

Chapter 1

Values, ethics and human rights issues in youth justice social work

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A C H I E V I N G A S O C I A L W O R K D E G R E E

This chapter will help you begin to meet the following National Occupational Standards.

Key Role 6: Demonstrate professional competence in social work practice.

- Work within agreed standards of social work practice and ensure own professional development.
- Manage complex ethical issues, dilemmas and conflicts.

It will also introduce you to the following academic standards as set out in the social work subject benchmark statement:

5.1.1 Social work services, service users and service carers.

5.1.3 Values and ethics.

Problem-solving skills.

5.5.3 Analysis and synthesis.

5.6 Communication skills.

5.7 Skills in working with others.

Part one: Understanding ethical dilemmas between legal and social work practice in youth justice

Jane Pickford

Introduction

The youth justice system in England and Wales caters for young people who get into trouble with the police who are aged between 10–17 (inclusive). Youth justice practice is unlike any other area of social work because your client, no matter how harsh their background, will be viewed primarily as a wrongdoer who deserves to feel the weight of legal powers pressing against them. When this force is applied, you may find that some of the caring precepts of your profession become challenged, diluted and on occasion, negated.



Consequently, the discord between social work ethics and legal principles is perhaps no more keenly felt than in work with juvenile suspects and law-breakers. In some instances welfare instincts that practitioners are trained to develop within a culture of safeguarding and child protection, hit a legal brick wall when confronted with principles of justice and victims' rights.

In the first part of this chapter, you will be introduced to the ethical conflicts involved in youth justice social work. This will include examining dominant concepts of childhood that have undoubtedly impacted upon our juvenile justice system, explaining the traditional conflicting theories of youth justice and of criminology, as well as analysing how our youth justice system fares when faced with moral and legal standards imposed by international conventions and human rights legislation. In addition, it will be useful to outline statistics in relation to trends in youth offending, risk factors and custody rates, in order to contextualise our investigations.

The second part of the chapter provides an examination of the values and ethics underpinning social work practice and the regulatory frameworks in place to ensure practice is in accordance within the values and ethics fundamental to the social work profession. It considers the application of social work values to practice and potential ethical dilemmas facing social workers in their practice with children and young people who offend.

But first, let's introduce the nature of the big ethical problem for youth justice practitioners.

The 'big dilemma' in youth justice

Are children born innocent and become corrupted by exposure to the adult world and so need protection, or are children born with the potential for evil and so need to be controlled and civilised by adults? This fundamental question that is at the core of the nature vs nurture debate (which perhaps cannot be answered, even with the wealth of biological, psychological and environmental research gathered over the history of criminological investigation) is one of the most potent ethical dilemmas you will encounter in youth justice practice. It relates to the divergent approaches that have developed in relation to models for dealing with young offenders.

Though many academics assert that it might now be old fashioned to analyse tensions between the two historically dominant perspectives of welfare vs justice, it is evident to practitioners that these tensions are at the root of differences of opinion in public, professional and political arenas, when deciding how to deal with children and young people who come before the criminal justice system. Though these approaches (and others that have developed) will be examined later in this chapter and in detail in Chapter 2, it is useful to briefly outline them here and analyse how they interact with models of childhood (see Hendrick, 2002) and two mainstream criminological theories. Figure 1.1 attempts to simplify the polemic dominant theories of childhood, youth justice and criminology and highlight how they interact and overlap.



Figure 1.1 Overlaps and tensions in theories of childhood, youth justice and criminology

Children are born innocent	Children are born with the potential for evil
<p><i>Romantic model of childhood</i></p> <ul style="list-style-type: none"> • From the ideas of Rousseau. • Concept of 'original innocence'. • Children are born good and corrupted by the adult world. • Childhood should be respected as an important stage. • It is precious – a separate period of life that is distinct (opposite) from adulthood. • Children should be protected. 	<p><i>Evangelical model of childhood</i></p> <ul style="list-style-type: none"> • From the religious ideas of Wesley and More. • Children are born with 'original sin'. • Children need discipline and education to civilise them. • Under this model children need to be strictly controlled. • Children are naturally self-seeking (see Hendrick, 2002).
<p><i>Welfare approach to young offenders</i></p> <ul style="list-style-type: none"> • Delinquent kids are a product of an adverse environment. • Delinquency is pathological – a manifestation of a deeper problem. • Delinquents are not fully responsible for their actions. • Delinquents are better dealt with by a system designed around need – by social workers and other professionals trained to work with young people. • Treatment and rehabilitation is possible if disadvantage is alleviated. • Discretionary powers are necessary. • Informality and flexibility is required. 	<p><i>Justice approach to young offenders</i></p> <ul style="list-style-type: none"> • All people (inc young people) commit crime due to choice and opportunity. • Young people should be held fully responsible for their actions. • Sanctions are justifiable as deterrents. • Rigorous legal procedures and standards of proof should be adhered to. • Punishments should be proportionate and commensurate to the seriousness of the crime they have committed. • Sanctions should be based on the nature of the crime, not on the nature/circumstances of the criminal. (see Muncie 2009)
<p><i>Criminological theory of positivism</i></p> <ul style="list-style-type: none"> • Various factors cause criminality – positivists investigated biological/genetic triggers, psychological triggers and social/environmental triggers. • Causational factors can explain criminality and function as mitigations to full culpability. • Youth itself can count as a mitigation – the younger the culprit the less likely they are to be aware of the full consequences of their actions. • Causes need to be located and risk factors addressed. • Individualised treatment is required in order to address the problems that precipitated the criminal behaviour. 	<p><i>Criminological theory of classicism</i></p> <ul style="list-style-type: none"> • Crime is committed out of choice. • Humans are rational beings but by nature self-seeking and hedonistic. • They are concerned with the pursuit of pleasure and avoidance of pain. • The would-be offender will undertake a cost-benefit analysis of the proposed deviant action. • The offender knows that their act is wrong, so should take full responsibility for crime and deserves to be punished. • Punishment should be proportionate to the wrong caused. • Personal circumstances don't excuse bad behaviour.

Examining Figure 1.1, it is clear that (i) the main perspectives of childhood, (ii) the dominant theoretical approaches to young offenders, and (iii) mainstream criminology, all share characteristics and are mutually supporting. The romantic model of childhood has a lot in common with the welfare approach to youth justice which in turn shares similarities with the school of positivism within criminology. Whereas, the evangelical model of childhood is reflected in the justice perspective of youth offending, which is in turn supported by the classical school of criminology. However, it is also clear that these two sets of three

mutually supportive approaches are arguably oppositional polemic positions, and herein lies the 'big dilemma' in youth justice practice. The inability of successive governments (and indeed public opinion) to clearly recognise this dilemma and choose between these fundamentally different ways forward, continues to cause tensions within youth justice practice. Due to the elemental nature of this question, the polemics it raises and the fact that it taps into deep-seated and perhaps irresolvable academic arguments surrounding the nurture vs nature debate, it is doubtful that we will find any resolution to this issue.

Trends in youth offending

In order to conceptualise the youth crime problem, it is useful to examine the nature and extent of juvenile law breaking. Statistics indicate that during the period 1992 until 2003, there was a significant decline in detected juvenile criminality. Over that period, the total youth offending dropped by 27 per cent, despite public perceptions to the contrary (NACRO, 2009). However, the period from 2003–2007/8 witnessed an apparent reversal of that trend, with overall youth crime rising.

The apparent rise in detected youth crime over those years was probably influenced by issues other than the actual rate of youth criminality. It has been acknowledged by academics and practitioners that changes in police practice probably impacted on crime figures, creating misleading statistical data about seeming rises in juvenile law breaking. In 2002, the Labour government set a target (eventually of 1.25 million) for the police to narrow the 'justice gap' (between offences recorded and those 'brought to justice') by increasing the number that result in 'sanction detection' (i.e. by obtaining convictions or by issuing penalty notices for disorder (PNDs) or obtaining confessions from existing offenders of previous offences to be taken into consideration (TICs) when sentencing a current offence or by issuing reprimands and final warnings). One possible consequence is that offences which would previously have been dealt with informally (and go unrecorded) might have received a formal response over that period and so be reflected in the recorded figures for youth crime. Further, the increased use of anti-social behaviour orders (ASBOs) and the consequent criminisation of those who breached orders arguably similarly and misleadingly inflated the statistics (NACRO, 2009).

The increase in 'sanction detections' was not followed by a concomitant increase in the police clear-up rate. Bateman's analysis of the seeming rise in detected youth crime was that it was a *function of sanction detections being imposed for behaviour that would previously not have attracted such an outcome* (Bateman, 2008).

The target was, in other words, met at the expense of those populations of offenders who might otherwise have received an informal response for minor transgression against the law (NACRO, 2009).

These would include:

- offences committed by younger people;
- less serious offending;
- offences committed by girls.

