



House of Commons
Justice Committee

**Children and Young
People in Custody
(Part 1): Entry into the
youth justice system:
Government Response
to Committee's Twelfth
Report of Session 2019–21**

**Ninth Special Report of
Session 2019–21**

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Justice Committee

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

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Committee staff

The current staff of the Committee are, Chloë Cockett (Senior Specialist), Mark Doyle (Committee Media Officer), Su Panchanathan (Committee Operations Officer), Tracey Payne (Committee Specialist), Christine Randall (Committee Operations Manager), Jack Simson Caird (Assistant Counsel), Holly Tremain (Committee Specialist), Ellen Watson (Second Clerk) and David Weir (Clerk).

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Ninth Special Report

On 12 November 2020 the Justice Committee published its Twelfth Report of Session 2019–21, *Children and Young People in Custody (Part 1): Entry into the youth justice system* (HC 306).

The Government's Response, together with a letter dated 13 January 2021 from Lucy Frazer QC MP, Minister of State for Justice, was received on 15 January 2021. The letter and response are appended to this Report.

In the Government's Response the Committee's recommendations are shown in **bold** type, and the Government's responses are shown in plain type.

Appendix: Letter from Lucy Frazer QC MP

GOVERNMENT RESPONSE TO THE JUSTICE COMMITTEE'S TWELFTH REPORT OF SESSION 2019–2021 CHILDREN AND YOUNG PEOPLE IN CUSTODY (PART 1): ENTRY INTO THE YOUTH JUSTICE SYSTEM

The Government welcomes the Justice Committee's Twelfth Report on Children and Young People in Custody: Part 1. We are grateful for the time given and expertise shared by the Committee in producing and publishing the Report, and have considered the recommendations carefully.

I would like to offer my apologies for the minor delay in responding to this Report.

This response (attached at Annex A) addresses recommendations made to the Ministry of Justice and the Youth Justice Board by the Justice Select Committee's report on *Children and Young People in Custody (Part 1)*. The Committee's report contained recommendations for both the Ministry of Justice and the Youth Justice Board for England and Wales (YJB). The YJB is an independent non-departmental public body established by the Crime and Disorder Act 1998. The YJB has supported the Ministry of Justice to address the recommendations that are within its functions, but the views represented in this response are those of the Ministry of Justice. Some recommendations were also within the remit of the Department for Health and Social Care, NHS England and NHS Improvement, whose input is also included.

The approach of the youth justice system is rightly distinct from that of adults, focusing on the statutory aim of preventing offending by children and the welfare of the child. The Government wants a youth justice system that recognises the unique needs of children, tackles the underlying reasons why children offend and intervenes early to provide support, divert children away from the system where possible and ultimately help children to lead crime-free lives.

We want fewer children to enter the youth justice system, and more of those children who have offended to desist from further offending and go on to lead crime-free lives. For the small minority of children who do require detention we are working to reform the experience of custody and to improve outcomes. We also want to minimise the harm caused to victims and communities from offending by children.

It is important to recognise the successes in the youth justice system over the past decade that have had real positive impacts. Between 2008/09 and 2018/19, the number of first-time entrants fell by 85%, the number of sentencing occasions has fallen by 78% and the number of children sentenced to custody has fallen by 76%.¹

However, we are not complacent about the challenges that remain, and recognise that the Committee has raised a number of important challenges and opportunities which we have engaged with carefully in this response.

Given the scope of this Part 1 report, it is important to highlight that our white paper *A Smarter Approach to Sentencing* (September 2020) sets out our response to some of these challenges, with a particular focus on measures requiring primary legislation to support change. This includes measures to strengthen community sentences and provide courts with robust alternatives to custody, measures to make custodial sentences fairer and clearer while reflecting the severity of an offence, and measures to ensure that children are not exposed to custodial remand unnecessarily.

More broadly than sentencing we recognise that ensuring the best outcomes for children in the youth justice system relies on a wide range of partners and public agencies working effectively together and agree that more can be done to achieve our ambitions for the youth justice system. This resonates with much of the Committee's report and further strengthening this collaboration is a major priority for us as we continue to modernise the youth justice system.

Yours sincerely

LUCY FRAZER QC MP

¹ Youth justice statistics: 2018 to 2019, Ministry of Justice and Youth Justice Board for England and Wales, January 2020

Annex A: Government Response to the Justice Select Committee's Twelfth Report of Session 2019–20: Children and Young People in Custody (Part 1)

Youth justice population

The Select Committee recommended:

The complexity of the issues that these children have faced, as shown in the graph above, highlights the need for a whole-system approach involving a range of public agencies beyond those of the criminal justice system, and we recommend that much greater priority be given to this in the development of future policy and practice.

1. We welcome the Committee's recommendation as we recognise that children who offend are some of the most vulnerable in our society, often with multiple complex needs and which require a combined approach from a range of agencies to address, not just the youth justice system.
2. Much of this holistic approach is already embedded in the operation of the youth justice system. As the Committee will be aware, multi-agency working, taking into account the needs and welfare of the child, is a key element of the youth justice system, which is enshrined in law through the principal aim of "preventing offending by children and young persons". The statutory requirements for Youth Offending Teams (YOTs), which are set out in the Crime and Disorder Act 1998, also perform this function by outlining that YOTs require the involvement of local police, probation, health partners and a representative from children's social care.
3. That is also why the Youth Justice Board (YJB), which oversees the operation of the youth justice system, publishes *Standards for children in the youth justice system*. This defines the minimum expectation for services working with children who offend, including how those services should work with partner agencies.
4. The Ministry of Justice and the YJB work closely with our cross-government partners to ensure that children in the justice system receive the support that they need. This includes regular engagement, for example via the Youth Justice Oversight Group, which brings together partners from across government to analyse the performance of the whole system and consider the ways in which collaboration can help to address some of the challenges.
5. There are also specific projects working to ensure that local youth justice services are properly considered and integrated into wider multi-agency initiatives, such as Violence Reduction Units.
6. The Youth Custody Service and NHS England and NHS Improvement (NHSE&I) are implementing a Framework for Integrated Care (known as SECURE STAIRS). This is a trauma informed, formulation driven framework for integrated care inclusive of the principle of 'every interaction matters' and that a multi-disciplinary approach to

