Youth Crime briefing

Principles of participation for youth justice

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Introduction

We want to see professionals communicating directly with children and young people, listening to them and attempting to see the world through their eyes.³

Participation of children and young people in strategic planning processes and in service development and delivery has been a theme running with increasing strength through government policy in recent years. In practice too, there has been a growing commitment at the local level to make a reality of consulting and listening to the views of children and young people.

Services need to be shaped by and responsive to children, young people and families, not designed around professional boundaries.²

Involving children, young people, families and communities can greatly enhance the development of strategies, policies and services at both central and local levels. But it is of equal importance to embrace the principles of participation at the individual and family level in delivering services in the youth justice arena; from undertaking assessments, through the planning and implementation of individual support and supervision programmes, to the enforcement of orders and requirements. In addition, it is only through listening and taking account of the views of service users that the full potential of the process of monitoring and evaluation of services and programmes can be realised.

The Children and Young People's Unit issued guidance on making a step towards fuller participation across government and local services. The vision was for participation to improve at different levels:

- Where individual decisions are being taken about children's own lives. For example, the Children Act 1989 says that looked after children should be involved in decisions about their care package, and statutory guidance is being developed to ensure that children and young people with special education needs are, where possible, involved in all decisions relating to their education.
- Where services for, or used by, children are being developed or provided locally. For example, many local partnerships and local authorities have discussion groups and special consultation events to influence the design and provision of play facilities, leisure, transport and guidance services.
- Where national policies and services are being developed or evaluated. For example, where departments are producing consultation documents and using website design to seek children and young people's views on policy proposals.

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Although principles of participation are being applied more effectively across services to children and families, there remain some areas that have seen less progress, including the youth justice system. This briefing paper makes the case for embedding participation as a core thread through the youth justice system. It sets out a framework of law and standards, introduces key principles for practice and points the reader to sources of training and self-audit.

**Participation: having a voice, having a choice**

The UK government held a competition in 2005 asking children and young people to define participation. The winning line described it as:

*Participation means it is my right to have the opportunity to be involved in making decisions, planning and reviewing an action that might affect me. Having a Voice, Having a Choice – My Voice, My Choice.*

The recent publication from an alliance of organisations working together as Participation Works, provides a definition of participation as:

*The process by which individuals and groups and individuals can influence decision-making and bring about change.*

The publication (recommended particularly for senior leaders in statutory or third sector organisations) helpfully adds that the related terms, ‘involvement’ and ‘engagement’, describe the inclusion of children and young people in some form of decision-making and that ‘consultation’ is the process by which they are asked their opinions (requiring a commitment to listen and give due weight to views expressed, whether formally or informally). In Wales, the Welsh Assembly Government has funded the work of a consortium of organisations, hosted by Save the Children, to develop participation rights for children and young people. A range of materials, including for self-audit, are available together with workshops and training.

Participation is not only effective in achieving better outcomes for children and young people but is congruent with children's human rights. The bedrock of participation rights for children and young people is the United Nations Convention on the Rights of the Child (UNCRC) which has enjoyed an increased amount of reference in government policies recently (not so marked with regard to youth justice). Commitment to the UNCRC from the Welsh Assembly Government has been particularly strong with participation rights being promoted in particular in the *All Wales Youth Offending Strategy* as well as the report on implementing the UNCRC contained in *Rights in Action*.

Participation forms one of the main strands running through the UNCRC and a number of articles (sections) add to the overall establishment of participation rights (including, for example, rights to association and assembly; access to a range of information; freedom of expression; thought, conscience and religion. Perhaps central to participation rights, however, is article 12 (often referred to as ‘article 12 rights’):

*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.*

The article continues with relevance to courts, panels and other proceedings, which could include administrative proceedings in custodial settings:

*For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The United Nations Committee on the Rights of the Child is scrutinising the United Kingdom in relation to its record on implementing the UNCRC during 2008. On the occasion that the committee last reported on the UK, in 2002, it was critical of the youth justice system in a number of ways but in the context of participation rights in general, it was recommended that the government should:

*Take further steps to promote, facilitate and monitor children's effective participation ...*"}

The *Children Act 1989* enshrined participation rights although, as is often the case, did not fully embrace the criminal courts and penal custodial arrangements. Thus, family proceedings courts are required to have particular regard to the ascertainable wishes and feelings of the child, in the light of his or her age and understanding. However, no equivalent was put in place in the context of criminal proceedings. In addition, the Act placed duties on local authorities, looking after children, to ascertain (and give due consideration to) the wishes and feelings of each looked after child, so far as reasonably practicable, before making any decision affecting the child.

