Juvenile Justice in Northern Ireland – Mainstreamed Restorative Justice

From a Europe-wide perspective, Northern Ireland has taken a very unique direction for dealing with and responding to juvenile delinquency. A restorative justice approach has been mainstreamed which aims to move classical procedures and sanctioning to the margins of the juvenile justice system. The centrepiece to this new system is the restorative youth conferencing system, that is based in statute and that has been fully incorporated into the CJS rather than being a restorative intervention that stands at the margins of the system.

According to Dignan, a restorative approach advocates a more participatory decision-making process in which those with an interest in an offence – the victim, the offender, and others – have the opportunity to deliberate together and seek agreement on the most appropriate way of responding to it. Accordingly, it views ordinary criminal trial and sentencing processes, in which offences are viewed as being committed against the state and its laws, as inappropriate for such agreed decision-making, and instead aims to divert the vast majority of young offenders into less formal arenas. The state is accorded the role of investigation, finding guilt and facilitating a procedure, in which the aim lies not only in finding an appropriate response to the offence, but also in providing an arena in which:

… offenders can be held accountable for their actions; offender and victim can discuss the impact of the offence on both of their lives; victims can receive apology, find closure, and separate the offender from the offence. At the same time, such less formal arenas aim to avoid the stigmatizing effects of formal or ordinary prosecution and procedures. Where persons are tried and sentenced according to regular processes and penalties, restorative JJS follow a strategy of decarceration, imposing community sanctions instead, often focussing on penalties that contain some form of reparative element, for instance reparation or compensation orders, or community service, instead of custody.

The juvenile justice system that has emerged in Northern Ireland since the turn of the millennium indeed mirrors Dignan’s definition of a restorative justice approach to JJ. Shares of custodial sentences have been consistently low, not exceeding 9% of all sentences in recent years, with comparatively high rates of community sanctioning, conditional discharges and financial penalties. The average number of young persons held in custody has been consistently low as a consequence, averaging about 28 persons over the last 10 years. Also, the rate of diversion away from prosecution has been very high. The following is a flowchart
of the structure and procedure of Juvenile Justice in Northern Ireland. Parties are indicated in blue boxes, Intervention in Yellow, dotted arrows imply forms of diversion. As you can see, there are several diversionary options available, the first being at the police level, in the form of the Youth Diversion Scheme. Although I shall not be elaborating this scheme due to time constraints, what I can say in short is that it provides diversionary outcomes for cases of petty and/or first-time offenders – informal warnings and restorative cautions – that are issued by the police upon consultation with the prosecution service, who in turn also have the option to divert minor cases of offending on the basis of the Principle of Opportunity. From the literature it becomes clear that police diversion in Northern Ireland is highly effective at diverting the vast majority of offenders away from formal prosecution. David O’Mahony for instance quotes that in 2002/03, only about 5% if YDS cases were prosecuted through the courts and 14% were given formal cautions. The remainder were dealt with informally, either through informal cautions or NFA. Sadly comprehensive data that cover the period following the introduction of youth conferencing are not yet available, an issue we shall be returning to later.

**Youth Conferencing**

The reforms in NI saw the introduction of a system of mainstreamed restorative youth conferencing that aimed to provide new alternatives to either formal prosecution or traditional sanctioning. “Restorative youth conferencing is a process that gives young offenders the opportunity to understand and make amends to their victims and community for the consequences of their offending. It holds offenders accountable for their actions and also provides victims with an opportunity to be heard and to be directly involved in how the harm they have experienced is addressed.”. Typically, a conference involves a meeting in which a young person can reflect upon what he has done, and offer some form of reparation to the victim. Victims are free to choose if they wish to attend, and can explain to the offender how the offence has affected them. So the offender is provided with an opportunity to understand the impact of his behaviour first hand, and the victim can learn to “separate the offender from the offence”. O’M/Camp 101. Conferences are usually chaired by trained mediators, whose role is the preparation and facilitation of the conference. The desired outcome of a youth conference is the drafting of an agreed contract that determines what consequences the offender shall face for his offence.

Now, where Police Diversion and NFA are not viable options, instead of implying the unavoidable imposition of a traditional sanction through ordinary court procedures, *Youth Conferences* have been made available at two stages of
the procedure: the first is the possibility for the PPS to refer cases to the Youth Conferencing Service for a **Diversionary Youth Conference** instead of to the courts; and the second is the introduction of mandatory referrals by the courts to the YCS for **Court-Ordered Youth Conferences** as an opportunity to avoid formal, custodial interventions through less formal procedures.

**Diversionary Conferences** are convened following a referral by the PPS to the YCS, and are intended only to be used in such cases that would otherwise have justified the institution of court proceedings. They are intended to be used in cases in which young persons have a history of offending, rather than for first-time petty delinquency that is intended to be diverted at the police level. This is underlined by the fact that overall, the recommendation for further prosecution can only be made where the gravity of the offence is too severe as to merit police diversion, and/or where a person has already received interventions under the YDS. So, in the words of David O’Mahony, they are intended as “**follow-up interventions to curb offending, particularly where there has been previous contact with the criminal justice system.**” P. 101 in HANDBOOK. In order to eligible for a diversionary conference, the young offender has to consent to the conferencing procedure, and must admit to having committed the offence. Where the YCS determines that these preconditions are not met, the youngster shall be referred back to the PPS and is eligible for being dealt with through the ordinary court procedure.

