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Re-inventing diversion

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Abstract

This article reviews recent developments in the area of 'out of court' disposals in youth justice in England and Wales, highlighting the emergence of recent trends towards decreased use of formal procedures to deal with the reported offences of young people. The idea considers possible explanations for these developments and assesses the contribution of a number of recent practice initiatives with a diversionary orientation. The article reflects on the varying rationales underpinning these developments, and wider influences in the form of economically driven pragmatism, before concluding that in order to sustain recent achievements, diversion must demonstrably strengthen its claims to legitimacy.

Keywords: cautioning, diversion, minimum intervention, restorative justice, welfare

Turning the Clock Back?

'Diversion' has been a feature of youth (juvenile) justice in England and Wales for a very long time. 'Informal conferences' as a means of dealing with the reported crimes of the young were acknowledged in the report of the Molony Committee in the early part of the 20th century (Home Office, 1927); and moves to extend or curtail the use of 'out of court' disposals in this context have been a regular feature of policy and practice ever since (Smith, 1989, 2011). Shifts in the acceptability of the practice of dealing with the alleged misdemeanours of young people informally and removed from the rigours of prosecution and court processes have, in turn, been mirrored by significant variations in the use of diversionary measures, themselves of varying degrees of 'formality'. Most recently, from 2008 onwards we have seen a further significant change in the way in which the reported crimes of young people have been dealt with. During this period, there have been reductions in the use of formal procedures at all stages in the criminal process, from the point of entry through to the use of custody, with the net apparent effect of a considerable liberalization in the treatment of 'young offenders'. There has been a parallel decrease in crime figures, so it might be assumed that there has been a straightforward impact on disposals with one figure simply reflecting the other. However, there are several reasons for calling that explanation into question: firstly, the period immediately prior to this saw a steady and sustained increase in the numbers of young people processed and then incarcerated, despite a similar decline in recorded offending rates, over an extended period of time; and, secondly, the decline in punitive disposals for young people has not, up to now, been paralleled by a similar reduction in the use of penal sanctions for adults, particularly in terms of the use of custody. To account for these anomalies, it seems then that explanations of the current trends in youth justice will therefore need to be rather more nuanced. In particular, we should perhaps consider the potential influence of 'legitimizing' discourses, which have sought to achieve a number of changes in the ways in which young people in conflict with the law are conceptualized; such as the re-emergence of 'rehabilitation' and the associated recognition of 'need', the modification of conventional notions of a linear tariff of disposals, arguments for 'minimum' (cheapest?) intervention, and the principles of 'localism' and community-based problem resolution.

Comment [RS1]: Many academic articles seek to introduce new evidence, ideas or analysis on the topic in question. In this case, I have used existing material to try to show that much of the recent history of diversion in youth justice can be understood in light of earlier experience. So, here, I am drawing on previous material and established ideas, but introducing a new analytical approach to them. The concept of 're-invention' allows us to introduce and discuss distinctive features of contemporary developments in diversion. Academic writing can therefore be 'original' in a number of different ways.

Comment [RS2]: Here, I'm 'setting up' the key question. What I'm claiming is that what we can see are inconsistencies in practice which don't reflect 'common sense' expectations.

In academic writing, establishing a clear starting point which remains a consistent focus of your argument is very important. It offers a benchmark against which you should be able to judge the relevance and value any of the subsequent content of the article.

In order to seek out a basis for understanding the emerging pattern of outcomes, this article will first summarize recent developments, going on to consider some of the concurrent innovations in practice which might be viewed as 'diversionary', before attempting to sketch out some possible explanations which might account for what is happening, and which might in turn point towards future developments and possibilities.

Comment [RS3]: Here, again, the article is following academic convention. I have sketched out the problem to be discussed and then briefly outlined the structure planned for the remainder of the article. I hope I follow it!

Linking text like this is very important to ensure the flow and coherence of your argument is maintained – it helps the reader stay focused as well.