Analysis of the data confirms that the apparent rise in juvenile criminality 2003–2007 can be substantially explained by disproportionate rises in each of the above categories. It seems that the police were picking low-hanging fruit – those easiest to pursue – when attempting to meet government targets over this period. Once the targets were removed, declines in overall youth crime, particularly in relation to first offenders, were notable.

Youth crime figures peaked in 2007/8 and since that period total offences committed by young people has notably declined, largely due to a reduction of first time entrants into the youth justice system (i.e. those receiving their first reprimand, final warning or conviction (Department of Education, 2010; Youth Justice Board/Ministry of Justice, 2011)).

ACTIVITY 1.1

Take a look at the most recent statistics relating to youth crime at the Ministry of Justice website: www.justice.gov.uk and outline the current trends in youth crime. Has the crime rate for 10–17 year olds risen or fallen over the last few years? What factors might have precipitated recent trends? Have there been any noticeable patterns in increases or decreases of particular types of crime?

If we analyse some of the key data published jointly by the Youth Justice Board and the Ministry of Justice early in 2011, the downwards trend is clear:

- There were 198,449 proven offences committed by young people aged 10–17 which resulted in a disposal in 2009/10 – this is a decrease of 19% from 2008/09 and 33% from 2006/07.
- The most common offences resulting in a disposal in 2009/10 were:
 - theft and handling – 21% of all offences;
 - violence against the person – 20% of all offences;
 - criminal damage – 12% of all offences.
- In 2009/10 most youth offending in England and Wales was committed by young men – 60% of all offences were committed by young men aged between 15 and 17 years. Young males were responsible for 78% of the offences committed by young people.

- There were 155,856 disposals given to young people in 2009/10. This is down 28% from 2006/07.
 - These falls followed a period of rapid growth from 2003/04 to 2007/08, when out of court disposals almost trebled.
 - This increase was due to the introduction of Penalty Notices for Disorder (PNDs) which coincided with the introduction of a public service agreement target, which took effect in 2002, to increase the total number of offences brought to justice (OBTJ). This target has now been removed.
 - Females accounted for 22% of all disposals given to young people in 2009/10. They accounted for 32% of all pre-court disposals given, and 17% of all first-tier disposals. They accounted for 15% of all community disposals and only 8% of custodial disposals.
- (Youth Justice Board/Ministry of Justice, 2011)

Trends in custodial sanctions

In England and Wales we lock up more children and young people than almost any other Western society. NACRO (2010) in a policy position paper recommending further reductions to the amount of children and young people being sent to the secure estate, made the following comments on custodial remands and disposals:

- Between 1992 and 2002, the number of young people sentenced to custody rose by more than 85% while the level of detected youth crime reduced by more than a quarter.
- During the early months of 2009, the population of the secure estate fell for the first time since 2000 – this trend has continued and early 2011 there are approx 2,100 young people in the secure estate – at its peak it reached approx 3,000.
- In England and Wales we incarcerate four times more under 18s than France, ten times more than Spain and 100 times more than Finland.
- Custody is costly but has an appalling success rate (75% are reconvicted within one year) and academic evidence suggests that for many young people the use of custody actually increases the risk of reoffending.
- *Reoffending following release from custody is inversely related to age: younger children are more likely to be reconvicted than older teenagers, who in turn are more likely to be reconvicted than adults* (NACRO, 2010, p2).
- A large number of young people who are detained in custodial facilities do not pose a serious risk to the public.
- Of young people aged 16 to 17 convicted of non-violent offences, 12% are given custodial sentences, while over a third of younger children below the age of 15 in custody do not seem to meet the statutory criteria for incarceration.
- Around 40% of the population of the secure estate for children and young people are classified as vulnerable and one third of children have no educational provision on entering those establishments.

(NACRO 2010)

Risk factors and youth offending

The Youth Justice Board highlighted the following four risk factors as being the most influential on youth offending:

- *Family* e.g. inadequate, harsh or inconsistent parenting.
- *School* e.g. low achievement, disaffection, truancy or exclusion.
- *Community* e.g. residence in areas of low community cohesion, crime hot spots or easy access to drugs.
- *Personal* e.g. being male, mixing with offending peers, poor physical or mental health or misuse of drugs or alcohol.

(Youth Justice Board, 2005b)

To these four major influences, Pitts (2008) possibly adds a fifth (though linked to the factor of community) namely, physical area. When investigating gang activity, Pitts discovered that youth involvement in serious criminality correlated more strongly with habitation in deprived neighbourhoods than with the other factors noted above.

These vulnerability/susceptibility factors are at the centre of risk assessments undertaken by Youth Offending Teams (YOTs) across England and Wales. The Youth Justice Board designed a risk assessment tool – *Asset* – which is used to ‘score’ a young person’s risk of further offending using the ‘scaled approach’ introduced in November 2009.

Some academics and practitioners have been highly critical of this move, because:

- it could ‘up-tariff’ a YP for welfare issues;
- its focus is on individual rather than structural factors such as government policy, unemployment, poverty, etc. (Smith, 2007);
- some people who are predicted as high risk do not re-offend and vice versa;
- calculating the risk of a young person committing further offences cannot be reduced to an actuarial or mathematical equation because young people often do not act predictably and their lives are often varied and complex. The process is totally oversimplified and this experiment in actuarialism amounts to treating young people who come before the criminal justice system like *crash test dummies* (Case and Haines, 2009) (see Chapter 4 for a further critique).

The interface between law and ethics

In this section we consider our youth justice system in relation to international legislation and conventions, as well as examining how it may stand up to the provisions of our own Human Rights Act 1998.

International conventions, guidelines and rules relating to youth justice

Is the way we treat young people who come into contact with the criminal justice system comparable to juvenile justice systems in other legal cultures? How well do we fare when we scrutinise our brand of youth justice and test its compliance with international legal requirements? We analyse how the implementation of human rights legislation into our domestic law has impacted upon our practice of youth justice. Do some of the practices within our youth justice legislation breach fundamental principles of human rights?

But first we must examine international law on the rights of the child and the many protections that have developed over the past few decades. Some countries have taken international provisions about minimum requirements in relation to youth justice systems more seriously than others. How does our system fare when we put it to the test of international conventions? Have we developed a child-oriented system when we deal with young people who are accused of breaching our criminal law?

International human rights law should offer protections for young offenders, if provisions are adhered to at a domestic level. You should be aware of them to check whether procedures your client has been subject to might be in breach of these safeguards. The most significant examples include:

- United Nations Convention on the Rights of the Child (1989).
- United Nations Rules for the Administration of Juvenile Justice (1985) (Beijing Rules).
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990b).
- United Nations Guidelines for the Prevention of Juvenile Delinquency (1990a) (Riyadh Guidelines).

and also:

- Article 5 of the European Convention on Human Rights – the right to liberty and security (now part of our Human Rights Act 1998).
- Article 6 – the right to a fair trial (now part of our Human Rights Act 1998).
- International Covenant on Civil and Political Rights (ICCPR) (1966) – Article 14 (4): . . . *in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*

The most far-reaching is the Convention on the Rights of the Child; this is due to its binding character and the fact that it has been ratified by 191 states/countries. The convention acknowledges that distinct legal procedures are necessary when dealing with under 18 year olds who are accused of criminal activities.

Article 40 is one of the most significant parts. It states that:

State Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth . . .

This includes minimum due process guarantees, including:

- The presumption of innocence.
- The right to be informed promptly of the charges against him or her.
- The right to have legal assistance in the preparation of his or her defence.
- The right to be tried without delay by a competent legal authority.
- A requirement to set a reasonable minimum age of criminal responsibility.
- The need to provide non-judicial methods of dealing with children in conflict with the law.
- The need to establish alternatives to institutional care.

These provisions are supplemented by Article 37, which prohibits the death penalty and life imprisonment without the possibility of release. Article 37 also requires that imprisonment 'shall be used as a measure of last resort' and where children are imprisoned it must be for the shortest possible period of time.

Article 39 requires the countries to promote physical and psychological recovery and reintegration of child victims.

The Convention also has general principles, which should be considered in addition to specific principles. These include:

- All procedures should be in the best interests of the child (Article 3).
- Judicial bodies/tribunals must take into account the evolving capacities of the child (Article 5).
- Judicial bodies/tribunals must give due weight to the views of the child (Article 12).
- Procedures must be free of discrimination (Article 2).

The United Nations Committee on the Rights of the Child monitors countries who have ratified the Convention on the Rights of the Child to test for compliance and publishes periodic reports. Our youth justice system has been scrutinised by the Committee on three occasions: 1995, 2002 and 2008. On each occasion the Committee has raised serious concerns. Most notably, there was concern expressed about the fact that the government in England and Wales had not encoded the principles of the convention into domestic law. The result of this is that, while there is an obligation to comply with the convention, there is no domestic sanction for non-compliance! It is arguable that public opinion in our country (often prompted by tabloid coverage of young offenders) has not been conducive to the idea of promoting suspect's and offender's rights generally. (Indeed, the coalition Conservative/Liberal Democrat government has adopted this tone in its proposal to abolish the Human Rights Act). Monaghan (2005, p47) asserts that,

... with regard to youth justice, there remains considerable ambiguity of commitment to rights and a significant level of infringement and outright denial ... respect for children's rights is selective and, arguably, discriminatory.

