

# Believe in children



## Barnardo's

**Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders**  
March 2011

Jane Glover, Senior Policy and Research Officer, Barnardo's  
020 8498 7737 | [jane.glover@barnardos.org.uk](mailto:jane.glover@barnardos.org.uk)

Barnardo's, Tanners lane, Barkingside, Ilford, Essex, IG6 1QG

---

### **Executive Summary and recommendations**

Barnardo's is pleased to submit this response to the Ministry of Justice (MOJ) Green Paper *Breaking the Cycle*. Our response concentrates on youth justice and aspects of criminal justice as a whole where it impacts on children, young people and families. We present our comments under headings (corresponding to questions posed in the paper) and include the following recommendations:

#### **Cross-cutting**

1. A national cross-departmental 'youth justice steering group' in order to achieve a better balance in the setting and delivery of youth justice policy between safeguarding, health, education, prevention and punishment than currently exists; and ensure that all new policy and practice has a "child impact assessment".
2. Raising the minimum age of criminal responsibility in England and Wales to 12 for all offences other than murder, attempted murder, manslaughter, rape and aggravated sexual assault

#### **Resettlement**

3. The Government to conduct an urgent review of the range of support that is available to young people in the secure estate that addresses young people's motivation and ability to engage with the resettlement process.
4. Develop a more comprehensive statutory package of support for *all* young people serving a custodial sentence, including a lead professional for each child during and after their sentence and a clear pathway for resettlement similar to the care plan for looked after children.

#### **Specialist service provision**

5. A national framework that provides for an agreed child-focused approach to young people exhibiting sexually harmful behaviour, which focuses on both community and secure estate settings.

#### **The out of court disposal framework**

6. A simpler system of cautioning, similar to that in use with adults.
7. That central Government closely monitors the impact of the spending cuts on Youth Offending Team (YOT) provision across England and Wales to ensure that the Government

can react if it is found that children, young people and their families are unable to access vital early intervention and prevention services on a concerning scale.

8. The MOJ must ensure that where YOTs and partners are already using restorative justice that there is consistency of application and approach (in adherence to defined principles) and that all appropriate local agencies, including children's services are involved in the coordination of restorative justice within each area.

#### **Enforcement of youth sentencing**

9. Imprisoning children for technical breaches of statutory orders is wrong and should be outlawed.
10. A graduated response to breach so that broken curfews or missed meetings cannot carry the same penalty as a breach where an indictable offence is committed.
11. That breach of a community-based sentence should never result in a custodial sentence for a child aged 14 or under unless the original offence was serious or violent or the breach is accompanied by a conviction for another serious or violent offence.

#### **Reducing the need for custodial remand**

12. Amend the Bail Act 1976 to only allow custodial remand where there would be a significant risk of further offences causing serious harm were the child to be released on bail.
13. Greater investment in remand fostering as an alternative to custody.

#### **Delivering the functions of the Youth Justice Board**

14. The commissioning and placing of children in the secure estate should remain the responsibility of central government but it should be fulfilled by MOJ staff working within a distinct child-focused unit (such as the current youth justice unit) rather than within the National Offender Management Service (NOMS). Only by keeping commissioning of the child and adult estates truly separate will the MOJ be able to work towards achieving a children and young people's secure estate that is appropriate for the needs of vulnerable children.
15. That the MOJ considers how independent research and dissemination will be carried forward in the future.

#### **Increasing local flexibility to tackle offending**

16. We recommend that the MOJ considers the impact of labelling of, and language used to describe, children and young people who offend on the local workforce; and that training is provided so that staff across the different agencies (particularly those not traditionally used to working with young people who offend) feel confident in their ability to address offending issues.

#### **Supporting family relationships**

17. The Government should consider developing a long term strategy to support the families of adults and young people in the secure estate and invest in good quality interventions such as family group conferencing and multi-systemic therapy.

