



Storing Up Trouble Children in the Justice System: Are We Making Things Worse?

Tam Baillie
Scotland's Commissioner for Children
and Young People

Apex Scotland Annual Lecture

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**Previous Apex Scotland Annual Lectures
have been delivered by:**

7 September 2010

Baroness Vivien Stern CBE, Senior Research
Fellow at the International Centre for Prison
Studies King's College London

8 September 2009

Professor Fergus McNeill, Professor of Criminology
and Social Work, University of Glasgow

9 September 2008

Kenny MacAskill, the Cabinet Secretary
for Justice and Richard Jeffrey, The Prisons
Commission

11 September 2007

Professor Wesley Skogan, Institute for Policy
Research (IPR), Northwestern University, Illinois

12 September 2006

The Rt Hon Lord Cullen of Whitekirk

13 September 2005

Cathy Jamieson MSP, Justice Minister

15 September 2004

Duncan L Murray WS, President of the Law
Society of Scotland

16 September 2003

The First Minister, The Rt Hon Jack McConnell MSP

18 May 1998

Henry McLeish MP, Minister for Home Affairs and
Devolution, Scottish Office

Foreword

If we are to make any real impact on offending and re-offending numbers in Scotland, then the evidence points overwhelmingly to the need to address the numbers of young people starting out on an offending pathway. Evidence linking school exclusion with later life offending suggests we should be specifically targeting these young lives to challenge behaviour patterns which lead to crime, and so it was fitting that this year's Apex Scotland Lecture, delivered by Scotland's Commissioner for Children and Young People, Tam Baillie, was introduced by young people from our award winning Dunfermline High School Inclusion Unit. These pupils are an example of what the right interventions at the right time can deliver in terms of diverting young people from destructive behaviour patterns to become achievers with high aspirations and the ability to lead and mentor other students.

For those young people who become ensnared in criminal activity however, there remains the need for justice and corrective interventions. Scotland has a less than enviable reputation for having one of the lowest ages of criminal responsibility in Europe as well as disappointingly high numbers in custody and very worrying re-offending rates. In his lecture, Tam Baillie speaks passionately about the need for reform of children's justice systems in Scotland and the tragic consequences of failing to listen to the voices and opinions of young people when considering what will work and what will not. He presents a coherent and personal overview of some of the areas which most require change and, as always, Apex Scotland will look to this as a springboard for influencing opinion and helping to improve the lives of young people in the system.

Particular thanks are due to Mike McCarron, Apex Scotland Chairman, for his introductory remarks, to the pupils and teachers from Dunfermline High School for their brilliant introduction and representation of the school throughout the evening and to Chief Constable David Strang who summed up and gave a vote of thanks on the night. Thanks are also due to the Apex Scotland team at head office and to our colleagues at the Signet Library for their professional skill in making the event successful, and of course to Tam Baillie for agreeing to speak.

I hope you will enjoy reading the lecture which can also be picked up as a podcast on our website. (www.apexscotland.org.uk)

Introduction

I want to start by stating how privileged I feel to be Scotland's Commissioner for Children and Young People. I have spent over 30 years working with young people in some of the most vulnerable and traumatised circumstances and to have the opportunity to influence policy and practice – to influence the ability of them to realise their rights – is an honour that I feel deeply. And I feel privileged to be addressing this audience tonight at the Apex Lecture, because I believe that you share my ambitions to improve the lives of children and young people in Scotland, and many of you are in positions of influence to contribute to that process of change.

I will lay out my strategic approach, give you some examples of my experiences of working with children in the youth justice systems in Scotland and England and end with some prompts to our thinking of how we might improve on our current approach.

The UNCRC is the cornerstone of everything I do. It has been signed by the UK Government as a pledge to do the very best by our children and young people, by upholding the rights enshrined in the Convention. As such, the UK Government is subject to periodic review and I see the role of the Commissioner as part of the scrutiny landscape ensuring the UNCRC is implemented in Scotland. Other jurisdictions in the UK have Commissioners and collectively we report to the UN Committee with the next reporting cycle being 2014.

Increase participation and engagement

One of the key articles is Article 12, a child's right to have an opinion, for that opinion to be listened to and taken into account. I have spent the past 18 months seeking the views of as many children and young people as possible, which I did through my consultation, a RIGHT blether.

A RIGHT blether was an ambitious programme of engagement involving children and young people in identifying things that they valued – right brilliant things – as well as things that they felt should be changed – through a vote conducted in schools, youth clubs and social care settings.

