

Q132 **Rob Butler:** You will be familiar with the argument that is always put forward every time someone suggests raising the age of criminal responsibility that young children have in the past committed egregious crimes such as murders, and people fear that they will then not be punished or dealt with by the criminal justice system. How would you resolve that issue if the minimum age of criminal responsibility was raised?

Dr Lewis: I do not think it is a black and white thing, that you are either not dealt with or dealt with. For example, with mental illness you might be considered too mentally ill, having had an acute schizophrenia episode, and that you did not have sufficient mens rea to have that level of criminal intent, but you are not just let out into the community. There is an alternative pathway for managing the risk. That is what we would be thinking. We are not saying that young children who commit very serious risky offences should be allowed to skip off into the distance. There is a risk that needs to be managed for their victims, for public interest and for themselves, but there is a capacity for change that probably is not being maximised by criminalising those young people.

Q133 **Chair:** Isn't the problem that, if you do not criminalise the act, the public do not feel that the gravity of the occurrence, which may have resulted in death or grave injury, is properly met? Your point may go to treatment post-conviction, some might argue. What would you say to that?

Dr Lewis: You can be found to have done the act, but it is about how you are managed. This is why there needs to be a whole systems approach. The person probably needs to be managed in secure care, but what that secure care looks like, and the interventions provided within it, might be different from what you get in the criminal justice system.

Q134 **Chair:** You are sort of drawing an analogy between immaturity and the traditional defence of not guilty by reason of insanity. Is that where you want to be going?

Dr Lewis: I was thinking about mens rea.

Q135 **Chair:** That is the same thing. You have a hearing to establish whether someone committed the act and then it is a question as to whether they had mens rea in the sentencing.

Dr Lewis: I think that is right. The evidence may show that the person committed the act, but it is what happens next that is important as regards rehabilitation. The public must have confidence in what happens next, and that has huge resource and service provision issues, which is why it is a very big conversation that pulls in lots of different agencies. In every other country in the world, bar two, that is what they are doing, so we are very much out on a limb. We are quite vulnerable. We have been openly criticised by the United Nations for having the lowest age of criminal responsibility in Europe, so we are quite vulnerable in that way.

Q136 **Chair:** I understand that. Mr Russell, do you want to pick that point up?

Justin Russell: I think the system itself realises how inappropriate it is to bring children into the criminal justice system anyway. The average age of children being supervised by YOTs has gone up, and the average age of children in custody has gone up. The mantra "Child first; offender second" has become the standard way that most YOTs now approach the issue.

I was going through the random sample of cases we look at. There are very few 10 or 11-year-olds now being taken through the formal system. One out of 1,100 court cases that we looked at involved a 10 or 11-year-old. It is slightly more for out-of-court disposals; about 3% of them involved a 10 or 11-year-old. Where possible, children are not being put through the system. It is worrying that there are still some that are recognised in that way, but I think the trend needs to continue.

On the point about maturity, there are significantly older offenders who lack the maturity to really understand what is going on. There are 18, 19 and 20-year-olds who could probably be managed in a different way, and spotting that maturity at whatever age we are talking about is an important thing to build into the system.

Chair: Thank you. That is very helpful.

Q137 **Maria Eagle:** An interesting idea is to have the equivalent of hospital orders. As somebody who used to have to look after them when I was a Minister, I know they have their problems, too. They do not always work as well as one might wish to keep the public safe, for example.

I was interested that earlier Dr Lewis, in answer to my colleague Paula Barker's question about disproportionality, talked a lot about disability. Whether you call it ADHD, autism or special educational need, it is all an element of disability. To what extent is disability also one of the hidden issues in the cohort of very complex children who end up in custody? Is it because their disabilities are not identified and they are not getting help at an early enough stage to prevent it being the criminal justice system where they end up trying to get some support? Is that a fair assessment, Dr Lewis?

Dr Lewis: You are spot on. There is five times the prevalence of people with autism in the youth justice and youth custody population than in the general population. The vast majority of them do not have a diagnosis at the point they come in. Again, the prevalence of ADHD is around 4% in the general community, but it is 17%, possibly a bit higher, in the youth custodial service. ADHD is a treatable disorder, so it is an absolute tragedy for that not to be picked up.

Q138 **Maria Eagle:** It seems quite clear from all the preceding questions that it would be much better to keep children and young people out of the criminal justice system, and, indeed, there has been some success in doing that over the last period of years because the numbers coming in are substantially smaller. Perhaps diversion from criminal justice processing is another way of keeping people from entering the system, because, once in, the evidence seems to be that people get stuck there and their offending behaviour worsens throughout their life in many cases.

I want to talk briefly about out-of-court disposals. The statutory ones, youth cautions and youth conditional cautions, as was mentioned earlier, count as a first-time entry into the criminal justice system, so it is the non-statutory ones, the community resolutions, that I am particularly interested in, which are of course the ones that are not really assessed or evaluated. How successful are out-of-court disposals? How successful have they been, whether statutory or non-statutory, at diverting children from formally coming into criminal justice processing? I suppose it is more the community resolutions, because the statutory ones drag you into the system.

Helen Berresford: You are absolutely right. The priority should be to keep as many children out of the formal justice system as possible. As much as anything, that is because of the evidence, which shows that once you attach an offender label to a child, that identity can be self-reinforcing and can have an impact on the likelihood of future offending. You are right about the numbers; there has definitely been real progress

on keeping people out of the system and looking at alternatives to custody.

The reoffending data speaks for itself, in that the highest reoffending data is for children in custody, by far. Those on community alternatives are less likely to reoffend. There is a real opportunity at the minute to focus on work across Government and with YOTs, and with other providers in the sector, and look at what we want for those interventions in the community. What do we want to see and what do we know from good practice? There is lots of good practice out there.

The important thing now that we have got the numbers down is to look at how we build on that. We were funded recently by Barrow Cadbury Trust to develop a toolkit. We worked with a number of youth offending teams, to look at how you can translate the research around helping a young person to shift their identity into an out-of-court disposal, and the importance of that in working in the community and trying to avoid custody.

There is good intention and will in youth offending teams and some really good practice. We work with Lewisham and Medway, and we spoke to Camden, which has some really good examples. There is a lot out there, and now is the time to build on it. I know you have the Centre for Justice Innovation on the next panel; they have done a lot of work around that and will be able to give you some real detail.

Q139 **Maria Eagle:** Mr Russell, do you have any sense from your position about how successful out-of-court disposals have been at diverting children and young people from coming into the system in the first place?

Justin Russell: You asked specifically about community resolutions, which are an increasingly common informal method of diversion. The honest answer is that we do not know. There is no national data on how many community resolutions are being given out and there has been no national evaluation of their effectiveness either. They are an increasingly big proportion of all the YOT case loads we are looking at. We estimate that about 40% of all out-of-court disposals are now informal community resolutions.

When we look at the quality of the assessment, planning and delivery for informal community resolutions, on average, we find that it is a lower quality than for other types of more formal caution or for court-based work; in particular, the quality of assessment does not seem to be as good for other non-formal resolutions. In less than half the cases we look at, community resolutions have a satisfactory assessment for the risk that the young person may pose, either to themselves or to other people. The honest answer is that we do not know, and we need some more work to be done on that area.

Q140 **Maria Eagle:** What is the best way to evaluate their effectiveness? Do you have any views on that, Mr Russell?

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

Q141 **Maria Eagle:** Dr Lewis and Dr Taylor, what role do youth liaison and diversion schemes play in the youth justice system?

Dr Lewis: One of the key things is aiding communication. We know that 60% of young offenders have communication problems, so helping with that is really important, to enable fair justice. What crossed my mind about reoffending rates is that we have robust data that people with ADHD who are unmedicated have a higher rate of reoffending, but if they receive the correct treatment, which is a combination of medication and psychological input, the reoffending rates drop by at least a third. It is massive, and it is unfair to not treat people and enable them to be diverted out and reach their potential.

Q142 **Maria Eagle:** Dr Taylor, do you have anything to add?

Dr Taylor: I endorse all of that. It is even more than unfair—it is unsafe not to be providing those treatments to young people. We know what to do, and it can transform their lives.

Q143 **Dr Mullan:** Helen, you talked about, for example, the reoffending rates for those in custody being higher. Would you accept that we have to be careful about drawing direct comparisons between association and cause? The more we create a justice system that moves away from criminalisation, the more it is reasonable to assume that those still in that system are the more serious, more significant offenders and, by definition, their data will show higher rates of reoffending, for example, and that is probably going to get worse. We should not assume that that trend is because going to prison makes them reoffend. Those going to prison are probably already the ones who are more likely to reoffend.

