



University of Portsmouth
Institute of Criminal Justice Studies

Does court attendance for young offenders impact on future
offending: Youth Conditional Cautions vs Referral Orders

Laura Kavanagh

UP822737

October 2017

Dissertation submitted in partial fulfilment of the requirements for:

M.Sc. Criminology and Criminal Psychology

Statement of Originality

Dissertation submitted in partial fulfilment of the requirements for the award of MSc Criminology and Criminal Psychology

Title: Does court attendance for young offenders impact on future offending: Youth Conditional Cautions vs Referral Orders

Submitted by: Laura Kavanagh

Declaration: I confirm that, except where indicated through the proper use of citations and references, this is my own original work. I confirm that, subject to final approval by the Board of Examiners of the Institute of Criminal Justice Studies, a copy of this Dissertation may be placed upon the shelves of the library of the University of Portsmouth or made available electronically in the Library Dissertation repository and may be circulated as required.

Signed:

Date: 5/10/2017

Word Count: 16,487

Abstract

The Youth Justice System (YJS) represents an array of conflicting and contradictory aims values and approaches, as it attempts to reconcile two inherently opposing objectives; to rehabilitate and to punish.

Through its disposals and interventions, the YJS has the power to help or to harm (Wigzell & Stanley, 2015), and while research reveals that some approaches can improve positive outcomes and appear to reduce or prevent reoffending, others can stigmatise, label and subsequently aggravate offending behaviour (Carlile, 2014); an effect seen to worsen the deeper into the system a child gets (McAra & McVie, 2015). Nevertheless, such approaches still dominate the YJS, inhibiting the ability to effectively reduce the offending of those already in the system. One such potentially harmful aspect of the formal YJS processing is the requirement to attend court, with self-reports from children and young people suggesting that court attendance had adversely affected them, both emotionally and behaviourally (Botley, Jinks, & Metson, 2010).

The majority of young offenders attending court receive a Referral Order (RO), a sentence which in practical terms can arguably be very similar to a Youth Conditional Caution (YCC), a disposal which police have the power to impose out of court. This study assesses the impact of court attendance on reoffending for children and young people, through an assessment of the relevant literature and a preliminary study, comparing reoffending rates YCCs and ROs.

The study found more reoffending overall for ROs than YCCs, but the opposite was found when disposals were matched by length (3-4 months), suggesting that for such short disposals, ROs, requiring court attendance may be slightly more effective than YCCs in reducing offending. Due to the small sample sizes however, neither of these effects were found to be statistically significant, highlighting a need for more research to better understand the relationship between these two disposals and reoffending by children and young people.

Acknowledgements

My heartfelt thanks go to Tom Ellis, my supervisor, for all his guidance, support and assistance, and to the YOT manager for his invaluable contributions, in particular for the many hours spent collating the data for my analysis, without which this work would not have been possible. I am so grateful to you both.

Contents

Abstract	
Acknowledgements	
List of tables and figures	1
Glossary of abbreviations	2
Introduction	3
Chapter 1: The Youth Justice System	6
Welfare and Justice approaches	7
Historical overview: past to present	9
Determining disposals	12
Is the current system 'working'?	14
Chapter 2: Research review	16
Failure to meet needs	17
Exacerbating offending	18
Alternative approaches – what works?	20
Court for children and young people	21
Referral Orders and Youth Conditional Cautions	24
Chapter 3: Methodology	28
Research design	29
Data collection procedure	30
Sampling strategy	31
Analysis of data	34
Cost and scale	36
Ethical considerations	36
Chapter 4: Results and Discussion	37
Results	38
Discussion	43
Critical evaluation of methodology	46
Conclusions and recommendations	49
References	52

List of tables and figures

Tables

Table 1: Welfare vs Justice 8

Table 2: YCCs vs ROs25

Table 3: Numbers excluded from sample33

Table 4: Total reoffending for 3-4 month disposals.....38

Table 5: Total reoffending for whole samples38

Table 6: Percentage reoffending for whole samples.....40

Table 7: Percentage increase in reoffending between years42

Figures

Figure 1: Diagram of available disposals..... 13

Figure 2: Reoffending rates by disposal 2014-2015 15

Figure 3: Length of RO and reoffending39

Figure 4: Reoffending by age and disposal 40

Figure 5: Reoffending by gender and disposal 41

Figure 6: Reoffending 2014-2015..... 42

Figure 7: Reoffending 2015-2016..... 42

Glossary of Terms and Abbreviations

Disposal – refers to both outcomes via sentences given by the court and out of court disposals issued by police

CMS – Case Management System

FTE – First time entrant

OOCD – Out of court disposal

RO – Referral order

YCC – Youth conditional caution

YOP – Youth Offenders Panel

YOT – Youth Offending Team

YJB – Youth Justice Board

YJS – Youth Justice System

Introduction

The statutory principle aim of the youth justice system (YJS) is to prevent offending by children and young people. Offending is a phase many youth go through and naturally grow out of (Barry, 2010), yet evidence shows that once they have entered the system, many struggle to breakout (Morgan & Newburn, 2012). Contact with the YJS can 'stigmatise and label individuals as offenders' (Carlile, 2014, p. 9) and has been found to increase the likelihood of reoffending (Mcara & Mcvie, 2015), with 37.9% of children and young people currently reoffending within a year of caution, conviction or release from custody (Youth Justice Board, 2017a).

Research shows that court attendance can have a particularly negative effect on children and young people, both emotionally, and behaviourally in terms of heightened offending (Carlile, 2014), making court attendance for children and young people contrary to the aim of reducing offending. The extent to which it has regard to the welfare of the child (as required under s.44 of Children and Young Persons Act 1933), and the 'best interests of the child' (as required by Article 3 of the Convention on the Rights of the Child 1989) is also questionable, particularly when used for first time offenders and minor offending.

Whilst entry into the YJS appears to aggravate offending behaviour, research has shown that diverting from the system has the potential to reduce it. It makes logical sense that youth justice policy should focus on avoiding initial entry into the system wherever practicable, prioritising diversion and reserving court for the most serious and prolific offenders. Yet, while the use of court for children and young people has decreased and the use of out of court disposals increased in the last decade (Youth Justice Board, 2017a), too many children and young people still attend court where it might arguably have been avoided (Carlile, 2014). Of those that do, the vast majority receive Referral Orders, disposals specifically designed for first time offenders, who would generally naturally desist from offending if left unchecked. Intervention through court attendance can hinder this desistance process (Mcara & Mcvie, 2015) and is therefore arguably counterproductive; at best unnecessary and at worst detrimental to the children and young people it concerns and to society.

Aim

This study aims to assess whether there is a differential impact on young people's reoffending, based on whether or not they attend court, through a comparison of outcomes for two similar disposals: Youth Conditional Cautions (imposed out of court), and Referral Orders (imposed by the court).

Objectives

- To introduce the YJS, provide a historical overview and summarise the current system today.
- To review the evidence-based literature that suggests current youth justice policy, in particular court attendance, is ineffective.
- To empirically evaluate the impact of court attendance on reoffending rates for young people receiving ROs.

Chapter summaries

These objectives will form the basis for the following 4 chapters:

Chapter 1 – The Youth Justice System

This chapter introduces the YJS, addressing its origins, the competing welfare and justice approaches underpinning the system and their influence throughout history, as well as the changes in legislation and policy that have led to the mixture of conflicting aims, values and approaches that characterise the contemporary YJS. The 'disposals' available for children and young people who offend are reviewed, and the process by which they are imposed, and the current status in terms of figures of those in the system and reoffending rates is provided, concluding that the current system is not effectively achieving its aims.

Chapter 2 – Research Review

This chapter addresses the reasons the YJS is failing to meet its aims through a review of the relevant theory and research, which suggests contact with the system can be stigmatising and result in increased offending. The effect of court attendance in particular is then addressed, and the ways in which it may contribute towards higher reoffence rates discussed. The RO, the lowest level court disposal available in many cases, is compared with the YCC, a similar disposal given out of court, and the value and necessity of a court hearing for the imposition of an ROs is questioned. The case is made that there is value in establishing the immediate impact of court attendance on reoffending.

Chapter 3 – Methodology

This chapter outlines the research design used for the study in Chapter 4. It explains the chosen methods, the reasons they were selected and their strengths and weaknesses, and how the data was collected and the final samples selected, making them as comparable as possible. It then describes how reoffending for YCCs and ROs will be measured and analysed

and the variables it will be analysed by, before briefly addressing the scale, cost, and ethical considerations involved in the research.

Chapter 4 – Results and Discussion

The results of the study are analysed, presented and explained. The key findings, and implications regarding the impact of court attendance upon children and young people receiving ROs are discussed, as well as how they fit with the reviewed literature. A critical evaluation then addresses the limitations of the study, and acknowledges the factors that could not be controlled but may have influenced the results.

A final conclusion follows, summarising the study and making recommendations for valuable further research which will shed more light on the findings in the study, and may eventually promote a more efficient YJS.

Chapter 1

The Youth Justice System

The Youth Justice System

This chapter introduces the Youth Justice System (YJS), addressing its origins, the main competing approaches and providing a historical overview. It then turns to the current YJS: its aims; approaches; procedures and disposals, and the extent to which current policy and practice is effective in meeting the aims of the YJS.

Youth crime is commonly construed as a recent phenomenon. It is widely perceived that, whilst children in the past were well behaved and orderly (Pearson, 1983), today they pose a substantial 'threat to the social order' (Hendrick, 2015 p.3). Young people have been seen as 'problematic' for the last century, however, and concerns over their behaviour are found to date back to the 17th century (Newburn, 2007) when childhood was first recognised as a separate life stage (Morgan & Newburn, 2012).

The treatment of children and young people in the Criminal Justice System (CJS) has been a long process of development since this time, with the creation of a separate Youth Justice System (YJS) in the early 20th Century, before which children were not differentiated from adults in criminal proceedings (Morgan & Newburn, 2007). As our understanding of childhood has broadened, we have developed an appreciation of children's unique needs, informing law and policy and effecting major changes which safeguard their treatment and underpin the YJS of today. Among these are the protection of children under the age of 10 from criminal responsibility (still remarkably low however compared to other countries e.g. Sweden at 15 (Morgan & Newburn, 2007)), the separation of children from adults in the system through the introduction of separate youth courts, sentences and prisons, the statutory requirement to have regard to a child's welfare when sentencing (under s.44 Children and Young Persons Act 1933) and the requirement to consider the 'best interests of the child' when making decisions that will affect them (Article 3, Convention on the Rights of the Child 1989). Policy on tackling youth offending has varied greatly over the decades, but could until recently be broadly categorised into two main competing approaches; Welfare and Justice.

Welfare and Justice approaches

The welfare/justice debate relates to two competing theories of crime: positivism; which understands offending behaviour to be caused by internal and external factors, and classicism; which understands offending behaviour as a rational choice (Cavadino & Dignan, 2009). These opposing theories place different levels of culpability upon the child offender, translating into two very different models by which to tackle youth offending in the YJS. The main differences are outlined in the table below.

Table 1: Welfare vs Justice.

	Welfare	Justice
Offending Behaviour is:	Determined, caused by biological, psychological and environmental factors	A rational choice based on free will. Individuals offend where the benefits outweigh the costs.
Offender viewed as:	Victim	Threat
Concerned with:	Needs of child	Deeds of child
Role of YJS:	Address underlying issues and provide help	Assess culpability and punish
Sentences should be:	Flexible, tailored to individual	Proportionate to crime, Determined and consistent
Offending prevented by:	Early intervention	Deterrence by making the costs of crime outweigh the benefits

(Adapted from: Cavadino & Dignan, 2009, p.698; Morgan & Newburn, 2012, pp.505-506, Hendrick, 2003)

The more dominant approach has drifted from one to the other throughout the history of the YJS dependant on the social and political contexts of the time (Hendrick, 2015), a justice agenda used to justify harsher policies when crime is seen to be excessively high, and a welfare agenda used to justify a softer, more lenient approach when harsh policies are seen to be ineffective (Bernard & Kurlychek, 2010). Neither paradigm is ever implemented in a pure form (Muncie J. , 2015) with all youth justice systems representing a compromise between the two (Morgan & Newburn, 2012), but recent history has generally favoured a more punitive, justice orientated approach, owing largely to the politicization of YJ since the early 1990's (Yates, 2010).

Public perceptions of crime, built on media representations, crime statistics and governmental agenda itself, have a huge impact on policy (McLeod, 2012), motivating and influencing the political agenda no matter how ill-informed (Goldson B. , 2010). When crime appears high, a 'culture of fear' is created, generating a public demand for more punitive sentencing (Simon, 2007, p. 17). How the government endeavour to deal with crime is therefore highly influential on the way the public vote, encouraging governments to set the harshest policies in a bid to instil public confidence and therefore gain votes (Pratt J. , 2007). Youth justice policy is therefore 'vulnerable to shifts of public mood' (Garland, 2001, p. 172), which unfortunately does not always prioritise the best interests of the child (Morgan & Newburn, 2012). The

following section provides a brief historical overview of the changes in youth justice policy from the early YJS to the current YJS today.

Historical overview: past to present

Up to 1960s - Welfarism was largely dominant in youth justice up until the 1960's. A wealth of welfarist legislation was implemented up to this point, which: curtailed the use of prison for under 14's and restricted it for 14-15 year olds; stressed reformation as a key motivation for imprisonment of 16-21 year olds; prohibited capital punishment for under 18's, abolished 'physical' punishment, raised the age of criminal responsibility to 10 years from 8, and introduced care proceedings as an alternative to custody (Morgan & Newburn, 2007). Youth crime was reportedly rising throughout the period however, during the war and yet more sharply afterwards from 1955 onwards, despite the introduction of the 'welfare state' which provided employment and raised standards of living (both of which were expected to result in a decrease); and anxieties were rising over new 'youth cultures' (Hendrick, 2015).

1970s - The rising crime rate was attributed to the permissiveness of the 1960's (Hendrick, 2015) resulting in a 'significant backlash against welfarism across criminal justice and penal policy' (Morgan & Newburn, 2007, p. 1026). The 1970's witnessed the replacement of the welfare based system with a justice orientated one, focusing firmly on punishment. Making little use of the care proceedings and community based penalties, immediate custodial sentences more than doubled, from 3,000 in 1970 to 8,000 by 1980 (Morgan & Newburn, 2007, p. 1026).