**Court-ordered Youth Conferences** also require consent to the procedure and admission of guilt, and are the **mandatory** disposal for the court unless certain conditions exist that are determined by the offence at hand: Offences with a penalty of life imprisonment, severe offences that are only triable before the Crown Court when committed by an adult, and offences stated in the Terrorism Act 2000 are not automatically eligible for a conference. The court can however, still decide to order a conference in such cases, but must provide justification for such a decision. The fact court-ordered conferences are mandatory highlights the desired centrality of conferencing within the JJS, and since such severe offending will be the exception rather than the rule, the vast majority of juveniles shall be referred to the conferencing system.

In both cases, once a referral has been made, the case is allocated to a specially trained employee of the YCS, so-called **youth conference coordinators**. They are employees of the civil service and usually have backgrounds in other CJ agencies, and are trained in facilitation of mediation procedures. Their role is to facilitate the conference process by preparing the participants for the conference, convening the conference itself, and reporting the outcome of the conference to the CJ authorities.

By law, a conference shall only be deemed as such if the coordinator, a police officer, an appropriate adult and the offender are present. Other persons are
entitled to participate, however they are not obliged to do so: the victim (or a victim representative), any probation officer or social worker who may be assigned to the juvenile in question, and the offender’s legal representation/lawyer. The latter however, due to the nature of RJA requiring consenting participation of the offender, cannot speak for the juvenile, but can only be present in an advisory role. Young persons are entitled to free legal aid for both forms of conferences. Victims need not be present in person in order to be heard.

There are numerous alternatives in place: a representative can speak for the victim, stating the effects and consequences of the offence on the victim; victims can be involved via telephone or video live link, without having to be physically present. Indirect participation is possible via having letters read out or video/audio recordings played. Finally, the coordinator can allow any other person to participate in the conference insofar as this person’s involvement would be advantageous, for instance persons who can provide information and insight into the life of the offender, his social situation, or into the consequences that the offence has had on the victim.

Following group dialogue in which the harm that has been caused is addressed and established, a conference plan is agreed that takes the form of a negotiated contract. The most important factor in devising such contracts is agreement. The young offender must consent to it. Restorative justice approaches can only have truly effective outcomes if regret is sincere and the person realizes that he or she has behaved wrongly.

According to the law, plans should contain one or more of the following: apology, unpaid community work or service, financial reparation to the victim, submit to supervision of an appropriate adult, participate in activities addressing offending behaviour, curfews, drug treatment. Contracts usually also have some form of restorative or reparative element to them in the form of symbolic or material reparation. Conference plans are to be adhered to for a period that cannot exceed one year. Once a plan has been agreed, or once it becomes clear that no agreement can be reached, the YCC refers the result of the conference back to the PPS or the court.

Agreed diversionary conference plans are returned to the PPS, which then decides if it wishes to accept the contract, to have it amended or to reject it. Any amendments require the agreement of the parties involved in drafting it. If accepted, the conference is placed on a juvenile’s criminal record, however not as a conviction. If no agreement can be reached, the YCC is obliged to file a written report explaining why, and with reference to this report the PPS can decide how to proceed further. If plan cannot be agreed, or if the PPS rejects the plan, ordinary proceedings can be instituted.
Upon agreement of a *court-ordered conference plan*, the YCC sends it to
the judge making one of three recommendations:

1.) court should deal with the offence normally, and not impose a plan.
2.) The court should impose a Youth Conference Plan;
3.) The court should impose a Youth Conference Plan AND exercise its
ordinary powers in the ways recommended in the plan.

Accepted Plans become so called Youth Conference Orders, which are
entered into the criminal record as a conviction. The court can amend a plan to a
certain degree, for instance the number of hours of reparative work, or the
duration of the plan. Again, any amendments to a plan require agreement from
the parties. Within a plan, YCOs can recommend the imposition of ordinary
sanctions, including custody, however the duration of custody is to be decided by
court in order to guarantee the proportionality of outcomes. This issue is also
addressed by the requirement that a court can only issue a YCO if it is convinced
that the offence is “serious enough to warrant it”.

If a young offender willingly and repeatedly fails to comply with a *conference plan*, a further conference can be ordered that aims to address the reasons for non-
compliance. If non-compliance then persists, the consequences differ depending
on the kind of conference:

In the case of *diversionary conferences*, the PPS can require that the plan be
amended, or it can institute ordinary proceedings. Amendment is only possible if
all parties consent to the proposed changes. If a juvenile is before court as a result
of non-compliance with a *diversionary order*, the court may, where it feels it is
appropriate to do so, order the facilitation of a *court-ordered conference*. So a
young person can be referred to the YCS again for the same offence.

If a juvenile does not comply with the *Youth Conference Order*, he can be
issued a community sanction (attendance centre order, community service order
for 16+). Additionally, the court can revoke the YCO, amend its contents, or
extend the timescale of the order. If the YCO is revoked, the youngster shall be
resentenced as if they had just been found guilty of the offence.

Recent data from the Northern Ireland Office indicate that the conferencing
system has in the meantime manifested itself as a central pillar in responding to
young offenders. According these data, in 2008/09, a total of 1,234 youth
conferences were approved, 590 of which were diversionary, and 644 were court-
ordered. They go on to state that over 50% of court disposals were court-ordered
conferences in this time period. It will thus be interesting to investigate whether
the Restorative Youth Conferencing System is meeting the objectives of
restorative justice – participation, to be heard, non-coercion, involvement,
satisfaction, agreed outcomes, responsibilisation, achieving closure, apology
among many others; whether conferencing is more promising than or equally
promising to other forms of intervention in terms of reoffending, and what the effects have been on court sentencing practices.

