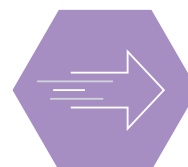
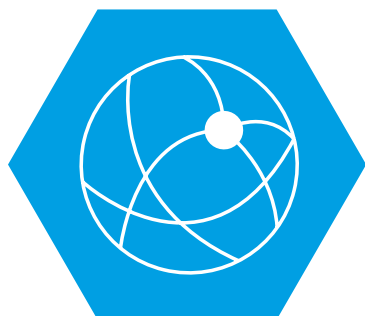




Ministry  
of Justice

# REVIEW OF CUSTODIAL REMAND FOR CHILDREN

JANUARY 2022





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# 1 FOREWORD

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## Victoria Atkins MP Minister of State for Justice



I want to see a youth justice system that secures justice for victims while recognising the unique needs of children, and builds on the progress made over the past decade. We have made great strides to reduce the numbers of children in the youth justice system and the youth custodial population has fallen by 68%. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 was a landmark piece of legislation which brought in significant reforms to youth remand by introducing very stringent tests for remanding a child to custody.

Yet, with over a third of children in custody on remand, the government is not complacent about the challenges that remain. Remand is an integral part of our justice system and remand decisions by their very nature are difficult. Typically, courts must take a view on the risk a child poses in a very short period of time, and often in the absence of all the facts. Those decisions, in essence, strike a fine balance between public safety and the best interests of the child. This government is clear that placing a child in custody must always be a last resort, but that option must remain open to the courts where necessary. While youth offending has continued to fall in recent years, the profile of crime committed by children and young people has become more serious – with knife crime, violence against the person and county lines-related offending prominent. In the context of serious offending, remand remains a vital public protection tool.

No decision to use custodial remand is ever taken lightly, and this investigation actually challenges some assumptions that custodial remand is routinely over-used. Indeed, the vast majority (82%) of bail hearings result in bail. But recent trends have led many to question why children on remand now make up such a significant proportion of the youth custody population.

While it is often not easy to isolate which of the complex factors in play might lead a court to opt for remand, this review shows that there is more we can and must do to improve practice and oversight around remand. This requires collective action across government and youth services, both strategically and at a local operational level. This is why I am pleased, in publishing this report, to be responding to recommendations made by the Independent Inquiry into Child Sexual Abuse, and the Justice Select Committee, to investigate these issues.

We are already doing more. Recognising that the decision to remand a child to custody remains a matter for the courts, the Police, Crime, Sentencing and Courts (PCSC) Bill will further tighten the tests courts must satisfy in making that decision and require them to record the reasons for any custodial remand.

This review identifies important good practice seen in areas including information sharing, provision of alternative accommodation and local scrutiny, which ensure everything possible is in place in a timely manner to provide the court with strong alternatives to custodial remand. We also recognise the importance of properly examining and tackling racial disparities where they do exist.

This review makes some recommendations for areas of improvement. We will achieve change here through a series of concerted, incremental actions across the system which, taken together, will contribute to ensuring that custodial remand is used appropriately. I encourage all of those working with children in contact with the justice system to reflect on these findings and play their part in making these improvements.

A handwritten signature in black ink that reads "Victoria Atkinson". The signature is written in a cursive style with a large initial 'V' and 'A'.

# 2 GLOSSARY

---

<b>ACE</b>	Adverse childhood experiences can be defined as potentially traumatic events or chronic stressors that occur before the age of 18 and are uncontrollable to the child
<b>ADCS</b>	The Association of Directors of Children’s Services
<b>AssetPlus</b>	Assessment and planning framework tool developed by the Youth Justice Board for work with children who have offended, or are at risk of offending, that reflects current research and understanding of what works with children
<b>AYM</b>	Association of YOT Managers (England)
<b>Bail ISS</b>	Bail Intensive Supervision and Surveillance – a more intensive form of supervision and support programme which can be used at the bail stage
<b>Contextual safeguarding</b>	An approach to safeguarding that considers a child’s experience of harm outside the home – for example, with peers, in schools and in the neighbourhood
<b>CPS</b>	The Crown Prosecution Service prosecutes criminal cases that have been investigated by the police and other investigative organisations in England and Wales. It is independent, and makes decisions independently from the police and government
<b>CYP</b>	Children and young people
<b>DfE</b>	Department for Education
<b>DLUHC</b>	Department for Levelling Up, Housing and Communities
<b>DTO</b>	A Detention and Training Order is a fixed-term custodial sentence available for children and young people aged 12-17 years old – if the child or young person is 12-14 years old, the order can only be made if they are a persistent offender
<b>ESLG</b>	YJB External Stakeholders Liaison Group
<b>HMCTS</b>	Her Majesty’s Courts and Tribunals Service
<b>HMICFRS</b>	Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services independently assesses the effectiveness and efficiency of police forces and fire and rescue services
<b>HMI Probation</b>	Her Majesty’s Inspectorate of Probation is the independent inspector of youth offending and probation services in England and Wales: it reports on the effectiveness of probation and youth offending services and publishes inspection reports; it highlights good and poor practice, and uses data and information to encourage high-quality services and is independent of government
<b>LAA</b>	Local authority accommodation

<b>LAC</b>	Looked after child(ren) – in Wales, known as children with care experience
<b>LGA</b>	Local Government Association
<b>MA</b>	Magistrates Association
<b>MOPAC</b>	The Mayor’s Office for Policing and Crime
<b>NPCC</b>	National Police Chiefs’ Council
<b>NRM</b>	National referral mechanism: the national framework for identifying and referring potential victims of modern slavery in order to gain help to support and protect them
<b>OCC</b>	Office of the Children’s Commissioner
<b>PACE</b>	Police and Criminal Evidence Act 1984
<b>PECS</b>	Prisoner Escort and Custody Services
<b>SCH</b>	Secure children’s home
<b>STC</b>	Secure training centre
<b>Supporting Families</b>	Formerly Troubled Families Programme, established in 2012 and aimed at driving change in outcomes for vulnerable families with complex needs in England (Families First in Wales)
<b>VCS</b>	Voluntary and community sector
<b>VCSLG</b>	YJB VCS Liaison Group
<b>YAN</b>	The YJB’s Youth Advisory Network of Ambassadors, comprised of children and young adults aged between 14-25 years old
<b>YCS</b>	Youth Custody Service
<b>YDA</b>	Youth detention accommodation
<b>YJB</b>	Youth Justice Board for England and Wales
<b>YMC</b>	YOT Managers Cymru (Wales)
<b>YOT Forum</b>	Good practice forum attended by YOT operational and team managers and specialist workers where relevant and usually run for a day. The forums are divided by YJB regional areas: East and South East; London; Midlands; North East, Yorkshire and Humberside (this area had two forums one on the North East and one in Yorkshire and Humberside); North West; South West and South Central
<b>YJ management boards</b>	Local authority-level oversight groups responsible for reviewing YOT performance including data analysis and strategic challenges in youth justice
<b>YJS</b>	Youth justice system
<b>YOI</b>	Young offender institution
<b>YOT/YOS</b>	Youth offending team / youth offending services <sup>1</sup>

<sup>1</sup> YOTs are known locally by many titles, such as youth justice service (YJS), youth offending service (YOS), and other generic titles that may illustrate their wider role in the local area in delivering services for children

# 3 EXECUTIVE SUMMARY

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1. Custody should always be a last resort for children. In recent years, one third of the children and young people in custody have been there on remand, with this figure reaching as high as 45% in 2021. This fact has attracted significant scrutiny and a recommendation from the Independent Inquiry into Child Sexual Abuse (IICSA) that the government examine the scale and appropriateness of youth custodial remand, which is the genesis of this work.
2. MoJ's Youth Justice Policy Unit carried out this review covering England and Wales. It puts forward elements of analysis of the situation, best practice and proposals for improvement. This review is aimed primarily at practitioners involved in the remand process and is the product of extensive engagement with a broad range of stakeholders and youth justice system partners.
3. **Our findings question a dominant narrative that the number of children on remand has increased significantly or that custodial remand is regularly 'overused', as has frequently been reported. The reality is more complex.**
  - The *number* of children on custodial remand and the overall number of remand episodes have fallen significantly over the last decade, and in recent years, the number of children on custodial remand has remained fairly stable. However, a larger fall in the overall numbers of children in custody has seen children on remand as a *proportion* of total prison population increase.
  - At the same time, we have seen a rise in sentences for serious offences<sup>2</sup> as a proportion of all custodial sentences and a fall in Detention and Training Orders. This could be indicative of the diversion from custody being more prominent at the lower level of offence severity for which children are less likely to be remanded.
  - Engagement with partners across the system shows evidence of careful consideration of remand decisions and significant efforts to ensure viable alternatives to custodial remand are available.
  - However, the fact that about a fifth of remand episodes last under 7 days, or that such a large proportion of children on custodial remand are either acquitted or do not receive a custodial sentence, justifies close scrutiny.
  - Recent analysis of the data as part of research commissioned by the Youth Justice Board found that children were more likely to receive custodial remand if they were male, older, non-local residents, committed more serious offences, or were judged as having a higher likelihood of reoffending, a greater risk of serious harm or safety and wellbeing concerns, or their cases were heard at Crown Court.

<sup>2</sup> Section 250 of the Sentencing Code ('grave crimes' sentence)



- It is clear that data alone does not definitively explain the reasons behind custodial remand. Rather, a combination of factors drives remand decisions. These include those factors mentioned above, as well as the availability of robust alternatives to custody in the community.
  - Remand is a very complex decision-making process and decisions are subject to a stringent legislative framework. Remand is inherently provisional (it is an in-between stage in the justice system) and relies heavily on information provided by local partners (social services, YOTs etc) which is not always complete. Courts must retain their ability to remand a child to custody where necessary.
4. **We must strike a balance between preserving the best interests and welfare of the child on one hand and protecting the public from harm on the other. While public safety remains a priority for this government, there is scope for meaningful action to improve operational practice, and reduce instances where custodial remand is a default, rather than a necessity. We signpost good practice and proposals to enable improvement.**
- We acknowledge the complexity of this issue, and that this will be an ongoing process of improvement rather than an instant transformation. Our next steps are a combination of smaller measures, including better partnership working and continuous improvement rather than a single silver bullet.
  - In a complex system we also highlight the importance of action beyond central government's direct influence, involving a range of local partners and actors in wider areas of policy and delivery.
5. **The government is already taking legislative steps to tighten the tests the courts must apply to remand children to custody** with measures in the Police, Crime, Sentencing and Courts Bill introduced to Parliament on 9 March 2021. These ensure there is a high bar to justify use of custodial remand and require judges to record their justification. These changes, however, are careful not to tie the hands of the judiciary in ensuring that custodial remand remains an option when necessary to protect the public.
6. **Frontline delivery and operational practice can be strengthened.** As remand can be overlooked (as neither sentencing, nor a custody and resettlement issue), we will prioritise this as a strategic objective and ask partners to do the same. We discuss a range of activities to improve effective partnership-working between agencies, enhanced oversight and scrutiny of remand decision-making, improved guidance and training and improvements in how data is routinely collected and analysed.
7. **We should enhance accommodation and community provision to ensure robust alternatives to custody are available where risk can be managed effectively.** We look at promoting availability of Bail with Intensive Supervision and Surveillance (Bail ISS) and explore development of local authority accommodation and alternatives to remand in the community.

8. **Racial disparities in remand are a known issue and need addressing.** We need to understand the basis for these disparities to know where action is appropriate. Recent YJB research shows that objective factors (such as demographic characteristics, offences and offence history, location and court type) and practitioner assessments can explain much of the striking initial disparity. However, after controlling for these factors, disparity could not be fully explained, and black children remained less likely to receive community remand (8 percentage points). The Commission on Racial and Ethnic Disparities report highlights the importance of understanding what drives headline disparities and future work on remand should build on this approach.
9. The issues identified in this review in relation to remand cannot be seen in isolation and MoJ will need to continue work across government to ensure we all play our part in helping prevent children from getting involved in crime.
10. The pandemic hit while the review was ongoing and while we incorporate elements of lessons learned (such as work to minimise court delays), this review is not about assessing the impact of COVID-19 on the justice system.

# 4 METHODOLOGY

## Guiding principles

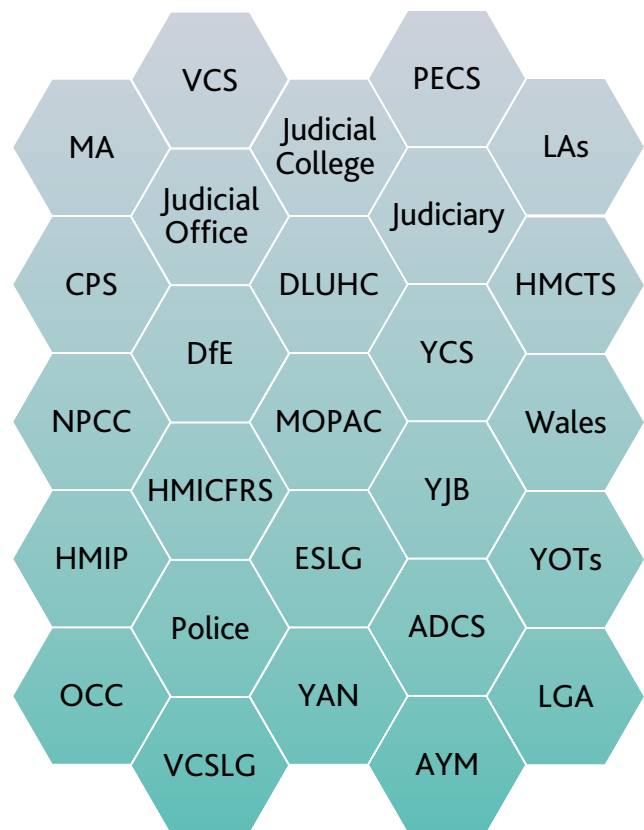
In conducting the remand review we have followed a number of guiding principles, including taking a user-centric policy approach, with a focus on the child's voice, seeking frontline and stakeholders' input, employing evidence-based policy, a critical eye, and openness and transparency.

## Fieldwork and engagement

Alongside substantial desktop research, this review has been informed by extensive engagement with a broad range of frontline practitioners and stakeholders in local and central government, as well as defence lawyers and academic researchers. We conducted interviews with 5 YOT Forums and 13 YOTs, as well as semi-structured interviews with 21 magistrates, district judges (magistrates' court) and justices' legal advisers, across England and Wales.<sup>3</sup>

The Youth Justice Board (YJB) facilitated some of this engagement with representatives of voluntary and charitable sector organisations as well as young ambassadors from the Youth Advisory Network, whose first-hand experience of the justice system and remand process has lent the review a user-centric perspective.

This broad spectrum of engagement garnered a significant amount of feedback, which while qualitative, has greatly complemented the analysis of quantitative data and research available. However, it should be noted that, whilst we sought views from a range of practitioners and stakeholders, the feedback given represents their own views and may not be representative of their wider organisations, or the Ministry of Justice.



<sup>3</sup> South-East YOT Forum • South-West YOT Forum • North-East YOT Forum • Leeds YOT Forum • London YOT Forum • Ealing YOT • Lambeth YOT • Hammersmith and Fulham YOT • Brent YOT • Hants/IOW YOT • Lewisham YOT • Islington YOT • Manchester YOT • Birmingham YOT • Nottinghamshire YOT • Carmarthenshire YOT • Yorkshire YOT • Torbay YOT

## Use of Data

The Ministry of Justice and the YJB publish a range of data related to remands, which has been used to inform this review. This covers the size and make-up of those proceeded against at the magistrates' and Crown Courts, and the outcomes they receive, the size and make-up of the custodial remand population and YOT reporting on the types of remands that children receive.

However, in many cases these data cannot be combined to give a complete picture of the children who are remanded, or the reasons behind their custodial remand. Each organisation records data, often for the purposes of management information and to inform operational decisions. This can limit the ability to conduct in depth analysis into the trends, and drivers of trends, in remands. For example, the number of people who have a history of absconding while on remand or bail, which is a critical element of the remand test, is reported but not held centrally. It is utilised for individual case management rather than for the purposes of central overview. It is therefore impossible to say with the data the extent to which any remands may be deemed "unnecessary".

Further to this, the relatively low volumes of children in custody on remand mean that the data can fluctuate substantially over short periods. This is accentuated when attempting to split the cohort into different groups to understand whether any particular child, or offending characteristic, has driven any noticeable changes in remands.

The available data has been used to draw conclusions where possible. The data has been supplemented by engagement findings, including a number of semi-structured stakeholder interviews which provided valuable expert input to provide further qualitative evidence on which the conclusions of this review are based.

# 5 OVERVIEW OF DATA AND KEY TRENDS

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## A look at remand trends

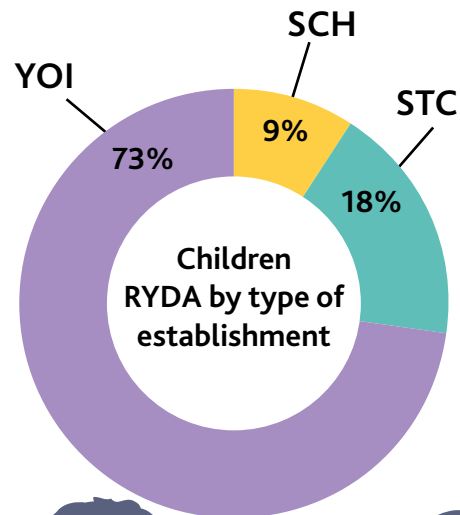
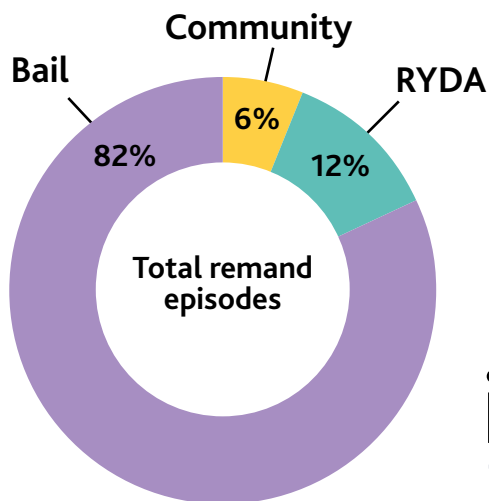
This section uses **published** information from the MoJ, YJB and the Youth Custody Service (YCS) to look at the key statistics related to children who are remanded to custody. This includes information on population changes (with breakdowns of demographic information), total remand episodes, and a look at offences and offence groups. The section starts with a consideration of the last 10 years to show historic trends, with the rest of the section using data covering the five-year period between 2015 and 2020. In some cases, data for this time period was not available due to changing reporting practices. Unless specified, this chapter uses the youth justice annual statistics remand data which focuses on children under the age of 18.<sup>4</sup> This source goes up to March 2020, and in some cases alternative sources are used to give the latest remand picture in 2020/21 and 2021/22.<sup>5</sup>

There are also data limitations which makes identifying trends, and the drivers of these trends, difficult. For instance, when the remand population is broken down by a specific characteristic (for example, offence) there are only small volumes which means a small, absolute change can lead to a large proportional change. Furthermore, the data sources for children remanded are not linked, which makes comparing data sets difficult and prevents comparisons across the remand process. Finally, data cannot always be broken down in sufficient detail to allow specific groups of interest to be considered due to the small numbers of children, which impacts the quality of the data. For this review, only data from published statistics have been used. All of these limitations mean that data alone cannot be used to draw firm conclusions as to the drivers of the remand population.

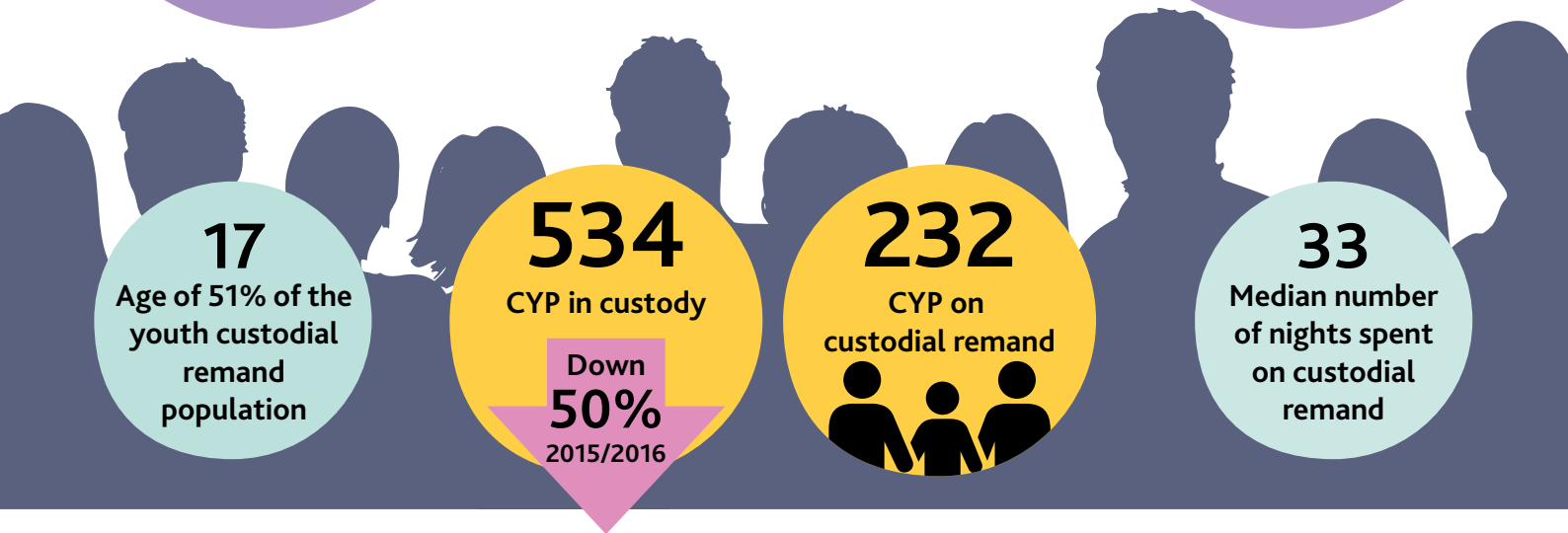
Figure 1 shows that the numbers of children in custody, and the numbers in custody on remand, fell substantially between 2009 and 2017. In 2017, the youth custody population was less than a third of the level in 2009. Since 2017 it has remained steady, before falling gradually in 2019 and 2020, while the volume of children on remand increased slightly, before remaining broadly flat in 2019 and 2020.

<sup>4</sup> Children and young people on remand can remain in the youth secure estate after their 18th birthday. The YCS will only invoice for remand nights up until the child's 18th birthday.

<sup>5</sup> This data is a snapshot of the youth custody population (prior to April 2019 this was on the nearest Friday to the last day of the month, from April 2019 onwards this is on the last day of the month). The children and young people's (CYP) legal basis in this snapshot is their most precedent legal basis (e.g. if they are on remand and serving the custodial half of a Detention and Training Order (DTO) for other matters their most precedent legal basis would be DTO).