formulation-based care is fundamental, focusing on the child's formulation, 'my story', rather than their diagnosis, offence or other label. Implementation of SECURE STAIRS also includes improved training for staff to better support these complex children such as ongoing staff supervision and reflective practice.

7. However, we agree that there is more to be done to ensure that children at risk of entering the justice system, and those in contact with it, receive the holistic support that they need. The Ministry of Justice and the YJB will continue to work closely with our national and local partners to continue to build a system which addresses children's needs and supports them away from crime.

Diversion from formal criminal justice processing

8. We recognise the importance of preventing children from entering the criminal justice system and intervening early to stop minor offences from leading to repeat or severe reoffending. Some out-of-court disposals have the lowest reoffending rate of all disposals for children. Diversion from formal criminal justice processing is therefore a vital part of the wider youth justice system. We are interested in hearing about ways in which this part of the youth justice system can be improved, and we welcome the attention the Committee has given to this important area.

Data collection and evaluation

The Select Committee recommended:

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

In adopting our previous recommendation that the Ministry of Justice and Youth Justice Board work together to collect data on informal diversion schemes, the two bodies should include demographic information in that data.

9. We agree that more can be done to collect data on diversion schemes, and work is already underway to do so. Since April 2020, the YJB has been collecting data on Community Resolutions and other informal outcomes with YOT intervention. This will add to our understanding of Community Resolutions and informal diversion schemes, however the data will be limited in its ability to capture all elements of these disposals, to measure reoffending and to track all types of outcomes.

10. Where this data is being collected, the age, sex and ethnicity of the child are also captured. The YJB will explore publishing this data when it has collated a full year of sufficient quality data.

The Select Committee recommended:

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

11. The Committee's report highlights findings that the quality of intervention work in out-of-court disposals is generally good and effective, and we know that youth cautions have the lowest reoffending rate for children. We are concerned, however, to see some of the findings of the Inspectorate's Annual Report 2019/20 in relation to out-of-court disposals and therefore welcome HMI Probation's new YOT inspection standard on out-of-court provision.

12. We agree that more can be done to understand the impact and effectiveness of out-of-court disposals. The YJB's data collection work outlined above, while it will not provide every answer, will improve our understanding. This builds on the impact evaluations that the YJB has previously carried out in relation to local liaison and diversion schemes, which are available on the Youth Justice Resource Hub.²

The Select Committee recommended:

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

13. NHS England and NHS Improvement (NHSE&I) lead on youth liaison and diversion schemes and welcome this recommendation. Whilst NHSE&I have had a clear rationale as to why children and young people were not included within the adult liaison and diversion evaluation, relating to the issue of obtaining informed consent, they will consider the merits of undertaking a process evaluation. NHSE&I are currently developing plans to work closely with HM Courts and Tribunal Service (HMCTS) and YJB in 2021–22 to establish pathfinder areas to identify and promote good practice.

14. Presently, providers are not asked to record criminal justice outcomes—in any event the outcome by itself will not reveal whether it was information provided by the liaison and diversion service that was the determining factor that led to a diversionary disposal. These are subjective decisions taken by the police, the Crown Prosecution Service (CPS), YOTs, youth courts etc. who will weigh several factors in reaching their decision and who may not necessarily record the reason.

15. During 2018–19, liaison and diversion services engaged with 2,399 children and young people. Forty-seven per cent presented with one or more mental health issues, 23% with a substance misuse issue and 10% with alcohol issues.

Guidance

The Select Committee recommended:

We recommend that the Ministry of Justice and Youth Justice Board work together to set out national guidance on out-of-court disposal work. As suggested by the Centre for Justice Innovation, this guidance should include an evidence base for out-of-court disposals, examples of good practice and a framework for data recording.

2 <https://yjresourcehub.uk>

16. There is already statutory guidance in place for youth out-of-court disposals,³ which we keep under review. While some variation in use of out-of-court disposals will arise from appropriate differences in local practice, it is important that there is clear guidance for practitioners and officers about the framework they should be operating in. We are interested to hear about ways in which guidance could be clarified to better meet the needs of practitioners. In addition to the national guidance, the YJB has published a number of key pieces of guidance covering out-of-court disposals including *Standards for Children in the Youth Justice System*⁴ and *Case Management Guidance: Section 1*,⁵ which are currently undergoing revision.

17. In addition, the Youth Justice Resource Hub hosts various sources of published information relating to out-of-court disposals, including examples of best practice from YOTs across England and Wales. The YJB is committed to building the range of practice examples available via this site to support practitioners and local services in developing their own practice. As set out above, the YJB has been collecting data on Community Resolutions and other informal outcomes with YOT intervention since April 2020.

Funding

The Select Committee recommended:

We recommend that the Ministry of Justice work with the Youth Justice Board to review current funding arrangements and ensure that funding adequately reflects the pre-court diversionary work being carried out by youth offending teams.