According to NIO data, from April 2008 to March 2009, victims participated in 66% of the 1,234 conferences that were ordered. The task of ensuring victim participation has to be mindful of their right to not attend. Pressuring victims to attend could on the one hand diminish the chances of them doing so, or result in participation that they do not really want, which in turn could result in double victimisation. This appears to be being achieved successfully, with 91% of victims stating that they attending willingly and without coercion according to an evaluation of the conferencing system by Campbell et al’s in 2005. The possibilities for victims to participate in the process in Northern Ireland without having to be present, for example via live video links, phone links, having letters read out, appears to be a highly promising approach as well, one that was however only used in 36% of conferences in which no victim or victim representative was present. Such involvement appears to have had a greater impact though than conferences where the victim’s views were either summarised by the YCC or the likely impact was conjectured. It would therefore be worthwhile considering ways of endorsing the use of such alternatives that do not reduce the number of victims attending personally.

In terms of involvement and being heard, Campbell et al’s evaluation indicated that 92% of victims felt they were able to say all that they wanted during the conference. 93% of young offenders received the opportunity to explain their perspective of the event, and 98% felt that they were listened to when doing so, so that they felt to have been able to have an influence on the conference.

In terms of making the young offender accountable for his actions and effecting some form of responsibilisation, 92% of young persons and 78% of victims felt that the conference had helped the young offender realise the harm caused by the offence, with 77% of young offenders exhibiting shame and 92% expressing remorse for their behaviour. 97% accepted responsibility for what they had done. According to Campbell et al. 91% of victims received some form of apology, and 85% of them felt that it was sincere and were satisfied with it. Only 55% even stated to have entered the conference explicitly expecting an apology. The key reason for victim participation was rather that they wanted to voice how the offence had affected them (86%), and wanted to help the young offender get back on track (79%). This also indicates that the overall aim was not retribution or vengeance, which is also reflected in the fact that 70% of conference plans contained no repressive elements, while 85% resulted in attendance at activities and programmes to help the offender (mentoring, drug awareness, offence focussed work, anger management etc.), 60% required an apology and over 50% entailed the delivery of reparation.
The aim of restorative interventions is facilitating a process in which an agreed outcome can be found in which both parties feel to have been involved. 91% of all agreements were met with involvement by both parties. NIO data for 2008/09 indicate that satisfaction rates were high both among offenders and victims. 94% of offenders were satisfied with the outcome of the conference, as were 86% of victims. 9/10 victims and offenders would recommend to other offenders or victims to participate in conferencing process. These are rather promising figures as well.

So the conferencing system appears to be working rather well in terms of achieving restorative non-repressive outcomes, in terms of involvement, agreement, responsibilisation, satisfaction, and healing. But how promising is conferencing as a means of avoiding recidivism?

According to first results from a very general reoffending evaluation by Tate and O’Loan, the conferencing approach could well be viewed as having a generally positive effect. In the year 2006, 47.4% of persons who received a YCO reoffended within 12 months, as did 28.3% percent of persons receiving a diversionary conference. By contrast, the rate of reoffending among persons released from custody was more than 70%, 52.1% for persons subjected to community orders, 28.7% of fines and 34.5% of conditional discharges. In particular, if we compare recidivism rates for different offence categories, conferencing appears at first glance to be particularly attractive for cases of theft, violence against the person and cases of criminal damage. The appropriateness of conferencing for these offence types is evidenced by Campbell et al., who discovered that assault had the highest rate of personal victim attendance (49%), while criminal damage and theft accounted for 69% of all cases in which a victim representative took part, thus making truly restorative outcomes more likely.

While these data appear promising, the effectiveness of an intervention cannot be pinpointed according to such general reoffending rates alone, not least due to the fact that persons who receive custodial sentences are likely to have a greater intrinsic risk of reoffending than for instance someone who receives a pre-court disposal. In order to determine with more statistical precision the effects of conferencing on reoffending, we would need to conduct multivariate analyses that take into account the offender’s age, criminal history, the severity of the offence committed, when reoffending occurred, the contents of the youth conference plans (supervision?), to name but a few variables. In any case, in the context of restorative justice, similar or even slightly elevated reoffending rates are viewed as a success as well because the same results could be achieved through a procedure in which the needs of the offender and the victim are addressed in a far superior fashion, one that allows the offender to be actively involved in a process of responsibilization and to be heard rather than through the vocal chords of his
Turning now to the effect of the conferencing system on court sentencing, due to data constraints in the field of juvenile justice practices and on recorded juvenile delinquency, it is at the current time virtually impossible to investigate with any degree of accuracy the effects of conferencing on the number of juveniles proceeded against before the court, and on the degree to which shifts in sentencing practices can be attributed to Court ordered conferences. There are no specific data publicly available on the extent of and trends in recorded juvenile offending, and victimisation and self-report studies only cover persons aged 15 and above.

That is very disappointing because if one looks at the trend in the number of young persons sentenced and proceeded against, there is a clear downward inclination, which could well indicate that diversionary conferences are having some effect in keeping young offenders out of court. Overall, the number of juveniles proceeded against per 100,000 pop decreased by 15.2% since 2003 to 2006, and the number of juveniles sentenced per 100k/pop decreased by 16.7%. Comparative data for adult offenders indicated respective decreases of 0.7% and 3.4% respectively. However, the overall rate of recorded crime for all ages has decreased by 15% from 2003 to 2006, but it is not possible to differentiate which share of this decrease was due to juvenile offending.

