

# The Youth Justice System's Response to the COVID-19 Pandemic

## Literature Review

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# About the research project

## The Youth Justice System's Response to the COVID-19 Pandemic

This research project aims to understand the unprecedented implications that the COVID-19 pandemic has had on each stage of the youth justice system. Delivered in partnership between the Manchester Centre for Youth Studies (MCYS) at the Manchester Metropolitan University (MMU) and the Alliance for Youth Justice (AYJ), the project is documenting the impact of the pandemic on policy and practice responses, barriers and enablers to effective adaptation, and children's perspectives. Funded by the Economic and Social Research Council (ESRC) as part of the UK Research and Innovation's rapid response to COVID-19, findings and recommendations from the 18-month project will be shared widely with practitioners and decision-makers to shape future policy and practice.

### About the Manchester Centre for Youth Studies (MCYS)

The MCYS is an award-winning interdisciplinary research centre at MMU, specialising in participatory, youth-informed research that positively influences the lives of young people. MCYS believes young people should have the opportunity to participate meaningfully in decisions that affect them and employs participatory approaches to engage with young people across a range of issues. As an interdisciplinary research centre, the MCYS team brings together academics and practitioners from a range of disciplines. In addition to collaborating with young people and their communities, MCYS works with agencies and organisations across the public, private and voluntary sectors, both in the UK and internationally.

### About the Alliance for Youth Justice (AYJ)

The AYJ brings together over 70 organisations, advocating for and with children to drive positive change in youth justice in England and Wales. Members range from large national charities and advocacy organisations to numerous smaller grassroots and community organisations. The AYJ advocates for distinct systems, services and support that treat children as children first and foremost - underpinned by social justice, children's rights and a focus on positive long-term outcomes. AYJ aims to promote widespread understanding about the underlying causes of children coming to the attention of the criminal justice system, and champion approaches that enable them to reach their full potential.

# About this report

## Documenting the lessons from policy, practice and research literature

This literature review was produced by the Alliance for Youth Justice, as part of a series of papers that will be published over the life of the research project. The review aims to provide a comprehensive overview of the existing policy, practice and research literature about the impacts of COVID-19 on the youth justice system.

The review considers the impacts of the pandemic across each stage of the youth justice system, bringing together findings from community-based responses, the courts, and the secure estate. While the impacts of the pandemic continue to emerge, the scope of this review is primarily focused on documenting the developments in the first year of the pandemic. All sources referenced in this paper are openly accessible online via the links provided.

Findings from this review will be disseminated widely to the youth justice sector and utilised to inform the development of future stages of the project and recommendations for policy and practice.

## Acknowledgements

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To view the Executive Summary please visit [here](#).

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# Executive Summary

## Introduction

This literature review has been produced to map and draw together the available literature to capture and analyse the significant impacts of COVID-19 on the youth justice system. The review aims to document this exceptional period for youth justice, exploring the policy and practice responses, and the available evidence about the impacts on children.

## Children in the community

### The devastating toll of the pandemic on children

- The impact of COVID-19 on children has been described as '*devastating*', as not only have pre-existing vulnerabilities been exacerbated, but many more children and families are now exposed to new challenges. Those from disadvantaged and marginalised communities suffering particularly adverse impacts.
- With unprecedented challenges across areas such as children's social care, education, and mental health, there has been a rapid erosion of support and many of the protective services that are crucial to children who face these huge pressures.
- With school closures and public services changing or scaling back their provision, immediate concerns were raised about the drop in support and the reduced visibility of children, as well as the need to keep them safe and protect them from harm.
- The impact on children's education has also gained much attention, with the pandemic highlighting existing disparities in education provision, with particular impacts for deprived communities. Due to the high levels of disadvantage among children who enter the youth justice system, these issues are highly significant.
- Racial inequalities have also been exacerbated by the pandemic, with evidence indicating that COVID-19 has had a disproportionate impact on racialised communities in health outcomes of the virus, but also with regards to broader issues such as mental health, job losses, and disruption to education.
- Throughout the pandemic, significant concerns have been raised about the safeguarding implications for children, particularly those living in complex family situations and children in care. 'Stay at home' measures have intensified children's experiences of abuse, neglect and domestic violence, in circumstances where their home can already be the least safe place.
- Heightened risks of children's exposure to violence and exploitation by gangs and organised crime groups and involvement in associated criminal activities have been reported, but the full extent of the impacts of violence and criminal exploitation for children throughout the COVID-19 crisis are difficult to ascertain.
- COVID-19 has impacted the support available to children from statutory and voluntary services to intervene, safeguard children, and help prevent possible or further involvement with the criminal justice system, at the time when it has been most crucially needed. Many children have been left excluded from what support and interventions have been available due to a lack of digital technology.

- There was a lack of clear and consistent communication as various pieces of guidance were issued and updated across the year, due to the sheer quantity of rapidly changing, sometimes conflicting guidance issued by different government departments and local authorities.
- A decade of austerity and rising child poverty resulted in services for children and young people that were poorly prepared for the pandemic, with increasing demand for the education, health and social care services that were already struggling.
- Vital protections for children in care were removed when the Government introduced a statutory instrument amending children's social care regulations which temporarily removed or weakened 65 safeguards, in the face of wide-ranging criticism.

## Policing the pandemic

- With COVID-19 having uncertain impacts on the functioning of criminal justice, during March 2020-2021 policing decisions had an important role to play in preventing unnecessary arrests and throughput of children into the youth justice system.
- The Coronavirus Act 2020 and the 'Lockdown Regulations' created new criminal offences and police powers with implications for children. National guidance stated that all police forces should follow a 'Four Es' approach to securing compliance with COVID-19 requirements: engaging, explaining, and encouraging, before taking enforcement action.
- While data has not been published that could determine the extent to which children were policed for COVID-19 regulation compliance, children and young people have highlighted inconsistency in police approaches across different areas, and police confusion and mistakes in enforcing regulations and guidance.
- Concerns were raised about the need to restrict the arrest, police detention and interview of children to exceptional circumstances. Data is not currently available to shed light on the full extent that police decisions in dealings with children were affected by COVID-19.
- At police stations, significant adaptations were put in place at with the aim of minimising the impact of COVID-19 for police forces across the country, with police have conducting more business via telephone or video calls, and took part in virtual out of court disposal panels with Youth Offending Teams (YOTs).
- In police custody suites, there have been some significant immediate changes, and possible longer-term implications for practice, including the use of remote legal representation at police interviews with children.
- Appropriate Adult (AA) arrangements remained 'robust' when other forms of support and advice became remote, and AA schemes were able to recruit staff and volunteers.
- A survey of nearly 4,000 children and young people *Policing the Pandemic* raised concerns about policing during COVID-19 including age-based targeting and unfair targeting and treatment of different racial groups.

## Children under the supervision of Youth Offending Services

- As lockdown began in March 2020, the Youth Justice Board (YJB) asked for business continuity plans from each YOT, who were also required to submit 'recovery plans' by September 2020, around how they planned to reinstate pre-COVID-19 activities and incorporate any new practices developed during the pandemic.
- Government guidance stated that YOT workers were deemed critical workers, but children on YOT caseloads were not listed as vulnerable children for access to schools during lockdowns, as well as for access to laptops and food parcels, unless local arrangements were put in place.
- A localised approach to the YOT response to COVID-19 was deemed effective by HM Inspectorate of Probation, allowing local services the flexibility to prioritise the most vulnerable and 'at-risk' children. YOTs in Wales took a coordinated approach and worked together on their plans.
- YOTs and local authorities had to read, understand and disseminate a huge volume of guidance, with no uniform format and no way for updates to be quickly identifiable, putting a strain on resources.
- YOTs were quick to respond and quickly shifted to remote working and engagement with children, balancing keeping staff safe with responding to the needs and risks of children. A 'digital divide' among YOT staff was identified, where some had access to modern information and communications technology, while others did not.
- YOTs adapted interventions and programmes to deliver them remotely, and developed online sessions with children, utilising varied approaches and sometimes involving parents and partners.
- Face-to-face contact was maintained for children deemed to pose the greatest risk to others, and some children continued to visit YOT offices if this was preferred by the child. When restrictions eased YOT staff went on 'walk and talks' and other outdoor sessions with children, which were deemed by inspectors to be productive.
- YOTs continued their work overseeing sentences, some reparation work continued, and out of court disposals and referral order panels were initially halted but resumed quickly, virtually.
- A lack of access to digital technology and even phones for many children on YOT caseloads is a key concern, with inspectors finding a stark digital divide and just under half of children having insufficient access to technology.
- Vulnerabilities for all children have been exacerbated throughout the pandemic, with children on YOT caseloads being particularly vulnerable and often facing multiple disadvantage, making them likely to be some of the worst affected. YOT inspectors highlighted how the needs of children and families became '*much more acute*' as time went on.
- Inspectorate reports highlight that team managers have been stretched, and raise concerns about increasing demand on YOTs as the impacts of COVID-19 are realised and as normal business resumes.



## Children in court

### Court closures and backlogs

- In March 2020, as the county entered lockdown and social distancing restrictions came into force, criminal courts could not continue hearing cases as usual. Many courts closed, business moved online, and cases were put on hold.
- From mid-April 2020 Magistrates' courts were instructed by the judiciary to prioritise the listing of cases according to three priority categories, with urgent custody cases top priority. The reintroduction of jury trials was announced in May 2020, gradually increasing throughout the year.
- Child-friendly guidance for children attending court in person or remotely was published by the YJB and HM Courts & Tribunals Service (HMCTS), but not until June.
- The Ministry of Justice (MoJ) and HMCTS published recovery plans in July and September 2020 setting out the short- and medium-term response to COVID-19. No specific measures for youth courts were included in the recovery plans.
- Understanding and scrutinising the extent of the backlog impacting children as a result of COVID-19 is extremely challenging due to the lack of data available, not only specific to children but for the whole system. There are various concerns raised in the available literature about the impact of long delays to cases.
- One of the key issues highlighted in the literature is the impact of court delays on those who allegedly committed offences as children but are approaching and turning 18 while awaiting their hearing.

### Virtual justice and participation

- With social distancing measures and lockdown restrictions significantly reducing in-person court appearances, courts have used digital technology to continue conducting their business remotely. Live video and audio links, which enable a person to see and hear others taking part in a hearing when they are not in the same location, have been used to some degree for years before COVID-19.
- The expansion of 'virtual justice', and other adjustments under COVID-19 regulations, may have important impacts both on children's ability to effectively participate in their court proceedings and on justice outcomes.
- The Coronavirus Act 2020 temporarily expanded the situations in which live video and audio links may legally be used in criminal court proceedings, allowing for hearings to be conducted entirely by video or telephone in certain circumstances. In March 2021, the Government introduced the Police, Crime, Sentencing and Courts Bill, clause 168 of which would make the temporary live link provisions permanent.
- HMCTS rapidly expanded live link technology capability in the courts, including linking police stations and custodial establishments to courts, allowing for confidential communication between lawyers and defendants. Courts adapted quickly to remote hearings, but figures specific to children are not available.

- For those having their remand hearings from a police station, virtual arrangements have meant many spend longer held in police custody awaiting their hearing.
- As the use of live links in court hearings increased during the pandemic, concerns were raised about how this may impact on children's understanding and participation in their hearings.
- The use of live links for children's hearings may also impact their justice outcomes, with concerns raised that children appearing over video link may be less likely to be granted bail, more likely to be remanded to custody, and more likely to receive custodial sentences.
- There is an overall lack of available literature on the experiences of children in court during this time, in particular a lack of evaluation of how children have been experiencing virtual justice.

## Remand and sentencing

- Decisions made in the courtroom have played an important role in attempts to stem the flow of children into the youth justice system, where they would require various levels of supervision and intervention, and particularly into custody.
- Concerns about the remanding and sentencing of children to custody were raised by many organisations, urging the Government and courts to take action to limit children entering custody. No action was taken by the Government to intervene and concretely limit the sentencing or remanding of children into custody.
- The Sentencing Council confirmed that courts should bear in mind the practical realities of the public health emergency and the impact of immediate imprisonment in this context.
- The number of children in custody on remand has not fallen significantly during this period. Concerns have been raised about remand hearings taking place over video link, including that children may be more likely to be remanded when appearing over video rather than in person, and about delays to remand cases and children spending longer in custody on remand.
- In September 2020 the Government introduced a statutory instrument to increase the Custody Time Limits from 182 days to 238 days for both adults and children, which children were subsequently exempted from following the threat of legal challenge.
- There is no known literature documenting the impact that COVID-19 has had on courts' sentencing decisions in practice. Published data shows a sharp fall in the number of prosecutions and court outcomes in April-June 2020, after which the number of children proceeded against appears to continue its pre-COVID-19 trend.
- The overall population of children in custody fell from 770 in February 2020 to 516 in March 2021.

## Children in custody

### Conditions and regimes in custody

- The treatment and experiences of children in custody during this exceptional time have been of great concern. Children in custody are extremely vulnerable, and their experiences of detention exacerbates and compounds this vulnerability.
- Children sentenced or remanded to custody are held in Young Offender Institutions (YOIs), Secure Training Centres (STCs), or Secure Children's Homes (SCHs). The vast majority of available literature on custody during this period focuses on the experience of children in YOIs and STCs.
- Measures taken across the secure estate to manage the spread of COVID-19 have included restricting regimes; minimising inter-establishment transfers; compartmentalising including quarantining new arrivals, isolating those with symptoms, and shielding vulnerable people; and routine testing of staff, and of children on reception and transfer. The imposition of restrictions varied significantly between different establishment types.
- In June 2020, the MoJ and Her Majesty's Prison and Probation Service (HMPPS) published a national framework for the easing of restrictions, but concerns were raised that the specific needs of children had not been clearly articulated and a clear, separate plan for the children's estate was lacking.
- The daily experiences of children in custody during the COVID-19 pandemic have been described by secure estate inspectors as *'bleak'*. The Children's Commissioner for England described the regime as *'draconian'* and *'likely to have long-term effects on the children incarcerated.'*
- With education and training severely restricted, concerns were raised about the *'significant'* impact on children's wellbeing, highlighting that the *'blanket ban'* on education in line with the adult estate was *'certainly not in children's best interests'*. The Independent Monitoring Boards' annual report argues that most children in YOIs would have classified as *'vulnerable'* and therefore should have received some form of face-to-face education throughout lockdown.
- The overriding concern regarding children in custody during COVID-19 has been the impact on children's mental health. These concerns have several dimensions, considering the prevalence of mental health needs among children in custody prior to COVID-19, concerns about access to support services during the crisis, as well as the increased pressures on mental health associated with experiences of custody during the pandemic.
- Bullying and violence were initially reported to have decreased, but HM Inspectorate of Prisons' have noted that rather than having gone away, violence, bullying and intimidation had taken on new forms, with children reporting an increase in verbal abuse and intimidation at cell doors, through windows and across landings
- One of the initial concerns raised regarding custody was around staffing shortages due to COVID-19. Reports on initial visits to YOIs highlighted staffing shortfalls at various points in time due to staff contracting COVID-19 or needing to self-isolate.

## Visits and contact

- Children were subject to considerable restrictions on contact with those outside of custody. This has significant implications for the maintenance of relationships with children, oversight and safeguarding, and resettlement planning. Children's main complaint was the suspension of social visits, and that those in custody found it difficult to cope with.
- The rollout of video calling technology had been too slow, and when 'Purple Visits' were available, there was relatively low take up due to children having no one to contact, finding it distressing to see loved ones, or families not having access to the necessary ID or technology.
- The MoJ also announced in March 2020 it was working to ensure the secure estate had more secure phone handsets, and in November 2020 confirmed that the children's estate had been prioritised, and all public sector YOIs had in-cell phones.

## Release of children from custody

- As lockdown restrictions were announced, there were immediate calls for the Government to release children from custody, given concerns about the heightened risks of COVID-19 outbreaks in secure environments.
- The End of Custody Temporary Release Scheme (ECTR) was put in place for those nearing their release date. On 2<sup>nd</sup> June it was confirmed that no children had been released under the scheme, which was met with much criticism about its failure to result in any significant numbers of releases from custody.
- Restrictions imposed on the custodial regime also caused issues for transition planning, including arrangements for release and resettlement, as professionals could not directly meet with children.
- Children on remand experienced anxieties, frustrations and worsened experiences due to spending increased time in custody with uncertain futures.
- During this time fewer transfers to the adult estate were taking place meaning the children's custodial estate was holding an increasing number of 18-year-olds.

## An over-centralised, disproportionate response?

- The literature suggests that the approach to implementing restrictions across the secure estate was too centrally driven, leaving insufficient room for flexibility at an establishment level.
- While children were initially understanding of the need for restrictions, as time went on without restrictions easing, children became increasingly frustrated.
- A deepening divergence emerged between the easing of restrictions on children in the community, compared with those in the secure estate.
- Overall, the literature raises significant concerns about the long-term impact of the restrictions for children in custody.

## Conclusion

- The devastating impact of the pandemic on children and families, and the heightened levels of safeguarding concerns, are major concerns for children involved with the youth justice system as well as those in the general population facing new and increased challenges.
- The literature identifies a consistent theme about the lack of information, understanding and focus on children during the pandemic. The Government has often failed to distinguish between its approach to adults and children in their policy responses.
- Throughout the various stages of the youth justice system, digital models of communication and service provision have been adapted. A clear 'digital divide' has emerged between those who have access to digital technologies and those who do not.
- Across systems and services for children, including the youth justice system, there is a need for proper evaluation of the temporary measures implemented during COVID-19 before they become widespread and permanently embedded.
- From decisions to arrest, divert or prosecute children in the community, to remand and sentencing, there was a clear need identified to work to reduce the number of children passing through a system that is struggling to cope.
- The full impacts of delays on the courts and broader criminal justice system in the longer-term are yet to be fully understood but should be seen in the context of a system already under severe strain.
- Custody numbers fell overall, but the proportion of children on remand has increased, and unambitious custody release schemes have been criticised for being completely ineffective.
- The majority of children in penal establishments have been subjected to awful conditions for months on end, deprived of education, visits and contact, and amounting to solitary confinement. The harms experienced by children in custody, and the impacts on their longer-term health and wellbeing must be fully assessed and supported effectively.
- The next stages of the research project aim to make a significant contribution to addressing these gaps in knowledge and informing future strategy, policy and practice, in the best interests of children.

# Introduction

At the outset of the pandemic in March 2020, the Alliance for Youth Justice (AYJ) published a briefing paper *Coronavirus: Issues and recommendations for children and young people*,<sup>1</sup> developed with the AYJ's network of members, which cautioned that there would be '*implications for all children and young people in our communities, particular challenges for those in the youth justice system, and exceptionally critical risks for children in custody.*' In the period that has followed, many of these concerns have been realised, as the youth justice system has faced a multitude of unprecedented challenges.

COVID-19 has devastatingly exacerbated the issues faced by children affected by the criminal justice system. The range of vulnerabilities and social problems that have been compounded by the pandemic coincide closely with many of the factors that bring children into conflict with the law and are prevalent amongst those involved with the youth justice system.<sup>2</sup> The momentous impact of the pandemic continues to unfold, with vast implications for all systems and services supporting children, families and communities, and throughout the various stages of the criminal justice system.

This literature review has been produced to map and draw together the available literature to capture and analyse the significant impacts of COVID-19 on the youth justice system. As the implications of the pandemic continue to emerge, the scope of this review is focused on relevant literature from the first year of the pandemic from March 2020, and significant updates through to July 2021. The review aims to document this exceptional period for youth justice, exploring the policy and practice responses, and the available evidence about the impacts on children.

Chapter one considers the impact of the pandemic on children in the community and the implications for the youth justice system. It considers the broader impacts of COVID-19 on children and families in crisis, with a particular focus on children at risk of abuse, exploitation and violence. Policing responses are then considered, including the policing of emergency powers, adaptations at the police station and interactions between police and children. The first chapter ends with a presentation of the literature about children under the supervision of Youth Offending Services, the way that local services adapted to the restrictions, and the role of the Youth Justice Board (YJB).

Chapter two outlines the literature about the impact of COVID-19 on courts and the implications for children. The closure of courts across the country, delays and resultant backlogs are explored, as well as the rollout of 'virtual justice' and the implications for children's effective participation in court proceedings. This chapter ends by looking at the available evidence about patterns in remand and sentencing of children, and the associated policy and practice adaptations.

Chapter three brings together the available evidence about the impact of the pandemic on children in custody, and how policies and practices have responded to the crisis. The conditions and regimes across the secure estate are analysed, with consideration of the impact on visits and contact with families, friends and supporters. Arrangements for release of children from custody are also explored, including calls for early release of children, and resettlement and transition planning.

Finally, cross-cutting themes, gaps in the evidence base and areas requiring further exploration are identified. The research project will continue to address these questions during the next stages of the project through engaging with children and young people, frontline practitioners, and decision-makers.

# Children in the community

## Chapter 1

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# Chapter 1: Children in the community

## The devastating toll of the pandemic on children

### Children and families in crisis

The impact of COVID-19 on children has been described as ‘*devastating*’,<sup>3</sup> with a ‘*childhood crisis*’<sup>4</sup> expected, as not only have pre-existing vulnerabilities been exacerbated, but many more children and families are now exposed to new challenges.<sup>5</sup> Children are considered to be disproportionately affected by the crisis,<sup>6</sup> with those from disadvantaged and marginalised communities suffering particularly adverse impacts.<sup>7</sup> With unprecedented challenges across areas such as children’s social care, education, and mental health, there has been a rapid erosion of support and many of the protective services that are crucial to children who face these huge pressures.

With school closures and public services changing or scaling back their provision, there were immediate concerns raised about the drop in support and the reduced visibility of children, as well as the need to keep them safe and protect them from harm.<sup>8</sup> As summarised by the Children’s Commissioner for England:

*...many families are struggling with additional financial and social pressures. But there are some children, who before this crisis were already vulnerable or living in precarious situations, who are facing particular hardship. These children have been cut off from many of the sources of support that they might previously have had – schools, children’s centres, health visitors, networks of family and friends, home visits from social workers – at the same time as their families are under new stress and strain from lockdown requirements.*<sup>9</sup>

### Poverty and financial instability

The Equality and Human Rights Commission, Institute for Public Policy Research (IPPR) and Action for Children, among others, have highlighted that financial instability has increased,<sup>10</sup> and many families report their finances have been negatively affected by the pandemic.<sup>11</sup> Although emergency COVID-19 support has according to the Resolution Foundation kept ‘typical’ household incomes temporarily afloat,<sup>12</sup> those already on low incomes have been disproportionately impacted.<sup>13</sup> IPPR research shows household debt is increasing,<sup>14</sup> and the number of children living in poverty, already increasing prior to the pandemic,<sup>15</sup> is expected to increase.<sup>16</sup> With the economy struggling,<sup>17</sup> and industries employing young people hit hardest by lockdown according to the Institute for Fiscal Studies,<sup>18</sup> the long-term impacts are as yet unknown. This raises concerns about employment prospects for children and young people in the aftermath of the pandemic. These concerns will be particularly acute for children affected by the youth justice system who are already facing additional barriers, such as problems accessing education and training opportunities, and the criminal records system in England and Wales allowing widespread and lengthy disclosure of childhood criminal records.<sup>19</sup>



## **Education**

The impact on children's education has also gained much attention, with commentators including the Equality and Human Rights Commission, House of Lords Public Services Committee, and the Institute for Fiscal Studies journal discussing how the pandemic has highlighted existing disparities in education provision<sup>20</sup> and exacerbated these inequalities.<sup>21</sup> According to the Joint Committee on Human Rights, there was a '*huge disparity*' in the amount of education accessed during the lockdown, with particular differences noted between those in deprived communities and those attending private schools.<sup>22</sup> Concerns have been raised by children's charities that a shift to online teaching will have long term impacts on educational attainment.<sup>23</sup>

Despite the various approaches to distance learning adopted by schools, there were significant barriers to home learning for disadvantaged children including poor internet access, insufficient access to devices or study spaces, and limited or no parental support.<sup>24</sup> Due to the high levels of disadvantage among children who enter the youth justice system, these issues are highly significant. Disruption to education and training is likely to have particular issues for children in the youth justice system, due to the prevalence of pre-existing issues with educational engagement and attainment<sup>25</sup> and children being Not in Education, Employment or Training (NEET).<sup>26</sup> In the year ending March 2019, 65% of children in the youth justice system were assessed as having concerns related to their education, training or employment.<sup>27</sup>

## **Neurologically and physically diverse children**

The negative impacts of the pandemic on wellbeing have been magnified for children with Special Educational Needs and Disabilities (SEND), neurodivergent children and those with physical disabilities. Children with SEND have had amplified experiences of issues brought about by the pandemic such as anxiety, isolation, and disruption to education, services and their home environment.<sup>28</sup> The Joint Committee on Human Rights raised concerns that school closures created '*specific barriers to children with SEND's access to their right to education*'<sup>29</sup> and research by Ofsted found the pandemic '*highlighted and intensified*' longstanding issues in the SEND system and deepened the negative impacts on children.<sup>30</sup>

Articles in specialist journals highlight greater risks of poor mental health, increased family pressure and difficulties, and concerns about long lasting impacts for neurologically and physically diverse children and young people.<sup>31</sup> A study investigating the effects of COVID-19 lockdown restrictions on physical activity and mental health of children and young adults with 'physical and/or intellectual disabilities' found that over 90% of parents and carers reported a negative impact on the child's mental health, including poorer behaviour and social and learning regression. They cited '*a lack of access to specialist facilities, therapies and equipment*' as reasons for this, and '*raised concerns about the long-term effects of this lack of access on their child's mental health and physical activity levels.*'<sup>32</sup>

Children in the youth justice system have a high concentration of additional needs, particularly around Special Educational Needs<sup>33</sup> and Speech, Language and Communication Needs.<sup>34</sup> For example, 71% of sentenced children were assessed as having concerns around speech, language and communication in the year ending March 2019.<sup>35</sup> These impacts on the wellbeing of neurologically and physically diverse children will therefore have a significant impact on the population of children in the youth justice system.