# Remand picture in numbers\*



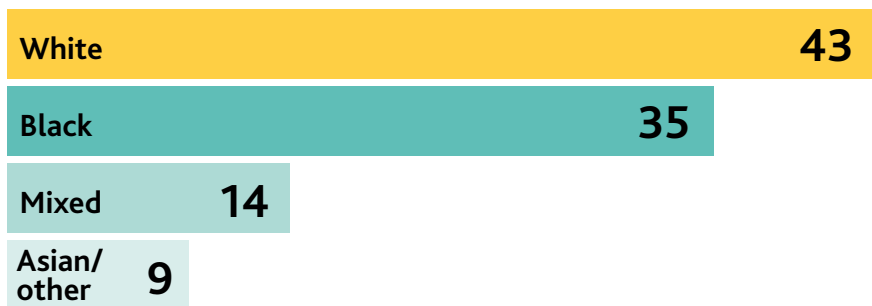
**17**  
Age of 51% of the youth custodial remand population

**534**  
CYP in custody  
Down **50%**  
2015/2016

**232**  
CYP on custodial remand

**33**  
Median number of nights spent on custodial remand

Children on custodial remand by ethnicity (%)

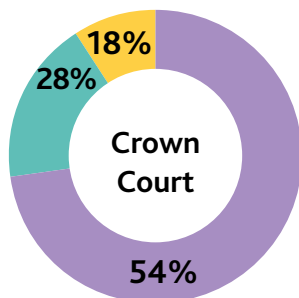
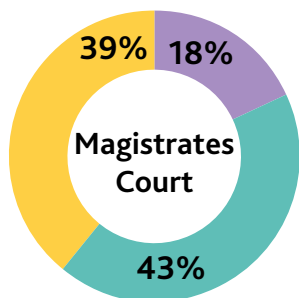


Children on custodial remand by offence

**58%**  
Violence Against the Person offence

**11%**  
Robbery

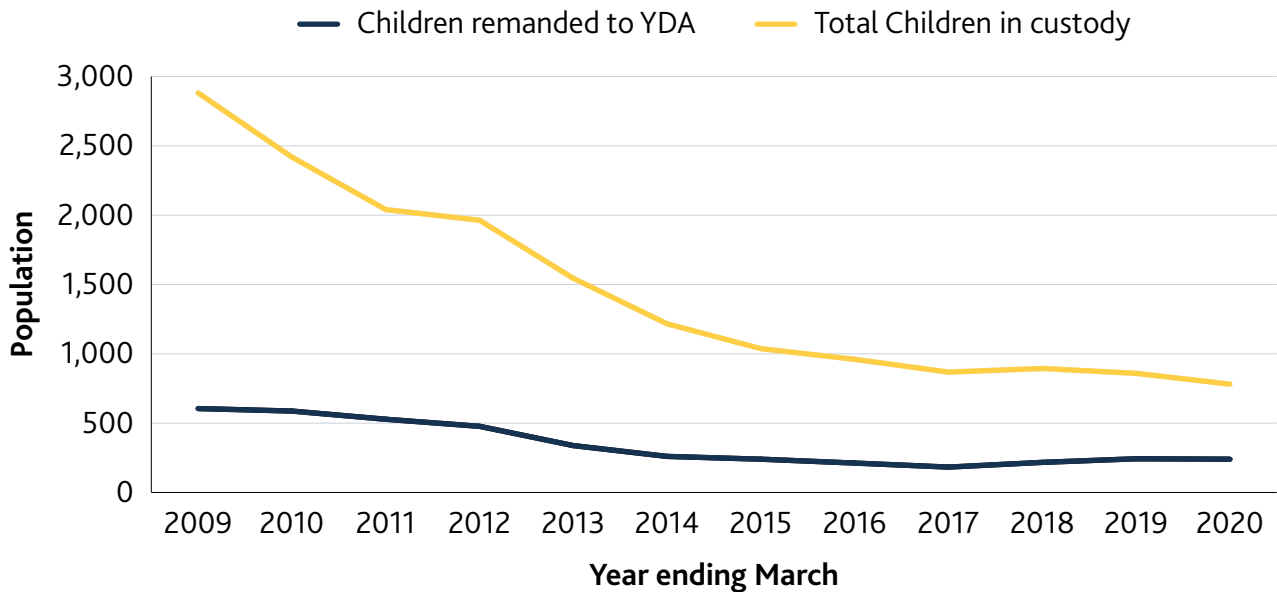
Outcome of those remanded to custody



Immediate custody    Non-custodial sentence    Acquitted

\*[www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020](http://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020). Due to rounding, some total percentages are greater than 100%. <https://www.gov.uk/government/statistics/youth-custody-data> for average CYP remand and population figures for 2021/22 so far

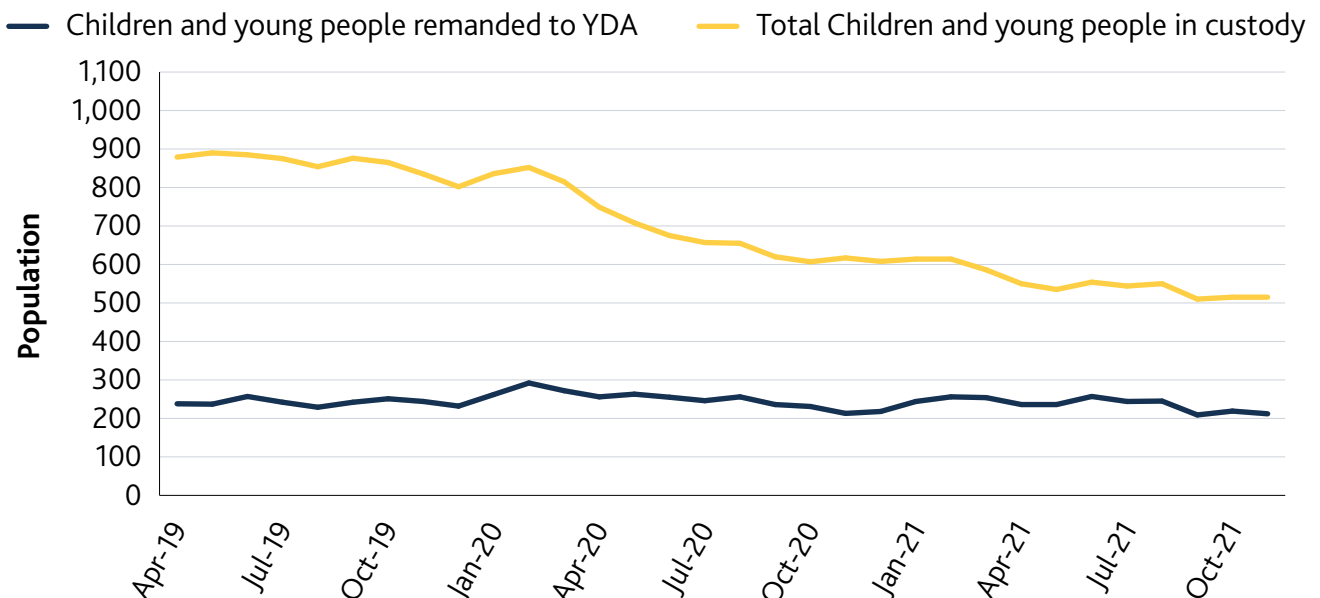
**FIGURE 1: Average monthly population of children remanded to youth detention accommodation and children in youth custody population [2008/09 – 2019/20]**



Youth Justice Statistics, 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

Figure 2 shows the population of children and young people in the youth estate as a whole. The youth custody population is now around 510 while the remand population (including 18-year-olds) has remained broadly flat, averaging 244 during 2020/21 and 232 in 2021/22 so far.

**FIGURE 2: Average monthly population of children and young people remanded to YDA and total youth custody population (including 18 year olds) [April 2019 – November 2021]**

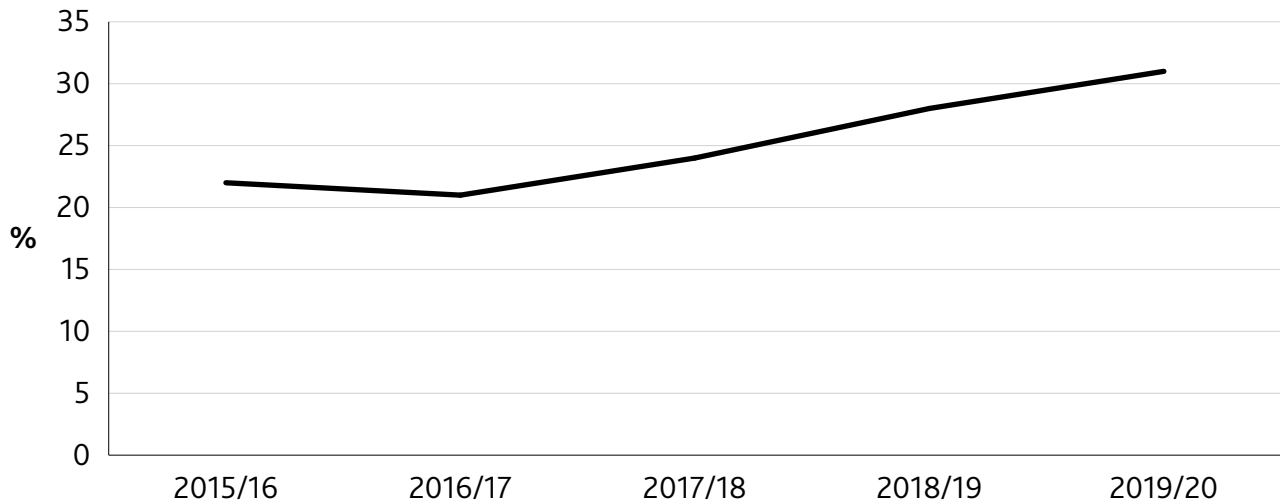


Youth Custody Report, 2021: <https://www.gov.uk/government/statistics/youth-custody-data>

As a result of these trends, remanded children now make up a higher proportion of the custodial population, as the falls in the sentenced population have been greater than in the remanded population.<sup>6</sup> This is shown in Figure 3, using the information published by the YJB.

The *proportion* of children on remand has remained above 2019/20 levels in 2021/22. This has been caused by the youth custodial population continuing to fall, likely as a result of fewer children being sentenced due to the pandemic.

**FIGURE 3: Proportion of children on remand as a percentage of children in custody [2015/16 – 2019/20]**



Youth Justice Statistics, 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

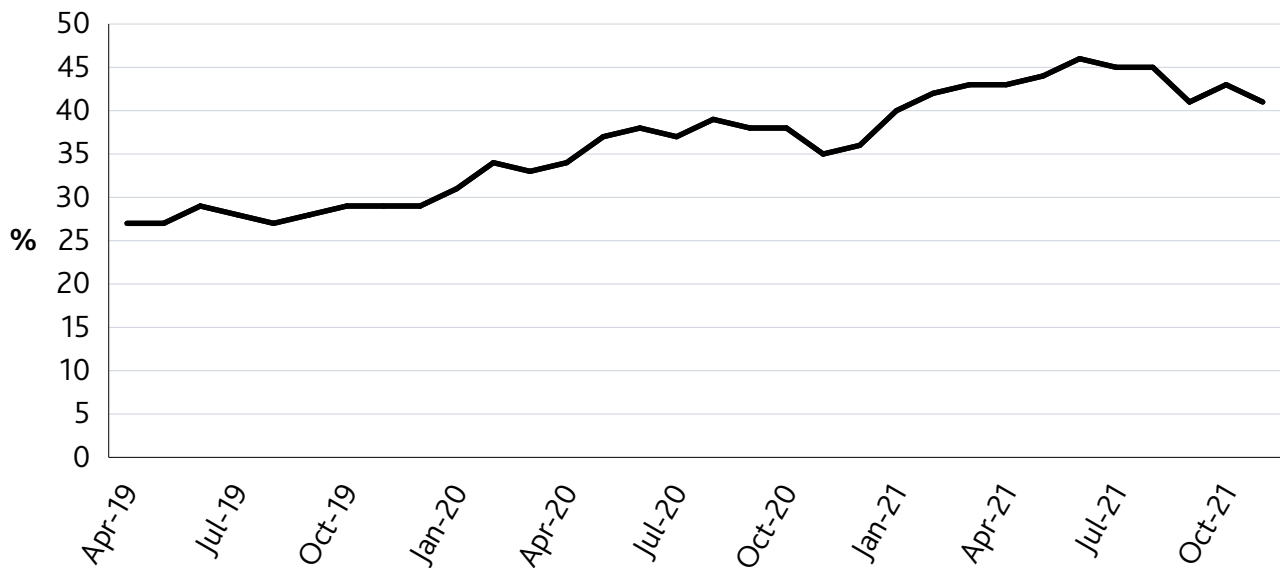
Published data for the **population of children (i.e. under 18-year-olds) in custody on remand** is only available up until 2019/20. This shows that in 2019/20 an average of 31% of the under 18 population in custody were on remand (Figure 3).

More recent published data is available (Figure 4) but includes 18-year-olds in the youth estate on remand. This more recent published data provides an understanding of the most recent trends, which shows that the proportion of children and young people on remand as a percentage of total youth custody population increased to 41% in November 2021 (a slight fall on previous months). This is most likely to have been largely driven by a fall in the number of children being sentenced as a result of COVID-19.

<sup>6</sup> Data captures children and young people where their most precedent legal basis is remand only



**FIGURE 4: Proportion of children and young people on remand as a percentage of total youth custody population [April 2019 – November 2021]**



Youth Custody Service, 2021: <https://www.gov.uk/government/statistics/youth-custody-data>

Children who are remanded to custody are more likely to be charged with serious and violent offences. Table 1 shows that in the year ending March 2020 58% of the average monthly population of children in youth detention accommodation on remand were remanded to custody for violence against the person offences, including the most serious offence, murder.

**TABLE 1: Average monthly population of children in youth detention accommodation on remand, by type of offence, year ending March 2020**

Offence group	Average population in custody	Share of population
Breach of Statutory Order	6	3%
Domestic Burglary	18	7%
Drugs	12	5%
Robbery	27	11%
Sexual Offences	7	3%
Violence Against the Person	140	58%
Other offences <sup>7</sup>	29	12%
<b>Total</b>	<b>240</b>	<b>100%</b>

<sup>7</sup> Offence groups listed under 'Other' include; arson, breach of bail, breach of conditional discharge, criminal damage, death or injury by dangerous driving, fraud and forgery, motoring offences, non-domestic burglary, other, public order, racially aggravated offences, theft and handling stolen goods, vehicle theft / unauthorised taking.

## Number of remands, by type, given by the courts<sup>8</sup>

As shown in Table 2, the total number of remand decisions has decreased substantially between 2015/16 and 2019/20, almost halving in that time. In the year ending March 2020, **bail remands made up the majority of total remands (82%)**, followed by remand to youth detention accommodation (YDA) (12%). Community remands with intervention made up 6% of remands with remands to local authority accommodation (LAA) making up 2% of all remand decisions.

**TABLE 2: Total number of remand decisions by type [2015/16 – 2019/20]**

	2015/16	2016/17	2017/18	2018/19	2019/20
<b>Bail remands</b>					
Unconditional Bail	15,827	15,103	14,038	12,932	10,243
Conditional Bail	16,850	14,118	10,444	8,118	5,523
<b>Total bail remands</b>	<b>32,677</b>	<b>29,221</b>	<b>24,482</b>	<b>21,050</b>	<b>15,766</b>
<b>Community remands with intervention</b>					
Bail Supervision and Support	524	482	571	630	456
ISS Bail	380	399	380	373	324
Remand to Local Authority Accommodation	731	673	620	591	465
<b>Total community remands with intervention</b>	<b>1,635</b>	<b>1,554</b>	<b>1,571</b>	<b>1,594</b>	<b>1,245</b>
<b>Youth Detention Accommodation remands</b>					
<b>Remand to Youth Detention Accommodation</b>	<b>2,803</b>	<b>2,946</b>	<b>3,208</b>	<b>2,945</b>	<b>2,226</b>
<b>Total remand episodes</b>	<b>37,115</b>	<b>33,721</b>	<b>29,261</b>	<b>25,589</b>	<b>19,237</b>

Youth Justice Statistics, 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

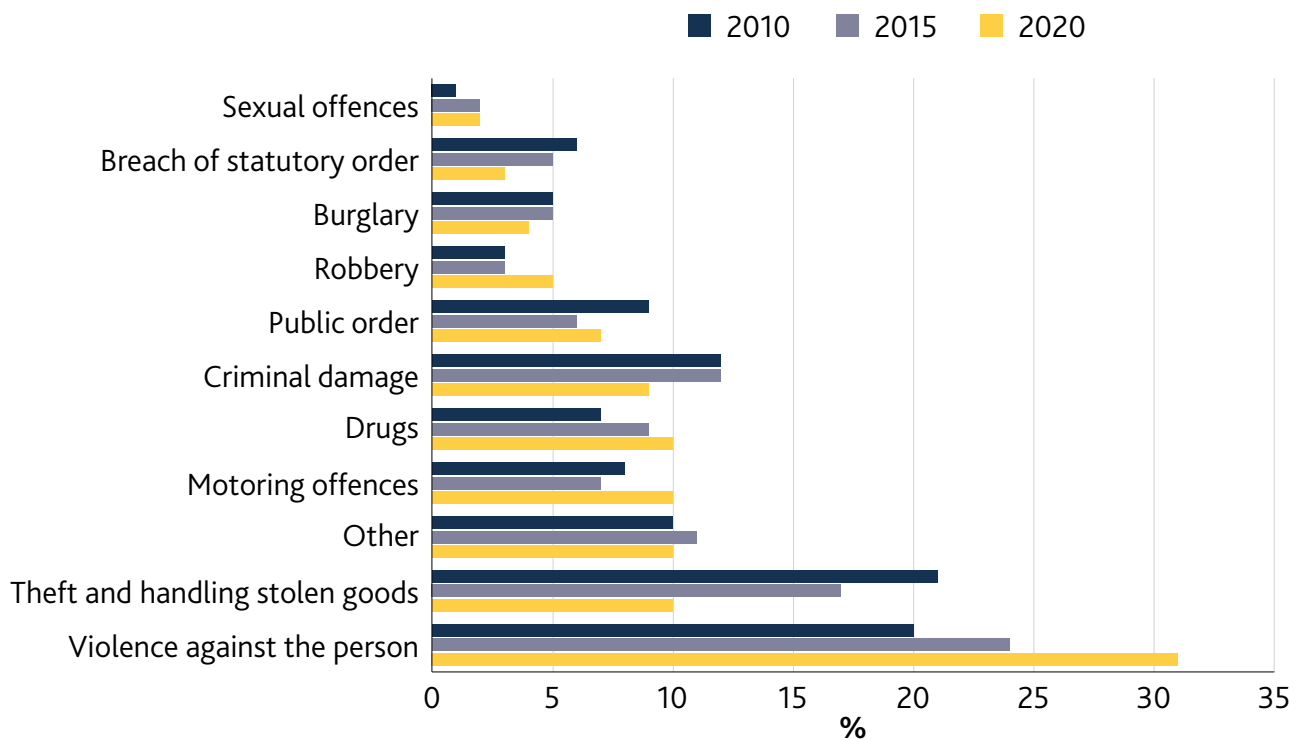
While the overall number of remand decisions fell by 48% over that period, the number of remands to YDA have not fallen as substantially, falling only by 21%. This could be indicative of the cohort of children that are now brought before the courts, or of an increased propensity to impose remands to YDA.

While we do not have detailed data on the reasons behind remand decisions, data on proven offending and court proceedings does indicate that, as the numbers in the youth justice system have fallen, the children proceeded against are now more likely to be charged with, or convicted of, a violent offence, for which a custodial remand would be more likely.

<sup>8</sup> All figures in the paragraph below, including the table are from: Youth Justice Statistics, 2020, Supplementary tables, Chapter 6 – Children in Remand: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

The proven number of offences has fallen dramatically for each offence group between 2010 and 2020. However, proportionally, the violence against the person offence group, has fallen by less compared to other offence groups, and now makes up a higher proportion of proven offences by children compared to in 2010 as shown in Figure 5 (increasing from 20% to 31%). This could be due in part to underlying trends in violent offences committed including violent crime associated with the growth of county lines. Figure 5 also shows the other more serious offence groups such as robbery, drugs, and sexual offences have increased proportionally between 2010 and 2020, while less serious offence groups such as theft have fallen (from 21% in 2010 to 10% in 2020).

**FIGURE 5: Share of proven offences for each offence group for 2010, 2015, and 2020**



Note: Offence groups listed under 'Other' include; arson, breach of bail, breach of conditional discharge, death or injury by dangerous driving, fraud and forgery, not known, other, racially aggravated offences, vehicle theft / unauthorised taking.

### Possible drivers of remand – changes in offence group makeup over time

The data presented in Table 1 and Figure 2 is not published at offence or outcome level. This means that it cannot be used to understand the drivers of the changes in remand numbers. Courts proceeding data published in the magistrates' court and Crown Court remand tools<sup>9</sup> includes information on offence breakdowns and outcomes.

<sup>9</sup> Criminal justice system statistics quarterly: December 2020: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

The remand figures in the tables below are split by calendar year and count only the children who went on to receive a substantive outcome (i.e. a pre-court or court disposal).

The court proceedings data groups remands to YDA and LAA into one category, which means it is not possible to distinguish between the two. However, YJB data (Table 1) shows that in 2019/20 there were almost five times as many remands to YDA compared to remands to LAA (2,226 compared to 465). This suggests that the vast majority of the data used in this section will be made up of remands to the secure estate.<sup>10</sup>

Table 3 below shows the total number of cases proceeded against has fallen by around 36% between 2015 and 2019. Over the same time period the number of remands to YDA and LAA also fell, but by a smaller percentage (around 20%). This has led to an increase in the proportion remanded overall from 4% to 5%. However, while the proportion remanded from the magistrates' court has remained the same at 3%, the proportion of children remanded from the Crown Court has increased from 34% in 2015 to 45% in 2019.

**TABLE 3: Court Remand Data (2015-19)**

	2015	2016	2017	2018	2019
Total number of cases proceeded against for both courts	43,948	39,909	36,939	31,705	28,118
Remands to custody & local authority accommodation for both courts	1,767	1,561	1,621	1,545	1,410
Proportion remanded to custody & local authority accommodation	4%	4%	4%	5%	5%
Proportion remanded to custody & local authority accommodation from the magistrate's court	3%	3%	3%	3%	3%
Proportion remanded to custody & local authority accommodation from the Crown Court	34%	33%	37%	41%	45%

Courts Remand Tool, Criminal Justice Statistics, December 2019:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/888658/remands-magistrates-court-tool-2019.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888658/remands-magistrates-court-tool-2019.xlsx)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/888657/remands-crown-court-tool-2019.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888657/remands-crown-court-tool-2019.xlsx)

Looking at the number of cases proceeded against in the Crown Court alone shows a fall of around 32% between 2015 and 2019. Concentrating on those cases proceeded against at the Crown Court (as the higher proportion of cases where remand to YDA or LAA is the outcome of the hearing), Table 3 sets out the offence group for all remand outcomes. The number of children proceeded against at the Crown Court for violence against the person offences remained fairly similar and possession of weapons offences increased between 2015 and 2019. However, all other offence groups saw large falls. As can

<sup>10</sup> In this section, remand status and offence group figures are given for the defendant's principal status or offence. Principal remand status and offence groups refers to the defendants most serious remand status or offence. If there are two or more offences, it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

be seen in the last column, some offence groups have fallen by larger proportions than the average proportional fall in total cases proceeded against in the Crown Court (32%).

