



Ministry of  
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*Dear Mr Hammarberg,*

### **YOUTH JUSTICE IN ENGLAND AND WALES**

Thank you for your letter of 29 February 2012, following your visit to the United Kingdom in December 2011. Your letter includes observations on the Youth Justice system in the UK, following up on some aspects of the 2008 memorandum on the rights of the child and juvenile justice in the United Kingdom. I have also noted your further observations and recommendations on the youth justice system in Northern Ireland. My officials in the Ministry of Justice have ensured that a copy of your letter has been passed to the Northern Ireland Assembly in Stormont, as they have devolved policy responsibility for all youth justice matters in Northern Ireland. I have read your comments with interest and I hope you will find my response helpful.

#### Age of Criminal Responsibility

The Government has no current plans to reconsider the age of criminal responsibility. We believe that setting the age of criminal responsibility at 10 allows frontline services to intervene early and robustly, preventing further offending, whilst helping young people develop a sense of personal responsibility for their behaviour.

We do, however accept that prosecution is not always the most appropriate response to youth offending. In practice the majority of very young people are not taken before a court, but are instead offered alternatives to prosecution. Since 2007 there has been a 40% reduction in the number of young people entering the criminal justice system for the first time. Out of court disposals such as reprimands and warnings are the most likely response to offending by those in the youngest age group, with warnings usually including interventions to tackle offending behaviour and underlying welfare issues. Provisions in the Legal Aid, Sentencing and Punishment of Offenders Bill currently before Parliament, remove the “escalating” principle of reprimands and warnings and will allow the police greater flexibility in responding to offending behaviour rather than arbitrarily determining when children and young people should be prosecuted. We also support informal restorative resolutions to minor offending that are being increasingly used by the police.

## Sentencing

As you will be aware, the principal aim of the youth justice system in England and Wales is to prevent offending and the courts must consider the welfare of each young person that they sentence. Custody remains available as a last resort for the most serious and persistent offenders, but courts can only give custody after they have considered a community sentence with a high intensity requirement set as an alternative to custody. This new requirement was brought into effect at the end of 2009. There has been a significant and welcome reduction in the number of under-18s being sent to custody in recent years which is continuing. During 2010-2011, there was an average of 2,040 under-18s in custody at any one time, down 16% compared to 2009-2010 from 2,418.

## Remand

Turning to your comments about young people on remand, we agree that the current level of secure remand for under-18s is disproportionately high. This is why we are introducing a new remand framework in the Legal Aid Sentencing and Punishment of Offenders Bill currently before Parliament. Under this new framework for the first time 17 year olds will be treated as children for the purposes of remand, whereas currently they are regarded as adults and in law can only be remanded to prison – although in practice they are placed in under-18 youth offender institutions. This will fulfil our longstanding commitment to the UN Commission for the Rights of the Child to treat 17 year olds as children for remand purposes. The new remand framework will also impose stricter conditions for eligibility for a secure remand. This will be limited to those children who commit serious or violent offences or in cases where the child has a history of committing offences whilst on remand if there is a real prospect that they would eventually receive a custodial sentence. In addition, the new remand framework will make every securely remanded child looked after, so that the designated local authority will be responsible for and will have certain duties to discharge on behalf of that remanded child. In order to provide an additional incentive to local authorities to provide additional support to young people in the community, the legislation also transfers responsibility for the costs of secure remand to local authorities.

## Restraint

In 2008 the Government commissioned an Independent Review of Restraint in Juvenile Secure Settings, it concluded that a degree of pain in restraint techniques may be necessary in exceptional circumstances, for example in order to prevent harm to a young person in custody. The Government accepted that the use of pain-inducing techniques in restraining young people must only take place in exceptional circumstances, when all other approaches have been exhausted or would not work.

As a result of implementing these recommendations, a new system of restraint - Minimising and Managing Physical Restraint - has been developed for use in most of the under-18 secure establishments in England and Wales. This includes the use of some techniques which involve the application of a controlled amount of pain. All techniques have also been assessed by an independent panel of medical and operational specialists (the Restraint Advisory Board) to ensure that each technique is suitable and safe for use on under-18s. Rollout of this new restraint system is due

to begin in 2012. Significant progress has therefore been made since the period referred to in the recent High Court judgment.

### Anti Social Behaviour

The anti-social behaviour consultation document: More Effective Responses to Anti-social Behaviour, which was published last year, sets out the key findings of the Home Office's review of the current tools and powers to deal with anti-social behaviour, as well as proposals to simplify and improve them.

In the consultation document, the government was clear that informal tools such as warning letters or Acceptable Behaviour Contracts are an important part of professionals' toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-level incidents. We want to increase professional discretion to decide when to use these approaches, for example to address anti-social behaviour by young people. We also consulted on other specific points relating to young people, for example whether new civil orders should be heard in the Youth Court. In addition, our proposals distinguished more clearly between civil and criminal law, for example by replacing the ASBO, a civil order with a criminal sanction on breach, with a purely civil injunction, with civil sanctions on breach.

We are currently considering over a thousand responses from members of the public, front line practitioners and a wide range of interested organisations. We will publish a detailed response in due course.