## 1. Introduction

- 1.1. Barnardo's works directly with over 100,000 children, young people and their families every year through over 400 vital projects across the UK.
- 1.2. We run 42 projects offering services to children and young people at risk of or involved in offending, including 18 services working to prevent and divert children from anti social behaviour. We outline a selection of these services in this submission, but please contact us for more information or to arrange a visit. The services include:
  - Fast track responses to anti social behaviour as an alternative to a formal order;
  - Youth Inclusion and Support Programmes;
  - Advocacy for young people in the secure estate;
  - Specialist services for children and young people exhibiting sexually harmful behaviour;
  - Resettlement services for young people leaving custody;
  - Intensive family support and parenting programmes.
- 1.3. Barnardo's welcomes many of the aspirations and commitments set out in *Breaking the Cycle* to improve the sentencing and rehabilitation of adult offenders, and in the particular the recognition of the importance of positive family relationships in rehabilitation.
- 1.4. We welcome the commitments to continue to work with the Department for Education (DfE) to support the development of community budget pilots which will engage with families with complex needs – many of whom will need significant support in breaking cycles of intergenerational offending. We hope that learnings from the pilots will be captured and good practice systematically shared across authorities, including those in Wales.
- 1.5. Barnardo's is concerned however, that the Green Paper has missed an important opportunity to be as progressive in addressing entrenched issues within the youth justice system as it has with the adult justice system. Above all we are concerned that a lack of focus on children and young people in the Green Paper coupled with the recent governance changes - oversight of youth justice policy moving from a cross-departmental 'joint youth justice unit' to a youth justice unit wholly under the auspices of the MOJ and the disbanding of the Youth Justice Board (YJB) - is a step backwards in a very gradual but positive shift in recent years towards focusing on young offenders as children and young people first and foremost.
- 1.6. In view of the recognition made in the Green Paper of the value of a cooperative, partnership approach to managing offenders that is demonstrated by youth offending teams (YOTs), Barnardo's believes that these partnership arrangements should be matched at the centre. **We recommend a national cross-departmental 'youth justice steering group'** in order to achieve a better balance in the setting and delivery of youth justice policy between safeguarding, health, education, prevention and punishment than currently exists. We suggest that this could be co-chaired by Ministers from the respective government departments who would oversee the work of the

youth justice unit within the MOJ and could **ensure that all new policy and practice has a “child impact assessment”**<sup>1</sup>.

- 1.7. Additional recommendations are set out below. We focus on answering the questions set out in chapter five ‘Youth Justice’ and chapter six ‘Working with Communities to Reduce Crime’, however, important elements are missing from the chapter on youth justice and we have therefore outlined these in a separate section below.

---

## 2. Gaps in the Green Paper

### Custody thresholds and the age of criminal responsibility

- 2.1. Whilst the consultation states that ‘too many young people whose offences are not the most serious and whose behaviour does not pose a risk to the public are sent to custody’<sup>2</sup>, there are no specific proposals to reduce the numbers of young people (particularly under-15s) sentenced to custody.
- 2.2. Barnardo’s advocates for **raising the minimum age of criminal responsibility in England and Wales to 12 for all offences other than murder, attempted murder, manslaughter, rape and aggravated sexual assault**. This change would reduce the numbers of young people drawn into the criminal justice system and also bring the UK into line with its international obligations under the United Nations Convention on the Rights of the Child.

### Resettlement

- 2.3. The consultation is clear that [secure detention] ‘does not deliver good outcomes for young people’<sup>3</sup>. While in many cases this is true, Barnardo’s would add to this that the failure to adequately support young people and their families *prior to* and *following* their incarceration also fails to deliver good outcomes.
- 2.4. Since 2007 Barnardo’s has run an advocacy service for young people held in 10 young offender institutions, three secure training centres and one secure children’s home. Barnardo’s staff report being particularly concerned about the lack of attention given to young people’s needs in their rehabilitation planning. Through research, the previous Government and the YJB identified seven interlinked resettlement pathways important in reducing reoffending. These pathways rightly influence the resettlement work carried out with young people by criminal justice agencies at every juncture, yet they fail to address the young people’s motivations and abilities to change.
- 2.5. Our work with young people in the secure estate convinces us of the importance of identifying young people’s strengths, skills, weaknesses and motivations *before* the crucial elements of resettlement can be put in place that will meet their needs. For

---

<sup>1</sup> This would mean that when preparing decisions that could affect children or young people, there would always be a systematic attempt to analyse and evaluate the consequences of the proposed action on children and young people before implementation. Children’s views would ideally also be heard at this stage

<sup>2</sup> In box, page 70

<sup>3</sup> Paragraph 240

example, a number of young people that we work with in custody have been found to have high levels of anger and limited ability to control their emotions. These young people require support to understand their feelings and to manage their anger if education or training programmes are to be successful.

**2.6. Barnardo's recommends that the Government conduct an urgent review of the range of support that is available to young people in the secure estate that addresses young people's motivation and ability to engage with the resettlement process.**

**2.7.** Lack of support to find suitable accommodation is one of the top five concerns voiced by young people in custody to Barnardo's advocacy service. Our recent research with these young people followed their journeys as they moved from custody to the community. We found that significant numbers of 16 and 17-year-olds are being insufficiently supported on release – resulting in disengagement from services and costly reoffending<sup>4</sup>. We calculated that the structure and stability that can be instilled in a young person's life through supported accommodation on release from custody can produce savings of more than £67,000 for one young person over a three-year period.

**2.8.** We therefore recommend that the Government consider revisiting aspirations previously set out in the Youth Crime Action Plan<sup>5</sup> to develop **a more comprehensive statutory package of support for all young people serving a custodial sentence**, including a lead professional for each child during and after their sentence and a clear pathway for resettlement similar to the care plan<sup>6</sup> for looked after children.

