

Communities and Culture Committee

CC(3)-08-09 : Paper 2 : 21 May 2009

Committee Inquiry into Youth Justice in Wales - evidence gathering - Children in Wales

1. Children in Wales Evidence to the Communities and Culture Committee Inquiry into Youth Justice in Wales - Welsh children in the secure estate

2. Purpose

I am pleased to be able to respond to the request to give evidence to the Committee in relation to the Inquiry into the experience of children and young people in the secure estate. As the umbrella organisation for all disciplines and sectors in Wales,* Children in Wales has a broad based membership, many of whom work with children and young people who are or who have been involved in the youth justice system. This paper outlines some of the key issues that we believe need to be addressed by WAG and also the UK government in order for children and young people to be better served by the current system.

3. Background

Since its creation in 1992, Children in Wales has been extremely concerned that the age of criminal responsibility in the UK is the lowest in Europe at 10 years old in England, Wales and Northern Ireland and as low as 8 years old in Scotland. The UN Committee on the Rights of the Child has consistently made recommendations on this and other matters relating to Youth Justice to the UK State Party in successive Concluding Observations.

The Concluding Observations from the United Nations Committee on the Rights of the Child to the UK State Party on 20th October 2008 which are relevant:-

'77. The Committee is concerned that:

- (a) The age of criminal responsibility is set at 8 years of age in Scotland and at 10 years for England, Wales and Northern Ireland;
- (b) There are still cases where children, notably those aged between 16 and 18, can be tried in an adult court;
- (c) The number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort;
- (d) The number of children on remand is high;
- (e) Children in custody do not have a statutory right to education;
- (f) There is the practice, in the Overseas Territories, of holding persons below 18 in conflict with the law in the same places of deprivation of liberty for adults;
- (g) The recently published Youth Crime Action Plan (July 2008) includes a proposal to remove reporting restrictions for 16 and 17 year-olds facing criminal proceedings "to improve the transparency of the youth justice system";
- (h) The provisions of the Counter-Terrorism Bill also apply to children suspected or charged with terrorism offences; in particular the Committee is concerned at the provisions for extended pre-charge detention and notification requirements;

78. The Committee recommends that the State party fully implement international standards of juvenile justice, in particular articles 37, 39 and 40 of the Convention, as well as general comment No. 10 on "Children's rights in juvenile justice" the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines") and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty ("the Havana Rules").

It also recommends that the State party:

- (a) Raise the minimum age of criminal responsibility in accordance with the Committee's general comment No. 10, and notably its paragraphs 32 and 33;
 - (b) Develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle;
 - (c) Children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with;
 - (d) Following the welcome withdrawal of its reservation to article 37
- (c) of the Convention, ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places

of deprivation of liberty;

(e) Provide for a statutory right to education for all children deprived of their liberty;

(f) Review the application of the Counter Terrorism Bill to children;

(h) Adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process.

79. The Committee is concerned at the application to children of the Anti-Social Behaviour Orders (ASBOs), which are civil orders posing restrictions on children's gathering, which may convert into criminal offences in case of their breach.

The Committee is further concerned:

(a) At the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences;

(b) That ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system;

(c) That most children subject to them are from disadvantaged backgrounds.

80. The Committee recommends that the State party conduct an independent review of ASBOs, with a view to abolishing their application to children.'

Comments on Custody

The increasing rate at which UK policies have resulted in significantly larger numbers of young people being locked up has been alarming. There has been an increase in the use of custody since 1996 of 550% in Wales and England and in particular there has been an increase in the use of custody for 10 to 14 year olds for less serious offences, most noticeably for breaches of community orders which can be for failing to keep weekly appointments with the Youth Offending Team.

In particular, there is a very worrying phenomenon whereby many of the young people who are locked up whilst on remand, have committed crimes which when they are later sentenced do not warrant a custodial sentence.

It is of great concern that the number of children being imprisoned in England and Wales is the third highest in Europe behind only the Russian Federation and the Ukraine. This is at the same time as there being no rise in numbers of 10 to 25 year olds committing very frequent or serious offences. Other European countries where fewer young people are locked up, manage to keep the levels of youth crime at a significantly low level.