I can now say that a RIGHT blether was the biggest consultation ever undertaken in Scotland because a massive 74,054 children and young people registered their views through the vote – and that will be used by me to inform my strategic plan over the next four years.

So, a RIGHT blether was my contribution to increasing participation and engagement and that approach will continue throughout my time in office. For instance on 12th September we will launch a creative conversation among 2–5 year olds and their parents/carers. We have called this one 'a right wee blether' – and we have already got over 40,000 sign-ups for this exercise.

Increase awareness and understanding of UNCRC

I believe that having a more wide spread awareness of the UNCRC and a better understanding of its Articles will encourage a better, more valued approach to children and young people, right the way through their childhood.

Think of the outrage that we all feel when children die at the hands of their parents or carers – we are disturbed by the actions of those who harm children and most often we demonise the parents. And then contrast that to the outraged reaction when children themselves commit dangerous acts that equally disturb us. It is the children themselves who become demonised. And yet – and particularly when it is younger children committing disturbing acts – most often, they are the children who managed to survive their traumatising early experiences and we too easily forget it.

The UNCRC is a reminder that we have obligations to children throughout the whole of their childhood – obligations that mean we need to value them and recognise their rights during this formative period regardless of their age, regardless of how disturbing their behaviour may be.

One of the results from a RIGHT blether was children and young people telling me that they wanted to be safe and respected in their communities and, in response, I am committing to promote respect and to challenge negative perceptions of children and young people.

So, awareness raising and understanding of UNCRC is a key strategic aim for me.

Promote and safeguard children's rights; I have a responsibility to promote and safeguard children's rights. For me, the best way to approach this is through the most vulnerable groups of children and young people in Scotland – a Scotland that has some very challenging figures in terms of our vulnerable population. For instance, we have an estimated 55,000 children and young people living with parents/carers who are misusing substances, an estimated 65,000 living with parents/carers who are misusing alcohol, and a previous estimate of 100,000 living in households where there is domestic abuse. The challenge is which vulnerabilities to focus upon to maximise the impact and this is an issue for my office.

The results from a RIGHT blether told us that children and young people wanted help to feel safe and secure in their homes. My response to that is to work to prevent child abuse and neglect, and to focus this on the issue of domestic abuse in particular. The results also told us that children and young people wanted to feel included no matter how different they all are, and my response to this is work to ensure that children with disabilities have the same life chances as their peers, because too often they don't.

This is my initial response because children and young people also told us that they meant this blether result to apply to all children and I will work with other groups to honour that wider interpretation. And when you are focusing on vulnerable children and young people, those who are looked after, those who are part of the children's hearing system, are among the most in need. Hence my continuing interest in bettering the position of looked after children and young people.

Overarching issues

However, even if we manage to improve on each of the three strategic aims, there are some overarching issues that will always thwart our ambitions to realise the rights of children and young people.

The first of these is the emerging issue of service cutbacks, which in the past has disproportionately affected services to children. History tells us that in times of stress or austerity it is our children and young people who suffer most, and in the current climate we need to safeguard against this occurring as we respond to the economic challenge.

The second overarching issue is child poverty as it is the most corrosive impact on children's well being, children's development, and ultimately children's capacity to enjoy their rights. In a RIGHT blether children told us that they wanted to have the same life chances regardless of how much money their families had. My response to this is to focus on the link between poverty and educational attainment, particularly those children from poor backgrounds who do well, and those schools that perform well despite the low socio-economic areas they serve.

The third overarching issue is the need to improve on our approach to the early years of a child's life.

The Scottish Government has done a good job in highlighting the evidence base for the impact of the early years experiences on a child's social, emotional and cognitive development, and indeed have made a strong case for the need to develop our services in this area. However, we need to be more assertive in making sure we really do develop the early years services and for that reason I welcome the commitment of Scottish Government to legislate in this area.

The Children's Hearing System

I had my first experience of the Children's Hearing system in 1979 when I worked in a service providing community supports to young people. I was inexperienced and I did not appreciate that the Children's Hearing System approach to support children and their families – to look at the whole situation of a child and not just focus on their troubled behaviour was far-sighted and ahead of its time. That is until I moved to work in England, where it became apparent to me some of the fundamental differences between the approaches in England and Scotland.

