

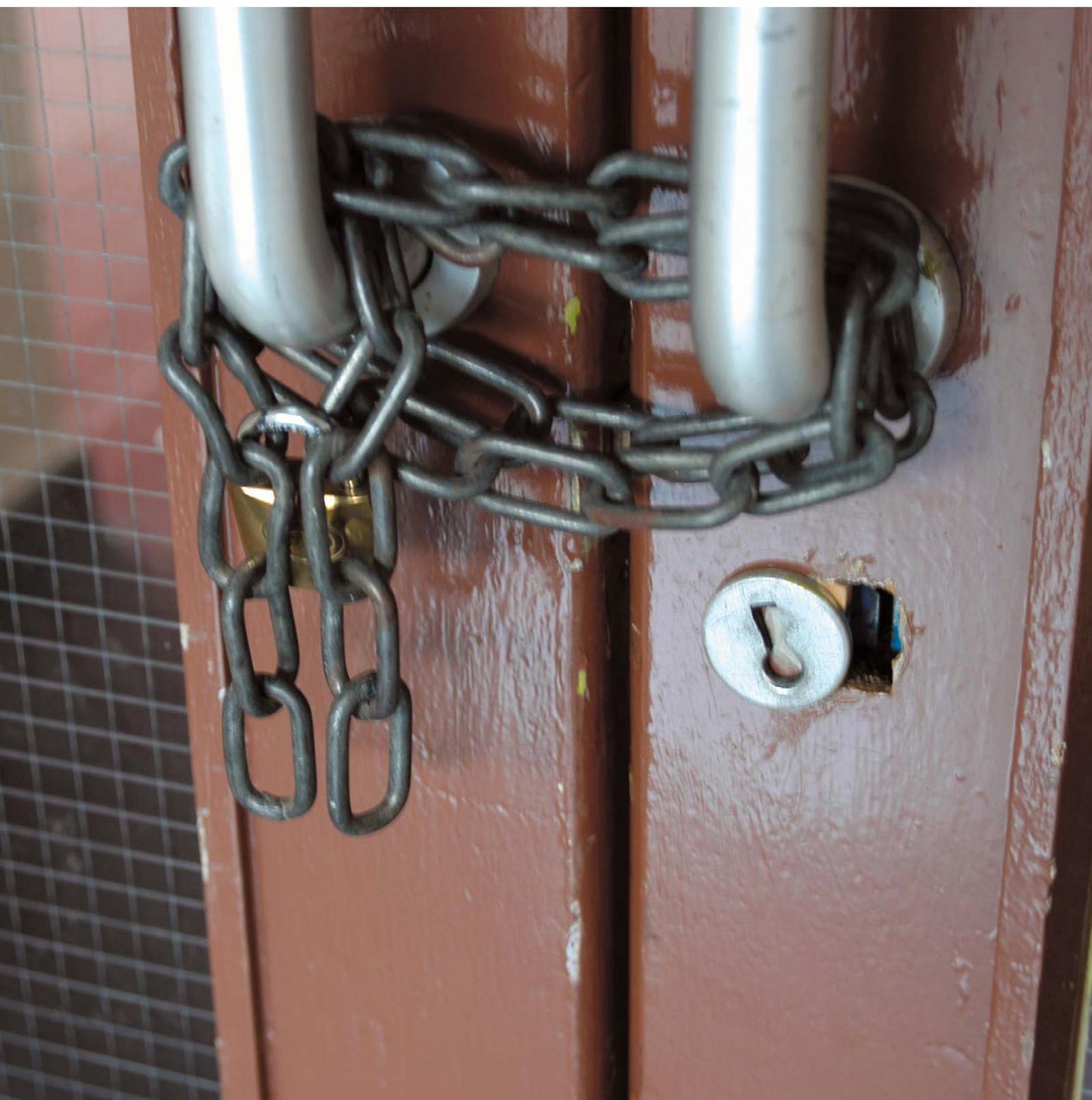
From playground to prison:

the case for reviewing the
age of criminal responsibility

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Foreword

Barnardo's believes that arguments in favour of the wholesale lifting of the criminal age of responsibility from 10 years of age to 12 may be persuasive, but are not convincing. Children, even those as young as ten or eleven, need to face prosecution for the most grave offences such as murder or rape. But bringing the formality of the criminal justice process to bear for less serious offences committed by children aged 11 and under, is unnecessary and more to the point, ineffective.

