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Into the Breach

the enforcement of statutory orders in the youth justice system

Dr Di Hart

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This report was written by Dr Di Hart.

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'People going to jail for missing an appointment - that's just stupid!'
(A child interviewed for this study)

To re-balance the criminal justice system in favour of the law-abiding majority and improve public confidence, it was thought essential to ensure that the conditions of community penalties were fully adhered to and that (where necessary) enforcement action swiftly followed non-compliance.
(Home Office 2007a, p.7)

His disorder means whatever anyone in authority tells him, he does the opposite, so I have no doubt he will breach it like he did within two hours of getting it, which meant he was tagged. He needs medical intervention and I need help.
(A mother describing her reaction to her 12 year old son's ASBO, Daily Telegraph, 25 June 2009)

If you continue to breach this, we are just going to be embarrassed into keeping you in custody, no matter how harsh that may seem.
(A judge speaking to a 16 year old boy accused of breaching his ASBO 16 times in a year, BBC News, 26 April 2011)

Into the breach

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Acknowledgements

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- The YOT managers, magistrates and anti-social behavior practitioners in the study areas who gave up their time to reflect openly on the strengths and frustrations of current practice
- The YOT and secure training centre staff who identified and recruited relevant children to take part in the project and worked hard to make the interviews a success
- The sixteen children who so freely shared their views and experiences
- Members of the advisory group and participants in the invited seminar who contributed their expertise, knowledge and ideas.

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Finally I would like to thank Penelope Gibbs, Juliet Lyon and Rebecca Nadin at the Prison Reform Trust for their consistent interest and support.

Dr Di Hart

Foreword

As a newly qualified probation officer working with a juvenile justice team, I made a home visit to undertake a pre-sentence report interview. Ben was a 16 year old boy and was due to appear in court for an offence of taking a vehicle without consent, which at the time was called joyriding. His mum answered the door. Ben was at home with three friends. Before starting the interview, Ben told me he just needed to nip to the shop but would be back in two minutes. The next time I saw Ben was at court, and by that time I had submitted a nil report as I had not been able to interview him. Regrettably, Ben was remanded in custody for me to prepare the PSR, which I peppered with ambitious plans for intervention. Ben received a supervision order and needless to say my success in delivering the intervention plan was hampered by what at the time I considered to be his lack of engagement. I recall being frustrated by Ben's 'failure to take responsibility' and in preparing the inevitable breach report I mentioned his lack of cooperation with the order. At some point he committed another crime. It was some years later that I reflected how differently the order could have been approached - that I had treated Ben as a rational adult, living in a family with other supportive rational adults. Of course Ben was not a rational adult, and his family set up was far from ideal. I had failed to fully account for the many barriers Ben faced, and by failing to adjust for them I was somewhat to blame for the breakdown of the supervision order. Had I approached the order in a different way perhaps the outcomes for Ben, his family and his victims would have been very different.

Fast forward a couple of decades: YOT assessments of children, their diverse needs, and their families are now far more sophisticated. I am convinced that YOT staff are far better trained and innovative when it comes to motivating and engaging children and teenagers like Ben. That said, as a YOT manager there are other pressures associated with breach that are rarely out of mind.

Most YOT managers would agree that maintaining the confidence of their local courts is an essential element of a successful youth offending service. Achieving the confidence of the court has many aspects, but in their day to day dealings with sentencers, YOT managers are usually keen to stress the 'robust nature' of the community sentences they supervise. Indeed YOT managers may well fear the reputational risks to their service from children, already under the supervision of the YOT, reappearing in Court for a further offence. If sentencers think that little constructive work has happened on the existing order, or that timely enforcement action has not been taken, they may lose confidence in community sentences.

As well as considering the views of sentencers, YOT managers may try to second guess the views of the inspectorate. Will inspectors 'mark down' their scoring of individual YOTs when enforcement action, including a return to court, has not taken place to the letter of National Standards for Youth Justice Services or can YOT managers be confident that inspectors will support other approaches on a case by case basis?

YOT managers may worry about the potential for children to commit the most serious offences. There have been well publicised serious violent offences committed by adults and children, where subsequent investigations have concluded that different enforcement practices might have prevented the crime.

Finally YOT managers grapple with the issue of what may initially appear to be persistent or wilful breach. When children are perceived as flatly refusing to comply with the sentences imposed by the court, magistrates may feel that they have run out of options and need to ensure that the authority of the court is upheld.

Since youth offending services were established 11 years ago, the evidence shows that use of custody initially increased, but has reduced considerably over the last couple of years. Breach levels have not fallen to match this reduction. Research commissioned through the Prison Reform Trust's Out Of Trouble programme tells us much about children in custody. They have chaotic lives, mental health issues, learning difficulties, special educational needs, poor cognitive abilities and speech and language needs. Many have been in care, or experienced poor parenting, including parental drug addiction and domestic violence.

However we still have more to learn about the links between these characteristics and breach. Only by better understanding and responding to these links will YOTs be able to work with the courts and other partners to reverse the upward trend in breach. Similarly, only by understanding these issues will policymakers be able to think about how national standards and inspection regimes need to be changed.

It is pleasing to see some positive proposals within the current green paper, *Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders*. Indications that YOTs will have greater discretion around enforcement may help YOT managers overcome some of the concerns I raised earlier. If, for example, existing pockets of innovative practice are shared and mainstreamed, and compliance panels and restorative approaches become widely embedded, breach rates should reduce.

The scarcity of research into breach makes this a very important publication. The learning from Di Hart's work will challenge us to better engage children in their orders. Increasing compliance and reducing breach will prevent children being accelerated toward custody.

Jim Hopkinson
Head of Leeds Youth Offending Service

Executive summary

Introduction

This report summarises the findings of a project concerning children under the age of 18 who are in breach of their anti-social behaviour or criminal justice order. The aim of the project was to increase our understanding of the way statutory orders are enforced and to make recommendations for change.

Children who fail to comply with the conditions of a statutory order may be returned to court and sentenced for the breach, regardless of whether they have committed further offences or anti-social acts.

Youth offending teams (YOTs) are expected to bring breach proceedings after three instances of non-compliance with a youth justice order, although there is management discretion to depart from this in exceptional circumstances. Where a child is subject to an anti-social behaviour order (ASBO), however, there is a presumption that every instance of breach will be prosecuted.

The courts have a range of options open to them when considering their response but sentencing guidelines state that sentencers are not obliged to impose a punitive penalty even if the breach is proved, and custody is meant to be a last resort.

Little research has been done on the impact of enforcement but there is some evidence that action to achieve compliance does not necessarily have a positive effect on reconviction rates. Although reconviction rates amongst children are reducing, those subject to the greatest level of intervention, such as intensive community orders or custody, remain the most likely to be reconvicted.

Some commentators have also stressed the importance of distinguishing between superficial compliance and real engagement, where the person being supervised is genuinely committed to the purpose of the order even if they do not manage to fully comply.

There is some evidence to suggest that the children who have the most difficulty in complying with the conditions of their order are not the most serious offenders but those who offend persistently, often strongly associated with disadvantage. In relation to breach offences, some children may have difficulty in understanding what is required of them or be living such chaotic lives that they cannot comply.

Data published by the Ministry of Justice (MoJ) and Youth Justice Board (YJB) suggests that breach of statutory order now constitutes 6% of all proven offences, double the proportion in 2002/03. There is currently no available data on the proportion of total orders that are breached, except for Intensive Supervision and Surveillance Programmes (ISSP), about one third of which have resulted in breach action, and ASBOs, where 68% of all those given to children since 2000 have been breached.

Most likely to be returned to court for breach of a statutory order are older boys, and those of mixed ethnicity. Breach offences, however, account for a disproportionate number of younger children, girls and those of white ethnicity in custody. There are also regional variations in the use of breach proceedings. Around 20% of children in custody have been

found guilty of a breach offence and in 2009/10 an average of 9% of children were in custody solely for breach of a statutory order, usually a community sentence.

There are gaps and discrepancies in the data that make analysis difficult. It would be particularly useful to be able to analyse the relationship between enforcement activity and reoffending.

Practitioner perspectives

Interviews were undertaken in six local areas with YOT managers, the chair of the youth court bench and an identified lead on anti-social behaviour.

YOT managers agreed on the need for sanctions to be available for non-compliance, primarily to demonstrate that court orders are taken seriously rather than to reduce reoffending. This was, in part, because public confidence in the system could reduce punitive sentencing.

Many practitioners would welcome greater discretion in how best to respond to non-compliance, based on individual need, as long as this was defensible and non-discriminatory.

There was much less consistency in anti-social behaviour (ASB) services than in YOTs, with completely different structures and levels of resourcing. This led to considerable frustration and staff could feel as if they were working within a vacuum.

Although there were usually multi-agency processes before an ASBO was made, there was frustration about the lack of intervention subsequently.

There was a general acknowledgment that the children who find it hardest to comply are those facing the greatest disadvantage, including family factors, cognitive or communication difficulties or social pressures.

The ability of practitioners to form positive relationships with children was seen as important if they are to engage and there was some frustration about deficiencies in mainstream services in this respect.

Although sentencers perceived themselves to be rigorous in ensuring that children had been given every assistance to comply with their order, YOTs said that they were rarely challenged in court.

There was some concern about inconsistent sentencing for breach and a perception amongst YOTs that custody was not always used as a last resort. Conversely, some ASB practitioners thought that custody was not used enough.

There was limited awareness of sentencing guidelines and it seems that a range of other factors can influence sentencing, including the desire by sentencers to resolve the child's problems.

Children's perspectives

Individual interviews were conducted with 12 children subject to statutory orders under YOT supervision in the community and four children in custody for breach of a statutory order.

The children had 24 convictions for breach of a statutory order between them and some had never completed an order before being returned to court for breach, new offences or both. Their offences ranged from relatively minor criminal damage to serious violence.

Analysis showed that most shared many

indices of disadvantage, including experience of the care system, abuse and neglect, an unstable living situation, a home where there was domestic violence or parental mental illness/ substance misuse and a disrupted education.

There was a marked correlation between indices of disadvantage and compliance. The four children who were said to come from a relatively stable, supportive home had a significantly better history of compliance.

All the children knew what order they were on but even the most engaged children said that they had not been consulted about the associated conditions and any potential barriers to their ability to comply.

The children wanted to comply but were often worried about their ability to do so, particularly if the order was long and accompanied by rigorous conditions such as a curfew and electronic monitoring.

There were mixed views on the interventions that the children received. Most valued vocational or other activities but few were positive about cognitive or other programmes directly targeting their offending.

The reasons given by the children for instances of non-compliance reflected the chaotic circumstances in which they lived, including violence in the home, fear of rival gangs and substance misuse.

Once the children realised they were probably going to be returned to court for non-compliance, there was a high risk of further offending.

Having aspirations for the future and caring what happened to you were very important, and not all children were in this position. For some, being in custody was not the worst thing that could happen.

Others lacked the problem-solving skills needed to comply in the face of difficulties, such as the lack of bus fare to keep an appointment, and did not think to contact their worker.

Family and peer relationships could be a positive or negative factor influencing compliance, both in terms of practical and emotional help. Supportive parents also gave the child a reason to comply.

Also important were the relationships with practitioners, and children responded to a sense that their workers cared and wanted them to succeed. The children wanted their workers to strike a balance between support and boundary setting.

YOT workers were generally seen positively but this did not necessarily extend to other services.

Documentary analysis

Some YOTs had developed local procedures on breach. These included statements of underlying principles, the stages to be followed in supervising an order, the forms to be used and the conduct of cases in court.

For example, one YOT described the expectations regarding the identification of any barriers and suggested rewards for compliance. It also set out a rigorous approach to report writing to ensure sentencing decisions for breach were based on full information.

Other examples were a checklist to use with young people to identify and overcome barriers to compliance, and a matrix for

deciding whether breach proceedings should be initiated.

YOTs have templates for the written agreements they are required to have with children when their order begins. These all tended to be very formal in nature and, given the literacy and cognitive problems experienced by many children, would be difficult for them to take in. One YOT had, however, developed a range of child-friendly leaflets to supplement these more formal documents.

Children's records showed considerable variation in practice style: some practitioners did home visits and were generally proactive in resolving children's problems; others were not. There were also variations within reports recommending the appropriate disposal for breach, with some presenting the child's perspective and others tacitly inviting custody.

Conclusions

Before the effectiveness of the approach to enforcement can be judged, we need to understand what it is trying to achieve. Is it hoped that the enforcement of orders will reduce offending or is it designed to give a message to the public, courts and children that orders are being taken seriously? These aims do not necessarily conflict but both assume that children are fully responsible for the choices they make. There may be some, perhaps, who cannot comply.

Whatever stance is taken, it is important to identify the impact of the current approach to enforcement on those at the receiving end: the children themselves. It could be argued that the one-size-fits-all approach to enforcement has had a disproportionate effect on the most disadvantaged, who can thus experience a rapid escalation through the system and into custody.

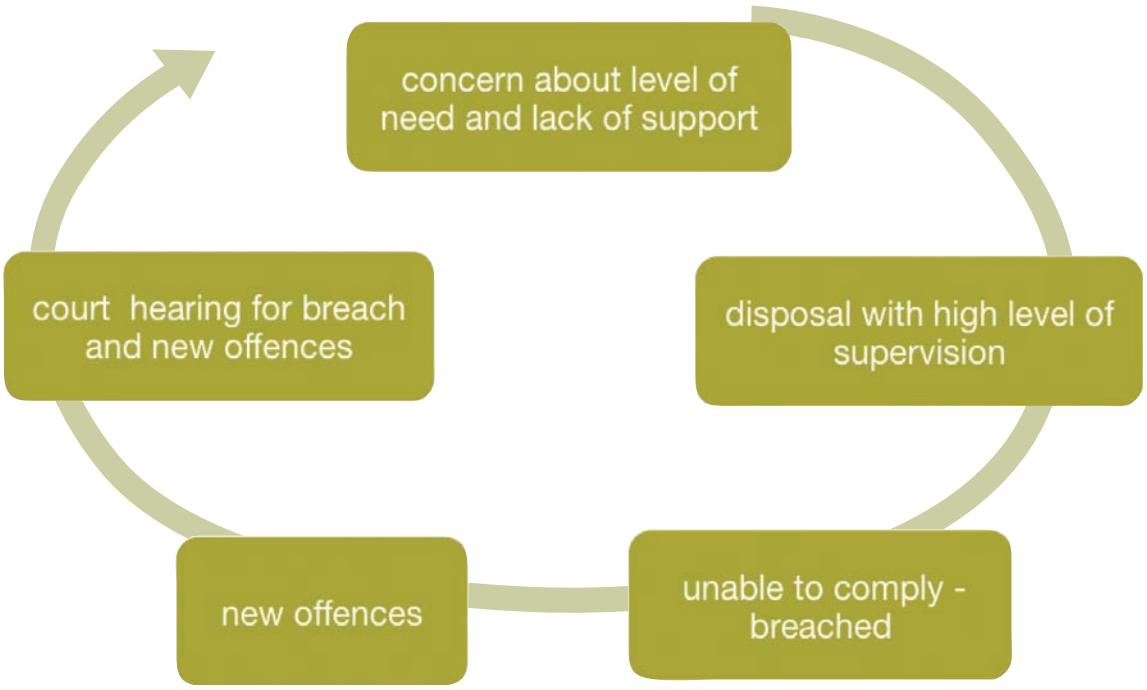
The children who took part in this study wanted to comply, to leave their offending behaviour behind and to have a 'normal life'. The fact that they had such difficulty in doing so was not caused by defiance but a much more complicated set of factors.

Firstly, the achievability of the order was a problem for many of the children. Many of the orders were both lengthy and intense, and there was a sense that they were being set up to fail.

Secondly, constraints on interventions were also a problem. YOTs were constrained by the rigidity of expectations regarding enforcement and the nature of the interventions at their disposal. Many of the children needed services that were outside the remit of the YOT or anti-social behaviour practitioners and there was frustration when these were not available.

Thirdly, the children were facing major challenges, sometimes as a result of inherent cognitive or developmental difficulties, but usually as a result of the quality of care from their family combined with adverse social circumstances.

Those operating the system are fully aware of the challenges facing the children they work with and keen to make a positive difference to their lives. This could lead sentencers to impose an order with a high level of supervision that the child finds overwhelmingly difficult to comply with, escalating rather than resolving their difficulties as illustrated overleaf.



There will always be limitations to a system that tries to impose youth justice solutions on child welfare problems but the current system could be rebalanced to focus less on formal compliance and more on genuine engagement.

Recommendations

1. Ensure that orders are achievable and children are not being set up to fail

Recommended actions

- Sentencers and pre-sentence report writers must take account of individual children's ability to comply with proposed orders and not set them up to fail. In particular, they must ensure that those from the most vulnerable groups, including looked after children, children with learning disabilities and difficulties, mental health and substance misuse problems, are identified and supported.
- A formal system should be developed to provide feedback to sentencers on the outcome of their decisions, including the way that orders are implemented and the progress of individual children.
- Defence solicitors representing children in the youth and crown court should be accredited, as they are in family proceedings.

Action by: Her Majesty's Courts and Tribunals Service, Sentencers, YOTs

2. Involve children in decision-making

Recommended actions

- Practitioners must develop methods to enable children to participate in all decisions affecting them, both in court and subsequently.
- Easy-read leaflets, and other means of communication suitable to their age and understanding, should be developed for use with children.

Action by: MoJ/YJB, Home Office, Her Majesty's Courts and Tribunals Service, Sentencers, YOTs, Anti-social behaviour units, Police

3. Improve the quality and effectiveness of interventions in the community

Recommended actions

- Research on the impact of enforcement measures should be commissioned. Interventions delivered as part of community orders should be rigorously evaluated according to their effectiveness in engaging children and in improving outcomes.
- Whole-family interventions should be developed rather than interventions which focus solely on the child.
- Children subject to anti-social behaviour orders, or their replacement, should have access to the same professional assessment, services and support as those on youth justice orders.
- Anti-social behaviour services for those under 18 should be managed separately and under the governance of children's services.

Action by: MoJ/YJB, Home Office, YOTs, Anti-social behaviour units

4. Lengthen the road to breach action

Recommended actions

- Local managers should be authorised to use greater discretion and professional judgement in the management of statutory orders, including decisions about breach action.
- A checklist of considerations to take into account should be developed to support local decisions about breach action.
- The YJB/MoJ should explore new ways of creating additional stages in the decision-making process, including the use of panels.

- The Home Office should ensure that breaches of ASBOs (or their replacement) are not prosecuted unnecessarily and that children are appropriately diverted.
- Mechanisms that will serve as a warning to children about the need to comply which don't require a return to court should be developed.

Action by: MoJ/YJB, Home Office, YOTs, Anti-social behaviour units, CPS

5. Ensure that breach cases are conducted fairly

Recommended actions

- Training on the appropriate response to breach cases should be provided for all involved in breach proceedings, including sentencers, legal advisors and solicitors.
- The format of reports used in breach hearings should be reviewed to ensure that cases are proved before information about the child and proposals about disposal are provided to sentencers. Where the court decides to revoke an order and re-sentence the child, a new pre-sentence report should be requested.
- Sentencers must adhere to sentencing guidelines by satisfying themselves that children have been given adequate support to comply with orders before they impose a punitive penalty.
- When a child is not complying but there is little risk of further offending, consideration should be given to revoking the order.
- The use of adjournments to provide an opportunity for children to demonstrate compliance should be endorsed.

Action by: MoJ/ YJB, Her Majesty's Courts and Tribunals Service, Sentencers, YOTs

6. Develop quality assurance measures to meet agreed standards

Recommended actions

- Measures need to be introduced to assure the quality of work with children who find it difficult to comply with orders, and to ensure the quality of breach reports meets agreed standards.
- This expectation should be extended to children subject to anti-social behaviour orders and their replacements.

Action by: HMI Probation, Ofsted, YOTs, Anti-social behaviour units

7. Make better use of data to improve engagement and outcomes

Recommended action

- Local and national systems for the collection and analysis of relevant data should be developed to improve practice with children who have difficulty complying with orders.

Action by: MoJ/YJB, Home Office, YOTs, Anti-social behaviour units

8. Identify and meet the welfare needs that lead to offending and anti-social behaviour

Recommended action

- Mechanisms must be developed to ensure that education, health and social services respond to the needs of children at risk of offending or committing anti-social behaviour, and those who are subject to statutory orders.

Action by: MoJ/YJB, Home Office, DfE, Children's Services, YOTs, Anti-social behaviour units

Introduction

This report summarises the findings of a project concerning children under the age of 18 who are in breach of their anti-social behaviour or criminal justice order. This builds on an earlier project undertaken by the National Children's Bureau (2010) that raised a number of questions about the stories that lie behind formal guidance and statistics on breach. The Prison Reform Trust's Out of Trouble programme has funded this second, qualitative, study to provide an in-depth picture of the way policy is interpreted in practice, including the perceptions of local practitioners and children. Out of Trouble is a five year programme, generously supported by The Diana, Princess of Wales Memorial Fund, whose aim is to reduce the number of children and young people imprisoned in the UK.