The 2008 report of the committee on the Rights of the Child echoed these concerns, commenting on a popular intolerance for adolescents and asserting that the media attitude towards youths could encourage further human rights infringements. This negative characterisation was also observed by a YouGov survey in 2008 when over half of those surveyed said that children were behaving like animals and just under half said that children were potentially a danger to society. These populist attitudes are reflected upon in the Committee's conclusions, below.

The Committee noted that, while there had been some positive interventions since their 2002 report (e.g. the government's development of the Children's Plan, the creation of Children's Commissioners, the segregation of youths from adults held in custody and the establishment of the Equalities and Human Rights Commission) overall, many serious deficiencies remained. Their main concerns regarding youth justice can be summarised as follows:

1. *The age of criminal responsibility in England and Wales.* The Committee criticised our threshold of ten years old and stated that we were out of line with most other countries, recommending that this be raised substantially. The table below illustrates the differences of acceptable ages of criminal culpabilities between countries.

Table 1.1 International comparisons of minimum age of criminal responsibility

Age of criminal responsibility	Country
7	Switzerland, Nigeria, S Africa
8	Sri Lanka
10	England, Wales, Northern Ireland, Australia, New Zealand
12	Scotland, The Netherlands, Canada, Greece, Turkey, Southern Ireland
13	France
14	Italy, Germany, Bulgaria, Romania, China
15	Denmark, Sweden, Norway, Finland, Czech Republic, New York (US), South Carolina (US)
16	Spain, Japan, Texas (US), Poland
18	Belgium, Luxembourg, many US states

In March 2010, England's children's commissioner Maggie Atkinson called for the age of responsibility to be raised, stating that most criminals under the age of 12 did not fully understand their actions (www.guardian.co.uk/uk/2010/mar). However, the Ministry of Justice said those aged 10 and over knew the difference *between bad behaviour and serious wrongdoing* and that the age should not be raised (<http://news.bbc.co.uk/1/ni/uk/8566591.stm>). Her timing was perhaps unfortunate, as her plea followed soon after the trial of two boys from Edlington who, at the age of 11 and 12, seriously tortured two younger children, a case which bore strikingly similar characteristics to the killing of James Bulger some 16 years earlier. Later that year, in May 2010, a trial at the Old Bailey of two 10-year-old boys who were found guilty of the attempted rape of an 8-year-old girl, re-ignited the debate about the age of criminal responsibility. Article 40 (c) of the Convention on the Rights of the Child says that it is

for states to set a reasonable minimum age, but declares that it considers that a minimum threshold that is below the age of 12 is *not internationally acceptable*. Echoing these concerns and noting the very low age of criminal responsibility in England and Wales, Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe (Council of Europe, 2008) recommended in 2008 that the Government considerably increase the age of criminal responsibility to bring it in line with the rest of Europe, where the average age of criminal responsibility is 14 or 15 years.

2. *The use of adult courts for juveniles.* The Committee reiterated its previous opinion that crown courts are adult courts and unsuitable for children and young people and that a youth court that deals with serious crimes should be established. Similarly, though a young person who is tried with an adult co-defendant at an adult magistrate's court is usually referred to youth court for sentence, the committee deemed it inappropriate to hold trials of juveniles at adult courts. Further, the practice that many young suspects have bail and remand decisions adjudicated at adult courts after arrest because youth courts usually sit only for one day each week in most areas, was also viewed as unacceptable.
3. *The use of detention.* The Committee stated that detention levels both for sentenced and remanded juveniles were objectionably high and indicated that the 'last resort' principle of youth custody enshrined in the Convention was not being adhered to. The Committee found it noteworthy that there is no simple guidance relating to the classification of a 'persistent young offender' and that assessments of dangerousness are often subjective. The Committee also expressed concern regarding deaths in custody and the high levels of self-harm among detainees.
4. *ASBOs for children should be abolished.* The Committee was concerned that:
 - ASBOs are civil orders that attract criminal sanctions on breach;
 - orders often prohibit a wide range of behaviour/activities;
 - that there exists a culture of *ease of issuing such orders*;
 - ASBOs facilitate early contact with the criminal justice system, which is detrimental to young people;
 - they are primarily targeted at adolescents from disadvantaged backgrounds.

(Note: specific human rights law implications of ASBOs will be examined under the sub-heading Human Rights Act, below.)

5. *The use of dispersal orders and methods to curtail peaceful assembly.* The Committee condemned the use of dispersal orders and the use of the 'mosquito' high pitched electronic device against young people who assemble in public places.
6. *The right to privacy.* The Committee was concerned about the climate of zero-tolerance towards youth disorder as reflected in the trend in some areas to publicise details and pictures of youths subject to ASBOs and the proposal in the Youth Crime Action Plan 2008 to drop the reporting restrictions in relation to those aged 16 and 17. Further, disquiet was expressed about the growth of the taking and retention of DNA samples of young suspects.

7. *The use of restraint techniques.* The Committee urged a more reticent attitude to the use of restraining methods, which should be used as a last resort and only when the young person is a danger to themselves or others.

In a review of the Committee's findings, NACRO (2008) concluded that, not only had our government failed to address ongoing concerns such as the high levels of detention and the low age of criminal responsibility, but that human rights infringements were of growing concern in relation to the flourishing use of ASBOs and other civil measures that restricted freedom and privacy. Additionally, the growth of a popular, perhaps media provoked demonisation culture regarding youths, *should be viewed with dismay*. While it is up to the government to implement the Committee's recommendations, youth justice practitioners should

. . . consider and defend children's human rights with vigour . . . Ensure that they are familiar with children's human rights, and frame practice around the principles and provisions of the Convention on the Rights of the Child.

(NACRO, 2008, p8)

The Human Rights Act 1998

The Human Rights Act 1998 incorporates the European Convention on Human Rights into domestic law so that all current and planned legislation must be implemented in a manner consistent with the rights and freedoms set out in the Convention. Additionally, the Act includes the adoption into domestic law of the United Nations Convention and linked protocols including (very significantly from a youth justice standpoint) the Beijing Rules (the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985).

Has the inclusion of these international provisions affected the practice of youth justice in this country? Could legal challenges be mounted under the Human Rights Act about the way we treat young people who are deemed to be anti-social or who are suspected of or convicted for a criminal offence? You should be aware of these protections in your work with clients and be prepared to challenge any breaches.

In 1999 the European Court of Human Rights, in the case of Thompson and Venables (the killers of toddler James Bulger), (prior to the implementation of the Human Rights Act) ruled that:

- The process in the Crown Court was unfair because it was unsuitable for the two defendants (aged 11 at the time) in that it was intimidating and incomprehensible for the boys. This ruling has yet to be acted upon.
- Sentencing should be left to judges to decide and recommendations should not be overruled by politicians (the boys were originally sentenced to eight years by the trial judge; this was raised to ten years by the Lord Chief Justice and then to 15 years by Michael Howard, the then Home Secretary).
- Decisions about release should not be decided by the Home Secretary but by an independent judicial body such as the Parole Board.

Following this ruling, Jack Straw the Labour Home Secretary in 2000 referred the issue to the Lord Chief Justice who declared that the boys had served their minimum tariff. This paved the way for a parole application and a successful injunction to protect their anonymity. They were released with new identities in 2001. The sentencing of juveniles convicted of the gravest crimes will be set by the Lord Chief Justice on recommendation of the trial judge.

It is noteworthy that the European Court's ruling regarding Crown Courts being unsuitable places for dealing with young people (the Crown Court is essentially an adult court) has been ignored by the government. Young people who are alleged to have committed serious offences are still tried in this unsuitable and confusing environment. The implication seems clear: children should not be subject to adult court procedures. Changes must be made to the system of trial of children and young suspects in the crown court, especially those at the youngest end of criminal responsibility (i.e. 10 to 13 year olds). As noted in the last section, the United Nations Committee on the rights of the child has consistently urged our government to reform this area of youth justice procedure.

