



# Punishing Disadvantage

*a profile of children in custody*

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## Foreword

Twenty years ago I led a research project to establish how many, and who, were the children deprived of their liberty within the five jurisdictions of the United Kingdom and Republic of Ireland. Shortly after publication of the research findings, entitled *Children in Custody*, I left academia to become director of social services for Leeds, the second largest metropolitan authority in England. In order to be true to myself and to the research findings, I decided that the local authority, which had a statutory duty to protect and promote the welfare of children, should do everything possible to ensure children were not sent to prison, given that all the research indicated imprisonment was detrimental to children's well being and development.

Custodial remand was an obvious place to intervene then – and remains so today, in view of the substantial number of children in this research sample imprisoned on remand that went on to receive community sentences. As was also evident from my research, many children are still being remanded for reasons which are unrelated to their alleged offences, including, for example, where they have no fixed abode, or are deemed likely to abscond. In circumstances such as these, the local authority should be accommodating and supervising the child, thereby negating the need for custody, as per their statutory duty to protect and promote child welfare.

Although legally and morally responsible, my policy of doing everything possible to ensure children were not imprisoned was not popular with magistrates and I was invited to explain it to members of what was then called the juvenile bench. Having explained the research findings and my position, one magistrate retorted: 'You refer to these youths as children, but they are not, some are six feet tall and weigh 13 stone', to which my immediate, and perhaps unhelpful, response was that perhaps we ought to sentence by height and weight in future. Age is important in sentencing given that it is intellectual and emotional maturity, rather than physical development, which are required to understand abstract concepts of property, law and punishment. Given children's ongoing development of intellectual and emotional maturity, it is crucial that the legal system protects those under the age of 18 from the full panoply of punishment. But does it?

In terms of overall numbers there is no doubt England and Wales has become more punitive: in 1985 a daily census showed 1,438 children in prison or secure accommodation - by 2008, the average child prison population had risen to 2,926, though differences in methodology make direct comparison impossible. As was the case in 1985, most of these children exhibit multiple indicators of deprivation and are among the most vulnerable in our society. In 1985, 73% of the children in penal institutions had previously been removed from their families. In 2008 56% are known to have experienced at least one period of time in local authority care; have had their name on the child protection register; or other referrals/contacts with social services. It is an irony that a child may spend a number of years on the child protection register being 'protected' by the local authority and yet, at the vulnerable age of 14 or 15, end up in prison.

The vulnerability of many of the children in this report is highlighted by two key features, the first, and saddest of which, is 'bereavement' - 12% of the children in this sample were known to have lost a parent and/or sibling. What are these bereft children to make of a society which punishes their anger at bereavement by punitive incarceration? Do we really expect a short term detention and training order to help them come to terms with their loss and develop into mature adults?

The second feature is alcohol abuse, which not only figures as a common causal factor in much of the offending that leads to custody, but also in the family backgrounds of many of these children. As is evident from a number of the children's stories which have been highlighted in this report, parental alcohol abuse, allied with domestic violence, is often modelled by children with their own alcohol consumption and violence.

The most disturbing finding from this study has been the development since my research of a 'fast track' into custody for breach – as this study shows, breach accounted for around one fifth of the primary offences for which children in this sample were sentenced to custody, with breach offences making up around three fifths of the non-violent, less serious offences for which children received custodial sentences in the latter half of 2008. Throughout the 1980s, I and others argued there were inherent dangers of net-widening within the expansion of non-custodial sentences and early intervention. This study illustrates that the tenor of our concern has come to pass, with children sentenced to custody for breaching anti-social behaviour orders and, even more alarmingly, imprisoned on remand where failure to engage with the youth offending service is used as a rationale for refusing bail.

Over the past 25 years, a period during which the current leaders of the coalition government have progressed from school to the front benches, other children have been less fortunate, and the use of custody for these neglected, deprived and sad children has grown. Government would do well to consider the three principles outlined in this report:

1. In the absence of strict criteria on the meaning of last resort, there will always be an unavoidable subjectivity to decisions about the custody threshold.
2. Deterrence is ineffective when dealing with children whose life to-date has been characterised by abuse and punishment. The lessons they learn will not be those the state intends.
3. The best way to reduce the use of imprisonment is to lengthen the road to the prison gates.

We are currently being exhorted by the coalition government to propose ideas to reduce wasteful public expenditure. Let us start here, by reducing the inappropriate use of custody, and stop this waste of public money and children's lives.



Norman Tutt

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## Summary

At any given time, between 2,000 and 3,000 children aged 10 to 17 are likely to be in custody, either under sentence or on remand, in England and Wales. This study has asked: who are these children, and why and how do they come to be in custody?

In order to answer these questions, we carried out a two-stage review of the information on children in custody that is held centrally by the Youth Justice Board (YJB). First, we undertook a census of all children who received custodial sentences or custodial remands in the second half of 2008, who numbered approximately 6,000 in total. Secondly, we looked in more detail at the backgrounds and current circumstances of 300 of these children (200 sentenced and 100 remanded), who were randomly selected from the full population. We were thus able to produce a broad profile of all children who entered custody, and a detailed profile of 300 of them, from July to December 2008. No survey on this scale has been conducted in the last twenty five years, and as such, the study is a significant addition to our understanding of youth custody.

### *Key findings*

Around three-fifths of all children sentenced to custody in the latter half of 2008 were convicted of offences that usually result in non-custodial sentences, and thus were at the less serious end of the spectrum of offending. Around half of the children were imprisoned for crimes that were non-violent. Just over one-third (35%) were imprisoned for offences that were both less serious and non-violent. No more than about one-fifth of sentenced children (based on our analysis of 200 randomly selected cases) were assessed as posing a 'high' or 'very high' risk of causing serious harm to others. And there were concerns about the vulnerability in custody of almost half of the children in our sample of 200.

Around a fifth of sentenced children had been imprisoned for breaching conditions of community sentences, of asbos, of licences following earlier release from custody or for failing to surrender to bail. Thus breaches constitute a significant factor in shaping the size of the population of children in prison.

Most of the children who were sentenced to custody were repeat offenders – and it is the persistence of their offending, rather than the seriousness of the specific offences for which they were sentenced, which would seem to explain the use of custody in many or most instances. About three-fifths of all children who received custody in the second half of 2008 had had previous periods in custody, either under sentence or on remand. About 30% were sentenced for two or more offences when they received the current custodial sentence. Of the 200 children in our sample of sentenced children, the previous offending of 70% of them is such that they could be described as 'persistent offenders', in accordance with the government's 'procedural definition' of persistence. A further 24% had previous convictions,

but because of missing data we cannot say if they should be described as 'persistent'. Only 6% of the sample had no previous convictions. Almost half of the children with previous convictions had their first conviction at the age of 13 or younger.

Concerns are often raised about how decisions to remand children in custody are arrived at, and our data did not permit much more clarity here. In most cases no reasons were recorded by the youth offending team for the refusal of bail; where reasons were cited, lack of stable accommodation in the community and substance misuse problems featured in several cases – neither of which falls within the main statutory criteria for custodial remand.

Many previous studies have found that there are high levels of disadvantage among children who enter the youth justice system, and our research findings strongly reinforce this message. We conducted a detailed analysis of the types of disadvantage experienced by the sample of 200 sentenced children. The analysis was hindered by incomplete data; nevertheless, the results make it clear that these children experience multiple layers of different types of complex disadvantage. For the vast majority of the 200 children, there is evidence of disadvantage both in terms of home and family and in terms of psycho-social and educational problems.

For example, around three-quarters of the sample of 200 children are known to have had absent fathers; around half to live in a deprived household and/or unsuitable accommodation; and just under half to have run away or absconded at some point in their lives. Two-fifths are known to have been on the child protection register and/or experienced abuse or neglect; one third to have had an absent mother; and more than a quarter to have witnessed domestic violence, with a similar proportion having had experience of local authority care. In addition, the home environment of many of these children is evidently extremely difficult; and criminality and/or substance misuse among members of the immediate and extended family is common. It is clear, also, that bereavement is a particularly significant feature of the lives of a considerable number of the children in the sample. 20% of the sample is known to have harmed themselves, and 11% to have attempted suicide. Another common aspect of their lives is disrupted education with, for example, over half known to have truanted or regularly failed to attend school for other reasons, and around half to have been excluded from school.

### *Conclusions*

By law, custody should be reserved for those children whose offending is so serious that no other sentence can be justified, and hence should be the sentence of 'last resort'. Our findings suggest, however, that in practice a great many children are being sentenced to custody for offences that are not in themselves very serious. In these cases, it is likely that the children have prior convictions, which are (in accordance with the law), taken into account by the courts when sentencing. While the use of custody for repeat, less serious offending is lawful, and it is clear that offending of this kind can cause real harm or be extremely difficult to deal with, it does not follow from this that custody is an effective or appropriate response.

The principal aim of the youth justice system is defined, in statute, as the prevention of offending by children. It is doubtful that the use of custody to punish children who offend – although unavoidable in some circumstances – contributes much to the achievement of this aim. The high level of correlation between offending behaviour by children and multiple disadvantage suggests that the prevention of offending depends, at least in part, on effective action to tackle these children's deep-rooted and complex needs. In other words, a justice system that puts more emphasis on addressing welfare and less emphasis on punitive responses is likely to achieve better results in terms of reducing offending and reoffending. Such an approach would, moreover, comply with the statutory obligation on the courts to 'have regard to the welfare' of the children who appear before them.

Placing children's welfare at the heart of efforts to tackle their offending does not mean overlooking or minimising the difficulties and harm that these children's behaviour causes. Ensuring that children understand and take responsibility for their wrongdoing, and make amends wherever possible, can and should be an integral part of a welfare-based approach to offending. This is an approach, therefore, that recognises just how troublesome is the behaviour of most children who are sentenced to custody, whilst also recognising that these children are themselves very troubled.

### *Policy implications and recommendations*

The broad context of this study is a jurisdiction which has a strongly punitive approach to dealing with children who break the law. A punitive approach to youth justice has developed in Britain in tandem with political rhetoric about the threats posed by children who are said to be beyond the control of their families, schools and communities; rhetoric which both reflects and reinforces public anxiety about offending and anti-social behaviour perpetrated by the youngest members of our society.

However, the current time presents opportunities for reform of the youth justice system and the development of a more progressive approach to misbehaviour and offending by children. The coalition government proposes to undertake a review of sentencing and has pledged to introduce a 'rehabilitation revolution' to reduce reoffending. Recognition of the ineffectiveness of short custodial sentences, allied with the urgent need to cut public spending on prisons, has produced a political climate in which the development of better and wider alternatives to custody, for children and adults alike, is seen as important and necessary.

In developing recommendations we have been guided by three principles. The first is that there is an unavoidable subjectivity to decisions about the custody threshold and the point at which the penalty of last resort should be deployed. In assessing whether the youth justice system in England and Wales has struck the right balance, it is worth remembering that our system is an outlier, compared to other European systems – being readier to send children to prison, and to send children to prison at an earlier age, than most of our European neighbours. At 10 years, the age of criminal responsibility in England and Wales is lower than in almost all other European countries. More children are locked up – on remand or under sentence – here than in most other countries in Europe. This does not necessarily mean that

this country has struck the wrong balance, of course, but it should give our politicians pause for thought.

Secondly, we think it important to recognise that principles of deterrence are unlikely to prove an effective strategy in dealing with very disadvantaged children with patterns of persistent offending. We appreciate that there may be a role for deterrent sentencing for some children who find themselves in trouble with the law, but imprisonment is very unlikely indeed to prove effective for those disadvantaged children who have a lifetime of resistance to deterrent threat behind them. The welfare of these children should be the primary factor that is taken into account in sentencing decisions.

Finally, at a tactical level, we think that the best way to reduce the use of imprisonment for children is to 'lengthen the road' down which children have to travel in the court process before they reach the sentence of last resort. The Crime and Disorder Act 1998 intentionally reduced the length of this road, by eliminating multiple police warnings for minor offences. The unintended costs of this tactic were high, drawing children into the youth justice process more rapidly than was necessary, often for very minor offences.

Our recommendations for policy development are as follows:

1. In recognition of the high levels of disadvantage experienced by children in the youth justice system and evidence of damage in earlier childhood, health, social and children's services should engage with vulnerable families at the earliest possible stage to prevent or reduce such damage.
2. A welfare-based approach to offending by children should be developed. There are three dimensions to such an approach:
  - a) The age of criminal responsibility should be raised to at least the European norm of 14. This would have the effect of removing all children under the age of 14 from the remit of formal youth justice.
  - b) Wrongdoing by these children would be addressed through non-criminal justice agencies; welfare agencies must ensure that this group receives the health and social care provision they require for their welfare to be safeguarded.
  - c) For children above the new age of criminal responsibility, referral to appropriate health and social care services should take place alongside formal prosecution, where prosecution is appropriate and in the public interest.
3. There needs to be an unequivocal legislative statement of the purposes of sentencing for those under 18 that limits the use of deterrent strategies for children with patterns of very persistent offending, whilst meeting the objections that were raised to Section 9 of the Criminal Justice and Immigration Act 2008.

4. Building on the Sentencing Guidelines Council guideline on Sentencing Youths, the Sentencing Council needs to formulate guidelines about the custody threshold for children that restricts further the use of imprisonment for children, and genuinely limits the use of custody to the most serious offences. This will require clarification of the role of previous convictions in aggravating the offence under sentence. For example, custody for persistent non-serious offenders could be ruled out by defining 'last resort' solely in terms of offence seriousness, so that it is no longer understood as meaning 'the court has run out of other options'. Monitoring of sentencing practice should be undertaken to ensure that the custody threshold is consistently applied.
5. As part of the redefinition and clarification of the custody threshold, narrower criteria should be established for the imposition of custody for breach offences. Imprisoning children for technical breach, where this has not been accompanied by further offending, is inappropriate and other options should be developed.
6. The use of custodial remands for children should be minimised. This might involve, on the one hand, primary legislation to make it clear that more restrictive criteria are required for remand decisions in relation to children than those that apply to adult offenders. On the other hand, legislative reform will need to be accompanied by clearer guidance for courts on the criteria for remand and monitoring of remand decision-making.
7. The Asset assessment process should be thoroughly revised, with a view to developing a comprehensive assessment tool which encompasses screening for mental health problems, learning disabilities and speech, language and communication needs. Effective systems for referral and further assessment and support should be incorporated in the process.
8. Appropriate training, supervision and monitoring of staff responsible for assessment is vital to ensure that the system is properly implemented. What is needed is not simply a set of procedures to ensure effective compliance with assessment processes, but effective leadership that conveys to the workforce that proper assessment is critically important to their work.
9. The Home Office, the Ministry of Justice (MoJ) and the Youth Justice Board (YJB) need to explore new ways of 'lengthening the road' that leads to custody, for example by developing more flexible arrangements for police warnings and pre-court diversion.



## 1 Introduction

Children in custody: who are they and what are their backgrounds? What is the nature of their offending? While newspaper headlines may leave the impression that children are out of control and youth crime is rising sharply, crime statistics do not bear this out.

In England and Wales, the population of children in custody grew rapidly over the course of the 1990s and early part of the next decade. There are many factors underlying this growth in the use of custody for children (that is, those aged 10 to 17).<sup>1</sup> These include tougher sentencing and a process of ‘net-widening’, whereby ever-greater proportions of misdemeanours are dealt with through the formal youth justice system, rather than a surge in offending by children. While around 4,000 custodial sentences for children were passed in the year 1992, the equivalent figure for 2002 was 7,500. In addressing wrongdoing by children, England and Wales is more inclined than its European partners to deploy the formal criminal justice system. A disproportionate part of the Youth Justice Board budget in this jurisdiction – around £300 million or approaching two-thirds of the total budget – is spent on the secure estate (YJB 2010a).

While the general picture, since the early 1990s, is of an increasingly punitive youth justice system in England and Wales, the child custody figures have shown a consistent downward trend since mid-2008. The total number of children in custody – including both sentenced and remanded children – peaked at 3,175 in October 2002; in contrast, the latest child custody figure, released by the YJB in June 2010, is 2,173.<sup>2</sup> The downward trend in child custody may be explained, at least partially, by a degree of policy shift within the youth justice system, involving attempts to expand and strengthen preventative and diversion work and develop more flexible community sentencing.

The age of criminal responsibility in England and Wales – 10 years – is considerably younger than in most other jurisdictions. It compares to, for example, 12 years in Canada and the Netherlands, 13 years in France, 14 years in Germany and New Zealand and 15 years in Japan, Sweden, Norway and Italy.

Inevitably, politicians – at least when in power – take the position that sending children to prison is always a remedy of last resort and that, however regrettable, there is little option but to imprison the minority of children whose offending attracts custodial sentences. They argue that imprisonment is unavoidable either because of the severity of the offence or the need to protect the public. Their critics argue that they are locking up more and more children for less serious offences and thereby incurring high costs to the public purse and perpetuating a cycle of crime. To date, it has been difficult to test these arguments, since there has been surprisingly little information in the public domain about the profile of imprisoned children. This report is intended to help fill this gap in knowledge and understanding.

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1. In accordance with the United Nations Convention on the Rights of the Child, we define as ‘children’ all individuals under the age of 18 years.  
2. <http://www.yjb.gov.uk/en-gb/yjs/Custody/Custodyfigures/>

## 1.1 Children in prison: the statistics in brief

A total of 6,720 custodial sentences were passed on children aged between 10 and 17 in 2008/09. These disposals amounted to 6% of all sentences received by children. Community sentences accounted for 35% of all sentences, and first-tier disposals (such as fines, discharges and referral orders) for the remaining 59%. Over the course of the same year, the courts imposed 5,504 custodial remands on children (YJB, 2010b). The most recent reoffending rates show that nearly three-quarters of children who are imprisoned reoffend within a year of release (Ministry of Justice, 2010).

### Box 1.1: The secure estate for children

#### *Secure children's homes (SCHs)*

These are run by local authority social services departments, overseen by the Department of Health and the Department for Education. SCHs generally accommodate girls aged 12-16, boys aged 12-14, and boys assessed as 'vulnerable' aged 15-16, who have been sentenced to custody or remanded to secure accommodation. They can also be used as secure accommodation for children solely on welfare grounds. They have a high ratio of staff to children and tend to be small facilities, ranging in size from six to 40 places.

#### *Secure training centres (STCs)*

STCs are provided by private contractors commissioned by the Ministry of Justice and are for vulnerable children up to 17 years who have been sentenced to custody or remanded to secure accommodation. They differ from YOIs in that they have a higher staff-to-young offender ratio (three staff to eight children) and are smaller in size, ranging from 50 to 80 places.

#### *Young offender institutions (YOIs)*

YOIs are run by the Prison Service and the private sector and accommodate 15-18 year olds who have received custodial sentences or have been remanded to custody (separate YOIs accommodate young people up to the age of 21). They each house from 200 to over 800 children and young people and have a lower ratio of staff to children than either STCs or SCHs. YOIs are considered to be inappropriate accommodation for more vulnerable children.

The secure estate for children comprises 13 young offender institutions (YOIs); four secure training centres (STCs) and 10 secure children's homes (SCHs) (see Box 1.1). The average stay in the secure estate (for children under sentence) is four months, and the annual throughput is around 9,000, including remands. In 2008/09, the average population of children in custody was 605 on remand and 2,276 under sentence, producing an average total of 2,881<sup>3</sup> children in the secure estate (YJB, 2010b).

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3. 3,049 if young people aged 18 are included



## 1.2 What we know about children in trouble with the law

Children in trouble with the law, like their adult counterparts, face a range of social and health problems including: troubled or disrupted family life, poor educational attainment or learning difficulties and often mental health and substance misuse problems. Here we summarise some key research findings about this group.

### *Family life*

Unstable family life is a common feature in the biographies of children in trouble with the law. For example, almost two thirds of 301 children and young people aged 13-18, surveyed in custody and in the community, came from 'split' families (Harrington and Bailey, 2005). Focusing on 100 children who were persistent offenders, another study found higher than average levels of loss, bereavement, abuse and violence experienced within the family, with for example, half being the victims of 'recorded' abuse (Arnull et al, 2005). This family breakdown is most clearly illustrated by the high numbers of children who offend who have been under the supervision of social services.

### *Care status and offending*

A large minority of children who offend have been in care at some point in their lives. For example, a survey of adult prisoners found that nearly one third (32%) had been taken into care as a child (Social Exclusion Unit, 2002). Arnull et al (2007), in a review of 257 Asset forms, reported 24% had been accommodated by the local authority via voluntary agreement with parents, 10% had been subject to a care order, and 20% had been on the child protection register. They also noted that significant missing data would suggest these figures were under-estimates. Among those children who were persistent offenders, 38% had been accommodated by social services at some point compared to 0.5% of the general population (Arnull et al 2005). Hazel et al (2002), in their review of 336 children serving custody, reported that 41% had been in care and 17% were on the child protection register. A study, reviewing 214 Asset forms completed for 12-14 year olds sentenced to custody, found 22% had been living in care at the time of arrest and 6% were on the child protection register (Glover and Hibbert, 2009).

Surveys of children in the secure estate (15-18 years) conducted by HM Inspectorate of Prisons (HMIP), consistently show that high proportions have care histories. For example, in the most recent survey of 1,046 boys and 54 girls, 24% of boys and 49% of girls said they had been in care (Tye, 2009). Studies of 'looked after children' show their disproportionate representation in the criminal justice system; they have over twice the level of detected offending than all children in a similar age range (Department for Children, Schools and Families, 2009).

### *Educational difficulties*

Employment, education and training remain central concerns for rehabilitation and reducing reoffending. Low educational attainment and learning difficulties are serious problems amongst children in trouble with the law. Baker (2003) in her analysis of over 2,500 Asset forms found that 27% had difficulties with literacy and numeracy and 25% had special educational needs;<sup>4</sup> 15% had a statement of special educational needs. A review of approximately 4,000 Asset forms, conducted by the YJB in 2004, reported similar findings. A quarter of the children were found to have special educational needs and 29% difficulties with literacy and numeracy. Glover and Hibbert (2009), focusing on 12-14 year olds, found that 11% of their sample were attending special schools at the time of their arrest and 16% had a 'statement'.

Harrington and Bailey (2005) assessed the IQ level of 301 children and young people in trouble with the law (in custody and in the community) aged between 13-18 years. Over half (59%) were found to have a low (36% = 70-79) or extremely low (23%, under 70) IQ. In addition, skills assessment conducted at entry to custody has also shown poor levels of attainment for age; of 5,963 boys entering prison, 31% had the literacy level, and 38% the numeracy level, expected of a seven year old (HMIP, 2002).

A number of additional indicators, including lack of qualifications, truancy levels and school exclusion show a general lack of engagement with education. Tye (2009) in the survey of over 1,000 children from across the secure estate found that 69% of boys had truanted at some point and 88% had been excluded from school. The equivalent figures for girls were 83% and 89%. The various reviews of Asset show over 40% were regularly absent from school (Baker, 2003; YJB, 2006).

### *Drugs and alcohol*

Children in custody have disproportionately high levels of substance use. In a study of over 500 boys and girls aged 12-17 from across the secure estate (using face-to-face and self-complete interviews), consumption of tobacco, alcohol and drugs far exceeded the average for the general population (YJB, 2004). They were over three times more likely to be regular smokers, drinkers and users of illegal drugs than the general population. Over three-quarters (76%) had been regular smokers by the age of 15, 74% drunk alcohol more than once per week and the large majority (88%) exceeded recommended daily units on any one drinking occasion. The most commonly used illegal drug was cannabis (72%). However, 11% reported daily use of heroin, 12% of cocaine and 13% of crack prior to custody, and over one third (35%) reported drug use in prison (YJB, 2004). Girls were more likely than boys to report having used heroin (22% vs 10%) and crack (33% vs 18%) and to have been dependent on drugs (49% vs 35%) (YJB, 2004).

Establishing the direction of the causal link between drug use and crime is complex. A large minority (45%) of 12-17 year olds in the YJB study (2004) said they started committing crimes before starting to use drugs or alcohol. However, crimes were often committed under the influence of substances, and money gained from crime was being used to buy alcohol or drugs.

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4. A statement from the Local Education Authority outlining a child's special educational needs and based on a formal assessment of need carried out according to set procedures laid down by law.

### *Physical and mental health*

The physical health of children in custody is 'significantly worse than for general population comparison groups' (Brooker and Fox, 2009). We have noted above the high prevalence of smoking and substance misuse amongst this group. Brooker and Fox (2009), focusing on 80 children in custody in the East Midlands, found that 12% had a physical health condition that significantly affected their life and over a third regularly put their health at risk through drug use, unsafe sex, and involvement in prostitution. Previous reviews of Asset (Baker et al, 2003) found a lower rate (8%) had a physical health condition that was significantly affecting daily functioning and 11% were putting their health at risk through their own behaviour, suggesting that Asset may under-estimate health problems – although these discrepancies could also reflect the fact that studies such as that of Baker looked at the whole of the offending population and not just children in custody.

Girls in custody appear to have particularly poor health. Douglas and Plugge (2006) examined the physical and mental health of seventy three 17 year old girls held in the secure estate. Overall, the sample's subjective health ratings were much poorer than those of women in social class 5<sup>5</sup>, the group within the general population with the poorest health, and compared with adult female prisoners. Over 80% were smokers, prior to custody 61% were drinking over the recommended safe drinking limits and 82% had used illicit drugs. Their sexual health was also poor, with nearly a quarter having had a sexually transmitted infection. Over three-quarters (79%) reported having a long-standing illness or disability.

However, it is mental health which is the main health concern. Kroll et al (2002) examined the mental health needs of boys (age 12-17) in secure care and found high levels of psychiatric morbidity. One third were depressed prior to custody and depression and anxiety levels remained high after admission to prison. The most prevalent psychiatric disorders were found to be conduct disorder (91%); major depression (22%) and generalised anxiety disorder (17%). Brooker and Fox (2009) reported that over half their sample of 80 children had been in contact with or been referred to mental health services, around one in five had previously attempted suicide and two in five had self-harmed.

Harrington and Bailey (2005), focusing on their sample of 301 girls and boys in the secure estate and under the supervision of youth offending teams, reported that girls had significantly higher levels of mental health problems than boys, this was the case for depression (35% vs 13%), deliberate self-harm (17% vs 7%) and post-traumatic stress disorder (19% vs 6%). Douglas and Plugge (2006) found 71% of the girls they interviewed had some level of psychiatric disturbance; 86% when factoring in long-standing disorders. Baker et al (2005) found that girls who were offending were more likely than boys to be assessed as having emotional and mental health difficulties. In particular self-harm emerges as a prominent problem for girls. In 2007, 69% of girls in custody harmed themselves (HM Prison Report 06/07).

There is a clear and consistent message in the research literature on children in trouble with the law. As a group, they are seriously disadvantaged on a number of important social, educational and health indicators.

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5. Registrar General's classification of social class by 5 occupational categories with 1 = to highest occupational level (e.g. professionals) and 5 = to lowest (e.g. manual occupations).

### 1.3 Research aims and methods

This report presents the findings of the first systematic study of children in custody since the census conducted by Gillian Stewart and Norman Tutt in 1984<sup>6</sup>. At that time, detailed information about the backgrounds of these children was limited. On their census day, around 2,000 children (under 17 years) were being held in penal or secure childcare establishments across the UK and the Republic of Ireland. The large majority were boys and around one in 10 were from ethnic minority groups. The most common types of offences were property offences including burglary, theft and ‘taking and driving away’, but a significant minority of the children had been charged with offences that involved some degree of violence. Some key social problems were highlighted by the study, including the high numbers living in residential care or under supervision by social services.

Our study was commissioned by Out of Trouble, the Prison Reform Trust (PRT) programme to reduce the number of children and young people imprisoned in the UK (PRT, 2008). The aim was to redress the knowledge gap about children in custody in England and Wales by creating a unique, detailed profile of those in the secure estate during 2008. This included: demographic information and education and offending history but also a more in-depth review of family and social circumstances and health and welfare, to gain a better understanding of the multiple problems often faced by children in trouble with the law. By combining both qualitative and quantitative data we have been able to produce and analyse a uniquely comprehensive dataset about children in custody. No research on this scale has been conducted in the last twenty five years, and as such, the study represents a significant addition to our understanding of youth custody. We hope that the review and analysis of this information will stimulate further debate about the scope and methods for reducing the use of youth custody.

#### *Methods*

We built a comprehensive profile of children in custody from information held on the YJB’s secure access clearing house system (SACHS), used to manage placements in the secure estate across England and Wales. Data collection was undertaken between July 2009 and February 2010, and had two main elements:

1. A census of all children who entered custody – under sentence or on remand – over the period from July to December 2008.
2. An in-depth profile of 300 children randomly selected from the full population of those who entered custody from July to December 2008.