This report incorporates an updated version of the earlier findings[1] and new material based on fieldwork in six local areas within England and Wales. The overall aim of the study is to increase our understanding of the way statutory orders are enforced and to make recommendations for any changes that might improve the outcomes for children in trouble. A particular focus is the population of children who are in custody as a result of breach, especially where this is the main reason for their incarceration.

The report contains an analysis of:

- the legal and policy framework in relation to breach
- research literature
- statistical data
- the views of national stakeholders
- the perceptions of local practitioners in six localities in England and Wales
- the circumstances and perceptions of 16 children subject to a statutory order.

Why is breach a problem?

Children in breach of anti-social behaviour or criminal justice orders have taken up a significant proportion of custodial places in recent years (around 19% at any one time), increasing their risk of poor outcomes and draining resources. Those affected include younger children (Glover and Hibbert 2008); children in breach of a civil rather than criminal order (Brogan 2005); and children whose original offence did not warrant custody. The reason for a decision to bring breach proceedings is that the child has failed to comply with some or all of the conditions of their order, such as attending appointments or observing a curfew. Even where appointments are kept, bad behaviour can be taken as a failure to comply. The child may or may not have committed further offences or anti-social acts and these will be considered separately by the court: they do not, in themselves, constitute a breach offence.

The decision to issue breach proceedings could be seen as a failure on the part of the children, but could equally be interpreted as an indictment of the terms of the order: are children being set up to fail (Home Office 2008a)? Even where the terms of the order are achievable, the support some children need to comply may be lacking.

There are five main pathways for children subject to a statutory order. They may:

1. comply with the conditions and complete the order
2. fail to comply but not be formally breached

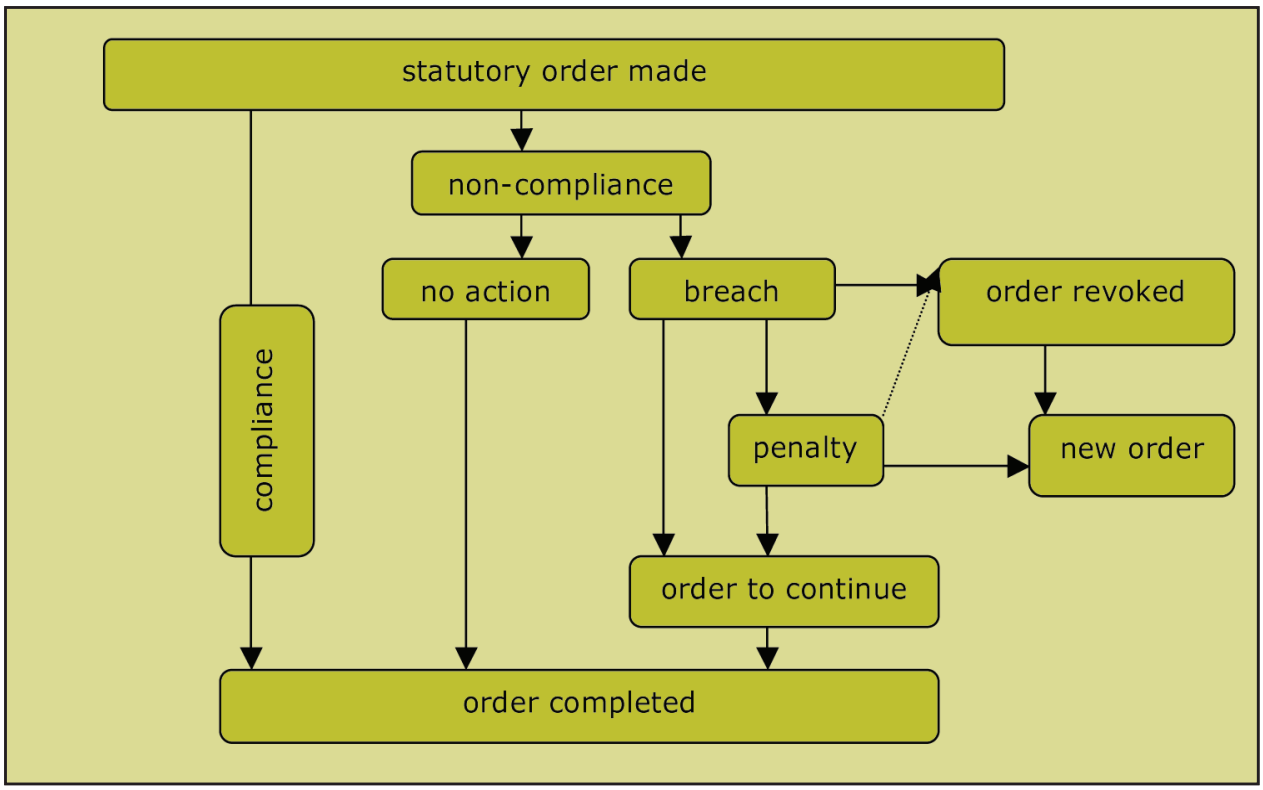
1. The original report included consideration of breaches of bail but the updated findings focus only on breaches of 'statutory order'.

3. fail to comply, be formally breached but allowed by the court to continue on the current order (although the requirements can be varied)
4. fail to comply, be formally breached and the court revokes the order and resentences them for the original offence for which it was imposed[2]
5. fail to comply, be formally breached and the court sentences them for the breach offence (may be in addition to 3 or 4).

No systematic work has been done to identify the factors that determine which pathway a child will follow and the second phase of this project attempted to explore these in more detail. From the first phase of the project, it was anticipated that these factors might include:

- children's characteristics and behaviour
- expectations set out in national policy and guidance
- local guidelines and culture
- practitioners' attitudes, including youth offending teams (YOTs), police, prosecutors and courts
- the quality of support services
- the nature of enforcement arrangements.

Figure 1: Statutory order pathways



2. Not applicable to ASBOs because the original order was not imposed as a result of an offence.

Expectations and evidence

The current approach to youth offending, as with adults, is based on a belief that crime and anti-social behaviour require a 'tough' response, as epitomised by the title of the White Paper that set out the New Labour government's intentions in 1997: No More Excuses. There is also a wish to demonstrate that justice must not only be done but be seen to be done, a concern that has persisted in spite of a change of government (Ministry of Justice 2010 p.2).

The law relating to specific aspects of the system for breaching children is complex, with different systems and processes applicable to different orders. A range of agencies and individuals are responsible for deciding whether to bring breach proceedings; some breaches are technically a criminal offence whilst others are not and it may be difficult to disentangle the response to the breach from the response to other aspects of offending. Further offending does not constitute a breach in itself and should be prosecuted separately but the boundaries can become blurred.

Policy and guidance

The system for bringing breach proceedings is determined by law but actual decisions about whether to return a child to court and any resulting penalty will depend on how the legal framework is operated. This is determined in part by the raft of guidance issued to the agencies involved in such decisions, including the local authority, police, Crown Prosecution Service (CPS), electronic monitoring contractors, community panels, YOTs and the courts. It is also determined by individual judgements and the use of discretion, raising the possibility of inconsistency and unfairness. There are separate guidance documents in relation to children within the youth justice and anti-social behaviour systems, reflecting the different government departments that are responsible.

Youth justice guidance

Decisions to bring breach proceedings within the youth justice system rest largely with the YOT, who are given very clear messages about the importance of compliance by the National Standards for Youth Justice Services (YJB 2004, 2010a) and Case Management Guidance (YJB 2010b). The general principles, regardless of the type of order that the child is subject to, are that the YOT must explain the order to the child (and parents/carers) and the consequences of failing to comply. The latest version of the Standards appears to adopt a slightly more flexible approach than previously, allowing an element of discretion. It also introduces more explicit expectations of the practitioner, stating that the YOT worker must not only set out in writing what is required of the child but ensure that the child understands. Also new is the expectation that the YOT worker should 'ensure that every effort is made to support the child and young person in successfully completing an order' (YJB 2010a, p.64).

Compliance and enforcement must generally be managed by the YOT in the following way:

- follow up all failures to attend within one working day to determine whether the reason is acceptable or unacceptable
- where the non-compliance is unacceptable, issue a formal written warning within 24 hours
- where two formal warnings are given and a further unacceptable failure to attend takes place, breach action must be initiated within five working days (YJB 2010a, pp.64-65).

It is not only non-attendance that can be considered a failure to comply: 'unacceptable behaviour', such as attending appointments under the influence of drugs or alcohol, or poor time-keeping may also be seen as non-compliance.

There is some scope to depart from the automatic trigger for breach action. This must be agreed by the YOT manager and the reasons recorded. Breach proceedings can be 'stayed' even after three failures to comply in 'exceptional circumstances'. This is open to interpretation, but factors mentioned as having a bearing on decision-making are the child's level of maturity and whether there are 'chaotic circumstances' in their life (YJB 2010a, p.61); 'the provision of support to meet their welfare needs' and 'overall compliance and whether they seem committed to completing the order'. An overarching principle for the YOT manager to consider is 'whether staying breach would be in the interests of the objectives of their order' (YJB 2010b, s6: p.8).

Conversely, it is also possible to take breach action before the usual warnings have been issued – again 'in exceptional circumstances':

> *… if the young person's failure to comply is of the nature that requires such action [for example, significant concerns raised by the child or young person's risk of serious harm to others] (YJB 2010b, s6: p.9).*

Where a child is returned to court, the YOT is responsible for prosecuting the breach. The child is entitled to contest the evidence and to have legal representation. The YOT should provide a breach report for the court outlining:

- the details of the failures to comply
- progress and achievements in relation to the requirements of the order
- details of the original offence; and
- a proposal for the most appropriate course of action (YJB 2010b, s6: p.9).

Interestingly, breach reports are not mentioned in the list of documents that should be routinely scrutinised as part of quality assurance processes (YJB 2010b, s2: p.13).

Sentencing options

The courts have a range of options open to them when considering their response, depending on the specific order. The breach may be an offence in itself, and therefore lead to additional penalties. The court may also decide to revoke the order and resentence for the original crime. Guidance on the principles underpinning the sentencing of children stresses the importance of avoiding their 'criminalisation' and promoting reintegration rather than imposing 'retribution' (Sentencing Guidelines Council 2009, p.3). Children are acknowledged to require a different approach from adults because:

> *... young people are unlikely to have the same experience and capacity as an adult to realise the effect of their actions on other people or to appreciate the pain and distress caused and because the young person is likely to be less able to resist temptation, especially where pressure is exerted (s3.1).*

Sentencers are advised that they are not obliged to impose a penalty even if the breach is proved: they can simply allow the order to continue. They must also avoid setting the child up to fail:

... a court must ensure that the requirements are not so onerous as to make the likelihood of breach almost inevitable (s10.27).

The use of custody for breach is considered to be a serious step and:

... a court should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and support necessary for compliance (s10.39).

In general, breaches should not result in custody if the original offence was not imprisonable. However, specific penalties may be available where the child has 'wilfully and persistently' breached the terms of the order. This would usually mean where there had been three previous court appearances for breach. Even then, custody is not inevitable: for Youth Rehabilitation Orders (YROs) the court should first consider the suitability of imposing an Intensive Fostering or Intensive Supervision and Surveillance (ISS) requirement. Further persistent breaches may then result in a Detention and Training Order (DTO) of up to four months, even if the original offence did not warrant a custodial sentence.

The guidance for supervising children serving the community part of a DTO[3] is generally the same as for those on community sentences. If breach action is taken, the court can order them to serve the remainder of their sentence, or three months, in custody, whichever is shorter. For those released from s90/91 or s226/228 sentences, they can be recalled to custody without a return to court if licence conditions are breached or their behaviour constitutes an enhanced risk of harm to others (YJB 2007). Decisions about their release will be taken by the parole board. For all post-custody supervision, a rapid review by a YOT manager must take place within one working day if this risk is thought to be present.

Guidance on breaches of anti-social behaviour orders (ASBOs)

Although there is an expectation that a child who perpetrates anti-social behaviour will receive an assessment of their circumstances and needs (Home Office 2008b, p.63), this is not a statutory requirement. It is also unclear who is expected to undertake it, using which assessment framework. The YOT is expected to assess for the suitability of an Individual Support Order (ISO) or Parenting Order using Asset[4] in applications for ASBOs in the civil court but it is also suggested that children's services departments may undertake a specialist assessment using the Framework for the Assessment for Children in Need and their Families and that, where an ASBO is sought, every child should be assessed using the Common Assessment Framework (YJB 2008, p.6). Given this lack of clarity, a child could receive multiple assessments and the processes for coordinating and quality-assuring such assessments may not be in place. There is also scope for confusion as to who is ultimately accountable. Once an ASBO has been made, there is no statutory requirement to provide the child with support to comply, unless it is accompanied by an ISO, though these have a maximum term of six months whilst ASBOs are for two years. Decisions to bring proceedings against a child in breach of an ASBO are very different from those within the youth justice system. It is argued that there is a qualitative difference between the breach of an ASBO and non-compliance with a youth justice order because breach of an ASBO has the potential

3. The first half of a DTO is served in custody and the second half in the community under YOT supervision.
4. The YJB's format for assessing the risk of offending.

to cause direct harm in a way that, for example, failure to attend an appointment with the YOT does not (Sentencing Guidelines Council 2008). For instance, a person seen by the police in a location from which they are prohibited is likely to be arrested to prevent the behaviour for which the prohibition was imposed. There is an assumption that it is in the public interest to prosecute every breach and decisions are taken primarily by the CPS (2010). The YOT will have an opportunity to contribute their opinion as to the most appropriate sentence if there is a finding of guilt. The YOT will also be involved if a child is failing to comply with an ISO, which may accompany an ASBO, but again does not have the final say.

In relation to prosecuting breaches, the CPS provides most guidance (CPS 2010). They specify that, if an ASBO breach is a child's first criminal offence, a final warning may be appropriate (para 10).

Sentencing options

Where a conviction is secured for an ASBO breach, there are specific sentencing guidelines (Sentencing Guidelines Council 2008). Sentencers are reminded that ASBOs are preventative not punitive orders and that the prohibitions they contain should reflect this, rather than being a 'standard list'. The terms should be precise and 'capable of being understood by the subject'. The main aim of sentencing for breach is to achieve the purpose of the order, not to punish, and it should primarily reflect the 'harassment, alarm or distress involved' rather than the fact of breach in itself.

In a specific section on young offenders, the same principles are said to apply but the penalty should reflect the fact that they are generally less culpable than adult offenders and that punishment will have a more onerous effect on them. The appropriate disposal will therefore usually be a community sentence, and sentencers are again told not to set them up to fail by imposing onerous requirements (p.10). Custody should normally only be considered if the breach involved harassment, alarm or distress and even where the custody threshold has been reached, it is clearly stated that a custodial sentence is a last resort.

There is still a fundamental difference, however, in the sentencing principles for criminal justice and ASBO breaches. In general, custody should only be used for breach of a criminal order when the original offence also reached the custody threshold. This is not the case with ASBOs, where the original behaviour was not a crime at all, let alone one that warranted custody. It is also the case that, whilst the youth justice system allows for both a number of warnings and the option to use discretion, ASBO policy expects the first and every breach to be prosecuted, making no reference to the CPS guidance on the option of a final warning.

In July 2010, the Home Secretary for the new coalition Government made a speech referring to the need to 'move beyond the ASBO' which was criticised as being a 'top-down, bureaucratic, gimmick-laden approach'[5] . A consultation document has been issued though the timescale for legislative change is not yet clear[5]. It proposes to repeal the ASBO and replace it with a Criminal Behaviour Order that could be attached to a criminal conviction, and a Crime Prevention Injunction aiming to stop anti-social behaviour at an early stage. Both could contain supportive requirements as well as prohibitions. It is also proposed that,

5. www.homeoffice.gov.uk/media-centre/speeches/beyond-the-ASBO
6. Home Office (2011) More effective responses to anti-social behaviour Home Office: London

before making an application for an injunction for someone under the age of 16, the relevant authority (probably the YOT) could prepare a report on the family circumstances. The Criminal Behaviour Order would have criminal sanctions for breach but the Crime Prevention Injunction would only carry civil sanctions. It is unclear what these civil sanctions would be for children: possibilities include requirements for supervision, activity, curfew or detention. It is impossible to know whether these proposals will be adopted or, if they are, what their impact will be compared to current arrangements.

Monitoring and inspection

Given how rigorously children are held to account, is this reflected in the way that practice is scrutinised? The current approach to monitoring and inspection is changing. There will be less emphasis on centralised data analysis and the inspection framework will be reduced, with an expectation of local accountability. It is impossible to predict what effect this will have on the standard of work within YOTs – and children's services in general.

There have been important differences in the way practice is monitored across the range of agencies dealing with children in trouble to date. YOTs have been required to submit performance data to the YJB and this is published in an annual report. YOTs are inspected by HMI Probation, who initially focused on the timeliness of any enforcement action and were critical of instances of delay or inconsistency. The Core Case Inspection Criteria in use from 2009 (HMI Probation 2009), however, are broader in scope: consideration of children's compliance is looked at within the context of outcomes, with general criteria including that:

There has been compliance with requirements, a reduction in needs relating to factors linked to offending and reduced reoffending (3.1a).

The YOT are asked to provide information about the child's needs, including disability, care status and other welfare needs, and offences in order to enable the inspection team to arrive at a judgement about this. A recent joint inspection of court work in respect of children led by HMI Probation is critical of the quality of the information provided by YOTs when deciding the appropriate disposal for breach cases, judging 69% of reports to be inadequate (HMI Probation et al 2011).

The work of YOTs has also been considered within the wider inspection of local children's services, led by Ofsted. Anti-social behaviour agencies sit outside this framework and there is no monitoring or inspection of the quality of their intervention with children. Anti-social behaviour units within local authorities are not within the governance of children's services and, although the police service is inspected by HMI Constabulary, the needs of children subject to ASBOs are not within their remit. This is a major omission for services that are making important decisions about children's lives.

Literature

Although there is extensive literature on the causes of offending and what works in tackling it, little has been written specifically on the role of enforcement either from a research or practice perspective. Where studies have been done, the main focus is primarily on adults although some findings are transferable to work with children.

Enforcement and reconviction

Given that the main purpose of criminal justice or anti-social behaviour orders is to prevent a reoccurrence of the problematic behaviour, it is legitimate to question whether they are achieving this effect. A report in 2001 (May and Wadell) found that offenders who did not comply with community orders were more likely to be reconvicted. This led to an assumption that action to achieve compliance would have a positive effect on reconviction rates but this has rarely been put to the test.

One of the few studies that did examine it, although in relation to adults supervised by the probation service rather than children, raised doubts about the impact of enforcement on reoffending (Hearnden and Millie 2003). The study compared reconviction rates across probation areas that had been classified as harsher or more lenient than average in their response to non-compliance. They confirmed the finding that those who were breached in court were more likely to be reconvicted within two years, but could not demonstrate a link between this and enforcement activity.

> *When areas were grouped between 'high' and 'low' rates of breach at court, there was very little difference in their overall reconviction rates. 'Strictness' of an area appears to have very little impact on rates of reconviction … Whatever the explanation, probation areas and policy-makers should be realistic about what reductions in offending can be achieved in the short term through toughening up enforcement practice (p.10).*

In spite of this finding, a thematic inspection report on enforcement (Home Office 2007b) focused almost entirely on process issues, such as the time taken to bring breach cases to court, rather than outcomes. It also, however, counselled against a bureaucratic approach and offered some 'hypotheses', including the following:

> *Achieving compliance, through engaging the offender in the supervision process, setting shared objectives and offering regular appointments with an offender manager who is committed to working with the offender, is likely to reduce the need for enforcement (p.23).*

Although reoffending rates amongst children are reducing, a recent report (National Audit Office 2010) suggests that the reasons for this are unknown and cannot be attributed to any particular interventions[7]. Those subject to the greatest level of intervention, such as intensive community orders or custody, remain the most likely to reoffend (p.8).

McAra and McVie (2007) have followed up a large cohort of children in the Edinburgh study to identify patterns of offending and suggest that youth justice intervention may even exacerbate offending behaviour for some.

The dynamics of compliance

Others have looked at the dynamics of compliance and have identified a number of levels. Robinson and McNeill (2008) take as their starting point the distinction made by Bottoms (2001) between 'short-term requirement compliance' i.e. attending appointments and doing what is asked, and 'longer-term legal compliance' i.e. stopping offending behaviour. They suggest a further sub-division of short-term compliance between those who are just 'formally' complying by turning up and those who are 'substantively' complying because they are genuinely engaged. There are therefore four levels of compliance:

7. The reduction could be unrelated to youth justice interventions but rather the result of National Indicator 111, introduced in April 2008, aimed at reducing first-time entrants to the youth justice system.