The above decision highlights how the government can be challenged for breaches of human rights and international protections in relation to young offenders. There are other possible breaches that could impact upon your social work practice in advising young people and their parents. Further challenges that could possibly be taken in relation to the provisions in our contemporary youth justice law and practice include:

- *Anti-social behaviour orders (ASBOs), anti-social behaviour contracts (ABCs) and local child curfews.* A magistrate can order an anti-social behaviour order in respect of any person over the age of 10. The police, in conjunction with the local authority, make the application for an ASBO. The local authority can also impose ABCs on young people (and adults) before an ASBO application is made. Young people may feel pressurised to accept the terms of an ABC, for fear that a formal ASBO application might be made to the court if they decline. (See Chapter 4 for more information about ASBOs and ABCs and other civil orders.) Although an ASBO is civil in nature, its breach can involve criminal sanctions. Such an order can now be made for beyond the original two year limit and its potential for constituting an intrusion of individual and family privacy seems clear. Furthermore, the local child curfew, which can be imposed on a group of children under the age of 10 for an extendable period of 90 days, appears similarly intrusive. As with the anti-social behaviour order, no criminal behaviour need be proved before a curfew is imposed.

The growth of other civil orders such as dispersal orders, the introduction of wider powers against parents and broader control measures within the parenting order alongside the development of the anti-social behaviour injunction (in 2010) all provide evidence of wider and deeper tactics of government control of those perceived to be unruly within our society. The danger of human rights infringements has grown in tandem with this increase in state interventions, interventions that appear to be targeted disproportionately against young and marginalised communities (UN Committee on the Rights of the Child Report, 2008).

It is noteworthy that Alvaro Gil-Robles, the Human Rights Commissioner for the Council of Europe, alleged in his report back in June 2005 that the UK was already suffering from 'asbomania'. Also, Shami Chakrabarti, the current director of Liberty, when asked to

comment on the practice of some local authorities to 'name and shame' young people subject to ASBOs said that this practice was: *More akin to the medieval stocks than a 21st century law and order strategy. We are in danger of transforming Britain into Asboland* (Observer, 12 June 2005).

Successful challenges have been mounted by individual 'defendants' to allegedly unreasonable ASBO restrictions. In May 2005, a 16 year old from Collyhurst Village near Manchester became the first person to be banned under an ASBO from wearing a hooded top. However, in August 2005 a youth in Portsmouth, who was banned from wearing a hooded top or a baseball cap under the terms of an ASBO, had this part of the order set aside by a district judge when his solicitor successfully argued that this restriction breached his human rights. Similarly, in July 2005 the High Court backed a 15 year old's claim that ASBO powers that sanctioned the police to remove him from curfew zones breached the Human Rights Act in that it unreasonably interfered with his freedom of movement. Also, magistrates might be wary of breaching basic freedoms under the Human Rights Act, as was seen in May 2010 when a Bench in Bedford refused to impose an ASBO condition requested by the police and CPS against an 18 year old, which purported to ban him from wearing his trousers so low that his underpants were visible.

As Muncie (2009, p321) has noted:

The unintended consequences of raising anxiety and fear of the 'disrespectful' is to encourage a greater mistrust not only of 'the irritating' but also of 'difference'.

- *Article 8 of the European Convention on Human Rights, which is incorporated into domestic law by the Human Rights Act 1998, states that every person has the right to respect for their individual, private and family life, unless an intrusion is necessary for (among other things) the prevention of crime. It may be difficult to justify severe restrictions on the liberty of a child who has not yet been convicted of committing any criminal act. Article 8 may also cover situations where a young person has been remanded into local authority accommodation and, due to shortage of specialised places (especially of secure accommodation), they are placed some considerable distance from their family, possibly for a number of months while awaiting trial.*
- *Article 6 of the Convention covers the right to a fair trial: possible issues arising under this provision are threefold.*

First, it has been noted earlier that criminal sanctions can be applied for breaches of civil orders (e.g. anti-social behaviour and local child curfews, etc). For a civil order to be made, the standard of proof is on the balance of probabilities – a much lower standard than the criminal law requirement of proof beyond reasonable doubt. Furthermore, parental bind-overs are deemed to be civil in nature and criminal sanctions can accrue for breach. Additionally, the referral order established by the Youth Justice and Criminal Evidence Act 1999 enables a court to refer a young person to a Youth Offender Panel, a body outside the 'official' criminal justice system, where there is no right to legal representation, yet which is authorised to pass criminal sanctions. Arguably, as such provisions and procedures are either in reality criminal in nature or have criminal consequences, they

legitimately fall into the ambit for scrutiny by Articles 6 and 8 of the Convention (particularly as no rights of appeal are set out in either the Crime and Disorder Act 1998 or the Youth Justice and Criminal Evidence Act 1999).

Second, Section 35 of the Crime and Disorder Act 1998 permits an adverse inference to be drawn from a defendant's silence at interview or trial stage: this provision applies from the age of ten. Article 6, in its assertion of the presumption of innocence and the right to a fair procedure, arguably sits uneasily with Section 35 in relation to young suspects. Also, it can perhaps be implied that Article 6 requires that an appropriate adult be present when the young person is cautioned about their 'right' to silence, so that they can be properly instructed as to the full implications of their silence.

The third possible challenge in relation to Article 6 concerns reprimands and final warnings under Section 65 of the Crime and Disorder Act 1998 and the recently introduced youth conditional caution. Issues about proportionality in relation to such sanctions, coupled with the continued debate about the possibility that young people, in eagerness to rid themselves of any further involvement with the criminal justice process, may confess to things they might not be found guilty of in a court of law, may be open to question in relation to fairness of procedure. Additionally, any failure to co-operate with the requirements of a conditional caution may result in the breach being cited in court and possibly lead to a harsher sentence being given in any future court appearances.

- *Article 3 of the European convention covers the prohibition of torture*, which includes degrading treatment or punishment. Linked to this, the Beijing Rules state that when a young person is sentenced it should amount to a *fair reaction* – in other words, it should adhere to the principle of proportionality. It could possibly be argued that the Crime and Disorder Act 1998 implicitly sanctions the use of deterrent sentences in order to dissuade others from certain behaviours and that such sentences may, therefore, fall foul of the Human Rights Act 1998. Further, the 18 options available to a sentencer when sanctioning a youth rehabilitation order could result in some young people being given a range of requirements which might be disproportionate to the crime(s) they committed.
- *The consequences of being a young person refused bail*. This may mean that their relationship with their parents is severely affected. In an adversarial process where there may have been only a short time to respond to an application to refuse bail, the parent may not be involved at all in the decision-making process. Certain decisions to refuse bail may possibly breach Article 8 (noted above) and Article 5 of the Convention, which covers the right to security and liberty.

So it appears that there is potential for a number of challenges to our youth justice system that could be mounted under the Human Rights Act. Lawyers representing young offenders and Youth Offending Teams should perhaps have made such challenges a priority but unfortunately we still await the formulation of firm legal guidelines via case law challenges of many of these possible Human Rights Act breaches. As a well-informed, proactive practitioner, you must be aware of any potential challenges.

ACTIVITY 1.2

Legal case study

Karim (aged 12) and Simon (aged 11) decide not to return to school after lunchtime but instead go to their local shopping mall in Kenchester. They enter a shop and Simon suggests that they steal some sweets from the pick 'n' mix counter. While they are stuffing confectionery into their rucksacks, Ken, a security guard, approaches them and asks them to open their bags. Karim complies with this request and reveals the chocolate he has stolen. Simon refuses to open his bag, and when Ken tries to take it from him Simon takes a baseball bat from the side pocket of the bag, hits Ken on the head and runs out of the shop. The police are called and Simon is apprehended while running from the shopping centre and arrested. Karim is also arrested and both boys are taken to the police station for questioning. Ken goes to hospital suffering from a split lip and a broken nose.

Simon is charged with grievous bodily harm (under Section 20 of the Offences Against the Person Act 1861) and theft (under S1 of the Theft Act 1968) and Karim is charged with theft.

Karim already has a previous final warning for another matter of shoplifting six months earlier and Kenchester Youth Court sentence him to a four-month referral order. At the Youth Offender Panel meeting, the panel state that Karim must sign a contract that requires him to attend community reparation sessions for six hours every other Saturday for the duration of the order. In addition he must attend two one-and-a-half hour meetings with the YOS worker on Mondays and Wednesdays at 2.30 p.m. Karim's mother tells the panel that this will interfere with his school attendance, his extra-curricular sports activities, his homework time and family social time and that she feels that the requirements seem to be quite harsh for the theft of sweets worth £2.50. The panel tell Karim's mother that if he does not sign the contract the matter will be referred back to court for non co-operation and that if this happened Karim could be sentenced to a custodial sentence. Reluctantly, Karim signs the contract. After the court hearing the police and the local authority successfully obtain an ASBO on Karim that bans him from the shopping mall and from anywhere within a two-mile radius of the mall, and prevents him from wearing a hooded top. Karim usually attends a youth club half a mile from the mall on Friday evenings. Also, Karim was scalded as a child and is embarrassed of a large red scar on his neck. He regularly wears hooded tops to cover this mark.