1980s – A tough, justice focused rhetoric continued, with the introduction of 'short sharp shock' detention regimes introduced under the Thatcherite government (Morgan & Newburn, 2007), while at the same time in an effort to reduce the high rates of young people in the system and save on the extortionate cost of custodial terms, a successful 'reductionist' approach was implemented (Rutherford, 1984, cited in Goldson, 2009, p.689). Legislation limited the use of custody and shortened sentences and diversion from court was prioritised (Morgan & Newburn, 2007). A huge decline in incarceration and an increase in community based penalties followed, resulting in a fall in the overall rate of youth offending (Goldson, 2009).

1990's - By the early 1990's youth crime was seen as endemic, with wide media reporting on the matter creating a 'moral panic', further fuelled by the James Bulger murder in 1993 (Morgan & Newburn, 2007). Children were regarded as unruly and the public lost faith in the system (Goldson, 2009). Political attitudes towards young offenders subsequently hardened, influencing a punitive turn in policy and law for decades (Bateman & Hazel, Youth Justice Timeline, 2017). Despite the relative success of the 1980's, the past was declared a 'failure'

(Muncie & Hughes, 2002). The rate of diversion declined (Smith, 2015), and The Justice Secretary (Michael Howard) claimed 'prison works' and incarceration became routine, with new legislation allowing courts to issue tougher sentences (Bateman & Hazel, Youth Justice Timeline, 2017). The use of custody over the next decade rocketed, increasing by 90% from 1992 to 2001 (Nacro, 2003 and 2005, cited in Goldson, 2009), a system the 1996 Audit Commission's review found to be 'uneconomic, inefficient and ineffective' (Morgan & Newburn, 2007, p.1031).

'New Labour' brought wide ranging reform across the system after their election in 1997, creating a 'New Youth Justice' with the introduction of the Crime and Deviance Act 1998 (CDA 1998), the framework of which still largely defines the YJS today (Hopkins Burke, 2016) The CDA 1998:

- Set a clear primary aim for the YJS; 'to prevent offending by children and young persons' (s.37(1)) and obligated all those within the YJS to have regard to this aim (s.37(2)).
- Created local authority Youth Offending Teams (YOTs) (s.39), with individuals from criminal justice and welfare agencies, including health, probation, police, education and social services to tackle offending by children and young people holistically (Morgan & Newburn, 2012).
- Created the Youth Justice Board, a non-departmental public body, to oversee and monitor the performance of the YJS (including YOTs) and set targets and guidelines.
- Abolished 'doli incapax' a rule claiming children under 13 do not know right from wrong (therefore protecting them from criminal conviction).
- Created more orders, including the anti-social behaviour order ('ASBO') which could be issued for 'nuisance' behaviour.
- Replaced the existing cautioning system with two new disposals (Reprimands and Final Warnings) available for minor offending, effectively operating a 'two strikes and you're out' system (Morgan & Newburn, 2007).

Tony Blair pledged to be 'tough on crime, tough on the causes of crime' promising to tackle the underlying issues associated with offending whilst also 'responsibilising' young offenders, with a commitment to 'evidence-based practise' (Hopkins Burke, 2016). A 'corporatist' approach (as opposed to strictly welfare/justice) was now evident, less concerned with the causes of crime and more concerned with its effective management (Pratt, 1989). Central to this was the identification and management of 'criminological risk' (Hopkins Burke, 2016 p.231), through intervention in the lives of offenders but also those deemed 'at risk' of

offending, via 'early prevention' schemes operated by YOTs (Morgan & Newburn, 2007). The abolition of 'doli incapax', the liberal use of anti-social behaviour orders targeting 'nuisance' behaviour and the new disposals for minor offending which escalated young people through the system resulted in a vast expansion of the YJS which was 'overburdened with minor crime' (Audit Commission 2004, cited in Muncie, 2015). A further 'relentless' rise in numbers followed, peaking at 110,000 first time entrants (FTEs) in 2007 (Youth Justice Board, 2017a) and over 3,000 youth in custody in 2008 (Morgan & Newburn, 2012).

2000's to present - the economic collapse in 2008 sparked an 'era of austerity' a more 'cost-effective' YJS became a priority (Hopkins Burke, 2016). The YJB set targets to reduce FTEs the use of custody and reoffending rates and greater emphasis was placed on 'diversion' from the system (Smith, 2015). Out of Court Disposals (OOCs) were again modified by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which scrapped Reprimands and Final Warnings, replacing them with the current Cautioning system (see below) without limit to the number one can receive, and influencing a significant decline in the use of remand to custody (Hopkins Burke, 2016). Consequently, a reduction in numbers has been achieved to great effect. Between 2006-2016, the number of FTEs fell by 83% to 18,300 (Youth Justice Board, 2017b) and the number of children and young people in custody fell by 66%, leaving an average of 960 children and young people detained for the year ending March 2016 (Youth Justice Board, 2017a).

These figures, policies and approaches do not necessarily reflect changes in youth crime therefore, but result from changes in youth justice policy (Bateman, 2015), dictated by governmental agenda and economic climate, influenced by statutory aims and principles and challenged to balance the often opposing moral obligations of 'the needs of the offender against the rights of the community and the broader public interest' (Mcara & Mcvie, 2015, p. 133), culminating in a resultant mix of several conflicting aims, values and obligations. As Muncie (2015, p. 301) states;

'In the twenty-first century discourses of protection, restoration, punishment, responsibility, rehabilitation, welfare, justice, retribution, diversion, human rights, just deserts, risk management, cost-effectiveness and prevention exist alongside each other in some perpetually uneasy and contradictory manner'.

It is the temporal weight given to each of these aims and values that largely determines how offending by children and young people is dealt with at each stage of the judicial process by the YJS, which for Taylor (2016, p. 49) currently remains a system of 'justice with some welfare'. This process is considered in more detail below.

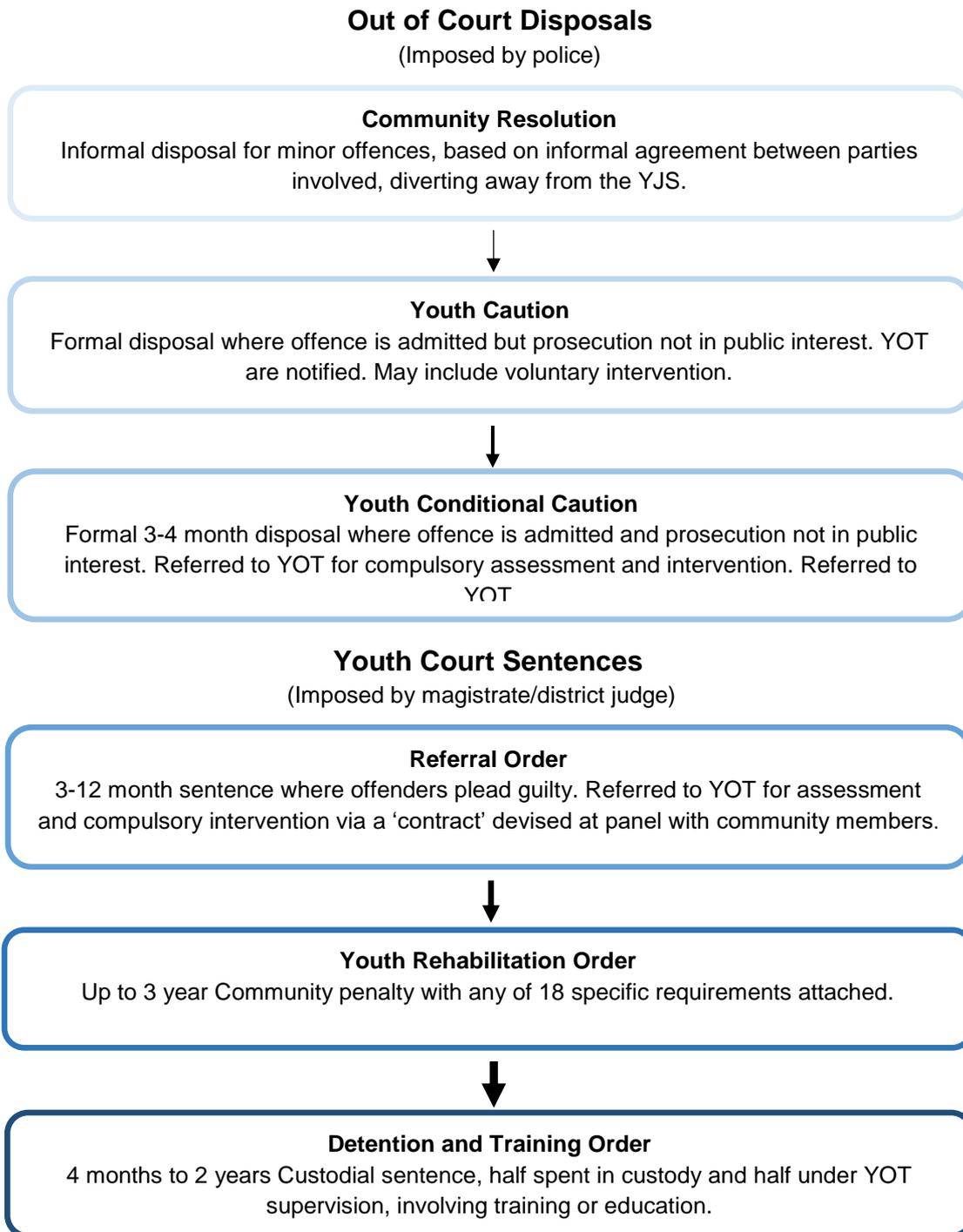
Determining disposals

When a young person is first arrested, the police in conjunction with the Crown Prosecution Service and Association of Chief Police Officer's Guidance (assisted by the local YOT in most cases) must decide whether or not to divert from the formal system, impose an OOCB or to charge to court, after which sentencing decisions lie with the magistrate or district judge in a Youth Court, or judge in the Crown Court (YJB & MoJ, 2013). A decision is reached using professional judgement based on a gathering of information from YOT Partners: Education; Health; Children's Social Care, an assessment by the YOT, and the 'gravity score' of the offence. Gravity score is calculated using the 'gravity matrix', based on the severity of offence and taking into consideration aggravating and mitigating circumstances (e.g. whether the offence was admitted and previous offending history), a score of 1 usually indicating diversion and 4 indicating charge (ACPO, 2013). The YOT assessment uses 'Assetplus', a tool offering a detailed and holistic assessment of every aspect of the young person's life: needs; risk and protective factors; skills; attitudes etc. to determine the young person's likelihood of reoffending and level of 'risk' they pose to the public, in order to establish the most appropriate disposal and interventions (GOV.UK, 2014). The interests of the public and views of the victim are also taken into account (YJB & MoJ, 2013).

Where the decision is made to charge a young person, they are typically tried and sentenced in the 'Youth Court' which makes special adjustments for the needs of children and young people (GOV.UK, 2017), but in exceptional circumstances (e.g. for very serious crimes) a young person may be tried in the Crown Court (Sentencing Council, 2017a). Again, sentencing decisions in court are made at the discretion of the sentencer, guided by a YOT assessment and considering aggravating and mitigating factors. New sentencing guidelines place greater emphasis on the personal background, age (developmental and chronological) and circumstantial factors of a young person when sentencing, yet simultaneously (and contradictorily) asserts that these should not 'undermine the fact that the sentence should reflect the seriousness of the offence' (Sentencing Council, 2017a).

When choosing the most suitable disposal, whether OOCB's or court sentences, the decision maker must regard the statutory aim of preventing offending and the welfare of the young person. The diagram below shows the most common contemporary disposals, increasing in severity from top to bottom.

Figure 1: Diagram of available disposals.



(Adapted from: YJB & MoJ, 2013; Sentencing Council, 2017b)

A 'no further action' option is also available out of court, whilst alternative 'first tier' penalties available in court include a discharge, conditional discharge, fines and reparation orders. When tried in the Crown Court, young people may receive longer custodial sentences unavailable to the youth Court: 'detention' for specified serious offences (under s.91 of the Powers of Criminal Courts Act 2000); 'detention for life' or 'extended sentence of detention'

where such an offence applies and the individual is deemed a threat to society, or a mandatory life sentence where found guilty of murder (Sentencing Council, 2017b). This study will focus on YCCs and ROs specifically, which will be discussed in more detail in Chapter 2.

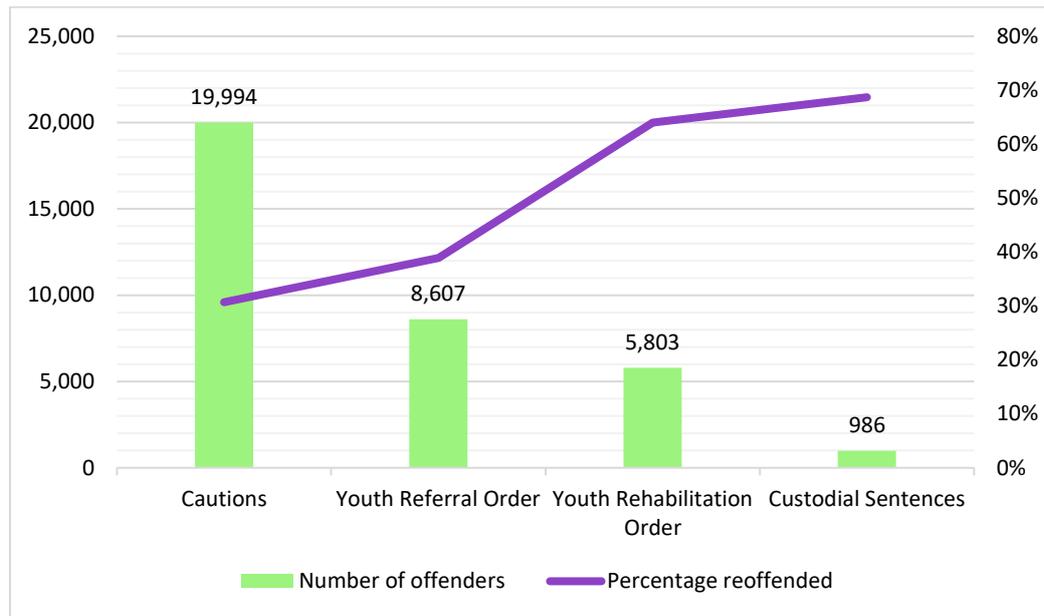
Is the current YJS 'working'?