Barnardo's is therefore suggesting that the Government considers raising the age of criminal responsibility in England and Wales to 12 for all offences other than murder, attempted murder, manslaughter, rape and aggravated sexual assault.

This is not to suggest that children who have committed other offences should not be made to face up to the consequences of their behaviour. There are, thankfully, a range of meaningful and effective interventions which can and should be employed.

The primary weakness of our current response is that addressing criminal behaviour by a very young child through punishment alone is – transparently – nonsense. Our response has to be directed at the parents and sometimes the wider family, because early criminality so often flows from inadequate parenting,

and a lack of discipline and boundaries in a child's life, which allow mischief to grow into much more troubling behaviour. Such families are often a source of misery for their neighbours. Whole family approaches such as Family Intervention Projects (FIPs) challenge and support parents and their children to face up to their behaviour and accept responsibility for their actions.

For those families who do not co-operate there are robust civil orders available – either parenting orders or child safety orders – that require compliance.

Evaluation of the FIPs shows positive outcomes, including a 64 per cent reduction in anti social behaviour; a 58 per cent reduction in truancy, exclusions and bad behaviour at school; a 61 per cent reduction in domestic violence; a 45 per cent reduction in substance misuse and a 42 per cent reduction in concerns about child protection.¹

This is not a soft option. We are not arguing that children as young as 10 do not know the difference between right and wrong. But we are insisting that family based approaches are much more likely to be effective than the conviction of the child on his or her own.

By Martin Narey, Barnardo's Chief Executive and former Director General of the Prison Service.

¹ National Centre for Social Research (2010) *ASB Family Intervention Projects: Monitoring and Evaluation*. DCSF, London.

Background

- The minimum age of criminal responsibility in England and Wales was set at 10 in the 1963 Children and Young Person's Act. Previously the 1908 Children Act set it at seven.
- In the 1998 Crime and Disorder Act, Labour abolished the principle of *doli incapax* whereby the prosecution had to prove that a child under 14 appearing in the criminal court knew and fully understood what he or she was doing was seriously wrong.

Statistics

There are essentially two ways of looking at the amount of crime committed by children aged 10 and 11 in England and Wales:

- The number of children given a youth justice disposal; custodial sentences, community sentences, pre court reprimands and final warnings.
- The number of proven offences that result in a disposal; a more accurate figure as one child can commit more than one offence, it gives the best current picture of the totality of known crime committed by the age group.

The number of 10 and 11-year-olds given youth justice disposals declined from 7,487 in 2005 to 5,671 in 2008, a fall of 24 per cent². What is most significant is that during a similar period, the number of offences committed by this group declined from 8,163 to 6,059, a fall of 26 per cent³.

Convictions, sentences, reprimands and final warnings

There were 5,671 children aged 10 and 11 in receipt of a youth justice disposal in 2008⁴. Only three of those children committed a crime serious enough to be locked up.

The vast majority, 5,007, were given a reprimand or final warning.

Just 661 children were convicted and sentenced in the courts for crimes not serious enough to warrant custody. Of those, almost half were sentenced for the less serious summary offences⁵. Only 41 were sentenced for more serious violence against the person offences, which include a broad range of crimes of varying severity⁶.

But despite these children committing low level crimes, once

² Ministry of Justice *Criminal Statistics England and Wales* (2008, 2007, 2006, 2005) published in 2010, 2009, 2008, 2007. Table S5.2 (Offenders aged 10 to under 12 convicted and sentenced at all courts) and Table 3.3 (Number and proportion of juveniles given reprimands and warnings by age group and offence 2006-2008). Also, for the 2005 data on reprimands and final warnings use Table 3A in *Home Office Statistical Bulletin 2005* (published 2006). Figures prior to 2005 are not published.

³ YJB (2008/09) *Annual Workload Data; offences resulting in a disposal*. Note that we refer to a 'similar period' because YJB data corresponds to the financial year (April 08 to March 09), while MOJ data corresponds to the calendar year (2008).

