

Ensuring effective referral into youth diversion

Introduction

Point-of-arrest youth diversion addresses low-level criminal behaviour by children and young people without putting them through formal criminal justice processes. By avoiding outcomes such as out of court disposals or prosecution, it protects them from negative consequences such as labelling, a criminal record or interruption in their education.¹ Youth diversion involves short assessments and quick referrals into light-touch, voluntary programming. There is strong and ever-growing evidence that youth diversion reduces reoffending, lowers costs, and leads to better outcomes for children and young people.²

In this, our fifth evidence and practice briefing, we are focusing on systems for referring children and young people into diversion. We will outline the evidence base on referrals, explore good practice and share insights from practitioners to help ensure referrals into diversion schemes operate as effectively as possible.

Based on the evidence base and good practice from schemes, we suggest that the referral process should:

- Enable practitioners to make swift and timely referrals that do not heavily impact on the child or young person's rehabilitative process;
- Ensure that referral is procedurally fair, that children and their families are treated with dignity and respect, and have access to relevant information from practitioners; and
- Allow for multi-disciplinary decision making that can be robustly reviewed and scrutinised.

Insights from research

The importance of speedy referrals

While research shows that formal criminal justice system processing of children and young people can increase the likelihood of them committing further offences,³ youth diversion has been found to more effectively tackle reoffending.⁴ One reason for this may lie in the speed of the diversion referral process. Indeed, research suggests that certainty and speed in responding to offending are more important determinants of desistance than severity.⁵ The importance of speed in reducing reoffending is flagged by HMIP in its thematic inspection on youth offending teams' out-of-court disposal work: 'It is important that children are assisted in moving on and the need for change reinforced as quickly as possible after their offending behaviour.'⁶ 'Timely referrals from the police' are listed as an indicator of good quality out-of-court work, and youth offending teams are urged to deliver interventions when 'the offending behaviour is still fresh in the mind of the child.' Similarly,

Lengthy referral periods are often cited by practitioners as the biggest challenge facing their youth diversion scheme



Young people's insights into being released under investigation:

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in their guide to youth out-of-court disposals, the Ministry of Justice and Youth Justice Board highlight that ‘the more quickly the interventions are delivered following the original offence, the more impact they have.’⁷

Just as the principle of proportionality precludes the use of protracted interventions for the majority of diverted children and young people, their behaviour being too low-level to justify extended engagement, it also indicates the importance of a short referral period. Youth diversion avoids the aforementioned collateral consequences of formal criminal justice system processing, such as interruption of education, training and employment. A lengthy, drawn out referral process may impede the scheme’s ability to bypass these negative consequences, detracting from its very justification.

Insights from labelling theory

One of the Centre’s three core principles of youth diversion is to minimise labelling: schemes should take all reasonable steps to avoid stigmatising the children they work with, and to prevent them from forming deviant identities that may interfere with their development.⁸ As explained in our evidence and practice briefing on minimising labelling, by reducing children’s exposure to the formal criminal justice system, youth diversion lessens the negative impact of labelling.⁹ Research has demonstrated that the further a child or young person is processed by the system, the greater the likelihood of reoffending, especially for lower-risk youth, where the detrimental effect of additional system contact is possibly more influential.¹⁰ This is consistent with what labelling theory would suggest and, in line with the evidence on speedy referrals, points toward a policy of initiating diversion referral as early as possible once it is established that a case is appropriate.

While labelling has been found to increase with the intensity of criminal justice contact, research shows that even police stops and arrests have labelling implications.¹¹ Recognising this, a number of areas are refraining from arresting children involved in low-level offending, instead taking them to a place of safety to discuss next steps and carry out the initial referral assessment. For these schemes, the diversion referral process is no longer triggered by an arrest, but by offending behaviour that reaches the threshold of arrest, and the police station is no longer the core referral site.

Achieving cost effectiveness

As set out in *Valuing youth diversion: a toolkit for practitioners*, youth diversion can reduce costs through: saving police, CPS, and court time; long-term reductions in reoffending; and better access to support services to address emerging needs earlier.¹² An effective referral process can make a particular contribution to saving staff and agency time. Police time savings come when diversion accelerates the time frame in which police can refer low-level cases to youth offending teams and re-focus on dealing with more serious work. A quick and straightforward referral process is therefore needed to leverage the cost avoidance potential of diversion.