Helen Berresford: You are right that it is not easy to do a direct comparison of the two, but we know, with 70% of children who leave custody reoffending, that it is not working at the minute. We have far more to do to tackle that and get a grip on what the right approach is for the children currently being sent to custody. Should they be in custody? If they should, they need to be in some form of residential accommodation, so what is the right support for those people? For example, if you look at the role of resettlement support, we know what works in resettlement. There has been lots of evidence, not least from the Beyond Youth Custody partnership, about what works for effective resettlement, and lots of drive and lots of buy-in from the youth custody service and the YJB.

If we look at the inspection reports and the practice at the minute, I cannot overestimate how far we have to go to get the right resettlement

support for people in the justice system. If somebody comes into custody, they should straightaway, from the minute they are sentenced, have their needs assessed. Build a plan with the child, and work with the YOT and custody staff to look at what they need over the course of their sentence, and what they need and what they want to achieve in life. Then put in place education and health support and all of those factors. All of that can be done; it is just that too often it is not at the minute.

Q144 **Dr Mullan:** To make the point again, I accept that. You could say that custody should be improved, but that is not the same thing as saying that the same cohort, which by definition is different from the cohorts that do not go into custody, would have done better not going into custody. We do not know that, particularly, as we have just discussed, because we do not have good data about the outcomes for those taking non-custodial routes. We cannot make that kind of direct comparison.

Helen Berresford: I accept that point as well; it is not an easy direct comparison.

Justin Russell: I have a point about getting help for those young people. Earlier, Helen raised the issue of thresholds for assistance. One of the problems we have is the slightly perverse outcome that to get help with your mental health problem or your speech and language, or whatever it is, you have to get arrested and seen by a YOT, because if you were just referred through a normal community route you would not pass the threshold for that sort of assessment or help. We have excellent specialist services tied up in YOTs that are able to help young people, but those services are not available to young people in the broader community, or they have to wait a long time. Trying to find a way through that is a critical problem.

Q145 **Andy Slaughter:** May I ask you about the use of remand, which appears to be a growing issue? We do not talk about it that much. The figures I have, which you may be familiar with, are that the number of children in remand has gone up by 12% in the last year, but about two thirds of the total number detained on remand do not receive a custodial sentence. It is split half and half between those who are acquitted and those who get a non-custodial sentence. Well over 50% of those on remand are from BAME backgrounds, which strikes me as very significant. Do you agree with that? If you think it is a problem, what is your solution?

Helen Berresford: I absolutely agree. Every single stat you have just given is a terrible indictment of where we are on remand. It is really clear, particularly when two thirds do not go on to receive a custodial sentence, that there is over-use of remand. There are a number of suggestions as to why that is. Some of it is to do with detention in police custody and the time available to get together an alternative bail package. Some of it is around there not being enough alternative accommodation. Of course, there are decisions about risk that are taken as well in the court system.

From a resettlement perspective, because that is a lot of what we have worked on at Nacro, there are real challenges for the resettlement of young people who go into custody on remand, not least because of the obvious issue that you do not necessarily know how long they are going to be there. A lot of resettlement practice has traditionally focused on children and adults who are sentenced. It is difficult to put in place the right support to engage someone meaningfully in education, with therapeutic interventions and things that might benefit them when they are in custody, when they are on remand. We can be left with somebody leaving suddenly without that kind of support having been put in place.

Justin Russell: The statistics show that it is slightly more complicated than that. Of the two thirds who are remanded but then do not get a custodial sentence, of the half that are not acquitted but get a community sentence, one of the oddities about the youth system is that youth magistrates cannot take into account time served on remand when deciding whether to sentence. I suspect what is happening is that pre-sentence report writers and magistrates think, "They have had a taste of custody. I would have given them a custodial sentence had I been able to take that into account."

Q146 **Andy Slaughter:** That may be true, but it is an unsatisfactory answer. Apart from anything else, how are we supposed to know what is going on? It is entirely untransparent.

Justin Russell: I completely agree, but my suspicion is that that is what is going on some of the time.

Q147 **Andy Slaughter:** I am not sure I accept that answer. The time served issue often happens in adult sentencing as well. Unless it is stated in the sentencing remarks, and I doubt that it is in many cases, how does that advance us in dealing with the issues around remand, if that be the case? Are we supposed to say it will all sort itself out?

Justin Russell: I was not implying that. I was just saying that in trying to get the remand figure to come down we need to continue to press for credible intensive alternatives.

Part of the problem is that the case mix has been changing over time. There is an increasing proportion of serious violent offenders coming before the courts, which then have to make remand decisions, so you need an increasingly credible alternative to custody for them. It is disappointing that the use of intensive surveillance and support schemes—ISS schemes—seems to have been dropping. It would be good to see those revived. I have been talking to YOT managers who say that during Covid they have been able to make good arguments to avoid the use of remand, but they are worried about children who were on remand before lockdown started, who are now very severely delayed in waiting for trial dates or sentencing.

Andy Slaughter: There are about 2,000 tags that were not used for the early release scheme. You could probably have a few of those.

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

Q148 **Andy Slaughter:** Apart from being unjust, it must be very disruptive. You mentioned resettlement and reoffending as well. Whose fault is it? Is it the courts' fault for not interrogating matters more, or are the options not available, so it is the fault of those who are providing the resettlement opportunities or the bail packages?

Justin Russell: It is probably a bit of both. As I said, you need credible alternative packages.

Q149 **Andy Slaughter:** What has been particularly brought home, partly by the Manning judgment, is the effect of being incarcerated during the Covid period. Three weeks ago today, the Prisons Minister was asked specifically about children on remand, and she said that youth offending teams were reviewing whether any applications could be made to help people who are on remand to be released back into the community.

Are you aware whether there has been any material change in the last few weeks, or during the Covid period, to fast-track remand cases to be dealt with in front of the courts, and to look at the effect of remand in the light of solitary confinement, lack of visits, lack of education and things of that nature?

Justin Russell: I am not. I was getting the opposite message from youth services I spoke to last week. They said they had been pressing youth courts very hard to prioritise those cases and have not been successful. There is still a lot of concern about that.

Q150 **Andy Slaughter:** Do you know why that is?

Justin Russell: I don't. I am just feeding back what we were told. There is a lot of concern about how long remand cases are having to wait to be heard. I heard about a case last week where they were due to be sentenced in April and they are only just coming up for sentence this week because they had to wait for a psychologist's report.

Q151 **Andy Slaughter:** Do any of the other witnesses have a view on whether the Covid situation is making matters worse?

Helen Berresford: I am not aware.

Chair: Thank you very much.

Q152 **John Howell:** In your own ways, you have all shown that the sentencing options are not flexible enough to deal with the situation, and perhaps

you would like to comment on that. I want to move you on to a question about youth courts and what needs to happen to them so that they change. What more do we need to do to make them change to meet the needs of the youth justice population?

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

Q153 **Rob Butler:** I speak as a former youth magistrate, and I am almost going to be a turkey voting for Christmas here: if we think about the youth courts themselves, do you think there is an argument to have rather more specialised child experts involved in the current youth court system for as long as that is the system we have to operate? For example, even as a first step, could we have direct recruitment to the youth magistracy, as we see in the family courts? Dr Lewis, do you think that would be helpful?

Dr Lewis: I think that would be very helpful, if it is accompanied by appropriate training.

Q154 **Rob Butler:** Helen, what is your view?

Helen Berresford: That is absolutely right. It is really important. Courts are an alien environment for many people, particularly for children, and the skills and expertise needed for everyone involved in a court case with a child are pretty specific. It is important to get training and have specific skills around that. For children going through that system, involving the child at all points, in all the decisions and discussions that are going on, and making sure that everyone who has a part in the process is in those discussions, is really important.

Q155 **Rob Butler:** Do you think our current adversarial system enables that, or should we be thinking more broadly about what is done in other jurisdictions? I am thinking particularly of Scotland and New Zealand, where they have what they call family group conferences and the like? Do you think that would be a better form of youth justice?

Helen Berresford: I am not an expert on the court system, and you will have people on the next panel who know far more about it than me. From our experience and the experiences we hear from young people, it is a difficult system to go through, so looking at any alternatives is the right thing if it will help create a more supportive environment, where the child knows what is going on and feels involved in that, and, as you say, family are involved with the process as well.

Dr Lewis: I agree with that. A member of the adolescent forensic special interest group at the college has moved to New Zealand and has been working there for a year. His feedback has been very interesting. He said that, having seen the system work, it seems so much more effective. There is much more engagement.

Engagement is what it is all about. We are trying to divert people from one trajectory on to another, and we can only do that if the young people buy into the system. He has been very impressed by that. Scotland has a proud tradition of child welfare and is very advanced in its thinking. They have done quite a lot of creative work over the last two or three years, and it would be great to share in that.