18. The YJB's funding for YOTs makes up on average just under a third of the total funding YOTs receive. This money must be spent on the delivery of youth justice services, but how it is spent within that constraint is up to each YOT. Consequently, YOTs have the opportunity to spend this money to address specific local needs. The rest of YOT funding is provided by local authorities and partner agencies who also set YOT priorities in their area. These priorities are based on local need and outlined in their annual youth justice plan.

19. The YJB's funding for YOTs for 2020/21 will be announced shortly and the Ministry of Justice has no current plans to review how we establish YOT funding levels. The spending review settlement has been negotiated during a challenging financial backdrop. In light of this, the Government would expect local authorities to prioritise activities to achieve optimum outcomes.

20. The principal aim of the youth justice system is to prevent offending. As such, we would expect an effective local authority, including its YOT, to focus a proportion of its efforts on preventing offending through activities such as pre-court diversionary work.

21. We recognise the importance of pre-court diversionary work and we welcome the increasing use of diversion. We are working to address gaps in our understanding of this area including through the previously mentioned work to gather data on community resolutions.

3 Youth Out-of-Court Disposals: Guide for Police and Youth Offending Services, 2013, <https://www.yjlc.uk/wp-content/uploads/2015/03/Youth-Out-of-Court-Disposals-Guide-for-Police-and-Youth-Offending-Services.pdf>

4 <https://www.gov.uk/government/publications/national-standards-for-youth-justice-services>

5 <https://www.gov.uk/government/publications/how-to-use-out-of-court-disposals>

22. As part of the YJB's pathfinder work, the YJB, National Probation Service, and Association of YOT Managers have jointly commissioned a Prevention and Diversion Project, which aims to work collaboratively to better understand the nature of prevention and diversion work. This will help to define, identify, measure and report on the effectiveness of initiatives undertaken by YOTs across England and Wales. The increased oversight and understanding of YOTs' prevention and diversion work will contribute towards developing an evidence-base for effective practice and ensuring children's needs are met.

Mental health support

The Select Committee recommended:

We recommend that the Ministry of Justice increase access to mental health support for all children and young people who need it. The Ministry should set out how this will be achieved and resourced.

23. We recognise that children who offend are some of the most vulnerable in our society and a significant proportion who enter the youth justice system do so with concerns relating to their mental health. We are clear that addressing the needs of these children is of key importance in improving their life chances and supporting desistance from crime.

24. NHS England and NHS Improvement's ambition is to widen NHS help and to work with partners across the whole system (education, children's services, public health, voluntary sector, youth justice) to ensure appropriate support is available when and where children and young people need it. As outlined in the NHS Long Term Plan, services should be expanded so that by 2023/24 at least an additional 345,000 children and young people aged up to 25 will be able to access support via NHS funded mental health services and school or college-based Mental Health Support Teams. By 2028, local areas will design and implement models of care that are age appropriate, closer to home and holistic, bringing together physical and mental health services with wider local authority and NHS services, including primary care, community services, Speech and Language Therapy, school nursing, oral health, acute and specialised services.

25. Some children cannot, or will not, access mental health services as they are currently designed. There have been a number of recent national and local initiatives to improve the support, quality, and health services these children receive; however, gaps still remain. Consideration of the specific needs of autistic children and children with a learning disability is an important part of this work.

26. The Children and Young People Mental Health Transformation Programme included a specific work programme on Health and Justice. For example, the Framework for Integrated Care (known as SECURE STAIRS) aims to deliver a whole system approach within the youth secure estate. It uses a formulation-based approach and draws from evidence-based interventions like Trauma Systems Therapy, Enabling Environments and Psychologically Informed Environments. There is already positive evidence for SECURE STAIRS emerging from settings where it is fully mobilised.

27. Community Forensic Children and Young People Mental Health services (known as FCAMHS) currently provide a specialist service for high-risk young people that would

not otherwise be available. The services ensure there are clear links between youth justice and welfare provision (community and custodial), secure mental health in-patients or specialist settings for high-risk young people, and core provision whether within specific children and young people mental health services or other services.

28. Supporting wider work around mental health service improvement for children and young people, this work will aid integration of services for this group who are currently falling through the gaps. The new NHS Long Term Plan commitment is an opportunity to strengthen and pull together existing provision around the child and intervene earlier in their pathways to enable better outcomes. The intention is to apply the Framework for Integrated Care into the community, to support trauma-informed care and formulation-driven, evidence-based, whole-systems approaches to create change for vulnerable children and young people with complex needs.

29. The Ministry of Justice will work with partners from across government as they take forward the work outlined here to help ensure that children have access to the support they need.

Minimum age of criminal responsibility

The Select Committee recommended:

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

30. The Government does not have any current plans to either review or change the age of criminal responsibility. The Committee acknowledged that there are substantial arguments for the retention of the current minimum age of criminal responsibility in England and Wales. The Government believes that children aged 10 and over can differentiate between bad behaviour and serious wrongdoing, and that setting the age of criminal responsibility at 10 provides flexibility in dealing with children, allowing early intervention with the aim of preventing subsequent offending.

31. Our primary objective is to prevent young people offending in the first place and provide the police and courts with effective tools for tackling offending. Serious crimes committed by children are rare and we do not want to see younger children prosecuted for offences unnecessarily where a better alternative may be available. When considering the most appropriate response to offending by a young person, the age, maturity and needs of a child are always considered. Most younger children who enter the youth justice system are dealt with by way of an out-of-court disposal. No 10- or 11-year-olds have received a custodial sentence since 2010.⁶

6 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/children-and-young-people-in-custody/written/106180.html>

32. It is also important to ensure that serious offences can be prosecuted and the public protected. That is why there is a distinct and separate sentencing framework for children aged 10 to 17 which recognises that children have their own specific needs which require a different and more tailored approach. When sentencing, the courts must take into account two statutory considerations: the principal aim of the youth justice system, which is to prevent offending by children and young people, and the welfare of the child.