The census involved downloading from SACHS basic details on demographics, index offence(s) and current sentence or remand. During the six-month period between July and December 2008, 2,440 individuals were remanded and 3,151 were sentenced to custody; but the total numbers of remand and custodial episodes (taking account of the fact that substantial proportions of children received more than one remand and/or custodial sentence) were 2,736 and 3,283 respectively.

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6. This study (Stewart and Tutt, 1987) covered a broader range of custodial institutions than we did, including secure psychiatric accommodation.

From the full population of around 6,000 children who entered custody in the study period, we randomly selected a sample of 300 children for the in-depth profile. These records were selected from among each child's last episode of remand (of which there were 1,568 in total, or 34% of all episodes) or sentence (3,071, or 66% of all episodes). The 300-strong sample represents 6.5% of the total population of children who entered custody. It was broken down into 100 cases of remand and 200 sentenced cases, reflecting the remand-sentence ratio (1:2) of each individual's last episode. Having selected the sample, we then tested it for its similarities with the census data on age, gender, ethnicity, offence type, offence seriousness and (for the sentenced sample) type of sentence. We found no significant differences between the sample and the full population in terms of these variables.

For the purpose of our profile of the 300 sampled cases, we constructed a large database on which we manually entered both qualitative and quantitative data on each individual held on SACHS. These data derived from the various documents on SACHS, including completed Asset forms, pre-sentence reports, and 'risk of serious harm' forms. The Asset forms were used as the primary source of data.

As a supplementary element of this study, undertaken to ensure that this report incorporates the direct voices of children in the youth justice system, we undertook seven face-to-face interviews with children who had recently been in custody and with their youth offending team (YOT) workers. We also analysed the recordings of 13 interviews with children in custody which were conducted for Out of Trouble in 2009.<sup>7</sup>

### **Asset**

Asset is the standard assessment tool used by youth offending teams to collate information on all children who come into contact with the criminal justice system. The Asset assessment process is of critical importance: it is intended to identify the range of factors that contribute to offending and which need to be addressed in order to reduce reoffending. The results of the assessments are thus expected to feed into the development of disposals and other interventions, to ensure that they are tailored to the individual's needs and offending profile.

Asset can be updated as a record of progress over time, so that changes in needs and in risk of reoffending can be tracked and appropriately responded to. It is the primary source of information used in the production of court reports and made available to secure establishments in advance of children being received into custody. According to the National Standards for Youth Justice Services (YJB, 2010c), Asset must be completed for all children subject to bail supervision and support; those for whom court reports (pre-sentence report and specific sentence report) have been requested; and for those on custodial sentences at assessment, transfer to the community and closure stages.

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7. The interviews were commissioned from Sara Parker, an experienced broadcast journalist, for media use by Out of Trouble and Barnardo's.

For the purpose of this study, we used Asset not only as the primary data source, but also as a template to structure our database. By drawing on the Asset forms, and additional documents where possible for supplementary information, we recorded information on each individual's index offence(s) and background (details about family circumstances, education and physical and mental health), as well as evidence of previous offending and extent and nature of previous contact with the youth justice system.

The information held on the Asset forms we reviewed was of variable quality, often incomplete and sometimes out-of-date. Moreover, even if properly implemented, the Asset process is not comprehensive: there are areas of need that are simply not covered, or covered only superficially. These problems (described in more detail in subsequent chapters and Appendix A) have inevitably hampered our analyses.<sup>8</sup> In addition, Asset is based on the assessment of one YOT worker and there is no information on Asset as to how long that YOT worker may have known the child in advance of the assessment or how long the Asset assessment took to complete. These types of details would allow greater clarity about the likely depth and accuracy of Asset information.

An interview with the child is usually the central component of the Asset assessment process. However, in 14 cases out of our sample of 200 children who were sentenced to custody, no interview had been conducted as part of the assessment. In addition to conducting an interview, YOT workers can consult a range of documents and other sources of information in completing the Asset form (these are listed in Box 1.2). YOT workers used an average of six sources in completing the Assets for the 200 children in the sentenced sample.

**Box 1.2: Sources of information used in completing Asset forms**

Interview with child	Previous convictions
Case record	Residential homes
Family carer	Housing association
School	Local education authority
Social service department	Careers guidance
Victim	General practitioner
Police	Mental health service
Crown Prosecution Service	Other health services
Solicitor	Drug and alcohol services
YOI/secure unit	Voluntary organisation
Lead professional	

**Report structure**

This report comprises eight chapters. Following this introduction, Chapters 2 and 3 look at the use of custodial sentences for children. Drawing both on the census and sample data, we analyse the seriousness of the offences for which children were sentenced to custody in the latter half of 2008, and assess where these offences are located in relation to the custody threshold as it is defined in law. We also look at the relevance of previous offending to custodial sentencing.

8. For some of the children in the sample of 100 remand cases, only the short 'bail' version of Asset, rather than the full 'core' version, was available on SACHS, which severely limited the data we could access for these cases.

Chapter 4 addresses the issue of remand, and, like the preceding two chapters, it makes use of both the census and sample data. A main issue addressed here is the fact that a large majority of children who receive custodial remands are subsequently acquitted by the courts or receive non-custodial sentences.

In Chapters 5 to 7 of the report, we assess the prevalence and distribution of different types of disadvantage among the 200 sentenced children in our sample (the focus on the sentenced children is due to a lack of detailed information on those who were remanded). Chapter 5 focuses on disadvantages relating to home and family life, while Chapter 6 is concerned with psycho-social and educational problems. Chapter 7 then pulls together our data on both sets of disadvantages.

Finally, Chapter 8 highlights our key findings and considers their implications for policy. The chapter also includes a series of recommendations for government and the youth justice system.

Throughout the report we use boxed examples of children's individual 'stories' in order to bring out the main findings more vividly. These include narrative accounts drawn from Asset material (this information has generally been paraphrased for readability) and accounts based on the interviews with children. All names have been changed in these examples.





## 2 Sentencing and the custody threshold

### Interview with Kelvin

Kelvin is a 15 year old from a family of seven children; he is the third oldest. His parents have separated and he lives with his mother and siblings. One of his older brothers has convictions for stealing cars.

Kelvin recently received a community sentence for an offence of burglary. He had acted as a look-out while his friends attempted to steal a safe from a shop. They were disturbed by the owner and ran away with nothing; Kelvin was subsequently arrested because the shop-owner had recognised him.

As part of the community sentence for the burglary, Kelvin was put on a curfew with electronic tagging. He breached the curfew and received a six-month detention and training order (DTO) for this – his first custodial sentence. He described to the interviewer the circumstances of the breach:

*You got to be in by 7 o'clock and I breached it.*

Why did you breach it?

*Cos I wanted to go out ... With me mates.*

You knew you would be picked up by the police if you breached?

*Yeah and then they took me back to court and I went to jail and then I got out, and I'm back on tag and I've got to do my license.*

[When you were breached] didn't you get a second chance?

*I've had chances before doing it.*

So why did you keep doing it?

*Cos I didn't want to go in at 7 o'clock.*

...But sometimes you have to do things you don't want to do, I guess?

*Yeah but, I didn't do it ... I just didn't want to go in at 7 o'clock.*

So what did you do instead?

*Went out with me mates ... Chilling ... Sitting about with them.*

Kelvin also explained that he has been suspended many times from school for fighting and gambling, although he is now back at the same school.

Children under sentence make up the bulk of the population of children in custody. In the year 2008/09, about four-fifths of the average custodial population of almost 2,900 children were under sentence. Some 6,700 children received custodial disposals over the course of the year.

When sentencing children, several types of custodial sentence are available to the courts. Of these, the detention and training order (DTO) is by far the most commonly used. This sentence was introduced by the Crime and Disorder Act 1998. The different custodial sentences for children are outlined in Box 2.1. All are available for children aged 10-17, other than the DTO which is available for 12-17 year olds only.

#### Box 2.1: Custodial sentences for children

##### *Detention and training order (DTO)*

The DTO is a custodial sentence for 12-17 year olds. Its length is between four months and two years. The first half of the sentence is spent in custody while the second half is spent in the community under the supervision of the youth offending team.

##### *Mandatory life sentence*

A child convicted of murder will receive a mandatory life sentence under Section 90 of the Powers of the Criminal Courts (Sentencing) Act 2000. A mandatory life sentence will have a 'tariff' or minimum term to be served in custody, after which he can be released only at the discretion of the Parole Board.

##### *Section 91 sentence*

If a child is convicted of an offence (other than murder) for which the maximum sentence for adults is at least 14 years in custody, he can be sentenced under Section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 to a sentence whose length is up to the adult maximum – including life. This sentence is also available for certain sexual and firearms offences which have a minimum sentence of under 14 years.

##### *Sentence of detention for public protection*

Under Section 226 of the Criminal Justice Act 2005, a child can receive a sentence of detention for public protection for certain violent or sexual offences, if he is considered 'dangerous'. This is an indeterminate custodial sentence, similar to a life sentence, involving discretionary release after a minimum term in custody has been served.

##### *Extended sentence*

Under Section 228 of the Criminal Justice Act 2005, a child can receive an extended sentence for certain violent or sexual offences, if he is considered 'dangerous'. This sentence comprises a custodial term followed by an extended licence period.

The focus of this chapter and the one that follows is the children who were sentenced to custody in the second half of 2008. Wherever possible, we present information on the full population of 3,283 children who received custodial sentences from July to December 2008. But for parts of these two chapters, we have to rely on the sample of 200 sentenced children – randomly selected from the full population – on whom we extracted more detailed information. This sample is broadly representative of the full population in terms of its demographic make-up, the offences for which the children were sentenced, and the sentences received.

In the first part of the chapter, we present a demographic and offending profile of the sentenced children. The rest of the chapter is concerned with the seriousness of their offences, and the position of these offences in relation to the custody threshold. More specifically, we consider the gravity of offending and levels of violent and non-violent offending.

## 2.1 Profile of sentenced children

A total of 3,151 children were sentenced to custody from July to December 2008. The majority were sentenced just once in the six months, while 120 received two custodial sentences and six received three – making a total of 3,283 sentences received. The analysis in this chapter is based on the 3,283 sentenced cases, rather than the 3,151 individuals. It should be noted that the figure of 3,283 sentences includes 416 cases in which the child was recalled to custody while serving the post-custody phase of a DTO, or given a section 91 sentence or extended sentence (see Table 2.1, below, for details).

The sentenced population breaks down in terms of gender, ethnicity and age as follows:

- 91% are boys and 9% girls.
- 72% are white, 10% black, 6% mixed race and 4% Asian. For 8% the ethnicity is unknown.
- Almost half of the population (45%) is aged 17, while a further 31% is aged 16, and 6% aged 15. The remaining 2% are aged 12-13; there are no 10 or 11 year olds.

At 9%, the proportion of girls is equivalent to the proportion of adult women who entered custody under sentence in 2008. Among the sentenced children there is a larger proportion of mixed race and a smaller proportion of Asian children compared to all sentenced prison receptions in 2008 (Ministry of Justice, 2009). More details on the demographic profile of the sentenced children are provided in Tables B1 and B2 in Appendix B.

### *Sentences*

As shown in Table 2.1, the majority of sentenced children are serving DTOs (78%) or have been recalled to custody while on DTO licence (12%). Among those who are serving DTOs, the most common length is four months (34%), while a further 32% have received either six or eight month sentences. 14% of the children received DTOs of between 18 and 24 months in length.

83% of the children are serving their sentences in young offender institutions, 11% in secure training centres, and 7% in secure children's homes (for more details on establishments, see Table B3 in Appendix B).

*Table 2.1: Type of custodial sentence received*

Type of sentence	n	% of cases
Detention and Training Order	2,577	78%
DTO recall	384	12%
Section 91 sentence	250	8%
Section 91 recall	30	1%
Detention for public protection	17	1%
Extended sentence	16	<1%
Recall of extended sentence	2	<1%
Mandatory life sentence	7	<1%
<b>Total</b>	<b>3,283</b>	<b>100%</b>

### *Offences*

The 3,283 children were sentenced for a total of 4,800 offences over the period July to December 2008. While 71% were sentenced for one offence only, 29% were sentenced for two or more.

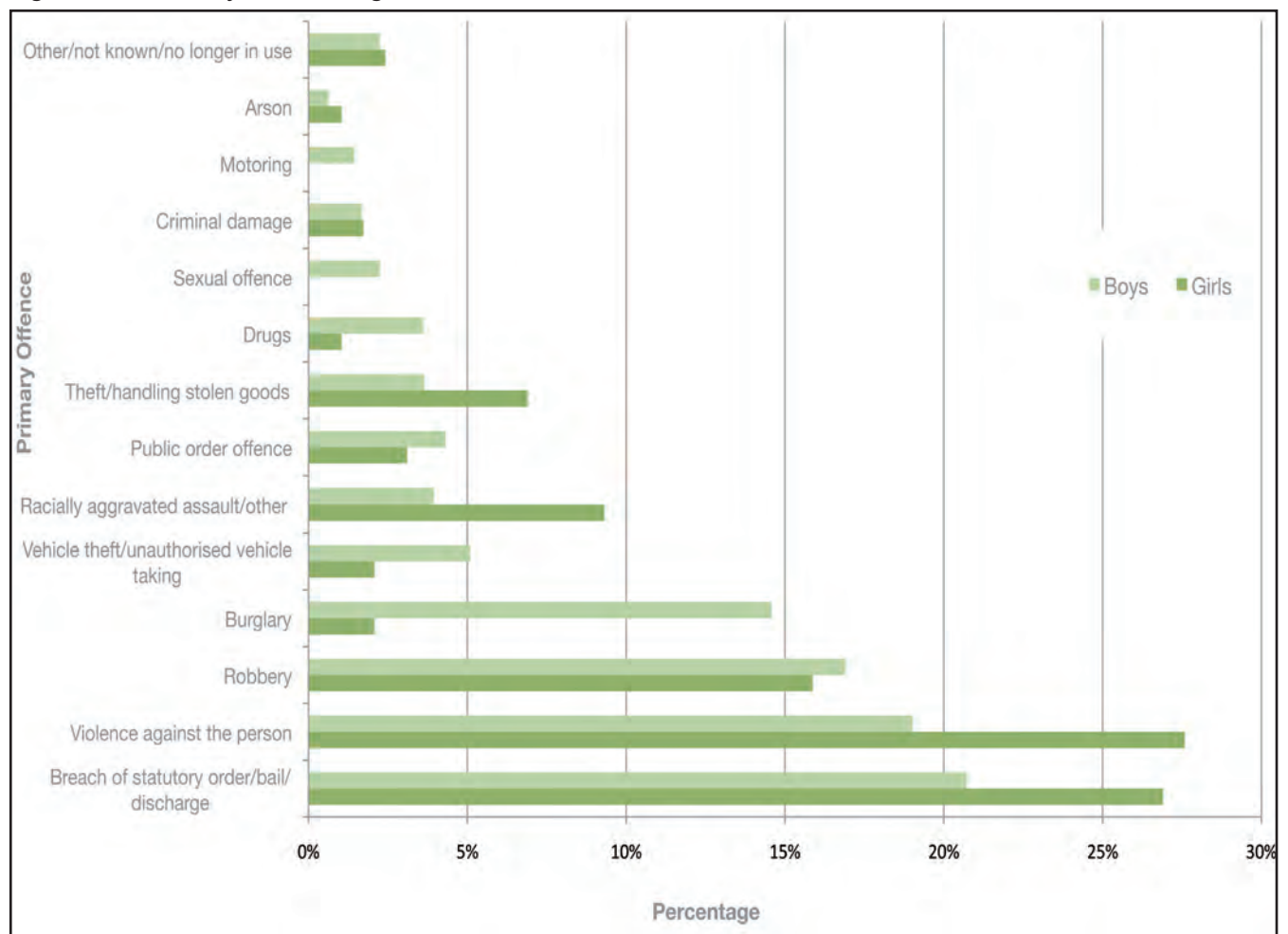
*Table 2.2: Primary offences (offence types summarised) for which children sentenced to custody*

Offence	No. children	% children
Breach (including breach of statutory order and failure to surrender to bail)	698	21%
Violence against the person	649	20%
Robbery	552	17%
Burglary (including domestic, non-domestic, aggravated)	442	13%
Vehicle theft/unauthorised vehicle taking	158	5%
Racially aggravated assault and other racially aggravated offences	145	4%
Public order offence	138	4%
Theft/handling stolen goods	129	4%
Drugs	111	3%
Sexual offence	67	2%
Criminal damage	55	2%
Motoring	43	1%
Arson	22	1%
Other/not known	74	2%
<b>Total</b>	<b>3,283</b>	<b>100%</b>

Looking only at the most serious offence for which each individual was sentenced, the two most common broad offence types were breach (that is, breach of statutory order, bail or conditional discharge) and violence against the person (which encompasses a range of specific offences of varying levels of seriousness). Each of these types of offence accounted for around one-fifth of all the children sentenced, as shown in Table 2.2. 17% of the children were sentenced for robbery and 13% for burglary; no other offence type accounted for more than 5% of the population.

The gender breakdown of the offences shown in Figure 2.1 (see also Table B4 in Appendix B for the full figures) reveals that there is a higher incidence of violent offending among the 290 sentenced girls than among the 2,993 boys: with 28% of the girls compared to 19% of the boys having been sentenced for offences of violence against the person, roughly equal proportions for robbery, and 9% of girls compared to 4% of boys for racially aggravated assault/other. The girls are also more commonly sentenced for breach and theft or handling. Burglary, on the other hand, is far more common among the boys (15% compared to 2%). The offending profile of the girls differs markedly from that of all women who entered prison under sentence in 2008, among whom 32% were convicted of theft and handling, and 14% of offences of violence against the person (Ministry of Justice, 2009: Table 6.2).<sup>9</sup>

*Figure 2.1: Primary offences: gender breakdown*



9. The finding of relatively high levels of violent offending among the girls is broadly consistent with that of a recent YJB study which found that violence against the person was the most prevalent offence among a sample of 285 girls who had received convictions or a Final Warning recently (39%) (YJB, 2009a). This study, drawing also on existing research, considers whether the evidence of greater convictions for violent offences among girls is indicative of a real increase in this form of offending. The answer to this question is unclear: on the one hand, girls may be more readily prosecuted for offences today for which they would not have been prosecuted in the past; on the other hand, there may have been a degree of normalisation of violence in the lives of some girls.

Box 2.2: Offending related to alcohol and drugs

*Assault occasioning actual bodily harm*

Jodie is 17, and was sentenced to a four-month DTO for an unprovoked attack on another girl whom she did not know.

The victim and her boyfriend were walking home after a night out and passed Jodie and her boyfriend in the street. According to the victim, Jodie shouted some insults at her, which she initially ignored; but she then confronted Jodie. After the confrontation, Jodie punched the victim in the face, which knocked her to the ground. The two boyfriends managed to pull Jodie away from the victim, who was very distressed and suffered a bloody nose, bruises, swelling to eyes, a chipped tooth and loss of some hair. When a police officer attempted to arrest Jodie, she was abusive and pushed him; she was then sprayed with incapacitating spray.

Jodie initially denied the offence, and appeared to remember very little about it. She was very drunk at the time, having consumed three litres of wine.

*Riot/affray*

Ethan, a 17 year old, was sentenced to a four-month DTO for a public order offence specified in the Asset form as riot/affray. He claims to remember nothing of the offence due to the large amount of alcohol he had drunk beforehand.

On the evening of the offence, he had gone to a house party at 6pm, and drank heavily for the rest of the evening. He remembers being heavily intoxicated, and that he had been mixing his drinks. He claims he was having a good time at the party, and can vaguely recollect the group he was with having received a phone call, but no more. His next memory is of waking up in a police cell. Ethan was appalled when he read through the victim statement and showed genuine remorse for the individuals who had been affected by his actions. He pleaded guilty after further legal advice.

*Murder*

Kai is a 16 year old with a history of drinking heavily into the early hours of the morning; this appears to have been condoned by his mother.

The offence was committed on New Year's Eve, when Kai was out celebrating with his mother, his mother's boyfriend and his girlfriend, all of whom are his co-defendants. Kai was drinking lager and whiskey, had taken speed and smoked cannabis. The victim, another 16 year old boy, became involved in an altercation with Kai's girlfriend, in the course of which the girlfriend sustained some serious injuries to her face. Kai and his co-defendants then launched an attack on the victim, causing injuries from which the victim subsequently died.

## *Offence factors*

The Asset form includes a section entitled ‘offence analysis’, in which factors relevant to the current offence are described. This section of Asset was completed for 159 of the 200 cases in our random sample of sentenced children. In more than a third (58) of the 159 cases for which information was available, alcohol and/or drugs were said to be a factor, in that the child was under the influence of either or both substances at the time of the offence. In 40 of these cases, the child was under the influence of alcohol (only); in seven cases under the influence of drugs (only); and, in 11 cases, under the influence of both.

A majority of violence against the person, vehicle theft or unauthorised vehicle taking and public order offences were committed when the individual was under the influence of drugs or alcohol. Among the 17 girls in the sample, offending while under the influence of drugs or alcohol was much more common (this applied to 10, or 71%, of the girls for which information was available) than it was among the boys (48, or 33%, of the boys). This may, in part, reflect the higher incidence of violent offending among the girls, given the apparent relationship between violence and the influence of drugs or alcohol.<sup>10</sup> Some examples of cases in which drugs or alcohol were said to play a part in the offences are provided in Box 2.2.

A number of factors other than alcohol and drugs were highlighted in Asset forms as having contributed to the offences for which the children in our sample were sentenced. These included the following:

- 29 children had been in an argument with the victim before the offence
- 21 were trying to impress their peers or had been influenced by peers
- 18 committed the offence for financial reasons
- 10 had an argument with a close relative or partner before committing the offence.

## **2.2 The custody threshold and offence gravity**

When a sentence is passed on a child – as applies equally to the sentencing of adults – it should be proportionate to the seriousness of the offence. Proportionality is a long-standing principle in sentencing law in this jurisdiction, and was reaffirmed by the Criminal Justice Act 2003. Another long-standing principle, which also applies both to children and adults, is that custody should be used only if the offence or offences are ‘so serious that neither a fine alone nor a community sentence can be justified’ (Criminal Justice Act 2003, section 153(2)). This latter direction to use custody only where alternatives to custody cannot be justified is generally interpreted – by sentencers, youth justice practitioners and policy-makers – as meaning that custody is the sentence of ‘last resort’.<sup>11</sup>

But the ‘last resort’ of custody is generally expected to be used with even greater restraint for children compared to adults. This has been made clear by the YJB; for example, in its *Strategy for the Secure Estate*, published in 2005, which asserts that: ‘In the case of children and young people, custody should be used particularly sparingly because of their dependent, developing and vulnerable status’ (YJB, 2005: 8). The recently published Sentencing Guidelines Council

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10. The recent YJB study of girls’ offending found a significant relationship between alcohol consumption and convictions for violent offences (YJB, 2009a).

11. Sentencers interviewed by Hough et al (2003), for example, emphasised their use of custody only as a ‘last resort’. The notion of custody as the sentence of last resort emerged explicitly also in Solanki and Utting’s study (2009) of sentencers’ approaches to the sentencing of children.

(SGC) guideline on *Sentencing Youths* (2009)<sup>12</sup> notes that the custody threshold is, effectively, higher for children than it is for adults because the minimum custodial term that can be passed on a child is a four-month DTO, whereas no such minimum term applies for adults.<sup>13</sup> The principle of custody as a last resort in sentencing children is emphasised by Article 37(b) of the UN Convention on the Rights of the Child, which states that:

*No child should be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

There are, in addition to proportionality and custody as last resort, two further principles that apply in the sentencing of children. First, the Crime and Disorder Act 1998 defines the prevention of offending by children and young persons as the ‘principal aim of the youth justice system’ (section 37(1)). Secondly, the Children and Young Persons Act 1933, requires ‘every court in dealing with a child or young person who is brought before it, either as...an offender or otherwise ... [to] have regard to the welfare of the child or young person’ (section 44).

Below, we look at the 3,283 primary offences for which children were sentenced from July to December 2010 in relation to the custody threshold. This analysis is similar to a recent study undertaken by Barnardo’s, which looked at the custody threshold as it was applied to the sentencing of 12-14 year olds to DTOs (Glover and Hibbert, 2009).

### *Gravity scores*

The legal principle that custody should be reserved for offences that are ‘so serious’ that no other sentence can be justified begs the question of precisely what level of ‘seriousness’ warrants custody. The law is clear, however, that custody should primarily be reserved for offences which are at the most serious end of the extremely wide spectrum of offending – although, as will be further discussed below, an individual’s prior convictions can serve to make the current offence more serious in the eyes of the law.

In order to assess whether, across the full population of sentenced children, custody was used for serious offences, we looked at the ‘gravity score’ for each primary offence for which each individual was sentenced. These scores are on an eight-point scale devised by the YJB on the basis of sentencing patterns for all offences and are validated with reference to the year 2000 criminal statistics and sample 2001 youth offending team data:

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12. This SGC guideline sets out the ‘overarching principles’ that should apply in the sentencing of children, and takes account of the range of relevant sentencing legislation including the Criminal Justice and Immigration Act 2008. It has applied to the sentencing of children from December 2009 onwards.

13. On the other hand, the existence of an effective four-month minimum term for children can mean that occasionally children are imprisoned for a longer period than adults would be in similar circumstances, if the court wishes to impose the shortest possible term for the purpose of administering a ‘short, sharp shock’. Such an approach would not, however, be in accord with the law.



- Offences which score between 1 and 5 predominantly receive first-tier or community disposals; for example:
  - 1: drunk/disorderly
  - 3: common assault
  - 5: assault occasioning actual bodily harm
- Offences scoring 6 are ‘transitional’, and receive non-custodial and custodial sentences in equal number, for example:
  - 6: robbery
  - 6: domestic burglary
- Offences scoring 7 to 8 predominantly lead to custody, for example:
  - 7: wounding with intent to cause grievous bodily harm
  - 8: rape.<sup>14</sup>

Table 2.3 shows the gravity scores of all primary offences for which the 3,283 were sentenced to custody from July to December 2008. Here we see that the offences within the 6 to 8 gravity bands, within which custody is likely or highly likely, make up a minority (41%) of all offences. The remaining 59% of offences are in bands 1 to 5, where community or lesser penalties are predominantly received. It is notable also that a total of 122 offences, or 4% of all offences, have a gravity score of 1 or 2, meaning that a first-tier penalty (such as a discharge, fine or referral order) would be the norm.

*Table 2.3: Gravity scores of primary offences for which custody received*

Gravity score	<i>n</i>	% of offences	Cumulative %
1	20	1%	1%
2	102	3%	4%
3	569	17%	21%
4	1,050	32%	53%
5	186	6%	59%
6	1,076	33%	92%
7	222	7%	98%
8	58	2%	100%
<b>Total</b>	<b>3,283</b>	<b>100%</b>	<b>100%</b>

14. The system of scoring is set out in the YJB Counting Rules 2008/09, Annexes C and D (YJB, 2008). As we noted many discrepancies between the list of seriousness scores in this document and the scores assigned to the offences on the SACHS database, we reclassified the offences on which we collected data in line with the Counting Rules. Another difficulty associated with the YJB’s scoring system is that some of the offence categories are broad and hence in practice encompass specific offences of varying seriousness.

In short, it can be argued that in three-fifths of cases, the children were convicted of offences which in themselves were not ‘so serious’ that only custody could be justified – since these were all offences which usually attract non-custodial penalties. However, this leaves aside the question of whether prior convictions can or should serve to elevate the gravity of such offences into the ‘so serious’ category, a point to which we shall return in the next chapter.

We noted above that there are some gender differences in the primary offences for which the children were sentenced – with, in particular, violence against the person being more common among the girls, and burglary much more common among the boys. Notwithstanding the greater prevalence of violence among the girls, an analysis of offence seriousness by gender indicates that the boys, overall, were sentenced for more serious offences, with 43% of the boys’ primary offences located in the gravity bands 6 to 8, compared to just 27% of the girls’. (See Table B5 in Appendix B.) This indicates that, on the whole, the courts treated the girls more punitively than the boys, as they tended to receive custody for less serious offences.

### 2.3 The custody threshold and violent offending

An additional means of assessing offence seriousness in relation to the custody threshold is to look at whether the offences are violent or non-violent. Violence alone is rarely considered a necessary or sufficient condition for custodial sentencing. However, its relevance to the custody threshold is that ‘harm’ is one of two components of the statutory definition of offence seriousness,<sup>15</sup> and ‘harm’ is very frequently (if by no means universally) associated with violence. In addition, a higher proportion of the general public are prepared to advocate imprisonment for children convicted of violent offences than for those convicted of property offences (Hough and Roberts, 2004; Roberts and Hough, 2005).

