

PSED Assessment for *standards for children in the youth justice system 2019*

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1. Introduction

This document records the analysis undertaken by the YJB to enable it to fulfil the requirements placed on it by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the YJB to pay due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

In undertaking the analysis that underpins this document, where applicable, the Youth Justice Board (YJB) has also considered the United Nations Convention on the Rights of the Child (UNCRC). The YJB is committed to developing a youth justice system that follows a “child first, offender second” principle. This is commensurate with article 2 of the UNCRC which promotes actions as being in the best interest of children and young people (article 2), non-discrimination (article 3) and to enable the active participation of children and young people in matters which affect them (article 12).

The YJB’s Celebrating Diversity Strategy 2016 -2018 states our commitment to put equality and diversity at the heart of everything we do. It is about recognising and celebrating difference, being inclusive and embedding this into our core values and organisational culture, and being seen as an exemplar to others. It is more than just compliance with legislation and broader than protected characteristics. We believe we have a strong moral and social duty to do all we can to challenge prejudice and promote equality.

Everyone in the YJB has a role in delivering this in their work. We are not primarily a service delivery organisation – instead we work through others by

supporting and holding them to account. Externally, our impact lies in influencing others. Internally we can demonstrate a positive culture where we value difference and treat people as individuals.

This is reflected in how the YJB conducts its business. There remains a disproportionately high number of children from black, Asian and minority ethnic (BAME) backgrounds and children who have been/are in the care system in the youth justice system. The solutions to reducing children from offending and disproportionality amongst certain groups do not lie in the justice system alone. To transform the lives some of the most troubled children in England and Wales, and to reduce the number of victims of youth crime, there needs to be close collaboration between English and Welsh governments, local government and services.

The YJB, the Ministry of Justice, the Youth Custody Service (within Her Majesty's Prison and Probation Service), other government departments in England and the Welsh Government have agreed to work towards these newly established aims. It will be crucial to work with partners across the system to deliver the aims. We have established a cross-government Youth Justice System Oversight Group to review the performance of the youth justice system against these aims. We will use the outputs from this new Group and other intelligence to provide regular updates to Ministers on the performance of the system, including any actions we believe the Government should take to address specific issues.

The YJB is not primarily a service delivery organisation. It works in partnership with others to address issues, support and hold them to account. One of the ways in which we will be doing this is through our Priorities Programme. This includes reducing the disproportionate over-representation of children from BAME backgrounds in the youth justice system and reducing the gap of disproportionate outcomes at key decision points within the youth justice system.

The YJB has recently refreshed the values which underpin its role and function. This includes striving to eliminate discrimination and bias in the youth justice system and working for the best possible outcomes for children, whatever their background or ethnicity. We gather information and assess the effectiveness of the system and form an expert view of how the system can prevent offending, and deliver the best outcomes for children who offend and for victims of crime. We advise ministers and those working in youth justice services about how well the system is operating, and how improvements can be made. We share best practice; support information sharing and listen to what children have to say.

These provide pathways to deliver and embed good diversity and equality practice as a key element of our monitoring and influencing role.

2. Brief outline of policy or service

Since its inception, the YJB has advised the Secretary of State on the content of national standards. The standards have had several iterations reflecting the youth justice service providers' needs for guidance and since 2013 describe the minimum requirements of youth justice services. The YJB oversees adherence to the standards in exercising its function of monitoring the youth justice system.

The National Standards for Youth Justice Services (published in 2013) reflected the maturity of the youth justice system. Standards for children in the justice system 2019 confirms a professional mature system exists, and proposes a move to outcome focused oversight. This rationalises and condenses the expectations to five specific functions: pre-court, at court, in the community, in custody and on transition and resettlement.

It is our intention that the proposed standards for children in the youth justice system (2019), will better support services to deliver the aims of the system by providing a structure which gives statutory youth justice services the freedom to deliver good outcomes for children, and to encourage innovation by removing constraints.

This work does not represent a major policy change, but is a refresh of existing documentation and guidance. We have undertaken significant engagement with the sector, government departments, regulators and policy colleagues in developing the new standards and are publicly consulting on them in November 2018 to obtain further views prior to seeking ministerial approval for publication.

3. Evidence and analysis

Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act.

Section 149 of the Equality Act 2010 places a duty on Ministers, Departments and Public Authorities, and persons who are not a public authority (as set out in the Act). Although the YJB is not a public authority as specified in Schedule 19 to the Equality Act 2010, it exercises public functions and must have due regard to the matters set out in the Act. Due regard needs to be considered against the nine 'protected characteristics' under the Equality Act (see below). This means not discriminating against, harassing or victimising another person because they have or are perceived to have protected characteristics or are associated with someone who has. This is through either direct or indirect discrimination.