More recently, the aspirations of *Every Child Matters: Change for Children* with regard to participation rights were established as legal duties on relevant agencies by the *Children Act 2004*. These duties include consulting and involving children and young people in decision-making (by local authority children’s services authorities and their partners) in improving the ‘five outcomes’. In addition, a new duty towards those known as
‘children in need’ was introduced by amendment to the Children Act 1989. The duty mirrors that described above regarding the wishes and views of looked after children. Assessment and planning for children in need is a growing aspect of work within the youth justice system.

Although it is beyond the scope of this briefing to provide detail, participation rights have been further strengthened in recent years by, for example, new legislation relating to disability, adoption and care standards. Despite much legislation introduced affecting children in trouble in the youth justice system, participation rights have not been established leaving anomalies between legal pathways.

### Putting participation into practice

A lot of adults tell me that they want to work more closely with young people, and to do so in new ways. A lot of young people say they want more say in what happens to them, that they want to play a bigger part in decisions that affect their lives. Many of these adults just don’t feel they really know how to go about it, they have the general idea – and the commitment – but no experience or training. Many young people have had bad experiences of being “consulted” or they are not sure that participation will be meaningful or enjoyable.

In putting participation into practice, it is useful to develop approaches that are based on a set of principles. The Ready Steady Change programme, commissioned by the Department for Education and Skills, provides a set of fundamental underpinning beliefs:

- children and young people have equal worth to adults
- all children and young people are experts on their own lives
- children and young people have the right to be involved in all decision-making that affects them
- all human beings shape and define their environments and social relationships
- children’s and young people’s participation in decision-making is key to improving their well-being
- participation is about making everyday choices as well as seeking to influence wider public decision-making and policy and service development
- everyone that works with children and young people has a responsibility to encourage and support their active involvement in decision-making
- a commitment to children’s human rights is key to achieving improved outcomes for children and young people.

At government level, Learning to Listen offers a set of core principles which are specific about including harder to reach children and young people, including those in the youth justice system:

### Children and young people have equal opportunity to get involved

- Children and young people are not discriminated against or prevented from participating effectively on grounds of race, religion, culture, disability, age, ethnic origin, language or the area in which they live.

- Departments and agencies take a proactive approach in targeting those facing the greatest barriers to getting involved (for example, younger children, children and young people from minority ethnic backgrounds, those living in rural areas or disadvantaged neighbourhoods, children missing school, young people in the youth justice system, refugees, traveller children, disabled and other children with special needs or special personal or family circumstances) to ensure they are aware of and take up appropriate opportunities to have their say.

- Where necessary, support and opportunities for training and development are provided to children and young people so that they can contribute effectively.

- Relevant information is available to children and young people in good time and in appropriate formats, is jargon free, culturally appropriate and accessible.

### Policies and standards for the participation of children and young people are provided, evaluated and continuously improved

- The rationale and success criteria against which progress will be measured are set out from the start.

- Children and young people are involved in reviewing lessons learned.

- Departments and agencies agree quality standards and codes of conduct for working with children and young people, and set out how confidentiality and child protection issues will be handled.

In Wales, a set of standards for participation have recently been developed, together with self-assessment tools and other guidance on implementation. In brief, the standards comprise the following elements:
• **Information.** Providing information that is understood by all, in different formats and media, but also being clear about who is listening to children and young people and what will happen.

• **It’s your choice.** Children and young people choosing to be involved, choosing what is important and how to work on those things.

• **No discrimination.** Recognising that people are different but have an equal right to be involved. In return professionals and agencies will get in touch with as many children as possible.

• **Respect.** Children and young people’s views and opinions will be listened to and taken seriously and they will be helped to act upon the things that are important.

• **You get something out of it.** Making participation beneficial and a positive experience. Making participation fun and enjoyable, accessible and confidence building.

• **Feedback.** Ensuring that children and young people are kept aware of progress and know the difference that they have made.

• **Improving how we work.** Making sure that participation improves the way agencies and professionals plan and make decisions.

Practitioners in the youth justice arena are now familiar with evidence that a key element in effective practice and effective interventions is the quality of the relationship between the worker and the child or young person. A relationship characterised by a sense of partnership, trust and understanding will develop best, and provide opportunity for change, where participation principles are applied. Although this is dependent on the commitment to such principles by individual practitioners, it is critical that participation runs strongly through relevant agencies and systems.