If we adopt a common-sense classification of offences as either ‘violent’ or ‘non-violent’, and include sexual offences under the ‘violence’ heading,<sup>16</sup> we find that the sentenced offences are almost evenly divided between the two categories (excluding 50 cases where it is not known if the offence is violent or non-violent):

- 1,659, or 51%, of the primary sentenced offences are violent
- 1,574, or 49%, of the primary sentenced offences are not violent.<sup>17</sup>

The 1,659 violent offences vary widely in their gravity: among the most serious are eight cases of murder, 11 of manslaughter, 30 of rape and 139 of wounding with intent to cause grievous bodily harm. At the other end of the spectrum, there are 129 cases of common assault. The most common violent offence is robbery, with 541 cases – accounting for a third of all the violent

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15. Section 143 (1) of the Criminal Justice Act 2003 states that:

*In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.*

16. The Ministry of Justice and Home Office do not have a standard classification of ‘violent’ offences. One approach that has been adopted (see, for example, Hansard, 23 June 2008, Column 64W) is to define as violent ‘offences of violence against the person, robbery and sexual offences’. However, the Ministry of Justice and Home Office classification of ‘violence against the person’ offences does not include a number of specific offences that are frequently described as violent in other contexts: such as aggravated burglary, violent disorder and arson – all of which are included in the Criminal Justice Act 2008 list of ‘specified’ violent offences. For this study, we have sought to develop a comprehensive classification which incorporates all offences which are typically associated with violence of any kind.

17. It should be noted, however, that because this analysis is based on primary offences only, it does not convey the full extent of violent offending among the children. Of the 1,574 non-violent (primary) offenders, 413, or 26%, had secondary offences of all kinds; and at least 85, or 5%, had violent secondary offences.

offences; this is followed by assault occasioning actual bodily harm, for which 165 children were sentenced. (In 99 cases, the offence is given the generic classification of ‘violence against the person’.) Details on all violent offences are shown in Table B6 in Appendix B.

The figures presented thus far reveal that around half the sentenced population received their custodial sentences for non-violent primary offences, while three-fifths of the population received custody for less serious offences (that is, offences in gravity bands 1 to 5). This raises the question of what proportion of the population received custodial sentences for primary offences that are neither violent nor serious.

To find the answer to this question, we cross-tabulated the violence dimension with the gravity scores of the sampled offences (excluding the 50 cases on which there is no violence/non-violence classification). This reveals, as shown in Table B7 in Appendix B, that among the less serious offences (those with gravity scores of between 1 and 5), 61% are non-violent and 39% violent. The equivalent figures for the more serious offences (gravity scores 6 to 8) are 32% non-violent and 68% violent.<sup>18</sup> Table 2.4 shows that the offences in the non-violent, less serious category amount to 35% of all 3,233 primary offences on which we have the relevant information; they number 1,144 in total. In contrast, 29% of all offences, or 926 in total, are both violent and more serious.

*Table 2.4: Offence gravity and violence/non-violence*

	<i>Non-violent offences</i>	<i>Violent offences</i>	<i>Total (n)</i>
Less serious:1-5 gravity scores	35%	23%	58% (1,877)
More serious:6-8 gravity scores	13%	29%	42% (1,356)
Total (n)	49% (1,574)	51% (1,659)	100% (3,233)

The 29% of offences in the ‘violent, more serious’ category are those for which the strongest case can be made for custodial sentencing. It is, however, much more questionable whether the 13% of offences in the ‘non-violent, more serious’ category, and the 23% in the ‘violent, less serious’ category cross the custody threshold. And the use of custody for the 35% of offences in the ‘non-violent, less serious’ category appears to run directly counter to the principle of reserving custody only for cases where the offence is ‘so serious’ that no other sentence can be justified.

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18. The offences in the non-violent, more serious category are domestic burglary and possession of class A drugs with intent to supply.

## *Punishing disadvantage: a profile of children in custody*

The 1,144 'non-violent, less serious' offences break down into the following main offence types:

- Breach (all forms): 61%
- Theft/handling: 11%
- Vehicle theft/unauthorised vehicle taking: 8%
- Drugs offences: 7%
- Criminal damage: 5%
- Motoring offences: 4%
- Other: 4%.

The Barnardo's study into custody thresholds for 12-14 year olds concluded that 'parliament's clear intention of making custody for such young children genuinely a last resort is not reflected in sentencing practice' (Glover and Hibbert, 2009: 4). Our wider-ranging study, which entailed an analysis of the sentencing of all 3,283 children who received custody in the second half of 2008, has reached a similar conclusion. We have found that as many as 35% of these children were primarily sentenced for offences that were neither violent nor in the more serious gravity range, while only 29% were sentenced for offences that were *both* violent *and* more serious. This strongly indicates that the courts are frequently failing to fulfil their statutory duty to use custody only for offences that are 'so serious' that no other sentence can be justified.

This is not to suggest that sentencers are necessarily operating with little or no regard for the principle of custody as a sentence of last resort. As we have already mentioned, and will consider in detail in the chapter that follows, the matter of determining offence seriousness is complicated by considerations of prior offending. Another factor in decisions to impose custody in cases where, on the face of it, the offence does not merit it may be the child's stated unwillingness to comply with the conditions of a community sentence. Sentencers do not make their decisions in isolation, and if they have little confidence in the capacity of the local youth offending team to deliver effective community sentences, they may be more inclined to resort to custody than they otherwise would be; in addition, poorly prepared pre-sentence reports, or inadequate legal representation of child defendants, may also contribute to inappropriate sentencing decisions. More fundamentally, a custody threshold based on the ill-defined, tautological notion of 'so serious that [no other sentence] can be justified' lends itself to inconsistent decision-making that is readily influenced by a punitive political climate.

### 3 The custody threshold: further considerations

#### Interview with Louis

Louis is now 18, and was first arrested when he was about 16. He has a large number of previous convictions; many of his offences were committed in order to raise money to buy cannabis. He received his first custodial sentence at the age of 17 – a 12-month DTO for theft, burglary and arson. The arson had involved setting fire to a wheelie bin, while the burglary was of a large television set which he had stolen from his father's house; he had been caught walking down the street carrying the television.

According to Louis's YOT worker, he is very vulnerable: she stated that he is excessively eager to please and impress his peers, with the result that they often take advantage of him and intimidate him. On one occasion, Louis ran to the YOT offices to take refuge from a large group of young people who were pursuing him. Louis's vulnerability was particularly apparent when he was in custody, where he was bullied and assaulted by other prisoners. When visiting Louis in the YOI, the YOT worker thought that he looked like a different boy: although he was always thin, he had lost a lot of weight, and appeared very withdrawn.

When asked what he found hard about being in custody, Louis said:

*The food, not being used to it, getting the tray with all the separate bits in it, and I thought – do you expect me to eat that every day? When I've been having big meals like my mum makes. I got annoyed with the servery boys and if you wind them up they get you back by spitting in your food, they'll look at you and do it right in front of you.*

*I didn't really get on with any of the prisoners – I just kept my head down .... I thought it was going to be fighting all the time and it wasn't – you only get people fighting if you get mouthy. I got clouted once when I was in the gym. No prison officers did anything because the gym is long and thin, so I just walked over to the officer and said 'Can you take me back to the wing please?' They took me back to the wing, cleaned me up, but I wasn't allowed out of my cell for a week unless I was escorted and I said 'Why?' and they said if he sees me I'm going to end up in a fight.*

Louis also spoke about his hopes for the future:

*I want to have - you're going to think, 'he's dreaming – what's he talking about? – he's dreaming' – by the time I'm 25, I want to have a car, a flat, a nice one-bedroom or two-bedroom flat. A car, cause I've got a driving licence, I want to do it all legally, so it's all legal, a flat and a dog, a little Staff – 'cos I had a Staff and my mum got rid of it when I went into custody.*

Following the discussion of custodial sentencing in the previous chapter, this chapter addresses four further issues relevant to the custody threshold. The first of these is the use of custodial sentences for breach offences. Secondly, we look at the 'risk of serious harm' that sentenced children may be said to pose to others. Thirdly, we assess the offending histories of the children sentenced to custody, to the extent that we can do so with the available data. Finally, we consider these children's apparent vulnerability in custody.

### 3.1 Custodial sentencing for breach

In the previous chapter, we saw that breach offences make up around three-fifths of the non-violent, less serious offences for which children received custodial sentences in the second half of 2008. Indeed, breach offences accounted for around one-fifth of all the primary offences for which the children were sentenced to custody. These offences include breach of licence conditions, community sentences, anti-social behaviour orders (asbos) and conditional discharges; they also include failure to surrender to bail.<sup>19</sup>

Custodial sentencing for children who breach bail or statutory orders undermines the principle that custody for children should be used only as the last resort, for serious offences. Extensive use of custody for breach is a relatively recent phenomenon; for example, the Crime and Disorder Act 1998 extended the powers of the courts to impose custody on children who breached supervision orders. As noted by a recent report on the sentencing of breach, published by the National Children's Bureau (Hart, 2010), the law relating to breach is complex and in some respects inconsistent<sup>20</sup>; but the evidence is clear that, since the early part of this decade, children who have breached bail or statutory orders have been 'taking up a growing proportion of custodial places'.<sup>21</sup> This is concerning, because it 'increases their risk of poor outcomes and is a drain on resources' (Hart, 2010: 4). Hart reports that in 2007/08, 16% of children who breached statutory orders received custodial sentences; these sentences accounted for 26% of all DTOs passed over the course of that year.<sup>22</sup> The following year, however, saw a reduction in the use of custody for breach.

Our study identified 698 cases of breach (as the primary offence) among all 3,283 sentenced cases. In around half of these breach cases (345), the offence is described as a 'breach of statutory order'. This is a generic term which encompasses breach of anti-social behaviour order (asbo) and breach of licence conditions (usually DTO licences) as well as breach of community sentences. A further 256 of the breach cases are specified as licence breaches (239 of DTO licences and 17 of Section 91 licences), and 69 as asbo breaches. In addition, there are 18 cases described as bail breaches (see footnote 19), and 10 breaches of conditional discharge. Breach offences are disproportionately common among the younger children – accounting for 35% of the 13 year olds' primary offences, and 29% of the 14 year olds' offences. In contrast, 19% of the 17 year olds were sentenced for breach. (See Table B8 in Appendix B for an age breakdown of primary offences.)

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19. The YJB SACHS data include references to custodial sentences for 'breach of bail'. In fact, breach of bail conditions is not a criminal offence, whereas failure to surrender to bail is an offence. Hence we assume that cases where custodial sentences are recorded for 'breach of bail' are in fact cases of failure to surrender to bail.

20. Because of the enormously wide range of behaviours – both criminal and non-criminal – that asbos can seek to prohibit, the sentencing of asbo breach is a particularly challenging issue. Recently published guidance on asbo breach sentencing emphasises that these sentences, like all others, 'must be commensurate with the seriousness of the offence', in terms of both harm and offender culpability (SGC, 2009: paragraph 7). Application of this principle would seem to be problematic, however, when the order is breached through behaviour that is not criminal; see, for example, the first case described in Box 3.1.

21. It is noted by Solomon and Allen (2009) that 'compared to their European neighbours, England and Wales stand out for their high use of custody in response to non-compliance with court orders' (2009: 8).

22. Although some of these sentences will not have been passed solely for the breach offence.

Among the 200 children in our sentenced sample, 41 were sentenced for breach as their primary offence. The circumstances of these breach offences appear to have been quite varied. Where offence details are available on Asset for these cases, three main reasons for the breach are identified: failure to comply with curfews; failure to comply with area restrictions specified as part of an asbo or licence conditions; and failure to engage with the YOT or other stipulation of a community order. Two examples of breach cases are provided in Box 3.1, below.

### Box 3.1: Breach of orders

#### *Breach of asbo*

Darren, who is 17 years old, had already received two DTOs before his current sentence. He had also been remanded in custody prior to the current DTO. His offending history dates back several years; he received his first reprimand at the age of 11 and his first conviction when 12. He has also had many other disposals including a referral order, action plan order, supervision order and others.

Darren's asbo prohibited him from entering a specific area. He breached it when he walked through the area with two friends, as they made their way from his home to the shops. He claimed that the route he had taken was the most direct way to the shops, and that he had not wanted to walk the long way round without his friends. He was spotted walking through the restricted area, and was reported to the police and subsequently arrested. On conviction, he was sentenced to an eight-month DTO for the breach.

#### *Breach of statutory order*

Ben is aged 17, and this sentence is his first time in custody. He has, however, received a variety of non-custodial sentences in the past. He was first reprimanded at the age of 11, although his first conviction was not until he was 16.

His current sentence is a four-month DTO for the breach of a community punishment order. His YOT worker recorded in Asset that 'Ben has consistently refused to engage with his order. Ben has told me he cannot be bothered complying with his order in any form.'

## 3.2 Risk of serious harm to others

The risk that an individual will cause serious harm to others is often seen as an important criterion for a custodial sentence. The issue of risk of serious harm is explicitly addressed in the new Sentencing Guidelines Council guideline on the sentencing of children and young people (SGC, 2009):

*In determining whether a custodial sentence is unavoidable, generally, a court will need to take account both of the seriousness of the offence (particularly the extent to which it caused (or was likely to cause) serious harm) and of the risk of serious harm in the future. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.*

The core Asset form has a section entitled 'Indicators of risk of serious harm to others'. This asks whether the child has been convicted of a 'serious specified' or 'specified' offence (that is, an offence specified under the dangerousness provisions of the Criminal Justice Act 2003) or has been assessed for dangerousness; it also asks if the child has been assessed as presenting a risk to other children. A 'yes' in response to either of these or other questions in the section necessitates completion of the additional 'risk of serious harm' (ROSH) Asset form, which explores evidence of harm-related behaviour, risk indicators and likelihood of future harm.

The risk of serious harm section of the core Asset is entirely missing for eight cases in our sample. Among 192 that have been at least partially filled out, the need for a ROSH form is flagged in 123 cases (64%). In the remaining 69 cases (39%), the ROSH form is not flagged. A completed ROSH form is present for 98, or 80%, of the 123 children who are identified as requiring it. An additional 17 ROSH forms were completed for children who are not flagged on the core Asset as posing a risk of serious harm, or for whom the risk of serious harm section of the core Asset is missing. This produces a total of 115 ROSH forms.

For 92% of the 115 children with ROSH forms, the YOT worker recorded on the form that there is evidence of current or previous harm-related behaviour; and, generally, descriptions of current or previous violent or sexual offences are included by way of evidence. In 36% of the 115 ROSH cases, use of weapons is cited as a factor contributing to the risk; the making of threats to others is cited in 25% of cases. Almost one in 10 of the children (9%) is said to have behaved violently in a (secure or non-secure) children's home or secure training centre.

Although the large majority of the children are said to have engaged in current or previous harm-related behaviour, in almost half of the cases (45%), the YOT worker replied 'no' to the question: 'Are there indications that the young person will engage in future behaviour that will cause serious harm to others?' For the 55% for whom the answer is 'yes', the assessment of future serious harm is justified with reference to the children's previous displays of violence/harm and their stated intentions for future offending. Twenty-two children are said to pose a risk of future serious harm due to their use of drugs and/or alcohol, and nine because of their 'impulsive' or 'reckless' behaviour or because of peer pressure. Some examples of YOT workers' assessments of risk of serious harm in the future are provided in Box 3.2.



Box 3.2: Risk of serious harm

*Prior and stated intent of violence*

Seventeen year old Joe received an eight-month DTO for the offence of domestic burglary. He is from a very troubled family background, having had a very unsettled childhood during which he spent periods in care and on the child protection register due to physical and emotional abuse. His father is known to probation for an assault on his mother's ex-partner; is a heavy drinker and has attempted suicide and been admitted to psychiatric care several times.

According to his YOT worker, Joe has the potential for serious physical violence, as a manifestation of his extreme vengeful feelings. He has stated his intention to cause serious harm, and appears capable of planned and deliberate behaviour, and is highly preoccupied with revenge and 'getting' those he believes have betrayed him. He has made specific threats of revenge to certain targeted individuals – including family members and YOT staff. His YOT worker stated, 'In my assessment, Joe is capable of causing serious physical and psychological harm and from his own admission, even death.'

*Recklessness*

Matt, aged 17, received a six-month DTO for domestic burglary. His previous offending shows violent tendencies. He has made threats while in custody but – according to his YOT worker – appears to pose a higher risk in the community.

Conflicts with his family, which is extremely dysfunctional, and his peers are believed to be the triggers for much of his offending. His YOT worker describes him as reckless, angry and irrational. It is believed that potential victims are his former partner (with whom he has a child who is subject to child protection procedures) and witnesses.

*Alcohol and peer influences*

Seventeen year old Carlos had consumed six cans of strong lager prior to committing the offence of assault occasioning actual bodily harm, for which he was subsequently sentenced to an eight-month DTO. Carlos' drinking habits are clearly strongly linked to his offending. A particular concern for his YOT worker is that when he is drinking in the company of similar-minded, anti-social young men, minor confrontations frequently appear to escalate rapidly into violence. Carlos denies, however, that he is a regular drinker, and that alcohol could be damaging to his health.

In the concluding section of the ROSH form, the individual is classified as posing either a 'low', 'medium', 'high' or 'very high' risk of serious harm to others. Around half the 115 ROSH children (51%) are in the 'medium risk' category, while 20% are 'low risk'. Just over one-quarter (27%) are classified as 'high risk', and only two children (2%) as 'very high risk'. Looking at the children classified as 'high' or 'very high' risk, of whom there are 35 in total, as a proportion of the full sample of sentenced children, they make up:

- 17% of all 200 sampled children; or
- 21% of the 159 children on whom relevant information is available (that is, excluding the eight for whom the risk section of the core Asset is entirely missing, and the 25 flagged as needing the ROSH, but for whom the ROSH is missing).

The adequacy of risk profiling by YOT workers can be questioned. As already noted, in many cases YOT workers may complete their assessments on the basis of limited information and knowledge of the individual child. Risk assessment is in any case a highly inexact science, even with adults<sup>23</sup>; assessing risk in children, whose patterns of behaviour and predispositions may be liable to change rapidly as they grow and mature, is likely to be more difficult still.

### 3.3 Offending history

We have seen in the previous chapter that many of the children sentenced to custody in the second half of 2008 had committed offences that were not, in themselves, 'so serious' that they obviously or necessarily merited custody. Around two-thirds of the children were convicted of offences which typically attract non-custodial penalties. Around one-third of the children were convicted of offences which usually receive non-custodial penalties and which, in addition, are non-violent. Moreover, as we have just seen (based on our analysis of our sample of 200 sentenced children), only about one-fifth are classified as posing a 'high' or 'very high' risk of serious harm to others.

If so many of the sentenced children were not convicted of very serious offences, and did not appear to pose a high risk of serious harm, why did the courts opt for custodial sentences? It is likely that the answer to this question is that many of these children have significant offending histories, and these histories were a factor in the sentencing decisions. According to sentencing law, an offender's previous convictions should be treated as factors which increase the seriousness of the offence currently before the court, since a persistent offender may be considered more culpable than a first-time offender.<sup>24</sup> This legal principle, which was made explicit in the Criminal Justice Act 2003<sup>25</sup>, applies to both children and adults. In addition, the relevance of previous convictions to custodial sentencing is made clear by the Powers of the Criminal Courts (Sentencing) Act 2000, under which a DTO can only be passed on a child aged 12-14 if the offending is 'persistent'. There is no definition of 'persistence' in legislation, although the new guideline on Sentencing Youths provides that:

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23. See discussion of risk assessment in Jacobson and Hough (2010).

24. See Roberts (2008) for a discussion of the justifications for considering previous convictions at sentencing.

25. Section 143(2) of the Criminal Justice Act 2003 states:

*In considering the seriousness of an offence ('the current offence') committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated.*

*A young offender is certainly likely to be found to be persistent (and, in relation to a custodial sentence, the test of being a measure of last resort is most likely to be satisfied) where the offender has been convicted of, or made subject to a pre-court disposal that involves an admission or finding of guilt in relation to, imprisonable offences on at least three occasions in the past 12 months (SGC, 2009: paragraph 6.5(ii)).*

While it is lawful for the criminal courts to take previous convictions into account, in determining whether a child's current offence merits custody, the appropriateness of doing so can be questioned. In general, the rationale for sentencing on record is that an offender with preconvictions is more culpable because, based on his prior experience, he could have been in no doubt that he was breaking a law which would lead to punishment. With respect to child defendants, however, this rationale has less applicability: due to their developmental and emotional immaturity, they are less likely than adults to make the link between breaking the law and punishment, even if they have been imprisoned in the past. Hence a child defendant with a significant offending history cannot necessarily be said to be more culpable than a child who is a first-time offender.<sup>26</sup> Another argument against the practice of taking prior convictions into account in passing sentence (whether on a child or adult offender) is that it entails repeating the punishment for the earlier offences.

It is not possible for us to assess the extent of previous offending among the full population of children sentenced to custody in the second half of 2008. We do know, however, that a majority of the 3,283 sentenced children – 62% – had been in custody prior to the current sentence, including on previous custodial sentences and periods on remand. Previous custody was much more common among the boys (64%) than among the girls (45%). The substantial numbers sentenced for breach (discussed above) are another indicator of previous offending, since the bulk of these breach offences are likely to be for breach of licence conditions or community sentences. We also have an indication of the level of multiple – if not previous – offending among these children. As noted above, the 3,283 children were sentenced for a total of 4,800 offences over the six-month period. While 71% were sentenced for one offence only, 29% were sentenced for two or more. Of this latter group:

- 623 children (19% of the full population) were sentenced for two offences;
- 201 (6%) for three;
- 80 (2%) for four; and
- 50 (2%) for between five and nine offences.

### *Persistence and length of offending history among sampled children*

Even among our sample of 200 sentenced children, on whom we have relatively detailed information, a full assessment of offending history has not been possible because of missing and inconsistent data entry on the 'criminal history' section of the Asset forms. Nevertheless,

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26. The specific issue of the relationship between previous convictions and culpability is not addressed by the SGC guideline. Paragraph 2.4 of the guideline states:

*Whilst a court is required to aggravate the seriousness of an offence where there are previous convictions (if the court considers that to be reasonable taking account both of the offence and the time that had elapsed since the previous conviction 6), a sentence that follows re-offending does not need to be more severe than the previous sentence solely because there had been a previous conviction. (SGC, 2009; emphasis in the original).*

## *Punishing disadvantage: a profile of children in custody*

we have sought to identify the proportion of these children who are persistent offenders, in accordance with the 'procedural definition' of persistence that was used by government, and was adopted in the Barnardo's report on the custody threshold for 12-14 year olds. (It should be noted that this is a broader definition than that suggested by the *Sentencing Youths* guideline (SGC, 2009), cited above.) According to the procedural definition, a child is persistent if he or she:

*has been sentenced by any criminal court in the UK on three or more separate occasions for one or more recordable offences and within three years of the last sentencing occasion is subsequently arrested or has information laid against them for a further recordable offence (Ministry of Justice, 2008: 12).<sup>27</sup>*

At least 70% of our sample are persistent offenders, according to this definition. A further 24% have previous convictions, but because of missing data on the numbers and/or dates of these convictions, we are unable to state with confidence whether or not they are persistent. Fourteen of the children, or 7% of the sample, can be described as first-time offenders on the basis that they have no previous convictions. Eleven out of these 14 children (6% of the full sample) also have had no final warnings or cautions, while the other three have had pre-court disposals.

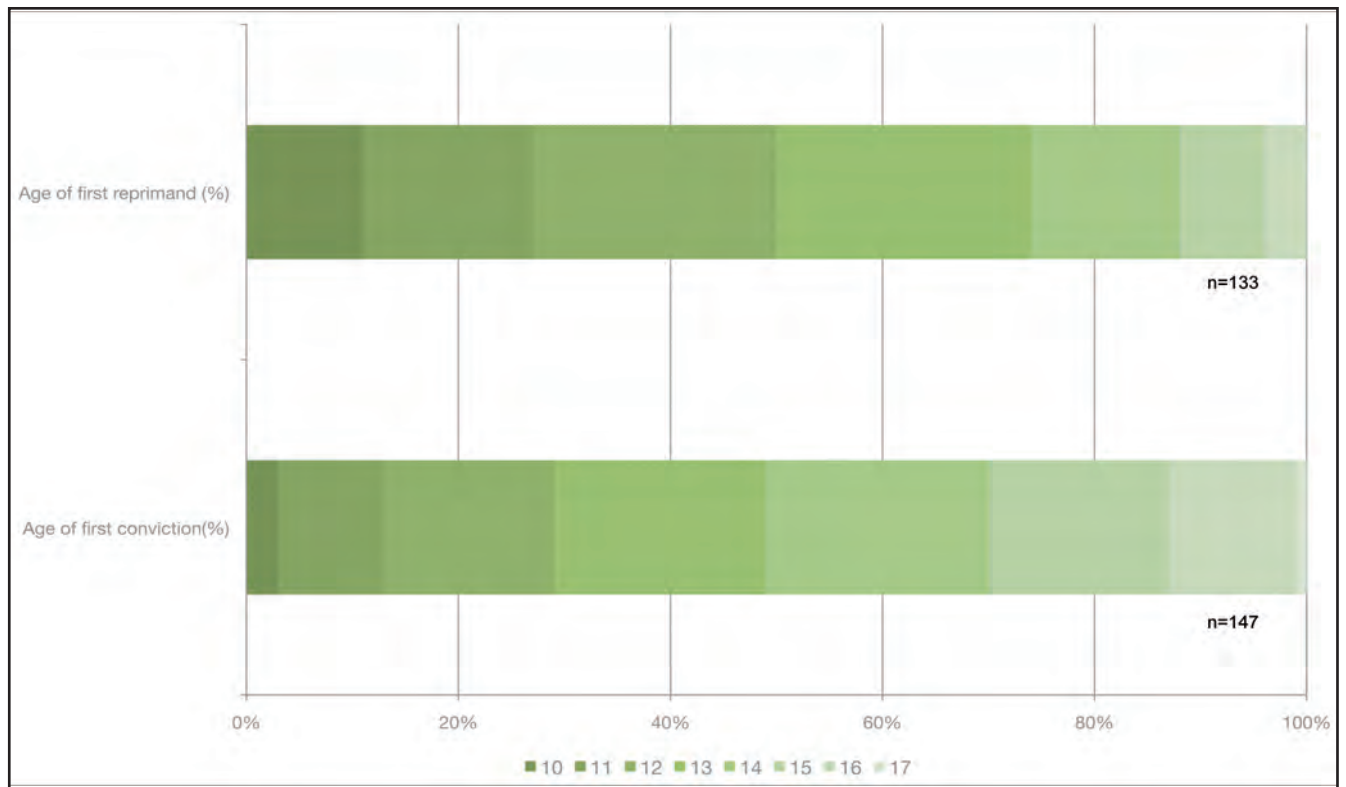
Thirteen of the 14 first-time offenders were sentenced for violent or sexual offences. These include six offences of robbery, one of rape, and one of wounding with intent to cause grievous bodily harm. The fourteenth first-time offender appears to be something of an anomaly: he is recorded as having been sentenced for a theft/handling offence, and it is stated in his Asset form that he was 'released on bail' after having served six days in custody.

Thus, on the basis of the limited information that is available, it appears that the large majority of children in the sample have offended prior to the offence for which they are currently sentenced; and that, among the small number who have not previously offended, the current offence tends to be relatively serious. It is also evident that many of the children have quite lengthy offending histories. Excluding those cases where the data are missing or the question is not applicable, half the children had their first reprimand between the ages of 10 and 12, and around three-quarters before they were 14. Around 30% had their first conviction at the age of 12 or younger, and almost half at 13 or younger (see Figure 3.1 and Table B9 in Appendix B).

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27. The procedural definition of persistence – which is no longer in use – was originally produced by the Home Office in setting its target for the time that should elapse between arrest and sentence of persistent young offenders. Prior to the development of the new SGC definition of persistence, guidance and case law made it clear that in determining whether a 12-14 year old was 'persistent' for the purpose of receiving a DTO, courts were expected to use a common-sense rather than the procedural definition.

Figure 3.1: Age of first reprimand and first conviction



### Offending patterns

Where possible, we looked at patterns in repeat offending by the children in our sample, in terms of both offence seriousness and frequency. This analysis reveals that, by both measures, consistency or growth in reoffending is common. Of 155 cases where changes in offence seriousness could be assessed, we found:

- Offending becoming more serious in 46% of cases
- Offending of a consistent level of seriousness in 31% of cases
- Offending becoming less serious in 15% of cases
- No identifiable pattern in 8% of cases.

Of 127 cases that we could analyse with respect to frequency of offending, the findings were:

- Increasing frequency of offending in 32% of cases
- Consistent frequency in 42% of cases
- Declining frequency in 17% of cases
- No identifiable pattern in 9% of cases.