Equality Act 2010 protected characteristics

race	Sex	disability
sexual orientation	religion and belief	age
marriage and civil partnership	gender reassignment	pregnancy and maternity

Direct discrimination

Our initial assessment is that the proposals to revise the National Standards for Youth Justice Services are not directly discriminatory within the meaning of the Equality Act, as they apply equally to all children irrespective of if they have a protected characteristic. We do not consider that the standards would result in children being treated less favourably because of a protected characteristic.

Indirect discrimination

Our assessment, based on the information available, is that among children, certain groups with protected characteristics are over represented in the youth justice population, notably BAME children.

Published YJB and Ministry of Justice Youth Justice Statistics for 2017/18 reported that whilst BAME children made up 18% of the 10 to 17-year-old population, they accounted for 27% of all children who received a caution or conviction, 35% of children sentenced for indictable offences and 45% of the custodial population.

Regarding gender, males made up 84% of the population of children who received a youth caution or court sentence in 2017/18 and girls 16%.

In terms of their age, 24% were 10 to 14-year-olds, 19% were 15-year-olds, 25% were 16-year-olds and 32% were 17-year-olds.

4. Actions

The YJB is committed to challenging discrimination, promoting equality and to working with others to eliminate bias in the youth justice system. We have identified tackling disproportionality as one of our priority programmes, with the aim of reducing the over-representation of BAME children and the gap of disproportionate outcomes at key decision points within the youth justice system. The YJB will adopt the Lammy Review process of 'Explain or Reform' and utilise its data collection and 'Journey of the Child' analysis to understand the points of disproportionality and explain these differences, and look to reform through strategic influencing within the criminal justice system by highlighting areas of concern with the relevant organisations.

Our standards for youth justice services have always set out the requirement to identify and tackle disproportionality. The revised standards for children in the youth justice system specify the requirement for YOT management boards and YOTs to quality assure their services to ensure that any disproportionality is identified and action is taken to tackle it. The standards have intentionally been broadened to include accountability at the strategic partnership level (by the YOT Management Board) to strengthen oversight of YOT activity.

The consultation on the standards for children in the youth justice system includes a question on whether children with protected characteristics might be affected by the proposed change to the standards. The respondents indicated no concern about standards impacting negatively on children with protected characteristics.

- i. **Advance equality of opportunity** between people who share a particular protected characteristic and people who do not share it.

Standards for children in the youth justice system are intended to prioritise the best interests of children, recognise their particular needs, promote their strengths and capacities, encourage their active participation and promote crime-free lives.

The proposed standards for children in the youth justice system set out the minimum requirements of youth justice services and enable YOTs and their partners to determine how best to meet the needs of, and respond to their local populations, including those with protected characteristics. This is at each stage of the system; pre-court, at court, in the community, in custody and on transition and resettlement.

The intention is to:

- remove or minimise disadvantages suffered by all children through contact with the criminal justice system, including those with protected characteristics
 - ensure the needs of all children are met, including those with protected characteristics.
 - ensure there is appropriate diversion from the criminal justice system for all children, being mindful of the difference for those with protected characteristics. This is particularly important as disproportionality has been evidenced in police stop and search activity, in police charging and in sentencing by courts.
- ii. **Foster good relations** between people who share a particular protected characteristic and people who do not share it.

The standards for children in the youth justice system are intended to be the minimum standards required to ensure good outcomes are being achieved.

YOTs are required to self-assess their adherence to the standards on an annual basis. This identifies where there are strengths and weaknesses in practice and local arrangements. This process will continue and is one of the means through which YOTs and YOT management boards should identify if there are disproportionate responses to any groups of children. It will enable them to take actions to address specific needs, address deficits in service delivery and highlight if there is a requirement to expand the range of specialist support available to meet particular needs, including for those with protected characteristics, if evidence suggests this is necessary.

5. Decision making

Our recommendation is to proceed with the introduction of the standards for children in the youth justice system. We do not believe there will be an adverse or disproportionately negative impact on children who have protected characteristics. The existence of national standards within the youth justice system is well established and well understood, as is the necessity to adhere to them to ensure good outcomes for children generally, and those with particular needs and protected characteristics.

The changes we are making to the standards are to make them more relevant to a mature youth justice sector, to improve local accountability and ensure there are effective working practices across all youth justice functions. Our expectation is that the standards will continue to identify areas for improvement and development remains the same.

Monitoring and evaluation

The YJB has established a process of annual self-assessment of YOT adherence to national standards. The process and requirements will be revised to reflect the new standards. This will help ensure that YOTs, their management boards and where relevant secure providers are able to identify what is and is not working well in their area and whether they need to strengthen and/or expand the services provided to meet the needs of the children on their caseloads. The self-assessment process examines different standards to ensure that all youth justice functions are scrutinised over a period of time and is:

- focused and feasible in relation resources available locally
- useful and timely to improve learning, decision making, and influence allocation of time and resources
- useable by, and/or comparable to, data collected by other stakeholders so it contributes to the wider evidence base
- credible, valid and reliable
- ethical e.g. in relation to data consent and protection.