⁴ Ministry of Justice (2010) *Criminal Statistics England And Wales 2008* (published 28 Jan 2010). Table S5.2 (Offenders aged 10 to under 12 convicted and sentenced at all courts) and Table 3.3 (Number and proportion of juveniles given reprimands and warnings by age group and offence).

⁵ Summary offences are defined as, "...the least serious offences, for example, ...driving offences, drink and disorderly, common assault and criminal damage". Her Majesty's Courts Service (2005) *Criminal Jurisdiction in the Magistrates' Court*. Her Majesty's Courts Service, London.

⁶ Only one of these was for the most serious offence of 'Wounding or Other Act Endangering Life'. The remaining 40 were for what is categorised as 'Malicious Wounding etc.' These offences range from: 'Possession of a firearm or imitation firearm, with intent to cause fear of violence', to 'Causing bodily harm by furious driving', and 'Having an article with a blade or point in a public place'. Ministry of Justice (2010) *Criminal Statistics England and Wales 2008* (published 28 Jan 2010). Appendix 5 - Offence Classification Numbers used for Court Proceedings. The offence classification we refer to is Category 8. Home Office Counting Rules for Crime define 'Wounding' as 'inflicting harm on another person, with or without a weapon, even if the injury amounts to no more than grazes, scratches, abrasions, minor bruising, swellings, reddening of the skin, superficial cuts, or a black eye'. 'Malicious' refers to a young person carrying out the action even though they have intended to cause harm or foreseen that harm may be done.



they enter the criminal justice system re-offending rates for these sentences are high – 40 per cent of those given a referral order offend within a year and seven out of 10 of those given a community sentence⁷.

- Three were given a custodial sentence
- 5,007 were given a reprimand or final warning
- 426 children were given a referral order, which is a community-based, restorative intervention for children who appear in court for the first time and plead guilty to an offence⁸
- 134 were given a community sentence
- 52 were given an absolute discharge
- 24 were given a conditional discharge.
- 13 were fined
- 12 were otherwise dealt with

Total number of offences

There were 6,059 proven offences committed by children aged 10 and 11 in 2008/09 – only 2.5 per cent of all

offences committed by under 18-year-olds⁹.

Data published by the Youth Justice Board shows that more than half of offences were criminal damage or theft and handling, including shoplifting¹⁰. Only a quarter were offences that are classified very broadly as violence against the person. But this includes minor assaults, which could be no more than childhood fights¹¹. The fact that relatively few of all the offences committed result in a court disposal reflects that overall, children aged 10 and 11 are involved in minor crimes.

The characteristics of children in the criminal justice system

A youth offending team manager who has many years experience working with children who offend, said:

‘The 10 and 11-year-olds on our caseloads have very high welfare

7 Ministry of Justice (2010) *Reoffending of juveniles: results from the 2008 cohort England and Wales*. Ministry of Justice, London.

8 When a young person is given a referral order, he or she is required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a youth offending team (YOT). The panel, with the young person, their parents or carers and the victim (where appropriate), agree a contract lasting between three and 12 months. The aim of the contract is to repair the harm caused by the offence and address the causes of the offending behaviour.

9 Ministry of Justice and Youth Justice Board (2010) *Youth Justice Annual Workload data 2008/09*. Ministry of Justice, London

10 *ibid*, Table 1.2, p7.

11 Assaults can include a common assault with no injury, or an assault where the injury amounts to no more than grazes, scratches, abrasions, minor bruising, swellings, reddening of the skin, superficial cuts, or a ‘black eye’. (Home Office (2007) *Counting Rules for Crime*. Home Office: London)

needs. Many have speech and learning difficulties and operate at a level well below their age. They come from extremely chaotic family backgrounds and are often on the cusp of going into care. The youth justice system is not geared up to meet the needs of these young children.’

Research does not tend to break down the characteristics of children based on age so it is not possible to identify those characteristics specific to children under the age of 12, however, we do know that children in the criminal justice system are predominantly drawn from the poorest and most disadvantaged families and communities and have multiple problems:

- 60 per cent have significant speech, language or communication difficulties¹²
- 24 to 30 per cent have a learning disability¹³
- 18 per cent suffer from depression¹⁴
- 10 per cent have anxiety disorders¹⁵
- 5 per cent have psychotic-like symptoms¹⁶

Why raise the age?

