



**Cynulliad Cenedlaethol Cymru  
The National Assembly for Wales**

**Y Pwyllgor Cymunedau a Diwylliant  
The Communities and Culture Committee**

**Dydd Mercher, 7 Hydref 2009  
Wednesday, 7 October 2009**

**Cynnwys**  
**Contents**

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon  
Introduction, Apologies and Substitutions
- 4 Ymchwiliad i Gyfiawnder Ieuenctid—Casglu Tystiolaeth  
Inquiry into Youth Justice—Evidence Gathering

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Janice Gregory	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Lesley Griffiths	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Bethan Jenkins	Plaid Cymru The Party of Wales
David Lloyd	Plaid Cymru The Party of Wales
Joyce Watson	Llafur Labour

**Eraill yn bresennol**  
**Others in attendance**

Dr Samantha Clutton	Uwch Swyddog Ymchwil a Pholisi, Yr Uned Polisi, Ymchwil a Datblygiad, Barnardo's Cymru Senior Research and Policy Officer, Policy, Research and Development Unit, Barnardo's Cymru
Mary Duff	Cadeirydd, Pwyllgor Llysoedd Ieuenctid, Cymdeithas yr Ynadon Chair, Youth Courts Committee, Magistrates' Association
David Ford	Cadeirydd, Panel Llys Ieuenctid Caerdydd Chair, Cardiff Youth Court Panel
Andy James	Cyfarwyddwr Cynorthwyol, Barnardo's Cymru Assistant Director, Barnardo's Cymru

**Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol**  
**Assembly Parliamentary Service officials in attendance**

Tom Jackson	Clerc Clerk
Annette Millett	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 9.33 a.m.*  
*The meeting began at 9.33 a.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Janice Gregory:** Good morning, everybody. We start the meeting with the usual announcements. If you have a mobile phone, BlackBerry, or pager about your person, please switch it off rather than set it to stand-by mode. The National Assembly for Wales operates through the English and Welsh languages; if you require translation, it is available on channel 1 on the headsets provided, and if you require amplification of the sound, that is on channel 0. There is no test of the fire alarm today, so if the alarm sounds, we will be asked to leave the building by the nearest safe exit. Please be guided by the ushers, who will make sure that we leave the building safely.

[2] I have received apologies from Alun Cairns and Lynne Neagle. There are no substitutions for them.

9.34 a.m.

### **Ymchwiliad i Gyfiawnder Ieuenctid—Casglu Tystiolaeth Inquiry into Youth Justice—Evidence Gathering**

[3] **Janice Gregory:** This morning, I am delighted to say that we have representatives from Barnardo's Cymru. Good morning to you both and thank you for taking the time to come to the committee to give evidence to this important inquiry.

[4] Dr Samantha Clutton is the senior research and policy officer in the policy research and development unit at Barnardo's. Andy James is the assistant director for policy. Thank you for the paper that you supplied prior to coming to committee this morning. Members have had an opportunity to look at that. I do not whether you know how we work, but Members will ask you a series of questions—there are no trick questions in there; we are determined to make this as wide an evidence-gathering session as possible. I would be happy if you wanted to move straight into questions or if you wanted to give a couple of minutes' preamble. We have about 40 to 45 minutes for this session, so it is entirely up to you—whatever you are comfortable with. I do not know who is to lead on this or whether it will be a joint effort.

[5] **Mr James:** I will lead on it, and we are happy to go straight into the questions.

[6] **Janice Gregory:** Okay, that is great. In that case, the first question is from Bethan.

[7] **Bethan Jenkins:** Thank you for coming in to give evidence. What do you think are the strengths and weaknesses of the all-Wales youth offending strategy? You say in the information that you have provided that there is no seamless provision across the board, and that, sometimes, the principle of putting the child at the centre of the discussion is not reflected in practice. Can you expand on that?

[8] **Mr James:** The strategy sets out the principles in the context of the United Nations Convention on the Rights of the Child, which we welcome. Barnardo's supports that, because we believe in taking an holistic approach to dealing with youth offending, and we think that that is the best way of tackling crime and the life issues that come with supporting young people who are in trouble. We also support the maxim, 'Child first, offender second'.

[9] I presume that you have already received lots of evidence to show that the approach in Wales is markedly different from that in England, which has a much more punitive feel to it. In the context of youth justice in England, children's rights under the UNCRC come very much down the pecking order and are not really seen as worthy of being on the agenda, in many cases.

[10] So, we agree with the strategy's main aims of keeping young people out of the youth justice system and out of custody wherever possible. We have had sight of the new delivery plan, which is pretty fresh, and we support most of its content. Sam will say a little about the implementation gap and some of the concerns that we have about that. In the main, the strategy is focused on community provision, and one of its biggest flaws is that it cannot influence or make key decisions about the secure estate and where young people are sentenced within and outside Wales.

[11] For example, the strategy cannot address the lack of appropriate custodial provision in Wales. We have very limited provision. There is nothing in west or north Wales. The strategy

cannot ensure that the 10 entitlements approach is available to all children, particularly in English institutions. It is very difficult to administer that. The strategy cannot decide the type of custodial establishments that Welsh young people are sent to. So, the glaringly obvious shortfall is that we cannot support and administer the children's rights agenda that we have in Wales in English institutions. That will probably form a part of our later discussions. We very much support the idea of devolving to Wales the responsibility for the secure estate and, possibly at a later stage, the youth justice system in Wales.

[12] **Dr Clutton:** On the implementation, as Andy said, the principles of the strategy are very welcome, and set Wales apart. Part of the problem is that there is an implementation gap within Wales relating to policy areas for children and young people. That came through very clearly when the UN committee published its report last year. We have evidence that shows that the young people most at risk of being involved in the youth justice system are least likely to access their entitlements. It has something to do with their vulnerability and the way in which they get the best—or not—out of services, and so education is a key area in that regard, particularly unofficial exclusion from school. Once children and young people are within and in contact with the youth justice system, there is no sense in a young person not having a care plan throughout the process. The work is all about directing them out of that system, but we know that, once children and young people are within it, it is a lot harder to get them out of it. Some of this can be about workers changing within the youth justice system, because the order to which the child is subject changes.

9.40 a.m.

[13] So, you may see a change in the youth justice staff at the point at which a child goes from a final warning to a reprimand, and so on, but part of it is also about the relationship between that system and outside agencies. A young person may be in touch with many different agencies about many different issues, and I do not think that there is enough evidence that agencies are working together consistently. So, a young person may have a lot of appointments in one week with many different agencies, and some of those appointments may be conditional, but it is questionable whether those agencies are working together properly to get the most effective impact from those interventions.

[14] To go back to Bethan's question about a seamless service, there is some evidence to suggest that it is not until young people are given a custodial sentence that they get a mental health assessment, for example, which they may have needed when they were in the community. In addition, at the point of resettlement, there is a gap between our aspirations and the experiences of young people across the board, in relation to accommodation, substance misuse and mental health, which, as you know, are all interrelated.

[15] **Mr James:** On the strategy and the new delivery plan, for us, the key is to make a concerted effort to reduce the level of custody, that is, the number of children and young people who are given custodial sentences. That must include achieving some consistency in sentencing, because the patterns across Wales vary so much. I know that it is an overused phrase, but custodial sentencing is a 'postcode lottery'. If you are a young person, it is best not to get into trouble in Merthyr, as it has one of the highest custodial sentencing rates of the whole of England and Wales. If a young person who had committed the same offence and who had the same sort of background were tried in another court, the disposal would be altogether different. Much more work needs to be done to ensure that sentencing is more consistent across Wales. The magistrates are all given the same guidelines and they operate according to those, but there is obviously some discretionary decision making going on, to account for the wide discrepancies in sentencing patterns.

[16] Finally, if the responsibility for the secure estate were to be devolved to Wales, which we would support, we feel that the biggest single thing to help that transition would be to

reduce the number of custodial sentences given across Wales. Then, we could make a fresh start and take a different approach geared to our children's rights agenda in Wales. That would give us an opportunity to take a much more positive approach to dealing with those young people who, although difficult, come from the most damaged and disruptive backgrounds, in our experience. They need support and help.

[17] **Lesley Griffiths:** I have never heard anyone say that there is a postcode lottery with custodial sentences before. Can you expand a bit more on that? You said that magistrates are given the same guidelines, so why do you think that Merthyr Tydfil gives more custodial sentences?