Custodial sentences for children and young people have become increasingly used for younger and less serious offenders since the changes to the previously stricter criteria for sentencing to a single criterion that in the court's opinion the child is 'a persistent offender' following the Criminal Courts (Sentencing) Act in 2000 when Detention and Training Orders were introduced. This is based on the court's perception of 'patterns of behaviour' and a child could therefore be sentenced to custody without having any previous criminal charges or any previous convictions!

We believe that there should be a change in sentencing thresholds so that a child under 15 can't be sent to custody unless they have committed 'grave' crimes or 'violent offences' or they meet the strict sentencing thresholds of the old (pre 2000) Secure Training Orders

We also believe that there should be a graduated response to a breach so that broken curfews or missed meetings do not carry the same penalty as a breach where an indictable offence is committed. Also we believe that non compliance breaches should not carry a custodial penalty for children under 15.

It has to be remembered that the over-use of custody for non serious offences is both costly to the public purse (circa £186,000 per annum per child) and at the same time over stretches limited staff resources in an expensive service. Most importantly, re-offending rates are high (80% 10 - 14 year olds) re offend within 12 months and 92% of older boys who have been detained more than twice will re offend. The younger the child's age entering custody, the more likely they are to re-offend and remain in the criminal justice system longer.

Children in Wales has also long advocated for children and young people in the youth justice system to be seen as children (or young people) first and not as offenders first. The 'best interests of the child' and the UN Convention on the Rights of the Child which underpins policies in Wales should also apply within the secure estate as well as other aspects of youth justice work. It took many years of campaigning to ensure that basic protection for young people in custody was recognised under the child protection procedures and children's legislation. It is still an uphill task to have the basic principle of policies for children in the community being equally applied to children in the criminal justice system.

Children and young people in custody are disproportionately represented from the following groups: 'looked after' by local authorities or have had contact with social services; Statement of Special Educational Needs; excluded from school; recognised mental health disorder; substance misuse problems ; or Attention Deficit Hyperactivity Disorder.

Children who have been 'looked after' by local authorities comprise an astonishing 50% of the child population in custody. It therefore

follows that services are in fact dealing with the very same children but under different labels. This is not conducive to achieving better outcomes for those children.

The All Wales Youth Offending Strategy is a good start to ensuring that the young offender is regarded as a child first and we are pleased that it is based on the UNCRC. It is a framework within which existing services and services that have been identified by need can be developed.

The Youth Justice System and Wales

We have long been concerned that youth justice is one of the main areas of public policy affecting children and young people that is not devolved. Whilst in latter years WAG and the Youth Justice Board have had a more co-ordinated approach, such as combining two committees to form the joint WAG/YJB Youth Justice Committee for Wales and jointly agreeing key performance indicators. This has however only partly met our aspirations of a child centred and holistic approach to a co-ordinated package of services for Welsh young people in the youth justice system including the secure estate. The collaboration is also vulnerable to the political and organisational relationship between WAG and the Youth Justice Board that in turn is dependent on the UK government. Whilst at present there is much more harmony than there was originally, future relationships could be vulnerable to any changes. There are also significant differences in the implementation in Wales and England and consequently the differing aims of the inspection framework. For instance, in Wales there is a key objective of listening to the views of children and young people. However for some time this was not a priority for the inspection of the work of the YOTs. As agendas diverge regarding children's policies, it will become more and more challenging to combine England and Wales policies and practice on youth justice. This is very important as practice follows policy and we ourselves in Children in Wales have been provided children's rights training for staff in custodial settings and this is clearly set in a different context to how training would be provided in England.