The changes between 2015 and 2019 affect the proportion of cases proceeded against for each offence group. While previously violence against the person accounted for 21% of cases proceeded against in the Crown Court in 2015, it accounted for 32% in 2019. The offence group possession of weapons has increased in a similar way from 3% to 6%. While the number of robbery offences proceeded against fell between 2015 and 2019 the offence group robbery still makes up 23% of cases proceeded against in the Crown Court.

**TABLE 4: Total cases proceeded against in Crown Court by offence group**

	2015	2016	2017	2018	2019	% change between 2015 and 2019
01: Violence against the person	360	306	323	357	365	1%
02: Sexual offences	175	148	129	81	60	-66%
03: Robbery	449	323	339	303	269	-40%
04: Theft Offences	210	142	139	143	123	-41%
05: Criminal damage and arson	32	21	17	12	18	-44%
06: Drug offences	172	157	150	142	113	-34%
07: Possession of weapons	54	64	76	81	75	39%
08: Public order offences	118	85	96	63	73	-38%
09: Miscellaneous crimes against society	67	56	55	41	28	-58%
10: Fraud Offences	11	11	5	4	3	N/A
11: Summary non-motoring	50	53	41	27	17	-66%
12: Summary motoring	2		3		1	N/A
13: Not Known					13	N/A
<b>Grand Total</b>	<b>1,700</b>	<b>1,366</b>	<b>1,373</b>	<b>1,254</b>	<b>1,158</b>	<b>-32%</b>

Table 5 shows that some offence groups are more likely to be remanded. For example, in 2019, 55% of cases proceeded against in the Crown Court for violence against the person offences were remanded compared to an average of 45%.

**TABLE 5: Remand to youth detention accommodation and local authority accommodation as a proportion of offence group**

	2015	2016	2017	2018	2019
Crown Court average	34%	33%	37%	41%	45%
01: Violence against the person	43%	44%	43%	53%	55%
03: Robbery	37%	37%	43%	39%	46%
04: Theft Offences	32%	37%	36%	38%	50%
07: Possession of weapons	41%	34%	45%	44%	41%

Table 4 shows that the offences brought before the Crown Court, are now on average more likely to be violence against the person offences. Table 5 shows that violence against the person offences are more likely to be remanded than the other offences dealt with in the Crown Court and that the rate has been increasing. Table 6 shows that this has translated into violence against the person offences now accounting for a greater proportion of custodial remands at the Crown Court – violence against the person offences now make up 38% of cases proceeded against in the Crown Court that receive a custodial remand in 2019 compared to 27% in 2015.

**TABLE 6: Proportion of cases proceeded against in Crown Court receiving a custodial remand by offence group**

	2015	2016	2017	2018	2019
01: Violence against the person	27%	29%	27%	37%	38%
02: Sexual offences	8%	9%	8%	4%	3%
03: Robbery	29%	27%	29%	23%	24%
04: Theft Offences	12%	11%	10%	11%	12%
05: Criminal damage and arson	1%	1%	1%	1%	1%
06: Drug offences	9%	11%	10%	10%	8%
07: Possession of weapons	4%	5%	7%	7%	6%
08: Public order offences	5%	2%	5%	3%	4%
09: Miscellaneous crimes against society	4%	3%	3%	3%	2%
10: Fraud Offences	1%	0%	0%	0%	0%
11: Summary non-motoring	2%	1%	1%	1%	1%
12: Summary motoring	0%	0%	0%	0%	0%
13: Not Known	0%	0%	0%	0%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Taken together, the above analysis implies that the Crown Court on average now deals with a higher proportion of violent cases that are more likely to result in a custodial remand. While it is impossible to ascertain without looking at each individual case and understanding the combination of factors the courts had taken into account to decide to remand to custody, this could indicate that the changes in the offence profile of children brought before the courts could have been a key driver of the increased likelihood of a child being remanded.

### Subsequent outcomes at trial

**Further to these headline trends, there are concerns raised by some around the high proportion of children remanded to custody who are subsequently acquitted or do not get a custodial sentence.**

At all courts, in 2019/20, of those children that were remanded to custody around a third went on to receive a custodial sentence. The remainder were either acquitted (30%) or received a non-custodial sentence (36%).<sup>11</sup>

<sup>11</sup> Youth Justice Statistics 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

In 2019, three per cent of the children who were proceeded against in the magistrates' courts were remanded to custody;<sup>12</sup> this goes up to 45% for proceeded against in the Crown Court, which is easily explained by the more serious nature of the offences tried in Crown Court.

**While this is interpreted by some as meaning that too many children are remanded to custody unnecessarily, this is not automatically the case. The trial outcome is an entirely independent assessment of the evidence, and the sentencing decision weighs up a lot of factors, many of which will have been unknown at the time a court had to make a bail/remand decision.** Many factors could result in a remand to YDA, which at the conclusion of a trial, having heard all the evidence, may either result in an acquittal or where it results in a conviction does not justify a custodial sentence. For example, a child might have a history of offending while on bail which satisfies the legislative conditions for custodial remand but, once evidence is put to the court at trial, the accused is found not guilty. Another explanation put forward was that the original charge was more serious than the offence that is ultimately proven. The acquittal of an individual at the conclusion of a trial therefore does not automatically undermine the basis on which a remand decision was taken.

**45%**  
*of children proceeded against in the Crown Court were remanded into custody*

## Time spent on remand

We know that the median number of nights spent on youth custodial remand is 33 but **22% of all youth custodial remand episodes last for 7 days or less.**<sup>13</sup> However, it is not possible to determine with certainty why so many children are remanded for short periods of time, due in part to fact that the main counting rules for the published Length of Time in Custody Dataset are that a child is counted each time their **episode** ends, or they turn 18 (whichever occurs first)<sup>14</sup>. For example, we cannot identify from the published data when the episode ended due to a community sentence being given, a child transferring to the adult estate or as a result of the child being released from custodial remand on bail.

**22%**  
*of all youth custodial remand episodes last for 7 days or less*

<sup>12</sup> Of those 3% of children in the magistrates' court who were remanded to custody, 39% were acquitted and 43% received a community sentence, while only 18% received a custodial sentence. Acquitted for Magistrates includes: Proceeding discontinued (S.23(3) Prosecution of Offences Act 1985), Discharged (S.6 Magistrates' Courts Act 1980), Withdrawn – no/insufficient evidence provided, Dismissed – (S.9 Magistrates' Courts Act 1980).

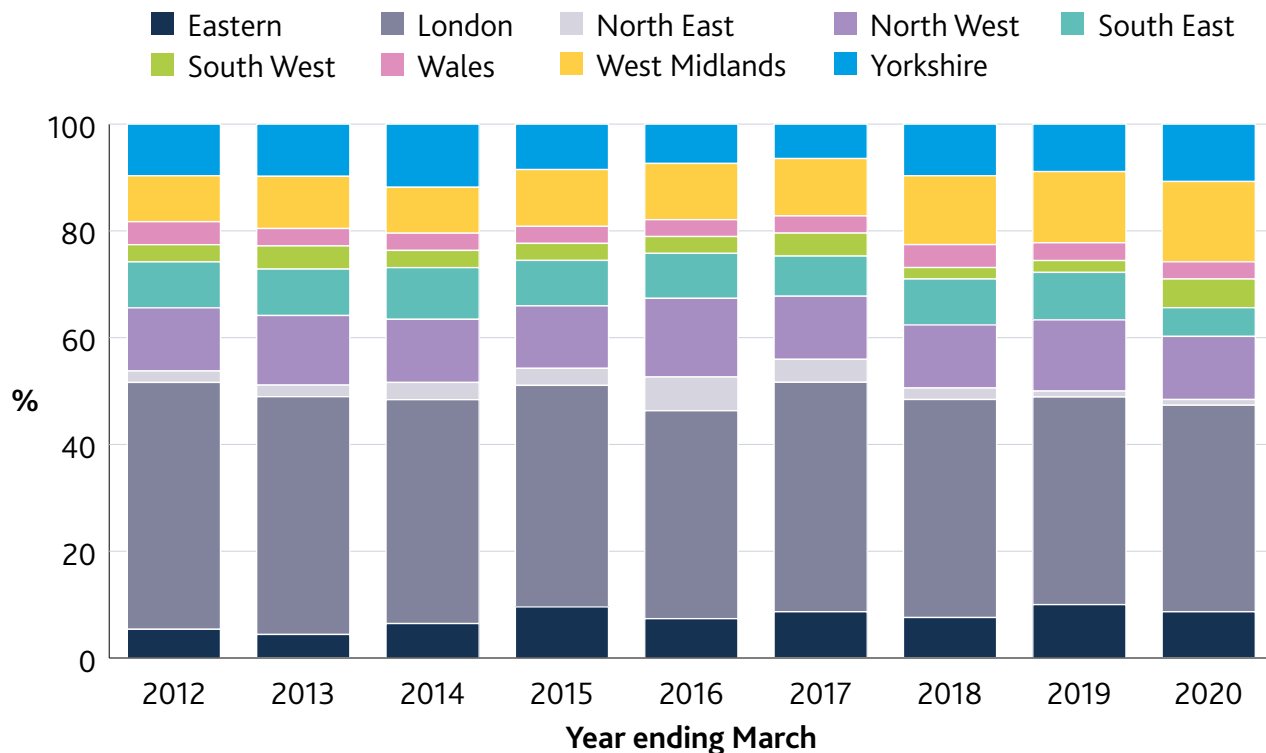
<sup>13</sup> Youth Justice Statistics 2020, supplementary tables, Chapter 7. Time spent on custodial remand only, this excludes those children that received a custodial remand and then went on to receive a custodial sentence. The main counting rules for the published Length of Time in Custody Dataset are that a child is counted each time their episode ends, or they turn 18 (whichever occurs first). The number of nights a child spends in the youth secure estate are not counted past the child's 18th birthday

<sup>14</sup> Episodes are divided into three groups: Remand Only; Detention and Training Order (DTO) Only; Other / Combination (the child had received a combination of orders, e.g. remand and DTO). The number of nights a child spends in the youth secure estate are not counted past the child's 18th birthday.

## London remains a driver of remand volumes

London consistently makes up the highest proportion of custodial remands compared to any other region, currently accounting for over a third of all custodial remands.

**FIGURE 6: Average remand population by region of YOT (year ending March 2012 to year ending March 2020)**



Youth Justice Statistics 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

## Likelihood of custodial remand

Recent YJB research on '*Ethnic disproportionality in remand and sentencing in the youth justice system*'<sup>15</sup> published in January 2021, suggests that on average, being a boy, being older or not residing locally increases the likelihood of receiving custodial remand (not controlling in this case for other factors, such as offence). For example, boys are approximately 9 percentage points more likely to receive custodial remand than girls. Not living locally also increases the likelihood by 7 percentage points. Every additional year in age increases the likelihood by 4 percentage points.

<sup>15</sup> YJB, *Ethnic disproportionality in remand and sentencing in the youth justice system*: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_remand\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf)





The likelihood of **custodial remand is shown to be affected by not being a local resident, having previous orders, having a 'high or very-high' ROSH<sup>16</sup> and 'safety and wellbeing' assessment.** This might suggest that custodial remand decisions may be presented as being in the interest of the child particularly in light of assessments of 'safety and wellbeing' and risk of serious harm. Consequently, **concerns around child protection and safeguarding measures may inadvertently increase the likelihood of remand in custody.** However, custodial remand is also linked to having a higher likelihood of reoffending. As such, an argument can also be made that remand is a function of the assessed risk the individual presents to society.<sup>17</sup>



The analysis highlights that higher scores relating to 'risk' (ROSH) and/or 'welfare' ('safety and wellbeing assessment') increase the likelihood of custodial remand.

Custodial remand is associated with more serious offences such as domestic burglary and robbery, or fraud. An increase of the gravity score<sup>18</sup> by 1 point (on its 8-point scale), increases the likelihood of receiving custodial remand by approximately 2 percentage points. The likelihood of custodial remand increases if the likelihood of reoffending score<sup>19</sup> is high: the effect is approximately 12 percentage points. Moreover, the YJB research shows that having a high or very high level of the Risk of Serious Harm (ROSH) score or safety and wellbeing judgements increase the likelihood of receiving custodial remand by approximately 14 and 4 percentage points, respectively.<sup>20</sup> There are no significant differences between Multi-Agency Public Protection Arrangements (MAPPA) categories.

## Ethnic Composition

We understand that the term Black, Asian and Minority Ethnic (BAME) leaves little room for individuality or distinction and are aware of the limitations of this terminology, so have tried wherever possible to specify where a particular ethnic minority is being referred to, and where that is not possible, we refer to children of ethnic minority backgrounds.

Data is collected in different ways across organisations. While not all the data allows us to isolate this group for example, our considerations include children from Gypsy, Roma and Traveller backgrounds.

<sup>16</sup> Risk of Serious Harm

<sup>17</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_remand\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf) – page 59

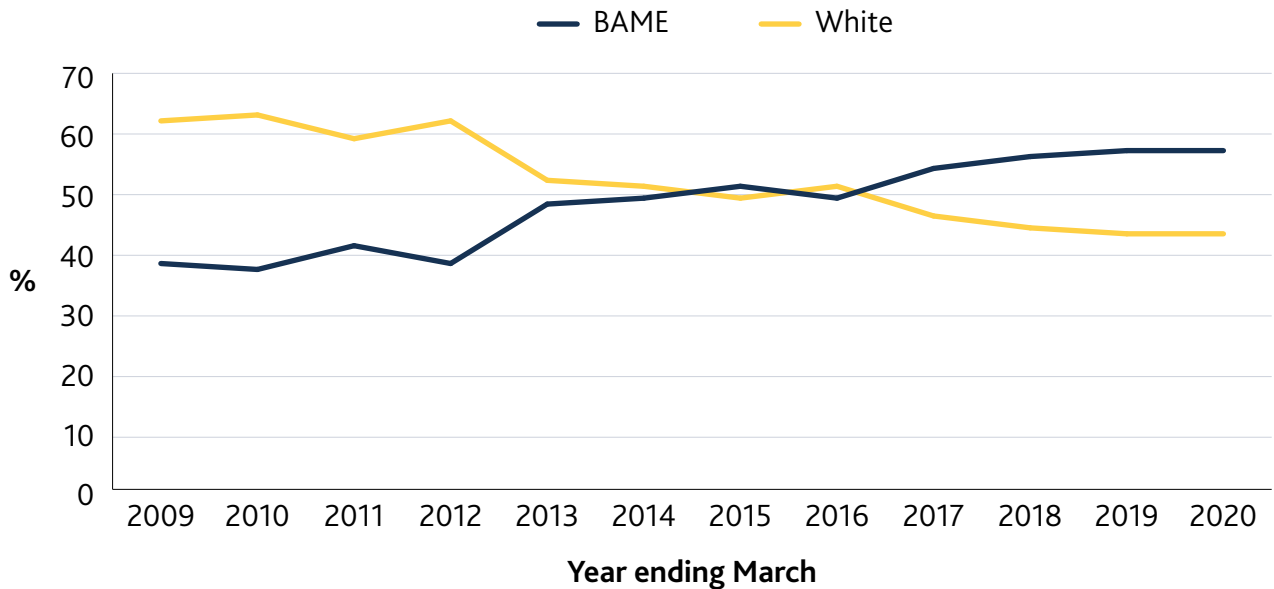
<sup>18</sup> A gravity score is a score attributed to each offence and reflects the seriousness of the offence on a sliding scale from 0 to 8 (with 8 being the most serious).

<sup>19</sup> The Youth Offender Reconviction Scale (YOGRS) in AssetPlus is the youth justice system specific version of the Offender Group Reconviction Scale (OGRS). OGRS estimates the probability that offenders with a given history of offending will be resanctioned for any recordable offence within two years of sentence, or release if sentenced to custody. In the youth justice system (YJS), the term sanction is used to refer to convictions and out of court disposals (OOCD).

<sup>20</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_remand\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf) – page 59

Ethnic disparities are seen across the youth justice system and differences in remand outcomes appear particularly pronounced. The proportion of the youth custodial remand population accounted for by children from ethnic minorities has increased from 38% in the year ending March 2009 to 57% in the year ending March 2020, though absolute numbers for all ethnicities have fallen.<sup>21</sup> Of this 57%, 35% are black, 14% are mixed and 9% are of Asian and other ethnicity. The proportion of white children has decreased overall from 62% in the year ending March 2009 to 43% in the year ending March 2020.

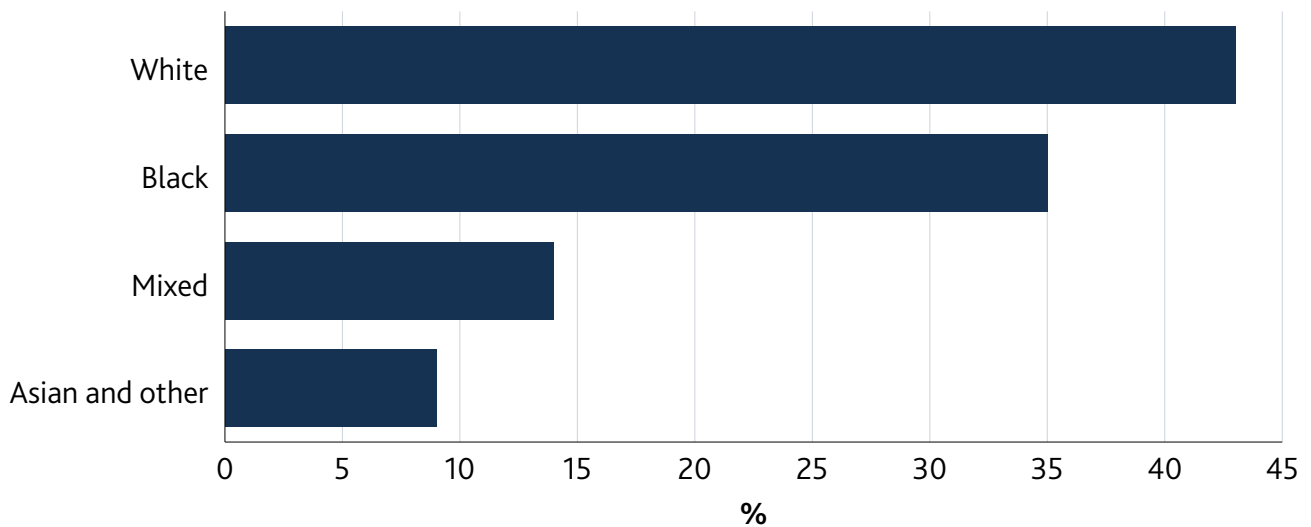
**FIGURE 7: Remand population by ethnicity (year ending March 2009 to year ending March 2020)**



Youth Justice Statistics 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

<sup>21</sup> YJB, Youth Justice Statistics 2019/20: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/956621/youth-justice-statistics-2019-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf)

**FIGURE 8: Remand population by ethnicity (year ending March 2020)**



Youth Justice Statistics 2020: <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

## Analysis of ethnic disparity in remand outcomes

It is important to consider headline statistics on ethnicity data in remand outcomes alongside the fuller and the most recent YJB research on ethnic disparities in remand.<sup>22</sup> It provides further insights into the disparities which currently exist in remand outcomes. This research uses two years of the YJB's case management and assessment data to assess the extent to which differences in outcomes can be explained by differences in other demographic and offence-related factors, and practitioner assessed factors.<sup>23</sup> While the research was able to account for a wide range of factors, the results are limited to the information collated centrally by the YJB. This means that pertinent variables that inform how practitioners come to understand BAME children under supervision and may affect decision making are not included in the data.<sup>24</sup>

**The YJB research concludes that most of the differences in the remand outcomes can be explained by demographic characteristics, offences and offence history, location and court type. However, even after accounting for this, there were more restrictive remand outcomes for**

<sup>22</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_rem\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_rem_and_sentencing_in_the_youth_justice_system.pdf)

<sup>23</sup> The analysis uses two data sources: youth offending team (YOT) case management system records and AssetPlus assessments recorded by YOTs between October 2017 and December 2019 and submitted to the YJB quarterly. Case data includes gender, ethnicity, age, local area, offence history, nature of the offence and offence seriousness. It also includes case information on outcome, remand decision, court type, sentence and sentence length. AssetPlus data includes information such as the likelihood of reoffending, safety and wellbeing assessments, concerns, risk of serious harm (ROSH) score, care history, etc.

<sup>24</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_rem\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_rem_and_sentencing_in_the_youth_justice_system.pdf) – page 58

**children from an ethnic minority background (as well as fewer out-of-court disposals for children from an ethnic minority background, and longer court sentences for black children).**

Practitioner-assessed factors appear to account for nearly all remaining disparity in these areas. The descriptive analysis indicates that there are clear and substantial differences between ethnicities in practitioner-assessments, particularly around the risk and wellbeing of mixed ethnicity and black children. These differences of vulnerability and risk might reflect biases in judgement or actual societal differences in circumstances and wellbeing between children of different ethnicities. **It is therefore important that appropriate measures be taken at a local level to monitor practitioner assessments, such as scrutiny of outcomes, reviews of cases and processes and data collection.**

A degree of disparity remained in outcomes for black children which could not be accounted for by objective factors, remand status or practitioner-assessed factors. Specifically, **even after taking into account the influence of offending, demographics, and practitioner assessments, black children remained less likely to receive community remand (8 percentage points).**<sup>25</sup> The researchers considered that anything outstanding could be due to bias in the sentencing of children or other factors for which the report does not control.<sup>26</sup>

Further research and analysis will be required to understand fully what might contribute to those outcomes. However, empirical research also shows how societal inequalities impact the daily lives and future life chances of children and increase the likelihood of the most disadvantaged ending up before the youth court.<sup>27</sup> In particular, the learnings from the Commission on Race and Ethnic Disparities (CRED) report explore inequalities in the UK with a focus on education, employment, crime and policing, and health. It found that wider issues such as geography, deprivation, school exclusion and family structure also have a significant impact on life chances and outcomes of children. The Commission advocate focusing on the root causes of inequality to drive practical action. For instance, the higher numbers of ethnic minorities receiving school exclusions was acknowledged, particularly for Gypsy Roma Traveller (GRT) children. However, the Commission found no evidence of institutional racism; instead, many sociological variables are listed among “*a range of interwoven, local factors*” including differences between schools, poverty, and childhood trauma. The report also explores that different experiences of family life and structure can explain many disparities in education outcomes and crime.

We do not seek to capture the entirety of these underlying factors, as they go much broader than the remand process, which is the focus of this review. The Government will respond to the CRED report in due course, but we must not lose sight of the importance of action on broader social inequalities which can be reflected in racial disparities, in addition to exploring any specific steps specific to the remand process.