Emerging Trends: Patterns of Disposal

Recently published statistics (House of Commons Justice Committee, 2013; Ministry of Justice et al., 2013) suggest a dramatic fall in the numbers of young people being processed formally though the justice system. Arrest figures were reported to have fallen by 13 per cent between 2009/10 and 2010/11, with a longer term decline of around a third from 2006/07 to the same point in time, following a period of at least six years when these figures had remained relatively stable. As young people progressed through the criminal justice process, substantial falls were also noted in the number of final warnings, reprimands and conditional cautions administered, with 40,757 such disposals administered in 2011/12, a decrease of '57 per cent on the 94,836 given in 2001/02' (Ministry of Justice et al, 2013: 18). In parallel with this trend, it was also noted that the number of 'first time entrants' to the youth justice system had declined by 67 per cent from its peak in 2006/07, to 36,677. As the Ministry of Justice and Youth Justice Board (2013: 22) acknowledge, this fall may have at least partly been accounted for by the change in the 'Offences Brought to Justice Target' set by government which had previously created an incentive for police to secure formal recordable disposals rather than dealing with minor offences informally. The modification of this target in April 2008 (followed by its eventual abolition) is believed to have had some influence on police behaviour and, consequently, disposal patterns – although, in fact, the fall in the number of FTEs began slightly before this point. As might perhaps be expected, reductions in the number of people entering the system have also had an effect on subsequent outcomes, with fewer young people receiving 'court disposals', and those who were being identified as increasingly 'prolific' (Ministry of Justice, 2003: 54), suggesting that those being excluded from formal processing were more likely to be less persistent offenders. Nonetheless, the number of custodial disposals was also reported as falling at a faster rate than for all disposals (48% compared to 37% from 2001/02 to 2011/12), suggesting a degree of 'liberalization' at all points in the process, and resulting in a very substantial reduction in the average custody population, as well (down 30% from 2001/02 to 2011/12).

Comment [RS4]: Descriptive statistics of this kind can be very useful, although you need to be careful to ensure the credibility of the source – official statistics are used in this case, which themselves may need to be approached with caution!

It's important to avoid providing long lists of evidence or statistical findings without explanation because they are often quite hard to take in when presented in this way – but they can be extremely useful in helping the reader to understand the scale of the issue being discussed.

It is worthy of note that these sharp falls are reminiscent of the shift in the balance of outcomes in youth justice during the 1980s, and that similarly, there appeared to be a 'system-wide' effect with the number of those receiving custodial sentences declining substantially, in parallel with the increased use of 'diversion' at the lower end of the scale of disposals. Between 1977 and 1991, for example, the proportion of those young (aged under 17) people processed who were prosecuted fell from 48 to 21 per cent (Smith, 2003: 18), and the number of young people aged 14−16 sentenced to custody declined from 7700 to 1400 between 1981 and 1991. This suggests that in both cases what was taking effect was not simply an administrative adjustment to 'weed out' relatively minor offenders who could be dealt with by informal means, but a wider shift in policy and practice towards a less punitive model of youth justice. The extent to which this was intentional or planned is perhaps debatable, although there were a number of identifiable drivers in terms both of policy shifts and practitioner innovation (Smith, 2007).

Comment [RS5]: The message here is that this is a key point - 'worthy of note' is a bit pompous and I could have used a better phrase, maybe: 'important to recognise'. I'm also aware that there are some 'pet' words or phrases that I tend to overuse. This is one of them, and I quite often have to stop myself repeating the word 'clearly' too often. You may find that you, too, tend to overuse certain favourite terms.

Also echoing earlier developments (see Audit Commission, 1996, for example), the rapid increase in the use of 'out-of-court disposals' was not without its critics:

> There is widespread belief within the magistracy that out-of-court disposals are being used over-zealously by the police, with an autocratic approach to their implementation and without independent scrutiny and monitoring…. Magistrates need to be convinced that out-of-courtdisposals are effective… [rather than] a cash-cutting exercise and a 'quick fix'. (Magistrates' Association, quoted in House of Commons Justice Committee, 2013: 20)

And, similarly, a number of familiar and recurrent associated concerns were raised alongside this:

> There are a number of circumstances where an out-of-court-disposal may be inappropriate. In cases of serious offending, the victim may feel that they do not get justice. Unlike with adult cautions, there is no requirement to consent, therefore a young person may be burdened with a criminal record without due process. In cases of genuine guilt, there may be insufficient to nip offending behaviour in the bud. (House of Commons Justice Committee, 2013: 20)

Notwithstanding these reservations the Justice Committee offered a cautious endorsement of current practice in the use of such disposals, subject to the adoption of more rigorous 'safeguards'. At this point, then, it did not seem that

there was any imminent likelihood of the trends of previous years being reversed, with 'diversion' set to figure prominently in the youth justice landscape for the foreseeable future.

Comment [RS6]: What I've done in this section is establish the evidence base for the subsequent discussion. So, in effect, this section is setting out 'what' has been happening in the field of diversion, and I'm going to move on to try and answer 'why' this might be. Again, this is a fairly standard format in academic writing and helps to provide a sense of structure to the article.