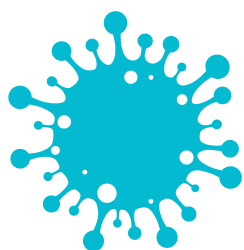
## Mental health

One of the most commonly raised concerns throughout the year has been children's worsening mental health,<sup>36</sup> as children have faced significant changes to their lives, isolation, anxieties about their health, friends and family and their future, increasing instability and inequalities, and adverse experiences at home.<sup>37</sup> An open letter to the Prime Minister coordinated by mental health charity YoungMinds sets out:

*One in eight children and young people already have a diagnosable mental health condition, and research suggests that the majority of those believe that the pressures created by the crisis exacerbating their needs. Many others – including those who have experienced bereavement, abuse or domestic violence – are also likely to require additional support. The fear of becoming ill or seeing a loved one become ill, the loss of routines, the difficulties of social connection, the impact of loneliness, the disruption to education and the challenges of living in difficult or dangerous situations are creating additional pressure for young people across the country. Young people who belong to groups that are already marginalised or disadvantaged may be particularly at risk.*<sup>38</sup>

Reduced social contact due to COVID-19 restrictions may be particularly damaging to children's development and mental health. Contact with others is considered a 'basic human need, analogous to other fundamental needs such as food consumption or sleep', but physical distancing is particularly damaging to children and adolescents because they are 'at a unique period in their lives when the social environment is important for crucial functions in brain development, self-concept construction, and mental health'.<sup>39</sup>

Despite concerns over children's mental health being raised immediately, there was a significant decrease in referrals to children's mental health services during the first lockdown.<sup>40</sup> Analysis by the Royal College of Psychiatrists found that between April and December 2020, the number of children referred to mental health services was 28% higher than the same period in 2019, at 372,438 children.<sup>41</sup> Starting in March 2020, YoungMinds completed a series of surveys<sup>42</sup> of over 2000 children and young people with a history of mental health needs, the findings of which highlight the catastrophic scale of the impact of COVID-19 on mental health. Children and young people surveyed in January 2021 reported that it got harder to cope as lockdowns went on,<sup>43</sup> with 83% saying the pandemic had made their mental health worse. Looking ahead to the future implications, 67% of respondents believed that the pandemic would have a long-term negative effect on their mental health.



**83%** of children and young people said the pandemic had made their mental health worse

**67%** of children and young people believed the pandemic would have a long-term negative impact on their mental health



Prior to the COVID-19 crisis, mental health needs were already prevalent among children affected by the criminal justice system. In the year ending March 2019, 71% of sentenced children in the youth justice system were assessed as having mental health concerns.<sup>44</sup> Given this prevalence, children in the youth justice system are likely to be significantly impacted by the current and looming issues brought about by the pandemic.

### ***Children in care and care leavers***

Children in care and care leavers are identified by charities and organisations supporting children as particularly vulnerable to experiencing increased loneliness and anxiety due to lockdown, and falling through the gaps as the level of available, face-to-face support fell.<sup>45</sup> In March 2020 charities and organisations working with care-experienced children wrote to the Government calling for support for children in care and care leavers, including raising concerns that more care-experienced children may be reported missing.<sup>46</sup> Concerns were also raised by the Children's Commissioner for England about possible foster care and social care staff shortages impacting children.<sup>47</sup> It is well documented that children who are in the care of the local authority are consistently overrepresented among those who come to the attention of the youth justice system.<sup>48</sup> Care-experienced children are also vastly overrepresented in the secure estate, where they make up over half of those placed in penal custody,<sup>49</sup> have relatively worse experiences and poorer outcomes.<sup>50</sup>

### ***Gendered impacts on girls***

The impacts of the pandemic have also had particularly harsh consequences for the experiences of girls and young women. Research by Agenda, the alliance for women and girls at risk, highlights the severe impacts of COVID-19 on girls and women already facing multiple disadvantage and disproportionate levels of violence and abuse, poverty, poor mental health, addiction, homelessness and contact with the criminal justice system. The report argues that *'Far from being "the great leveller", the outbreak of Covid-19 and a year of restrictions have sharpened pre-existing inequalities...the pandemic and successive lockdowns have created the conditions for these issues to fester and grow.'*<sup>51</sup> All organisations who responded to a survey by Agenda reported that the complexity of supporting girls and women's needs, including complex trauma, poverty and mental health issues. Local authority reports to the Department for Education of serious incidents involving children for April - September 2020, show that notifications regarding incidents of known or suspected abuse and neglect involving girls increased by 49% compared to the previous year, compared to a 15% increase for boys.<sup>52</sup>

Imkaan contend that *'we are dealing with two pandemics – violence against women and girls declared by the World Health Organisation in 2013 and Coronavirus COVID-19.'*<sup>53</sup> They highlight the compounding impacts on Black and minoritised girls and women, of both the increased levels of violence against women and girls, and of racialised discrimination and the disproportionate impact of structural inequalities becoming exacerbated.

*No one is immune to coronavirus COVID-19, but structural inequality reproduces disproportionately across diverse communities and exacerbates existing racialised inequalities. For any woman and girl with protected characteristics, the two pandemics increase her risks at multiple interlocking levels.*

Evidence suggests that girls are more likely to come to the attention of the criminal justice system because of their vulnerability and the risks they face, rather than the severity of their offending.<sup>54</sup> These include experiences of violence, abuse and exploitation, experience of the care system as children, poor mental health and substance use, exclusion from education and poverty – experiences which can be mutually reinforcing and create a complicated combination of factors which can drive offending.<sup>55</sup>

### ***Racial inequalities***

Racial inequalities have also been exacerbated by the pandemic, with evidence indicating that COVID-19 has had a disproportionate impact on racialised communities. These impacts are seen in health outcomes of the virus,<sup>56</sup> but also with regards to broader issues such as mental health, job losses, and disruption to education. The Black Lives Matter protests in the wake of the murder George Floyd in Minneapolis on 25<sup>th</sup> May 2020, brought issues of structural racism and discrimination into a global focus. In the United Kingdom, The Runnymede Trust has highlighted a '*collision of crises*' in relation to racism, policing and the COVID-19 pandemic:

*Reflecting historical patterns, the policing of the pandemic has had the greatest impact on racially minoritised communities, with new police powers adding to and exacerbating pre-existing forms of racist policing.*<sup>57</sup>

The persistent issues of racial disparity in the youth justice system are underlined by the Black Lives Matter movement and contextualised by the widening racial inequalities as a result of the pandemic. As described by the National Association for Youth Justice:

*Two developments this year are so significant that they impact on our understandings of the state of the youth justice system and its wider societal context. The first is the global pandemic of the COVID-19 virus, the second is the heightened prominence of the Black Lives Matter movement in social and political discourse.*<sup>58</sup>

In England and Wales, children from ethnic minorities are overpoliced, more likely to be stopped, searched and arrested, less likely to be diverted, and are therefore disproportionately likely to end up in the criminal justice system. In January 2021, the YJB published research which found racial disparities in assessments, and remand and sentencing decisions, at various stages of the youth justice system.<sup>59</sup> 'Black, Asian and Minority Ethnic' children now represent over half of children in prison. The criminal records system further perpetuates racial inequalities beyond the justice system, creating additional barriers for children and young people by impacting access to education, employment and housing - preventing them moving on from past mistakes.

### ***Implications for the population of children in the youth justice system***

There is a clear relationship between the multitude of problems facing children and families that have been exacerbated by the pandemic, and the population of children involved in the youth justice system. The vulnerabilities explored in this section are all common concerns in Youth Offending Team (YOT) assessments of the needs of children in the youth justice system.<sup>60</sup> The literature strongly indicates that all of these concerns have been significantly aggravated by COVID-19, while the full scale of the impacts remain unclear. Therefore, there is also cause for great concern that these increased vulnerabilities amongst children in the general population may lead to more children being drawn into the criminal justice system in the future.

## Safeguarding children from abuse, exploitation and violence

Throughout the pandemic, significant concerns have been raised about the safeguarding implications for children, especially in the context of vulnerabilities being exacerbated during this period. There have been particular risks around the impact of the 'stay at home' measures for children living in complex family situations and children in care. With households under increased pressures, confinement has intensified children's experiences of abuse, neglect and domestic violence, in circumstances where their home can already be the least safe place. There is a close interrelation between these risks of harm within the home and children's vulnerability to other forms of abuse, exploitation and violence. In this context, there are heightened risks of children's exposure to violence and exploitation by gangs and organised crime groups and involvement in associated criminal activities.<sup>61</sup>

United Nations (UN) rights experts called on governments to boost child protection measures to safeguard children exposed to violence and exploitation,<sup>62</sup> cautioning that:

**“ At a time of lockdowns and isolation at home and elsewhere, children are at a greater risk of experiencing violence and exploitation, as well as challenges to their mental health. This is especially true of those who are already in vulnerable situations, who must not be left behind. ”**

**Najat Maalla M'jid, UN Special Representative of the Secretary-General on violence against children**

### ***Abuse and maltreatment***

Many human rights organisations and children's charities including the NSPCC, UNICEF, Equality and Human Rights Commission, Children's Commissioner for England, and World Health Organisation raised concerns about children being at increased risk of abuse and maltreatment.<sup>63</sup> As schools and support services moved much of their provision online, the lack of oversight and drop in support<sup>64</sup> raised concerns among organisations supporting children that there were fewer opportunities to identify and address issues such as abuse and neglect in the home, providing additional opportunities for perpetrators.<sup>65</sup> As summarised by the NSPCC:

*Many of the risk factors associated with abuse and neglect have been exacerbated by the coronavirus pandemic, while the support services that would traditionally identify and respond to these concerns have been unable to see many of the children and families they work with face-to-face.*<sup>66</sup>

This is particularly concerning at a time where families have been isolated together in high-pressure circumstances. Evidence shows domestic abuse has increased.<sup>67</sup> At the end of May 2020 Refuge reported on its National Domestic Abuse Helpline:

*During the initial stages of the Covid-19 crisis, Refuge reported around 50% increase in demand to its Helpline, and a 300%+ increase in visits to its National Domestic Abuse Helpline website. However, demand has spiked again significantly – calls and contacts to the Helpline have risen to a weekly average increase of 66% and visits to our website (where women can request a safe time to be contacted) have seen a phenomenal 950% rise compared to pre Covid-19.<sup>68</sup>*

Reports of child abuse have also increased,<sup>69</sup> with the NSPCC finding that adolescents are at a higher risk of physical, sexual and online abuse than younger children.<sup>70</sup> From April 2020 to March 2021 the NSPCC's helpline service saw a 23% increase in contacts, with the number of reported concerns around adult health and behaviour increasing by 42%, neglect increasing by 15%, physical abuse increasing by 18%, and emotional abuse increasing by 40%.<sup>71</sup>



## **23% increase in contacts to the NSPCC's helpline**

**April 2020 to March 2021**

Government data on Serious Incident Notifications relating to abuse or neglect for April to September 2020 shows the number of notifications increased by 27% compared to the previous year, and for those aged 16 and over they increased by a third.<sup>72</sup> However, gaps in the data are identified around instances of child abuse and neglect,<sup>73</sup> and with many children 'invisible' to services during the pandemic,<sup>74</sup> this makes it challenging to accurately assess the nature and extent of the increase in maltreatment.

### ***Child to parent violence***

As well as being at increased risk of suffering from domestic abuse during lockdown, HM Inspectorate of Probation has highlighted concerns about children themselves exhibiting violent and abusive behaviour towards their parents and siblings.<sup>75</sup> Professionals raised concerns to inspectors about *'the potential for an increase in both severity and frequency of this form of abuse'*.<sup>76</sup> HM Inspectorate of Probation noted in its annual report that while many YOTs were already aware of this issue prior to lockdown and some provided specialist support, a lack of media focus and financial support for this type of behaviour could be placing parents at risk.<sup>77</sup>

These concerns are echoed in research by the University of Oxford and University of Manchester on *Experiences of Child and Adolescent to Parent Violence in the Covid-19*

*Pandemic*, which included a survey of 104 parents with prior experience of child and adolescent to parent violence ('C/APV') from their child aged 10-19, and 47 practitioners working with families experiencing C/APV.<sup>78</sup> The research found 70% of parents reported an increase in violent episodes during lockdown, 69% of practitioners reported an increase in referrals, and 64% of practitioners identified that the severity or incidence of violence had increased. For the 29% of parents who reported a decline in C/APV, this was explained by 'a reduction in the stresses and triggers for violence in this period', and practitioners and parents were concerned the issue would worsen as lockdown eased.<sup>79</sup> The report by the Universities of Oxford and Manchester highlighted reasons for the increased risks of C/APV during lockdown including 'spatial confinement and coerced proximity', changes in structure and routine, fear and anxiety, and a lack of access to support. It raised concerns that in the long term families were likely to face increased difficulties including returning to previous lives, mending relationships, and services struggling to meet increased needs.<sup>80</sup>

According to HM Inspectorate of Probation YOTs were 'acutely aware' of risks from this behaviour and examples were provided of positive practice, such as undertaking doorstep or garden visits to check on the safety of potential victims, and increasing the capacity of YOT's parenting support workers.<sup>81</sup> However, overall HM Inspectorate of Probation highlighted difficulties in responding to child to parent violence, including that the nature of the behaviour and age of the child carrying it out mean usual support for victims don't all apply; that while victims are advised to call police, asking parents to report their own child presents challenges; and that YOTs may also face conflicts in trying to support both the child and victim at the same time.<sup>82</sup> The inspectorate called for more focus and further research on the issue of child to parent violence, and the development of a specific approach and new interventions for managing it.<sup>83</sup>

### ***Criminal exploitation, gang activity and serious violence***

There have been mixed reports over the course of the year about the extent to which serious violence and gang activity continued since March 2020 and how it is expected to change in the aftermath of the pandemic. There were initial reports from various news outlets of lockdown leading to drops in violent crime and a potential reprieve for children caught up in drug-related violence.<sup>84</sup> Data from the Office for National Statistics shows a 3% drop in knife-related offences between July to September 2020.<sup>85</sup> A Leaders Unlocked report examining almost 4,000 children and young people's perspectives found that despite a perceived decrease in violence, many remained fearful of knife crime during lockdown, including reports of "still having knives pulled."<sup>86</sup>

Initial concerns were raised by the Policy Exchange that changes to drug demand would increase gang rivalry and violence, and that street gangs may feel emboldened if neighbourhood policing reduced.<sup>87</sup> National newspapers published articles on early concerns raised by commentators including a Police and Crime Commissioner, academics and frontline practitioners, that when society opened up again and as the impacts of COVID-19 on society were realised, there would be a significant increase in violence and crime.<sup>88</sup> Young people also warned in their responses to the Leaders Unlocked survey of their belief that there may be a spike in incidents after lockdown is eased.<sup>89</sup>

Various commentators including frontline youth workers reported in the media that children during lockdown were still experiencing harms from serious violence and exploitation at alarming,<sup>90</sup> perhaps increased rates.<sup>91</sup> Numerous reports have highlighted comments from

police and charities supporting children at risk of exploitation, confirming that county lines exploitation has continued and adapted during the pandemic.<sup>92</sup> These reports raise concerns that gangs may have capitalised on heightened vulnerabilities, and altered their methods in response to lockdown.

Research by the University of Nottingham found that lockdown has meant police have been able to spot and disrupt exploitation on quieter rail networks, and resources have been freed up for detection and targeted enforcement.<sup>93</sup> A report by HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) also found that forces used periods of reduced demand in some other areas of policing as an opportunity to try to identify children at risk of exploitation.<sup>94</sup> The Home Secretary, Priti Patel, has also stated that police have been working to fill the gap in oversight left by school closures,<sup>95</sup> and a report by HMICFRS provided examples of police forces carrying out this work.<sup>96</sup>

However, county lines gangs have adapted to using roads instead of rail networks to transport drugs, and increasingly recruiting and exploiting children on social media and from local areas.<sup>97</sup> Research by the University of Nottingham and Crest Advisory finds that forms of exploitation have changed, for example increased exploitation through car theft and increases in the incidence and severity of violence towards children, while children's direct contact with schools and services decreased.<sup>98</sup>

The full extent of the impacts of violence and criminal exploitation for children throughout the COVID-19 crisis are difficult to ascertain. Official statistics must also be treated with caution, as there are several reasons why the reliability of data on missing children reports and referrals to safeguarding services and the National Referral Mechanism (NRM) for modern slavery would be impacted by the pandemic. In 2020, NRM statistics show that the number of children referred for criminal exploitation, and the proportion of cases flagged as county lines, continued its year-on-year increase.<sup>99</sup> Analysis of any data as measures of the nature and extent of exploitation during the crisis must come with the caveat that opportunities for professionals to identify and report concerns were impeded by the crisis, so the full extent of these issues will not be represented in these figures. Analysis of the data is further complicated by the fact that understanding of child criminal exploitation is evolving, and police and other professionals classifying cases as involving child criminal exploitation is a relatively recent development. As recognition and recording of the issue improves and becomes embedded in practice, we would expect data to show increases.

### ***Heightened risks of exploitation for children in care***

As well as the general concerns about the impact of COVID-19 on children with care experience discussed previously, there are particular concerns with regards to exploitation. The Government was criticised by ECPAT UK for failing to protect children in care, who highlighted that the pandemic has exacerbated '*pre-existing crises in social care*'.<sup>100</sup> ECPAT UK and peers in the House of Lords have raised concerns about children in care including those in unregulated accommodation being at particular risk of going missing and being criminally exploited, and this going under the radar of professionals, with these risks compounded by the Government's move to significantly dilute important corporate parenting duties and remove many crucial safeguards for children in care (discussed more below).<sup>101</sup> A news report on comments from youth workers raised concerns about girls being increasingly targeted for criminal exploitation,<sup>102</sup> although the extent of this is unclear.<sup>103</sup>



## Limited engagement with children at a time of heightened risks

### *Reduced capacity for oversight of children*

As concerns over children's exposure to abuse, exploitation and violence have increased, the ability and capacity for services to engage with children and identify these safeguarding risks have decreased, at a time when they are so crucially needed.

The Government committed to keeping schools open for vulnerable children and children of key workers, which was welcomed by commentators including ECPAT UK,<sup>104</sup> but the narrow definition of vulnerability raised concerns that many children would be left at risk:

*The commitment to keeping schools open to vulnerable children as well as the children of key workers has been welcome, but the narrow focus on children with an allocated social worker or education, care and support plan (ECHP) means that many other vulnerable children have been at risk and may have been exposed to exploitation.*<sup>105</sup>

For example, children on YOT caseloads did not automatically meet the definition of being 'vulnerable' and inspectors found vast numbers were not accessing education.<sup>106</sup>

A study examining children's social care found that, while service delivery was maintained during lockdown, there were concerns about the nature and scale of the harms that would emerge and need to be managed, having been hidden during the pandemic.<sup>107</sup> Research from the University of Nottingham found that front-line agencies have been hampered in efforts to assess vulnerabilities and monitor risks.<sup>108</sup> The National Youth Agency (NYA) raised concerns that the Government had failed to confirm that youth work projects are an essential service and to set out that youth workers are key workers,<sup>109</sup> until January 2021.<sup>110</sup> As highlighted by UK Youth and the NYA, youth services have closed or had severely restricted and reduced provision, including staff shortages.<sup>111</sup> With the closures of sports, fitness and well-being facilities and other services, the NYA highlights youth services have had fewer opportunities to engage with children and fewer services to sign-post to.<sup>112</sup>

Children at risk of serious violence have reported an overall lack of support, with a Redthread, MAC-UK and StreetDoctors report on reflections from children and young people stating:

*Counselling and youth work is an extremely important source of support for young people; those who have been able to access this have talked of the benefits. But it is also clear that many young people are falling through the gap.*<sup>113</sup>

Many reports, for example from the Children's Commissioner for England, The Children's Society, and NYA confirm children have been at greater risk of becoming involved in gang-associated activity and criminal exploitation as protective systems were stripped away and children were out of sight of professionals.<sup>114</sup> The emotional and psychological impact of exploitation on children has therefore continued,<sup>115</sup> and ECPAT UK highlights that victims of child criminal exploitation continue to be criminalised.<sup>116</sup>

## **Adapting service delivery**

A number of reports including by Clinks, NYA, UK Youth and the Early Intervention Foundation set out how services adapted to provide remote delivery and 'detached youth work', including telephone or video contact and virtual sessions, and resuming adapted face-to-face services where possible.<sup>117</sup> However, these reports highlight challenges around engaging children during COVID-19, summarised by NYA:


*When brought to an abrupt halt by the lockdown, some youth work moved online, but after initial contact many young people have been less willing to engage online, only have restricted access to technology/ devices/data, or have no safe space in which to talk confidentially or disclose sensitive information. The deployment of street-based, detached youth work is patchy, and door-step conversations lack confidentiality and are highly visible to other people nearby.<sup>118</sup>*

Organisations have worked to support each other by producing guidance and directions on how to safeguard and support children during COVID-19, as well as signposting children and those who support them to services.<sup>119</sup>

Although services have been facing clear struggles in monitoring and supporting children, there are indications in the literature of some potentially positive impacts. Multi-agency meetings including risk and vulnerability meetings, multi-agency public protection arrangements (MAPPA) and Missing and Child Exploitation (MACE) meetings have continued, and HM Chief Inspectors of the criminal justice system report that as these meetings have moved online, attendance of professionals has improved, with signs of quicker, more informed decision-making, more coordination and improved safeguarding activity.<sup>120</sup>

## **Financial pressures on voluntary sector youth organisations**

Youth services and the criminal justice voluntary sector have reported struggling with significant funding shortfalls and possible permanent closures, at a time when vulnerabilities and demand for voluntary services supporting children at risk of violence, exploitation and criminal justice involvement has according to these organisations been increasing.<sup>121</sup> A survey by UK Youth of organisations that engage with young people found 88% were likely to reduce service provision, almost a third were anticipating having to make staff redundant, and 17% reported permanent closure was likely.<sup>122</sup>



**88% of youth organisations  
likely to reduce service provision**

Concerns were immediately raised by children's charities and organisations supporting charities about the financial pressures on voluntary services supporting children,<sup>123</sup> and in April 2020 the Government announced £750 million funding for frontline charities, part of which would be directed to '*vulnerable children charities*'.<sup>124</sup> The Digital, Culture, Media and Sport Select Committee and Children England criticised the funding as insufficient,<sup>125</sup> and the National Audit Office found that by March 2021 the Government had failed to spend the £17 million which was allocated to a Youth COVID-19 Support Fund, to support youth organisations.<sup>126</sup> Concerns were also raised in November 2020 that the Youth Investment Fund, non-COVID-related 5-year funding due to start in April 2020, had not begun being spent.<sup>127</sup>

### ***Reduced oversight at a time of heightened risks***

COVID-19 has impacted the support available to children from statutory and voluntary services to intervene, safeguard children, and help prevent possible or further involvement with the criminal justice system, at the time when it has been most crucially needed. Children's exposure to abuse, exploitation and violence have increased while services' capacity for oversight and engagement has been severely impeded. Children have been missing out on vital service provision and safe spaces,<sup>128</sup> and left with fewer routes out when they are in trouble.<sup>129</sup> Many children have been left excluded from what support and interventions have been available due to a lack of digital technology.<sup>130</sup>

Further needs assessment, research and analysis at a local, regional and national level is required to better understand the nature and extent of these hidden harms, and what is required from services and systems across the country to meet these needs. Given that experiences of abuse, exploitation and violence are closely associated with children's involvement in the youth justice system, and as factors directly driving their criminalisation, there will be significant implications for how to develop and implement appropriate and effective policy and practice responses.