Criminalising children as young as 10 and 11 for less serious crimes is an ineffective means of punishment. Subjecting children to criminal interventions at such a young age means they may be more likely to commit further offences and continue on the conveyor belt of crime.

Re-offending rates for children given a criminal justice disposal are high

– Forty five per cent for those receiving a first tier penalty such as a fine, discharge or referral order, 68 per cent for those given a community order and 74 per cent for those sentenced to custody¹⁷. This suggests that these interventions fail to instill a sense of personal responsibility. In contrast, multi-professional family support teams that a number of local authorities have established, such as Southend and Westminster, have demonstrated that key worker-led whole family interventions can more effectively reduce offending and anti-social behaviour by children¹⁸.

Youth justice disposals are ineffective at tackling the causes of offending and do not ensure services intervene early and robustly

– Individual youth justice disposals are very poor at addressing the multiple factors most closely associated with youth crime amongst 10 and 11 year olds – social disadvantage, emotional and behavioural difficulties, poor parenting and difficulties at school. Of particular concern is that current disposals deal primarily with the child and, critically, fail to view his or her poor behaviour in the context of the whole family. Because they fail to take a systemic, whole family approach they are not tough on the causes of crime but are very weak on them. In particular, youth justice sanctions fail to effectively

12 Bryan K, F. J. (2007). *Language and communication difficulties in juvenile offenders*. IJDLC, 42, 505-520

13 Department of Health (2009) *Healthy Children, Safer Communities*. Department of Health, London

14 Fazell, D. A. (2008). Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and meta regression analysis of 25 surveys. *Journal of the American Academy of Child and Adolescent Psychiatry*, 47 (9), September 2008, pp.1010-1019

15 *ibid*

16 *ibid*

17 Ministry of Justice (2010) *Reoffending of juveniles: results from the 2008 cohort England and Wales*. Ministry of Justice, London.

18 Westminster’s Family Recovery Project reports that of the families who have been part of the project for 6 months or more 39% of known Anti-Social Behaviour has reduced; Southend’s multi-agency team reports that where a family went on to be engaged with the multi-agency team 45% stopped offending and 30% reduced their offending.’ (DfE, 2010: Areas with dedicated multi-professional teams in place that are delivering key worker led coordinated packages of support. DfE: unpublished)

respond to children's behaviour at the critical transition point from primary to secondary school.

Early criminalisation has harmful consequences – There is a strong body of research evidence demonstrating that if children are criminalised from a young age they are more likely to be drawn further and deeper into the criminal justice system, ultimately resulting in a period in custody. This is reflected in the analysis of the case files in our report *Locking Up or Giving Up?* which found that a third of children under 15 in custody were 10 or 11 when first convicted¹⁹. Detailed longitudinal research, involving a cohort of 4,100 children in Scotland, concluded that the deeper that children penetrate the youth justice system, the more 'damaged' they are likely to become and the less likely they are to stop offending and grow out of crime²⁰.

Avoiding criminalisation is a means of real cost avoidance – Effective intervention to tackle the multiplicity of problems that a child and his or her family is facing can substantially reduce costs to the state. Almost £6 million could have been saved in court appearances alone, of which there were 664 in 2008, money which would have been better invested in prevention rather than punishment²¹. Appendix A sets out the example, from the Audit Commission's report on the youth justice system published in 2004, of James, a 16-year-old who is serving his second custodial sentence.

Looking at James' life with the benefit of hindsight, we can see that he might well have gained a lot from early parenting support, anger management, learning support and mentoring. If these had been provided early on when he was first cautioned by the police, and continued throughout James' teenage years, instead of resorting to criminal justice responses, some or all of his offending might have been avoided. The costs of these support services would have been £42,000 up to the time he was 16, compared with the actual costs of £154,000 for the services he did receive (which include expensive court appearances and custody), a saving of more than £110,000.

Alternatives to criminalisation and prosecution

There are a number of alternatives that are not a soft option and are a more effective response than criminalisation. They successfully challenge and support children aged 10 and 11 and their parents to:

- face up to their behaviour
- accept responsibility for their actions
- understand and recognise the consequences for others of their behaviour
- operate within clearly set boundaries that involve the threat of sanctions
- improve school attendance and performance
- improve relationships within their family
- improve their behaviour, therefore reducing the likelihood of offending.