<sup>25</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_remand\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf) – page 49

<sup>26</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_remand\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf) – page 51

<sup>27</sup> Different but equal? Exploring potential catalysts of disparity in remand decision-making in the youth court – Yannick van den Brink, 2021: <https://journals.sagepub.com/doi/10.1177/09646639211033709>

# Children presenting very complex needs



Children involved with the justice system often have complex needs. They may be known to social services, are often excluded from school, have difficult local circumstances, and can be both perpetrator and victims, an aspect potentially overlooked when dealing with a child labelled 'difficult'. The **offender-victim overlap** and the exploitation of young people were also recurring themes of our engagement, in particular in the context of **county lines**.

A high proportion of children may already be known to children's services or involved in a local Supporting Families programme, formerly the Troubled Families Programme.<sup>28</sup> Supporting Families has highlighted positive crime prevention results from whole family working, including when YOTs are more closely linked into early help/intervention teams. A robust national impact analysis of the programme shows 25% and 15% reductions in adults and children respectively receiving a custodial sentence. Spending Review 2021 announced around a 40% real-terms uplift in funding for Supporting Families by 2024-25, taking total planned investment to £695 million over the Spending Review period to secure better outcomes for up to an additional 300,000 families. Supporting Families' national family

<sup>28</sup> Supporting Families: <https://www.gov.uk/government/collections/supporting-families>

outcomes framework is currently being updated to ensure that it supports government and ministerial priorities across key issues like crime, health and education.

**MoJ will continue to work with DLUHC, during the new phase of Supporting Families, to explore how best to support children at risk of being involved with the justice system.**

**Risk assessments** are difficult decisions that draw on a range of information. We heard some suggestions that appearing in court directly from police detention can result in custodial remand being more likely, though data limitations mean we are unable to establish the extent to which this is due to the nature of the alleged offence which warranted police detention in the first place or whether (as some suggested) it was due to an increased perception of risk posed by the young person. Some groups we engaged with suggested that the fact that magistrates tend to deal infrequently with youth remand cases may drive them to be more risk averse in making these decisions compared to those district judges who more routinely make these decisions.

**Care history** – While we do not have information specific to children on remand, there is information on children sentenced which provides useful context. 45% of children sentenced in 2018/19 were assessed as having a concern relating to their care history, while 56% were shown to be a current or previous child in need.<sup>29</sup> 12% of sentenced children had a care order in 2019/20. For 16-17-year-olds sentenced in 2014, rates of LAC ranged from 7% of those cautioned, to 31% of those receiving a custodial sentence of at least 12 months.<sup>30</sup>

**School attendance and exclusions** were flagged as a particular issue in some inner cities during judicial engagement. For 16-17-year olds sentenced in 2014, a record of permanent exclusion was recorded in the range of 8% of those cautioned, to 23% of those sentenced to custody for less than 12 months.

Pupils who are excluded often have a range of **other vulnerabilities** including difficulties in their home life and strained relationships; these vulnerabilities can be exploited by gangs upon exclusion when children are likely to have more unsupervised time on the streets.<sup>31</sup> One interviewee said they see a lot of excluded children and felt that schools are “quick to let them go”. Some interviewees felt that exclusion from school and offending go “hand in hand,” in that some children “mix with the wrong people” and not being in school makes them vulnerable. The link between exclusion rates and

<sup>29</sup> Assessing the needs of sentenced children in the Youth Justice System: <https://www.gov.uk/government/statistics/assessing-the-needs-of-sentenced-children-in-the-youth-justice-system>  
Of the 24,000 young people starting a court order or caution in 2018/2019, HMI Probation estimate that 4,500 may have been looked after children, including nearly 700 children starting custodial orders.

<https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/HMI-Probation-Youth-Annual-Report-2020.pdf> YOTs also reported during the reviews engagement a disproportionate number of Looked After Children in the cohort of children being remanded to custody

<sup>30</sup> MoJ/DfE Experimental Statistics 'Understanding the educational background of young offenders': [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577542/understanding-educational-background-of-young-offenders-full-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577542/understanding-educational-background-of-young-offenders-full-report.pdf) included a cohort of 16-17 year old children from 2014 sentenced to custody, youth rehabilitation orders (YROs), referral orders (ROs) and cautions. Findings cannot necessarily be generalised to younger children, or other offending outcomes.

<sup>31</sup> Back To School? Breaking the link between school exclusions and knife crime: <http://www.preventknifecrime.co.uk/wp-content/uploads/2019/10/APPG-on-Knife-Crime-Back-to-School-exclusions-report-FINAL.pdf>

offending is well documented.<sup>32</sup> In our interviewees' experience, most children wish to be in education, but schools are not equipped to deal with children that require a significant level of support. Although it was also highlighted that YOT prevention teams work closely with schools, HMI Probation noted in its 2018-19 report that there is a lack of strategic education representation on Youth Justice (YJ) management boards.<sup>33</sup> The Government's Serious Violence Strategy is clear that young people excluded from mainstream education are at greater risk of youth violence. Being excluded from school has often resulted in fewer of hours spent in a supervised environment.

As part of the Beating Crime Plan published in July 2021, the Government announced it will invest over £45 million to roll out new schools-based Support, Attain, Fulfil, Exceed (SAFE) and Alternative Provision taskforces alongside our Violence Reduction Unit network. These aim to keep vulnerable young people from entering a life of crime and help them to make successful transitions into further education, employment and training. The taskforces will be based in serious violence hotspot areas and will use specialists, including mental health professionals, family workers, and speech and language therapists to support young people at risk of involvement in crime to re-engage in education.

**Suitable accommodation**, be it family home or local authority accommodation, has been a major and recurrent issue in our engagement. We explore issues of accommodation sufficiency in detail in the community provision chapter.

Almost all of the causes of childhood offending lie outside of the direct influence of the youth justice system. Therefore, it is crucial that health, education, social care and other services form a collaborative approach alongside law enforcement agencies to prevent offending and reoffending behaviour in children.

Courts must base their decisions on the **information** presented to them, which involves a wide range of organisations and individuals, complex relationships and very pressured timelines. The following chapter highlights the complexity of the remand process landscape – key players, interactions, activities and products – necessary to equip the courts to make reliable and fair remand decisions.

<sup>32</sup> "...Education services are a statutory member of YOTs, but often they seem to play a peripheral role in efforts to rehabilitate children. [...] As well as local authority youth offending services doing more to embed education and training as part of their routine offer to children, schools and colleges must show greater leadership and responsibility in offering places to children who have offended."- Charlie Taylor review, p. 11 paragraph 32: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577105/youth-justice-review-final-report-print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577105/youth-justice-review-final-report-print.pdf)

<sup>33</sup> Annual report: inspection of youth offending services (2018-2019): <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/10/Youth-annual-report-inspection-of-youth-offending-services-2018-2019-1.pdf>



# 6 THE BAIL AND REMAND FRAMEWORK

It is a well-established principle that custody should be a last resort for children. This is true of those who have been convicted and sentenced, as well as those on remand, including those awaiting trial.

There is a strong evidence base that suggests contact with the criminal justice system can be criminogenic<sup>34</sup> and that 'repeated and more intensive forms of contact with agencies of youth justice may be damaging to young people in the long-term'. The detrimental impact custody can have on children is also well-documented, ranging from harm while detained to missed developmental opportunities, and show that reducing system contact is the best way to reduce the risk of offending. Remand detention is also known to have detrimental consequences for children's well-being and future life chances.<sup>35</sup>

Consequently, remand to custody should only be used when truly necessary; not because other, more appropriate, alternatives are not available. The existing legislative framework – both domestic and international – already aims to ensure children are only kept in custody where it is necessary.<sup>36</sup> The tests to be applied in bail and remand decisions post-charge are set out in two acts:

- The **Bail Act 1976 (s.4)** provides a general presumption to bail, except in limited circumstances, listed in schedule 1.<sup>37</sup>
- If bail is refused, courts must then apply **sections 91 to 101 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012**. These provisions govern decisions to remand children who have been refused bail. Children must be remanded to LAA unless one of two sets

<sup>34</sup> Petrosino A., Turpin-Petrosino C., Guckenburg, S. Formal system processing of juveniles: Effects on delinquency. Campbell Systematic Reviews (2010) Edinburgh Study of Youth Transitions and Crime: <https://www.edinstudy.law.ed.ac.uk/publications/> Case, Stephen; Browning, Ann (2021): Child First Justice: the research evidence-base, Loughborough University: <https://hdl.handle.net/2134/14152040.v1> [see 65/66 box 5.2.2 and 5.3.2 for some links to relevant research reports] What Works in Managing Young People who Offend? A Summary of the International Evidence, Ministry of Justice (2016): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/498493/what-works-in-managing-young-people-who-offend.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/498493/what-works-in-managing-young-people-who-offend.pdf)

YEF (2020) What works; Preventing children and young people from becoming involved in violence & YEF (2021) Evidence and Gap Map; Summary Report – summarises the state of the evidence base underpinning approaches to prevent children offending

<sup>35</sup> M. Nowak UN Global Study on Children Deprived of Liberty United Nations, Geneva (2019)

<sup>36</sup> Many publications provide an overview of the legislative framework applicable to children, which we are not repeating here, for example, Youth justice resource pack: [https://www.local.gov.uk/sites/default/files/documents/15.33%20Youth%20justice%20resource%20pack\\_v04\\_1.pdf](https://www.local.gov.uk/sites/default/files/documents/15.33%20Youth%20justice%20resource%20pack_v04_1.pdf)

<sup>37</sup> Namely, where the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, or commit an offence while on bail; or interfere with witnesses; or otherwise obstruct the course of justice. Where a child is charged with murder only the Crown Court can grant bail.



of conditions<sup>38</sup> which govern remand to youth detention accommodation (YDA) is met. Sections 98 to 101 set out a stringent set of cumulative conditions based on considerations of age, offence seriousness, public protection necessity, sentence prospect and legal representation. These conditions are detailed in the legislative reforms chapter, which discusses the proposals to strengthen the remand tests in the Police, Crime, Sentencing and Courts Bill.

In addition to the existing statutory framework, there is a wealth of **guidance** available to practitioners and decision makers (see landscape section). These include: the Youth Court Bench Book which provides guidance for magistrates who sit in the youth court, the Judicial College Toolkit on young defendants in Crown Court, and Case Management Guidance published by the YJB for youth offending team practitioners. These are discussed in more detail in the effective delivery chapter.

## Legislative reform

Remand decisions are already subject to a stringent legislative framework as has been described. However, informed by early insights from this review, the government has taken steps to further tighten the test the courts must apply to remand children to custody. The Police, Crime, Sentencing and Courts (PCSC) Bill introduced to Parliament on 9 March 2021 introduces a number of changes. We summarise the rationale for these below.

After almost a decade since the reforms brought in by LASPO, courts are now very familiar with the conditions needed to remand a child to custody. Our engagement with the judiciary and justices' legal advisers confirmed that the flowchart on page 35,<sup>39</sup> which illustrates clearly the steps courts must follow when navigating the LASPO conditions, is used routinely.

However, acknowledging the concerns raised around the use of custodial remand, the government decided to strengthen the tests the courts must apply when deciding to remand a child to custody.

**The main objective of the proposals in the PCSC Bill is to ensure custodial remand is always used as a last resort, though we have been careful not to restrict judicial discretion or jeopardise public safety.** This is why the government decided not to limit the '**offence**' condition to offences attracting a life sentence only, as the current threshold (14 years' imprisonment or more) covers very serious offending already.

As a starting point, the proposals introduce a statutory duty for the courts to consider **the best interests and welfare of the child** when making their decision, in line with the Children and Young People Act 1933,<sup>40</sup> the principal aims of the youth justice system and the principles in the sentencing guidelines for children and young people.<sup>41</sup>

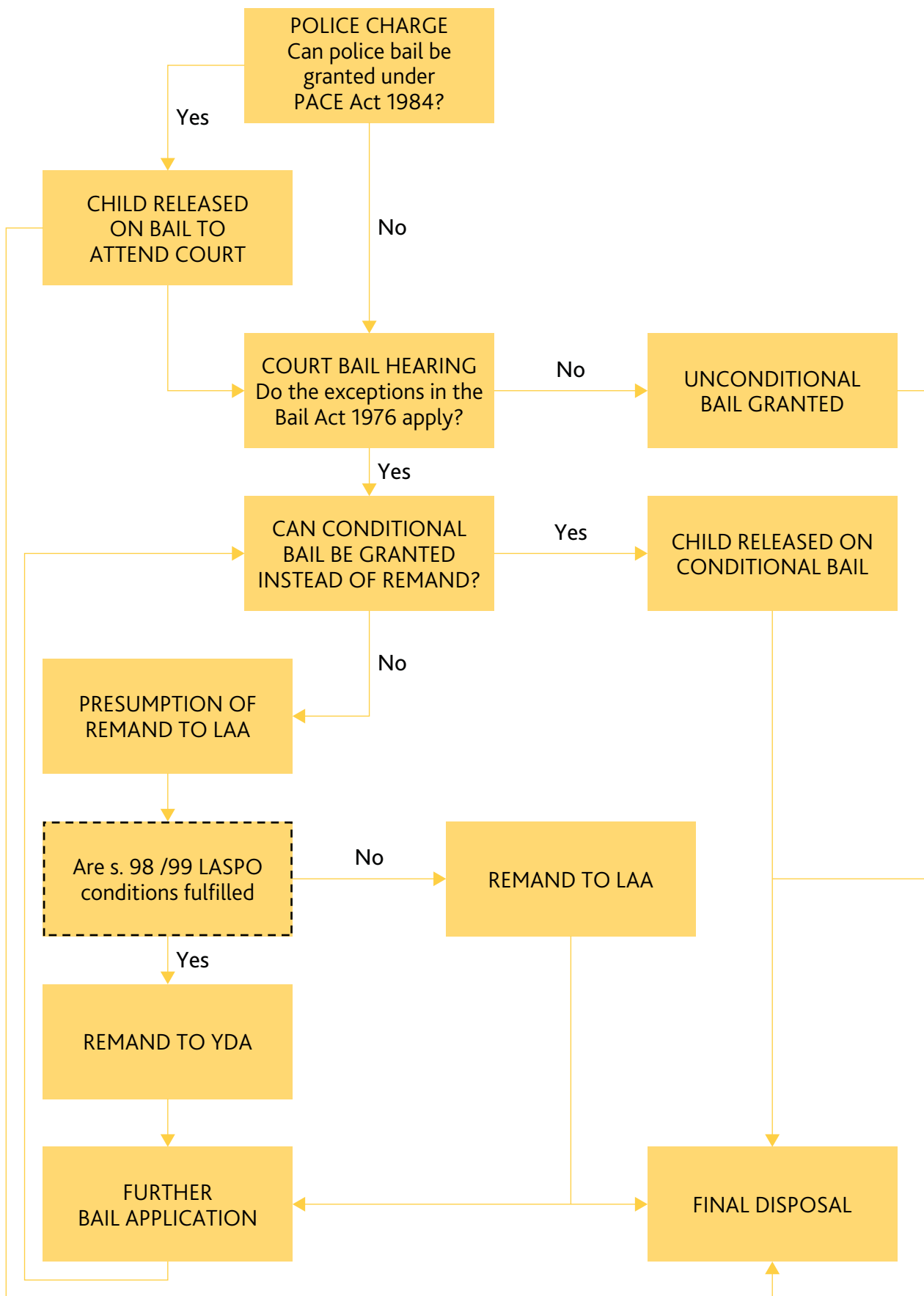
<sup>38</sup> As set out in sections 98 and 99 (or sections 100 and 101 for extradition cases).

<sup>39</sup> MoJ Circular No. 20012/06: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/219974/circular-06-12-youth-remand-adult-bail.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/219974/circular-06-12-youth-remand-adult-bail.pdf)

<sup>40</sup> Children and Young Persons Act 1933, section 44: <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

<sup>41</sup> Sentencing Children and Young People: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

The flowchart below provides an overview of **the end-to-end** bail/remand process.



Annex A

To be eligible for a remand to youth detention accommodation (domestic cases), a child must:

Step 1

Be aged between 12–17

AND

Step 2

Satisfy the legal representation conditions

AND EITHER

Step 3

**1st set of conditions**

**(a)** Have been charged with a violent or sexual offence (**OCCN**)

**(b)** Have been charged with an offence (**OCCN**) where an adult may receive a custodial sentence of 14 years +

OR

**2nd set of conditions**

**(a) The 1st history condition**  
Have a recent history of absconding while remanded to YDA or LAA and are charged with or convicted of an offence (**OCCN**) which was committed while remanded to LAA or YDA

**(b) The 2nd history condition**  
Have been charged with or convicted of an offence (**OCCN**) which, when taken with previous imprisonable offences (convicted), amounts (or would amount if convicted) to a recent history of committing imprisonable offences while on bail or remand to LAA or YDA

AND

There is a real prospect of them receiving a custodial sentence for the **OCCN**

AND EITHER

Step 4

**(a)** It is necessary to protect the public from death or serious personal injury

OR

**(b)** It is necessary to prevent the commission by the child of further imprisonable offences

**Key:**  
**OCCN** – the offence(s) the court is considering now  
**LAA** – local authority accommodation  
**YDA** – youth detention accommodation

Other provisions aim to tighten the '**sentencing condition**', also known as '**real prospect test**', to encourage consistency in decision-making. Under section 99(3) of LASPO, if "it appears to the court that there is a real prospect that the child will be sentenced to a custodial sentence for the offence", the court may remand the child into custody. As drafted, the test appears perfectly sensible but in practice, only a third of children remanded go on to receive a custodial sentence.

While the court would not be expected to engage in a sentencing exercise in advance of the trial, it should be apparent from the outset that the alleged offence, taken in combination with the individual circumstances of the case, *would* most likely warrant a custodial sentence. The *mere possibility* of a custodial sentence should not disproportionately influence the court's assessment over other conditions (such as risk to the public), given the child is still presumed innocent at that stage (in pre-trial cases). We therefore propose to amend the wording of this test to raise the threshold for custodial remand for cases which appear so serious – on the basis of the facts available to the court – that custody seems 'very likely'. In addition, we are proposing to apply the real prospect test both to the sentencing and history conditions (it only applies to the history conditions at present), so it is a cumulative, rather than an alternative, assessment.

We also propose to amend the **necessity condition** to ensure that, when bail is refused, courts should remand the child in the community unless the risk they pose cannot be safely managed. This is to reflect the fact that even where a child presents a level of risk (be it of harm or offending), it should not follow that the child should automatically be placed in a secure environment if that risk can be managed safely in the community. It would also reinforce the principle that remand's primary purpose is public protection, not punishment. Under the current condition, remand to custody is only possible if it is necessary to protect the public from death or serious personal injury, or to prevent the commission of an imprisonable offence, in addition to one of the other sets of conditions being met. This proposal would require the court to be satisfied that there is no alternative mechanism for adequately dealing with the risk presented by the child in the community. This is an 'and' stipulation, not an 'or' – i.e. it must be to protect the public or prevent a further offence and there must be no other way of managing the risk in the community. This addition is designed to help shift decision-making towards a better informed and balanced approach to risk, to avoid using custody as default where a risk is identified.

Section 99 provides courts with the ability to remand a child to custody for offences outside the scope of section 98 (violent or sexual offences or those punishable with 14 years for an adult), but where remand is nonetheless deemed necessary because of a history of offending while on bail, or breaching bail conditions. The **first history condition** refers to a need to show that the child has a 'recent history' of absconding while remanded to LAA or YDA.

As there is no definition in legislation or guidance outlining what should amount to a 'recent history', the current wording may be interpreted broadly, potentially resulting in custodial remand based on a single previous incident if it was 'recent'. While we do not propose to quantify what amounts to 'recent', the provision should be framed in a way which recognises that children change in a shorter time than adults. We therefore propose amending the condition to ensure that only history of breach or offending while on bail, which is relevant in all the circumstances of the case', and both 'recent *and* significant' can result in custodial remand. The intent of this drafting is to remove non-proven or non-harmful matters – for example, breaches that have not resulted in further action or charges that have not resulted in a conviction – as these should not factor in the decision to remand a child to custody. Adding the word 'significant' signals to the court that this should not simply mean a single previous or minor breach.

Proposals also include a duty to **state in open court that the court has considered section 91(3) (requirement to remand to LAA) in reaching its decision**. This duty to consider remand to LAA first is already part of the current tests but a new obligation to refer to it explicitly will make clear where it was a determinant factor in the decision. Furthermore, as courts do not currently separate out data on remand outcomes between LAA and YDA, we believe that requiring the courts to provide a detailed justification for their assessment that a child should be remanded to YDA could make courts more accountable for their decision and could influence some to remand in non-custodial settings. This requirement will also complement and reinforce the concept of presumption to remand to LAA.

We have mirrored those proposals for extradition proceedings as there is no justification to have separate tests for children involved in such proceedings.

Taken together, these changes are intended to bring better consistency to decisions around custody remand.

# 7 REMAND LANDSCAPE

Remand is a complex process within a complex landscape, involving numerous services and agencies across government. The chart below identifies the key decision stages in the end-to-end bail and remand process and the main responsibilities of the services involved.

Stage / Guidance	Responsibility
<b>Police station</b>	
<b>Police bail<sup>A</sup></b>	Police consider if bail is to be granted, if not liaise with local authority children's services and YOT to establish if a <b>PACE<sup>B</sup></b> bed accommodation is available. Allocation to a secure placement can be considered if alternatives not appropriate.
<b>ASSETPlus assessment<sup>D</sup></b>	For <b>LAC children<sup>C</sup></b> , social worker liaises with YOT to ensure joint planning with appropriate accommodation as part of their care plan. The YOT worker will assess the child's risk and needs considering an appropriate bail package or diversion, liaising with other children's services (i.e. school, social care history).
<b>Liaison and diversion services and triage<sup>E</sup></b>	Where available the child's safety and wellbeing is assessed by an early intervention worker for redirection to appropriate services outside the justice system.
<b>Charging<sup>F</sup></b>	Police apply <b>College of Policing Charging and Case Preparation Guidance<sup>G</sup></b> and consult the CPS, which applies <b>Principles Guiding the Decisions to Prosecute<sup>H</sup></b> .
<b>Legal advice and advocacy<sup>I</sup></b>	Child's solicitor advises child and family. An appropriate adult or parent/guardian should be present during police interview.

