

*Abstract*

*This article reviews recent developments in the area of 'out of court' disposals in youth justice in England and Wales, highlighting the emergence of recent trends towards decreased use of formal procedures to deal with the reported offences of young people. The idea considers possible explanations for these developments and assesses the contribution of a number of recent practice initiatives with a diversionary orientation. The article reflects on the varying rationales underpinning these developments, and wider influences in the form of economically driven pragmatism, before concluding that in order to sustain recent achievements, diversion must demonstrably strengthen its claims to legitimacy.*

*Key words: diversion, restorative justice, cautioning, minimum intervention, welfare*

Turning the clock back?

'Diversion' has been a feature of youth (juvenile) justice in England and Wales for a very long time. 'Informal conferences' as a means of dealing with the reported crimes of the young were acknowledged in the report of the Molony Committee in the early part of the twentieth century (Home Office, 1927); and moves to extend or curtail the use of 'out of court' disposals in this context have been a regular feature of policy and practice ever since (Smith, 1989; 2011). Shifts in the acceptability of the practice of dealing with the alleged misdemeanours of young people informally and removed from the rigours of prosecution and court processes have, in turn, been mirrored by significant variations over time in the use of diversionary measures, themselves of varying degrees of 'formality'. Most recently, from 2008 onwards we have seen a further significant change in the way in which the reported crimes of young people have been dealt with. During this period, there have been reductions in the use of formal procedures at all stages in the criminal process, from the point of entry through to the use of custody, with the net apparent effect of a considerable liberalisation in the treatment of 'young offenders'. There has been a parallel decrease in crime figures, so it might be assumed that there has been a straightforward impact on disposals with one figure simply reflecting the other. However, there are several reasons for calling that explanation into question: firstly, the period immediately prior to this saw a steady and sustained increase in the numbers of young people processed and then incarcerated, despite a similar decline in recorded offending rates, over an extended period of time; and, secondly, the decline in punitive disposals for young people has not, up to now, been paralleled by a similar reduction in the use of penal sanctions for adults, particularly in terms of the use of custody. To account for these anomalies, it seems then that explanations of the current trends in youth justice will therefore need to be rather more nuanced. In particular, we should perhaps consider the potential influence of 'legitimising' discourses, which have sought to achieve a number of changes in the ways in which young people in conflict with the law are conceptualised; such as the re-emergence of 'rehabilitation' and the associated recognition of 'need', the modification of conventional notions of a linear tariff of disposals, arguments for 'minimum' (cheapest?) intervention, and the principles of 'localism' and community-based problem resolution.

In order to seek out a basis for understanding the emerging pattern of outcomes, this article will first summarise recent developments, going on to consider some of the concurrent innovations in

practice which might be viewed as 'diversionary', before attempting to sketch out some possible explanations which might account for what is happening, and which might in turn point towards future developments and possibilities.

#### Emerging trends: patterns of disposal

Recently published statistics (Ministry of Justice et al, 2013; House of Commons Justice Committee, 2013) suggest a dramatic fall in the numbers of young people being processed formally through the justice system. Arrest figures were reported to have fallen by 13 per cent between 2009/10 and 2010/11, with a longer term decline of around a third from 2006/07 to the same point in time, following a period of at least six years when these figures had remained relatively stable. As young people progressed through the criminal justice process, substantial falls were also noted in the number of final warnings, reprimands and conditional cautions administered, with 40,757 such disposals administered in 2011/12, a decrease of '57 per cent on the 94,836 given in 2001/02' (Ministry of Justice, 2013, p. 18). In parallel with this trend, it was also noted that the number of 'first time entrants' to the youth justice system had declined by 67 per cent from its peak in 2006/07, to 36,677. As the Ministry of Justice acknowledges (2013, p. 22), this fall may have at least partly been accounted for by the change in the 'Offences Brought to Justice Target' set by government which had previously created an incentive for police to secure formal recordable disposals rather than dealing with minor offences informally. The modification of this target in April 2008 (followed by its eventual abolition) is believed to have had some influence on police behaviour and, consequently, disposal patterns – although, in fact, the fall in the number of FTEs began slightly before this point. As might perhaps be expected, reductions in the number of people entering the system have also had an effect on subsequent outcomes, with fewer young people receiving 'court disposals', and those who were being identified as increasingly 'prolific' (p. 54), suggesting that those being excluded from formal processing were more likely to be less persistent offenders. Nonetheless, the number of custodial disposals was also reported as falling at a faster rate than for all disposals (48 per cent compared to 37 per cent from 2001/02 to 2011/12), suggesting a degree of 'liberalisation' at all points in the process, and resulting in a very substantial reduction in the average custody population, as well (down 30 per cent from 2001/02 to 2011/12).