As shown in the figures above, the overall reduction of children and young people in the system over the last decade is substantial, particularly for FTEs. Overall 'proven offending' is thereby reduced, by virtue of recording less youth crime and diverting more from the system.

Reoffending, however, tells a different story. While numbers of reoffenders and reoffences have decreased following the reduction of FTEs (Youth Justice Board, 2017a), the reoffending rates for those children already in the system remain 'astonishingly high' (Taylor, 2016), with 37.9% of those cautioned, convicted or released from custody in 2014-15 reoffending within a year, increasing over the last decade from 33.6% in 2004 (Ministry of Justice, 2017). The frequency with which they reoffend and the percentage of those entering the system being convicted has also increased (Youth Justice Board, 2017a), demonstrating that the system is clearly failing to meet its aim of preventing offending for those already in the system (House of Commons, 2013).

This failing can, in part, be explained by the fact that a reduction of FTEs leaves a higher concentration of more 'serious' offenders in the system, with the greatest needs, more challenging behaviour and a greater propensity to reoffend (Youth Justice Board, 2017b). These remaining individuals are therefore the most difficult to rehabilitate (Taylor, 2016). However a closer examination of reoffending by disposal type implies alternative possibilities as to why reoffending rates remain so stubbornly high. The graph below shows the proven reoffending rates by disposal for those cautioned, convicted or released from custody in 2014-2015.

Figure 2: Reoffending rates by disposal 2014-2015^{1 2}



(Adapted from: Ministry of Justice, 2017)

As evident in the graph, while reoffending is relatively high in all disposals, there is a strong correlation between the intensity of disposal and reoffending rates. As the disposals increase in intensity, although fewer children and young people are represented, higher levels of reoffending result, with Cautions at 30.7%, Referral Orders 38.9%, at Youth Rehabilitation Orders at 64% and Custodial sentences at 68.7%. Moreover, these official statistics only provide a 'crude estimate' of the total amount of reoffending, as they only represent 'proven reoffences', i.e. those caught and brought to justice (Morgan & Newburn, 2012). The actual reoffending figures may be considerably higher. This exemplifies a well-documented (and concerning) fact that the deeper into the system a child is, the more difficult it is for them to get out (Mcara & Mcvie, 2015), raising the question of whether current policy and practice is not only failing to prevent reoffending, but could also aggravate it.

This proposition will be explored in the following chapter, which will consider the theory and research suggesting particular aspects of the YJS are counterproductive towards reducing offending, with particular attention to the use of court for children and young people.

¹ These figures reflect all disposals given between 1st April 2014 and 31st March 2015, with reoffending measured for a full year from the start of their order.

² 'Cautions' include both Youth cautions and Youth Conditional Cautions.

Chapter 2

Research Review

Research Review

This chapter reviews the research and theory exploring the ways in which contact with the system, and in particular court attendance, can stigmatise, label, and contribute towards, rather than prevent, offending. It then considers the similarities between two disposals: YCCs and ROs, suggesting that court attendance for ROs may be detrimental.

The previous chapter demonstrated that the YJS is failing to reduce offending amongst those within the system. Studies conclusively show that formal processing through the YJS has minimal effect on reducing offending, often maintaining current levels at best, and aggravating them at worst (Huizinga, Schumann, Ehret, & Elliot, 2003). The following section explores the reasons this may be the case.

Failure to meet needs

Individuals within YJS's across advanced countries tend to be defined by the following common criteria: mostly young men from minority ethnic groups, unemployed or casually employed with poor pay, under educated and with strained family relationships (White & Cunneen, 2015). Many are in care, suffering from mental health issues and learning difficulties and often come from 'some of the most dysfunctional and chaotic families where drug and alcohol misuse, physical and emotional abuse and offending is common' (Taylor, 2016, p.2). Young offenders are typically 'victims' as well as 'perpetrators' (Cunneen & Goldson, 2015) of crime, with the likelihood of children being victimised significantly higher than for adults (Morgan & Newburn, 2012), but also of social injustice and inequality (White & Cunneen, 2015), with many living in poverty (Goldson, 2010). These individuals represent the most severely disadvantaged and 'structurally vulnerable' within society (White & Cunneen, 2015). By the time they reach the YJS, these children and young people have too often been failed by other children's services (Wigzell & Stanley, 2015), which, stretched beyond capacity, are only able to provide help for the most 'acute cases' (Carlile, 2014). Failure to address these underlying issues undoubtedly contributes to their offending behaviour (Taylor, 2016).

This is the case with poverty in particular, and whilst it is not the case that all poor children offend, or that all offending children are poor, there exists an irrefutable correlation between the two (Goldson 2010, p. 65), with crime found to be a reaction to, or a way of coping with the social and economic deprivation suffered (White & Cunneen, 2015). The two most common crimes committed by children and young people last year (2015-2016) were violence against the person (26% of the total) and theft and handling offences (14%) (YJB & MoJ, 2017). Kramer (2000) found that violence can occur as an indirect result of poverty, inequality and social exclusion, as these conditions inhibit social institutions from providing the

social support and informal control necessary to curtail offending behaviour. Violence by these children and young people, Kramer argues, can be expressive, a result of frustration and humiliation at their social and economic exclusion, but is frequently instrumental, occurring in pursuit of monetary or other financial gain of which they are deprived. Similarly, theft can be explained as a way to attain material goods that impoverished young people cannot obtain legitimately (White & Cunneen, 2015).

These findings support the 'Strain theory' of crime – that when individuals are blocked from achieving goals in life (e.g. unable to achieve the lifestyle valued by society due to poor economic status) it can create 'strain', and criminal behaviour can result as a coping mechanism (Agnew & Brezina, 2010). Yet in the YJS, the link between crime and poverty is often ignored (Grover, 2008), the individual suffering poverty, rather than poverty itself, is seen as the primary problem (Yates, 2010). State intervention remains focused on 'managing' the poor disadvantaged rather than working towards eradicating the root causes (White & Cunneen, 2015, p. 23). The YJS alone cannot meet the needs of these individuals, therefore its goal to reduce offending is arguably unachievable (McAra & McVie, 2007). Not only is the YJS seemingly unable to effectively reduce offending, but theory and research suggests that contact with the CJS is actually associated with higher reoffending levels, suggesting it may, ironically, exacerbate offending behaviour.

Exacerbating offending

The Labelling theory proposes that the application of a 'criminal' or 'deviant' label onto an individual can itself create further deviance (Spencer, 2011). Lemert (2009) argued that temporary and often trivial offending, or 'primary deviance', is committed for a host of subjective reasons and is widespread, normal and unproblematic. Indeed one of the most consistent findings in criminological research reveals that offending is a 'phase' that the majority of children and young people naturally grow out of, peaking in the mid to late teens and decreasing thereafter, known as the age-crime curve (Fabio, Tu, Loeber, & Cohen, 2011). Offending only becomes problematic in 3-4% of young offenders (Hopkins Burke, 2016). Occasionally, however, primary deviance is singled out by society and the individual labelled as 'criminal' or 'deviant' (Becker, 1963). The label defines society's expectations of the individual and they become ostracised from normal society, limiting their opportunities to engage in lawful activities such as employment (Cavadino & Dignan, 2009). The labelled may eventually 'accept and conform' to the label imposed upon them, and adjust their self-identity accordingly (Becker, 1963), thus further negative behaviour or 'secondary deviance' ensues by means of necessity in order to survive (Ugwudike, 2015). Consequently, such labelling

creates a 'self-fulfilling prophecy', ironically creating that which it is intended to discourage or prevent (Ugwudike, 2015) thus exacerbating offending behaviour.

The social learning theory of crime also suggests that contact with the system could aggravate offending behaviour, through enabling children and young people to socialise with other anti-social peers. Social Learning theory, well supported through academic research, proposes that behaviour is learned and imitated through such association, reinforced through rewards such as approval, social status and materialistic gain (Akers & Jensen, 2010).

That contact with the system is criminogenic is well supported empirically across many jurisdictions (McAra & McVie, 2007). For example, Farrington (1977) found higher rates of reoffending for young people that had been publicly labelled (by conviction) than for those who had self-reported delinquency but not been labelled. Findings from the Edinburgh Study of Youth Transitions and Crime showed similar results; when formally apprehended individuals were statistically matched at 3 levels of intervention by 'offence seriousness' and 'frequency' with individuals that avoided formal apprehension, those formally apprehended reoffended at a higher rate (Mcara and McVie, 2015). The study found that recidivism rates rise with increased frequency and intensity of intervention, and that those drawn furthest into the system yield the highest recidivism rates (Mcara and McVie, 2007), following the trend seen in Figure 2 (Chapter 1). Interestingly, this applies irrespective of how welfare or justice based the intervention is (McAra & McVie, 2007).

While the above studies compared apprehended against non-apprehended groups, the Ministry of Justice (2012) replicated these findings with reliably matched groups in terms of offending history that received differing levels of intervention. A statistically significant increase in reoffending was found for young people receiving higher intensity community penalties than those that received lower and for custodial sentences when compared with high level community penalties. This was in spite of the fact that no difference was found in reoffending based on length of custodial sentence, suggesting that contact with the YJS is 'inherently criminogenic', and can prevent natural desistance (McAra & McVie, 2007). In his review of the YJS, Taylor, (2016) states that we must be careful that our youth 'justice' system does not cause *injustice*. However, as argued by McAra & McVie (2007), systems that are damaging to young people and inhibit their ability to change cannot deliver justice and therefore the extent to which these practices have regard to their statutory obligations (to regard the welfare and best interests of the child) is seriously questionable.

There is a clear need for real, evidence based policy and practice in youth justice, but as seen in Chapter 1 (despite vows to be evidence-based), evidence is often used selectively,

produced or interpreted to fit, rather than inform, governmental agenda, or seemingly ignored (Phoenix, 2010). Significant evidence however suggests alternative approaches may more effectively reducing offending.

Alternative approaches – what works?

While contact with the formal YJS can be harmful, some forms of intervention hold significant value, such as those based on 'desistance'. As mentioned above, the vast majority outgrow crime, making maturation arguably the single most effective tool in reducing offending (Maruna, Coyle, & Marsh, 2015). This desistance is not merely the result of aging however, but is based on a combination of complex social and internal processes that enable and support the cessation of offending (Maruna, Coyle, & Marsh, 2015). Recent research with individuals having previously been referred to a YOT identified stable familial relationships, emotional support, changed friendship groups, and most significantly, a good relationship with a professional adult, as important factors in helping them move away from crime (HM Inspectorate of Probation, 2016a). A desistance based approach promotes such positive life factors, as opposed to focusing on offending behaviour and offender deficits, thereby empowering children and young people to change (Maruna, Coyle, & Marsh, 2015). This information, rather than political agenda provides a much stronger, 'evidence based' foundation on which to formulate policy and programmes that work with young offenders to more positively effect change.

There is some evidence of desistance theory being used in contemporary youth justice, for example the AssetPlus assessment tool used by the YOT employs the principles of desistance theory to assist YOTs in personalising desistance support in interventions (HM Inspectorate of Probation, 2016a). However not all interventions and youth justice processes are desistance focused, particularly so the deeper into the system one gets as the focus tends to become more 'retributive', despite the fact that these are the ones who arguably need the most help to desist.

Diverting children and young people from the YJS is theoretically supported, as it reduces the impact of labelling and negative socialisation by reducing exposure to the YJS (Wilson & Hoge, 2012), and its efficiency is widely supported empirically. For example, a meta-analysis of 45 studies comparing the effectiveness of a range of diversion programmes (formal and informal, and with and without intervention) against 'traditional YJS processing' (through the courts), Wilson and Hoge (2012) found that all types of diversion are significantly more successful than 'traditional processing' through the YJS. Another meta-analysis by Petrosino, Turpin-Petrosino, and Guckenburg, (2010) also found diversion substantially more effective than formal system processing for the majority of cases, although an apparent exception was

identified for FTEs, for whom a crime-reduction effect was witnessed. Generally however, these findings, together with the studies outlined above, promote a 'minimal intervention, maximum diversion' approach to youth justice (McAra & McVie 2007, p. 319) to efficiently maximise reductions in offending and benefit the futures of the children and young people concerned and subsequently society.

Diversion moreover is 'considerably cheaper' than formal court processing (Wilson & Hoge, 2012), the cost of each 'court event' for children and young people estimated to fall between £400 and £6,800 dependant on offence type in 2011 (National Audit Office, 2011). Given the current economic climate, it may be this incentive, rather than the benefit of the child and society, that drives the increased use of diversion in recent times (Bateman, 2015). However, despite its increased usage, diversion is not used consistently (Taylor, 2016), with many individuals still 'slipping through the net', appearing in court for minor offending where prosecution is not 'in the public interest' (Carlile, 2014), suggesting diversion could still be used more widely. Doing less rather than more to tackle offending takes 'courage...on the part of policy makers' however (McAra & McVie 2007 p. 340), and as seen throughout history, diversion rapidly loses favour and is overlooked when governments need to be seen as tough on crime, regardless of its success (Tibbetts, 2012).

The theory and research reviewed above makes a clear case that, whilst diversion (both from the system altogether, and from formal processing through court via OOCs) effectively reduces offending, contact with the system can be stigmatising, with increased levels of intervention correlating with higher reoffending rates. Still, it remains unclear from these conclusions which specific aspects of the process cause stigmatisation and encourage increased offending. The obvious difference between diversion and formal prosecution however is the process by which the disposal is administered; where diversion is handled by the police, those charged must attend court.