Simon, who has previous convictions for shoplifting and robbery of a mobile phone, has learning difficulties. He initially goes to the Youth Court, but as the injuries to Ken were serious his case is referred to the Crown Court. He is refused bail as it is argued by the prosecution that he is a persistent offender, that this is a serious offence and that he might offend again. As there are no secure remand placements in Kenchester, he is placed in a centre in Durham, 300 miles away from his family. As his parents are on benefits, they can't afford to go to see him. The trial takes place six months later. At the trial, Simon is very worried and confused. He tells his lawyer that he doesn't understand the legal jargon or the procedure.

Advise Karim and Simon regarding legal challenges that might be brought in relation to any possible breaches of their rights.

COMMENT

As a practitioner dealing with these youths the issues that you might raise include:

Regarding Karim

- *Karim's referral order seems to breach Article 6 of the European Convention on Human Rights (ECHR) as it is questionable whether he has had a fair hearing and there is no appeal.*
- *The level of restriction in the referral order on his liberty seems to breach Article 3 of the ECHR as it arguably is not a 'fair reaction' to the crime, as is required.*
- *The many requirements of the referral order arguably breach Article 8 of the ECHR as they seem to unnecessarily interfere with his private and family life, preventing him from undertaking his educational, sporting and social activities.*
- *In relation to Karim's ASBO, this is a civil order and if he breaches it he could receive a criminal sanction. This too is possibly a breach of Article 6, above.*
- *There have been some recent successful court challenges in relation to very restrictive ASBOs that the courts have held have breached the human rights of recipients. The two-mile radius ban and the subsequent impact upon his attendance at the youth club is arguably unreasonable, given the nature of the offence and that he has no other record of anti-social behaviour. The hooded top ban is also possibly a breach of his human rights.*

Regarding Simon

- *His placement in Durham is possibly in contravention of Article 8 of the ECHR as it interferes with his private and family life.*
- *The length of detention is also an issue under Article 8 as this is a young man who is on remand and has not yet been convicted of the offence.*
- *As Simon is only 11 years old and finds the trial in the Crown Court (an adult court) confusing, this seems to contravene one of the decisions of the European Court of Human Rights in Thompson and Venables [1999] which stated that a Crown Court was an unsuitable place for the defendants (who were aged 11 at the time of the case) to be tried.*

The dual agenda of youth justice and social work: Justice vs welfare

Are young people who come before the criminal justice system offenders, who have chosen to break society's rules and so deserve to be punished, or are they (as the Children Act 1989 asserts) children 'in need'? Should we expect them to take full responsibility for the consequences of their actions or should we view them as being less capable than adults of understanding and adhering to the rules of society? Should they be dealt with in the same courts as adults and be eligible to the same punishments, or should they

be dealt with by specialist courts and personnel who have been trained to understand and remedy their needs? Should there be a wider range of disposals available to judges and magistrates who deal with young offenders than there is for adult offenders? Should we help and guide young people to move away from law-breaking behaviour or should we provide an optimum deterrent in the form of commensurate punishment? Should we punish the young offender's crime or the young offender himself/herself? These are just some of the questions that highlight the dilemmas facing those who structure and work within the youth justice system and form part of what youth justice theorists and practitioners call the 'justice vs welfare' debate that were mentioned earlier in this chapter. These two approaches have dominated youth justice philosophy for a hundred years and though other valid perspectives have been developed (we will examine these in Chapter 2) the justice vs welfare debate still rages in academic, media, governmental and professional practice fields.

The introduction of a distinct system for dealing with young offenders in 1908 represented, in essence, a 'modification' of adult justice – a 'compromise' which resulted in the cross-fertilisation of principles of adult responsibility with notions of welfarism and protectionism. A justice approach, based upon classicist ideas of culpability and responsibility, would involve a strict legal due process system, which sentenced using notions of proportionality and seriousness, providing a sanction that befitted the offence, rather than the offender. A welfare-based approach would involve a less formal and adaptable procedure, one that would conceptualise the offending behaviour, allow for mitigation and a recognition of the possibility of limited responsibility (part of neo-classicism), and allow for non-legal experts to enter the decision-making process and produce a disposal that would fit the offender, rather than the offence. The Children Act 1908 effectively opened up the possibility of these two styles being blended (or possibly muddled) in the context of dealing with young offenders.

This early discovery of the potential of conflict between the polemic welfare vs justice dichotomy was to produce various forms of compromise solutions over the course of the century. We examine in detail these philosophies, legislative developments and features of systems based on principles of justice and those based on principles of welfare in Chapter 2.

As a youth justice practitioner, you will become familiar with the dilemmas between justice and welfare approaches. Primarily, your social work training will have taught you to regard the best interests and welfare of the young person you are working with as paramount considerations. You will soon be aware that in youth justice, while the law sometimes protects and supports those interests (such as in relation to international and human rights protections outlined above), often the application of law conflicts with your guiding social work ethics. For example, you might view a young offender as primarily a child in need and feel that community intervention and offence counselling might be the best way to deal with a troubled young person who is 'acting out' through offending behaviour. Judges, magistrates and the police might have a different opinion and decide that the offence is serious and/or that the only way to protect the public is to put your client behind bars.

The conflict between social work ethics and legal principles is arguably more tangible in the practice of youth justice than in any other area of social work.

Part two: Guiding codes and principles of youth justice social work

Paul Dugmore

Values and ethics within social work

Common to the caring profession, the values traditionally allied to social work include self-determination, choice, empowerment and non-judgementalism. Banks (2001) suggests that such values offer only a partial characterisation of social work as they fail to account for the full remit of social work which also has a controlling role, guided by legal, governmental and agency procedures where ethical issues around justice and fairness are prominent, as in the case of youth justice (Banks, 2001, p2). The value base of social work is laid out in various sets of statements that outline how practice should be according to a range of ethical rules and requirements. These include the International Federation of Social Work (IFSW) and the International Association of Schools of Social Work (IASSW) whose joint statement of principles sees ethical awareness as a fundamental part of the professional practice of social workers whose ability and commitment to act ethically is an essential aspect of the quality of the service offered to those who use social work services. These principles are subsumed under the broad areas of human rights and dignity, social justice and professional conduct (IFSW and IASSW, 2004). The British Association of Social Work (BASW, 2002) Code of Ethics states that:

Social work practice should both promote respect for human dignity and pursue social justice, through service to humanity, integrity and competence.

It contains six principles:

1. Respect basic human rights as expressed in the United Nations Universal Declaration of Human Rights and other international conventions derived from that Declaration.
2. Show respect for all persons, and respect service users' beliefs, values, culture, goals, needs, preferences, relationships and affiliations.
3. Safeguard and promote service users' dignity, individuality, rights, responsibilities and identity.
4. Foster individual well-being and autonomy, subject to due respect for the rights of others.
5. Respect service users' rights to make informed decisions, and ensure that service users and carers participate in decision-making processes.
6. Ensure the protection of service users, which may include setting appropriate limits and exercising authority, with the objective of safeguarding them and others.

In addition to values and ethics being integral to social work practice, they are also a significant feature of social work education and training as outlined within the regulatory framework for social work. Currently, the social care workforce in England, which includes youth justice, is required to act in accordance with the General Social Care Council (GSCC).

The GSCC, established in 2001 under the Care Standards Act 2000 is, at present, the regulator and guardian of standards for the social care workforce in England. It is responsible for social work education and training and maintaining the social care register, although this function will transfer to the renamed Health Care Professions Council following the proposed abolition of the GSCC as part of the government's Health and Social Care Bill (2011) going through parliament at the time of writing.

GSCC Code of Practice

In 2003 the GSCC published a Code of Practice for both employers and employees in order to help raise standards in social care services. The Code of Practice for social care workers consists of a list of statements that define the standards of professional conduct required of all social care workers. These are to:

- Protect the rights and promote the interests of service users and carers.
- Strive to establish and maintain trust and confidence of service users and carers.
- Promote the independence of service users while protecting as far as possible from danger or harm.
- Respect the rights of service users, while seeking to ensure that their behaviour does not harm themselves or other people.
- Uphold public trust and confidence in social care services.
- Be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills.

Thus, the expectation that social work practitioners work with service users in a way that is based upon the values underpinning the profession is clearly outlined in government guidance. Banks (2001) is critical of such codes of practice/ethics, as they assume professional autonomy, when, in practice, social workers are subject to the procedures of their employing agency. She also suggests that ethical practice comes not from a set of codes, but from an individual's own values and ability to exercise compassion and respect and that the codes assume consensus on values within the profession when other values may be seen as important by users of services, other professionals and the media for instance (Banks, 2001).