[18] **Mr James:** There could be several reasons for that. There could be local reasons regarding the delivery of alternatives to custody, for example. Much of it may be to do with the magistrates' faith in what they have been offered by youth offending teams. There are several variables involved. However, for the young person involved, it cannot be right that, if they were to cross the boundary into another court's jurisdiction, they would at greater or lesser risk of custody. The evidence across Wales is pretty conclusive and has been for a while. There are different sentencing patterns in different courts and some take a more punitive line than others. Given that they work to the same guidelines, it is not really acceptable that young people face those differences.

[19] **Eleanor Burnham:** I used to work with excluded young people, and I was also a magistrate in Wrexham, and I agree with you. We were told that magistrates in Flintshire had a much more severe attitude, even though we had all had the same training. We will be talking to the Magistrates' Association later. What key questions should we ask? I am sure that we have them covered but, just in case, what key questions should we ask them?

[20] **Mr James:** A recent concern of ours as an organisation, which we have flagged up in recent reports, is how many 12 to 14-year-olds have been sentenced to custody. The figure is roughly 400 a year across England and Wales, and about 40 of those are Welsh young people. We did some research on that and found that about a third of them were sentenced to custody without really meeting the criteria for custody, which is whether they have committed a serious and grave offence, and whether there is strong evidence of persistent offending. We think that there should be a tightening up of the sentencing guidelines for magistrates, as we hope that that would enhance the prospects of a more consistent approach.

[21] **Janice Gregory:** It is quite right and proper that we have given some time to enable you to answer Bethan's question, which was about the strategy. However, just to give you some idea, we are time restricted, so we now have half an hour to get through the next 11 questions.

[22] **Mr James:** Okay.

[23] **Janice Gregory:** It is not that I am restricting your time. I would not want you to think that for a second, but it is just to give you some idea. It is right that we have that depth of answer. Dai will ask the second question.

[24] **David Lloyd:** Diolch am eich tystiolaeth ysgrifenedig, ac am yr ateb cynhwysfawr i'r cwestiwn cyntaf sydd, yn rhannol, wedi ateb mwyafrif y cwestiynau sydd i ddilyn. Mae'n siŵr y bydd hynny o gysur ichi. **David Lloyd:** Thank you for your written evidence, and also for the comprehensive answer to the first question, which has partly answered most of the questions that will follow. I am sure that that will be of some reassurance to you.

[25] Mae adolygiad y pwyllgor wedi bod ar This committee inquiry has been ongoing for

waith ers rhai misoedd bellach ac mae aelodau'r pwyllgor hwn wedi ymweld â charchardai yng Nghymru ac yn Lloegr lle y mae ein pobl ifanc yn dueddol o gael eu hanfon hefyd. I ehangu ychydig ar eich ateb blaenorol, beth, yn nhyb Barnardo's, yw'r canlyniadau i blant a phobl ifanc o Gymru sy'n gorfod cael eu carcharu ymhell o'u cartrefi—yn Lloegr, er enghraifft? Beth yw'r canlyniadau o safbwynt Llywodraeth yn ceisio diwallu eu hanghenion?

a few months now and committee members have been visiting prisons in Wales and England where our young people also tend to be held in custody. To expand a little on your previous answer, what, in Barnardo's opinion, are the consequences for children and young people from Wales of being placed in custody far away from home—in England, for example? What are the consequences as regards Government trying to address their needs?

[26] Yr ydym hefyd yn ceisio atal aildroseddu. Sut y mae canlyniadau o'r fath yn cael eu helpu wrth garcharu ein plant a'n pobl ifanc ymhell o'u cartrefi?

We are also trying to reduce reoffending. How are such consequences helped by placing our children and young people in custody far away from home?

[27] **Mr James:** The short answer is that I do not think that they are helped by being in custody in English institutions. Having a child serve a sentence hundreds of miles away from the family home puts an enormous strain on the family. We know that the Youth Justice Board for England and Wales aims for 90 per cent of young people to be placed within 50 miles of their home. That does not even come close for young people who are sent to institutions in England. Unless we improve and increase provision in Wales, that target will always be unachievable.

[28] Try to imagine what it might be like for a 12-year-old boy, who has been sentenced under a secure training centre order and has to go to an English institution hundreds of miles away from home. He may never have been away from home before, but he is placed in a really strange setting, which is completely new to him. The family may have problems gaining access to that institution. It may be too far to get there and back in a day on public transport. The transport costs could be so prohibitive that the family cannot get there. We know that there is a process of reimbursement but the money has to be paid out first before people get it back. It is very difficult for some of these families to do that. It is a matter of purely having contact with the family. I have two boys, aged 16 and 13 years old, who I think are pretty well adjusted but even they would really struggle with that lack of contact. If you have children, perhaps you can imagine what it might be like for those kids, given the sense of isolation, the loneliness, and the fear that they feel. I do not think that we should be placing children out of Wales, in England.

[29] **Dr Clutton:** On reducing reoffending, there is some really good practice of families being brought in to the secure estate to work with young people, and being involved in their rehabilitation plans and so on. They discuss how things will work out when the young person returns home. All that is made much more difficult when children are placed a long way from home.

[30] There is also a child poverty issue in that families from poorer backgrounds are less likely to be able to visit their children and so they are at greatest risk. We know that families are the key to reducing reoffending, by having that strong family link, but the good practice that is evolving is being jeopardised by the current arrangements.

9.50 a.m.

[31] **Mark Isherwood:** What comment would you make on the need to separate the distance and the Wales-England issues? It would be a huge distance to send a young person from north Wales to Neath, whereas most of the young people from Wales whom we met at

Stoke Heath were very near to home, and a lot of the staff were born in Wales or are currently living here, and some of them were even Welsh speakers. What matters is that the distance and the services provided are appropriate to young people from Wales.

[32] **Mr James:** The issue of services being provided and putting together a plan that incorporates all of the elements of Welsh policy, when you are dealing with an English institution, is very difficult, which is what the youth offender teams tell us. There is clear policy divergence between Wales and England in terms of policy delivery for children and young people. Issues around the learning pathways in education and around substance misuse and mental health are much more difficult to pull and knit together when you are dealing with the legislation and perspective of different countries. So, that is a problem.

[33] If we get to the point where we can devolve the secure estate to Wales, the big issue is where the capital to do that is going to come from. We need the money to come with that devolved responsibility. If that is done, it would need to be based on the model that we see at Hillside in Neath, which we think is the best model, and the secure children centre model, and for that to be replicated for north Wales, so that there is a similar establishment there too. The money must come with the devolved issue to do that. I know that there have been discussions about doing that, but I understand that they have been blocked by the Home Office or by Whitehall. However, I believe that that would be the best move.

[34] **Janice Gregory:** You have gone quite a way to answering question 3, so I do not know whether Joyce wants to add anything.

[35] **Joyce Watson:** No, it has been answered.

[36] **Mark Isherwood:** You referred to the fact that the privilege and sanctions system in secure settings sometimes disadvantage young people with the greatest needs. Why do you believe that that is the case and what would you propose to address that?

[37] **Dr Clutton:** Children with additional and complex needs, who have very chaotic family backgrounds, and who have not had their mental health issues addressed, often have behavioural and emotional difficulties, which mean that they do not succeed well within the merits and sanctions system in the secure estate. That means that they cannot earn the right to have things like family contact, so, in a way, that vicious circle perpetuates the fact that their disadvantage is made worse by that system. I do not know what the answer is to that; I appreciate that there needs to be some kind of system within prisons, because, currently, a child with the greatest need is least likely to succeed within the merits system and earn the rights to things that may boost their self-esteem, so that they can engage in rehabilitation. So, those most in need, with the most complex problems, are the least likely to do well within that system—in exactly the same way as in the education system within schools.

[38] **Mark Isherwood:** Neath, for example, has a form of a reward system. I met young people last week who, when they first arrived, I was told, were severely traumatised and were deliberately avoiding accessing the merits system, because they were still fighting the system. However, the same young people have moved on and have now embraced the merits system, where appropriate support to meet their broader needs have been put in place. So, do we not both running alongside each other?

[39] **Dr Clutton:** I am not saying that we should get rid of the merits system. I have an issue with the merits system operating where children are detained on welfare grounds, which is often because of child sexual exploitation, because that seems to imply that we are saying to them that they are the ones in the wrong, rather than saying that they are the victim. I think that they should run side by side, and that, where there are effective therapeutic interventions, a child can succeed within the merits system.



