



AYJ response - CRAE Call for Written Evidence: Civil Society Alternative Report to the UN Committee on the Rights of the Child September 2022

About the 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.

Please note: We have kept our submission to areas we believe the AYJ can add value to CRAE. For example, we are aware and supportive of work CRAE are carrying out on the Bill of Rights Bill, school exclusions, and children in police custody, so have not detailed these in our submission. The **recommendations** included in this document arise from the [Impact of COVID-19 on Youth Justice research project policy briefings](#). The **evidence and quotes in blue** are drawn from the [Young Advocates' youth-led report](#) presenting findings and key insights from their peer research with over 120 children and young people.¹

General Measures of Implementation and General Principles

New developments and general measures

- Despite the fallout from the pandemic having arguably had the most significant impact on children, creating a perfect storm for children at risk, the government has failed to prioritise them in its response. The pandemic exposed a lack of national strategy for children, systems and services struggling to meet growing demand, and the urgent need for bold, coordinated action to address the impact of COVID-19 and the side-lining of children in the years before.² Yet action remains limited.
- Despite the wealth of evidence that children in conflict with the law are often extremely vulnerable, they are too often treated separately to other vulnerable children. Current developments in the policy landscape for children hold potential to weather parts of the perfect storm ahead, but are disjointed and lack a coordinated approach. In a fragmented policy landscape with no clear role-holder across government, there is a real danger that children will fall through the gaps.³
- Legislation, such as the Police, Crime, Sentencing and Courts (PCSC) Act 2022, and Nationality and Borders Act 2022, continues to be passed without proper regard to the UNCRC and without Child Rights Impact Assessments (CRIA)

Recommendations to government

- The government to appoint a Cabinet-level Minister for Children
- Cabinet-level Children's Minister to work across departments to create and provide oversight and accountability for a national strategy for children. The strategy, similarly to the programme of work in the HM Government Levelling Up white paper¹, to include:
 - Analysis of the scale and drivers of children's needs
 - Policy programme of medium-term missions, with a particular focus on early help, mental health, education, safeguarding, disparities, and justice
 - Systems reforms, including: all new policies to be subject to CRIA; consideration of departmental responsibility restructure¹ or creation of interdepartmental children's taskforce.

Definition of the child

- There is a concerning trend in the government narrative towards harsher treatment of older children in contact with the law, realised in legislation through the PCSC Act 2022:
 - Section 127⁴ inappropriately brings older children's sentencing closer in line with adults: it amends the starting point for tariffs for older children to 90% (for 17-year-olds) and 66% (for 15-16-year-olds) of the starting point for adults.
 - Mandatory minimum custodial sentences, which go against the principle of custody as a last resort, continue to apply to 16-17-year-olds similarly to adults. Rather than removing older children from the provisions, Section 124, PCSC Act 2022, intends to increase their use by reducing judicial discretion.⁵

General principles

Best interests, discrimination, and privacy

“Stereotyping makes them [police] look racist because while they're harassing us the real criminals are getting away with worse crimes.”

“Made me stop trusting the police why can't I walk from my house to the park without being stopped? I have no faith in the law or the education system which is also racist.”

“Being seen as a gang member and not as a person.”

- Children and young people interviewed by the Young Advocates

- The PCSC Act 2022:
 - amended criteria for remanding a child to custody to include that “the court must consider the interests and welfare of the child”.⁶ No such criteria was introduced for custodial sentencing.
 - introduced the Serious Violence Duty, which raises significant concerns around data sharing, overstepping human rights obligations, and racialised discrimination and marginalisation.⁷ It does not provide for the need for authorities to consider the best interests of the child in carrying out the Duty.⁸ There are concerns the Duty risks creating a new discriminatory profiling system like the Gang Matrix,⁹ and will play out in the same way as the Prevent Duty, leading to racist targeting and alienation of children from the systems and services designed to support them.¹⁰ These concerns are not addressed in the draft statutory guidance.¹¹
 - was passed with explicit acknowledgement that its punitive measures will disproportionately impact racially minoritized individuals.¹²
- The Commission on Race and Ethnic Disparities 2021 report contained no focus on youth justice despite disparity in the youth justice system being the Lammy Review's (2017) biggest concern.¹³ The resultant Inclusive Britain action plan (2022) contains no action on youth justice, for example addressing racial disparity in access to diversion;¹⁴ or addressing Youth Justice Board (YJB) 2021 research findings that minority ethnic children are more likely to be given custodial remand, more likely to receive harsher sentences, less likely to receive out of court disposals, with Black children specifically facing more severe sentences.¹⁵
- During the pandemic, children have felt unfairly targeted by police based on their age, class and race.¹⁶ Given the disproportionate impact of the pandemic on racially minoritised children, and the over-policing of racialised communities, disparities at the front end of the youth justice system risk increasing post-pandemic.¹⁷ Tensions continue