It is worthy of note that these sharp falls are reminiscent of the shift in the balance of outcomes in youth justice during the 1980s, and that similarly, there appeared to be a 'system-wide' effect with the number of those receiving custodial sentences declining substantially, in parallel with the increased use of 'diversion' at the lower end of the scale of disposals. Between 1977 and 1991, for example, the proportion of those young people (aged under 17) processed who were prosecuted fell from 48% to 21% (Smith, 2003, p. 18), and the number of young people aged 14-16 sentenced to custody declined from 7,700 to 1,400 between 1981 and 1991. This suggests that in both cases what was taking effect was not simply an administrative adjustment to 'weed out' relatively minor offenders who could be dealt with by informal means, but a wider shift in policy and practice towards a less punitive model of youth justice. The extent to which this was intentional or planned is perhaps debatable, although there were a number of identifiable drivers in terms both of policy shifts and practitioner innovation (Smith, 2007).

Also echoing earlier developments (see Audit Commission, 1996, for example), the rapid increase in the use of 'out-of-court disposals' was not without its critics:

'There is widespread belief within the magistracy that out-of-court disposals are being used over-zealously by the police, with an autocratic approach to their implementation and without independent scrutiny and monitoring... Magistrates need to be convinced that out-of-court-disposals are effective... [rather than] a cash-cutting exercise and a 'quick fix'.' (Magistrates' Association, quoted in House of Commons Justice Committee, 2013, p. 20)

And, similarly, a number of familiar and recurrent associated concerns were raised alongside this:

'There are a number of circumstances where an out-of-court-disposal may be inappropriate. In cases of serious offending, the victim may feel that they do not get justice. Unlike with adult cautions, there is no requirement to consent, therefore a young person may be burdened with a criminal record without due process. In cases of genuine guilt, there may be insufficient to nip offending behaviour in the bud.' (House of Commons Justice Committee, 2013, p. 20)

Notwithstanding these reservations the Justice Committee offered a cautious endorsement of current practice in the use of such disposals, subject to the adoption of more rigorous 'safeguards'. At this point, then, it did not seem that there was any imminent likelihood of the trends of previous years being reversed, with 'diversion' set to figure prominently in the youth justice landscape for the foreseeable future.

#### Drivers of change: principle and pragmatism

The change of direction in youth justice practices can be dated back to 2007-08. When seeking out the likely triggers for this, there appear to be a number of candidates; and it looks as if there may have been a process of 'convergence' between a number of different interests at around this time. Government was seeking to revitalise its strategic vision for children, whilst at the same time, the first signs of a forthcoming financial crisis may have prompted a rethink amongst key organisations about the use of time and resources which were likely to become increasingly scarce. Notable here was the review of policing carried out by Sir Ronald Flanagan, whose interim report observed that:

'An emphasis on sanction detection levels has undoubtedly to a degree produced the unintended effect of officers spending time investigating crimes with a view to obtaining a detection, even when that is clearly not in the public interest' (Flanagan, 2007, p. 10).

Accordingly, the review recommended that less police time should be devoted to processing relatively less serious offences. Alongside this, there seemed to be some recognition from government that its then prevailing policies in the area of policing and early intervention were producing unhelpful and unintended consequences in drawing young people unnecessarily into the justice system. This issue had been highlighted trenchantly by a previous Chair of the Youth Justice Board (Morgan, 2008), and whether or not in response to this, the Children's Plan (DCSF, 2007) and the accompanying 'PSA Delivery Agreement 14' (HM Government 2007) made a commitment to reducing the number of 'first time entrants' to the justice system. The implicit rationale for this

appeared to be a belief that involvement in the justice system might itself be criminogenic, perhaps even informed by evidence (see Kemp et al, 2002; McAra and McVie, 2007).