Q156 **Rob Butler:** Mr Russell, we see multi-stakeholder and child engagement in the youth offending teams. Do you think that ought to come in earlier in the system, in place of the current court system?

Justin Russell: We generally find good relations between youth offending teams and court teams and local youth courts, and there is good feedback from courts. To be honest, the No. 1 problem in the system is the delays in the youth courts. It takes 12 to 18 months to get serious county lines or sex offence cases to trial after arrest. In the meantime, young people are left in limbo with a serious offence hanging over their head, and youth offending teams are not able to intervene with them unless it is on a voluntary basis. The key thing that needs to be sorted out is the delay issue, which the Centre for Court Innovation raised this morning.

Q157 **Rob Butler:** I am very mindful that we have limited time left on this panel, but one thing we have not talked about is secure schools, which are supposed to be a panacea. Some of us may be more or less sceptical about that. Will secure schools be part of the answer or, given what we have heard, particularly from the expert psychiatrists, rather than an intense focus on education, should we have an intense focus on mental health?

Justin Russell: We need to change the culture of youth custody. Some of the most depressing visits I did in my previous job at the Ministry of Justice were to secure training centres and YOIs. We simply have to change the way they operate and the way they interact with young people. I think secure schools are worth a go, and part of the answer, but we need a much wider approach to the whole custodial estate.

Q158 **Rob Butler:** Dr Lewis, do you think secure schools are the answer?

Dr Lewis: I am definitely a fan. Education creates different opportunities, and education will be informed by an understanding of mental health difficulties and disorders. Education should be the vector.

Q159 **Rob Butler:** Do you think that the secure school model will provide enough opportunity for the mental health provision you would like these young people to be getting?

Dr Lewis: I think so. I understand that the contract has been given out to an organisation that is experienced in dealing with pupil referral units. A huge proportion of the young people who end up in pupil referral units have neurodevelopmental difficulties. By having a co-ordinated approach, you can help change people's life chances.

Q160 **Dr Mullan:** I want to pick up on your depressing experience in visiting those sites, Mr Russell. Could you elaborate on that? What do you mean? In what way?

Justin Russell: A secure training place costs something like £180,000 a year. Given the sheer amount of money, they do not feel like £180,000-worth of provision. You go in and they are bare. They feel like prisons and not therapeutic environments for young children of 13 or 14. If nothing else, if we could change the physical feel and culture of those places, it would be progress.

Q161 **Dr Mullan:** I want to follow up the questions around the court experience for young people. There has been a transition to the use of video links, for example, in response to Covid. There has been some suggestion that that is particularly challenging for young people. Balancing that of course with what you have also said about the need to avoid delays, do any of the panel have views on the use of remote hearings?

Chair: Do you have any thoughts on the court reforms we have seen?

Justin Russell: Some of the YOTs I spoke to earlier on in the lockdown felt that they were being squeezed out of the process by not having access to the video links, or by not being allowed into some of the video conferences they were running. I think they prefer to be there in person to do face-to-face assessments in court. There were similar issues with police custody suites, where it is very difficult to maintain public health guidance, and they need to get back into those.

There are some issues with links to secure custody as well. A couple of STCs did not have video links, and that was causing problems and forcing young people to be transported in person to court hearings. There were certainly a lot of teething issues when it first got going, which hopefully are starting to settle down.

Dr Taylor: It would be very helpful as we move out of the Covid crisis to review what works with video links and what does not. It is quite clear, and Alex made the point earlier, that, diagnostically, there are some things we cannot do by video link; there are subtleties we cannot pick up, but we could use video interviewing as a supplement perhaps, and we could extend the amount of work that we do with young people. Once we are no longer driven by circumstances, now that we have improved technology, we should have a radical review as to how we could use it to help in this situation, but not replace the clinical interview.

Chair: That is useful.

Q162 **James Daly:** Chair, time is ticking on and I may be repeating some of the points that have already been raised, but I want to make one point to

the witnesses. I was a criminal defence lawyer for a long time, and I do not recognise much of the characterisation of the youth courts that I served in. The magistrates that I have appeared before were obviously not perfect, but there was a high level of training and interaction with youth witnesses. I could list any amount of variations to youth orders that have been tried and failed.

I want to put the counterbalance. There is a system that is trying very hard to work on behalf of young people. It is not all the failure that I feel is being painted here today. I would not want the efforts of magistrates and youth offending team officers, who are working night and day to support young people in communities throughout this country, to get the viewpoint that what they are doing is not having an impact. I can tell you from 16 years of doing it that it has had an impact on many young people's lives and changed them for the better. That is a statement rather than a question, but I think the point had to be put.

Chair: Mr Russell, what would you say?

Justin Russell: There have been particular challenges during Covid and there were challenges before that in relation to court closures and young people having to travel further to get to youth courts. Obviously, that is not to do with the magistrates themselves, but about wider HMCTS policy. I think you are right; they are dealing with what comes before them with the tools they have.

Q163 **James Daly:** There is a good level of interaction between magistrates and young people. Their experience as magistrates and experience in life enables them, with the training they get, to do a good job. Would I be wrong in saying that, in general, youth magistrates throughout this country do a good job?

Justin Russell: As I say, we focus on YOTs rather than youth court inspections. One of the interesting ideas in the Centre for Justice Innovation report this morning is around the potential for magistrates to have more of a reviewing role, with ongoing referral orders and getting a chance to have the young person come back and report on how they are doing. That might be a welcome development and has worked very well with drug rehabilitation requirements in the adult court.

Q164 **Chair:** I see a number of the other witnesses nodding in agreement with that point, Mr Daly.

Dr Taylor: The reviewing role is very important, particularly if the courts can have some sort of relationship with the individual and engage them in the process. I think that is an extremely helpful step forward. There is some evidence, mainly from the United States, that that engagement process works in the mind of the offender and that they do better.

Chair: That is very helpful; thank you very much. Mr Butler, do you have any final points?

Q165 **Rob Butler:** Does anybody have any comments about transition out of the youth system into the adult system and how well that is catered for?

I know it is a massive subject and we have minus 20 minutes to do it in. I do not know if anybody could sum it up in 20 seconds. Dr Taylor, you were talking about the 18 to 25 age group. Do you want to try to tackle that briefly?

Dr Taylor: Certainly, from the college perspective, we are moving away from the idea of chronological age cut-offs to trying to be much more flexible about where people fit best in services. My experience of working with 18 to 25-year-olds, mainly young people with developmental disorders and personality disorders, is that they have needs that are different from much older adults.

We also have some evidence from the transitionary group, the 18 to 21-year-olds in prison, that they are often not, at that stage, into particularly toxic levels of substance misuse, but the older men are, and mingling them in the prison is not a terribly constructive thing to do, because substance misuse is very heavy and prisons are training grounds for substance misuse, if you like. It is important to continue to see people who are not much more than 18 as quite vulnerable. We need to try to have a more flexible approach for those transitionary years. There may be some people for whom it is perfectly correct to move them straight across to the adult system, and they would benefit from it, but others would be much better staying for a while longer in the younger persons' services.

Q166 **Rob Butler:** Mr Russell, are the YOTs doing enough to prepare people for that transition? It is a bit of a cliff edge, some would say.

Justin Russell: It is a real cliff edge. You are going from a small case load, and access to mental health and all the rest of it, to probation officers with a very big case load and no on-site CAMHS team. The transition can be managed well if the YOT worker and the probation officer work very closely alongside each other and keep that relationship going after transition, but quite often that does not happen.

We found in our resettlement study that it was particularly poorly managed for young people turning 18 while in custody. They were having to go straight into the adult service. My big message in my reports is encouraging YOTs to hang on to some of those young people. They do not have to let them go as soon as they hit 18. They can continue to supervise them, and I encourage them to do that where they feel it is appropriate.

Helen Berresford: I agree with all that. You are right, it is absolutely a cliff edge, and it is important to get that transition.

Chair: Thank you very much to the four witnesses on our first panel for your time and for your evidence. We very much appreciate it and we are very grateful to you.

Examination of witnesses

Witnesses: Enver Solomon, Laura Cooper, Jessica Mullen, Laurie Hunte, Shadae Cazeau and Phil Bowen.

Q167 **Chair:** The next panel consists of Enver Solomon, chief executive officer of the charity Just For Kids Law; Jessica Mullen, director of influence and communication at the charity Clinks; Laurie Hunte, criminal justice programme manager at Barrow Cadbury Trust; Shadae Cazeau, head of policy at EQUAL; and Phil Bowen, director, Centre for Justice Innovation. Have I missed anybody out?

Enver Solomon: My colleague Laura Cooper, who is a practising solicitor in our team, is joining us to contribute as well.

Q168 **Chair:** It is nice to see you, Laura.