Court is the first formal procedure children and young people are exposed to in the YJS, and while the extant research on the impact of court upon children and young people is limited, that which does exist suggests that attending court can have a detrimental impact on the child's welfare and could contribute to reoffending. The next section explores the ways in which appearing in court can have negative repercussions.

Court for children and young people

As outlined in Chapter 1, children and young people are usually tried and sentenced in the Youth Court, except where charged alongside an adult, or for very serious or grave crimes e.g. firearms offences and homicides, for which they are sentenced in the Crown Court with

thenpower to impose longer custodial sentences (Sentencing Council, 2017a). The youth court is intended to be less formal than magistrates and crown courts; there is no jury, the public cannot attend and the child or young person is addressed by their first name (GOV.UK, 2017).

When children and young people are questioned on their experience of attending court, however, it is clear that even the youth court can be a traumatic experience (Hazel, Hagell, & Brazier, 2002). Attending the youth court was described as 'frightening' 'scary' and 'worrying' by service users (Botley, Jinks, & Metson, 2010), whilst Carlile (2014) found that attending the crown court can be a 'terrifying' ordeal for children and young people (Carlile, 2014). Although this has been used to justify the use of court, claiming it will 'scare' children away from committing further crime (Petrosino, Turpin-Petrosino, & Guckenburg, 2010), terror is not found to have a deterrent effect on reoffending, making the Youth Court potentially harmful to children and young people, and the Crown Court wholly inappropriate (Carlile, 2014). Furthermore, court appearances have been found to have a stigmatising effect on children and young people (Lewis, 2016) which can lead to further offending. A study by McGrath (2009), asking children to indicate how stigmatised they felt by their court experience immediately after the event, found that those who felt most stigmatised were indeed the most likely to go on to reoffend.

The number of young people sentenced in court has fallen considerably in the last decade, with 38,400 cases in the youth court march 15-16, a 71% decrease over the last decade (2006-2016) (Youth Justice Board, 2017a). As with the decrease in numbers in the wider system, however, this has resulted in a higher concentration of children with complex needs (Wigzell & Stanley, 2015). As established, meeting these underlying needs is paramount in decreasing offending, yet this is increasingly difficult for courts, who lack the infrastructure to address underlying welfare needs and who's primary focus is on the offence, determining guilt or innocence, and sentencing (Wigzell & Stanley, 2015), making court an inappropriate recourse for such individuals.

The use of this adversarial system for children and young people limits the input the child can have in decisions that directly involve them, interfering with the legal right of a child to have their views heard and considered in decisions that affect them (under Article 12 of the United Nations Convention on the Rights of the Child). Hazel, Hagell and Brazier (2002) found that children reported frustration in being 'marginalised' during the court process, where people unfamiliar with their individual circumstances were making decisions for their future.

Some level of engagement is essential for youth proceedings to be effective, however, enabling sentencers to understand the behaviour of young offenders, and offenders to understand the consequences of their actions, yet the Independent Parliamentarians Inquiry into the Operations and Effectiveness of the Youth Court Review (Carlile, 2014) found young people's engagement to be minimal, primarily due to a lack of understanding. Understanding of the proceedings may be limited by virtue of their immaturity and the fact they are still developing, and by the range of neurodevelopmental problems children in the system often suffer (which are not screened pre-before court, so may not be identified), making children very vulnerable (Carlile, 2014), and leaving them feeling confused and intimidated (Botley, Jinks, & Metson, 2010). Interviews with children who had attended court found an apparent language barrier with children and young people often unable to comprehend what the magistrate was saying, worsening their confusion and making them feel isolated (Hazel, Hagell, & Brazier, 2002), ultimately resulting in disengagement.

Disengagement was also reported by children and young people to be further heightened by a perceived lack of respect and fair treatment from court officials (Botley, Jinks & Metson, 2010). That children and young people feel they are treated fairly is of key importance in attaining their engagement and therefore supporting their desistence (Carlile, 2014), through increasing the likelihood of compliance with the conditions of their disposals (Schiff, 2007). Perceived unfair treatment however can result in non-compliance and even aggravate offending behaviour, a finding supported by Hinds (2007) who found that unfair treatment of children and young people by the police damages the perceived legitimacy of their authority, resulting in a negative impact on compliance.

Carlile (2014, p. 53) found however that children and young people often did not feel they were treated as individuals in court proceedings, and in one child's words, it just 'seems like they don't care'. Botley Jinks and Metson (2010) found that how children perceived the way they were treated directly effected their behaviour, self-reporting to have acted positively when treated respectfully, but being 'angry and frustrated' when not and responding negatively. Others reported feeling disempowered, becoming 'passive' or 'giving in' (Hazel, Hagell, & Brazier, 2002). Both Hazel et al (2002) and Botley Jinks and Metson (2010) saw these issues (language barriers, lack of respect and not having much input over the decision making process) in terms of perceived 'power differentiation', existing between adult court officials and child offenders, which is not easily rectified within the constraints of the current system.

The reviewed literature suggests that the court process is ineffective in meeting the aims of the YJS (Carlile, 2014) and can be detrimental towards the welfare of children and young people and may aggravate their offending behaviour. Court attendance could, therefore,

potentially contribute towards the increase in offending witnessed between those formally prosecuted and those diverted. Where the offence of a child or young person is very serious in nature and likely to receive a custodial sentence, and/or the defendant pleads 'not guilty' necessitating a trial, court may admittedly be the most appropriate course of action. Yet such cases are exceptional, with only 6% of all children and young people charged to court last year (2015-2016) receiving a custodial sentence, and only 25% receiving a Youth Rehabilitation Order (Youth Justice Board, 2017a) (see Figure 1, Chapter 1). The vast majority, 43%, received the lowest level disposal available to the court with intervention – a Referral Order (RO).

Referral Orders and Youth Conditional Cautions

ROs, introduced by Powers of the Criminal Courts (Sentencing) Act 2000, are the mandatory sentence where a child or young person appears in court for the first time and pleads guilty to an imprisonable offence, except where the court proposes a discharge, conditional discharge, a hospital order or custody, or where the sentence is set by law (Sentencing Council, 2017a), thus it is the order most first time offenders receive (Watkins & Johnson, 2010). ROs are also discretionary where previous offending history exists (Sentencing Council, 2017a).

As briefly mentioned in Chapter 1, ROs are a referral to the YOT. Whilst the court sets the length of the order (between 3-12 months), the terms of the order are determined at a youth offending panel (YOP); a meeting between the individual and panel members, representative of the community (HM Inspectorate of Probation, 2016b). At the YOP a mutual 'contract' is devised between the offender and community panel members to address the offending behaviour. Limited research with service users suggests that panel meetings were generally viewed as positive experiences (Botley, Jinks, & Metson, 2010). ROs are claimed to be 'consistently the most effective sentence' in terms of reducing offending (HM Inspectorate of Probation, 2016b), (unsurprising, given it is the least intensive disposal available), yet despite the apparent success of panel meetings, ROs still produce higher proven reoffending rates than diversionary disposals. This is the case even when compared to the highest level, most comparable OOC, the Youth Conditional Caution (YCC).

Introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, YCCs represent the highest level of disposal one can receive out of court. It is used as an alternative to more formal prosecution, offering children and young people a chance to escape the stigmatisation of further formal contact with the YJS (Antonopoulos & Winterdyk, 2003), yet once implemented they have much in common with ROs. The table below briefly summarises the similarities and differences.

Table 2: YCCs vs ROs.

	YCC	RO
Who is it for?	10-17 year olds where offence is admitted and prosecution is possible but not in the public interest	10-17 year olds who plead guilty to an imprisonable offence, mandatory for most first time offenders (as above)
Available for which offences?	All offences, but CPS must authorise for indictable only	All charged offences unless punishment set by law
Length	3-4 months	3-12 months
Disposal Imposed by	Police	Magistrate or judge
Referred to	YOT	YOT
Role of YOT	<ul style="list-style-type: none"> - assess young person - recommend appropriate conditions to Police - deliver disposal 	<ul style="list-style-type: none"> - assess young person - recommend appropriate requirements and level of supervision to Panel members - deliver disposal
Conditions/requirements	<ul style="list-style-type: none"> - Decided by Police and YOT - Must be agreed by young person - Should include reparative elements (towards victim or community) and rehabilitative elements to reduce offending 	<ul style="list-style-type: none"> - Contract negotiated at Youth Offending Panel with community members, young person and occasionally victim - Young person must agree and sign contract - Should include reparative activity (towards victim or community) and rehabilitative interventions to reduce offending
Compliance	Is compulsory, non-compliance can lead to prosecution for original offence	Is compulsory, non-compliance can lead to a return to court
Disposal is 'spent'³	Once conditions completed.	Once contract completed.

(Adapted from: YJB & MoJ, 2015; YJB & MoJ, 2013)

³ Under Rehabilitation of Offenders Act 1974, both ROs and YCCs are considered 'spent' once completed, disclosable only for: further criminal procedures; enhanced disclosure checks for specific jobs e.g. working with the vulnerable; passport control situations or if specific offence cannot be filtered (HM Inspectorate of Probation, 2016a; YJB & MoJ 2013).

As demonstrated in Table 2, ROs and YCCs can be very similar in terms of delivery and consequences once imposed. Although YCCs do not attend a YOP and ROs can be longer in length, it is arguably the way the disposal is imposed; out of court, or by the court, that differs most between these disposals. As the higher level disposal, ROs may reflect more serious offences than YCCs in general, but (as mentioned in Chapter 1) this is not always the case, given all the other factors considered when deciding whether to charge. Seriousness can be gauged by the length of RO however, with Sentencing Guidelines recommending: 3-5 months reflecting 'low' seriousness; 5-7 'medium'; 7-9 'high' and 9-12 'very high' (Sentencing Council, 2017a), making 3-4 month ROs the lowest level sentence available to courts in many cases, and the most comparable to YCCs.

Given the findings from the literature above, the decision to charge or not may be critical for the child or young person affected, with court attendance shown to have potentially damaging consequences for the individual and their propensity to reoffend. Together with the extortionate expenses attached to such proceedings and the fact that 'minimum intervention' strategies are reported to be more efficient in all such areas, the value of court attendance, at least for ROs and especially for those of the shortest term and lowest level of seriousness (i.e. 3-5 months) is questionable. This is particularly so because YCCs are available as an out of court option and are very similar once implemented, but have a higher success rate in terms of reduced reoffending.

Goldson (2010) argues that any interventions that do not reduce offending and can be harmful are irrational and require scaling down if not abolishment, while Carlile (2014) argues that court should be used only as a last resort for the most serious and prolific offenders. Children should be dealt with informally out of court wherever possible (Taylor, 2016), but even in cases where a prosecution is deemed necessary, it has been proposed that a court hearing might be avoidable (Wigzell & Stanley, 2015). This is especially the case for ROs given for first time, minor offences where the disposal is pre-determined and its terms are not even set by court (Taylor, 2016). It makes logical sense to remove the imposition of such disposals from court, achievable through Taylor's suggestion of 'Childrens Panels'; a meeting between the child or young person, magistrates, family members and YOT workers in an informal setting, where the causes of offending behaviour are investigated and a plan of action to address the behaviour and its causes is decided upon (2016). This would retain the successful element of the YOP whilst reducing the risk of causing harm to the child, and give children and young people a voice in the decision making process which they so often do not have in court proceedings.

Although the evidence above implies that court attendance may result in increased levels of offending, this proposition has not yet been empirically established, highlighting the need for research in this area. The preliminary study in the following chapter aims to contribute towards this, by comparing reoffending rates for ROs against substantively similar YCCs. Should the study determine a correlation between court attendance and higher levels of reoffending, this may provide evidence to support the implication that the court process specifically is harmful, and is a contributory factor in differential reoffending rates found between YCCs and ROs. Furthermore, it would suggest that court attendance may be counterproductive to the principal aim of the YJS and its obligation to regard the welfare and best interests of the child, and that avoiding court could better serve the interests of the young person and society.

Chapter 3

Methodology

Chapter 3: Methodology

This chapter outlines the research design used in the study, addressing the chosen methods, data collection and sample selection. The variables by which the data was explored and how the data was analysed is explained, and the scale, costs and ethical considerations of the research are briefly addressed.

The research reviewed in Chapter 2 found a correlation between increased levels of intervention and higher reoffending, and suggested that court attendance may be a contributing factor. This new research takes this a step further, by comparing the reoffending rates of young people receiving two similar disposals but entering the YJS at two contrasting points: YCCs, imposed out of court; and ROs, imposed by the court, to determine the impact of court attendance specifically on reoffending. Given the correlation between increased levels of intervention and reoffending, the expectation might be that reoffending rates are higher for ROs than YCCs.

Research design

The research is a comparative, fixed design study using secondary data analysis (Robson, Real World Research, 2011). It uses quantitative data, previously recorded by a YOT on their Case Management System (CMS). This method was chosen as it allowed for the quick collection of a large amount of data, which may not otherwise have been achievable in the time frame using alternative methods, and because quantitative data analysis is useful for identifying relationships and trends in a preliminary study such as this (Robson, 2011).

Secondary data analysis holds many advantages, particularly for this specific piece of research. It saved on time and material resources as the data already existed (Robson, Real World Research, 2011); while minimising costs. It is unobtrusive, avoiding the ethical considerations which accompany the collection of primary data through surveys, interviews and questionnaires, (particularly where minors and sensitive information are concerned as with this study) (Robson, 2011), yet it allowed access to data that is outside the public domain and is therefore otherwise inaccessible. Using quantitative secondary data also limits the degree of 'researcher bias' that may occur when collecting primary data, especially where the data is qualitative and requires interpretation, as the researcher is removed from the process and the quantitative data is clear, allowing greater objectivity (Robson, Real World Research, 2011).

There are however some limitations to the approach. Using only quantitative secondary data analysis means any trends discovered will lack explanation, and by aiming to identify general

patterns in behaviour, fixed designs 'cannot capture the subtleties and complexities of human behaviour' (Robson, 2011, pg. 83). However at this early stage, the chosen method and design was deemed sufficient to explore the research questions.

