Towards a positive youth justice

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Review

Towards a Positive Youth Justice

Structured abstract

Purpose: to consider and explore the principles that should inform a positive and progressive approach to conceptualising and delivering youth justice;

Design/Methodology: critical literature review, incorporating primary research and evaluation conducted by the authors;

Findings: a children first model of positive youth justice should cohere around the promotion of four key principles: children’s rights and adults’ responsibilities, desistance and inclusion, diversion and systems management, relationship-based partnerships between children and practitioners;

Practical implications: the child-friendly, child-appropriate and legitimacy-focused nature of the CFOS model can encourage diversion from formal system contact, can enhance levels of participation and engagement with formal youth justice interventions and promotes positive behaviours and outcomes for children in trouble;

Originality/Significance: the principles outlined progress youth justice into positive forms antithetical to the negative elements of the ‘new youth justice’ and will have relevance to other jurisdictions, rooted as they are in universality, child development and children’s rights.

Introduction

This paper considers the principles that should inform a positive and progressive response to children who find themselves in conflict with the law. It draws upon internationally agreed standards and combines these with the established body of criminological research and scholarship with particular reference to the evidence-based model of ‘positive youth justice’, also known as ‘children first, offenders second’ (Haines and Case 2015). We cohere this paper around a set of four guiding principles for positive youth justice, set against the context of current practice in England and Wales, which is often portrayed as hostile to the interests of children

and ultimately to the goals of crime prevention and reduction. Positive examples of developing practice that pursue a children first approach are included throughout to illustrate the evidence base for such an approach and to explore the potential for wider adoption of the four principles and for a 'positive turn' in our responses to children in conflict with the law. Whilst the paper focuses on youth justice practice and policy in England and Wales, the principles outlined will have relevance to other jurisdictions, rooted as they are in universality, evidence-based partnership, child development and children's rights.

The Principles of Positive Youth Justice

The four principles identified and explored below cohere around what we consider would constitute an effective, ethical and just response to children in conflict with the law - a direct challenge to what we view as the negative and criminalising 'principles' of youth justice post-Crime and Disorder Act 1998. It is not within the scope of this paper to exhaustively describe all that might be desired in our responses (but see Haines and Case 2015), nor in practice are the principles discrete activities, but are in reality over-lapping and mutually reinforcing.

Promoting children's rights and adults' responsibilities

Children are different to and should be treated differently to adults. The privileged status of children is recognised in international law and treatise. The over-arching standards by which the international community regards appropriate treatment of children stem from the United Nations Declaration of the Rights of the Child (1959) and are given full expression in the United Nations Convention on the Rights of the Child (UNCRC 1989). The rights outlined are applicable to all children whatever their circumstances, including those who have committed a crime. The standards particular to children who are in conflict with the law are set out in a series of United Nations guidelines for the administration of juvenile justice since 1985. These guidelines advocate the use of discretion and diversion wherever possible and at all stages of dealing with children accused of offences in recognition of the dangers of

labelling children as ‘delinquent’ and the importance of allowing normal maturational processes to take their course (United Nations 1990).

Underpinning these international standards for the treatment of children who offend is the central principle that first and foremost they are children (not offenders) and should be given special status as such. These standards recognise that children do not have the same access to resources, are significantly reliant on adults, and are traversing a range of physical, emotional, psychological and neurological developmental stages which require a different response from those in authority, particularly those in the criminal justice system, to that of adults.

The UK does not do well when its adherence to the UNCRC is systematically assessed by periodic reviews. Criticism of youth justice policy and practice has come as a result of the low age of criminal responsibility, high use of custodial detention and the intrusive nature of interventions impacting on privacy and the rights to family life (United Nations 2008). All of this means the UK government has been repeatedly challenged by the United Nations to improve its treatment of children in conflict with the law to bring it into line with the commitments it made in signing the UNCRC.

