

ADCS formal response to the 'Scaled Approach', Revised National Standards for Youth Justice Service and Case Management Guidance for the Youth Justice System Consultation 7 February 2008

The Association of Directors of Children's Services (ADCS) welcomes the opportunity to respond to the Youth Justice Board's (YJB) consultation on the 'Scaled Approach' and its related documents.

ADCS is the national leadership organisation in England for directors of children's services appointed under the provisions of the *Children Act 2004* and for other children's services professional in leadership roles. The Association provides a national voice as a champion for children, with local and central government, and with the public.

Introductory comments

- 1.1 We recognise that the 'Scaled Approach' sets out the most comprehensive changes proposed within the spectrum of youth justice for several years, and welcome the Government's emphasis on this important area of policy.
- 1.2 The 'Scaled Approach' demonstrates a comprehensive change to the way that youth justice services in England and Wales are managed and the supporting documentation will be a valid resource to those people working in the field to help create a greater consistency of practice.
- 1.3 Although we recognise that the 'Scaled Approach' was piloted in different areas across the country, we have concerns that there were no metropolitan areas chosen for the pilot and therefore the results will not be representative of the issues being felt in London and other metropolitan areas. It is also regrettable that we are having to respond to the consultation before the results of the pilot areas have been formally published, so their experiences are not able to inform our comments. The 'Scaled Approach' document states that the development of the approach was informed by experiences in the pilot areas (Youth Justice: The Scaled Approach [2007], p.7), but these experiences have not been made available to the public to enable thorough examination of their findings. ADCS would therefore suggest that a further consultation exercise be conducted once the results from the pilot areas have been publicly disseminated.
- 1.4 The 'Scaled Approach' sets out the rationale behind introducing a risk led approach to intervention within youth justice, whilst the National Standards set out what the youth justice agencies are required to do and the Case Management guidance serves to demonstrate what the Youth Justice Board considers good practice, subject to local circumstances. ADCS welcomes this differentiation between the documentation, feeling that it will be useful for both

strategic managers working on policy, as well as practitioners in the field who are implementing the new approach.

- 1.5 You will note that we have not provided a direct response to the questions as they are set out in the consultation document as we feel that these detailed questions are best answered by practitioners working directly within the youth justice system. Instead we have provided a more general response to the consultation, which deals with some of the broader issues addressed in the 'Scaled Approach'.
- 1.6 ADCS recognise that whilst we have provided a response which reflects a general position, this will not be fully reflective of all localities within England and Wales, where specific local conditions will play a large part in determining individual responses to the Scaled Approach.

The Scaled Approach / National Standards / Case Management Guidance

- 2.1 One of the key ideas behind the 'Scaled Approach' is a focus on determining risk based intervention based on *Asset*. There is a high level of trust being placed on the *Asset* model that it will be able to accurately inform what intervention and therefore contact is necessary. However, though the *Asset* is the best assessment tool so far developed, its scoring still allows for subjectivity. Also, a recent YJB quality audit indicates that only 18% of *Assets* completed nationally are of a satisfactory standard. The position in London is slightly worse. ADCS do however recognise the work of the YJB to improve the situation, by stipulating that all Youth Offending Services draw up a Quality Improvement Plan with the aim of improving standards.
- 2.2 ADCS's view is that this proposal to adopt risk based intervention according to *Asset* is fine in theory, but it may not be appropriate in practice. Our experience is that as *Asset* is based upon judgements made by practitioners it is not always robust and accurate to for each individual young person. There may therefore be circumstances under the Scaled Approach where an individual may become subject to a wholly inappropriate level of intervention for their need.
- 2.3 It is the view of the ADSC that *Asset* is, therefore, not a reliable basis for determining sentence length or requirements, and the 'Scaled Approach' could be likely to increase disproportionality.
- 2.4 The ADCS would therefore suggest that two things are necessary:
 - 2.4.1 The construction of a properly constituted body, reporting to the YJB, to review *Asset* as a tool with a view to its continuous improvement.
 - 2.4.2 National roll-out of a training programme for practitioners using *Asset* to improve quality and promote consistency nationally.