## A failure to prioritise children in policy

### ***Lack of clarity in guidance and regulations***

As COVID-19 spread throughout the country and the Government implemented national restrictions to limit transmission, various government departments began issuing guidance to the public to accompany COVID-19 regulations, and for statutory and voluntary agencies on continuing to carry out their duties and providing support while subject to lockdown.<sup>131</sup> There was a lack of clear and consistent communication as various pieces of guidance were issued and updated across the year. Concerns were raised by parliamentarians and third sector organisations about the clarity and consistency of published guidance. Agencies were expected to quickly digest and implement vast amounts of information and instructions, due to the sheer quantity of rapidly changing, sometimes conflicting guidance issued by different government departments and local authorities.<sup>132</sup> As a joint briefing by children's charities based on intelligence-gathering from across the children's sector highlighted:

*This patchwork of advice and guidance is confusing for both staff and young people, particularly for cases that cross local authority borders or involve multiple agencies...One professional working in a school noted how because there are so many different sources of information, "it has taken a long time to identify the best."*<sup>133</sup>

There were ambiguities and discrepancies between guidance and regulations - for example, government guidance did not state that accessing social services constituted a 'reasonable excuse' to leave home during the first national lockdown, but regulations did.<sup>134</sup> A number of organisations and individuals who work to protect the rights of children and families wrote an open letter to the Secretary of State for Education highlighting 'inaccurate' guidance had been issued which misrepresented legal protections for children in care and care leavers.<sup>135</sup>

### ***Funding crisis in public services***

Children's charities such as The Children's Society and National Children's Bureau (NCB) have highlighted the need to ensure funding reaches children's services,<sup>136</sup> and gaps in 'piecemeal' spending with failures to address growing issues including the 'sustained crisis in children's social care.'<sup>137</sup> Reports including by the House of Lords Public Services Committee have highlighted how COVID-19 is a 'critical juncture' for public services.<sup>138</sup> Funding for statutory services set out in the 2020 Spending Review has included £7 billion for English local authorities to respond to the impacts of COVID-19, and £1.4 billion education funding.<sup>139</sup> The NCB's analysis of the 2020 Spending Review sets out:

*A decade of austerity and rising child poverty resulted in services for children and young people that were poorly prepared for the pandemic. Now, the impact of successive lockdowns is having a devastating impact on health and wellbeing, pushing more children and young people into poverty, and increasing demand for the education, health and social care services that were already struggling.*<sup>140</sup>

In 2021 the Government announced funding including £500 million for 'mental health recovery',<sup>141</sup> and a further £1.4 billion for education 'catch up' plans.<sup>142</sup> However, concerns continue to be raised about the sufficiency of announced funding.<sup>143</sup> For example, following the publication of the education catch up plans, Education Recovery Commissioner Sir Kevan Collins resigned from his position, having reportedly requested a £15 billion package for children, stating: 'I do not believe it is credible that a successful recovery can be achieved with a programme of support of this size.'<sup>144</sup>

## **Removing vital protections for children in care**

The Government introduced a statutory instrument amending children's social care regulations which came into force in April 2020 and temporarily removed or weakened 65 safeguards,<sup>145</sup> including making changes to statutory social worker visits and statutory reviews of children's welfare for children in care; independent scrutiny of children's homes; placing children in care away from home areas; fostering and adoption panels and agencies; and complaints and representations.<sup>146</sup> Particularly given children's needs were expected to be higher during the pandemic, this move was met by much opposition. Just for Kids Law told the Joint Committee on Human Rights:

*These changes...remove vital safeguards and legal protections for children in care at a time when they need more support not less due to the pandemic. They also put many children at greater risk of harm as many will be having less contact with children's services or are not in school where safeguarding concerns would normally be raised.*<sup>147</sup>

The Children's Commissioner for England was not consulted on the regulations, and told the Joint Committee on Human Rights she viewed the regulations as *'unnecessary, detrimental for children's rights and a distraction from the much more fundamental issues about how to keep children protected during Covid-19.'*<sup>148</sup> The Joint Committee on Human Rights questioned whether the changes were necessary and proportionate.<sup>149</sup> A campaign coordinated by children's rights charity Article 39 and supported by many organisations and individuals called for the statutory instrument to be scrapped;<sup>150</sup> and in a successful legal challenge brought by Article 39, the Court of Appeal ruled the Secretary of State for Education acted unlawfully in failing to adequately consult on the changes.<sup>151</sup> In the face of wide-ranging criticism, the Government claimed the measures were introduced *'to allow some temporary flexibility'*<sup>152</sup> but the damaging impact of the rollback of these critical safeguards for children in care has yet to be fully understood, in both the more immediate and longer term. The original statutory instrument expired in September 2020 and was replaced by another that ran until March 2021 - this made fewer changes to existing regulations, in effect restoring many of the legal protections initially removed.<sup>153</sup>

## **Calls to prioritise children**

Large numbers of organisations have called for the Government to prioritise children in the response to and recovery from COVID-19, with significant investment in public services to address vulnerabilities exacerbated by the pandemic.<sup>154</sup> Recommendations from human rights groups, think tanks and children's charities for government action to support children in the community have included urgent critical analysis of the impact of COVID-19 on children,<sup>155</sup> improving family financial security,<sup>156</sup> relaxing referral criteria for support services,<sup>157</sup> improving mental health support<sup>158</sup> and support for looked after children.<sup>159</sup> UNICEF's Youth Advisory Board wrote to the Prime Minister calling for the Government to create a *'comprehensive Children's Recovery Plan which sets out the necessary actions and provides ringfenced resource for schools, local authorities, civil society, and children's service providers to help build a better tomorrow for all children.'*<sup>160</sup> In June 2021, the National Children's Bureau and over 140 organisations issued a joint statement in a call to the Government to put children at the heart of COVID-19 recovery and set out an ambitious cross-government plan, backed by significant investment.<sup>161</sup>

*It's time for the nation to put children at the heart of its plans for the future, to stop childhoods being disrupted and life chances being derailed.*

## Policing the pandemic

Police act as a gateway to the youth justice system, responding to children's behaviour in the community and making decisions around whether to arrest a child, and whether to divert them away from the criminal justice system entirely, use an Out of Court Disposal, or to charge them (or refer them to the Crown Prosecution Service for charging).<sup>162</sup> With COVID-19 having uncertain impacts on the functioning of criminal justice, during March 2020-2021 policing decisions had an important role to play in preventing unnecessary arrests and throughput of children into the youth justice system. This section examines the literature on how policing has responded to the pandemic and dealt with children's offending behaviour and compliance with COVID-19 regulations, and the experiences of children who have come into contact with police and been arrested during this time.

## Policing under emergency powers

### ***Emergency COVID-19 powers***

The Coronavirus Act 2020 and the 'Lockdown Regulations' created new criminal offences and police powers with implications for children.<sup>163</sup> As explored in a Youth Justice Legal Centre (YJLC) legal briefing,<sup>164</sup> many of the powers applied only to adults responsible for children, rather than children themselves, for example children were exempt from being issued fines. However, the YJLC raised concerns about ambiguity in the regulations around children, and the fact that for powers where a responsible adult had to be present, regulations gave police the power to determine who qualified as an appropriate adult.<sup>165</sup>

In March 2020, the AYJ highlighted the importance of communication with children and young people in order to quell the spread of misinformation and to increase their adherence to restrictions under lockdown.<sup>166</sup> The AYJ briefing recommended that a concerted communication campaign specifically directed towards young people about the importance of social distancing and isolation measures was needed, but this was not forthcoming.

A report by Leaders Unlocked examining children and young people's perspectives of policing the pandemic, based on views gathered from over 3900 13-to-25-year-olds across England and Wales, found the majority did not feel well informed about police powers.<sup>167</sup> The report states that many children and young people commented on the *'lack of clear and consistent information from the Government'*, as one young person stated:<sup>168</sup>



**I'm not sure what they are meant to be doing or their powers, as the Government and police have not explained them or been very clear.**

## **Policing COVID-19 regulations**

At the outset of the crisis, police were urged by the UN Committee on the Rights of the Child not to arrest children for violating COVID-19 regulations.<sup>169</sup> Concerns were raised by youth justice organisations, lawyers and children and young people that children would be criminalised for failing to comply with COVID-19 laws and regulations. These organisations warned that some groups of children could be disproportionately impacted by policing of the measures, particularly children from ethnic minorities being subject to racialised targeting and disproportionate policing of their communities.

There were also concerns over vulnerable children, including looked after children, where difficulties in home environments may mean they would struggle more than other children to comply with stay at home regulations.<sup>170</sup> Although some of the new police powers only applied to adults with responsibility for a child, concerns were raised by the YJLC that a lack of clarity about dealing with children, increased interactions with police, and the inability to issue a fine, increased the risk of arrest for minor offences.<sup>171</sup> It is not clear from available data the extent to which these concerns about the policing of COVID-19 regulations have been realised.

While data has not been published that could determine the extent to which children were policed for COVID-19 regulation compliance, a report by HMICFRS published in April 2021 on the police response to COVID-19 notes that all police forces followed a 'Four Es' approach to securing compliance with COVID-19 rules: engaging, explaining, and encouraging, before enforcing the legal requirements.<sup>172</sup> The report states enforcement was a last resort, but children and young people have highlighted inconsistency in police approaches across different areas,<sup>173</sup> and police confusion and mistakes in enforcing regulations and guidance. The HMICFRS report found that the introduction and variation of new legislation and guidance sometimes led to errors or inconsistencies in police approaches, with many forces expressing '*frequent frustration*' at the lack of notice they received about changes.<sup>174</sup> In April 2020 the Independent reported on police mistakenly issuing 39 fines to children for breaching lockdown regulations, which can only be issued to adults.<sup>175</sup> A Crown Prosecution Service (CPS) review of the first 200 finalised cases under COVID-19 legislation found all cases under the Coronavirus Act and 6% of cases under the Health Protection Regulations were incorrectly charged.<sup>176</sup> The Joint Committee on Human Rights in September 2020 provided examples of police incorrectly enforcing restrictions, mainly around '*non-essential travel*', stating:

*A number of prominent incidents were reported in the first weeks of the lockdown, in which police forces confused guidance and law, attempted to enforce aspects of the guidance which were not included in the accompanying regulations, and even attempted to enforce 'rules' which were contained in neither guidance or law.*<sup>177</sup>

The HMICFRS report on the police response to COVID-19 echoes this, stating that forces had occasionally encountered difficulties in enforcing regulations as opposed to securing compliance with guidance.<sup>178</sup>

## Calls to maximise diversion

### *Arresting children as a last resort?*

Prior to COVID-19 there have long been calls for reducing ‘unnecessary’ child arrests,<sup>179</sup> and to prioritise diversion of children from the youth justice system.<sup>180</sup> The number of children arrested fell by 82% between 2006 and 2019.<sup>181</sup> As fears about the impacts of COVID-19 began, concerns were raised by youth justice lawyers about the need to alleviate pressure on the justice system and prevent unnecessary harm from coming to children by restricting the arrest, police detention and interview of children to exceptional circumstances, with calls for the Home Office to issue immediate guidance to the police stating that arresting children should be an absolute last resort, in line with the Government’s *Coronavirus Action Plan*.<sup>182</sup>

The Policy Exchange made initial predictions in March 2020 that police would exercise discretion when dealing with crime and look to reduce arrests.<sup>183</sup> Youth justice specialist lawyers at the Garden Court Chambers issued a *Child Protocol* urging police to refrain from arresting and detaining children, to release children under investigation or on bail rather than keeping children in police custody, and to divert children wherever possible.<sup>184</sup> Data is not available to shed light on the full extent that police decisions in dealings with children were affected by COVID-19, but an inspection report by HMICFRS noted that ‘most forces followed national guidance encouraging frontline officers to arrest only when essential.’<sup>185</sup>

Her Majesty’s Criminal Justice Chief Inspectors reported in January 2021 that overall, people who came into contact with the police were more likely to receive an out of court disposal than prior to the pandemic, and more likely to be released under investigation instead of bailed.<sup>186</sup> HMICFRS found mixed results regarding whether forces had increased the use of out of court disposals, with forces reporting reasons for doing so including keeping those suspected of minor offences out of custody areas, perceived difficulties in receiving timely charging advice from the CPS, receiving advice from the CPS that out of court disposals were more appropriate, and the perception that court delays meant victims were unlikely to receive swift justice.<sup>187</sup>

Her Majesty’s Criminal Justice Chief Inspectors also reported that overall people in contact with the police were more likely to be released under investigation instead of bailed,<sup>188</sup> This may indicate a change in police decision-making aiming to reduce contact with the justice system or may be explained by a shift in the nature of offences, and that police may have felt less able to progress cases within the timescales required by bail. The latter may have negative impacts in the longer run, as children released under investigation who go on to be prosecuted may face considerable delays in their cases reaching court.<sup>189</sup>

The Chief Inspectors noted that police custody suite throughput remained steady during the pandemic, as police officers worked to clear backlogged cases, meaning there was no drop in the number of cases entering the system.<sup>190</sup> However, HMICFRS noted that there was variation from force to force, and from April to August 2020 total numbers slightly decreased compared to the previous year, particularly for children.<sup>191</sup>



## ***Stemming the flow of children entering the system***

The reported proportionate increase in out of court disposals is positive in decreasing the number of children facing long court delays and possible further criminalisation, but concerns were raised by Chief Inspectors that in the past, out of court disposal work in assessing wellbeing or risk of harm was generally lower quality than court disposals, and that those accepting cautions, for example, do not always understand the implications, highlighting decisions should be driven by case by case information, not by court difficulties.<sup>192</sup>

Looking ahead, concerns have been raised by HM Chief Inspectors about plans for 20,000 more police officers increasing the number of cases in the justice system, exacerbating pressures,<sup>193</sup> and calls were made for a longer-term commitment to diversion to reduce throughput of children and adults into the criminal justice system as it deals with COVID-19's impacts.<sup>194</sup>

## **Children in police custody**

Significant adaptations were put in place with the aim of minimising the impact of COVID-19 for police forces across the country. HM Inspectorates confirmed that police have conducted more business via telephone or video calls,<sup>195</sup> and took part in virtual out of court disposal panels with YOTs.<sup>196</sup> In police custody suites, there have been some significant immediate changes, and possible longer-term implications for practice.

## ***Police station interviews and remote legal advice***

In March 2020, a joint interim interview protocol (JIIP) between the National Police Chiefs' Council, CPS and legal professional bodies was signed, providing guidance on when police interviews should be conducted, postponed using bail or release under investigation, or avoided altogether. The JIIP also encouraged the use of legal representation in interview by video conferencing or telephone, rather than in person – while accepting that it was not within the letter of the law.

There were no specific provisions for children originally included in the JIIP, but in April 2020 additional safeguards were added. Before interviewing with remote legal advice, police were instructed to assess each individual child's suitability, and secure informed consent from them and their appropriate adult.<sup>197</sup> According to HM Inspectorate of Probation, this updated guidance took some time to filter through to all custody settings.<sup>198</sup> In June 2020, the Youth Justice Board (YJB) issued guidance for children about policing during COVID-19 and children's rights if arrested, reflecting the second version of the JIIP.<sup>199</sup>

In February 2021, a survey of 315 appropriate adults by Transform Justice, the National Appropriate Adult Network (NAAN), and Fair Trials raised concerns that remote legal representation at police interviews with children or vulnerable adults was more prevalent than expected – being used in half of cases, often audio-only, with some solicitors reportedly refusing to attend in person.<sup>200</sup> The report, *Not remotely fair? Access to a lawyer in the police station during the Covid-19 pandemic* highlighted concerns about consent from children and AAs, including that it was often not informed, not sought, obtained under pressure or ignored. Significant risks were also highlighted in relation to children's ability to understand

their legal advice and effectively participate in their police interview, as well as about legal advisors behaving more passively and intervening less to support the child. The concerns were supported by the Independent Custody Visiting Association (ICVA), as well as the HMICFRS report on the police response to COVID-19 which highlighted a lack of information on where legal advice was obtained remotely, whether informed consent was obtained, and how police had satisfied themselves that the use of live links did not adversely impact the detainee's communication with their solicitor.<sup>201</sup> The report states:

*We found it difficult to obtain evidence that decisions were made in the best interests of detainees when they exercised their rights to legal advice and representation provided remotely.*

A third version of the JIIP was published in May 2021, excluding children and vulnerable adults.<sup>202</sup> In June 2021, the signatories wrote to police forces to state that remote legal advice should be available where a child or vulnerable adult is known or strongly believed to be COVID-19 positive; however, the JIIP was not amended.

### ***Appropriate adults***

Children and vulnerable adults in police custody are entitled to an Appropriate Adult (AA) in order to provide additional protections. The purpose of their role is to safeguard children's interests (rights, welfare and effective participation) while they are detained and interviewed by police. Although parents often act in this role, it is a statutory duty of local authorities to ensure provision when required. In April 2020, NAAN published guidance clarifying that the physical presence of an appropriate adult (AA) at interviews, and range of other processes at the police station, was a legal requirement.<sup>203</sup>

A YOT thematic review by HM Inspectorate of Probation found AA arrangements remained 'robust' when other forms of support and advice became remote, and AA schemes were able to recruit staff and volunteers.<sup>204</sup> NAAN confirmed that AA schemes remained operational in police stations throughout the pandemic. However, many AAs were unavailable due to shielding and, in some areas, local coordinators personally filled gaps in rotas while recruiting new AAs.<sup>205</sup>

### ***Time spent in police custody***

Just for Kids Law, Children's Rights Alliance for England, Youth Justice Legal Centre and Garden Court Chambers raised concerns that arrested and detained children were being put at unnecessary risk of exposure to COVID-19.<sup>206</sup> A Hodge Jones & Allen Senior Associate raised concerns that the combination of joint police interview guidance, and CPS charging guidance highlighting the need to process children's cases swiftly, could be used by police to justify keeping children in police custody following an arrest.<sup>207</sup> The Independent Custody Visiting Association (ICVA) reported an increased length of stay in custody for some detainees, but did not specify whether this included children.<sup>208</sup> HMICFRS also reported an increase in the time people were detained in police custody, due to waiting for virtual remand hearings (discussed further in Chapter 2).<sup>209</sup>

## Children's perceptions and interactions with police

A survey of nearly 4,000 children and young people about *Policing the Pandemic*<sup>210</sup> found varied results in their responses. Many respondents reported positive examples of police engaging with their community, but a number of concerns were raised about policing during COVID-19. Racial disproportionality during the pandemic was a key concern for many young people, with respondents observing unfair targeting of different racial groups and differences in police treatment depending on ethnicity. One young person reported:

*"The other day I saw a group of white young people who were causing antisocial behaviour. Then I saw two black young people who weren't too far from this group. But these two weren't messing around or causing any trouble. When the police pulled over in their cars, they targeted the two black youth."*

Children and young people reported age-based targeting and over-policing of poorer communities, with the report highlighting examples from children such as:



**I don't feel safe with the police constantly harassing teenagers for minding their own business, but old pensioners are allowed to do anything they want.**



**As someone who lives between two households, I've seen significantly more policing around my mum's neighbourhood, a council estate which happens to be mostly lower to mid income families. If you're gonna patrol everywhere, patrol everywhere, including rich people.**

Respondents also raised concerns about inconsistent approaches to dealing with vulnerabilities, with Leaders Unlocked highlighting they heard positive examples of police sensitivity to vulnerabilities, as well as examples where police did not show '*understanding and compassion*' for children and young people in difficult situations. One child stated:

*"On two separate occasions, I was fined by police who were patrolling my area and realised that I've been out for too long. Their lack of consideration and intolerance is inhuman. Many of my friends who are also in temporary accommodation by themselves have also had the same problem. They aren't doing so well and have no one to talk to."*

Finally, some felt unnecessarily harassed by police, and that police were using lockdown opportunistically to 'catch up' with known children and young people and 'score points'. Children and young people from ethnic minorities reported particular issues with being stopped and searched over lockdown, and respondents highlighted they did not feel stops were to do with COVID-19. The report states:

*Many young people...said the police had used intimidating or aggressive tactics with them. Some commented that they felt harassed, watched or followed by the police. Some mentioned unnecessary use of force when being stopped or arrested. Others talked about too many police officers attending some situations, which increased intimidation and risked escalating tensions.*

## Children under the supervision of Youth Offending Services

Children in contact with the law who have received a youth justice disposal or who are referred, are supported and supervised by YOTs. YOTs engage with children in the community, run interventions, oversee community sentences, and support children in police stations, courts, and in custody. YOTs work with partners in the community including health, education and children's services, the police and voluntary organisations. This section explores the literature on how YOTs have been affected by COVID-19, how they have adapted their engagement and work with children and partners, and the impact this has had on the children they support.

### The role of the Youth Justice Board

As lockdown began in March 2020, the YJB asked for business continuity plans from each YOT, which have not been made publicly available. According to HM Inspectorate of Probation YOTs in Wales took a coordinated approach and worked together on their plans.<sup>211</sup> Allowing a localised approach to the YOT response to COVID-19 was deemed effective by HM Inspectorate of Probation, allowing local services the flexibility to prioritise the most vulnerable and 'at-risk' children.<sup>212</sup> YOTs were also required to submit 'recovery plans' by September 2020, around how they planned to reinstate pre-COVID-19 activities and incorporate any new practices developed during the pandemic, with guidance on this published in July 2020, highlighting the need to take an approach best suited to local needs.