Other common issues facing secondary data users relate to the purpose the data was originally collected for, where the sample population were derived from and how it was collected (Robson, 2000). As the data was originally recorded for administrative purposes (rather than for previous research) containing all RO and YCC records within the geographical area and has not been subject to any previous analysis, these issues are avoided. Consideration should also be given to the quality of record keeping that the data relies upon (Robson, 2000, p. 100). Biased data or record keeping is unlikely in this case however, as the YOT CMS from which the data was taken from is primarily used for the YOT's own records, and are guided by YJB National Standards (Youth Justice Board, 2013) and YOT Data Recording Requirements (Youth Justice Board, 2016). Therefore they can be assumed to be largely reliable.

Data collection procedure

The data was collected from the CMS of a YOT in England in 6 sessions, with the assistance of one of the YOT Managers. The data collection procedure gathered details of all YCCs and ROs imposed within the geographical location in the two financial years 1st April 2014 – 31st March 2015 and 1st April 2015 – 31st March 2016, allowing reoffending to be measured for a full year from the start of each disposal⁴, as is the commonly used measure for 'proven reoffending' used in official statistics (YJB & MoJ, 2017). Two whole years of data were used to avoid any unintentional effects of seasonality, and maximise the sample size and reliability of results. Data from the year 2013-2014 was not collected as YCCs were newly introduced in 2013 and results may reflect 'teething issues' experienced as the system adjusted to the new disposal, and could therefore be unreliable. The year 2016-2017 was not collected as many of the cases within this year have not yet reached the 12 month follow up period.

Information gathered for each case included: the subjects date of birth (for case identification purposes only); gender; start date/panel date; disposal type; length of order (for ROs); whether they had previous offences; whether they had reoffended within following year; and, if so, whether by virtue of a further 'physical offence' or by non-compliance with order.

⁴ Reoffending is measured from the 'Panel Date' for ROs (the day the contract was signed and Order began). No equivalent date was available for a YCC, so the 'start date' is used, reflecting the date the case was allocated to a YOT Officer.

The sample of YCCs and ROs within the 2 year period were selected by applying the following filters to the CMS records:

- 'Youth Conditional Caution'
- 'Referral Order'
- '1/4/2014 - 31/3/2015'
- '1/4/2015 - 31/3/2016'

As a result of this process, the CMS provided the following variables for each case:

- date of birth
- gender
- 'start date' (for YCCs)
- 'panel date' (for ROs)

The additional required information for each case (length of ROs, previous offending, reoffending within year and by 'physical offence' or non-compliance) were not easily retrievable using CMS filters however, requiring the individual files of each young persons' case history to be entered and searched manually. Other occasional problems included some 'missing' data from cases such as relevant dates which again had to be retrieved manually, and the occasional glitch such as filters erroneously including data relating to individuals that were outside the responsibility of the YOT in question, or in one case the inclusion of a 'Youth Rehabilitation Order' (rather than a YCC/RO). Although this process was time consuming, such problems were anticipated given that the CMS is intended as an administrative record, and was not designed with such research in mind.

Erroneous data was removed as the data set was cleaned, together with unnecessary or personal information (e.g. names) to protect the identity of the individuals represented. Any non-numerical data (e.g. relating to reoffending and non-compliance) was coded to allow for frequencies to be easily interpreted, before further exclusions to the data set were made to maximise comparability of the samples.

Sampling strategy

The original samples included all YCCs and ROs given in the two year period between 1st April 2014 and 31st March 2016. As noted above, YCCs and ROs represent the two most similar disposals that are imposed differently by the system i.e. as an OOCd or a court sentence. However it should be borne in mind that these are necessarily comparison groups rather than matched groups (as outlined in Chapter 2) and will vary by the characteristics of each

individual case. In order to measure the effect of the court process as accurately as possible therefore, it was important to maximise the comparability of the two samples. Thus, the inclusion criteria were originally limited to:

- first time entrants to the YJS (FTEs)
- Cases under 18 a year post disposal start date (10-16 year olds)
- RO of only 3-4 months in length (to match the length of YCCs)

Cases falling outside these parameters were (initially) excluded.

FTEs

FTEs are those young people receiving their first formal disposal. Formal disposals include; Youth Caution and YCC (or Reprimand and Final Warning before 2013), RO, Youth Rehabilitation Order, Detention and Training Order, and rarely, a s.91 Order. Those within the sample that had a known previous offence which had received a formal disposal were excluded, because their previous offence and/or disposals may have had a bearing on their future likelihood to reoffend, rather than the current disposal or the way it was imposed.

It should be noted that FTE status does not guarantee the cases within the samples have had no previous offences at all; it could simply be that they have never been caught or apprehended. Alternatively, they could have previously received a community resolution or voluntary disposals for previous offending, been charged for an offence and found not guilty, or avoided being charged for an offence due to lack of evidence. In such cases, despite previous encounters with the justice system, individuals are still classed as FTEs. It is impossible to identify how many cases in the sample this applies to, or to quantify the impact such previous contact may have had upon the results.

10-16 year olds

Children are dealt with by the YJS up to the date of their 18th birthday, after which they are officially dealt with as adults by the CJS, therefore YOT's do not have records to indicate whether or not further offending occurred after this date. For the purposes of measuring reoffending in the year following the start of their disposal therefore, this study includes only those children that had not yet reached their 18th birthday by this date. Age at start of disposal was calculated for each case using 'birth date' and 'start date' for YCCs and 'panel date' for ROs in Excel, and all individuals who were 17 or over were removed from the sample.

3-4 month ROs (to 3-12 month ROs)

As noted in Chapter 1, it may be the case (although certainly not always) that those given ROs have committed more serious offences than those given YCCs, and that this could affect the

reoffending rates between disposals (i.e. more serious first offences could be more likely to reoffend). It was not possible to obtain the 'offence type', 'gravity score' or 'risk' of further offending for each case, due to time constraints and changes in policy regarding the way risk was calculated between the two years the sample was derived from, making the inclusion of this factor beyond the scope of this study.

The length of RO may also indicate the seriousness of offence however with longer orders generally reflecting more serious offences, although again as discussed in Chapter 2, seriousness is merely the starting point in determining length of order with many other factors considered. Different lengths of orders and levels of seriousness can also receive varying amounts and intensity of supervision and intervention, which may also influence the likelihood of reoffending. For these reasons, it was originally intended to use only ROs of 3-4 months (as is the duration of all YCCs) in the interests of maximising the comparability of the samples and controlling for any unintended effects (positive or negative) that length of order or seriousness of offence may have had on reoffending.

Further exclusions from the sample included: one RO where an order was revoked before a contract was signed; and another where a contract was not signed for an unknown reason, making it impossible to measure reoffending from the date of contract signing.

These exclusions resulted in a substantial loss from the anticipated sample, as outlined in the table below, leaving the final figures for each sample at 72/108 YCCs against only 16/68 ROs.

*Table 3: Numbers excluded from sample*⁵

	All disposals	Previous Offence/s	Case 17+	Disposal Revoked	Contract not signed	Disposal 4months+	Total in sample
YCCs	108	28	8	0	N/A	N/A	72
ROs	68	21	10	1 ⁶	1	19	16

These figures were used for the initial analysis in the following chapter, however the small sample size of ROs created difficulties for the analysis. Therefore, the 19 ROs over 4 months

⁵ Some of the cases excluded fitted into more than one category, (e.g. had previous offences and turned 18). In such cases they are only represented under the first applicable category (e.g. 'previous') as exclusions were made in order left to right.

⁶ This case was revoked before contract was signed, however two more cases revoked at a later date remain in the sample as reoffending occurred before revocation.

in length were reintroduced to provide a more balanced and reliable sample size of 35 for analysis (see 'length of order' below, and results Chapter 4).

Analysis of data

The collected data was then used to explore the relationship between YCCs and ROs and re-offending, presented in Chapter 4. Due to the relative simplicity of the data collected, the reasonably small sample sizes and the straightforward nature of tests required, statistical analysis software was not deemed necessary for data analysis. Instead, statistical significance of the difference in reoffending rates between the YCC sample and RO sample was tested for using a Chi-Square (χ^2) test in Excel.

Several extraneous variables were identified that could have an effect on the results:

- Length of Order (ROs)
- Age
- Gender
- The year (2014-2015/2015-2016)
- Whether reoffending was by virtue of non-compliance

Reoffending for each disposal was therefore further analysed by each of these variables to identify any trends and assess any impact they may have on the results.

Length of order

As outlined above, the inclusion of longer ROs in the sample may affect the overall RO reoffending rates due to the likelihood of them reflecting more serious offences, and receiving more intensive and longer supervision. Therefore, the relationship between length of referral order and reoffending for the RO sample was assessed and presented and the bearing this may have had on results was taken into account.

Age

The age of the young people in each sample population may have unintentionally affected the reoffending rate. For example, if it was found that a particular age group within the sample had greater propensity to reoffend, and that age group received more of one disposal type than the other. Recent statistics indicate 10-14 year olds had slightly higher overall reoffending rates in the year ending March 2015 than 15-17 year olds (Youth Justice Board, 2017a), while theoretically the age-crime curve suggests those at the top end of the scale (16 year olds for the purposes of this study) may be more highly represented. The mean and mode age were calculated for each disposal, and then for those who reoffended, or did not, within each

sample. A t-test was then run using Excel to measure for a statistically significant difference in means between the groups.

Gender

There is a clear gender imbalance in the overall sample (20 females to 87 males) but it is important to look into any potential effects gender may have had on overall reoffending and by disposal. If a substantial difference was identified between male and female reoffending by disposal, it could mean that different disposals or how they are imposed affect males and females differently, and would hold implications for which disposals, and how implemented, are best suited to each gender to reduce reoffending. The percentage of reoffending was calculated for each gender and disposal and results presented below.

Year

As the data was derived from two different years (2014-2015 and 2015-2016) it is possible that the years may differ from each other in some unknown way which could inadvertently have affected the results, so a comparison was made between the two years involved to check for consistency. Similar figures in terms of cases for each disposal and reoffending rates would give more validity to the study and make it more representative (although representation is limited to only the geographical area involved in the study), whereas a discrepancy could highlight the potential for other factors impacting on the findings: changes in policy; economic factors; policing 'targets'; staff numbers in the youth offending team, etc. Reoffending rates for each disposal across each year were calculated and displayed on a graph.

Non-compliance

'Reoffending' is generally assumed to mean an individual has committed a further 'physical offence'. However for both a YCC (once agreed to) and an RO (once contract is signed), the agreement is legally binding and the young person must comply with their disposal. Breaching it, even through missed appointments or refusal to participate, is an offence of 'non-compliance' which can result in a YCC being sent to court and charged for the original offence (Youth Justice Board and Ministry of Justice, 2013), or an RO being returned to court for resentencing (Sentencing Council, 2017a). This distinction is important, because if the reoffence was through non-compliance rather than a further 'physical offence', it is possible that these findings may be more reflective of the young people's attitudes towards their treatment by the system and perception of fairness (as research suggested in Chapter 2), rather than the individuals propensity to reoffend. Cases that reoffended by non-compliance were therefore calculated for each disposal.

Costs and scale

This is a small scale, preliminary study. Although literature exists on the impact of court attendance for children and young people, much is theoretical or relies on self-report studies. There is little research that compares reoffending rates for out of court against court disposals for children and young people, and none that specifically assesses the impact of court attendance on reoffending for ROs, as compared with YCCs. This preliminary study aims to highlight any findings of interest for further study that could eventually influence the way the YJS imposes disposals on children and young people.

Costs were limited due to the research methods chosen. No participants or resources were required, and minimal travel was necessary, meaning financial expenses were low. The greatest costs involved in the study were in terms of time, both on the part of the researcher and also a staff member of the YOT, who spent several hours over 6 days assembling, anonymising, formatting and cleaning the data set to put it into a workable format for the study.

Ethical considerations

The lack of direct contact with the individuals the cases within this study relate to meant that ethical considerations were limited, however the data collected is sensitive in that it relates to offending behaviour and criminal activity, and contains personal information. For this purpose, to ensure the research was conducted ethically:

1. 'Informed consent' had to be gained from the YOT Management, as the data used in the study is the property of the YOT, and is not in the public domain. A request for permission to access and use the data along with a full explanation as to the purpose of the study and how the data was intended to be used was put in writing to the YOT Management before permission was granted.
2. All data used had to be fully anonymised before to ensure the protection of identity of the young people the information in the study relates to. This was easily achieved by removal of given and family names from the data set, set as well as case management system specific reference numbers.

Ethical approval of the research was sought and granted by Portsmouth University independent Ethics Committee, prior to the commencement of data collection.

Chapter 4

Results and Discussion

Chapter 4: Results and Discussion

This chapter presents the findings of the study by disposal and by each variable and briefly explains them. A discussion of the findings assesses observations and implications in relation to current policy and practice and research outlined in Chapters 1 and 2, and concludes with a critical evaluation of the study.

Results

Reoffending by disposal

Table 3 below shows the initial findings of reoffending rates for all 3-4 month disposals.

Table 4: Total reoffending for 3-4 month disposals.

	YCCs	ROs
Total in sample	72	16
Number reoffended within year	26	5
Percentage reoffended within year	36.11%	31.25%

These initial findings are intriguing, suggesting the inverse of what was expected; slightly more reoffending among YCCs than ROs. The RO sample of only 16 cases was too small to test for statistical significance (a minimum of 30 cases are required (Robson, 2011) but are nevertheless worthy of further investigation to determine if they imply a wider or significant trend.

In order to increase the sample size, and in the interests of more accurate further analysis, the 19 ROs of over 4 months in length but otherwise viable were reintroduced and are included in the RO sample in all analyses hereafter. The revised figures including these longer orders are presented in Table 4.

Table 5: Total reoffending for whole samples.

	YCCs	ROs
Total in sample	72	35
Number reoffended within year	26	15
Percentage reoffended within year	36.11%	42.85%

Despite still only having less than half the sample size of the YCCs, the results now show more reoffending for ROs; the addition of longer orders increasing overall RO reoffending by 11.6%. A χ^2 test could now be run on the data, which found the difference in reoffending rates between disposals not to be statistically significant at $p < 0.05$; $\chi^2 (1, n = 107) = 0.45, p = 0.50$.