### 3.4 Vulnerability in custody

As discussed above, the decision to impose a custodial sentence on a child should be taken only as a last resort, and should primarily be determined by the seriousness of the offence for which the child has been convicted; however, the courts are also obliged to ‘have regard to the

welfare of the child' in passing sentence. Precisely how the courts should balance welfare considerations with the other sentencing purposes or principles has never been spelt out. It would appear that sentencing decisions can reflect welfare considerations in two ways: first, in terms of the content of any sentence, so that, for example, supervision could be directed towards the child's needs; secondly in terms of providing mitigation that would lessen the severity of the sentence passed. The Sentencing Guidelines Council guideline on *Sentencing Youths* notes various points to which the courts 'should be alert' in having regard to the child's welfare. These include the high rates of mental health problems and learning disabilities and difficulties among children in the criminal justice system; 'the vulnerability of young people to self-harm, particularly within a custodial environment'; and 'the effect on young people of experiences of loss or of abuse' (SGC, 2009: paragraph 2.9).

In Chapters 4 to 6 of this report, we will examine the levels of disadvantage – relating to, among other matters, self-harm, mental health problems and experiences of loss or abuse – among our sample. Here, we are interested in welfare-related items specifically noted on Asset as having a bearing on the children's past or likely future experiences of custody.

The core Asset form includes a section on 'indicators of vulnerability', which includes a question about known problems during previous experiences of custody. Twenty-one children in the sample, or 29% of those who have had some prior experience of custody, were identified as having previously had problems when in custody. In six of these cases, these problems did not necessarily relate to the individual's welfare, but concerned the use of violence or making of threats to other children in custody. In a further six cases, the identified problem was self-harm, while another six were said to have been bullied or generally to have had problems coping with custody. No information on the problems faced in custody was provided in the remaining cases.

In 72 of the cases in our sample, the YOT worker replied 'Yes' to the Asset question: 'Are there any current concerns about vulnerability if s/he were to go to custody?' Excluding the 'don't knows' (eight cases) and missing data (34), this amounted to almost half – 46% – of the 158 cases for which there was an answer. Proportionately, many more girls than boys were identified as vulnerable: eight of the 11 girls (or 73%) for which there was an answer, compared to 64 of the 147 boys (44%).

The most common concerns about vulnerability in custody were risks of self-harm or suicide attempts (identified in 22 cases); the child's potential inability to cope mentally or emotionally (19 cases); and the risk that he or she would be bullied (14 cases). Also mentioned as factors enhancing vulnerability were the fact that it would be the first time the child was in custody; worries about how they would cope with being separated from family or partners; possible reprisals from gangs and negative associations with peers inside the secure estate; their potential to commit acts of violence; and problems relating to drug dependency. Two examples of cases in which vulnerability in custody was mentioned are set out in Box 3.3. The Asset form does not ask specifically about possible vulnerability arising from mental health problems, learning disabilities or speech, language and communication needs – all of which might be expected to contribute significantly to the difficulties a child could face in custody.

Box 3.3: Vulnerability in custody

*Self-harm and suicidal feelings*

Rosa, aged 17, was sentenced to a four month DTO for two offences of common assault. The offences were the result of a fight between Rosa and two other girls after one reportedly called her a 'white bitch'. Rosa had been drinking heavily before the fight, and the two victims were punched and kicked.

Rosa has never been to prison before, but has had a number of community sentences in the past. She has been in care since she was 12 years old, having been abandoned by her mother, who has an alcohol problem. She was physically abused by her step-father, who was later convicted of sexual offences against her older sister. Rosa now has minimal contact with her parents, and tends to socialise with peers who also have difficult family circumstances.

When she is angry, Rosa often punches walls and furniture, and has broken most of her knuckles. Her YOT worker believes she is vulnerable as she has been self-harming – and has done so in the past – and has stated that she is feeling suicidal.

*Emotional and mental health problems*

Fourteen year old Callum was sentenced to a 10-month DTO for robbery; he was also convicted of possession of an offensive weapon (a knife) and racially aggravated assault. The robbery was committed with a group of friends against some other boys.

Callum has been diagnosed with attention-deficit hyperactivity disorder (ADHD). He recently experienced the loss of an uncle and his grandfather, both of whom he was close to. The two deaths appear to have had a significant effect on him. He receives strong support from both his parents and the child and adolescent mental health service (CAMHS).

Callum has never before been in custody, and stated that he would 'go crazy' if he received a custodial sentence because he has an aversion to confined spaces. His YOT worker stated that 'I have concerns about the lasting impact on Callum should he have to experience an environment with such confines and be removed from his well-established support networks. Indeed it would appear likely that the imposition of such a sentence would increase risk levels in the long term, rather than reduce them.'





## 4 Custodial remands

### Interview with Rhianna

Rhianna is 17 years old and has been remanded in custody for actual bodily harm (ABH) on a young man who sexually assaulted her. Her previous offending includes arson. At the time of this current offence she was living with her father after her mother kicked her out. She told the interviewer that her offending started after the sexual assault.

Rhianna had wanted to join the army but her offending history prevents this. She is classed as vulnerable because of self-harming and was relieved that she had not been sent to a young offender institution (YOI). She described the secure unit where she is being held as much better than she expected because there are no cells, the staff don't wear uniforms and 'are nice'; but she is being bullied.

*In secondary school and in here I do get bullied quite a lot...in the way that people will laugh at me when I say something and they laugh at me 'cause I'm scared of the dark and they laugh at me 'cause I suck my thumb and in the way they make sly remarks and they make out they're not aimed at me but they are aimed at me. I just blank it out and let the staff deal with it.*

Before entering custody, Rhianna had been referred by her GP to child and adolescent mental health services (CAMHS) because of self-harming. She was also tested for attention-deficit hyperactivity disorder (ADHD) but says she never got the results. She stopped attending appointments with her psychologist when she started drinking heavily.

*I'm not self-harming no more, no, but I do have times like, when I can do, but I'm not like, cutting my wrists or anything no more, but I do pull my hair and punch walls and things like that, so I suppose in a way I'm still self-harming.*

She gets visits from her family every two weeks which she describes as really important to her. She is very worried about going to court and the sentence she will receive.

*It's really difficult being on remand, you have stuff rushing through your head about court and about how long I'm going to get...I've been on remand for like, three months now, I think it is. It'll be three months tomorrow, being on remand and like... It is a really long time to be on remand, but when I get sentenced it'll be like four months being on remand...I miss my freedom, I miss the fact that I'm unable to walk out the front door when I want to, or I can't walk away from my troubles, if someone starts bullying me I can't walk away from it.*

Concerns about the use of custody for children extend beyond custodial sentencing to the subject of custodial remands. At any given time, children on remand comprise a minority of children in custody; in the year 2008/09, the average population of children in custody was 605 on remand and 2,276 under sentence. However, because they spend, on average, less time in custody than those who are sentenced, they account for a higher proportion of receptions into custody. In the last six months of 2008, 45% of receptions were of children on remand. In addition, time spent in custody on remand can cause disproportionate levels of disruption to family life and education.

There is very limited research on how remand is used by the courts in criminal proceedings, either in the adult or youth justice populations. Player (2007: 425) argues: 'unlike sentencing practice, the bail decision has attracted relatively little academic or public debate, yet it is a decision that has profound implications for the human rights of defendants, the protection of the public and the size of the prison population'. A key issue, focusing here on children, is that the majority who receive custodial remands are ultimately either acquitted or, following conviction, receive non-custodial sentences (Gibbs and Hickson, 2009).

By law, 'there is a general presumption in favour of bail for any person involved in criminal proceedings'.<sup>28</sup> The decision to grant bail is governed by the Bail Act (1976) – with amendments contained in the Criminal Justice Act 1991 and the Crime and Disorder Act 1998 – which applies both to adults and children. The main reasons for which the court may refuse bail are:

- if the defendant is unlikely to surrender to custody
- if the defendant poses a risk of further offending while on bail or a risk of obstructing justice or interfering with witnesses.

In addition bail can be denied if the court is satisfied that:

- it is necessary for the defendant's own protection (or welfare in the case of a child defendant)
- the defendant is already in custody
- there is insufficient information to make a remand decision or the accused has breached his present bail by failing to surrender to bail
- it would be impractical to complete inquiries or make a report without keeping the defendant in custody.

Under the Bail Act, courts can take into account the following four statutory criteria in making their decision on whether or not to impose a custodial remand:

- the nature and seriousness of the alleged offence
- the defendant's background, including previous offending
- the defendant's history of compliance with bail conditions
- the strength of the evidence against the defendant.

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28. This background information on remand is adapted from Player et al.(2010) and the Youth Justice Board (YJB) website: 'Courts and Orders – Use of Remand: Legal Framework': [www.yjb.gov.uk/en-gb/practitioners/CourtsAndOrders/Managingdemandforcustody/Appropriateremand/LegalFramework.htm](http://www.yjb.gov.uk/en-gb/practitioners/CourtsAndOrders/Managingdemandforcustody/Appropriateremand/LegalFramework.htm)

In the case of child defendants, those aged 10-16 years who are refused bail should be remanded to non-secure local authority accommodation (RLAA). This involves the child being looked after by the local authority. Unless the type of accommodation is a condition of the remand the local authority can choose what type of accommodation it provides. For the court to order secure remand for this age group there are a number of additional criteria:

- the child must be over 12 years; and then only if
- the child has been convicted of a violent or sexual offence or an offence that, if an adult, would (if convicted) be punishable with a prison term of 14 years or more
- the child has a recent history of repeatedly committing imprisonable offences whilst on bail or in local authority accommodation
- the court deems it necessary to protect the public from serious harm or further offending by the defendant.

Where secure remand is ordered, the court has a duty to explain clearly to the defendant why it has sought this option. See Box 4.1 for details of custodial remands.

#### Box 4.1: Custodial remand options for children

##### *Remand to custody*

All 17 year old boys and girls and 15-16 year old boys who are not assessed as being vulnerable. In these cases, the remand will be to a young offender institution.

##### *Court-ordered secure remand*

All 12-14 year olds, 15-16 year old girls, and 15-16 year old boys assessed as being vulnerable. A court-ordered secure remand means that the individual is placed in a secure children's home or secure training centre.

The focus of this chapter is on the children who were subject to custodial remand in the second half of 2008. While we can learn something about the use of remand from the data we have gathered, these were incomplete and limited in the following respects:

- A large proportion of the sample (n=24) had a bail Asset only. This is completed by a YOT worker and while it covers the same substantive areas as the core Asset, it is not as detailed in terms of background information.
- Only 27 of the sample had a core Asset available which was linked to the offence for which they were being remanded. A further 31 had core Assets for the appropriate timeframe (within a month of the court date) but the offences on secure access clearing house system (SACHS) did not match those outlined in the Asset (see Appendix A).

This is worrying in that it suggests the courts are making decisions about remand on the basis of very limited information. However, the lack of information available on SACHS may also be due to the fact that youth offending teams (YOTs) do not forward all relevant reports to the YJB placement teams.

Wherever possible, we present information on the full population of 2,736 children who received custodial remands from July to September 2008. However, as for the previous chapters, on some issues we have to rely on the sample of 100 remanded children, randomly selected from the full population. This sample is broadly representative of the full population in terms of demographics and the alleged offences for which the children were remanded to custody or subject to court ordered secure remand. However, the availability of the core asset for 76 children potentially skews the sample towards more serious or persistent offending as these children are more likely to have undergone a full Asset assessment.

We look at sentence outcome, present a demographic and offending profile of the remanded children and, where available, the reasons given for decision to remand, although these were not made explicit in most of the documents we reviewed. We also examine evidence for risk of reoffending, serious harm posed to others and vulnerability in custody.

We do not have information about the type of remand ordered for the full population; however the majority (82) of our sample of 100 were remanded to custody. Only 18 children were subject to court ordered secure remand (COSR). The offences for which these 18 children were remanded were violence against the person (five), sexual offences (three), racially aggravated offences (two), robbery (two), breach of bail (two), criminal damage (one), domestic burglary (one) non-domestic burglary (one) and a public order offence (one).

#### 4.1 Sentence outcomes

We have highlighted above the fact that most children on remand go on to receive a community sentence or an acquittal. This is in numbers significantly higher than for the equivalent adult population (Player et al, 2010). While we cannot give a wholly accurate picture of the proportion in our sample who went on to receive a custodial sentence, we know that 17 were subsequently sentenced to custody and 49 had no further recorded custody episodes<sup>29</sup>, although we have no information about how many of the 49 were acquitted or received a community disposal following their period of remand. Of the remaining 34 children, five received a custodial sentence within a month of the remand period and 14 children received a custodial sentence over a month later. We do not know for certain whether or not these related to the offence for which they were remanded or to new criminal charges but most children who are initially remanded are likely to be released on bail and be at liberty at the time of trial so we can assume it was likely to relate to the remand offence. Fifteen received a further remand after the remand episode we were focusing on. Overall then, we can estimate that between one fifth and over a third of children in our remand sample received a custodial sentence post remand (Figure 4.1).

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29. Researchers began collecting detailed information on 100 remanded children in November 2009, providing a minimum of 10 months and a maximum of 19 months for further custodial reconvictions to be placed on SACHS.

Figure 4.1 Remand episode and sentence outcomes

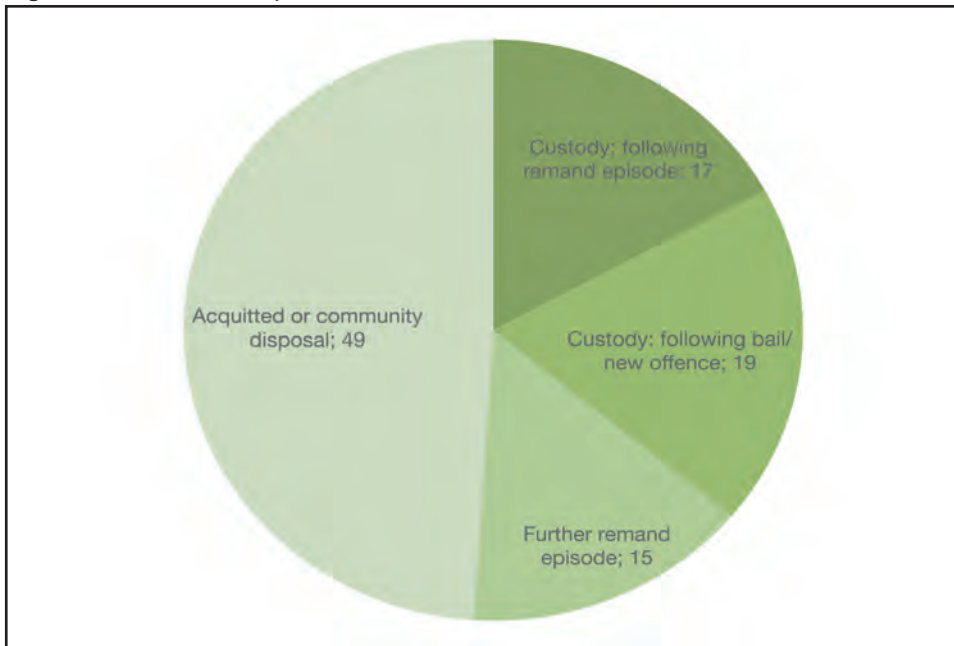
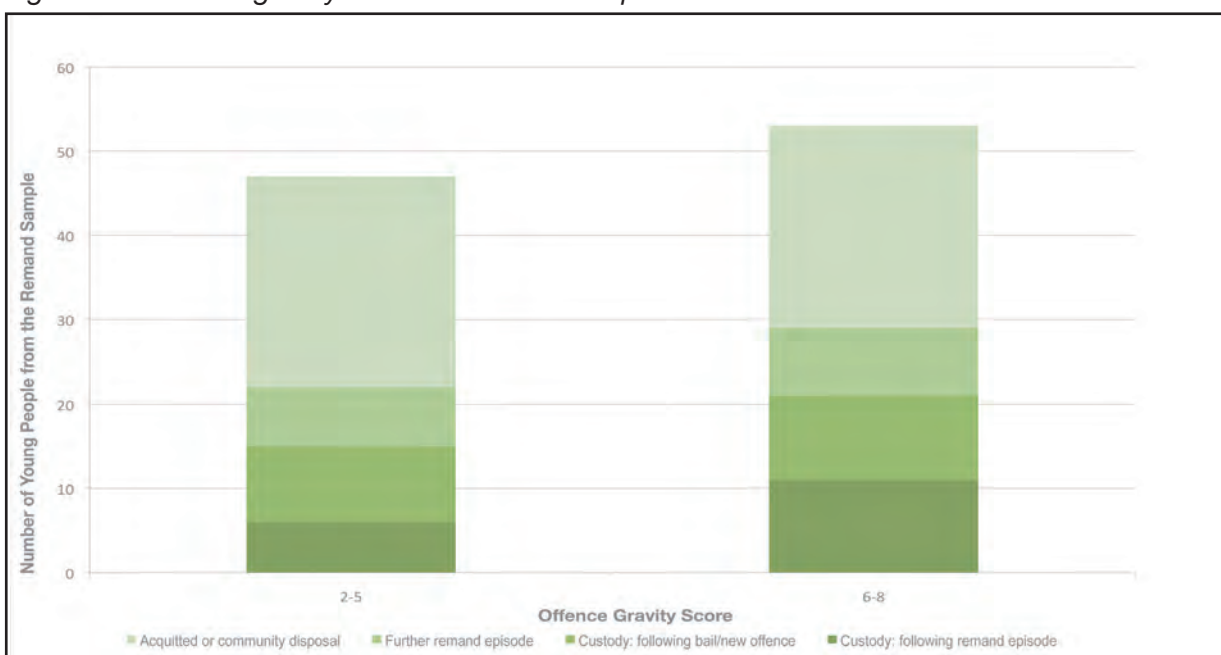


Figure 4.2 below summarises the offence gravity scores by the sentence outcome. The offence gravity score, devised by the YJB and based on their analysis of sentencing patterns, rates the seriousness of each alleged offence. For example, gravity scores of 1 to 5 are predominantly likely to receive a first tier or community sentence, offences scoring 6 can receive custodial and community sentences in equal measure and offences scoring 7 to 8 predominantly lead to custody. Analysis of the gravity scores for the remand population (2,736) for alleged offences for which the children were remanded, showed a 50/50 split in terms of likely custodial or community sentencing outcome. Figure 4.2 shows that around one fifth of those who had been remanded for an offence with a gravity score of 6 to 8 went on to receive a custodial sentence.

Figure 4.2 Offence gravity scores and remand episode outcomes



## 4.2 Profile of remanded children

A total of 2,440 children were subject to custodial remand in the second half of 2008, with the majority being remanded just once in six months, while 248 were remanded twice, 21 were remanded three times and two children were remanded on four occasions – making a total of 2,736 remands. The analysis in this chapter is based on the 2,736 remand episodes rather than the 2,440 individuals.

The remanded population breaks down in terms of gender, ethnicity and age as follows:

- 94% are boys and 6% are girls
- 65% are white; 13% black, 7% mixed, 4% Asian and for 11% the ethnicity is unknown
- 55% are aged 17, 25% are 16 and 13% are 15 years old. The remaining 7% are aged between 12 and 14 years.

There are slightly more girls in our remand sample compared to our sample of sentenced children. At 6% of the remand population, the proportion of girls is lower than the proportion of adult women remanded into custody (abstracted from Ministry of Justice 2009: 51-52). There is a smaller proportion of black children on remand as compared to the adult population; however comparing the proportion of black children in the remand and sentenced sample, there is a higher proportion of black boys and girls remanded than sentenced. Mixed race children are over-represented and Asian children are under-represented when compared to the adult remand population. Our remand group contains a greater proportion of younger children (aged 15 years and under) than our sentenced group. More details on the demographic profile of the remanded children are provided in Tables B10 and B11 in Appendix B.

The majority (2,721) of children were remanded to custody or subject to court ordered secure remand prior to conviction. Only 15 children on remand had already been convicted and were awaiting sentence. For the majority (62%) of girls and nearly half of the boys (49%), the remand episode was their first time in custody.

On average, girls travelled 22 miles further from home to their institution than boys (mean average 58 miles for girls compared to 37 miles for boys) and travelled slightly further than those sentenced which was an average of 40 miles (See Appendix B, Table B12).

Using dates recorded on SACHS (the young person's recorded court date and the remand episode closure date) we were able to calculate that on average (median) the children in our sample of 100 spent 32 days on remand. Just under a half (46) were on remand for longer than the 36-37 day average length cited by Gibbs and Hickson (2009). Over a quarter (28) had spent three months or more on remand, 12 of the children were remanded for six months or more and one was on remand for over a year.

## 4.3 Alleged offences

Looking at the most serious alleged offence for which each individual was remanded, the most common for boys were violence against the person, robbery and burglary – each accounting for

just under one-fifth of remand offences for boys, whilst for the girls it was violence against the person (22%) and breach (23%). As noted above, children who have breached bail or statutory orders are taking up an increasing proportion of custodial places, leading to questions about the adequacy of support provided to children to meet the conditions of bail or criminal justice orders (Hart, 2010).

*Table 4.1: Primary alleged offences (offence types summarised)*

<i>Offence</i>	<i>Girls</i>	<i>Boys</i>	<i>All</i>
Breach of statutory order/bail/discharge	23%	11%	12%
Violence against the person	22%	19%	19%
Robbery	16%	19%	19%
Burglary (including domestic, non-domestic, aggravated)	3%	19%	17%
Vehicle theft/unauthorised vehicle taking	1%	6%	6%
Racially aggravated assault/other	7%	3%	3%
Public order offence	3%	3%	3%
Theft/handling stolen goods	10%	4%	4%
Drugs	3%	5%	5%
Sexual offence	-	4%	3%
Criminal damage	7%	2%	2%
Motoring	-	1%	1%
Arson	1%	1%	1%
Other/not known/no longer in use	6%	4%	4%
Total	100%	100%	100%
N	197	2,539	2,736

#### 4.4 Risks of reoffending

The core Asset is used to calculate the risk of reoffending. This is measured by giving a score to the different sections of Asset. The following are considered: four static factors (offence type; age at first reprimand/caution/warning; age at first conviction; and number of previous convictions) and 12 dynamic factors (including: care history; living arrangements; family and personal relationships)<sup>30</sup>. Each factor is scored from 0-4 (i.e. a score of 4 in the 'living arrangements' section of the Asset would suggest that for this particular child his/her living arrangements are likely to contribute to his/her reoffending). The maximum score a child can receive, based on static and dynamic factors, is 64.

30. For further notes on calculating the risks of reoffending: [www.yjb.gov.uk/publications/Resources/Downloads/Youth%20Justice%20-%20The%20Scaled%20Approach%202009.pdf](http://www.yjb.gov.uk/publications/Resources/Downloads/Youth%20Justice%20-%20The%20Scaled%20Approach%202009.pdf)

As discussed in previous chapters, risk assessment is a ‘highly inexact science’ and the adequacy of risk profiling by YOT workers is questionable as in many cases, YOT workers may complete their assessments on the basis of limited information and knowledge of the individual child.

Table 4.2 shows the risk scores for likelihood of reoffending for the children in our remand sample. The scale we use here replicates the latest scaled approach score bands<sup>31</sup> used by the YJB. Just under half the remand sample (47%) were assessed as posing a medium risk of reoffending and around one quarter were assessed as having a low (26%) or high (27%) likelihood of reoffending. However, we lack context for the scores given by the YOT workers, which ideally would include more information about the extent and nature of evidence used to determine the score and some indication of the type of likely reoffending (e.g. violent/non violent).

*Table 4.2: Overall assessed likelihood of reoffending*

<i>YJB risk of reoffending bands</i>	<i>Our remand sample</i>
Low (score 0 – 14 inclusive)	26%
Medium (score 15 – 32 inclusive)	47%
High (score 33 – 64)	27%
<b>Total</b>	<b>100%</b>

#### 4.5 Risk of serious harm to others

The core Asset also contains a section collating ‘Indicators of risk of serious harm to others’, which may provide some indication about why remand may have been ordered by the court. Should a young person be flagged as presenting risk of serious harm, a further separate screening form (‘Risk of serious harm or ROSH’) is conducted to identify the level of risk posed.

Our data shows that a ROSH form was requested for under half the remand sample (46). In three cases the risk of serious harm was highlighted in Asset but a separate ROSH was not available. Of those assessed (43), under half were deemed to pose a high risk (16) or very high risk (3) of serious harm to others; the remainder were assessed as posing a medium (20) or low risk of harm (4).

Evidence cited in ROSH for the ‘calculation’ of likely risk included the child’s previous and/or current offence/s (43) a history of violence/violent offending (25), previous/current use and/or possession of weapons (13), threatening behaviour (seven), and sexually inappropriate behaviour/sexual offences (current/previous) (six).

Overall, more than three quarters of the children in the remand sample (81) were not considered to pose a high risk of serious harm to others.

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31. [www.yjb.gov.uk/publications/Resources/Downloads/Youth%20Justice%20-%20The%20Scaled%20Approach%202009.pdf](http://www.yjb.gov.uk/publications/Resources/Downloads/Youth%20Justice%20-%20The%20Scaled%20Approach%202009.pdf)



## 4.6 Rationales for refusing bail

In the large majority of cases (84) in our sample, the reasons for remanding the child were not noted in the documents we examined on SACHS. Below we outline what reasons were given in 16 cases where this information was available (that is, the cases in which bail assets were available on SACHS). The most frequently cited were:

- the potential for the young person to commit further offences if bailed (eight)
- the seriousness and nature of the offence (six)
- breach of bail and/or curfew conditions/offended while on bail (five)
- witness intimidation/interference (three)
- interference with the course of justice/lack of engagement with the YOS (three)
- public protection (two)
- the young person will be placed at risk – i.e. gang reprisals, drug-related issues (two)
- the young person has no fixed abode (one)
- the young person is likely to abscond (one)
- other – i.e. the young person is a class A drug user (one).

As has been highlighted elsewhere (Gibbs and Hickson, 2009), this shows that in a few instances, custodial remand was being used as a ‘remedy’ for dealing with unstable accommodation, risk of absconding and problem drug use or through a lack of appropriate bail options. The courts can also ‘default to the prison option’ (Gibbs and Hickson, 2009) for those children with mental health needs as they can be unaware of alternatives or have no access to them. Seven children in our remand sample were formally diagnosed with a ‘mental illness’. The account noted in Box 4.2, raises questions about the appropriate use of remand in the case of a 17 year old boy with learning difficulties and ‘mental impairment’ who was not sentenced to custody for his offence.

### Box 4.2: Theft and handling

Dan is a 17-year old boy who was remanded for three counts of theft and handling stolen goods. He spent 126 days remanded in custody and did not receive a custodial sentence for these offences. Dan has never served a custodial sentence but was previously remanded to custody for a robbery and a possession of offensive weapon charge.

Dan’s educational history suggests he has learning difficulties. While he has had no formal diagnosis of mental illness, a psychological assessment identified him as having significant mental impairment. He has a very low IQ and was very close to being considered not fit to plead.

Boxes 4.3 and 4.4 provide information about the offending and background of two of the children in our remand sample who spent a short period of time on remand – 16 days (Box 4.3) and one day (Box 4.4).

**Box 4.3: Vehicle theft/ unauthorised taking**

Jack is 17 years old and was remanded to custody for sixteen days for charges of alleged vehicle theft/ unauthorised taking. On the night of the offence Jack had been drinking alcohol whilst walking around the streets with a group of friends. Jack claimed he and his friends got in the car as he knew the driver, but denied stealing the car or knowledge of where it came from. They did not drive anywhere because the police approached them and so Jack got out of the car and was then arrested.

Jack used to live with his mother, father and an older sister. Jack's mother died a year ago from liver failure and pneumonia. She used to drink quite heavily, as does his father. Bereavement counselling was offered to Jack and his father but they declined, saying they are dealing with the event 'fine'. His mother used to set all the boundaries at home. Jack has a volatile relationship with his father and this has resulted in criminal damage in the past.

Jack sometimes stays away from home without asking, and has spent two-three nights away without anyone knowing his whereabouts. He has an older sister with whom he spends a lot of his time. Jack sees his grandmother most days and his uncle spends a lot of time at the house

Jack received a custodial sentence within a month of this remand episode.

**Box 4.4: Public order offence**

Max is a 14 year old who has three previous convictions for which he received non-custodial disposals. He is remanded for one day for a Section 4 public order offence (causing fear or provocation of violence). Police were called to Max's care home after a neighbour complained that he had shouted abuse at him and thrown items at his car. Max has been accommodated under voluntary agreement with his parents since April 2007, following an incident at home. He has had numerous placements but these have all broken down. His current public order offence took place at a home for children with complex and challenging needs.

Max was placed on the child protection register for a year in 1996 under the category of neglect. Social services retained contact with Max due to their concerns about parenting, neglect and abuse. Max and his mother have a poor relationship and social services' records show that Max has been subject to years of negative verbal abuse from his mother. His mother suffers from depression and contact with his mother is sporadic as he does not always wish to see her.