*In this instance the Youth Justice Board (YJB) defines recovery as “a return to normal state of health or strength” and that to transition is a “process of changing from one state to another”. However, we recognise that different local authorities and agencies have adopted different definitions and are at variable stages of recovery. The YJB recognises that the outbreak of the pandemic has been very challenging for the sector with YOTs having to urgently restructure services, interventions and partnership arrangements. This period of transition to recovery presents an opportunity to reinstate activity which worked prior to COVID-19, but also to incorporate some of the innovative practices which have developed, which the YJB fully supports.<sup>213</sup>*

There are reportedly no plans for the Ministry of Justice (MoJ) or YJB to publish these recovery plans.<sup>214</sup>

HM Inspectorate of Probation highlighted that YOTs and local authorities had to read, understand and disseminate a huge volume of guidance, with no uniform format and no way for updates to be quickly identifiable, putting a strain on resources.<sup>215</sup> The YJB has shared practice examples and other materials for youth justice professionals on the Youth Justice Resource Hub.<sup>216</sup> The YJB also published guidance for children in June 2020 setting out how YOTs are continuing to work during COVID-19 and what has changed, including information like time slots to attend meetings, virtual contact, social distancing, and that YOTs will continue to support children with their court hearings, and offer a range of interventions.<sup>217</sup>

Government guidance, *Children of critical workers and vulnerable children who can access schools or educational settings*, stated that as workers ‘essential to the running of the justice system’ YOT workers were deemed critical workers.<sup>218</sup> However children on YOT caseloads were not listed as vulnerable children for access to schools during lockdowns, as well as for access to laptops and food parcels, unless local arrangements were put in place.<sup>219</sup>

Scrutiny of YOT work during this time is more or less restricted to inspection reports. YOT inspections were initially temporarily suspended and then resumed virtually.<sup>220</sup> The Justice Select Committee undertook an inquiry on the impact of COVID-19 on probation services, but this only focussed on adults.<sup>221</sup>

The Youth Justice Board has confirmed it is exploring a ‘*BAME COVID 19 Response pathfinder – which aims to provide funding to support BAME children who have been affected by the impact of COVID 19 and increased ACEs and trauma for the BAME community, preventing entry to the YJS.*’<sup>222</sup> This includes £1.4m allocated to local areas for support in their COVID-19 response for ‘*over-represented children*’.<sup>223</sup> Some YOTs had highlighted that families from ethnic minorities may be affected by COVID-19 for longer time periods and this had a concerning impact on children’s mental health.<sup>224</sup>

## The response from Youth Offending Teams

According to the HM Inspectorate of Probation November 2020 report, *A thematic review of the work of youth offending services during the COVID-19 pandemic*, YOTs were quick to respond and adapted well, balancing keeping staff safe with responding to the needs and risks of children.<sup>225</sup> Regular meetings reportedly took place between YOT managers, YJB, HM Courts and Tribunals Service (HMCTS), police, and the Youth Custody Service (YCS), while meetings between YJB, regional YOT leads, and YOT managers continued.<sup>226</sup> HM Chief Inspector of Probation Justin Russell told the Justice Select Committee that caseload pressures on YOTs were less concerning than for adult probation,<sup>227</sup> but inspectorate reports highlight that team managers have been stretched, and raise concerns about increasing demand on YOTs as the impacts of COVID-19 are realised and as normal business resumes.<sup>228</sup>

### ***Adaptions to practice and models of engagement***

HM Inspectorate of Probation found that YOTs quickly shifted to remote working and engagement with children.<sup>229</sup> However, not all YOTs had sufficient Information and Communication Technology (ICT) infrastructure, and a ‘*digital divide*’ among staff was identified, where some had access to modern ICT while others did not. Contact levels with children were reportedly mostly sufficient, remote engagement worked better where there was an existing relationship with a child, compared to building trust and new relationships remotely.<sup>230</sup> YOTs adapted interventions and programmes to deliver them remotely, and developed online sessions with children, utilising varied approaches and sometimes involving parents and partners. The HM Inspectorate of Probation annual report on YOT inspections states:

*YOTs developed a mixed delivery model. This included some remote interventions, with case managers sending material out in advance and using phone contacts to discuss it, as well as case managers sourcing suitable video clips for discussion and moving pre-existing programmes online.*<sup>231</sup>

Although some remote approaches were praised as successful, a key concern raised by YOTs and HM Inspectorate of Probation was the difficulty in undertaking assessments of a child without meeting them in person, and adapting assessments to take into consideration new COVID-19-related risks.<sup>232</sup> Overall HM Inspectorate of Probation's thematic review states that while some risks took some time to become apparent, YOTs adapted their assessment tools, and reviews of children's situations were 'active and prompt'. Assessments were reportedly mostly based on existing information from AssetPlus or out of court disposal assessments. HM Inspectorate of Probation's thematic review sets out:

*We considered that the classification of the child's level of safety and wellbeing was accurate in 64 of the 70 cases sampled (91 per cent); however, the correct classification of risk of harm was given in fewer cases – 54 of 70 (77 per cent). The content of assessments and reassessments evolved over time and staff became more adept at conducting remote and virtual assessments. Overall, assessments of risk of harm to others were better than those of safety and wellbeing. Assessments didn't always focus on the new issues that arose specifically because of COVID-19 and subsequent restrictions.*<sup>233</sup>

Face-to-face contact was reportedly maintained for children deemed to pose the greatest risk to others, and some children continued to visit YOT offices if this was preferred by the child. When restrictions eased YOT staff went on 'walk and talks' and other outdoor sessions with children, which were deemed by inspectors to be productive.<sup>234</sup>

HM Inspectorate of Probation's thematic review highlighted that there were initial concerns that health staff would be redeployed and no longer be available to support children on YOT caseloads, but according to the inspectorate in most services this did not happen, although mental health and other services restricted remote services to children with the highest needs.<sup>235</sup> HM Inspectorate of Probation's thematic review, and HM Chief Inspectors of the criminal justice system in their joint report on COVID-19 and in evidence to the Justice Select Committee, report that attendance at multi-agency meetings improved, as did general communication with social workers, with joint work well coordinated.<sup>236</sup> The inspectorates report that communication with community partners and work with police went well, highlighting the alignment of YOTs with local authorities and their ability to conduct joint planning work as having allowed them to respond well to local needs.<sup>237</sup>

According to HM Inspectorate of Probation YOTs continued their work overseeing sentences, some reparation work continued, and out of court disposals and referral order panels were initially halted but resumed quickly, virtually.<sup>238</sup> Inspectors reported that some children receiving out of court disposals had their assessments and delivery entirely remotely.<sup>239</sup> Concerns were raised by YOT staff about difficulties around the use of breach to support compliance with community sentences.<sup>240</sup> YOT staff, the Chief Inspectors of the criminal justice system and the Howard League for Penal Reform raised concerns, explored in Chapter 3, about contacting staff and children in custody, building relationships and supporting them to prepare for resettlement.<sup>241</sup>

## **The digital divide**

While inspectors report children by and large remained able to access critical services, contact with YOTs was severely disrupted.<sup>242</sup> A lack of access to digital technology and even phones for many children on YOT caseloads is a key concern raised by Chief Inspectors of the criminal justice system and other commentators, with inspectors finding a stark digital divide.<sup>243</sup> As set out by HM Inspectorate of Probation:

*The pandemic has brought the issue of the digital divide into sharp focus. For those who do not have the equipment, signal strength or finances to fund internet access, the pandemic has increased that gap.*<sup>244</sup>

HM Inspectorate of Probation's thematic review found that just under half of children in their YOT sample had insufficient access to technology – some families had no or poor broadband, some had one phone to share between parents trying to work and children doing school work and contacting their YOT.<sup>245</sup> The report highlights that the impact of the digital divide on children in care who are placed away from their home area needs additional consideration, stating that 'very few' assessments and plans considered access to technology for these children.<sup>246</sup>

## **Possible positive impacts**

Inspectors highlight that some developments during March 2020-2021 may be positive for children. Better partnership working through remote multi-agency meetings allows YOTs to better identify risks, and according to inspectors there are indications of parents becoming more involved with YOT work with their children and gaining a better understanding of the causes of and response to their child's behaviour.<sup>247</sup> HM Inspectorate of Probation's thematic review highlights that children have indicated they prefer 'walk and talks' and initial phone contact for building trust as they get to know staff, feeling it was less intense.<sup>248</sup> HM Inspectorate of Probation stated that some children may have been able to use lockdown restrictions as an opportunity to rethink their direction, break 'unhelpful' relationships, and re-engage with their families and YOTs, which YOTs worked to make the most of.<sup>249</sup> For example, the HM Inspectorate of Probation report sets out:

*One 16-year-old had been on the edge of gang activity. He had become a target and an attempt had been made to stab him. During lockdown, he supported his family, as one member had to shield. Working with his YOT worker, he used his time to reflect on his life. He has been supported to use the lockdown time well, and successfully applied for and got an apprenticeship.*

## **A lack of understanding of impact**

However, very little is known about children's perceptions of digital service delivery, and the impact on children of having their programmes and sentences overseen remotely. The long term impact is unknown,<sup>250</sup> but concerns have been raised, for example by the Early Intervention Foundation, about the risks of virtual and digital delivery of interventions.<sup>251</sup> Referral order panel members raised concerns to HM Inspectorate of Probation that they couldn't 'get a sense of the child', being unable to pick up on non-verbal communication and dynamics between children and their parents and carers.<sup>252</sup> As recommended by HM Chief Inspectors of the criminal justice system, and Crest Advisory, there is a need for proper evaluation of the temporary measures implemented during COVID-19 before they become widespread and permanently embedded.<sup>253</sup>



## Exacerbated vulnerabilities of children under supervision

As outlined previously, vulnerabilities for all children have been exacerbated throughout the pandemic, with children on YOT caseloads being particularly vulnerable and often facing multiple disadvantage, making them likely to be some of the worst affected. HM Inspectorate of Probation's annual report on YOTs summarises: <sup>254</sup>

**“ Children’s responses to the pandemic have broadly fallen into two groups. The smaller group have complied with restrictions and used the time to reflect on their future; the majority have struggled with the lockdown and this period has amplified their needs. For some, the pandemic was an additional trauma to an already extensive list. For all children, key aspects of support for desistance have gone. ”**

HM Inspectorate of Probation

YOT inspectors highlighted how the needs of children and families became ‘*much more acute*’ as time went on.<sup>255</sup> Concerns have been raised by HM Chief Inspectors that a large portion of children on YOT caseloads were not accessing education over the year,<sup>256</sup> with 41% of children in the HM Inspectorate of Probation thematic review sample not accessing any form of education, training or employment.



**41% of children on YOT caseloads not accessing any form of education, training or employment during the lockdown**

HM Inspectorate of Probation has highlighted the need to pay close attention to local authority budgets to examine the impact of COVID-19 on YOT's ability to continue their work supporting children.<sup>257</sup> Various inspection reports have highlighted that child to parent violence increased,<sup>258</sup> raising concerns that more children will be drawn into the criminal justice system.

Chair of the YJB Keith Fraser told the Justice Select Committee that ‘*Covid-19 could be viewed, first of all, as another adverse childhood experience for children.*’<sup>259</sup> The Government has stated that there are no plans to publish an updated set of AssetPlus statistics on the assessed needs of children on YOT caseloads,<sup>260</sup> but the available evidence provides a clear basis for doing so, to identify the extent to which these concerns have been impacted and to inform the development of future policy and practice responses.

# Children in court

## Chapter 2

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## Chapter 2: Children in court

### Court closures and backlogs

When children are charged with an offence they are brought to court for trial and sentencing. The majority of cases involving a child defendant will be heard in a youth court, a form of magistrates' court adapted to be more suitable for children.<sup>261</sup> Cases may also be heard in Crown Courts if they are deemed to meet criteria around seriousness, or in adult magistrates courts under some circumstances, such as the child has an adult co-defendant.<sup>262</sup> HMCTS manages the administration of criminal, civil, and family courts, while the CPS decides which cases should be brought before court for prosecution, prepares cases and presents them at court.

Fully functioning courts enabling swift justice are a critical part of a criminal justice system - as the legal maxim goes, '*justice delayed is justice denied.*' However, prior to COVID-19 delays in the youth justice system were already a concern, with annual youth justice statistics and research by the Centre for Justice Innovation and the Institute for Crime & Justice Policy Research identifying long delays in children's cases coming to court.<sup>263</sup> According to HM Crown Prosecution Service Inspectorate:<sup>264</sup>

**“ Even before the pandemic, delays and backlogs in the justice system were unacceptable. ”**

**HM Crown Prosecution Service Inspectorate**

In March 2020, as the country entered lockdown and social distancing restrictions came into force, criminal courts could not continue hearing cases as usual. Many courts closed, business moved online, and cases were put on hold. Decision-makers and practitioners have worked to minimise the impact of COVID-19 on courts since March 2020, but case delays, already in existence and exacerbated by COVID-19, have had significant ramifications for children. As set out by HM Chief Inspectors in the Criminal Justice Joint Inspection on the impact of the pandemic on the criminal justice system:<sup>265</sup>

**“ Whilst we are heartened that the criminal justice system coped reasonably well with the immediate challenges of the pandemic, it is the significant backlog of cases which constitutes the greatest threat to the proper operation of the criminal justice system. ”**

**HM Criminal Justice Chief Inspectors**

## Activity in courts

### Levels of court activity

From March 2020 a lot of court business was initially suspended, when HMCTS closed court rooms and suspended all new jury trials.<sup>266</sup> Almost half of courts were closed as business was consolidated into fewer buildings, and magistrates' courts and Crown Courts were only covering urgent business, much of it done remotely.<sup>267</sup> HMCTS began posting daily,<sup>268</sup> then weekly<sup>269</sup> operational summaries setting out information on courts including which types of cases were being heard and prioritised. They also began issuing and regularly updating advice and guidance for court users, setting out what to expect when coming to court, and safety and hygiene measures.<sup>270</sup> Child-friendly guidance for children attending court in person or remotely was published by the YJB and HMCTS, but not until June.<sup>271</sup>

Magistrates' courts were initially only covering urgent work including overnight police custody cases and cases where a child is remanded in the secure estate, and from mid-April 2020 were instructed by the judiciary to prioritise the listing of cases according to three priority categories, with urgent custody cases top priority, and any serious and time-sensitive Youth Cases, for example '*where delay might mean a relevant age-threshold was crossed*', falling into the second priority category.<sup>272</sup> The reintroduction of jury trials was announced in May 2020,<sup>273</sup> gradually increasing throughout the year.<sup>274</sup> By September 2020 the Government claimed up to 90% of all courts were reopened,<sup>275</sup> although social distancing measures continue to mean they cannot hold as many hearings and trials as usual.<sup>276</sup> By January 2021 jury trials were taking place in over three quarters of Crown Courts.<sup>277</sup> Courts reportedly worked to increase the use of video technology to hear more cases, with the majority of cases heard over this period using audio or video technology.<sup>278</sup> This expansion of 'virtual justice' is explored fully in the next section.

While the number of cases being received by magistrates' courts was lower than pre-COVID-19 levels throughout March 2020-February 2021, and also for Crown Courts until August 2020, the number of disposals also fell.<sup>279</sup> MoJ statistics show in the year ending December 2020 there were 27% fewer children sentenced than the previous year, compared to a 31% decrease in overall sentencing including adults (and compared to a 13% decrease between 2018 and 2019 in the number of children sentenced, and a 16% decrease between 2017 and 2018).<sup>280</sup>

### Measures to minimise delays

In July 2020, the MoJ and HMCTS published the *Court and tribunal recovery update in response to coronavirus*,<sup>281</sup> setting out the short- and medium-term response to COVID-19, a range of measures aimed at returning the courts to business as usual and minimise delays. These included the reopening of all courts, expansion of court capacity by using other buildings as courts (so-called Nightingale courts), considering extending operating hours, and increasing the use of video technology. One hundred and forty-two million pounds was provided to fund improvements to courts including improving remote capabilities.<sup>282</sup>

An updated recovery plan was published in September 2020 setting out plans for more Nightingale courts, more staff and more video technology, backed by £80 million funding,<sup>283</sup> and in February 2021 plans for more Nightingale courts and a '*super courtroom*' hearing complex cases were announced.<sup>284</sup> Court rooms closed down through the Government's

pre-COVID-19 court reform programme were brought back into service.<sup>285</sup> The MoJ told the Public Accounts Committee in March 2021 that these measures successfully increased capacity and results were starting to be seen particularly in magistrates' courts, *'but the overall situation remained very challenging'*.<sup>286</sup> No specific measures for youth courts were included in the recovery plans.

The National Audit Office is auditing the Government's response to the court backlog, due to be published in Autumn 2021,<sup>287</sup> and the Justice Select Committee has ongoing work examining the strains on the court system.<sup>288</sup>

### **Prioritising children?**

A Youth Justice Working Group chaired by the Judicial Lead on Youth Justice was set up to support HMCTS work to minimise delays in the youth court and Crown Court trials involving child defendants. The group of criminal justice agencies including relevant HMCTS leads met *'regularly'* to monitor progress on recovery plans, identify options to reduce backlogs, develop criteria for prioritising cases, and to minimise *'unnecessary'* child appearances at court.<sup>289</sup> The Government has stated HMCTS is carrying out significant work to consider the impact of COVID-19 on the youth court and develop measures to reduce backlogs.<sup>290</sup> Without data and more information on this programme of work, it is difficult to assess its effectiveness.

In February 2021, the Government stated that Resident Judges and HMCTS regional senior officials had been working to ensure trials involving child defendants were prioritised, reviewing cases to make sure they remain a top priority, in particular where the child may turn 18 before conviction.<sup>291</sup> The lack of data available on court cases involving children means it is not possible to discern the extent to which this happened in practice.

### **Crown Prosecution Service**

According to the criminal justice inspectorates, the CPS was able to continue its work throughout the pandemic, with good digital capability limiting the interruption to services.<sup>292</sup> There was reportedly no drop in cases being processed by the CPS, as during lockdowns police officers worked on clearing backlogged cases, and the CPS worked to clear charging backlogs.<sup>293</sup> Initially there were reported uncertainties about how and when CPS staff should attend court.<sup>294</sup>

The CPS issued an interim charging protocol and case review guidance, to guide charging decisions and to be taken into consideration when deciding whether it is in the public interest to prosecute a child.<sup>295</sup> The protocol set out priority categories for police and CPS to manage cases under, with priority cases including where someone is remanded to custody, all COVID-19 related offences, and youth court cases. The guidance also states that prosecutors should consider the time someone has or is likely to spend on remand prior to trial, and should give consideration to the defendants age:

*All cases involving youth offenders must be dealt with expeditiously and avoid delay, which has at its core the principle that there is little point in conducting a trial for a young offender long after the alleged commission of an offence when the offender will have difficulty in relating the sentence to the offence. To maximise the impact on the youth offender, the case must be dealt with as soon as possible.*<sup>296</sup>

Regarding whether prosecution should be considered a proportionate response, the case review guidance sets out that prosecutors should note the COVID-19 crisis is *'producing an expanding pipeline of cases waiting to be heard'*, that proceedings are likely to be delayed, and that significant delays may adversely impact defendants.<sup>297</sup> In light of this recognition, the longer-term implications of the delays and backlogs in the youth justice system are yet to be fully understood.

## Extent of the backlog

In evidence to the Justice Select Committee in May 2020 the Lord Chief Justice stated it has been *'extremely difficult to get reliable data'* in order to understand and manage the situation in courts, leading to the Committee concluding:

*It is remarkable that in 2020 basic data on how many cases are in progress and how many trials due is not yet available to the Lord Chief Justice.*<sup>298</sup>

Understanding and scrutinising the situation for children is even more challenging due to a lack of published, disaggregated data. While regular data has been published on criminal court workload, hearings, and trials during COVID-19, this does not show youth court data, or Crown Court trials involving children.<sup>299</sup> The Justice Select Committee, in two separate reports in July and November 2020, raised concerns that data is not available that shows youth court delays and backlogs, and called on the Government to confirm whether it is collected, if not why so, and if it is, for it to be published separately.<sup>300</sup> In response, in February 2021 the Government shared data on outstanding cases involving children in the magistrates' courts and the Crown Court, but only for the period January-June 2020, confirming no statistics were available after this date.<sup>301</sup> This data showed a 42% increase in outstanding youth court cases between February and June 2020, while outstanding Crown Court cases involving children fell slightly. This slight decrease for the Crown Court may, at least in part, be a consequence of the increase in outstanding youth court cases, as backlogs in the youth court will lead to delays in cases being allocated to the jurisdiction of the Crown Court.<sup>302</sup>

HM Inspectorate of Probation reported that there was a 55% increase in the backlog of cases involving children in the youth court and Crown Court between April to June 2019 and April to June 2020, with considerable regional variation.<sup>303</sup> In February 2021, the Government stated that over the first few months of the pandemic the number of outstanding cases in youth courts increased as more cases were received than finalised, but from July 2020 onwards courts were clearing more youth cases than they were receiving, so the number of outstanding cases reduced week on week.<sup>304</sup> A similar pattern is evident in data on overall magistrates' courts workload, initially increasing, then decreasing from August 2020, although with local variations.<sup>305</sup> However, this data shows the overall number of outstanding magistrates' court cases began increasing again from January 2021.<sup>306</sup>

Similar figures are not published for youth court cases but the Government told the Joint Committee on Human Rights in December 2020 that youth courts were running at *'near to normal sitting patterns'*, with the outstanding caseload forecast to return to pre-COVID-19 levels by early 2021.<sup>307</sup> This was reiterated in response to the Justice Select Committee in February 2021, saying the return to pre-COVID-19 levels was expected *'soon'*.<sup>308</sup> Although data published by the Government in response to the Justice Select Committee shows the number of outstanding Crown Court cases involving children fell from 652 to 617 from

March-June 2020, no later data is available, while the data on all Crown Court cases shows the number of outstanding cases grew rapidly from June 2020.<sup>309</sup>

As highlighted above, the extent of the backlog impacting children as a result of COVID-19 is unclear due to the lack of data available, not only specific to children but for the whole system.<sup>310</sup> However, the criminal justice inspectorates and the Justice Select Committee have raised concerns about significant increases to case backlogs, which were already 'chronic' and significantly growing before March 2020, and were having profound impacts across the criminal justice system.<sup>311</sup> The Chief Inspectors of the criminal justice system stated:

*These unprecedented and very serious court backlogs constitute the greatest risk to criminal justice.*<sup>312</sup>

The Institute for Government estimated a six-month lockdown would result in the highest average court case waiting time ever recorded.<sup>313</sup> Children are facing longer waits for their cases to be heard or for their sentencing: with youth justice lawyers reporting in June 2020 that many children's cases were being adjourned until late 2021,<sup>314</sup> reports from the Lord Chancellor and Law Gazette in late 2020 of cases being listed into 2022,<sup>315</sup> and reports in early 2021 of trials listed in 2023.<sup>316</sup> One case involving a teenager was reported on by The Guardian where the time between the alleged offence and trial date was set to be four years.<sup>317</sup> As Enver Solomon, then Chief Executive Officer at Just for Kids Law told the Justice Select Committee:

*Imagine if you have to wait that length of time, those months, for your case to come to court. It is not good enough.*<sup>318</sup>

There are various concerns raised in the available literature about the impact of long delays to cases, although much of the literature discusses the impact on defendants, victims and witnesses overall rather than focusing on child defendants specifically. The Justice Select Committee highlighted that delays will have left children spending longer in custody on remand, or longer on bail in the community.<sup>319</sup> The Public Accounts Committee, HMCTS and news reports have acknowledged the distress and uncertainty backlogs cause and the impact this has on the wellbeing of those awaiting their hearings or trials,<sup>320</sup> with magistrates highlighting the impact will be felt disproportionately by children.<sup>321</sup> The HM Crown Prosecution Service Inspectorate and the Equality and Human Rights Commission both raised grave concerns that public confidence and trust in the criminal justice system will be eroded by delayed justice,<sup>322</sup> while CPS's interim case review guidance pointed out why it is so important for children to have their cases heard expeditiously to ensure the impact is felt and understood:

*...there is little point in conducting a trial for a young offender long after the alleged commission of an offence when the offender will have difficulty in relating the sentence to the offence. To maximise the impact on the youth offender, the case must be dealt with as soon as possible.*<sup>323</sup>

The Public Accounts Committee published a report questioning the lack of information available on the criminal court backlog, and the Government's ability to address it, stating:

*We have limited confidence in the Ministry's plans for reducing the backlog in the court system, particularly in criminal courts. The backlog in criminal courts was growing before the pandemic, and many organisations have warned that it could take*

*years to clear the backlog. But the Ministry and HMCT could not tell us what level of outstanding caseload is, in their view, acceptable. It is therefore not clear to us what the Ministry is aiming for in its plans to reduce the backlog. What is abundantly clear is the impact that delaying access to justice has on victims and witnesses, who in some cases find themselves waiting years to access justice.*<sup>324</sup>

## **Turning 18**

One of the key issues specifically impacting children highlighted in the literature is the impact of court delays on those who allegedly committed offences as children but are approaching and turning 18 while awaiting their hearing. This is a pressing concern for many, including the Children's Commissioner for England, the Magistrates' Association, Justice Select Committee, and Joint Committee on Human Rights.<sup>325</sup>