Figure 2: Levels of compliance

Adapted from Robinson and McNeill (p.439)

Those subject to supervision will be at different points on this pathway and it is the task of the practitioner to help them move towards more genuine and long-term compliance. Robinson and McNeill also suggest that it is important to understand the individual attitudes that lie behind the behaviour:

> *... regulators often make the mistake of expecting consistency between attitudes and behaviour; leading them to confuse non-compliant behaviour with postures of defiance and thus developing an oppositional stance towards defaulting regulatees (p.438).*

In other words, some offenders may have difficulty in complying but be fundamentally committed to the system whereas others are just doing what they have to do. They argue that heavy-handed enforcement can alienate those who genuinely want to comply but do not always manage it. Instead, the practitioner should work with the offender's beliefs and attitudes, generate social ties and establish the legitimacy of the system so that they can develop internal controls. One difficulty is that compliance can easily be measured but engagement cannot, a trap that National Standards have fallen into.

A review of the evidence comparing coercive and non-coercive interventions (McGuire 2010) concludes that coercive methods are counter-productive and that more positive outcomes are achieved by a range of individualised supportive interventions, including counselling and family work.

Accredited programmes are unlikely to be effective if other elements are not also in place, responding to the assessed needs of the individual. McGuire also concludes that the possibility of punishment does not act as a deterrent. Instead of judging interventions according to whether they are 'hard or soft' they should be judged according to whether they are effective or ineffective.

The 'best' response to non-compliance

If coercive approaches are ineffective, what are the best approaches if a child does fail to comply? Squires and Stephen (2005) suggest that:

> *Project managers need to be free to exercise some discretion in managing their offenders and should not be confined by over-stringent breach conditions which produce high failure rates and render such projects little more than stepping stones to custody (p.109).*

Even where the decision to bring formal proceedings has been made, the Audit Commission (2004) has recommended there should be no requirement to impose a 'vertical' tariff, with each failure to comply automatically triggering a more punitive response as it would for an adult. This recommendation has been incorporated into Sentencing Guidelines (2009) although it is not certain that it is always followed.

> *Because I was looking after my niece I breached some of my meetings … once you're on an order and you breach it you get put on something higher so it just*

keeps going from there. So they don't really help you, they just keep escalating it (girl aged 15 in Glover and Hibbert 2008, p.4).

A study of sentencing practice (YJB 2009) identified a complex range of factors that influence decisions, with those more likely to lead to custody being:

- the nature and seriousness of the offence
- previous criminal history, especially if the child had failed to change their behaviour following previous community sentences
- the child's personal circumstances, including lack of accommodation.

Sentencers identified a number of children who 'openly invited the court to consider a custodial sentence' (p.43) because they did not think they could comply with a community sentence and did not want to risk being breached. This was either because they had failed to comply with previous orders or their personal circumstances/ environment presented too many challenges.

Who complies and who doesn't

Gyateng et al (2010) undertook a study to try to identify the key predictors of breach and compliance with community supervision in London during 2007/08. One important finding was that:

... the likelihood of breach increased significantly in line with the number of requirements imposed on an offender (p.5).

The study focused on adults but there is no reason to suppose that this would be different for children. Other factors that increased the likelihood of breach were:

- being young (24 or less)
- having a drug need
- a previous history of breach
- the borough in which the offender was supervised
- the type and length of the order.

Although not specifically looking at enforcement, a study profiling children in custody (Jacobson et al 2010) identified that about one fifth were there primarily for a breach offence. This 'fast track' into custody was described by Norman Tutt as a disturbing development since his similar study of 20 years earlier (p.iv). The report recommends that:

... 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 (p.xi).

Although custody should be used as a last resort and for the most serious offences, the profile found that 35% of children had actually committed less serious and non-violent crimes, and that 61% of these were breach offences. Younger children were over-represented, with 35% of 13 year olds in custody primarily for breach as opposed to 19% of 17 year olds. The nature of the breach offences varied, with the most common being failure to comply with a curfew, area restrictions or conditions of a community order. When levels of disadvantage were examined, it was clear that children in custody experienced 'multiple layers of different types of complex disadvantage' (p.viii). The authors concluded that a major contributor to decisions to sentence children to custody was often the persistence of their offending rather than the seriousness.

There is additional evidence that the enforcement system may be particularly disadvantageous to specific groups. For example a report on 10–14 year olds in custody questioned whether they received the support needed to help them meet what they saw as the strict criteria of their orders (Glover and Hibbert 2008). Those with learning or communication difficulties have been identified as vulnerable by the Commission for Racial Equality (2006), the Communication Trust (2009) and the Prison Reform Trust (Talbot 2010), which reported significant concerns amongst YOT practitioners about children's capacity to fully participate in interventions because of a range of impairments. A lack of understanding was most commonly cited and one respondent described the difficulties experienced by children with a learning disability:

> *Understanding what you are proposing and what they've done; difficulty differentiating right from wrong. Difficulty understanding the impact on the victim and the community (p.43).*

Are children being set up to fail?

If a strong line is to be taken on the enforcement of an order, it is important that the conditions are reasonable and achievable. ASBOs have come in for particular criticism for setting children up to fail, especially in the early days. A clinical psychologist, called in to a YOI to assess a young man with special needs who had breached a curfew, recounted:

> *During this assessment he was asked if he was able to tell the time. He replied no, he could not. He had never had a watch and had never been able to tell the time, but no-one had asked when the curfew was set (Care Services Improvement Partnership 2007, p.6).*

In a study of ASBO breaches resulting in custody Brogan (2005) found that the main conditions breached had been those of non-association or geographic restrictions. He recommended that these be researched further 'to assess their applicability and reasonableness'. A study of the use and impact of ASBOs carried out for the YJB (Solanki et al 2006) found that many children did not have a clear understanding of the details of their orders. Moreover, although all the children interviewed for the study were aware of the possibility of breach, most either did not consider the threat of custody to be 'real' or did not consider it to be a deterrent. Another study identified three responses to an ASBO: determination not to breach, intentional breach and unintentional breach (Matthews et al 2007).

In this context, the quality of individual practice is particularly important. It is clear from research that children value a supportive approach.

> *She always reminds me of appointments I've got, rings me up and reminds me. Also sends me letters and also gives me a ring and tells me when my appointments have been made (child talking about her YOT worker, National Audit Office 2004, p.38).*

Key points

- A political imperative to convey the message that statutory orders are taken seriously is a major driver of the youth justice system. As a result, prescriptive systems of enforcement have developed within both youth justice and anti-social behaviour agencies.
- In other respects there are major disparities in the way they operate: young people in the youth justice system are entitled to an assessment and support to comply with their order whilst those subject to an ASBO are not. There are also different responses to non-compliance.
- Children can be penalised for non-compliance regardless of whether they have committed further offences or anti-social behaviour.
- The assumption that enforcement will reduce reoffending is not evidenced in research.
- There is some evidence that enforcement activity has a disproportionate effect on the most disadvantaged.
- Children can be set up to fail by lengthy orders with onerous conditions.

Who gets breached and what happens to them?

Sources of data

There are a number of sources of statistical data on aspects of breach. Since 2002/03 the YJB[8] has published annual statistics that include data relevant to this project: demographic information on children in the youth justice system, the types of offence that have been committed and sentence outcomes. As with all complex databases, there are doubts about the accuracy of the information received[9]. The data is broken down by age, gender and ethnicity. It allows an examination of trends over time and this analysis has been explicitly included in the YJB's annual statistical reports since 2005/06.

Information is provided on the numbers and characteristics of children who are returned to court for breach of a statutory order. Until 2009/10 this did not include cases where the court allowed the current order to continue, only those where the outcome was a new disposal, so did not reflect the full extent of non-compliance.

An additional YJB data source is the Secure Accommodation Clearing House System database (SACHS), the booking system for placing children into custody. Again, there are issues with the accuracy of some of the information. The YJB provided data for the project from this database on the numbers of children in custody for breach of a statutory order as both 'primary' and 'non-primary'[10] offences for 2008/09 and 2009/10, broken down by gender, age, ethnicity and legal basis for detention.

Data on ASBOs is available from an annual report published by the Home Office[11] using information supplied by the courts. This will be considered after consideration of the data supplied by the YJB.

Overall incidence of breach offences

Breach of statutory order[12] was the only offence type that increased every year until reaching a peak in 2008/09. Along with all other types of offence, except drug offences, the volume has started to decrease but, when considered as a proportion of overall offending, the opposite is true. In the latest data for 2009/10, breach of statutory order constitutes 6% of all proven offences, double the proportion in 2002/03. The report for 2006/07[13] suggests that the dramatic increase was due to the inclusion of the 'enforcement' National Standard in the YOT performance framework since 2004/05, with enforcement levels improving from a low base, but this does not explain why it continued to increase after that time. As will be seen later, overall numbers of children prosecuted for breaching an ASBO have gone down significantly, which would suggest that it is youth justice orders that account for this trend.

8. Since 2010, this has become the responsibility of the Ministry of Justice and the title has changed from Youth Justice Annual Workload Data to Youth Justice Annual Statistics.
9. The YOT is responsible for submitting data on outcomes in the Youth Court.
10. That is, whether the breach of statutory order was the most serious offence or not.
11. www.crimereduction.homeoffice.gov.uk/ASBOs/ASBOs2.htm
12. This category of offence includes breach of ASBOs, community sentences and licence conditions following custodial sentences.
13. Youth Justice Annual Workload Data 2006/07 (p.14).

Chart 1:
Trends in breach of statutory order compared to all other offences 2002/03 - 2009/10

Although the number of breach offences as a proportion of overall offending is of some interest, statistics on the proportion of total orders which are breached (except the Intensive Supervision and Surveillance Programme (ISSP) for which separate data is published) are not available. The breach rate for ISSP is high, perhaps reflecting the complex needs of children subject to this order, with approximately one third breached and about half of these resulting in custody. Neither is it possible from the national data to determine which statutory order has been breached. The YJB provided this project with additional information on the outcome of other orders for the period 2006-2008 but expressed concerns about its integrity. Only one of the software packages used by YOTs provides this information and, even then, no outcome had been recorded in a high proportion of cases and there was some concern about accuracy where it had been. The data did suggest, however, that low level disposals were the least likely to be breached, with referral orders breached in about 11% of cases, compared to more restrictive disposals, such as community punishment and curfew orders, which were breached in more than 50% of cases. Similar data is not yet available on the YRO.

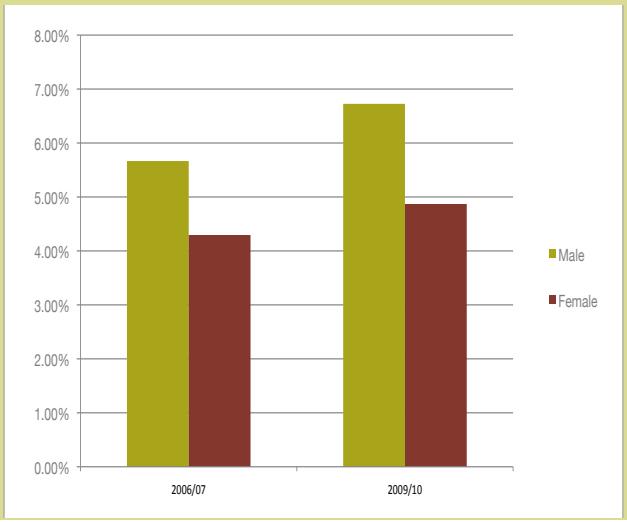
If detailed information were available on the outcome of orders that are made, it would provide a more accurate representation of

breach rates, and would give some indication of which orders had been complied with and which had not. If this were then linked to data on reoffending, it could enable some analysis of the effectiveness of different orders. For example, one YOT undertook a partial analysis for this project and found that, although breach of statutory orders only constituted 4% of their total offences, 47% of the YROs made since January 2010 had been returned to court for breach. This allowed the magistrates and the YOT to jointly reflect on the impact of particular YRO requirements. Another study YOT examined their data for 2009 and found that an average of 23% of all orders had been breached, including 70% of curfew orders. Data on the proportion of ASBOs that are breached is provided by the Home Office and is a more meaningful way of considering the breach rate than the data currently provided on youth justice orders.

Age, gender and ethnicity

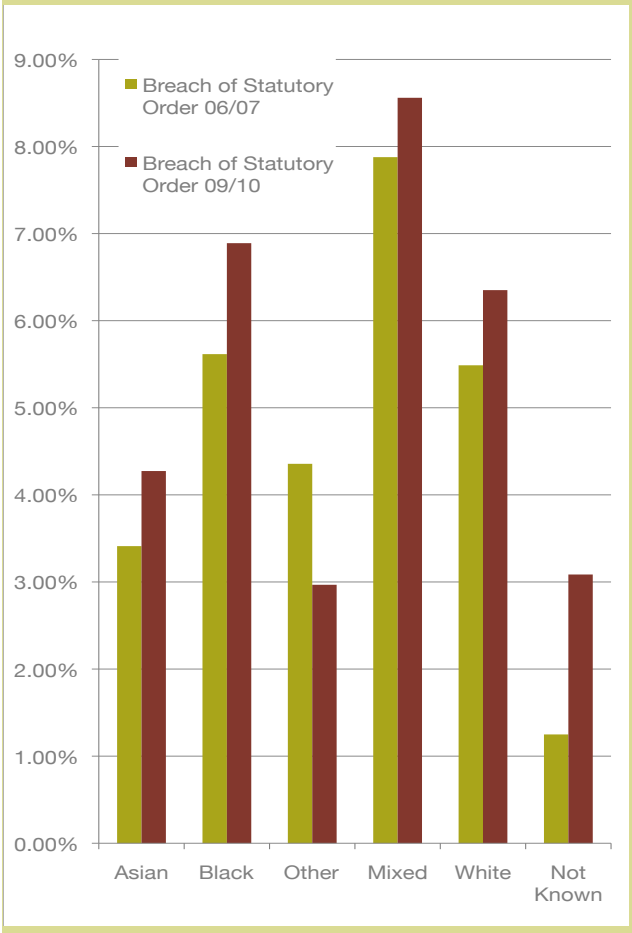
Boys are proportionally more likely to be returned to court for breach of a statutory order than girls. In 2009/10, although girls accounted for 22% of total offences, they accounted for 17% of breaches. This trend has been reasonably constant since 2006.

Chart 2: Trends in breach of statutory order 2006/07 vs. 2009/10 by gender



The proportion of children breaching their order also varies according to ethnicity, with those of mixed ethnicity being consistently over-represented, and Asian children consistently under-represented.

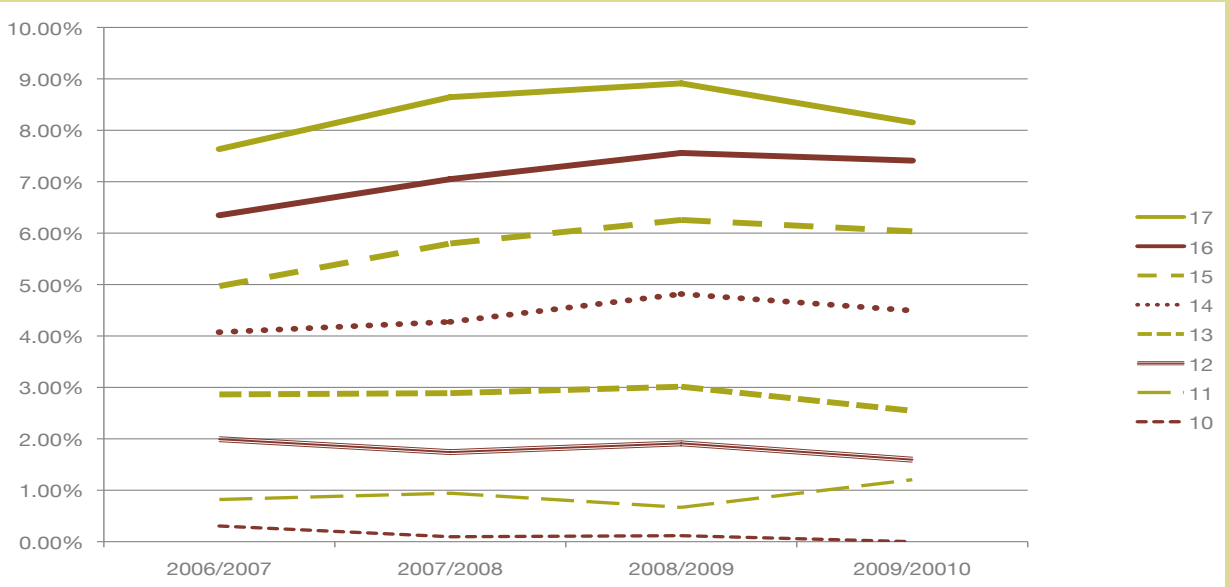
Chart 3: Trends in breach of statutory order 2006/07 vs. 2009/10 by ethnicity



This distribution pattern was confirmed by one of the study YOTs from an analysis of their local data, enabling them to focus attention on the problem.

The trends in terms of age are more complex. Until 2008/09 there was a steady increase in the proportion of breach offences by children aged 14 and over, whilst rates amongst younger children were more stable or declined. This has now changed, with the proportion of breach offences amongst older children reducing, although 16 and 17 year olds are still above the national average of 6% for 2009/10.

Chart 4: Trends in breach of statutory order 2006/07 vs. 2009/10 by age



Regional variations

Although the national average for breach of statutory orders as a proportion of all offending for 2009/10 is 6%, this masks a regional variation which has been consistent over time. The North West, North East and Yorkshire are consistently higher than average (8% in 2009/10) whilst Wales (4%) and the South West (5%) are consistently lower. Within these averages, individual YOT data varies more dramatically. For example, very few offences in Cornwall are breach (3%) whilst Oldham consistently breaches far more than the national average (15%). More qualitative investigation would need to be undertaken to understand these variations, and it would be particularly interesting if this were considered alongside custody figures. For example, it could be that high breach/high custody rates indicate a punitive approach whilst low breach/high custody rates indicate a failure to engage with children. There are a range of other explanations but the overall message is that data could be used more effectively to inform policy and practice than is currently the case.

Use of custody for breach

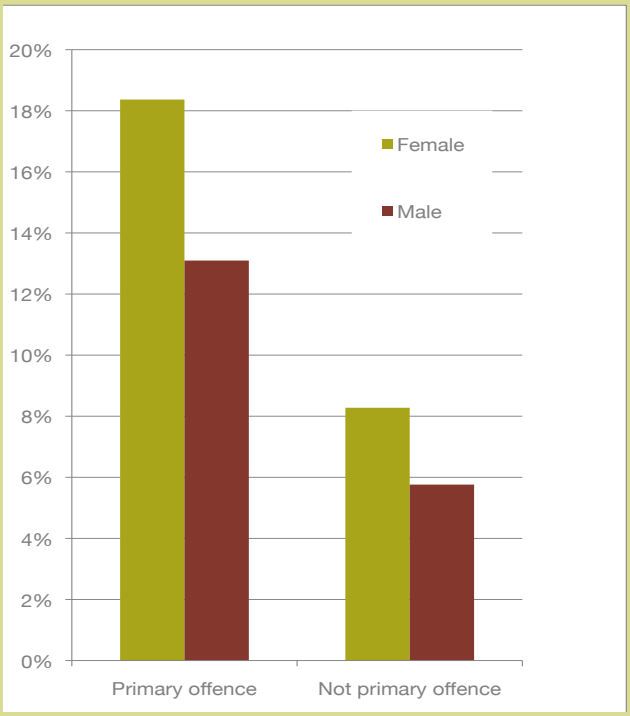
The published data no longer allows for analysis of the total range of disposals for breach of a statutory order, other than those who are sentenced to custody. In 2009/10 this offence was the primary reason for an average of 13% of children being in custody, a slight increase from the previous year. However, a number of children are also sentenced to custody for other, more serious, offences with breach as a secondary offence. Additional data was provided by the YJB from the SACHS database on these children and, when they are included, the proportion of those in custody whose offending included breach of a statutory order rises to 19%.