The problems continue when aiming to investigate the effects of court-ordered conferences on the sentencing practice of the courts. Reductions can be registered in all sanctioning categories, and the most major downward shifts appear to have occurred in the areas of discharges (24.1% to 16.5%) and financial sanctions (down from 30.9% to 22.1%). However, without comprehensive data, it is impossible to trace whether discharges have decreased due to appropriate targeting of less severe offences through the PPS in the form of police diversion or diversionary conferences, whether offending has become more severe which would justify shifts up the tariff, or whether Youth Conference Orders are being issued instead of discharges and fines rather than posing as a real alternative to more severe sentences like custody, community sanctions or suspended custodial sentences. There are also no detailed data currently available on the practice of the YDS that allow a distinction between informal warnings, restorative cautions, No Further Action and how many young people are referred to the PPS for further prosecution, so the pre-court diversion rate is currently not ascertainable in full, nor are trends thereof. I shall be filing “Freedom of Information Requests” with the Northern Ireland Office in the near future in an attempt to attain a more complete statistical picture of juvenile justice practice.
Problems arising from Conferencing

Restorative Justice interventions and approaches have inherent problems, that are also mirrored in the NI approach. The UN Guidelines on the administration of restorative justice programmes require that they “should be used only with the free and voluntary consent of the parties” (United Nations, 2000). Much effort is made in the Northern Irish conferencing approach, primarily by the YCCs, to inform young offenders of the implications of a conference and the procedure that it implies, in order to provide them with a full awareness of all the options available to them. YCCs conduct several meetings prior to the conference in order to achieve this, and provide young offenders with informational materials. However, in practice, since the most visible alternative to a conference is usually further prosecution or an ordinary court sentence, to what degree this consent is voluntary is rather questionable. Also, Campbell et al. discovered that of the 91% of young people saying they preferred the conference to court, 63% reasoned this view with the fact that it is an “easier sentence than court.” In Northern Ireland, young offenders are required to make their decision on whether or not to accept the prospect of a conference “on the spot”. Campbell et al. in their evaluation of the YC System proposed that meetings with the YCC should be conducted before the young person is asked whether or not he consents to the imposition of a COC in order to better ensure that young people have full understanding of the procedure and implications prior to making a decision on consent, rather than after consent has been given. This appears to be a very plausible and easily implementable suggestion.

A central issue throughout restorative justice literature is the principle of proportionality, which requires that the outcome reflect the seriousness of the offence. In Northern Ireland, the legislation states that a court should only impose a YCO if the offence is “serious enough to warrant it”. What is “serious” enough is however to be decided at the discretion of the court, and the variability of conference plan conditions leaves much room for disproportionality to develop. Also, in the context of agreed outcomes, there is the danger that a court may be reluctant to turn down a conference plan for being ‘too harsh’ where there has been agreement from the young offender in devising it. Once a young person has given his consent, he may be reluctant to withdraw it at a later stage for fear of being looked upon negatively by the court as a consequence when being resentenced. This could also influence the young person’s willingness to actively participate or be honest in drafting the conference plan, for fear of causing conference breakdowns or demanding conference plan conditions that the court could in turn deem too lenient. According to the evaluation by Campbell et al. 26% of juveniles were not happy to agree to the plan, 14% of which felt they had
to agree. There is indeed the risk of “double jeopardy”, in that a young person could be punished by the court both for the offence as well as for the failure of the conference. Such effects are naturally difficult to measure, but should nonetheless be borne in mind when considering the introduction of a conferencing scheme.

One possible result of disproportional outcomes and poor targeting of interventions is net-widening, which occurs when less serious cases are brought into the criminal justice system or are driven further up the sentencing tariff that would have previously fallen outside it. An evaluation of the police-led restorative cautioning approach by O’Mahony and Doak in 2004 found that, of the restorative cautions held during the evaluation period, 90% were for minor thefts, of which 80% were for damages of less than 15 pounds, and 50% were even less than 5 pounds. In the words of the authors, “it was not uncommon to come across cases where a considerable amount of police time had been invested in arranging a full conference for the theft of a chocolate bar or a can of soft drink”. P 494 IMB? Restorative cautions are much higher up the disposals-tariff than informal warnings because they result in a criminal record. In order to prevent net-widening, it is key that diversionary measures are targeted rigorously and appropriately, reserving formal interventions for such cases where the severity of offending and the history of the offender merit it. In Northern Ireland this shall be the task of the PPS.

Primarily, it shall also be the task of the PPS to ensure that only such cases are forwarded to the courts that are severe enough to warrant court-ordered conferences, while the remainder are to be dealt with via the YDS and DCs. There is evidence from 2005 that indicates that there could well be room for improvement in this respect, since in the evaluation period examined by Campbell et al., the majority of referrals to the YCS relating to minor property offences came from the courts, rather than the PPS, indicating that it would have been more appropriate to have filtered these cases out through the many out-of-court diversionary options that are available to the PPS. This is further evidenced by the fact that in 15.9% of cases, the court issued a conditional discharge rather than accepting the YCP, even though legislation clearly states that YCs should not be considered in the first place where the court deems a conditional or absolute discharge appropriate. This also points to the difficulties that can arise where the issuance of court ordered conferences is mandatory except for the most severe cases. It could well be appropriate to draw a line at the lower end as well that requires a minimum degree of offence severity or offending history, however determining where to draw this line is a difficult task, that can only be resolved through investigating the effectiveness of conferencing in terms of analysing reoffending rates and the effects of the conferencing system on court sanctioning.
practices. Continuous evaluation is therefore a must if net-widening is to be prevented and the proportionality of outcomes is to be warranted.

