

Local Members Interest
N/A

Safer and Strong Communities Select Committee - Thursday 05 November 2020

Impact of Covid-19 on Children appearing in Criminal Courts

Recommendations

I recommend that the Committee:

- a. Note the impact on children's mental health because of the delays in youth court processes
- b. Understands the cost pressure of the delays in the youth courts
- c. Understands and supports the actions taken to highlight the impact of the delays on children.

Report of Cllr Mark Sutton, Cabinet Member for Children and Young People

Summary

1. The committee is asked to understand the impacts of Covid 19 on the courts system and the impact on children awaiting outcomes in the criminal courts and to note the impacts this has on children's mental health.
2. The committee are asked to note the work that has been undertaken to make representation to key stakeholders to identify solutions and highlight the concerns across key stakeholders.
3. For the committee to note the financial pressures placed on the YOS Partnership pooled budget.

Background

4. The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 introduced a new remand framework for 10 to 17 year olds and contained key changes to how remanded children are to be viewed and treated.
5. A single Remand Order, Remand to Youth Detention Accommodation (YDA) for Youths was introduced, which removes the differentiation between 10-16-year olds and 17-year olds. Specifically, 17-year olds, who were previously subject to sentencing practices for adults, are now treated according to the same remand framework, regardless of their age and gender and can be assessed as vulnerable and placed on remand in secure accommodation.
6. Every child or young person remanded to YDA automatically has 'Child in Care' status, including 17 year olds, and can be remanded to a Young Offender Institution

(YOI), Secure Training Centre (STC) or Local Authority Secure Children's Homes (LASCH): the latter two being the more expensive of the Youth Detention Accommodation provision. 'Leaving Care' status is granted for those in custody for 13 weeks or more.

7. An 'associated transfer of funding' for all remands to custody (Young Offender Institutions) to Local Authorities to cover 85% of the historical spend for custodial remands, accompanied these changes.
8. Significantly the 2/3rds subsidy received by Children's Directorates in relation to remands to local authority secure accommodation, for all under 15's and any 15-17-year-old who were assessed as vulnerable, was removed. From April 2013 the Children's Directorates became fully responsible for all costs with no associated transfer of funding in recognition of the Children in Care status.

Profile of Remanded children

9. Children remanded to custody are more likely to display entrenched patterns of offending behaviour and/or are more likely to have committed serious offences. Many of these children have suffered trauma, lived in households affected by domestic abuse, mental health, substance misuse, suffered loss, been excluded from school, experienced drug or alcohol related dependencies and have mental health or special educational needs. Some of the children will be influenced by gangs or be engaged with gang activities.
10. The majority of children are currently remanded because they have been charged with serious crimes. Many had been influenced by peers, including peers affiliated to gangs and some have been criminally exploited. Some of the children have been charged with offences with adults such as robbery. Involvement with an adult tends to lengthen the time that they spend on remand as the court makes arrangements so that all the co-defendants can be sentenced together.

Remand Costs

11. Depending on the age of the child, they can either be remanded to a Local Authority Secure Children's Home (LASCH), Secure Training Centre (STC) or Youth Offenders Institution (YOI). The table below details the cost of the individual bed nights for each type of establishment.

Establishment Type 2020/21	Cost (£) per night
LASCH	762
STC	453
YOI	321

12. Children aged 15 years and under are more likely to be remanded to LASCH or STCs - the most expensive types of remand establishments. This is usually because they are deemed to be vulnerable by means of their age or emotional wellbeing. These establishments offer education and intensive interventions for the children in their care. Often the children are on remand to Crown Court (very

serious crime) or have an adult co-accused, where the Courts will seek to sentence all offenders involved together, resulting in an extended remand period which, in turn, places pressure on the remand budget.

13. The Staffordshire Youth Justice Plan for the last 3 years has identified the costs of remands as a significant pressure for the partnership budget. This shortfall will sit against the bottom line for the Youth Offending Service.