Max has an older brother aged 19 who is currently serving a custodial sentence for theft. Max disclosed his older brother had sexually abused him when he was younger.

Max has ADHD and has ongoing involvement with mental health services. His psychologist has assessed him as having an IQ of 63 and social, emotional and behavioural difficulties. Max has twice attempted suicide and overdosed on his medication for ADHD.

Max received a custodial sentence over a month after this remand episode

Box 4.5 provides an illustration of where seriousness or persistence of offending, and the need to protect the public, may have played a part in the decision to remand the young person to custody, although as with Dan, Jamie did not go on to receive a custodial sentence.

#### **Box 4.5: Persistent offending**

Jamie is a 17 year old boy with a long criminal history, dating back to when he received his first conviction aged 12 years. Jamie has had one previous DTO in June 2008 and over 10 previous convictions. These include: five supervision orders, a referral order, an action plan order and 10 other disposals. Jamie was remanded in custody for his alleged part in a series of four offences (detailed below). He did not receive a custodial sentence for these offences but had spent over nine months (283 days) on custodial remand.

*Non-domestic burglary* – Jamie had been drinking heavily with two associates when one suggested they force entry into a store to steal more alcohol. His associate smashed the glass door with a hammer and gave it to Jamie who waited outside while his associates entered the store. Jamie then leaned in over the door frame to take bottles of alcohol that were passed to him. He was found in possession of the hammer when police arrived and searched him.

*Violence against the person* – actual bodily harm (ABH): Jamie and some friends had been drinking in the town centre when the victim and some of his friends passed by and verbally insulted them. An altercation ensued and Jamie and the victim started wrestling on the floor. The youths with Jamie then began kicking and stamping on the victim at which point Jamie ran off.

*Possession of class C drugs* – When police arrested Jamie for the ABH offence he was found in possession of a small amount of cannabis.

*Criminal damage* – Jamie had been drinking heavily with some friends in a property. When he left the property he realised some money was missing from his pockets so he went back to the flat. When he was refused access he got a fire extinguisher and banged it against the door to the flat until the tenant reluctantly let him in.

Jamie was under the influence of alcohol whilst commissioning all four offences. Historically, alcohol has been a feature in most of his offending. His alcohol ‘binges’ are believed to be both due to his feelings of loneliness coupled with lack of constructive activities (i.e. the fact that he is not in employment, education or training) to occupy his time. He has also experimented with class A drugs (heroin, crack, cocaine, amphetamines and ecstasy) in the past but has recently claimed to have stopped using.

#### 4.7 Vulnerability in custody

As highlighted in the previous chapter, the core Asset form includes a section allowing the YOT worker to outline indicators of vulnerability for the young person, including any problems during previous periods of custody. Although for remand, the decision about the vulnerability of the child is for the court to make, the Asset data showed that one fifth (20) of the children in the remand sample were assessed as being at risk of self-harm or suicide and eight were noted to have had problems during previous custodial sentences. These were outlined for four of the eight children and included threats to self-harm or a history of self-harm during previous custody; threats to kill themselves; and for one child who had been experiencing withdrawal from cannabis and alcohol, banging his head on the cell wall. In total then, the YOT worker noted current concerns about likely vulnerability in custody for over one quarter of the children in the remand sample (28).

## 5 Disadvantages in home and family life

### Interview with Jake

Jake is 15 years old and is serving a 10-month detention and training order for breach of a community order, which involved various episodes of breaking his curfew while he was on an electronic tag. This is his first custodial sentence. His past offences (all of which were committed over the course of the past year) include car theft, violence and drugs offences. He has been using drugs since he was 14 years old, but does not consider himself to have a drug problem.

Jake is the youngest child in a large family, but has very little contact with any of his relatives. He has been in the care of the local authority for many years, and was living with a foster family before going into custody. He believes that his offending is related to the recent death of his mother:

*My mum had an accident and died one day and that's probably the reason why I'm in here [in custody]. Upset and then not bothered about anything.*

Jake has been excluded from four different secondary schools.

*[My] social worker has tried to help me but they're doing my head in. I just want to be left alone... I don't want adults come speaking to me about my feelings. It's got [nothing] to do with them really... I don't want no one to help me. I've had it for the past eight years. I've had loads of people coming around me trying to get part of my life. I don't want to give people part of my life.*

He thinks his custodial sentence is fair punishment for what he did, and said that he has not found being in custody difficult or frightening:

*Not bothered. I've done something wrong so I have to do this.*

No member of his family has visited him in custody; he is not sure if his brothers even know that he is in custody. However, he receives regular visits from the youth offending team and his social worker. He does not know what he will do when he is released, but he hopes to return to live with his foster carers.

By law, as we have noted above, the criminal courts are required to ‘have regard to the welfare’ of any child or young person who appears before them (Children and Young Persons Act 1933). Protecting the welfare of child defendants within the formal, adversarial legal system of England and Wales is bound to be a challenging task; and all the more so when it is taken into account that these children tend to be very disadvantaged and thus, very often, their welfare is already at risk or compromised. Children who appear in court as defendants can be described as ‘doubly vulnerable’: that is, they are vulnerable participants in the justice system not only because of their young age and developmental immaturity, which in themselves can make the experience of court distressing and difficult to comprehend, but also because they tend to have a range of emotional, social and psychological needs (Jacobson with Talbot, 2009: 34).

In this and the next two chapters of the report, we assess the range and extent of disadvantages among children in custody.

## 5.1 Assessing disadvantage within the sentenced sample

It is widely recognised within the criminological research literature – as we have observed in Chapter 1 of this report – that offending by children is strongly associated with various forms of disadvantage. These ‘risk factors’ for offending include disadvantages relating to: family life; the wider social environment in which children live; socio-economic status; experiences of and responses to education; and emotional and psychological needs and dispositions.

As part of this study, we wished to assess the prevalence and distribution of these kinds of disadvantages among children in custody. In order to do so, we have focussed on the randomly selected sample of 200 children who were sentenced to custody in the last six months of 2008.<sup>32</sup> Our assessment of disadvantage among these children is limited to those attributes on which information was available to us through the completed Asset forms and other documentation held on the secure access clearing house system (SACHS) database. This means that our figures on disadvantage are significant under-estimates. Information on some types of disadvantage (particularly those relating to learning disabilities and speech, language and communication needs, and also experiences of criminal victimisation) is simply not included in Asset, due to the focus of the process on items deemed strictly relevant to offending behaviour rather than welfare concerns, although in practice the two cannot be easily differentiated. Our analysis has also been hindered by the large amount of missing data on items that are included in Asset (see Appendix A). It should be remembered also that in 14 cases (7% of the sample) Asset forms were completed without the child being interviewed; in these cases, the report writer’s insight into the level and types of disadvantages experienced by the child is likely to be particularly limited. Moreover, the Asset process is largely focussed on individual or family-level deficits and tends to draw attention away from structural dimensions of disadvantage.

Nevertheless, the available information allows us to explore many of, if not all, the types of disadvantage experienced by the children in our sample. In so doing, we do not intend to

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32. We did not include the 100 remanded children in the disadvantage analysis, because we lacked detailed information on a significant minority of these individuals.

investigate whether there are causal relationships between particular forms of disadvantage and offending behaviour. Rather, we are interested in how different kinds of disadvantage intersect with each other and, particularly, in the extent to which the children face multiple layers of complex problems. Previous reviews of Asset and other research into the backgrounds of children in the youth justice system have tended to look at the prevalence of specific risk factors or types of risk factor in isolation from each other.<sup>33</sup> There have been few other attempts to analyse systematically, through the use of both quantitative and qualitative data, the layering of these factors within a randomly selected sample of children in custody.

In addition, because the analysis encompasses so much of the qualitative information contained in Asset forms and other documents, we have been able to look in close detail at the specific difficulties and disadvantages faced by the sampled children. This means that we have gained some understanding not only that multiple problems exist in the children's lives, but also – as we will demonstrate through the use of narrative accounts in this chapter – of how these problems impact on individual children and are experienced by them.

### *Methodology of disadvantage analysis*

For the purposes of our analysis of disadvantage, we compiled a list of 30 types of disadvantage through a process of reviewing and merging the data we had collected. We then subdivided the 30 types of disadvantage into two sub-groups: first, 19 factors relating to home and family life; secondly, 11 psycho-social and educational problems.<sup>34</sup> While these 30 factors are by no means an exhaustive list, we are confident that they represent most of the significant forms of disadvantage that are generally found to be prevalent among children who offend. As far as possible, each of the 30 disadvantage factors has been defined as mutually exclusive, in order to avoid double-counting in our assessment of the overall distribution of types of disadvantage.

Drawing on both the quantitative and qualitative data for all cases in the sample,<sup>35</sup> we coded each of the 30 factors dichotomously: that is, as either 'present' or 'not present'. In cases where the presence of the factor was not known, this was coded as 'not present'.

This chapter presents our findings with respect to home and family disadvantage. After looking at the prevalence and distribution of these factors across the sample, we will go on to examine three areas of disadvantage in more detail: namely, general family problems; experiences of local authority care; and bereavement. Following this discussion, Chapter 6 focuses on the psycho-social and educational problems we have identified, while Chapter 7 pulls together the data on both the family and the psycho-social/educational facets of disadvantage.

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33. See, for example, Baker et al (2003); Harrington and Bailey (2005); Chitsabesan et al (2006); YJB (2006); Arnall et al (2007).

34. In the criminological literature, risk factors are typically classified as community/environmental, familial and personal/individual (see, for example, discussion of the relevant literature in Farrington and Welsh, 2007); however, we found that our data were more amenable to the two-fold classification outlined here than to the more usual three-fold classification.

35. Some of the coding was primarily based on quantitative data: that is, where completed tick boxes in Asset provided most of the relevant information (supplemented as appropriate with data from other sources). For other variables, the coding was primarily based on qualitative data derived from Asset text boxes or from other documents.

## 5.2 Prevalence and distribution of indicators of disadvantage in home and family life

The 19 home and family disadvantages that have been included in our analysis are listed in the first column of Table 5.1. These disadvantages are wide-ranging; they encompass not only the individual's family background, relationships within the family and experiences of local authority care, but also current living arrangements (which may or may not be within the family home) and early parenthood.

Table 5.1 also shows the prevalence of each type of disadvantage in our sample of 200 sentenced children. In interpreting these figures it must be borne in mind that – as noted above – the prevalence rates are under-estimates because of the incomplete data, and hence reveal the extent of known rather than actual disadvantages. The figures reveal that around three-quarters of our sample (76%) are known to have had absent fathers, around half (51%) to live in a deprived household and/or unsuitable accommodation, and just under half (47%) to have run away or absconded at some point in their lives. Four other factors are each known to be present in more than one quarter of the sample: having been on the child protection register and/or experienced abuse or neglect (39%); having had an absent mother (33%); witnessing domestic violence (28%); and experience of local authority care (27%).

It is difficult to assess the extent to which the figures in Table 5.1 reveal disproportionate levels of disadvantage among the children in our sample compared to non-offending children, since there is a lack of data on the prevalence of these problems among the general population of 12-17 year-olds in England and Wales. However, some comparative figures for the general population are presented in Table 5.2, along with the related figures from our sample. These clearly demonstrate the disproportionality of disadvantage among children in custody – even on the basis of our under-estimated prevalence rates for the sample of 200.



*Table 5.1: Prevalence of home and family disadvantages among sample of 200 sentenced children*

<i>Factor</i>	<i>% cases</i>
Absent father (i.e. has lived apart from father for significant period of childhood; not solely through bereavement)	76%
Living in deprived household (e.g. dependent on benefits) and/or unsuitable accommodation (e.g. overcrowded, lacks basic amenities) <sup>36</sup>	51%
Has ever run away or absconded	47%
Ever on child protection register and/or has experienced abuse or neglect	39%
Absent mother (i.e. has lived apart from mother for significant period of childhood; not solely through bereavement)	33%
Has witnessed domestic violence	28%
Ever accommodated in local authority care (through voluntary agreement by parents and/or care order)	27%
Father/step-father involved in criminal activity	18%
Sibling(s) involved in criminal activity	17%
Chaotic or highly disorganised living arrangements	16%
Large family size (at least five children in the family)	16%
Parent with physical or mental health problems or learning disability	14%
Mother/step-mother has misused drugs or alcohol	12%
Is a parent him/herself or is pregnant	9%
Father/step-father has misused drugs or alcohol	7%
Bereavement – father	6%
Bereavement – sibling(s)	4%
Bereavement – mother	3%
Mother/step-mother involved in criminal activity	3%

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36. Definitions taken from the core Asset form.

**Table 5.2: Indicators of disadvantage in home and family life: comparative figures**

	General population of children	Children in custody
Experience of abuse in the family <sup>1</sup>	16%	39%
Deprived households <sup>2</sup>	13%	51%
Living in care <sup>3</sup>	0.6%	27%
Has ever run away/absconded	11% <sup>4</sup>	47%
Experience of death of parent(s) and/or sibling(s)	4% <sup>5</sup>	12%
Parents with substance misuse problems	2-3% <sup>6</sup>	7%

1 General population figure is for children experiencing serious maltreatment by parents during childhood – based on national random sample of 2,869 young people (18-24yrs) (source: Cawson, 2002); figure for custody sample includes experiences of abuse or neglect, or having been on child protection register.

2 Household deprivation for general population based on national average of secondary school children entitled to free school meals (source: DCSF, 2009a); for custody sample, includes dependence on benefits and unsuitable accommodation.

3 Children in care general population figure is percentage in care as at 31 March 2009, and incorporates all types of care orders (source: DCSF, 2009b); figure for custody sample includes any prior experience of care.

4 General population figure is an estimate of numbers of overnight runaways (sample 10,000) [www.childrenssociety.org.uk](http://www.childrenssociety.org.uk)

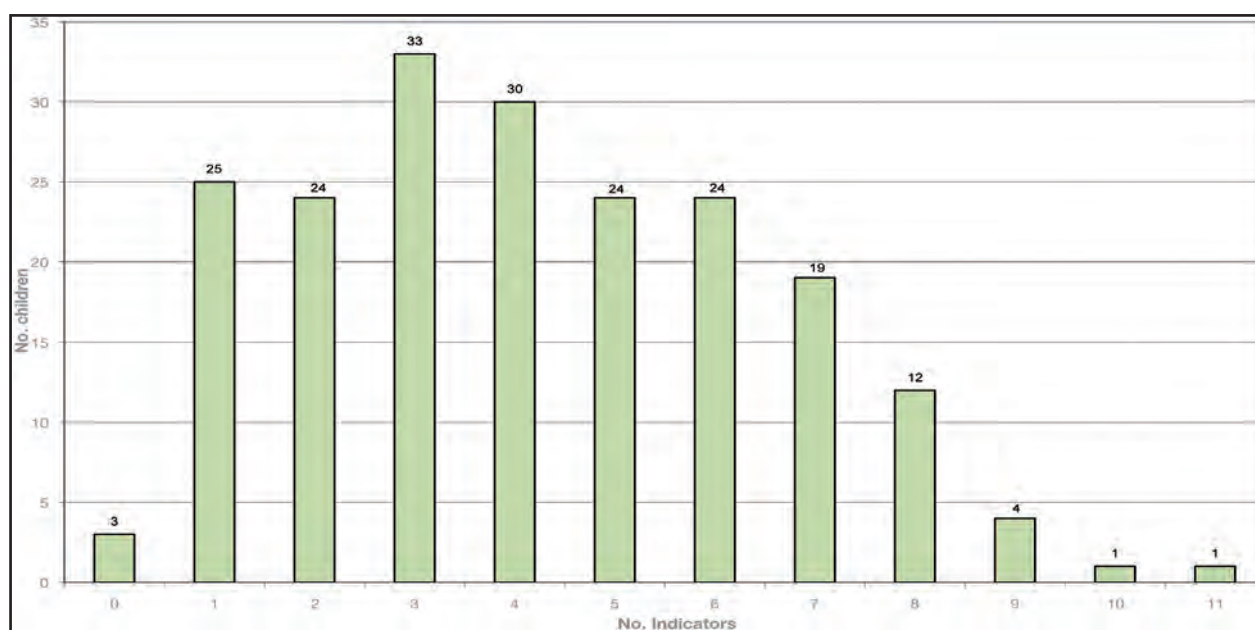
5 Source: Green et al (2005)

6 Source: ACMD (2003)

### Multiple home and family disadvantages

Figure 5.1 shows the distribution of indicators of home/family disadvantage across the sample. These numbers vividly demonstrate the concentration, or multiple layering, of family problems among these 200 children. Around three-quarters of the sample are known to have three or more indicators of home/family disadvantage, and more than two-fifths to have five or more. The mean number of indicators per child is 4.2. It should be noted, however, that this analysis involves a simple addition of factors rather than any kind of weighting, and it is likely that certain combinations of factors are more significant than others.

**Figure 5.1: Distribution of home/family disadvantages**



Analysis of gender differences within our sample is limited by the fact that there are only 17 girls among the 200 children. Likewise, the scope for inter-ethnic comparison is limited by the composition of the sample, which includes just 18 black, 17 mixed race and 7 Asian children; the remaining 158 are white. Nevertheless, it is interesting to note that girls seem to be more disadvantaged than boys; and white and mixed race children to be more disadvantaged than those who are black and Asian. The indicators for which there is the greatest gender difference in prevalence are 'witnessed domestic violence' (59% of the girls, compared to 25% of the boys); 'substance misuse by mother' (35% of the girls and 9% of the boys); and 'substance misuse by father' (18% of girls and 5% of boys). The most marked ethnic differences are seen in relation to 'witnessed domestic violence' (35% of white, 30% of mixed race, 6% of black and no Asian children) and 'criminal activity – father' (47% of mixed race, 17% of white and no Asian or black children).

These ethnic and gender differences are reflected in the following average numbers of indicators per child:

- The mean number of indicators per girl is 5.2, compared to a mean of 4.1 per boy.
- The mean number of indicators for mixed race children is 4.6, compared to 4.4 for white children, and 2.7 for both black and Asian children.<sup>37</sup>

(See Tables B13 and B14 in Appendix B for full gender and ethnic breakdowns of the distribution of indicators.)

### 5.3 General family problems

Most of the families of the children in our sample can be said to have multiple problems relating both to internal family dynamics and to external factors. While the nature and extent of problems within the families vary widely, there are some recurring difficulties. As illustrated by the accounts presented in Box 5.1, below, these include substance misuse among members of the immediate and extended family; involvement of family members in criminal activity (around one-third of the children – 32% – have siblings and/or parents involved in criminality); violence and abuse within the home; and parental separation, which is often acrimonious. Very often, there is a generally chaotic home environment, within which adults fail – despite best efforts in some cases, and through wilful or unintentional neglect in others – to control the behaviour of children. It appears that factors such as these often combine to produce volatile family dynamics, and spirals of aggression and violence whose reach can extend far beyond the family home. It is notable also that 17 of the 200 children in the sample are known to be parents themselves or to be expectant parents. This latter number includes two girls – out of the total of 17 girls in the sample – who are pregnant.

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37. The gender difference in the means is not statistically significant, and nor are the differences between the Asian and white and between the Asian and mixed race means. However, the black/white and black/mixed race differences are statistically significant.

**Box 5.1: Family problems**

***Violence in the home and mental illness***

Leila is a 15 year old girl who was sentenced for racially aggravated common assault. The offence was an unprovoked attack in the street on two girls, aged 12 and 13, whom Leila did not know. Prior to the offence she had been drinking cider with a group of friends, and had argued with her boyfriend.

Leila has a volatile relationship with both her parents, who are separated. She has spent periods of time living with her father, who has been diagnosed with schizophrenia. He fails to impose boundaries on her behaviour, and offers little support. More recently, Leila has been living with her mother, who appears to treat her more consistently. Leila has a large scar on her forehead, which she states was caused by her brother punching her: he broke her nose and cut her forehead with a ring he was wearing.

Leila is currently around two months pregnant by a friend of her brother's. She has stated that she wishes to keep the baby.

***Offending by family members***

Twelve year old Sean was sentenced for going equipped for stealing. He is the youngest in a family of eight siblings; five of his older siblings are in custody. His mother has recently served a short prison sentence for shoplifting, and is currently being prosecuted for several more such offences. She tends to side with her children when they are accused of committing crimes or anti-social behaviour. Sean has no contact with his birth father, who was abusive towards his mother; his step-father is serving a prison sentence and is due to be released next year.

The family is in the process of being re-housed following court action by the Council's Anti-Social Behaviour Unit: local residents had made numerous complaints about threatening and abusive behaviour by all family members. The family have been subject to a Family Intervention Programme – an anti-social behaviour initiative under which they have been offered re-housing in another area, along with intensive support, in return for signing a contract of good behaviour.

***Domestic violence***

Marc, aged 16, was sentenced for an offence of common assault perpetrated against his ex-girlfriend.

There is a long history of domestic violence and abuse in Marc's family. Alcohol misuse and maternal detachment are also features of the family dynamic. Marc's relationship with his step-father is particularly troubled; the latter previously received a caution for assaulting Marc. Marc has no contact with his birth father or paternal extended family. His mother has twice attempted suicide; one of these occasions was witnessed by Marc.

Marc spent several years in local authority care. He was in a large number of placements over this period, all of which failed because of his tendency to be physically and verbally abusive. At the age of 16 he left the care system and went to live with his uncle and grandmother, but was temporarily homeless at the time he committed the offence following an argument with his uncle.

It would, however, be misleading to suggest that all the families of the children in our sample have multiple, deep-seated problems. In a substantial number of cases, such as those described in Box 5.2, family life appears to be reasonably stable, and parents and others provide (or attempt to provide) extensive support to the children who have offended – often working with the youth offending team and other local services in so doing. Loving and constructive relationships between the family members are reported in some of these cases. In others, it is reported that there is considerable conflict and tension within the family, but that the cause of this is largely the offending and other challenging behaviour of the child.

#### Box 5.2: Relatively stable families

##### *Positive input from mother and foster parents*

15 year old Jon's sentence was for breach of a statutory order. Jon was living with his mother and two sisters at the time of the offence. His mother tried extremely hard to set boundaries on his behaviour, and attended parenting courses in an effort to bolster her authority, but Jon consistently flouted all the rules she set; negative peer influences on his behaviour were a particular problem. Jon's mother's health suffered as a result of her struggles with her son, and Jon subsequently entered local authority care.

Jon was placed with foster parents, from whom he gained a great deal. The carers reported that he complied with their boundaries, was always pleasant, and enjoyed undertaking various activities with them. On completion of his sentence he is to return to live with his mother, but hopes to maintain contact with the foster parents at weekends.

##### *Mother struggling to contain son's behaviour*

Gavin was convicted under Section 4 of the Public Order Act – intentionally causing harassment, alarm or distress. When drinking with friends on the street, he verbally abused and threatened a woman who had physical disabilities. The victim was extremely distressed.

Gavin lives with both his parents and two of his three siblings. His father works as a delivery man and his mother is undertaking a social studies course at college. His mother told the YOT that she is finding it very difficult to cope with Gavin's behaviour, which is highly disruptive for the entire family. She has stated that although she wants to be supportive, she feels that she can no longer have him living in the family home.

#### 5.4 Care history and other involvement of social services

Given the high levels of difficulty and disadvantage in the family backgrounds of the children in our sample, it is unsurprising that social services involvement in the families is relatively common. Fifty-four, or just over one quarter, of the 200 children in our sample are known to have been in local authority care for one or more periods of time. Most of these – 45 in total – have been accommodated by the local authority through voluntary agreement with the parents (under section 20 of the Children Act 1989) while 18 have been subject to a care order (under section 31

of the Children Act 1989). Nine individuals are known to have been both subject to a care order and accommodated through voluntary agreement.

Other forms of contact with local authority social services are also common within the sample. Around one-fifth are known to be, or to have been, on the child protection register; and in almost half the cases it is noted on Asset that the individual has had 'any other referrals to or contact with social services'. When data on these different forms of social services contact are combined, this reveals that over half the sample (56%) are known to have experienced at least one of the following: period(s) of time in local authority care; name on the child protection register; other referrals/contact with social services (see Table 5.3).

**Table 5.3: Involvement of social services**

<i>Type of involvement</i>		<i>%</i>
Ever in local authority care	By voluntary agreement	23%
	Care order	9%
	Care order and vol. agreement	5%
Ever on child protection register		19%
Other referrals/contact with social services		47%
At least one of the above		56%

The qualitative Asset data on care history reveal that social services' involvement in the lives of the children in our sample – and very often, the lives of their siblings – frequently continues over long periods of time. Some of the parents have actively sought input from social services, as they struggle to deal with their children's problematic behaviour and other difficulties in the home. More typically, the initial involvement of social services follows reports of abuse or neglect within the family. Many of the children in the sample who have spent periods of time in local authority care – whether on account of concerns about their physical and emotional welfare, family breakdown or bereavement, behavioural problems or a combination of all of these – have been subject to multiple placements in different kinds of care over several years; these placements are sometimes interspersed with times spent back in the family home. One such case is outlined in Box 5.3.

**Box 5.3: Multiple placements in care**

Arran is a 14 year old boy, sentenced for racially aggravated common assault. The victim was a fellow-resident in a children's home, whom he struck with his knee and then punched twice in the face.

Arran was first taken into care at the age of seven, when he was placed on a full care order because of his mother's excessive alcohol consumption and 'chaotic' lifestyle. He experienced a number of foster and other residential placements, but frequently absconded. He is now living in a children's home, but spends a great deal of time at his mother's house; this violates his care order, which stipulates that he should not stay out overnight.

Arran's relationship with his mother is tumultuous. She continues to drink very heavily, and has recently been admitted to casualty several times because of accidents resulting from her intoxication. Arran has siblings but does not have contact with them.

## 5.5 Bereavement

It is clear that bereavement in general, and untimely death in particular, are a significant feature of the lives of some children in our sample. It is sometimes suggested in Asset forms that a significant bereavement triggered the offending of the young person. More commonly, it appears that the experience of bereavement, in family situations that were already fragile and difficult, served to entrench existing patterns of destructive behaviour. Twenty-three (12%) of the children in our sample are known to have lost a parent and/or a sibling. Among them, one lost both parents (to heroin overdoses) and another both his mother and siblings (in a house fire). In addition, two children in the sample have experienced the death of a close friend (through suicide and a road traffic accident). There are also several cases in which the child was evidently profoundly affected by the loss of another relative to whom he or she was particularly close – frequently this was an uncle or grandfather, in the context of families from which the father was absent.

Some of the deaths of family members occurred in traumatic circumstances, which clearly added to the deep and long-lasting impact of the bereavement. This is true, for example, of the boy who continues to feel guilt over the fact that his mother saved him but not his brother from a house fire; another who found the bodies of both the grandparents who had cared for him since he was very young (and had subsequently attempted to hang himself at their grave); and a third whose older sister died in suspicious circumstances, following which his mother – who has mental health problems – issued violent threats against those she believed to be responsible. (For more detailed examples of how bereavement has affected the children, see Box 5.4.)

Box 5.4: Bereavement

*Murder of uncle*

Seventeen year old Sam received a custodial sentence for consistent breach of a community punishment order. He had informed his YOT worker that he 'couldn't be bothered' with the order.

Since a young age, Sam has lived with his grandmother, after having been placed on the child protection register due to allegations that he had been sexually abused by his mother's partner. His grandmother was subsequently granted custody of his three half-siblings, because of concerns that they were being neglected. Sam has a good relationship with his siblings and grandmother, although his grandmother has recently been in poor health and has been finding it hard to manage Sam's behaviour.

Three years ago, one of Sam's uncles was murdered. This affected him a great deal at the time. Another uncle lives in the household with Sam, his grandmother and siblings. This uncle has mental health problems, but often attends a day centre where he receives support.

*Mother's suicide*

Fifteen year old Adam's custodial sentence was for aggravated burglary of a dwelling.

When Adam was about six years of age, his mother committed suicide. There are indications that Adam witnessed the suicide, but he chooses not to disclose any information about this. After his mother's death Adam and his three siblings lived with his maternal grandmother, as his father was in custody. Following his father's release, Adam went to live with him, but had a difficult relationship with his stepmother. He subsequently spent two years in care, following allegations that he was being abused by a known paedophile.

Arrangements have been made for Adam to live with his two older sisters after he is released from custody.



## 6 Psycho-social and educational problems

### Interview with Kyle

Seventeen year old Kyle has committed a range of offences in the past, such as robbery, theft from motor vehicles 'and daft things like that'. The first time he went to court was when he was 13. He was expelled from school after numerous fights, and then deliberately burning a classmate in a cookery lesson. His recent custodial sentence was for aggravated burglary.