**Conclusions**

The Northern Irish approach is a highly promising attempt at incorporating restorative justice as a central pillar within the JJS. It is performing well in terms of ensuring restorative outcomes, as measured by high levels of victim participation, victim and offender and satisfaction and involvement, and agreed outcomes that are deemed fair by the majority of participants. At the same time, since it is fully incorporated into the JJS and statute, it underlies the same procedural and due process safeguards as would regular criminal proceedings, for instance the right to appeal or free legal representation. This also has the effect that it is fully funded which allows for the creation of appropriate infrastructures and the provision of specialist training. Initial reoffending analyses also indicate that conferencing is by no means less capable of preventing recidivism.

Central problems arising from this approach are problems of achieving sincere informed consent of offenders, warranting proportionality of outcomes and avoiding net-widening effects. The key to alleviating these issues lies primarily in improving the ability of the PPS to appropriately target diversionary measures and to thus only refer cases to court that truly warrant court intervention in terms of offence severity, offence type and offending history. Such improvements in turn can only be identified through continuous, in-depth evaluation of the effects of conferencing on reoffending rates and on the sentencing practices of the courts. There is a need to identify which offences are most appropriate for conferencing, and to target these accordingly.

Restorative interventions are resource-intensive and should not be forced to be used in cases in which other outcomes like community sanctions, that also have their merits, would be equally appropriate. Thought should therefore be geared not only towards the development of evidence-based further training for Youth Diversion Officers, prosecutors and youth court judges, but also to the question of whether conferences need to be mandatory, because as O’Mahony and Doak say, more restorative justice is not necessarily always better.

One of the main reasons that the introduction of Conferencing has been a success in Northern Ireland is the fact that it was slowly introduced in connection with a total overhaul of the Criminal Justice System in the light of the end of decades of sectarian violence. There was a need within the community for more less formal procedures and more accountability within the institutions of justice. Whether or not such an approach could be introduced elsewhere would require
extensive prior evaluation, but one can certainly learn from the Northern Irish approach in terms of formalities and implementation strategies.

**ENGLAND AND WALES – Anti-social behaviour orders**

The current juvenile justice system of England and Wales stands in stark contrast to the restorative, positive approach of Northern Ireland with its high rates of diversion and low rates of imprisonment. English juvenile justice is characterized by very high rates of custodial sentencing, high prison populations, low rates of informal diversion and intensive, retributive and punitive sanctioning.

Since the mid-1990s, a policy shift has occurred in English JJ, away from minimum intervention and bifurcation towards zero-tolerance and the perception that ‘prison works’. The reforms were primarily triggered by a string of riots and exhibitions of public disorder by young people, and intense media coverage of select cases of serious violence by children (most prominently the Bulger case). The run-up to the 1997 general elections was primarily characterized by highly popular punitive and sensationalist discourse that built on the moral panic that emerged in the general public. In the course of the elections, the two main parties engaged on a competition of outdoing each other in terms of promising punitive tough reforms, ultimately resulting in the victory of New Labour and the subsequent overhaul of the juvenile justice system in the late 1990s and early 2000s.

As a consequence, a juvenile justice system has emerged in England/Wales that Cavadino/Dignan term a Neo-Correctional approach. Neo-correctionalist systems see the paramount aim of the JJS in the prevention of reoffending, and are characterized by applying a zero-tolerance, law and order approach that concentrates on early intervention and making offenders responsible for their behaviour, even in cases of petty and/or first-time offending. At the same time, the NC approach stresses the importance of effectiveness, efficiency and the swift administration of justice. Such effectiveness is to be achieved on the one hand by improved inter-agency collaboration and communication at the local level, and also by successfully targeting interventions based on standardized assessments of risk.

Rather than concentrating solely on criminal behaviour, early intervention in the neo-correctional context extends to cover acts of pre-delinquency and anti-social behaviour which are viewed as significant indicators or risk factors for potential
future offending, alongside variables such as school truancy, poor parental supervision, delinquent parents and substance abuse.

The early intervention approach used in England and Wales is attached not only to

- ‘early within the procedure’: even minor infringements of the law should be responded to with a formal intervention, for example ‘Final Warnings’ by the Police instead of informal warnings, or ‘Referral Orders’ by the Prosecution Service rather than absolute or conditional discharges,
- but also ‘early in a young person’s life’: intervening in criminal behaviour has been made possible at an earlier age, with the age of criminal responsibility having been lowered to 10 years
- and also in terms of ‘early in the route to criminal behaviour’: targeting not only criminal behaviour, but also acts of pre-delinquency, anti-social behaviour, incivilities, or what is termed „signs of demoralisation“ in Poland

The White Paper *Respect and Responsibility* of 2003, which is a central document to the Government’s ASB reduction scheme, states that “anti-social behaviour is caused by a lack of respect for other people”, and that “it is time to support the majority against this antisocial minority”. ASB is thus viewed as a rational decision, as is offending in general that indicates a person’s lack of respect for the community. This view also implicitly implies that the law-abiding community should be angered, intimidated and feel personally offended by such behaviour, and want to contribute to its alleviation - that they as good citizens are entitled to a community free of crime and anti-social behaviour.