Drivers of Change: Principle and Pragmatism

The change of direction in youth justice practices can be dated back to 2007/08. When seeking out the likely triggers for this, there appear to be a number of candidates; and it looks as if there may have been a process of 'convergence' between a number of different interests at around this time. Government was seeking to revitalize its strategic vision for children, whilst at the same time, the first signs of a forthcoming financial crisis may have prompted a rethink amongst key organizations about the use of time and resources which were likely to become increasingly scarce. Notable here was the review of policing carried out by Sir Ronald Flanagan, whose interim report observed that:

> An emphasis on sanction detection levels has undoubtedly to a degree produced the unintended effect of officers spending time investigating crimes with a view to obtaining a detection, even when that is clearly not in the public interest. (Flanagan, 2007: 10)

Comment [RS7]: Here, we are moving into the territory of explanations, and highlighting this point as an important contributor to the changes of practice identified previously.

Another one of my writing weaknesses is an over-reliance on quotations. Irrespective of the threat of plagiarism software, it is usually better to rephrase the quotation in your own words, and only stick to the original if it is either highly distinctive, or important that it is presented in the original author/speaker's own words.

Accordingly, the review recommended that less police time should be devoted to processing relatively less serious offences. Alongside this, there seemed to be some recognition from government that its then prevailing policies in the area of policing and early intervention were producing unhelpful and unintended consequences in drawing young people unnecessarily into the justice system. This issue had been highlighted trenchantly by a previous Chair of the Youth Justice Board (Morgan, 2008a), and whether or not in response to this, the Children's Plan (DCSF, 2007) and the accompanying 'PSA Delivery Agreement 14' (HM Government, 2007) made a commitment to reducing the number of 'first time entrants' to the justice system. The implicit rationale for this appeared to be a belief that involvement in the justice system might itself be criminogenic, perhaps even informed by evidence (see Kemp et al., 2002; McAra and McVie, 2007).

Further support for the new direction of travel was provided by the government's *Youth Crime Action Plan* (HM Government, 2008). Pledging itself to securing a reduction in the number of young people entering the justice system for the first time by a fifth, the government also announced that it was piloting the Youth Restorative Disposal (YRD) as a 'new approach to tackling low level first time offences' (HM Government, 2008: 21). Strikingly, but typically, the government sought to face both ways at once by simultaneously claiming credit for '*stopping* repeat cautioning to ensure that prolific offenders go to court (my emphasis)' (HM Government, 2008: 17), which was neither strictly accurate nor consistent with other aspects of the document, although it did offer the public-facing appearance of continuing to be 'tough on crime'.

Diversionary Practices: Green Shoots?

Associated with this policy reversal, there also appeared a number of new diversionary initiatives, some initiated by government, such as the YRD, and some relying rather more on local innovation (County Durham Youth Offending Service, 2012; Haines et al., 2013; House of Commons Justice Committee, 2013; Hull Youth Justice Service, 2010, for example), but usually supported by *Youth Crime Action Plan* funding, as in the case of the 'Triage' scheme initiated by the Youth Justice Board in 2008. Additionally, the Youth Justice Liaison and Diversion initiative, was launched by the Department of Health in 2008 'to enhance health provision within the youth justice system and facilitate help for children and young people with mental health and developmental problems, speech and communication difficulties and other similar vulnerabilities' (Haines et al., 2012). Whilst these schemes all shared the characteristic of being targeted at the pre-court stage of intervention, and in some areas appear to have overlapped, they also incorporated rather different core aims and objectives.

Comment [RS8]: Here, I'm moving on to provide evidence in support of my argument. Of course, the temptation in academic writing is to report only those findings which support what you want to say, but it is more important to look for counter-evidence, in order to test rigorously the points you want to make. This might mean revising or modifying your conclusion, but readers will usually be positively influenced by your willing ness to challenge yourself and adapting your own thinking – look actively for 'nuances'.

The YRD, for example, was designed to be administered by the police, and would be available once only to young people found to be responsible for 'low-level, anti-social and nuisance offending' (Rix et al., 2011: 2), and only where the young person concerned had not previously received a reprimand, final warning or caution. Other agencies would be informed of the outcome, but the use of the disposal was to remain entirely at the discretion of the police. As its name suggests, it was expected that the YRD would incorporate a 'restorative' element; subsequent research indicated that this usually consisted of an apology, although compensation and reparation arrangements were also utilized. Apologies might be 'instant' in cases of shoplifting, but might also involve some form of 'conference' with offender, victim and possibly parents/guardians present (Rix et al., 2011: 26). This evaluation of the YRD also found that there was a degree of agreement amongst practitioners that it was a 'good mechanism for dealing with young people and reducing FTEs [first time entrants] to' the justice system (Rix et al., 2011: 27).