Kyle told the interviewer that he performed badly at school because he has attention-deficit hyperactivity disorder (ADHD), and talked of having seen doctors about the disorder:

*Yeah I got tested for [ADHD], a couple of times. [Me mum] ... took me to the doctor [when I was] about 12, something like that. I used to get dead hyperactive off [the drink] coke and daft things like that, smash other people's windows ... And like on the street as well, used to get nicked for that as well. Daft ... After the next couple times of smashing windows mum took me to the doctor and he referred me to a psychiatrist at a children's hospital and I got tested for [ADHD] there.*

Talking about his ambitions, Kyle said that he hopes to:

*Get somewhere in life ... Not be on the streets all the time, drinking, watching people waste their life ... You need education, but I ain't got none have I, so tough luck ... I won't be able to go to college. I'm not that type of person to do college and that ... I'm not a college boy, I'll never go college. I just wouldn't fit in ... cos there'll be all little college boys and all little students and that, and I'm a little chav aren't I. Bouncing around the college walls, it would be mad.*

He described his relationship with his parents:

*I live with me dad now, I used to live with me mum, but me mum kicked me out cos she couldn't handle me, I was too much of a runt ... I've not spoken to her in a bit, not spoken to her in a month.*

Does that upset you?

*Yeah, a bit ... I look up to me dad and that's it. That's the only person I would ever look up to and that's my dad.*

He's been in jail – what does he say about you getting into trouble?

*He'll go mad at me, he'll shout at me and all that, but he'll always tell me to stick up for meself. He'll say to me don't let no one think that they're better than you, cos me dad used to be in the same, like – years ago, me dad used to be in the same gang I'm in now. It's mad. I've gone into me dad's footprints haven't I, really. I've took the path he took.*

The previous chapter was concerned with the disadvantages relating to home and family life that are faced by the 200 children in our sentence sample. This chapter addresses disadvantages in the form of psycho-social and educational problems. We have identified 11 specific factors under this broad heading: below we consider their prevalence and distribution across our sample. We then look in more detail at three broad areas: first, the education, training and employment (ETE) status of the individuals; secondly, substance misuse and emotional and mental health; and, thirdly, thinking, attitudes and behaviour.

### 6.1 Prevalence and distribution of psycho-social and educational problems

The limitations of Asset are particularly pertinent to our examination of psycho-social and educational problems. While the core Asset document includes items on literacy and numeracy difficulties and special educational needs, it does not record specific information on learning disabilities or cognitive impairment, nor are speech, language and communication needs addressed.<sup>38</sup> In addition, mental health problems are covered in a superficial manner.<sup>39</sup>

Reflecting the scope and nature of the available data for this study, our analysis is primarily based on the 11 indicators of psycho-social and educational problems that are listed in the first column of Table 6.1. This table shows the prevalence of each factor in our sample of 200 sentenced children. These figures are under-estimates, due not only to the significant gaps in the Asset process we have already alluded to, but also to missing data. Nonetheless, we found that the majority (70%) of the children in our sentenced sample are known to associate with predominantly criminal peers; over half (54%) to truant or regularly fail to attend school for other reasons; and almost half (48%) to have been subject to fixed-term and/or permanent school exclusions. Just under a third (31%) of the children are said to have problems relating to misuse of drugs or alcohol, meaning that they are at risk due to their use of substances and/or their substance use has a detrimental effect on their daily functioning. Two of the psycho-social and educational factors are known to be present in over a quarter of the sample: difficulties with literacy and/or numeracy (26%); and substance use viewed as positive and essential to life (26%).

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38. As observed in the strategy document *Healthy Children, Safer Communities*, the assessment tools used in the youth justice system, including Asset, 'were designed specifically to assess risk in relation to offending and to measure progress in preventing re-offending' and hence focus on 'the extent to which health needs are associated with the likelihood of further offending'. As a result, mental health problems tend to be under-estimated, and learning disability, speech, language and communication needs, and conduct disorders are not specifically assessed (HM Government, 2009: 31).

39. It is interesting to note that in a Prison Reform Trust survey of YOT staff, which examined how young people with impairments or difficulties are supported and identified within YOTs, around half the respondents (49%) stated that the Asset process is 'very' or 'quite' useful in alerting staff to the possibility that a young person might have learning disabilities or low IQ, with a similar proportion (48%) finding Asset useful with respect to communication, speech and language difficulties. Our finding that very low numbers of individuals in our sample had been identified as having these kinds of problems would seem to undermine claims as to the usefulness of Asset in this regard (Talbot, in press).

*Table 6.1 Prevalence of psycho-social and educational problems among sample of 200 sentenced children*

<i>Factor</i>	<i>% cases</i>
Associates with predominantly criminal peers	70%
Truancy or other non-attendance of education (currently or previously; due to refusal to attend, lack of provision or other reason)	54%
School exclusion (currently or previously; fixed-term and/or permanent)	48%
Substance use places the young person at particular risk (e.g. injecting, sharing equipment, poly-drug use) and/or has a detrimental effect on education, relationships, daily functioning, etc.	31%
Substance use viewed as positive and essential to life	26%
Difficulties with literacy and/or numeracy	26%
Self-harm	20%
Formal diagnosis of emotional or mental health condition	17%
Attempted suicide	11%
Has been bullied at school	10%
Physical health condition that significantly affects everyday life <sup>40</sup>	8%

Comparative figures for the general population, where available, are presented in Table 6.2. As with the figures for home/family disadvantage, we see here the significant over-representation of psycho-social and educational problems among children in custody.

40. Examples of health conditions cited in YOT forms included asthma, a long-term injury following an assault, and health problems following a drugs overdose. YOT workers appear to vary in their interpretations of what kinds of conditions are 'significant'.

**Table 6.2: Indicators of psycho-social and educational disadvantage**

	<i>General population of children</i>	<i>Children in custody</i>
Absenteeism/truancy <sup>1</sup>	6%	54%
School exclusion <sup>2</sup>	0.2% (permanent) 9.8% (fixed-term)	48%
Statement of special educational needs	3% <sup>3</sup>	18%
Drug misuse <sup>4</sup>	8% <sup>a</sup> , 4% <sup>b</sup>	31%
Mental disorder <sup>5</sup>	10%	17%
Evidence of self-harm <sup>6</sup>	7%	20%

<sup>1</sup> General population figure is percentage of pupil enrolments in state secondary schools that are persistent absentees in autumn 2008 and spring 2009 terms (DCSF, 2009c); figure for children in custody refers to those who currently or previously have tranted or failed to attend education for other reasons.

<sup>2</sup> General population figures are percentages of children at state secondary schools who received permanent and fixed-term exclusions over the year 2007/08 (DCSF, 2009d); figure for children in custody refers to any previous or current permanent or fixed term exclusion.

<sup>3</sup> Percentage of children across all schools with statements as of January 2009 (DCSF, 2009e).

<sup>4</sup> General population figures on drug misuse refer to (a) any illicit drug use in last month; (b) any class A drug use in last year (Fuller, 2009). The figure for young people in custody refers to substance use that places young person at risk or has detrimental effect on daily functioning.

<sup>5</sup> Figure of 10% prevalence of mental disorder among the general population derives from a large-scale survey of children aged 5 to 16, involving the use of a structured questionnaire to assess the existence of a disorder (Green et al, 2005). The figure for children in custody reflects the proportion of children in our sample for whom it was noted during the Asset assessment that a mental or emotional health problem had been formally diagnosed.

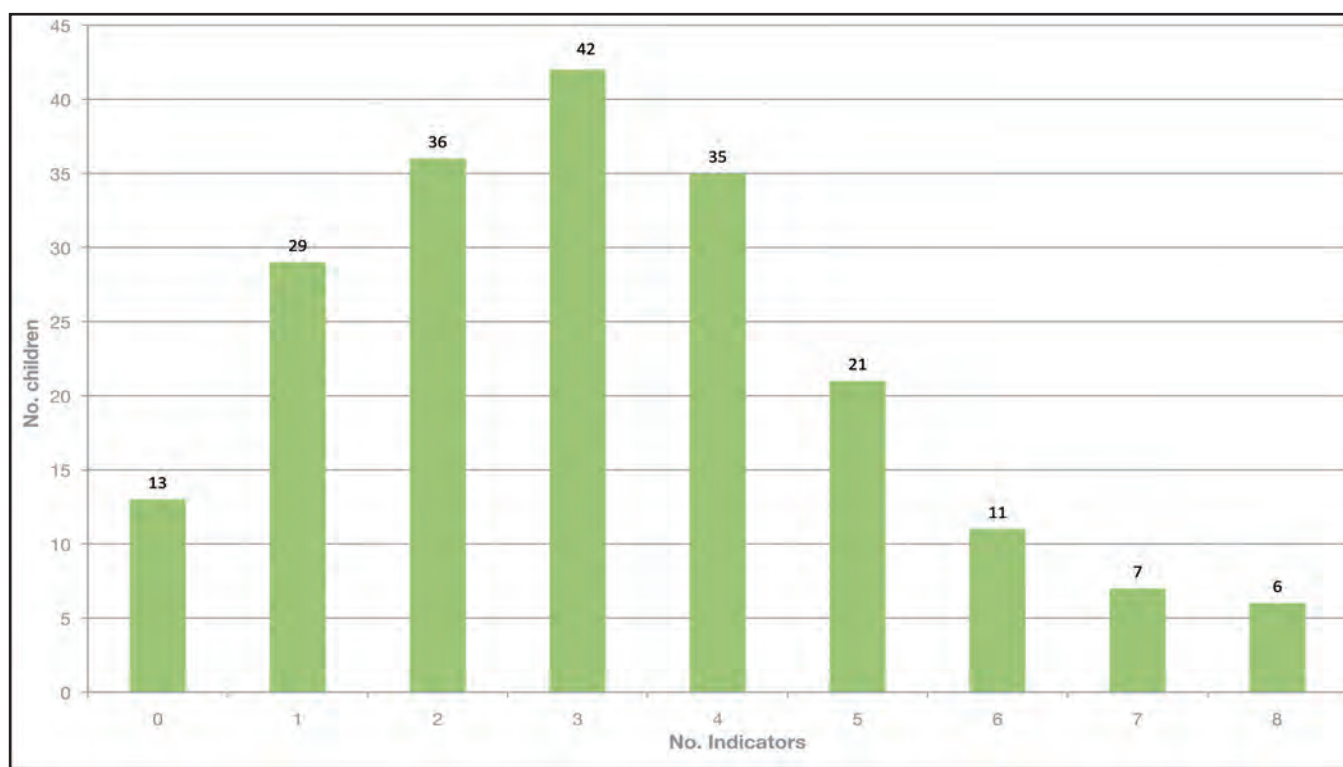
<sup>6</sup> Self-harm for the general population refers to the rate of self-harm in the previous year among a representative sample of 6,000 15 and 16 year olds (Mental Health Foundation, 2006); the figure for the custody sample refers to any self-harm (no specified time period).

### **Multiple psycho-social and educational problems**

Figure 6.1 shows the distribution of psycho-social and educational problems across the sentenced sample. As with the home and family factors, here we see that most of the 200 children face multiple disadvantages. The mean number of problems per child is 3.2.

As with the home/family disadvantages, the girls in the sample appear to be more disadvantaged than the boys in terms of psycho-social and educational problems; as do the white and mixed race children compared to those who are black and Asian. Ethnic differences were most notable with respect to ‘associates with predominantly criminal peers’; ‘truancy and other non-attendance’; and ‘substance use viewed as positive and essential to life’. The greatest gender differences were seen with respect to ‘self-harm’ - recognised as a problem for more than half of the girls (53%) compared to 16% of the boys, and ‘attempted suicide,’ noted for around one-quarter of the girls (24%) compared to 9% of boys.

Figure 6.1: Distribution of psycho-social and educational problems



The average numbers of psycho-social and educational factors per child, broken down by gender and ethnicity, are as follows:

- 3.7 factors for girls, compared to 3.1 factors for boys
- 3.4 factors for white, 2.7 for mixed race, 2.1 for black and 2.0 for Asian children.<sup>41</sup>

(Full gender and ethnic breakdowns of the distribution of psycho-social and educational problems are provided in Tables B15 and B16 in Appendix B.)

## 6.2 Experiences of education, training and employment

The Asset data we collected indicate that at least one-quarter of the children (26%) in the sample have difficulties with numeracy and/or literacy. Around one-fifth of the children (21%) are identified on Asset as having special educational needs (SEN). The large majority of the children specified as having SEN (86% of those with SEN; 18% of the full sample) are said to have been stated by the local authority for their educational needs.<sup>42</sup>

Although it covers numeracy and literacy difficulties and SEN, the core Asset document is very limited in terms of its overall coverage of learning problems. The subject of learning disability is not explicitly addressed; and nor is there any specific reference in the document to speech, language and communication needs. From some text box entries on the Asset forms we reviewed, and related documentation, we could identify a very small number of children in the

41. Of the gender and ethnic differences noted here, the only one that is significant is that between the mean for black children and the mean for white children.

42. We deliberately did not include identification of SEN and/or SEN statements among our 11 key psycho-social and educational factors, in order to avoid double-counting with literacy and numeracy problems.

sample as having a low level of cognitive ability, and one was said to have communication difficulties. On the basis of findings of other research into children in the youth justice system, we can assume that a great many more of the children in the sample do in fact have impairments and difficulties of these kinds, but that they were simply not identified during the Asset assessment process. For example, among 247 offenders aged 15-18 interviewed by Harrington and Bailey (2005), 23% were found to have IQs of under 70 ('extremely low') and 36% IQs between 70 and 79 ('low'). A small-scale study by Crew and Ellis (2008), involving an assessment of the speech and language needs of 19 clients of Bradford youth offending team (YOT), found that only five of the 19 children had communication skills in the normal range, while eight had severe communication difficulties.<sup>43</sup>

The majority of the 200 children in our sample appear to have experienced disrupted schooling. The major manifestations of school disruption are truancy and school exclusion, which are frequently linked to behavioural problems also reflected in the offending. A number of existing studies have identified strong associations both between truancy and offending and between school exclusion and offending (Parke, 2009; YJB, 2009b and 2009c; Harrington and Bailey, 2005). Similarly, our analysis shows that high levels of truancy and other non-attendance from school (54%), along with school exclusions (48%), are prevalent among the sentenced sample. It is clear also that the schooling of many of these children has been significantly disrupted in other ways. In particular, those who have had extremely unsettled living arrangements have tended to have multiple changes of school; although the number of children in our sample for whom this has been a problem cannot be reliably estimated from the available data.

Table 6.3 shows the ETE status of the sampled children, based on Asset tick box entries. These entries refer to an extremely wide range of educational courses, training and other programmes in which the individuals were engaged prior to entering custody or, more rarely, while in custody. They include study for AQA unit awards (flexible study in short units of work, adapted for offender learning), vocational college courses (for example, in construction and mechanics), the Duke of Edinburgh Award, and basic skills training in subjects such as mathematics, English and IT.

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43. See also Bryan et al (2007) and Lader et al (2000).

*Table 6.3: Current ETE status of children in sentenced sample*

Current ETE situation	No. of children*	%**
Mainstream school	16	11%
Special school	9	6%
Pupil referral unit	17	12%
Other specialist unit	11	8%
Community home with education	1	1%
Home tuition	1	1%
Work experience	0	0%
Full time work	5	4%
Part time work	0	0%
Casual/temporary work	2	1%
Unemployed	35	24%
New deal	0	0%
Pre-employment/life skills training	1	1%
College/further education	8	6%
Other training course	8	6%
Unable to work (e.g. incapacity)	1	1%
Looking after family	6	4%
Nothing currently arranged	29	21%
Other	24	17%

*\*There is double-counting as multiple responses are possible*

*\*\*Excludes missing cases. Total ranges from 141 to 145*

Looking only at those 52 children in our sample who we know to be of compulsory school age (that is, are aged 15 or younger<sup>44</sup>), we find that 25 of them are currently involved in some form of schooling; 16 are not in any form of education, and one is engaged in part-time work. For 10 of these children, no information on current provision is available. (These figures refer to the period of time immediately preceding entry into custody.) Nineteen children from the full sample of 200 have completed GCSEs. The number of GCSEs and grades achieved range from low GCSE passes in a few subjects to one child who is recorded as having received 11 A\* - C grades at GCSE.

44. Children are entitled to leave school in the June of the school year in which they turn 16. As we were unable to determine the exact ages of the children in the sample, for the purposes of this analysis we simply treated all those aged under 16 as being of compulsory school age.

### 6.3 Substance misuse

Drugs and/or alcohol appear to be factors in the offending of a substantial minority of the 200 sampled children. In Chapter 2, it is reported that in 58 cases the children were said to be under the influence of drugs and/or alcohol when they committed the offences for which they were sentenced to custody. More generally, information recorded on Asset (excluding missing data) indicates that one-fifth of the sampled children offend in order to obtain money for substances and, for around two-fifths (42%), their substance use has other links to offending: for example, they have offended while under the influence, or have been convicted for possession or supply of illegal drugs.

Tick-box Asset data show that tobacco, alcohol and cannabis are the three substances most commonly used by children in the sentenced sample, as shown in Table 6.4, below. This table indicates that class A drug use is relatively uncommon among the children. However, a small number of the children are evidently experiencing problems in relation to the use of drugs such as heroin and crack cocaine. The two cases described in Box 6.1 are examples where there was particularly young onset of use of class A drugs, with substance misuse within the family having been an influence.

*Table 6.4: Substance use by children in sentenced sample*

Substance	Used in the past (not recently)	Recent use	Not known to have used	Missing
Tobacco	13%	64%	17%	7%
Alcohol	20%	59%	15%	7%
Solvents	7%	5%	73%	15%
Cannabis	18%	53%	25%	4%
Ecstasy	16%	7%	63%	16%
Amphetamines	8%	4%	74%	16%
LSD	4%	0%	80%	17%
Poppers	5%	1%	78%	17%
Cocaine	13%	7%	66%	15%
Crack	2%	3%	79%	17%
Heroin	1%	2%	81%	17%
Methadone	1%	1%	82%	17%
Tranquilisers	3%	2%	79%	17%
Steroids	1%	1%	82%	17%



**Box 6.1: class A drug use**

*Heroin introduced by uncle*

Sixteen year old Jake is currently serving a custodial sentence for breaching his detention and training order. He states that he has been using heroin since the age of 13. He was introduced to the drug by his uncle and he claims he has been smoking it about twice a week. The uncle is a habitual heroin user, and has also encouraged Jake to commit robbery to fund purchases; the conditions of Jake's licence prohibited him from associating with his uncle. Jake's mother is currently serving a four-and-a-half year prison sentence for importation of heroin.

Prior to being recalled to custody Jake had apparently been 'clean' for a period as he had been taking prescribed blockers. While in custody he remained free of heroin and was on Subutex, prescribed by his counselling, assessment, referral advice and throughcare service (CARAT) worker. However, he began re-using on his release.

*Alcohol and heroin misuse*

Samantha, aged 16, received a detention and training order for possession of an offensive weapon – a knife, which she was concealing in her sleeve when arrested by the police.

Samantha has been using alcohol from the age of 12-13. Alcohol has been integral to her family life; her father is an alcoholic, and her mother, who has learning difficulties and struggles to express herself, may also drink heavily. It has previously been reported that Samantha would wake up in the morning wanting a drink and would drink neat vodka if she found it in the house.

It has been noted that alcohol use is making Samantha aggressive and that she has attacked a woman who lives in supported lodgings with her. There have been periods where she has stopped drinking, but these spells have been short-lived. Recently, Samantha admitted that she is taking heroin with her cousin and she has expressed concerns that she is addicted and cannot stop using. There are also concerns that heroin use is accompanied by continued use of valium and alcohol. Samantha has tried on many occasions to overdose on alcohol and drugs and at the beginning of 2007 was hospitalised three times due to drugs overdoses.

## **6.4 Emotional and mental health**

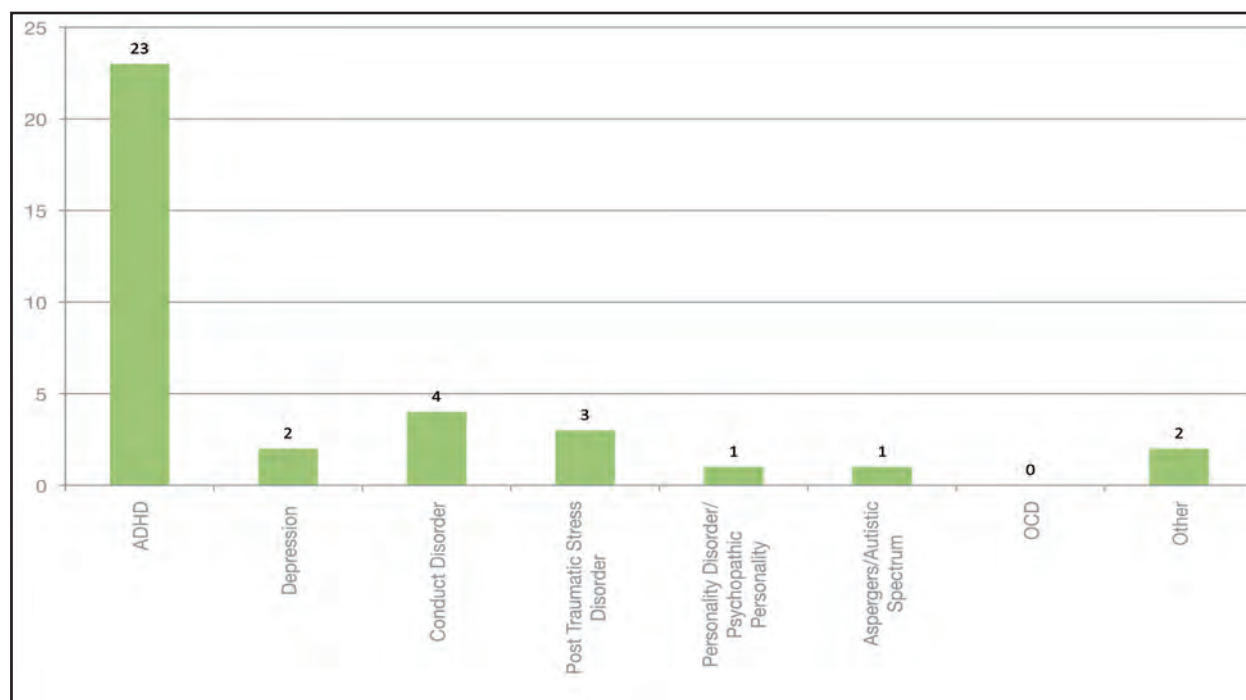
The core Asset is used to conduct an initial assessment of the emotional and mental health of all children who enter the youth justice system. The emotional and mental health section of the Asset covers past, current and future events and circumstances that have had or are likely to have an impact on the young person's emotional and mental well-being; any formal diagnoses of 'mental illness'; referrals to mental health services; self-harm and previous suicide attempts.

A score of two or more in this section indicates that a further mental health assessment is required, through the use of a short screening tool known as the SQIFA (screening questionnaire interview for adolescents). Depending on the outcome of the SQIFA, a more detailed interview, the SIFA (screening interview for adolescents) should be undertaken.<sup>45</sup>

### *Formally diagnosed mental disorders*

As we were unable to access SQIFA and SIFA data via the SACHS database, our analysis of emotional and mental health needs is primarily based on the more basic assessment information contained in core Asset documents. This information indicates that 33, or 17%, of the children in the sample have been formally diagnosed with some form of mental disorder; five of these children (3% of the sample) are said to have more than one disorder. Figure 6.2 shows the range of mental disorders that are specified for the children in our sample; the most common among these is attention deficit hyperactivity disorder (ADHD), which is said to affect 23 children or 12% of the sample. Four individuals have been diagnosed with conduct disorder; three with post-traumatic stress disorder; two with depression; one with personality disorder/psychopathic personality; and one is said to have Asperger's syndrome. Two are said to have 'other' disorders.

*Figure 6.2: Diagnosed mental disorders*



The figures on disorders such as depression and post-traumatic stress disorder seem very low, given the extremely difficult family and home circumstances of many of these children. Indeed, the overall number of 17% of children with diagnosed mental disorders is unlikely to reflect the true extent of these problems. Research into mental health problems among children who offend suggests that the prevalence is significantly higher. For example, Harrington and Bailey (2005) assessed 301 offenders aged 13-18 using a standardised needs assessment tool. Almost a third (31%) of the sample was found to have a mental health problem or problems, the most common of which was depression (18% of the sample).<sup>46</sup>

45. Youth Justice Board website - 'Mental Health' [www.yjb.gov.uk/en-gb/search?LinkClick=%2Fcgi-bin%2FMsmGo.exe%3Fgrab\\_id%3D0%26page\\_id%3D434%26query%3Dsqifa%26hiword%3Dsqifa%2520](http://www.yjb.gov.uk/en-gb/search?LinkClick=%2Fcgi-bin%2FMsmGo.exe%3Fgrab_id%3D0%26page_id%3D434%26query%3Dsqifa%26hiword%3Dsqifa%2520)

46. Harrington and Bailey's study included an evaluation of 600 Asset forms completed on a separate sample of children attending YOTs. In only 15% of the forms evaluated were the young people identified as having mental health problems of some kind – around half the rate as was found by the assessments undertaken by Harrington and Bailey on their sample of 301 children. This suggests, as we have already argued, that the Asset assessment process is not sensitive to mental health needs.

*Self-harm and attempted suicide*

The data on our sample of 200 children reveal that 20% of them (39 children) are known to have self-harmed in the past. As already noted, this is much more common among the girls – with nine out of the 17 girls in the sample known to have harmed themselves. Around one in 10 of the sample (11%, or 21 children) has attempted suicide; among them are four of the 17 girls. In Box 3.3 in Chapter 3, the situation of a girl ('Rosa') who has harmed herself and has suicidal feelings is described. Box 6.2, below, provides an example of a boy with a history of self-harm and suicide attempts.

**Box 6.2: Self-harm and suicide attempts**

Seventeen year old Riley was sentenced to custody for an offence of burglary. He has a good relationship with his mother and step-father, but has been very badly affected by the death of his older sister several years ago. It is believed that his sister's death may have been a result of domestic violence, and her partner appears to be a negative influence on Riley's behaviour. Riley's brother has learning disabilities and is also facing a custodial sentence; Riley feels very protective towards him. Riley's paternal grandfather has recently been sentenced to custody for sexual offences against several members of the extended family, one of whom has attempted to commit suicide.

Riley has a young child by an ex-girlfriend. The child is subject to child protection procedures.

Riley has disclosed to a psychiatric nurse that he contemplates suicide on a daily basis. In the past he has cut and burnt himself and taken an overdose. He has been known to self-harm on the anniversary of his sister's death.

*Thinking and behaviour and attitudes to offending*

The core Asset form includes sections on 'thinking and behaviour' and 'attitudes to offending'. While much of the Asset process is largely subjective, these sections of the form are particularly dependent on the youth offending team (YOT) worker's personal assessments of the character of the child. For this reason, we have not included data from the 'thinking and behaviour' and 'attitudes' parts of Asset in our analysis of disadvantage. Nevertheless, these data make it clear that the sampled children tend to exhibit at least some of the following characteristics: a limited capacity to understand or consider the consequences of their behaviour; recklessness and impulsivity; a lack of empathy for others, including the victims of their offences; general aggression and difficulty controlling anger; and a tendency to be heavily influenced by their peers. Such traits may be considered entirely unexceptional among the general teenage population. However, on the basis of the accounts contained in Asset, it appears that they are frequently manifest in extreme forms in the children in our sample, and – as illustrated by the case studies in Box 6.3 – are often interlinked with the various forms of disadvantage we have addressed throughout this chapter.

Box 6.3: Thinking and behaviour; attitudes to offending

*ADHD and lack of empathy*

Fourteen year old Sophie received a custodial sentence for a racially aggravated assault. It appears that her offences tend to involve assaulting victims (usually her peers) on impulse and without provocation, and without any thought as to the consequences of her behaviour. She tends to be verbally as well as physically aggressive.

Sophie's YOT worker believes that her behaviour is significantly influenced by her ADHD, of which lack of victim empathy is a feature; and that 'she sees everything as a "joke" and ... is easily influenced in response to a "dare"'. In addition, offending appears to give her status among her peers.

In the view of the YOT worker, her offending behaviour may also be influenced by her sense of rejection from her parents: she was placed on the child protection register on grounds of neglect when she was nine, and living with her mother; subsequently she lived with her father (who is known to the police), but her relationship with him and her stepmother has since broken down.

*Aggression and impulsivity*

Jan, a 14 year old boy, was sentenced for breach of a DTO licence; he had received the DTO for an offence of assault occasioning actual bodily harm. He also has various previous convictions, including one for non-domestic burglary. His YOT worker views him as very aggressive and impulsive, with little understanding of the consequences of his actions. When consequences are explained to him, moreover, he will typically say that they are unfair. However, after losing his temper Jan will usually calm down and apologise for his behaviour. He appears to be easily led, as many of his offences have been committed in the company of others.