A. Detention and custody – Children and young person: <https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/children-and-young-persons/>

B. Detention and custody – Children and young person: <https://www.app.college.police.uk/app-content/detention-and-custody-2/detainee-care/children-and-young-persons/>

C. The national protocol on reducing unnecessary criminalisation of looked-after children and care leavers: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/765082/The\\_national\\_protocol\\_on\\_reducing\\_unnecessary\\_criminalisation\\_of\\_looked-after\\_children\\_and\\_care\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/765082/The_national_protocol_on_reducing_unnecessary_criminalisation_of_looked-after_children_and_care_.pdf)

D. AssetPlus: assessment and planning in the youth justice system: <https://www.gov.uk/government/publications/assetplus-assessment-and-planning-in-the-youth-justice-system>

E. Liaison and diversion services: <https://www.app.college.police.uk/app-content/mental-health/crime-and-criminal-justice/#liaison-and-diversion-services>

F. Youth Offenders: <https://www.cps.gov.uk/legal-guidance/youth-offenders>

G. Charging and case preparation: <https://www.app.college.police.uk/app-content/prosecution-and-case-management/charging-and-case-preparation/>

H. The principles we follow: <https://www.cps.gov.uk/principles-we-follow>

I. Advocacy in the youth court: <https://www.lawsociety.org.uk/en/topics/advocacy/advocacy-in-the-youth-court>

Stage / Guidance	Responsibility
<b>Court</b>	
<b>Bail hearing in youth court<sup>J</sup> Equal Treatment Bench Book<sup>L</sup></b>	The court will initially consider whether to grant the child unconditional bail/conditional bail under the <b>Bail Act 1976</b> . <sup>K</sup>
<b>Presentation of YOT application and bail package to court<sup>M</sup></b>	The YOT worker presents a Bail or Bail ISS package to the youth court in liaison with partner agencies (i.e. ETE, ACC, health, electronic monitoring, children's services) including social worker if already LAC or social care history if relevant. The YOT will consult with the defence solicitor.  If bail is withheld, the court considers the <b>Legal Aid, Sentencing and Punishment of Offenders Act 2012</b> <sup>N</sup> tests. Remand to local authority accommodation is the default unless the strict criteria for remand to youth detention accommodation apply.
<b>Advice to court</b>	The youth court legal adviser advises magistrates/district judge (magistrates' court) regarding interpretation of the law and the child's solicitor makes representation on behalf of the child.
<b>Adjournment<sup>O</sup></b>	The youth court may adjourn to allow the YOT/local authority more time to establish appropriate accommodation and interventions subject to a pre-sentence report.
<b>Remanded to custody<sup>P</sup> Convicted but not sentenced<sup>Q</sup></b>	The YOT worker books a custodial placement with Youth Custody Service and sends the required information to YCS Placement Team. Child becomes looked after if not already and a social worker is allocated.
<b>Breach action<sup>R</sup></b>	The YOT worker will report details of breach and record of compliance. The youth court will decide whether to extend or revoke bail and give secure order.

J. Youth Court Bench Book and Pronouncement Cards:

<https://www.judiciary.uk/publications/youth-court-bench-book-and-pronouncement-cards/>

K. Bail Act 1976: <https://www.legislation.gov.uk/ukpga/1976/63>

L. Equal Treatment Bench Book:

<https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf>

M. How to manage bail and remands: section 3 case management guidance: [https://www.gov.uk/government/publications/](https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance)

[how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance](https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance)

N. Legal Aid, Sentencing and Punishment of Offenders Act 2012:

<https://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

O. Youth Court Bench Book and Pronouncement Cards:

<https://www.judiciary.uk/publications/youth-court-bench-book-and-pronouncement-cards/>

P. Custody and resettlement: section 7 case management guidance: [https://www.gov.uk/government/publications/](https://www.gov.uk/government/publications/custody-and-resettlement/custody-and-resettlement-section-7-case-management-guidance)

[custody-and-resettlement/custody-and-resettlement-section-7-case-management-guidance](https://www.gov.uk/government/publications/custody-and-resettlement/custody-and-resettlement-section-7-case-management-guidance)

Q. Youth Court Bench Book:

<https://www.judiciary.uk/wp-content/uploads/2020/06/Youth-Court-Bench-Book-June-2020-1.pdf>

R. How to manage bail and remands: section 3 case management guidance:

<https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance>

Stage / Guidance	Responsibility
<b>Secure estate</b>	
Child allocated appropriate placement <sup>S</sup>	YCS Placements will assess the child's risk, safety and wellbeing based on information provided by the YOT prior to placing.
LAC/YOT review and planning meeting(s) <sup>T</sup>	Local authority children's services social worker (in co-ordination with YOT and secure staff) will conduct a LAC review and ensure an appropriate programme of work (Detention Placement Plan) is in place, taking into account current care plan if child already LAC.
Further bail applications to court (crown or youth) <sup>U</sup>	The YOT worker (in coordination with social worker and YCS staff) will assess prospect of further bail application in association with partner agencies and defence solicitors.
Approaching 18 years old <sup>V</sup>	Transition to be considered if the child is approaching 18 when convicted, undertaken by social worker and YOT worker in liaison NPS/YCS/HMP.

S. The Youth Custody Service Placement Team: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/647093/Placement\\_Guidance\\_Sept\\_2017\\_YCS.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/647093/Placement_Guidance_Sept_2017_YCS.pdf)

T. Looked after children and youth justice: [https://dera.ioe.ac.uk/19861/1/Guidance\\_revised\\_following\\_consultation.pdf](https://dera.ioe.ac.uk/19861/1/Guidance_revised_following_consultation.pdf)

U. Youth Court Bench Book and Pronouncement Cards:

<https://www.judiciary.uk/publications/youth-court-bench-book-and-pronouncement-cards/>

V. How to manage bail and remands: section 3 case management guidance:

<https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance>

Stage / Guidance	Responsibility
<b>Resettlement from YDA</b>	
Child granted bail <sup>W</sup>	The YOT worker and social worker (if relevant) will oversee the bail package with the involvement of relevant agencies (i.e. ETE, ACC, health, electronic monitoring, children's services) ensuring the child's safety and wellbeing.
Child given community sentence following period of secure remand <sup>X</sup>	The YOT worker and social worker (if relevant) will enact and oversee the sentence plan with the involvement of relevant agencies ensuring the child's safety and wellbeing.
LAC guidance <sup>Y</sup>	The child may qualify for LAC leaving care support if they have been in YDA for more than 13 weeks or will remain LAC if they require further care.

W. How to manage bail and remands: section 3 case management guidance:

<https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance>

X. How to use community interventions:

<https://www.gov.uk/government/publications/how-to-use-community-interventions>

Y. Looked after children and youth justice: [https://dera.ioe.ac.uk/19861/1/Guidance\\_revised\\_following\\_consultation.pdf](https://dera.ioe.ac.uk/19861/1/Guidance_revised_following_consultation.pdf)



**Youth offending teams (YOTs)** are part of local authorities. There are 154 YOTs in England and Wales. The Crime and Disorder Act 1998 requires the named statutory partners<sup>42</sup> to form a YOT and places upon them a duty to co-operate to secure youth justice services appropriate to their area. YOTs are overseen by YJ management boards, who ensure that information and data on children subject to YDA is gathered, analysed and presented to partners and relevant forums in order to address performance and develop strategy.

“Youth justice services” include “the provision of support for children and young persons remanded or committed on bail while awaiting trial or sentence”.

The Act does not prescribe how services are delivered but sets out two principal statutory functions assigned to each YOT:

- To co-ordinate the provision of youth justice services for all those in the authority’s area who need them.
- To carry out such functions assigned in the youth justice plan formulated by the local authority.

YOTs work with children and their families throughout their time in the youth justice system, including when they are in custody. Non-statutory partners can also be important in delivering opportunities to help children and young people in their rehabilitation or divert them from potential engagement in criminal activity.

**The Youth Justice Board (YJB)** is an independent public body established by the Crime and Disorder Act 1998 and appointed by the Secretary of State for Justice. The YJB has a statutory responsibility to:

- Monitor the youth justice system to understand how it is operating.
- Distribute grants to local services.
- Support the provision of IT services for YOTs.
- Collate and publish information.
- Commission research to support practice development.
- Identify and share evidence-informed practice across the sector.

While remand in itself is not a distinct priority, the YJB’s custody, resettlement and transition strategic objective incorporates a focus on remand and the YJB’s oversight function includes ‘use of custody’ as a key performance indicator.

The YJB’s strategic and business plans set out the YJB’s ambition for a Child First youth justice system – a system which supports children to become the best version of themselves. The YJB recognises that building a Child First system will take time and require a wide coalition of support to work with partners across the system and beyond to push for positive change and to influence perceptions of children within the justice system.

<sup>42</sup> Statutory partners to YOTs are the local authority (responsible for ensuring the partners work together to deliver effective youth justice provision), education, police, health, and the National Probation Service (cf. LGA youth justice resource pack).

**The Youth Custody Service (YCS)** has operational responsibility for the youth secure estate. The needs and risk factors of children are assessed by a central team in YCS, to determine where they will be placed. The youth secure estate is made of:

- Young offender institutions (YOIs) – In 2020/21, there were an average of 881 service level agreement places<sup>43</sup> across the five YOIs, which accommodate 15 to 18 year old boys. Four YOIs are currently operated by HMPPS, and one (Parc YOI) by G4S. Average cost per place per year (including education) is £119k.<sup>44</sup>
- Secure training centres (STCs) – accommodate children aged 12-18. STCs have a higher staff to child ratio, compared to YOIs, and are smaller in size. There were 167 places across two STCs operated by G4S (Oakhill) and MTC Novo (Rainsbrook), however following two Urgent Notifications at Rainsbrook, children were transferred to alternative appropriate accommodation within the youth secure estate and the contract has now been terminated. Work is now underway to determine the future use of the building. Oakhill STC was subject of an Urgent Notification on 14 October 2021 and an Action Plan for improvement was published on 11 November. The number of children at Oakhill has been temporarily reduced. Latest published statistics show that, at the end of September 2021, there were 38 children at Oakhill STC.<sup>45</sup> The average cost per place per year (including education) is £201k.
- Secure children’s homes (SCHs) – are operated by local authorities and accommodate vulnerable boys and girls aged 10 to 18. There are 14 secure children’s homes in England and Wales, carrying 253 approved places. This has remained broadly stable for the last seven years.<sup>46</sup> SCHs are generally small facilities of eight to 24 beds, including both welfare and justice placements and have a high ratio of staff to children. In 2020/21, 107 beds were commissioned in SCHs to hold children sentenced or remanded to custody. Average cost per place per year (including education) is £271k. SCHs also accommodate children placed on secure welfare orders – e.g. frequent absconders or at high risk of harming themselves.

As per its manifesto commitment, this government is also trialling Secure Schools, an innovative approach to youth custody. They will be run by child-focused providers and will have education, healthcare, care and physical activity front and centre. The first school will open in Medway.

<sup>43</sup> Total number of beds available, excluding any offline

<sup>44</sup> Written questions and answers – Written questions, answers and statements – UK Parliament: <https://questions-statements.parliament.uk/written-questions/detail/2021-07-14/33308>

<sup>45</sup> Youth custody data: <https://www.gov.uk/government/statistics/youth-custody-data>

<sup>46</sup> Children accommodated in secure children’s homes: <https://explore-education-statistics.service.gov.uk/find-statistics/children-accommodated-in-secure-childrens-homes>

## Youth court

The majority of cases for children aged between 10-17 are heard in a youth court by a specially trained lay magistrate or a ticketed district judge, who has undergone specialist training to work in a youth court. Magistrates are assisted by a justice's legal adviser, who advises about the law.

Children can be presented to the adult magistrates' court for a decision on bail where no youth court is available. The fall in the overall number of young people being referred to court means that, in some areas of the country, the extent of youth court availability has been reduced. While there is no readily accessible management information on the number of youth courts – as not all courts sit youth sessions – the number of youth sessions has declined from 16,435 in 2018 to 10,682 in 2020.

Cases involving children are only sent to the Crown Court in limited circumstances for serious offences such as murder, attempted murder, manslaughter and where it is determined to be a 'grave crime' – an offence that would carry a sentence of 14 years or more imprisonment for an adult.

**10,682**  
*Number of youth sessions in 2020, down from 16,435 in 2018*

## Wales

While youth justice is not devolved in Wales, there is a strong interface with devolved services because some of these agencies are statutory members of youth offending teams and are providers of services to which children in the youth justice system may require access, notably education, health, children's services or housing. Policing and probation, which are statutory members of YOTs remain reserved to the UK government.

In May 2019, the Welsh Government and MoJ jointly published Female and Youth Justice Blueprints to improve partnerships between devolved and non-devolved services to deliver justice as a shared UK and Welsh Government priority in Wales. The Youth Justice Blueprint takes a whole system approach to youth justice, setting out the ambition for a rights-based and trauma-informed system, which will support services to deliver positive outcomes for children in Wales.

5% of overall youth justice activity in England and Wales is undertaken in Wales. YOTs in Wales tend to have smaller caseloads than English YOTs and there can be different concerns to the metropolitan areas of England, which is why most of the analysis and recommendations in this report are particularly relevant to the English landscape.

Local authority funding sits within the devolved competence of the Welsh Government, as do other services such as health, education, accommodation, housing and social services.

**5%**  
*of overall youth justice activity in England and Wales is undertaken in Wales*

# 8 FRONTLINE DELIVERY AND PRACTICE

This chapter explores a range of issues affecting frontline delivery and practice and possible improvements – including better partnership-working between agencies, enhanced oversight and scrutiny of remand decision-making, improved guidance and training and improvements in how data is routinely collected and analysed. At the core of this is the need for system-wide leadership on remand.



# Systemic leadership

Remand needs to be more overtly recognised as one of the many cogs in the youth justice process. It needs to be explicitly included in strategic planning, or risk becoming a lost topic in the youth justice landscape, and the reform proposals identified in this review not being pursued.

The work we have undertaken for this review, in partnership with key agencies, is a step towards a more consistent cross-government focus on remand, to make sure that the use of custodial remand is restricted to cases where the protection of the public is at risk. Senior leaders will need to model a collaborative approach to help drive forward consideration of remand in key decisions about youth justice. One option could be the inclusion of remand as an explicit priority in Criminal Justice System (CJS) partners' business and strategic plans, as exemplified by the National Police Chiefs' Council (NPCC).

The NPCC has recognised the gap in strategic leadership in the remand space. It has updated its Children and Young People's framework to require forces to have processes in place for scrutiny and review of several areas of work, including remand. It is also carrying out work within its framework to tackle race disparity, including scrutiny panels, case reviews and trials of innovative practice.

## Effective partnership working and information-sharing

“ There is widespread understanding in the youth justice field that no single agency can provide all the necessary support for children in conflict with the law to find their way to healthy, pro-social and fulfilling lives. Multi-agency working is thus at the heart of well-managed youth justice services.

Joint work can result in greater effectiveness through sharing ideas and coordinating services, greater efficiency through pooling resources and avoiding duplication of effort, improved engagement and participation by the children and their families through creating new community opportunities and resources in their lives.<sup>47</sup> ”

From point of arrest, children come into contact with a number of agencies and individuals, each responsible for, or representing, a different organisation or process within the youth justice system.

<sup>47</sup> Multi-agency work in youth offending services: <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/07/Youth-multi-agency-work-RAB-v1.0-1-1.pdf>

The individual and collaborative actions taken by these practitioners to ensure courts can make an informed decision about remand are central to this.

Problems and delays with information sharing and partnership working can have serious implications for bail and remand decisions – and further outcomes for the child.

**In our engagement, YOTs, local authorities and the judiciary all expressed concerns around delays in the creation of bail packages or sourcing suitable local authority accommodation (LAA), resulting in a child sometimes being remanded into custody for short periods.** We set out below findings from our engagement related to the drivers behind these delays or difficulties, examples of good practice and proposals for change.

## What leads to insufficient or untimely information sharing?

### Information available to the court

From our engagement with the judiciary, we understand that courts sometimes do not have enough detail about proposed accommodation or placements to make an informed decision, which can, on occasion, lead to remand to youth detention accommodation (YDA) rather than LAA. This is confirmed by a recent HMI Probation report<sup>48</sup> which found that out of the 25 remand cases of black boys and mixed heritage children, the bail and remand information provided to the courts was sufficient in only 8 cases, and that relevant agencies worked together to support and promote a coordinated bail support package as an alternative to remand in just under half of cases.

At the point of arrest, **police** require timely information about the child and their circumstances to decide whether bail is appropriate, which is obtained primarily from YOTs and social services.

The **Concordat on Children in Custody**<sup>49</sup> aims to be a starting point for multi-agency discussions to set in place local processes and agreements for the effective sharing of information. However, we have heard in our engagement that those information flows are not always effective: an arrest may occur out of hours or at the weekend, the child may have been arrested out of their home area, or the police may not be able to securely identify the child. A lack of information in these types of cases can lead to a remand to YDA being more likely than bail or remand to LAA, with one YOT forum noting that a lack of communication between themselves and the police could both adversely impact police bail decisions, as well as limit the time YOTs have to prepare for a remand hearing.

Where police bail is not granted, the **CPS** independently applies relevant tests and legal criteria<sup>50</sup> in the representations it makes concerning remand. The information made available to prosecutors at the earliest opportunity from partners such as the police and youth offending teams is crucial to this process. The CPS keeps the issue of bail under review throughout the life of the case.

<sup>48</sup> A thematic inspection of the experiences of black and mixed heritage boys in the youth justice system: <https://www.justiceinspectors.gov.uk/hmiprobation/inspections/black-and-mixed-heritage-boys/>

<sup>49</sup> Preventing the detention of children in police stations following charge: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655222/Concordat\\_on\\_Children\\_in\\_Custody\\_ISBN\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655222/Concordat_on_Children_in_Custody_ISBN_Accessible.pdf)

<sup>50</sup> The Code for Crown Prosecutors (the Code) was revised in October 2018, to include more stringent conditions on how the Threshold Test is applied by prosecutors, to ensure that it is only being used where completely necessary and to avoid cases being charged prematurely.

Her Majesty's Crown Prosecution Service Inspectorate (HMCPsi) report<sup>51</sup> '*Serious Youth Crime: A review of how the CPS handles serious youth crime*' found excellent compliance – 98.9% of cases examined met the Code standards. However, it also pointed to examples of delayed information sharing ahead of charging decisions, and the impact this could have on the ability of courts to make fully informed remand decisions. In particular, the report noted that 47.3% of MG3 forms<sup>52</sup> completed by CPS failed to address remand and bail, limiting the assistance given to the court on these decisions.

The CPS has already taken steps to address performance issues, focus on improvements to policy, guidance and training, and ensure that good practice is replicated across the country. This includes a programme of training to consolidate knowledge and expertise concerning cases involving children and young people, with training for all new CPS prosecutors, to equip them to cover hearings in a magistrates' court involving a young person charged with an adult, and all routine hearings in youth courts, including cases where a young person may be remanded in custody due to the seriousness of the offence. The CPS have also committed to publishing data on a quarterly basis, broken down by ethnicity, age and sex.

## What could make a difference?

### Collaborative working in the community

The YOTs and YOT forums we talked to mentioned **lack of time as a key issue in putting together bail packages**, with sometimes only hours available to get the necessary information and arrangements in place. As mentioned above this might be caused by evening, weekend, or out of area arrests delaying effective information-sharing. Our engagement shows that having protocols, and well-established personal relationships, facilitates information gathering between all key agencies – even where the arrest is out of area, and increases the chances to submit a bail package in time.

Some areas are already identifying and responding well to mitigate the challenge of short timeframes. For example, placing YOT workers in police stations to pick up children's cases early on, or creating shared spreadsheets to allow information on children refused police bail to be quickly shared with YOTs.

<sup>51</sup> HMCPsi – Serious youth crime, March 2020: <https://www.justiceinspectors.gov.uk/hmcp/ps/wp-content/uploads/sites/3/2021/03/2020-11-03-Serious-youth-crime-report.pdf>

<sup>52</sup> The MG3 is the form used by the police to make referrals to CPS for charging advice and decisions.



The Metropolitan Police has developed a **Children in Custody Golden Hour Information Exchange**. Starting with a pilot covering 3 London boroughs and now rolled out more widely, the Golden Hour initiative responds to concerns that critical information was not always shared quickly when a child entered custody, reducing officers' ability to properly safeguard them.

The Golden Hour introduced a commitment between police and local authorities that, within 1 hour of a child arriving in custody, the police will contact the local authority (using the emergency contact team if out of hours) to share information about the child and arrest, as well as details of the nominated appropriate adult/guardian. Local authorities will then, within an hour, reciprocate with any safeguarding or welfare concerns the police need to be sighted on.

This programme has seen benefits including:

- Local authorities are able to plan early for potential accommodation needs, benefitting police bail decisions as well as allowing greater time if case proceeds to court for a bail/remand hearing.
- Key information about the child's relationship with nominated appropriate adults is shared so that police can safeguard the child.
- Information about self-harm behaviour or mental health is shared to allow appropriate specialist intervention in custody.

The Golden Hour is successful because it is simple, uses existing frameworks, and brings advantages to partner agencies by facilitating quick collaboration to secure the best, or more appropriate, outcome for a child. The Metropolitan Police Service is continuing this work to share this practice across the London area, with a desire to start similar national practice.

There cannot be a 'one size fits all' approach to remand cases but it is important to have simple protocols in place to ensure information sharing happens at pace. Existing forums, such as Local Community Safety Partnerships or Local Criminal Justice Boards, which include the police as a critical upstream agency, could provide the platform for such discussions and drive improvements in collaborative working in relation to remand cases and to establish or enhance such protocols.

**Consequently, we propose that local forums such as Local Community Safety Partnerships or Local Criminal Justice Boards develop and agree effective information-sharing procedures in relation to remand that enable youth justice services to present robust alternatives to custody to courts in a timely manner.**

YJ management boards can also have a role to play here. In addition to the level of scrutiny they can provide, they are instrumental in making sure YOTs in their area work closely and effectively with partner agencies.

**Therefore to support this work, YJ management boards should also ensure that appropriate protocols are in place between liaison and diversion teams, police, CPS, emergency duty teams and YOT/youth justice services to identify children at risk of remand earlier to improve efficiency and effectiveness of partnership working in respect of remand cases.**



## Collaborative working within courts

Similarly, collaborative working can help hearings run smoothly, as **established relationships between YOTs and justices' legal advisers build greater flexibility into the court process**. This might mean, for example, allowing more time for a package to be put together before it is presented, or moving the case to later in the day to minimise the potential for adjournment. However, this kind of trade-off should be the exception and must be balanced against the impact on both the child and the victims waiting for the case to be heard.

In our engagement, **Court User Groups (CUGs)** were mentioned as good examples of potential routes to build collaborative working, share good practice, develop relationships, and review processes and potential barriers. We note that CUGs were disbanded in many areas almost a decade ago due to doubts about their effectiveness, but feedback from our interviewees suggested widespread support for reinstating them – or a similar mechanism. The ingredients for effective collaborative forums were that the time involved in participation was proportionate to local numbers of youth cases; adequate resourcing; defined membership; clear terms of reference; and a level of seniority to support change. Many suitable groups already exist locally which could be used to improve joint working, for example, sub-groups to Local Criminal Justice Boards. This is particularly in areas that have a regularly sitting youth court.

The Youth Justice Board (YJB) is scoping a research project to explore the quality and utilisation of pre-sentence reports (PSRs) and bail package reports (BPRs) in the youth justice system. The YJB is keen to understand how to ensure PSRs and BPRs provide appropriate assessments of children and are used effectively by the judiciary when making remand and sentencing decisions.

# Improved guidance, training and sharing of best practice

Our engagement identified that, while there is a lot of good practice around the country, there is appetite for more – and better signposted – guidance, continuous development tools, and more effective dissemination of existing best practice.

## Available guidance and training

In its recent effective **case management guidance for youth offending services**,<sup>53</sup> HMI Probation set out what effective case management looks like in practice and partnership working sits at its heart (a summary of which is below).