The particular features of the current state responses to children in conflict with the law in England and Wales can be seen to have developed from a shift in public discourse and public policy in relation to law and order which has been described as an era of ‘popular punitivism’ (Garland 2001), or the ‘punitive turn’ (Muncie 2008). The specific policy shifts in relation to children were central to the political debate of the 1990s and formed a major plank of the new Labour administration’s commitment to promote a culture of ‘No More Excuses’ (Home Office 1997) in relation to youth crime. This saw a clear demand to make children and increasingly their parents, the focus of responsibility with attention taken away from environments that promote and sustain offending (Scruton 2008; Smith 2014) or efforts to address the economic opportunities, inequalities and discrimination prevalent in the lives of these children and their families.

As a result of the ‘responsibilising’ (Muncie 2004) drive from the early 1990s onwards the rights of children in conflict with the law have routinely been infringed (children’s

rights had never been well-protected in the justice system but the 1980s had seen a renewed focus on rights compliance - Thorpe 1980), whether through policing which targets and criminalises children (Morgan and Newburn 2007), anti-social behaviour and criminal justice legislation, which discriminates against them and violates their rights to association and privacy (Crawford 2009), or through incarceration in institutions which inflict punishments that are contrary to the UNCRC (Goldson 2005, Children's Commissioner 2015). If children's rights are central to effective responses to those who offend the current arrangements in England and Wales fall well short of the desired mark.

A justice system which sees children in conflict with the law as 'children first and offenders second' (Haines and Case 2015) is one which gives responsibility to the adults around the child to ensure that the child's rights and needs, as identified by the UNCRC, are met. Children who offend seriously and/or persistently are predominantly drawn from circumstances where neither of these requirements are met (Goldson and Muncie 2006, Creaney and Smith 2014). It is therefore the adults, both in the family, in the wider community (particularly those acting on behalf of the state), who should take responsibility for ensuring these rights and fulfilling these needs rather than locating the weight of responsibility with the child.

A Positive Turn? A children first approach in Welsh social policy

The Welsh strategy for shaping and delivering youth justice services for children is called 'Children and Young People First' (Welsh Government and Youth Justice Board 2014). In its vision statement, the strategy document articulates a principled and progressive approach to youth justice, wherein:

'Children and young people at risk of entering, or who are in, the youth justice system must be treated as children first and offenders second in all interactions with service' (Welsh Government and Youth Justice Board 2014: 3)

The priorities for the strategy are five-fold: a partnership approach, a focus on early intervention, prevention and diversion, reducing reoffending, effective use of custody

and resettlement and reintegration at the end of sentence. Crucially, of the eight key objectives for youth justice practice set out as pursuant of these priorities, the first three are explicitly child-friendly:

- 1. Children First, Offenders Second;
- 2. Children in the YJS have the same access to their rights and entitlements as any other child;
- 3. The voice of the child is actively sought and listened to.

Consequently, the priorities, objectives and principles of the strategy reflect, map onto and animate the guiding features of a children first approach to positive youth justice (Haines and Case 2015).

Key principle: Children first positive youth justice prioritises children’s rights, strengths, capacities and potentialities, making the facilitation and realisation of these the primary responsibility of the adults with whom they work.

Promoting Desistance and Inclusion

Desistance theory seeks to understand the processes that promote long-term abstinence from criminal behaviour among those for whom offending has become a pattern. Critical to desistance are normalising and supportive approaches to those who offend, approaches which simultaneously encourage integration and inclusion.

Desistance theory (Ward and Maruna 2007, McNeil et al 2012) suggests that the normal life course can expect a degree of turbulence in adolescence followed by an increasing adherence to social norms and social order as individuals move into adulthood. Labelling theory (Becker 1963, Lemert 1967) also identifies the impact of agencies of social control as inadvertently retarding possibilities for desistance by over-reaction to childhood deviance, which acts to shape the identity of those cast as offenders. Once labelled as an offender the child finds it hard to shake off this master identity.