Further support for the new direction of travel was provided by the government's *Youth Crime Action Plan* (HM Government, 2008). Pledging itself to securing a reduction in the number of young people entering the justice system for the first time by a fifth, the government also announced that it was piloting the Youth Restorative Disposal (YRD) as a 'new approach to tackling low level first time offences' (HM Government, 2008, p. 21). Strikingly, but typically, the government sought to face both ways at once by simultaneously claiming credit for '*stopping* repeat cautioning to ensure that prolific offenders go to court (my emphasis)' (p. 17), which was neither strictly accurate nor consistent with other aspects of the document, although it did offer the public-facing appearance of continuing to be 'tough on crime'.

#### Diversionary practices: green shoots?

Associated with this policy reversal, there also appeared a number of new diversionary initiatives, some initiated by government, such as the YRD, and some relying rather more on local innovation (Hull Youth Justice Service, 2010; County Durham Youth Offending Service, 2012; Haines et al, 2013; House of Commons Justice Committee, 2013, for example), but usually supported by *Youth Crime Action Plan* funding, as in the case of the 'Triage' scheme initiated by the Youth Justice Board in 2008. Additionally, the Youth Justice Liaison and Diversion initiative, was launched by the Department of Health in 2008 'to enhance health provision within the youth justice system and facilitate help for children and young people with mental health and developmental problems, speech and communication difficulties and other similar vulnerabilities' (Haines et al, 2012). Whilst these schemes all shared the characteristic of being targeted at the pre-court stage of intervention, and in some areas appear to have overlapped, they also incorporated rather different core aims and objectives.

The YRD, for example, was designed to be administered by the police, and would be available once only to young people found to be responsible for 'low-level, anti-social and nuisance offending' (Rix et al, 2011, p. 2), and only where the young person concerned had not previously received a reprimand, final warning or caution. Other agencies would be informed of the outcome, but the use of the disposal was to remain entirely at the discretion of the police. As its name suggests, it was expected that the YRD would incorporate a 'restorative' element; subsequent research indicated that this usually consisted of an apology, although compensation and reparation arrangements were also utilised. Apologies might be 'instant' in cases of shoplifting, but might also involve some form of 'conference' with offender, victim and possibly parents/guardians present (Rix et al, 2011, p. 26). This evaluation of the YRD also found that there was a degree of agreement amongst practitioners that it was a 'good mechanism for dealing with young people and reducing FTEs [first time entrants] to' the justice system (p. 27).

Like the YRD, Triage schemes 'based in police stations' incorporated an emphasis on combining diversion from 'formal sanctions' with restorative interventions (Institute for Criminal Policy Research, 2012, p. 4); but, in addition, they also sought to ensure that welfare needs of offenders could be identified and addressed. 'Diversion from' the justice system might therefore be

accompanied by 'diversion to' other services. As the medical origins of the term also imply, Triage was intended to take the form of an initial assessment of young people reported for an offence, followed by a specific response depending on the outcome of this process; level 1, leading to 'diversion from the youth justice system; level 2, involving 'a referral to supportive interventions'; and, level 3, resulting in 'fast-tracked progression through the system' (p. 5). The appropriate level of intervention would be determined according to specified criteria, including offending history and 'gravity' of current offence. Unlike the YRD, referrals via the Triage process are usually made following consultation between specialist project staff and police officers (Wood et al, 2011).

In practice, Triage has been found to operate variably in different areas, and only in two of the pilot schemes evaluated was a level 3 service provided. At level 2, young people would not always be diverted from the justice process, even though they were provided with supportive interventions. At level 1, most interventions were very similar to those offered through the YRD, consisting 'of restorative approaches such as letters of apology' (p. 6), in relation to a similar repertoire of offences, including 'theft, violence, criminal damage and public disorder'. In some cases, young people might have had previous involvement with the justice system, but approaches to implementation were not consistent:

Triage came in a variety of shapes and sizes, having been implemented to meet local needs. However, most commonly schemes were focused on the diversion of first-time offenders from the youth justice system. (Institute for Criminal Policy Research, 2012, p. 7)

In some areas, it was noted, 'the introduction of neighbourhood or community resolution' (YRD-type responses) was believed to have a potential impact on the use of Triage, pre-empting its use, and deflecting attention from the 'specific needs' of vulnerable young people (p. 31). On the other hand, 'Triage was highly valued for its early intervention and diversionary approach by many... stakeholders...' (p. 30).