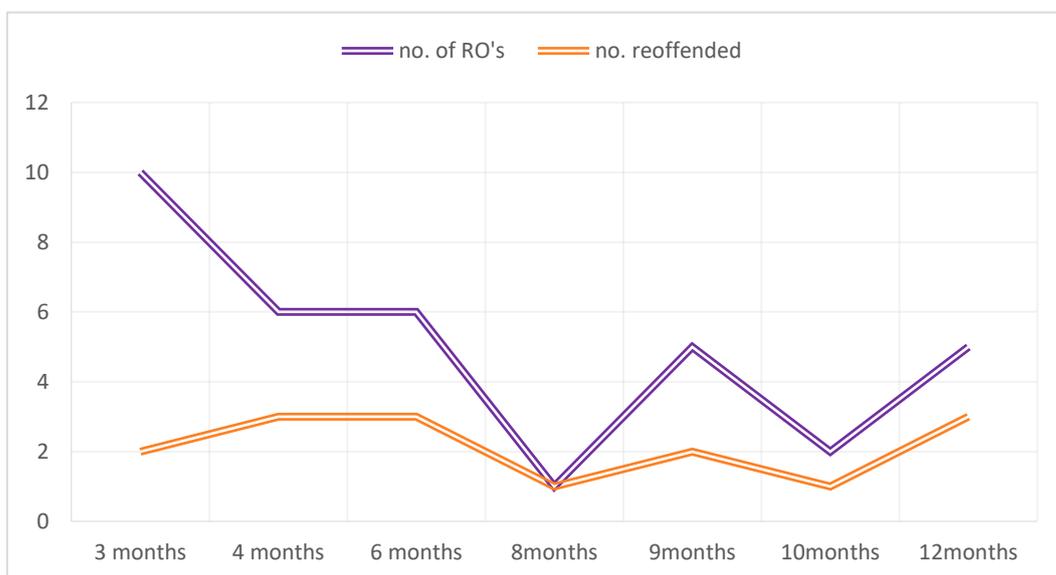
The finding of no statistical significance however may well be due to the fact that the samples are still relatively small, and larger sample sizes are more likely to achieve statistical significance (Robson, 2011, p. 500). Lack of statistical significance does not 'rule out' a relationship between the disposals and reoffending (Robson, 2000, p. 115), therefore the 6.74% difference found should not be assumed negligible, and warrants further investigation.

The substantial increase in reoffending levels for ROs after the addition of longer orders suggests that reoffending may have been negatively affected by the length of order. The impact of order length is assessed below.

Length of order

ROs of 3-4 months in length had a reoffending rate of 31.25%, whilst ROs of 6, 8, 9, 10 and 12 months in length had a much higher reoffending rate of 52.63%. The graph below displays the distribution of length of RO and reoffending to investigate this finding.

Figure 3: Length of RO and reoffending



The graph shows a notable difference in reoffending rate between orders of 3 months in length and all other orders, even when compared with orders of 4 months; an unexpected finding given the short time difference. Reoffending rate does not seem to strictly correlate with length of order (positively or negatively) thereafter.

Again, the small sample size and uneven distribution of cases under each order length limits any conclusions that can be drawn (only 1 case is represented in the 8 month category, and no cases received orders of 5, 7 or 11 months).

The remainder of this section takes a closer look at the data and other extraneous variables that may impact on the results.

Age

Figure 4 below shows numbers of disposals and reoffending rate by age, while Table 6 displays the percentage of overall reoffending per age group.

Figure 4: Reoffending by age and disposal.

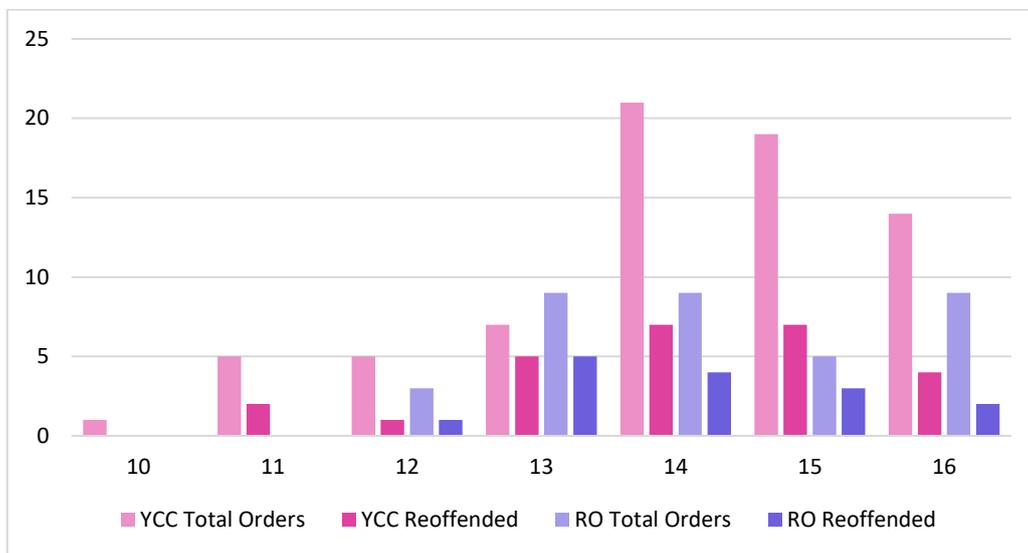


Table 6: Percentage reoffending by age group.

Age	10	11	12	13	14	15	16
Number of orders	1	5	8	16	30	24	23
Percentage of age group reoffended	0%	40%	25%	63%	37%	42%	26%

The average age was very consistent; 14 year olds received the most YCCs with an average age of 14.2, and 13, 14 and 16 year olds the most ROs with an average age of 14.3, however as demonstrated in Table 6, 14 year olds were no more likely to reoffend proportionately.

An independent t-test conducted to compare age of reoffending between disposals showed no significant difference at $p < 0.05$ between mean age of those that reoffended for YCCs (Mean=14.07, Standard Deviation=1.41) and ROs (Mean=14, Standard deviation=1.19; $t(40) = 0.17728, p = 0.860207$, two-tailed).

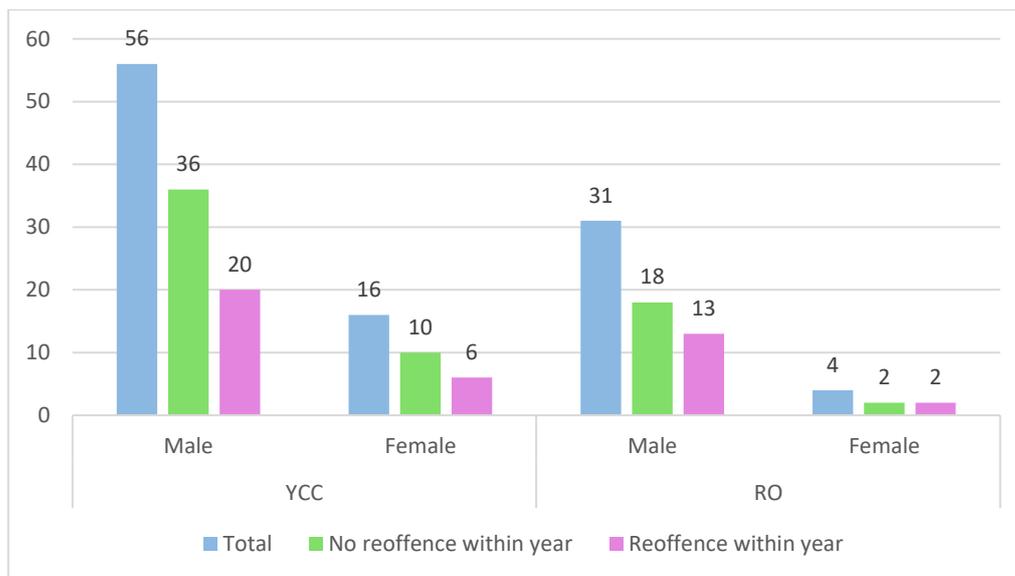
Another independent t-test showed there was neither statistically significant difference at $p < 0.05$ between ages of those who did not reoffend for YCCs (Mean=14.19, Standard Deviation =1.57) and ROs (Mean = 14.4, Standard Deviation=1.42; $t(64) = 0.49829$, $p = 0.61999$, two-tailed). 14 was both the age at which most reoffended, and did not.

Interestingly, the age of 13 had the highest reoffence rate at 63%, and was the only age at which more reoffended overall than did not, showing a higher propensity for reoffending among 13 year olds in this sample, despite there being just over half the amount of 13 year olds to 14 year olds. 15 year olds also reoffended more than did not for the RO disposal, although to a much lesser degree. These results show that the difference found in reoffending between YCCs and ROs is not directly attributable to the ages represented in each disposal and their propensity to reoffend.

Gender

The chart below shows reoffending by gender and disposal.

Figure 5: Reoffending by gender and disposal.



Females are largely underrepresented, comprising only 18.7% of the entire sample; accounting for just 16 of the YCCs (22%) and 4 of the ROs (11.4%). Yet the chart shows a higher proportion of reoffending overall among females for both interventions; 35.7% male and 37.5% female reoffence rate for YCCs, and more dramatically 42% male and 50% female for ROs, giving an overall reoffending rate of 37.9% for males and 40% for females.

Year

The two years of data were then separated and compared, as displayed in figures 6 and 7 below.

Figure 6: Reoffending 2014-2015.

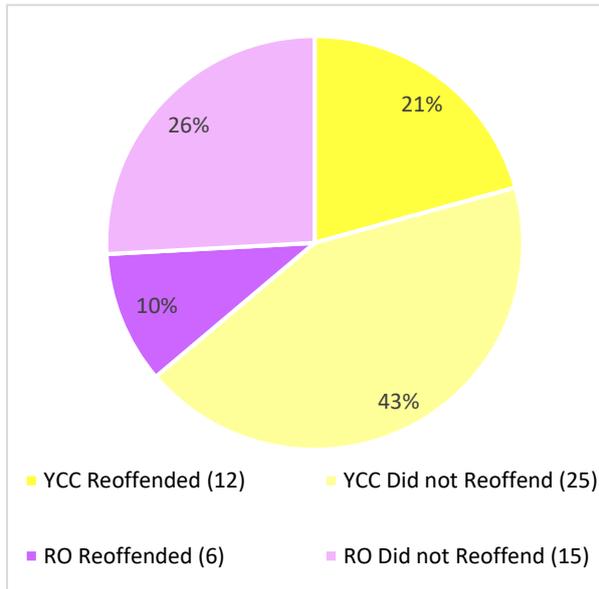
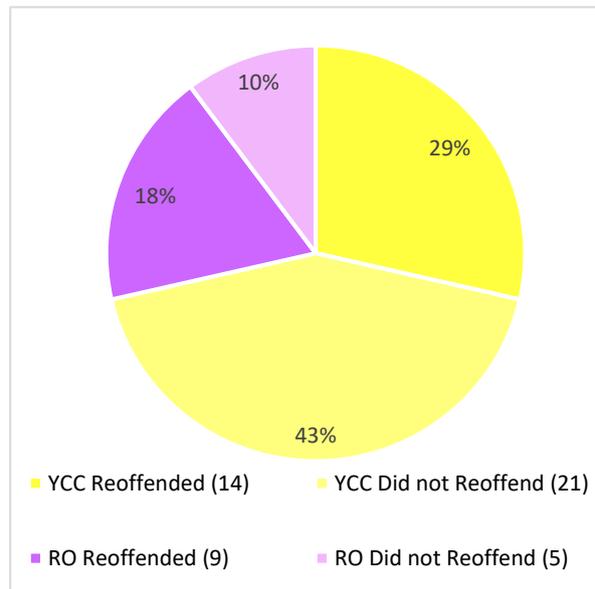


Figure 7: Reoffending 2015-2016.



The charts show a significant difference in reoffending between the two years, with more reoffending for both disposals in 2015-2016. Whereas reoffending for both YCCs and ROs appears to increase by 8% from 2014-2015 to 2015-2016, YCC non-reoffending remains the same at 43%, and RO non-reoffending falls by 16%, making the proportion of those who reoffended for ROs much higher, and shifting the balance so that more reoffended than did not within the RO disposal in 2015-2016. This can be observed more clearly by looking at the percentage increase in reoffending for each disposal per year, displayed in Table 7 below.

Table 7: Percentage increase in reoffending between years.

	2014-2015	2015-2016	Percentage Increase
Overall Reoffending in Year	31%	47%	16%
Percentage of YCCs Reoffended in period	32.43%	40%	7.57%
Percentage of ROs Reoffended in period	28.57%	64.28%	35.71%

The figures in this table show some very interesting findings. Unexpectedly, there was proportionately more reoffending among YCCs than ROs in the year 2014-2015. The opposite was found in 2015-2016.

The most surprising finding however is the dramatic 35.71% increase in reoffending rate for ROs between the two years, especially so as there were less ROs in total in 2015-2016 (16) than in 2014-2015 (21).

Non compliance

There were very few cases that reoffended purely by virtue of non-compliance with their disposal (as distinct from committing further 'physical' offences); only 4/107 cases in the whole sample, 3/72 YCCs and 1/35 ROs. A further 1 YCC and 1 RO both non-complied and committed further offences. These figures were simply too low to allow for any comparison to be made or conclusions drawn. The above findings are discussed in more detail below.

Discussion

The aim of the study was to assess whether court attendance has an impact on reoffending rates, by comparing two similar disposals; YCCs given out of court, and ROs given in court. The study found that young people attending court and receiving ROs had a slightly higher reoffending rate within a year than those that were dealt with out of court and received YCCs; 42.85% and 36.11% respectively. This finding suggests that YCCs were slightly more effective than ROs in preventing reoffending, and raises the possibility that the court process may have had a negative impact, contributing towards – rather than preventing – further offending for children and young people. These findings support the literature and theory assessed in Chapter 2, suggesting court attendance for children and young people holds limited value and is not always necessary, and that greater use of diversionary disposals, or ROs imposed through a process other than court, may be more appropriate.