to be exacerbated by police practices such as stop and search,¹⁸ strip search,¹⁹ and use of force,²⁰ all of which are racially disproportionate.²¹

- Policing is seen as overwhelmingly racist, untrustworthy and inconsistent. It is felt as though stereotyping is in the job role of a police officer, creating a lack of trust. Frightening and frustrating police interactions can also cause fear and anger.²²
- Suspicionless stop and search ('Section 60') continues despite evidence of its harms and disproportionality.²³ In May 2022 the government removed restrictions on its use, acknowledging this would disproportionately impact racially minoritised young people.²⁴
- It remains completely unclear where accountability and oversight sit for addressing racial injustice in the youth justice system.

Recommendations to government

- Clarify who is responsible for addressing racial disparity in the youth justice system, how progress on explaining or reforming racial inequalities is being monitored, and held accountable.

Respect for the views of the child, meaningful participation

- The rapid expansion of virtual justice due to the pandemic raised significant concerns amongst practitioners regarding children's ability to effectively participate.²⁵ The PCSC Act 2022 embedded the pandemic expansion of virtual justice without the necessary evaluation of impact having taken place.
- The Judicial Review and Courts Act 2022 made it possible for child defendants to enter pleas online, eliminating safeguards and without regard to children's increased vulnerability and requirements.²⁶

Recommendations to government

- Publish disaggregated data, and conduct and publish ethnographic and outcome research, on virtual justice for children

Safeguarding Children including Violence against Children

Torture and other cruel, inhuman or degrading treatment or punishment

- The use of taser on children tripled between 2017/18 and 2019/20.²⁷
- The government response to List of Issues Prior to Reporting (LOIPR) states consideration is given to the welfare and maturity of any child stopped and searched and specific safeguards are followed. Reports²⁸ demonstrate this is clearly not the case.
- The practice of strip searching children is intrusive and traumatising and frequently occurs without safeguards including an Appropriate Adult, required under statutory guidance.²⁹

Recommendations to government

- Review the extent to which the National Strategy for the Policing of Children & Young People is being applied in practice.
- Between March 2016 and March 2020 (the last data before lockdown), total use of force incidents on children in the secure estate increased 150%, and the rate of use of force increased from 40.4 incidents per 100 children, to 82.5.³⁰ Pain-inducing restraint

continues to be allowed 'as a last resort to prevent serious harm', and continues to be used.³¹ Use of restraint continues to cause injury to children, including serious injuries requiring hospital treatment.³²

- Restraint is often the first thing staff jump to, to resolve disagreements. This can cause long term physical and mental harm which could be avoided by prioritising de-escalation.³³
- Data remains unavailable on separation across the secure estate - for children in Secure Children's Homes and Secure Training Centres, between March 2016 and March 2020, separation incidents per 100 children per month increased from 65.3 to 93.2.³⁴ Better data is needed to determine the impact of the Minimising and Managing Separation and Isolation in the Children and Young People Secure Estate policy framework introduced in April 2022.³⁵
- Conditions in custody during the pandemic have amounted to solitary confinement, prolonged for some.³⁶ Recovery in the children's secure estate has been "slow and inconsistent",³⁷ with time out of cell remaining a concern.³⁸ Despite dire conditions in custody during the pandemic, no child was released under the End of Custody Temporary Release Scheme.³⁹

Freedom of the child from all forms of violence; Optional protocol on sale of children