Thus, it is important that a culture of participation is championed at the highest level and is established as a core strand of strategic planning, including in the context of local area agreements. Participation Works have provided guidance for strategic leaders detailing the roles that should be adopted. In local statutory partnerships and trusts, the key leaders are the Director of Children’s Services (DCS) and the Lead Member (elected member). The aim should be to ensure that:

• there is an identified leader with responsibility for participation in children’s services (which should include youth offending services and targeted prevention services)

• participation is built into performance management and quality assurance systems

• a common definition and understanding of participation is shared across services (different agencies and professionals can have different perceptions)

• investment is sufficient and remains in place to ensure participatory activities and structures are effective

• training is provided to the workforce

• contrary attitudes and barriers to participation are challenged

• media led perceptions of children and young people locally are improved

• strategic leaders have direct and meaningful contact with children and young people.

The National Youth Agency has driven forward the implementation of participation rights in recent years and has a number of resources to help agencies to put participation into practice. These resources include *Hear by Right* and *Act by Right*, supported by workshops around the country. Other resources from the Children’s Rights Alliance for England, Participation Works and the Participation Unit (in Wales) are referenced below.

**Hear by Right**

The standards framework in Hear by Right is based on the ‘Seven S’ model of organisational change: Shared values; Strategy; Structures; Systems; Staff, elected members or trustees; Skills and knowledge and Style of leadership. It relies on self-assessment, divided into three levels of ‘emerging’, ‘established’ and ‘advanced’, with each level building on the last. This ensures that young people’s involvement is built in and not just bolted on.

Hear by Right has been designed as a practical and flexible toolkit, and comes supplied with a CD-Rom and a pre-prepared PowerPoint presentation to help explain its function. It is already being used by a wealth of different organisations in many different sectors. A website has been developed to present an ongoing picture of how Hear by Right is being used, and to provide organisations with inspiration for how the active involvement of children and young people can be used to benefit their work.

**Act by Right**

Act by Right is a skills development programme to enable children and young people to develop knowledge and skills to take effective action on issues that concern them and achieve change in
the services they receive and in the communities in which they live. It has five units; five stages of a journey of both personal development and leading toward the children and young people effecting change. Each unit has three aims and each aim has three activities. It takes about three hours to complete each aim plus one hour to review learning at the end of each unit. Each unit therefore takes at least 10 hours; 50 hours for the whole workbook.

Act by Right is designed for 14 to 19 year olds in groups of about 10, working through all five units, though each unit can be undertaken in its own right. With additional support, it can be used with younger people as well. The stages of the journey are: getting to know each other and representing others; getting to know our community; getting ready for action; campaigning for change; and finding out what's changed.

The National Youth Agency is keen to ensure that the young people using the workbook are credited for their learning and achievement. Act by Right is accredited by ASDAN, which means you can complete some or all of the units and activities, record the evidence of what you have learned, gain credits and use these to go towards an award.22

Children and Young People's Participation Consortium for Wales and the Participation Unit

The Participation Consortium is a multi-agency strategic body. It is working at a national level to develop capacity and practice in terms of the participation of children and young people (0 to 25 years) in decision-making in Wales. The Consortium was initiated in 2003 by The Welsh Assembly Government. The Participation Consortium received funding from the Welsh Assembly Government Children and Family Grants Scheme and the European Social Fund to establish a Participation Unit in 2004. The Consortium steers the work of the Unit which is hosted by Save the Children. The Unit acts as a focal point and supports the strategic development of participation.

The Participation Consortium and the Participation Unit are working together at a national level. They are also working with the Welsh Assembly Government Participation Project which aims to involve children and young people in the work of the Welsh Assembly Government and other large statutory organisations.23

Participation and youth justice

While some aspects of services for children and young people have seen participation rights developing, others provide more significant barriers. For example, listening to children and young people and taking their views and wishes seriously is established in family proceedings and for looked after children. In addition, the growth in restorative justice approaches allows for children, family, victims and others to benefit from a participative process, including family group conferencing and well managed referral order panels. In all other areas, it is more challenging and requires creative approaches to ensure the participation of very young children or those whose capacity to give their views is limited.

In the youth justice arena, participation rights are perhaps most easily applied in the context of crime and anti-social behaviour prevention initiatives. However, in the formal youth justice system, there are often elements of interaction and work that is compulsory in nature and where failure to engage or keep to conditions and requirements may lead to enforcement. Many cases feature children and young people whose liberty is restricted, either in part, such as by curfews or compulsory unpaid work, or in total during custodial remands and sentences. Thus, it is not always simple to establish a strong new culture of participation, either among the youth justice workforce, or among children and young people in the youth justice system.