### **Specialist services for young people who offend**

**2.9.** The consultation document provides welcome commitments to ensuring that young people in trouble with the law receive the most appropriate intervention at the earliest opportunity<sup>7</sup> – delivered through diversion pilots and funded by payment by results and community budgets. Barnardo's is concerned that this limited approach to the provision of early intervention services may result in funding of services that will meet the needs of the *majority* of the local population of children in trouble but fail to address the *specialist* needs of some very vulnerable children in trouble.

**2.10.** We have long been concerned about the dearth of service provision for young people who have exhibited sexually harmful behaviour. There is a broad consensus from research that between 25 and 35 per cent of all alleged sexual abuse involves young, mainly adolescent perpetrators<sup>8</sup> and analysis of Home Office offending data calculated that children and young people aged between 10 and 21 years accounted for 47 per

---

<sup>4</sup> Barnardo's (2011) *No Fixed Abode: The housing struggle for young people leaving custody in England*.

Barnardo's: Barkingside

<sup>5</sup> The Home Office, DCSF, Cabinet Office and MOJ (2008) *Youth Crime Action Plan 2008*

<sup>6</sup> A looked after child's care plan identifies their assessed needs and the services to meet those needs, and sets the framework for the services provided to the child and family to enable the desired goals and outcomes to be achieved.

<sup>7</sup> Paragraph 232

<sup>8</sup> *Cawson, P. et al. (2000) Child Maltreatment in the United Kingdom: a study of the prevalence of child abuse and neglect. London: NSPCC.*

cent of all cautions for sexual offences<sup>9</sup>. The majority of young people affected are adolescent males, but young children and females also commit sexually harmful acts. Children and young people with learning disabilities are over-represented within this group but the reason why is not fully understood.

**2.11.** Recent MOJ data shows that there has been a small increase in the proportion of young people convicted of sexual offences over the last ten years from one per cent of all offences to 1.3 per cent, but the numbers remain broadly similar at around 500 young people every year<sup>10</sup>. However, Barnardo's suspects that these numbers may be higher as harmful behaviour committed by young people towards their own peers often goes unrecorded.

**2.12.** Barnardo's runs seven services across the UK to support children and young people exhibiting sexually concerning or harmful behaviour and their families – with the aim of contributing to the prevention of sexual abuse by children and young people

---

### **Barnardo's Good Practice – The Junction**

*The Junction* based in South Yorkshire works with up to 100 young people aged 4 to 17 every year whose sexual behaviour is a concern. This includes children and young people who have acted out sexually inappropriate behaviour, those who have harmed someone sexually or who have been charged with a sexual offence.

The service receives referrals from social care, health, education and police in three local authority areas and offers:

- Support and advice to families in understanding and managing their child's behaviour.
- Advice and support to professionals and agencies including those working in Child and Adolescent Mental Health (CAMHS) and social care.
- Training and education to help increase safety within school environments and to enable looked after children or young people who are displaying sexual behaviour to remain in their current placements

For each young person referred, *The Junction* provides formal assessments and/or individual work with them and their families. Solutions are developed in collaboration with the young people and their families that will help to manage the behaviour and increase levels of safety, and a programme of intervention can be developed.

Interventions include individual and family sessions. Each is designed to meet individual concern and need but can include:

- Increasing the young person's knowledge and ability to engage in safe sexual relationships

---

<sup>9</sup> Masson, H. and Erooga, M. (1999) *Children and young people who sexually abuse others: incidence, characteristics and causation*. In: Erooga, M. and Masson, H. (eds) *Children and young people who sexually abuse others: challenges and responses*. London: Routledge.

<sup>10</sup> MOJ *Sentencing Statistics England and Wales 2009*. Published October 2010

- Working with parents to increase knowledge about concerning sexual behaviour and how to respond
- Helping young people to develop respect and concern for others and to take responsibility for their behaviour
- Overcoming past and present difficulties (e.g. victim issues)
- Building on strengths and solutions
- Developing plans for future safety

In 2010/11 of those young people identified as having a need on each of the following outcomes; 73 per cent went on to achieve satisfactory school or college attendance, 83 per cent had an improved knowledge of sexual behaviour strategies and 82 per cent were able to understand the impact of their behaviour. In addition 85 per cent of parents or carers where there was an identified need were reported as having an improved capacity to prevent abusive or harmful behaviour occurring.