- The pandemic has increased safeguarding risks to children, with growing concerns about exposure to various forms of abuse, exploitation and violence.⁴⁰ Children's social care is failing to meet the needs of older children at risk of extra-familial harm in particular.⁴¹ There is a huge risk that a growing number of children at risk of harm are not receiving support and will end up caught up in the criminal justice system.⁴²
- There are significant concerns about the Serious Violence Duty (see above), the government's new measure for addressing serious violence.⁴³ This includes continued emphasis on enforcement and criminal justice rather than safeguarding children.
- There is a lack of strategy to address child criminal exploitation (CCE). Huge delays to National Referral Mechanism (NRM) decisions are causing significant issues with case progression, the unjust criminalisation of victims of CCE, and access to support.⁴⁴ Children may also never be referred, have unsuccessful referrals, or be prosecuted against and convicted despite having an NRM referral either in process or concluded. Those supporting children in court report uncertainty around whether cases can and should be adjourned to await NRM decisions.⁴⁵ Expansion of virtual and online justice may create additional barriers for professionals to spot exploitation; the government refused to create a statutory definition of CCE via the PCSC Act 2022; and the Nationality and Borders Act 2022 created new ways to disqualify children from modern slavery support and from receiving victim status through the NRM.⁴⁶
- Girls and young women experiencing sexual exploitation are routinely criminalised; up to 90% of girls in contact with the youth justice system have experienced abuse from a family member or someone they trusted; 63% of girls and young women serving community sentences have experienced rape or domestic abuse.⁴⁷

Recommendations to government

- Introduce a statutory definition of CCE
- Publish evaluation of NRM devolved decision-making pilot, setting out impact on time taken for decisions, outcomes, safeguarding support provided. Take urgent action.
- Publish clear guidance for Crown Prosecution Service, judiciary and legal practitioners regarding how cases awaiting NRM decisions should be handled
- Evaluate and publish information on the support currently available to children with positive NRM decisions and develop a national action plan informed by the findings

Policing and Criminal Justice

A distinct, child-centred youth justice system

- Moves were made by parliamentarians during the passage of the PCSC Act 2022 to increase the age of criminal responsibility, but despite cross-party support amendments were rejected by government.
- Court delays have been exacerbated by the pandemic, particularly concerning for children tried in Crown Court or adult magistrates courts.⁴⁸ Pre-charge delays are increasingly leaving children in limbo for months if not years – with the practice of Release Under Investigation, without time limits, delaying cases indefinitely.⁴⁹ A delayed criminal justice process is hugely disruptive for children, and has particularly life-changing impacts for those who are on remand, and those turn 18 awaiting their court hearing who continue to be treated and dealt with as adults – for example losing access to diversion, receiving adult criminal records. In 2021 a Private Members' Bill aimed to address this injustice but did not progress past first reading,⁵⁰ despite sector and cross-party support.⁵¹
- Provision and access to diversion is inconsistent and inequitable.⁵² Children from ethnic minorities are less likely to be diverted.⁵³ Eligibility criteria creates constraints.⁵⁴ Police forces' awareness of and use of informal outcomes varies,⁵⁵ and Youth Offending Team (YOT) practitioners are concerned that increasing numbers of children being kept out of the system aren't being offered support.⁵⁶
- During the pandemic, practitioners highlighted that 'good' lawyers may have been successfully arguing against custodial sentences and remands by making strong arguments about conditions in custody, demonstrating the importance of specialist lawyers.⁵⁷ However, there are longstanding concerns about the quality of advocacy for children in court.
- Courts are strongly associated with injustice, and feeling that although the judge sits and listens, they have already made their decision based on stereotypes. Professionals in courts are not representative of the young people they work with, limiting their understanding of cultural and other contributing factors. Some solicitors give poor advice and have no idea what options are available or good for them.⁵⁸
- Changes to the criminal records regime in the PCSC Act 2022 are welcome but should have gone further.⁵⁹
- Research by HMI Probation and User Voice in 2021 found 'significant deficits' in the quality of work YOTs and partner agencies carry out with Black and mixed heritage boys; a lack of understanding of what is driving over-representation, and plans to address it; few services available specifically for Black and mixed heritage boys; and evidence of 'adultification'.⁶⁰

Recommendations for government

- Increase the age of criminal responsibility to at least 14
- Implement time limits for children's cases that are Released Under Investigation, similarly to those applied to pre-charge bail.
- Reform courts and sentencing legislation so that young people are dealt with and sentenced according to their age at the date of their alleged offence.
- Reform the Rehabilitation of Offenders Act 1974 so the relevant date for rehabilitation periods is the date of commission of the offence, rather than date of conviction.
- Collect and publish more data on point-of-arrest diversion, including what support is available, and conduct a review of eligibility criteria, and cases that reach court but go on to receive a diversionary outcome.⁶¹

- Introduce mandatory training on children and the youth justice system for lawyers representing child defendants.⁶² As a minimum, extend Bar Standards' Board youth proceedings competency requirement to all pupils and barristers representing and prosecuting children in the Crown Court.⁶³
- Review work undertaken by YOTs to address the findings of the thematic inspection into the experiences of Black and mixed heritage boys.