Implementation

There are many issues that arise from the fact that youth justice is not devolved to Wales although there have also been one or two examples which have been of benefit to children in Wales such as the promotion of a YJB prevention strategy and the funding of parenting programmes when funding was not made available in Wales by WAG. However, we believe that the best approach is for sufficient funds to be available for implementation of a fully resourced Youth Offending Strategy that enables services to work together to ensure the needs of each individual child are met at a sufficiently early stage. The Strategy is important in that it recognises the critical importance of services other than the youth offending services, to preventing offending, preventing custody or supporting re-settlement. There should however be a recognition that this is a medium term strategy rather than a quick fix. It does however provide the solution and does not waste public money.

The recently agreed All Wales Youth Offending Strategy Delivery Plan has prioritised 6 areas: and these have been agreed between WAG and YJB. Consideration has also had to be given to the Youth Crime Action Plan which applies to England and Wales. once again we believe that there is unnecessary complexity in trying to deal with two sets of planning processes and priorities simultaneously.

From the Children in Wales perspective, despite a welcome move towards prevention by the YJB, there has been insufficient investment by YJB in preventative work - last year just 5% of the £445 million budget for England and Wales. The move towards prevention in our view will only expand and succeed if those services that are supporting it are fully engaged and own the agenda. At present we believe that youth justice is insufficiently mainstreamed into the development of supporting children and families.

There also needs to recognition that there are many well researched and predictable triggers that lead to young people getting into trouble, many of which can be addressed occur well before a child commits a crime. For instance, many young people are excluded from education and this is a trigger that renders them more vulnerable to entering the youth justice system. In addition, the practice relating to children in the secure estate requires much improvement especially in relation to children's individual learning and development needs. These needs become less and less likely to be addressed adequately the more complex their needs are.

The issues can be summarised as flowing from the separation of youth justice services from the rest of children's services where the mandatory 'single children's plan' is the driver for developing services within each local authority. This separation has implications across all aspects of planning, service delivery, monitoring and inspection of youth justice. In particular the divide at the frontline makes it confusing and operationally time consuming. It also makes it particularly difficult to work with families or young people who have a range of needs such as housing, substance misuse, mental health and education.

The separation of responsibilities between WAG and the local authorities in Wales and the YJB can frequently create an unhelpful divide when it comes to responsibilities for funding

eg for preventive services or re-settlement packages. A local authority may be less likely to allocate funds for prevention if it believes it is the duty of YJB to provide the funding. This in turn leads to the design of services that are neither locally rooted nor co-ordinated.

Most importantly there has been little evidence of children's rights and the UNCRC as the underpinning set of principles for policies for children and young people in the youth justice system because the Youth Justice Board covers England as well as Wales and the children's policy framework has significantly diverged between Wales and England.

4 Summary / Recommendations

i representation should be made to the UK government that the age of criminal responsibility should be raised

- ii representation should be made to the UK government that there should be a change in sentencing thresholds so that a child under 15 can't be sent to custody unless they have committed 'grave' crimes or violent offences or they meet the strict sentencing thresholds of the old (pre 2000) Secure Training Orders
- iii there should be a graduated response to breach so that broken curfews or missed meetings do not carry the same penalty as a breach where an indictable offence is committed. Non compliance breaches should not carry a custodial penalty for children under 15.
- iv. a fully funded All Wales Youth Offending Strategy - which will require allocation of resources for such matters as CAMHS, educational support, re settlement etc
- v. devolved responsibility for youth justice to integrate with planning services for children and young people
- vi all children's basic rights under the UNCRC should be met at all stages in the youth justice system

Appendix

Children in Wales is the national umbrella organisation for voluntary, statutory and professional organisations and individuals who work with children and young people in Wales. www.childreninwales.org.uk. Children in Wales was established in March 1992 and became a registered charity in 1993. It aims to promote the interests of children, to improve services in Wales and to put children high on the Welsh agenda. We work closely with our members who comprise professionals, policy makers and consumer groups to improve the lives of all children living in Wales, but especially young children, those affected by family instability, children with special needs or disabilities, and those suffering the effects of poverty and deprivation. We collect and disseminate information about children and promote good practice in children's services through research, policy and practice development, publications, conferences, seminars, training and access to an extensive library and information service. Children in Wales has offices in Cardiff and Caernarfon.