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5 Labelling and desistance theories both suggest that if intervention is required as a
6 result of offending in childhood then this should be the minimal necessary (see our
7 later arguments for diversion) and it should come from non-stigmatising sources
8 which do not encourage the development of an offender identity through prolonged
9 systems contact (McAra and McVie 2007). A child-friendly, child-appropriate,
10 children first model of positive youth justice (Haines and Case 2015) asserts that
11 early and preventative interventions should be universally accessible. We should not
12 solely target psychosocial individual, familial and educational issues, but also the
13 prevalent macro-level, socio-structural factors which leave children vulnerable to
14 social exclusion from childhood poverty and associated structural inequalities such
15 as high levels of crime, victimisation, deprived neighbours and reduced employment
16 opportunities. These interventions are best designed and delivered by non-youth
17 justice agencies and should not be directed at children with the specific or sole aim
18 of preventing offending.
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29 Desistance theory aligns closely with positive principles of inclusion, participation
30 and engagement. A focus on inclusion supports and moves beyond the objectives of
31 desistance by strengthening pro-social relationships and ties to institutions,
32 particularly the family, school, and work. The converse is physical, economic and
33 psychological exclusion, which are damaging to the prospects of desistance as they
34 retard normal developmental processes. Where children do offend, building upon
35 their capacity and resources appears a more promising approach to enhance their
36 inclusion than focusing upon their risks and deficits. The 'opportunity model'
37 promoted by Currie (1991) suggests this is most likely to be successful where
38 children who have offended are given the opportunity to develop their skills and
39 identity by participating in activities alongside non-offending peers. For Pitts (2001),
40 establishing an identity which is not reliant upon offending requires children to be
41 able to acquire a steady and adequate income. Thus, access to education, training
42 and ultimately reliable employment should be central to any service which works with
43 children who are offending (Prince's Trust 2007).
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55 Restorative practice can also have a key part to play in promoting inclusion when it is
56 genuinely focused on restoration rather than (as is the case in some variants) on
57 directing blame, shame and responsibility on to children (Haines and O'Mahony
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2006, Cunneen and Goldson 2015). Traditional justice-based approaches can insulate children from the harm their behaviour has caused in a way which is unhelpful for the development of empathy and connectedness to others (Braithwaite 2002). If we are really interested in repairing harm caused by children, then the victim has a uniquely important role to play. Furthermore, when restorative justice is authentically pursued, it has as much interest in restoring the child as it does about repairing harm for the victim. In McNeil’s words, “Ultimately, the pathways to desistance are through repaired relationships – within families, within communities, within the state – and not just the state” (McNeil 2012). In order to be congruent with children-first principles, restorative practice should be pursued in a way which does not burden the child with the full weight of adult responsibility and recognises that those in contact with the YJS will often have experienced a range of harms themselves. Consequently, it is primarily the responsibility of the adult practitioner to facilitate, support and guide the child in addressing these harms within an inclusionary, positive, children first relationship and dynamic intervention plan.

The current architecture for responding to children in conflict with the law in England and Wales does not encourage integration, in large part because of its structural separation from the services which are needed by children who find themselves in trouble (Byrne and Brooks 2015). While the development of multi-agency Youth Offending Teams (YOTs) may have set out to enable better access for marginalised children in the YJS to the universal and specialist services they required, the evidence suggests that YOTs have struggled to achieve this role as conduit to supportive services (Tomlinson 2005). This failure to promote integration could be anticipated both because of the structural separation of services for ‘young offenders’ and because of the stigmatising impact of the receipt of such services. Critically it is children’s deeds, their status as offenders, which enables entry to the YOT and, with insight from labelling and desistance approaches, this will inevitably risk impairing normal development and prospects for desistance by encouraging the development of offender identities.

The apparatus of the ‘new youth justice’ was also heavily interventionist in its attempt to ‘nip offending in the bud’ and saw the proliferation of youth crime prevention schemes post-Crime and Disorder Act 1998 (Goldson 2000) which had a

net-widening effect, antithetical to the principles of desistance (Smith 2011). Many of these youth crime prevention projects disappeared when dedicated funding streams were cut from 2010 onwards, however, some have been rolled into broader 'early help' and new diversionary approaches (Smith 2014b). This reflects an increasingly complex terrain in which a range of diversionary and preventative activity takes place across England and Wales, much of which may be counter-productive in prolonging systems contact, but as yet the evidence to determine this is not available (Kelly and Armitage 2015).