**Case management** in YOTs is shared across the partnership and is not the sole responsibility of any single agency. Case managers must work **in partnership** with other statutory agencies to produce a **plan** from a **comprehensive assessment** and must **review** cases to reflect significant changes in the child's circumstances, needs and protective factors. The case manager must coordinate interventions with all the relevant specialists and/or agencies and be clear about what is expected of them.

Integral to case management is a well-informed, analytical and personalised approach, giving a voice to and **actively involving the child** and their parents/carers, responding to needs and risks identified, with **service delivery** reflecting the child's wider familial and social context.

One of the YJB's statutory duties is to identify and share best practice. One of the ways that it does this is through its Youth Justice Resource Hub.<sup>54</sup>

YOTs should follow the Modern YOT Partnerships Guidance,<sup>55</sup> and are also provided with specific guidance for managing bail and remand cases in the YJB's Case Management Guidance (CMG).<sup>56</sup>

**The YJB are currently revising the Case Management Guidance and MoJ continues to contribute to this work in the lead up to publication.**

<sup>53</sup> Case management in context: <https://www.justiceinspectors.gov.uk/hmiprobation/effective-practice/youth-justice-case-management-effectiveness-in-inspected-cases/case-management-in-context/>

<sup>54</sup> <https://yjresourcehub.uk/>

<sup>55</sup> Modern youth offending partnerships – Guidance on effective youth offending team governance in England: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319291/youth-offending-partnerships-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/319291/youth-offending-partnerships-guidance.pdf) (currently under review).

<sup>56</sup> How to manage bail and remands: section 3 case management guidance: <https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance>

## Available guidance for courts

Judicial Training is managed on behalf of the Lord Chief Justice (and Senior President of Tribunals and Chief Coroner) by the Judicial College, part of the Judicial Office. The judiciary of England and Wales is independent and delivers training and guidance for the judiciary.

Current induction training for **magistrates** includes learning on remand. For those magistrates approved to sit in the youth court, a further induction is provided which sets out the differences between youth and adult courts. This includes detailed information on the powers and procedures relating to remand and bail. Magistrates are also expected to read the Youth Court Bench Book which contains detailed information on remand, and the Sentencing Council's Overarching Principles – Sentencing Children and Young People. Following induction training, magistrates undertake consolidation and continuation training which also cover remand.

All trainee justices' **legal advisers** working in youth courts complete an initial six-month training course, usually after having been a justices' legal adviser for at least 12 to 15 months. The training includes module learning and court observation and supervised practice with mentor oversight. After this initial period, justices' legal advisers are required to complete a Youth Consolidation module. All justices' legal advisers who sit in the youth court are also required to do a half day refresher training every year.

The training for justices' legal advisers not only covers the court's powers of bail, remand and sentencing and youth case law, it also strives to build relationships with the YOTs, with engagement being an integral part of the modules.

## Operational practice – our findings

Despite available training and resources, we identified some areas where further awareness raising or training would be beneficial. For example, our engagement with YOTs and the judiciary highlighted that improving the understanding of remand to LAA might help reduce custodial remand. This is explored further in our accommodation and community provision chapter below.

## Perception of the child

Children appearing at court for bail and remand decisions can often be looked after children or already known to the care system and may also be more likely to have been excluded from school. These children are also more likely to have suffered trauma or adverse childhood experiences (ACE), including experiencing or witnessing the arrest of a household member, or that member being sent to prison, as well as having mental health or special educational needs.

Many children involved in the remand process are criminally exploited and involved in county lines. The Howard League for Penal Reform found that experiences of exploitation are "often not sufficiently explored and factored into remand decisions."<sup>57</sup> Some areas are trying to address the impacts and perceptions of these children, with plans to share findings with other local authorities such as in the pathfinder below.

<sup>57</sup> What's wrong with remanding children to prison?:

<https://howardleague.org/wp-content/uploads/2021/09/Whats-wrong-with-remanding-children-to-prison.pdf>

The YJB has commissioned Cambridgeshire, Essex, Norfolk and Suffolk YOTs to work in partnership to develop effective practice to reduce the number of children involved or exploited by county lines activity. A range of themes or approaches are being tested across the 4 local authorities and the impact of these approaches are being evaluated independently. The findings from these themes or approaches are being shared via the YJB Resource Hub, with a final report expected at the end of March 2022 as part of the dissemination strategy which has been developed to help inform the work of other local authorities in tackling county lines, including online live sessions.<sup>58</sup>

Further insights from police work include the Vulnerability Knowledge and Practice Programme (VKPP) across England and Wales to coordinate and improve the police service's holistic response to vulnerability. The VKPP has several projects and activities that contribute to the overall evidence base for vulnerability and violent crime. Part of the VKPP's Exploitation Serious Case Review Spotlight Briefing reflects on research and insights gained from the National Safeguarding Panel's Child Criminal Exploitation Review.<sup>59</sup> The briefing also highlights the work of Goff et al, 2014; Ocen, 2015; Epstein, 2017; Davis, 2019, around the concept of 'adultification' bias – that black children are more likely to be treated as adult-like and excluded from being perceived as vulnerable. The report highlights the importance of police forces establishing processes to review decisions/actions and practice to ensure the eradication of all bias and resultant disparities. The VKPP also oversees the National Vulnerability Action Plan (NVAP). One of the actions within the NVAP is 'officer norms' which recognises that the understanding of what is 'normal' may change in officers from repeated exposure to aspects of criminality/vulnerability and these need to be re-set to ensure thresholds of what is acceptable in child and adult protection are maintained.<sup>60</sup> The VKPP is currently undertaking research around officer norms and is scoping promising practice that forces have adopted to address this.

We heard from the Youth Ambassador Network<sup>61</sup> that children often feel that they are not given a voice, or that they had a process 'done' to them rather than being seen as an individual within that process. Work is underway to respond to this issue and continue a cultural and behavioural shift to better understand children in the process. Many YOTs we engaged with spoke of agencies adopting trauma-informed approaches in their relationships with children, even referred to by some as "the golden thread throughout the process". This approach is championed in the YJB's Strategic Plan for 2021-24<sup>62</sup>

<sup>58</sup> YJB Live Session: County Lines Pathfinder, Finding the Way Forward (November 2020) – Youth Justice Resource Hub: <https://yjresourcehub.uk/serious-youth-violence/item/841-yjb-live-session-county-lines-pathfinder-finding-the-way-forward-november-2020.html>

<sup>59</sup> Spotlight On... Exploitation, county lines, threats and weapons: learning from two serious case reviews: [https://whatworks.college.police.uk/Research/Documents/VKPP\\_Exploitation\\_SpotlightBriefing.pdf](https://whatworks.college.police.uk/Research/Documents/VKPP_Exploitation_SpotlightBriefing.pdf)

<sup>60</sup> National Vulnerability Action Plan (NVAP) Revised 2020-2022 v2: [https://www.npcc.police.uk/Crime\\_Ops\\_Committee/NVAP.pdf](https://www.npcc.police.uk/Crime_Ops_Committee/NVAP.pdf)

<sup>61</sup> A forum facilitated by the YJB, the Youth Advisory Network of Ambassadors provides a voice to children and young adults aged between 14-25 years old with experience of the justice system. It aims to understand their concerns, provide an opportunity to influence the decisions that may affect them, and ensure that their needs are integral to the development of services and planning.

<sup>62</sup> Strategic Plan 2021 – 2024: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/966200/YJB\\_Strategic\\_Plan\\_2021\\_-\\_2024.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966200/YJB_Strategic_Plan_2021_-_2024.pdf)

and its Child First guiding principle. This is echoed again in the Welsh Youth Justice Blueprint<sup>63</sup> which takes a whole system, child's rights and trauma-informed approach.

To support children through the court process, in 2020, Prisoner Escort and Custody Services rolled out its Generation 4 service for under 18s, introducing a separate service for children, which includes a dedicated pool of specialist staff and care at court. The escort officer helps to explain the process, and reduce, as far as is possible, the emotional impact.

Children refused bail by the police should not be held overnight in a police cell but be provided with local authority accommodation instead. In reality, the chronic lack of emergency LA beds means that children are often held overnight at the police station and arrive at court directly from there. We heard from some interviewees that children appearing directly from police cells can be perceived by courts as being 'riskier', setting the tone for future proceedings. Interviewees also told us that this risk perception can be compounded by the child being presented in the dock rather than in open court. Data limitations mean we are unable to assess the extent of any such perceptions, and how they might affect remand decisions.

***Children refused bail by the police should not be held overnight in a police cell but be provided with local authority accommodation***

Improving the experience of the child might not have a direct impact on decision-making and remand outcomes but this all contributes to a more child-centred approach which helps ensure the broader needs and circumstances of children are considered (in remand and beyond).

## **Role of the defence advocate**

The use of out of court disposals was a recurring theme in interviews with magistrates and judges. They often mentioned instances where children appear at court for a bail hearing because the child did not admit guilt at the first opportunity at the police station, only to be sent back for an out of court disposal. One reason put forward for these cases was that a child chooses to, or can be advised by their advocate, to give a 'no comment' interview, taking out of court disposal options off the table, as Youth Cautions and Youth Conditional Cautions require an admission of guilt. Interviewees explained that in those instances the court has to make a decision on bail and remand which could have been avoided.

Although it was recognised that there are some highly capable and dedicated youth specialists, many interviewees expressed concerns about the quality of advocacy and defence solicitors, in particular around a perceived lack of competence and over-reliance on YOTs. Interviewees felt that CPS prosecutors generally had a good background in youth work and do generally understand the remand process and youth legislative framework. There were indications from some youth courts that trainees and junior solicitors are heavily used to represent the child. Given youth cases are more procedurally complex than adult cases, some defence lawyers can struggle to navigate the process. **Concerns about the competence or professional conduct of a solicitor in youth courts should always be reported to the SRA.**

<sup>63</sup> Youth Justice Blueprint for Wales:  
[https://gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-05/youth-justice-blueprint_0.pdf)

Our findings from our engagement with the Youth Ambassador Network shows that often children appearing in court struggle to understand the process, feel intimidated and not listened to by those around them.<sup>64</sup>



**No-one explains anything to us – we just don't understand what's happening."**

**"Can be intimidating – standing in front of a judge, police and officials – so many people and we do not know who everyone is."**

**"PSRs are helpful as they tell part of our story but not everything. The court needs to consider that telling our story is traumatic – we are often asked to repeat really personal details about our life and that re-traumatises us – we disengage and our heads don't understand why we have to repeat what is written in front of them on paper."**

**"We are told only speak when spoken to but we don't understand what is being said to us and feel we cannot ask – we are surrounded by adults and don't feel we can trust anyone- we feel less of a human. I just sat there not knowing what was happening- from the moment everyone in the room stood up, I was just there for the ride."**



In 2018, the YJB led a roundtable to discuss standards of advocacy in the youth court, attended by youth court practitioners, regulators and interested parties. Attendees recognised the need for culture change and collaborative working to improve national standards of advocacy. As a result, a sector-led working group was set up to improve standards of advocacy and explore some of the key issues.

**We propose that this group explores ways to ensure high standards of advocacy in remand cases, working with the relevant youth offending team, the child's social worker and other partner organisations, to inform recommendations made.**

<sup>64</sup> This information was obtained during a YAN workshop session hosted by the YJB and MoJ, which took place on 5th November 2020 and feedback from 5 further YJB hosted workshops across YOIs in England. The participants were experts by experience, aged between 16-24. The views reflected are their own and demonstrate the reality of life for them. The content is thematic paraphrasing and remains true to their own perceptions.

In response to concerns about the standard of advocacy in the Jeffrey Review (2014) and its own research with the Bar Standards Board (2019), the Solicitors Regulation Authority (SRA), ran its 'Assuring Advocacy Standards Consultation', in which it made proposals to how it would assure advocacy standards. The SRA published its findings in July 2020,<sup>65</sup> setting out a commitment to explore in greater detail how solicitors can maintain their skills and knowledge in practicing in youth courts. To this end, they proposed to review samples of training records to understand the current and emerging issues and risks with practice and respond with updated resources. A summary of findings was published in December 2021.<sup>66</sup> The summary outlines key messages for solicitors and firms practising in this area, findings and how the SRA will respond. The SRA has also committed to developing competences for solicitors practising in the youth court in 2022. This work builds on existing resources for young people, including a leaflet outlining what to expect from a solicitor and resources to help solicitors meet the challenges of practising in the youth court. The competences will articulate the knowledge, skills and behaviours the SRA expects of solicitors practising in the youth court.

## The role of the courts

In our engagement with the judiciary and justices' legal advisers we heard that the step-by-step process of decision making according to the LASPO tests is generally used rigorously. However, judicial discretion, for example, in the application of realistic prospects tests, may include considering whether accommodation available in the community can safely manage the risk, rather than a purely objective consideration of whether custodial remand is absolutely necessary.

### Magistrates

While most magistrates consider the initial training offer on remand adequate, they felt they could benefit from more regular refresher training to maintain skills. Provision of additional quick reference information resources for adult court judiciary and practitioners on youth bail and remand was suggested as one way to support this.

Magistrates also considered it was important to be frequently exposed to youth bail and remand hearings to build personal knowledge and experience of the application of the law. One interviewee noted that some magistrates deal with bail and remand so infrequently that, although training is always useful, it is the experience of doing bail and remand cases that "*hammers home the knowledge*". Both magistrates and district judges (magistrates' court) also told us that the reduced number of youth courts, outside of London in particular, has resulted in less exposure to – and therefore less experience with – youth remand cases.

Interviewees also noted that there are now more instances of children being seen in adult courts, with cases not being heard by youth-ticketed magistrates, particularly at Saturday courts. This can mean that some magistrates are hearing fewer cases and have less exposure to the most serious youth

<sup>65</sup> Assuring advocacy standards consultation response: <https://www.sra.org.uk/globalassets/documents/sra/consultations/assuring-advocacy-standards-consultation-response.pdf?version=4a1c3f>

<sup>66</sup> Review of the training records of solicitors practising in the youth court: <https://www.sra.org.uk/sra/how-we-work/reports/training-records-solicitors-practising-youth-court/>



cases. Some interviewed magistrates felt this resulted in them having a greater reliance on justices' legal advisers in court and would therefore welcome more training or a chance to sit on more cases to develop or maintain their expertise. Judicial training is a matter for the independent judiciary, but we know Judicial College (and other partners) will continue to assess the most effective resources and approaches to support those working in the justice system to make fair and high-quality decisions.

## Crown Courts

The use of Crown Courts for children suspected of committing more serious offences (or, in some cases, where charged alongside an adult) was also raised by judicial and YOT interviewees, who were concerned that it is detrimental to child welfare. They expressed concerns that Crown Courts are not always best equipped to deal with children's needs, compared with the youth court which has specially trained magistrates and is designed to help ensure children can understand proceedings.

## Addressing Race Disparity

In our fieldwork we asked participants about issues of race disparity specific to the remand process, which helps to provide nuance to the findings of the YJB research. Every magistrate or judge interviewed was clear that courts are consistent and fair in their treatment of children but some ventured that small differences of awareness and understanding could contribute to racial disparity<sup>67</sup> and some said that it was hard to gauge accurately whether the children appearing in court are a representative proportion of the population, given small overall numbers, without looking at local and national ethnicity data.

We were told that courts typically follow YOT recommendations and it was suggested by some magistrates and district judges that black children, particularly boys, are perhaps unconsciously not championed by practitioners. Equally, some YOT interviewees reported that they believed that in like-for-like cases, black boys were more likely to be remanded to custody. Some YOTs interviewees suggested children from an ethnic minority background can be perceived as more 'risky' by the judiciary and also mentioned that the demographic make-up of the bench often does not reflect the diversity of the local area and the children who appear before them; something recognised by the Magistrates Association, which works to improve the diversity of the magistracy through its Diversity and Inclusion Networks.<sup>68</sup>

Court observations and interviews undertaken by academic researchers looking at children from lower socio-economic backgrounds, with disabilities and from ethnic minorities indicate that, due to limited information and time pressure, practitioners' first impressions of the child and the parents might play a role in the remand decision.<sup>69</sup>

The magistrates and judges interviewed suggested courts could work further with youth partners to understand the cohort of children on remand and the problems they face, and some indicated they would like to receive data to increase their understanding of these cohorts. This insight would

<sup>67</sup> Relatively few frontline practitioners we spoke to ventured hypotheses around disparity in remand outcomes given the sensitive and complex nature of the topic. So, while we sought practitioners' insights in that context, the feedback received is only an indicator, beyond what can be deduced from YJB research, as to where problems were perceived to lie in practice. Engagement focused on the remand process and so did not surface important issues on work upstream.

<sup>68</sup> Magistrates Association Diversity and Inclusion Networks: <https://www.magistrates-association.org.uk/What-We-Do/MA-Diversity-and-Inclusion-Networks>

<sup>69</sup> Different but equal? Exploring potential catalysts of disparity in remand decision-making in the youth court – Yannick van den Brink, 2021: <https://journals.sagepub.com/doi/10.1177/09646639211033709>



be relevant to all local services. These reflections echo feedback from YOTs during engagement, and a recent HMI Probation thematic inspection also highlighted the opportunity for better understanding of the challenges faced by the child and improve information-sharing about social contexts and experiences.<sup>70</sup>

These findings, combined with those of the YJB research,<sup>71</sup> also illustrate how much we still need to explore to understand better why disparity occurs when it cannot be accounted for by objective factors like offence type and offending history.

In 2020, the Government Equalities Office commissioned the Behavioural Insights Team for a summary of the evidence on unconscious bias and diversity training. The resulting report highlighted that 'there is currently no evidence that this training changes behaviour in the long term or improves workplace equality in terms of representation of women, ethnic minorities or other minority groups'.<sup>72</sup> It also states that there is emerging evidence of unintended negative consequences. In light of its findings, it will be phased out in the Civil Service and other public sector employers are encouraged to do likewise.

The Government is taking a range of action to improve life chances and equality of opportunity overall which stands to benefit those from ethnic minority groups, including developing its response to the Commission on Race and Ethnic Disparities. The Beating Crime Plan<sup>73</sup> highlights work on early intervention for young people, such as the £200 million Youth Endowment Fund to improve the evidence base on what works in crime prevention and £45 million for specialist teams to support young people at risk of involvement in violence to re-engage in education.

In addition, there is close collaboration between the Ministry of Justice, Youth Justice Board and the Youth Custody Service specific to addressing race disparities. Actions range from improving access to diversion and early intervention, improving sharing of local data and improving the custodial environment and staff training.

We also note some wider partner initiatives underway with a particular focus on race. A working group on adult and youth race equality has been established by Criminal Justice in Wales (previously the All Wales Criminal Justice Board) looking both at those in the justice system and staff, supported by the YJB in Wales. In London, there is collaboration between the Mayor's Office for Policing and Crime (MOPAC), Ministry of Justice, justice partners and communities to tackle ethnic disparity in youth justice, with an Action Plan which includes a specific action to develop a London-specific response to disparity in youth remand to ensure that YOTs provide robust information for all remand options.

<sup>70</sup> The experiences of black and mixed heritage boys in the youth justice system:  
<https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/10/The-experiences-of-black-and-mixed-heritage-boys-in-the-youth-justice-system-thematic-report-v1.0.pdf>

<sup>71</sup> YJB, Ethnic disproportionality in remand and sentencing in the youth justice system:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/952483/Ethnic\\_disproportionality\\_in\\_remand\\_and\\_sentencing\\_in\\_the\\_youth\\_justice\\_system.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/952483/Ethnic_disproportionality_in_remand_and_sentencing_in_the_youth_justice_system.pdf)

<sup>72</sup> Written Ministerial Statement on Unconscious Bias Training:  
<https://www.gov.uk/government/news/written-ministerial-statement-on-unconscious-bias-training>

<sup>73</sup> Beating crime plan:  
<https://www.gov.uk/government/publications/beating-crime-plan/beating-crime-plan>

# Enhanced scrutiny of outcomes and performance in remand cases to ensure high-quality decision making and promotion of a child centric approach by all arms of the CJS

If we are to encourage better information-sharing, collaborative working and decision-making in the remand process, it is crucial that there are structures in place to provide a senior oversight and scrutiny role and ensure systems are working as they should. In our engagement and research, we sought to understand how this might work best in practice locally.

We recognise that, over the last two decades, there has been a significant evolution in youth justice services, and this has meant that oversight structures may vary in each area (for example, some YOTs might sit within a local authority's children's social care team, others with community safety or as a freestanding function). We know, however, that while they may look very different, their crucial role is to make sure that practice is scrutinised regardless of the cohort of children involved. For example, YJ management boards were set up primarily with the function to provide local strategic oversight, with membership drawing from across all agencies responsible for delivering services to children involved in the youth justice system.

In addition, it is a statutory requirement that each local authority publish an annual youth justice plan.<sup>74</sup> These plans set out the local strategic priorities, and how the area will act to meet them, guided by the YJB's National Standards and related key performance indicators, and complemented by the Case Management guidance. The YJB sets out its expectations for youth justice plans in a separate guidance document. This has recently been revised to explicitly reference that partnerships should demonstrate an understanding of how they are performing in reducing the use of custody, including remand.<sup>75</sup>

We support this move and encourage local authorities to ensure that there is joined-up strategic oversight and leadership over the remand process. In particular, they should ensure that remand decisions can be given the appropriate scrutiny, monitoring trends and anomalies to take timely and appropriate action where needed.

<sup>74</sup> Section 40 of the Crime and Disorder Act 1998 sets out the youth offending partnership's responsibilities in producing a plan, setting out: how youth justice services in their area are to be provided and funded; how the youth offending team (YOT) or equivalent service will be composed and funded, how it will operate, and what functions it will carry out. Crime and Disorder Act 1998: <https://www.legislation.gov.uk/ukpga/1998/37/contents>

<sup>75</sup> Youth Justice Plans YJB Practice Guidance March 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/973141/Youth\\_Justice\\_Plans\\_-\\_YJB\\_Practice\\_Guidance\\_\\_March\\_2021\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973141/Youth_Justice_Plans_-_YJB_Practice_Guidance__March_2021_.pdf)

To address this, we propose that:

- Remand is included in every youth justice plan in accordance with the guidance set out in the YJB's youth justice plan practice note of March 2021.
- YJ management boards conduct regular practice reviews of children remanded to identify and properly understand trends and anomalies in performance, including a focus on disparity in outcomes, and taking appropriate action to tackle emerging issues and implement lessons learned.
- In support of trust and effective participation of all children, local agencies should intensify efforts to understand the diverse needs and backgrounds of children in their area. Practical steps to achieve this include training, staff diversity, and direct engagement within local communities.
- Existing local criminal justice structures are used to monitor remand trends and provide oversight and regularly review practice.
- The YJB, in partnership with the sector, identify and share evidence-based practice that may support reducing the number of children remanded into youth detention accommodation.

A remand system with effective partnership working, robust training and guidance for frontline practitioners, and effective scrutiny and oversight of outcomes all stand to support an environment for fair and legitimate outcomes. Given the wide range of factors which can play a part in remand decisions, these proposals therefore have the potential to reduce ethnic disparities in remand outcomes.