- 
- 2.13.** While there has been some progress in policy development over recent years, there has thus far been a failure to develop an overall systematic approach to children and young people who exhibit sexually harmful behaviour and there is a lack of specialist preventative and reactive projects to support those where a need has been identified.
- 2.14.** This issue currently crosses a number of Government departments, specifically the DfE, the MOJ, the Home Office and the Department for Health (DH), with the result that there is no agreed approach or guidance. Barnardo's believes that **there is a need for increased awareness of the importance of specialised services to meet the needs of these young people, and a national framework that provides for an agreed child-focused approach<sup>11</sup> to these young people in both community and secure estate settings.**
- 2.15.** While girls and young women are under-represented in the youth justice system, they make up 25 per cent of the young people on YOT caseloads<sup>12</sup>. While the Green Paper acknowledges some of the gender-specific needs of adult women offenders it fails to apply this consideration to young women and girls under the age of 18. Research by the Howard League for Penal Reform, also shows differing approaches to sentencing of young people from minority ethnic communities<sup>13</sup>, and **Barnardo's would urge the government to take a more equalities focused approach to working with young people in trouble with the law.**
- 2.16.** Research at Barnardo's which has looked at the links between offending and sexual exploitation also indicates that sexual exploitation can act as a pathway for both boys and girls to engage in offending behaviours<sup>14</sup>. This victimisation is not always identified by those working in youth justice settings, and there is a need for balance between

---

<sup>11</sup> We would recommend consideration of a 'Strength-Based Approach' that focuses on resilience of young people and their families, which research has shown to be effective with this group of children and young people. For example, see Hackett, S (2004) What works for children and young people with harmful sexual behaviours. Barnardo's: Barking

<sup>12</sup> *MOJ Youth Justice Statistics 2009/10 England and Wales* Published January 2011

<sup>13</sup> The Howard League for Penal Reform (2010) *Access to justice Denied* Howard League: London

<sup>14</sup> Paskell, C (2011) *Associations between Child Exploitation and Youth Offending*. Unpublished

addressing young people's offending and victimisation in order to reduce offending overall. Barnardo's report when published will make recommendations that will support YOTs in better identifying and responding to sexual exploitation, including how to identify risk factors and the need for the adoption of specialist screening tools.

---

### 3. Q48. How can we simplify the out of court disposal framework for young people?

- 3.1. Barnardo's believes that all children who offend should be viewed as 'children in need' first and foremost. Such a system already operates in Scotland where all children who need a social services intervention – including those who offend – are dealt with by the Children's Hearings System, which is underpinned by a principle that children who commit offences are in need of care and protection. This is not to say that children should not have to face up to the impact and consequences of their offending behaviour, but that they should be offered timely support to address the complex problems they face.
- 3.2. Recent research from The Edinburgh Study of Youth Transitions and Crime<sup>15</sup> – a longitudinal study involving 4380 children - has revealed that the use of compulsory measures (such as Anti Social Behaviour Orders (ASBOs)) in the early stages of offending, tends to label and stigmatise young people, which inhibits the normal process of desisting – or 'growing out of' - offending that would happen otherwise.
- 3.3. Similarly, research from the United States in 2009 found that for adolescent offenders, therapeutic programmes are much more cost effective than punitive interventions, and that punitive interventions usually have negative returns, with programme costs exceeding benefits<sup>16</sup>.
- 3.4. The current system of reprimands and final warnings administered to children and young people is overly complex, difficult for children and young people to understand and escalates them unnecessarily into the court system. Barnardo's welcomes MOJ proposals to simplify out of court disposals and end the current system of automatic escalation. **A simpler system of cautioning could be adopted, similar to that in use with adults.**
- 3.5. Barnardo's has a number of early intervention services that work to divert children and young people from more serious offending. A key feature of all these projects is that support is provided to the whole family - including parents, grandparents and siblings where necessary – in a joined up package of interventions. In addition, our services work hard to ensure that the support provided addresses not only the offending

---

<sup>15</sup> The Edinburgh Study of Youth Transitions and Crime is a programme of research run by Edinburgh University and funded by the Economic and Social Research Council (ESRC), The Nuffield Foundation and the Scottish Executive to track pathways into and out of offending. 4380 children have been tracked since 1998 when they were 11 or 12 years old. It is one of only two longitudinal studies available on offending behaviour. The other is The Cambridge Study which was conducted in the 1950's. The Edinburgh study findings can be accessed at <http://www.law.ed.ac.uk/cls/esytc/>

<sup>16</sup> Outlined in The Sainsbury Centre for Mental Health (2009) The chance of a lifetime: Preventing early conduct problems and reducing crime. SCMH: London, 2009.

behaviour, but all aspects of a young person's life that may be impacting on their behaviour- including education, emotional wellbeing, drugs and alcohol and relationships.

**3.6.** We therefore welcome the commitments made to supporting families to improve their parenting skills and the recognition of the role of youth offending teams (YOTs) in diverting children and young people from offending. However, we believe that it is important to ground these commitments in reality. Barnardo's works across a range of local authorities in England and we are well placed to see the impact of current spending cuts. We are witnessing some local authorities electing to cut existing early intervention support and divert their funding to other priorities and YOTs being merged or 'stripped back' to such an extent that the preventative elements of their work, such as drug and alcohol support and reconciliation work are lost.