Sentencing and remand

“Everyone does not get the same sentence. Certain races get it worse cause of your colour they say you're innocent until proven guilty but they treat me like I'm guilty from the start.”

“The thing that needs to change is their environment...you're not gonna fix problems by sending people to jail...there's no options...you're setting them up to fail.”

- Children and young people interviewed by the Young Advocates

Custody is not currently used as a last resort⁶⁴ and for the shortest possible period – evidence from other jurisdictions makes this clear, despite the decrease in numbers since 2009. During the pandemic the government made no efforts to remove children from custody. The government predicts the number of children in custody will steeply increase, more than doubling by September 2024,⁶⁵ but has no strategy to prevent it.⁶⁶

- The PCSC Act 2022 moves the UK further from ensuring custody is used only as a last resort and for the shortest possible period, and further away from abolishing life imprisonment:⁶⁷
 - aims to increase the use of mandatory minimum custodial sentences⁶⁸
 - moves the custody release point, or ‘minimum term’, from halfway to two-thirds of the sentence for certain sentences⁶⁹
 - introduces tiered starting points for minimum custodial terms for murder committed as a child, which increase the minimum terms for 7 of the 9 tiers - from 12 years previously to up to 27 years now.⁷⁰
 - restricts possibilities for minimum term reviews for children convicted of murder, to determine possible reductions to their minimum term⁷¹
- Over 40% of children in custody are on remand.⁷² The government claims there is ‘evidence of careful consideration of remand decisions and significant efforts to ensure viable alternatives’. However, while remand and sentencing criteria differ, three quarters of children remanded to custody do not go on to receive a custodial sentence,⁷³ signifying overuse. Changes to remand criteria in the PCSC Act 2022 are welcome but should have gone further.⁷⁴
- Over half of children in custody are Black, Asian or minority ethnic.⁷⁵ A third of children remanded to custody are Black.⁷⁶ YJB research (2021) shows that, taking into account the influence of offending, demographics, and practitioner assessments, Black children are still more likely to receive harsher sentences and more likely to receive custodial remands.⁷⁷

Recommendations for government

- Introduce new legislative criteria that significantly narrows the circumstances in which a child can be sentenced to custody.⁷⁸ As a minimum, amend criteria for custodial sentencing in line with the amendments to the custodial remand criteria in the PCSC Act 2022.⁷⁹

Children in custody

“Right now all jails are (functioning) way below expectations”

“I would like more time out my cell and different things to do in my cell to keep me busy.”

*“In the YOI, the white officer would say to the black kids ‘I’m not letting you out of your cell you n*gga.’”*

- Children and young people interviewed by the Young Advocates

- Jail can be very isolating, fear-inducing and feel like an inhumane, emotional punishment. Complaining is difficult and takes a long time, which causes stress and impacts upon mental health without creating any change. Verbal, physical, and racist abuse is a major issue, as are the harms of isolation and restraint. Education is often inadequate and feels like it won't be transferable or useful back in the community.⁸⁰
- See above re: use of force, separation, and solitary confinement in custody.
- Experiences in custody during COVID-19 have been brutal for children and staff.⁸¹
 - Children in YOIs and STCs were initially subjected to awful conditions for months on end, deprived of education, visits and contact, and amounting to solitary confinement.⁸² Their experiences were characterised by poor in-cell provision and withdrawal of support services, with significantly disrupted communication, case management and resettlement work.
 - Recovery has been slow and inconsistent, education provision recovery is concerning, and access to purposeful activity remains not good enough.⁸³
 - Access to health care regimes including mental health provision has been severely disrupted for many.⁸⁴
 - The long-term impacts on the social, emotional and neurological development and mental health of children are yet to be realised.⁸⁵
 - The already low benchmark of care and provision for children in custody was dramatically impacted by restrictions. There is a risk this has shifted views of what is considered an acceptable regime.⁸⁶
 - Children have not had usual access to activities, including Release on Temporary License (ROTL), that evidence progress and contribute to sentence progression, raising concerns about an inability to show progress unjustly impacting eligibility for early release.⁸⁷
- The government's response to the LOIPR claims the Youth Custody Service (YCS) 'creates a safe environment' in custody, but the estate is mired in crisis.
 - Since the YCS was established in 2017, concerns across STCs have increased.⁸⁸ HMPPS considers all STCs to have failed to meet good standards of safety and care since 2017.⁸⁹
 - Medway STC closed in March 2020 due to concerns about safety and abuse, in December 2021 Rainsbrook STC followed suit due to significant concerns about safeguarding and care of children.⁹⁰ Oakhill STC was placed under special measures in October 2021 due to significant concerns about safety and welfare.⁹¹
 - The government plans to re-open Rainsbrook STC to fulfil an increase in required capacity,⁹² when it is unclear how concerns have been addressed.
- As set out in the Independent Review of Children's Social Care final report (2022) Young Offender Institutions (YOIs) or Secure Training Centres (STCs) are 'wholly unsuitable' for children, and 'should be phased out within the next ten years'.⁹³
- In 2016 the government confirmed it would create two Secure School pilots, a new form of custody designed to align more closely with schools than prisons. The first pilot is not expected to open until 2024,⁹⁴ and there is no known progress on the second pilot.⁹⁵