Racial disproportionality

The Select Committee recommended:

Race disproportionality is significant and fundamental, visible in every part of the youth justice system. We recommend that the Ministry of Justice set out what resource has been allocated to addressing disproportionality. We are not convinced that disproportionality has satisfactorily been “explained or reformed”. The Ministry should also provide the Committee with detailed research setting out why these communities are so disproportionately represented in each part of the system, including the cause of their disproportionate imprisonment. The Ministry should set out what action is being taken and resources allocated.

33. We want people to have confidence in a justice system that is fair and open—one where no person suffers discrimination of any sort. We share deeply the concerns about where we are now in terms of disproportionality. We will continue to prioritise the understanding and tackling of disproportionality within the youth justice system and recognise the absolute need for systemic change.

34. In terms of resource, efforts to better understand and tackle racial disparity in the Criminal Justice system are part of the mainstream responsibilities of the Ministry of Justice and partner organisations, both in terms of people and funding. Under the Public Sector Equality Duty, we also have responsibilities to understand and tackle disparities as part of our regular work, be that policy making, ongoing operational improvement, data and analysis or in other areas. As such, even where there are in some cases dedicated teams or project budgets, counting this alone would fail to capture the actual level of resourcing for work that addresses race.

35. Our commitment to explain or reform is ongoing—this is not something that is ‘complete’, nor do we expect changes we make to have instant impact—these are deep-rooted issues. A wide range of data around race is included within the Youth Justice Statistics annual publication.⁷ A broader overview of over-representation data is provided in the YJB’s ‘Exploring Racial Disparity’ data presentation, which also captures antecedent disparities.⁸

36. In terms of research around the reasons for over-representation at different stages of the youth justice system there is no single compendium. We have sought to engage in more detail with the key data in some original analysis, such as our analysis of Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales⁹ and the YJB’s Experimental Statistics on assessing the needs of sentenced

7 <https://www.gov.uk/government/collections/youth-justice-statistics#annual-statistics>

8 <https://prezi.com/view/TEmgQ5ThJLNTAFKULeC/>

9 <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales>

children.¹⁰

37. There is a range of existing literature exploring the reasons for disproportionality in the Youth Justice System. Explanations include demographic factors, differential involvement in crime, and social exclusion and systemic inequalities.¹¹ While inequalities upstream do contribute to the disproportionality in justice measures, there is also clearly disproportionality within the youth justice system.¹²¹³ This is a complex area that does not have a single explanation. For example, levels of guilty plea at Crown Court, which have been shown to be disproportionately ‘not guilty’ for BAME defendants, will be influenced by a range of complex and interacting factors such as the legal advice they receive, the type of legal representation they have, if any, the level of trust they place in any sentencing discounts they may receive for early guilty pleas, the defendant’s assessment of their chances with a jury, as well as whether they actually committed the offence with which they were charged.¹⁴

38. While there is important work to be done to improve the treatment and outcomes of these communities in those areas of the Criminal Justice System that are under direct influence of the Ministry for Justice, this will only partially address the key issues linked to over-representation. This is because the ‘upstream’ factors that lead to crime are similarly disproportional. That is why there have been wider efforts by the government to tackle over-representation through health, education and policing—demonstrating the significance of a holistic approach.

39. Several key actions are being taken by the Ministry for Justice and our agencies to address disproportionality throughout the system and we are working to further strengthen our understanding of how we can ensure that BAME children can be diverted from custody, where appropriate.

- We have secured £1m in funding to use physical activity and trauma-informed practice to improve outcomes for 11,000 BAME children at risk of entering the criminal justice system.
- Our ‘Chance to Change’ pilots with police allow low-level offences to be addressed out of court. We understand that BAME defendants are consistently less likely to plead guilty and therefore face more punitive outcomes. This model places less emphasis on admission of guilt and more on the opportunity for diversion.
- YJB support is in place to assist with the diversion of over-represented children through the pathfinder concept. A pathfinder to support BAME children and families impacted by Covid-19 has been developed. Payments totalling £1.4m over 3 years have been allocated to areas such as Newham and Brent with regards to Covid-19 response to provide this support to over-represented children.

10 <https://www.gov.uk/government/statistics/assessing-the-needs-of-sentenced-children-in-the-youth-justice-system>

11 See, for example, May, Gyateng, & Hough (2010), *Differential treatment in the youth justice system*; Runnymede Perspectives (2012), *Criminal Justice V. Racial Justice. Minority ethnic overrepresentation in the criminal justice system*.

12 MoJ (2017), *Trends in associations between ethnic background and being sentenced to custody for young offenders in England and Wales between 2009 and 2016*

13 MoJ (2017), *Trends in associations between ethnic backgrounds and being sentenced to custody for young offenders in England and Wales between 2009 and 2016*

14 MoJ (2016), *Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales*.

40. We are going further to fund Black and Asian specialist voluntary sector organisations. A YJB project is in the process of being developed with around £80,000 youth-specific funding for voluntary and community sector organisations to support children who have experienced trauma and Adverse Childhood Experiences (ACEs) resulting from Serious Youth Violence (this links to recommendation 31 in David Lammy’s review).

41. Work is ongoing in several areas with police. We have collaborated with the NPCC to tackle disproportionality in police custody. The YJB is also working on a potential pathfinder project to understand disproportionality in the out-of-court disposal system. This would identify and pilot a process for monitoring of out-of-court disposals within four police forces and make recommendations as to the process for a national approach as well as to develop a national training package specifically Community Resolutions.