Like the YRD, Triage schemes 'based in police stations' incorporated an emphasis on combining diversion from 'formal sanctions' with restorative interventions (Institute for Criminal Policy Research, 2012: 4); but, in addition, they also sought to ensure that welfare needs of offenders could be identified and addressed. 'Diversion from' the justice system might therefore be accompanied by 'diversion to' other services. As the medical origins of the term also imply, Triage was intended to take the form of an initial assessment of young people reported for an offence, followed by a specific response depending on the outcome of this process; level 1, leading to 'diversion from the youth justice system; level 2, involving 'a referral to supportive interventions'; and, level 3, resulting in 'fast-tracked progression through the system' (Institute for Criminal Policy Research, 2012: 5). The appropriate level of intervention would be determined according to specified criteria, including offending history and 'gravity' of current offence. Unlike the YRD, referrals via the Triage process are usually made following consultation between specialist project staff and police officers (Wood et al., 2011).

In practice, Triage has been found to operate variably in different areas, and only in two of the pilot schemes evaluated was a level 3 service provided. At level 2, young people would not always be diverted from the justice process, even though they were provided with supportive interventions. At level 1, most interventions were very similar to those offered through the YRD, consisting 'of restorative approaches such as letters of apology' (Institute for Criminal Policy Research, 2012: 6), in relation to a similar repertoire of offences, including 'theft, violence, criminal damage and public disorder'. In some cases, young people might have had previous involvement with the justice system, but approaches to implementation were not consistent:

> Triage came in a variety of shapes and sizes, having been implemented to meet local needs. However, most commonly schemes were focused on the diversion of first-time offenders from the youth justice system. (Institute for Criminal Policy Research, 2012: 7)

In some areas, it was noted, 'the introduction of neighbourhood or community resolution' (YRD-type responses) was believed to have a potential impact on the use of Triage, preempting its use, and deflecting attention from the 'specific needs' of vulnerable young people (Institute for Criminal Policy Research, 2012: 31). On the other hand, 'Triage was highly valued for its early intervention and diversionary approach by many… stakeholders…'. (Institute for Criminal Policy Research, 2012: 30).

In addition to these two initiatives, the ambitious Youth Justice Liaison and Diversion (YJLD) pilot scheme was introduced in 2008 to promote a more welfare-oriented approach to diversion, with an emphasis on meeting the health needs of vulnerable young people coming into the ambit of the justice system. Inspired by prior evidence that young people entering the justice system were around twice as likely to experience one of a range of 'vulnerabilities', including mental health needs and learning difficulties, YJLD would seek to identify opportunities to divert young people in these categories 'away from the YJS [youth justice system] towards mental health, emotional support and welfare systems (taking into account proportionality, public interest and risk management issues)'; to provide 'enhanced' services to meet their needs; and to encourage diversion 'away from custodial settings' within the youth justice system (Haines et al., 2012: 24). In practice, it is clear that the scheme was implemented very differently across the six pilot sites, and police resistance was encountered in a number of areas, because of the potential effect on their detection figures. Referral routes were varied, and the timing of the referrals themselves had implications for the potential to avoid formal processing of young people. In some cases, police had already made decisions before the YJLD scheme became involved:

> Although a desired objective within each site, diversion away from the YJS has been a difficult aim to achieve…. Whilst there is evidence that some pilot sites have established a more systematic pathway for diverting away from the YJS (still limited to low level offending), the other sites implemented a more ad hoc approach to diversion. (Haines et al., 2012: 60)

Ironically, at a time when diversion was becoming the norm, some of these sites with a specific 'diversionary' remit appeared unable to utilize the opportunity to achieve a decrease in the number of young people receiving formal criminal justice disposals. The Centre for Social Justice (2012) has also observed that frontline practice has not consistently reflected the policy shift in favour of diversion nationally; and there may still be evidence of 'justice by geography' in this respect (House of Commons Justice Committee, 2013; Office for Criminal Justice Reform, 2010).

If we are to seek to understand the implications of this range of developments, it may help first to attempt to make sense of their differing and overlapping rationales. It seems that the practices associated with diversion in these three examples incorporate both restorative and 'welfare' approaches, and sometimes a combination of the two. At the

Comment [RS9]: Here, I'm adding to a list of examples of current practices, and I'm trying to do several things: firstly, I want to show that there are a sufficient number of examples to make a case that practice innovations are widespread; secondly, I want to show that there is variety in these innovations and they are not all of a type.

In order not to show bias, I aim to give them an equal amount of space and describe them in similar detail.

Comment [RS10]: The use of supporting evidence from other sources needs to be managed carefully. In this case the source is authoritative and credible, but that is not always the case, and where there is any doubt it is important to seek further corroboration.