What is your assessment of the effect that Covid 19 has had on the criminal justice system as a whole?

Enver Solomon: I concur with the points made in the previous session. The big issue of concern for us is delay. We should not underestimate the impact that delay has on the lives of defendants, victims, families, and all those affected by crime, who get caught up in the criminal justice system.

Our team of lawyers has cases that are being adjourned to dates late in 2021. Imagine if you have to wait that length of time, those many months, for your case to come to court. It is not good enough. The guidance from the CPS, and what the UN convention on the rights of the child says, is that justice should be carried out expeditiously for children because, if it is not, it damages their rights and it damages their ability to access justice fairly and in a way that meets their needs. Delay has to be dealt with, and it is a serious concern.

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

Q169 **Chair:** That is a helpful point. Laurie, do you have any views on that?

Laurie Hunte: I concur with what the previous witnesses said. I want to pick up a couple of points. As Enver was saying, there are delays and sometimes the delays are quite excessive. It is important that a child's maturity and development are taken into account, and a delay in the process can have an impact on their life chances.

One other point I want to raise concerns the fact that we have Covid legislation in place that previously meant that people could not travel too

far from their houses. I wonder about the impact on detached youth work due to that legislation and what outreach work has been able to take place with some of the most vulnerable children.

Q170 **Chair:** Shadae, can you help us with your organisation's experience of Covid impacts?

Shadae Cazeau: I also concur with what was said earlier. From EQUAL's point of view, an area that we have been quite concerned about in youth justice is policing, and how that has been affected as a result of Covid, and how young people are experiencing policing through this time. From what we know and understand, and from the anecdotal evidence we have been given, there seems to be disproportionality in policing during Covid. There are some concerns about how that may have trickled down into other areas of the system, and eventually how it will impact on policing moving forward after Covid-19. From the input we have seen, disproportionality continues, and that is one of our major areas of concern.

Phil Bowen: Covid-19 and the court backlogs produced by it make it even more vital that we use as many pre-court disposals and diversion schemes as possible. We have welcomed the CPS guidance that sets that out and highlights the fact that very often diversion and out-of-court disposals are necessary. In our discussions in the field with YOTs that are already operating point-of-arrest diversion schemes, we have certainly heard that they have had to be very creative, as Justin Russell said, to think through how they deliver interventions in challenging circumstances.

Coming on to the courts, this morning we published some research into youth courts, which had already found, pre Covid, that vulnerable children and young people were facing delays in the youth court system, as we have already heard. They found the adversarial court process difficult to understand, and they did not always receive the interventions they needed.

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

Lastly, I want to pick up Dr Mullan's question about remote hearings. We have real concern about how young victims, witnesses and defendants experience remote hearings. Unlike for family and civil cases, there has been no review of the evidence around the use of remote hearings during Covid-19 for the criminal courts. Our worry is that remote hearings could become standard before we know for whom they work and for whom they

do not work in our criminal courts. In my view, just as with the right to jury trial, we cannot let the necessary steps that we have had to take during the Covid-19 pandemic determine what the future of our justice system looks like. We think there is good anecdotal evidence and good evidence that remote hearings for young people in particular might disadvantage them in a way that they would not for someone who is fully mature.

Q171 **Chair:** Jessica, what is your perspective?

Jessica Mullen: I concur with all the previous witnesses. From the point of view of the voluntary sector organisations that Clinks represents, which work across custody and in the community, including in the youth justice system, we are seeing that they increasingly struggle to deliver their services in the current context, but they are also seeing an increase in service user needs. There is a clear mismatch. Service user need is increasing for all the reasons others have pointed to, around the impact on mental health, lack of access to education and lockdown in custody. Almost half the organisations that respond to our regular surveys have told us they have had to reduce their service provision. It is also severely impacting their sustainability and ability to deliver in the future because they are not able to deliver on contracts and grants.

That has a particular impact on organisations in the criminal justice voluntary sector because they tend to have much lower reserves than the wider voluntary sector in the UK. Again, it has a particular impact on black and minority ethnic-led organisations, which in this context, given the over-representation we have in the youth justice system, are all the more important in supporting people in the system. That is because those organisations have suffered from chronic underfunding for some time.

To add to that, in the youth justice space, we are particularly concerned because many youth justice organisations, particularly if they work with YOTs, get their resources through local authorities, and, obviously, we are seeing an impact on local authorities' resources as a result of Covid. We are looking at the already not great engagement with the voluntary sector potentially decreasing and becoming more fragile going forwards.

Q172 **Rob Butler:** I would like to ask the same question I asked the previous panel, but over a broader timescale. How has the youth justice system adapted to meet the changing needs of the children who are now coming into it, as opposed to the children who were coming into it, say, five years ago. May I start with Mr Bowen and ask you to address specifically how you think the youth courts have responded to that changing need?

Phil Bowen: The first thing is that the youth justice system in general, through the adoption of things such as pre-court disposals and point-of-arrest diversion, has done a great job, as the previous panel said, in reducing the number of children who come into any form of contact with the criminal justice system. Our analysis of how the youth court has reformed or changed, given the changes in the population, is that it has essentially remained very similar. It still operates on an adversarial basis,

and in many ways it does not look very different from how it looked 20 years ago; there are just fewer people going to it. Our research, in our report published this morning, suggests that our youth courts need to become more problem solving. As the Northamptonshire bench chair and justice of the peace Dominic Goble has said, the challenge is how we make our youth courts transformative, not purely transactional.

I guess our view is that the Government are in a very lucky position. They have had the Carlile review, which the current Lord Chancellor sat on. They have had the Charlie Taylor review, the David Lammy review and our research, all of which generally agree on a shared vision of our youth courts, which is changing the youth court to become a much less adversarial, more engaged and procedurally fair system, and one in which the youth court and youth court magistrates follow the case of a young person right through to the end. Over the past five years, I think consensus has emerged from all of those reviews about how youth courts can respond to that challenge. The question for the Government is how they get on and deliver the change.

Enver Solomon: One issue that has been entirely overlooked, and I will ask my colleague Laura to come in on this too, is the quality of legal representation for children in the youth court, and, indeed, in the Crown court, at the police station and across the system. It is a significant factor in what happens in the youth court.

In no other area of public policy do we have children and young people being represented by those who do not have any specialist skills or training to work with them. It does not happen in the health system or the education system. It does not happen in any other area of the public realm, yet, astonishingly, even though we know the multiplicity of needs that children who come into the criminal justice system face—it has been documented by other witnesses, and in the reports that Phil referred to—we are allowing lawyers, who have no training in representing children and young people, to work with them in a very challenging adversarial setting.

Imagine being a child with a communication difficulty and a difficult background, and a lawyer starts working with you who has no specialist skills to understand how to interact with a young person. It has devastating consequences for the quality of legal representation and for the quality of decision making. We are seriously concerned about that. I am going to ask my colleague Laura, who heads our legal centre, and is a solicitor, to comment.

Laura Cooper: I want to make a couple of points. I am going to get to the point that Enver was making about youth specialist representation, but, first, although youth courts are designed specifically for children, we feel that still not enough is being done to make sure that they are active participants in what is happening to them. There is the sense that it is good enough, but it is not good or great.

A quick example can be demonstrated in a recent Court of Appeal case that Just for Kids Law took around the use of intermediaries. A judge refused the use of an intermediary for a child with communication difficulties, on the basis that it was a lawyers-only case. We were concerned about that, as it seems to infer an acceptance that the child does not have to fully understand everything that is happening to him or her in the trial. That is really concerning.

As a minimum, we feel that all professionals involved with a child should have not just awareness and knowledge of the law but real skills to engage the child in what is happening. Lawyers need specialist skills and knowledge in representing children, to not just divert children from the criminal justice system but to communicate effectively with them. That is difficult to achieve without youth justice legal expertise gained through specific training and accreditation. A good way to highlight it is that children represented in family proceedings have to be appointed a specialist children's panel lawyer. That is not currently the case for lawyers who represent children in criminal proceedings, despite the fact that the child's liberty might be at stake. No specialist youth justice training is mandatory or required.

Rob Butler: I want to ask Jessica Mullen a question about adapting to change in the cohort on the custodial estate, but, before I do, I think my colleague Mr Daly wants to chip in.

Q173 **James Daly:** I feel like the merchant of doom. I want to challenge those two points. I do not want to be negative, but some of the finest advocates I have ever come across in the court had no training whatever. I had no training over 16 years of defending people in the youth court, and I do not feel it made one iota of difference whether I had training or not in the representation that I and others gave. Unless some evidence can be produced to say that representation is going to be better because of this training, whatever it may be, I think it is a very dangerous step, because the evidence from those of us who are frontline practitioners would say it is not needed at all.