Recommendations for government

- A national strategy and improvement plan to be urgently developed that sets out a comprehensive, long-term vision for children in custody including:
 - The steps the government is taking to ensure its prediction that the number of children in custody will more than double in coming years is not borne out
 - How government is working to repair the harms to children of experiencing custody during the pandemic
 - A plan with clear timescales for closing YOIs and STCs within ten years
 - A robust interim improvement plan for YOIs and STCs

Please note the contents of this briefing do not necessarily reflect the views of all AYJ members

¹ <https://www.ayj.org.uk/news-content/young-advocates-report-publication>

² <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>

³ <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>

⁴ <https://www.legislation.gov.uk/ukpga/2022/32/section/127/enacted>; <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

⁵ <https://www.legislation.gov.uk/ukpga/2022/32/part/7/chapter/1/crossheading/minimum-sentences-for-particular-offences/enacted>; <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

⁶ <https://www.legislation.gov.uk/ukpga/2022/32/section/157/enacted>

⁷ <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>;

<https://www.libertyhumanrights.org.uk/issue/2827/>

⁸ <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

⁹ 89% of people on the Gangs Matrix in 2019, and 87% in 2020, were Black, Asian and Minority Ethnic

<https://www.london.gov.uk/press-releases/mayoral/changes-have-led-to-the-detection-rate-improving>;

<https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>

¹⁰ <https://www.ayj.org.uk/s/AYJ-PCSC-Bill-House-of-Lords-Second-Reading-Briefing.pdf>

¹¹ Read more here [please note this is not publicly published but may be in future]:

<https://static1.squarespace.com/static/5f75bfbfb67fc5ab41154d6/t/6310aaf2adbad10629c5eee1/1662036723586/AYJ+response+Serious+Violence+Duty+statutory+guidance+-+for+MoJ+Aug+2022.pdf>

¹² <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements>

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- ²¹ <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2022/08/cc-strip-search-of-children-by-the-metropolitan-police-service-new-analysis-by-the-childrens-commissioner-for-england.pdf>;
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<https://www.gov.uk/government/statistics/police-use-of-force-statistics-england-and-wales-april-2020-to-march-2021/police-use-of-force-statistics-england-and-wales-april-2020-to-march-2021>; <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>
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- ²³ https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf
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- ³⁷ <https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2022/05/CJ-Covid-19-recovery-progress-report-web-2022.pdf>
- ³⁸ <https://www.ayj.org.uk/news-content/crises-and-crossroads-policy-briefing-publication>
- ³⁹ <https://www.ayj.org.uk/news-content/covid-project-literature-review>; <https://www.ayj.org.uk/news-content/crises-and-crossroads-policy-briefing-publication>
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<https://thecommissionerofyounglives.co.uk/wp-content/uploads/2021/12/OUT-OF-HARMS-WAY-CYL-DEC-29-2021-1-4.pdf>
- ⁴² <https://www.ayj.org.uk/news-content/a-perfect-storm-for-children-at-risk-publication>
- ⁴³ Read more here [please note this is not publicly published but may be in future]:
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