[40] **Mr James:** I think that the scale of the institution also has something to do with that. With the numbers being low and manageable in Hillside, there is a real opportunity to work closely with children and young people, and, with all of the therapeutic and support input, it makes sense to combine the two, because it can make a real difference.

[41] **Bethan Jenkins:** Is this something to do with the fact that it is easier to lose the higher level of merits—that it is too easy to fall back into old ways as opposed to being given incentives at the start of the scheme? Do these merits schemes vary from places like Hillside secure unit to Park prison? Is there some way that they could be brought together to discuss a streamlined approach to the merits system across the board?

[42] **Dr Clutton:** The way the system operates depends on the establishment. At first, the system allows you to earn some really basic things, like curtains or a rug. We are not talking about access to a Playstation, as with the higher levels; at the start, we are talking about nicer bedding and so on. As someone working in a children's charity, a lot of this appears very draconian to me.

[43] **Eleanor Burnham:** We live in a complex age where we have, if you will pardon my saying so, the *Daily Mail* syndrome whereby people are baying for blood all the time. You have answered some of my questions, but I wonder if you would like to say a little more about what would have the greatest impact in rehabilitating young offenders. You mentioned Hillside; I have not personally been there, but as I said, I used to be a magistrate, and we used to go to Stoke Heath. Things have moved on, because in those days there was a lot of bullying. The situation has improved greatly, but what exactly is Hillside doing that makes a difference? Is it the therapy, the size of the institution, or are there other aspects that will help to reduce the numbers of Welsh youth being sent to institutions across the border? I agree with Mark that, if you go to Stoke Heath, it is so close to the border that a lot of people from Wales work there, but there is also the issue of education, and the different curriculum that we have in Wales. We were also told that there is no integrated service when the young people got out. Do you think that that is key to ensuring that they do not reoffend and end up back in custody?

[44] **Mr James:** I will start with your point about the media. I have been in this job for 10 years, but before that I managed two youth justice teams in Neath Port Talbot and Swansea, and it was ever thus; the media blows up cases that demonise children and young people. I used to begin some of my talks with a quotation about how dreadful young people are today, talking back to their teachers, not listening and so on, and then I would reveal that the quotation was from Aristotle. Disruptive children have always been with us, and always will be; the issue is how we deal with them, and, from our perspective, how we deal with them in a humane way.

[45] As for the models that we have seen for custody, the secure children's centre is far and away the best—for the reasons that you have begun to explain. The linkage with Welsh policy is key for the education and resettlement programmes; it is much easier to organise all of those things. We have a service called Taith that provides assessment and treatment of young people who are alleged to have engaged in sexually harmful behaviour. Some of those young people are in Hillside, and we work closely with that secure unit in providing the treatment programmes. We see the contact that happens at that particular unit, and we have always been impressed by the psychological, psychiatric and emotional support that is provided for young people in that establishment. It makes such a difference; it does not feel like a cold institution.

[46] **Eleanor Burnham:** Some of the other testament that we have had has focused on the other end of the issue, namely, what happens when young offenders go back into the community. Everyone is so busy that no-one is making the necessary links. Common sense

says that the further away the young person is, the less likely it is that the youth offending teams will be involved, because they do not have time to discharge people and look at what has been happening to them in the secure institutions.

[47] **Dr Clutton:** All the issues related to family contact are also true of agency contact, especially where you have an English establishment that is delivering English policy across the board, and then you come back to a Welsh authority with a Welsh policy. Children and young people's policy is one area where we have quite wide divergence now, especially if you look at the principles, so it is a big issue.

[48] **Eleanor Burnham:** Are we doing better with our policies?

10.00 a.m.

[49] **Dr Clutton:** In principle, we are doing much better with our policies. They are child-focused and we are committed to the United Nations Convention on the Rights of the Child. If you are going to be born, be born in Wales. However, now we need to make this happen by applying what is down on paper. We do not need any more strategies; we need to make the ones that we have work because they are good strategies.

[50] **Mr James:** Yes, it is about implementation.

[51] **Janice Gregory:** I like that expression: 'If you are going to be born, be born in Wales'.

[52] **Lesley Griffiths:** To follow up what you were saying, Andy, you stated in your evidence that the use of secure accommodation for children abused through sexual exploitation is expensive and ineffective. What specific provision do we need for these young people, and is there any available at the moment in Wales?

[53] **Mr James:** We have a service called Seraf, which works with young people at risk of being sexually exploited. Sam has done a great deal of the work in terms of the research and policy development for that, so perhaps she would like to say a bit about it.

[54] **Dr Clutton:** Until very recently, we knew very little about the sexual exploitation of children in the context of what is happening in Wales. We have now done quite a bit of research involving nearly 1,500 cases held by children's services and youth offending teams across three local authorities. We have a pretty good idea about the nature and prevalence of child sexual exploitation. We now have a service that works with children who are at risk of, and being, sexually exploited. It is a pan-Wales service. However, there are two elements to the resources available for this intensive high-end work. One is that we need to start doing some more preventive work to stop children getting to the point where they are being exploited or at significant risk of sexual exploitation. The second is that, because these children are often problematic and difficult, we do not have any input until there is a perceived danger that they might die, if, for example, they have gone missing and there has been a crisis. At that point, the response is often to put them in secure accommodation for their own safety on welfare grounds.

[55] As an example, I will use one case study of a young person with whom we have been working. When she was first referred, her risk scores had come down quite a bit. The practitioner who had put in the referral was quite surprised by this, but we then found out that the form had been filled in while she was in secure accommodation. Within three weeks of her coming out of that secure accommodation, she was at very significant risk. The perpetrator was waiting for her to be released, and she was back in the pattern of sexual exploitation. So the problem is solved while the child is within secure accommodation, but there is no intervention to help the child to overcome the things that make them vulnerable to

being sexually exploited, and the perpetrators just wait until the child is released.

[56] **Lesley Griffiths:** So are you saying that there is no provision, apart from the secure estate?

[57] **Dr Clutton:** There is the Seraf service that can do intervention work with the children at high risk, and we have evidence of the outcomes of that service; it drastically reduces the risk of a child being sexually exploited.

[58] **Lesley Griffiths:** Is that being used rather than the secure estate?

[59] **Dr Clutton:** It is being used in some cases, but there is a resource issue. In the case of a child who is aged 16 or over, getting the resources to make that happen is near-impossible.

[60] **Joyce Watson:** This is an area that I am really keen to do something about. As you know, I am chair of the cross-party working group on the trafficking of women and children. We could call this internal trafficking for the purposes of sexual exploitation. ‘Trafficking’ is not a term that people want to use in the community; it is not something that they want to hear about. We are hiding behind referring to it as the sexual exploitation of children, when the reality is often that people are making money out of this. So, I am really passionate about doing something about this, particularly given that a decision has been taken today not to fund the serious organised crime agency to work on trafficking. If you were going to wave a magic wand, and you had all the money at your disposal, what could we do to stop this? There are two elements to this: there is the criminal act of the perpetrator—it is organised crime in many cases—but paramount to us is the protection of the child. So, if you had the money and you could do anything, what would you do? We need to know that for the recommendation that we need to make.

[61] **Dr Clutton:** I wish that we had two hours instead of 10 minutes, but I will speak quickly, and I can give you this in writing afterwards too. On the response to missing children, children who go missing is the biggest indicator of child sexual exploitation and children being moved, internally trafficked, while they are missing. We need a better response when they first go missing so that we can do a risk assessment and arrange interventions. We need to look at prevention through schools on a more universal basis and with targeted vulnerable children and young people and local authorities, and we need to build capacity there.

[62] We need to ensure that the new, all-Wales protocol for child sexual exploitation is implemented and that practitioners are aware of it and know how to use it and where it is. That was published as part of the 2008 all-Wales child protection procedures. We also need to ensure that we can get the resources for the children who need intensive, long-term support through a specialist service. They are also the parents of vulnerable children in the future. We know that if there is a big problem for them once they reach the age of 16, they will be hugely vulnerable. The risk is at a peak then and there are currently not the resources for a service that evidence says reduces risks and produces good outcomes.

[63] **Janice Gregory:** It would be most useful if you could let us have that in writing. Perhaps you could send it to the clerk. We can then ensure that it is circulated to committee members.