The most recent report from HM joint inspectors of youth offending teams recommends further action to improve participation (although it noted some examples of good practice):

We also believe that children and young people should be consulted about improvements in service and be able to see that their suggestions can make a difference to the quality of service provision.

There was no clear strategy for the development of consultation with service users. No plans were in place to seek the views of children and young people from black and minority ethnic groups. Feedback was sought from children and young people, but not collated and used to improve practice.24

There can appear to be some constraint on compliance with participation rights where involvement is not voluntary in nature. However, where involvement is compulsory, due to a court order, it remains important to restrict rights only so far as is necessary. Some rights are ‘absolute’ and cannot be denied in any circumstance – such as the right to life, the right to have the best interests taken into account as a primary factor in decision-making (although that is not fully established in criminal law and procedure) and the
right to protection from cruel or inhumane treatment. Other rights, however, are limited and can be denied in full or in part. However, there must be justification (for example, to prevent serious crime or disorder) and the degree of restriction of rights must only be proportionate and to the extent that is necessary. As the government has explained, in the context of the Human Rights Act 1998, one must not use a sledgehammer to crack a nut.

It is difficult to envisage any circumstance in the youth justice system in which participation rights are entirely curtailed. For example, even on conviction for a grave offence there should be opportunity for the child or young person concerned to give their views and to participate in the trial and reporting and sentencing processes. This is particularly the case with the growth of preventive sentences related to dangerousness where assessment and opinion is inherently uncertain in terms of reliability.

International standards for administering youth justice are clear that the child or young person must remain central to processes. To illustrate, the Riyadh Guidelines state specifically about youth justice:

A child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialisation or control.25

Decisions are made that have substantial impact on children and young people in the youth justice system. These can include removal from home or family, becoming a looked after child, being detained, being subject to conditions of bail or sentence and attendance at venues for interventive programmes. Sometimes such programmes are not entirely suitable to the particular needs of the individual or lacking in cultural sensitivity. Whether the youth justice system works for individuals effectively can depend on their involvement in assessment, planning, implementation and review. The more that participation principles are adhered to, the better the chance of success.

Only that individual can help adults to know what will really work for them – and more importantly, what won’t work. This is important for getting it right for all, especially where the adults might not know what life is really like for the individual child or young person, or what cultural or religious factors might not be understood.26

Barnardo’s with Nacro has prepared training materials, Committed to Rights for all those working with children and young people in the youth justice system (including in custody), to demonstrate that a rights-based approach leads to better judgement and decision-making (please see Appendix 1).

Conclusion

There has been uncertainty and a range of opinion regarding the compatibility of children’s human rights and the administration of the youth justice system – perhaps often framed around the balance between rights and responsibilities and between the rights of victims and offenders. However, with regard to participation, there is growing commitment to involving and consulting children and young people and growing evidence of improved outcomes and services.

In the mainstream of youth justice, participative approaches are related to the adult – child relationships that are known to be key elements of intervention programmes. Participation is crucial to providing fair trials and other judicial processes and to assessment, planning and review of supervision and support programmes.

In the prevention arena, it is established that participative approaches are helpful in designing and delivering programmes (such as positive activities) and that reducing the harm done to and by gang members is enhanced by a better understanding of the world seen through children and young people involved – their lived reality.

More broadly, strategic planning and service structure and delivery are more likely to succeed where consultation processes are most developed (near or at the top of the ‘ladder of participation’ at Appendix 2 below) and where the important leaders are committed to championing participation rights.

Appendix 1: excerpt from Committed to Rights self-audit materials27

The self-audit materials are designed for use at the face-to-face practice level rather than auditing strategic development of participation rights. Areas covered include general skills and techniques, pre-court, in court, sentencing and sentence administration and life in custody. The example below addresses preparation for court, in court and preparation of reports.

These points will allow you to see whether everything possible has been done to ensure that the young person has been treated according to the legislation and in such a way as to involve him or her as much as possible.
Preparation for court

• Is someone given responsibility for trying to speak with children (particularly if detained for court) to ensure that all relevant parents, carers, significant others are informed?
• Does that person ensure that children understand what is happening, what will be expected of them and that sufficient information has been provided?
• Does that person ensure that lawyers are able to communicate properly with particular children?
• Are children encouraged to express themselves about what bail or other conditions might work best (if considered likely) or what alternative care arrangements might work best (if removal from ‘home’ is likely)?
• Are children sensitively assessed where necessary without risking emotional or psychological harm – if avoidable?
• Are children enabled to be open and honest (beyond any bravado etc) to allow their vulnerability and needs to be assessed?
• Are all efforts made to establish the maximum amount of consistency with regard to which adults are in contact with children throughout the process – avoiding excessive new personnel?