In addition to these two initiatives, the ambitious Youth Justice Liaison and Diversion (YJLD) pilot scheme was introduced in 2008 to promote a more welfare-oriented approach to diversion, with an emphasis on meeting the health needs of vulnerable young people coming into the ambit of the justice system. Inspired by prior evidence that young people entering the justice system were around twice as likely to experience one of a range of 'vulnerabilities', including mental health needs and learning difficulties, YJLD would seek to identify opportunities to divert young people in these categories 'away from the YJS [youth justice system] towards mental health, emotional support and welfare systems (taking into account proportionality, public interest and risk management issues)'; to provide 'enhanced' services to meet their needs; and to encourage diversion 'away from custodial settings' within the youth justice system (Haines et al, 2012, p. 24). In practice, it is clear that the scheme was implemented very differently across the six pilot sites, and police resistance was encountered in a number of areas, because of the potential effect on their detection figures. Referral routes were varied, and the timing of the referrals themselves had implications for the potential to avoid formal processing of young people. In some cases, police had already made decisions before the YJLD scheme became involved:

'Although a desired objective within each site, diversion away from the YJS has been a difficult aim to achieve... Whilst there is evidence that some pilot sites have established a more systematic pathway for diverting away from the YJS (still limited to low level

offending), the other sites implemented a more ad hoc approach to diversion.’ (Haines et al, 2012, p. 60)

Ironically, at a time when diversion was becoming the norm, some of these sites with a specific ‘diversionary’ remit appeared unable to utilise the opportunity to achieve a decrease in the number of young people receiving formal criminal justice disposals. The Centre for Social Justice (2012) has also observed that frontline practice has not consistently reflected the policy shift in favour of diversion nationally; and there may still be evidence of ‘justice by geography’ in this respect (Office for Criminal Justice Reform, 2010; House of Commons Justice Committee, 2013).

If we are to seek to understand the implications of this range of developments, it may help first to attempt to make sense of their differing and overlapping rationales. It seems that the practices associated with diversion in these three examples incorporate both restorative and ‘welfare’ approaches, and sometimes a combination of the two. At the same time, they seem to share the features of being applied predominantly in cases of ‘low level’ offending at the early stages of a young person’s offending career, so conforming to pre-existing notions of a ‘tariff’ of disposals, and also in some instances being dependent on additional indicators of ‘need’. Of the three, the YRD appears to have the most coherent rationale, although this is clearly restricted to a very specific point at the pre-reprimand (now pre-caution) stage of the justice process. For Triage and YJLD, though, both models of delivery and their underlying rationales appear rather more confusing, and rather less consistent with the principles of diversion, at least in the sense of achieving minimum necessary intervention. Whilst it may be helpful to put in place mechanisms to ensure that young people coming into contact with the youth justice system can be referred to other services, it is difficult to see how this might contribute to a wider diversionary strategy; and it certainly risks precluding those coming to official attention without additional needs from the possibility of being diverted; or possibly in times of greater resource availability contributing to the possible re-emergence of ‘net-widening’ (see Thorpe et al, 1980). Historic bifurcatory tendencies (Bottoms, 1977) and established operational distinctions between ‘welfare’ and ‘justice’ based practices seem merely to be reinserting themselves into a reconstituted framework of criminal justice interventions.

#### Diversionary practices: local initiatives

Working alongside, and sometimes incorporating elements of these national developments, it is also evident that a number of local diversion strategies have also emerged over recent years. These, too, have tended to focus on the early stages of the justice process, with the intention of preventing children and young people entering the youth justice system for the first time. Durham, for example, implemented an approach based on the use of the Common Assessment Framework to support a ‘Pre Reprimand Disposal’ (PRD) for 10-13 year olds in 2008, extending this to cover the age range 10-17 in 2009. Like Triage and YJLD, this approach relies on a ‘needs’ framework to support interventions, but it is more explicit about pursuing the central objective of reducing the number of FTEs, and thereby reducing the likelihood of further contact with the justice system (see McAra and McVie, 2007). Alongside this, though: ‘Indirect restorative work is undertaken with every PRD through victim awareness sessions, including on occasion letters of apology to victims’ (Eshelby, 2011, p. 3).