Age, gender and ethnicity

The demographic data shows that there is considerable disproportionality in relation to the offences that have resulted in a custodial sentence for certain categories of children. In 2009/10 girls accounted for 8% of custodial sentences but breach offences were over-represented amongst the reasons for which the sentence was imposed. Of all girls in custody, 18% were there primarily for

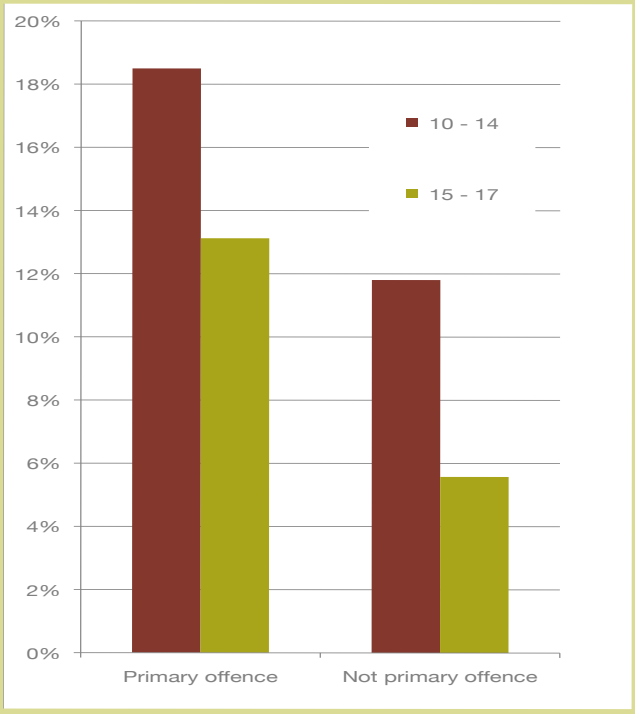
breaching their statutory order, and, for a further 8%, it was a secondary reason. Boys were not only less likely to be in custody for breach but it was less likely to be a primary offence.

Chart 5: Children in custody for breach of a statutory order 2009/10 by gender



A similar picture emerges in relation to age, with breach offences being over-represented amongst 10-14 year olds. In all, 30% of children in this age group were in custody for having breached a statutory order and, for 18%, it was their primary offence.

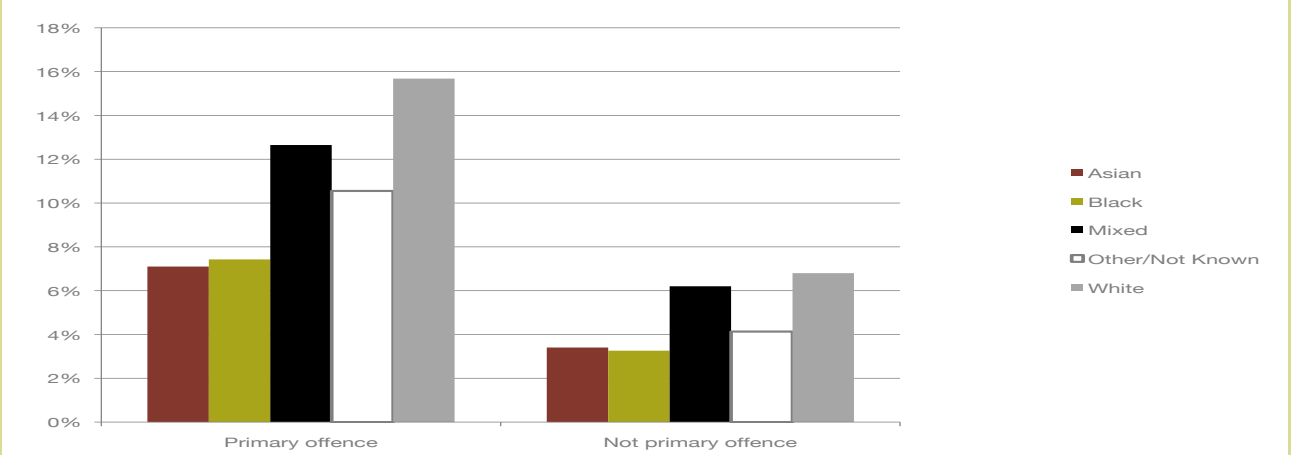
Chart 6: Children in custody for breach of a statutory order 2009/10 by age



It seems that, although girls and younger children appear to be less likely to commit a breach offence than others, it is a significant reason for deciding that they should receive a custodial sentence.

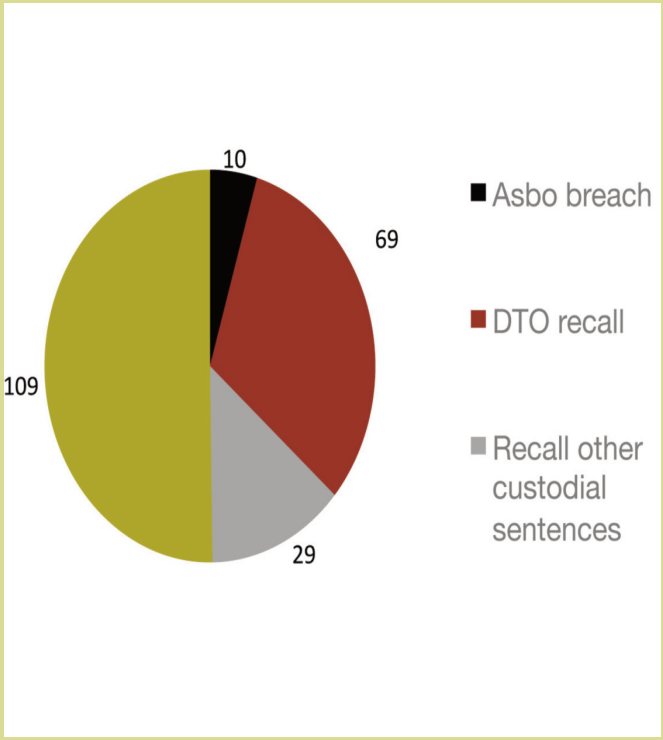
In relation to ethnicity, a more confusing picture emerges. Here it is children of white origin who are more likely to be in custody for breach, although children of mixed ethnicity are also over-represented.

Chart 7:
Children in custody for breach of a statutory order 2009/10 by ethnicity



For some children in custody, breach of statutory order is recorded not just as their primary but their only offence. In 2009/10 an average of 9% of children in custody were in this category and most were the result of breaching a community sentence.

Chart 8: Children in custody solely for breach of statutory order 2009/10

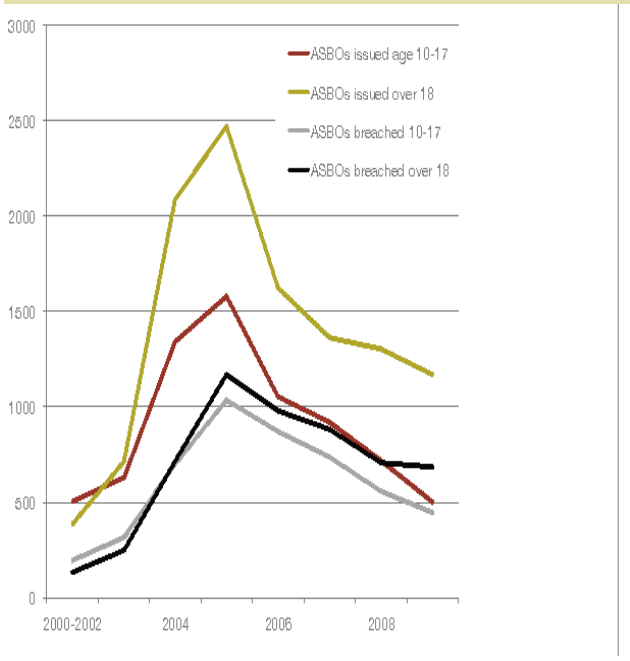


Breach of ASBOs

The Home Office produce annual statistics on the numbers of ASBOs issued and breached. These also include sentences imposed for proven breaches, with some analysis by age, gender and criminal justice area, but not ethnicity[14]. The data is difficult to interpret because some information does not fully differentiate between children and adults. Data on the sentences imposed on adults for breaching an ASBO, for example, includes those that were issued when the person was below the age of 18.

It is evident from the data that the use of ASBOs has declined dramatically since a peak in 2005. In 2009 there were only 501 issued to children under the age of 18. The breach rate has been consistently high, however, particularly for children.

Chart 9: Total number of ASBOs issued and breached 2000-2009 by age



Younger children aged 10-14 are even more likely to breach their ASBO than 15-17 year olds (72% compared to 65%). In eight of the 32 criminal justice areas that have issued ASBOs to 10-11 year olds, all of them have been breached, raising serious concern about the appropriateness of such orders for this age group. Overall, girls have accounted for 9% of orders, slightly less than the rate for adult women, and 10% of the breaches.

There are variations in the extent to which local criminal justice areas use ASBOs against children as opposed to adults. For example 50% of ASBOs issued in Greater Manchester have been to children as opposed to 31% in Greater London, although it is difficult to imagine that the children will be significantly different. Breach rates also vary according to age group, with some areas (West Mercia for example) breaching children at more than twice the rate of adults. In interpreting this data, however, the total

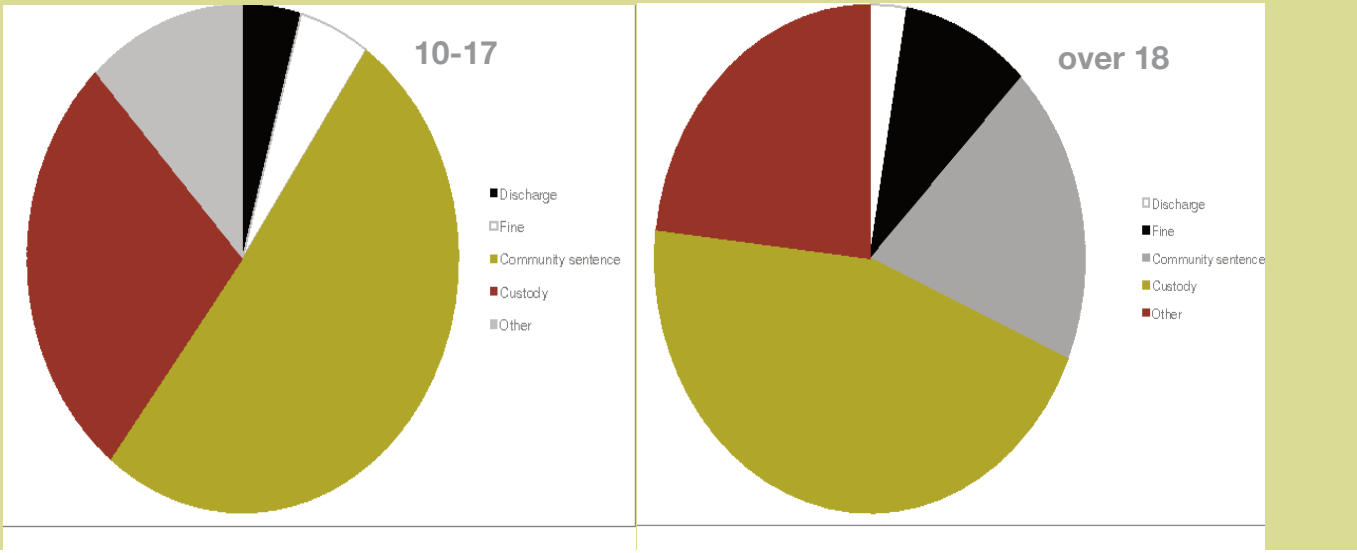
14. This prompted criticism from the Commission for Racial Equality (2006).

number of ASBOs issued must be borne in mind. Some areas appear to have a higher threshold for issuing an ASBO to a child than others, reserving them for the most troubling situations. In these areas, higher breach rates could be expected and are not necessarily an indication of poor practice.

Children are less likely to receive a custodial sentence for breaching an Asbo than adults (40% against 60%) but their average sentence length is longer (6.3 months as opposed to 4.9). Within the overall cohort of children sentenced to custody, those aged 10-14 accounted for 17% of the total, and girls 7%.

There has been a drive to ensure that children subject to an ASBO receive support and, since 2004, the Home Office has collected data on the numbers of ASBOs with an ISO attached. The overall percentage has increased from 1% in 2004 to 26% in 2009, though the greatest increase has been for the 10–14 age group (37% of ASBOs given to this age group in 2009 had an ISO attached). Unfortunately, there is no available data on whether children with an ISO were more or less likely to breach their ASBO.

Chart 10: Sentence for breach of Asbo by age 2000-2009



Key points

- There are gaps and discrepancies in both youth justice and ASB data that make analysis difficult. In particular, it is not possible to establish the rate at which youth justice orders are breached.
- Breaches of statutory order are not reducing at the same rate as most other offences, constituting 6% of all offences.
- 19% of children in custody have breached a statutory order.
- Although breach offences are more common amongst 15-17 year old boys, they account for a disproportionate number of girls aged 10-17 and boys aged 10-14 in custody.
- There are ethnic differences in the profile of children who breach and in those who receive a custodial sentence, with those of mixed ethnicity being over-represented in both groups.
- There are significant discrepancies regionally and locally in the proportion of proven breach offences.
- The proportion of ASBOs that are breached is high and increasing, with a 72% breach rate amongst 10 -14 year olds. In some criminal justice areas, 100% of ASBOs against 10/11 year olds have been breached.
- Children are less likely than adults to receive a custodial sentence for breaching an ASBO but the average sentence is longer.

Putting the system into practice: practitioner perspectives

The discrepancies in the data would suggest that the national framework on the enforcement of both youth justice and anti-social behaviour orders is being applied differently in different localities. The stubbornly high incidence of non-compliance with statutory orders by children would also suggest that there may be deficiencies in policy and/or practice that warrant further attention. The study aimed to explore these topics in partnership with six local areas in England and Wales. Specific questions were:

1. How do those responsible for administering the enforcement system at a local level perceive the guidance and their role in operating it?
2. How have these perceptions shaped the development of local approaches to, or systems for, enforcement?
3. How are national expectations and local systems interpreted in practice by practitioners and sentencers?
4. How does this influence the response to individual children subject to a statutory order?
5. Are there factors relating to the characteristics of individual practitioners or sentencers that influence the pathways of children subject to a statutory order?
6. Are there factors relating to the characteristics of individual children subject to a statutory order that influence their pathway?
7. What recommendations, if any, would they make to change the system/process?

Methodology

Practitioner perspectives

1. Interviews were undertaken in six local areas with the following:

- YOT manager/s
- chair of the youth court bench
- identified lead on anti-social behaviour

Interviewees were asked to describe the local systems for enforcement, including any mechanisms for joint decision-making, staff protocols and any information provided to children and their families. They were also invited to comment on their perceptions and attitudes on the overall approach to enforcement inherent in current policy.

Children's perspectives

2. With the assistance of three of the YOTs, individual interviews were conducted with 12 children subject to statutory orders in the community. This included both children who had complied with their order and those who had experience of breach proceedings. A further four interviews were undertaken with children serving a custodial sentence for breach of a statutory order. The children were selected, as far as possible to provide a range of ages, genders and ethnicities, and levels of offending.

Documentary analysis

3. An examination of any local documentation, including statistical data and protocols, was undertaken to provide additional context for the interviews.
4. Subject to the children's permission, their case records were examined.

Advisory group

An advisory group consisting of key national stakeholders, including policy makers and inspectors, was convened to assist the

project. This was to ensure that areas of enquiry were as useful as possible, and that findings could form the basis for any future policy developments. The group met twice but were also available to advise and comment as necessary, and helped to shape the recommendations.

Selecting the localities

The local areas were selected in order to get a range of perspectives. This was based partly on statistical evidence of different levels of breach proceedings and custodial sentencing, and partly on any expressed views on the balance between support and enforcement. When looking at the YJB data on breach of statutory order as a proportion of all offences, and the proportion of all offences that result in custody, two areas had both higher than average custody and breach rates; one had both low custody and breach rates and the other three presented a mixed picture.

Table 1: Custody and breach rates[15] for the participating YOT areas 2008/09

YOT	Custody rate (nat av = 6.1%)	Breach rate (nat av = 6.5%)
A	5.6	6.0
B	11.3	10.0
C	5.7	7.2
D	6.4	4.8
E	20.2	3.9
F	7.2	14.0

Source: Youth Justice Annual Workload data 2008/09

There were no simple reasons for these patterns, and it was not possible to develop a typology of localities whereby, for example, a 'tough' approach to enforcement correlated with above average breach rates. (This must be understood, however, in the context of the earlier comments about the limited usefulness of the data on breach currently collected). The findings are therefore presented by the role of participants rather than by locality.

Views of YOT managers

There was a considerable degree of consensus amongst YOT managers. The managerial approach adopted by the YJB, embodied in the National Standards, has clearly achieved a level of consistency at manager level (although this does not necessarily ensure consistent front-line practice).

Tools and powers

YOT managers agreed on the need for sanctions to be available for non-compliance. Interestingly, however, the main purpose of this was as an assertion of authority: to demonstrate that court orders are taken seriously. The need to give this clear message extended beyond the individual: it was said that 'word gets around' if it is perceived that children can get away with non-compliance. The audience for this message includes the court, the community and other children. This was expressed in a number of ways:

> *The aim is to achieve/maintain confidence in the courts – and to ensure compliance with orders.*

> *We are about enforcing court orders. If you're not - the children know that and it undermines your approach, if there are no consequences.*

The need to establish this confidence was, in part, because it could reduce punitive sentencing. If the courts trust the YOT to enforce the order, they are more likely to impose a community penalty.

15. Breach offences as a proportion of all offences.

I give out a very tough message that we are about protecting the public and enforcement. We've got a low rate of custody, because the court trusts us – they are prepared to take risks.

Interestingly, no-one described the purpose of enforcement as being directly related to a reduction in offending, the primary aim of the youth justice system, unless the child was posing an immediate risk. In such cases, there was considerable anxiety that the YOT would be blamed if they had not issued breach proceedings.

There comes a point when you have to breach for public protection.

For most children, however, the link between reoffending and enforcement was described more indirectly. As two YOT managers stated:

What we've got to offer is good! If you're not engaging we can't get it to you.

We need to do the work to reduce offending.

One case example highlighted the dilemma of a child who was deemed not to pose an offending risk but was nevertheless sentenced to custody as a result of breach proceedings.

There was a boy on a referral order for possession of cannabis – he flagrantly refused to do it - and he ended up in custody. The court said: 'What else could we do?' They tried adjourning to test commitment – nothing worked and he got a four month DTO.

When discussed in other contexts, this example polarises opinion, with some people feeling that is a reasonable response and others feeling it is excessively punitive.

Reasonable excuses

Most YOTs have attempted to define a reasonable excuse for non-attendance but say there are difficulties in this.

We found it too inflexible to write it down – we're informed by intelligence as much as the breach itself.

When the young person is sick, for example, we've tried to get a doctor's note but it's unrealistic. Staff have self-certificates!

The general expectation was that some attempt would be made to check out the excuse. There also seems to be considerable variation in whether to allow the child to pay back a missed appointment. This was evident in the examination of children's records and will be described in more detail later in the report.

If the child offers no excuse or attends but is abusive or intoxicated, this can also be seen as non-compliance and lead to a warning.

The use of discretion

YOT managers described instances where they might stay breach proceedings. The three main factors they would take into account were:

1) The child's individual circumstances:

A girl breached her curfew for four nights but it was fraught at home – she'd moved out and was homeless. We prepared a summons but we're going to pull it.

2) The child's developmental stage:

'I forgot' is not usually accepted but sometimes it could be if, for example, there are learning difficulties.

3) Overall success of the order:

He was one month off finishing the order – there were lots of positives and he hadn't reoffended so I let it go.

Some managers would welcome greater flexibility still.

There are two sorts of breach – those who are flagrantly not complying and need to be brought back so the court can have a fresh look. There's another large group who miss the odd appointment – the letter of the law says they have to come back at the third. Maybe it's not appropriate...

It's too rigid. It follows the probation model – attempting to treat everyone the same. But you do need some framework and consistency otherwise children might be discriminated against.

Factors related to compliance

Similar factors were cited when describing the types of children who were more or less likely to comply. Family support – or lack of it – was seen as vital, as were good accommodation and thinking/ communication skills.

For some children, the levels of maturity and thinking skills – they don't think rationally. We say to the court – "They can't comply."

Particular problems were experienced by looked after children – especially those in residential care where staff did not always remind them of appointments or generally support their compliance. This was a significant problem for one YOT that had a number of private children's homes taking children from outside the area.

Another YOT stated the importance of the YOT worker's relationship with the parents.

The relationship is not about liking – but about developing a sense of common purpose. Some parents are too worn down by failure and poverty.

An interesting point was made about the difference between engagement and compliance:

Gang members are more likely to comply but less likely to engage.

We had a serious incident – the review showed up that the young person had been turning up but not participating. In future, we would prosecute for that.

It was acknowledged that it is not just the characteristics of the children that matter: the order has to be achievable.

The shorter and sharper the order, the more likely they are to comply – don't throw the book at them! 'We might as well add more conditions'...

Practice standards

The quality of the YOT's service was also seen as important in this.

We're not a welfarist YOT but we are a warm and welcoming YOT.

All managers expect their staff to make real efforts to engage with the children, including home visits, text messages to remind them of appointments, making appointments at convenient times and venues. There was variation in how this quality of practice is monitored, with internal audit and supervision being the most commonly cited rather than

external scrutiny. In one YOT, a decision had been taken that the overall manager for the service would scrutinise and sign off all breach applications, which was thought to have driven up the standard of work.