For instance, when I worked in Nottingham a young man I worked with – I will call him 'Darren' – received a custodial sentence in a Detention Centre. This was based in Oxford and his mother asked me if she could visit. Of course she could visit and I took her and Darren's younger brother to the Detention Centre. However, when we arrived we were confronted with a ten foot high fence topped with barbed wire, and when we went inside all of the inmates were dressed in blues – blue stripy shirts and blue trousers. This was Darren, a 14 year old lad, who had committed one too many shoplifting offences for the Juvenile Magistrates Court and it shocked me.

I moved to Liverpool and worked in the Bootle Juvenile Court. Indeed, I spent a lot of time in the court and it was clear that the English court process spent a great deal of time establishing whether a young person had committed an offence and a relatively short time trying to consider what to do as a result. In terms of proportion I would say, around 80/20 in favour of establishing guilt or not, whereas my experience

of the Scottish system was the reverse, around 80/20 in favour of considering what to do next.

And the final comparison is more recent. I have the privilege of meeting with Commissioners from Wales, Northern Ireland and England. We were considering a joint statement on youth justice in the UK and settled on urging Governments to adopt an approach that looked beyond the offence – that took an holistic approach – that considered the educational, health and family support needs of the child. I remarked that this was not such a radical call in Scotland as this was already there in terms of the Children's Hearing System. The other Commissioners recognised this and suggested that we could use the evidence base from the Scottish system to press home the case for change. My reaction was rather sheepish. We do not have a strong evidence base for better outcomes and indeed what evidence there is points to the tendency for net-widening and retaining young people in the system without improving their situation. I am thinking here of the Edinburgh Youth Transitions and Crime research which demonstrates that once children become part of the children's hearing system they remain within it and indeed when they become adults they move onto adult justice systems.

Challenges to the Children's Hearing System

The rather thin evidential base in terms of improved outcomes is not the only weakness in the Children's Hearing System. We have recently passed legislation updating and modernising the system which is still in the process of bedding in, yet there are some issues that remain to be resolved.

For instance, the Government has made significant progress in abolishing remands for under 16 year olds and for ensuring that those under 12 years of age do not appear in the adult court. However, the age of criminal responsibility still sits at 8 which is one of the lowest in Europe.

While this has to be set in the context of the approach of the hearing system, and there will be a decoupling of the link with most offences and retention of information under the Rehabilitation of Offenders legislation, it does seem a missed opportunity to raise the minimum age of criminal responsibility and will continue to be a point of criticism and weakness in our system.

An attempt has been made to increase the authority of the panel decisions to be implemented by transferring accountability powers from the Principal Reporter to the newly established role for the National Convenor of the Children's Hearing System – a move which I welcome. However, it remains to be seen how this power will be exercised, particularly when there is much to work out in terms of the role of local support agencies in executing panel decisions.

And it is notable that throughout the passage of the legislation there was little or no debate around the issue of our handling of 16/17 year olds.

It is worth remembering that there are general issues in relation to 16/17 year olds as well as those specific to the hearing system. We have many fractures in our systems when it comes to 16/17 year olds. It is a time when young people at varying stages are moving from child focused services to adult focused services. For instance, they can leave school and enter any number of pathways into further education, training or employment – or more frequently nowadays, unemployment. It is a time when mental health services transfer from CAMHS to adult based provision, although with no consistency of the actual age around the country. And some of our variously pitched age related laws start to kick in, including the interaction of the youth justice system and the adult justice system.

In terms of the UNCRC, it is quite clear that 16/17 year olds are covered and have the same rights as other children. That includes the justice system, which leads to criticisms from the Committee about children tried in adult court and held in custody centres with adult offenders – and

both of these appeared in the last Concluding Observations.

The Children's Hearing System and 16/17 year olds

I want to tell you some stories that illustrate my experience of the Children's Hearing System and 16/17 year olds and help shape my response to the issues it throws up.

I spent time working on the streets of Glasgow city centre contacting vulnerable young people who found themselves there and trying to plug them back into systems from which they had become detached. We worked with a young woman, aged 17 years – I will call her 'Angie'.

Angie had been in care, returned home and it had broken down. She was now in Glasgow city centre, on the fringes of sexual exploitation (and quickly sucked in) and associating with injecting drug users (and Angie soon developed her own habit). Angie was still on supervision which had been kept since she left care and we were in contact with the home social work team; they were prepared to work through us with Angie as we tried to improve her situation.