Relying on too few sources is also a risk, because this may only represent a partial view.

same time, they seem to share the features of being applied predominantly in cases of 'low level' offending at the early stages of a young person's offending career, so conforming to pre-existing notions of a 'tariff' of disposals, and also in some instances being dependent on additional indicators of 'need'. Of the three, the YRD appears to have the most coherent rationale, although this is clearly restricted to a very specific point at the prereprimand (now pre-caution) stage of the justice process. For Triage and YJLD, though, both models of delivery and their underlying rationales appear rather more confusing, and rather less consistent with the principles of diversion, at least in the sense of achieving minimum necessary intervention. Whilst it may be helpful to put in place mechanisms to ensure that young people coming into contact with the youth justice system can be referred to other services, it is difficult to see how this might contribute to a wider diversionary strategy; and it certainly risks precluding those coming to official attention without additional needs from the possibility of being diverted; or possibly in times of greater resource availability contributing to the possible re-emergence of 'net-widening' (see Thorpe et al., 1980). Historic bifurcatory tendencies (Bottoms, 1977) and established operational distinctions between 'welfare' and 'justice' based practices seem merely to be reinserting themselves into a reconstituted framework of criminal justice interventions.

Comment [RS11]: Repetition! Possible followed shortly by possibly – there's no need for this and I should have edited this sentence more carefully. Proofreading is a chore, but usually worth the effort – earlier versions of the article would have contained more errors of this kind.

Diversionary Practices: Local Initiatives

Working alongside, and sometimes incorporating elements of these national developments, it is also evident that a number of local diversion strategies have also emerged over recent years. These, too, have tended to focus on the early stages of the justice process, with the intention of preventing children and young people entering the youth justice system for the first time. Durham, for example, implemented an approach based on the use of the Common Assessment Framework to support a 'Pre Reprimand Disposal' (PRD) for 10−13 year olds in 2008, extending this to cover the age range 10−17 in 2009. Like Triage and YJLD, this approach relies on a 'needs' framework to support interventions, but it is more explicit about pursuing the central objective of reducing the number of FTEs, and thereby reducing the likelihood of further contact with the justice system (see McAra and McVie, 2007). Alongside this, though: 'Indirect restorative work is undertaken with every PRD through victim awareness sessions, including on occasion letters of apology to victims' (Eshelby, 2011: 3).

Similarly, in Hull the Triage model was incorporated into a diversion scheme explicitly to support a reduction in 'unnecessary formal criminal prosecutions and thus reduce the numbers of children and young people entering the youth justice system', as well as reducing the use of custodial options by the youth courts (Hull Youth Justice Service, 2010: 2). In this case, diversion would be supported by a 'Challenge and Support' intervention (MacKie et al., 2011) which would 'always include a restorative element' (Hull Youth Justice Service, 2010: 4). In Hull it was reported that the scheme had attained a 48.7 per cent reduction in the number of FTEs in 2009/10 (Hull Youth Justice Service, 2010 5), whilst in Durham the reduction reported was 71 per cent over a two year period (2007/08 to 2009/10; Eshelby, 2011: 2).

Comment [RS12]: I use 'connecting' words a lot – this helps with the flow, and sustains the sense of a consistent argument.

In Swansea, too, a well-developed locally based diversionary initiative has been put in place, grounded in the principle of 'children first, offenders second' (Haines et al., 2013: 5). In this instance, the objectives of 'diversion out' of the justice system, addressing need and prevention of offending were 'melded' into an integrated approach to the reported offences of young people, according to a local service manager (Haines et al, 2013: 5). Substantial decreases in the number of young people being formally processed were also reported here – 70% fewer 'first time entrants' in 2011/12 compared to 2008/09 (Haines et al, 2013: 9).

These examples are distinctive because, although they draw on discourses of 'need' and restoration, they share a strong central commitment to the principle of minimum intervention and are more clearly committed to diversion for its own sake than the centralized initiatives originating from government in the late-2000s appeared to be. The question of whether or not finding a form of accommodation with established criminal justice discourses of 'retribution', 'need', 'risk' and 'public protection' leads to distortions of the primary objective (such as 'net-widening', perhaps; see Austin and Krisberg, 2002) remains subject to detailed negotiation and resolution 'in practice' (Smith, 1989). Mathiesen's (1974) concept of the 'unfinished' perhaps offers some helpful guidance here, in the sense that it enables us to engage in an active process of pursuing principled change without having to resolve the embedded tensions and contradictions in advance.

Diversion in a New Era: Progressive Change or Disengagement?