Enver Solomon: To respond to that, Mr Daly, there is evidence in the report that Phil's organisation brought out this morning about the impact of poor-quality representation. There is also evidence from the Bar Standards Board, which commissioned research a few years ago looking at ensuring that barristers have some core competencies and skills in working with children. Indeed, as a consequence of that research, the BSB brought in a voluntary requirement for barristers representing children to have some core competencies and skills.

The argument we are making is not based on hearsay or just what we see through our practice. There is an evidence base behind it. It really is impacting on outcomes that could be better in the quality of decision making in criminal justice and therefore the savings that could accrue from that.

Q174 **Chair:** In your practice, you appear as advocates in the courts

yourselves.

Enver Solomon: We do. We have a criminal practice, and my colleague Laura is involved in working with and representing children and young people. Our legal director is a highly skilled criminal lawyer and we have a couple of other criminal lawyers.

Q175 **Chair:** You are a charity, but you have skin in the game as advocates.

Enver Solomon: We do. We know what we are talking about, in other words.

Q176 **Chair:** Equally, you are part of the market.

Enver Solomon: We have a legal aid contract. We are not looking to win work. We are not trying to take over the legal market. We are interested in quality representation for children and young people, and improving that across the country.

Chair: I just wanted to get that clear.

Q177 **Rob Butler:** My question was about how the youth justice system has adapted to meet the changing needs of children that we have experienced over the last five years or so. Jessica Mullen, could you address that specifically with a view to the custodial estate?

Jessica Mullen: I suppose my response would be two not entirely simplistically related points, both of which the previous witnesses have pointed to. One is that, as the custodial population has decreased, we are seeing potentially more complex cases, and cases where the complexity is not assessed and issues are not identified and therefore addressed, be that mental health needs or learning disability. The second thing is that, although the number of children has reduced, the number of black children has reduced at a much lower level, leading to now more than 50% of the population being from black and minority ethnic backgrounds.

It is important that we do not draw simplistic correlations between those two facts and assume that that is because children from black and minority ethnic backgrounds are more risky or more complex. We know from disproportionality further down the system that often what is happening is the result of quite a complex interplay between perceptions of risk and racialised bias, be it conscious or unconscious, so we end up seeing escalation through the system of certain groups.

In response to that, there was some talk in the previous panel about diversion and the fact that we do not have data about diversion rates, and, therefore, we do not have demographic data about who gets diverted and who does not, and why that might be. We know from feedback from voluntary sector organisations working in that space that they see black and minority ethnic children more often overlooked for diversionary routes, and they perceive that to be because those children are perceived as risky and unmanageable. Then we see the statistics of over-representation lengthen throughout the later stages of the system.

My other point is about what the system could do to adapt to that. We have not really seen, and we still do not see, sufficient engagement of black and minority-led organisations working in the custodial estate to support that population—organisations that understand the lived experience of those children, and, in particular, the lived experience of racism, and how that might influence their interactions with the system. I pointed out in my previous answer the impact that Covid-19 is having on those organisations. It is important that those organisations are there in the recovery from Covid, given the disproportionate impact of Covid on black and minority ethnic children and their families, and the support that they will need as lockdown eases and we go into the recovery phase.

Q178 **Richard Burgon:** This is a question that was addressed to the first panel, but I am very interested to hear the thoughts of every member of the second panel on this very important issue. People will be aware that today the shadow Secretary of State for Justice, David Lammy, secured an urgent question on an update on the implementation of the Lammy review. We have all seen and considered the Lammy review, and think it is very important indeed.

Why does the panel think that race disproportionality has continued to increase despite the Lammy review and its recommendations? It is the case, as I said in a previous evidence session, that there is a greater disproportionality of black children being locked up in our country than there is in the United States of America, which should give us all cause for great concern. Why has race disproportionality continued to increase despite the important Lammy review?

Shadae Cazeau: The first point is that when we look at first-time entrants in the system, which is where I think we should focus some of our attention, we see that the proportion of black people entering the system has doubled over the last 10 years. That gives a slight indication as to why some things from the Lammy point of view have not come into play. When we look at policing, which Lammy was not able to go into but is part of the process, and the over-policing of BAME communities, you see they are often disproportionately first-time entrants in the system.

I understand that the MOJ has addressed quite a few of the recommendations, and of course we are happy that some of those recommendations have been enforced. There are other things that concern us, such as the lack of representation in the judiciary. That was raised in the Lammy review, and, although the judiciary have looked at some of those areas, they have not necessarily accepted all of those recommendations. Those things are quite important in youth justice when young people are in court and fail to see anyone who looks like themselves and, therefore, feel lack of trust in the system.

A lack of trust runs throughout. As Jess mentioned earlier, there is also the issue of risk perception that we discussed. Throughout the system, you can see different elements. Young black men especially are often looked at as risky. As a result, the sentence they are given may be harsher, and the time they spend on remand, for example, may be

longer. These are the kinds of things that might have impacted on why the Lammy review has not been completely implemented; it would require some training and things that have not necessarily happened yet for people to really understand their unconscious biases around risk and risk perception, and therefore to address those and be able to implement the recommendations.

Laurie Hunte: You raise a very important question. The Lammy review came out almost three years ago. It is always a big ask for one review to address all societal issues. One of the things it did was to point a way forward for the explain or reform principle. I do not believe enough organisations have really embraced that as a priority.

It is key that all statutory agencies in the criminal justice system collect data and examine it to see where disparities lie, and look to use what resources they have to try to reduce them. It is a very difficult task. There have been a number of agencies that have attempted it; for example, the Parole Board was very concerned about the lack of representation in its members, and it took steps to do something differently and recruit in a different way. Those are the sorts of challenges that organisations will need to go through—to examine what is happening and do things differently. I would like to see the whole range of criminal justice organisations take up that challenge as the Parole Board did.

Phil Bowen: The centre has been involved in the creation of the choice to change diversion pilots, which were specifically set up following the Lammy review. We provide much wider support to a wider range of adult and youth diversion schemes across the country. As we speak, we are working on a research project looking at whether there is racial disparity in the initial decisions around who gets diversion, especially for young black boys. The hypothesis we have developed, in concert with YOT practitioners, is that similar individuals of different ethnic backgrounds may have different decisions made on their cases due to some of the issues that Laurie and Shadae have already mentioned.

There is another issue I want to raise on why there has been less progress than is desirable on the Lammy review. HMCTS and the MOJ have not yet responded to Dr Natalie Byrom's data review of the HMCTS court reform programme, which itself makes recommendations about collating data on racial and other protected characteristics. In David's review, the inability to look at data down to a granular level in the court system was a particular issue and a particular problem.

The last thing, which again comes back to the issue of why the Lammy review has not cut through on this issue as much as it could do, is that the Ministry of Justice rejected some of David's suggestions around youth court reform. As an organisation that has just done a whole bunch of research on youth court reform, we found there was a lot to be said for what David was recommending around how youth courts follow cases through and how they can improve their engagement. As I said before, some of those issues will be good for everyone who comes through a

youth court, but particularly for some of the people who face disproportionality at the moment.

Jessica Mullen: I have three quite quick points. The first is that there is an awful lot of activity that has happened in the Ministry of Justice in response to the Lammy review, but it is all concentrated in the Ministry of Justice, and there is not a cross-government strategic approach. Policies in other Departments potentially undermine some of the activity that is happening in the Ministry of Justice. The policies on stop and search and knife crime protection orders are likely to be pushing more people from black and minority ethnic backgrounds into the system, so the Ministry of Justice is, essentially, playing catch-up in that sense.

Within the Ministry of Justice there has been a lot of activity, but it has not been significant enough that it has led to action that has improved outcomes. One example is a recent report that the youth custody service produced around parental engagement for black and minority ethic children. It came to some very good conclusions but explicitly stated that it placed no obligation or commitment on any agency to implement any of them. We have lots of reports and information and activity, but no teeth for any of that work.

Finally, and linked to that point, a lot of the activity in response to Lammy is almost siloed in the teams that are working on the Lammy response, and is not fully embedded across all policy. That means that when new policies come up, or new situations come up such as Covid-19, we do not have a system that has race equality embedded at its core, and, therefore, we are at risk of creating new racial disparities in the system.

Enver Solomon: There is a real issue with sentencers. I do not think sentencers are collecting data and asking themselves tough questions about the disproportionality in sentencing. We have had cases where we represented young men from black and minority ethnic backgrounds, and we know for a fact that they get a harsher sentence, particularly in relation to drug offences, than their white counterparts. Sentencers need to collect data across every court and forensically review it on a regular basis, and ask themselves questions about disproportionality and what they are doing about it, and the extent to which every bench is representative or not of the local community.