[64] **Mr James:** There is also an issue about raising awareness on a broader level and society’s understanding and knowledge of this issue. It is one of those hidden areas that people do not want to look at, and they do not believe that it goes on. They think that if there is any child prostitution, it is 13-year-olds standing on street corners in areas of cities. That is not how it works. It is done in an extremely sophisticated way. It is done behind closed doors,

via the internet and telephones and in people's homes, so it is not visible. We need to raise awareness so that people understand that a bit more and understand that these are not choices that young people are making. They are not making rational choices to be involved in this end of the world; it is a very seedy, violent place.

[65] **Dr Clutton:** To take a young person who is a victim of extreme physical, emotional and sexual abuse and lock them up gives them a message that helps the perpetrator to continue exploiting them.

[66] **Joyce Watson:** Moving on to women, and young girls in this case, in the secure estate, what are the particular needs of girls and young women from Wales who receive custodial sentences, and how should those needs be met?

[67] **Dr Clutton:** The Youth justice board has compiled evidence that girls and young women in the youth justice system—and there is an overlap here with our last conversation—are much more likely than their peers to have been sexually abused and to have mental health problems. We need to change how we approach the interventions that are available during a custodial sentence. Obviously, there are times when girls and young women have to have a custodial sentence because of the nature of the offence that they have committed, but you have to look at the context of the path that gets them to that point. We need to have an approach that takes into consideration their extreme vulnerabilities, and I am not sure that that is there at the moment. There is a big overlap here with the sexual exploitation issue. In the research that we did in relation to that, we also looked at boys and young men and child sexual exploitation, and we found that boys are more likely to be in the youth justice system and that girls are more likely to be in the welfare system, in general. However, girls who had a very high risk score and who we were pretty sure were being sexually exploited, were also found with youth offending teams. So, there is an overlap there.

[68] **Bethan Jenkins:** Your evidence mentions children of adult offenders and a scheme that is happening in Hull. You also mention that you are not sure what funding, if any, comes through that UK system to Wales. Could you say what type of scheme you would want to see for Wales and whether the Hull scheme should be replicated here?

[69] **Mr James:** On 19 October, Barnardo's will issue a series of three reports. The first is called, 'Every Night You Cry' and is about the realities of having a parent in prison.

10.10 a.m.

[70] As I said, there will be three reports and a series of briefing papers on the issue because we want to raise awareness about this. As you know, in Wales, all the work of the Welsh Assembly Government with children and young people is underpinned by the United Nations Convention on the Rights of the Child. During the 2008 reporting round to the UNCRC committee, the non-governmental organisations' alternative report highlighted that although there had been some policy development and commitment to meeting the needs of the children of prisoners, service delivery in this area is still very limited across Wales. As an organisation, we support around 21 services that work with the children of prisoners across all four nations of the UK. The first briefing that we are producing will focus in the main on telling the stories of children and young people themselves. We have also funded a wide literature review to find out what is out there and what information is known about this. We have also audited all the local authorities' children's plans to find out how many of them identify this as an issue. Those reports will be coming out soon and we will send them out to committee members and all AMs in a couple of weeks' time.

[71] As part of our unit and our work in Wales, we contribute to all UK reports that Barnardo's produces because we are keen to have a Welsh perspective to all of that. Sam has

taken the lead on this, so perhaps Sam can explain some of the issues that it has raised and the key methods we can look for in relation to service delivery.

[72] **Dr Clutton:** We are members of the National Offender Management Service children and families pathway group. Developments so far within this area have been around supporting fathers within the Welsh prison estate and trying to pilot some work on that in relation to parenting, reducing reoffending and helping to achieve better outcomes for children and young people. However, in relation to that I became aware of the fact that there is no direct, targeted work with the children of offenders taking place within Wales. We know that the risks are very grave in terms of educational engagement, emotional wellbeing and all the usual suspects, but I will just read one statistic. One longitudinal study found that 48 per cent of boys who were separated from their fathers in their first 10 years of life as a result of parental imprisonment were convicted as adults, compared with 14 per cent of boys separated for other reasons. So, there is a much greater risk of offending for the children of offenders. This is also true of substance misuse and the hidden harm agenda, and there is a lot of overlap in relation to that. At the moment, only one of the children and young people's plans has children of offenders as a priority. We will be picking up children of offenders through work with substance misuse and the integrated family support teams, but again that is about thresholds. We have evidence of what the problems are and evidence of what works, and one of the messages that we have been trying to clearly give the criminal justice agencies is that helping the children of offenders is part of crime reduction and crime prevention. That is in the very long term, but it is definitely the case because these children are at a much greater risk of entering the criminal justice system themselves.

[73] **Janice Gregory:** I am sorry; I would love to give you more time, but I want to get to the end of the questions rather than ask you to send us written answers. So, I am moving on to Mark now.

[74] **Mark Isherwood:** What needs to be done to address the complex needs of some children in the secure estate in areas such as learning needs, mental health and substance misuse?

[75] **Mr James:** I will start with mental health. We have been campaigning to improve community and mental health services provision, in particular for 16 to 18-year-olds, for the last two years in Wales. There are 16 to 17-year-olds who are routinely denied access to CAMHS. If they have mental health needs for example, but also have a substance misuse problem, they are denied access to CAMHS, and if they are not in full-time education or training, or if they have a learning disability, they are denied access to CAMHS, despite clear guidance that CAMHS should be provided for all up to the age of 18. So, real discrepancies exist at the moment. We have been part of the Wales Audit Office review of CAMHS across Wales, and that report is being produced in November. We did the consultation element of that report with children, young people and parents, so we are hopeful that the Government is going to address that issue once it has a chance to respond to that report, and that provision for CAMHS will be universal for anyone who needs it up to the age of 18.

[76] Overwhelming evidence shows that many young people in the youth justice system, and particularly in the secure estate, have mental health problems. That is well documented. So, we welcome the developments in Park prison, for example, the new in-reach service that it is establishing. Certainly, we are aware that in the Hillside secure unit, there is strong psychiatric and psychological support for children and young people.

[77] We are concerned about those young people in English custodial settings because that is a different matter. Evidence provided to the committee by the youth offending team managers highlighted that

[78] ‘mental health provision in English institutions is not continuous with services in Wales and serious delays in the assessment and placement of appropriate medical care occur due to the splits between England and Wales’.

[79] If you want further evidence to support the argument for devolving the secure estate to Wales, then that goes a long way towards providing it. If we continue with our current system, we will fail those children and young people in those institutions. It is difficult to marry the two mental health systems in England and Wales and to provide a good service.

[80] Providing mental health support to young people on their release and as part of the resettlement programme is also a key area and the new delivery plan suggests that that will be addressed. However, while it is stipulated that psychiatric nursing support should be available to all youth offending teams, some teams have permanent staff members—which works well and the linkage with local plans is strong—but far too many have to try to get their CAMHS support from the general pot of CAMHS support in their local authority area; they do not have dedicated staff to do that. So, there are real issues in relation to the mental health of young people involved in the whole of the youth justice system, but particularly in custodial settings. By and large, if we are honest, those issues are not being addressed.

[81] **Mark Isherwood:** When we visited Rainsbrook secure training centre, we spoke to the psychiatrist there who expressed the opposite concern, which was a lack of feedback after young people had been released into their local community and support networks. She did not know what was happening to them, so she could not measure the effectiveness of what she had delivered and the outcomes in order to adapt to the particular needs of the children.

[82] **Mr James:** That is probably symptomatic of how disjointed and disconnected provision is.

[83] **Dr Clutton:** There is also the question of whether they were getting any intervention as they went back into the community to provide that feedback.

[84] **Eleanor Burnham:** If Rainsbrook works as they say it works, it seems quite effective. It is the first time that I have met a psychiatrist who seemed really on the ball and she is obviously very caring—that was impressive. That is an interesting fact because it is a privately run institution. I do not know whether you want to comment on the difference between privately run organisations and other types of institutions. You addressed some of my questions about when these young people go back into the community, but do you agree that there should be better support, not only in relation to psychiatric help, but also around education and training, particularly in this economic downturn, and housing? All of that could and should reduce reoffending because that is an enormously difficult nut to crack.

[85] **Dr Clutton:** If we use the term ‘youth social exclusion’ and look at all of the related problems, there are models that are shown to be effective. Those are youth-centred services where all of the dimensions of life are covered by the service in one place with a key worker, who is the gateway to these other specialisms. You therefore deal with a young person as a whole person—you do not say that a young person is getting all of this support because it is being delivered by many different agencies. That young person has to negotiate those relationships themselves. Housing is obviously a huge issue and we know that there is a severe lack of suitable accommodation for single young people in Wales.