As explained by Just for Kids Law and the Youth Justice Legal Centre in their briefing *Timely Justice: Turning 18*, if a child turns 18 before their first court appearance, their case must be dealt with by the adult court, and if a child turns 18 before they are convicted, they can no longer receive youth sentences.<sup>326</sup>

The Justice Select Committee have urged the MoJ to provide information on how many children and young people are projected to find themselves in this position, and what is being done to address the issue. They highlight the profound impact of turning 18 in these circumstances:

*They face being convicted as adults, which could mean longer sentences and rehabilitation periods. There is a vast gap between the youth and adult criminal justice system, and those in this position may find that they lose access to crucial youth offending services, such as diversion schemes.*<sup>327</sup>

As described to the Justice Select Committee by Enver Solomon, then Chief Executive Officer at Just for Kids Law, these young people being dealt with in court as adults 'raises all kinds of issues about fairness, about being treated appropriately and about the disproportionate outcomes'.<sup>328</sup> The Youth Justice Legal Centre (part of Just for Kids Law) highlighted that these young people will lose their right to anonymity,<sup>329</sup> while peers in the House of Lords raised the loss of 'valuable specialist youth court provision'.<sup>330</sup>

Rob Butler MP introduced a Ten Minute Rule Bill into Parliament in February 2021 on the topic,<sup>331</sup> calling for legislation to be amended so those who turn 18 between allegedly committing an offence and appearing in court are heard and sentenced within the youth justice system. In his speech highlighting the urgent need for his Bill, Butler highlighted that in normal circumstances 'it can easily take a year before the first court appearance', and that 'COVID-19 has lengthened delays throughout the whole court system', meaning an increasing number of young people will be impacted. Commenting on the Bill, Pippa Goodfellow, Director of the Alliance for Youth Justice, stated:

*Delays in the system, exacerbated by COVID-19, mean that many children may wait years for their trial, through no fault of their own. The measures proposed in this Bill would allow for fairer, more equitable and age-appropriate justice.*<sup>332</sup>



The Joint Committee on Human Rights, in its report on the human rights implications of the Government's response to COVID-19, also called for these young people to be dealt with as children in the youth courts.<sup>333</sup> The Government response to the Committee stated that HMCTS prioritises cases where the defendant may turn 18 before conviction, and claimed that although these young people will be tried in an adult court and subject to higher maximum sentences *'this does not necessarily lead to significantly longer sentences in practice.'*<sup>334</sup>

### ***Challenges in reducing the impact of court delays on children***

As set out by the criminal justice inspectorates, significant action is necessary to reduce the impact of court delays on children. Lucy Frazer MP, at the time the Minister with responsibility for youth justice, noted that clearing backlogs for children's cases is particularly challenging as they are less likely than adults to be able to have their case heard remotely due to vulnerabilities.<sup>335</sup> According to HM Inspectorate of Probation, Referral Order Panel members regret the fact that court closures and delays have meant they have lost the option of 'early revocation', where they could apply to court for a Referral Order to end earlier than originally set out, in situations where children have made good progress.<sup>336</sup>

HMICFRS has highlighted '*numerous*' examples of serious cases being cancelled at short notice as courts struggle to manage cases,<sup>337</sup> increasing uncertainties and disruption to defendants' lives. Questions have been raised about whether consideration of delays will impact sentencing: a Guardian article highlighted that sentencing guidelines state courts can consider delays as a mitigating factor and set out judges sentencing remarks during the pandemic that showed delays had influenced their decision not to send someone to custody (although these remarks were all regarding adults, it would follow this may be the case for children).<sup>338</sup>

Crest Advisory's report examining how the justice system can survive and recover post-COVID-19 made a core recommendation for sustained investment in the system, highlighting how funding the Government had committed to date to clear backlogs was insufficient.<sup>339</sup>

*The need to take urgent and significant action to reduce and eliminate what were already chronic backlogs in cases...is urgent. Without this, the implications for victims, witnesses, defendants and prisoners are severe.*<sup>340</sup>

The impacts of these delays on the courts and broader criminal justice system in the longer-term are yet to be fully understood but should be seen in the context of a system already under severe strain. Concerted, coordinated action, with significant investment will be required to mitigate the negative consequences for children in the system.

## Virtual justice and participation

With social distancing measures and lockdown restrictions significantly reducing in-person court appearances, courts have used digital technology to continue conducting their business remotely. Live video and audio links, which enable a person to see and hear others taking part in a hearing when they are not in the same location, have been used to some degree for years before COVID-19, in eligible criminal proceedings.<sup>341</sup> Since their introduction around the turn of the century, governments have sought to expand their use - the rationale for doing so including to reduce overly long journeys to court, address 'delay and waste' in the court system, and to cut costs and reduce the number of court buildings needed.<sup>342</sup> The increased use of technology has particularly been pursued under the HMCTS reform programme, *Transforming our Justice System*, which began in 2016.<sup>343</sup> The use of video and audio, or 'live' links, was expanded as explored below during March 2020-2021. This expansion in 'virtual justice', and other adjustments necessary under COVID-19 regulations, may have important impacts both on children's ability to effectively participate in their court proceedings and on justice outcomes.

### Rolling out virtual justice

#### *Legislating for expansion*

The Coronavirus Act 2020 temporarily expanded the situations in which live video and audio links may legally be used in criminal court proceedings. As set out by the Youth Justice Legal Centre, the Act allows for hearings to be conducted entirely by video or telephone in certain circumstances. It allows defendants on bail to appear by live link and enables courts to direct any person to take part in eligible proceedings by live link.<sup>344</sup> It broadens use in preliminary hearings, sentencing hearings, and in relation to enforcement proceedings.<sup>345</sup>

Limitations on proceedings that can be conducted via audio link only are imposed, and legal safeguards remain in place specifying that before a live video or audio link is used, the court must be satisfied it is in the interests of justice to do so; and parties to the proceedings must be given an opportunity to make representations, including the relevant YOT for cases involving children.<sup>346</sup> The decision on whether to use live links ultimately remains a matter for the judiciary. In March 2021, the Government introduced the Police, Crime, Sentencing and Courts Bill, clause 168 of which would make the temporary live link provisions introduced in the Coronavirus Act permanent.

#### *Expanding technology capability*

According to updates from HMCTS, it rapidly expanded live link technology capability in the courts, including from April 2020 rolling out the 'Cloud Video Platform' (CVP) linking police stations and custodial establishments to courts,<sup>347</sup> allowing for confidential communication between lawyers and defendants.<sup>348</sup> HMCTS published and updated guidance about how it will use these video and audio technologies during the pandemic,<sup>349</sup> and guidance for professionals including solicitors, YOTs, and intermediaries, on using the CVP.<sup>350</sup>

The HM Crown Prosecution Service Inspectorate and Justice Select Committee stated that courts adapted quickly to remote hearings.<sup>351</sup> Figures specific to hearings involving children are not available, but HMCTS data overall shows that in April 2020 85-90% of hearings were

taking place over audio or video link, with numbers increasing from around 550 virtual hearings on 23<sup>rd</sup> March to 2,700 on 23<sup>rd</sup> April one month later.<sup>352</sup> HMCTS Chief Executive Officer, Susan Acland-Hood, highlighted an initial 800% increase in just two weeks.<sup>353</sup>

HMCTS data shows after this initial surge in the proportion of hearings conducted remotely, as the number of face-to-face hearings increased over the following months, the proportion of hearings taking place that were conducted via audio or video link was usually between 40-50% throughout August 2020-February 2021.<sup>354</sup> In February 2021 the Government claimed there had been a 4000% increase in remote hearings since March 2020,<sup>355</sup> but this figure appears to be incorrect as it seems to compare a daily total with a weekly hearing total.<sup>356</sup> The correct figure using equivalent weekly data comparing the end of March 2020 to end of February 2021 would show closer to a 370% increase in remote hearings.<sup>357</sup>

The rollout of the CVP, according to a Criminal Justice Joint Inspection report on the impact of the pandemic, *'permitted prosecutors to be deployed efficiently, and in some instances meant advocates were able to cover multiple court locations, bringing real benefits in continuity of representation.'*<sup>358</sup> The inspectorates raised concerns however that the use of CVP declined after its initial increase, and by September 2020 was only used in around 15% of cases (no figures specific to children's cases are available). The inspectors stated in January 2021 that *'in most places, it now seems that there is a clear judicial preference for in-person court attendance'*, going on to call this a *'lost opportunity'* given the growing case backlog. It is concerning that criminal justice inspectors have focused on the lack of take-up of CVP and lack of national protocol on its use as a lost opportunity, rather than analysing what is driving the clear preference amongst the judiciary to have cases held face-to-face. This is particularly concerning given the Government's assurances that judicial discretion ensures children only have court proceedings held virtually when appropriate, despite any given pressures to hold hearings remotely.<sup>359</sup>

### **Video enabled remand hearings**

HMCTS and the YJB published a paper in June 2020 regarding the use of video links in proceedings where a child is held in police detention, or 'video enabled remand hearings'. It set out procedural considerations for where and how a child, their YOT, and parent/guardian should appear in person in court or via video link.<sup>360</sup> The paper suggests that the operational principles it proposes would safeguard children, maintain the safety of professionals and administer quick and fair justice. However, the Youth Justice Legal Centre raised concerns that, in reality, practical considerations may well *'take priority over the welfare of children, as often happens in the criminal justice system.'*<sup>361</sup>

The joint criminal justice inspectors *Impact of the pandemic on the Criminal Justice System* report also highlights that for those having their remand hearings from a police station, virtual arrangements have meant many spend longer held in police custody awaiting their hearing. This is concerning given it is accepted that police cells are not a suitable place for children,<sup>362</sup> and the report states the additional demands on police this creates as they continue to manage risks and welfare needs is *'not sustainable'*, with some forces planning to withdraw from the virtual arrangements. They recommended that *'a new model (which takes account of both the advantages and disadvantages of the virtual court system) needs to be developed as soon as possible.'*<sup>363</sup> Any new model must give distinct and specific consideration to children, ensuring that the welfare of children is a primary consideration, and upholding their rights is central to the process.

## Ensuring children’s effective participation in court hearings

Effective Participation - the ability to understand and be involved in what is happening in court - is a core component of the right to a fair trial.<sup>364</sup> The effective participation of children in their court proceedings is a common concern raised in literature around children in court, due to their young age and developmental immaturity, as well as the prevalence of vulnerabilities such as SEND and other disabilities or difficulties impacting neuro-development and communication.<sup>365</sup> Prior to COVID-19 existing evidence on live links in criminal court proceedings raised concerns that their use exacerbates existing difficulties in ensuring effective participation.<sup>366</sup> For example, research by the Equality and Human Rights Commission, as cited in the Justice Select Committee’s report on the impact of COVID-19 on courts, states:

*Almost all the criminal justice professionals in England and Wales who we interviewed felt that use of video hearings does not enable defendants or accused people to participate effectively, and reduces opportunities to identify if they have a cognitive impairment, mental health condition and / or neuro-diverse condition.<sup>367</sup>*

### Support for children in court

The Government provided assurances that in cases where intermediaries – communication specialists who help children and vulnerable adults engage in and understand proceedings – would usually be available to children in court, they would remain available to children in virtual hearings.<sup>368</sup> Intermediaries for Justice published weekly updates on intermediary practice in light of COVID-19,<sup>369</sup> which highlight concerns raised by intermediaries about conducting assessments and providing support to a child or vulnerable person remotely, as well as the overall suitability of remote hearings for vulnerable people. Crucially for children’s virtual hearings, the Chief Inspector of Probation Justin Russell told the Justice Select Committee that:

*‘Some of the YOTs I spoke to earlier on in the lockdown felt that they were being squeezed out of the process by not having access to the video links, or by not being allowed into some of the video conferences they were running. I think they prefer to be there in person to do face-to-face assessments in court.<sup>370</sup>*

Where hearings involving children have taken place in person, John Bache, Chair of the Magistrates’ Association, assured the Justice Select Committee he believed children were still able to sit next to their parent or guardian, and close to their advocate. He stated that *‘with good, experienced practitioners in all parts of the court, the informal nature and therefore the productivity of the youth court can be assured.<sup>371</sup>* Existing evidence raises concerns about the extent to which this informality is usually maintained in youth courts,<sup>372</sup> and no literature since has shone a light on whether this has been the case during COVID-19.

In response to questions about the impact of live links on children, government representatives provided assurances that *‘there is a range of guidance available regarding the use of remote hearings for children’*, and participants have the opportunity to tell the court if they need support.<sup>373</sup> They also stated they were working with YOTs, the YJB, and YCS to ensure video remand hearings adhere to safeguarding principles, including:

*We have focused on ensuring the child/young person is able to receive the necessary support so that they can fully understand the criminal procedure and have a fair hearing, by engaging with YOTs to properly understand how a child's needs should be assessed.*<sup>374</sup>

It is unclear from the literature how practice has developed between these various agencies and the extent to which YOTs have been able to attend hearings and support children.

### **Concerns about the impact of live links**

During March 2020-2021, as the use of live links in court hearings increased, concerns were raised about how this may impact on children's understanding and participation in their hearings. The Youth Justice Legal Centre published a legal update stating that hearings conducted by video link are likely to impede children's ability to effectively participate in proceedings, *'particularly given the high numbers of child defendants with communication difficulties'*<sup>375</sup>, a sentiment echoed in a Nacro briefing.<sup>376</sup> The Youth Justice Legal Centre told the Justice Select Committee:

*We are extremely concerned that the increase in video link hearings for child defendants, both during the coronavirus and subsequently, severely compromises a child's rights to a fair trial and their ability to effectively participate.*<sup>377</sup>

Considering witness testimony such as the above, the Justice Select Committee stated they *'remain concerned'* that virtual justice is not always tailored to the needs of vulnerable court users, which by definition includes children, highlighting that there is emerging evidence that remote hearings are *'less satisfactory'* for these people.<sup>378</sup>

The Royal College of Psychiatrists told the Justice Select Committee that *'diagnostically, there are some things we cannot do by video link; there are subtleties we cannot pick up'*.<sup>379</sup> The Chair of the Magistrates' Association raised difficulties in participants expressing themselves on video, and the importance of body language.<sup>380</sup> Concerns were highlighted in reports by the Joint Committee on Human Rights and Justice Select Committee about virtual courts interfering with a defendant's ability to get confidential advice from their legal representative.<sup>381</sup> Regarding remote trials, the Times reported that criminal lawyers *'remained unconvinced'* on their use despite a *'successful'* mock trial.<sup>382</sup>

Ensuring that those having their court proceedings held remotely have access to suitable broadband and digital technology that would support their participation remained an ongoing concern,<sup>383</sup> with the Joint Committee on Human Rights highlighting that it is not clear whether special measures were being implemented for digitally excluded people, and calling on the Government to ensure people with learning and communication impairments, particularly children, can participate effectively and are not disadvantaged.<sup>384</sup>

In February 2021 the Judicial College published a new edition of its Equal Treatment Bench Book, which supports the work of the judiciary, including new and expanded content on the impact of COVID-19, and remote hearings.<sup>385</sup> It gives detailed guidance covering many of the issues set out above, aimed at ensuring courts understand how children's engagement and understanding of their proceedings may be impacted by having their hearing held remotely.

Crucially, the use of live links for children's hearings may impact their justice outcomes, with concerns raised by youth justice lawyers, supported by pre-COVID-19 research, that children appearing over video link may be less likely to be granted bail, more likely to be remanded to custody, and more likely to receive custodial sentences.<sup>386</sup> A 2018 report by the Alliance for Youth Justice, based on survey and interview data gathered by Transform Justice, set out that while not enough is known about video links to understand the full impact, those who responded to Transform Justice *'had an overall sense that a child appearing via video link negatively prejudices outcomes.'*<sup>387</sup> The report highlighted comments from YOT workers that, especially where children are appearing via video link from custody, a guilty plea feels more like a *'done deal'*, as does refusal of bail:

*There's something about physical presence in the dock that makes me feel that there is a chance of bail. When appearing via video link it's like a forgone conclusion that bail won't be granted.*<sup>388</sup>

### **A lack of understanding of impact**

With children's effective participation in their court proceedings already at risk, indications in the literature that YOTs and intermediaries, both of whom provide key safeguards for children, may have struggled during COVID-19 to support children in remote hearings<sup>389</sup> are particularly worrying. The Government has made assurances that children's effective participation in proceedings was being supported,<sup>390</sup> and the Chair of the Magistrates' Association told the Justice Select Committee he believed video links can work effectively, that it would be *'fairly obvious'* if a fair hearing wasn't taking place and that an *'experienced youth magistrate'* would step in.<sup>391</sup> There is an overall lack of available literature on the experiences of children in court during this time, in particular a lack of evaluation of how children have been experiencing virtual justice. In the absence of any evidence or meaningful analysis, there remains insufficient evidence as to the impact on the rights of the children involved.

As noted by the Criminal Justice Chief Inspectors, the long-term impact of remote justice on outcomes such as reoffending, or on how justice is experienced, is unknown, highlighting how *'for those changes which are considered beneficial, much more work needs to be done to ensure the necessary governance, resourcing and training are introduced to allow them to successfully become common and widespread practice.'*<sup>392</sup> Echoing this sentiment, Phil Bowen, Director of the Centre for Justice Innovation told the Justice Select Committee:

*We have real concern about how young victims, witnesses and defendants experience remote hearings. Unlike for family and civil cases, there has been no review of the evidence around the use of remote hearings during Covid-19 for the criminal courts. Our worry is that remote hearings could become standard before we know for whom they work and for whom they do not work in our criminal courts. In my view, just as with the right to jury trial, we cannot let the necessary steps that we have had to take during the Covid-19 pandemic determine what the future of our justice system looks like.*<sup>393</sup>

While commentators, including the Justice Select Committee, accepted live links as a *'necessary interim measure in response to the pandemic'*,<sup>394</sup> the Committee urged the MoJ to provide more information on its work around their use, and to urgently commission a

review evaluating the effect of COVID-19 measures in criminal courts, considering the specific effect on access to justice and fairness of outcomes for children.<sup>395</sup>

However, no government literature and limited data<sup>396</sup> has been made available about the use of live links with defendants during COVID-19, and there is no specific information regarding children. The Lord Chief Justice claimed that information has been being gathered about the experiences of court users on video and audio link so that '*careful decisions*' can be made about where they do and do not work well.<sup>397</sup> The Government confirmed HMCTS was '*conducting an evaluation of remote hearings during the pandemic to inform their use in the longer-term*', including considering children's cases, collecting evidence on the volumes, characteristics and outcomes of remote hearings and exploring how different users have varied experiences and perceptions.<sup>398</sup> This evaluation was originally planned for publication in spring 2021, but has not been published, at the time of writing.<sup>399</sup> The long-awaited framework for evaluating the impact of the wider pre-COVID-19 court reform programme was published in May 2021<sup>400</sup> and an interim evaluation report is planned for publication in 2022. Meanwhile, legislation has already been introduced that would permanently embed the broader use of live links made possible under emergency COVID-19 measures.<sup>401</sup>

In March 2021, the Public Accounts Committee raised its concerns that the MoJ was placing significant focus on remote technology as a solution to court backlogs, which it highlighted could take up to 2022 to roll out completely, and about which the MoJ and HMCTS acknowledged it does not fully understand the impact. The Committee concluded:

*There is a risk that the Ministry is overly relying on the potential of technology to manage the increased demand in the court system, without yet having a clear understanding of how the rapid expansion of remote justice impacts on court users or justice outcomes.*<sup>402</sup>

## Remand and sentencing

When a child first appears before the court charged with an offence, the court must decide whether or not to grant bail (under the Bail Act 1976). If bail is refused, they must then decide whether to remand the child to local authority accommodation, or to Youth Detention Accommodation (under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012). This means deciding whether to send the child, unsentenced, to custody to await trial and sentencing, or whether to transfer them into the care of the relevant local authority.<sup>403</sup> When a child appears before the court for sentencing, the court has a number of options available to them, from an absolute or conditional discharge through to Youth Rehabilitation Orders through to custodial sentences.<sup>404</sup> Legislation sets out that the principal aim of the youth justice system is to prevent the reoffending of children,<sup>405</sup> and courts should only sentence a child to custody as a last resort, if a fine or community sentence cannot be justified (also set out in Sentencing Council guidelines).<sup>406</sup> Evidence indicates that custodial remand and sentencing is not in practice always used as a last resort.<sup>407</sup>

Given the pressures on youth justice services and the secure estate (see Chapter 3) during the pandemic, decisions made in the courtroom have played an important role in attempts to stem the flow of children into the youth justice system, where they would require various levels of supervision and intervention, and particularly into custody.

## Stemming the flow of children into custody

Domestic law sets out that a custodial sentence may be imposed only if an offence is deemed *'so serious that neither a fine alone nor a community sentence can be justified.'*<sup>408</sup> Sentencing Council sentencing guidelines, which courts must follow, set out the *'utmost importance'* that custody is only ever used as a last resort for children,<sup>409</sup> and this principle is likewise set out in international human rights conventions. However, pre-pandemic, concerns have consistently been raised that this principle is not applied in standard practice in decisions to sentence and remand children to custody.<sup>410</sup>

The World Health Organisation, the Children's Commissioner for England, and a number of leading youth justice and legal organisations quickly raised concerns about the remanding and sentencing of children to custody, urging the Government and courts to take action to limit children entering custody.<sup>411</sup> Raising concerns about conditions in custody, the Children's Commissioner for England called on the Secretary of State for Justice to introduce a temporary moratorium on short sentences for children, to *'divert children from unnecessarily entering custody and greatly reduce pressure on the system.'*<sup>412</sup>

The Howard League for Penal Reform and twelve other organisations supporting children in the youth justice system wrote a joint letter to lead judges urging them to encourage judges and magistrates to ensure that any decision to remand a child to custody is subject to *'anxious scrutiny'*, that *'children should not be remanded unless there are wholly exceptional circumstances.'*<sup>413</sup> The letter likewise urged judges and magistrates to be encouraged to avoid imposing custodial sentences on children *'at all costs'*, reminding them of existing Sentencing Council Guidance that sets out that the impact of a custodial sentence on the welfare of a child must be considered, and stating that the impact of COVID-19 on conditions in custody clearly falls under this guidance.<sup>414</sup>



No action was taken by the Government to intervene and concretely limit the sentencing or remanding of children into custody through, for example, a moratorium. A court judgment by the Lord Chief Justice in late April 2020 confirmed the approach courts were being encouraged to take to sentencing:

*Judges and magistrates can...and in our judgment should, keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be.*<sup>415</sup>

The Sentencing Council was urged to issue an addendum to their sentencing guidelines to this effect.<sup>416</sup> In June 2020 the Chairman of the Sentencing Council shared a news update on the application of sentencing principles during COVID-19, confirming that:

*Throughout the sentencing process, and in considering all the circumstances of the individual case, the court must bear in mind the practical realities of the effects of the current health emergency. The court should consider whether increased weight should be given to mitigating factors, and should keep in mind that the impact of immediate imprisonment is likely to be particularly heavy for some groups of offenders or their families.*<sup>417</sup>

The Secretary of State for Justice, Robert Buckland, assured the Justice Select Committee that the MoJ was ‘expediting remand hearings to reduce the unsentenced prison population’,<sup>418</sup> while Minister Chris Philp assured MPs that when listing cases courts were mindful of the need to hear cases involving children on remand quickly.<sup>419</sup>

## Custodial remand

The Senior Presiding Judge and Deputy Senior Presiding Judge of England and Wales published a note of listing in magistrates’ courts setting out that all custody cases are priority cases, and as such remand cases continued to be heard by courts throughout the pandemic.<sup>420</sup> The CPS issued interim case review guidance that stated prosecution decisions should consider the length of time someone has spent on remand in custody and any likely period of remand prior to trial.<sup>421</sup> No literature is available which sheds light on the degree to which children’s remand cases have been prioritised, as assured by the Government,<sup>422</sup> or the degree to which prosecution decisions in children’s cases have been impacted during this time.