In court

• Although there may be legal representation, is someone experienced in working with children in court and prepared to take a pro-active role to whatever degree is required, eg respectfully assisting the court by interrupting proceedings if it is clear that a child does not understand or is giving misleading/wrong information?
• Is there someone always present in court to help children understand proceedings and the implications of any procedures that require consent or consultation (including special courts at weekends and in adult magistrates’ courts)?
• Where there are issues of bail or remand conditions or a risk of custodial remands, does someone ensure that children understand and can contribute to planning of conditions to make them achievable and relevant and with sufficient adult support to be sustainable etc?

Preparation of reports

• Does your allocation policy take account of the diverse communication, cultural and other needs of children?
• Are children always involved in assessment processes?
• Where children find it difficult to understand why some personal or sensitive questions arise, are explanations offered (unless there are safeguarding reasons), eg about self-harming behaviour?
• Are children always interviewed in circumstances that allow for their full involvement, including alone if appropriate (not with a parent or carer present)?
• On the other hand, are children enabled to have an advocate or helper present if they have communication difficulties?
• Are children (as well as parents or carers) encouraged to suggest sources of information and significant people who might be contacted?
• Is care taken to interpret what children say accurately, taking account of bravado, for example, regarding statements to do with remorse?
• Are children encouraged to comment on what sort of interventions/restoration will suit them, are achievable and which will help them (including preventing offending)?
• Are children involved in reviewing the content of final drafts of reports?
• Are children encouraged to comment on what might help them to comply with court orders?

Appendix 2: The ladder of participation

The model overleaf, adapted from Roger Hart, Ladder of Participation, Tokenism to Citizenship, allows consideration of where an organisation is performing with regard to participation rights in the context of consultation approaches.
### PRINCIPLES OF PARTICIPATION FOR YOUTH JUSTICE

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participants initiated with decisions shared with adults</td>
<td>Participants produce ideas, establish projects and invite adults to join in decision-making (adults can provide access to systems, venues and other resources and training at best)</td>
</tr>
<tr>
<td>Participants are directed in the process</td>
<td>Participants produce initial ideas and how to progress with adults available but not taking charge</td>
</tr>
<tr>
<td>Adult initiated but decisions shared with participants</td>
<td>Adults produce ideas but involve participants at every stage of planning and implementation and decision-making</td>
</tr>
<tr>
<td>Participants are consulted and informed but designed and led by adults</td>
<td>Adults produce ideas and develop but consult participants taking their wishes and views seriously</td>
</tr>
<tr>
<td>Assigned services or projects but children and young people are informed</td>
<td>Adults produce the ideas and project but participants volunteer to join with their views respected</td>
</tr>
<tr>
<td>Tokenism</td>
<td>Participants are asked to give their views but have limited choice about how to respond or the scope of those views</td>
</tr>
<tr>
<td>Manipulation</td>
<td>Participants express views suggested by adults and with limited understanding of the issues. Participants are not informed if, or how, their views were influential</td>
</tr>
</tbody>
</table>

### References

2. This is one of the five principles underpinning the Children's Plan: Building brighter futures (Department for Schools, Children and Families, 2007). Available at www.dfes.gov.uk/publications/childrensplan/downloads/The_Childrens_Plan.pdf
6. Empowering Children and Young People: promoting involvement in decision-making Children's Rights Office and Save the Children. Detail at www.crae.org.uk
12. Section 1(3)(a) Children Act 1989
13. Sections 22(4) and 22(5) Children Act 1989
14. For comprehensive detail and guidance, see www.everychildmatters.gov.uk/
15. Section 17(4A) Children Act 1989, inserted by s53 Children Act 2004
18. See reference 3 above
19. The National Children and Young People’s Participation Standards are available at www.participationworkerswales.org.uk/participation
20. See reference 4 above
21. Taken from National Youth Agency introduction to Hear by Right. This and more detail is available at www.nya.org.uk/information/100133/participation/
22. Taken from introduction to Act by Right. Detail available at www.crae.org.uk and www.nya.org.uk/information/100133/participation/
26. From Barnardo’s Committed to Rights, produced by Barnardo’s and Nacro as part of the Ready Steady Change resources. Detail and downloads available at www1.barnardos.org.uk/committedtorights/
27. See reference 2 above