So, what is ASB? According to the definition provided by the Home Office it is “conduct which caused or is likely to cause alarm, harassment or distress to one or more persons not of the same household”. The NL Government initially went on to name examples for such behaviour, listing acts such as littering, verbal (racial) abuse, riding mini-motorbikes, intimidating groups of young people hanging around in public spaces, begging, drinking in public, school truancy, basically forms of behaviour that cannot be addressed by the existing criminal laws, but which contribute to making neighbourhoods less respectable and imply the presence of disorder. The approach has strong links to Wilson and Kelling’s “Broken Windows” theory, according to which monitoring and maintaining urban environments in a well-ordered condition through timely intervention may prevent urban deterioration and escalation of incivilities into more severe crime and disorder.
Over the past decade, the New Labour Government was very active in elaborating a wide ranging infrastructure and action plan for combating ASB, that I shall not be elaborating here. The courts and local authorities have been provided with a range of new interventions, which include parenting orders, acceptable behaviour contracts, fixed penalty notices for disorder, local child curfews, dispersal powers and child safety order to name but a handful. However, one of these measures stands out quite prominently, the so-called Anti-Social Behaviour Order. As we shall see, this intervention is highly innovative, but also highly controversial for a number of reasons and from a number of perspectives.

The formalities of the ASBO are as follows:

- Can be applied for when a person behaves in an anti-social or criminal manner
- applicable to all persons aged 10 and above
- can be applied for by the police, the local authorities, transport police and registered social landlords, either on their own grounds, or upon complaints from the local community.
- issued by adult Magistrate’s Courts in civil law proceedings
- an ASBO can only be issued if the protection of the public from the behaviour in question cannot be achieved by any other means
- ASBOs last for a stated period of at least two years. No maximum limit has been set because duration depends not on the severity of the behaviour, but on the degree of public protection required.
- An ASBO prohibits the named individual from behaving in certain ways as stated in the order, one of which is always the prohibition from engaging in further ASB based on the definition stated above. Other common conditions are geographical exclusion areas and curfews that ban the person from leaving their homes at certain times, usually in the evenings and at night time, or meeting or contacting certain people.
- The content of ASBOs has to stand in direct connection to the offence or behaviour of which the young offender has been sentenced or accused.
- Failure to comply with the conditions of an ASBO is a breach of a civil order, which for children and juveniles is punishable with up to two years imprisonment or a fine of up to 1000 pounds.

Following their introduction, take-up was rather slow, as can be seen in this figure. On the one hand, this can be attributed to the fact that local infrastructures, in terms of setting up ASB units, drafting ASB Action Plans, identifying and training ASB-officers, were not immediately available or had not yet been completed nationwide, and that local authorities and the public were also
reluctant to apply for them. As we can see the total number of imposed ASBOs did not really reach significant levels until 2003, the year in which the Anti-Social Behaviour Act was passed, which among other issues called for ASBOs to be used more frequently, particularly in cases of juveniles.

Also, at the end of 2002 the law was amended to allow for ASBOs to be issued as ancillary sanctions to criminal convictions, rather than just upon application. Meaning that persons who are sentenced by the court for a crime can additionally be subjected to an ASBO that can either run simultaneously to the criminal sentence, or which is to be served after the criminal sentence has been served. If one compares the number of ASBOs with and without those attached to criminal convictions, it becomes rather clear that this new opportunity for issuing ASBOs was widely responsible for the increase in ASBO use, accounting for more than 50% of all ASBOs issued since their introduction. The decline in ASBO use after 2005 can also be primarily attributed to the CRASBO, following voiced concerns from practitioners and the sciences that such measures should be used with caution as they can be viewed as punishing the recipient twice for the same offence, an issue to which be shall be returning later on.

At this point it needs to be pointed out that, not only CRASBOs, but also the vast majority of ASBOs on application are issued in response to criminal behaviour. ASBOs are only rarely issued because someone was riding a mini-motorbike or dropped litter in a public place. Precise data that break down into which forms of behaviour resulted in an ASBO are not yet available, a shortcoming I hope will be alleviated in the near future. I am merely quoting what I have read in numerous sources, for instance David O’Mahony’s work.

The following is an example of an ASBO that was issued against a 16-year old in Chepstow, Wales, and shall serve as our case study for this talk:

- 16-year-old served with an ASBO for harassing residents of Chepstow, Wales, by running across gardens, insulting residents, throwing stones and climbing on roofs
- Was electronically tagged for a previous conviction for burglary at the time the ASBO was issued, i.e. had a criminal history.
- ASBO to last for two years, banning him from the following:
  - Behaving in an anti-social manner
  - Entering without prior invitation any privately owned property in England and Wales, including car parks, schools and gardens
  - Threatening, insulting or abusing others
  - Climbing on the roof of any building in England/Wales
  - Associating with, contacting or attempting to contact four youths named in the order
Criticism of the ASBO

The ASBO is a highly controversial intervention, with criticism being voiced from numerous perspectives and directions, most prominently the fact that it is viewed as undermining efforts of social reintegration and of enhancing community cohesion; that the ASBO could have massive net-widening effects, both in terms of the forms of behaviour that it is intended to respond to (criminalisation) and that it could be fast-tracking young people into prison; and that it circumvents key elements of due process and procedural safeguards.

Social exclusion

If one regards the conditions of ASBOs, it becomes clear that they are merely prohibitive, negative, and on second glance highly exclusive of those who receive them. Instead of providing young persons who exhibit problem behaviour with support in tackling the underlying causes, ASBOs entail absolutely no efforts to promote social inclusion, rehabilitation and education. Rather, there is the assumption that reoffending and behaving anti-socially can be prevented merely on the basis of informing young people that they shall face severe consequences if they do not abide by their orders. They are left to their own devices under the assumption that they have understood the situation and are suddenly willing to seize the opportunity to “make the right decision” from then forth. Brian Tulley, anti-social behaviour coordinator for East Cambridgeshire, stated in an interview regarding the imposition of an ASBO against a juvenile: "I hope he will respond positively to the order, and see it as a turning point in his life. The consequence of failing to comply can be serious.” This clearly underlines New Labour’s view that ASB and offending are the results of rational and malicious decisions. However, if we bear in mind the fuzzy definition of ASB, and the fact that each ASBO prohibits the person subjected to it from behaving anti-socially again, it could be very, very difficult to knowingly behave properly, especially for young people.