19 Glover, J and Hibbert, P. (2009) *Locking up or giving up: Why custody thresholds must be raised*. Barnardo's: London

20 McAra, L. and McVie, S. (2007) 'Youth justice? The impact of system contact on patterns of desistance from offending', *European Journal of Criminology*, 4(3), 315–45.

21 Costs are calculated using a case study from the Audit Commission (2004) report which found that the costs of a court appearance for criminal damage and assault (including police time) was £8,712. This figure has been applied to the 664 children sentenced in court in 2008, to give a figure of £5.8 million. Audit Commission (2004) *Youth Justice 2004: A Review of the Reformed Youth Justice System*, Audit Commission, London.



Multi-professional intensive family support – A number of local authorities have set up multi-professional teams, for example, the Westminster Recovery Programme, which are delivering key worker led, co-ordinated packages of support to families with multiple problems, including children at risk of, or those who have been involved in, criminal behaviour. Rather than the child being prosecuted and receiving a youth justice disposal, these teams take a whole family approach to change behaviour.

Family intervention projects – Barnardo's runs a number of family intervention projects (FIPs) and these challenge and support parents and their children to face up to their behaviour and accept responsibility for their actions. By adopting a key worker system that takes a whole family approach, projects have successfully improved outcomes.

Evaluation of the FIPs shows positive outcomes including 64 per cent reduction in anti social behaviour, 58 per cent reduction in truancy, exclusions and bad behaviour at school, 61 per cent reduction in domestic violence, 45 per cent reduction in substance misuse and 42 per cent reduction in concerns about child protection.²²

A mother who had parenting support from Barnardo's FIP programme in Gateshead whose 11-year-old son was involved with the youth offending team, recently wrote to Tim Loughton Parliamentary Under-Secretary for Children's Families:

'I just used to sit and cry and the boys had to look after themselves. We had no ground rules, we were like lodgers living in the same house.'

²² DCSF (2010) *ASB Family Intervention Projects: Monitoring and Evaluation*. London

‘We were taught about different ways of disciplining children, actions and consequences, how to talk to and not at them. I completed the 10 week course and my life and that of my children changed 100 per cent. We now work together on problems, we talk instead of shouting, the children know what is acceptable and the consequences of doing things they know are wrong.’

Civil Court Orders – Two civil court orders - Child Safety Orders²³ and Parenting Orders²⁴ – are available and can be used as an effective sanction, directed at parents and families if they fail to comply with voluntary interventions, or in addition to them. The orders could be used more widely if necessary and where families fail to co-operate on a voluntary basis.

The Irish example

In October 2006 the minimum age of criminal responsibility in Ireland was raised from seven to 12 for all offences except murder, manslaughter, rape and aggravated sexual assault.

Although legislation prohibits children under 12 from being charged and convicted of a criminal offence, they do not enjoy total immunity from action being taken against them. Legislation states that where the police have ‘reasonable grounds’ for believing a child under 12 is responsible for an act which would constitute an offence



they must take the child to his or her parents or guardian. If they have grounds for believing the child is not receiving adequate care or attention they are to make a referral to children’s social services. In addition the legislation states that where this is not ‘practicable’ the police can arrange for a temporary care order so the child is taken into local authority care.

There has not been an independent analysis of the impact of raising the age of criminal responsibility on youth crime levels. However, according to the Department of Justice there is no evidence to suggest that it has had an adverse effect on the level of offending by 10 and 11 year olds²⁵.

²³ The Child Safety Order (CSO), introduced in the Crime and Disorder Act 1998, is designed to tackle ‘criminal-type and anti-social behaviour’ by children below the age of criminal responsibility. It is available on an application by a local authority to a family proceedings court to ensure that a child receives appropriate care, protection and support, through appropriate supervision, specified activities, family group conferencing, or exclusion from certain areas. Failure to comply with a CSO is not an offence, but the court can make a Parenting Order or a care or supervision order.