42. We are currently reviewing the use of remand for children, with particular attention to the disproportionate representation of BAME children (more detail on the review and YJB-commissioned research is set out below).

43. We have also worked with the Magistrates’ Association to build awareness of disproportionality among sentencers. The YJB has recently held a joint roundtable with the Magistrates Association looking at over-represented children and the development of a Disproportionality Protocol and checklist for magistrates.

44. Within the Youth Custody Service (YCS), work is also taking place:

- Bespoke Diversity and Inclusion Plans are in place across the youth secure estate and are monitored for assurance against progress.
- Following de-biasing training for key staff, YCS are working with HMPPS to develop a bespoke training package on Diversity and Inclusion that will include cultural intelligence and best practice models.
- YCS continues to develop effective practice briefings help upskill staff—for instance on supporting children and young people with specific personal, cultural or religious needs, and supporting conversations around difference.
- The first phase of HMPPS’ Race Action Programme will review existing data, practice and provision and will be taken forward by staff member dedicated to the YCS.

45. Finally, we await the recommendations of the commission on race and ethnic disparities both in the criminal justice space and in its important contribution to upstream areas. We will consider this publication carefully as we shape future work in this space.

The Select Committee recommended:

The Youth Justice Board should update the Committee on the findings of their commissioned research. We agree with Transform Justice, that the disproportionate use of remand has not satisfactorily been explained, and we recommend that the Ministry of Justice provide an explanation of why the levels of BAME children being remanded to custody are disproportionately high. This explanation should include comparative data on the numbers of BAME children and other pleading guilty and differences in the types of offences of which BAME children and others are accused,

in particular where they are likely to result in remand in custody. The Ministry should also set out the steps it is taking to prevent unconscious bias in decision-making.

46. We accept that disproportionality in the criminal justice system is a concern, and that the picture is particularly stark when it comes children on remand.

47. The Committee highlights research that the YJB has commissioned into the drivers of ethnic disproportionality in remand and sentencing outcomes in the youth justice system. Following independent peer review by external academics, this research is currently in preparation for publication in line with Government Social Research guidelines. It is expected to be published. We will share a copy of the research findings with the Committee following publication.

48. The YJB aims to use this research to better understand why ethnic disproportionality occurs at the points children are remanded or sentenced, in order to ensure efforts to redress disproportionality are evidence-informed and appropriately focussed. The research also aims to assess the extent to which differences in these outcomes can be explained by differences in directly observable demographic- and offence-related factors and practitioner-assessed factors. These factors include, for example, age, offence type and severity, care history, and assessments of safety and wellbeing.

49. Even with this additional research, understanding what lies behind disproportionality is complex and involves factors outside of the remand process itself. The departmental review into the use of custodial remand for children is looking into these issues and will include some analysis of the drivers of remand and the characteristics of children remanded. More broadly, a number of initiatives across government and beyond are also aiming to understand those issues better and tackle over-representation in the justice system, as set out in response to recommendation 9 above.

50. In relation to unconscious bias in decision making, fair treatment and challenge of bias are embedded in the competence framework for magistrates. The Judicial College, which has responsibility for national magistrate training, has produced eLearning which is essential training for all magistrates, legal advisers and advisory committee members on awareness of unconscious bias in decision-making and how to mitigate this. Building on this, fair treatment and challenge of bias are also embedded in the appraisal system and other core training.

51. In addition to this, the Ministry of Justice has worked closely with the Magistrates Association to understand sentencing outcomes for children from BAME backgrounds.¹⁵ The Magistrates Association has undertaken work to embed addressing disproportionality across policy work and in the training and development of their members, including resources for magistrates to ensure fair decision-making and challenge of prejudice or bias.

52. Aside from the provision for magistrates, District Judges (Magistrates' Court) and Circuit Judges who hear youth cases can also benefit from training in cognitive bias being a pervasive theme that the Judicial College increasingly weaves into all induction, continuation and cross-jurisdictional face-to-face and digital training, and which is supported by the resources available to all judicial office-holders on the College's Learning

15 <https://www.magistrates-association.org.uk/News/ma-report-on-disproportionality-in-the-youth-justice-system>

Management System. A new edition of The Equal Treatment Bench Book, a document that is written and owned by a group of judges drawn from both Courts and Tribunals and which covers issues relating to fair and equitable treatment in Court, and which is a resource for all judicial office-holders, will be published shortly. A version of The Equal Treatment Bench Book is publicly available on the judiciary website.¹⁶

53. We are aware that, especially in the context of workplace equality, recent evidence of isolated unconscious bias training has not shown a long-term behaviour change.¹⁷ In the context of efforts to avoid bias in decision making within the justice system, both Government (and, no doubt, its independent partners) will continue to assess the most effective resources and approaches to support those working in the justice system to make fair and high-quality decisions.

Youth courts and sentencing

54. The approach to youth sentencing is distinct from that for adults and focuses on the statutory aim of preventing offending by children and on the welfare of the child. The youth sentencing framework emphasises restoration and rehabilitation but provides that those committing the most serious offences go to custody. Custody is only to be used as a last resort for children. There are restrictions on the use of custody for younger children, and the system includes high-intensity community orders to provide robust alternatives to custody.

55. We recently set out proposals for legislative change in the white paper *A Smarter Approach to Sentencing*. This includes measures to strengthen high-end community sentences and reforms to the legal tests for custodial remand, to avoid unnecessary use of custody for children. We have also set out our plans to ensure custodial sentences are appropriate for the small number of children for whom they are necessary, by reforming the Detention and Training Order and reforming existing provisions for murder and serious violent and sexual offences.