## The role of HMI Probation

Oversight of YOT practice is provided by HMI Probation, and the standards against which inspections are carried out are in its Standards for Inspecting Youth Services.<sup>76</sup>

In March 2021, HMI Probation published its statutory consultation for its inspection framework and programmes for 2021-22,<sup>77</sup> in which it seeks views on its proposals for thematic inspections and research projects. HMI Probation's inspections have been impacted by COVID-19, and much of its planned activity has been rescheduled. At present, remand is not one of the thematic reviews proposed to be considered as part of its business planning for 2021-22.

**Given the findings of this review and HMI Probation's own conclusions on bail and remand cases explored during the thematic inspection of black and mixed heritage boys in the YJS, we would welcome such a thematic review on the use of custodial remand for children in a future programme of inspection.**

<sup>76</sup> Standards for inspecting youth offending services: <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/04/Youth-offending-standards-March-18-final.pdf>

<sup>77</sup> Consultation on our inspection framework and programmes 2021-2022: <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/03/210322-HM-Inspectorate-of-Probation-Statutory-Consultation.pdf>

## Better data collection

As noted earlier in this report, while a lot of information is collected and published centrally, the data systems are designed largely for individual organisations' management information purposes. This has meant that there is no single source that provides a complete picture of the remand to YDA, which limits the potential for analysis of the key drivers of the numbers of children on remand.

Most specifically, data disaggregating remand to LAA and remand to YDA is not readily available through current court systems. However, Common Platform<sup>78</sup> is being designed to provide a richer and more detailed management information in co-operation with other criminal justice partners with the intention of delivering better data capture and reporting. MoJ will work closely with Common Platform to actively pursue this.

Although not specifically focussed on remand, the Data Improvement Across Government programme is a £9.6m project to develop the use of data to support vulnerable children and families across government. It comprises of projects involving DfE, MoJ, DHSC, Home Office (HO), and DLUHC. The overarching aim of the programme is to improve the cross-government evidence base to inform policy decisions and service delivery for children and young people.

The MoJ, working with the YCS, YJB and HMCTS, will continue to improve data on remand for children including through:

- **Exploring the potential to amend HMCTS data recording to cover the different types of remands that a child can receive.**
- **In future, requiring courts to state the reasons behind a decision to remand a child to youth detention accommodation, as set out in the PCSC Bill, and ensuring accurate recording of these reasons to enable more regular and high quality analysis of the drivers behind remand trends.**
- **YCS and YJB continuing to work in partnership to agree, share and review published statistics in order to provide better oversight of remand.**

<sup>78</sup> The Common Platform is the new digital case management system which will be used in magistrates' and Crown Courts.

# 9 COMMUNITY PROVISION AND ACCOMMODATION

Recent youth justice trends show that the small number of children currently in the criminal justice system present high levels of complex needs<sup>79</sup> and are more likely to have committed more serious and violent offending than a decade ago.<sup>80</sup> This makes the courts' task of assessing children's risks more difficult and custodial remand more likely. We need effective community alternatives to custody which allow children to be remanded safely in the community without putting the public at risk. This in turn should limit exposure to a custodial environment which is not always best placed to meet the needs of those children.

If legislative proposals, good frontline practice and other improvements combined are successful in reducing numbers of children remanded to custody, this will also mean heavier reliance on strong and robust community interventions. This chapter explores only those direct alternatives to custodial remand – namely, Bail Intensive Supervision and Surveillance (ISS) and remands to LAA. In line with existing statutory duties, central and local government should take steps to ensure that these alternatives can be delivered effectively, so that children are not remanded to custody due to lack of service provision in the community.

## Bail Intensive Supervision and Surveillance Programme

Bail Intensive Supervision and Surveillance (ISS) is designed to provide **support and services matched to the circumstances of the child, the alleged offence and the grounds for refusal of bail**. The programme was introduced by the YJB in 2001 to address objections to bail and as an alternative to remand to youth detention accommodation.<sup>81</sup> It is generally seen as a robust option, used as an escalation point in cases where management of the child safely in the community is particularly challenging. Unlike ISS for Youth Rehabilitation Orders (YRO), **the constitutive elements of Bail ISS are not prescribed by statute**.

Section 38(4)(c) of the Crime and Disorder Act 1998 however imposes a statutory duty on local authorities and their partners to provide "support for children and young persons remanded or committed on bail while awaiting trial or sentence". Bail supervision and support falls under that duty and, while Bail ISS is not explicitly listed, there is a reasonable expectation that it should be available.

<sup>79</sup> In 2019/20, 76% of sentenced children were assessed by YOTs as having a concern relating to substance misuse and 72% relating to mental health)

<sup>80</sup> 65% increase in knife and offensive weapon offences by children resulting in a caution or sentence in 2019/20 vs 2013/14

<sup>81</sup> ISSP – the final report: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/354919/yjb-ISSP-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/354919/yjb-ISSP-summary.pdf)

The **YJB case management guidance on Bail ISS** currently specifies a minimum of 25 hours structured activity a week, with access to support in the evenings and weekends.<sup>82</sup> The core elements include: at least 15 hours of education, training or employment; family support; building interpersonal skills; and an electronically monitored curfew. Programmes should also assist with services addressing homelessness, drug misuse or mental health problems, where necessary. As the child is not convicted, there should not be any restorative justice element and while general discussions around offending behaviour can take place, specific offending behaviour work must not be carried out. Conditions should be reassessed as part of the child's ongoing case review before trial, particularly if the child has engaged with the programme and the risks posed have decreased.

**The local YOT will indicate in their recommendation to the court whether the child is suitable for Bail ISS, but the court decides whether bail is granted and whether ISS conditions are attached.** There is no statutory requirement for the local authority or YOT to be consulted in relation to imposing ISS, nor are local authorities required to advise the court that the arrangements are available in their area.

## Issues with the current provision of Bail ISS

Many YOTs demonstrate good use of Bail ISS and offer innovative programmes, but **some local areas do not offer ISS provision because of financial or resourcing pressures.** There is no longer ring-fenced funding or bespoke teams in YOTs for this provision, so ISS is not routinely available in some areas with low case numbers or low historic use of ISS. Some YOT interviewees were concerned that, as this provision is seldom used, it does not justify investment and raised the possible need to pool resources across areas to re-establish an offer. Some acknowledged that more could and should be done in their area to work together to deliver more, but lack of information on the child and the need for a quick turnaround for a bail hearing make this difficult. **Not offering Bail ISS as an option to the courts in some areas runs contrary to the principle of custody as a last resort.**

**The resource-intensive nature of Bail ISS is also off-putting to practitioners.** Of the 7 youth court areas interviewed, 2 areas use Bail ISS often and view it as good and robust alternative; 1 area reported that YOTs are not able to offer it at all; and the other 4 areas either use Bail ISS infrequently as they deem it too drastic and unsuitable for certain offending and/or use it sparingly due to lack of resources. Of those that use it sparingly, both the judiciary and YOTs thought that Bail ISS is very prescriptive and inflexible. They pointed out for example that if children in custody do not complete 15 hours of education, the requirement to deliver this for Bail ISS seems particularly onerous. Children facing remand are often already excluded from school, and in most cases of serious offending, cannot return to mainstream school. This, along with multiple complex needs that the child often presents, makes this particular component difficult to fulfil. **It has been suggested that YOTs recording their reasons for not offering Bail ISS would help build understanding and focus on this option, particularly if insights can be aggregated.**

**The co-operation of children is key to the success of Bail ISS.** Bail ISS should be a support tool, not set the child up to fail. Often arrangements are hardest to put in place for children with drugs offences or violent offending, when it can be particularly difficult for a child to adhere to a regimented

<sup>82</sup> How to manage bail and remands: section 3 case management guidance: <https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance>

routine. If the child is reluctant to be placed on Bail ISS, YOTs and the judiciary can be concerned that the child will breach the stringent conditions and end up in custody, making it unsuitable.

**There is an appetite for a more flexible approach to ISS which enables a greater focus on the needs and circumstances of the individual child.** Bail ISS could still be intensive in nature but put more onus on others to take responsibility for the child, such as ISS case managers, social services, parents, carers or other appropriate adults who can have a positive influence in the child's life. Other suggestions include considering Bail ISS as an option sooner for repeat offenders or for less serious offences to act early to prevent matters escalating, where proportionate to do so. There could be greater focus on positive future goals to help the child succeed, with assessments on what the child has done well, rather than what condition the child has breached. We were told that updated guidance to allow for greater flexibility and innovation would be welcomed by practitioners. Any innovative practice learned, for instance, from COVID-19 regarding remote education, should be driven by the child's best interests rather than sole convenience. **The YJB is due to publish its revised Case Management Guidance (CMG) in 2022, which will include a revised remand chapter and Bail ISS section.** This will provide practical advice to ensure Bail ISS is best used to put in place the intensive community-based support required to prevent young people committing further crime or harm without having to resort to custody.

**Some YOTs are able to be more creative with the bail packages** they offer and use money from additional funding allocated, for example, for serious violence prevention work, to outsource some of their bail provision to specialist providers. Some members of the judiciary and justices' legal advisers interviewed thought YOTs should be as imaginative as possible with Bail ISS with the limited resources available and were clear that it is rare for courts to go against YOTs' recommendations. **Although imposing ISS is ultimately a judicial decision, courts need to have the confidence it will be adequately implemented by YOTs.**

Manchester City Council – It costs approximately £847 to provide a bail support package and £1,413 for Bail ISS per young person per week. This is substantially cheaper than remanding a child to custody (one night in a YOI costing £315, £574 for a STC and £753 in a SCH).<sup>83</sup> In 2020-21, Manchester provided ISS for 23 children. This compares to only 1 child being placed on remand to LAA and 28 children remanded to custody. Manchester youth justice services (YJS) can offer a full range of support including, drama therapy, speech and language therapy, virtual school, drugs and alcohol services (Eclipse), CAMHS, Connect, social care, case manager supervision, visits, meetings and interventions. Good use of 'edge of care' models such as Alonzi Hub are utilised to support children with ISS packages. Alonzi Hub engage in close partnership working with complex safeguarding teams, YJS, police and other agencies to ensure risks are being managed appropriately, sharing intelligence and monitoring compliance. Manchester is keen to further develop the evidence base of effectiveness of these bail support packages in order to offer this to more young people.

<sup>83</sup> This does not include the additional costs of administering the Remand Budget, which adds overall cost to each placement. In Manchester, remand administration is undertaken by eight members of staff, with the annual estimated cost of £864 per week/£44,933 a year.



Since Bail ISS is cheaper, and a preferable community alternative to custodial remand, MoJ would encourage local investment in the programme and has been working closely with the YJB to explore the issues outlined in this chapter to decide how best to support and encourage the use of Bail ISS. The revised Case Management Guidance will include new and updated advice on how to innovatively apply bespoke Bail ISS packages. Bail ISS will still be intensive and robust in nature by requiring high levels of supervision and oversight, to reassure courts that it is a suitable option to manage the child's risk and needs. However, it will also increase the flexibility of its constitutive elements to ensure Bail ISS is fit for purpose and compatible with the cohort of children it is designed for. The revised guidance will include advice on what constitutes a breach of ISS and will also help differentiate between ISS for bail and ISS for Youth Rehabilitation Orders, to make clear that there are important distinctions in how they should be perceived and applied by practitioners.

**The MoJ will continue to explore with YJB (as owners of the Bail ISS guidance) how better to encourage the use of Bail ISS as a direct alternative to custodial remand.**

## Remand to local authority accommodation

### Overview

If a child has been refused bail and is remanded to LAA, as a first step the court must consider whether the child can return to a family setting. If this is not possible, local authorities must place the child in the most appropriate placement available and ensure adequate care is provided.<sup>84</sup> Only 6% of bail hearings result in community remands with intervention which includes 465 remand episodes to LAA.<sup>85</sup> Children remanded to LA's care are looked after and, as such, are entitled to the same care planning and review processes as other looked after children.<sup>86</sup>

If a child cannot be returned to the family home, emergency accommodation must be sought by the local authority. It has been widely raised as a concern throughout our frontline engagement that local authorities are struggling with a lack of suitable placements to meet the complex needs of remanded children, especially at short notice, resulting in the use of out of area accommodation and unregulated provision.

While we have been told repeatedly through our frontline engagement that it is rare for a child to be remanded to custody due to a lack of accommodation, 22% of all youth custodial remand episodes last 7 days or less.<sup>87</sup> We have also been told that a **child can on occasion be remanded to custody for a short period** to allow time for local authorities to find suitable accommodation pending further bail hearings. This data, combined with the feedback from interviews, would suggest that

**Only 2%**  
**of cases are remands**  
**to local authority**  
**accommodation**

<sup>84</sup> Section 22C Children's Act 1989

<sup>85</sup> Youth Justice Statistic 2020, Supplementary tables, Chapter 6.2

<sup>86</sup> Looked after children and youth justice: [https://dera.ioe.ac.uk/19861/1/Guidance\\_revised\\_following\\_consultation.pdf](https://dera.ioe.ac.uk/19861/1/Guidance_revised_following_consultation.pdf)

<sup>87</sup> Youth Justice Statistics 2020, supplementary tables, Chapter 7. Time spent on custodial remand only, this excludes those children that received a custodial remand and then went on to receive a custodial sentence. Also, days calculated on remand before their 18th birthday and stops recording after that which could explain high numbers of children spending less than 7 days in custodial remand.



the initial remand episode could possibly have been avoided had a suitable alternative been presented to the court at the first bail hearing. As remands to local authorities only represent 6% of cases, some local authorities are not incentivised to develop in-house provision for children on the cusp of custodial remand, given wider financial and demand pressures in the care system.

## Challenges faced by the judiciary and youth justice services when remanding a child to local authority accommodation

We were told consistently that LASPO tests are applied stringently and that custody is always seen as a last resort. However, there is inevitably a degree of subjectivity in how the tests are applied and our interviews with the judiciary reveal that there is sometimes **a lack of confidence in remand to LAA** as a robust alternative to remand to YDA. The judiciary have to take into account a number of factors when considering suitable alternatives to custody. For instance, whether the child has a supportive family or whether it is safe for the family if the child is violent and disruptive. Public protection is a major consideration and courts must be satisfied that the child's risk can be safely managed.

Youth magistrates, district judges in magistrates' courts and justices' legal advisers interviewed consistently mentioned the **lack of information provided to the courts regarding where the child would be placed if remanded to LAA**, which places additional pressures on decision makers if there are particular safeguarding concerns for the child. This is compounded by the fact that government data does not break down locations and types of settings in which children remanded to LAA are placed. YOTs and local authorities try and place a child with family wherever possible, but it can take time to find a willing family member and conduct a risk assessment to determine whether the home is a safe and suitable environment. Both YOTs and the judiciary said courts can be reluctant to remand children back to the family home, believing these remands are not sufficiently different from bail or because of a lack of family support or supervision; or perceived risk linked to the child's return to the area where the alleged offence took place. Consequently, it is not unusual for courts to be adjourned until later in the day until a placement can be found.

YOTs and courts can find themselves in a catch-22 whereby, as has been reported by some YOTs, some local authorities might refuse to find a placement for a child until the court has ordered the child to be remanded into LAA. This in turn hampers the YOT's ability to create an effective wrap-around service, as they need to know where the child will be living. Equally, the court might not feel confident to opt for a remand to LAA until the accommodation has been identified, which the local authority will not do until the court has made that decision. **Where a YOT assesses that remand to LAA would be the most suitable route, steps to reserve a suitable placement should be sought prior to a court order, a suggestion supported by the Children's Commissioner's Office.**

Transform Justice believe that **remand to LAA might also be underused because courts and prosecutors do not understand its function as distinct from bail with supervision**, which means they do not see it as a sufficiently robust alternative to remand to custody.<sup>88</sup> They conclude that there needs to be more clarity on the role of remand to LAA and how it differs from bail and remand to custody. Our engagement with YOTs and the judiciary supports this position and improving the understanding of remand to LAA might help reduce custodial remand.

<sup>88</sup> Path of little resistance: is pre-trial detention of children really a last resort?:

[https://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT\\_V2-December.pdf](https://www.transformjustice.org.uk/wp-content/uploads/2018/12/TJ-December-2018-PRINT_V2-December.pdf)

There are also considerable **challenges faced in finding suitable placements for children remanded to LAA at short notice**. YOTs believe that fewer LAA places are offered to a child awaiting trial compared to children waiting for a place on welfare grounds. Children can be caught up in the process of ‘reverse auctions’, where multiple councils are bidding for a place for one placement, with the result that the place goes to the child with the lowest level of need, who is easiest for the home to accommodate.<sup>89</sup> This is largely due to the placements not being able to meet the complex needs of the child, but some YOTs interviewees also report instances of providers refusing to take a child due to the perceived level of risk and issues with funding a suitable placement. Sometimes commissioning processes in local areas mean that it is difficult to source somewhere on the day of court, with emergency beds not always readily available.

## **Lack of sufficient and suitable accommodation for children with complex needs in the children’s social care market affect remanded children disproportionately.**

“ There are not enough places available and local authorities are left ringing round for last minute, over-priced, possibly inadequate placements. Children can be stuck in limbo because no children’s home in the country will accept them.”<sup>90</sup>

”

A recent thematic inspection exploring the needs of black and mixed heritage boys in the youth justice system by HMI Probation highlights the ‘*longstanding and serious issues*’ concerning the availability of suitable accommodation for children, which, given the increasing numbers of black and mixed heritage boys being remanded in custody, is a serious concern.<sup>91</sup> Inspectors noted in 8 of the 25 remand cases inspected that accessing suitable and timely accommodation placements had been an issue.

An early finding from the Howard League for Penal Reform’s remand research was that several children’s bail applications were undermined by local authorities’ unwillingness to fund alternative accommodation and by poor communication between YOTs and children’s services.<sup>92</sup>

Fulfilling the accommodation needs of children awaiting trial is heavily reliant on children’s services, but the demand for residential children’s homes is outstripping supply. The problems faced by children’s services and social care have been well documented, including Sir Martin Narey’s Independent Review

<sup>89</sup> The children who no-one knows what to do with:  
<https://cscp.org.uk/wp-content/uploads/2020/11/cco-the-children-who-no-one-knows-what-to-do-with.pdf>

<sup>90</sup> The children who no-one knows what to do with:  
<https://cscp.org.uk/wp-content/uploads/2020/11/cco-the-children-who-no-one-knows-what-to-do-with.pdf>

<sup>91</sup> The experiences of black and mixed heritage boys in the youth justice system – A thematic inspection by HM Inspectorate of Probation October 2021:  
<https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/10/The-experiences-of-black-and-mixed-heritage-boys-in-the-youth-justice-system-thematic-report-v1.0.pdf>

<sup>92</sup> What’s wrong with remanding children to prison? Remand briefing one – Emerging themes:  
<https://howardleague.org/wp-content/uploads/2021/09/Whats-wrong-with-remanding-children-to-prison.pdf>

of Residential Care in 2016 and the National Audit Office and the Public Accounts Committee.<sup>93</sup> The number of looked after children in England is at an all time high, having increased by 16% from 2015 to 2021,<sup>94</sup> which has created more pressure on the system. Meanwhile, the number of children's homes operated by local authorities is only 14%, with the private sector now running over 80% of children's homes, which along with competition with other local authorities for limited placements, can drive up costs.<sup>95</sup> **Local authorities have reported that it is now considerably more expensive to remand children into the community.**

As noted in its case for change, costs and privatisation are issues the independent review of children's social care is concerned about.<sup>96</sup> The Competition and Market Authority (CMA) are conducting a study of children's social care to examine concerns around high prices paid by local authorities and the inadequate supply of appropriate places for children in their care.<sup>97</sup> The work covers foster care, children's homes and unregulated accommodation. Its interim report finds that in 2020, for the largest providers for children's homes, the average weekly price was £3,830, with an average operating profit margin of 23%.<sup>98</sup> As LAs must find an appropriate placement, often under considerable time pressure, they are often paying private providers for those placements at prices that are higher than they would otherwise be. As a result, large private sector providers of children's homes and fostering services appear to have been making higher profits in England and Wales than the CMA would expect in a well-functioning market.

**There is significant overlap between children looked after in the welfare system and in the justice system<sup>99</sup>** and many of the issues facing authorities when sourcing suitable provision for a child remanded to LAA mirror difficulties generally experienced in children's social services. In addition, LAA

<sup>93</sup> Pressures on children's social care:

<https://www.nao.org.uk/wp-content/uploads/2019/01/Pressures-on-Childrens-Social-Care.pdf>

Child protection: <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/713/713.pdf>

<sup>94</sup> Children looked after in England including adoptions – Reporting Year 2021:

<https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions#releaseHeadlines-tables>

<sup>95</sup> Main findings: children's social care in England 2021: <https://www.gov.uk/government/statistics/childrens-social-care-data-in-england-2021/main-findings-childrens-social-care-in-england-2021#childrens-homes-of-all-types-1>

CMA outlines concerns on availability and price of children's care:

<https://www.gov.uk/government/news/cma-outlines-concerns-on-availability-and-price-of-children-s-care>

<sup>96</sup> The Case for Change:

<https://childrensocialcare.independent-review.uk/wp-content/uploads/2021/06/case-for-change.pdf>

<sup>97</sup> CMA launches study of children's social care provision:

<https://www.gov.uk/government/news/cma-launches-study-of-children-s-social-care-provision>

<sup>98</sup> CMA outlines concerns on availability and price of children's care:

<https://www.gov.uk/government/news/cma-outlines-concerns-on-availability-and-price-of-children-s-care>

<sup>99</sup> 45% of children sentenced in 2018-2019 were assessed as having a concern relating to their care history, while 56% were shown to be a current or previous child in need: Assessing the needs of sentenced children in the Youth Justice System:

<https://www.gov.uk/government/statistics/assessing-the-needs-of-sentenced-children-in-the-youth-justice-system>

Of the 24,000 young people starting a court order or caution in 2018/2019, HMI Probation estimate that 4,500 may have been looked after children, including nearly 700 children starting custodial orders. Annual report – inspection of youth offending services (2019-2020): <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/HMI-Probation-Youth-Annual-Report-2020.pdf> YOTs also reported during the reviews engagement a disproportionate number of looked after children in the cohort of children being remanded to custody.

provision is dependent on placement availability and the risk the young person may present to others in the placement, determined by the registered manager of the home.<sup>100</sup>

Our engagement shows that some local authorities work effectively together: for example, to put in place escalation routes with established points of contact in children's homes when a placement cannot be agreed; while others create a network to share accommodation and retain specifically emergency bed placements for children in the justice system in case a place is needed.

## Placements "out of area"

The Welsh Government has previously raised concern about the high number of children from England placed in out of authority placements in Wales. The evidence suggests that many of these placements lack effective planning and information sharing to determine the availability of local education, health, social and other services to meet the child's needs. In Wales, the Welsh Government has developed a protocol for notifying the local authority and the local health board when a child has been placed there from outside the area, and again when the placement ends.<sup>101</sup> This protocol is in the process of being updated.

There may be occasions where it is not appropriate to place a child within their local area, for example if the child is at risk from exploitation, trafficking or gang violence, or if the child needs specialist provision that is only available outside of the area.

