

EXECUTIVE SUMMARY

Comprehensive review of the system of justice for children in England and Wales is urgently needed. This report, from Barnardo's, The Children's Society, the Howard League for Penal Reform, Nacro, the National Children's Bureau, NCH, NSPCC and the National Association for Youth Justice makes the case for change.

Despite recent reforms, the current arrangements for children in trouble are seriously flawed and have attracted criticism. Indeed, although many are experiencing 'reform fatigue', there has been no comprehensive review since the late 1960s, and certainly not since the UK ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991. The sentencing and court reviews, being taken forward in Bills currently before Parliament, confirm a failure to consider children separately.

Our youth justice system is not sufficiently distinct from the adult system, is overly complex, fraught with anomaly and tension and is at odds with children's human rights. Moreover, children in the youth justice system are not treated according to the same principles and philosophy that underpin wider children's law and policy. Review must not focus exclusively on criminal justice for children but must seek wider harmonisation between different areas of law. The aim must be to establish an effective child-centred system that can sustain national and international scrutiny and will stand the test of time. To inform the process and provide a blueprint for a future system, a substantial, high profile review, with a distinct focus on children, is required.

The report recognises that aspects of the youth justice system are worthy of praise and further development but identifies others that are not satisfactory. In particular, attention is drawn to the serious concerns of the United Nations Committee on the Rights of the Child, reported in October 2002, reflected more recently by findings of the Joint Committee on Human Rights. This report does not propose in detail what a reformed system might comprise, but does suggest that it should comply with international convention, treaties and rules.

The report identifies some specific issues that should be included in a review, including:

- Ensuring that the treatment of children in trouble with the law is underpinned by the principles of children's human rights as enshrined in the United Nations Convention on the Rights of the Child (Chapter 1).
- Providing a system for dealing with children in trouble with the law that is distinct and separate from the criminal justice system for adults (Chapter 2).
- Making 'the best interests of the child' the guiding principle for the system which responds to children in trouble with the law (Chapter 3).
- Raising the age of criminal responsibility, avoiding unnecessary criminalisation and caring appropriately for children who present a risk to themselves or to others (Chapter 4).
- Ensuring that children in trouble with the law are treated as children first. This would require a harmonisation of all legislation relating to children (Chapter 5).
- Ensuring that children are held in secure accommodation only as a measure of last resort and that these secure facilities are suitable to meet children's needs in a safe and caring environment (Chapter 6).

At the time of going to print, the Green Paper on Children at Risk had just been published. Disappointingly the government reaffirms its commitment to the current youth justice system with the criminal age of responsibility at 10 years old, and a focus on criminal behaviour. The accompanying Home Office document reiterates this commitment along with a focus on preventing offending as being the single main sentencing purpose for children and young people. This seems to offer little scope for the fundamental review that *Children in Trouble* proposes. However, some comfort may be taken from the government's commitment to establishing an independent commissioner for children in England. It is to be hoped that this focus on children's rights will present an opportunity for consideration of the recommended review.

The barriers to reform are significant, but the case for change is compelling. A comprehensive review, based on thorough research and wide consultation, would provide an appraisal of the current arrangements and a blueprint for the future.

The youth justice system has three related core failings:

- it has a poor and worsening record of compliance with legal obligations regarding children's human rights
- it is not sufficiently distinct from the adult criminal justice system and is not designed or administered with a sufficient focus on children's particular needs and characteristics
- legislation, policy and principles are not congruent with those for children and families in general (including welfare, safeguarding, education and health).

Several problematic issues are symptomatic of those core failings.

- The boundaries of the criminal system are blurred, particularly regarding 'anti-social behaviour' and responses to very young children below the age of 10.
- There is a tendency to criminalise children unnecessarily and at younger ages, and a corresponding tendency to treat them as adults too soon.
- Responses to children in trouble with the law have become increasingly centrally controlled, prescribed and regulated as well as reflecting an overly punitive ethos and being increasingly mandatory in nature.
- Legislation is far too complex, characterised by anomaly and sometimes discrimination. It lacks a set of founding principles giving rise to tensions and difficulties in, for example, providing a vehicle for restorative justice developments.
- Courts, trials and sentencing procedures and practices are not appropriate for children.
- Custody is not used as a measure of last resort or for the shortest appropriate period. In addition, the treatment of children in custody is far too often unacceptable.

Moreover, some aspects of the system are costly, both financially and in terms of harm to children.