The Howard League for Penal Reform issued legal and practical guidance for defence lawyers to help them resist applications to remand a child to custody, by setting out evidence and legal requirements on the need to reduce custodial remand due to COVID-19; and to ensure they are making effective bail applications, including setting out information on securing an effective bail package.<sup>423</sup> The Youth Justice Legal Centre likewise advised lawyers to liaise with YOTs about renewing bail packages and making robust bail applications,<sup>424</sup> and Garden Court Chambers issued a protocol on child criminal cases including urging courts to consider bail applications for children on remand.<sup>425</sup>

The Chief Inspector of Probation, Justin Russell, told the Justice Select Committee that some YOT managers felt they had been able to make good arguments to avoid the use of remand. They reportedly were most worried about children remanded in custody before the beginning of COVID-19 lockdown, ‘who are now very severely delayed in waiting for trial dates or sentencing.’<sup>426</sup>

## Remand numbers

In May 2021 the MoJ published data tools to accompany its usual quarterly statistics release which made remand decisions in children's cases discernible.<sup>427</sup> The release shows that the proportion of children in magistrates' courts remanded to custody in the latter half of 2020 stayed the same as pre-COVID-19 levels, at 3%, and the proportion bailed increased slightly (from 47% and 45% in Q3 and Q4 of 2019, to 49% in both Q3 and Q4 of 2020).<sup>428</sup> For children in the Crown Court, the proportion of children remanded to custody fell (from 51% and 47% in Q3 and Q4 of 2019, to 46% and 39% respectively in 2020), and the proportion of children bailed remained roughly the same at 38-39%.<sup>429</sup> In Crown Courts the drop in the proportion of cases remanded to custody is notable.

We can see however that the annual average number of children in custody on remand has stayed roughly the same. In the year ending March 2020 the average number of children on remand was 250. For the year ending March 2021, the average was 244.<sup>430</sup> The chart below shows that while the number of children in custody on remand between March 2020 and March 2021 did initially fall, there were months where it increased and has been increasing since November 2020. The Justice Select Committee urged the Government to investigate the reasons behind these relatively high levels of custodial remand for children, '*particularly given the pressures on the custodial estate during the coronavirus outbreak.*'<sup>431</sup>

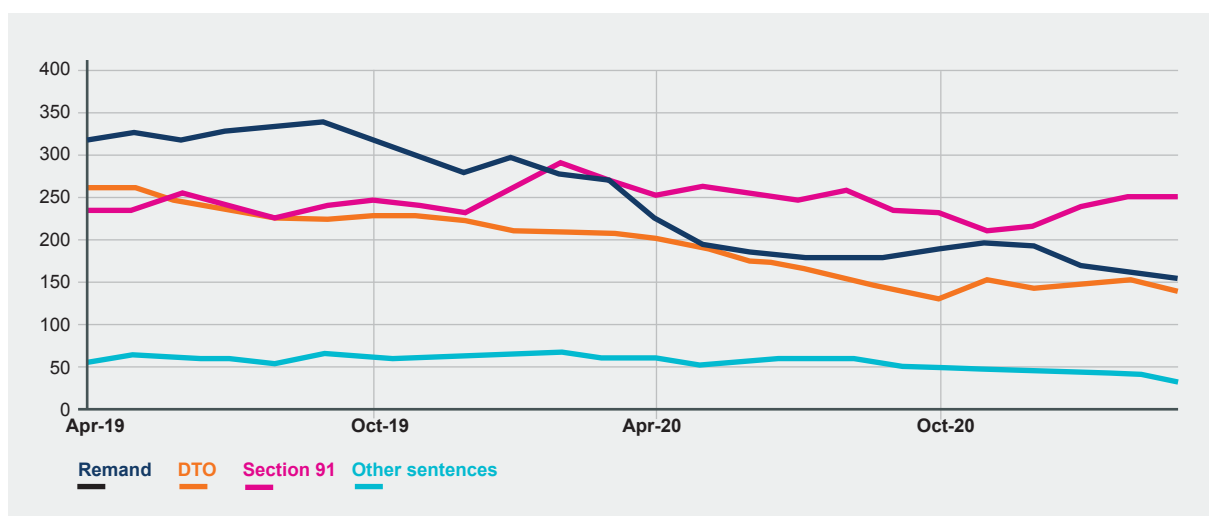


Figure 1 - HMPPS and YCS Youth Custody Data: Secure Population of children by Legal Basis for Detention, April 2019 - March 2021

It is concerning to see that the number of children in custody on remand has not fallen significantly during this period. As discussed in the previous section of this literature review, concerns have been raised about remand hearings taking place over video link, including that children may be more likely to be remanded when appearing over video rather than in person.<sup>432</sup> Concerns have been raised by many including the Justice Select Committee,<sup>433</sup> Chief Inspector of Probation,<sup>434</sup> Equality and Human Rights Commission,<sup>435</sup> and Association of Directors of Children's Services<sup>436</sup> about delays to remand cases and children spending

longer in custody on remand. HM Inspectorate of Prisons ‘spoke to children who were in custody for the first time and were expecting to spend almost a year waiting for their trial.’<sup>437</sup> Their research into the experiences of people in custody during COVID-19 highlighted the anxiety of unconvicted detainees, including children that had spent over a year in custody, compared to those who were sentenced who repeatedly spoke about their release date giving them hope.<sup>438</sup> As highlighted by Criminal Justice Chief Inspectors in their joint report on COVID-19 and the criminal justice system, any increased time spent on *remand* ‘will inevitably add to the anxieties and frustrations of individuals’ with the potential for adverse impacts on the stability of custody.<sup>439</sup>

## **Custody Time Limits**

According to the Youth Justice Legal Centre, considerable concerns were raised about cases for children on remand being heard within the Custody Time Limit (CTL)<sup>440</sup> – the length of time someone can be on remand in custody or under the care of the local authority awaiting their trial. As such, a protocol was published in April 2020 by the Senior Presiding Judge, HMCTS, and CPS setting out a temporary framework for cases involving a CTL. As described by the Youth Justice Legal Centre the protocol states that ‘no CTL case should be adjourned without a future date and, during the period that the protocol is in operation, that date should either be for trial, mention or further remand’, and CTL trials should be given priority over cases where defendants are on bail.<sup>441</sup> The law governing CTL’s sets out specific conditions in which courts can extend a CTL, including where there is a ‘good and sufficient cause’, and the new protocol confirms that extensions due to COVID-19 amount to such.<sup>442</sup>

It is unclear from the available literature what impact this protocol may have had, but CTL cases clearly continued to raise concerns as in September 2020 the Government introduced a statutory instrument to increase the CTL from 182 days to 238 days for both adults and children.<sup>443</sup> As highlighted by the Howard League for Penal Reform, the change was not subject to any parliamentary scrutiny, and initially no Equalities Impact statement was produced.<sup>444</sup> In a joint letter to the Secretary of State for Justice, the Howard League for Penal Reform, Just for Kids Law, and Liberty challenged the lawfulness of the regulations and the lack of consultation with the Children’s Commissioner, highlighted the need for an equalities statement and a Child Rights Impact Assessment, and called for children to be excluded from the extension.<sup>445</sup> Following this the then Youth Justice Minister Lucy Frazer confirmed that an equalities statement had been produced, which the Government only later shared,<sup>446</sup> which included that:

*Defendants who are Black, Mixed, Chinese or Other ethnic groups, males, or children are more likely to be remanded in custody during any point in Crown Court proceedings. Therefore, we consider that temporarily extending the CTL in the Crown Court in respect of those awaiting a trial will also disproportionately impact on people with these protected characteristics.*<sup>447</sup>

The Government initially stated it would not withdraw the regulations for children, so Just for Kids Law issued a Pre-Action letter to challenge this, after which, according to the children’s legal charity, the MoJ ‘agreed to consult the Children’s Commissioner and reconsider their position.’<sup>448</sup> In January 2021 the Government then announced they would introduce a statutory instrument to make children exempt from the CTL extension, which came into force in February 2021 and applied retrospectively.<sup>449</sup>

The increase in the CTL, although in the end in place for a shorter time than intended and removed retroactively, was cause for concern for children and will have impacted children between September 2020 and February 2021. It is particularly concerning that the Equalities Impact Statement found it would have a disproportionate impact on Black, Asian and Minority Ethnic children,<sup>450</sup> who are increasingly disproportionately represented in custodial remand numbers. In a letter to the Secretary of State for Justice, the Howard League for Penal Reform, Just for Kids Law, and Liberty highlighted that the crucial purpose of CTLs is to *'protect the liberty of the citizen, assumed at the present stage not to be guilty'* (R v Manchester Crown Court Ex p McDonald [1999] 1 WLR 841, §848).<sup>451</sup> For children it is particularly concerning given that, as set out by the organisations: *'Forty-eight per cent of the children remanded in custody who were subsequently convicted in the crown court did not receive an immediate sentence of imprisonment.'* Overall, two thirds of children remanded to custody do not receive a custodial sentence: a third are acquitted and a third receive a community sentence.<sup>452</sup> Considering this, the letter states: *'To increase the period of remand in such cases - by any amount, let alone almost a third - is manifestly unfair and plainly contrary to the purpose of the custody time limits.'*<sup>453</sup>

## Sentencing

There is no known literature documenting the impact that COVID-19 has had on courts' sentencing decisions in practice. Quarterly data examining the use of out of court disposals, prosecutions, convictions and remand and sentencing decisions is published but does not usually distinguish between children and adults.<sup>454</sup> However as highlighted above, in May 2021 the MoJ published data tools to accompany the usual statistics release, where data on children is discernible, although it does not cover out of court disposals for children.<sup>455</sup> The quarterly data shows a sharp fall in the number of prosecutions and court outcomes in April-June 2020, after which the number of children proceeded against appears to continue its pre-COVID-19 trend. The number of children sentenced to custody in July-August 2020 and September-December 2020 is significantly lower (45% and 19% respectively) than for the same periods in 2019, whereas for those sentenced to community sentences, there is still a decrease compared to the previous year, but it is less pronounced (4% and 7% respectively). For community sentences the decrease seems to follow pre-COVID-19 trends whereas for custody the decrease is beyond any previous trend.<sup>456</sup>

This could indicate that courts were being more careful in sentencing children to custody but could also be due to other factors such as the types of cases being heard. However, the data shows that the number of cases involving a child convicted of a 'violence against the person' offence, by far the most common offence group for children in custody,<sup>457</sup> increased in July-December 2020 compared to July-December 2019.<sup>458</sup>

Monthly data is also available on youth custody numbers, which shows that the overall population of children in custody fell from 770 in February 2020 to 516 in March 2021.<sup>459</sup> It is unclear from the available data the extent to which this drop is a result of slower processing of cases due to court closures and adjustments, the release of children already in custody, or conscious decisions by courts to minimise throughput of children into custody. The Criminal Justice Chief Inspectors have commented that the drop in adult prison numbers over the same period was largely due to reduced court activity reducing receptions to prison.<sup>460</sup>

# Children in custody

## Chapter 3

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## Chapter 3: Children in custody

Children sentenced or remanded to custody are held in Young Offender Institutions (YOIs), Secure Training Centres (STCs), or Secure Children's Homes (SCHs). The vast majority of literature on custody available across March 2020-2021 focuses on the experience of children in YOIs and STCs, and as such so does this chapter. SCHs are generally recognised by the children's sector to be the most appropriate setting for children deprived of their liberty, due to their smaller size, higher staff ratios and 'child care ethos'.<sup>461</sup> Across March 2020-March 2021, on average YOIs held 497 (76%) children, STCs held 98 (15%) children, and SCHs held 61 (9%) children.<sup>462</sup>

### Conditions and regimes in custody

Understanding the impact of COVID-19 on conditions and regimes in custody must be framed in the context that access to purposeful activity and basic facilities is already inconsistent and unreliable under usual circumstances. While in custody children should have access to education, work, vocational training and offending behaviour programmes, and should be able to exercise and access the library and gym.<sup>463</sup> For example, children in STCs must have access to education or training courses for at least 25 hours a week, and children in YOIs at least 15 hours a week.<sup>464</sup> However, pre-COVID-19 reports on YOIs and STCs consistently raise concerns about the fact that these standards are not always met. Inspection reports and survey data highlight a lack of time spent out of cells, children not receiving their education entitlements, a lack of access to fresh air, showers and clean and suitable clothing, as well as concerns about levels of safety, bullying and victimisation, and the use of separation, force, and restraint on children.<sup>465</sup>

Children in custody are extremely vulnerable, and their experiences of detention exacerbates and compounds this vulnerability.<sup>466</sup> As the country went into lockdown and emergency measures were put in place across the secure estate, questions were raised about the treatment and experiences of children in custody during this exceptional time.

### Managing the risks of transmission in custody

#### ***Measures to prevent and control outbreaks***

As information about how COVID-19 spread and the need to social distance came to light, it was clear that measures would need to be taken to help prevent COVID-19 outbreaks among children and staff in custody. In mid-March 2020, as COVID-19 spread in the community, Public Health England and the MoJ issued guidance for custodial establishments, *Preventing and controlling outbreaks of COVID-19 in prisons and places of detention*.<sup>467</sup> It included information on placing symptomatic people in protective isolation; cohorting (gathering together and separating from the wider population) symptomatic people, clinically vulnerable people, and newly received people; transitions into the community; infection prevention and Personal Protective Equipment for staff; COVID-19 testing; and restricting transfers between establishments and managing court appointments during an outbreak of COVID-19 in an establishment.

The Children's Commissioner for England wrote to the Secretary of State for Justice in March 2020 regarding children in custody, acknowledging the presence of underlying health conditions in detained children and the need to mitigate risks. The Commissioner acknowledged that work was being done by the YCS and NHS to identify at-risk children and put measures in place to protect them, but raised concerns these efforts would be undermined by staffing levels, and called for all children with a health condition making them susceptible to COVID-19 to be considered for early release from custody.<sup>468</sup>

At the beginning of April 2020, the Howard League for Penal Reform and the Prison Reform Trust wrote an open letter<sup>469</sup> to the Secretary of State for Justice, Robert Buckland, calling on the Government to take further action to reduce the prison population in order to protect prisoners, staff and the wider public from coronavirus.

*As congregate settings, prisons act as “epidemiological pumps”, which can drive the spread of disease amongst the wider community.<sup>470</sup>*

They warned that failure to act immediately could lead to loss of life on an unprecedented scale, citing a report by Professor Richard Coker,<sup>471</sup> which set out the most up-to-date evidence concerning the nature, spread and transmission of coronavirus as it applies to prisons, recommending that authorities ‘*should consider alternative options to incarceration where feasible.*’

From April 2020 routine transfers between custodial establishments were discontinued by HM Prison and Probation Service (HMPPS).<sup>472</sup> In late April 2020 the MoJ and Public Health England published an interim assessment of the impact on COVID-19 containment of various population management strategies in prisons, which did not include examination of the children's secure estate.<sup>473</sup> Modelling in the briefing paper judged the impact of social distancing through regime changes and cohorting to be ‘*profound.*’

In February 2021 the then Youth Justice Minister Lucy Frazer confirmed to MPs that measures taken across the secure estate to manage the spread of COVID-19 have included restricting regimes; minimising inter-establishment transfers; compartmentalising including quarantining new arrivals, isolating those with symptoms, and shielding vulnerable people; and routine testing of staff, and of children on reception and transfer.<sup>474</sup> A report on short scrutiny visits by HM Inspectorate of Prisons between April-July 2020 described how children with symptoms were often isolated in protective isolation units, and children with pre-existing medical conditions were given the opportunity to shield.<sup>475</sup> The report stated the collection of measures taken had ‘*undoubtedly helped contain spread of virus.*’ Regarding hygiene, HM Inspectorate of Prisons reported a ‘*greater emphasis on cleanliness than we would usually see*’, but ‘*frequent lapses in standards.*’<sup>476</sup> A briefing by the Prison Reform Trust as part of its COVID-19 Action Prisons Project included a comment from someone in a YOI:<sup>477</sup>



**We haven't had a cell clean in ages so that's a bit poor as we are in a pandemic to do with destroying germs so that's a bit shocking.**

## Prevalence of the virus

From March 2020 the MoJ began sending out stakeholder email updates on COVID-19, which included some data on confirmed COVID-19 cases in the secure estate. However, information on children was not disaggregated. Following calls from the Alliance for Youth Justice to share data on children, HMPPS began publishing the statistics at the end of June 2020, which is when separate data on children's cases was made available.<sup>478</sup>

HMPPS COVID-19 statistics show that between March 2020 and March 2021 there were 110 cases of children testing positive for COVID-19 in custody.<sup>479</sup> Across March and April 2020 there were a total of 8 children confirmed to have COVID-19, then between May-September 2020 inclusive no new cases were confirmed. There was an increase in confirmed cases over the end of 2020 and early 2021, with spikes in November 2020 (24 cases) and January 2021 (36 cases),<sup>480</sup> reflecting similar spikes in the general COVID-19 data for cases in the community.<sup>481</sup> The data, as well as a Prison and Probation Ombudsman investigation into COVID-19-related deaths in custody, report that there have been no deaths of children in custody over the year.<sup>482</sup>

## Imposition of restrictions on children in custody

From March 2020 regimes were severely restricted in YOIs and STCs in order to apply social distancing,<sup>483</sup> similar to measures introduced in the adult estate,<sup>484</sup> with three core objectives: preservation of life; maintaining security, stability and safety; and providing sufficient capacity in the secure estate.<sup>485</sup>

Initial short scrutiny visits to YOIs by HM Inspectorate of Prisons highlighted that managers had acted quickly to implement social distancing measures.<sup>486</sup> Communication between staff and children regarding the restrictions and the need for them was noted by HM Inspectorate of Prisons as effective.<sup>487</sup> Time out of cell was restricted to essential activities, including exercise, and in 'family groups' initially of two to five children.<sup>488</sup> Inspectors highlighted that the regime for new arrivals, who were kept in separate units for a 14-day-period, was particularly restrictive.<sup>489</sup> In its May 2020 briefing, *Children in prison during the Covid-19 pandemic*, the Howard League for Penal Reform described the situation:

*There are no face-to-face visits, no face-to-face education in the majority of establishments and no therapy. Children are experiencing difficulties in accessing the support they need to plan for release. The usual safeguards that exist, including on-site advocacy services, are no longer present.*<sup>490</sup>

The imposition of restrictions varied significantly between different establishment types. In SCHs, children's social care guidance set out that as children's homes are usually considered 'households', social distancing in the house in that case would not be required, but when deciding if they are a household and if there is a need to isolate, staff should consider the physical layout and bedroom and staffing arrangements.<sup>491</sup> A blog by Ofsted's Senior Officer for the Secure Estate noted that 'staff and managers in SCHs are managing to keep an almost normal routine for children. Children are still attending education and do some of their usual activities' and highlighted 'really positive feedback from children about how staff are looking after them and the care they are receiving.'<sup>492</sup>



In June 2020 the MoJ and HMPPS published the *COVID-19: National Framework for Prison Regimes and Services*, providing a 'conditional roadmap' for the easing of restrictions, including setting out five stages of lockdown in the secure estate, conditions to operate at each stage, and what regimes would look like in each stage.<sup>493</sup> The five stages range from 'Complete Lockdown' at stage 5 where time out of cell and social contact is minimised, to 'Restrict' at stage 3 with compartmentalisation and social distancing remaining in place but social visits and classroom based learning reintroduced, to 'Prepare' at stage 1 where regimes can operate without social distancing, with ongoing testing and monitoring. The document highlights that restrictions must be necessary and proportionate. It states that the 'medium-term' national framework would be accompanied by area-specific Exceptional Delivery Models, and confirms that Ministers would make decisions on which stage the secure estate is in.<sup>494</sup>

Public updates were not routinely shared on which regime stage different establishments in the secure estate were in. Regime stages were sometimes mentioned on individual establishment guidance pages in relation to visits,<sup>495</sup> and in inspectorate reports – for example it was confirmed in July 2020 that Feltham A and Werrington YOIs were in stage 3, and in December 2020 the Government told the Justice Select Committee that *'the large majority of prisons continue to operate at Stage 3 of the National Framework.'*<sup>496</sup> Commenting on the framework, then Chief Inspector of Prisons Peter Clarke told the Justice Select Committee:

*...the children's estate is literally a footnote to it. It points out in a footnote that the framework applies to YOIs. The fact is that the so-called exceptional delivery models, which are being put together to implement the framework in practical terms, have not so far included the children's estate, and there is going to be a separate one drawn up for the children's estate. It is all part of the bigger problem, which is that, basically, children's custody is a subset of the adult prison estate and is treated as such in many ways. There needs to be far more discrimination.*<sup>497</sup>

The Justice Select Committee, in its July 2020 report on the impact of COVID-19 on custody, noted this with disappointment and concern, stating *'there does not appear to be a sufficiently clear, separate plan'* for the children's custodial estate, and that the specific needs of children should be clearly articulated. They continue:

*The Committee recommend that the MoJ and Youth Custody Service set out in greater detail specifically how the children's estate will transition out of the current phase of lockdown, bearing in mind our current understanding of the relative risks from Covid-19 in the youth custody estate and those in the adult estate.*<sup>498</sup>

The result of this lack of separate consideration of children in custody is articulated in the HM Inspectorate of Prisons annual report:

*For four months the restrictions in place for the children's estate simply mirrored those for adults, taking no account of the specific needs of children. The primary example of this was the curtailment of all face-to-face education at the public sector sites. The impact of this decision was that children in the two public sector YOIs were locked up for more than 22 hours every day for more than 15 weeks. For those at Cookham Wood, time out of cell was as little as 40 minutes a day for over a month. This was both disproportionate and avoidable. At Parc, education was closed for just one week as managers put in place health and safety measures.*<sup>499</sup>

In evidence to the Justice Select Committee in July 2020, then Children's Commissioner for England Anne Longfield, highlighting that *'initial relaxations'* of restrictions had just started to take place in custody, compared YOIs and STCs to SCHs:

*It contrasts very much with children who have been housed in secure children's homes where there are youth custody beds. They have maintained pretty much a normal regime. They have been out of their rooms, and they have been having education sessions. There is a lesson about how it could have been treated differently, looking at the model for secure children's homes rather than a model for adult prisons, which is, essentially, the difference we have.*<sup>500</sup>

HM Inspectorate of Prisons suspended its planned inspection schedule between March 2020 and May 2021, replacing YOI inspections with short scrutiny visits,<sup>501</sup> then scrutiny visits.<sup>502</sup> HM Inspectorate of Prisons, Ofsted, and the Care Quality Commission, which jointly inspect STCs, also suspended routine inspections, instead undertaking assurance visits.<sup>503</sup> Alongside reports on scrutiny and assurance visits,<sup>504</sup> HM Inspectorate of Prisons also published a thematic review examining the experiences of those in custody in 2020 during COVID-19, *What happens to prisoners in a pandemic?*, based on interviews with people held in five prisons and one establishment holding children.<sup>505</sup>

## Time out of cell

Inspectors in May and July 2020 highlighted time out of cell in YOIs was *'extremely limited'* and raised concerns about variation between establishments.<sup>506</sup> Later reports are available for Feltham A and Wetherby and Keppel YOIs which highlight ongoing variation: in Feltham A by February 2021 children were out of their cells on average 4.5 hours a day and 3.5 hours during the weekend;<sup>507</sup> in Wetherby and Keppel in January 2021 only 30% of children said they spent over two hours out of their cell each day.<sup>508</sup>

The picture in the STCs was also mixed. Following the relaxing of restrictions commencing in April 2020 and becoming more widespread in September 2020, at the time of Oakhill STC's assurance visit in November 2020, inspectors noted children were spending *'substantial periods outside their locked bedrooms'*, including attending five hours of education a day and having time slots outside their rooms in the evening.<sup>509</sup> By contrast, in October 2020 inspectors were so concerned by the extent to which children were locked in their rooms at Rainsbrook STC, and the lack of education provision,<sup>510</sup> that they conducted a further monitoring visit in December 2020, which found:

*Some children are still being locked in their rooms for 23.5 hours a day for days or even weeks, despite assurances that this would be stopped.*<sup>511</sup>