It must be stressed that the CFOS approach is not confined to diversion from the potentially criminogenic experience of formal system contact. As the model is grounded in the principles of child-friendly and child-appropriate (non-punitive or treating children as adults) and legitimate practice (non-labelling or stigmatising), it can be employed as a means of children's participation and engagement with formal youth justice services and interventions. The dual focus on child-friendly approaches and legitimacy (children's perceptions of fair, just and moral treatment) has been evidenced as enhancing children's participation and engagement levels with formal YOT practice through an emphasis on pursuing (adult-facilitated) positive behaviours and outcomes for children such as access to universal rights, academic achievement and attaining prosocial lifestyles (see Case and Haines 2015).

To the extent to which the YJS has shrunk in the last ten years it can be said to have promoted desistance and inclusion. The fear, however, must be that the concurrent shrinking of alternative forms of welfare support has not aided inclusion for marginalised children and nor can the residual siloed YJS and services be considered as promoting desistance informed responses.

A Positive Turn? Promoting Desistance and Inclusion in Surrey

In Surrey the functions of the YOT have been subsumed into a wider youth support service (YSS) working with a range of vulnerable children (Byrne and Brooks 2015). This abandonment of the YOT model explicitly stemmed from the desire to develop non-siloed services for children with youth justice involvement (Surrey County Council, 2011). Insofar as services are provided to the courts and statutory requirements are met, children receive essentially the same services and opportunities from the same people

regardless of whether their entry route to the service is through offending, homelessness, mental health, unemployment or other factors which lead them to be identified as a 'child in need'.

The YSS has developed a model of relationship-based practice, centring on one key practitioner in a working partnership with a child, which seeks to address concerns about the overly bureaucratic processing of children (Pheonix 2013), the multiple referrals within multi-disciplinary teams (Ibbetson 2013) and the criticism that human interactions and services have become subordinate to an 'inflexible technocratic framework of routinized operations' (Webb 2001). The active and meaningful engagement of children in their assessment and interventions is a key ambition for the service, which also sees its goal as the full participation of its service users in their communities and ultimately their employability.

Critical to the development of a distinctive brand of youth justice in Surrey has been the wide-ranging application of restorative diversion and the gate-keeping of the formal YJS by the YSS and Surrey Police (Mackie et al, 2014). As a result Surrey has by far the lowest first time entrants to the YJS and is one of the lowest per capita users of custody in England and Wales (**Ministry of Justice 2014**).

Key principle: Children first positive youth justice promotes children's strengths and capacities as a means of facilitating desistance, restoration and inclusion.

Promoting Diversion and Systems Management

Any evidenced-based approach to responding to children in conflict with the law should seek wherever possible to divert them from the formal YJS in the knowledge that formal processing is inherently harmful to the development of a non-offending, positive identity. Considering 29 studies of juvenile offending over 35 years Petronsino et al (2010) concluded that formal processing increased the likelihood, frequency and severity of further offending. This was true when formal processing

was compared with diversion to other services and when compared with 'doing nothing'.

Diversion has the effect of protecting against the stigmatising effect of formal criminal justice contact and the subsequent negative impact of acquiring an 'offender' label. Empirical studies have established the inherent danger of contact with the YJS for those on the receiving end (Little and Sodha 2012, Goldson 2005), particularly contact resulting from policy and practice as currently conceived.

We know that many children who offend have a range of unmet needs. Diversion from the YJS does not discount these needs but seeks to deal with them whilst minimising systems contact. This approach underpinned the 'minimal intervention' of the 1980s and has been further promoted by more recent research demonstrating the criminogenic nature of formal system contact (McAra and McVie 2010). It should, however, also be recognised that diversion has an increasingly contested set of meanings and diverse applications in the current youth justice landscape (Kelly and Armitage 2014, Smith 2014b); more of which below.

Diversion from the formal system is part of a range of 'systems management' techniques, which inform decision-making within and beyond the YJS in order to improve outcomes for children (Haines and Case 2015). Diversion from court and from custody are also key within systems management, along with a range of partnership activities and decision-making gateways designed to manage the system in line with the principles of minimal and appropriate child-friendly intervention.