10.20 a.m.

[86] I was very interested in the figures in the youth offending delivery plan for Wales: 94 per cent of young people involved in the system are appropriately accommodated. I think that that is probably because they were also looking at children who are living at home. That 6 per

cent at the top are the ones who have substance misuse and mental health issues, who are homeless and who are also expensive. They are expensive for society and we are throwing a lot of money at these young people in a very ineffectual way that does not offer them better outcomes and does not help us to achieve our aspirations for them. It is about the way in which services are delivered in terms of preventing offending and reducing reoffending.

[87] **Eleanor Burnham:** To move on, I visited the Clwyd Alyn set-up in Holywell the other day, which does exactly what you have said. Do we need to fund organisations, whether they are private or public, that are proven to be effective on all of these issues?

[88] **Dr Clutton:** It is about a model of having someone who can broker those agencies and specialists into coming together so that the young person is the focus, and the agencies work around that young person instead of the young person having to run around the agencies.

[89] **Mr James:** One of the problems that we see time and again is around the area of transition. In terms of mental health, there are really excellent models being developed in England. Mental health services have been provided for 16 to 24-year-olds in one setting so that they do not have an arbitrary cut-off point at the age of 18, when it is so difficult to mesh children and adults' services. That issue of transition crosses all the welfare responsibilities that affect children and young people of that age.

[90] **Dr Clutton:** Very briefly, there is a very interesting piece of work being set up in Pentrehafod School in Swansea. It is bringing the police, social services and education together to identify and respond to at-risk children.

[91] **David Lloyd:** O ran mesurau i geisio osgoi carcharu plant a phobl ifanc yn y lle cyntaf, yr ydych yn sôn yn eich papur am y gwahanol wasanaethau yr ydych yn eu rhedeg, er enghraifft, gwasanaeth mentora Barnardo's yng Nghastell-nedd Port Talbot. Yr ydych hefyd yn sôn am gynllun osgoi carcharu sy'n cael ei weithredu yn Wessex, Lloegr. Yr ydych yn pwysleisio pwysigrwydd gweithredu'n gynnar i gefnogi teuluoedd er mwyn atal troseddu yn y lle cyntaf. Yr ydych hefyd yn sôn yn eich papur y gall teuluoedd fod yn

**David Lloyd:** On steps to try to avoid imprisoning children and young people in the first place, you mention in your paper the different services that you provide, for example, the Barnardo's mentoring service in Neath Port Talbot. You also mention a scheme to avoid imprisonment that is being operated in Wessex, England. You emphasise the importance of taking early action to support families in order to prevent offences in the first place. You also mention in your paper that families can be

[92] 'party to numerous interventions from different agencies in a way that dilutes impact'.

[93] A allwch chi olrhain beth yw'r rhesymau am hynny a beth y gellid ei wneud o gofio bod nifer o wahanol asiantaethau, ond ein bod am sicrhau'r ergyd fwyaf hefyd? Beth y gellid ei wneud i osgoi'r sefyllfa hon lle mae nifer fawr o wasanaethau'n cefnogi teuluoedd, ond eto nid ydym yn gallu newid trywydd ein plant a'n pobl ifanc?

Will you outline the reasons for that and what can be done, bearing in mind that there are a number of different agencies, but that we want to ensure the greatest impact as well? What can be done to avoid this situation where we have a large number of agencies supporting families and yet we are unable to alter the course of our children and young people?

[94] **Dr Clutton:** I think that I would make exactly the same point as I made in response to Eleanor's question about young people going back into the community and having youth-centred provision. This is about child-and-family-centred provision. I think that the Assembly is signed up to that and the IFSTs are an example of that. It is about the threshold of the IFSTs

that cause concern in relation to that. It is also about looking at the whole picture. Do not run a parenting programme without ensuring that there is direct work with the child. Do not undertake direct work with a child through a special initiative in school without engaging the parents. I think that there is a big overlap here with the child poverty agenda. Community-focused schools have a lot of potential and promise that we have not used and tapped into. Part of that is to do with the funding that is being given to community-focused schools, but it is a good way of bringing services together in one place for families to undertake early prevention work in at-need communities.

[95] **Mr James:** We have real concerns at the moment that the preventative agenda will be lost or abandoned given the current economic climate that we are operating in and the fact that the focus may switch to the heavy end of child protection. While we recognise the need for young people to be safeguarded, it would be foolish to abandon all the work that we are doing in terms of prevention to get to that point. As an organisation, Barnardo's does a lot of that prevention work. We are already in negotiations with local authorities, where the cuts are biting, and they are cutting some of the provision that we make on their behalf. We are very concerned about that.

[96] **Janice Gregory:** Lesley?

[97] **Lesley Griffiths:** I think that Andy has already answered my question on funding. Sam, I would be interested in your views. Do you think that responsibility for the secure estate should be devolved to Welsh Ministers?

[98] **Dr Clutton:** Yes, because, in Wales, we have made a commitment to the UNCRC, and we have told our children and young people that they have rights as Welsh children. We should be in a position to ensure that those rights are observed. I do not think that we will ever be in a position to make that happen while Welsh children are held in the secure estate in England.

[99] **Mr James:** What an opportunity, if we could get it, it would be to do something differently by taking a much more progressive approach than the punitive responses that we see elsewhere.

[100] **Lesley Griffiths:** But the funding has to come with that.

[101] **Mr James:** It has to. We need the capital investment to build the units that would allow us to take that approach. Given the ethos and philosophy that we work to in terms of children's rights in Wales, it would be quite a feather in our cap if we could do things differently and better.

[102] **Dr Clutton:** And achieve better outcomes.

[103] **Janice Gregory:** Thank you. The last question is from me. I am sure you know that, when we compile our report, it will go to the Welsh Assembly Government with a series of recommendations. I do not want to put you on the spot, so you do not have to answer this question now, straight away, but if you could think of one or maybe two recommendations that you would like to see included in the report, what burning recommendations do you have that you could not wait to get out? You can write to us to tell us what they are. It is entirely up to you.

[104] **Mr James:** We could write to you as well. The most obvious one is that we support the idea of devolving the secure estate. Really, that is a precursor to considering devolving the whole of the youth justice system to Wales. We have no doubt that vested interests will not want that to happen, not least those in Whitehall, I would guess. But, in terms of how we



progress what we provide for our children in Wales, that is a key recommendation that I would support.

[105] **Janice Gregory:** Thank you. You will be sent a transcript of this morning's proceedings. Please check it for factual accuracy. You cannot take out anything that you wish you had not said, but if you could check it, we would be most grateful. Thank you.

[106] Members, we are now running 10 minutes late, but I thought it important that we heard as much evidence as we could from Barnardo's. Again, the representatives have our thanks. I am going to call our next witnesses to the table but, before I do, I welcome the many people in the public gallery. Good morning, to you. I understand that we have a group of Liberal Democrat peers from the House of Lords. Welcome to you and to anybody else who is in the public gallery who is not a peer in the House of Lords; you are most welcome to this committee. I hope that you are enjoying the meeting, by the way. You will have heard the recommendation that youth justice be devolved to Wales—thank you very much.

[107] We welcome our next guests to committee. Mary Duff is from the Magistrates' Association, and David Ford is the chair of the Cardiff youth court panel. I am sorry to have kept you waiting, as we ran slightly over with the previous witnesses, which we in this committee sometimes do. This is an important inquiry, so I am sure that you understand. Again, thank you for your patience.

[108] Thank you, too, for the paper that you have submitted. Members have had an opportunity to look at it. I am sure that you are aware of how committee works, in that you will be asked a series of questions, none of which will be a trick question. This is a serious attempt to gather as much information as we possibly can. Do you want a minute or two for a preamble, or are you happy to go straight to questions?

[109] **Ms Duff:** I would like to have a few minutes, if you would not mind.

[110] **Janice Gregory:** Our time is limited. It is now 10.30 a.m.—not that you should worry about that, of course, but we need to conclude this part of the session by 11.05 a.m.. We have 35 minutes.

[111] **Ms Duff:** I just want to emphasise to you who we are and why we are here. We are sentencers, and sentencing is what we are here to talk about. I am the chair of the national Magistrates' Association youth courts committee, and I am also Welsh, so they have not just sent over an English person, which I know sometimes happens. I was born and educated in Wales and I do know the country, and I am sure that you will accept that that is an advantage.