Impact of COVID-19

14. COVID-19 has significantly impacted on the ability of courts to operate within their usual limits. This is particularly affecting the crown courts and children awaiting trials in alongside adults. The time a child should be on remand for should not exceed 6 months however, the courts are applying discretion as these are extenuating circumstances and extending custody time limits means that children are spending longer on remand.
15. The impact for SCC is that more children are likely to be 'looked after' for longer due to the nature of the remand and could then acquire subsequent leaving care rights. The impact for the YOS is a strain on the budget and a subsequent overspend.
16. Additionally, the YOS is supporting children who are awaiting an outcome and are trying to maintain contact with the secure environments in a complex environment.
17. There are also significant concerns about the impact on the children who are awaiting an outcome from court, for what are always serious charges and if found guilty will result in lengthy sentences. An added complexity is that there has been a national agreement that once children are sentenced, anytime served on remand could be taken into consideration. Therefore, children could be released without the usual sentence planning that would happen in ordinary circumstances.
18. An example we are facing in Staffordshire is; 2 children who reached their custody time limits and have been extended. They went to trial at the beginning of September and were found guilty and can proceed to sentencing, remaining on remand until sentence. To support the sentencing a report is prepared by the YOS to make recommendations. Ordinarily these cases would be back in the courts within 3 weeks, however the next available court slot is not until mid-November which means that this is an additional cost on the remand budget in excess of £19,260.
19. There are also children waiting for an outcome within the youth courts who have stringent conditions from the court as part of bail. These children are at a greater risk of committing further offences for not adhering to their bail due to the longer than usual timeframes.

Remands to Custody funding

20. The Local Authority received £86,883 for the costs of remands. The 2020/21 projected overspend on the direct Remands budget based on analysis of the first 4 months of 2020/21 and a rolling average for the remaining ten months is £192,000.

Activity to offset the risk

21. The head of the YOS has highlighted the risks contained within this report with the following partners/agencies:

22. Youth Justice Board:

- a. All YOT's have a dedicated regional business advisor allocated to their service to oversee and ensure compliance with youth justice services. The impact of COVID-19 on remands and the pressures outlined in this report have been raised with the regional business advisor who has raised this with the senior leaders within the YJB. However, there has been no formal response to date.

23. Youth Custody Service (YCS):

- a. The issues over remands has been raised with the regional YCS lead and the impact on children's mental health, whilst awaiting extra ordinarily longer than would be usual for an outcome. The YCS lead has agreed to raise this across the secure establishments to consider whether these children require additional support.

24. Werrington YOI:

- a. Werrington is our local Youth Offending Institute (YOI) sited in Staffordshire and where possible all children within Staffordshire are placed, although if there are additional needs children could be placed further afield with some of them being placed hundreds of miles from home. Sometimes placement demand also forces a child to be placed far from home. The issues for children on remand have been discussed with the senior staff within Werrington and there has been agreement that there will be extra monitoring for children on remand, particularly considering their mental health needs.

25. Justice Select Committee:

- a. The head of Staffs YOS was invited to give oral evidence at the Justice Select Committee in June. During this session the impact on children within the custodial estate was explored. The head of the YOS raised concerns about the financial burden on YOTs and Local Authorities together with the impact on children and young people. Within this session the chair of the Magistrate's Association was present who discussed the significant challenges that the courts were facing in moving criminal cases through the formal justice system.