16 <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>

17 <https://questions-statements.parliament.uk/written-statements/detail/2020-12-15/hcws652>

Remand

The Select Committee recommended:

We welcome the MOJ's current review of youth remand, but request more detail on what that review is covering. The Ministry should also set out the timeframe in which they intend to complete the review and publish its results and any action plan.

56. The review into the use of custodial remand for children completed its first phase of engagement with a wide range of CJS partners and stakeholders earlier in the year, focusing on the work and challenges faced by staff delivering and overseeing front-line operational services. We have also heard from children who have experienced custodial remand, to better understand their perceptions of the process and its impact upon them.

57. Some of our planned engagement was inevitably affected by the pandemic, with the result that completion of the fact-finding phase of the review has been delayed, but this work continues to be an important focus for us.

58. Further work and analysis are required before any conclusions can be drawn but, based on our research to date, we have identified an initial suite of recommendations. These pertain to improving data collection and analysis, identifying good practice and promoting effective partnership working throughout the bail/remand process, improving service delivery and enhancing community provision, and embedding disproportionality considerations in guidance, training and strategies. We are currently discussing and refining these recommendations with our partners and, as noted by the Committee, we have also put forward legislative proposals in the recent white paper *A Stronger Approach to Sentencing*, which will strengthen the legal tests necessary to remand children to custody and ensure that custody is only used as a last resort. Publication of the final report is now planned for spring 2021.

Use of custody for children pending psychiatric reports

The Select Committee requested:

We ask the Ministry of Justice to set out how many children have been sent to custody pending a psychiatric report. We recommend that the Ministry set out what steps it is taking to prevent this from happening.

59. The recently published MHA White Paper accepts in principle the Independent Review's recommendation. The Government agrees with the Review that prison should not be used as a place of safety on the grounds of mental health but significant further work is needed before legislative change can be introduced. As part of this, the Government recognises the need for a clear, timely pathway in which sentencers have confidence to transfer people directly from court to a healthcare setting for psychiatric assessment.

Sentencing options for first-time offenders

The Select Committee recommended:

We recommend that the Ministry of Justice review current sentencing options for children with a view to introducing a Youth Rehabilitation Order as a sentencing option for first-time offenders pleading guilty.

60. The youth justice system aims to prevent offending by children and young people and deal with children at the lowest appropriate level, emphasising diversion and community resolution for low level offending. We believe that Referral Orders (RO), where an intensive approach is available for cases where custody is a viable option, already provide courts and sentencers with an effective tool to sentence first-time offenders who plead guilty at the appropriate level. We do not consider that there is evidence to warrant a review of sentencing options for first-time offenders pleading guilty.

61. For children who appear in court for the first time and plead guilty to an imprisonable offence, an RO is a mandatory sentence unless the court decides that the offence is so serious that a custodial sentence must be imposed. We believe that this already provides courts with an effective sentencing option for children who are first-time offenders and plead guilty, while ensuring that children are dealt with at the lowest appropriate level. A child who receives an RO will be referred to a youth offender panel, which investigates the causes of offending and agrees a programme of interventions to address factors underlying offending behaviour, take responsibility for the consequences of their actions and make reparations to any victims where appropriate. If a child is not complying with the contract agreed with the panel, actions may include a referral from the panel back to the court. The court may then take a number of actions, including the revocation of the Referral Order and resentencing of the child—with the full range of sentencing options that would have been available at the original sentencing.

62. Our best attempts to assess the relative effectiveness of YROs and ROs suggest that ROs are more effective at reducing reoffending.¹⁸¹⁹ In 2018/19 the reoffending rate for ROs was 32.8%, lower than both YROs (61.7%) and custody (69.3%).

63. In cases where custody is a viable option, the Youth Offending Team can already recommend a more intensive community option—an intensive RO contract. An intensive RO contract should involve a timetable of structured activity each week, which reflects the serious nature of the crime. The intensive RO shares many similarities with Intensive Supervision and Surveillance (ISS), which can be part of a Youth Rehabilitation Order (YRO) sentence. In 2016, an HMI Probation inspection of ROs found that when intensive RO contracts are used, they are used well and divert young people from custody where appropriate.²⁰

Courts

The Select Committee recommended:

The Ministry of Justice should review current sentencing options, with a view to introducing a feedback loop [between the Youth Court and Youth Offending Teams and the young person].

64. We are aware that many participants in the youth justice system see value in feedback loops between Youth Courts, Youth Offending Teams and children. As outlined

18 Impact of sentencing on proven reoffending for young offenders in England and Wales, 2012 to 2014, 25 April 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797491/PR_SQ_Annex_A_April_2019.pdf

19 YROs were associated with higher reoffending rates than matched referral orders, although this could be explained by not matching on plea data.

20 Referral orders-do they achieve their potential? An inspection by HM Inspectorate of Probation, July 2016

in the white paper, *A Smarter Approach to Sentencing*, we will explore problem-solving approaches in the youth justice system, including building the evidence base for the use of panels beyond their current use for Referral Orders (RO).

65. For those children who receive an RO, youth offender panels already provide an opportunity for this feedback loop to occur. Guidance on ROs advises that YOT managers work with local sentencers, providing regular dialogue, information and feedback on the contents of contracts and case outcomes and the effective management of custody threshold cases. The panel can refer the child back to court if there is non-compliance or the child does not agree a contract.