Much of Jan's anger appears to be directed towards his mother. He is currently on the child protection register for neglect, and his mother seems to be unwilling or unable to impose any boundaries on his behaviour. His father is Albanian and currently lives there – having been deported at the end of a custodial sentence that he served for an offence of wounding or inflicting grievous bodily harm. Jan recently spent some time staying with him in Albania, and his mother is eager for him to return there; but Jan has stated that he does not wish to live with his father.

## 7 Overview of disadvantage factors

### Interview with Charlie

Charlie is 12 years old and has been sentenced to custody for theft and fraud. This is his first custodial sentence, but he spoke about a long offending history which includes street robbery and criminal damage. He was caught breaking into a school when he was eight years old and was given a warning as he was too young to be arrested. By the time he was 10 years old he was being arrested on a regular basis.

*I've been arrested and arrested and I've been staying out all night, not going home for three nights and getting arrested for burglary and that and getting arrested for street robbery, assault, drunk and disorderly, load of things... I do 'em 'cause sometimes I need money for drugs... I've been arrested about 20 times and I've lost count of the times I've been in the [police] cells.*

Charlie lives with his mother and two younger sisters. In the past year he has been excluded from three different schools. He described his offending as having started when he was about eight years old, and he links it to something that he had found out about his family which he is not willing to discuss. He feels a great deal of remorse at what he has put his mother through.

*School was all right in reception, Year 1, Year 2, 3 and 4 and that. I was a good lad... I had a laugh and that, but I wasn't a bad lad. I was about eight or nine years and I started getting angry easy and fighting and that and when I was eight I started smoking weed. I tried it before I was eight. When I was eight I started getting it for myself 'cause I looked older and I was smoking it every day... I started taking pills when I was about 10 or 11 years and started taking whizz [amphetamine] when I was 12. Started sniffing [solvents] when I was 11... My mum didn't know... [when she found out] she was proper worried ... She hated it. Every time I came home stoned she would cry... My mum is the most important person in my life.*

He has never been in care but has had various contacts with social services and shows a great deal of antipathy towards social workers. He has also been diagnosed with ADHD.

*I hate social workers, trying to take me off my mum 'cause of my behaviour – she's the only one that helps me. Any social worker comes near me and I'll knock 'em out and I don't care if a social worker hears this.*

His mother visits him in custody once a week, costing her about £50 in petrol per trip. He is trying to get transferred somewhere nearer home. He believes he deserves to be in custody because of his offending and all the community orders he has breached. He feels he needs 'to sort my head out' but thinks it's unfair that he is being held so far from home. He talked about what he dislikes most about being in custody:

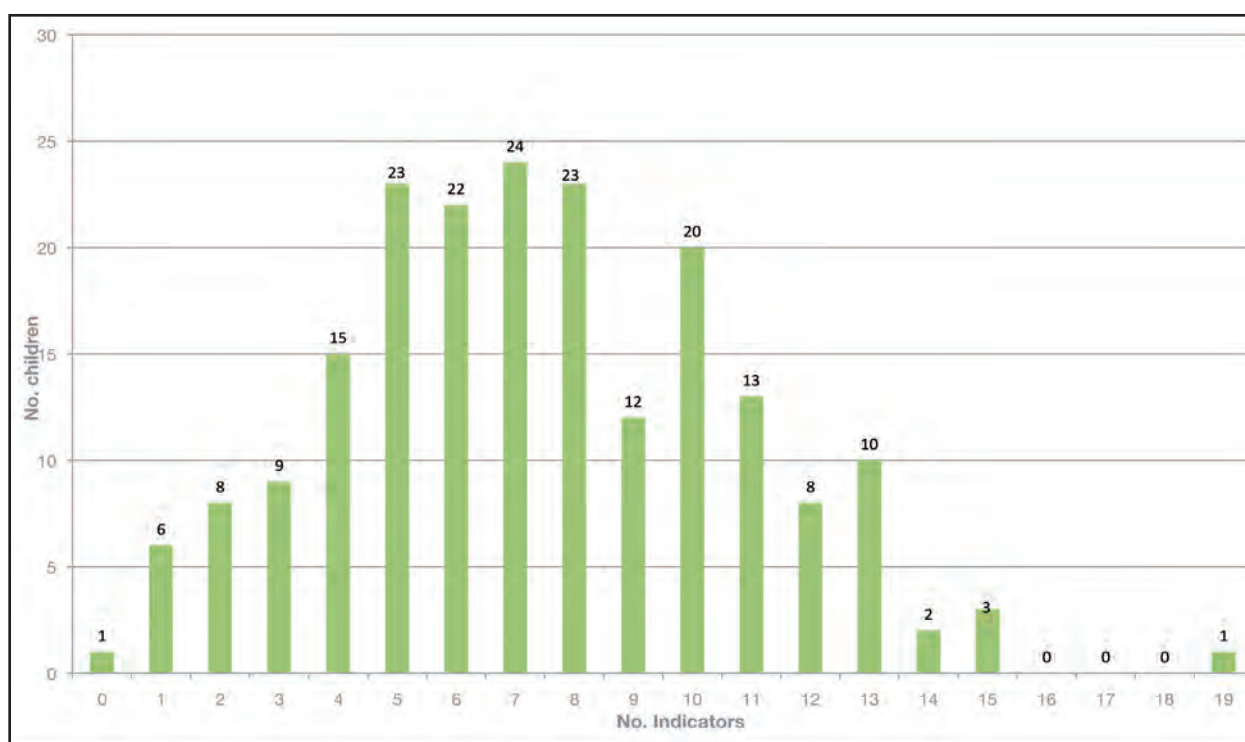
*I miss having a laugh with my mates, my mum and my sisters, my nan and grandad, freedom, having to be in your room at night you can't come out... I'm locked in from 9pm until 7am... you're not even allowed to get a drink of water in the night. Really bad like but copeable, like.*

Our analysis has primarily focussed on 30 types of disadvantage: 19 relating to family and home life, and 11 relating to psycho-social and educational problems. This chapter looks at how all 30 factors are distributed across the sample of 200 children.

## 7.1 Distribution of all disadvantages

When the figures on the two sets of disadvantage are combined, we see that the average number of factors per child is 7.4. (It should be noted that we have simply aggregated the numbers of factors, without weighting them in any way). Around 80% of the children in the sample are known to have five or more disadvantage factors in total, while almost 60% are known to have at least seven, and just over one-third at least nine (see Figure 7.1). The highest number of factors for a single child is 19.

*Figure 7.1: Distribution of all disadvantage factors*



We have noted above that both broad types of disadvantage are more prevalent among the girls than the boys in the sample,<sup>47</sup> and among the white and mixed race children compared to those who are black and Asian. These differences are reflected in the following average numbers of disadvantage factor per child:

- The mean number of all disadvantage factors for girls is 8.9, compared to 7.2 for boys.
- The mean number of all disadvantage factors is 7.8 for white and 7.3 for mixed race children; these compare to 4.8 and 4.7 for black and Asian children respectively.<sup>48</sup>

47. A study of persistent young offenders found, similarly, that 'girls in this study sample have troubled lives – more so than the boys in the sample. The girls have experienced high levels of violence, abuse and mental health problems.' Suicide attempts, in particular, were much more common among the small number of girls in the sample than among the boys (Arnall et al, 2005: 146).

48. The gender difference in the means for all disadvantage factors is statistically significant, as is the difference between the black and white means. The other differences are not significant.

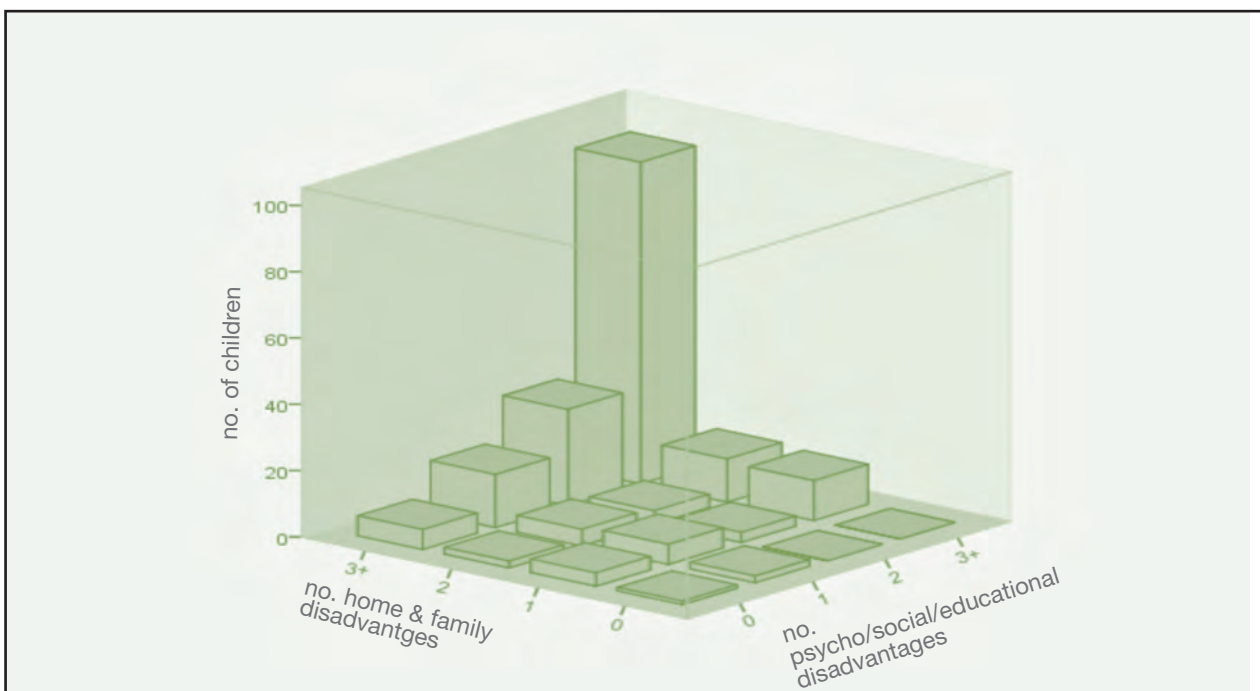
## 7.2 Multiple layers of disadvantage

Although we do not know the full extent of disadvantage among the sampled children – and information on mental health and learning problems is especially limited – our analysis makes it abundantly clear that these children tend to have multiple layers of disadvantage. For the large majority of the 200 children, there is evidence of disadvantage both in terms of home and family and in terms of psycho-social and educational problems. One hundred and ninety-three children (97% of the sample) are known to have at least one of both broad types of disadvantage, while 143 children (72%) are known to have at least two of both types; 97 children (49%) at least three; and 57 children (29%) at least four. (See Figure 7.2 below and Table B17 in Appendix B).

In short, it is apparent that most of the children in our sample face complex and interlocking problems of many different kinds. While we do not have the information that might allow us to look at how exactly different types of disadvantage are inter-related, it seems highly likely that they feed into and reinforce each other. Thus, for example, conflict between family members can contribute to emotional and behaviour problems in the child which in turn can further exacerbate tensions within the family. Similarly, learning problems, disengagement from education and negative peer influences may all be closely inter-linked, and also reflect and contribute to problems within the home.

From this perspective, offending behaviour – on the part of the individual child, and often other family members as well – can be seen as integrally related to broader cycles of familial, psycho-social and other disadvantage. The concept of ‘cumulative disadvantage’, as developed by Sampson and Laub, is useful here. This is described as a process whereby ‘weak social bonding serves as a mediating and hence causal sequential link in a chain of adversity between childhood delinquency and adult criminal behaviour’; a process which is, moreover, ‘linked to four key institutions of social control – family, school, peers, and state sanctions’ (1997: 13).

*Figure 7.2: Numbers of children with both home/family and psycho/social/educational disadvantages*



In Boxes 7.1 to 7.4, below, we provide illustrations of what these cycles of disadvantage mean in practice. The first example is of a 17 year old boy who was recorded as having 19 disadvantage factors – the highest number of everyone in our sample. The second example is a girl who, with a total of eight disadvantage factors, is slightly under the average for girls of 8.9 factors. The remaining two examples are boys both of whom are known to have seven factors – around the average for males; the first of these two boys is, at age 13, among the youngest children in our sample.

#### Box 7.1: A seventeen year old boy

Patrick's current four-month sentence is his third DTO, and was received for possession of an offensive weapon – a small knife, which he had hidden in a phonebox. He was 10 years old when he received his first reprimand from the police, and he was first convicted at the age of 13. He now has more than ten previous convictions for a variety of offences including theft, burglary, robbery, criminal damage and common assault.

Both of Patrick's parents, who separated when he was very young, have a history of drug misuse and offending. Patrick was placed on the child protection register when he was six on grounds of emotional abuse. He subsequently spent many years in care, in numerous placements – from which he frequently absconded. He also bullied other children, and was on one occasion convicted of assaulting a member of staff. His attendance at school was irregular, and he was permanently excluded at the age of 13 because of persistent disruptive behaviour. Since then he has received various forms of educational provision, but has tended to be aggressive towards teaching staff.

Patrick currently has minimal contact with his parents; his grandmother is said to have offered to accommodate him after his release, but her home has been visited by social workers who deemed it unsuitable. Patrick has some contact with an aunt who is known to have serious drug problems and a long history of offending.

Patrick is a habitual user of alcohol and cannabis, and has been known to use inhalants. He exhibits symptoms of attention-deficit hyperactivity disorder (ADHD), for which he has previously been prescribed medication, and post-traumatic stress disorder. His behaviour is frequently aggressive – both verbally and physically – and he appears unable to control his temper. He has self-harmed in the past, and has also engaged in sexually inappropriate behaviour, although he does not have any convictions for sexual offences. He evidently struggles to forge or sustain relationships. He told a youth offending team (YOT) worker that he wished he was 10 years old again, and still living where he had been then: a specialist residential unit for children with attachment disorders.



**Box 7.2: A fifteen year old girl**

Kiera was sentenced for a serious assault (the specific offence type is unclear from the available data) and a robbery, for which she received a six-month DTO. She committed the assault when a fight broke out among a group of girls of which she was a part, and has admitted to playing a major part in it – hitting and kicking the victim, and continuing the attack as the victim lay on the ground. The attack was filmed on another girl's mobile phone. The robbery was also an incident involving a group of girls, but this time with a young male victim. The victim was told to hand over his mobile phone, and was attacked when he refused to do so; Kiera joined the attack and bit his arm. She and her co-defendants were drinking at the time of the robbery.

The current sentence is Kiera's first time in custody, and no previous convictions are recorded on her Asset form or other documentation held on the secure access clearing house system (SACHS); however, she did receive a reprimand at the age of 14.

Prior to entering custody, Kiera was living with her mother, her mother's partner, and her four younger siblings. She speaks of having a very acrimonious relationship with her stepfather, who has assaulted her mother on numerous occasions. There are indications that Kiera has herself been physically and emotionally abused by her stepfather. When talking to her YOT worker about the prospect of receiving a custodial sentence, her sole concern appeared to be the welfare of her mother and younger siblings: she explained that when her stepfather becomes violent, she usually retreats upstairs with the younger children and calls the police.

Kiera's school record shows that over the past few years she has received many fixed term exclusions for disruptive behaviour and truancy; following her offences described above, she was permanently excluded. Her behaviour tends to be impulsive and aggressive, and she has displayed aggression towards the victims of the assault and robbery since the time of the offences. She evidently associates very strongly with her peers; in the view of her YOT worker, she seeks support and reassurance from them partly because her emotional needs are not met at home.

**Box 7.3: A thirteen year old boy**

Tom had received an asbo in early 2008; one of its conditions was a curfew. He breached this condition by staying out late one night with friends – with whom he was smoking cannabis and drinking – and was subsequently sentenced to a four-month DTO for the breach.

Although aged only 13, Tom has a relatively lengthy offending history. His current sentence is his second DTO, and he has also in the past received several non-custodial sentences. His previous convictions are for other asbo breaches, assault occasioning actual bodily harm, and racially aggravated actual bodily harm.

When not in custody, Tom lives with his mother, father and older sister. He has a volatile relationship with his father, who left the family home for some months around two years ago, but the family situation is nevertheless reasonably stable at the present time.

Tom's schooling has been interrupted by lengthy periods of exclusion. He has recently been in receipt of alternative educational provision which appears to have been beneficial for him. He has been assessed as having significant emotional needs and the cognitive ability of a nine year old. He had early onset of puberty, with the result that in terms of physical and sexual development he has reached the level of a 15-16 year old.

Tom uses cannabis and regularly drinks with other boys in a local park. Several of his offences have been committed while he has been intoxicated. He claims that he began drinking alcohol at the age of 10. He has limited control over his temper, and his offences have tended to be impulsive. He has told his YOT worker that while he sometimes tries to comply with the conditions of his asbo, at other times he 'can't be bothered'.

**Box 7.4: A sixteen year old boy**

Lukas received a Section 91 sentence of three years for possession of a class A drug with intent to supply. He had been arrested after being seen selling drugs on the street by the police, and admitted the charge. This is his first custodial sentence, but he has more than 10 previous convictions, primarily for offences of arson, for which he received community sentences and other disposals. He was aged 14 when he was first reprimanded, and had his first conviction at the same age.

Lukas's family situation and living arrangements have long been unsettled. At the age of around four, when he was living with his mother, he was placed on the Child Protection Register on grounds of suspected physical and emotional abuse. He subsequently spent several years living with his uncle, after his mother said that she could not cope with his behaviour, and then two different sets of family friends. However, each of these arrangements broke down for various reasons including Lukas's challenging behaviour. When he was 13, at which time no family members were prepared to care for him, he entered local authority care. Here he had various placements, which were frequently disrupted by his drug taking and offending: care staff report that he regularly stole cash, assaulted staff and started fires.

Prior to entering custody, Lukas would visit his mother and siblings at the family home – although he stated that it was his siblings rather than his mother whom he wished to see. His mother has informed the YOT that she wishes to have regular contact with him in order to support him while he is in custody; generally, her relationship with Lukas appears to be improving. It is unclear if he has any contact with his father.

Lukas has been diagnosed with ADHD, and has had referrals to mental health services in relation to his fire-setting. There are concerns over his physical health: there are indications that he may have epilepsy, and he suffered a fractured skull after being attacked with a baseball bat when he was 15. Before entering custody he was using cannabis on a daily basis, and is believed to have engaged in solvent abuse in the past. He reports that he cannot control his temper, and appears to be particularly aggressive towards people in authority. He does not accept that fire-setting is dangerous – arguing that no one has been hurt through his actions, and that it is normal for people to enjoy watching things burn.



## 8 Conclusions and recommendations

At any given time, between 2,000 and 3,000 children are likely to be in custody – either under sentence or on remand – in England and Wales. This study has asked: who are these children, and why and how do they come to be in custody?

The context of this study is a society which has developed a very punitive approach to dealing with children who break the law. At 10 years, the age of criminal responsibility in England and Wales is lower than in almost all other European countries. More children are locked up – on remand or under sentence – in this jurisdiction than in most others in Europe. The punitive approach to youth justice has developed here in tandem with political rhetoric about the threats posed by children who are said to be beyond the control of their families, schools and communities; rhetoric which both reflects and reinforces public anxiety about offending and anti-social behaviour perpetrated by the youngest members of our society.

However, the current time presents opportunities for reform of the youth justice system and the development of a more progressive, more effective approach to misbehaviour and offending by children. The recently elected government is undertaking a review of sentencing and has pledged to introduce a ‘rehabilitation revolution’ to reduce reoffending. Recognition of the ineffectiveness of short custodial sentences, allied with the urgent need to cut public spending on prisons, has produced a political climate in which the development of better and wider alternatives to custody, for children and adults alike, is seen as important and necessary.

If progressive reform of the youth justice system does take place, this can build on certain policy developments associated with the last few years of the previous government. Although most public pronouncements on youth crime emphasised the need to be ‘tough’, a commitment to reducing the use of custody for children was also made, albeit quietly. This commitment has been echoed in the Sentencing Guidelines Council guideline on Sentencing Youths (SGC, 2009), which strongly reiterates the principle that custody should only be used for children as a measure of ‘last resort’, and that any custodial sentence should ‘take account of the circumstances, age and maturity of the young offender’ (para. 11.11). Various efforts to strengthen and broaden preventative and diversionary work with children have been undertaken and appear to have achieved results: the number of children in custody declined steadily from its peak of 3,175 in October 2002 to 2,173 in June 2010.

### 8.1 Key findings

The main aim of this study was to provide an account of the backgrounds and circumstances of children in custody. In order to do so, we carried out a two-stage review of the information on children in custody that is held centrally by the Youth Justice Board (YJB). First, we undertook a census of all children who received custodial sentences or custodial remands in the second half of 2008, who numbered approximately 6,000<sup>49</sup>. Secondly, we looked in more detail at the backgrounds and current circumstances of 300 of these children (200 sentenced and 100 remanded), who were randomly selected from the full population. Using this information, we produced a broad profile of all children who entered custody and a detailed profile of 300 children who entered custody from July to December 2008.

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49. 2,736 children were subject to custodial remand in the second half of 2008, and 3,283 were sentenced to custody, producing a total of 6,019 children. These numbers refer to the total remand and custody episodes; hence children who received more than one episode (of either or both types of custody) are counted more than once.

### *Custodial sentencing*

By law, custody should be reserved for those children whose offending is most serious, and hence should be the sentence of 'last resort'. Our research findings suggest, however, that a great many children are being sentenced to custody for offences that, in themselves, are not serious. Around three-fifths of children imprisoned in the latter half of 2008 were convicted of offences that usually result in non-custodial sentences, and thus are at the less serious end of the spectrum of offending. Around half of the children were imprisoned for crimes that are non-violent. Just over one-third (35%) were imprisoned for offences that are both less serious and non-violent. No more than about one-fifth of sentenced children (based on our analysis of the 200 randomly selected cases) were assessed as posing a 'high' or 'very high' risk of causing serious harm to others. And there were concerns about the vulnerability in custody of almost half of the children in our sample of 200.

Given the offending and risk profile of the sentenced children, how can the use of custody for all of them be explained? It seems likely that at least part of the answer to this question lies in the fact that most of the children are repeat offenders. Although it has been difficult for us to assess with any precision the scale and nature of their offending histories, there is strong evidence that the large majority of children sentenced to custody have had prior, and often extensive, involvement in the youth justice system. By law, a child's previous convictions should be treated as aggravating factors which make the offence currently before the court more serious.

Around three-fifths of all children who received custody in the second half of 2008 had previously spent time in custody, either under sentence or on remand. Nearly a third were sentenced for two or more offences when they received the current custodial sentence. Of the 200 children in our sample of sentenced children, the previous offending of 70% of them is such that they can be described as 'persistent offenders', in accordance with the government's 'procedural definition' of persistence. A further 24% have previous convictions, but because of missing data we cannot say if they qualify as 'persistent'. Only 7% of the sample had had no previous convictions. Almost half of the children with previous convictions had their first conviction at the age of 13 or younger.

An important part of this picture of persistence is that a substantial proportion of the children – one-fifth of all of them – received their custodial sentences for breach offences. Other than in the small minority of cases where the offence was failure to surrender to bail, the fact that the child was sentenced for breach is in itself an indicator of prior offending (in cases of breach of licence conditions, community sentences or conditional discharges) or prior involvement in anti-social behaviour (in breach of asbo cases).

The evidence of repeat and persistent offending suggests that, in many cases, sentencers are using custody as a 'last resort' not so much in the sense that the seriousness of the current offence effectively rules out any other, less severe, penalty; but in the sense that they believe they have run out of other options for the children, following attempts to make use of other disposals. This supposition is supported by the findings of a study of sentencing commissioned by the YJB:

*Despite general scepticism concerning the value of custody, there was a widespread and strongly held view among sentencers that custodial sentences were given to young offenders because they had become 'unavoidable'. This endpoint could be reached because of the seriousness of an offence, but more commonly sentencers described feeling that community alternatives had been exhausted and 'enough was enough' (Solanki and Utting, 2009:9).<sup>50</sup>*

This study also found that sentencers' views on where the 'endpoint' is reached tend to be 'vague and subjective'. Hence an offence which is believed to merit the 'last resort' of custody in one court might be viewed very differently in another. This is certainly suggested by the wide geographical variation in custody rates, which cannot be explained by differences in patterns and severity of offending.<sup>51</sup> This evident inconsistency is one problematic aspect of the use of custody to punish persistence. Another problematic aspect is that the rationale for punishing persistence is questionable when it comes to children. A child who has repeatedly broken the law cannot necessarily be considered more culpable than a child who has broken the law only once, if the repeat offender's comprehension of his or her actions and their implications is limited.

Some of the children sentenced to custody have committed very serious offences, and the courts probably have little or no choice in passing sentence on them. Most of the children, however, have not been convicted of very serious offences, and in these cases it is questionable whether custody is genuinely the 'last resort'. The children who have committed these less serious offences are likely to be persistent offenders – raising the question of whether a history of previous offending lifts the gravity of the offence under sentence to a level where it is 'so serious' that only a custodial sentence is appropriate. Certainly, the repeat offending of these children can cause real harm or be extremely difficult to deal with; but it does not follow from this that, in these cases, custody is an effective or appropriate response.

It is clear that sentencers' decision-making can be constrained by factors beyond their control, such as the availability or quality of supervision provided by local youth offending team (YOT) workers, or the quality of legal representation for children in court. Moreover, a custody threshold based on the ill-defined, tautological notion of 'so serious that [no other sentence] can be justified' lends itself to inconsistent decision-making that is readily influenced by a punitive political climate.

### *Offending and disadvantage*

Many previous studies have found that there are high levels of disadvantage among children who enter the youth justice system. The findings of our extensive study strongly reinforce this message. We have sought to gain insight into the ways in which different kinds of disadvantage intersect with each other, and how they are experienced in the children's day-to-day lives.

The major part of our analysis of disadvantage encompassed 30 types of disadvantage: 19 relating to family and home life, and 11 relating to psycho-social and educational problems. In

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50. Hough et al. (2003) found that this conceptualisation of 'last resort' was common among sentencers in the adult criminal courts.  
51. The percentage of custodial sentences passed in 2008/09 ranges from 3.3% in the north-eastern region of England to 8.9% in London (provisional data supplied by the YJB).

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examining the extent of these specific types of disadvantage among the 200 children in our sample, we were hindered by incomplete data; hence the prevalence rates we produced are under-estimates. Nevertheless, our analysis makes it clear that these children experience multiple layers of different types of complex disadvantage. For the vast majority of the 200 children, there is evidence of disadvantage both in terms of home and family and in terms of psycho-social and educational problems. Almost three-quarters of the sample are known to have two or more of both broad types of disadvantage, and around half the sample to have at least three of each type.

For example, with respect to home/family disadvantage, around three-quarters of the sample are known to have had absent fathers; around half to live in a deprived household and/or unsuitable accommodation; and just under half to have run away or absconded at some point in their lives. Two-fifths are known to have been on the child protection register and/or experienced abuse or neglect; one third to have had an absent mother; and more than a quarter to have witnessed domestic violence, with a similar proportion having had experience of local authority care. Most of the families of the children in our sample have multiple problems relating both to internal family dynamics and to external factors. Recurring themes include criminality and/or substance misuse among members of the immediate and extended family; violence and abuse within the home; parental separation, which is often acrimonious; and a generally chaotic home environment. It is clear, also, that bereavement is a particularly significant feature of the lives of some children in our sample - sometimes acting as a trigger for the child's offending behaviour; but more often serving to entrench existing patterns of harmful behaviour within family situations that were already fragile and difficult.

Our capacity to assess the range and extent of psycho-social and educational problems among the sample of 200 sentenced children was restricted by a lack of relevant data. In particular, the core Asset form – which was our main source of information on all forms of disadvantage – does not record specific information on learning disabilities or cognitive impairment, and nor are speech, language and communication needs addressed. In addition, mental health problems are covered in a superficial manner. Notwithstanding the data limitations, however, we found that 70% of the children in our sentenced sample are known to associate with predominantly criminal peers; over half to truant or regularly fail to attend school for other reasons; and around half to have been excluded from school (on a fixed-term or permanent basis). Just under a third of the children are said to have problems relating to substance misuse; and around a quarter to have difficulties with literacy and/or numeracy. 17% of the children are recorded as having been formally diagnosed with some form of mental disorder; the most common among these is attention-deficit hyperactivity disorder (ADHD), which is said to affect 12% of the sample. The offending behaviour of many of the children appears to be compulsive and reckless.

Our analysis has not sought to address the question of whether certain forms of disadvantage are underlying causes of offending. However, the strong correlation between disadvantage and offending behaviour, which has been found by this and many other studies, suggests that, at the very least, disadvantage can contribute to emerging criminality. The relationship can also, simultaneously, work the other way: in other words, offending and related patterns of harmful or disruptive behaviour can serve to entrench certain disadvantages, such as disengagement from education or poor family relationships.