The evidence for the damaging impact of systems contact is strong and has led to renewed efforts to reduce children's involvement with the YJS following significant increases in the number coming into the system and going to custody following the implementation of Crime and Disorder Act 1998. Diversion has returned as part of a re-awakening of interest in systems management techniques within the YJS in England and Wales over the last decade, which have contributed to the major falls in the use of custody, court and formal adjudications against children. The opportunity to manage down the youth justice system has come following a reduction in top down prescription from central government, a reduction which can variously be attributed to; increased localism / devolution; the poor outcomes of the first ten years

of New Labour’s ‘new youth justice’ reforms (the youth justice industry, which had been so generously sponsored by New Labour, had delivered high levels of incarceration and criminalisation); or perhaps most compellingly to concern for cost effective management of children who offend in an age of austerity (Muncie, 2006; Solomon and Garside, 2008).

A Positive Turn? Promoting diversion and systems management through Swansea Bureau

The Bureau model is a formal diversionary partnership between South Wales Police and Swansea (now Western Bay) YOT, with three key aims (Hoffman and MacDonald 2011):

- 1. to divert children out of the formal processes of the YJS;
- 2. to tackle the underlying causes of offending by promoting positive and prosocial behaviour;
- 3. to treat young offenders as children first.

Any local child committing an offend is eligible for the pre-court, diversionary Bureau, which follows a five-stage process:

- 1. Arrest and bail (police-led);
- 2. Assessment of the child and family (YOT-led);
- 3. Assessment of victim’s needs (YOT-led);
- 4. Bureau Panel (police and YOT discuss appropriate response);
- 5. Bureau Clinic (police, YOT, child and parents agree appropriate response).

Independent evaluation (Haines et al 2013; Hoffman and MacDonald 2011) has identified that since the Bureau’s inception in 2009, the annual number of first-time entrants into the YJS in Swansea has decreased year-on-year, whilst the annual number and percentage of children in conflict with the law receiving a non-criminal disposal (now ‘community resolution’) has increased year-on-year. Concurrently, the annual number and percentage of children reoffending following Bureau contact and the annual number and percentage of children prosecuted for an offence have

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3 decreased year-on-year. These trends have persisted into 2015 (Haines and Case
4 2015).
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10 Child-friendly Bureau decision-making processes (aligned with systems
11 management principles) and positive outcomes for children have been underpinned
12 by the principles of children's inclusion, participation and engagement; principles
13 identified as influential by key stakeholders (e.g. police, YOT workers, parents) in
14 qualitative evaluation (Hoffman and MacDonald 2011). The Youth Justice Board for
15 Wales has now committed to rolling out the Bureau model across all local authority
16 areas in Wales.
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22 Despite evident successes in diversion and systems management (cf. Haines et al
23 2013), not all children in England and Wales have benefited from these practice
24 principles equally with some groups continuing to be disproportionately likely to
25 suffer prolonged and potentially damaging systems contact. Examples are the over
26 representation of black and minority ethnic children and those with care experience
27 in the formal YJS and particularly in the custody population (Bateman 2015).
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33 The rejuvenation of diversion and systems management in England and Wales has
34 undoubtedly had a profound impact on the size and scope of the formal YJS and in
35 this respect it can be characterised as an extremely positive development. The fear
36 is that this seemingly progressive development in contemporary youth justice does
37 not represent a principled move away from damaging interventions in the lives of
38 children, but reflects the need for more efficient offender management (Bateman
39 2014). It is therefore susceptible to a swing back to more punitive responses to
40 children in conflict with the law when the political or economic circumstances
41 change. In addition, the context of contemporary diversion and its practices differ
42 from earlier manifestations. In some places diversion means diversion to nothing as
43 welfare services have been pared back, this may benefit those who will easily grow
44 out of offending behaviour but will not support those who have pressing welfare
45 needs. In other places a new form of 'interventionist diversion' has developed, which
46 offers support but this can come with the dangers of continued systems contact
47 (Kelly and Armitage 2015)
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Key principle: Children first positive youth justice emphasises diversion and child-friendly systems management as vehicles to promote positive behaviours/outcomes for children and to avoid the potentially criminogenic consequences of system contact.