**3.7.** We recommend that central Government **closely monitors the impact of the spending cuts on YOT provision across England and Wales** to ensure that the Government can react if it is found that children, young people and their families are unable to access vital early intervention and prevention services on a concerning scale.

---

#### **4. Q49. How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?**

**4.1.** Barnardo's welcomes the MOJ's interest in expanding the use of restorative justice as we believe that the model will pave the way for a more positive process and better outcomes for victims of crime. However, careful consideration needs to be given as to how this might be implemented

**4.2.** There is much debate in the voluntary and statutory sector about which model should be endorsed. The Northern Ireland model is referred to in the consultation document and the MOJ have also evaluated restorative justice pilots based on New Zealand and Australian models<sup>17</sup>.

**4.3.** Barnardo's believes that the specific model adopted is less important than ensuring adherence to both the responsibilities and constraints set out in a recent MOJ evaluation report<sup>18</sup> and the key principles of restorative justice developed in New Zealand. In particular:

**4.4.** It is crucial that the **offender is allowed to 'make good' their offence in ways determined by the victim**. There has lately been an increased interest in 'reparative' schemes (for example, 'Making Good' and 'Community Payback') where in essence the state takes over the role of the victim in deciding the reparation – which is often indirect and bears little relation to the nature of the offending. True restorative justice approaches should directly involve the victim and thereby produce a 'cathartic' experience where the young person is directly aware of the harm caused. As one

---

<sup>17</sup> Shapland, J et al (2006) *Restorative justice in practice. The second report from the evaluation of three schemes*. Centre for Criminological Research: University of Sheffield. July 2006

<sup>18</sup> Ibid

Barnardo's service manager points out, "the outcome of restorative justice actually comes from the process and the offender's genuine offer to make amends".

- 4.5. A second key principle is the **involvement of both the offender's and the victim's family or support network**. Both Northern Ireland and New Zealand youth justice family group conference models invite the young person who has offended to attend the conference with his or her extended family and other people who have a significant place in his or her life, and the victim is also invited to attend with a supporter. The action plan made often contains restorative elements agreed with the victim, as well as elements focussed on the welfare of the young person. (After the problems have been outlined and agencies have explained what support is available, the family is given private time to work out an action plan for the young person). The pilots that were recently evaluated by the MOJ<sup>19</sup> did include a family element, but in most cases only involved one member of the offender's family. Barnardo's believes that involvement of the wider family in restorative justice is crucial to tackling the underlying causes of the offending behaviour.
- 4.6. The third principle worth highlighting is that **the disposal or 'punishment' ultimately handed out to the offender must come as a direct result of the restorative conference itself**. This may require some legislative change but is important in ensuring that young people are not given 'add-on' disposals by the police or courts and that the credibility of the restorative conference is preserved. The MOJ's evaluation of restorative justice said that, "restorative justice should be set up with a clear statutory footing, to give criminal justice agencies the impetus to refer cases". Barnardo's would add to this, "...and give the decisions agreed by the victim and the offender gravitas".
- 4.7. Currently a range of reparative and restorative approaches are used across the UK meaning that when and how young people are diverted is often dependent upon where they live. **The MOJ must ensure that where YOTs and partners are already using it that there is consistency of application and approach**. True restorative justice can be an expensive process as short cuts can not be made in preparing victims, offenders and their families for the conference. Oversight by the MOJ would prevent the gradual shift in some localities into relying on (cheaper) community payback and making good schemes, which may not produce such positive outcomes.
- 4.8. Finally, Barnardo's believes that **all appropriate local agencies, including children's services, should be involved in the coordination of restorative justice within each area**. We believe that there is also significant value in utilising the skills of non-statutory agencies, which are independent and separate from the traditional system of criminal justice.

---

## 5. Q50. How can we increase the effective enforcement of youth sentencing?

- 5.1. Barnardo's agrees with the assertion that there is variation in the practice which is applied to the breach of community orders, with some areas proposing a custodial sentence for small technical breaches. Research by Barnardo's showed that one third of

---

<sup>19</sup> Ibid

12 to 14 year olds in 2008/09 were sentenced to custody for breach of a statutory order<sup>20</sup>. We believe that **imprisoning children for technical breaches of statutory orders is wrong and should be outlawed.**