- 2.5 The introduction of a Youth Rehabilitation Order (YRO), in the Criminal Justice and Immigration Bill is a welcome attempt to simply sentencing structure, increasing the accountability of Youth Offending Teams (YOTs) to the court, and aligning intensity to an assessment of risk is sensible.
- 2.6 Each YRO that is passed will have several requirements attached to it, set out in the 'Scaled Approach'. However the ADCS believe that some of the requirements within the YRO are significantly flawed:
- 2.6.1 Education Requirement: This would seem to supersede the parents responsibility under education legislation to ensure attendance and, further, can a young person be breached if they are excluded? If this is the case it would appear to bring general pupil misbehaviour before the criminal courts.
- 2.6.2 Mental Health Requirement: The YJB asserts that the young person would have to consent to treatment, in which case why make it a requirement? Also, can the young person change their mind after entering treatment?
- 2.7 ADCS support the proposal to extend the use of Referral Orders, but suggest that more resources will be required to recruit, train, and support volunteer panel members, and request that this should be reflected in any new funding arrangements.
- 2.8 There is also the additional training issue to ensure that panel members are familiar with the new legislation and approach. This is essential to ensure that requirements and community reparation included within a Referral Order are not so onerous as to negate the impact of a YRO should the young person re-offend.
- 2.9 ADCS welcome the idea of Youth Conditional Cautions but would emphasise that the involvement of the YOT in decision making is critical and should not be optional.
- 2.10 We also would request it to be noted that they feel that any significant increase of requirements for unpaid work as a result of the Youth Conditional Caution will require additional resources than those already allocated.
- 2.11 The proposed yearly review of Anti Social Behaviour Orders (ASBO's) is also very welcome.
- 2.12 The premise of the 'Scaled Approach' is that the more serious the crime, or the risk to the public, therefore the increased level of intervention that will be levied. ADCS view is that whilst this may be appropriate for some local areas, where there is only a modest level of youth crime, and resources can therefore be targeted at those young people who are most at risk of re-offending, it is not an appropriate approach to take in areas such as inner London; where a high proportion of the young offenders fall into the top end of

the risk spectrum. In Southwark (for example), it is estimated that as many as 30% of young offenders would be categorised as high risk under the 'Scaled Approach' model. To enable focussing a high level of intervention and therefore contact time on this number of individuals, as well as continuing to provide an appropriate level of intervention to those young people categorised as low or medium risk and continuing early intervention work, would require a considerable increase in the current level of resources available.

- 2.13 The 'Scaled Approach' document acknowledges that in some areas the high risk group may be particularly large (Youth Justice: The Scaled Approach [2007], p.18), and the ADCS request that this should be taken into account when funding allocations are determined.
- 2.14 Experience suggests that if an increasing number of young people are categorised as high risk, then this will proportionately lead to higher levels of breach action. With higher levels of breach, especially for high risk cases this would mean the 'Scaled Approach' resulting in an increase in custodial sentences, leading to greater pressures on the police and other youth justice services. Many localities would argue that there are currently too many young people in custody, so any approach that will lead to increasing that number further can only be of detriment to both the young people in custody and the system itself. The key to this is the YOT's relationship with the court and the confidence magistrates have in YOT proposals and programmes.
- 2.15 ADCS accept the need for the concept of a 'custody threshold' but would request that any threshold imposed should not be too tightly defined. We accept the Ministry of Justice's position that Section 152 (2) of the Criminal Justice Act 2003 requires the court to consider whether a custodial sentence can be justified on the grounds of seriousness or persistence of offending. As such the impact of a defined threshold on custody rates is likely to be marginal in most, though perhaps not all, court areas. It also raises further difficulties:
- 2.15.1 Defining a threshold that takes account of seriousness, persistence, likelihood of compliance with a community penalty, and public protection would be monumentally complex.
- 2.15.2 Some courts may feel that judicial discretion is impaired, and may, perversely, sentence to custody just because a threshold has been met despite alternative proposals from the YOT.
- 2.16 However, some provisions might be usefully incorporated in guidance, i.e. if a young person successfully complies with a Bail Intensive Supervision and Surveillance Programme (ISSP) a community penalty should be imposed, rather than as sometimes happens, a shorter custodial sentence.
- 2.17 Another key issue that could potentially cause conflict in the design of the 'Scaled Approach' is the idea of YOT practitioners proposing a sentence and interventions that will need to be completed during the order and then the

courts being the mechanism that will deliver that sentence. This brings into question who is actually determining proportionality in the youth justice system and has the potential to cause conflict between organisations.