Promoting relationship-based partnerships

Relationships are critical to enabling change; this applies to relationships between practitioner and child, between a service and its service users, and ultimately between the child and the state. The current practice context in England and Wales described above militates against the development of trusting, creative, and empowering relationships. This is not to say that positive relationships cannot or do not form within the current practice context, but that the environment is not conducive to such relationships.

Let us first consider the importance of the relationship between practitioners and child. Where it is determined that intervention is appropriate as a result of offending it is known that change is most likely to be supported through establishing authentic relationships in which practitioners demonstrate genuine concern, commitment and understanding (Batchelor and McNeill 2005)

The development of teenagers into healthy adults is dependent on adults who care about them (Fergus and Zimmerman, 2005; McNeil and Weaver, 2010) and indeed, successful engagement and cooperation with workers is also predicated upon those adults demonstrating that they care (Brandon, 1982; Graef, 1997, Creaney 2014a). In considering the relationship between a service and its young service users, it should therefore be a priority to design-in continuity of child-practitioner relationships when developing processes and structures to ensure these are central to the work of the service, rather than being a secondary consideration once the service’s own requirements have been fulfilled (Hanson and Holmes, 2014). Professional relationships are a tool to enable change, offering a ‘secure base’ to enable the child to form other connections and relationships that promote inclusion and desistance as above.

The dominant discourse in youth justice policy and practice for the last two decades has been one of risk management underpinned by the risk factor prevention paradigm (RFPP) deriving significantly from the work of Farrington (1996). RFPP has come under sustained academic criticism (Case, 2007; Pitts, 2007; O'Mahony, 2009; Case and Haines, 2010) but has survived largely intact because of its utility for politicians, policy-makers and managers. It finds its expression in youth justice practice most explicitly in the Asset assessment tools and in the application of the 'Scaled Approach' (Bateman 2011, Haines and Case, 2012). In addition to empirical concerns as to the validity of claims made for practice built on risk prediction, the increasing tendency to see children who offend primarily in terms of their risks pathologises the child and obscures the commonality of their experience with others, losing sight of the opportunities to build on strengths, enhance resilience and promote desistance (Ward and Maruna, 2007; Case and Haines, 2014). At this point, it is important to note the imminent replacement of Asset with a revised assessment and intervention framework, AssetPlus, which proposes to place far more emphasis on progressive principles of desistance, practitioner discretion and children's perspectives. However, looking at AssetPlus through the lens of CFOS it remains an offender first approach as it is still situated within a siloed, discrete, youth justice-focused and YOT-centric system of assessment and intervention with children in trouble.

In current practice the requirements of risk management come to dominate the interaction between the child and the practitioner meaning that too often the child is processed through the YJS, serving time (in custody or community). On their journey they are passed between a range of professionals whose interest is often about fulfilling the process expectations of their role or in the vain hope that another professional can provide 'the expert fix' (Ibbetson 2013), rather than forming an authentic relationship which enables change (Phoenix and Kelly, 2013). The current arrangements for administering justice to children who find themselves in trouble fail to deliver a context which encourages the demonstration of care or where effective relationships are likely to be successfully forged.

The second key relationship is between the child and the service which is responsible for providing the help, support or guidance to assist them to desist from

offending. This is clearly linked to the practitioner-child relationship as it will often be through individual workers that children are able to express their aspirations and shape the service they receive. If as is described above there is limited scope for such self-expression and self-determination within a relationship dominated by risk management and associated process then children become relatively powerless in key decision-making processes (Case 2006; Case and Haines 2015; Creaney 2014b). Importantly it is not only the child who is disempowered by this context, it is the practitioners whose discretion is fettered and their ability to act authentically and with moral purpose is diminished.

Services should consider children who offend, as with other socially excluded children, as potential assets to their communities whose participation is central to the future well-being of those communities (Drakeford and Gregory 2010). Within individual interventions and within the design and direction of services, children should be seen not as the problem but as having the key to effective solutions.