Comment [RS13]: Here, the aim is to move from more descriptive accounts to what might be called a summative explanation of the trends and initiatives mentioned previously. Summing up and reviewing alternative explanations is important, especially as a prelude to restating your key points and drawing conclusions.

As is evident from the previous discussion, the progressive reduction in the number of young people being processed through the justice system had little to do with central government programmes, although it was at least facilitated by key policy changes, including the revised police outcome targets relating to First Time Entrants to the justice system.

It is important, as well, not to discount wider influences, such as the change in the economic climate, and the increased pressure on all agencies, including the police, to achieve cost savings, a potential benefit highlighted in several of the evaluations and reports referred to previously (Haines et al., 2012; Hull Youth Justice Service, 2010; Rix et al., 2011). As we have observed, too, there remains a body of committed practitioners geared towards promoting the rights and best interests of children in trouble, which acts as a reservoir of energy for progressive change when opportunities arise. Others have also reflected on the possible influences at work in recent years (Allen, 2011; Bateman, 2012), concluding that a number of factors appear to have converged to create a more favourable climate for 'non-punitive' approaches, including the reorganization of governmental responsibility for youth justice in 2007, changes of emphasis in government guidance, changes in the targets for the processing of offenders, and a number of specific initiatives with the strategic aim of influencing processes and outcomes, such as the *Out of Trouble* project of the prison Reform Trust (Allen, 2011: 22). Interestingly, the role and influence of the Youth Justice Board in this context is a matter of dispute, with Bateman (2012: 38) believing this to have been very limited; whilst Allen (2011: 20) affords the board some credit for its work 'behind the scenes' to influence thinking at local level.

Significantly, a change of government in 2010 did not lead to a reversal of the direction of travel, either in policy or practice. Like its New Labour predecessor in 1998, the new coalition government moved rapidly to stamp its identity on the domain of criminal justice, launching its flagship policy document *Breaking the Cycle* (Ministry of Justice, 2010) within months of coming to power, signalling a major shift of direction, not least by way of its bold title. In fact, the promises made in respect of diversion represented no more than a continuation of the existing line of travel. Promising to: 'promote diversionary restorative justice approaches for adult and young people committing low-level offences' and to 'return discretion to police officers and encourage offenders to make swift reparation to victims and the wider community', the government argued that:

> Out-of-court disposals can… help offenders understand the impact of their crime, make reparation to the victim and community, and divert people into treatment for drug, alcohol and mental health problems…. [T]his requires a system of out-of-court disposals that is simpler for practitioners and the public to understand, effectively enforces penalties, helps to change offenders' behaviour and harnesses the power of communities to tackle problems in their area themselves, without recourse to the courts.' (Ministry of Justice, 2010: 61)

In fact much of the machinery by which this could be achieved was already in place, and of course, the downward trend in the use of formal disposals was already in place by then. In one respect, though, there was a commitment to go further than previously, in that alongside greater discretion over out-of-court decision-making, government expressed the intention to 'end the current system of automatic escalation and instead put our trust in the professionals who are working with young people on the ground' (Ministry of Justice, 2010: 69). In proposing to curtail the principle of a sentencing 'tariff' at last in respect of children and young people, the government had thereby opened up the renewed possibility of repeated use of out-of-court disposals, and even a reversal of the pattern of increasingly severe disposals for those who might previously have been prosecuted. Although an earlier Conservative government had failed to make this kind of reform stick in the early 1990s, subsequent developments have demonstrated a continuing commitment to this aspiration. This was made concrete with the changes to the structure of out-of-court disposals introduced by the Legal Aid Sentencing and Punishment of Offenders (Laspo) Act 2012, which replaced the previous progressive framework of Reprimands and Final Warnings followed by prosecution with a much more flexible and contextualized approach, reintroducing cautions and extending the 'conditional caution' introduced on a pilot basis by the previous government (Hart, 2012). Whilst other aspects of this legislation, such as the tightening of breach procedures and the extension of the potential length of curfews (Hart, 2012: 7–8) might at least indicate the potential for the reassertion of a greater degree of 'punitiveness', there clearly remains a predominantly diversionary flavour to the overall reform package represented by the act.