It was acknowledged that some practitioners are better at engagement than others:

> *It usually depends on the person – their empathy. There is not a clear correlation with professional background but people who are social work qualified do have a different approach – they find it easier to probe and know when there is more going on.*

Other YOTs disagreed with this, feeling that the qualities were personal rather than related to training or qualifications. Culture was also important:

> *Staff have inherited a way of working. We're losing sight of the fact that this is a young person before us with needs...*

The pressure to meet National Standards, to satisfy inspectors, and to protect the public were all cited as contributing to this.

YOTs are not currently required to undertake any local analysis of their use of breach though some participants were attempting to look at it. They reported difficulties with the software, which does not easily generate helpful reports. Where data had been analysed, it had raised some interesting questions about the children most likely to be subject to breach proceedings, based on age, ethnicity or types of order.

Good practice example[16]:

In **Redbridge YOT**, all decisions to issue breach proceedings are made by the Head of Service. Decisions are based on a checklist of explicit factors, drawn partly from CPS guidance (2010) and categorised into:

- Evidence test: is the evidence sufficient to provide a realistic prospect of conviction?
- Public interest test: this considers aspects of the child's offending and compliance history, reasons for non-compliance and likelihood of further breaches, whether the breach involved aggression and whether the order is about to expire.
- Personal and social factors.
- Relevant policy or national standards considerations.

Interventions

Managers acknowledged that they had an obligation to provide high quality, individualised interventions if children are to engage.

> *Making sure it's tailor-made and addresses risk: if it's generic then it has no relevance and the young person doesn't want to do it.*

> *Are you providing something they find interesting and purposeful? A range of stuff geared to age, ability, gender.*

Sometimes the pressure to slot children into available programmes was seen as a problem and one YOT said they would prefer to have the space to get to know them and work on their motivation for the first couple of weeks.

> *Staff need to be trained in motivational interviewing - recognising that resistance*

16. Practice examples are drawn from a number of sources and include YOTs that did not participate in the study.

is normal and how to work with it. So they've got the skills to try everything. They need a wider mindset about diversity – 'Is the way I'm doing this piece of work a block to them?'

Good practice example:

Wrexham YOT has devised a Compliance/Motivational Checklist for the case manager to complete with the child. This explores the aspects of the child's life that may prove a barrier to engagement, and involves them in decisions about how they want their appointments to be structured and communicated to them. The practitioner then draws up a Compliance Plan that must be solution-focused and address all the possible barriers to compliance.

Systems and processes

Managers were originally worried about the impact that the YRO and the Scaled Approach might have on breach rates because the intensive supervision in high risk cases meant that there were more requirements to be adhered to. This concern did not seem to have been borne out, although it was acknowledged to be early days.

We were concerned – we spoke to the magistrates about not putting on conditions that the young person may not be able to cope with.

One example was given where the YOT manager was loathe to have education requirements in an order because of the quality of the provision: he did not want children to be breached for a failure to attend a school that was not meeting their needs.

On the positive side, the possibility of returning to court to vary conditions that were not working was welcomed, as was the possibility of counting the total number of contacts over a month rather than weekly so that children had more opportunity to get back on track. It was also noted that decisions to revoke and re-sentence to a new YRO effectively wipe the slate clean, with previous breaches not carried forward.

Some YOTs had developed a model of arranging a meeting before making a final decision to issue breach proceedings:

Unless its public protection, we have a three-way meeting if there have been two missed appointments and the young person is on a final warning, with the young person, family and YOT worker. We put it to them: 'Why shouldn't we breach you?'

Although none of the participating YOTs deliberately issued proceedings just to give a message to the child, there was an element of a therapeutic use of breach in selected cases.

We have gone back to court on a breach and asked for a period of adjournment so we can re-look at things: it can work – we use the court strategically.

There's a test period, between the summons and the hearing – we know then if children will comply.

Other proactive applications to court, not always in the context of breach proceedings, were described by some YOTs. This might be as a reward when the child had done particularly well and an application was made for early revocation of an order. On other occasions, however, it could be decided that

an application to revoke the aspects that were not working might be the most useful way forward.

There were repeated breaches but the young person was not reoffending, just not engaging, so we applied to revoke the supervision bit and leave the other conditions in place.

Good practice example:

Newcastle YOT has operated a breach meeting process for a number of years. This is designed to ensure that the YOT and its partners have done everything that could be done to engage a child in their intervention before taking the decision to return them to court for failing to comply.

Once a child is technically in breach of their order the YOT will convene a meeting of all interested parties including the child, parents, carers and significant others in order to best understand the reasons for non-compliance and to explore what further could be done to re-engage the child in the supervision process. The breach meeting is chaired by a team manager who will take a decision as to the most appropriate course of action based on the information presented. If the meeting concludes that re-engagement and compliance can be secured the team manager will issue the child with a formal warning and the supervision process will be allowed to continue. If they decide that the most appropriate course of action is to return the child to court, formal breach proceedings will be initiated. Even if formal breach proceedings have been started the YOT will continue to try to re-engage with the child in order to secure compliance prior to any court appearance.

The breach meeting process is risk led and not everyone subject to YOT interventions will be eligible due to overriding risk assessments and risk management plans. The YOT has engaged with their local court in developing the breach meeting process and they support the approach.

Conduct of cases

All the participating YOTs undertook their own prosecutions in the youth court and felt that this worked well because the court would be told about what had been successful in addition to the incidents of non-compliance. They reported that not-guilty pleas were relatively unusual because work would have been done before the hearing to discuss the evidence with the family. If the case was contested, the legal division might then take over the prosecution. Although children are entitled to legal representation, the quality of this was variable.

There's a disappointing standard of defence solicitors: they don't fight for them, the law is so complex they don't understand it.

It is standard practice for the YOT to prepare a report for the court setting out the evidence of breach and recommending what should happen if the breach is proved. Sometimes these reports are integrated, others are separate because of the need to differentiate between the two aspects of the hearing: should the sentencer have sight of the proposed sentence before the case has even been proved? This is addressed in one YOT's local procedures and will be discussed later in the report.

Interestingly, and in spite of the sentencing guidelines, the YOTs said that they were rarely challenged by the court either about the work they had done to support the child's compliance or the recommendations.

They are probably a bit too accepting – they could challenge more.

We would set it out in the report – but we're not held to account for the service we offer.

It depends on the chair and whether they are welfare orientated. Some will say 'What have you done?'

Good practice example:

Wessex YOT prescribes the process for reports to the court in breach proceedings. The Prosecution Statement sets out the facts - only if the case is proved is the sentencer given Response to the Order Information. The word report is deliberately avoided because 'it is not intended as a pre-sentence report' and the court should be asked to adjourn for one to be prepared if they are intending to revoke and re-sentence, particularly if there is the possibility of custody. The rationale for this is to allow for a full assessment of the case, including an analysis of the offences, personal circumstances and risks to self and others that should inform sentencing. Templates are offered to assist practitioners in completing these documents.

Sentencing decisions

The outcome of many breach proceedings is to allow the order to continue, or to vary the conditions to make them more achievable.

We took one person back. He was on Intensive Supervision and Surveillance but didn't have the capacity to comply, so the order was revoked and new conditions given.

There was some doubt about whether the Sentencing Guidelines were always followed, and concern about inconsistent decision making. The principles on which sentencing decisions are meant to be based are open to interpretation.

Some magistrates think differently: the threshold of seriousness has been a bone of contention.

It depends on the legal adviser, and the magistrate. Some legal advisers put an adult slant on it. 'Wilful and persistent' will be challenged at some point…

There was even more concern about decisions taken by district judges, although this was not universal.

I'd prefer a district judge – they're quicker, clear thinking and more consistent.

The three district judges – it's difficult to know what criteria they use – one is loud but the other two are 'silent assassins' – they are more punitive.

The district judges are horrendous – they do their own thing.

Although YOTs did not want to see children going to crown court, one advantage was that:

They don't really understand but they are better at following the law.

A range of factors other than the Sentencing Guidelines were thought to influence decisions, with some children more at risk of a punitive response than others. The most commonly cited were girls and black and minority ethnic children, particularly Roma or travelling families. Other factors were a history of previous offending, especially if this had resulted in time in custody or the child was well-known to the sentencer, and social class.

The child's behaviour in court was also important:

They are partly looking for a sense of contrition – and can hugely misinterpret the child's demeanour. They are looking for a sense from the YOT worker that the order is working – if you can give evidence of that, they let the order carry on. They probably have a tariff in their head – 1 = let it continue, 2 = add conditions, 3 = custody.

If they are rude and cheeky, particularly the girls … one girl was very nervous and only 12: she smirked and the magistrate said that she'd let her parents down and she was disrespectful.

Conversely, some children learned to 'play' this. An example was given of one girl who practiced crying before she went into court or middle-class families who knew how to use their social skills to get a less punitive response.

The use of custody was not always perceived as a last resort.

They interpret the term 'last resort' differently.

They still make maverick decisions – either way. In a case of persistent breach, they let the order continue or it's a first time offender and they send to custody – particularly girls. There was a Romanian girl – she got sent down: 'people coming to this country….'

Breaches of Asbo

YOT managers had little to do with prosecutions for breach of ASBO unless they were already involved with the child or required to write a PSR. The consensus was that the use of ASBOs was declining and that more preventative work was being done, often involving the YOT, before decisions to seek ASBOs were taken. Some unease was expressed about the criminalisation of children through breach applications but this was of less concern now that the threshold for an ASBO is higher. The use of ASBOs on conviction was also seen as declining – also welcome.

There's a problem of giving kids on an order an ASBO as well, but it's happening less now. They're punished twice for the same thing, it's setting them up.

One YOT manager did have strong views about the disparity between the approach taken towards breaches of ASBOs compared to youth justice orders:

Everything that goes with it is absolutely intolerable. It tramples on human rights. It's that immediate – you're seen on the streets - and there's automatic prosecution. In the latest breach of ASBO, his mother's drunken ex came in and threatened him so he broke his curfew. The police breached him and he ended up in a police cell.

There was a consensus that the risk of up-tariffing remained and that processes should either be more aligned with the youth justice system, or integrated completely since most of the children were known to the YOT anyway and would benefit from statutory intervention.

It's nonsense to have two separate processes. If they're breached, they should automatically have the YOT supervising.

Measures to improve the system

YOT managers had a number of suggestions about improvements they would like to see, most of which could be incorporated into the existing framework. Some concerned better administrative and IT systems or better training for all professionals involved in the youth justice system, but most related to decision-making processes.

Decision-making processes

Changes could take a number of forms but managers would generally welcome some way of lengthening the road by adding additional stages before a return to court becomes inevitable, allowing more flexibility matched to the child's needs. In terms of the YRO, this would require statutory change. Any variation in the current approach would also need to be sanctioned by the YJB/MoJ, provided the reasons for decisions were recorded and based on evidence. This was important because:

> *There are mixed messages from the YJB – 'Do fewer breaches!' but they are also risk averse.*

Specific ideas included:

- flexibility in determining what counts as a contact
- official endorsement of the child's option to pay back a missed appointment or to have warnings expunged if they kept subsequent appointments
- scrutiny of breach applications by a senior manager
- some kind of pre-court sanction: 'a reminder to get back on track'
- a panel/meeting with authority to stay breach proceedings and formulate an alternative plan to improve compliance
- progress reports to sentencers, who could endorse the YOT plan without a need to always return the child to court - this could just be where there was non-compliance or extended to include more positive situations
- the withdrawal of breach proceedings if children begin to comply during the process.

One YOT manager took a more radical position and wanted even greater autonomy, and to be judged on outcomes rather than processes[17].

> *If you take the line that all that matters is to reduce reoffending and custody rates, then let us decide. If we were only judged by outcomes, then it would be up to us how we got there.*

Better communication with children

Some YOTs reviewed their practice as part of their involvement in this project and identified the following:

- making written information more child-friendly, and finding alternative ways of providing information about expectations
- case managers providing evidence of attempts to support compliance before breach decisions are endorsed
- involvement of children in planning their own interventions, based on their assessed learning style
- increased use of speech and language therapists to raise awareness amongst all those coming into contact with children
- greater use of rewards, including early revocation.

Use of management information

YOTs acknowledged that current systems do

17. Some areas are currently piloting the suspension of National Standards to see how this affects outcomes.

not give them the information they need to monitor their use of breach proceedings. They would like:

- data analysis systems that enable them to monitor their own practice more effectively[18].

Strengthening links with sentencers
To improve the consistency and quality of sentencing decisions, it was suggested that:

- magistrates could be invited to shadow the work of the YOT so that they had a better picture of children's backgrounds and the challenges they faced - they would also gain insight into the available interventions so would be clearer what they were sentencing children to
- all youth crime should be dealt with by the youth court
- a drug court model could be adopted, with magistrates continuing to review cases following sentence.

Views of anti-social behaviour practitioners

Although YOT managers had a range of views, they were all very clear about the system within which they were operating and YOTs were structured in a similar way. This was not the case with the anti-social behaviour practitioners. In five of the six localities the lead was identified as someone within the police service. Their grade, however, ranged from administrator to Inspector and they were operating within completely different structures and levels of resourcing. In the remaining locality, a specific team has been created within the local authority to monitor children on civil ASBOs and they participated in the interview. Local Crime and Disorder Reduction Partnerships have discretion about the arrangements they put into place.

The whole area of anti-social behaviour, because it's evolved on a district basis, it causes confusion. It hasn't been set who should be involved – it has developed piecemeal – staffing and resources are different in different areas – you're judged against those but you've got a third of their resources.

As could be expected, these variations led to a much wider range of responses than was apparent amongst YOT managers.

Tools and powers
There was no consensus about the effectiveness of current law and policy on breach powers for ASBOs, although all were agreed that some type of measure was needed to protect communities.

You're never going to tackle all the deep-rooted problems – the ASBO is useful as a short-term fix, for example a kid where he shouldn't be – you can help the community by arresting him before the behaviour escalates. It's narrow but useful.

All were also agreed that the process of seeking an ASBO had become more sophisticated over the years, with more attention paid to intervention that would prevent the behaviour escalating to the point where an ASBO is needed. ASBOs were therefore more of a last resort when all else had failed, and the anti-social behaviour was both serious and persistent.

Lessons had also been learned about the wording of prohibitions to ensure they were clear and would achieve the desired effect.

18. The YJB are currently developing and piloting such a tool as part of a wider toolkit for YOTs to examine their use of breach.

I look at what they're doing – consult with social services and the YOT – look at the causal factors. When are they doing it? Do parents work at that time? These are the main points I need to address to tackle this behaviour – to disrupt the behaviour.

The fact that ASBOs can only contain prohibitions was seen as a weakness and a lot of thought went into getting the conditions right so they achieved the desired result without being too onerous. This included the need to 'streamline them with youth justice orders', to explain them again following the hearing and to give children a written card to remind them.

There was a car thief, he was banned from being in the front seat of cars – he was a nice kid but couldn't grasp it, thought it was a bit of fun. He kept breaching. We went to court and asked for discharge.

Other examples were given where orders had been varied to make them less ambiguous and more achievable. The conditions most likely to be breached were non-association and geographical restrictions.

It's non-association that causes the issues – particularly if one young person is on an ASBO and the other isn't: 'He came up to me!' We're having fewer conditions now – trying to focus. It should be what you're up to, not where you are.

This streamlining of conditions should mean that a breach will be likely to lead to harm and must therefore be pursued vigorously.

These approaches were locally determined, and there was a general perception of a lack of national guidance.

There's very little guidance about the hands-on work.

This included the Sentencing Guidelines, with very few interviewees being aware of them:

It's bizarre – we don't get the information about what the courts can do.

As a result, staff could feel as if they were working within a vacuum, and were frustrated about the outcome of their work.

I'm happy with the tools and powers but not with the end result.

Although ASBOs were thought to have their limitations, there were a number of examples where they had worked well, even if this was only at the breach stage. For some children who had not previously experienced the consequences of their behaviour, it could be enough to achieve change.

It can go one of two ways. Some breach because they are never going to change at this point in their life. Others who haven't had much to do with courts before put two fingers up then think: 'Oh my god!' and start to comply.

Two interviewees felt strongly that the high proportion of breaches did not mean that the orders were a failure.

This is entirely wrong. They don't understand the level of behaviour that led to the order so if 50% haven't breached that means that no distress or harassment has been caused.

In one locality that had undertaken an analysis it was found that, even where an order had been breached, the seriousness of anti-social behaviour was often reduced.

Systems and processes

All the localities except one had established multi-agency processes when anti-social behaviour became a concern. This usually took the form of a panel. These arrangements are not mandatory and one area had abandoned them as too time-consuming. A typical process would be:

> *There's a police ASB team and a wider group that meets every two months – including YOT, FIP, education, youth work and schools, police, pupil referral unit – but children's services are missing. The panel can bring in the social worker if they're already involved in a particular case. There's a four-tier process: a yellow letter, a red card (final warning). It's non-statutory. All partners' logos are on the letter. A case can come in at any stage depending on the seriousness: 'What can the panel offer the young person to give them the opportunity to change?' For an ASBO, the council, and the police and the YOT consider it. We have to consult the YOT manager but he doesn't have to agree.*

Interestingly, in one large county the original respondent referred me on to a colleague in another area because her own team had not applied for an ASBO on any children in the last two years. She put this down to the fact that every local secondary school held a multi-agency meeting regularly to review the needs of children who were likely to get into difficulties and services were put into place before behaviour became anti-social.

Apart from the annual review, there is no requirement to monitor the outcome of interventions or to undertake any analysis. A number of interviewees had reviewed outcomes for themselves to see what could be learned. In another locality, they did consider persistent breaches at their panel.

> *'Is it because he's bloody-minded or is there an issue?' You might need to vary it if it's too difficult for them to comply.*

Post-ASBO intervention

The granting of an ASBO is seen as the end of this road and there is no statutory requirement to continue to work with the child, unless it is accompanied by an ISO or another youth justice order. This is a source of frustration and contrasts sharply with the youth justice system where the work starts once an order has been granted.

> *The big issue is that no-one monitors ASBOs or CRASBOs. The local officers are told about the conditions and if they have pushed for it, they may go round to check but there is no statutory duty for anyone to do it.*

One locality had tackled this problem by setting up a team within the local authority, although they did not take on children with an ASBO on conviction. This service was non-statutory and under threat because of the need to save money.

> *The council was taking people to court for an ASBO and then left them: the only people they had contact with were the police. It seemed sensible to set up support/monitoring after that. Otherwise how do you know what's happening, whether the order needs to be varied? We will go to court for the final hearing, to introduce ourselves and give them a*

letter. We're a new person, just to help them manage the order (not the person who took it). We get parents/guardians on board.

This facilitated their ability to undertake the duty to review children's ASBOs after a year. More than that, it enabled the family to be supported and signposted to services.

They have a visit at least every 90 days – we'll do joint visits with other agencies. It's in line with the YOT service. There's no data but we think it has brought down the number of breaches and most technical breaches.

Another participant was amazed and envious of this service and wanted to see every child on an ASBO allocated to a worker, whatever their agency.

Because the ASBO can only make prohibitions, not require a child to take up services, intervention is ad hoc. It is a frustration for the police if there is no-one to co-ordinate ongoing work, which is outside their remit.

The big thing is occupying them – if they're not doing something productive then ... if kids are not going to education, they need to go somewhere – it's not acceptable to say they're unteachable.

Examples were given of valuable services, particularly those directed at the family rather than the child alone such as Family Intervention Projects (FIPs) or Multi-systemic therapy (MST) but these were not consistently available. The disengagement of other services was a source of frustration.

Professionals need to do their job properly – children's services are weak. There's lots of care homes that take a lot of police time.

The local authority team that provided individualised support was negotiating to be allowed to undertake assessments under the Common Assessment Framework and hoped this might improve access to services. Otherwise anti-social behaviour practitioners just had to refer on and hope for the best.

Factors relating to compliance

Similar factors to those identified by YOT managers were thought to make a difference to a child's ability to comply, particularly family support.

Parents with drug or alcohol problems: a lot of it is about what mum and dad do; a lack of rules or a history of older siblings who've been in trouble – that's not great.

All participants were well aware of the problems experienced by children with learning or mental health difficulties and felt some frustration that other agencies had not intervened sooner. They tried to mobilise services if they could.

Lots have got ADHD – we get them late when they've already been excluded from school. Special needs are another missing piece of the jigsaw. There's no CAMHS[19] input to the panel and a long waiting list.

There was also a sense, expressed by some, that a minority were 'just nasty' or 'evil'.

You develop an instinct – a sense of who is evil and who is just lost.

19. Child and Adolescent Mental Health Service.

Breach action

Breach proceedings were seen as important with the general perception that this was an automatic process.

