

By email: remandreview@justice.gov.uk

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ADCS response to the MoJ's remand funding consultation

The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs). Under the provisions of the *Children Act (2004)*, the DCS acts as a single point of leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to respond to this important consultation by the Ministry of Justice (MoJ).

There was no clear preference for any one of the seven change options put forward in the consultation amongst ADCS members as the suite of options do not wholly or individually recognise or address the issues and challenges faced. In summary, the reallocation of insufficient funding in different ways will still result in the same outcome, local authority (LA) children's services subsidising the MoJ's budget. It is also a missed opportunity to look at funding in isolation rather than all relevant issues in the round to affect change.

System level factors

The context in which we are delivering youth justice services has radically changed over the decade or so since the *Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012* received Royal Assent, this does not appear to have been sufficiently recognised and considered here. Changes include:

- In recent years there has been significant progress in managing down the custody population, with greater emphasis on diversion and use of community resolutions overseen by LA youth justice teams. However, the severity and type of offences has shifted, with violence and drug related offences increasing sharply. In such circumstances the courts are more likely to remand children to custody based on risk to the public or parallel concerns about the child's safety in the community given the increase in grooming, abuse and exploitation by unscrupulous adults.
- The *LASPO 2012* reforms gave LAs the responsibility to meet the costs of remand but not the levers to influence either children's experiences or outcomes beyond the initial placement decision. The severity of crimes being committed, lengthening police investigation times plus ongoing backlogs in the courts, particularly criminal courts where children's cases will be heard if they have an adult co-defendant, are contributory factors here. LAs are frequently paying for remand placements for older children who time out of the youth justice system on their 18th birthday before their case is even heard. Plus, the majority of children on remand do not receive a custodial sentence when their case does reach the courts indicating wider issues requiring action. For example, the recent review of remand ([MoJ, 2022](#)) highlighted concerns about the confidence and experience of both advocates and lawyers in youth courts, where cases are typically more procedurally complex.
- The needs profile of children in conflict with the law has changed and offending behaviours frequently mask wider vulnerabilities. Recent research, which draws on a sample of 80 case files from youth justice teams across the west Midlands, underscores this complexity of need and its relation to the risk of offending; just one child had no past recorded abuse or childhood adversity ([West Midlands Combined](#)

[Authority](#), 2021). Some children are not known to youth justice teams at all before being charged with a very serious offence. Younger and/or more vulnerable children are generally placed in secure training centre (STC) or secure children's home (SCH) at more than 2.5 times the cost of a youth offending institute (YOI) placement. Remand placements in SCHs and STCs are no longer covered by the grant LAs receive and uplifts in payments have not kept pace with inflation and actual costs.

- There is a growing shortage of the right placements in the right places for children in care, adding to the difficulties our teams face in assembling an alternative package for children and young people in conflict with the law who are likely to have a multiplicity of needs and cannot return home. The majority of placement providers are now privately owned and operated, meaning they can pick and choose from multiple referrals on any given day. The time sensitive nature of court proceedings can mean that we simply run out of time in our search for a suitable registered placement and accompanying support package. Remand fostering is underutilised and more focus here would be welcome, there is previous learning from YJB funded pilots around intensive fostering to draw from.
- Where children are remanded to custody, they are exposed to very significant risks and harms and this experience can reinforce offending behaviours. Levels of violence and self-harm are persistently high and very significant concerns about health, safety and welfare of children in YOIs and STCs continue to be raised, with multiple settings closing or being served an Urgent Notification by the inspectorates in recent years. This same picture is not replicated in SCHs, which are owned and operated by LAs and regulated by Ofsted.
- ADCS members are increasingly concerned about joint enterprise. Usage is worrying on a number of fronts, from the racially disproportionate application of the doctrine to Black and mixed heritage boys in particular, to the cost to LAs of paying for multiple remand placements whilst investigations take place or cases are listed for trial. Multiple ADCS members provided examples of placements costing hundreds of thousands of pounds per year over and above local grant allocations of tens of thousands.
- Finally, local government's funding from central government has fallen dramatically and growing number of LAs are in financial jeopardy, with several now effectively bankrupt and many others signalling difficulties. The unpredictable nature of remand spend can make it difficult to plan and, as already stated, we have few levers to influence the police, courts, providers of placements or youth custodial settings.