They found there to be *'no rationale'* to support the practice of only allowing newly admitted children out for 30 minutes each day. Following this, the Urgent Notification process was invoked.<sup>512</sup> The resultant follow-up visit in January 2021 found *'early signs of improvement'* and that children were no longer locked in their rooms for *'excessive periods of time'*.<sup>513</sup> However, in June 2021 a second Urgent Notification process was invoked, and Secretary of State for Justice Robert Buckland confirmed all children were to be removed from the STC, *'amid serious ongoing concerns about safety and performance'*.<sup>514</sup>

The daily experiences of children in custody during the COVID-19 pandemic have been described by secure estate inspectors as *'bleak'*.<sup>515</sup> The Children's Commissioner for

England described the regime as 'draconian' and 'likely to have long-term effects on the children incarcerated'.<sup>516</sup> The Joint Committee on Human Rights told the Government that children must not under any circumstances be subject to restrictions amounting to solitary confinement.<sup>517</sup> As set out by the Howard League for Penal Reform in its May 2020 briefing on children in custody during COVID-19:

*The internationally accepted definition of solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day.<sup>518</sup> After 15 days solitary confinement becomes prolonged, which the Supreme Court has noted can cause irreversible psychological harm.<sup>519</sup> Most children in YOIs are now routinely held in prolonged solitary confinement.<sup>520</sup>*

Concerns have been raised by the Joint Committee on Human Rights and others about Article 3 of the European Convention on Human Rights - prohibition of torture and inhuman or degrading treatment – being breached.<sup>521</sup> A Hodge Jones & Allen Solicitors blog on the issue highlighted:

*A report<sup>522</sup> compiled by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, outlined evidence that segregation "can have an extremely damaging effect on the mental, somatic and social health of those concerned", which "increases the longer the measure lasts and the more indeterminate it is".<sup>523</sup>*

It is therefore extremely concerning that regarding a visit to YOIs in July 2020 HM Inspectorate of Prisons reported:

*...nearly all children had been locked up for more than 22 hours every day since the start of the restrictions, which had been imposed some 15 weeks before our visit. This was both disproportionate and avoidable.<sup>524</sup>*

Other reports across 2020 included children at Cookham Wood having 40 minutes a day out of their cells,<sup>525</sup> and an hour at Wetherby and Keppel,<sup>526</sup> and while there were reports of increases from summer 2020 as education was reintroduced,<sup>527</sup> even into 2021 time out of cell had remained very low for some, with children in Wetherby and Keppel mostly reporting less than two hours.<sup>528</sup> The annual report of the Independent Monitoring Boards (IMBs) summarised the situation:

*Many young people across the youth estate were effectively held in solitary confinement for most of the first lockdown period, March to July 2020... both the immediate and cumulative effects on young people's mental health have been severe.<sup>529</sup>*

According to inspectorate reports, the situation was even worse for children arriving in custody, who were kept separated from everyone other than any children who arrived on the same day, meaning if they arrived by themselves they would have no interaction with any other children for two weeks.<sup>530</sup> Time out of cell was worse for new arrivals, at 30 minutes.<sup>531</sup> Inspectors noted these conditions, 'tantamount to solitary confinement', would be 'highly likely to be damaging to [children's] emotional and physical well-being'.<sup>532</sup>

Multiple news articles across the year raised concerns about solitary confinement of children, highlighting comments from lawyers disputing claims by the MoJ that children were receiving four hours out of their cells each day,<sup>533</sup> and concerns that their clients had

become depressed, anxious, and agitated,<sup>534</sup> and that *'time is losing meaning to them.'*<sup>535</sup> Media articles also highlighted comments from a child with experience of being remanded to an STC at this time.<sup>536</sup>

*"For three or four months it was in the cell 23 hours a day. By the last month I was there I got about an hour of education as well as 45 minutes out."*

*"You get taken for a walk to get some air but you don't talk to anybody but the guard. It started to really affect me."*

The Director of children's rights charity Article 39 highlighted the particularly damaging impact of keeping children locked in their cells for such substantial periods of time:

*It is psychologically and emotionally damaging for any child but especially cruel for those who have learning disabilities, mental health problems and for children who have endured earlier abuse and neglect.*<sup>537</sup>

## Education and activities

In all YOIs other than Parc, face-to-face education was completely suspended for 16 weeks from March 2020, replaced by in-cell education packs.<sup>538</sup> While in April 2020 Parc was reportedly delivering two hours of face-to-face education each weekday.<sup>539</sup> According to the Prisoners' Education Trust, in-cell education included 'distraction packs' of activities in the immediate term, then curriculum-based packs, and children registered on a qualification were receiving relevant coursework but were *'unlikely to be able to complete any practical assessments'*.<sup>540</sup> The Government confirmed *'some form'* of face-to-face education had resumed across YOIs by July 2020,<sup>541</sup> although a report on Wetherby and Keppel stated that for nine months most education had been delivered through in-cell packs.<sup>542</sup> HM Inspectorate of Prisons questioned the lack of education provision in public sector YOIs:

*Throughout the restrictions, vulnerable children in the community and in privately-run secure sites were able to continue to attend school. We do not understand why the same approach was not taken for children in public sector custody and we consider the loss of education for so long to have been disproportionate.*<sup>543</sup>

The IMBs' annual report echoes this, with Boards arguing that most children in YOIs would have classified as *'vulnerable'* and therefore should have received some form of face-to-face education throughout lockdown.<sup>544</sup> The report highlights that as children returned to school in early summer, there remained *'very limited'* return to education provision in YOIs.

Less information is available regarding STCs during the first months of the pandemic as assurance visits did not take place until late in 2020, but incremental increases to classes are noted to have been introduced from mid-June 2020 in Rainsbrook, and full lessons are noted to have resumed in September 2020 in Oakhill, with full entitlement of five hours a day available in both STCs at the time of visit in October and November 2020.

With education and training restricted, concerns were raised, including by the Prisoner's Education Trust, about the *'significant'* impact on children's wellbeing, highlighting that the *'blanket ban'* on education in line with the adult estate was *'certainly not in children's best*

*interests*.<sup>545</sup> The reduction in education provision is particularly concerning given children in custody already have some of the lowest levels of educational attainment and engagement compared to other children,<sup>546</sup> and given the Government's own view that education should be central to custody (for example with the development of Secure Schools).

Keith Fraser, Chair of the YJB highlighted to the Justice Select Committee that reduced education *'leads to a sense of increased isolation and could have a detrimental impact on children in their re-assimilation to society'*.<sup>547</sup> Questions were raised about the quality of education packs, with inspectors noting *'very few'* children said the in-cell education packs were helpful.<sup>548</sup> The IMBs stated in-cell provision was *'woefully lacking and poorly delivered, largely consisting of distraction packs rather than learning materials'*,<sup>549</sup> and the Howard League for Penal Reform highlighted:

*One child told the Howard League that this consisted of some sheets on Maths and English that took him around 25 minutes a day to complete. There was no support with this work. The child described the worksheets as basic and not tailored to his learning needs or stage of education.*<sup>550</sup>

Francesca Cooney, Head of Policy at Prisoners' Education Trust also raised concern about the impact of in-cell learning:

*...in-cell activities and even digital technology are a poor substitute for classroom learning and engaging with teachers and peers. Children – especially those with disrupted, disjointed or even damaging prior experiences of education – need personal support and interaction to learn.*<sup>551</sup>

The IMBs highlighted that although education provision gradually improved, by the end of 2020 it still fell *'well short'* of pre-pandemic levels and standards. The report states:

*It is clear that some education providers had not adopted a creative approach to delivery after many months into the pandemic, thereby severely disrupting the rehabilitation of many young people, and the education and skills needed to find a job upon release.*<sup>552</sup>

However, one change welcomed by children according to HM Inspectorate of Prisons has been the smaller class sizes as face-to-face education resumed.<sup>553</sup> The Prisoners' Education Trust and Centre for Social Justice also called for lessons to be learned about the use of digital technology to improve education in custody.<sup>554</sup>

In December 2020 the Government highlighted that the *'family groups'* formed for children to access out of cell activities had expanded and retracted in size depending on COVID-19 risk factors, and that they had recently opened the option of mixing some family groups together to expand access to education and interventions.<sup>555</sup>

As well as in-cell education packs, HM Inspectorate of Prisons noted YOIs had enhanced in-cell activities including games consoles, puzzle packs and in-cell workouts.<sup>556</sup> Children have been eating meals in their cells, and in some cases children were going 16 hours between their evening meal and breakfast, which is *'too long'* according to HM Inspectorate of Prisons.<sup>557</sup> Across YOIs and STCs inspectors reported access to healthcare was maintained.<sup>558</sup> Some children have had access to youth club activities,<sup>559</sup> with an evaluation of a youth work training project by Kinetic Youth that took place at Feltham during COVID-19 finding it helped improve children's time out of cell.<sup>560</sup>

## Mental health and wellbeing

The overriding concern regarding children in custody during COVID-19 has been the impact on children's mental health. These concerns have several dimensions, considering the prevalence of mental health needs among children in custody prior to COVID-19, concerns about access to support services during the crisis, as well as the increased pressures on mental health associated with experiences of custody during the pandemic. The Howard League for Penal Reform quoted a child they supported in their briefing: <sup>561</sup>



**It's stressful. I'm behind my door all day.  
It's getting to my head.**

Some services including advocacy and mental health services withdrew their provision in custody,<sup>562</sup> with staff and IMBs raising concerns regarding the withdrawal of more intensive one-to-one programmes such as those provided by the child and adolescent mental health service (CAMHS), and HMPPS forensic psychology services.<sup>563</sup> The Howard League for Penal Reform noted in May 2020 that according to its legal work and contact with children no therapy was taking place.<sup>564</sup> Commenting on the withdrawal of specialist services, the IMBs' annual report notes:

*Prison officers, chaplaincy staff, and other external agencies, such as Wellbeing, Kinetic Youth and RoadLight, attempted to fill this much-needed gap. While their efforts are to be commended, the gaps left by the absence of usual services and the reduced regime meant that inexperienced staff were responsible for caring for the most vulnerable young people<sup>565</sup>*

The Government assured the mental health of those deprived of their liberty has remained a priority.<sup>566</sup> However, HM Inspectorate of Prisons inspection reports and its thematic review, *What happens to prisoners in a pandemic?*, published in February 2021, raised concerns about insufficient mental health support 'at a time of heightened anxiety', including 'limited specialist secondary mental health services'.<sup>567</sup> The IMBs' report notes that while some services returned or resumed after the first lockdown, these may only be dealing with the most acute cases.<sup>568</sup> The report raises concerns that the abrupt interruption to mental healthcare has impacted many children, with the long-term implications on mental health yet to be determined, and that there will be a 'substantial' backlog of one-to-one therapeutic work to reassess children's needs after lockdown.<sup>569</sup>

In its May 2020 and July 2020 reports on short scrutiny visits, HM Inspectorate of Prisons welcomed that staff in YOIs had introduced various enhanced safeguards to monitor children's wellbeing and mental health, including conducting more in-depth welfare checks, and monitoring and talking to children who had not made phone calls or were declining their time out of cell.<sup>570</sup> However, they also noted inconsistency in welfare checks.<sup>571</sup> The Government also confirmed it was providing support to Governors to mitigate welfare risks

including resources for staff and materials for those in custody.<sup>572</sup> According to the Government the 'SECURE STAIRS' framework for Integrated Care reportedly '*enhanced its approach to meet the needs of both children and staff focusing on the importance of connectivity*','<sup>573</sup> and work had been progressing with '*the most vulnerable and challenging*' children in custody through the Critical Case Pathway, '*a multi-disciplinary pathway which aims to provide oversight, assurance and support to professionals working with the most exceptionally complex young people in the youth custody estate, and take action as necessary to ensure effective assessment, planning and co-ordination of services.*'<sup>574</sup>

Then Chief Inspector of Prisons Peter Clarke raised concerns in July 2020 that there was a real risk of psychological decline and long-term damage.<sup>575</sup> In the thematic review, *What happens to prisoners in a pandemic?* Clarke's successor Charlie Taylor described the cumulative effect of '*such prolonged and severe restrictions*' on mental health and wellbeing as '*profound*', and noted with concern the decline witnessed in emotional, psychological and physical well-being.<sup>576</sup>

## Case study

### What happens to prisoners in a pandemic? HM Inspectorate of Prisons

K, a child, said that the long periods locked up without activity or stimulation had affected his wellbeing. The restrictions had been very frustrating for him. He described sleeping for days on end and being unable to move from his bed because he had been there for so long. It made him question his purpose in life. He said: 'It was like my life had gone to waste, I had nothing to do, absolutely nothing to do - couldn't run - a feeling I've never felt in my life.' He developed a routine in his cell to help manage but found the boredom difficult to deal with and was craving education. He talked about his efforts to stave off chronic boredom: 'It felt like I forgot myself, cos I was hardly talking... in my pad for that long I'd end up counting myself to sleep... I'd be that bored... cos I'd been in my pad for that long, I was counting every day, I'd count my toes, I'd count my fingers, I'd count my hands... I'd sit on my bed thinking, why am I counting? It felt like I forgot myself.' He described having to release his energy when he was eventually unlocked and walking deliberately slowly back to his cell to eke out a few more minutes of time out of cell. He described his experience of restrictions thus far as the worst six months of his life.

As well as the impact of confinement on children, including children reporting a lack of purpose, feeling drained and depleted and sleeping away the time,<sup>577</sup> other anxieties impacting children's mental health and wellbeing highlighted in the literature have included worries about family members in the community,<sup>578</sup> and not knowing how long restrictions would last.<sup>579</sup> According to HM Inspectorate of Prisons children spent time talking to others through their cell windows, and said they missed the developmental opportunities of social interaction.<sup>580</sup>

Children in custody on remand, many of whom have spent longer in custody due to court delays,<sup>581</sup> reported particular anxieties: the HM Inspectorate of Prisons thematic review on custody during COVID-19 highlights some children had spent over a year in custody waiting for their trials, stating: '*This was a daunting prospect and felt very unfair to them. The uncertainty they described contrasted starkly with prisoners serving determinate sentences, who repeatedly told us how a release date gave them something positive to work towards.*'<sup>582</sup> As one child explained:



**I am going to be on remand for one year...  
The delay in my case has been the worst  
effect of coronavirus.**

In February 2021 the Justice Select Committee stated it is '*not yet clear*' what the effect has been on children's mental health and levels of self-harm.<sup>583</sup> A report on the impact of lockdown on prisoners' mental health, which only focused on adults, found around half of people reported worsening mental health, with women and those under the age of 21 the most likely to report a decline.<sup>584</sup> Concerns have also been raised about the impact of lockdown on the physical health of people deprived of their liberty, but again the literature on this does not focus on children.<sup>585</sup>

In June 2020 Keith Fraser, Chair of the YJB, told the Justice Select Committee that '*there is some evidence at the moment, and we are testing its validity, of additional self-harm and an increase in attempted suicide*'. Conversely, HM Inspectorate of Prisons noted recorded self-harm had reduced or was stable in YOIs in April 2020 and July 2020,<sup>586</sup> and available reports on YOIs in early 2021 found self-harm had remained lower than before the pandemic, and in Feltham A was '*very low*'.<sup>587</sup> Then Youth Justice Minister Lucy Frazer told the Justice Select Committee in July 2020 that levels of self-harm had fallen in consecutive months since January 2020, with the figures to be published in the normal timetable.<sup>588</sup> The Committee found this encouraging and asked the MoJ to learn lessons about why that looks to have happened.<sup>589</sup>



## Bullying and violence

As children were spending vast proportions of their time in their cells, inspectors reported reductions in bullying and violence, although fluctuating levels and spikes in assaults have been noted.<sup>590</sup> Then Youth Justice Minister Lucy Frazer told the Justice Select Committee that some children felt safer in custody (YOIs) due to the restrictions:

*Some governors have reported that when children do not have to keep up the bravado of being with their peers for a long period in big groups it has made them feel a little safer. We have learned from that and, going forward, we are going to do more work in small groups, because people found that much safer and much easier to manage.*<sup>591</sup>

HM Inspectorate of Prisons' February 2021 thematic review also noted that violence had reduced, and children thought being unlocked in smaller groups had been effective.<sup>592</sup> Some children also reported putting to bed old disagreements as COVID-19 had put problems into perspective. However, IMBs have highlighted that as some restrictions eased, some establishments saw a rise in assaults.<sup>593</sup> IMBs also reported that as time under lockdown went on, many assaults on staff were being triggered by children's frustration at the lack of exercise and purposeful activity.<sup>594</sup>

HM Inspectorate of Prisons' thematic review noted that rather than having gone away, violence, bullying and intimidation had taken on new forms, with children reporting an increase in verbal abuse and intimidation at cell doors, through windows and across landings. The review notes:

*...the sheer length of time children were alone in their cells listening to threats meant that the effect on them was more pronounced. Those making the threats felt at liberty to escalate their abuse because they were unlikely to ever be unlocked at the same time as their victim during the current restrictions.*<sup>595</sup>

Children described the impact to HM Inspectorate of Prisons as making them 'paranoid', and:<sup>596</sup>



**... it gets you mad, verbal non-stop every single day and every single night. If someone verbals me I get mad easy, so just sitting in my pad sweating.**

Given being locked up or stopped from mixing with other children is a common 'behaviour management' tool in custody,<sup>597</sup> but children were already experiencing this due to COVID-19 restrictions, it is unclear how the response to bullying and violence may have been affected during this time. An inspection report of Feltham YOI found the number of children that had been separated reduced during the pandemic, as had the number of adjudications.<sup>598</sup> A report on Wetherby and Keppel YOI found the use of separation had generally been lower but had increased to pre-pandemic level in two months, attributed to an

increase in violence and shouting from windows.<sup>599</sup> The Basic Level of the incentives scheme in YOIs and adult prisons, which deprives people of privileges for 'poor behaviour',<sup>600</sup> was suspended by the Government during COVID-19 due to concerns about wellbeing,<sup>601</sup> although the report on Feltham YOI only said it had 'largely ceased'.<sup>602</sup> Inspection reports found managers had adapted the scheme to better fit conditions in custody during the pandemic,<sup>603</sup> and rewards for positive behaviour remained in place, but found examples of 'unofficial punishments' including turning the water off in children's cells, and concerns about limited conflict resolution work due to children being unable to mix.<sup>604</sup>

## Staffing levels

One of the initial concerns raised regarding custody was around staffing shortages due to COVID-19.<sup>605</sup> In March 2020 the Children's Commissioner for England wrote to the Secretary of State for Justice stating:

*My overriding concern is the maintenance of safe staffing levels, in order to enable children to be safe and have their basic needs accommodated. For children, basic needs includes access to healthcare, ability to socialise with peers and family, to participate in education and to get some exercise.*<sup>606</sup>

HMPPS began publishing data on staff absences due to COVID-19 in August 2020, but the quarterly statistics do not disaggregate between Prison and YCS staff.<sup>607</sup> Data was provided for April-July 2020 for SCHs, STCs and YOIs which showed total staff absences of 171 in April, 149 in May, 178 in June, and 160 in July, with a significant proportion of these from Wetherby and Keppel YOI, Cookham Wood YOI, and Barton Moss SCH.<sup>608</sup> The Children's Commissioner for England noted estimates of staffing level drops of 30%,<sup>609</sup> while an Explanatory Memorandum to changes to STC rules stated the restrictions were designed for STCs 'operating with a workforce reduced by 25% through self-isolation'.<sup>610</sup>

Reports on initial visits to YOIs highlighted 'significant' staffing shortfalls in March and April 2020,<sup>611</sup> but that staffing levels had 'recovered'.<sup>612</sup> Reports on visits to Feltham A and Wetherby and Keppel in early 2021 show that staff shortfalls had continued,<sup>613</sup> and had been significant in Wetherby and Keppel over the previous five months due to staff contracting COVID-19 or needing to self-isolate.<sup>614</sup> However, the reports indicate that despite staff shortages, as regimes were restricted staffing levels were generally sufficient.<sup>615</sup>

## Visits and contact

Maintaining and strengthening relationships with friends and family outside of custody is important for the general wellbeing and mental health of children, as well as being an important factor in effective and sustained resettlement.<sup>616</sup> Between March 2020-2021, as well as restrictions to daily life within custody, children were also subject to restrictions on contact with those outside of custody, in order to meet national lockdown and social distancing guidelines. This has significant implications for the maintenance of relationships with children, oversight and safeguarding, and resettlement planning.

### Face-to-face visits

In March 2020, the MoJ announced that all face-to-face visits to prisons were cancelled.<sup>617</sup> While the announcement did not mention the children's secure estate, it is confirmed by inspectorate reports,<sup>618</sup> and in evidence to the Justice Select Committee, including from then Youth Justice Minister Lucy Frazer, that visits were suspended for children in YOIs and STCs.<sup>619</sup> Department for Education guidance for children's social care services confirms that face-to-face contact with families and professionals was always allowed in SCHs, and should be prioritised, while changes were made to regulations to also allow for virtual visits.<sup>620</sup> Secretary of State for Justice Robert Buckland, in the Government's response to the Justice Select Committee's report on COVID-19 in prisons, stated that the YCS had been able to 'take a bespoke approach to social visits, maintaining face-to-face visits throughout the pandemic.'<sup>621</sup> It appears Buckland is referring to visits on compassionate grounds, and it is unclear the extent to which these continued across the estate if so.