The 6.74% difference in reoffending rates between the two disposals was not found to be statistically significant, however this could be due to the fact that the sample sizes (particularly for ROs) were still relatively small; a replication study on a much larger scale may well find statistical significance. Whether or not statistically significant, it is arguable that any increase in reoffending rates that may be caused by the YJS process is cause for concern and requires further investigation, considering that the reduction of offending should be their ultimate goal. Even if the difference is proven to be insignificant on a larger scale, the requirement for children and young people to attend court in such cases might still remain questionable, given the detrimental effects it can have and the fact that a similar, less stigmatising disposal is available out of court (in a YCC). Additionally there are the financial costs, time and resources,

defensible only if court can be said to hold valid utility, benefitting the recipients of ROs and/or society. Since this does not appear to be the case, court, at least for relatively minor offending, appears difficult to justify.

The findings of the study are in no way definitive however, and should be interpreted cautiously. A causal relationship cannot be claimed between increased levels of offending and court attendance because of the many other variables that may be at play. The effect of some of these extraneous variables was measured for, and while some found little to no effect, others uncovered some intriguing findings. The results of these are looked at in more detail below.

Length of order

Interestingly, the majority of Referral orders were of 3 months in length – the same length as most YCCs, and the minimum sentence a court could pass once a decision had been made to charge to court. This suggests that the majority of ROs were imposed for offences regarded as ‘low’ seriousness, just passing the threshold for prosecution, and therefore may well have been divertible.

Analysis by length of RO found a marked difference between orders of 3 months in length and all others. Interestingly this difference was noticeable even against 4 month orders, which are little different in length. When YCCs were compared with ROs equivalent in length at 3-4 months, reoffending was found to be slightly higher among YCCs (36.11%) than ROs (31.25%), suggesting that this sample, the shortest referral orders in fact performed better in terms of reducing reoffending than YCCs. When longer orders were reintroduced, the balance shifted to more reoffending for ROs (42.85% overall), revealing that, in this study, ROs over 3 months in length were much less effective than YCCs and 3 month ROs. This finding supports the literature in Chapter 2 suggesting that a ‘minimum intervention necessary’ approach is the most effective in reducing offending.

The addition of these longer ROs into the sample undoubtedly made a major difference in the overall reoffending rate, but the cause remains unclear. As previously mentioned, it may be that longer ROs reflect more serious offences and/or higher levels of intervention and supervision than shorter ones, and that these factors (rather than court attendance) negatively affect propensity to reoffend. Measuring this effect was beyond the scope of this study, however no identifiable correlation was found between length or order and reoffending beyond orders of 3 months in length, which may be expected if reoffending was a directly associated with offence seriousness. It may have simply occurred by chance due to the sample sizes (72

YCCs to only 16 ROs), or be caused by some unrelated factor, such as characteristics or demographics of the individuals receiving the orders.

Age

Age remained consistent across the samples; 14 years olds received the most disposals overall in the cohort, with the mode age at 14 for YCCs and shared between cases aged 13, 14 and 16 year olds for ROs. The mean age for both the YCC and RO samples was 14, and 14 was the mean age of those that reoffended, but also for those that did not reoffend for each disposal. The overrepresentation of individuals aged 14 therefore could not have influenced the difference in overall reoffending between YCCs and ROs however because they were not responsible for the most reoffending. Interestingly, when reoffending rates were calculated by age, it was 13 year olds that had the highest reoffending rate for both disposals at 63%, compared to only 37% of 14 year olds. This was an unexpected finding given that the age-crime curve dictates that offending usually peaks in the late teens, although we may have seen different results had 17 year olds been included in the sample.

Gender

Results by gender appeared to show slightly higher levels of reoffending overall among females (40%) than males (37.9%). This difference contradicts the findings in the most recent official statistics, showing overall reoffending rates at 27.6% for females and 40.3% for males in 2015-2016 (Youth Justice Board, 2017a), and although the figures for males are fairly similar, the female reoffending rate found in this study is substantially higher than that in the official statistics. This higher reoffending rate among females than males was seen in both disposals, at 37.5% compared with 35.7% for YCCs and 40% compared with 50% for ROs.

The difference in propensity to reoffend between gender in the samples was not thought to be responsible for the overall difference in reoffending rates between YCCs and ROs however, because females were largely underrepresented in the samples, accounting for only 16 YCC cases (22%) and just 4 RO cases (11.42%), and they did not receive proportionately more ROs than YCCs. Their presence in the sample therefore had very little effect on the overall reoffending rates. These findings, particularly relating to ROs, may well be due to chance, owing to the small numbers of females represented, or could be specific to the geographical location represented.

Year

Perhaps the most intriguing and unexpected finding was the discrepancy in reoffending between the two years for both disposals, but in particular for ROs. As there are only two years of data, it is difficult to discern which year, if either, represents the anomaly. Government

official statistics for the year 2014-2015 do indicate a similar overall reoffending rate for Cautions, at 30.7%, as compared with 32.43% found in this study ('Cautions' including both Youth Cautions and YCCs) but a 38.9% reoffending rate for ROs - much higher than the 28.57% found in this study for the same year and same follow up period (Ministry of Justice, 2017). This suggests that the low RO figures could be an anomaly or due to some other factor (e.g. the priorities of the YOT and composition of youth justice delivery). It must be noted however that these figures represent all given YCCs and ROs, not just FTEs as used in this study, so cannot be directly compared. Unfortunately the government have not yet produced the statistics for 2015-2016, so it is not possible to compare them with the findings in this study.

Non-compliance

The number of individuals returned to court for non-compliance alone (rather than 'physical' reoffences) were very few (3 for YCCs, and 1 for ROs), and were relatively evenly distributed in respect of the sample sizes, so no analyses or conclusions could be drawn. For these few individuals, it is possible that their non-compliance (and therefore reoffence), may be a reaction to their treatment in the YJS and thus a direct consequence of contact with the YJS as suggested in the research in Chapter 2, but with so few figures and in the absence of case information it is too difficult to determine.

Critical evaluation of methodology

As an exploratory piece of research, the use of relatively small sample sizes were deemed appropriate and sufficient for this study, yet the final sample sizes after necessary exclusions were made were smaller than anticipated, (largely due to the removal of those with previous offences and those aged 17) which limited the amount that could be achieved:

- The removal of 17 year olds meant that despite their large presence in the population (they received the most ROs overall) they were not represented in the study. Had this data been included, it may well have produced different findings. For this reason it would have been useful to explore the possibility of following up these cases within the CJS records so they could be included.
- It would have been preferable, had the sample size allowed, to use only ROs of 3-4 months in length, particularly given the big difference found between 3 month and all other length orders, as the comparability of the samples may have been compromised by the addition of longer orders.

The study endeavoured to make the two disposal samples as comparable as possible, but there remained inevitable differences between cases that were beyond the researcher's control, but may have influenced the results, in particular:

- The subjective life experiences of each case; their background, social circumstances and cultural influences all may affect an individual's propensity to offend. It is not possible to know the extent to which such variables affected the outcome, if at all.

Other extraneous variables that may have affected the outcome of the study were possible to control in principle, but controlling for them was beyond the scope of this research. These included:

- 'Offence type' and 'offence seriousness', which may dictate the likelihood of receiving one disposal over the other, and may be linked to propensity to reoffend (as discussed in Chapter 3). Official Statistics for the year 2014-2015 found that individuals with offences of robbery and theft were the most likely to reoffend, with 44.2% and 43.2% reoffending respectively (Youth Justice Board, 2017a), which could also be the case for the corresponding year of data in this study. If this was the case, and the individuals committing robbery and theft all received ROs, this could explain the difference found in reoffending rates.
- The specific conditions attached to disposals. These are ascribed individualistically, with regard to the circumstances of the offence and according to needs and ability levels, following assessment and application of professional judgement. Thus, objectively similar disposals in terms of length and intervention may be delivered very differently, and have different outcomes. 'Restorative Justice' (getting the victim and offender together), for example, is claimed to be the single most effective requirement, consistently reducing reoffending by up to 14% (Restorative Justice Council, 2015), but its use is limited to cases where there is a clear identifiable victim, and both parties wish to participate. Where these conditions are not met, other less effective methods of reparation are used. It may also be that certain combinations of requirements are more effective as found among adults; while punitive requirements (e.g. curfews and unpaid work) were found to have no long term effect on reoffending alone, they were seen to reduce reoffending when combined with supervision requirements (Bewley, 2012). The effectiveness of each condition will also differ between people; what 'works' for one individual may not for the next.
- Similarly, the level of supervision and intervention can differ between cases, guided by National Standards the 'Scaled Approach' (tailoring frequency, duration and intensity of intervention according to assessment (Case & Haines, 2015)) and again,

professional judgement. Those deemed to be at higher risk of reoffending or causing harm to self or others may meet with an officer more often than those at low risk across the duration of order, and the level of this supervision could affect the likelihood of reoffending. It could well be the case that the ROs in this study received more supervision and intervention (especially those with longer orders), negatively affecting reoffending.

Finally, the results of this study are only representative of the YOT that the cases derive from. The results could relate in some unidentified way to the specific demographics of young people in the area, or alternatively may be attributable to the work of the YOT. It may be that the low RO reoffending rate found in 2014-2015 as compared with national statistics, and the low overall rate of non-compliance is reflective of the effective practice of the YOT staff through building good relationships with the children and young people they support (a key factor for positive change (HM Inspectorate of Probation, 2016a)) and their ability to identify and meet the needs of each child and young person. This may help reduce reoffending, minimise the potential criminalising effects of the court process, and, as the YOT represents a small geographical area, positive YOT interventions with some individuals may have a knock on effect to their peers, resulting in a lower overall reoffending rate for disposals.

Conclusions and Recommendations

The YJS harbours an array of conflicting ideologies and responsibilities which translate into a system of confusing and contradictory aims, values, policies and practice, all sharing a common statutory obligation to regard the principal aim of the YJS – the prevention of offending by young people - and the statutory imperative to have regard to the welfare and the best interests of the child.

This study aimed to assess the impact of court attendance on reoffending rates for children and young people. The evidence reviewed in Chapter 2 suggests that current policy and practice employed in the YJS not only struggles to meet its statutory aims, due to an inability within the system to tackle underlying issues that correlate with offending behaviour, but that contact with the system can also exacerbate offending through stigmatisation and perceived unfair treatment, reflecting a YJS that arguably remains a justice based system with 'some welfare' (Taylor, 2016, p. 49). This is particularly evident in court appearances for children and young people, which research suggests are at best unhelpful and at worst harmful, both towards children and young people's welfare and in terms of their reoffending. Coupled with the incurrance of significant financial costs, this makes court for children and young people of questionable value, especially where similar outcomes could be achieved out of court, as is the case with some ROs and YCCs, suggesting court attendance may not always be necessary.

The impact of court attendance was assessed by isolating and comparing reoffending rates for two similar disposals; YCCs imposed out of court, and ROs imposed by the court. Although not statistically significant, the results suggested slightly lower overall reoffending for YCCs where court was avoided, than for ROs which required court attendance, although this did vary by length of order and year. Overall, this finding supports those of the research, suggesting the court process may have had a detrimental impact on the reoffending rate.

This is a relatively small scale preliminary study, despite the fact it covers 2 full years' data from a single YOT. As such, the findings are not at all definitive, nor can they be generalised, however they do raise some important critical questions for further, larger scale studies to shed more light on the direct effect of the court process on further offending. The simple techniques used in this study would easily allow for replication on a bigger scale, using data from more YOT's (and in the future additional years), allowing for more detailed and reliable analysis. Much larger sample sizes would facilitate:

- Analysis to be restricted to disposals of the same length (3-4 months), making samples more comparable than was possible in this study, and (with a minimum of 30 cases in each sample) a test of statistical significance in reoffending between orders of this length (Robson, 2011, p. 500).
- Analysis by 'offence type' and 'seriousness', which could be insightful as it may identify any correlation between 'type of first offence' or 'seriousness of first offence' and 'propensity to reoffend', and find whether some type of offences that can receive either a YCC or RO are more likely to receive one or the other, which could affect the reoffending rates for each disposal.
- Research into the levels of reoffending by 'non-compliance' between the two disposals. This was not possible in this study, but could be very valuable in understanding the effects of intervention on reoffending rates, following the research in Chapter 2 suggesting lack of engagement may be a direct reflection of children and young people's perception of fairness and attitudes towards their treatment in the system.

It may not be possible to attain much larger sample sizes from one YOT at this point in time however as YCCs are still relatively new. A larger scale replication of this study may therefore be more appropriate a few years down the line, where more data will be available. Other areas of research that merit further evaluation include:

- A comparison between YOT's representing a variety of regions, to identify and explore discrepancies and common trends between different YOT's in reoffending rates for the two disposals, which may shed light on other influencing factors. It would be interesting for example to discover whether the discrepancy in reoffending rates for each disposal between 2014-2015 and 2015-2016 found in this study were specific to region or a national trend, and what may have caused this.
- Further research on the impact of order length. The findings in this study suggest the length of RO could have a serious impact on reoffending rates, even as subtle as the difference between a 3 and 4 months, suggesting in fact that 3-4 month ROs were actually marginally more effective in reducing reoffending than YCCs. If this finding was repeated, it would imply that increased, rather than reduced court attendance is more effective for very short sentences in reducing reoffending.
- Further exploration of the findings relating to gender; that reoffending rate for ROs is considerably higher for females than males. Replicated findings may indicate a difference in the impact of court between gender, or on the impact of the RO

disposal between males and females, harbouring implications for gender consideration in sentencing decisions.

- Supplementary research methods such as semi-structured or unstructured qualitative interviews with both the young offenders and the service staff, to determine their beliefs on how and why court and formal entry into the system affects the likelihood of reoffending, and what might be done differently. Such information may further understanding of the findings while using additional methods provides a much more robust, rounded picture (Robson, 2000).
- A follow-up study, or a longer term study for 2–5 years post intervention, which would be useful to determine the long term effect that the two disposals had on reoffending. This could not rely on YOT data however and would require following up cases that had turned 18 within the adult Criminal Justice System.

It is too early to draw any conclusions or make recommendations for amending the sentencing of young offenders in the YJS based on this research, but this study does provide a relatively clear set of questions upon which to build larger scale evaluations to provide a clearer picture of the effect that the court process can have on reoffending for young people.