There is also a big issue at the point of entry, particularly in relation to the police. We are doing some work on children being held overnight in police cells. The disproportionality in the use of police cells is stark in relation to black and minority ethic children and young people. Again, I do not think custody sergeants across the country are collecting data and asking questions of the data about the disproportionate detention of children from black and minority ethnic backgrounds. That should be happening too. If at every point in the system data was being forensically reviewed and questions were being asked, I think we would have different outcomes.

Chair: Those were very full answers; thank you very much.

Q179 **John Howell:** May I ask the same question that I asked the earlier panel about the current criminal record system and what you think of it? Perhaps you could give an example, or more than one example, of the effect on a child of having a criminal record.

Enver Solomon: The Committee may be aware of the case that we brought known as G, and the Supreme Court ruling in relation to filtering rules. It related to a young person who had received a caution and, as a result of the nature of the offence, was given a criminal record that would stay with him way into the future. The ruling by the Supreme Court is that it was disproportionate and in breach of our client's rights to be given such a criminal record that would stretch into the future. The court ruled that for certain categories of offences, where you are given a caution, criminal records should not remain with you indefinitely.

The Government have yet to implement the decision of the Supreme Court. That is of great concern to us because we know as a consequence of that that there are thousands—we estimate about 25,000 every year—of youth cautions disclosed in criminal record checks, most of which are incidents that happened over five years ago. Because the Government are dragging their feet in implementing the Supreme Court ruling, people are being unlawfully stigmatised indefinitely. There is no excuse for the Government continuing to delay the implementation of that judgment.

More broadly, we think that the criminal record system means that far too many children and young people are stigmatised unnecessarily. Our view is that it needs to be subject to root and branch reform, and that the Government would be wise to embark on that. There have been plenty of reports. There was evidence collected by this Committee and a very good report a few years ago advocating root and branch reform, and a fantastic set of recommendations, yet they have not been taken forward. If only the recommendations your Committee previously put forward were implemented, it would be a significant step forward.

Q180 **John Howell:** Do the rest of you agree that there needs to be root and branch reform?

Chair: If there is agreement, that is great. Laurie, do you want to add something?

Laurie Hunte: I concur with what Enver Solomon has just said. There have been a number of different reviews urging reform of the criminal record regime: the Lammy review, the Taylor review and your predecessor Committee's review. A lot of those are focused on youth criminal records. I want to make the case for young adults to be taken into consideration. We now have evidence around developing maturity beyond the age of 18 up to the mid-20s. Mistakes at that point in life, because of the criminal records regime, can last a lot longer than mistakes made in childhood. It is important for young adults and some of the criminal activities they undertake to be thought about when looking at the criminal records regime.

Chair: There is agreement around that.

Q181 **Andy Slaughter:** May I ask the question we have asked all the panels about the age of criminal responsibility, which is currently 10 in England and Wales? Do you think that is the right age and, if not, what do you think it should be?

Enver Solomon: We would argue that it is way too low. We have seen Scotland move to 12. The UN recommends at least 14. There is increasing evidence from brain development research that shows that children do not have the capacity to understand what is going on in the criminal justice process, and often have no idea and struggle to make sense of what is taking place.

There are far better ways to deal with a child under the age of 14 who has done something wrong. We have had instances of a child with learning disabilities knocking over another child in the playground and being arrested and prosecuted for that. It is wholly inappropriate and counterproductive. We have had children under the age of 12 prosecuted for having a small knife in their pencil case that they had no intention to cause criminal damage with. Again, it is a complete waste of time for the criminal justice system to be dealing with those kinds of issues. There is no need for those children to be criminalised.

There may well be children under the age of 14 who commit very serious offences, and they could be dealt with through the child welfare system. Invariably, those offences will be a consequence of a toxic mix of issues in that child or young person's life, often related to mental health issues, and they are far better dealt with in that system than they are in the criminal justice system, if you are looking at outcomes that would genuinely divert them away from committing further crimes in the future. I do not know if my colleague Laura wants to add anything.

Andy Slaughter: I heard the number 14 there. I think we are getting familiar with the arguments, but the difficult question is the sort of age we are looking at. Is 14 the consensus, or is it 12, or some other age?

Chair: Or is there not a view?

Q182 **Andy Slaughter:** That is the problem, isn't it? No one is prepared to put their head above the parapet and advance a view. We know there is an objection to 10. For the sake of this discussion, let us say it is 14. How do you deal with serious offences committed by children between the ages of 10 and 14? How do you partly signal the seriousness of what has happened but mainly still have some sort of outcome for that young person? What is that going to look like? The answer we got earlier this afternoon seemed to imply that it might well be a very similar type of institution and behaviour addressing; it simply would not come with a criminal penalty attached.

Phil Bowen: I agree with a lot of what the first panel was saying on the issue. The only observation I would make is that, regardless of what age it is, and this is not an area of my expertise at all, you are absolutely

right that there is an obligation on us to help you work out what that system is. Certainly, from what Enver said, there needs to be an assessment based on rehabilitation and welfare. Part of the reason I do not have a clear view on it is that the issues are difficult. Whatever system there is, if the age was set at 12, there is still a responsibility on the criminal justice system when it kicks in at 12 to be more focused on children's welfare and less adversarial.

Jessica Mullen: The criminal age of responsibility is not an area where Clinks has particular expertise to have a view, but we certainly concur with Phil's point that, to address the underlying needs that drive children of any age into the criminal justice system, we need a system that has a far more therapeutic approach.

Chair: Fair enough. I get that. Does anybody else want to come in on this topic? It is a systems approach as much as anything.

Q183 **Andy Slaughter:** I have a comment perhaps rather than a question. Although not necessarily for all members of the Committee, you may well be pushing at an open door when advocating a higher age, but nothing is going to happen unless there is some suggested remedy, some alternative structure in place. Generally, that is what we are not hearing. We are hearing why it is wrong, but we are not hearing what the alternative is.

Chair: A challenge to take away, perhaps.

Enver Solomon: I would suggest that we deal with them in the same way that currently those who are under the age of 10 are dealt with. They are dealt with outwith the criminal justice system. If you raise the age, the same thing would apply. It happens across European jurisdictions. The average age of criminal responsibility in Europe is 14 and those children are dealt with outwith the criminal justice system through the child welfare system or the mental health system.

There are not excessive crime waves in those countries. There are not excessive negative outcomes as a consequence. We do not need to construct an alternative system. If you raised the age, it would be the same if a nine-year-old does something today; they would be dealt with outwith the criminal justice system. We have child welfare and child mental health systems that can respond appropriately to young people whose behaviours are a risk and a danger to others in their community or in their home.

Q184 **Chair:** What would you say, though, to the victims of what might be egregious behaviour, as Mr Slaughter pointed out earlier? How do you mark for them the fact that something grave has happened to them, albeit that you are dealing with the young person or child who committed the act in a different way? They have some say in it as well, haven't they?

Enver Solomon: Indeed. If a nine-year-old goes to school and punches another child in the face, that is a very serious thing to do. Under the

criminal justice system it would be deemed a violent offence. What happens in school today is that the child is sat down and told about the consequences and made to apologise to the victim, I would imagine. That would be good educational practice and part of the behaviour policy in the school. It is a form of restoration and you should still have that restorative practice taking place if the age was raised to 14.

Q185 **Dr Mullan:** I appreciate your contributions, but you cannot compare somebody being punched in the face with someone who has been raped, gang-raped even, or a situation where a child is assisting in drug dealing or has stabbed somebody. We are not talking about someone being punched in the face but very serious offences sometimes. How would you feel if it was your child and they had been raped, and the person who raped them did not suffer any criminal procedure? I get the complexity of the argument, but if you put yourself down at the level of the ordinary person, how do you think they would feel about that?

Enver Solomon: I understand the horrendous consequences of behaviours that cause severe harm to others, and I am not underestimating them or trying to detract from them. The argument that I am making is about the most effective way to deal with those behaviours and the harms that are caused to others. If the age was raised to 14, which is the recommendation from the United Nations, backed up with a lot of research and evidence, you would have to deal with them outwith the criminal justice system in a way that addressed their behaviour and the consequences of their behaviour.

I am not denying that as part of that there would be a process of restoration to ensure that victims feel that their voices are heard about what has happened to them and that there are consequences as a result of a child doing that. Invariably, if a child who was not of the age of criminal responsibility today committed an act or a behaviour that was very serious, they would be placed in a secure mental health setting. If they were deemed to be of risk to those in their immediate family, their immediate community, steps would be taken under the Children Act to address that.

Q186 **Dr Mullan:** Do you accept that it is a continuum? Most people would naturally be inclined to accept if someone was nine that it would be unreasonable to take them down the criminal justice route. I am sympathetic to what you are saying and I do not want you to get the impression I am not, but all too often we talk about these things only from the perspective of the offender, and we do not give enough credibility to the idea that sometimes victims have a separate desire to see that somebody serves some time.

