

Recent developments

'Have regard to' the welfare of offenders

The Criminal Justice and Immigration (CJI) Bill 2007 proposes an amendment to section 44 of the Children and Young Persons' Act 1933. This section currently states that any court 'shall have regard to the welfare of the child or young person' who comes before it. This principle now also applies to the Crown Prosecution Service. This has been an important mandatory requirement to ensure that children have been given at least a modicum of 'special' treatment when appearing in a court and, particularly, when appearing in a Youth or Crown Court.

However, it is a weak welfare principle in comparison with the so-called 'paramouncy principle' in the Children Act 1989 which is applied by courts dealing with the upbringing of children and which means that the child's welfare must be the determining factor in the court's decision. The duty to 'have regard to' means that, providing consideration has been given to the interests of the child or young person, the Youth, Magistrates' and Crown Courts can give legally give precedence to other interests such as the need to protect the public and to prevent re-offending.

Nevertheless, it is potentially of significance that the CJI Bill aims to insert new subsections 1A and 1B into section 44 such that it is made very clear that the 'principal aim' of the youth justice system (introduced by the Crime and Disorder Act 1998 section 37) – that of the prevention of offending by persons under 18 – must take precedence.

In December 2003 NACRO produced a Youth Crime Briefing, *The sentencing framework for children and young people*, which is currently reproduced on the Home Office 'Crime Reduction' web site (at <http://www.crimereduction.homeoffice.gov.uk/youth/youth59.htm>). That briefing discussed the tensions inherent in the co-existence of the two principles of have regard to welfare (which they note has been strengthened by relevant articles of the UNCRC) and to prevention of reoffending, together with the further need to set sentences proportionate to seriousness. The update concludes as follows:

‘While there is potential for these elements to clash, a sensitive balance can be achieved which gives an appropriate weighting to each. In general terms, the principle of proportionality establishes the appropriate programme to be imposed on a young offender.

Providing that the prevention of youth crime is treated as a longer-term aim, welfare, proportionality and the reduction of offending will be the likely outcome’.

However, clause 9 of the CJI Bill (at 4.12.07) would also insert a new section 142A in the Criminal Justice Act 2003 which states that ‘The court must have regard primarily to the principal aim of the youth justice system, that is, to prevent offending by children and other persons aged under 18’. It may be that the use of the word ‘primarily’ upsets the ‘sensitive balance’ hoped for by NACRO.

Referral orders: Youth conditional cautions

The Criminal Justice and Immigration Bill would also introduce a new pre-court disposal – the youth conditional caution (YCC). This was not mooted in *Youth Justice - Next Steps* and would be another example of the treatment of young offenders being brought into line with that of adults because a statutory conditional caution was introduced for adults in the Criminal Justice Act 2003. Clause 53 of the CJI Bill would introduce this option for 16-17 year olds; children under the age of 16 would continue to be dealt with under the reprimands and warning scheme. A young person who had previously been given a reprimand and/or warning would still be eligible for a YCC although those existing two options could be bypassed. They would not be available after a YCC had been given.

Final Warning Guidance

Additional guidance - to supplement and update the Guidance issued in 2002 - was published as Home Office Circular 14/2006. It includes guidance on the anti-social behaviour order, discharges, restorative processes and the offender’s record.

Social inclusion

In Chapters 8 (8.1.2 and 8.4.4) and 12 (12.1.1) we refer to the social exclusion or inclusion agendas in which certain criminal justice issues are increasingly situated. Youth justice

policies are also being developed in this context. The Green Paper, *Youth Matters* (cm 6629) issued by the Department for Education and Science in July 2005 (see <http://www.dfes.gov.uk/publications/youth/docs/youthmatters.pdf>) proposes measures to give all youngsters equal access to opportunities to allow them to be fully 'included' young people. The Green Paper has relevance to the Youth Justice System because of its funding proposals and because of the following policy statement in the Preface,

'It is wrong that young people who do not respect the opportunities they are given, by committing crimes or behaving anti-socially, should benefit from the same opportunities as the law-abiding majority. So we will put appropriate measures in place to ensure they do not' (page 1).

The UK Government has a Social Exclusion Unit. For its remit see:

<http://www.socialexclusion.gov.uk/>. This remit includes developments specifically related to 'Young adults with troubled lives' and the web page provides a link to the Unit's interim report on the multiple problems of 16-25 years olds (Office of the Deputy Prime Minister (2004) *Transitions*).

See also a recent edited book dealing with these issues:

Barry, M. (2005) *Youth Policy and Social Inclusion*. London: Routledge.

Metropolitan Police Service Youth Justice Policy:

The Metropolitan Police Service (MPS) has published their impact assessment of MPS Youth Justice Policy in compliance with the Race Relations (Amendment) Act 2000. It contains interesting data on the use reprimands and warning with different ethnic groups and compares statistics for London with other areas. Policy will be reviewed in September 2007. See: www.met.police.uk/foi/pdfs/policies/youth_justice_impact.pdf

Age of Criminal responsibility

The Republic of Ireland raised its minimum age from 7 to 12 in 2006.

Implementation of the Children Act 2004

The youth offending team (YOT) is one of the seven partners of the children's services authority listed in section 10(4) of the Children Act 2004. All of these partners 'must co-operate with the authority in the making of arrangements' as specified, 'with a view to improving the well-being of children' in relation to the five outcomes for children which are also specified in section 10. The statutory guidance to the Children Act 2004 notes that YOTs will have 'an important role to play' in the work of Children's Trusts in planning and delivering services relevant to existing statutory duties (HM Government (2005) *Statutory guidance on inter-agency co-operation to improve the wellbeing of children: children's trusts*. London: DfES at para 1.16). They can also 'jointly commission and pool budgets with other partners for the benefit of children at risk of offending and those involved in the youth justice system' (*ibid*: para 2.51).

Statistics

There is still widespread ignorance about youth offending trends. As Hough and Roberts note:

"People were ill-informed about youth crime trends. For example 75% of those polled believed that the number of young offenders had increased in the previous two years - when numbers coming to police attention were actually falling."

(Empirical research by Hough and Roberts 2003: see

<http://www.nuffieldfoundation.org/fileLibrary/pdf/summary.pdf>)

But as the Home Office points out:

"Crime by young people hasn't risen in the past five years and the number of known young offenders fell by 14% between 1995 and 2001 (Source: Criminal Statistics 2001)." [Home Office web site accessed 22.5.07]

Similarly, the YJB web-site notes,

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"The *British Crime Survey 2005/06* shows that the number of people who report being a victim of crime is unchanged from last year; and the *2005 Offending, Crime and Justice Survey* shows that the level of offending young people themselves report that they are committing has also remained stable." (YJB *Youth Justice Annual Statistics 2005-6* @

<http://www.yjb.gov.uk/publications/Resources/Downloads/Youth%20Justice%20Annual%20Statistics%202005-06.pdf>)

However at p.9 that publication does note that "The number of offences resulting in a court or pre-court disposal has risen by 11.4% from 2002/03 to 2005/06." It goes on to stress:

"It is important to note that these figures represent the number of offences resulting in a disposal and not the number of young people offending."

Various explanations have been posited (such as more reporting and recording). It is true however that the increase in offences of violence accounts for most of the overall increase and this is of concern (*ibid*: p.10).