> *You've got to – it's the law. A statement is taken, they go straight to custody and we automatically apply for remand, then they're before the court as soon as possible. It doesn't make any difference whether there's been further harassment or it's just a technical breach.*

This was generally seen as a good thing because of the effect on communities and individuals if the behaviour was left unchecked.

> *If you're breaching, you should be arrested as soon as possible, otherwise they won't learn.*

> *Breaching means someone's suffering.*

It was felt important to make the consequences of non-compliance clear to the child:

> *If you breach this, you're toast!*

> *The first breach is so important – it must be a short, sharp shock. They should dread it if it happens.*

Most of the participants, unlike YOT managers, did not want greater discretion about the decision to prosecute. Only one locality seemed aware of the option of pre-court disposals where the ASBO breach was the first criminal offence.

> *If a young person has never offended before, they are assessed in the same way as for any other offence. The majority of people we have on ASBOs have already got convictions so they would be further up the tariff but if it was a young person, they may not have done. We're all entitled to a fair chance, aren't we? I'm happy for them to get a pre-court diversion if there are no previous convictions.*

Other areas did not seem to know about this option – or explicitly thought this was not available, although some participants were not opposed to the idea.

> *I've not heard of that but it would make sense to have a final warning. The people who do the final warning clinic could put something in place.*

This was particularly the case where the breach was technical.

> *They prosecuted a 15 year old who was on the wrong side of the road for getting a sandwich. They should have access to them, there should be another legal disposal, the police should discuss it: they could release them on bail.*

Some tensions were evident between the police and the CPS. In one area the CPS had become reluctant to use anti-social behaviour legislation, preferring to use restraining orders or criminal proceedings. Where there was a breach of an ASBO and offending, they would generally prefer to prosecute for the criminal activity.

> *If there's a more substantive criminal offence, they would prosecute that over the ASBO – it can get a bit blurred. The CPS were getting criticised for duplication.*

This meant that it was difficult to disentangle what some court disposals were actually for.

Sentencing decisions

This linked to some dissatisfaction with the outcome of breach hearings, with frustration particularly evident in relation to a perceived reluctance to use custody: 'It's like a dirty word'. The lack of familiarity with sentencing guidelines may have contributed to this. When asked whether custody was usually used as a last resort, one interviewee said:

> *I don't think that's in the guidelines – and I don't think it should be. I would like to see custody used almost automatically.*

As with the YOT managers, there was a perception that sentencing could be inconsistent and that, on the whole, district judges were more punitive than magistrates. Interestingly, one interviewee thought that children were treated more punitively than adults. Another thought that girls were treated more harshly than boys.

> *One girl recently, it was punitive and she got a detention and training order. There's always the odd one – and that's girls. People feel more intimidated by violence from a female.*

Repeated court appearances were again thought to influence sentencers.

> *I wonder if there's frustration – there are only so many magistrates in the pot and they'll see them again and again. I wonder if that makes a difference…*

Another opinion, however, was that the opposite could sometimes be the case.

> *If it's a first offence for good kids – they want to make an example – more than recidivist kids because they're frightened of sending them to custody.*

Measures to improve the system

All interviewees felt that some measures were necessary to reduce anti-social behaviour but that changes would make the system more effective. There was no consensus about what these should be, with some wanting it to be tougher and some wanting it to be more supportive, though all agreed that both elements were necessary. Specific ideas were as follows:

- Most frequently cited was the ability to impose positive as well as prohibitive conditions, such as substance misuse treatment or positive activities: these could be tailored to the time when the anti-social behaviour usually took place to offer respite to victims.
- More use of ISOs, and for longer periods, but remove criminalisation for breaching them.
- More whole family interventions, such as FIPs or MST.
- Direct access to youth work provision.
- Mechanisms to hold other agencies – and parents – to account rather than just the child.
- Alternatives to prosecution, such as 'boot camps'.
- The option to use very short custodial sentences for breach, such as a weekend.
- Convictions for breach of ASBO to be 'spent' after two years in recognition that children can change.
- Better intelligence and monitoring of children subject to an ASBO.

Views of youth court magistrates

Tools and powers

Overall, youth court magistrates were positive about the approach to breaches within the youth justice system, although there were some reservations about the automatic trigger being the third incidence of non-compliance.

> *The request from the YOT tends to be 'Let this order continue'. They give you the dates but then say 'However he's beginning to show a positive attitude'. Why bring it back? It's all about guidelines: 'We've got to'. Guidelines are there more for the YOT than for the courts. Some things should be brought back on the first, others could be let go for five. I'd like it to be based more on the individual situation.*

Another magistrate thought three breaches was too many where the offending history was serious.

> *How many final last chances do you have? It doesn't give the right message: they think they've got away with it.*

The sentencing guidelines are thought to be helpful because they strike a balance between consistency and room for flexibility.

> *It's structured, you get a matrix but you can move within that as long as you explain in open court why you've done that.*

The changes brought in by the introduction of the Scaled Approach and the YRO divided opinion. There was a concern that the demands of enhanced supervision and over-complicated orders for those at the more serious end of offending could be too much for some children, and might increase the breach rate.

> *If the young person reaches the custody threshold, the YOT recommend a package that is so complicated so that the young person doesn't go to custody. They're not going to be able to comply.*

Others welcomed the opportunity to vary or add conditions if the order hadn't been working well.

One person expressed some doubts about the practice of revoking and resentencing.

> *I don't think revoking is a good thing – it's like saying: 'We got it wrong.' It doesn't give children confidence.*

On the other hand, all the magistrates liked the option to revoke an order because the child had done well. There was a sense that the children had too little praise in their lives.

> *With curfews, we've been thinking about, if they haven't breached it, can we revoke it? It could be a carrot. Look at their backgrounds – they've probably never had rewards.*

Magistrates were less sure about the approach to breaches of ASBOs, partly because they were less familiar with them and partly because they had reservations about the use of ASBOs per se.

> *ASBOs are a bit of an issue for us. The minimum is two years and that's much too long.*

The practice of bringing 'technical' breaches of ASBOs was a concern to one magistrate.

> *Someone would be banned from the shopping centre – if they were then seen going there, they're in breach, but they haven't caused a nuisance so the penalty*

would not be implemented because it would be disproportionate. A lot of change is needed – it should depend on the nature of the breach. The deterrent effect has been undermined.

Systems and processes

Magistrates normally have the opportunity to raise any concerns they have about the work of the YOT - and vice versa - in court user meetings. These focus on policy issues, or trend data, rather than individual cases. Some had introduced more informal opportunities for dialogue. One bench had set up a system for giving feedback on the quality of YOT reports and another had created a slot at the end of the court day to give immediate feedback.

There was both a desire to have more dialogue over individual cases and a concern about compromising judicial independence. In one area where there was a custody panel:

Magistrates don't participate – we have been invited but because the panel is reviewing every case where the magistrates have imposed a custodial sentence, it's not considered appropriate.

There was much less opportunity to have a dialogue with those responsible for the anti-social behaviour system, which was seen as being led by the police, but this would be welcomed.

Breach decisions

There was generally a high level of confidence in the YOTs to use their judgement in breach cases although this had been undermined in one locality since the introduction of the YRO.

Misdemeanours are being saved up. With some, we would have wanted to see it sooner – not just if they had been late or rude but…. We don't know who's not being breached. Officers may be deeming things acceptable when we wouldn't.

This was a minority view, however. A more typical response was:

You know they've really looked into it and you have confidence that no stone is left unturned.

This confidence extended to the quality of the intervention that the child would have received from the YOT. Interestingly, although the YOT managers had described a lack of challenge in the youth court, magistrates felt that they were robust in seeking evidence of the work that the YOT had done to support the child to comply.

We can ask and challenge. What has been the programme? You can stand it down and make them make a phone call and find out. It's someone's life you're talking about and I'm strong enough to do that.

Factors relating to compliance

The magistrates were very aware of – and interested in – children's often difficult circumstances, and were keen to ensure that they were not disadvantaged by these in the court setting. Some had had presentations and training from experts in speech and language therapy, Asperger's syndrome or ADHD. They were keen to communicate directly with the children, and were frustrated by the constraints imposed by the formality of the court room.

It would be good to take the children into more informal, comfortable surroundings to talk to them about what's going on.

They were also aware of the need to explain things in a way the children could understand.

I don't use the pronouncements we're given - there are huge literacy and numeracy issues. You must engage with the youth: it's up to you to establish their level of understanding and deliver a judgement in accordance with that. Break it down into chunks and check they understand each bit.

Other aspects of children's lives that were thought to lead to non-compliance were the lack of parenting or family support and being linked to gang activity. Following this level of interest, all magistrates had concerns about the support children were receiving from services other than the YOT.

A number of children seem to be falling through gaps between services – there are threshold issues and boundary issues. With parenting orders, you can't make it unless the parent comes to court so they don't – often this is the problem.

Children's services were also seen as a problem – particularly the reluctance to accept a remand into local authority accommodation or take responsibility for a child who was already looked after.

There's no close working relationship between different branches of children's services - CAMHS are appalling.

In one example given, this poor communication led to the court being given inadequate information in a case the magistrate had knowledge of.

There's little contact between children's services and the YOT. For example, a 17 year old in court - I knew the kid but significant facts in the PSR were wrong. It didn't mention that he'd found his father hanging and had been in care…

This lack of support was perceived to be even greater for children on ASBOs, where their prime contact with agencies can be negative. An example was given of a boy who was banned from his own street so was stopped all the time by the police and rapidly escalated through the system.

Conduct of cases

Magistrates were generally positive about the practice of the YOT in prosecuting breach cases and did not think this was unfair to the children. 'It is slightly blurred but is that wrong?' The advantages were that the cases could be brought quickly, and the YOT knew the child and their circumstances. This was in contrast to ASBO breaches, where the involvement of the local authority legal team or CPS led to delays and missing information.

The legal department are there so there are information gaps about what's happened. It's not the people who've been involved and know what's happening.

Although, in all settings except one, the breach reports cover both the evidence of the breach and the proposal, these matters were said to be effectively separated out so that the case had to be proved before the bench would consider the sentence.

Sentencing decisions

The factors that the magistrates took into account when sentencing were interesting. These included:

- The young person is sorry and pleads guilty
- "If they are totally disengaged with the process, with a real attitude, that's going to be the same outside court"
- "If the parent comes to court for the breach, I'd feel more confident that the parent was engaged with the order"
- The young person's attitude, motivation and family support
- Are they remorseful?
- A good home background, a sense of self-worth and basic education.

This list raises the question of whether children risk being penalised if they haven't got a supportive family, or are lacking in social or communication skills, and are therefore inadvertently punished for disadvantage.

One magistrate described rather different factors and offered the following:

- original offence/original sentence
- reasons for non-compliance
- needs of that individual and appropriate disposal
- is it that the young person has had a particularly hard time and says 'give me one more chance'?

There were some cases where magistrates struggled to decide on the most suitable disposal. These were usually the children with the most challenging personal circumstances, such as mental health problems, those who had committed sexual offences or those in the care system.

With children's homes – it's not good enough if they don't come home at night – we're tempted to put a tag on …

Children in care and children with mental health problems. We're getting things like broken windows brought to court. I would make comments – let it be known that I'm not happy. They shoot straight up the tariff.

Magistrates were frustrated with the limitations of the youth justice system in these cases.

Yes, I would like to be able to order housing or social services but that gets back to the role of the magistrate. Ought we be empowered to make those sorts of orders? There would be a lot of nervousness.

You've got to balance risk with welfare concerns. They may have been chucked out of home; no-one seems to want them. We can only sentence – we can't say 'You go to this home'. They need some stability. You have to rely on other services to sort it out.

Again, when magistrates were asked for specific examples, girls were said to present real challenges. In one case, the magistrate had been tempted to use custody because:

I thought she'd end up in the gutter and would be dead.

Other children explicitly asked to go to custody, or did so tacitly by saying they had no intention of complying with a community penalty.

Although magistrates are told not to set young people up to fail, we are limited and impose orders we know aren't going to work.

The use of custody

Magistrates expressed a reluctance to use custody for breach cases, particularly if the original offence did not meet the custody threshold, but they felt it was sometimes necessary. The factors that would lead them to consider a custodial sentence were 'wilful and persistent' breaches, reflecting the Sentencing Guidelines. They were also very influenced by hints from the YOT.

> *They'll never recommend custody but they say: 'We're having difficulty working with this young person'.*

Other situations where custody was more likely were a breach of post-custody supervision, or ISS or intensive fostering, because the child had already reached the custody threshold, or where the original offence was serious. In ASBO breaches, there was reluctance to use custody for 'technical' breaches: it would only be if there had been harassment.

One magistrate expressed some discomfort when the breach was not accompanied by further offending.

> *It doesn't seem fair if it's only non-compliance but there is a public protection issue – word gets out. We don't want to send them to custody but they have to comply with these orders.*

Measures to improve the system

Magistrates expressed some wish to know more about the outcomes of their decisions.

> *It's a very busy court. The chances of seeing that individual again are fairly small. We can say 'If the young person breaches can we deal with it' but...*

As an alternative, the possibility of some kind of process to review cases was suggested, perhaps avoiding the need to see every child who breached.

> *We could maybe just get feedback and decide which to bring back.*

The capacity to mobilise a welfare response was mentioned.

> *Sometimes I say: 'This is a child protection issue', particularly children being used in organised crime: Romanian kids being used to steal and beg.*

Although generally positive about what the YOT offered, there was concern that the quality of interventions may be eroded by financial cut-backs. More creative interventions were needed, particularly for children whose offending was entrenched. There was some frustration about the lack of intensive fostering schemes in such cases.

> *Nothing annoys magistrates more than saying that an order was 'successfully completed' when they didn't really do anything.*

Services that were particularly praised were speech and language therapy, parenting work and, in one area, dance workshops.

> *One of the best pieces of work is dance – they've found that they're not capable of expressing emotion. They've found through the music, it's led them to tears and they've found out that it's OK to show emotion.*

Good practice example:

Shropshire, Telford & Wrekin YOT took the opportunity of the introduction of the Youth Rehabilitation Order to adopt a different approach to sentencing, adding and varying requirements to respond more flexibly to children who were struggling. They developed a compliance and engagement programme as an option for sentencers on the second breach offence. It offers two weeks intensive support and motivation work from a worker dedicated to overcoming the barriers to compliance and motivating the child to complete their order. A big element is a meeting with parents to explain their responsibilities and to emphasise the seriousness of the situation if they breach again. Other services will be mobilised if there are unmet needs. At the end of two weeks there is a three-way handover meeting back to the case manager who is expected to pick up any concerns.

There have been too few children to formally evaluate the programme although it appears to have worked well. The YOT are considering lowering the threshold to a first breach if there has been non-compliance with a previous order. The YOT also recognise that it would be useful to begin all orders with work on motivation.

Key points

- The purpose of enforcement was seen primarily as giving the message that orders must be taken seriously, rather than to directly prevent offending.
- There was recognition that levels of disadvantage are a major reason for non-compliance.
- YOT managers would welcome more discretion and other mechanisms to lengthen the road before breach proceedings are taken.
- YOT staff are expected to support children to comply, but must also be mindful of public protection.
- The arrangements for seeking and enforcing ASBOs are largely police-led, with less centralised guidance.
- Asbo staff experience frustration about the limited nature of their role, particularly in mobilising support for children.
- There is a presumption that all ASBO breaches must be prosecuted and a lack of awareness of sentencing guidelines.
- Magistrates have a high degree of confidence in YOT decisions and do not challenge YOT staff enough about the support they have given children to comply.
- Magistrates want to make a difference to the children and experience a degree of frustration when orders are breached.
- A range of factors are thought to influence sentencing decisions, with the risk that disadvantaged children in challenging circumstances are inadvertently penalised because they are thought less likely to comply.
- Custody is not always used as a last resort for breach.

Being on the receiving end: children's perspectives

Sixteen children agreed to be interviewed about the factors that influenced whether children were able to 'stick to' the conditions of their order. For those aged under 16, parental consent was also obtained. Twelve children were drawn from three of the participating YOTs: some had been in breach of an order and some had not and they were not selected on that basis. The remaining four were currently serving a sentence in an STC for breach of a statutory order either as a primary or secondary offence. The children were selected, as far as possible, to provide a range of ages, genders and ethnicities, and levels of offending. It is not claimed that they are representative of the total population of children within the youth justice system.

Profile of the children

All the children gave their permission for access to their records and the following is a description of their demographic and personal characteristics and their offending history.

Seven of the children were, or had been before entering custody, subject to ISS requirements and 10 had been, or were still, on a curfew. In eight cases, this was electronically monitored. This reflects the complexity of most of the children's offending histories, often within a short time-scale.

The children's conviction rates for breach offences were high: between them, the 16 children had 24 convictions for breach of a statutory order. Ten had received their current disposal, at least in part, for breach of a previous statutory order and more were currently subject to warnings or in the process of being breached. Of the 16 children, only four had no history of ever having breached an order and, in one case, the child was interviewed only days after being released from a long custodial sentence so had had little opportunity for non-compliance.

Chart 11: Age, gender and ethnicity of study children

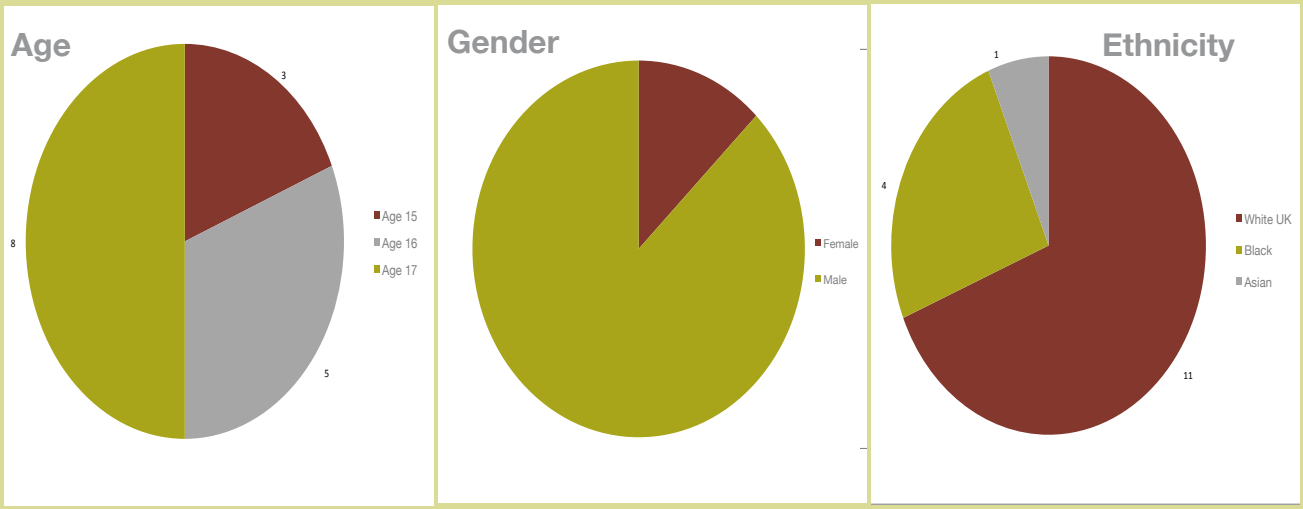
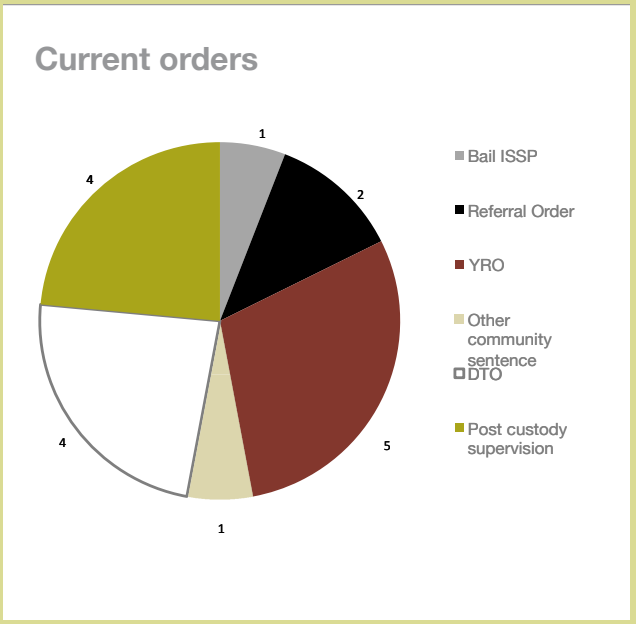
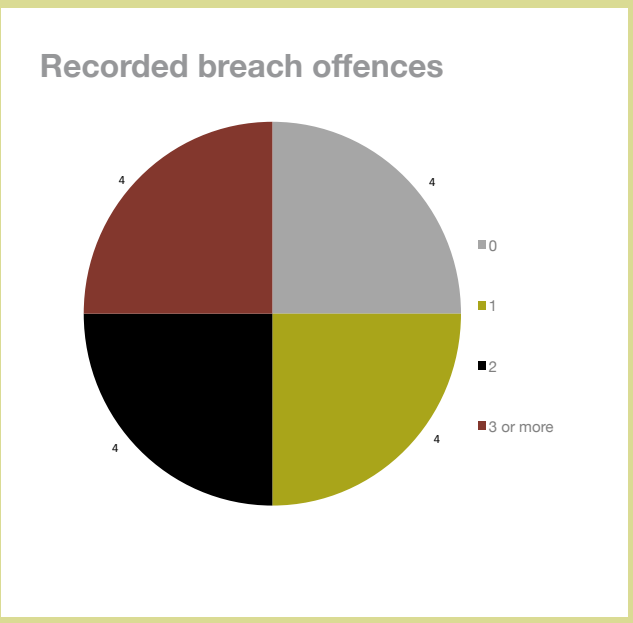


Chart 12: Current orders and breach offences of study children





NB One child was subject to two orders.