It is nothing to do with reducing reoffending or any of the other dynamics that in think-tanks and politics we focus so much on. They just think it is fair and right for someone to serve some time for an offence. The older someone gets, the more that desire increases, and we should not dismiss that as not being valid and legitimate for people to feel. It does not mean that they are small-minded, or do not understand rehabilitation, and all

the psychology that we might go through about child development. They just think that is a fair and reasonable thing to do, and they are representative of an awful lot of members of the public.

Enver Solomon: I acknowledge what you are saying and I acknowledge the desire for victims of terrible crimes to want a response and to have their voice heard. We have been doing some work with a family whose son was taken from them as a consequence of a terrorist act and they have spoken about the impact on their family. They do not want revenge or punishment and sanction; they want something else.

Q187 **Dr Mullan:** This is the typical thing that happens. I understand that. It always happens that people use an example of a particular person who is comfortable with a rehabilitative approach, and that is a valid thing to bring up, but there are many people who do not take that view, who do not think, "Fair enough, let's have them rehabilitated." We cannot constantly minimise the fact that there is an alternative view. Think-tanks and the like always bring up the example of someone who is forgiving, and that is great and fantastic, but not everybody is, and they are perfectly entitled not to be.

Enver Solomon: I am not seeking to minimise the fact that different people and different sections of the public have different views. I am just putting forward an alternative suggestion for how we deal with children who commit things that cause serious harm and serious damage to others.

Dr Mullan: I understand, and they are very valid arguments. I accept that.

Chair: We have probed it and we are back to Mr Slaughter's point that it remains an intractable issue in terms of finding alternatives. I am grateful for everybody's thoughts on it. We need to move on.

Q188 **Maria Eagle:** I will refrain from getting involved in the conversation that has just been going on about rehabilitation and punishment. I talked earlier to the other panel about the impact of non-statutory diversion and out-of-court disposals, whether statutory or non-statutory.

Could the witnesses on this panel let me know what they think about how successful and effective the youth justice system is in diverting children away from the formal criminal justice process? It seems then to drag them into a life of crime and a life in the criminal justice system, whereas keeping them out altogether is by far the best solution all round.

We are now in a situation where we have a very small number of children and young people in the system, but they have much tougher problems than perhaps 10, 15 or 20 years ago, and so there is a hard core of very difficult issues that the system faces. Is it still possible, using out-of-court disposals of one kind or another, to divert effectively those people from the criminal justice system?

Phil Bowen: That is a very good question. We did some research back in 2018 asking all youth offending teams across England and Wales whether

they had informal point-of-arrest diversion schemes, and we found that, of the 152 YOTs, 133 had a point-of-arrest diversion scheme. We asked a number of follow-up questions about what those schemes looked like. One of the issues was raised in the panel before ours; we were not able to aggregate any data to give you a sense of how many children are currently being diverted right now through those informal routes, but we know that in some areas about 40% to 50% of the overall YOT case load is going through informal diversion.

On your point around evidence, while it is true that we would like to have more scheme-specific evidence of the effectiveness of the impact of diversion, we know from longitudinal studies and from meta-analyses done over the course of the last 10 to 15 years that any form of diversion that helps young people avoid any form of formal processing, whether that be through a formal out-of-court disposal or a court prosecution, and avoid a criminal record, showed better outcomes for children who go through the informal route compared with similar children who go through a more formal route. We know quite a lot about whether those kinds of schemes work.

Over the last 10 years, we have begun to know much more about what it is about those schemes that works. For example, we know that holding the youth diversion project not in a police station but in a non-criminal justice setting is a more effective approach. We know quite a lot about how diversion works and whether it works. We would like more scheme-specific evaluations that show, for example, that the Gloucestershire diversion scheme works better than the Southwark diversion scheme, and we do not have that. That is partly because the Youth Justice Board does no national data reporting on diversion cases, so at the moment we do not know enough about who the kids are and what their outcomes are.

It is absolutely clear that youth diversion works. In our latest publication, we called on policymakers to put a more systematic framework around that kind of diversion—for example, clearer guidance and updating the inspection framework. I am glad to say we are talking with HMIP about how to do that. One of the issues is that currently the funding formula for YOTs does not recognise all the work they are doing on pre-court informal diversion. One of the conversations that we are currently having with the Ministry is how that work is represented in how they are funded, because we certainly know that in some areas some of those schemes have suffered from a lack of funding.

Q189 **Maria Eagle:** Is there a way in which out-of-court disposals can be used to tackle the impact of disproportionality? There is a far higher percentage now of BAME children and young people in the system, even though the number imprisoned is smaller. We have also heard, and it concerns me, that there is a very high percentage of young people and children who have disability of one kind or another. Is that kind of diversionary scheme or out-of-court disposal capable of tackling the impact of the disproportionality?

Phil Bowen: It was certainly a recommendation from David Lammy. I cannot remember which recommendation it was, but it was exactly to do more of that type of out-of-court informal diversion, in which even things like not having to plead guilty but accepting responsibility for the offence were seen as a way of bridging the gap especially between BAME individuals and the system and in building more trust.

We certainly think that is one way of tackling disparity, but, as I said in my opening comments, we are doing some research right now on whether there is disparity in who is being offered that kind of informal diversion. We have a sense that it may be happening due to things such as unconscious bias and due to some of the issues that Laurie and Shadae have already raised. While we think it is a way of tackling disparity, none the less it is still the police and youth offending teams making decisions about who gets diverted.

Maria Eagle: Shadae, do you have a view about that at all?

Shadae Cazeau: With the lack of evidence on the impact of diversion schemes and how well they are working, it is quite difficult to say, but from our point of view, anecdotally, we do not think it is fit for purpose for BAME and young black people. Part of that is because it seems there is a lack of engagement with some of the needs of those particular communities and perhaps a lack of cultural competency around what some of those communities need.

The other thing that might have an impact on the lack of diversion schemes taken up by those kinds of community is lack of confidence in the system. Effectively, if it is a formal diversion scheme that goes through a system, it is likely that people of BAME backgrounds who already have lack of trust in that system will not engage with the process. There are some informal things going on. We have heard from the Metropolitan police about schemes that are going on in London. Again, they have said that there has been some difficulty engaging with BAME groups on those informal schemes.

There is a benefit to having diversion schemes, and they could work to decrease disproportionality, but schemes have to directly address the cultural differences of those groups. That may include seeking some support from voluntary sector organisations to address the needs of the groups.

Q190 **Chair:** Could you help me with one topic and then we are going to move on to another? On remand to youth custody, we have heard evidence that two thirds of children given a remand to youth detention accommodation do not then get a custodial sentence. We discussed that with the previous panel. We are interested in what you think the reason is for that and the consequences that flow from it. Are there any observations from your perspective?

Phil Bowen: I discuss this a lot with magistrates themselves. The only thing I would say in addition to what has already been said is that magistrates are very keen to point out that the decision they make

around whether to remand a child is different from the end sentencing decision. They are often making that decision on flight risk and likelihood of future reoffending. Sometimes pointing out that two thirds get remanded who do not end up in custody does not quite get to the real issue.

Chair: It is not comparing like with like.

Phil Bowen: The only thing I would say in addition, and this applies in the adult system as well, is that we suffer from not having any form of the system that exists in other countries, where there are bail assessments made and services provided to keep people out of custody. I have seen a very good version of that in New Zealand, which seems to be the country of choice at the moment.

Chair: Jessica, do you want to come in?

Jessica Mullen: Because we do not have a system where bail information is given in the way that perhaps the pre-sentence report system works, or could work, we do not end up with engagement between the courts and the voluntary sector to understand what provision might be available in the voluntary sector to address needs that might otherwise lead the courts to assess that the risk is too high and to remand them into custody.

Chair: That is very helpful.

Q191 **Richard Burgon:** My questions focus specifically on remand; 57% of children who are remanded to custody are from a BAME background. My earlier question related to BAME disproportionality in general, but in particular in relation to the high percentage of children from a BAME background who are remanded to custody, why does the panel think that is the case, and what should be done to address it?

Shadae Cazeau: The bail grounds that the court uses when thinking about bail are whether the person will surrender or fail to do so, and whether they will commit further offences or interfere with witnesses. As I said earlier, if we think about risk perception, if the court feels that a person is risky, and if that unconscious bias is interpreted by the judge to perceive the person as risky, the chances are they will perceive them as somebody who will not surrender to bail, or who will interfere with witnesses or potentially commit further offences. That may lead to them being remanded as a result.

You can see the link between what the grounds are for bail and potentially how that impacts on a judge. A young black male, for example, who is accused of being involved in a specific type of violent incident, might be perceived as somebody who needs to be remanded. It is the grounds and the risks associated with them that have an impact on disproportionality in remand.