National Occupational Standards for social workers

Currently, social work qualifying students are assessed against a competence-based framework that was implemented with the degree. These standards were drawn up by the Training Organisation for the Personal Social Services (TOPSS) and are designed to provide a 'benchmark of best practice' in social work competence via a set of six key roles that lay down what a qualifying social worker should be able to do. These standards are subject to review and will be replaced following the work of the Social Work Taskforce (2009)

and Social Work Reform Board (2011) which has proposed a new *Professional Capabilities Framework* that is likely to be implemented in the near future. However, at present, the standards include a set of values and ethics that are central to, and underpin, the six key roles that make up the National Occupational Standards. Social work students must be able to critically analyse and evaluate their practice in relation to the six core values and ethics listed below:

- Awareness of your own values, prejudices, ethical dilemmas and conflicts of interest and their implications on your practice.
- Respect for, and the promotion of:
 - each person as an individual;
 - independence and quality of life for individuals, while protecting them from harm;
 - dignity and privacy of individuals, families, carers, groups and communities.
- Recognise and facilitate each person's use of the language and form of communication of their choice.
- Value, recognise and respect the diversity, expertise and experience of individuals, families, carers, groups and communities.
- Maintain the trust and confidence of individuals, families, carers, groups and communities by communicating in an open, accurate and understandable way.
- Understand, and make use of, strategies to challenge discrimination, disadvantage and other forms of inequality and injustice.

So you can see that your ability to practise in a way that is grounded in a strong, ethical value based framework will be crucial to your development as a good social worker.

QAA benchmark statement

In addition to the GSCC, social work qualifying education and training is monitored by the Quality Assurance Agency for Higher Education (QAA) which sets out academic standards for social work. The social work benchmark refers to social work as a *moral activity* that requires students to potentially make and implement decisions that may be difficult and which may *involve the potential for benefit or harm* (QAA, 2001, 2.4). The QAA states that programmes offering the social work degree should include the study of the *application of and reflection upon ethical principles* (2.4). In terms of subject knowledge in relation to values and ethics, the QAA states that during their degree studies in social work, students should *critically evaluate, apply and integrate knowledge and understanding* to:

- The nature, historical evolution and application of social work values.
- The moral concepts of rights, responsibility, freedom, authority and power inherent in the practice of social workers as moral and statutory agents.
- The complex relationships between justice, care and control in social welfare and the practical and ethical implications of these, including roles as statutory agents and in upholding the law in respect of discrimination.

- Aspects of philosophical ethics relevant to the understanding and resolution of value dilemmas and conflicts in both interpersonal and professional contexts.
- The conceptual link between codes defining ethical practice, the regulation of professional conduct and the management of potential conflicts generated by the codes held by different professional groups. (3.1.3).

A social worker within a youth justice setting is presented with, and subject to, a multitude of standards and principles which may, at times, appear to conflict with each other. In addition to the IFSW/IASSW statement of ethics the BASW Code of Ethics and the GSCC Code of Practice, such social workers are also required to work to National Standards for Youth Justice Services (2010).

National Standards for Youth Justice

The National Standards for Youth Justice Services (2010) are published jointly by the Ministry of Justice, Department for Children, Schools and Families, and the YJB. They set out the minimum requirements for relevant organisations providing youth justice services, providing a benchmark against which the effectiveness of work can be measured. The ten National Standards cover all areas of youth justice practice and aim to prevent offending by children and young people by ensuring that:

- There is effective governance, planning and performance management within YOTs to support the delivery of youth justice services.
- All children and young people entering the youth justice system benefit from a structured needs assessment to identify risk and protective factors associated with offending behaviour to inform effective intervention.
- Court orders are managed in such a way that they support the primary aim of the youth justice system, which is to prevent offending, and that they have regard to the welfare of the child or young person.
- Reports prepared by the YOT for courts and youth offender panels are effective and of a high quality.
- The needs and risks of young people sentenced to custodial orders (including long-term custodial orders) are addressed effectively to enable effective resettlement and management of risk.
- Services provided to courts are of a high quality and that magistrates and the judiciary have confidence in the supervision by YOTs of children or young people who offend.
- Those receiving youth justice services are treated fairly regardless of race, language, gender, religion, sexual orientation, disability or any other factor, and actions are put in place to address unfairness where it is identified.
- Strategies and services are in place locally to prevent children and young people from becoming involved in crime or anti-social behaviour.

- Out-of-court disposals deliver targeted interventions for those at risk of further offending.
- Comprehensive bail and remand management services are in place locally.
- Restorative justice approaches are used, where appropriate, with victims of crime and that restorative justice is central to work undertaken with young people who offend.
- All relevant information is captured and recorded accurately on the YOT case management information system.

(YJB, 2010d, pp5–6)

ACTIVITY 1.3

Take a look at the Code of Practice for Social Care Workers and the National Standards for Youth Justice and consider the differences as well as the similarities between the two.

COMMENT

It is clear to see that while the above statements include guidance that holds similarities with the key values of social work such as treating people fairly, they are also largely concerned with the effective administration of the youth justice system. While important, such a managerialist approach to social work or youth justice practice has been criticised by, among others, Munro (2011) who in her recent review of child protection states that this approach has fed into a view that a good enough picture of practice can be gained from procedural manuals and that the more important part of social work can be carried out on a computer (Munro, 2011). She suggests that as well as knowing what data to collect it is also important how to collect them and analyse them. We will return to this area in later chapters.

Within a youth justice setting, social workers need to develop the ability to practice in a way that is grounded in a strong, ethical value-based framework that is able to reconcile competing and sometimes conflicting values and perspectives.

As individuals we have our own set of values, which are informed by our own beliefs, our upbringing and our culture and these will affect our ability and willingness to practice ethically, in line with the frameworks outlined previously, the point made by Banks (2001) in her criticism of such codes of ethics. Additionally, working in a YOT involves working alongside other professionals who may hold a different value base. The values of a police officer, for instance, may be very different to a social worker. Such diversity of values was identified in the evaluation of the pilot YOTs where it was found that youth justice staff had difficulty in transferring *philosophically and practically* to the newly formed youth offending teams (Holdaway et al., 2001, p6). Research by Souhami (2007) identified how youth justice social workers contrasted the welfarist approach to their work with the punitive approach of other criminal justice agencies. The emergence of YOTs however, blurred boundaries between agencies, led to new, multi-agency practice and often led to youth justice social workers being separated from Social Services Departments as the new stand-alone YOTs were established. Thus the identity of social workers became diluted. This will be discussed further in Chapter 5.

Using values and ethics in your practice

With such a vast array of standards, codes and legal frameworks to consider, it can appear overwhelming for practitioners. How can you ensure your practice takes account of values and ethical issues in accordance with these? When working within youth justice it is important to consider how society views young people generally and young people who offend specifically. We all have personal views about young people and of what expectations are seen as the 'norm'. These may be based on our own experiences of adolescence, drawn from young people with whom we are in contact or from wider society.

ACTIVITY 1.4

Think about how you view young people. What assumptions do you make about them? What expectations do you have about young people? Are these different from the views, assumptions and expectations you have about young people who offend? Where do your views come from? Look for newspaper headlines about young people. What do they say? How are young people/offenders described? Are these views representative?

COMMENT

Your answers to the questions in this activity will be determined by a range of factors; they may be partly as a result of your age, your experience of adolescence, how you feel about your own children or those of others in your family or network of friends. Your own experience of adolescence may be very different from young people in contemporary society and you may find it hard to empathise. You may have been positive in thinking about young people, describing them as lively, inquiring, exciting and fun. Your responses may have been neutral, such as innocent, naive and impressionable; or negative, such as rebellious, troublesome, argumentative and difficult.

Your responses will more than likely also be shaped by external factors such as the television, newspapers and social policy. Young people are often presented in negative ways by the media, particularly those involved in offending. More recently in the UK much attention has been paid by the government and the press to the rise of anti-social behaviour, particularly among young people. The portrayal within the media of young people in gangs, often synonymous with the term 'hoodie' led to a raft of policy measures by the Labour government, introduced to combat problem behaviour. It could be argued that another 'moral panic' is being created similar to that in the 1970s when the term 'mugging' was designed to describe street robberies, leading to the use of stop and search powers by the police. These powers effectively discriminated against black and minority ethnic people, who were stopped disproportionately by the police (Hall et al., 1978). The term 'moral panic' was coined by Cohen (1973) as a way of emphasising the media's role in amplifying crime and deviance, particularly in relation to youths. It seems ironic that youth crime is so high on the political agenda when recent Home Office figures and the British Crime Survey both show a decline in youth crime over the last few years (Home Office, 2005b). However, public opinion polls suggest that there is an erroneous belief that youth crime is increasing at an alarming rate (Bateman, 2005).