### Resettlement and Education

You mentioned the need for improving resettlement services. The Government is also improving the delivery of resettlement provision through the expansion of regional resettlement consortia. These promote closer working between custodial establishments, Youth Offending Teams, and their partners in the voluntary and statutory sectors. A Resettlement Toolkit is also being developed. This will enable the effective practice developed through the resettlement programme to be disseminated across England and Wales.

Good quality education while in custody and effective support for resettlement are key elements of breaking the cycle of young offending. All young people in custody have access to a full day of education and purposeful activity and receive an individual learning plan which addresses their learning needs and supports their reintegration into education, training or employment on release. We are currently exploring ways to improve education provision for young people in and released from custody.

### Mental Health

The Government believes that children and young people in custody and other prescribed forms of detention, should be able to access the same provision for health services as their peers in the wider community do.

The introduction of a new reception screen and health assessment tool in the secure estate for young people in England (the Comprehensive Health Assessment Tool supports this aim. This will better assess and identify the health needs of children and young people in the secure estate, replacing the screen currently in use, which was not designed specifically to be used to assess the health needs of children. The project is being carried out in two stages: updating and implementation of the secure version for the young people's secure estate from April 2012 to September 2012, and

adaptation and piloting of a community version from April - September 2012.

I am grateful for your support for the Government's response to the June 2011 report of the Children's Commissioner for England on the mental health and emotional wellbeing of children in the youth justice system in England. I can confirm that we are in regular contact with the Deputy Children's Commissioner as we continue to take this work forward.

The Government is committed to taking forward proposals to invest in liaison and diversion services at police stations and courts to intervene at an early stage. Liaison and diversion services aim to ensure that wherever offenders are in the criminal justice or youth justice system, their health needs or vulnerabilities are identified and assessed and they are linked to appropriate treatment services. Addressing their needs is also expected to contribute to a reduction in the likelihood of their re-offending.

The vision for the National Diversion Programme is to roll out liaison and diversion services by 2014. The diversion services will cover courts and police custody suites, and will:

Be open and accessible to all offenders whether adult men, women, children or young people, whether they have learning disability, personality disorder, substance misuse, mental health issues or other vulnerabilities.

Ensure that wherever offenders are in the criminal justice/youth justice system, their health needs are known, enabling the police and courts to make informed decisions about charging and sentencing.

Ensure that wherever offenders are in the criminal justice/youth justice system, their health needs are known and provided for by appropriate treatment services.

Divert offenders from the criminal justice/youth justice system when appropriate.

Work over the past year has allowed us to set up a liaison and diversion network, consisting of 94 adult and youth pathfinder sites, alongside 10 police forces who are exploring the transfer of commissioning responsibility for health services in police custody suites to the NHS. These pathfinder sites are leading the way in developing how diversion services will work in the future, and providing information on their services which will contribute to the development of the business case (due for completion in early 2013), which will inform a Ministerial decision on full roll out. We will also undertake a fuller evaluation to capture the best of local learning and explore options for making schemes available nationally by 2014.

### Retention of DNA

The UK Government is committed to ensuring that our obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms are fully met. Following the ruling by the European Court of Human Rights in the S & Marper case in December 2008 that the blanket retention of DNA and fingerprints was unlawful, we introduced a number of draft changes to the DNA retention regime into the Protection of Freedoms Bill. These changes will ensure that the records of those who are innocent of any crime are removed from the database.

The Bill is likely to become law in April or May this year. We believe that our proposals strike the right balance between protecting the freedoms of those who are innocent of an offence and ensuring that we continue to have the capability to bring criminals to justice."

#### Disclosure of Criminal Records.

The Rehabilitation of Offenders Act 1974 provides a mechanism whereby some criminal records, whether those of an adult or young person, become "spent" after a specified period. Once a conviction is 'spent', the convicted person does not have to reveal it or admit its existence in most circumstances. There are certain areas of employment that are exempted from this rule for which employers may ask about spent convictions and these are listed in the "Exceptions Order to the Act". The two main exceptions relate to working with children or working with vulnerable adults.

The Government recently introduced the Rehabilitation of Offenders (Amendment) Bill which will reduce the period of time before which a conviction can become "spent" in certain instances.

The disclosure of an individual's criminal records is dealt with under the procedures of Part V of the Police Act 1997 which govern disclosure by the Criminal Records Bureau. You will however also wish to note that the Independent Advisor for Criminality Information Management, Mrs Sunita Mason, has published two reports on the criminal records regime and those reports consider disclosure issues.

Phases 1 and 2 of the reports can be found at <http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase1/> and <http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase2?view=Standard&pubID=965999> . In particular Recommendation 5 of Phase 1 recommends the introduction of a filter to remove old and minor conviction information from criminal records.

The Government's response was published on 6 December 2011 (see <http://www.homeoffice.gov.uk/publications/crime/gov-resp-indep-rev-crim-records?view=Standard&pubID=967088> ) and in respect of Recommendation 5 it was "The Government will continue to consider this proposal, part of which means trying to identify an appropriate and workable filtering mechanism".

I understand your term of office is coming to an end this month. I would like to thank you for all the work you have done in support of human rights around Europe, and wish you all the best for your future endeavours.



KENNETH CLARKE