**No child should be placed outside their local area if it is not in their best interests,<sup>102</sup> yet placements outside the council boundary accounted for 43% of all LAC placements in 2019-20.<sup>103</sup>** Out of area placements was raised as an issue by members of the judiciary and justices' legal advisers during interviews. If a child is placed out of area, it raises questions for the judiciary around the suitability and level of support and supervision that the local authority can have while the child is placed there.

*Placements outside  
the council boundary  
accounted for*

**43%**

*of all LAC placements  
in 2019-20*

Even for emergency placements out of area, the child's wishes and feelings must have been ascertained and given due consideration before finalising a decision.<sup>104</sup> The children and young people we spoke

<sup>100</sup> The final decision on whether to admit a child to a children's home rests with the registered manager of the home. The registered manager must carefully risk assess each placement, considering the individual needs of children and whether the home can meet these alongside other children already accommodated in the home. Ofsted assesses whether a home is operating in line with its Statement of Purpose during inspections. This includes how a home manages their admissions process and meets the individual needs of children in the home.

<sup>101</sup> The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1000549/The\\_Children\\_Act\\_1989\\_guidance\\_and\\_regulations\\_Volume\\_2\\_care\\_planning\\_placement\\_and\\_case\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000549/The_Children_Act_1989_guidance_and_regulations_Volume_2_care_planning_placement_and_case_review.pdf)

<sup>102</sup> Out of area placements is not a decision to be taken lightly and directors of children's services are required to sign off every decision to place a child out of area in line with regulations: <https://www.legislation.gov.uk/ukxi/2010/959/contents/2013-07-01>

<sup>103</sup> Children looked after in England including adoptions: <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions#releaseHeadlines-summary>

<sup>104</sup> The Children Act 1989 guidance and regulations – Volume 2: care planning, placement and case review: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1000549/The\\_Children\\_Act\\_1989\\_guidance\\_and\\_regulations\\_Volume\\_2\\_care\\_planning\\_placement\\_and\\_case\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000549/The_Children_Act_1989_guidance_and_regulations_Volume_2_care_planning_placement_and_case_review.pdf)

with throughout the course of the review described the difficulties associated with being placed outside their local area. **One child spoke of being moved to a placement three hours away, where she had no connections or support and ran away shortly after arrival.** The children strongly felt that officials making placement decisions need to have realistic expectations of the child and whether they will comply with bail and remand conditions and emphasised that removing a child's support network can cause further damage.

HMI Probation's 2019-2020 annual report found that the quality of services delivered to children in the care system has not been equal to the quality of those delivered to other children and was particularly weak for children placed in accommodation outside their local area.<sup>105</sup> Contributing factors listed centre around inconsistent partnership working between the Youth Offending Services and children's social care: lack of joint planning; uncoordinated delivery of interventions; ineffectiveness of recognising and meeting the needs of children; and lack of clarity around roles and responsibilities.

**However, there is no data available to provide a clear understanding of how many children remanded to LAA are placed out of area, as cases that involve caretaking between different YOTs are not reviewed by HMI Probation during area inspections.**

## Unregulated accommodation

Children remanded to LAA can sometimes be placed in supported accommodation, often termed 'unregulated accommodation'.<sup>106</sup> While good-quality supported accommodation settings have an important role to play in the system for older children who are ready for this type of provision, the quality has not always been consistent. Some YOTs expressed concerns that moving children into this provision can lead to an increased likelihood of child criminal exploitation. The DfE has already banned the placement of under-16s in this provision and, following a public consultation in July 2021, DfE has announced it will be introducing mandatory national standards which will be overseen by an Ofsted-led registration and inspection regime for provision that accommodates 16 and 17 year olds.<sup>107</sup> This will ensure this provision is of high quality, is used appropriately and provides the right level of support for children. Ofsted will be given the tools to take action against any low quality and unsafe accommodation for children.

The Welsh Government is considering making similar legislative provision in relation to banning the use of unregulated provision for children under 16, and for young people aged 16 and 17.

<sup>105</sup> Annual report – inspection of youth offending services (2019-2020): <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/HMI-Probation-Youth-Annual-Report-2020.pdf>

<sup>106</sup> Where a child is placed in "other arrangements" i.e. a "semi-independent" placement or a placement that is not regulated by Ofsted, the responsible authority must be satisfied that the placement is in suitable accommodation: Regulation 27 and Schedule 6 of the Care Planning, Placement and Case Review (England) Regulations 2010

<sup>107</sup> Introducing national standards for independent and semi-independent provision for looked-after children and care leavers aged 16 and 17 – Government response: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041166/unregulated\\_national\\_standards\\_consultation\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041166/unregulated_national_standards_consultation_response.pdf)

## Fostering

Remand foster carers used to be regularly used by local authorities and seen as an effective option, but their use for remand purposes has now become rare. Because of the smaller yet more complex cohort of children entering the justice system, some of whom are accused of committing serious violent offending, it is **increasingly difficult to find foster carers who are willing to house them**, particularly in households where there are other children.

There are 175 approved remand fostering households in England, 160 of which are within independent provision as of March 2021. This is a decline from 310 in 2018.<sup>108</sup> Some provision is still out there and being used but finding suitable placements is a challenge.

The Fostering Better Outcomes paper (2018) set out the government's vision for improving the system.<sup>109</sup> In 2019, DfE funded 7 local authority-led fostering partnerships to improve commissioning and sufficiency of fostering placements and have now commenced a second phase of this work, continuing funding 5 of those 7 projects to implement their tested approaches. To bolster local and regional support and recruitment, DfE has undertaken further practice and behavioural insights research, which has helped to develop a clearer idea of effective support for foster carers and better understand barriers and incentives to people coming forward to foster. Although this initiative is not specific to children on remand, it addresses sufficiency in the whole system.

In Wales the sector has moved away from recruiting specialist 'types' of foster carers. Instead there is recognition that there is a need to upskill some of the foster care population in Wales to ensure agencies have adequate placements to support children with high end complex needs and other types of specialist provision.

In Wales the National Fostering Framework was developed by local authorities, Welsh Government and the third sector, as a 5-year change programme to support the recruitment and retention of a wide range of foster carers along with enhancing the consistency in the delivery of foster care services across Wales. Part of this work has included developing a national brand for local authority fostering services, reviewing foster care finances and developing a core offer of support for foster carers including a national development framework for foster carers across Wales.

Welsh Government has recently invested in the delivery of a programme of awareness raising materials for foster agencies and training for foster carers in Wales so they can provide specialist support to children that need high end support such as children in custody. This training programme will enable fostering agencies to provide foster carers with the necessary skills to support these children who often display challenging behaviour and who require more specialist carer skills. This will improve the sufficiency level for these types of placements in Wales and enable children and young people to be placed in safe and appropriate placements where their fundamental needs are met and where they can access the necessary support they require.

*There are currently*

**175**

*approved remand fostering households in England, a decline from 310 in 2018*

<sup>108</sup> Fostering in England 1 April 2020 to 31 March 2021:

<https://www.gov.uk/government/statistics/fostering-in-england-1-april-2020-to-31-march-2021>

<sup>109</sup> Fostering Better Outcomes – Government response: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727613/Fostering\\_better\\_outcomes\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727613/Fostering_better_outcomes_.pdf)



## Secure children's homes: lack of provision for children in crisis

There are significant overlaps in the welfare, justice and mental health secure estates in terms of the cohort of children and how provision is commissioned, creating a high level of demand for secure children's homes (SCH) which is not met by supply.<sup>110</sup> While SCHs are a type of YDA, if a child is remanded to LAA, the local authority can apply to place the child into a SCH for welfare reasons.<sup>111</sup> 'Custody as a place of safety', that is, remanding a child to custody for their own welfare is also a contentious issue and some YOT interviewees commented on the need to strike a balance between sending a child to a secure setting for safeguarding purposes (ensure they are removed from those seeking to exploit them as part of county lines, for example) and the impact such custodial remand might have on the child. Children placed by the local authority in a criminal justice context increased to 15 (up 6 children) in 2020, representing 8% of the children accommodated in SCHs (up from 5% in 2019).<sup>112</sup>

**Recognising the gap between demand and supply of SCHs**, DfE has already invested £40m in order to improve facilities at existing SCHs and has enabled some homes to increase their capacity. For 2021-22, the government is also providing £24m to start a new programme of work to maintain capacity and expand provision in SCHs. This will provide high quality, safe homes for some of the most vulnerable children and will mean children can live closer to their families and support networks, in settings that meet their needs. The Spending Review 2021 also **maintains and increases capacity in secure and open residential children's homes by making available £259 million over the Spending Review period** so more children can receive the care they need.

In addition, the Welsh Government is supporting the development of safe accommodation for children with complex needs. This type of accommodation is intended to provide a regional approach to therapeutic care and support. The aim is to provide local solutions which reduce escalation to, and facilitate de-escalation from, secure welfare accommodation.

<sup>110</sup> At any one time, around 25 children each day are waiting for a SCH place and around 20 are placed by English and Welsh local authorities in Scottish secure units due to the lack of available places in England. National statistics – Main findings: children's social care in England 2021: <https://www.gov.uk/government/statistics/childrens-social-care-data-in-england-2021/main-findings-childrens-social-care-in-england-2021>

<sup>111</sup> LAs can apply for a section 25 order to place the children into a SCH if the criteria under Section 25 of the Children Act 1989 are met.

<sup>112</sup> Children accommodated in secure children's homes: <https://explore-education-statistics.service.gov.uk/find-statistics/children-accommodated-in-secure-childrens-homes> – Of the 142 children accommodated in SCHs at 31 March 2021, 7 children were placed by the local authority in a criminal justice context, representing 5% of all children accommodated. Figures relate to the position at 31 March except for 2020 when the reference date was changed to 29 February to reflect the position in secure children's homes before the coronavirus (COVID-19) pandemic and the national lockdown. Therefore, this year's figures are the first in this series to reflect the impacts of the pandemic and users should bear this in mind when making comparisons over time.

## Work underway and best practice examples

The Government has invested part of the £200m children's social care innovation programme (IP) to a number of IP projects that have focussed on increasing councils' capacity and improving commissioning practice, including:

- Havering (North London Commissioning) – £835k to create a sub-regional approach to commissioning residential placements, ensuring 35 placements are available. The project received a further £207k in 2020/21 to continue delivery and capture further evidence.
- Croydon (South London Commissioning) – £1m for sub-regional commissioning for looked after children across eight south London boroughs to increase placement choice.
- Essex (Inside Out) – £3m to set up an alternative to residential care by providing targeted support to those on the edge of secure care. The project received a further £1.2m in 2020/21 to continue delivery and capture further evidence.

### London Accommodation Pathfinder

YJB have developed a London accommodation pathfinder, a 3-year project aiming to provide appropriate accommodation and interventions as an alternative to custodial remand, a custodial sentence and improve resettlement. It will initially offer supported housing for up to 5 children in 1 location, then building to 4 locations with 5 children at each, meeting the needs of 20 children overall.

The Welsh Government published a Cabinet paper in March 2021<sup>113</sup> outlining its vision for secure accommodation in Wales in line with one of the commitments of the Youth Justice Blueprint. While custody should always be a last resort, the vision identified a set of principles for the small cohort of children who require secure accommodation. This included being placed in small homes close to their communities, and for services to wraparound the child, supporting their return to their community.

<sup>113</sup> Youth Justice Blueprint Implementation Plan:  
<https://gov.wales/sites/default/files/publications/2021-03/youth-justice-blueprint-implementation-plan.pdf>



Addressing bespoke issues with remands to local authorities through work on children’s social care will be vital in order to unblock some of the issues faced by looked after children in the justice system. Whilst the current review of children’s social care is operating independently, it is likely that this report’s findings will be very relevant to the issues it is examining around looked after children more broadly.<sup>114</sup>

**MoJ, DfE and local authorities to work together, building on the findings of the independent review of children’s social care, to explore how to address the issues faced by looked after children at risk of custodial remand.**

## Local authority investment in alternatives to custodial remand

### Local authorities and YOTs’ funding

#### Lack of financial incentive to reinvest

The reforms brought in by the LASPO Act gave local authorities greater financial responsibility for remands to YDA, aiming to **incentivise them to invest in alternatives to custodial remand**. Any underspend on custodial remands could then be reinvested elsewhere (for example bail support and packages, accommodation).

Local authorities have a legal requirement to cover the costs for all children remanded to YOIs (which make up 73% of custodial remand placements),<sup>115</sup> as well as retaining their duty to meet the costs for SCH, STCs, and for children remanded into the community. Local authorities each receive a contribution from the MoJ in April for the financial year, in respect of children detained on remand in YOIs and the treatment of looked after children remanded to YDA.<sup>116</sup> Youth Custody Services (YCS) recover money for all actual remand YDA usage of bed night spend, with local authorities keeping any money remaining in year after YOI spend.

**However, remand funding is not ring-fenced** and it is open to local authorities to determine how to best use their funding, so long as it is spent on improving outcomes for children.<sup>117</sup> As is explored below, in recent years the total overall spend by local authorities on remands to YOIs, STCs and SCHs has exceeded the amount of the remand grant which places further pressure on children’s services budgets.

<sup>114</sup> The Case for Change:

<https://childrensocialcare.independent-review.uk/wp-content/uploads/2021/06/case-for-change.pdf>

<sup>115</sup> Youth Justice Statistics England and Wales 2020, supplementary tables, Table 6.4:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/956621/youth-justice-statistics-2019-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf)

<sup>116</sup> The budget is comprised of 3 parts: remand accommodation in YOIs, which makes up the largest part of the budget; funding for the additional cost to local authorities associated with all children on remand becoming looked after children; and a deduction for transport to and from SCHs and STCs, as this service is no longer provided by local authorities. This budget is based on their previous 3 years of YOI spend, and sector bed night prices. Specific costs are discussed in the Explanatory Memorandum to the Recovery of Costs Regulations 2021.

<sup>117</sup> Payment and cost recovery arrangements in respect of children detained on remand in Youth Detention Accommodation: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414608/payment-cost-recovery-arrangements.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414608/payment-cost-recovery-arrangements.pdf)

While DfE are responsible for children's services policy overall, DLUHC and DfE are jointly responsible for assessing the funding required for local authorities to deliver these services and DLUHC is responsible for most of its distribution to local authorities.<sup>118</sup> This funding is available to local authorities for children's services, including youth justice services and children's social care.

**Remand funding should not be confused with the Youth Justice Grant for YOTs.**<sup>119</sup> The Youth Justice Board (YJB) gives an annual grant to local authorities to support the work of YOTs. On average this makes up just less than a third of the funding YOTs receive, with the rest of the funding provided by local authorities and partner agencies. The money given to YOTs by the YJB can only be spent on youth justice work. This grant is £78.5m for 2021/22 (up from £72.2m the previous year). YOTs highlight that while their statutory caseload may have fallen the complexity of current caseload required more intensive supervision and monitoring for those children who remain in the system. **YOTs also report that the complexity of current caseloads now requires more intensive supervision and monitoring, which contributes to higher costs.**

The vast majority of YOTs and local authorities attribute the decline in the number of children remanded to custody to the legislative changes to the framework that accompanied the funding changes in 2012. Yet only a small proportion of YOTs noticed a change in attitudes towards promoting remand to the community when local authorities became financially responsible for remands to custody, with no noticeable increase in investment in alternatives to custody, such as LAA or bail packages.

The rationale behind the current remand funding arrangements is that it is more cost-effective to remand or bail a child into the community than it is to remand a child to custody. However, while a robust bail package like Bail ISS is cheaper than custody, our research and engagement with YOTs and local authorities indicate clearly that it can often be more expensive to remand a child into LAA than to remand into custody. As explored in the accommodation section, this is linked to shortage of appropriate accommodation for all children in need of local authority care, leading to private providers being able to charge high prices for placements.

Research from the Children's Commissioner's Office in 2018 found that on average, local authorities had 15 children in care in placements costing more than £5,000 a week.<sup>120</sup> In 2020/21, it cost a local authority £3,171 to send a child to a STC and £2,247 to send to a YOI.

<sup>118</sup> Council tax and business rates also fund local authorities

<sup>119</sup> Youth Justice Grant funding is made under s.41(5)(g) of the Crime and Disorder Act 1998

<sup>120</sup> Estimating Children's Services spending on vulnerable children: <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/07/cco-vulnerability-2019-spend-report.pdf>

## The current funding mechanism

A number of YOTs also said that the current funding arrangements do not allow for flexible budgeting and spend. Many expressed unhappiness over how grant payments are calculated, particularly the fact that it is based on the 3 previous years' of YOI spend. Some interviewees also mentioned they are not able to carry forward remand funds from previous years, so any spare funding will be used on wider children's services as opposed to planning for investment in alternatives to remand.

It is difficult for local authorities to forward plan for spike events or instances where a child appears with an adult co-defendant (which would prolong proceedings), and taking the initiative to positively invest funds may lead to adverse effects in not being able to cover the costs of such events.

It is also difficult for local authorities to forecast for the long-term given the unpredictability of the cohort of children (not knowing the specific circumstances and needs of the child, coupled with the quick turnaround required). During our engagement, this was echoed by the Association of Directors of Children's Services (ADCS) who indicated that all local authorities, whether high-performing or in need of improvement, are facing financial pressures due to increased cost of provision and services, increased demand for special educational needs and social care services, along with other local pressures specific to each area, such as market capacity, local commissioning arrangements and sufficiency issues.

There is consensus among the youth sector that there is scope for the remand funding process to be simplified, however any changes to the formula or structure of remand funding would likely require legislative changes.

**In the medium to longer term, government will consider options to review existing funding arrangements in order to facilitate better use of community provision and services for children at risk of custodial remand.**

# 10 NEXT STEPS

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As is evident from this report, remand is a complex process that reflects many decisions and actions taken prior to a child's bail hearing. To feel confident all reasonable steps are taken to avoid any unnecessary use of custodial remand (remembering always the importance of protecting the public), actors across the system need to come together to achieve change.

Building upon the individual proposals in this review, and to bring to life the importance of **leadership** signalled throughout this report, there are some overarching next steps we will take, with partners, beyond this publication.

We will work to **promote the findings and recommendations** of this report through active dissemination and engagement with the delivery partners including local authorities, government departments, the YJB and courts, most of whom have already actively contributed to this review.

We will ensure there is appropriate **governance and oversight** for this agenda. Recognising that steps which would improve remand outcomes are closely connected to many broader agendas, this is likely to consist of post-publication stocktake meetings with key partners to ensure current focus and priority is maintained. Such oversight of individual proposals and workstreams can fit largely into existing governance (such as existing cross-government working groups on accommodation and existing oversight arrangements for youth justice services).

Feeding into senior governance, key officials involved in delivering the proposals will work on a **roadmap** and monitor progress against the review's proposals, maintaining links to provide updates and build collaboration with key stakeholders, ensuring all are clear on their roles.

We will encourage greater use of **data** to monitor trends around how custodial remand and its alternatives are used, and where possible publish any improved or new data we are able to obtain based on the planned follow-up work set out in the review.

We recognise there is a great deal of **passion and commitment** across the system to ensure that our justice system operates fairly and that we achieve the best possible outcomes for children who come into contact with it. We hope the proposals developed in this review will help reinforce this further.

# 11 ANNEXES

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## List of proposals

### **System leadership and effective partnership-working to embed a child centred approach, achieve consistent high-performance frontline delivery and promote better accountability**

#### **Effective partnership working between CJS professionals to ensure timely sharing of information and better-informed decision-making**

- Local forums such as Local Community Safety Partnerships or Local Criminal Justice Boards develop and agree effective information-sharing procedures in relation to remand that enable youth justice services to present robust alternatives to custody to courts in a timely manner.
- YJ management boards should also ensure that appropriate protocols are in place between liaison and diversion teams, police, CPS, emergency duty teams and YOT/youth justice services to identify children at risk of remand earlier to improve efficiency and effectiveness of partnership working in respect of remand cases.
- MoJ will continue to work with DLUHC, during the new phase of Supporting Families, to explore how best to support children at risk of being involved with the justice system.

#### **Improved guidance and training**

- YJB are currently revising the Case Management Guidance and MoJ will continue to work with them in the lead up to this publication.
- The quality of advocacy working group to explore ways to ensure that, in remand cases, all advocates understand the legislative frameworks applicable and all options available, working with the relevant youth offending team, the child's social worker and other partner organisations, to inform recommendations made.

## **Enhanced oversight, scrutiny and audit of remand decisions and outcomes**

- Remand is included in every youth justice plan in accordance with the guidance set out in the YJB's youth justice plan practice note of March 2021.
- YJ management boards conduct regular practice reviews of children remanded to identify and properly understand trends and anomalies in performance, including a focus on disparity in outcomes, and taking appropriate action to tackle emerging issues and implement lessons learned.
- In support of trust and effective participation of all children, local agencies should intensify efforts to understand the diverse needs and backgrounds of children in their area. Practical steps to achieve this include training, staff diversity, and direct engagement within local communities.
- Existing local criminal justice structures are used to monitor remand trends and provide oversight and regularly review practice.
- The YJB, in partnership with the sector, identify and share evidence-based practice that may support reducing the number of children remanded into youth detention accommodation.
- Given the findings of this review and HMI Probation's own conclusions on bail and remand cases explored during the thematic inspection of black and mixed heritage boys in the YJS, we would welcome such a thematic review on the use of custodial remand for children in a future programme of inspection.

## **Ensure suitable and robust alternatives to remand are available so that children are not remanded to custody due to lack of service provision in the community**

### **Bail ISS should be a robust alternative to custodial remand but understood as separate from the ISS part of a community sentence**

- MoJ will continue to explore with YJB (as owners of guidance on Bail ISS guidance) how to better encourage the use of Bail ISS as a direct alternative to custodial remand.

### **Improved access to, and availability of, suitable local authority accommodation for children at risk of remand**

- MoJ, DfE and local authorities to work together, building on the findings of the independent review of children's social care, to explore how to address the issues faced by looked after children at risk of custodial remand.
- In the medium to longer term, government will consider options to review existing funding arrangements in order to facilitate better use of community provision and services for children at risk of custodial remand.

## **New legislation which supports reduced use of custodial remand while ensuring that judicial discretion is maintained**

- Provide for a statutory duty for the courts to consider the welfare and best interests of the child when making remand decisions.
- Tighten the “real prospect” test.
- Significant *and* relevant history of breach or offending while on bail so a minor breach/offence is not enough to remand a child to youth detention accommodation.
- Strengthen the necessity condition so that custodial remand can be imposed only where the risk cannot be safely managed in the community and no alternative is available.
- Courts to provide reasons for a decision to remand to custody, making specific reference to the duty to consider the best interests and welfare of the child when making their decision, and to consider remand to local authority accommodation as a first step.

## **Collect reliable and relevant data to improve analysis capability, strengthen accountability and drive change**

The MoJ, working with the YCS, YJB and HMCTS, will continue to improve data on remand for children including through:

- Exploring the potential to amend HMCTS data recording to cover the different types of remands that a child can receive.
- In future, requiring courts to state the reasons behind a decision to remand a child to youth detention accommodation, as set out in the PCSC Bill, and ensuring accurate recording of these reasons to enable more regular and high quality analysis of the drivers behind remand trends.
- YCS and YJB continuing to work in partnership to agree, share and review published statistics in order to provide better oversight of remand.