When working with young people who offend it is important to be aware of the attitudes and feelings you have about and towards them. It may be that you have pre-conceived ideas about how young people behave based on what you have learned from the news. Your views may be stereotypical and unfair representations of young people who offend who are, in reality, as diverse a group of people as any other. Young people are often discriminated against because of their age and referred to in negative terms. Haines and Drakeford (1998) suggest that British society does not like young people and the pervasive negativity that informs how young people are treated is amplified for the minority involved in offending who act as the *legitimised target for all the harshest and most destructive impulses directed against their contemporaries as a whole* (Haines and Drakeford, 1998, p1). Pearson (1983) points to the fact that successive generations constantly pertain to the view that the behaviour of younger generations has deteriorated suggesting that young people now are less well behaved and respectful than they were when they were young. Confirmation of this is provided by Hough and Roberts (2004) who found in a survey of adults, over four out of five thought young people today are less respectful than they were a generation ago.

ACTIVITY 1.5

How might a young offender feel if the overriding picture that is painted of them by society is negative? What impact could this have on the offender and their behaviour?

COMMENT

Young people may internalise what they hear said about them and begin to think that society or adults only see or acknowledge 'bad' behaviour. This might lead them to think that anything else is not recognised. It may also create a divide between young people and adults that could exacerbate the problem. Many adults may feel uncomfortable walking past a group of young people on the streets but how does this make law-abiding young people feel?

Many young people involved in offending behaviour are likely to have issues of low self-esteem and the effects of labelling (as discussed in Chapter 3), only seek to exacerbate this. It is essential that young people are considered within life-course perspectives on adolescence, which take into account psychological, social and physical factors. As Crawford and Walker (2010, p84) suggest: *the challenges of adolescence may result in choices, which lead to a number of problems, some of which peak at this time*. Social workers need to be aware of what kind of behaviour might be expected from a young person going through adolescence, taking into account the developmental stage they are at. Briggs (2008) writing from a psychodynamic perspective suggests that it is essential, when working with young people, to be aware of the emotional impact of internal and external change on a young person's sense of stability, the propensity for this to stimulate fear of fragmentation and the importance of containment amidst such turbulence.

It is important as a social worker to be aware of the reasons that underpin your decision to become a social worker and 'help' people. Bower (2005) suggests it is often based on conscious and unconscious feelings of guilt about how society treats the most vulnerable

but it is also often related to our own life experiences and relationships that have damaged us in some way that we are seeking to heal.

It is also worth exploring why you want to work with a particular service user group and what qualities and values are important in being able to work with that group. It may be useful to identify what you see as the opportunities of working within a youth justice setting as well as what some of the difficulties may be. Social work practice in this area can be extremely varied and could involve working with young people at risk of offending, those in trouble with the police for the very first time, right through to young people with significant criminal records who may have been convicted of extremely serious offences.

ACTIVITY 1.6

Read the following cases. How would you feel working with each young person? What might some of the moral/ethical issues be for you personally and professionally?

Imran, aged 16, has been charged with indecently assaulting his three-year old brother. He is not allowed to return home while the police investigation is undertaken. You have to liaise with the children and families team and work in partnership with his family to identify an appropriate placement for him.

Sarah, aged 15, is in a local authority children's home as her mother has left the country and her father is in prison. She has committed numerous offences of burglary and you are writing the pre-sentence report for the court. The judge has indicated that Sarah is likely to receive a custodial sentence. When you discuss this with Sarah she breaks down in tears saying that if she goes into custody she will kill herself.

Andrew, aged 17, is serving a three-year custodial sentence. He is to be released in three months' time. He has nowhere to live on release and he does not want to engage in college, training or employment. He is content to sit around with his friends all day smoking cannabis.

COMMENT

Each of the cases requires quite different responses. You may find it difficult working with Imran as the abuse of children is always likely to provoke an emotional response. You have to remember that at this stage Imran has not been convicted and therefore it is only an allegation. However you may feel about an offence, it is your role to work with the young person and to see him or her as an individual who may have carried out an offence, rather than as an offender. Imran may be very scared about what is going to happen to him, about being separated from his family and being placed somewhere else. You will have to work with his family too, who will undoubtedly be finding the situation very difficult to deal with. The case may raise unresolved issues for you as an individual. You have to ensure that your practice is professional at all times despite the feelings this raises for you. Having a safe space in which to discuss your feelings is vitally important as ignoring them will not eradicate them. This is why supervision that enables you to reflect on your feelings and think about them in relation to theoretical frameworks is essential in order that you are able to acknowledge and work through your feelings so that you are able to prevent them from impacting on your relationship with individuals.

COMMENT *continued*

In cases such as Sarah's, you may feel helpless to stop young people like her having their liberty removed. You can only do what is within your power, and this would probably involve ensuring that your report for the court addresses all the difficulties that she has encountered as well as assessing her needs in order to make a proposal that will deal with the issues that caused her to offend, thereby reducing the risk she poses. It may be that the judge will still sentence Sarah to a period of detention and your role then would be to work with the secure establishment she is sent to so that she is closely monitored and any risk of harm is minimised. The relationship you have developed with Sarah, however short, will be crucial in containing her anxieties and emotional pain and if she perceives this encounter as positive, it will keep her open to developing relationships with other professionals in the future.

Andrews' case illustrates the care and control aspect of social work practice in this area. You may think that at 17 Andrew is almost an adult and therefore capable of making decisions about how he wishes to live his life. However, as your role is to prevent him from re-offending and to look after his welfare, you need to work with his motivation levels and self-esteem as well as provide practical support around accommodation and education or employment. There may be reasons why he does not want to do anything related to how he feels let down by his family or because he does not have a stake in society. Building up a relationship, enabling him to talk about his anxieties so that you can gain an understanding of his internal and external worlds, how he feels about his experiences, his relationships with others as well as with you, will lay the foundations for him to feel valued and respected so that change can be achieved.

Working with young people in the criminal justice system will evoke many different feelings in you and challenge your ethical and moral code of practice. It is important to be aware of how you feel about a particular case in order to know if it is impacting upon your practice. This is where reflective practice (Schon, 1983) is essential so that you can examine the decisions you have made and the actions you have taken in order to analyse the effect of these upon a case. Being able to relate theory to your practice is also an important part of reflective practice. Supervision is one forum where these sorts of issues can be explored with a manager, or you may choose to discuss cases with your colleagues. Ensuring you are undertaking continual professional development, in line with registration requirements, will assist you in developing your skill and knowledge base, as will helping ensure you are informed by evidenced-based practice and able to consider new perspectives. These fundamental issues of good social work practice will be revisited throughout this book.

Discrimination

It is clear that young people as a group may be discriminated against based on the stereotypes that are held by individuals and society. Discrimination and oppression are often complex issues, with some young people facing multiple oppressions, based on their culture and sex for instance. Having an awareness of how oppression and discrimination manifest themselves is especially important in the youth justice system.

According to Home Office statistical data produced in response to Section 95 of the Criminal Justice Act 1991, young people from minority ethnic backgrounds are over-represented within the criminal justice system (Home Office, 2005d). Section 95 of the Criminal Justice Act 1991 requires the Home Secretary to publish statistical data on race and gender with a view to helping the criminal justice system avoid discriminating on the grounds of race, gender or any other improper ground.

RESEARCH SUMMARY

*The Youth Justice Board, the organisation that oversees youth justice services in England and Wales, commissioned research to look at whether young people from minority ethnic backgrounds are differentially treated within the criminal justice system. The research examined how young people from minority ethnic backgrounds were dealt with compared to their white counterparts at each stage of the youth justice process. Eight YOTs were selected for the study and information was obtained on 17,054 cases involving males and females aged 12–17 over 15 months in 2001–02. The study, *Differences or Discrimination?*, found that there were considerable variations in the extent of over- or under-representation of particular ethnic groups in relation to the proportions served by the YOTs included in the study.*

The research found at various stages of the youth justice process differences in outcome in the treatment of people from different ethnic backgrounds as well as between males and females. Sometimes this was due to relevant variations in the cases; however, there were also differences consistent with 'discriminatory treatment'. These included:

- *A higher rate of prosecution and conviction of mixed-parentage young males.*
- *A higher proportion of prosecutions involving black young males.*
- *A higher probability that a black male would, if convicted in a Crown Court, receive a sentence of 12 months or more.*
- *A greater proportion of black and Asian males remanded in custody prior to sentence.*
- *A much greater proportion of mixed-parentage females who were prosecuted.*

The researchers concluded by stating that 'young black people were substantially over-represented in the caseloads of the police, prosecutors, YOTs and the courts in relation to their numbers in the local population'. They voice 'considerable concern about whether there is always fair treatment of minority ethnic young people'. Moreover, they believe the evidence of the research to be consistent with 'a more complex phenomenon of justice by race and geography'.

(YJB, 2004a)

The *Differences or Discrimination?* study did not look at why such differences had occurred but this is clearly an area that needs to be explored. The researchers felt that there needed to be a concerted effort to understand the phenomenon of differential patterns within the youth justice system which could only be achieved by a detailed analysis

of local sentencing practices, based on a careful analysis of case records and local crime rates, and on close observations of practices at all stages of the system.