- 5.2. The consultation proposes the use of ‘compliance panels’ which would review an offender’s case and give a view on the appropriate response to breach. In principle Barnardo’s would support the use of panels where there is complete or wilful failure to comply, but would need more detail on what basis the decisions to breach the young person would be made.
- 5.3. We also believe that the two most important steps in ensuring compliance are the passing of realistic sentences that do not set young people up to fail, and then supporting them to meet the requirements of the sentence. One quarter of children in the youth justice system have a learning disability<sup>21</sup> which can interfere with their ability to understand and comply with what are often quite complex statutory orders. Our research<sup>22</sup> showed that young people under 15 years of age who were sentenced to custody for breach of their community sentences were more likely to: have a history of running away or going missing; be living with known offenders; have special educational needs; and have experienced abuse within the family.
- 5.4. Barnardo’s recently successfully campaigned for a requirement in Sentencing Guidelines<sup>23</sup> that ‘before imposing a custodial sentence as a result of re-sentencing following breach, a court should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and support necessary for compliance’. We now recommend changes in Sentencing Guidelines to ensure **a graduated response to breach so that broken curfews or missed meetings cannot carry the same penalty as a breach where an indictable offence is committed.**
- 5.5. We also recommend that **breach of a community-based sentence should never result in a custodial sentence for a child aged 14 or under unless the original offence was serious or violent or the breach is accompanied by a conviction for another serious or violent offence.**

---

## 6. Q51. How can we succeed in reducing the need for custodial remand for young people?

- 6.1. Barnardo’s welcomes some of proposals set out to change the use of remand, and particularly the proposal to amend the Bail Act 1976 to remove the option of remand for young people who would be unlikely to receive a custodial sentence. However, whether a trial is likely to result in conviction or what the likely sentence will be can be

---

<sup>20</sup> Barnardo’s (2009) *Locking Up or Giving Up: Why custody thresholds for teenagers aged 12, 13 and 14 need to be raised*. Barnardo’s: Barkingside

<sup>21</sup> Department of Health (2009) *Healthy Children, Safer Communities – A strategy to promote the health and wellbeing of children and young people in contact with the youth justice system*. London: DH

<sup>22</sup> Barnardo’s (2009) *Locking Up or Giving Up: Why custody thresholds for teenagers aged 12, 13 and 14 need to be raised*. Barnardo’s: Barkingside

<sup>23</sup> Sentencing Guidelines Council (2009) *Overarching Principles – Sentencing Youths*. Definitive Guideline. Page 20.

difficult to predict at the time of bail application. Whilst this proposal does have the potential to reduce the number of children on remand, Barnardo's recommends **amending the Bail Act 1976 to only allow custodial remand where there would be a significant risk of further offences causing serious harm were the child to be released on bail.**

- 6.2. In principle, Barnardo's welcomes the single remand order, but would like to see more detail. We believe that all children in custody, whether on remand or serving a sentence should have a legal status that entitles them to additional support including a key worker.
- 6.3. There are several other options that may be appropriate for safeguarding the needs of young people placed in custody on remand. One method would be to grant 'child in need' status to all those remanded to custody, including 17 year olds. This would ensure that they undergo an assessment and any additional needs would be identified. However, we know from our own research<sup>24</sup> that 'child in need' status for those serving custodial sentences is not always an adequate safeguard, particularly at the crucial transition point when they are released into the community. We found that the initial 'child in need' assessment becomes redundant and young people are often subjected to re-assessment on release – resulting in placement in unsafe, unsupported temporary accommodation while assessments are carried out.
- 6.4. Perhaps a preferable option would be to introduce a new status identifying the services, support, duties and responsibilities which should rest on the local authority and its partners. Children, young people and their families could be consulted in agreeing the nature of the duties and responsibilities.
- 6.5. To reduce the need for custodial remand, we recommend greater investment in remand fostering as an alternative to custody.

---

### **Remand fostering – Barnardo's Albion Court**

Barnardo's Albion Court works in partnership with Warwickshire County Council and comprises of two key parts;

- The BRICS service works closely with the Warwickshire youth offending service and provides foster placements as an alternative to custody (whereby the young person is required to adhere to bail and remand conditions) and placements as part of a rehabilitation package (usually involving an intensive supervision package) for young people leaving custody on early release.
- The STEPS service provides emergency foster placements to support the Warwickshire children's services teams. These are time limited placements to provide a 'breathing space' for teams to secure a longer term placement to prevent children and young people with challenging behaviour from being placed in residential care or out of area foster placements.

---

<sup>24</sup> Barnardo's (2011) *No Fixed Abode: The housing struggle for young people leaving custody in England*. Barnardo's: Barkingside

### **Making a difference**

- Thirty three young people received a fostering service via BRICS and STEPS in 2009/10.
  - Nine of the ten young people placed in remand fostering as an alternative to custody did not offend during their placement period.
  - Two young people were placed on an intensive programme as part of an early release from custody package and later moved onto independent living.
  - All of the 13 young people who were placed with the service because they could not be found alternative accommodation because of challenging behaviour remained successfully in their placements for the set time period.
  - Eight young people were placed who had high needs in terms of criminal offending and very vulnerable backgrounds. Seven of these young people remained within the service and their placements needs were met. One young person was deemed to be continually making himself vulnerable while in placement and was placed in a secure residential setting.
  - Thirty eight young people received direct support to develop their life skills, become more independent and keep safe.
- 

### **Remand Fostering - Case study**

Naseem was 15 years old when he was referred to Barnardo's BRICS service. He is a young man of mixed parentage. His mother is of White UK origin and his father of Pakistani origin. He had lived with his mother all his life and had only visited his father occasionally.