66. We are also aware of innovative local approaches and informal arrangements between some magistrates and YOTs to improve information sharing and involve magistrates in reviewing the ongoing progress of children in relation to community orders other than ROs, for example Youth Rehabilitation Orders. For example, in Wrexham and Northampton informal review panels for young offenders who have received community orders are used to assess compliance and support the successful completion of the orders. While these are local examples and therefore limited in their ability to demonstrate wider impact, there is evidence that children who participated in these schemes felt more empowered and were more positive towards the order. Informal feedback from magistrates also suggested that they appreciate understanding how a child is progressing with their order.

67. We are very interested in further exploring what lessons we can learn from this innovative practice, as well as existing Referral Order panels and other jurisdictions. We are actively considering how the Ministry of Justice can best support these approaches, while ensuring we maintain the impartial court process.

The Select Committee recommended:

We recommend that direct recruitment to the youth magistracy be introduced, which would allow magistrates to specialise in the youth justice system from the outset. We also recommend that the Ministry of Justice and Her Majesty's Courts and Tribunal Service consider enabling peer advocates to have an increased role in court system.

68. Direct recruitment to the youth magistracy has been considered previously, but the initiative has not been pursued to date as there is currently an insufficient caseload in the youth courts for this to be proportionate. In order to achieve the minimum sitting day requirement for magistrates of 13 days per year²¹ with the current caseload, centralisation of youth courts across areas would have to be considered in some parts of England and Wales as part of any initiative that provides directly-recruited youth magistrates.

69. Currently, magistrates must sit for two years in the adult criminal court before an application can be made for authorisation to sit in the youth court. This requirement is an important part of their training and is based on the similarity of the legal frameworks across the adult and youth jurisdictions.

70. We recognise, however, that there may be benefits to direct recruitment to the youth magistracy. For example, such an initiative may attract a different set of candidates, particularly those with experience of, or interest in, working directly with children. We will

21 As per part five of The Lord Chancellor and Secretary of State's Directions for Advisory Committees on Justices of the Peace

therefore continue to further explore the benefits of, and options for, direct recruitment.

71. We are aware that peer advocates with experience of the youth justice system work with some YOTs to build meaningful and trusting relationships with participants. This is an important role and is based on a mutual understanding and shared experience of the system, including the court process.

The Select Committee recommended:

We invite the Ministry of Justice to set out the number of outstanding cases in the youth courts and what steps are being taken to ensure that cases are dealt with expeditiously.

72. A table detailing the volumes of youth outstanding cases in both the magistrates' courts and the Crown Court in England and Wales between January 2020 to June 2020 is below. No official published statistics are available with a breakdown for youth cases post June 2020.

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20
Magistrates' courts outstanding youth cases	9,552	9,396	9,702	11,251	12,573	13,309
Crown Courts' outstanding youth cases	622	654	652	619	615	617

*includes all case types (e.g. 'for trial', sentence and appeal cases). For Crown Court the age breakdowns provided are captured as the age of the main defendant at the point of the latest period that the case was outstanding, e.g. age at the point of 30th June 2020. For magistrates' court, the data is captured based on where the defendant is recorded as Youth in the database.

73. The most recent youth justice timeliness statistics published are from 2018–2019 and can be found online.²² Due to the Covid-19 pandemic, it has not been possible to produce criminal court timeliness estimates for Q1 and Q2 2020. Data to the end of December 2019 remain the latest available estimates. Relevant statistics are published as part of the 'Criminal Court Statistics Quarterly' series available online, which will provide quarterly updates and will allow an assessment to be made of the trends and impact over time.²³

74. It is important that cases involving children are heard as quickly as possible and we are working to clear the courts backlog at pace. HMCTS has put a Covid-19 recovery plan in place in which senior officials in each region are working with Resident Judges to prioritise trials involving youth defendants. Youth cases are continually reviewed to ensure that they remain a top priority, particularly where they involve a child who will be crossing a relevant age threshold.

75. HMCTS work on youth justice has been supported by the Youth Justice Working Group, chaired by the Judicial Lead on Youth Justice, and set up to reduce the impact of Covid-19 delays on the youth court and trials involving youths in the Crown Court. This group is attended by criminal justice agencies and its purposes are: to ascertain the likely impact of Covid-19 on backlogs and to identify options to reduce these safely; to develop criteria for prioritising cases involving children and young people; and to minimise

22 <https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019> (Annex E in the additional annexes document)

23 <https://www.gov.uk/government/collections/criminal-court-statistics>

unnecessary child appearances at court where appropriate and where there are alternative options. The group meets regularly to monitor the progress of the recovery plans that are in place, with the meetings being attended by the relevant HMCTS lead.

76. Recovery plans and arrangements have meant that, since July 2020, Youth Courts have been able to conclude more cases every week than have been received.

The Select Committee recommended:

The Ministry of Justice should set out what work is being done to ensure that all parties to a proceeding are adequately supported during remote hearings. We reiterate our previous recommendation, that the Ministry should urgently commission a review that evaluates the effect of Covid-19 measures in the magistrates' courts and the Crown Court. This review should also consider the specific effect Covid-19 measures have had on access to justice and fairness of outcomes for children and young people.

77. HMCTS has put in place arrangements for social distancing and for the mitigation of the risks associated with the pandemic, in consultation with Public Health England and Public Health Wales. This includes the use of live links where the judiciary consider it to be appropriate. These arrangements have, since July, enabled Youth Courts to conclude more cases every week than have been received, with the safety of all those involved in these hearings being paramount.