- 2.18 ADCS's view is that it will be likely that YOT's will have little alternative but to offset increased demands on high-risk cases by reducing input on low-risk, especially if resources available remain at their current level. This is likely to increase the risk of re-offending for those newly entering the system. It is also contradictory as there will be Targeted Youth Support (TYS)/Youth Inclusion Support Panel (YISP)/Youth Inclusion Programme (YIP), etc available pre-offending, intensive support for the high-risk, and seemingly very little in the middle.
- 2.19 The 'Scaled Approach' by its nature is an attempt to channel resources more effectively in youth justice services. However many of the ideas put forward by the 'Scaled Approach', especially increasing the intensity of supervision for high risk offenders will require an increase in resources needed. It is therefore likely that the 'Scaled Approach' will actually exacerbate, rather than reduce, the overall demands on resources in the system.
- 2.20 The National Standards are helpful in that they set out clearly what is expected of each individual agency who are working within youth justice services. ADCS's response is that this is fine in theory, but we have several concerns about how this approach might work in practice.
- 2.20.1 By separating out responsibilities, agencies will naturally increasingly focus on those responsibilities that directly apply to them and to which they are personally accountable for. This could potentially lead to silo working and discourage links to be made within the system to ensure effective joined up working. Practitioners will then only be gaining a partial picture of the role and scope of youth justice services, something that the Scaled Approach is attempting to discourage.
- 2.20.2 There is a concern that this strict setting out of requirements might lead to the development of a culture of blame within agencies if one element of the system fails. Agencies could become quick to point out that they are not required to fulfil certain requirements as they are not explicitly stated in the National Standards, potentially leading to elements of the system where overlap between agencies is required becoming muddled and unfocused.
- 2.20.3 There is also a concern that there is a reference to separating out welfare, which will be dealt with by mainstream services, while the YOT deals specifically with re-offending. However in most cases the two are inextricably linked and therefore some degree of overlap between organisation's requirements should be acknowledged within the document.

Conclusions

- 3.1 ADCS would like to reiterate our comments earlier in the document applauding the YJB in this positive move to attempt to introduce a simplified sentencing process which is focused on risk.
- 3.2 However whilst ADCS applauds some of the changes that are suggested, we have several reservations around the adoption of the 'Scaled Approach', including:
 - 3.2.1 The reliability of Asset, which underpins the 'Scaled Approach'.
 - 3.2.2 Reservations around some requirements included in the YRO.
 - 3.2.3 The issue of focussing resources on high risk cases resulting in a system where there could be high levels of pre-offending work and intensive support for high risk cases but very little in-between.
 - 3.2.4 The potential for significantly higher levels of breach.
- 3.3 ADCS therefore suggest that there should be further work done before these changes are adopted nationally. We would especially welcome further pilot work in metropolitan areas to discover what effects adopting the 'Scaled Approach' would bring to these areas.
- 3.4 ADCS would, of course, be happy to discuss any issues raised in the consultation in more detail with the YJB should they wish to do so.

This response has been prepared by ADCS member Romi Bowen, Director of Children's Services at Southwark Council under the auspices of the ADCS Families, Communities, and Young People Policy Committee. Any queries regarding this response should be addressed in the first instance to:

Rob Belli
Administrator (Committee Support)
ADCS
Ellen Wilkinson Building
University of Manchester
Oxford Road
Manchester. M13 9PL
(e) robert.belli@adcs.org.uk
(t) 0161 275 8809