Should further studies on a geographically representative scale with better matched samples determine higher reoffending rates for ROs than YCCs, then the practice of court hearings for ROs would be questionable. The findings therefore could materially influence the way disposals are imposed on young offenders in the future. Such evidence would imply that court proceedings for relatively minor first-time offending may be inappropriate, arguably failing several aims and obligations of the YJS (and subsequently our young people), in addition to the accrual of unnecessary costs to society. It is distinctly possible that avoiding court in such circumstances and further increasing the use of OOCs holds advantages for the economy, wider society, and not least, the futures of the young people who have come to the attention of the YJS, thus making further research in this area a very worthy cause.

References

- ACPO. (2013). *Youth Offender Case Disposal Gravity Factor Matrix*. Retrieved from <http://cps.gov.uk/legal/assets/uploads/files/Gravity%20Matrix%20May09.pdf>
- Agnew, R., & Brezina, T. (2010). Strain Theories. In E. McLaughlin, & T. Newburn, *The SAGE Handbook of Criminological Theory* (pp. 96-113). London: SAGE Publications Ltd.
- Akers, R. L., & Jensen, G. F. (2010). Social Learning Theory: Process and Structure in Criminal and Deviant Behaviour. In E. McLaughlin, & T. Newburn, *The SAGE Handbook of Criminological Theory* (pp. 56-71). London: SAGE Publications Ltd.
- Antonopoulos, G. A., & Winterdyk, J. A. (2003). The British 1998 Crime and Disorder Act: A 'Restorative' Response to Youth Offending? *European Journal of Crime, Criminal Law and Criminal Justice*, 11(4), 386-397. doi:10.1163/157181703322759432
- Barry, M. (2010). Promoting desistance among young people. In W. Taylor, R. Earle, & R. Hester, *Youth Justice Handbook: Theory, policy and practice* (pp. 158-167). Cullompton: Willan Publishing.
- Bateman, T. (2015). Trends in Detected Youth Crime and Contemporary State Responses. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2nd ed., pp. 67-82). London: SAGE Publications Ltd.
- Bateman, T., & Hazel, N. (2017). *Youth Justice Timeline*. Retrieved from <http://www.beyondyouthcustody.net/policy/youth-justice-timeline/>
- Becker, H. S. (1963). *Outsiders: Studies in the Sociology of Deviance*. New York: The Free Press.
- Bernard, T., & Kurlychek, M. (2010). *The Cycle of Juvenile Justice* (2 ed.). New York: Oxford.
- Bewley, H. (2012). *The effectiveness of different community order requirements for offenders who received an OASys assessment*. Ministry of Justice.
- Botley, M., Jinks, B., & Metson, C. (2010). *Young people's views and experiences of the Youth Justice System*. Leeds: Children's Workforce Development Council.
- Carlile, A. (2014). *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court*. London: National Children's Bureau.
- Case, S., & Haines, K. (2015). Risk Management and Early Intervention: A critical Analysis. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2nd ed., pp. 100-118). London: SAGE Publications Ltd.
- Cavadino, M., & Dignan, J. (2009). Comparative Youth Justice. In T. Newburn, *Key Readings in Criminology* (pp. 698-708). Cullompton: Willan Publishing.
- Cunneen, C., & Goldson, B. (2015). Restorative Justice? A Critical Analysis. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2nd ed., pp. 137-156). London: SAGE Publications Ltd.
- Fabio, A., Tu, L., Loeber, R., & Cohen, J. (2011). Neighborhood Socioeconomic Disadvantage and the Shape of the Age-Crime Curve. *American Journal Of Public Health*, 101, 325-332.

- Farrington, D. P. (1977). The Effects of Public Labelling. *British Journal of Criminology*, 17(2), 112-125. doi:10.1093/oxfordjournals.bjc.a046802
- Garland, D. (2001). *The Culture of Control*. Oxford: Oxford University Press.
- Goldson, B. (2009). Penal custody: intolerance, irrationality and indifference. In T. Newburn, *Key Readings in Criminology* (pp. 689-697). Cullompton: Willan Publishing.
- Goldson, B. (2010). Research-informed youth justice? In W. Taylor, R. Earle, & R. Hester, *Youth Justice Handbook: Theory, policy and practice* (pp. 64-72). Cullompton: Willan Publishing.
- GOV.UK. (2014, October 15). *Use out-of-court disposals: section 1 case management guidance*. Retrieved from <https://www.gov.uk/government/publications/use-out-of-court-disposals/use-out-of-court-disposals-section-1-case-management-guidance>
- GOV.UK. (2017). *Criminal Courts*. Retrieved from <https://www.gov.uk/courts/youth-courts>
- Grover, C. (2008). *Crime and Inequality*. Cullompton: Willan Publishing.
- Hazel, N., Hagell, A., & Brazier, L. (2002). *Young Offenders' Perceptions of their Experiences in the Criminal Justice System*. London: Policy Research Bureau.
- Hendrick, H. (2003). *Child Welfare: Historical Dimensions, Contemporary Debate*. Bristol: The Policy Press.
- Hendrick, H. (2015). Histories of Youth Crime and Justice. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2 ed.). London: SAGE Publications Ltd.
- Hinds, L. (2007). Building Police–Youth Relationships: The Importance of Procedural Justice. *The National Association for Youth Justice*, 7(3), 195-209. doi:10.1177/1473225407082510
- HM Inspectorate of Probation. (2016a). *Desistance and Young People*. Retrieved from https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2016/05/Desistance_and_young_people.pdf
- HM Inspectorate of Probation. (2016b). *Referral orders - do they achieve their potential? An inspection by HM Inspectorate of Probation*.
- Hopkins Burke, R. (2016). *Young People, Crime and Justice*. Oxon: Routledge.
- House of Commons. (2013). *Youth Justice: Seventh Report of session 2012-13*. London: The Stationary Office Ltd.
- Huizinga, D., Schumann, K., Ehret, B., & Elliot, A. (2003). *The Effects of Juvenile Justice Processing on Subsequent Delinquent and Criminal Behaviour: A Cross-National Study*. Washington DC: National Institute of Justice.
- Kramer, R. C. (2000). Poverty, Inequality and Youth Violence. *Annals of the American Academy of Political and Social Science*, 567, 123-139.
- Lemert, E. M. (2009). Primary and Secondary Deviation. In T. Newburn, *Key Readings in Criminology* (pp. 212-213). Devon: Willan Publishing.
- Lewis, B. (2016). Spotlight On: The Illinois Youth Court Association. *Children's Legal Rights Journal*, 250-252.

- Maruna, S., Coyle, B., & Marsh, B. (2015). Desistance from Crime and the Transition to Adulthood. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2nd ed., pp. 157-169). London: SAGE Publications Ltd.
- McAra, L., & McVie, S. (2007). Youth Justice? The impact of System Contact on Patterns of Desistance from offending. *European Journal of Criminology*, 4(3), 315-345. doi:10.1177/1477370807077186
- Mcara, L., & Mcvie, S. (2015). The Case for Diversion and Minimum Necessary Intervention. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2nd ed., pp. 119-136). London: SAGE Publications Ltd.
- McGrath, A. (2009). Offenders' Perceptions of the Sentencing Process: A Study of Deterrence and Stigmatisation in the New South Wales Children's Court. *The Australian and New Zealand Journal of Criminology*, 42(1), 24-46.
- McLeod, K. (2012). How Punitive are the British Public?: An Evaluation of Kingston University Student's Opinion. *Internet Journal of Criminology*. Retrieved from http://www.internetjournalofcriminology.com/McLeod_How_Punitive_Are_The_British_Public_IJC_Oct_2012.pdf
- Ministry of Justice. (2012). *2012 Compendium of re-offending statistics and analysis*. Ministry of Justice: London.
- Ministry of Justice. (2017, January). *Proven reoffending statistics: April 2014 to March 2015*. Retrieved from GOV.UK: <https://www.gov.uk/government/statistics/proven-reoffending-statistics-april-2014-to-march-2015>
- Morgan, R., & Newburn, T. (2007). Youth Justice. In M. Maguire, R. Morgan, & R. Reiner, *The Oxford Handbook of Criminology* (4th ed., pp. 1024-1060). Oxford: Oxford University Press.
- Morgan, R., & Newburn, T. (2012). Youth Crime and Justice: Rediscovering Devolution, Discretion, and Diversion? In M. Maguire, R. Morgan, & R. Reiner (Eds.), *Oxford Handbook of Criminology* (5th ed., pp. 490-530). Oxford: Oxford University Press.
- Muncie, J. (2015). *Youth and Crime* (4th ed.). London: SAGE Publications Ltd.
- Muncie, J., & Hughes, G. (2002). Modes of youth governance: political rationalities, criminalisation and resistance. In J. Muncie, G. Hughes, & E. McLaughlin, *Youth Justice: Critical Readings* (pp. 1-18). London: Sage.
- National Audit Office. (2011). *The cost of a cohort of young offenders to the criminal justice system: Technical Paper*. National Audit Office.
- Newburn, T. (2007). Youth Crime and Youth Culture. In M. Maguire, R. Morgan, & R. Reiner, *The Oxford Handbook of Criminology* (4th ed., pp. 575-601). Oxford: Oxford University Press.
- Pearson, G. (1983). *Hooligan: A History of Respectable Fears*. London: Macmillan.
- Petrosino, A., Turpin-Petrosino, C., & Guckenburg, S. (2010). *Formal system processing of juveniles: Effects on delinquency*. Oslo: Campbell Systematic Reviews.
- Phoenix, J. (2010). Whose account counts? Politics and research in youth justice. In W. Taylor, R. Earle, & R. Hester, *Youth Justice Handbook: Theory, policy and practice* (pp. 73-82). Cullompton: Willan Publishing.

- Pratt, J. (1989). Corporatism: the third model of juvenile justice. *British Journal of Criminology*, 26(3), 212-233.
- Pratt, J. (2007). *Penal Populism*. Taylor and Francis.
- Restorative Justice Council. (2015, February). *Restorative Justice in Youth Offending Teams: Information Pack*. Retrieved from [https://restorativejustice.org.uk/sites/default/files/resources/files/kn1b_info_packs%20\(2\)%20yot.pdf](https://restorativejustice.org.uk/sites/default/files/resources/files/kn1b_info_packs%20(2)%20yot.pdf)
- Robson, C. (2000). *Small-Scale Evaluation*. London: SAGE Publications Ltd.
- Robson, C. (2011). *Real World Research* (3rd ed.). Chichester: John Wiley & Sons Ltd.
- Schiff, M. (2007). Satisfying the needs and interests of stakeholders. In G. Johnstone, & D. W. van Ness, *Handbook of Restorative Justice* (pp. 228-246). Cullompton: Willan Publishing.
- Sentencing Council. (2017a). *Sentencing Children and Young People: Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery; Definitive Guideline*. Retrieved from https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide_FINAL_WEB.pdf
- Sentencing Council. (2017b). *Types of Sentences for Young People*. Retrieved from <https://www.sentencingcouncil.org.uk/about-sentencing/young-people-and-sentencing/types-of-sentences-for-young-people/>
- Simon, J. (2007). *Governing through Crime*. New York: Oxford University Press.
- Smith, D. (2015). What Evidence for Youth Justice? In B. M. Goldson, *Youth Crime and Justice* (2nd ed., pp. 83-99). London: SAGE Publications Ltd.
- Spencer, D. (2011). An Invitation... to What? *Critical Criminology*, 19(3), 197-212. doi: 10.1007/s10612-010-9112-x
- Taylor, C. (2016). *Review of the Youth Justice System in England and Wales*. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf
- Tibbetts, S. G. (2012). *Criminological Theory: The Essentials*. California: SAGE Publications.
- Ugwudike, P. (2015). *An Introduction to Critical Criminology*. Bristol: The Policy Press.
- Watkins, M., & Johnson, D. (2010). *Youth Justice and the Youth Court*. Hook: Waterside Press.
- White, R., & Cunneen, C. (2015). Social Class, Youth Crime and Youth Justice. In B. Goldson, & J. Muncie, *Youth Crime and Justice* (2nd ed.). London: SAGE Publications Ltd.
- Wigzell, A., & Stanley, C. (2015). The Youth Court: Time for Reform? In M. Wasik, Santatzoglou, & Sotirios, *The Management of Change in Criminal Justice* (pp. 241-258). Hampshire: Palgrave Macmillan.
- Wilson, H. A., & Hoge, R. D. (2012). The Effect of Youth Diversion Programs on Recidivism. *Criminal Justice and Behavior*, 40(5), 497-518. doi:10.1177/0093854812451089

- Yates, J. (2010). Structural Disadvantage: youth, class, crime and poverty. In W. Taylor, R. Earle, & R. Hester, *Youth Justice Handbook; Theory, Policy and Practice* (pp. 5-22). Cullompton: Willan Publishing.
- Youth Justice Board. (2013). *National Standards for Youth Justice Services*. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/296274/national-standards-youth-justice-services.pdf
- Youth Justice Board. (2016). *YOT Data Recording Requirements 2016/17: Data submission to the YJB by YOTs in England and Wales*. Retrieved from file:///C:/Users/User/Downloads/Data-Recording-Requirements-2016-17_England-and-Wales_YOTs.pdf
- Youth Justice Board. (2017a). *Youth Justice Statistics 2015/16*. Youth Justice Board. Retrieved from <https://www.gov.uk/government/collections/youth-justice-statistics>
- Youth Justice Board. (2017b). *Youth Justice Board for England and Wales: Annual Report and Accounts 2016/17*. Youth Justice Board.
- Youth Justice Board and Ministry of Justice. (2013). *Youth Out-of-Court Disposals; Guide for Police and Youth Offending Services*. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438139/out-court-disposal-guide.pdf
- Youth Justice Board and Ministry of Justice. (2015, April). *Referral Order Guidance*. Retrieved from <https://www.gov.uk/government/publications/young-offenders-referral-orders>
- Youth Justice Board and Ministry of Justice. (2017). *Youth Justice Statistics 2015/16 England and Wales*. Retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585897/youth-justice-statistics-2015-2016.pdf