²⁴ Parenting Orders under the Crime and Disorder Act 1998 have been available nationally since 1 June 2000. The Anti-social Behaviour Act 2003 and Criminal Justice Act 2003 amended Parenting Orders to increase their flexibility and widen their availability. Parenting Orders can be made by all courts, and the intention is to steer the child away from criminal conduct or antisocial behaviour by requiring parents to co-operate to tackle the early patterns of it.

²⁵ Correspondence with officials in the Irish Youth Justice Service in the Department of Justice.

Appendix A

James's story

James's behaviour became difficult to manage from the age of five. He was being neglected at home and by the age of six he was displaying learning difficulties and attendance problems. James was given a special educational needs statement and sent to a special school. At 10 he received his first caution – for arson – and during the next few years he dropped out of school and got into more trouble with the law.

Looking at James's life with the benefit of hindsight, he might

well have gained a lot from early parenting support, pre-school education, anger management, learning support and mentoring. If these had been provided early on and continued throughout his teenage years, some or all of his offending might have been avoided. The costs of these support services would have been £42,000 up to the time he was 16, compared with the actual costs of £154,000 for the services he did receive, which include expensive court appearances and custody. Effective intervention when problems first emerged could have saved more than £110,000.



Actual interventions and estimated costs²⁶

Age	Actual agency action	Cost (£)
6	Initial assessment and monitoring by an educational psychologist	204
8	Statement of SEN compiled by the LEA	7,000
	Special school place approved by at a panel meeting	780
10	Police involvement and caution	1,452
13	Court appearances regarding criminal damage and assault including police time	8,712
	Yot becomes involved and follows up for three months	1,428
	Education welfare officer makes one contact with family	28
	Annual review of statement	560
	Education 'package' organised, including an alternative education timetable	4,004
	Social services undertakes a family assessment	350
	Learning support assessment	105
14	James and his mother interviewed by social services	48
	Court appearances, including police time, relating to theft, taking a car and burglary	13,068
	Yot involved with court orders; Yot/Intensive Support and Surveillance Programme (ISSP) follow up for three months	6,000
	Education officer makes one contact with family	28
	Professionals' meeting	560
	Individual tuition offered, but not accepted by family	-
	First custodial sentence for six months	51,409
	Social services undertakes a family assessment	350
15	Social services attempts, unsuccessfully, a duty contact with mother	25
	Referral made to the local adolescent support centre	47
	Yot/ISSP team follows up for three months	6,000
	Child protection strategy meeting, implementation overtaken by custody	120
	Second custodial sentence for six months	51,409
	Total estimated cost to age 16	153,687

²⁶ Audit Commission (2004) Youth Justice 2004: A review of the reformed youth justice system, Audit Commission, London

Alternative strategies and costs assuming crime route is avoided

Age	Actual agency action	Cost (£)
0-3	Family Support/Sure Start (1 hr x 10 weeks)	1,250
5	Family Support/Sure Start (1 hr x 10 weeks)	1,250
	Educational psychologist support and liaison (1 hr x 12 months)	980
	Social services family assessment	350
6	Speech and language therapy sessions (1 hr x 12 weeks)	392
	Educational psychologist support and liaison/direct work (1 hr per fortnight x 6 weeks)	123
	Family support (1 hr x 10 weeks)	1,250
8	Anger management group (6 sessions)	1,624
	Family support to tackle neglect (10 weeks)	940
	Multi agency school inclusion group develop a plan	905
10	Learning support assistant/earning mentor (10 hours per week x 36 weeks)	12,600
	Education psychologist support and liaison/direct work (1 hour per fortnight x 3 months)	245
	James involved in decision making from now on	-
	Multi agency inclusion group review and plan secondary school transfer	905
12	Mentor in mainstream school and in the community (12 months)	6,000
	Education psychologist support and liaison/direct work (1 hour per month x 1 term)	123
13	Continue mentor support (12 months)	6,000
	Family support to tackle absentee parents (10 weeks)	1,210
14	Adolescent support (7 hours per week x 12 weeks)	2,016
	Support in school from the learning support unit on a drop in basis (10 hours per year)	350
	School lunch break 'haven' – available all year	3,731
15	With support for his family, James stays in mainstream education until leaving school age	-
	Total estimated cost	42,244

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the conveyor belt to crime*

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The report was written by the policy, research and media directorate

Some images posed by models.
Names have been changed to protect identities.

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