78. There is a range of guidance available regarding the use of remote hearings for children, to ensure all parties attending a proceeding are adequately supported throughout the process. HMCTS has also produced guidance for participants to set out the role and purpose of expanding remote hearings in response to the restrictions caused by Covid-19.²⁴

79. The court will always have the final say on whether it is appropriate for a remote hearing to take place and will have to be satisfied that it is in the interests of justice to do so. The decision to allow remote participation is therefore a judicial one decided on a case-by-case basis. The court will be required to consider all the circumstances of the case, including the views of the person participating and whether they will be able to take part effectively.

80. When a hearing notification goes out, participants have the opportunity to tell the court or tribunal if they need support or cannot participate effectively in the audio or video hearing. The Judge can then either change the method of the hearing or reasonable adjustments will be made, wherever possible, to ensure users can participate. There is a technical support line to assist remote hearing users to access their hearing and court staff are trained to support disabled people and those using assistive technology. In June 2020, HMCTS released a cross-jurisdictional reasonable adjustments guide for providing support to those with disabilities during remote hearings.²⁵

81. The use of video links in relation to proceedings involving children in police detention is also a matter for the judiciary. HMCTS together with YJB have released guidance setting

24 <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>; <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>

25 <https://intranet.justice.gov.uk/about-hmcts/customer-engagement/equality-and-diversity/customer-reasonable-adjustments/reasonable-adjustments-for-remote-hearings/>

out principles before giving practical guidance on procedure for the use of video links in relation to proceedings involving children in police detention to ensure that children are supported throughout.²⁶

82. HMCTS is currently conducting an evaluation of remote hearings during the pandemic to inform their use in the longer-term. This also includes youth cases as they can appear remotely. Its findings will help us to address issues around user experience, the administration of and staff support for hearings, and technology and audio-video quality standards.

83. The evaluation will include analysis of monitoring data, user surveys, and qualitative depth-interviews with different types of user (e.g. judges, legal professionals and public users). It will collect evidence on the volumes, characteristics and outcomes of remote hearings, and will explore how experiences and perceptions varied for different users. Findings will be available in spring 2021.

84. Significant work is being undertaken within HMCTS to carefully consider the impact that Covid-19 has had on the youth court and to develop measures that reduce the backlog while prioritising time-sensitive cases. The judiciary has also re-published a note of listing in magistrates' courts during Covid-19 outbreak, where it highlights the impact on the remand status of youth defendants (for example where delay might mean a relevant age-threshold is crossed).²⁷

Turning 18

The Select Committee recommended:

We recommend that the Ministry of Justice legislate to ensure that those who turn 18 while waiting for proceedings against them to begin are automatically dealt with in the youth justice system and sentenced as children.

85. Where a child turns 18 after an offence is committed but before conviction, they will be tried in adult court and, if found guilty, the maximum sentence available will likely be higher than that which would have been available at the time the offence was committed.

86. This does not, however, necessarily lead to significantly longer sentences in practice. Youth and maturity continue to inform sentencing decisions even after the offender turns 18, and the Sentencing Council's definitive guideline, *Sentencing Children and Young People*, states that in these cases courts should use the sentence that would have been given at the time the offence was committed as a starting point. Overarching guidelines for sentencing adults similarly list age and/or lack of maturity as a mitigating factor when determining the sentence.

87. Younger children have very different needs to young adults, and the special measures that exist in youth courts—such as the right to anonymity—are intended to protect vulnerable children. That is why they are not automatically available to defendants over the age of 18, regardless of when the offence was committed. However, assistance (including

26 <https://yjl.c.uk/children-courts-and-video-link-an-update-on-the-guidance-on-video-enabled-remand-hearings-for-children/>

27 https://www.judiciary.uk/wp-content/uploads/2020/07/07072020_-Amended-Note-on-Listing-Magistrates-re-breaches_APPROVED-3.pdf?utm_medium=email&utm_source=

the Registered Intermediaries scheme) does exist to support adult defendants who are determined to be vulnerable. Throughout court proceedings, consideration is given to the age—both chronological and developmental—of the defendant, and measures exist to ensure that those who turn 18 before trial are supported.

88. We are working to clear the courts backlogs and reduce the number of children awaiting trial. HMCTS in particular has taken steps to minimising delays for young people, and as part of its Covid-19 recovery plan senior officials in each region are working with Resident Judges to prioritise and support trials involving youth defendants. Youth courts are now running at near to normal sitting patterns, and it is forecast that the outstanding caseload will return to pre-Covid levels soon. Since 20 July courts have disposed of more youth cases than they have received, reducing the number of outstanding youth cases week on week. HMCTS also prioritises cases where there is a possibility that the offender may turn 18 before conviction.

Registered Intermediary Scheme

The Select Committee recommended:

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

89. The Ministry of Justice recognises the importance of ensuring that children are fully supported throughout the criminal justice process. We are currently considering the feasibility of the Law Commission's recommendations on intermediaries for defendants as part of a review of intermediary provision. These would create statutory eligibility for children and vulnerable adults to receive intermediary assistance for as much of the trial as is necessary to ensure a fair trial.

90. All children, regardless of specific needs, are currently supported through the criminal justice process by their YOT. The YJB provides robust guidance to YOTs which outlines the importance of relationship-based-practice to support children and their families through the court process. This guidance ensures that children and their parents and carers are provided with appropriate information and support during the court process, and that checks are made to ensure their understanding. This is essential in ensuring that children's voices are heard and that they can participate effectively throughout.

91. This guidance also outlines the importance of ensuring the safety and wellbeing of children in court as well as helping every child to understand the details of their court order and what is required of them to comply. Where there is a strong likelihood that the child or young person will be remanded or sentenced to custody, there are clear expectations set out in the guidance to ensure that liaison with the Youth Custody Service is fast and includes relevant details regarding a child's risk and/or need.