Many of the children had experienced multiple court appearances for a range of offences and disposals often overlapped, making it surprisingly difficult to determine which sentences had been imposed for which offence. The outcome of each order was also difficult to determine: very few had actually been completed without a further court appearance either for old offences, new offences, breach of the existing order or a mixture of all three.

Martin's[20] *first conviction had been only five months previously when he received a referral order for relatively minor offences. He had been returned to court twice for non-compliance but the order was allowed to continue. On the third breach, he had also committed further offences, again relatively minor, and he was convicted for these and the breach. He received a YRO with ISS, which he was already failing to comply with, including breaking his curfew, abusive behaviour during sessions and smoking cannabis during an activity. A letter was sent warning him of a return to court for breach and five days later he was arrested for a violent street robbery and remanded in custody.*

James *had a two year history of offending and anti-social behaviour. His first disposal had been a referral order and his most recent was a YRO. He had been sentenced on five occasions but had never completed an order, being returned to court each time either for breach, new offences or a mixture of both. He had breached bail, an ASBO, a referral order and an attendance centre order before receiving a DTO. Whilst in custody, he appeared in court for an old robbery offence and was sentenced to a YRO that would begin on his release, alongside his DTO supervision. Shortly after I met him, he was returned to court for breach of the YRO but it was decided that the order should continue.*

Dwayne *had been sentenced on five occasions within an 18 month period and the majority of his offences were for breach. He had moved out of the area*

20. All names have been changed to protect the children's identities.

and his offending had declined but he said he was scared to attend the YOT because he might encounter old gang rivals. His breach hearing had been adjourned to assess him for an ISS programme but he failed to keep the appointment and when the case was heard he was sentenced to an 18 month DTO for breach of a supervision order and his original offences.

The children's offences ranged from relatively minor criminal damage to serious violence but data on their assessed level of risk was not consistently available so could not be analysed.

Experience of disadvantage

Although data on the children's personal circumstances is incomplete, analysis showed that they shared many of the indices of disadvantage found in Punishing Disadvantage (PRT 2010). Three children were currently looked after and at least two others had been looked after recently. In all, 12 could be described as living in turbulent circumstances, being passed between separated parents, other family members or the care system. Abuse and neglect had been substantiated in five cases, ranging from emotional abuse from a mother with mental health problems, to neglect by parents with significant drug and alcohol problems, sexual abuse by a member of the extended family and physical abuse. Domestic violence was also a factor for at least six of the children. Ten of the children were said to be known to children's social services, although detail was often lacking. Five had parents with significant substance misuse or mental health problems. Many of the children had also experienced problems in education, with at least 10 having a history of exclusion or disrupted provision. Four records mention the possibility of ADHD and one Asperger's syndrome, although it was not always clear whether this was a formal diagnosis.

Table 2: Indices of disadvantage amongst study children

Factor	No of children
Current or recent experience of care system	5
Contact with children's social services	10
History of abuse or neglect	5
Domestic violence	6
Parent with substance misuse or mental health problem	5
Unstable living situation	11
Disrupted education provision	10

Only four children were not recorded as having any of these experiences, and were said to have come from a relatively stable, supportive home. There was a marked correlation between this and compliance, with only two breach convictions amongst these children as opposed to an average of two each for the rest of the sample. One child was recorded as having all of these adverse experiences.

***Marco** has just been released from a lengthy custodial sentence following an unprovoked attack on a stranger. He had experienced years of rejection and physical abuse by his mother, who told him she did not love him or want him. Shortly before the assault, he was accommodated by the local authority and placed in a children's home. On the day of the assault he had been to a family party and was very distressed because no-one had spoken to him. A psychological assessment suggested he had a severe attachment disorder.*

Children's views

Nature of the order and conditions

All the children were aware of what order they were on, and the conditions attached to it. This had been explained to them partly in court but primarily by the YOT and most thought they had been given something in writing. Those on more intensive requirements were also given a weekly timetable, in writing.

> ***Jason*** *was in custody solely for breach of his ASBO. He had learning difficulties and although he understood what the order said, he did not fully understand why it had been imposed or its implications. His parents had recently separated and there was conflict at home. Neither parent was willing to have him on his release. Jason had also been subject to a YRO and the YOT felt they were beginning to engage him and recommended that the order continue but he was given a DTO for repeated technical breaches of his ASBO.*

Understanding what they had to do was not necessarily accompanied by a real grasp of why or how. Even the most engaged children said that they had not been consulted about the conditions attached to their order and any potential barriers to their ability to comply. One child in custody following a breach of his ISSP said:

> *They didn't ask me if I could manage. I would have said: 'I don't think I can do that!'*

Another child, also in custody, felt the same about his YRO with an intensive fostering requirement, which he said he had breached in the first week.

> *Yes, they explained the rules thoroughly and even then I wasn't keen on it. I knew at the beginning I couldn't really stick to it. To be honest, I wish I'd just come straight here: I wasted a month.*

There was more room for negotiation once the order was underway.

> *The tag was 7 till 7 but I got it changed from 8 till 7 because I'm on an apprenticeship for roofing.*

The children had also been told that there would be consequences for non-compliance and that they could be taken back to court. The general perception was that this would lead to a more punitive sentence.

> *Breach! Basically, if you miss three or more appointments, you get two warnings then the last one, you go back to court. You might get a DTO or more hours.*

For some, the perception was that custody would be inevitable.

> *If I don't stick to it I'll go to jail.*

Others had been told that was a possibility but were inured by having many previous warnings.

> *'If you breach again, you'll come back to court and I'll send you down' - but they've said that before.*

When it had finally happened, another child described his shock.

> *They said: 'You know you was given a chance: you should have took it - I'm going to have to sentence you'. It doesn't really hit you till the Reliance people step behind you and grab your arms, then you think: 'Oh shit!'*

The children's views about their orders were very mixed. One child with learning difficulties was in custody for breaching his ASBO which banned him from the town centre for two years and told him who he could not 'hang around with'. He said:

I thought it was crap because when I come out of here I'm not going to be allowed to the job centre, the information stop, clothes shops. It's not fair – I wasn't naughty in the town centre.

Most were reasonably accepting that their youth justice order had been 'fair enough'.

To be honest, I was given a lot of chances. I've been to court over 20 times. I used to spend a lot of weekends in the cells – they'd just give me more orders to run concurrently. It's a bad thing for the tax-payers.

This 15 year old had, in fact, had a very disturbed background including emotional abuse by a mentally ill mother and domestic violence and had moved between various family members and the care system but did not relate this to his offending. This seemed to be the general perception:

I've done the crime; I've got to do the time.

They were also accepting of the possibility of breach, and some said that they didn't think people should be able to 'get away with' non-compliance.

If they didn't have that, people would take the mick all the time, ring in sick all the time and go back to doing crime.

This did not mean that the children felt positively about the requirements of the sentence. Several said that they thought it would be 'boring'.

I didn't think it was going to be tough, because I know myself, but boring and tedious.

Several more were daunted by the length of the order.

I'd have rather gone to prison – I'd have been out by now. It's done my head in having an order for a year.

Others complained about the intensity.

I'd have liked just to be on a tag or just an ISS. I don't like having to come here every day.

The majority didn't really see the point of what they were expected to do.

I thought I was going to struggle: keeping appointments, the curfew – the whole thing. I couldn't see the point of it at all.

Curfews were perceived as being particularly onerous for some.

The only thing that's hard is my tag – its 7 till 7. One minute you're in prison, then you're free and it's hard. You just want to be out and about.

There were some more positive opinions.

Yes, I did see the point. I smoke so the substance misuse work has been OK.

I thought some of it would be useful – and it has been. For example, they're trying to get me a college course.

Interventions

This relates to the interventions that the children received. The word 'boring' was mentioned again.

> *Worksheets are boring – I didn't get anything out of it.*

In contrast, the child who said that he had expected to find his ISSP 'boring and tedious' said:

> *It's funny – most of the things I do enjoy. I get the most out of barbecue building – you learn construction skills – but I also enjoy group discussions and job-hunting.*

Other opinions, in contrast to this, were more scathing.

> *None of it's good to me. It's all shit. Someone waffling on saying: 'You've got to choose your mates carefully' – I'm not going to go home and say 'You're not going to be my mate anymore!' am I? Stop employing people to waffle on!*

> *My worker's alright but it's something they have to do - anger management and all that.*

> *Some of it is tedious – the work you do is silly – it's not relevant. The original offence I did was burglary but they did stuff on car crime – that's not relevant is it?*

Although there was no consensus, the children tended to prefer practical or vocational activities to work directly related to their offending, whether this was individual or in groups. Popular activities were construction skills, football, apprenticeships, college courses, jewellery making, watching DVDs, pool and dog-walking 'because dogs are cute'.

Even where children were reasonably positive about programmes directly targeted at their offending, and said they had learned something, this did not necessarily affect their behaviour.

> *The theft group – it makes you see things differently so you know you're in the wrong; you know what it does to the shop – that's why prices go up - you know in the back of your mind it's wrong but you still do it...*

For children on intensive community sentences, they could exhaust the interventions on offer.

> *The first couple of weeks, I did see the point of them – they were alright – but now they just repeat them because new people have started.*

Being 'breached'

Most had experience of breaching their conditions and described the circumstances that had led to this. One girl had explained the reasons for her non-compliance to the court as follows.

> *My godmother died, there was violence at home and I got stuck in the lift.*

Describing an incident when she had broken her curfew, she said that her step-father had 'got drunk and violent', and had left the flat and she felt obliged to go after him.

The child who was in custody for breach of his ASBO had just found it too hard.

> *Like on my birthday, I went into town – into JD Sports to see what the clothes were. The camera saw me and the police turned up. My picture went into the town centre – it was at the Post Office and*

McDonald's. I was breached at McDonald's – I wasn't being naughty – just sitting there.

For some children, fear of violence on the way to the YOT had led them to miss appointments. For one boy, keeping appointments meant going into the territory of a rival gang. Another had made enemies in the travelling community and was scared to go out.

Once the child realised they were probably going to be returned to court for non-compliance, this was a high-risk time for further offending. One 15 year old said:

I got a phone call from the YOT to say: 'You're going back to court next week'. I was a bit pissed off to be honest – I thought I might as well enjoy it – I went for a spin in my foster father's car.

Factors related to compliance

The children wanted to comply. One child summed it up by saying he just wanted 'a normal life and a normal job'. The children were generally thoughtful about the factors that influenced whether they – and other children – were able to stick to their orders or not.

Some of these were practical, and at least partly in the control of practitioners. For example, one child said:

I don't like coming down here – it's horrible. It's an old prostitute area – abandoned buildings and that – you can get your appointments up to 5 or 6 o'clock and it's dark.

Her case manager had responded to this anxiety and usually collected her or met her elsewhere. Nearly all the children said that their YOT worker reminded them of appointments and generally tried to make it easy for them.

Most of the children were open about their use of alcohol and cannabis and several said that this got in the way of their keeping appointments.

I was smoking too much weed – if you're stoned you can't be arsed and you end up spending your bus fare.

I used to smoke weed so I had problems waking up and used to go to bed late. I can't stop smoking – if I see someone smoking I want it. My mum and my sister smoke.

The achievability of conditions made a difference, with several children admitting that they found it difficult to get up and some being daunted by the sheer intensity of the demands the order placed on them, leaving them no time to 'do their own thing'. On the other hand, this level of structure and the clear boundaries it imposed could be helpful.

When I get out, I'll be able to say to my mates 'I'm on licence now – I can't mess about'.

Children also valued the opportunities presented to keep them occupied and to access vocational opportunities that may not otherwise have been available, and were seen as a route out of offending:

Letting us do something that learns us something for the future...

This links to other, more complex, factors arising from the child's individual attitudes and personal circumstances. Having aspirations for the future and caring what happened to you were very important.

You've proved to everyone then. When I got out, people were saying to my mum: 'He'll do this and he'll do that', but I'm doing well!

This sense of being attached to family and community, and therefore having a road out of offending, was evident for some children.

***Shahid** was said to come from a good home, and lived with his mother and stepfather. He was attending college and in his second year of a B.Tec. He smoked cannabis but not excessively. His offence was said to have been committed under the influence of peers and he was thought to be genuinely remorseful. He had fully complied with his referral order.*

Several children recognised that this sense of hope was not experienced by everyone and that some children 'didn't care' or 'couldn't be arsed' what happened to them. This included some who wanted to be in prison so had no stake in complying with their order.

It's to do with their mind-set. If they don't care, they're going to breach, full stop. It depends on the home you're in. One boy said to me – his exact words were - 'I'd rather be in prison than at home'.

Prison doesn't help – it's not horrible, it's just not worth it. I'd rather be out: there's some people who'd rather be in. Some people breach to get back in – mainly because they're in debt to drug dealers...

For some, the fear of going back to court or to prison was a motivating factor, as was the prospect of early revocation or other rewards if they did comply.

If I'm good and do the order, I get privileges. He'll take me to the match, give me a lift home. It gives me a reason to do it.

Some of the children had a lack of problem-solving skills, associated with their emotional or cognitive problems, so they were easily thrown off track. One child described an incident when he had no money for the fare to attend his appointment.

I wasn't sure whether to ring – I thought I might be in trouble for failing an appointment – but I did and they arranged for someone to pick me up and gave me £5 to top up my travelcard.

This had been a significant incident for this child, who had experienced major rejection by the adults in his life. He was worried because his legal status meant that he could be recalled to custody without formal warning and was ambivalent about whether to just give up rather than risk failure.

Peer relationships were mentioned by several children. Often a cohort of children all had contact with the youth justice system but this could be a positive factor if they used it to support each other. It could also be a pressure. For the gang-associated children, this was particularly powerful.

When my friend got stabbed, one of my old boys rang me. I was in two minds about it - if I'd gone there I'd have breached and got new offences. It depends who your friends are: the boy who'd been stabbed rang me and they said it was OK not to come.

Family relationships were also of vital importance, in both a positive and negative sense. The chaos in some households had led directly to non-compliance in some cases and a number of children had been kicked out by their parents or passed between

warring ex-partners. One child was feeling particularly stressed by his home situation and the conflict with his mum.

On anger management, they taught me to walk away but I can't because I'm on a tag. I just have to stay there – in the situation. I texted my worker to say: 'You're going to have to do something'.

***McKenzie's** parents both misused substances, including amphetamines, and there had been long-term concerns about the care of the children. Her father had several criminal convictions, including possession of weapons, drug offences and assault on the police and had been in custody. Her mother also had a history of violence and there was violence in the home, which was described as chaotic. McKenzie had just gone to live with her grandmother.*

When parents were supportive, however, this helped children on a practical level – with parents writing appointments on the calendar, getting them up and making sure they had the means to get there. Two children described how their parents allowed their mates to spend the evening there so they didn't get bored and breach the curfew. More importantly, supportive parents gave the child a reason to comply.

The thought of my mum crying if I went back to [prison] - that's one of the main things…

I don't want my nanna to be disappointed in me.

Also important was the relationship with practitioners:

If your workers a div, you're not going to do it...

Most children were positive about their YOT workers.

If they didn't show they cared, I wouldn't care – I wouldn't come. The YOT want me to succeed.

He's good: he had a bad background, he's been to prison so if he tells me stuff, I listen. It does make a difference having a worker who's been there.

This did not necessarily extend to other relationships, with some feeling they had been let down by their solicitor. One child was very upset by his social worker's failure to visit him in custody, or to arrange a placement for him to go to on release.

One thing that's annoying me so much – social services are such lazy bastards. They sent me a letter to say 'We've got a panel on 22nd' – I'm leaving on the 25th! They'll take the easy option and stick me in a care home and that will definitely lead to reoffending.

They wanted their workers to strike a balance between support and boundary setting and, although they valued the flexibility to re-arrange or pay back appointments, they were ambivalent about the occasions when they had been able to 'blag' their way out of a failure to comply.

The groups are meant to last for an hour but they let you go after 10 minutes. They let me make excuses: it would have helped if they'd said 'No, Laura!' I thought they weren't that bothered about me.

The children were asked to rate how far youth justice staff had achieved this balance between support and strictness and were largely happy. They felt well-supported and

comments included the fact that the YOT had a 'welcoming vibe' and staff would try to sort out your problems. In fact one boy described the support as:

Over the top! – it's been a bit suffocating actually.

Measures to improve the system

The children had no fundamental criticism of the system as it was but there were one or two suggestions, such as the need to make the warning system clearer. One child's non-attendance was calculated rather than impulsive.

When you get breached – I thought you had another chance – I was breached on the third. I thought it was after the third. They should just make it clearer, but it's not a problem.

The lack of chances for those on licence was an issue for another, who was worried because his legal status meant that he could be recalled to custody without formal warning.

People going to jail for missing an appointment - that's just stupid! It's not fair at all. Some people might get paranoid and go on the run. They might not contact the YOT.

Children wanted breach decisions to be fair and consistent, whilst retaining some flexibility.

Most had internalised the concept that they were fully accountable for their own actions but, interestingly, a couple of children who had not breached expressed concern about those who had.

Find out why people breach and try to stop it. Just breaching them and not getting to the source of why they breach is pointless. Even if they go to prison, they'll still have the same mindset.

Key points

- The children had experienced high levels of disadvantage, particularly family disruption. Only four of the 16 were living in a settled and supportive situation and they were notably less likely to have committed a breach offence.
- All understood the conditions of their orders but had not been involved in determining them.
- Most children valued vocational or other activities but few were positive about cognitive or other programmes directly targeting their offending.
- Children wanted to comply but many were struggling.
- A major factor was the achievability of the conditions: the longer and more intensive the order, the more discouraged they felt about succeeding. Curfews were particularly difficult to manage.
- The YOT could help by offering practical support, advocating for them with other services and demonstrating that they cared.
- Other factors were children's cognitive ability and level of maturity, with some being impulsive and having poor problem-solving skills meaning they were easily discouraged.
- Perhaps most important of all in enabling compliance was having a reason not to breach: causing distress to family or ruining the 'normal life' that they aspired to.

Putting it in writing: documentary evidence

Three types of document were analysed to illustrate local approaches to breach:

- internal policies and procedures
- samples of written information for the children
- case records of children who agreed to be interviewed.

Policies and procedures
Two YOTs provided detailed guidance for staff on the breach process, setting out the stages to be followed, the forms to be used and the conduct of cases in court.

One YOT had entitled their procedure 'Enabling Compliance of Court Orders' and it began by stating the principle that:

> *[YOT] believes that all children should be helped and supported to comply with all court orders. The involvement of parents/carers in this process cannot be underestimated and all efforts should be made to involve them and any other relevant care services.*

It sets out the stages that the YOT should follow from the day the order is made to the conduct of cases in court if the order is breached, clearly striving to strike a balance between support and enforcement. For example, it describes the expectations of the worker regarding the identification of any barriers to compliance and reminders to the children. It also suggests rewarding children for compliance through a promise of:

> *a compliance reward for total compliance e.g. Youth Reward Card*
>
> *withdrawing a warning for non-compliance if the six following appointments are kept.*

This YOT also took a clear position on the need for rigour in breach proceedings to ensure a fair process. The breach must first be proved before giving the court any other information about the young person's progress or making any proposals about the most suitable disposal. The structure of reports was set out to ensure this separation and, if the court were intending to revoke the order and resentence, the YOT were to request an adjournment for a new pre-sentence report.

The other YOT also offered detailed guidance to staff but focused more on the decision-making process. If a YOT worker were considering taking breach proceedings, the expectation was that a formal report setting out the details would be submitted to the Head of Service, who would need to agree before a breach application could be made. The legal and policy directions on which this decision would be based were made explicit in the guidance.