Whatever the exact nature of the inter-relationships between disadvantage and offending, the fact that these inter-relationships clearly exist should have a bearing on the sentencing decisions of the criminal courts. There are three levels of argument. First, and minimally, a defendant's disadvantages might be treated as a mitigating factor, which render the penalty less severe on the grounds that the defendant is less culpable for his crimes than he would otherwise be: 'The moral blameworthiness of the deprived is different because the choices the deprived face and what motivates their action is different' (Odudu, 2003: 418).

Secondly, this group of children is characterised by a resistance to strategies of deterrent threat, whether from parents, teachers, social workers, police, youth justice workers or the youth court. They have proved unresponsive, many for most of their lives, to progressively tougher and more formal forms of punishment. The obvious question to ask is whether it makes sense to carry on doing 'more of the same'. Obviously there are justifications for the use of custody that appeal to principles other than that of deterrence – but it is equally clear that principles of deterrence offer a poor justification for the use of youth custody.

Finally, and more fundamentally, if the youth justice system is to achieve its 'principal aim' of the prevention of offending by children, then surely the system needs to provide effective responses to the deep-rooted needs that are often associated with this offending. The fact that so many children who end up in custody have had previous – custodial and non-custodial – sentences strongly suggests that these sentences fail to address needs.

It should also be remembered that the courts are required, by statute, to 'have regard to the welfare of the child'. Addressing the causes and manifestations of disadvantage must be central to any efforts to protect children's welfare. Moreover, there are often aspects of offending behaviour itself that have safeguarding implications, and should be addressed as such if the child's welfare is not to be further compromised. As recent inspectorate reports have made clear, this applies, for example, to alcohol misuse and gang membership (Criminal Justice Joint Inspections, 2010; HM Chief Inspector of Prisons, 2010).

The findings of this study suggest that not only is the behaviour of most children sentenced to custody highly troublesome, in terms of its impact on their community and the people around them, but also that the children are themselves very troubled. We have argued that the youth justice system needs to recognise and address the many and complex needs of children who offend. But doing so does not mean overlooking or minimising the difficulties and harms that these children's behaviour causes. Ensuring that children recognise and take responsibility for their actions, and make amends wherever possible, should be an integral part of any welfare-based approach to offending.

### *Offending and disadvantage among the sentenced girls*

If the offending patterns and backgrounds of all the sentenced children raise many matters of concern, this is, perhaps, particularly true of the girls among them. Among all the children who were sentenced to custody between July and December 2008, 9% were girls – the same proportion as that of adult women who entered custody under sentence in 2008. However, the

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offending profile of the girls in custody differs markedly from that of adult women in the prison population. Among the latter (looking at all women who entered prison under sentence in 2008), 14% were convicted of offences of violence against the person, while 32% were convicted of theft and handling offences. Among girls, the equivalent figures are 28% for violence against the person, and 7% for theft and handling. Indeed, there is a higher incidence of violence against the person offences among the girls than among the boys (28% compared to 19%), while similar proportions of girls and boys were convicted of robbery, another violent offence (16% and 17% respectively). If we compare the gravity of the boys' and girls' offending, however, we see that the boys' offending levels were, on the whole, more serious. The fact that the girls tended to receive custody for less serious offences suggests that, on the whole, the courts treated the girls more punitively than the boys.

As well as being more violent, compared to adult women offenders and to their sentenced male peers, the sentenced girls appear to have a higher level of need than the boys, in terms of both home/family disadvantage and psycho-social/educational problems. The sample we used for our disadvantage analysis included only 17 girls, and hence it is difficult to draw general conclusions from the gender differences we observed. Nevertheless, it is notable that while the average number of all types of disadvantage among the boys is 7.2, the girls had an average of 8.9 disadvantages per person. The specific types of disadvantage that were more prevalent among the girls than the boys included:

- Witnessing domestic violence (59% for girls compared to 25% of boys)
- Parental substance misuse: both mothers (35% vs 9%) and fathers (18% vs 5%)
- Self-harm (53% vs 16%)
- Suicide attempts (24% vs 9%).

### *Remand*

At any given time, children on remand make up a much smaller proportion of the custodial population, currently around one-quarter, than those in custody under sentence. In the year 2008/09, the average population of children in custody was 605 on remand and 2,276 under sentence. However, because children on remand spend, on average, less time in custody than those who are sentenced, they account for a higher proportion of receptions into custody. In the last six months of 2008, 45% of receptions were of children on remand. Moreover, time spent on custodial remand can cause a disproportionate amount of distress to the individual, because of the inherent uncertainty of the situation, and the disruption to family and social life and to education can be as great as that caused by a short custodial sentence. We found that girls on remand can be located nearly 60 miles from their home – nearly 40 miles for boys – and that remanded children are located further from home than sentenced children, making visits by parents, carers, YOT workers and lawyers potentially difficult and costly. The majority of children who receive custodial remands do not go on to be convicted and receive a custodial sentence, and this was the case for our sample.

Concerns are often raised about how decisions to remand are arrived at, and our data did not permit much more clarity here. In most cases no reasons were recorded by the YOT for the refusal of bail, although where reasons were cited, lack of stable accommodation in the

community and substance misuse problems featured in several cases. Other factors such as high risk of reoffending (accounting for 27 children) and high risk of serious harm to others (accounting for 19 children) may have played some part in the decision to remand some of the sample, however, these are less persuasive when so few were sentenced to custody.

### *Assessment*

We have noted frequently over the course of this report that the process of data collection for this study was hindered by gaps and weaknesses in the data that were available to us on the Youth Justice Board's secure access clearing house system (SACHS) database. The study was particularly reliant on the often poorly completed Asset forms held by SACHS, which were the primary source of data on the 300 children in our sentenced and remand samples; but time and again we encountered difficulties relating to the information recorded on Asset.

These difficulties were threefold. The first derives from the nature of the Asset assessment process itself. Although this process is wide-ranging and captures information on many aspects of children's backgrounds and current circumstances, there are various areas which it simply does not cover – largely because it has been structured to capture items deemed directly relevant to offending and not items strictly related to welfare (although, as we have argued, this is a false distinction in practice). As highlighted above, among the notable omissions are specific information on learning, cognitive impairments and speech, language and communication needs; mental health is also inadequately covered. The second difficulty was that in many cases, sections of Asset appeared to be entirely missing, or were completed inconsistently because older versions of Asset were in use. The result of this is that our data-set, even within the confines of what the Asset process entails, is incomplete. Thirdly, parts of Asset were often very poorly completed, such that there were discrepancies between information provided in different parts of the form, or between the information held on Asset and the information held on other parts of the SACHS database. (For more details, see Appendix A.)

These data problems have implications for our research; but, of course, they also have much greater and more significant implications for the work that is carried out with children by youth offending teams (YOTs) and other agencies within the youth justice system. Asset forms are the primary documents received by secure establishments on individual children, and hence are critical to the development of appropriate care and sentence plans. The Asset assessment process is also central to the formulation of pre-sentence reports by YOT workers.

The inadequacies of the Asset process – both in terms of its component parts, and also in terms of its implementation – limit the capacity of services to respond effectively and appropriately to the offending of children and the risks they pose, and to devise interventions that address their many and complex needs. We have argued above that it is only through addressing these needs that the youth justice system can achieve its principal aim of preventing offending, and fulfil its obligation to have regard to the welfare of children. If needs are not even identified, let alone properly assessed, there is no chance that they can be dealt with.

## 8.2 Recommendations

We have noted above that there are opportunities at the present time for reform of the youth justice system. The findings of this study point to several areas in which new policy developments are urgently needed. In developing policy recommendations, we have been guided by three principles. The first is that there is an unavoidable subjectivity to decisions about the custody threshold and the point at which the penalty of last resort should be deployed. In assessing whether the youth justice system in England and Wales has struck the right balance, it is worth remembering that our system is an outlier, compared to other European systems – being readier to send children to prison, and to imprison children at an earlier age, than most of our European neighbours. This does not necessarily mean that this country has struck the wrong balance, of course, but it should give our politicians pause for thought.

Secondly, we think it important to recognise that principles of deterrence are unlikely to prove an effective strategy in dealing with very disadvantaged children with patterns of highly persistent offending. The Criminal Justice and Immigration Act 2008 set out, in Section 9, purposes of sentencing in the youth justice system that – in contrast to the adult justice system – specifically excluded deterrence. The then Justice Secretary, Jack Straw decided in 2009 not to activate this Section on the grounds that the courts should not be denied the possibility of *an element* of deterrent sentencing.<sup>52</sup> We appreciate that there may be a role for deterrent sentencing for some children who find themselves in trouble with the law, but we would welcome a reformulation of Section 9 that gave recognition to the fact that imprisonment is very unlikely indeed to prove effective for those disadvantaged children who have a lifetime of resistance to deterrent threat behind them. The welfare of these children should be the primary factor that is taken into account in sentencing decisions.

Finally, at a tactical level, we think that the best way to reduce the use of imprisonment for children is to ‘lengthen the road’ down which children have to travel in the court process before they reach the sentence of last resort. The Crime and Disorder Act 1998 intentionally reduced the length of this road, by eliminating multiple police warnings for minor offences. The unintended costs of this tactic were high, in drawing children into the youth justice process more rapidly than was necessary, often for very minor offences.

Our recommendations for policy development are as follows:

1. In recognition of the high levels of disadvantage experienced by children in the youth justice system and evidence of damage in earlier childhood, health, social and children’s services should engage with vulnerable families at the earliest possible stage to prevent or reduce such damage.
2. A welfare-based approach to offending by children should be developed. There are three dimensions to such an approach:

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52. See [www.yjb.gov.uk/en-gb/practitioners/CourtsandOrders/CriminalJusticeandImmigrationAct/#purposes](http://www.yjb.gov.uk/en-gb/practitioners/CourtsandOrders/CriminalJusticeandImmigrationAct/#purposes)

- a) The age of criminal responsibility should be raised to at least the European norm of 14. This would have the effect of removing all children under the age of 14 from the remit of formal youth justice.
  - b) Wrongdoing by these children would be addressed through non-criminal justice agencies; welfare agencies must ensure that this group receives the health and social care provision they require for their welfare to be safeguarded.
  - c) For children above the new age of criminal responsibility, referral to appropriate health and social care services should take place alongside formal prosecution, where prosecution is appropriate and in the public interest.
3. There needs to be an unequivocal legislative statement of the purposes of sentencing for those under 18 that limits the use of deterrent strategies for children with patterns of very persistent offending, whilst meeting the objections that were raised to Section 9 of the Criminal Justice and Immigration Act 2008.
  4. Building on the Sentencing Guidelines Council guideline on Sentencing Youths, the Sentencing Council needs to formulate guidelines about the custody threshold for children that restricts further the use of imprisonment for children, and genuinely limits the use of custody to the most serious offences. This will require clarification of the role of previous convictions in aggravating the offence under sentence. For example, custody for persistent non-serious offenders could be ruled out by defining 'last resort' solely in terms of offence seriousness, so that it is no longer understood as meaning 'the court has run out of other options'. Monitoring of sentencing practice should be undertaken to ensure that the custody threshold is consistently applied.
  5. As part of the redefinition and clarification of the custody threshold, narrower criteria should be established for the imposition of custody for breach offences. Imprisoning children for technical breach, where this has not been accompanied by further offending, is inappropriate and other options should be developed.
  6. The use of custodial remands for children should be minimised. This might involve, on the one hand, primary legislation to make it clear that more restrictive criteria are required for remand decisions in relation to children than those that apply to adult offenders. On the other hand, legislative reform will need to be accompanied by clearer guidance for courts on the criteria for remand and monitoring of remand decision-making.
  7. The Asset assessment process should be thoroughly revised, with a view to developing a comprehensive assessment tool which encompasses screening for mental health problems, learning disabilities and speech, language and communication needs. Effective systems for referral and further assessment and support should be incorporated in the process.

8. Appropriate training, supervision and monitoring of staff responsible for assessment is vital to ensure that the system is properly implemented. What is needed is not simply a set of procedures to ensure effective compliance with assessment processes, but effective leadership that conveys to the workforce that proper assessment is critically important to their work.
  
9. The Home Office, the Ministry of Justice and the Youth Justice Board need to explore new ways of 'lengthening the road' that leads to custody, for example by developing more flexible arrangements for police warnings and pre-court diversion.

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## Appendix A: Data quality

Our profile of 300 children held in custody in the last six months of 2008 was based on data from the various documents contained on the secure access clearing house system (SACHS) held by the Youth Justice Board. The majority of information was collected from core Asset forms. Other documents used included pre-sentence reports (PSRs), post court reports (PCRs) and risk of serious harm forms (ROSH).

Asset is an assessment tool used by youth offending teams to collate information on all children who come into contact with the criminal justice system. It aims to identify a range of background factors that may have some bearing on current and future offending behaviour, including family circumstances, education, physical and mental health as well as details of previous offending. Asset also contains information which can be used to assess the needs of the child, enabling appropriate interventions to be set up. Given the importance of Asset, we felt we should highlight some of the problems we encountered in collecting these data.

### Sentenced sample

- *Extent of missing data*

As is clear from our findings chapters, there were significant missing data across a range of variables. This included youth offending team (YOT) workers unable to determine whether a factor was relevant to the child (data was recorded as “don’t know”) and instances where information was incomplete. Examples are provided in the table below.

*Table A1: Instances and extent of incomplete information*

Asset factor	No. cases	% cases
Accommodated by voluntary agreement	47	24%
Care order	53	27%
On child protection register	58	29%
Special educational needs	45	23%
No fixed abode	19	10%

- *Different versions of Asset*

The Asset was last amended in 2006 yet despite this, in 38% (N=75) of cases, data was collected from older versions of the Asset form, as these were the only forms available on SACHS relating to the offence/s in question. This meant there were some differences in the extent and nature of information available. For example, the old Asset form contained a different set of responses under ‘care history and ‘looked after’ status and had fewer questions on this issue compared to the new version.

- *Quality of completion*

We encountered a number of problems related to the quality of the information on Asset. These included forms that were poorly filled out; for example, issues were highlighted in tick-box sections but no further details were provided in related open box sections. Whilst the Asset

form is expected to be completed at the beginning, midway and end of sentence, we had instances where YOT workers had copied and pasted new updates onto old forms, resulting in tick box sections not being updated to reflect the new situation and confused and sometimes conflicting narratives of what has taken place. In some cases where a PSR was available, important information detailed in that report was missing from the Asset form. Our main objective was to collect data from the Asset form which was linked to the offence recorded in SACHS for which the young person had received a custodial sentence. However, where that was incomplete or was of poor quality, we also reviewed earlier forms to collect background variables. Table A2 provides a breakdown of the type of Asset that was reviewed.

*Table A2: Data collection on the sentenced sample*

<i>Asset validity</i>	<i>N</i>
Core Asset – offence match and completed one month prior or after sentencing	147
Core Asset – offences do not match but completed one month prior or after sentencing	29
Core Asset – offences match and completed within 3 months of sentencing	6
Core Asset – offences do not match and completed within 3 months of sentencing	9
Bail Asset – offence match and completed one month prior or after sentencing	3
Core Asset – over three months old	6

- *ROSH flagged but not available*

As part of the Asset form, an assessment is made of whether a young person is at risk of causing harm to others and if this is a concern, a separate ROSH form is completed. There were 123 children classified as being a ROSH, but for 25 children (20%), no additional ROSH form was available on SACHS. For 17 children, ROSH was not highlighted in the Asset but a form was available, possibly in reference to a previous offence.

### **Remand sample**

Many of the problems described in the sentenced section were also applicable to the remand sample (n=100). However there were a number of additional constraints for data collection. For example, a larger proportion of the sample (n=24) had a bail Asset, which covered the same substantive areas as the core Asset but were not as detailed (see Table A3). Only 27 of the sample had a core Asset available which was linked to the offence for which they were being remanded. A further 31 had core Assets for the appropriate timeframe (within a month of the court date) but the offences on SACHS did not match with those outlined in the Asset.

*Table A3: Data collection on the remand sample*

<i>Asset validity</i>	<i>N</i>
Core Asset – offence match and completed one month prior or after court date	27
Core Asset – offences do not match but completed one month prior or after court date	31
Core Asset – over 3 months old	13
Bail Asset – offence match and completed one month prior or after sentencing	20
Bail Asset – no date, offences do not match, illegible	4

## Appendix B: Supplementary tables

Table B1: Age of sentenced children by gender

Age	Girls	Boys	Total
12	-	<1%	<1%
13	2%	2%	2%
14	11%	6%	6%
15	20%	16%	16%
16	34%	30%	31%
17	33%	46%	45%
18	-	<1%	<1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>N</b>	<b>290</b>	<b>2,993</b>	<b>3,283</b>

Table B2: Ethnicity of sentenced children by gender

Ethnicity	Girls	Boys
White	79%	71%
Asian	1%	4%
Black	5%	10%
Mixed	6%	6%
Chinese	<1%	<1%
Unknown	8%	9%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>N</b>	<b>290</b>	<b>2,993</b>

Table B3: Age by gender and institution type (%)

		Girls			Boys			Total		
		SCH	STC	YOI	SCH	STC	YOI	SCH	STC	YOI
Age	12	-	-	-	6%	-	-	5%	-	-
	13	7%	1%	-	19%	9%	-	16%	5%	-
	14	28%	11%	-	52%	43%	-	46%	29%	-
	15	17%	33%	-	14%	31%	15%	15%	32%	14%
	16	43%	49%	2%	7%	14%	33%	15%	30%	32%
	17	6%	7%	98%	1%	3%	52%	2%	4%	54%
	18	-	-	-	-	-	<1%	-	-	<1%
	<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>N</b>		<b>54</b>	<b>151</b>	<b>85</b>	<b>166</b>	<b>194</b>	<b>2,633</b>	<b>220</b>	<b>345</b>	<b>2718</b>

*Table B4: Primary offences (offence types summarised) – gender breakdown*

<i>Offence</i>	<i>Girls</i>	<i>Boys</i>	<i>All</i>
Breach of statutory order/bail/discharge	27%	21%	21%
Violence against the person	28%	19%	20%
Robbery	16%	17%	17%
Burglary (including domestic, non-domestic, aggravated)	2%	15%	13%
Vehicle theft/unauthorised vehicle taking	2%	5%	5%
Racially aggravated assault/other	9%	4%	4%
Public order offence	3%	4%	4%
Theft/handling stolen goods	7%	4%	4%
Drugs	1%	4%	3%
Sexual offence	0%	2%	2%
Criminal damage	2%	2%	2%
Motoring	0%	1%	1%
Arson	1%	1%	1%
Other/not known/no longer in use	2%	2%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>n</b>	<b>290</b>	<b>2,993</b>	<b>3,283</b>

*Table B5: Offence gravity scores by gender*

<i>Offence gravity score</i>	<i>Girls</i>	<i>Boys</i>
1	<1%	1%
2	2%	3%
3	23%	17%
4	44%	31%
5	4%	6%
6	19%	34%
7	7%	7%
8	<1%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>N</b>	<b>290</b>	<b>2,993</b>

*Table B6: Breakdown of all violent offences*

<i>Offence</i>	<i>N</i>	<i>%</i>
Robbery	541	32.6%
Assault occasioning ABH	165	9.9%
Wounding with intent to cause GBH	139	8.4%
Common assault	129	7.8%
Possession of an offensive weapon	123	7.4%
Violence against the person (unspecified)	99	6.0%
Riot/affray	89	5.4%
Aggravated vehicle taking	62	3.7%
Unlawful wounding/causing GBH	51	3.1%
Rape (male and female)	30	1.8%
Aggravated domestic burglary	21	1.3%
Sexual offences (unspecified)	21	1.3%
Public Order Act offences (unspecified)	18	1.1%
Arson	16	1.0%
Assault to resist arrest/on a person assisting a constable	13	0.8%
Possession of a firearm with intent to cause violence	13	0.8%
Violent disorder	13	0.8%
Assault with intent to rob	11	0.7%
Manslaughter	11	0.7%
Murder	8	0.5%
Section 4 Public Order Act offences	8	0.5%
<b>Other</b>	<b>81</b>	<b>4.7%</b>
<b>Total</b>	<b>1,659</b>	<b>100%</b>

*Table B7: Offence gravity by violence/non-violence*

	<i>Non-violent offences</i>	<i>Violent offences</i>	<i>Total</i>	<i>N</i>
Less serious: 1-5 gravity scores	61%	39%	100%	1,877
More serious: 6-8 gravity scores	32%	68%	100%	1,356
Total	49%	51%	100%	3,233*

*\*Excludes 50 cases where violence/non-violence classification is not known.*

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*Table B8: Primary offences – age breakdown\**

<i>Offence</i>	<i>12</i>	<i>13</i>	<i>14</i>	<i>15</i>	<i>16</i>	<i>17</i>
Breach of statutory order/bail/discharge	0%	35%	29%	23%	22%	19%
Violence against the person	0%	6%	16%	15%	20%	22%
Robbery	40%	20%	17%	18%	17%	16%
Burglary (including domestic, non-domestic, aggravated)	20%	20%	12%	15%	13%	13%
Vehicle theft/unauthorised vehicle taking	10%	6%	4%	5%	4%	5%
Racially aggravated assault/other	0%	6%	6%	5%	5%	4%
Public order offence	0%	0%	4%	4%	5%	4%
Theft/handling stolen goods	20%	2%	5%	4%	5%	3%
Drugs	0%	2%	0%	2%	4%	4%
Sexual offence	0%	0%	2%	3%	2%	1%
Criminal damage	0%	4%	1%	2%	1%	2%
Motoring	0%	0%	0%	0%	1%	2%
Arson	0%	0%	2%	0%	0%	1%
Other/not known/no longer in use	10%	0%	1%	2%	2%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>n</b>	<b>10</b>	<b>54</b>	<b>202</b>	<b>529</b>	<b>1,011</b>	<b>1,476</b>

\*Excludes one case in which the individual was said to be aged 18.

*Table B9: Age of first reprimand and first conviction*

<i>Age</i>	<i>First reprimand (%)</i>	<i>First conviction (%)</i>
10	11%	3%
11	16%	10%
12	23%	16%
13	24%	20%
14	14%	21%
15	8%	17%
16	4%	12%
17	0%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>
<b>N</b>	<b>133</b>	<b>147</b>



Table B10: Age of remanded children by gender

Age	Girls	Boys	Total
12	1%	<1%	<1%
13	1%	1%	1%
14	7%	5%	5%
15	21%	13%	13%
16	19%	25%	25%
17	52%	55%	55%
18	-	<1%	<1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>N</b>	<b>197</b>	<b>2,539</b>	<b>2,736</b>

Table B11: Ethnicity of remanded child by gender

Ethnicity	Children remanded Jul 08- Dec 08		Adults remanded 30 June 2008 <sup>1</sup>	
	Girls	Boys	Females	Males
White	70%	64%	69%	69%
Asian	2%	5%	4%	9%
Black	7%	14%	17%	16%
Mixed	7%	7%	3%	3%
Chinese <sup>2</sup>	2%	<1%	6%	2%
Unknown	13%	11%	1%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
<b>N</b>	<b>197</b>	<b>2,539</b>	<b>533</b>	<b>6,945</b>

NB:

1. Data abstracted from Ministry of Justice Offender Management Caseload Statistics 2009 Table 7.24.

2. For children the category is Chinese, for the adult population, the category is Chinese/Other.

Table B12: Age and distance from home to remand institution by gender and institution type

		Girls			Boys			Total		
		SCH	STC	YOI	SCH	STC	YOI	SCH	STC	YOI
Age	12	4%	-	-	5	1%	-	5%	<1%	-
	13	7%	-	-	13	9%	-	12%	6%	-
	14	18%	12%	-	57	36%	<1%	51%	28%	<1%
	15	43%	44%	-	15	26%	12%	20%	32%	11%
	16	29%	44%	-	9	28%	26%	12%	33%	25%
	17	-	-	100%	-	-	62%	-	-	64%
	19	-	-	-	-	-	<1%	-	-	<1%
	Total	100%	100%	100%	100	100%	100%	100%	100%	100%
Distance from home (miles)	0-50	39%	55%	49%	68%	53	72%	63%	53%	71%
	Over 50	50%	39%	50%	30%	44	24%	33%	42%	25%
	Unknown	11%	6%	1%	3%	4	4%	4%	4%	4%
	Total	100%	100%	100%	100%	100	100%	100%	100%	100%
	N	28	66	103	142	135	2262	170	201	2365

Table B13: Distribution of family/home disadvantages\*: gender breakdown

No. indicators	Male		Female	
	no. cases	% cases	no. cases	% cases
0-1	26	14%	2	12%
2-3	55	30%	2	12%
4-5	49	27%	5	29%
6-7	40	22%	3	18%
8-9	11	6%	5	29%
10-11	2	1%	0	0%
Total	183	100%	17	100%
Mean	4.1		5.2	

\*See table 5.1 on page 59 for a comprehensive list of family/home disadvantages

Table B14: Distribution of family/home disadvantages: ethnic breakdown

No. indicators	white		mixed		black		Asian	
	no. cases	%cases	no. cases	%cases	no. cases	%cases	no. cases	%cases
0-1	20	13%	1	6%	5	28%	2	29%
2-3	44	28%	3	18%	6	33%	4	57%
4-5	41	26%	7	41%	5	28%	1	14%
6-7	35	22%	6	35%	2	11%	0	0%
8-9	16	10%	0	0%	0	0%	0	0%
10-11	2	1%	0	0%	0	0%	0	0%
<b>Total</b>	<b>158</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>18</b>	<b>100%</b>	<b>7</b>	<b>100%</b>
<b>Mean</b>	<b>4.4</b>		<b>4.6</b>		<b>2.7</b>		<b>2.7</b>	

Table B15: Distribution of psycho-social and educational problems\*: gender breakdown

No. problems	Male		Female	
	no. cases	% cases	no. cases	% cases
0-1	40	22%	2	12%
2-3	72	39%	6	35%
4-5	51	28%	5	29%
6-7	14	8%	4	24%
8-9	6	3%	0	0%
<b>Total</b>	<b>183</b>	<b>100%</b>	<b>17</b>	<b>100%</b>
<b>Mean</b>	<b>3.1</b>		<b>3.7</b>	

\*See table 6.1 on page 70 for a comprehensive list of psycho-social and educational problems

Table B16: Distribution of psycho-social and educational problems: ethnic breakdown

No. problems	white		mixed		black		Asian	
	no. cases	%cases	no. cases	%cases	no. cases	%cases	no. cases	%cases
0-1	28	18%	4	24%	8	44%	2	29%
2-3	59	37%	7	41%	7	39%	5	71%
4-5	48	30%	5	29%	3	17%	0	0%
6-7	17	11%	1	6%	0	0%	0	0%
8-9	6	4%	0	0%	0	0%	0	0%
<b>Total</b>	<b>158</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>18</b>	<b>100%</b>	<b>7</b>	<b>100%</b>
<b>Mean</b>	<b>3.4</b>		<b>2.7</b>		<b>2.1</b>		<b>2.0</b>	

*Table B17: Combination of home/family and psycho/social/educational disadvantages*

		<i>No. disadvantages relating to home and family life</i>												
		0	1	2	3	4	5	6	7	8	9	10	11	Total
No. psych. soc. & educ factors	0	1	4	2	1	1	1	2		1				13
	1	2	6	5	4	2	3	6	1					29
	2		3	4	10	6	4	3	3	1	2			36
	3		6	8	6	7	6	3	5	1				42
	4		2	4	6	6	3	4	6	3	1			35
	5		1		4	2	4	2	2	5		1		21
	6		1		1	4	1	1	2		1			11
	7		2		1	1	1	1		1				7
	8			1		1	1	2					1	6
	Total	<b>3</b>	<b>25</b>	<b>24</b>	<b>33</b>	<b>30</b>	<b>24</b>	<b>24</b>	<b>19</b>	<b>12</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>200</b>













In 1984 Professor Norman Tutt concluded a study of children in custody in the UK by voicing his concern about increasing pressure to incarcerate children ‘The time has come to stop the routine rhetorical condemnation of young people’s behaviour which readily catches the media headlines. Instead politicians and those in the public service must ask themselves: is custody a response to youthful problems or have we, through recourse to custodial policies, created further and more serious problems for security and the young?’ When Professor Tutt and colleagues conducted a survey of the children they found that many had been in care, many had been imprisoned more than once and only 5% had been convicted of serious violent crimes.

In England and Wales in 2010 there are over 2000 children in custody at any one time. Over a quarter have not been convicted. Half of those convicted are sentenced for non-violent crimes. Children who commit crimes are sometimes depicted as callous monsters. This study uncovers the real circumstances and backgrounds of children in custody. It analyses the nature of the crimes they have committed and assesses the disadvantages they face in terms of family and home life, mental health and education. The results mirror those of 1984, and beg the question: why are we still condemning the most socially excluded and deprived children to imprisonment?

*Diana*

Princess of Wales Memorial Fund  
**THE WORK CONTINUES**

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