Naseem was remanded to foster care by the court because he had committed a series of thefts and burglaries and was at risk of a custodial sentence if he continued. Naseem's mother felt she had lost authority over her son – he came and went when he pleased, spent considerable time away from home and had not attended the Pupil Referral Unit (PRU) he had been placed in. Naseem did not react well to challenge and would respond by kicking and punching at doors and walls. He was also verbally aggressive to his mother and social workers at times.

The aims of the Barnardo's remand fostering package were to involve Naseem in more appropriate family and social activities and to support him back into education and away from offending.

Naseem's foster carers and his sessional worker encouraged him to take part in family activities and encouraged his interest in football. Initially he refused to engage in education but Barnardo's, the Youth Offending Team and the PRU devised a tight package of support that ensured Naseem was accompanied to school and that there was a rapid response to any signs of disruption in the classroom. On 'numerous' occasions Naseem's carers or sessional worker supported him following an aggressive episode within the class room and negotiated with him and the PRU to make it possible for him to return to classes.

Over time Naseem developed a trusting and respectful relationship with his carers who supported him through episodes where he lashed out at furniture in the home. His carers also worked hard to help Naseem develop his relationship with his mother and helped them both to agree boundaries that would help them to live together again. They also helped Naseem to understand more about his Pakistani origins to enable him to build interest and respect in his father's culture which resulted in he and his father developing a stronger relationship.

Due to his progress, the court allowed Naseem to return to his mother after five months. He had not offended in that time and was regularly attending his PRU. A Barnardo's sessional worker continued to support Naseem for a further six weeks on his return home.

---

**7. Q52. How do you think we can best incentivise partners to prevent youth offending?**

- 7.1.** While Barnardo's supports 'payment by results' in principle, we have significant reservations about making it a fundamental feature of the youth justice system for several reasons:
- 7.2.** In the event that the 'reduction of reoffending' outcome measure excludes 'low risk' and 'high risk' children – as suggested at one point in *Breaking the Cycle* – there is a danger of 'cherry picking'. Risk of reoffending is currently attributed on the basis of the YOT 'Asset' (assessment) score. Where there is a strong financial incentive to reduce offending for a particular cohort, there may be an inevitable tendency to manipulate scores so that lower risk children are included and those who would normally be placed towards the top end of the 'medium risk' bracket are escalated into the 'high risk' bracket. Such practice would clearly undermine the credibility of the system of rewards while having the unintended – and counterproductive - consequence of attributing higher levels of risk than are warranted by the child's circumstances.
- 7.3.** A similar dynamic may mean that the proposed outcomes measures for the youth justice system are in tension with each other. A reduction in first time entrants for instance, would filter children who are less likely to reoffend out of the system. A service provider focused on reducing reoffending of the population within the system would have a perverse incentive to increase the number of first time entrants
- 7.4.** Payment by results also leads to a danger of trying to apply the principles of work with adult offenders (which sees reducing offending as 'the holy grail') to interventions with children and young people. Barnardo's knows from our work with children and young people with entrenched offending behaviour that desistance is a very gradual process, often initially involving small but significant shifts in attitudes or behaviours. (For example, a young woman who remembers to send a text message to inform her key worker that she will be late for an appointment or a young man who gets out of bed in the morning and manages to prepare breakfast). Barnardo's project workers who are skilled in working with these young people recognise and reinforce these positive shifts in behaviour in order to encourage the young person along a pathway towards desistance from offending. It is therefore essential in devising payment by results models that a distinct approach in responding to children and young people who offend is retained which addresses these 'softer' but significant outcomes of change in attitudes, behaviour and wellbeing.
- 7.5.** Finally we are concerned that large organisations within the private sector will be far better placed than the voluntary or statutory sector to take the risk of investing funds upfront in payment by results models. Where the statutory or voluntary sector does risk funding, there is a danger than innovation in ways of working with children and

young people will be stifled as providers stick to tried and tested 'fail safe' interventions that may not always be the most effective.