Other research offers similar findings (Goldson, 2002; Wilson and Moore, 2004); however, the general view is that studies into discrimination levels within the youth justice system are few and far between. Kalunta-Crumpton (2005) suggests that given the increased incarceration of black and some other ethnic minority young people, there is a need for comprehensive ethnic monitoring of the use made by courts of the more punitive sanctions available, custody in particular. Youth Offending Teams are now required to undertake a race audit and develop an action plan to address discrimination as a specific area on which their performance is measured, in accordance with the Race Relations (Amendment) Act 2000.

The other significant area of research into differential treatment within the youth justice system is in relation to sex. While offending rates by girls are swamped by those of their male counterparts, there is evidence to suggest they are rising, particularly in relation to the use of custody where the increase over the period 1992–2002 was as high as 600 per cent (NACRO cited in Bateman and Pitts, 2005). The Home Office established a working party looking at the discrimination of women by the criminal justice system. Historically girls and young women have been treated differently by a system that has struggled to see them as anything other than mad or bad and in need of welfare services. Hudson (2002) suggests that the difficulties faced by girls in trouble are that they are perceived as emotional and more difficult to work with. She suggests that social workers need to view the girl's behaviour as a response to their oppression and a way of surviving, and that emotionality should be seen as a positive resource. Hudson suggests that the recent drive towards the justice model has meant that girls are being treated less along welfare lines; this could be pushing them up the sentencing framework quicker than boys. A common problem for YOTs is the inability to offer suitable programmes for girls because of the lower number of girls in the criminal justice system. This needs to be addressed if girls are to receive a fair service and one that meets their needs effectively. This issue is exacerbated in the case of black and ethnic minority girls.

There are other groups discriminated by, and within, the youth justice system such as asylum seekers, travellers and 'looked after' children. The Prison Reform Trust (Jacobson et al., 2010) found that in 2008, 56 per cent of young people in custody were known to have experienced at least one period of time in local authority care, had been on the child protection register or had other contact with social services. Data from the YJB (2007) showed that over 70 per cent of young people who offend had a history of being in care or social services involvement. A study by Walker et al. (2006), cited in Whyte (2009), followed 53 young people aged 12 to 16 years for two years from admission in to secure accommodation. Over half were known to social services before the age 10 and all had been looked after and accommodated with 83 per cent being admitted from either a residential unit or school. Two years later over 45 per cent were still in an institutional setting compared to a control group, (who did not get secure accommodation) of whom all were living 'reasonably stable' lives in the community one year later. Thus, not only is the likelihood of entering the youth justice system much higher for young people who have

experience of being in public care, research demonstrates their life opportunities may be adversely impeded should they be incarcerated. NACRO (2005) has produced a *Handbook on reducing offending by looked after children* that identifies the ways in which professionals working with looked after children can support them in order to reduce risk factors and improve outcomes.

Research published by the Prison Reform Trust and the Association of Youth Offending Team Managers (Jacobson et al., 2010) found that children with learning disabilities and other impairments are more likely to go to prison than other young people because the youth justice system is failing to recognise their needs and is not fulfilling its legal duty to prevent discrimination. It found that 23 per cent of young offenders have very low IQs of less than 70, and 25 per cent have special educational needs which is a much higher proportion than in the general population.

Social work practitioners need to be aware of the issues facing marginalised minority groups in assessing their needs and providing services, as well as signalling their discrimination to the other agencies within the youth justice system. Social workers also need to listen to the experiences of individuals from such oppressed groups in order to be able to empower them, work in partnership, seek feedback from them and evaluate their interventions to ensure their practice *aims to redress, rather than reproduce, the inequalities and barriers to opportunity which are structured into the lives of the children and families with whom they are in contact* (Haines and Drakeford, 1998, p2).

ACTIVITY 1.7

Read the following case studies and identify the significant issues.

Gemma is 15 years old and from a traveller family. She has been sentenced by the court for shoplifting offences. Her parents have not attended appointments with you and Gemma tells you that they will not be attending even though the court has ordered them to. Gemma does not attend school as her family want her at home looking after her younger siblings with her mother.

Andrei is 17 and from Eastern Europe. He has appeared in court having been arrested for attempted theft from a cashpoint. The court is considering whether to grant him bail and you are assessing his suitability. He tells you that he is homeless, has no family and came to the UK six months ago to seek asylum. When you ask him where he has been staying he is very evasive and will not disclose any information.

John is 16 and lives in local authority accommodation. He is placed in a children's home in the local area on a temporary basis while a long-term placement is found. You are working with him while he is in the area. John has had six placements in the 18 months that he has been 'looked after'. While he attends his appointments with you, he is feeling very low and is not really engaging with you.

COMMENT

In Gemma's case you may have approached the issues from a legal perspective: her parents have been ordered to attend court, and in accordance with the Education Act 1988 Gemma has to be in education at the age of 15. Both issues carry consequences. However, you are working with Gemma who cannot be held responsible for her parents' behaviour. Alternatively you may have looked at the case from the perspective of assessing why Gemma is offending, and found that her non-school attendance and family may be seen to be contributing factors. In either approach it is essential that you meet her parents and explain the situation and try to gain an understanding of their situation. It may be that their previous contact with authorities has been negative and they are reluctant to engage as a result of this. Your local area may have specific services for travellers, including education provision, that you can put them in touch with for support.

Andrei's case might be best approached in a similar way, in that you do not know what he has experienced in his home country. His previous contact with authorities may also have been negative and he may well have experienced trauma of some kind. He could be in the UK as an unaccompanied minor with no adult care and supervision, he could be connected to a larger criminal group, or he could be an illegal immigrant. Whatever his situation, he is probably scared and confused about what will happen to him in a strange country. An interpreter will be needed to communicate with him if his English is not fluent, in order that he is made to feel at ease, his situation explained fully and as much information as possible obtained to ensure he is placed appropriately and given support.

John is probably feeling rejected as he has been moved about so often. You are probably one of many social workers and other professionals that he has had to speak to in that time. You need to acknowledge how he is feeling and let him talk about that. You can offer him support in your sessions and advocate on his behalf to the accommodating local authority so that permanent plans can be made as soon as possible. In any event, you need to have some idea about how long he is likely to be in his current placement as this will affect what provision you can put into place around his education, leisure, etc. It may be that John is offending as a result of being in care and this is something you could work with him on.

CHAPTER SUMMARY

In this chapter we have looked at trends and perspectives in youth justice as well as ethical dilemmas facing those who work within a youth justice setting. We have also identified the relevant frameworks setting out the expected conduct of workers within a youth justice setting and observed how values and ethics underpin social work education and practice. We have also considered the implications of the Human Rights Act and international guidelines in relation to working with young people who offend. You have explored your attitudes towards youth and young offenders and you have looked at your own prejudices as well as those of society at large. You have thought about what some of the ethical dilemmas may be in working with young people. The impact of the media and the affect that labelling may have on young people has been considered, as has the importance of being able to place young people according to their stage of life-course development. The issue of discrimination of young people within the youth justice system has been examined and the need for anti-discriminatory practice identified. It is essential that future practice is enhanced by the integration of psychosocial theories of working with young people and young people in trouble as well as evidence-based best practice. Ensuring that this is done within the context of recognising and valuing difference and the impact that such differences have on young people is vital in becoming a fully reflective practitioner.

FURTHER
READING



Youth Justice Board (2004) *Differences or discrimination?* London: Youth Justice Board.

Provides a full account of the research highlighted in this chapter.

Youth Justice Board/Ministry of Justice (2011) *Youth justice statistics 2009/10 England and Wales*. Statistical Bulletin January. London: Youth Justice Board/Ministry of Justice.

This contains statistics about youth criminality up to the time of the publication of this book. The latest figures can be obtained from the Ministry of Justice website.

Monaghan, G (2005) Children's human rights and youth justice. In Bateman, T and Pitts, J (eds) *The RHP companion to youth justice*. Lyme Regis: Russell House Publishing.

NACRO (2008) *Children's human rights and the youth justice system*. Youth Crime Briefing. London: NACRO.

This paper contains a comprehensive analysis of to what extent our youth justice system complies with the human rights requirements.

NACRO (2010) *The use of custody for children and young people*. Policy position paper. London: NACRO.

This paper critically assesses the extent of incarceration of children and young people in England and Wales.

www.justice.gov.uk

For up-to-date information on the youth justice system from the Ministry of Justice.

www.homeoffice.gov.uk

For information on crime and policing.

www.homeoffice.gov.uk/rds/section951.html

For more information on statistical information in relation to ethnicity, gender and crime.

www.nacro.org.uk

Refer to their youth crime section for up-to-date research on youth justice issues.

www.yjb.gov.uk

For information produced by the Youth Justice Board up until 31 March 2011.

www.un.org

For information about the United Nations Convention on the rights of the child and monitoring reports.

www.thenayj.org.uk

The website of the National Association for Youth Justice.

WEBSITE