Procedural fairness in referral

Research has shown that when people perceive the procedures of the justice system to be fair, they are more likely to obey the law in the future – regardless of the outcome of their case. Procedural fairness can be improved by prioritising treating people with dignity and respect, ensuring that they understand the process, that they have a voice, and that decisions are made neutrally.¹³ An effective youth diversion referral process will incorporate these elements of procedural fairness which . This might involve, for example, addressing police use of extended release under investigation. Indeed, our research on youth courts flagged this as a cause of delay and as potentially disruptive to the rehabilitative process, undermining the goals of trust and respectful treatment.¹⁴ Furthermore, practitioners reported that children and young people subject to release under investigation rarely understood the implications of it. In terms of voice,

the HMIP thematic inspection on out-of-court work suggested that more needed to be done to leverage the voice of the child in both referral assessment and decision making.¹⁵

Procedural fairness in the referral process should also be secured for victims. For example, a quick referral indicates to victims that their case is being taken seriously. HMIP's thematic inspection on out-of-court work recommended that Chief constables should: 'Make sure that referrals to YOTs are sufficiently timely to meet the needs of victims for speedy justice.'¹⁶

Checks on discretion

Diversion is often referred to in the research literature as a 'loosely coupled' decision-making point in the youth justice system, i.e. one relatively unconstrained by official rights and legal criteria.¹⁷ This means diversion necessarily entails a degree of professional discretion. As highlighted in our evidence and practice briefing *Who should be eligible for youth diversion?*, discretion can help ensure flexibility, allowing diversion referrals to be made in all cases where it is suitable.¹⁸ However, the discretion youth diversion affords practitioners demands attention. Discretion can make the operation of youth diversion arbitrary, rather than principled, running counter to the ideals of justice and risking compliance with the system as a whole.

Checks and balances are therefore needed to ensure that referral decisions are robust and that discretion is not improperly used. These checks are key in securing trust, an important aspect of procedural fairness. Joint decision-making panels, drawing on the expertise of police and youth offending teams as well as other specialists from, for example, education and health, are increasingly used as a guard against autonomous frontline police discretion in referrals. In its aforementioned thematic inspection, HMIP listed 'joint decision making' as an indicator of good practice and praised the effective use of panels.¹⁹ The report especially commended the use of community volunteers on these panels for providing a 'degree of independent challenge, external scrutiny and public reassurance.' Decision-making panels can therefore facilitate bounded decision making, i.e. decision making within clearly set parameters, complete with sufficient discretion.

Practice insights

Timing and scrutiny

As our mapping survey demonstrated, there is little consistency among schemes when it comes to average referral times.²⁰ As a result children and victims in some areas could be waiting longer than others for their case to be dealt with. We suggest that no referral process should exceed 4 weeks.

Good Practice Examples

One scheme has structured their referral process to ensure that no referral takes longer than four weeks (most are resolved much sooner). They hold their joint decision panel once a week. Once a decision is made, YOT workers have 5 working days to contact the young person and their parent/carers. Where there is a delay in decision making, their aim is that the delay should not hold up interventions to prevent further offending. As a result, delays in decision-making do not exceed three weeks or three panels. Allowing for a speedy decision making process enables swift justice for the victim and keeps the integrity of the scheme.

Some schemes have included another layer of scrutiny: a staff member will act as 'gatekeeper' and will review all referrals for suitability. It is important that these gatekeepers are empowered not just to reject referrals deemed too high risk, but also those that do not meet the threshold.

Released under investigation

As outlined in *Valuing youth diversion: a toolkit for practitioners, the speed of referral is important, as diversion is more effective when it happens as soon as possible after arrest.*²¹ Following the changes introduced in the Policing and Crime Act 2017, large numbers of people suspected of committing a crime are now being 'released under investigation' (RUI), as opposed to releasing a suspect on bail.²²

Good Practice Example

To reduce the length of time a child is RUI, one police force has added a prefix to their records management system, which automatically highlight cases in red where the suspect is aged under 18, as it makes it easier for officers to pick out these cases from a list of incidents. Alongside this, the police have also reduced the timeframe for reviews by Sergeants; from the standard 28 days to 14 days for children. By ensuring these cases stand out and are reviewed more regularly, will mean cases involving children are prioritised and may be resolved more quickly (either to be NFA'd, referred to diversion or charged).

Evidence suggests that individuals placed on RUI are often unaware of the progress of their case or even whether the police are even actively investigating it.²³ Practitioners have highlighted the use of extended RUI, combined with postal requisition as a cause of delay and

as potentially disruptive to young people's rehabilitation.²⁴ Due to the impact of the uncertain and potentially lengthy experience of being placed on RUI on children and young people, NPCC guidance states in all cases where a youth is involved, the Custody Sergeant must liaise with the YOS prior to releasing on bail or RUI. Additionally, the investigating officer must ensure the victim, suspect and solicitor where applicable is provided with an update on the progress of the investigation.²⁵ As this is not always easy, given timescales and the increasing number of RUI cases for officers to investigate, embedding protocols to ensure the efficient referral of children into a scheme can make for quicker and more effective diversion.