YOTs shaped by a policy context which responsabilises children, seeing them principally through a justice lens, will inevitably struggle to engage them as active participants through whose strengths and agency the service should be co-produced. Despite valiant efforts on the part of practitioners and some services the experience of children in the YJS largely conforms to this pattern of further marginalisation of an already excluded section of the youth population. In this respect a key plank of the legitimacy of the system's response to children in conflict with the law is undermined. If, as is the case, they do not feel the system is fair or that services understand or are sufficiently concerned about them engagement will be reduced and with it the likelihood of further transgression is increased (Tyler 2006).

The final relationships domain is that between the state, at both central and local levels, and children. The state is a critical partner in developing effective youth justice policy, strategy and practice all of which can either lead to greater numbers of children being criminalised or conversely children feeling they have a stake in their

communities and understanding that they have a right to receive non-stigmatising help when they require it.

The separate youth justice arrangements in England and Wales are both progressive in their distinctiveness from adult arrangements and regressive in separating children in conflict with the law from their peers. The Crime and Disorder Act 1998 strengthened the discrete YJS with benefits in terms of resources and improved custodial regimes but in so doing accentuated the local and national divisions between justice provision for children and other services which could offer them support. The continued reliance upon justice processes which are structurally separated from the welfare services that children often need and dominated by a negative, risk-focused approach to children in trouble thereby undermines the principal aim of the system which is to prevent youth offending.

Key principle: Children first positive youth justice is underpinned by children's participation and engagement, which is driven by positive relationships between the child and practitioner.

Conclusion: What chance a positive turn?

This paper has offered four principles which we consider should underpin our response to children in conflict with the law. The criminological evidence base suggests a positive youth justice predicated upon children's rights, inclusion, diversion and relationship-based partnership offers the best chance for positive outcomes for children, which would in turn lead to reduced crime and victimisation.

The extent to which the youth justice system has contracted over the last decade which is welcomed as this is supportive of the principles of positive youth justice. . The aspiration must be, however, to move beyond this to a response which positively promotes the interest of our most marginalised children when they come into conflict with the law. This paper has outlined a progressive and principled approach which can build upon the positive developments in youth justice over the last decade and

harness the current opportunity to re-think our response to children in conflict with the law.

A significant opportunity for a further move away from the ‘top-down corporate correctionalism’ (Pitts 2005) of the centralised YJS comes through the potential devolution of youth justice funding and responsibilities to English local authorities, alongside the embedding of the distinctive Welsh policy for children in conflict with the law. As outlined above, the ‘dragonised’ youth justice policy of the Welsh Government already articulates a children first vision, which has moved away from that of Whitehall, although this is yet to find full expression in practice (Haines 2010; Haines and Case 2015). The opportunity for greater devolution in England and Wales is for local arrangements to bring together welfare and justice responses to children people into a holistic offer of partnership between the local state and its younger citizens. The ‘problem’ of children in conflict with the law will thereafter not be one which is readily transferable to the Youth Justice Board or Ministry of Justice, but will increasingly remain a local responsibility. The concern with greater devolution must be that those areas most affected by youth crime, which would benefit most from a thorough implementation of a children first approach, may be the ones where the technologies of ‘new youth justice’ and what Eileen Munro described as the ‘illusion of certainty’ (Munro 2011) in managing risk holds on for the longest.

A further opportunity is the review of youth justice in England and Wales announced by the Secretary of State for Justice in September 2015 (MoJ 2015). This should be welcomed, particularly as this paper has argued a fundamental change in our response to children in conflict with the law is required. The scope to have a positive impact may be reduced, however, as the terms of reference of the review do not include the age of criminal responsibility or how children are dealt with by the courts. It is, nonetheless hoped that if the Secretary of State pursues his conviction that ‘the best criminal justice policies are good welfare, social work and child protection’ (Gove 2015), then there is potential for this to mark a ‘positive turn’ towards a children first approach.

The challenge will be for local areas to use the opportunities presented through devolution and a reformed policy context to re-define their local arrangements to deliver positive youth justice.

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