We encouraged the supervision order to remain as we felt it tied in the continuing social work support. However, Angie's situation was difficult and she picked up charges which prompted a hearing as well as an annual review of the supervision order. As a result of the hearing, Angie was placed in secure accommodation. I visited Angie in secure accommodation and her first words were:

*'You and your f***ing panels – I could have got a 28 day lie in and been out. In here I don't know when I will get out.'*

Now I am not telling this to be critical of the panel decision, but this made me thoughtful about the hearing system and how it dealt with 16/17 year olds. What I sensed was an ambivalence in terms of the issues and challenges it would face if it routinely dealt with all 16/17 year olds. It is more than just an issue of resources, it is also about the approach.

In 1986 I opened the first direct access homeless hostel for 16–21 year olds in Glasgow – it was built as an emergency provision with a maximum 10 week stay. At that time Glasgow had progressive policies for homeless young people and Stopover was the jewel in the crown. In fact Glasgow's policies were so good that neighbouring local authorities would sometimes send their homeless young people to Glasgow. Stopover was well thought of and we received 7 to 8 times the number of referrals than we could accommodate and we were always full. One of the characteristics of the referrals and residents was that 50% of them had been in care. Last year I was asked to speak at the launch of the National Residential Child Care Initiative. As preparation, I contacted Stopover and asked them what percentage of residents came from care – the answer was 50%. So, in almost 25 years, little has changed. In the same period, the average age of young adults leaving home has increased so that it is now sitting in the mid-twenties and rising. This begs the question, what are we doing with, arguably, our most vulnerable young people when we move them on at such a tender age into such uncertain circumstances?

Finally, I was recently called to give evidence to the Public Audit Committee to assist them with their consideration of the Audit Scotland report on expenditure on residential care for children and young people. The report was critical of the fact that local authorities could not demonstrate value for money because they did not have the information, and that which did exist indicated that outcomes for children and young people from care were generally poor. One of the main criticisms of the report was that local authorities spent around £250m on residential care but could not demonstrate value for money because they just did not have the information required to do so. The thing that struck me was the annex to the report where it listed 29 relevant reports produced in recent years on the issues for young people in and leaving care – if you include the Audit Scotland report, that makes 30 reports. My observation is that while we are not lacking in reports and rhetoric, we certainly seem to be lacking in real action that will change things.

So we have a situation where we have a Children's Hearing System that has the basis of an approach of which many of us are proud yet, despite recent reforms, still has some significant flaws and in my view we have to look in particular at the outcomes for young people who are part of the system.

Before I go on to prompt your thoughts on some of the things I think should be addressed, I want to give you some further confirmation of what I am getting at.

In the promotion of a RIGHT blether, I visited Cornton Vale Prison for women and Polmont Young Offenders Institution for young men – twice for Polmont. On each occasion I gave the young people a brief overview of my role and mentioned the age range of my responsibilities – this is all children aged up to 18 years and for those who have been in care it is up to 21 years. I asked those present, who were all aged up to 21 years, how many of them had been in care – there was a forest of hands. I didn't count them but the evidence tells us that between 45% and 70% of our young people in Young Offenders Institutions have been in care depending on what survey you look at. Incidentally, the reason we use such estimates is that we have to rely on ad hoc surveys although I understand that Scottish Prison Service is considering more routine monitoring of this information.

So we have a prison population for young people, predominately populated by young people from care – our care system which is meant to care for our young people, yet in too many instances it is propelling them into custody, and it is this issue that I want to address my recommendations for consideration.

Recommendations

I believe that we need to reconsider our use of custody for 16/17 year olds. There are some interesting things happening at the same time. There are encouraging signs where areas have adopted a Whole Systems Approach that have had a significant impact on the response to 16/17 year olds, reducing recidivism and indeed reducing the use of custody. The overall prison

figures have reduced for the first time in years so it is too early to say if it is a blip or not, and the main reason for the dip is the number of 16/17 year olds on sentence and remand. The more widespread adoption of this approach could potentially yield rewards in sustained reduction in the use of custody. However, as I say, it is too early to consider this as a trend. Yet I believe that as long as we have custodial options, we will continue to have 16/17 year olds in custody, even if in reduced numbers.

I recently looked at the custody figures for 16/17 year olds. On the day I looked there were 7 young women aged 16/17 years in custody. At the same time, we had 7 vacancies in our secure estate. Now, I am not for a minute suggesting that we should have transferred the young women from custody into secure accommodation, but I am certainly asking you to think about the link between the two and to consider why we have two systems for essentially the same young people and, as I have outlined, young people who in many instances have previously been in care.