Similarly, in Hull the Triage model was incorporated into a diversion scheme explicitly to support a reduction in 'unnecessary formal criminal prosecutions and thus reduce the numbers of children and young people entering the youth justice system', as well as reducing the use of custodial options by the youth courts (Hull Youth Justice Service, 2010, p. 2). In this case, diversion would be supported by a 'Challenge and Support' intervention (MacKie et al, 2011) which would 'always include a restorative element' (Hull Youth Justice Service, 2010, p. 4). In Hull it was reported that the scheme had attained a 48.7% reduction in the number of FTEs in 2009-10 (p. 5), whilst in Durham the reduction reported was 71% over a two year period (2007/08-2009/10; Eshelby, 2011, p. 2).

In Swansea, too, a well-developed locally based diversionary initiative has been put in place, grounded in the principle of 'children first, offenders second' (Haines et al, 2013, p. 5). In this instance, the objectives of 'diversion out' of the justice system, addressing need and prevention of offending were 'melded' into an integrated approach to the reported offences of young people, according to a local service manager (p. 5). Substantial decreases in the number of young people being formally processed were also reported here – 70% fewer 'first time entrants' in 2011/12 compared to 2008/09 (p. 9).

These examples are distinctive because, although they draw on discourses of 'need' and restoration, they share a strong central commitment to the principle of minimum intervention and are more clearly committed to diversion for its own sake than the centralised initiatives originating from government in the late 2000s appeared to be. The question of whether or not finding a form of accommodation with established criminal justice discourses of 'retribution', 'need', 'risk' and 'public protection' leads to distortions of the primary objective (such as 'net-widening', perhaps; see Austin and Krisberg, 2002) remains subject to detailed negotiation and resolution 'in practice' (Smith, 1989). Mathiesen's (1974) concept of the 'unfinished' perhaps offers some helpful guidance here, in the sense that it enables us to engage in an active process of pursuing principled change without having to resolve the embedded tensions and contradictions in advance.

#### Diversion in a new era: progressive change or disengagement?

As is evident from the previous discussion, the progressive reduction in the number of young people being processed through the justice system had little to do with central government programmes, although it was at least facilitated by key policy changes, including the revised police outcome targets relating to First Time Entrants to the justice system. It is important, as well, not to discount wider influences, such as the change in the economic climate, and the increased pressure on all agencies, including the police, to achieve cost savings, a potential benefit highlighted in several of the evaluations and reports referred to previously (Hull Youth Justice Service, 2010; Rix et al, 2011; Haines et al, 2012). As we have observed, too, there remains a body of committed practitioners geared towards promoting the rights and best interests of children in trouble, which acts as a reservoir of energy for progressive change when opportunities arise. Others have also reflected on the possible influences at work in recent years (Allen, 2011; Bateman, 2012), concluding that a number of factors appear to have converged to create a more favourable climate for 'non-punitive' approaches, including the reorganisation of governmental responsibility for youth justice in 2007, changes of emphasis in government guidance, changes in the targets for the processing of offenders, and a number of specific initiatives with the strategic aim of influencing processes and outcomes,

such as the *Out of Trouble* project of the prison Reform Trust (Allen, 2011, p. 22). Interestingly, the role and influence of the Youth Justice Board in this context is a matter of dispute, with Bateman (2012, p. 38) believing this to have been very limited; whilst Allen (2011, p. 20) affords the board some credit for its work 'behind the scenes' to influence thinking at local level.