26. Her Majesty's Courts and Tribunal Service (HMCTS):

- a. The head of staffs YOS has raised the impact of COVID-19 with the local justice centre and they are working hard to ensure that the administration of the court is considering those vulnerable children in custody. However, they are being severely hindered in their ability to move forward due to the complexity of arranging court sittings within their existing capacity due to being Covid secure. Particularly difficult when trying to arrange for witnesses and juries. Despite there being great communication and engagement at the local level with HMCTS, there is little engagement regionally or nationally and this is being addressed with the support of the YJB. There have been numerous discussions about operating courts in other buildings and operating in the evenings and weekends, however, there has been no formal consultation or communication on this issue with any YOTs or the YJB. Operating courts during evenings and weekends also present significant challenges to YOTs as they are required to be present during any hearing where a child is to be in attendance. If this plan goes ahead there is likely to be an additional cost pressure to Staffordshire YOS to ensure that staff were available outside normal working hours. It is widely known and been reported in the media that it is expected to take 10 years to clear the backlog of court cases and whilst the courts are trying to prioritise children, where they are involved with adults awaiting a trial there is no speedy resolution to this. As of the 1st September there were 344 outstanding offences awaiting to be dealt with that were pre Covid and during full lockdown. This equates to 156 children and of those children 132 are not known to Staffordshire YOS. Ordinarily at any one time there would be approximately 30 children awaiting an outcome from court, which demonstrates the significant backlog.

27. Staffordshire Youth Offending Service Management Board:

- a. The Staffordshire Management Board met on the 3rd September 2020 and the impact of remands was discussed at this meeting and has been identified as a cost pressure for the partnership. The YOS Management Board budget is a pooled budget from statutory partners, grant from the YJB and a grant from the Police, Fire and Crime Commissioner. The partnership budget does have an identified underspend which was accrued following the service restructure in relation to recruitment of posts. The intention of the partnership is to utilise this underspend to cover the costs of the unexpected remands. Based on the predicted spend for this year on remands it is likely that this can be covered with the current underspend. However, should the situation with the courts continue with the current restrictions it is unlikely that the partnership would be able to meet any overspend moving into 2021/22.

28. Staffordshire YOS:

- a. The YOS is also working with children who are on bail awaiting sentence. These children have strict bail conditions, including daily contact, GPS tagging and non-contact conditions with named people. Due to the length of time they are on bail because of the delay in courts they are struggling to maintain their strict bail conditions. As of the 14th September the YOS is working with 8 children who have these strict bail conditions. All these children are being closely supported and overseen by a manager to try to prevent a breach of these conditions. If a child breaches these conditions an option for the court would be a remand to

custody. Therefore, the service is prioritising these children to try to prevent further remands into custody.

29. Staffordshire Police:

- a. Staffordshire Police continue to support the service through the provision of 3 seconded police officers. These police officers are working hard with the community police officers to ensure where possible that all crimes committed by children that can be dealt with outside of the court arena receive an out of court disposal.

30. Stoke-on-Trent and Staffordshire Safeguarding Board:

- a. Recognising the risk to the children's mental health the Board has written a formal letter to the regional Her Majesty's Courts and Tribunal Service Regional lead and requested that there is a review of their recovery plan to ensure that children are prioritised. A response is awaited.

Conclusion

31. The decision to remand children is multifactorial – based on the seriousness of the offence and the likelihood of offending on bail. These are not always children that have a long history with SCC or YOS, which might be used to impact on the trajectory that ends in serious crime and remand.
32. COVID-19 is having a significant impact on the length of time children are spending on remand due to the delays within the court system. These delays are also impacting on the mental health of our children who are awaiting sentence longer than usual. There will undoubtedly be consequences on the numbers of children who enter care by virtue of their remand status which could also equate to them acquiring leaving care rights.
33. Fortunately, the numbers of children on remand are small numbers. As of the 14th September, we have 3 children on remand across the secure estate which is within expected numbers. However, small this cohort is; for Staffordshire this is placing a financial burden on the YOS.
34. For 2020/21 the Staffordshire YOS Management Board has identified an underspend in their pooled budget to cover the cost of the remands. However, if the current trajectory continues beyond April 2021, the partnership would have a significant cost pressure (with the actual amount being difficult to predict due to not knowing the full impacts of the court) and be unable to meet this within their current budget. Given that the delays within the courts is unlikely to dissipate quickly it is likely that this will be an ongoing financial pressure within the YOS budget and a piece of work is underway to try to project the costs while the delays in courts continue.

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