The ban on face-to-face visits has had major implications for children and the quality of their daily lives. In a briefing on children in custody during COVID-19, the Howard League for Penal Reform described the impact of the ban on visits to the secure estate:

*Children's access to the outside world is severely restricted. The cancellation of all visits means families, social workers, youth offending team workers, lawyers and doctors cannot have face-to-face visits with children... The absence of external visitors not only affects children's access to services and support; it also reduces the opportunities for external scrutiny and therefore has worrying implications for safeguarding.*<sup>622</sup>

HM Inspectorate of Prisons' reports on custody during COVID-19 highlighted that children's main complaint was the suspension of social visits,<sup>623</sup> and that those in custody found it difficult to cope with.<sup>624</sup> HM Inspectorate of Prisons stated that the suspension of visits from friends and family had a 'dramatic' and 'significant' impact on many children,<sup>625</sup> who went months without any face-to-face contact with loved ones.<sup>626</sup> Despite understanding why visits had been suspended,<sup>627</sup> children told inspectors that they were concerned and frustrated about not seeing parents, a worry that was exacerbated by not knowing how long the situation would last.<sup>628</sup> A report on Rainsbrook STC highlighted that children said they feel 'connected' to their families despite COVID-19, but miss physical contact: One child commented:

*"You need a hug more at the moment, don't you?"*<sup>629</sup>

HM Inspectorate of Prisons' thematic review on the experiences of those in custody during COVID-19 included a quote from a child they spoke to:

*“But now there’s no visits, it is tough to be honest – like not seeing your mum, your dad, your brothers, your friends, it is hard, but this is not forever, I mean like it’s not forever... [he misses] little things, hugging and speaking to them, holding hands when I’m talking to them, you know, little things like... a lot of things to be honest... My mum’s got a lot of things going on, she’s getting on now – I’m always thinking about her – I’m always ringing her telling her, ah take your medication... I always used to do stuff for my mum... it is tough... [but] it’s not forever, it’s temporary...”<sup>630</sup>*

Establishments worked to make socially distanced face-to-face visits feasible, reintroducing them in summer 2020,<sup>631</sup> although with restrictions depending on which tier the area was in.<sup>632</sup> According to then Youth Justice Minister Lucy Frazer, social visits restarted in YOIs in mid-July 2020,<sup>633</sup> as they did in adult prisons.<sup>634</sup> Inspectorate reports highlight that visits in Wetherby and Keppel YOI begun earlier, in June 2020,<sup>635</sup> and resumed in July in STCs.<sup>636</sup> Visitors were required to wear face coverings and no physical contact was allowed.<sup>637</sup> The number of social visits permitted a month reportedly reduced to allow for social distancing,<sup>638</sup> with mixed reports that children were able to have only one,<sup>639</sup> or up to two visits a month,<sup>640</sup> or later in the year one a week.<sup>641</sup> Take up of visits was low according to HM Inspectorate of Prisons, with reports highlighting concerns about travelling, and social distancing restrictions making visits *‘less desirable for children and their visitors’*.<sup>642</sup> During the second national lockdown in the community during November 2020, visits to the adult estate were suspended but in the children’s estate visits continued.<sup>643</sup> The regulations put in place in November 2020 specified visits to a friend or close family member living in custody as an exception to stay at home requirements.<sup>644</sup>

## Video calls

HM Inspectorate of Prisons' report on April 2020 short scrutiny visits at YOIs states that *‘all sites were slow to adopt video calling technology’*.<sup>645</sup> The first video call had taken place at Parc on the day of the inspectorate’s visit, but nothing had yet been set up at other establishments, a *‘significant gap’*.<sup>646</sup> Parc was reportedly offering children a weekly opportunity to video visit their family and friends, and all sites were set to receive two tablet computers for video visits but these had not arrived.<sup>647</sup>

In May 2020 the MoJ and HMPPS announced that secure video calls would be introduced to all YOIs and adult prisons, with Werrington and Wetherby among the first establishments to receive the technology.<sup>648</sup> HM Inspectorate of Prisons' August 2020 aggregate report on short scrutiny visits noted that rollout by HMPPS was slow, with the first secure video calls taking place at the end of June 2020.<sup>649</sup> Then Youth Justice Minister Lucy Frazer assured that secure video visits, using a software called Purple Visits, would be available to all children by the end of August 2020.<sup>650</sup> An interim policy framework on the use of secure video calls was published in February 2021.<sup>651</sup>

HM Inspectorate of Prisons' next report on July 2020 short scrutiny visits at YOIs updated that Purple Visits had been rolled out to both visited YOIs in June, and each establishment had received a laptop for conducting the Visits.<sup>652</sup> Staff were reportedly working to improve take up of Purple Visits, with HM Inspectorate of Prisons reports noting it was underused,

and highlighting that calls had to take place with an officer nearby.<sup>653</sup> Video call use was reportedly generally low in STCs too.<sup>654</sup> MoJ data shared in response to a Parliamentary Question showed that as at 14<sup>th</sup> December 2020, 657 Purple Visits had taken place in YOIs and STCs, not counting figures for Feltham A and Parc where figures specific to children could not be broken down.<sup>655</sup> A report on a January 2021 visit to Wetherby and Keppel YOI found that after a member of staff was appointed to take responsibility for Purple Visits and encouraged its use, for example by contacting next of kin, sharing more information, and allowing children with communication difficulties extra Visits, take up greatly increased.<sup>656</sup>

According to HM Inspectorate of Prisons, the rollout of Purple Visits had been *'too slow to relieve the frustrations of not having face-to-face visits and this delay has been very keenly felt'*.<sup>657</sup> However, when Purple Visits were available, HM Inspectorate of Prisons highlighted that the relatively low take up *'reflected, in part, the reality that some children, especially those 'looked after', had no one to contact in this way'*, as well as that some families struggled to produce the necessary ID to take part in Purple Visits.<sup>658</sup> As well as ID, the service relies on those at home having access to requisite technology. It was also felt that children found contact *'direct into the family home' 'too emotionally difficult'*,<sup>659</sup> and that they valued the privacy and accessibility of in-cell phone calls over Purple Visits,<sup>660</sup> including that:

*...some children found having a member of staff nearby during the call was not conducive to relaxed conversations and preferred to speak to family and friends by phone.*<sup>661</sup>

## Phone calls

The MoJ also announced in March 2020 it was working to ensure the secure estate had more secure phone handsets,<sup>662</sup> and in November 2020 in response to Parliamentary Questions confirmed that additional funding had been provided for the rollout of in-cell telephony, with the children's estate prioritised,<sup>663</sup> and all public sector YOIs now had in-cell phones.<sup>664</sup>

HM Inspectorate of Prisons noted quick action by the children's secure estate to give children extra phone credit.<sup>665</sup> Reports confirm that all children at Cookham Wood, Parc, Wetherby and Feltham had in-cell telephones from April 2020.<sup>666</sup> While inspectors note that children were supported to maintain contact with friends and family by increasing credit,<sup>667</sup> they questioned why different establishments provided significantly different amounts: from £5 a week at Parc to £20 a week at Cookham Wood and Wetherby.<sup>668</sup> Some children could also exchange good behaviour cards for more credit,<sup>669</sup> and some looked after children received enhanced pocket money payments from local authorities.<sup>670</sup> Children also received free additional letters to send,<sup>671</sup> and could use 'email a prisoner'<sup>672</sup> to send and receive emails.<sup>673</sup> According to inspectors children had enough phone credit,<sup>674</sup> and the extra credit was welcome, helping them to cope.<sup>675</sup> Children in STCs didn't report any concerns about contact to inspectors, and highly valued being able to make frequent phone calls to loved ones.<sup>676</sup> Those who didn't make contact with family or friends were identified by staff and offered additional support.<sup>677</sup> Children in SCHs already had phones in their rooms.

## Release of children from custody

As lockdown restrictions were announced, there were immediate calls for the Government to release children from custody, given concerns about the heightened risks of COVID-19 outbreaks in secure environments. Restrictions imposed on the custodial regime also caused issues for transition planning, including arrangements for release and resettlement for children approaching the end of their sentence.

### Custody release schemes

There were widespread calls for the Government to release children from custody, including from the Children's Commissioner for England,<sup>678</sup> the UN Committee on the Rights of the Child,<sup>679</sup> the UN High Commissioner for Human Rights and other leaders of global health, human rights and development institutions,<sup>680</sup> and children's rights charities and criminal justice organisations.<sup>681</sup> Calls included reviewing the status of all children due to be released in the next six months, all children aged under 14, all children in custody for non-violent offences, those with underlying health conditions, anyone who can be safely looked after in the community, and children on remand.<sup>682</sup>

Secretary of State for Justice Robert Buckland told the Justice Select Committee on 24<sup>th</sup> March 2020 that he was considering options for releasing people from custody,<sup>683</sup> on 31<sup>st</sup> March 2020 announced plans to temporarily release pregnant women and those with babies in custody,<sup>684</sup> and on 4<sup>th</sup> April 2020 the MoJ announced wider plans for temporary releases,<sup>685</sup> which it was later confirmed to the Justice Select Committee would include children.<sup>686</sup>

Two schemes were put in place: Compassionate Release on Temporary Licence (ROTL), for pregnant women, those with babies, and those medically extremely vulnerable to COVID-19, and the End of Custody Temporary Release Scheme (ECTR), for those nearing their release date.<sup>687</sup> The MoJ and HMPPS published policy papers on both schemes in April 2020, providing an overview of eligibility criteria, the case-by-case assessment, and the process for release.<sup>688</sup> Clinks provided a summary of the criteria and release process specific to children.<sup>689</sup> The ECTR scheme commenced from 6<sup>th</sup> April 2020 according to the statutory instrument laid in Parliament,<sup>690</sup> and applied to children in YOIs and STCs.<sup>691</sup> According to the ECTR policy paper, there was no power in place to apply the scheme to SCHs but '*work is underway to resolve this*',<sup>692</sup> however no update on this is available. To be eligible, children had to be, amongst other conditions, within 61 days of release, assessed as 'low' or 'medium' Risk of Serious Harm, and have served half of their custodial term. The guidance sets out many groups of children who were automatically excluded from the scheme, for example children on remand, children in custody for a serious violent, sexual, terrorism or drug offence, children serving sentences of more than four years for specific offences, and children eligible for multi-agency public protection arrangements (MAPPA) on release.<sup>693</sup>

The Government initially estimated that 4,000 prisoners overall were eligible for the scheme,<sup>694</sup> but the Prison Governors Association told the Justice Select Committee that the criteria were too strict for that to be possible.<sup>695</sup> In late April 2020, the Government confirmed fewer than 10 children were deemed eligible for the scheme,<sup>696</sup> and on 2<sup>nd</sup> June it was confirmed that no children had been released under the scheme.<sup>697</sup> Overall by the end of September 2020 just 54 prisoners were released under Compassionate ROTL,<sup>698</sup> and 262

under the ECTR scheme, but while the MoJ and HMPPs published a statistical release showing monthly release figures, this was not disaggregated to show the number of children.<sup>699</sup>

Very soon after it was introduced in April 2020, ECTR was reportedly temporarily suspended due to six people being incorrectly released,<sup>700</sup> and the scheme was then stopped in August 2020 as the spread of infection was '*under control*',<sup>701</sup> with the Government confirming in December 2020 there were no plans to re-start it.<sup>702</sup>

The scheme was met with much criticism about its failure to result in any significant numbers of releases from custody,<sup>703</sup> including a threat of legal challenge from the Prison Reform Trust and Howard League for Penal Reform due to the slow and limited government action.<sup>704</sup> The two charities wrote to the Secretary of State for Justice calling for urgent action, expanding the release policy including reviewing the position in respect of children.<sup>705</sup> Although criticisms have been levelled at many countries for too few and too slow releases from custody,<sup>706</sup> the Government itself highlighted that in California alone 3,500 prisoners were being granted early release,<sup>707</sup> and news articles and available examples show where other countries have gone further, for example France reportedly released 11,000 people, and US states Illinois and Mississippi decreased their children's custodial population by 30% and 50% respectively.<sup>708</sup>

Inspectorate reports highlight that children have been subject to usual early release from Detention and Training Orders (DTOs) and release on home detention curfew,<sup>709</sup> but data is not available on the number of children released from custody and the reason why in order to shed more light on custody release during COVID-19. Angus Mulready-Jones, Lead for Children and Young People at HM Inspectorate of Prisons, summarised the situation to the Justice Select Committee:<sup>710</sup>

**“ I do not think that anybody could sensibly say it [End of Custody Temporary Release Scheme] has been a success in reducing the prison population. Obviously, normal releases have been happening throughout this time. A slowdown in court activity has meant that the population has slightly reduced, although this is likely to be a temporary reduction. ”**

**Angus Mulready-Jones, Lead for Children and Young People at HM**



The IMBs' annual report highlighted concerns that a lack of Release on Temporary License during the pandemic meant children could not evidence progress and therefore risked being denied early release.<sup>711</sup> Some difficulties were also reported around ensuring an appropriate adult could meet children on release.<sup>712</sup>

## Resettlement and transitions

According to inspectorate reports release planning with external partners continued, most training and remand planning processes continued, and expectations on the provision of accommodation and health care on release were unchanged.<sup>713</sup> In the cases examined by inspectors all children were released with accommodation, although not always arranged in good time. Planning for health care on release continued, and inspectors noted positive practice of releasing children with a month of medication rather than a week.<sup>714</sup> However, the Howard League for Penal Reform stated it had seen the processes supporting release planning slow down, with professionals facing difficulties in completing the necessary assessments.<sup>715</sup>

Little is known about children's experiences of release and resettlement during this time. The Howard League for Penal Reform highlighted that children have faced difficulties accessing support for release planning.<sup>716</sup> The HM Inspectorate of Prisons thematic report on custody during COVID-19 did not specifically discuss release planning for children, but highlighted that *'limited'* planning had left those in custody feeling *'ill-prepared, vulnerable and worried about the practicalities of being released'*.<sup>717</sup> Children spoken to by HM Inspectorate of Prisons were concerned that the lack of mixing and building relationships with their peers meant they had been *'unable to develop the coping and social skills they needed to mix with larger and different groups of people'*, meaning they felt *'ill-equipped for a return to the community or a move to an adult prison'*.<sup>718</sup>

Concerns have also been raised about the anxieties and frustrations of children on remand, whose experiences are *'inevitably'* worsened by spending increased time in custody with uncertain futures.<sup>719</sup> During this time fewer transfers to the adult estate were taking place meaning the children's custodial estate was holding an increasing number of 18-year-olds.<sup>720</sup>

### Contact with outside agencies

The main difficulty cited in the literature around resettlement has been difficulties in communication between those outside custody and those inside. With visits suspended it was not only social contact that children were cut off from, but YOTs, social workers, lawyers and other professionals could not directly meet with children.<sup>721</sup> This has various implications around the welfare and safeguarding of children in custody, and regarding preparing children for court appearances, but the literature highlights impacts on resettlement in particular.<sup>722</sup>

HM Chief Inspector of Probation Justin Russell told the Justice Select Committee in January 2021 there had certainly been issues with contacting staff in YOIs, while HM Chief Inspector of Prisons Charlie Taylor said this *'inevitably'* makes resettlement more difficult.<sup>723</sup> Inspectorate reports highlighted that, despite custody staff reportedly working hard to prepare children and stay in contact with YOTs and social workers,<sup>724</sup> YOT staff had found it difficult to communicate and work with staff in custody,<sup>725</sup> *'hampering'* work to support resettlement,<sup>726</sup> affecting remand management and pre-release planning.<sup>727</sup> The Association of YOT Managers raised concerns that children were not building relationships with and feeling connected to their YOT workers.<sup>728</sup> The Howard League for Penal Reform stated that *'difficulties in contacting families and professionals make planning for release especially problematic'*.<sup>729</sup> Lawyers also reported difficulties in contacting children in custody.<sup>730</sup>



One of the reasons for the difficulty in communication highlighted in the HM Inspectorate of Probation thematic review of YOTs during COVID-19 was a lack of remote technology in custody.<sup>731</sup> The IMB at Cookham Wood YOI also reported that a lack of IT and telephone capacity had affected resettlement reviews.<sup>732</sup> Improvements over time were noted,<sup>733</sup> for example with the increased use of video links for professional and legal visits.<sup>734</sup> However, HM Inspectorate of Probation in November 2020 highlighted contact with custody as ‘a practical difficulty that needs to be resolved’,<sup>735</sup> and Chief Inspector of Prisons Charlie Taylor told the Justice Select Committee:

*It is a difficult one to solve because even with video links, particularly for children, building up personal relationships with good and authoritative adults is essential in making progress, and that has been extremely difficult to do.*<sup>736</sup>

HM Inspectorate of Probation’s thematic review on the work of YOTs during COVID-19 found that virtual ‘Purple Visits’ were ‘too limited’ and therefore restricted resettlement activity. It found variation in children’s access to phone calls with professionals depending on establishment, and regarding contact in custody stated:

*Work to prepare children for court, bail and remand hearings was attempted but remained unsatisfactory. Children in YOIs fared worse. Although case managers received some additional money to spend on phone calls, they had real difficulties in keeping contact with these children and in contacting custodial case work teams. This included cases where the child was due to be released and where resettlement planning should have been the priority.*<sup>737</sup>

The frustration that issues around contact have caused children, their families and YOTs was highlighted by HM Inspectorate of Probation, which stated that ‘Children who had speech, language and communication difficulties were especially disadvantaged.’<sup>738</sup>

## An over-centralised, disproportionate response?

Widespread concerns were raised, for example by the Children's Commissioner for England, about the severe impact of COVID-19 on the safety, welfare and rights of children in custody.<sup>739</sup> Leaders of global health, human rights and development institutions issued a joint statement in May 2020 reminding governments that the rights of people deprived of their liberty apply *'irrespective of any state of emergency'*, and that restrictions must be necessary and proportionate.<sup>740</sup> The Howard League for Penal Reform published a leaflet for children reassuring them that their rights still stand, such as those to education, healthcare, fresh air and exercise, personal contact, and legal advice.<sup>741</sup>

The literature reveals concerns that the approach to implementing restrictions across the secure estate was too centrally driven, leaving insufficient room for flexibility at an establishment level. In evidence to the Justice Select Committee in June 2020, then Chief Inspector of Prisons Peter Clarke told the Committee he was aware that managers and governors at YOIs *'had wanted to introduce some face-to-face education very soon after lockdown but were prevented from doing so because of a central direction'*. For example, regarding education at Cookham Wood YOI, provided by Novus, the IMBs' annual report found:

*Within two weeks of 20 March, Novus had developed a risk assessed plan for partial return to education. This was supported and agreed locally by management, staff and unions. However, it was rejected at higher levels in the prison service by HMPPS Gold Command, though a very similar plan was implemented four months later.*<sup>742</sup>

Giving evidence to the Justice Select Committee in June 2020, Angus Mulready-Jones, Lead for children and young adults at HM Inspectorate of Prisons, questioned the proportionality of restrictions:

*Was it acceptable on 23 March to shut down regimes, including education, so that you could assess the situation and start delivering a service safely to children? Absolutely it was. Is it still acceptable 10 weeks down the line to be in a position where children across the estate are locked up in excess of 22 hours a day? No, that is not an acceptable position.*<sup>743</sup>

In July 2020 the Justice Select Committee called on the MoJ and YCS to provide more information on how they responded to COVID-19 in the children's secure estate, how they have considered the needs of children, and why there is disparity between different YOIs and STCs, such as Parc being able to resume face-to-face education and improve time out of cell while other YOIs could not.<sup>744</sup> The Committee also raised concerns regarding the disparity between restrictions in custody and those in the community, highlighting that:

*Although lockdown restrictions are being eased in the community, they have not yet been eased in the secure estate. Institutions holding children continue to be in a state of lockdown with restricted regimes still in place.*<sup>745</sup>

According to HM Inspectorate of Prisons, while children were initially understanding of the need for restrictions, with children and staff reportedly taking a *'pragmatic, positive approach'*, and felt they *'were in it together'*,<sup>746</sup> as time went on without restrictions easing, children became increasingly frustrated.<sup>747</sup> HMPPS guidance and communications for individual institutions indicate restrictions in the children's secure estate eased over 2020 faster than in the adult estate.<sup>748</sup> However, a deepening divergence emerged between the

easing of restrictions on children in the community, compared with those in the secure estate.<sup>749</sup> Then Chief Inspector of Prisons Peter Clarke warned the Justice Select Committee in June 2020:<sup>750</sup>

*We are being told now that, while prisoners and children in YOIs have understood the need for restrictions so far, as they begin to see the situation changing in the community, they will lose patience if they do not see a similar progression.*<sup>751</sup>

IMBs have partly attributed a spike in assaults on staff towards the end of summer 2020 to children's reaction to restrictions in custody easing at a 'considerably slower pace' than in the community.<sup>752</sup>

In fact, as restrictions eased in the community, the Government introduced emergency regulations to amend The Secure Training Centre Rules 1998, relaxing mandatory entitlements to activities and education and training, suspending entitlements to visits, and allowing children to be kept in their cells for 22.5 hours a day.<sup>753</sup> The regulations came into force on 2<sup>nd</sup> July 2020 and expire in 2022. The move 'to effectively try and legitimise the solitary confinement of children'<sup>754</sup> was met by concern from children's rights charities and lawyers representing children, particularly to the distant end date of the new rules.<sup>755</sup> Chair of the Justice Select Committee Sir Bob Neill told the Guardian:

*It's just too long. These are exceptional measures for specific circumstances. You don't want institutional inertia to see the powers used too much and we've seen that happen too often in prisons.*<sup>756</sup>

The Government has insisted that it took measures that 'were appropriate at the time'.<sup>757</sup> In the Government's response to the Justice Select Committee's July 2020 recommendations, published in December 2020, it confirmed that 'YCS-specific' Exceptional Delivery Models had been produced, around Education and Physical Education, Advocacy, the Custody Support Plan, Interventions and Resettlement.<sup>758</sup> It stated that the YCS had from the outset prioritised essential activities such as phone calls, showers, fresh air, in-cell education materials, and in-cell or small group activities. The Government set out that face-to-face education in public sector YOIs re-commenced in mid-July 2020, that education remained a particular priority for the YCS, seeking to mirror the approach in the community,<sup>759</sup> and that during the second national lockdown in autumn 2020 regime delivery had 'significantly improved'.<sup>760</sup> It was also confirmed that the YCS had in May 2020 commissioned research to identify lessons from the experience of responding to COVID-19 in custody and inform recovery planning.<sup>761</sup> The expected publication date of this research has been delayed from spring 2021<sup>762</sup> to summer 2021.<sup>763</sup>

While the Government has offered various assurances that over the course of March 2020-2021 it was striving to improve time out of cell and match conditions with those in the community,<sup>764</sup> it confirmed in November 2020 it has no plans to publish data on time children have spent out of cell over the year.<sup>765</sup> The Equality and Human Rights Committee raised concerns about the lack of information on the impact of severe restrictions, calling for the Government to take immediate action to understand, monitor and mitigate the adverse effects of restrictions on children in custody.<sup>766</sup> Considering the heavier impact of custody on those deprived of their liberty during COVID-19, one blog called for some form of sentence discount.<sup>767</sup>

As soon as June 2020, Colin Allars, then Chief Executive of the YJB, told the Justice Select Committee:

*We are concerned about the potential for long-term impacts. To take where we have got to, effectively children in the system have had a pretty difficult time for 10 weeks in terms of education in the secure estate or in the support they have had in the community. Undoubtedly, it has been a difficult time for them.<sup>768</sup>*

Overall, the literature raises concerns about the long-term impact of the restrictions for children in custody, as described by Dr Anne-Marie Day:

*The [Alliance] for Youth Justice in a recent report on child custody noted that 'children in custody are extremely vulnerable, and their experience of detention exacerbates and compounds this vulnerability'. It would therefore be reasonable to conclude that children's experiences of incarceration during COVID-19 will have significantly amplified this vulnerability, resulting in a form of double jeopardy...<sup>769</sup>*

# Conclusion

## Conclusion

The devastating impact of the pandemic on children and families, and the heightened levels of safeguarding concerns, are major concerns for children involved with the youth justice system as well as those in the general population facing new and increased challenges. The range of vulnerabilities and social problems that have been compounded by the pandemic coincide closely with many of the factors that bring children into conflict with the law. Issues that are prevalent amongst children in the youth justice system have been significantly aggravated by COVID-19, while the full scale of the impacts remain unclear. Increased vulnerabilities amongst children in the general population may lead to more children being drawn into the criminal justice system in the future, highlighting the need for preventative strategies to be developed and implemented as a priority.

The literature identifies a consistent theme about the lack of information, understanding and focus on children. The Government has often failed to distinguish between its approach to adults and children in their policy responses and there remains a significant gap in knowledge about the impact of COVID-19 on children in the youth justice system. The paucity of disaggregated published data exemplifies this issue and does not allow for scrutiny and analysis of the particular impacts on children. There is a clear need for close monitoring and analysis of needs to ensure that systems and services are able to respond effectively.

Throughout the various stages of the youth justice system, digital models of communication and service provision have been adapted. A clear 'digital divide' has emerged between those who have access to digital technologies and those who do not. This divergence was apparent amongst children and their families, as well as the professionals and services supporting them. While there may be some positives to be learned from new forms of digital engagement, programme provision and the digitisation of criminal justice processes, the impact on children is largely unknown.

Across systems and services for children, including the youth justice system, there is a need for proper analysis and evaluation of the temporary measures implemented during COVID-19 before they become widespread and permanently embedded. Adaptions that were made in the context of crisis should not be implemented in the longer term without further scrutiny of their impact on children, even if they have been deemed a 'success' to date.

From the outset of the pandemic there were strong calls to reduce the number of children entering and progressing through a system struggling to cope. From decisions to arrest, divert or prosecute children in the community, to remand and sentencing decisions, evidence around the full extent to which this approach has been taken in practice for children is currently unclear. The full impacts of delays on the courts and broader criminal justice system in the longer-term are yet to be fully understood but should be seen in the context of a system already under severe strain. These backlogs present significant future challenges, underlining the need for these impacts to be understood systemically and for responses to be coordinated across government departments and local multi-agency partnerships.

The number of children in custody fell overall, but the proportion of those on remand has increased, and unambitious custody release schemes have been criticised for being completely ineffective. The majority of children in penal establishments have been subjected

to awful conditions for months on end, deprived of education, visits and contact, and amounting to solitary confinement. The harms experienced by children in custody, and the impacts on their longer-term health and wellbeing must be fully assessed and supported effectively.

The momentous impact of the pandemic continues to unfold, with vast implications for all systems and services supporting children, families and communities, and throughout the various stages of the youth justice system. Concerted, coordinated action, with significant investment will be required to mitigate the negative consequences for children in the system. The next stages of the research project aim to make a significant contribution to addressing these gaps in knowledge and informing future strategy, policy and practice, in the best interests of children.

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