10.30 a.m.

[112] I am also very pleased that David Ford has come with me because he has more specific details about sentencing in Wales. As you said, he is chair of the Cardiff youth panel, but he is also a member of the all-Wales youth offending strategy committee, which can only be an advantage. I am aware of time, but I will just stress what we said to you in our written evidence. The main points that we would want to stress, which I am sure will come out in the questions anyway—and these are views because we are sentencers—are that it is essential that there is very close working between youth offending services and children's services across the principality, that there are more robust community sentences, and that there must be excellent relationships between youth offending service members and magistrates.

[113] Custody, believe me, is always the last resort for magistrates. We have a structured decision-making process, and we reach a decision having taken everything else into consideration. However, for some children, custody is necessary for what may be very serious

offences or the end of a string of breaches. There are all sorts of reasons, but there is a step to follow. Given that there are different areas and different reasons for custody, you will get different statistics, and if you have a small number of children in an area, the statistics look horrendous. I am sure I am telling you what you already know.

[114] As sentencers, we must balance public protection with the individual child, the punishment and the rehabilitation, and the reparation to the victim. Being a magistrate is a very difficult job, and at the bottom of all this is resources and the need to consider whether there are enough resources for community sentences. Finally, you will be pleased to hear that there is a role for public relations here, so that the public gains a better understanding of what magistrates do, and for elected members and other people to understand our role. Thank you for letting me make that introduction.

[115] **Janice Gregory:** Thank you very much for that, Mary. The first question is from Eleanor.

[116] **Eleanor Burnham:** Mae gen i ddiddordeb mawr yn hyn, oherwydd fy mod yn gyn ynad heddwch yn Wrecsam. Yr wyf yn ddiolchgar iawn am bopeth yr ydych yn ei wneud, ond mae pryderon. Yr ydych chi wedi datgan pryderon, er enghraifft, ynglŷn â chwotgi nifer y llysoedd ieuenctid sydd ar gael mewn rhai mannau o Gymru yn enwedig, sy'n golygu bod pobl ifanc yn ymddangos mewn llysoedd oedolion o bryd i'w gilydd. Beth yw'r rhesymau am hyn, a pha effeithiau negyddol a gaiff hyn ar y plant a phobl ifanc sy'n gwrthdaro â'r gyfraith ac yn dod o'ch blaen chi?

**Eleanor Burnham:** I have a keen interest in this as I am a former justice of the peace in Wrexham. I am very grateful for all that you are doing, but there are concerns. You have expressed concerns, for example, about reducing the number of youth courts that are available in some parts of Wales in particular, which means that young people sometimes have to appear before adult courts. What are the reasons for this, and what negative effects does this have on the children and young people who are in conflict with the law and who appear before you?

[117] **Mr Ford:** I will answer that, if I may. I share your concern. Without doubt, there has been a reduction in youth courts in the last 12 months in particular, which is a direct result of the number of young people who are being brought before the courts. I understand that there has been a 6 per cent reduction in the last couple of years, but although we do not have any figures at the moment to support that, it is probably far nearer a 20 per cent reduction in the number of young people coming before the courts in the last 12 months. A lot of that is down to particular policies on pre-court disposals, cautions, reprimands and so on. I can give you a specific example relating to Cardiff. We have two dedicated youth courts that sit every morning and afternoon, which gives us 10 sittings. We have reduced that now to eight sittings, and we are likely to reduce that to either six or seven come 2010. That gives us a real problem in Cardiff, let alone in rural areas, where the problem is far more serious. I would agree that you want to avoid at all costs young people coming before an untrained adult court. In addition to that, it is not just the magistrates but the crown prosecutors who are specialists in dealing with young people. That is a concern of ours. In Cardiff, we are trying to work together, and the courts are big enough, with 10 physical courts. However, you always have to ensure that you have enough youth magistrates within the courts so that you can pull them out and use an empty courtroom downstairs. The Crown Prosecution Service in Cardiff has agreed to support that. That is not possible in places such as Brecon. That is beyond the magistrates' control, even though we are very much consulted about it. If you do not have the work, it is hard to justify doing it, given the amount of investment required by the courts.

[118] I totally agree with you that it is negative and that the last thing we want is for a young person to come into an adult court, particularly given the likelihood that they will go to an area adult or Narey court, which is the busiest and most severe looking. In one court in

Cardiff, the dock is fenced off with glass, which is the one that would be used to try the overnight arrests. It is likely that that is where these problems will arise. So, if you could pre-plan it, you would not put them in an adult court. So, I share your concerns, but it is as a direct result of the fall-off of work that is coming into the courts.

[119] **Eleanor Burnham:** How do you suggest that it be solved?

[120] **Mr Ford:** As sentencers, it is hard for us to get involved in the political arena of dealing with people outside courts. However, young people need to be dealt with as quickly as possible, and some sort of compromise may be for them to travel further than they would normally. Otherwise, courts will be sitting for only 20 minutes a day—and I have seen that happen. Given all the resources required, in this day and age, it is understandably hard to justify having a court up and running for just a few minutes, unless it is multitasking and can do other work.

[121] **Ms Duff:** In addition, the association is well aware of the problems relating to a Saturday court and is working with the police and the Crown Prosecution Service to see why young people are brought before a Saturday court. There might not be a youth magistrate there on a Saturday. We would also have to get someone in from the youth offending service. There are ways in which agencies can work together to prevent young people from coming before the Saturday court particularly. You have been talking about the ordinary youth court, but this is a worry for us, because the ones who come in on a Saturday are usually the more serious cases, and so they might end up being remanded. The last thing you want is for an adult-trained magistrate to remand young people in custody. We are aware of that, but it needs interagency co-operation.

[122] **David Lloyd:** Byddwch yn ymwybodol y bu'r pwyllgor hwn yn cynnal yr adolygiad hwn ers rhai misoedd bellach. Yr wyf yn ddiolchgar am y papur yr ydych wedi'i gyflwyno. Ynndo, yr ydych yn sôn, a dywedodd Mary eisoes, mai'r mesur olaf posibl yw carcharu. Fodd bynnag, yr ydym wedi cael tystiolaeth sy'n awgrymu i'r gwrthwyneb, sef bod pobl ifanc weithiau yn cael eu carcharu am droseddau nad ydynt o reidrwydd yn haeddu'r mesur olaf posibl, megis peidio â thalu dirwyon. O gofio hynny, a ydych yn credu bod y cydbwysedd yn iawn rhwng y defnydd a wneir o garcharu pobl ifanc ar un llaw a mesurau amgen sy'n osgoi eu carcharu ar y llaw arall?

**David Lloyd:** You will be aware that this committee has been undertaking this inquiry for quite a few months now. I am grateful for the paper that you have submitted. In it, you mention the fact that custodial sentences are used only as a last resort, and Mary has also referred to that. However, we have received evidence that suggests to the contrary, namely that some young people are given custodial sentences for things that do not call for the last resort, such as defaulting on fines. Bearing that in mind, do you believe that the right balance is being struck between the use of custodial sentences on the one hand and alternative, non-custodial sentences on the other?

[123] **Ms Duff:** I cannot comment on an individual case, but I would be very surprised if the only reason a young person was sent to custody was for defaulting on fines. I suspect that that case probably came at the end of a long history of very serious breaches. However, I cannot really comment on it.

[124] On the balance, and you heard me talk about how we must balance this, at the end of the day, we want robust community sentences. If they are not available in our area, whether in England or Wales, what can we do? We have a duty to the public as well as to that young person. If it is a serious crime or if they have not obeyed any court orders to date, what do you do? We would much prefer for them to go and do community work and to be rehabilitated, but if it is not in our hands, we do not know about that, and so we end up sending them into custody with a heavy heart.

10.40 a.m.

[125] **Mr Ford:** I can only say that every magistrate whom I have met in youth courts over the past 15 years has been totally conditioned to consider custody as the last resort. I do not know the details of the specific case portrayed in your question, but it would be quite staggering for a youngster to be dealt with in that manner for defaulting on fines unless there was a much bigger picture. Even then, I would not have thought that fines would ever be the straw that broke the camel's back. It is a different set of rules for the adult court and, there, that would be much more understandable. I cannot understand that with the youth courts.