The Youth Justice Board issued detailed accompanying guidance demonstrating its understanding of the principles and processes which should govern out-of-court decision making, and this reinforces the principle that interventions should be offence-based, rather than being determined by offender characteristics or antecedents. This guidance sets out a threefold repertoire of disposals: Community Resolutions, Youth Cautions and Youth Conditional Cautions, allowing for these to be tailored to the specific circumstances of an offence, supplemented by considerations of the offender's history and the victim's views. Whilst these disposals themselves differ in their content and intensity, any one of them can be offered at any point:

> Disposals may be *used in any order* even for those who have a previous conviction at court, in line with the adult framework. The *minimum appropriate disposal should be used and should include a restorative justice element.* (Walker and Harvey-Messina, 2012; emphasis in original)

Comment [RS14]: Here, I have presented two alternative (and both reasonably authoritative) viewpoints without trying to resolve the disagreement – this is a point of interest and I do have a view, but it is not central to my overall argument, so I think it is sufficient just to mention 'in passing', so to speak.

Comment [RS15]: Another word I often use to underline the importance of the point being made – but slightly problematic in an academic context because of the risk of being confused with the idea of 'statistical significance'!

Comment [RS16]: Sometimes what seems to be a complicated point may just be clumsy wording... sorry! This is a long sentence and there are several superfluous words, as well (eg 'at least' and 'the potential for'). When I was a student and I couldn't understand something I used to think it was my fault - now I blame the author.

Again, this underlines the importance of careful reading of what you have written.

> Whilst the word 'appropriate' might be seen as less restrictive than the alternative formulation of the 'minimum *necessary* intervention [emphasis added]', and although the range of disposals does include the capability of 'escalation' (for example in the case of non-compliance with a conditional caution), there is clearly a strong emphasis here on limiting the extent of intervention, and on community resolution of offences, which suggests at least the intention to underpin the emerging trend towards reduced use of formal disposals of any kind:
>
> There will be no escalatory process (in contrast to the previous Final Warning Scheme) and so any of the range of options can be given at any stage where it is determined to be the most appropriate action. (Ministry of Justice and Youth Justice Board, 2013: 7)

With apparently increased scope for diversion, and what seems like positive encouragement for its maximization from government, it has been concluded by commentators that:

> The new framework for out-of-court disposals is a real opportunity to reduce the unnecessary criminalisation of children. The key challenge for practitioners at local level will be to establish effective processes for decision-making…. (Hart, 2012: 4)

Challenges and Prospects

For those with a long-standing interest in diversion, and in the light of the recent history of youth justice, it is hard to be critical of measures which seem to support liberalizing trends in practice and outcomes for young people, which also appear to be mirrored elsewhere, as in the USA (Brown, 2012). On the other hand, it is important to stand back and offer a considered analysis of what is happening, not least because we have been here before (or somewhere that looks very like 'here'), and the hard won gains of the 1980s were lost very quickly with the onset of the 'punitive turn' in the early 1990s. There are three areas of concern, in particular, that I will discuss here because they seem to represent significant unresolved issues in light of the changing face of diversion in youth justice in current times.

Firstly, it is clear that recent developments in diversion in youth justice have been informed and supported by several distinct rationales, namely: needs-based arguments; restorative principles; and the idea of minimum intervention. In practical terms, these do not necessarily come into conflict, especially when diversion itself is viewed favourably, but they do offer different underlying justifications for the use of out-of-court disposals as well as implying different substantive content. Consequences follow, of course, for our understanding of what constitutes a 'successful' outcome (Morgan, 2008b), as well as the determination of the criteria for judging which young people, and in which circumstances, should be eligible for diversionary measures. It is relatively easy to 'fudge' this kind of conceptual tension when times are good, but less so when one or other (or all) of these potential justifications for diversion come under attack. The idea of 'success' is further confused in the current climate with the progressive introduction of 'payment by results' into the criminal justice arena, and the associated potential for the incorporation of a new range of instrumental and cost-based criteria against which intervention programmes will be judged (see Yates, 2012).

Secondly, and in light of the issue of its somewhat confused conceptual and empirical justifications, it seems reasonable to ask whether other factors are also influencing the move towards less use of formal interventions in youth justice; in particular, it does not seem entirely coincidental that the onset of economic difficulties coincided with the onset of the recorded decline in prosecutions in the late-2000s. Of course crime rates have fallen and there have been demographic changes, but these have not been shown to directly affect system-wide patterns of intervention and disposal in criminal justice in the past. And it is clear that recent developments have seen an emphasis on cost saving in youth justice, as elsewhere (Ministry of Justice, 2012; National Audit Office, 2010). If indeed one of the key drivers of the increased use of diversionary measures does prove to be that of financial constraint, this raises very particular concerns about the possible re-emergence of the 'logic of intervention' if and when the economy recovers, with a corresponding expansion of the kind of low level and counter-productive measures associated with New Labour's micro-managerial ethos. The return of 'net-widening' is not inconceivable even now, given past experience.