---

**8. Q55. How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?**

- 8.1.** As mentioned in the introduction to this response, Barnardo's is concerned that a balance is not currently being achieved between safeguarding, health, education, prevention and punishment in youth justice policy and that the disbanding of the YJB – which currently purchases and commissions places in the secure estate - may further perpetuate this. **We recommend that the commissioning and placing of children in the secure estate should remain the responsibility of central government but that it should be fulfilled by MOJ staff working within a distinct child-focused unit** (such as the current youth justice unit) rather than within the National Offender Management Service (NOMS). Only by keeping commissioning of the child and adult estates truly separate will the MOJ be able to work towards achieving a children and young people's secure estate that is appropriate for the needs of vulnerable children.
- 8.2.** An additional function of the YJB was to evaluate and disseminate good practice. **We recommend that the MOJ considers how independent research and dissemination will be carried forward in the future.**
- 

**9. Q57. What are the other ways in which we can work effectively across Government to increase local flexibility to tackle offending?**

- 9.1.** Some practical changes at the local level could pave the way for a more flexible approach to tackling youth offending. One of the major inhibitors of early intervention and prevention work currently is the lack of joined up working between children's services, health, education and criminal justice agencies. It is likely that if localities were enabled to develop restorative justice approaches that coordinate all appropriate local agencies - including the voluntary sector - that this would kick start a drive towards shared outcomes in tackling offending.
- 9.2.** The labelling of, and language used to describe, young people who offend should also be addressed. Barnardo's works in partnership with a significant number of local authorities. Our practitioners report that where non-criminal justice agency staff (such as those in children's services or mental health services) accept children and young people who offend as being their responsibility, it is often where positive language (that sees them as children and young people first and foremost) is common currency. **We recommend that the MOJ considers the impact of the labelling of, and language used to describe, children and young people who offend on the local workforce** and we would welcome the opportunity to work with the youth justice unit on this issue. **We also recommend that urgent training is required so that staff across the different agencies (particularly those not traditionally used to working with young people who offend) feel confident in their ability to address offending issues.**

**9.3.** Children and young people themselves could also play a more significant role in developing the local approach to tackling offending. Recent consultation work commissioned by the Youth Justice Board (YJB) and the Office of the Children's Commissioner (OCC)<sup>25</sup> revealed the value of listening to the insights of young people in the secure estate and led to YJB commitments to change process and practice. We know from our advocacy work that the ability to develop relationships with young people and to build trust is crucial to effective engagement. We recommend that increased efforts should be made to give a voice to young people in the criminal justice system – both to prompt positive, meaningful change to the system and to motivate young people to change their behaviour.

---

**10. Q58. What more can be done to support family relationships in order to reduce reoffending and prevent intergenerational crime?**

- 10.1.** It is generally accepted that improving parent – child interaction, especially in a child's very early years, provides the greatest leverage for changing a child's behaviour, and that overall, the biggest positive impact appears to arise from effective parenting programmes<sup>26</sup>.
- 10.2.** Barnardo's currently uses a variety of individual and group methods to provide both court ordered and elective parenting support. Our services focus particularly on those groups that require specialist support and often fail to engage with services, including young fathers, parents in custody, and black and minority ethnic (BME) fathers.
- 10.3.** We have found that court ordered parenting education programmes, where applied fairly and sensitively, can be accepted by parents and can produce positive results (though the results for parents of teenagers are, as with elective programmes, less impressive). We believe that Parenting Orders have a role to play in the overall framework of parent support. However, to be successful, both court ordered and elective parenting programmes must also provide access to additional family support services including drug and alcohol support and mental health services.
- 10.4.** Barnardo's would welcome more focus on tailored provision for the hardest to reach families who fail to engage with traditional parenting support - particularly parents in the secure estate, young fathers, parents with chaotic substance misuse problems and black and minority ethnic parents.
- 10.5.** There also needs to be a greater recognition that parenting support and education can be just as important at key points throughout a young person's life as well as in the early years. Barnardo's research<sup>27</sup> identified a significant gap in support for the families of teenagers in the secure estate. We found that: family days (which allow extended

---

<sup>25</sup> Youth Justice Board and the Office of the Children's Commissioner (2011) *Young People's Views on Safeguarding in the Secure Estate: A User Voice report for the Youth Justice Board and the Office of the Children's Commissioner*. YJB: London

<sup>26</sup> See Buchanan, A. and Ritchie, C. (2002) *What works for troubled children?* Barkingside, Barnardo's. and Allen, G (2011) *Early Intervention: the next steps: An Independent report to Her Majesty's Government*, Cabinet Office

<sup>27</sup> Barnardo's (2011) *No Fixed Abode: The housing struggle for young people leaving custody in England*. Barnardo's: Barkingside

visit times and in some cases activities) were dependent on good behaviour and tended to attract 'the same five or ten families' each time; relationship and parenting courses often failed to meet needs; and that in some establishments the family support element of resettlement is provided by unskilled prison officers as an 'add-on' to their usual role. Barnardo's knows from experience working with very vulnerable families that skilled family work is needed to address the complexities of their lives.

- 10.6.** The research also showed that although all YOT workers recognised the importance of family support work in the community, the pressure of statutory work often precluded working with families unless it was linked to specific parenting order provisions. In most cases family work seemed to be separated from what was described as 'mainstream work'.
- 10.7.** We recommend that the Government should consider **developing a long term strategy to support the families** of adults and young people in the secure estate and invest in good quality interventions such as family group conferencing and multi-systemic therapy.