[126] Echoing what Mary has said, as magistrates, we do all that we can to avoid custody. We have several responsibilities, as Mary mentioned in her introduction. While the youth court is a closed court, it may be appropriate for this committee's members to come to witness a youth court in action, to see what happens. It is so different from a normal court. The amount of engaging and understanding that we do, as magistrates, with each and every young person really helps us to understand their situation. Sure, young people are more immature and rash and so forth, but that is just a part of the bundle of issues that we have to deal with. We would prefer to avoid custody absolutely if we possibly can. We have probably all looked at the figures that are available, but I have access to some, if they need to be sent on. However, well over 95 per cent of all disposals are non-custodial. So, you are really looking at the small end of that, which, without doubt, will involve the most prolific or the most serious crimes. However, custody for the non-payment of fines does not add up in a youth court.

[127] **Bethan Jenkins:** I want to expand on that because I do not think that Dai Lloyd is talking about one particular instance; it is systematic. We have received evidence from Barnardo's stating that if there is one breach of an anti-social behaviour order, for example, young people will be taken into the custodial sentencing regime. I do not think that the issue is about one particular person not paying one fine; that reflects the whole system. We were also told today that Merthyr Tydfil Crown Court is much more heavy handed than other courts across Wales. So, there is an evidence base for that, as opposed to there being one young person with a fine. How would you respond to that?

[128] **Ms Duff:** I will answer the question on the ASBO and I will ask my colleague to answer the point about Merthyr Tydfil. In a way, ASBOs are out of our control. There are two types of ASBO, one of which is the straightforward ASBO and the other is the criminal ASBO. In the youth court, we deal with the latter. So, part of the sentencing plan for a young person might be a criminal ASBO. Youth magistrates have control over that and can agree its contents.

[129] A youth magistrate is not necessarily needed on the bench for an adult court to give a young person an ASBOs, for one thing. Although we try to get a youth magistrate in, as it is good practice, we do not always succeed. In addition, the decision that certain things should happen when ASBOs are flouted was a political one, and is therefore beyond our remit. So, in a way, that kind of ASBO is beyond the remit of the youth court. However, be assured that, if it is a criminal ASBO for a young person, we would do our best. First, we would ask whether it is the right thing to do anyway, or whether there are other ways to address the problems. If we do have to go along the line of a 'CRASBO', as it is called, we would make sure that the conditions in it will help the young person rather than just be prohibitive. It is a difficult area.

[130] **Mr Ford:** My response to the comments about fines and custody is equally strong whether it was just one case or many. I really do question that. Having spoken to many colleagues before today and over a number of years, I still find that staggering, and I suggest examining that evidence a little more if there is a perception of giving custodial sentences for

the non-payment of fines. There is probably not much more that I can add at this stage.

[131] On Merthyr Tydfil, I have some statistics that I could give to the clerk later to show that Merthyr has without doubt improved its performance significantly from 2005 to 2008. While I am not an expert and cannot talk fully about Merthyr, I am sure that members of this committee will realise that it is a very difficult area, and it takes only one or two prolific offenders to throw the statistics out completely. I would therefore question the assertion that Merthyr crown court is heavy handed. It deals with the amount of instances that it has before it, and youth magistrates will try all ways to avoid putting young people into custody if they possibly can, whether in Merthyr, Cardiff or anywhere else in the country.

[132] **Ms Duff:** May I add something to that?

[133] **Janice Gregory:** I am very conscious of the time, and there are other questions that will undoubtedly delve into this area, but I can give you 30 seconds.

[134] **Ms Duff:** To give you the best illustration, I contacted all the youth panel chairs in Wales before coming here today, and I have here a letter from the Merthyr Tydfil chair, which lists the serious offences that led to custody. With his permission, I would like to pass this letter on to you.

[135] **Janice Gregory:** That would be most helpful. Thank you, Mary.

[136] **Lesley Griffiths:** To follow on from that, and from what Bethan said about Merthyr, the Barnardo's representatives used the phrase 'postcode lottery'. They said that whether you received a custodial sentence depended on where you were tried. What do you say to that?

[137] **Mr Ford:** I refute that, although every case and every magistrate is an individual. The magistrates follow the guidelines, but each case must be dealt with on its own merits. I do not agree at all that there is a postcode lottery, because the guidelines are the same for us all.

[138] **Bethan Jenkins:** You state in your submission that there are problems in the secure estate, mainly because there are difficulties in finding placements. What more can you tell us about that, and how does it affect the outcomes for those children and young people who are given custodial sentences?

[139] **Mr Ford:** There is a concern about young people having to travel a distance to secure accommodation. Having listened to this meeting earlier and having spoken to others in the youth justice system, we know that that concern is shared. Although the Welsh border implies all sorts of issues relating to education, which I understand, fellow magistrates and I feel that the prime concern is that young people need to be as close as possible to their home area, certainly within the 50-mile area radius that was commented on. We certainly endorse that, for the obvious reasons that family and support agencies can get to the young person. It is difficult, because it can mean that people are waiting at the back of the court or in the court building until they hear where the young person is to be sent. That is the practical issue that we have, as sentencers. It is difficult for us to comment beyond the courtroom, other than to say that.

[140] **Mark Isherwood:** What concerns do you have about the staffing and support available to young people in custody?

[141] **Ms Duff:** The association is concerned about that across England and Wales. We are pressing the youth justice board to guarantee better training for prison officers who work with young people. Maybe things have changed, but the last time I spoke to the YJB about this, it could not guarantee that there was someone with a young person every moment of the day

who had been trained to deal with young people. That is clearly of concern to us. Again, that is beyond our remit, but we are naturally concerned about it, and we will continue pressing the YJB to reassure us on that point.

[142] **Mark Isherwood:** How up to date are your figures on that? During our visit to HMYOI Stoke Heath, a lot of emphasis was placed on the recent improvements in that area, and we saw certificates on the wall of officers who had gone on courses, and so on?

[143] **Ms Duff:** There has been a recent improvement, but I suggest that the courses are not as long or as detailed as we would like. We get regular updates, and I hope that the next one will be in a few weeks' time, so I could ask the YJB to pass that on to you, if you would like.

[144] **Janice Gregory:** Yes, thank you, Mary.

[145] **Joyce Watson:** I know that this is beyond your remit, but what do you think are the consequences for children and young people in Wales of being in custody some distance away from their home, maybe in England? Does that have an impact on reoffending?

[146] **Mr Ford:** We have already commented on distances. I have not met many people who disagree that the closest someone can be to home, the better. The impact of custody is very different. There are some positives. Yes, they do get some intervention and training and, yes, we want the courses to be longer and so on, but, often, a little is a little more than they were getting before. Custody is not always negative for an individual. It is very hard for us as magistrates; we sentence and we only really know that it has been successful if we do not see them again. It is a perverse way of managing. I think that we all agree on distance. The downside is that they will be mixing with others and they will learn a few trades that are not appropriate, but, otherwise, they will get some training that will help them. I do not know whether that answers all of the questions.

10.50 a.m.

[147] **Lesley Griffiths:** What type of provision in the secure estate would you like to see in Wales?

[148] **Mr Ford:** I would like to see more places being provided. Having been to Parc prison several times, I know that a lot of good work is going on. I would not want to be negative about such places, but more facilities are needed, so that we can keep young people closer to their home. According to the data that has been available over the last year, something like 50 per cent of Welsh youngsters are now housed in Wales, which is an awful lot better than it was. However, it is also important to note that we are looking at fewer than 160 young people in custody in total. We are not looking at thousands. That is 160 too many, of course, but it is not a huge number, on a mathematical basis.

[149] **Eleanor Burnham:** Yr ydych wedi datgan nad ydych yn teimlo bod y patrwm dedfrydu amrywiol yn adlewyrchu anghysondeb yn y llysoedd ond ei fod efallai yn adlewyrchu difrifwch troseddu, sydd yn gallu bod yn wahanol mewn lleoedd gwahanol. Beth fydd effaith y canllawiau dedfrydu newydd ar gyfer llysoedd ieuenedid, a fydd yn dod i rym ar ddiwedd Tachwedd, ar batrymau dedfrydu? A fydd y canllawiau dedfrydu newydd yn mynd i'r afael â'r amrywiaeth yn y patrymau dedfrydu sy'n **Eleanor Burnham:** You have stated that you do not feel that the varying pattern of sentencing reflects inconsistency in the courts but that it perhaps reflects the seriousness of the offending, which can vary from place to place. What impact will the new sentencing guidelines for youth courts, which will come into force at the end of November, have on sentencing patterns? Will the new sentencing guidelines tackle the variation in sentencing patterns that exist across Wales? You have questioned some of the statistics.

bodoli ar draws Cymru? Yr ydych wedi cwystiynu rhai o'r ystadegau.