Jessica Mullen: I think a witness on the previous panel talked about the disparity between perceiving risk and perceiving vulnerability, and it is

important to think about that for this population within the justice system. Someone who has a whole range of needs and vulnerabilities that could be addressed through services that would support and help that person is instead perceived as risky, and, therefore, as needing a more protective and punitive response.

Enver Solomon: If you think about the disproportionate numbers of those with a BAME background who also come from disadvantaged backgrounds, who are less likely to have good-quality legal representation, there might be poorer-quality decision making. It might be less likely for a case to be made for the young person to be released under investigation and less likely that the YOT is pushed forward with a robust package on bail. Those are all factors that contribute. Perhaps Laura could comment on that, because we get a lot of calls to our national advice line from lawyers asking for advice around how to address issues in relation to remand and bail.

Laura Cooper: That is right. I agree with the points made. The Youth Justice Legal Centre runs a national advice line for lawyers, families and young people. We regularly get asked those questions. One of the things we often do at the start of the process, even before charge, is to make written representations to avoid matters going to court. We specifically mention some of the factors that we have been talking about today in those representations to try to avoid even getting to that stage. We see it in representation. Lawyers representing children and young people need to have an understanding of the particular issues that young BAME defendants are facing, and try to address the trust deficit that was identified by Lammy.

Chair: That is very helpful. Richard, is there anything else?

Richard Burgon: That was very comprehensive, thank you very much.

Q192 **Dr Mullan:** You have talked about out-of-court disposal and diversionary approaches, but when it comes to those who end up in court and trying to find credible alternatives to custody, I am interested in the panel's views on the flexibility of the options available, particularly around whether we need to increase the use of youth rehabilitation orders. I understand that very often our judges are torn between referral orders and custody. The defendant might have a long track record of referral orders that might discourage them from being used. What are your views on how we could improve non-custodial approaches?

Chair: Who wants to start on that? It is another important topic.

Phil Bowen: My view is that there is not a lack of flexibility in the legislation. The framework for sentencing is a relatively flexible tool. We found from our research that there is an increasing sense of a lack of the right services in place in certain areas, and I would not want to understate that.

The other thing that we found, and I have said it before, is that youth courts and youth sentencing could be more responsive. There is a more

active role for magistrates and district judges in engaging the young person through things such as restorative justice and the piloting of informal reviews where judges get together with the young person and the YOT and talk about their progress through the case. We have seen that happen in Northamptonshire, where it has been trialled, and it has been extended to some other places, but on a very informal basis.

We have recommended that the Youth Justice Board extends the use of those kinds of pilot studies and assesses their impact. It comes down again to the issue of how we properly engage with the young people who are left coming to court who have complex needs. By that engagement, we hope to change their life chances.

We have also made recommendations where there is need for legislation. For example, at the moment under schedule 1, paragraph 35, if I remember rightly, of the Criminal Justice and Immigration Act 2008, courts can order that children's services attend youth courts and provide reports about them, but we have found in our research that often children's services were not providing those reports. There are a number of small things we identified in our report where the legislation can change, but I do not think it is really about the law and the flexibility of the sentencing framework. It is about the culture of our youth courts and how they become less adversarial and more problem solving.

Q193 **Dr Mullan:** One of the things I have read, which relates to what you said about the lack of a feedback loop, is that sentencers do not trust, perhaps incorrectly, out-of-court non-custodial disposals.

Phil Bowen: That is probably truer in the adult system, partly due to the probation reforms, than it is in the youth system, but you are absolutely right. In our research, we have had youth court magistrates say that it is like being a surgeon who operates on a patient and does not get to see whether the patient lives or dies. That does not seem right. We saw some youth offending teams doing a really good job trying to provide youth court magistrates with some sense of that, "Of the cases you have seen over the past three months, this is what has happened," but there isn't a feedback loop, and magistrate-led review hearings are a way of binding both the young person and the magistrates into the realities of community supervision.

Jessica Mullen: Across both the adult and the youth system, there is not sufficient visibility of the kind of community-based voluntary sector-led interventions that work alongside YOTs or the probation system. The magistracy and judiciary are not aware necessarily of what is available, particularly in the youth justice system.

With the probation review we have a very explicit acknowledgment of the role of the voluntary sector in working alongside the probation system to provide those interventions, but it is far more inconsistent in youth justice and across different youth offending teams. There are some examples of good engagement, of voluntary sector services co-located with the YOT and working very closely together, and there are other

areas where you do not see that at all. Part of that is to do with the way YOTs are funded through local authorities, and there is less resource therefore to go to the voluntary sector. Part of it is to do with different YOTs working in different ways. There would be value in some work that looked at the impact where YOTs are working well with the voluntary sector, and looking at the differences and trying to see what lessons could be learned.

Chair: Very quickly, Laura, and then we need to move on to a couple of remaining topics.

Laura Cooper: One practical issue is that, if a child is pleading guilty to a first offence, there is only the option of a referral order or custodial sentence. That is why it is essential that youth offending services have the resources to put robust alternatives in place for an individual.

Q194 **Chair:** That is a fair point; thank you. I have a couple of things to finish off. Whereabouts are we on the resettlement needs of children when they come out of custody? Are those resettlement needs being met, and, if not, what should be done to try to change that? We have talked about support in other areas. What issues do people note there? Do you have any observations, Jessica?

Jessica Mullen: I am going to sound a bit like a broken record, I am afraid. Part of it is about the engagement of community-led organisations and the links between custody and the community. The only way you can facilitate that is through voluntary sector involvement in custody through the gate and beyond sentence. I do not think we see sufficient involvement.

Q195 **Chair:** Are there any other observations?

Enver Solomon: One issue we see from our practice is that housing is still a massive problem for young people under the age of 18 when they come out of custody and do not have a stable home to return to. There is a lack of join-up between children's social services, housing providers and housing agencies to address the needs of young people facing homelessness. They are not necessarily being looked after as a child in care and gaining priority need housing, but are being sent to the housing office in the expectation that the housing office will deal with them. The legal framework says that if you are facing homelessness at the age of 18 you should be taken into the care system as a looked-after child.

Q196 **Chair:** That is very helpful. Thank you very much. You mentioned the age of 18, and that brings us to the final topic, which is transition. When they get to the point of transition, they are going to be treated differently in adult social services, and you made a point about a differential approach to housing, Enver. Laurie, are there any observations from your perspective about how well it is or is not managed at the moment and what could be done better to ease transition? There is a bit of a cliff edge in many respects, it seems.

Laurie Hunte: There certainly is. There is a very big difference between the youth custodial estate and the adult estate, and I include youth offending institutions in that. We know from neuroscience that maturity continues into the mid-20s and these transition points are very key periods in the lives of young people. It is important to maintain positive maturational development.

Unfortunately, we have an increasing proportion of children entering the youth justice system on long sentences, and it is important that the youth custody service recognises that and starts to build that journey into its processes. We are also getting an increase of young people coming in at the age of 16 or 17, with the delays in court processes and the use of remand. We know that a lot of young people—about 15% to 20% in youth custody, which equates to about 350 people a year—will go into the adult estate.

The youth custody service should set itself up to manage this and really build into the transitional process insights into maturity. It is very often the case that as soon as you turn 18 you move into the adult estate, but if there are good reasons, especially if there is a health or educational need, or if they are going through a court case, there is a good case for keeping the young person in the child system.

We very often talk about the experiences of boys because they are the majority in the criminal justice system, but we must also consider the experience of girls. The transition can be very abrupt if you are moving from a secure children's home into the female adult estate. I want to make sure that point is captured.

Q197 **Chair:** It can get forgotten. Because it is a small number, it can be overlooked sometimes. I understand that. Are there any other observations? Enver, do you have some final thoughts?

Enver Solomon: I just want to remind the Committee of a point that I made earlier about children who turn 18 going through the system and the fact that those numbers are going to increase. They are dealt with and convicted and sentenced as adults when they committed the offence as a child. We published a report recently with various recommendations to address that issue, and I urge the Committee to look at that.

Q198 **Chair:** That is very helpful. Laurie?

Laurie Hunte: It is very important to get data about how many people are going through, what institutions they are going to and what their outcomes are. The planning for the transitional process should start as early as possible. One thing that often gets in the way of a smooth transition is that the receiving institution has the right to say no, but it does not have the right to say no if it is a young person who is sentenced from the court or remanded to it. That is one thing that HMPPS may want to look at, to ensure that transitional processes are much smoother and work in the best interests of the young person.

Chair: That is very helpful. Thank you all very much for your time and

your evidence. You have covered a lot of ground. I am very grateful to all of you. The session is concluded.