Significantly, a change of government in 2010 did not lead to a reversal of the direction of travel, either in policy or practice. Like its New Labour predecessor in 1998, the new coalition government moved rapidly to stamp its identity on the domain of criminal justice, launching its flagship policy document *Breaking the Cycle* (Ministry of Justice, 2010) within months of coming to power, signalling a major shift of direction, not least by way of its bold title. In fact, the promises made in respect of diversion represented no more than a continuation of the existing line of travel. Promising to: 'promote diversionary restorative justice approaches for adult and young people committing low-level offences' and to 'return discretion to police officers and encourage offenders to make swift reparation to victims and the wider community', the government argued that:

Out-of-court disposals can... help offenders understand the impact of their crime, make reparation to the victim and community, and divert people into treatment for drug, alcohol and mental health problems.... [T]his requires a system of out-of-court disposals that is simpler for practitioners and the public to understand, effectively enforces penalties, helps to change offenders' behaviour and harnesses the power of communities to tackle problems in their area themselves, without recourse to the courts.' (Ministry of Justice, 2010, p. 61)

In fact much of the machinery by which this could be achieved was already in place, and of course, the downward trend in the use of formal disposals was already in place by then.

In one respect, though, there was a commitment to go further than previously, in that alongside greater discretion over out-of-court decision-making, government expressed the intention to 'end the current system of automatic escalation and instead put our trust in the professionals who are working with young people on the ground' (p. 69). In proposing to curtail the principle of a sentencing 'tariff' at last in respect of children and young people, the government had thereby opened up the renewed possibility of repeated use of out-of-court disposals, and even a reversal of the pattern of increasingly severe disposals for those who might previously have been prosecuted. Although an earlier Conservative government had failed to make this kind of reform stick in the early 1990s, subsequent developments have demonstrated a continuing commitment to this aspiration. This was made concrete with the changes to the structure of out-of-court disposals introduced by the Legal Aid Sentencing and Punishment of Offenders (Laspo) Act 2012, which replaced the previous progressive framework of Reprimands and Final Warnings followed by prosecution with a much more flexible and contextualised approach, reintroducing cautions and extending the 'conditional caution' introduced on a pilot basis by the previous government (Hart, 2012). Whilst other aspects of this legislation, such as the tightening of breach procedures and the extension of the potential length of curfews (Hart, 2012, pp. 7-8) might at least indicate the potential for the reassertion of a greater degree of 'punitiveness', there clearly remains a predominantly diversionary flavour to the overall reform package represented by the act.

The Youth Justice Board issued detailed accompanying guidance demonstrating its understanding of the principles and processes which should govern out-of-court decision-making, and this reinforces the principle that interventions should be offence-based, rather than being determined by offender



characteristics or antecedents. This guidance sets out a threefold repertoire of disposals: Community Resolutions, Youth Cautions and Youth Conditional Cautions, allowing for these to be tailored to the specific circumstances of an offence, supplemented by considerations of the offender's history and the victim's views. Whilst these disposals themselves differ in their content and intensity, any one of them can be offered at any point:

*'Disposals may be used in any order even for those who have a previous conviction at court, in line with the adult framework. The minimum appropriate disposal should be used and should include a restorative justice element.'* (Walker and Harvey-Messina, 2012)

Whilst the word 'appropriate' might be seen as less restrictive than the alternative formulation of the 'minimum necessary intervention', and although the range of disposals does include the capability of 'escalation' (for example in the case of non-compliance with a conditional caution), there is clearly a strong emphasis here on limiting the extent of intervention, and on community resolution of offences, which suggests at least the intention to underpin the emerging trend towards reduced use of formal disposals of any kind:

There will be no escalatory process (in contrast to the previous Final Warning Scheme) and so any of the range of options can be given at any stage where it is determined to be the most appropriate action. (Ministry of Justice/Youth Justice Board, 2013, p. 7)

With apparently increased scope for diversion, and what seems like positive encouragement for its maximisation from government, it has been concluded by commentators that:

The new framework for out-of-court disposals is a real opportunity to reduce the unnecessary criminalisation of children. The key challenge for practitioners at local level will be to establish effective processes for decision-making....' (Hart, 2012, p. 4)

## Challenges and Prospects

For those with a long-standing interest in diversion, and in the light of the recent history of youth justice, it is hard to be critical of measures which seem to support liberalising trends in practice and outcomes for young people, which also appear to be mirrored elsewhere, as in the USA (Brown, 2012). On the other hand, it is important to stand back and offer a considered analysis of what is happening, not least because we have been here before (or somewhere that looks very like 'here'), and the hard won gains of the 1980s were lost very quickly with the onset of the 'punitive turn' in the early 1990s. There are three areas of concern, in particular, that I will discuss here because they seem to represent significant unresolved issues in light of the changing face of diversion in youth justice in current times.