[150] **Ms Duff:** A few things are going to be introduced that might help. I remind you that custody is the last resort. At present, we give a referral order for a first-time guilty plea in the youth court. With the new provisions, we will be able to give a second referral order, if that is appropriate. That will be good because it will mean more input into the young person. The young person will have been assessed and there may be work that can be followed through, which is good, because hopefully we will not see that young person again.

[151] We then have the youth rehabilitation order, which replaces the other nine options that we have in the youth court at present. This is a sort of pick-and-mix. As magistrates, we rely very much on the quality of the pre-sentence report that comes to us. If we are thinking of custody, we ask the youth offending team to prepare a report, which will include the programmes that are part of the YRO, and it will be up to us, as sentencers, to accept that or not. Usually, we will accept it, because the team will know the young person better than us. If that does not work or the young person offends again, he or she will come back to court, and we do not need to up-tariff, as we might have done in the past; we can say, 'Let's look again at this young person. Is there a need for a second YRO, and a different programme within that?'. Then we might say, 'Are there more intensive programmes in the YRO that we can offer?'. I am afraid that it comes back to resources.

[152] There are intensive programmes—I believe that you already have the intensive supervision and surveillance programme in Wales, which is excellent—but there is also intensive fostering, which is being piloted in England and is not yet available everywhere. Where it is available in England, it is very successful. We do not have it everywhere in England, and it requires a lot of investment, but results are coming out showing that that is one way of preventing the young person from offending. So, there will be more robust community sentences available to us, providing that the resources are there to carry out those programmes. We are hopeful that this will make a difference to the pattern. In addition, the association has written to every youth panel chair in the country, in conjunction with Francis Done, the chair of the youth justice board; we show them their custody figures and ask the magistrates and youth offending teams to discuss how they have come about, whether they agree with them, and whether there is anything that either side can do to help. That discussion might help, so we are hopeful for the future.

[153] **Eleanor Burnham:** So, attitude is important, but resources are still key; will you be following through to ensure that this happens?

[154] **Ms Duff:** We cannot ensure that it happens because, again, we are not a political body. However, we make every effort to point out that resources are essential to bring down the numbers of young people in custody.

[155] **David Lloyd:** I will continue with the same sort of theme—alternatives to custody. Your paper highlights research that identifies eight factors present in areas that have high levels of serious offending, but low levels of custody: practices such as good pre-sentence reports and good alternative-to-custody programmes. How can these sorts of initiatives be promoted in Wales? Is it all undermined by a lack of resources?

[156] **Ms Duff:** No, I do not think so. I am sure that my colleagues will add to this, but I would say that the starting point is to ensure that magistrates understand what youth offending teams have to offer, and youth offending teams discuss sentencing with magistrates. Do you want to be more specific about Wales, David?

[157] **Mr Ford:** Yes. The whole process begins when we, as magistrates, want a pre-sentence

report. The onus is very much on us to follow a process and give initial guidance to the youth offending teams about what we are looking for. It may be rehabilitation, it may be punishment, or we may go further and say that we are looking for unpaid work, or an attendance centre, or perhaps a programme with particular requirements relating to mental health, or drugs or drink. We will be able to give a steer—we do give a steer—to the youth offending teams, which then interview the young people and give us recommendations. We are not bound to follow those recommendations, but they tend to be followed. The bigger the menu that we have, the better. So yes, resources are an issue, but it is important to say that we start the process by guiding them.

[158] I will just comment briefly on the second referral order option, which came through earlier this year. Again, you use it only when appropriate, but it gives us the opportunity to provide a second bite of the cherry for a young person. The more bites of the cherry that are available before custody, the better. As far as the November guidelines are concerned, a lot of us are not getting the full training until October, so it would be hard for me to fully comment.

[159] **Joyce Watson:** You have already started talking about youth rehabilitation orders, and the effect that they might have on levels of custodial sentencing. Would you like to elaborate a little?

[160] **Mr Ford:** It will be difficult, because as I have just said, the formal training for magistrates in south Wales starts a week today—I do not know about north Wales. Certainly, the principle of giving young people more opportunities outside custody is something that we would support.

[161] **Ms Duff:** I should have mentioned earlier that we would like to see a full menu of programmes, and perhaps there are people out there who could work better to provide them—namely, the volunteers. Maybe if they understood the opportunities that there are to work with young offenders, that might be a way of making more programmes available. That could be something that magistrates and others could persuade people to join in.

[162] **Joyce Watson:** I know that it is early days, but do you have any concerns at this stage?

[163] **Mr Ford:** The one obvious concern that I would have is whether the youth offending teams can cope with giving someone a second opportunity, or a modified programme. Again, this is a little outside our remit, but the proof of the pudding would be in the eating.

11.00 a.m.

[164] **Ms Duff:** Our concern, as an organisation, is to do with the scaled approach. Although the youth justice board has assured us that all will be well, we will have to wait and see. As magistrates, we start the sentencing process by looking at the seriousness of the offence, and not by the reassessment of risk—whether the young person is going to commit an offence again. We must bear the public in mind, and they must see that justice is done. We must balance the seriousness of the offence with the programmes available. So far, in the reports that I have seen in pilot areas, the youth offending team has done that very well, but, as magistrates, we must never forget that the person has committed an offence—and it might be a serious one—and we must punish them accordingly. Murder is a serious offence and the person is not likely to do it again—it is an extreme example—but, by the scaled approach, you would say that the person did not require much intervention, because the offence was a one-off. Obviously, that is not so. Therefore, as an association, our concern is balancing that.

[165] **Bethan Jenkins:** You said earlier that you want the voluntary organisations to deliver some of the orders and that you want to ensure that all of the requirements will be available to magistrates. Do you foresee a problem if you do not get the full mix of orders available for



delivery, because of a lack of resources or constraints on you?

[166] **Ms Duff:** It will be no different from what we have at the moment. What we are hoping is that things will change, but, at the moment, across the country—in Wales and in England—there are different menus of programmes available, so the situation will be no different. We just have to do our best with what is put in front of us.

[167] **Lesley Griffiths:** What are your views on the all-Wales youth offending strategy? How effective is it in dealing with young people in the secure state?

[168] **Mr Ford:** I will respond, as I sit on that committee. As an individual and as a magistrate, I am the only sentencer on the committee. The breadth of experience of the people involved across all disciplines involved with young people is a huge advantage to us. So, we can all debate different issues. I assume that you all have a copy of the strategy programme—if not, we can make it available—which details everything that has been done. It has six separate committees that focus on particular areas, such as custody and reoffending, and, again, individuals from different agencies are working together. It is a bit of a slow-burning project in many ways, but there are many things that have been achieved detailed in the document. It would not be appropriate for me to read through that now, as they are there for Members to read later, but it is a positive development. I would like to see more inter-agency communication. This is one of very few such projects. The Welsh Assembly Government and the youth justice board chair it together, working together, and it knocks more barriers down more quickly.

[169] **Lesley Griffiths:** You said that you are the only sentencer on the committee. Does that give you a different perspective?

[170] **Mr Ford:** Yes it does. I tend to put a spanner in the works occasionally, because I have a different viewpoint. I am divorced from the political arenas; I do not have a paymaster, as everyone else in the room does. So, I like to think that, in representing the magistrates, I contribute to that and make people think a bit sometimes.

[171] **Janice Gregory:** We have come to the end of the session. I have a final question, which you will have heard me ask our previous guests to the committee. Do you have a recommendation or set of recommendations that you would like to be included in the report? Perhaps you have one now, or perhaps you would like to send one in, but you are not obliged to do so. We would be happy to have your views.

[172] **Mr Ford:** Thank you. I think that we might send something in.

[173] **Janice Gregory:** You will be sent a transcript of this morning's proceedings. You cannot take out anything because you wish you had not said it, but please check it for factual accuracy. We are grateful to you both for taking the time to come to the committee this morning.

[174] Members, you have some papers to note. I see that everyone is happy with those. Do we agree the minutes of the previous meeting on 23 September? I see that we do. Thank you. The committee will meet again next week on 14 October. Thank you all for your attendance.

*Daeth y cyfarfod i ben am 11.04 a.m.  
The meeting ended at 11.04 a.m.*