Specific commentary on the options for change in the consultation

No change, in essence, maintaining the status quo was not supported by ADCS members for the reasons articulated, above. The current approach is not working for children or for LAs. The *LASPO 2021* reforms were rooted in the belief LAs needed to be incentivised to meet our statutory duties, which overlooked wider context we are working in. Plus, the current funding model penalises success as only historic YOI use and spend is included in calculations about local allocations.

There were mixed views, with some cautious interest expressed in exploring **regional funding allocations** and the synergies for a regionalised response linked to the recent review of the care system; the Department for Education is preparing to pilot two regional care cooperatives (RCCs) which aim to enable groups of LAs to better plan and commission

placements for children in care. However, RCCs are untested and future funding to rollout nationwide is not guaranteed, even if there is evidence of impact and success. The recently launched London Accommodation Pathfinder offers child centred placements in a therapeutic environment and whilst it is showing early signs of promise and impact, it is still the case that the courts are remanding local children to custody, the costs of which are falling to the LA. Regional footprints are often contested and rarely coterminous adding further complexity.

Some concerns were raised about the **redistribution of current funding** envelope to prioritise funds towards areas with higher levels of serious youth violence. This may at first glance offer a solution, but this could have the unintended consequence of undermining the ability of youth justice teams to hold risk in the community. Some LAs report a proportion of their grant funding is used for the provision of an intensive supervision and surveillance (ISS) offer to support children remaining in the family home as part of a bail package.

There was no clear consensus on **rolling remand funding into wider budgets**, whether the YJB grant to local youth justice services or the main grant from the Department of Levelling Up to local government. It is the commissioning team in wider children's services that find the placements rather than the youth justice team. These budgets are under significant pressure due to a shortage of placements and difficulties in meeting the needs of children and young people with complex needs, including offending behaviours.

An **innovation style funding pot** to bid into to support the development of alternatives in this space could be a welcome in addition to not instead of direct funding; it is the child's home LA picking up the costs of custodial placements, not a regional body or consortia. It should be noted that this would not be a short-term solution given the time needed to draw up bids, gain sign off, agree funding arrangements and then develop and register new provision or go out to the market to commission it. And, even if alternatives exist, the police and courts may still opt to recommend or use a custodial placement.

Both options for **retaining this funding centrally** found no support as no detail was provided about the changes being considered. Plus, it is not yet clear the current system has the capacity to design and deliver significantly different experiences now or in the future; the government accepted Charlie Taylor's recommendation to build two secure schools in 2016, the first one is not yet open. Given the size of the custodial population now, were the creation of a remand facility, or facilities, one of the options under consideration, this approach will simply perpetuate the challenges in the current system e.g. children being placed long distances from their families, making contact and our work with them more difficult.

Other options for change

ADCS members are of the view that the current approach to remand is fundamentally not working and a review of the impact of *LASPO 2012* is needed. Its aims and intentions with regards to remand have clearly not been achieved and the context in which we're working has radically shifted over time. In the interim, a couple of short-term solutions to ease the current financial pressures on LAs, and improve the experience of children, were proposed:

1. A central pot to bid into to cover the costs of remand placements for groups of children in real time was proposed, particularly where joint enterprise is a factor.
2. Where the court decides to remand to custody, ADCS would like to see more regularised review and assessment points during remand placements, allowing the

courts to reconsider their decision based on the latest view of child's progress and behaviours now, rather than in the past. More timely assessments or reporting could be beneficial in supporting searches for alternative placements in the community or return home with ISS. Greater funding for, and prioritisation of, ISS would be helpful, linked to the stated aim of reducing use of remand set out in the *Police, Crime, Sentencing and Courts Act 2022*.

To discuss any of the points raised in this response further with members of ADCS, please contact the relevant policy officer in the first instance via katy.block@adcs.org.uk.