The difficulties that young people have with adhering to their ASBO conditions are evidenced quite clearly by Home Office data on the frequency to which ASBOs are breached. From June 2000 to December 2007, of the 14,972 people who received an ASBO in England and Wales, more than 53% breached their conditions at least once, and 38.6% did so multiple times.

More alarmingly, juveniles appear to have much greater difficulties in abiding by their ASBO conditions than adults do, with 63.9% of them breaching at least once (compared to 47.7% for adults), and 47.5% doing so more than once.
(compared to 33.8% for adults), which raises the question as to whether the ASBO is in fact truly appropriate as a tool for preventing crime and ASB.

In this context of social exclusion, one key point of criticism is the fact that the civil court proceedings in which they are issued are not subject to reporting restrictions as would be the case in criminal proceedings concerning juvenile offenders. The media are free to report on such cases publicly without any limitations. The former Labour Government in fact repeatedly stressed the importance of “naming and shaming” young ASBO recipients in the local media and through posters that are reminiscent of the “Wanted” posters of the Wild West. The case study I presented to you was actually taken directly from a local newspaper’s internet portal. His name, age, photograph, address and the conditions of his ASBO have been made publicly available in mass media, and the police urge residents to call them if they witness any breaches of the order.

This has several effects that are indicative of a quasi-communitarian and popular punitive approach that is quite characteristic of Neo-Correctionalism. Firstly, it generates the impression within the community that something is being done, that stern action is being taken in order to improve the lives of “decent people”, thus improving satisfaction with the justice system, while at the same time ensuring that the community’s fear of crime and the folk devil “juvenile” remains at the forefront of their perceptions. Secondly, naming and shaming places the enforcement of ASBOs (and thus of decent, civil behaviour) in the hands of the local community, and gives residents a feeling of empowerment and involvement.

Reporting persons who contravene their ASBO conditions is heralded as a sign of good citizenship, assuming community responsibility, and as doing your part to making the community safe. This practice of empowering the general community is however at the young person’s detriment, because – referring again to the definition of ASB – whether or not a member of the community reports an ASBO to have been breached depends on that community member’s personal, subjective perception of what is in fact Anti-Social Behaviour. The New Labour Government itself even stated in its White Paper Respect and Responsibility of 2003 that “anti-social behaviour means different things to different people”. The vague definition allows virtually any form of behaviour to be classed as antisocial. And the dependence of successfully fulfilling an order on the subjective perceptions of an entire community makes it almost impossible for a young person to knowingly behave properly and to feel comfortable with the way he’s behaving, which in turn can generate anxiety, feelings of exclusion and negative labelling.

Net-widening
Concerns have also been voiced regarding the potential net-widening effects that ASBOs can have. We have already seen Home Office data on the breach rate of ASBOs, and that from 2000 to 2007, 63% of all 10-17 year olds who were issued an ASBO breached their conditions at least once. In this time period, 11,340 breaches by 2,768 10-17 year olds were dealt with by the courts, which comes down to roughly 4 breaches per person on average. 3,248 (28.6%) of these breaches resulted in custodial sentences, and for 1,142 (41.3%) of persons who were sentenced for a breach at least once, the most severe sentence received was a custodial one. These data imply that youngster who at some point in serving their ASBO are sent to custody, are sent there on average three times.

Yet, net-widening effects are not limited to custody. Community sanctions in England and Wales are by law only applicable in cases of imprisonable offences, and thus as alternatives to custody. A further 5,431 breaches received community sanctions (47.9%), which were the most severe sentence for 1,227 juveniles (44.3%). In total then, 76.5% of all breaches by juveniles were sentenced with a gravity that is normally reserved for imprisonable offences, and of all juveniles who breached their ASBO, 85.6% received such a sentence. Therefore, it is difficult to deny that the imposition of ASBOs has a strong net-widening effect, given the fact that two out of three juveniles shall breach their conditions at some point. For the record, failing to comply with the conditions of community sanctions can also result in a revocation of the community order and the subsequent replacement thereof with a custodial sentence, thus increasing the risk of increased custodial sentencing even more.

The average length of custodial sentences issued in response to ASBO breaches by juveniles was six months in the time span under investigation, which is strikingly higher than the average for adult ASBO-breaches, where the figure was ‘only’ 3.9 months. This discrepancy in sentence lengths can be explained to a certain degree, but by no means justified. Juveniles who receive custodial sentences in England and Wales are generally sentenced to so-called Detention and Training Orders. Such DTOs can only be ordered for fixed periods that last for a minimum of four months. Half of the stated period of a DTO is spent in custody, and the other half is served under supervision in the community, and should the young person reoffend during this time period, he has to return to custody to serve the remainder of the sentence there. Therefore, the actual amount of time spent in custody on average would be around 3 months per sentence, which much more closely resembles the figures for adults. However, this is nonetheless first evidence that juveniles could be being sentenced much more severely for breaching their ASBOs than adults are, because juveniles are still subjected to 3 months of probation, while adults are not. It appears as though the
length of DTOs that the courts issue in the context of breach proceedings is determined primarily by the custodial period thereof rather than the total length.