Of course there are some very challenging issues within the secure estate, not least of which is the very heavy burden of crippling overheads, in many instances because of the capital costs on some of our newer units. But the key message here is a challenge to our notion that we should be using custody for 16/17 year olds. I believe that with the combination of Whole Systems Approach, the use of secure accommodation in those instances where the public need to be protected, we can deal with our 16/17 year olds in a more fitting manner, a more rights based approach – and my recommendation to you is to actively work towards the cessation of the use of custody for 16/17 year olds.

This provides a link to my second recommendation which concerns the interaction of the Children's Hearing System and the adult court system. In my view, despite the shortcomings of the Children's Hearing System, the fundamental approach in considering the whole person and responding to these is the best – the only way – to develop effective interventions and responses.

We have starkly contrasting systems in the Children's Hearing System and the Criminal Justice System and it comes into sharp focus with our 16/17 year olds. The McLeish Commission into the use of prisons identified this and recommended that we should consider the introduction of Youth Hearings – not an extension of the Children's Hearing system, but a Youth Hearing System with additional options for disposal to that of the Children's Hearing System.

We did briefly flirt with Youth Courts for 16/17 year olds but have stepped back from a national roll out. The Commission did not really expand on how this Youth Hearing System would operate and it has not been adopted into our practice. I would want to go further than a suggestion of a Youth Hearing System for 16/17 year olds and suggest that we should consider this approach for a wider age group up to the age of 21 years.

I am suggesting that if we are to tackle our issues in respect of long term recidivist behaviour we need to seriously consider the approach we take for those in transition into adulthood, those who are at the peak of their offending behaviour, and ask ourselves if we have the right approach, if there are lessons we can learn from the fundamental approach of the Children's Hearing System. I believe there are and I suggest we should consider this as part of a reform programme for young offenders.

Finally, I want us to consider the position with regard to those young people leaving care. I have already highlighted that they are a significant proportion of our young prison population and that we have been responsible for maintaining them in the child focused systems and moving them onto the adult focused systems.

Despite developments in providing better after care services we still have consistently poor outcomes for children leaving care. Yet the reason they came into care in the first place was because we, the state, assessed that we could do a better job than for the young people to remain at home. In my view, one of the key issues is the age that young people leave care it is far too young. Young people leave care at

age 16, 17 or if they are lucky, 18 years of age, and a small proportion leave beyond this. Yet compare this to the average age of young people leaving home. As I stated earlier, at the last count, young people leave home in their mid twenties and in the current economic climate it is likely to rise further. So we have to ask ourselves why young people from care – our most vulnerable population – why do we expect our young people to leave care at such an early age when young people leave home much later? I know there are push and pull factors – the push factors being a culture of expectation that young people move on from care at these tender ages, and the pull factors being that young people often want to move on because of the restrictions in their living arrangements in care and they simply do not want to be there. I believe we need to be much more assertive with regard to the age at which young people leave care, we need to aim to keep young people in an age appropriate setting, much like we strive to do with our own children as they grow up.

I want to leave you with one last story – I was out shopping with my daughter and we were packing our bags. It was a large supermarket and there were loads of checkouts. A man and a woman came into the shop and were walking purposefully along the line of checkouts. My eye was caught by the man who had a badly scarred face. I caught myself staring at him as we packed the bags and the woman caught me looking at her partner. She stopped by our aisle and approached me – came right up to me, by which time I was quite apprehensive. She stuck out her hand and said “You’re Tam”. I nervously replied “Yes” She said “I’m Angie” I said “I’m glad you are still alive”. Angie then proceeded to tell me how her life had panned out in the intervening 10 years since we last had contact. Essentially she had been in and out of prison and was awaiting word on further charges and expected to spend another period in custody.

Angie was still the same spirited person I knew previously, still resilient in the face of her lifestyle, yet I couldn’t help wondering how we could have better assisted Angie to avoid the wastefulness

of her bouncing in and out of custody.

Many of you will be familiar with this story in your own work and I believe that we can improve our systems. I believe we can improve it for the young people with whom we work and together I believe we can change things – and hopefully I have given you food for thought about how we might go about doing just that.

Apex Scotland's Annual Lecture 2011 is also available to view on our website.

www.apexscotland.org.uk/video.html



Apex Scotland
9 Great Stuart Street
Edinburgh EH3 7TP
Tel: 0131 220 0130
Fax: 0131 220 6796

Email: admin@apexscotland.org.uk

www.apexscotland.org.uk



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