Firstly, it is clear that recent developments in diversion in youth justice have been informed and supported by several distinct rationales, namely: needs-based arguments; restorative principles; and the idea of minimum intervention. In practical terms, these do not necessarily come into conflict, especially when diversion itself is viewed favourably, but they do offer different underlying justifications for the use of out-of-court disposals as well as implying different substantive content. Consequences follow, of course, for our understanding of what constitutes a 'successful' outcome,

as well as the determination of the criteria for judging which young people, and in which circumstances, should be eligible for diversionary measures. It is relatively easy to 'fudge' this kind of conceptual tension when times are good, but less so when one or other (or all) of these potential justifications for diversion come under attack. The idea of 'success' is further confused in the current climate with the progressive introduction of 'payment by results' into the criminal justice arena, and the associated potential for the incorporation of a new range of instrumental and cost-based criteria against which intervention programmes will be judged (see Yates, 2012).

Secondly, and in light of the issue of its somewhat confused conceptual and empirical justifications, it seems reasonable to ask whether other factors are also influencing the move towards less use of formal interventions in youth justice; in particular, it does not seem entirely coincidental that the onset of economic difficulties coincided with the onset of the recorded decline in prosecutions in the late 2000s. Of course crime rates have fallen and there have been demographic changes, but these have not been shown to directly affect system-wide patterns of intervention and disposal in criminal justice in the past. And it is clear that recent developments have seen an emphasis on cost saving in youth justice, as elsewhere (National Audit Office, 2010; Ministry of Justice, 2012). If indeed one of the key drivers of the increased use of diversionary measures does prove to be that of financial constraint, this raises very particular concerns about the possible re-emergence of the 'logic of intervention' if and when the economy recovers, with a corresponding expansion of the kind of low level and counter-productive measures associated with New Labour's micro-managerial ethos. The return of 'net-widening' is not inconceivable even now, given past experience.

And thirdly, linked with the wider pattern of reduced funding and its consequences, the associated question arises as to whether or not there is a more deliberate and intentional process at play in the withdrawal of the state from areas of human life with which it is no longer concerned (see Yates, 2012). This kind of trend appears to be legitimised by arguments for 'localism', and the delegation of responsibility (but not funding) for aspects of welfare intervention which have until recently fallen under the remit of central government, such as local welfare assistance and public health. The language of 'community resolution' (Ministry of Justice/Youth Justice Board, 2013, p. 8) to characterise early interventions in youth justice is redolent of the same process of 'de-centralisation'. However attractive this might seem, in principle, if it is associated with an effective abandonment of communities by a government whose agenda is dictated by cost-cutting and retrenchment, then it will in the end constitute just another example of the abandonment of entire sectors of the population, for whom the misdemeanours of the young are just one element of a catalogue of disadvantage and state neglect. Clearly, if payment by results becomes associated with an expectation of achieving more by doing less, rather than doing what is right, the end product of an enhanced role for 'diversion' may be of very limited benefit if this is complemented merely by a loss of resources elsewhere.

The criminal justice system does not operate in a vacuum and the cuts to broader statutory children's services, as well as the voluntary services which provide wrap around services to support this provision, raise important questions regarding how a 'social' context for prevention or desistance will be developed. (Yates, 2012, p. 442)

It is important not to end on an exclusively negative note, however. The establishment of diversion as a legitimate core objective, and the reduction in the use of formal youth justice processes is clearly a welcome development, in both reducing the criminalisation of the young (Kemp et al, 2002),

and, in its wider influence, contributing to a fall in the use of custody (Bateman, 2012). And there are, at local level, a number of examples of good practice, prioritising principles both of *diversion from* the justice system and of *diversion towards* other forms of intervention to enhance young people's well-being and social inclusion (Haines et al, 2013); and it is both these principles which must be sustained in changing circumstances, and in the face of political manoeuvring<sup>i</sup>; specifically in the face of withdrawal of state resources to fund such interventions in the present, and potential 'system creep' in times of economic recovery, in the future. Being right is not enough.

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<sup>i</sup> On several occasions during 2013, government has moved to 'tighten up' the use of cautions, firstly announcing a review in April, and removing the option of a 'simple caution' for a range of serious offences in September.