The government review of pre-charge bail legislation in which the effectiveness of RUI is being evaluated ended in May 2020. The Youth Justice Board have put forward their views on the effectiveness of RUI for children and the introduction for new statutory review points for RUI investigations. We eagerly await the findings from the consultation and will update this briefing when it is available.

Young people's insights into being released under investigation

We spoke with young people from North East Lincolnshire and South London about their experiences with being released under investigation.

Young person from North East Lincolnshire

'It was really worrying and my anxiety levels definitely increased. I felt like I had a permanent sickly feeling in my stomach not knowing what was going to happen and constantly overthinking. I want to be a midwife so I was worried what would happen if it went to court and I got a criminal record and then couldn't get the job I want.'

'I was told I had been released under investigation but I didn't know what that meant. It was on the piece of paper I was given but I had no idea what it meant. It felt like if you make a mistake you are just left worrying and thinking that you are a criminal. I didn't have any reassurance from the solicitor either so I was totally clueless. The consultation with the solicitor was not face to face and the line was crackling so I couldn't hear properly. The whole process was really scary.'

Young person from South London

'Since being released under investigation I have noticed my anxiety levels have increased dramatically. Waiting for the feedback from the police station means I am constantly worrying about the potential outcomes. I have become more hesitant about thinking positively as I have no idea how or when I will be contacted about the case and as I have already been trying so hard to turn my life around it has made me feel like all the hard work was pointless.'

Young person from North East Lincolnshire

'I went into the Hub and saw [a police officer] because I didn't know what was happening and he explained stuff to me. I didn't have a solicitor when I was interviewed and they didn't tell me what would happen next. I was worried and felt guilty about what I had done and it made me stressed. It was 3 months before I knew what was going to happen. I'm good at keeping home stuff at home and school stuff at school so it didn't affect me at school but I was worried at home. It was horrible until I found out what was going to happen because I knew I had done something wrong and there was no way I could say it wasn't me and I thought I was going to go to court.'

Young person from North East Lincolnshire

'... I used to like the police before this but now I just feel like they're out to get me, I'm sound really but they treat me like I was this big criminal or something- they didn't even tell me I was getting arrested really -they didn't tell me what I did. They came to me and said they were going to take me home then the police from Grimsby came and just arrested me for suspicion. I was so confused.'

When asked about their release from police custody and whether they knew what was happening – 'I didn't have a clue, they didn't even contact me or anything, I was dead confused.'

Young person from South London

'I was 17 when I was under investigation is so stressful never knowing when it's going to be over you never know when you're going to get called I was under investigation for one year.'

In that time my bail condition meant I was not allowed to contact the other people involved even though we live next to each other.

Being under investigation made me paranoid made me question everything I had no information about how long the process was going to take and what it consists of I had no information until I was called back to the police station and nothing came from being under investigation the police took no further action.'

Concluding thoughts

The research around diversion points to the need for a speedy, straightforward referral process to better tackle recidivism, avoid the negative effects of labelling, and achieve administrative efficiency. The referral process should also be procedurally fair and include checks and balances on discretion. However, we understand that in practice, ensuring a speedy and effective referral process requires multiple agencies to work collaboratively and develop a quick and robust decision-making process for all partners involved. Our research and work with practitioners suggests that where this is not always practicable, having an agreed commitment from each partner agency that can be reviewed and refreshed has proven to be useful.

Unfortunately, as highlighted in our *Mapping youth diversion in England and Wales* briefing, lengthy referral periods are often cited by practitioners as the biggest challenge facing their youth diversion scheme.²⁶ Additionally, delays in the referral process has damaging effects on the young people involved, disrupting their rehabilitation and for some causing further issues with their education and mental health. These frustrations can lead to a distrust in the system and can lead to problems with engagement later in the process. If youth diversion is to deliver on its promises of better outcomes, work therefore needs to be done to speed up referral processes going forward.

Endnotes

1. For low-level offending, instead of being arrested, children and young people are increasingly being taken to a place of safety and undertaking a voluntary interview. As such, 'point of arrest' is not always meant literally, but rather indicates that a threshold of offending has been reached.
2. See, for example: Wilson, D, Brennan, I, Olaghery. (2018). 'Police-initiated diversion for youth to prevent future delinquent behaviour'. Campbell Systematic Reviews; Wilson H, Hoge R (2013). The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review. *Criminal Justice and Behavior*, 40(5), 497-518; and McAra, L, McVie, S (2010). 'Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime'. *Criminology and Criminal Justice* 10(2): 179-209.
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13. See, for example, Tyler, T. (2006) *Why People Obey the Law* (Princeton NJ, Princeton University Press).
14. Centre for Justice Innovation and Institute for Crime and Justice Policy Research (2020). Time to get it right: Enhancing problem-solving practice in the Youth Court. Available at: https://justiceinnovation.org/sites/default/files/media/documents/2020-06/time_to_get_it_right_final.pdf
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