As we have already heard, the majority of ASBOs are issued as responses to criminal behaviour rather than merely anti-social conduct. The fact that state intervention occurs is therefore not really the problem, and is in fact by all means necessary in most instances. Rather, it is the forms of behaviour that can be classed as breaches of ASBOs that is highly concerning. The ASBO could have the effect of making forms of criminal behaviour that are – according to the law – not imprisonable offences, eligible for the maximum term of imprisonment that a youth court sitting in criminal proceedings would be allowed to impose (24 months) in cases that are otherwise quite severe. Also, the order has a strong criminalising effect in that forms of behaviour that are not even criminal at all, but which are nonetheless stated in the conditions of an order, can result in a prison sentence. The formal version of the story is of course that the offence lies solely in the fact that a person has breached a civil order.

The ASBO can also be criticised from the perspective of due process, procedural safeguards, and the standing of promoting the best interest of the child. The first concern in this context is that, since ASBO proceedings are civil proceedings, the civil burden of proof applies. This means that the court need not prove beyond reasonable doubt that a juvenile behaved anti-socially, as would be the case in criminal proceedings, but rather needs only to feel that this is probably the case. Hearsay evidence is also admissible in civil proceedings. If one bears in mind the fact that the majority of ASBOs are in fact issued for criminal behaviour, this form of intervention can be regarded as a ‘back door’ through which procedural and due process safeguards can be avoided, especially in cases in which evidence would be insufficient to bring about a conviction in criminal proceedings, or one that satisfies the community. This is a circumvention of key elements of due process in criminal proceedings that are provided by the European Convention of Human Rights, most notably the presumption of innocence and the need for criminal intent in order to prove a person’s guilt, or the right to a fair trial. The possibility, and wide use thereof in practice, to attach an ASBO to a criminal conviction for which the offender has been sentenced, is also highly questionable, for it can be viewed as double punishment, that subjects a person to a form of “easy probation”, easy for the authorities, not for the offender, who will already have served his sentence, only to be subjected to further intervention, which can result in disproportionate sentencing!!

The UN Convention on the Rights of the Child and the Beijing Rules of 1985 among other international instruments call for imprisonment to be used only as a last resort. However, as we have seen from the data, this does not appear to play a decisive role in England and Wales. Overall, it is remarkable that the general focus lies more on protecting the public and improving public perceptions
of the justice system than on the best interest of the child. There are several other examples that evidence this view. One is that no maximum limit has been set for ASBOs, which is justified by New Labour in that the duration of an order should not be determined by the behaviour exhibited, but rather on the degree of public protection required. Also, the ASBO is explicitly stated as being a tool that is to be used when the protection of the public cannot be secured by any other means. Another is the naming and shaming of ASBO recipients, which appears to be in contravention of Article 40 of the \textit{UN Convention on the Rights of the Child} which guarantees privacy at all stages of criminal proceedings in order to protect them from stigmatisation. Such practice clearly shoves the best interests of the child aside, instead concentrating on generating a sense within the public that they are being protected and empowered to in fact protect themselves.

\textbf{CONCLUSION}

Finally, I am coming to a close, as my stomach tells me it is time, and we need some time for possible discussion. It should be stressed that the Action Plan to Combat Anti-Social Behaviour covers many other initiatives that are far less coercive or repressive – general and primary preventive approaches. that aim to improve health, education, involvement in useful activities, and to support families with multiple problems in difficult communities, drug and substance abuse issues, schemes that are made available from a very young age, that I am not going to elaborate here.

However, once these families carry their problems, or the manifestations of their problems, out into the public eye, the overall tone suddenly shifts from being inclusionary to exclusionary, from protection and support to repression, punishment and humiliation.

In my opinion, combating ASB with interventions like the ASBO shall have absolutely no long-term preventive effect. Young people are being criminalised and demonised as the ‘enemy within’, instead of making sincere rehabilitative efforts. There is an aura that citizenship in England means an “entitlement to civil and respectable communities”, but not to receiving support to be part of them.

With ASBOs, young people are being dragged into the CJS through the back-door of civil law and subjected to sanctioning that lacks any form of proportionality, and once inside the system, it is very difficult to get back out, as is well exemplified by the fact that each juvenile breaches his ASBO four times on average, and that juveniles who breach their ASBOs keep returning to custody once they have been sent there for the first time, a spiral that could – theoretically – be triggered by behaviour that is not even criminal to begin with. Yet Local Authorities have voiced their satisfaction with ASBOs, probably because they
measure their success in this regard in terms of public opinion towards them, which is clearly prioritised over successful rehabilitation, as can be taken from the breach rates. If the opposite were the case, things would have changed by now, and ASBO conditions would have been amended to include supportive and educational elements.

The ASBO is in contravention of numerous international instruments, recommendations and rules, and circumvents due process and procedural safeguards, a state of affairs that is in fact mirrored in many elements of the overall approach to responding to youth crime and deviance in England and Wales. Responses even to petty and first-time offending are severe, intrusive, disproportionate and often greatly repressive, rather than attempting to first educate young people and reintegrate them into society by non-repressive means. The lowering of the age of criminal responsibility to the age of ten, and the introduction of other civil law interventions that are applicable against persons under that age are confirmation of this. Ironically, or almost worryingly, New Labour stated that young people have “a right to early intervention”. If this is the form that early intervention takes, it is a right that I would recommend my own children pass on. Most recently, the new Conservative Government has voiced its intent to reverse this development, away from mass imprisonment to avoiding custody for young people. It shall be interesting to follow how or whether these statements are put into practice, and what effect such implementation might have on how ASB is dealt with. But for the meantime, regarding the ASBO, I would simply say: “Don’t try this at home”.