Written information for children
YOTs have templates for the written agreements they are required to have with children when their order begins. These all tended to be very formal in nature, perhaps trying to emphasise the gravity of the order and the need for compliance. For example:

> *Whilst attending [YOT] you will be working with us to look at your offending behaviour. Whilst here there is an expectation of how you behave and comply with your order. Should you*

continually fail to engage or comply with your order, we are required to inform the court, who may decide to impose a further punishment. Breach action will be undertaken for the following reasons -

- *If you show persistent non-attendance or non-co-operation.*
- *If you attend a meeting whilst under the influence of alcohol or drugs.*
- *If you present aggressive or threatening behaviour towards other young people, staff or members of the public.*
- *If you use language that is considered offensive to other young people, staff or members of the public.*

Given the literacy and cognitive problems experienced by many children, this may be difficult for them to take in.

The same YOT, however, had also developed a tool to support engagement by identifying barriers at an early stage. During the project, a manager in another YOT reviewed the information provided to the children, decided it was not child-friendly and developed a range of new leaflets.

Good practice example:

Bradford YOT has produced accessible leaflets for children explaining different orders and the consequences of breach in a way that urges the child to keep in touch and resolve any problems in attendance before they escalate. For example, one leaflet for children who fail to attend has a picture of a mobile phone and the words 'Get in touch. We can help. You can speak to us' as well as the harder hitting 'Get back in touch or you may end up going back to court'. Given the lack of problem-solving skills demonstrated by some children, and their fear that one missed appointment means they've 'blown it', this is likely to be a useful tool.

Children's records

These documents gave a flavour of the approach taken by practitioners. Written agreements and warning letters are on file, as are breach and pre-sentence reports. All contacts with the child and the outcome of failed appointments are also recorded. There was considerable variation in practice style: some practitioners did home visits and talked to mothers; regularly collected children for appointments; allowed them to reschedule any that were missed; advocated with other agencies to deliver services; provided clothing and were generally proactive. Others expected the children to take responsibility for themselves and exercised less flexible boundaries: for example, one child was issued with a formal warning for being half an hour late. This style is also evident in variations within reports recommending the appropriate disposal for breach. Some were more balanced than others in putting the child's perspective. For example, one report said of the breach:

It is fair to say that this coincided with a change in case manager twice in two months. When he does attend he fully engages in his session and is polite to staff.

Others tacitly invited custody:

I regretfully have to inform the court that I am unable to recommend an appropriate disposal to address the breach.

Though variations may of course be warranted by the circumstances of the child, in reality they seemed more to do with the practitioner's approach to the job and team culture.

Key points

- Individual YOTs have identified particular weaknesses in the system and addressed them through local guidance.
- These include attempts to standardise the way children are supported to comply, decisions about breach, and court processes.
- Particularly useful are:
  - a checklist to use with children to identify and overcome barriers to compliance;
  - a rigorous approach to report writing to ensure sentencing decisions for breach are based on full information
  - a matrix for deciding whether breach proceedings should be initiated.
- Written materials used with children are excessively formal and use legalistic language that most will not understand. One YOT has produced child-friendly formats that could be used more widely.
- In spite of attempts at standardisation, individual practice and decision-making are variable, raising issues of fairness.

Conclusions and recommendations

The purpose of enforcement

Before the effectiveness of the approach to enforcement can be judged, we need to understand what it is trying to achieve. Is it hoped that the enforcement of orders will reduce offending, the stated aim of the youth justice system? If so, this rests on the flawed assumption that, because those who breach an order are subsequently more likely to reoffend, rigorous enforcement will solve the problem. Evidence does not support this: the relationship between enforcement and reoffending is much more complex. For some, it can actually lead to an accelerated journey to custody.

In spite of the graduated response to intervention introduced by the Scaled Approach, a one-size-fits-all approach is taken to enforcement, regardless of whether the child's failure to comply is linked with a risk of offending or not. This suggests that the purpose of enforcement has more to do with the message it gives out, demonstrating to the public, courts and children that orders must be taken seriously. This goal should not be dismissed: if there is no confidence in the way that anti-social and offending behaviour are being tackled, there may be calls for yet more punitive responses. Responses from local practitioners suggested some confusion, however, between public confidence and public protection: that if people had faith in the system it would somehow reduce offending.

The two purposes of reducing offending and giving a clear message about compliance do not necessarily conflict. Those operating the system believe that children cannot be helped to change unless they engage in the interventions on offer, and there is therefore a need for consequences if they do not. This is a reasonable argument, although it assumes that children are fully responsible for the choices they make. Some, perhaps, cannot comply. It also assumes that youth justice interventions can tackle the causes of offending, in spite of the evidence of multiple disadvantage underpinning many of the children's behaviour and a lack of research on the effectiveness of many of the programmes used.

The impact on children

Whatever stance is taken, it is important to identify the impact of the current approach to enforcement on the children on the receiving end. A recent analysis of the child protection system using systems theory describes the problem of 'single loop learning' whereby compliance with procedures and timescales becomes the measure of success, rather than whether the child has been helped (Munro 2010). If the system is to be improved, there needs to be 'double loop learning' examining whether the 'right' actions have been specified, not just whether practitioners have complied with them. It could be argued that the current system for breaching children on statutory orders has fallen into the trap of single-loop learning.

This has had unintended consequences described in systems theory as the 'ripple effect'. Although overall offending has reducing significantly, the proportion of those sentenced for breaching their order has not and there is evidence that some types of children are disproportionately affected. The breach rates for ASBOs are extremely high, particularly for the 10-14 year age group where 72% are breached. Within the youth

justice system those most likely to be breached are older boys and those of mixed ethnicity, but the use of custody for breach disproportionately affects girls and younger children. Overall, one fifth of children in custody have been convicted for breaching their order.

The 16 children who took part in this study confirmed the findings of Jacobson et al (2010) that disadvantaged children can experience a rapid escalation through the system and that the rigid approach to enforcement may be confounding this. The children had been convicted of 24 breach offences between them, alongside a range of other offences, and few had ever managed to complete an order before being returned to court. Most had experience of one or more of the following: being in care; involvement with children's social services; abuse or neglect; domestic violence; a parent with mental health or substance misuse problems; unstable living situation or disrupted education. The child who had committed the most serious offence had experienced all of them. There were also references to ADHD, Asperger's syndrome, attachment disorders and learning difficulties although it was not clear if these had been formally diagnosed or were the functional effects of the circumstances in which they were living. Only four children appeared not to have experienced any of these adverse factors and they were much more successful in complying with their orders.

Barriers and enablers to compliance

The children who took part in this study wanted to comply, to leave their offending behaviour behind and to have a 'normal life'. The fact that they had such difficulty in doing so was not caused by defiance but a much more complicated set of factors. These fell into three main categories.

Achievability of the order

Many of the orders were both lengthy and intense, and the children were overwhelmed by the prospect of, for example, not being able to go to JD Sports or McDonalds for two years, or being confined within a warring household for 12 hours a day. Although they understood the conditions, they had had little involvement in determining what they should be – or on commenting whether they would be able to manage them. Particularly for those without adequate support, there was a temptation to give up and accept the consequences. They often had poor problem-solving skills and panicked when they thought they would be breached, sometimes leading to yet more offending. Although the imposition of onerous conditions is often understandable, it does confirm the impression that some children are being set up to fail. If normal adolescence is characterised by impulsivity and a disregard for consequences, how much harder is it for those living chaotic lives or with developmental difficulties to meet such rigorous expectations?

The constraints on intervention

YOTs also wanted the children to succeed and recognised that they must strike a balance between enforcement and support. They were constrained by the rigidity of the expectations imposed by National Standards and the extent to which they could use their discretion without attracting criticism in a risk-averse and managerial climate. The interventions offered received a mixed response from the children. They tended to prefer positive activities that gave them skills

for the future rather than programmes directed at offending behaviour. The quality of the individual relationships with YOT staff was particularly important and compliance was enhanced if the child felt that the staff cared about them, even if this caring was demonstrated by setting limits to their behaviour. Where staff allowed the children to 'blag' them, this could be seen as a lack of interest.

Many of the services that children needed were outside the remit of the YOT although they did strive on their behalf to sort out accommodation and financial problems. There was frustration about the quality of services from CAMHS or children's services, particularly for those in care. There was generally a lack of family work and, given the troubled nature of many of the homes children came from, this is a serious omission.

Individual challenges

The children were facing major challenges, sometimes as a result of inherent cognitive or developmental difficulties, but usually as a result of the quality of care from their family combined with adverse social circumstances. Where the family was reasonably settled and supportive, this meant that children had practical help to comply: a mum who got them up, a dad who wrote appointments on the calendar and a willingness to have the house filled with teenage boys so that the child was better able to comply with a curfew were all important. Conversely, a drunken, violent step-father or a combative mother with mental health problems made it almost impossible to stick to any kind of routine.

Related to this was the factor of caring what happened to you. The children identified others whose lives are so bleak that they have no reason to comply. One child, with the most challenging background, was on the edge of this precipice. Hope for the future and a feeling that you had a stake in the world were essential. For some children, this is what family provided and it was the prospect of letting them down that was helping them to comply.

Trying to get it right

Those operating the system are fully aware of the challenges facing the children they encounter and keen to make a positive difference to their lives. Why then are so many children being 'up-tariffed' and sentenced to custody for breach, and why are those most affected the ones with the greatest level of disadvantage? This study would suggest that, although there is a perceived need to give a tough message to bolster public confidence, it is not purely for punitive reasons but because of a wish to provide children with a high level of supervision and support. This well-intentioned decision results in children having an order they find overwhelmingly difficult to comply with, and which they are likely to breach. Under the current system they must be returned to court, which engenders a sense of hopelessness and possibly new offences. This is illustrated in the following diagram.

Figure 3: Sentencing the disadvantaged child

Is there a better way of doing it?

This poses a dilemma. There will always be limitations to a system that tries to impose youth justice solutions on child welfare problems but at present there is no political will to change this. Neither is there a will to abandon the practice of enforcement, whether it is having any impact on reoffending rates or not. There are also good reasons to support children to comply with their orders, not least because it gives them the message that someone cares what happens to them. The current system could be rebalanced, however, to focus less on formal compliance and more on genuine engagement.

1.Ensure that orders are achievable and children are not being set up to fail

How could the desire of sentencers to make a difference be harnessed more effectively? Under the present arrangements sentencers are usually unaware of the outcome of their decisions, unless they see the child back in court for breach or other offences. This can give them a distorted and negative view. There are ways they could be more involved, either through having the opportunity to monitor progress directly as in drug courts, or by receiving progress reports. Although it would need to be carefully managed, they could also be involved in decisions about breach: in some cases deciding which children should be brought back to court or endorsing the YOT's view that the order should continue with additional support. This would have the added advantage of saving court time. If sentencers had greater confidence that the necessary work would be done following sentence, and that they would be kept informed, there would be less temptation to control events through long and onerous sentences. YOTs would need to play their part by ensuring that recommendations were the least restrictive possible.

There also needs to be greater awareness of the ways in which some groups seem to be

particularly disadvantaged by current sentencing decisions, including girls and younger children or those who appear to be inviting a custodial sentence. Instead of attempting to make a difference through a youth justice order, sentencers should be challenging the input provided by other children's services, particularly in the case of looked after children.

Recommended actions

- Sentencers and pre-sentence report writers must take account of individual children's ability to comply with proposed orders and not set them up to fail. In particular, they must ensure that those from the most vulnerable groups, including looked after children, children with learning disabilities and difficulties, mental health and substance misuse problems, are identified and supported.
- A formal system should be developed to provide feedback to sentencers on the outcome of their decisions, including the way that orders are implemented and the progress of individual children.
- Defence solicitors representing children in the youth and crown court should be accredited, as they are in family proceedings.

Action by: Her Majesty's Courts and Tribunals Service, Sentencers, youth offending teams (YOTs)

2.Involve children in decision-making

Children felt they had no say in the conditions of their order or in the types of intervention they were offered. This weakened their sense of engagement and motivation. If they, and their families, were involved in determining their own conditions and intervention plan they would have more of a stake in complying. They will be the experts in the reasons for their offending and the best way of tackling it (Hart and Thompson 2010). It would also be helpful if the factors that will motivate them can be identified and used to develop a system of rewards for genuine progress (not just formal compliance). These rewards could include the early revocation of orders or positive activities – or even just praise.

Recommended actions

- Practitioners must develop methods to enable children to participate in all decisions affecting them, both in court and subsequently.
- Easy-read leaflets, and other means of communication suitable to their age and understanding, should be developed for use with children.

Action by: Ministry of Justice (MoJ)/Youth Justice Board (YJB), Home Office, Her Majesty's Courts and Tribunals Service, Sentencers, YOTs, Anti-social behaviour units, Police

3.Improve the quality and effectiveness of interventions in the community

As the recent National Audit Office report identified (2010) little is known about the effectiveness of youth justice interventions, and the children's views cast doubt on the value of some offending behaviour programmes. Given their unpopularity, it is unreasonable to enforce their compliance unless there is evidence that they work. There is also a need for research on the relationship between compliance with orders and reoffending, and the impact of the current approach to enforcement. For example, is it true that tough messages about enforcement

influence children's motivation to comply and enhance public confidence in the system?

Recommended actions

- Research on the impact of enforcement measures should be commissioned. Interventions delivered as part of community orders should be rigorously evaluated according to their effectiveness in engaging children and in improving outcomes.
- Whole-family interventions should be developed rather than interventions which focus solely on the child.
- Children subject to anti-social behaviour orders, or their replacement, should have access to the same professional assessment, services and support as those on youth justice orders.
- Anti-social behaviour services for those under 18 should be managed separately and under the governance of children's services.

Action by: MoJ/YJB, Home Office, YOTs, Anti-social behaviour units

4.Lengthen the road to breach action

This concept was proposed by Jacobson et al (2010) as a way of preventing disadvantaged children from entering custody. It is equally relevant to reducing the use of breach proceedings. There are a number of ways this could be achieved and many ideas were generated by those operating the system. Detailed processes could be developed locally but the mandate for this change of approach would need to be provided by central government. Possible mechanisms could be:

- Greater flexibility. As one national stakeholder said: 'Who says three is the magic number?' Provided there is management oversight to ensure children are treated equitably and not allowed to drift, the expectations regarding compliance could be matched to the individual's needs and capacity. This would allow a focus on engagement rather than formal compliance so that children who were committed to completing their order were not automatically penalised for every incidence of non-compliance or were allowed to make up for it in some way.
- More stages in the decision-making process. These could range from the relatively informal within existing structures, such as the screening of decisions by a senior manager, to the establishment of new panels[21]. There are a range of ways these could operate, but it would be useful to involve the family and children. These additional stages would allow any barriers to engagement to be identified and addressed, and a decision could be taken to defer breach action until these had been tried. A checklist to guide those making decisions would make sure all factors have been considered.
- Challenging the presumption of automatic prosecution for breach of ASBOs. It will be important to make sure that breaches of ASBOs (or their replacement) also adopt this more flexible approach, particularly for 'technical' breaches. Where children have been arrested, the involvement of triage services may be useful in challenging the practice of automatic prosecutions and remind staff of the power to use pre-court disposals.

21. Compliance panels are proposed in *Breaking the Cycle* although the details are as yet unclear.

- Introduction of pre-court sanctions. There may be occasions when it is important to let a child know that their non-compliance is unacceptable but a return to court would be excessive. There may be other sanctions that could be applied in these cases, giving them the opportunity to re-engage and have the non-compliance deleted from their record.
- Withdrawal of breach proceedings. Where proceedings have been issued, a child could be offered the opportunity to have them withdrawn if they begin to comply.

Recommended actions

- Local managers should be authorised to use greater discretion and professional judgement in the management of statutory orders, including decisions about breach action.
- A checklist of considerations to take into account should be developed to support local decisions about breach action.
- The MoJ/YJB should explore new ways of creating additional stages in the decision-making process, including the use of panels.
- The Home Office should ensure that breaches of anti-social behaviour orders (or their replacement) are not prosecuted unnecessarily and that children are appropriately diverted.
- Mechanisms that will serve as a warning to children about the need to comply which don't require a return to court should be developed.

Action by: MoJ/YJB, Home Office, YOTs, Anti-social behaviour units, CPS

5.Ensure that breach cases are conducted fairly

The usual rigour expected in prosecution cases is at risk in breach hearings. Breach reports can blur the facts of the case with recommendations about sentencing. It is important that more rigour be introduced so that the case is proved before sentencers are given additional information about the child's progress. Sentencers should also challenge the YOT so that they are satisfied the child has been given the support they need to comply.

Recommended actions

- Training on the appropriate response to breach cases should be provided for all involved in breach proceedings, including sentencers, legal advisors and solicitors.
- The format of reports used in breach hearings should be reviewed to ensure that cases are proved before information about the child and proposals about disposal are provided to sentencers. Where the court decides to revoke an order and re-sentence the child, a new pre-sentence report should be requested.
- Sentencers must adhere to sentencing guidelines by satisfying themselves that children have been given adequate support to comply with orders before they impose a punitive penalty.
- When a child is not complying but there is little risk of further offending, consideration should be given to revoking the order.
- The use of adjournments to provide an opportunity for children to demonstrate compliance should be endorsed.

Action by: MoJ/YJB, Her Majesty's Courts and Tribunals Service, Sentencers, YOTs

6.Develop quality assurance measures to meet agreed standards

At the moment, there is no specific requirement to scrutinise the quality of work in cases of non-compliance. This is particularly the case with children on ASBOs.

Recommended actions

- Measures need to be introduced to assure the quality of work with children who find it difficult to comply with orders, and to ensure the quality of breach reports meets agreed standards.
- This expectation should be extended to children subject to anti-social behaviour orders and their replacements.

Action by: HMI Probation, Ofsted, YOTs, Anti-social behaviour units

7.Make better use of data to improve engagement and outcomes

Although individual services have undertaken their own reviews, there are as yet no mechanisms to learn from practice. It would be useful for YOTs to be able to analyse local information so they can identify which types of children are failing to comply, and which orders seem to be most successful[22]. This also needs to be linked with reoffending data so that evidence of 'what works' can be developed.

This approach is also needed at a national level. At present we do not know:

- the proportion or nature of youth justice orders that are breached
- the disposals for breaching each type of order
- the numbers of first time entrants to custody who are there solely for breach
- the index offences of those being breached
- the ethnicity of those breaching an ASBO
- the impact of ISOs and parenting orders on ASBO breach rates[23].

Recommended action

- Local and national systems for the collection and analysis of relevant data should be developed to improve practice with children who have difficulty complying with orders.

Action by: MoJ/YJB, Home Office, YOTs, Anti-social behaviour units

8.Identify and meet the welfare needs that lead to offending and anti-social behaviour

There is clear evidence that children with unmet needs are more likely to commit offences. Once in the system those with the greatest level of disadvantage are at risk of a rapid acceleration through the system and into custody. Current enforcement practice is expediting this pathway, partly in a well-intentioned desire to make up through the youth justice system for the failure of other services. These services, in turn, stop seeing troubled children as their responsibility.

Recommended action

- Mechanisms must be developed to ensure that education, health and social services respond to the needs of children at risk of offending or committing anti-social behaviour, and those who are subject to statutory orders.

Action by: MoJ/ YJB, Home Office, DfE, Children's Services, YOTs, Anti-social behaviour units

22. The YJB are currently piloting toolkits which may assist with this.
23. The new Youth Justice Management Information System (YJMIS) developed by the YJB should allow for more sophisticated analysis but has not done so to date.

Opportunity or challenge?

The commitment to a lighter touch from central government, local discretion and a less target-driven culture could be a real opportunity to manage statutory orders in a more flexible way. On the other hand dwindling resources, increased poverty and the loss of the YJB could jeopardise the very services that are essential for children with such complex needs. Just as it is for children in the youth justice system, it is important that we retain a vision of what we want to achieve and a sense of hope that we can get there.

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Children are often vague, scatty and unwilling to conform to authority. Children in the youth justice system are all the more likely to display these characteristics. Many do not live in supportive families, many have learning difficulties and nearly all are used to missing school. Yet we expect these same kids to turn up on time to a series of appointments decreed by the court, sometimes several times a week, at different times, sometimes in different places, with different individuals. Breach is endemic in the youth justice system and is a key driver to custody - with one in every eight children in custody last year imprisoned for breaching the terms of a statutory order.

This research report, commissioned from NCB, is the first piece of primary research into children who breach statutory orders. It features an analysis of existing data and learning from qualitative research with children, practitioners and magistrates. Some of the findings chime with common sense, but some are surprising - in some areas, for instance, every single ASBO given to 10 and 11 year olds was breached.

The report's author, Di Hart, poses the question: if the principle aim of the youth justice system is to reduce reoffending, how does breach, and particularly the punishment of breach by custody, contribute to this? As the findings from this research demonstrate, it is not clear that the approach to breach taken by practitioners and sentencers is having any impact on reoffending rates. Consequently, this report proposes changes to legislation, guidance and practice.

Diana
Princess of Wales Memorial Fund
THE WORK CONTINUES

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