And thirdly, linked with the wider pattern of reduced funding and its consequences, the associated question arises as to whether or not there is a more deliberate and intentional process at play in the withdrawal of the state from areas of human life with which it is no longer concerned (see Yates, 2012). This kind of trend appears to be legitimized by arguments for 'localism', and the delegation of responsibility (but not funding) for aspects of welfare intervention which have until recently fallen under the remit of central government, such as local welfare assistance and public health. The language of 'community resolution' (Ministry of Justice and Youth Justice Board, 2013: 8) to characterize early interventions in youth justice is redolent of the same process of 'de-centralization'. However attractive this might seem, in principle, if it is associated with an effective abandonment of communities by a

Comment [RS17]: Two reasonably long quotations run together here – this is about the limit in terms of the number of words from other sources that can reasonably be used at one time, without giving the impression of over-reliance on others.

Comment [RS18]: This is perhaps a matter of preference – another habit of mine is to end sections, or indeed whole articles or even books, with a strong or particularly meaningful concise quotation to emphasise an important point – it's probably not advisable unless there really is no alternative.

Comment [RS19]: As the heading suggests, at this point in the article I am trying to draw the threads together and provide a forward-looking conclusion. I usually advise students that they have a bit more freedom in the introduction and conclusion to express their own views – albeit supported by the evidence and argument of the body of the article.

Comment [RS20]: Another common feature of academic articles – lists. Like diagrams, these are often helpful ways of capturing the most important points the author wants to make, and they also frequently feature in highlighted passages in library books. You do usually have to add explanatory or supporting arguments, otherwise lists can appear simply as unfinished thoughts.

government whose agenda is dictated by cost-cutting and retrenchment, then it will in the end constitute just another example of the abandonment of entire sectors of the population, for whom the misdemeanours of the young are just one element of a catalogue of disadvantage and state neglect. Clearly, if payment by results becomes associated with an expectation of achieving more by doing less, rather than doing what is right, the end product of an enhanced role for 'diversion' may be of very limited benefit if this is complemented merely by a loss of resources elsewhere.

> The criminal justice system does not operate in a vacuum and the cuts to broader statutory children's services, as well as the voluntary services which provide wrap around services to support this provision, raise important questions regarding how a 'social' context for prevention or desistance will be developed. (Yates, 2012: 442)

It is important not to end on an exclusively negative note, however. The establishment of diversion as a legitimate core objective, and the reduction in the use of formal youth justice processes is clearly a welcome development, in both reducing the criminalization of the young (Kemp et al., 2002), and, in its wider influence, contributing to a fall in the use of custody (Bateman, 2012). And there are, at local level, a number of examples of good practice, prioritizing principles both of *diversion from* the justice system and of *diversion towards* (Smith, 2011) other forms of intervention to enhance young people's well-being and social inclusion (Haines et al., 2013); and it is both these principles which must be sustained in changing circumstances, and in the face of political manoeuvring; specifically in the face of withdrawal of state resources to fund such interventions in the present, and potential 'system creep' in times of economic recovery, in the future. Being right is not enough.

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Note

On several occasions during 2013, government moved to 'tighten up' the use of cautions, firstly announcing a review in April, and then removing the option of a 'simple caution' for a range of serious offences in September.

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Comment [RS21]: Here, I've used this list to try and convey a cumulative picture of change, but at the same time, the divergent aspects of this summary are highlighted to offer a critical perspective on what might otherwise be seen uncritically as a 'good news' story.

Comment [RS22]: Classic academic fence sitting, you might think! It is a fine line between presenting a balanced argument and simply hedging your bets – I hope I've captured here a realistic sense of contemporary issues and challenges as well as the possibilities and opportunities these have actually opened up.

There is no need in our discipline area to conclude essays or articles with a definitive 'answer'. It's okay to say 'more research is needed', or to pose unanswered questions given the current state of knowledge – better that than being definitively wrong!

Comment [RS23]: Adding footnotes or endnotes may or may not be encouraged, but is only really needed when a particular term or event absolutely has to be contextualised without disrupting the flow of the argument, ie, very rarely. (Marx's works offer a classic example of how not to use footnotes, in my opinion.)

Comment [RS24]: Referencing is a bit of a pain – I used to wait until I'd finished the article and then go back to do the reference list at the end. This does give you a chance to read through and check what you've written but it's probably not the most efficient use of time. Best perhaps is to compile the list as you go along, and there is software available to help with this. Most universities have very good guidance on referencing which most students never consult – perhaps you could be the exception!

I look for consistency and completeness rather than any particular referencing style, but you may find that some have stricter rules on 'correct' referencing, so it is best to check this on your VLE or with your tutor.

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