



## **Making Youth Justice**

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Local penal cultures and differential outcomes: lessons and prospects for policy and practice

**Barry Goldson and Damon Briggs**

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# Executive summary

## Introduction

Youth justice is constantly being *made* (and re-made) within both temporal and spatial contexts. But even if the necessity to engage with both temporality (analysing reforms over time) and spatiality (examining place-based differences) is increasingly understood, traditionally researchers have tended to adopt the discrete *national* jurisdiction as their principal unit of analysis.

By departing from this tradition, we are principally interested here in the ways in which youth justice is made at the *sub-national* level and how otherwise discrete national jurisdictions - in this case England and Wales - can, in effect, be stratified and distinguished by *local penal cultures* that give rise to markedly different outcomes.

More particularly, we focus attention on rates of child imprisonment and, by drawing on secondary quantitative data and primary qualitative research, we aim to both illustrate, and to account for, significant *localised* variations in such rates (ranging from moderate to excessive penal outcomes).

By exploring such phenomena our research builds upon and extends an established tradition of 'justice by geography' studies. More significantly, by identifying the distinguishing features of (localised) penal cultures - that can either moderate or compound recourse to penal detention - the report signals important lessons and prospects for the development of policy and practice.

## Justice by geography

Despite the march of political devolution, England and Wales essentially remains a nationally centralised criminal justice polity and a single youth justice jurisdiction. Notwithstanding this, *national* youth justice policy is configured around a *sub-national* network of ten geographical 'regions' and more than 150 Youth Offending Teams (YOTs) – mostly located within discrete Local Authority Areas (LAAs).

Evidence provides that such geographical diffusion gives rise to *locally* differentiated outcomes.

We initially collated and analysed secondary quantitative data that allowed us to examine localised variance in child imprisonment rates over an eight-year period 2004/05-2011/12. We adopted this extended period to mitigate any aberration effects (short-term dips or spikes) that might otherwise skew the data and to ensure that identifiable patterns held firm over time.

Furthermore, the eight-year period can broadly be divided into two sub-periods that take account of interesting national-level counter-trends:

2004/05-2007/08 when the number of child prisoners was high and relatively constant (from circa 2,763 on an average day in 2004/05 to circa 3,072 on an average day in 2007/08), and 2008/09-2011/12 when the number of child/young prisoners began to drop very significantly (from circa 2,596 on an average day in 2008/09 to circa 1,228 on an average day in 2011/12).

To refine the analysis, we examined the imposition of custodial disposals on children *as a percentage/rate of all court disposals* (at the YOT/LAA-level) over the specified period. The data revealed very significant patterns of variance across the 150+ YOTs where custodial sentences as a percentage/rate of all court disposals ranged from a low of circa 0.6% to a high of circa 10.8%

The key challenge, however, is not simply to *illustrate* and *observe* regionally and locally differentiated outcomes but rather to attempt to *comprehend* and *explain* them.

A strikingly consistent message deriving from a number of international studies is that regionally and locally differentiated outcomes - justice by geography - cannot be satisfactorily explained by any singular reference to distributional differences in the gravity (seriousness) and/or to the incidence (extent) of recorded crime.

If it can be said, therefore, that spatially differentiated patterns of child imprisonment do not simply mirror regional/local variations in (recorded) youth crime, then we are obliged to look elsewhere for explanation.

We appeal to the concept of *penal cultures* to provide insights into the manner in which youth justice is made at local-levels in ways that give rise to differential outcomes.

## **Matching and mining localities: quantitative and qualitative methods**

To be assured – as much as is practicable – that our research design and methods genuinely allowed for comparing like-with-like, purposive sampling was adopted to identify six primary research sites (YOTs/LAAs): two in the north of England, two in the south of England and two in Wales. Within each regional pairing one site had a comparatively high rate of child imprisonment (as a percentage/rate of all court disposals issued during the period 2004/05-2011/12) and the other a comparatively low rate of child imprisonment (over the same period).

To protect the identity of each site, we refer to them as *Hihertown One and Lowertown One* (northern England), *Hihertown Two and Lowertown Two* (southern England) and *Hihertown Three and Lowertown Three* (Wales).

To ensure the validity and methodological integrity of the comparative focus, the paired sites were *matched* by taking detailed account of numerous forms of census and other publicly available quantitative data. In this way, we can be as certain as possible that the paired sites are genuinely comparable; comprising strikingly *similar demographic and socio-economic profiles* but notably *dissimilar penal profiles* when measured in terms of child imprisonment as a percentage/rate of all court disposals.

Furthermore, to test the extent to which the variable rates of child imprisonment (across the six primary research sites) held firm over a longer period of time (beyond 2004/05-2011/12), we analysed quantitative data for an additional six-year period (years ending March, 2013/14-2018/19).

If secondary analyses of (a substantial volume of) quantitative data allowed us to *match* our primary research sites, the *mining* of the same sites has been enabled by in-depth qualitative inquiry. In total (across the six primary research sites), 91 youth justice professionals and allied experts were interviewed including: prosecution lawyers; judges and magistrates; YOT managers and practitioners; police officers; representatives from government and non-government organisations; policy officers and independent consultants.

The substantial volume of qualitative data generated by the interviews was analysed thematically, and it has served to directly inform our understanding of both the *constituent elements* and the *differential outcomes* of local penal cultures.

To express this differently, by combining quantitative and qualitative methods we have been able to examine the spatially contrasting balances that are struck between 'negative' and 'positive' power in the making of youth justice in the Hightowns and the Lowertowns respectively.

## **Making youth justice: the constituent elements and differential outcomes of local penal cultures**

By subjecting our qualitative data to thematic analysis we aimed to identify the specific constituent elements of local penal cultures that – in *relational combination* - appear to *explain and account for* comparatively high or low rates of child imprisonment.

Six such constituent elements are especially significant:

1. Leadership
2. Philosophical foundations and service configurations: penal welfare v offender management
3. Perceptions of diversion
4. Perceptions of custodial detention
5. Knowledge-informed approaches
6. Human rights consciousness

Through an extended programme of empirical research we conceive the *Lowertowns* as applying ‘positive power’ through a combination of: charismatic, enthusiastic, supportive, purposeful, value-led, knowledge-grounded, credible and outward-facing leadership; a philosophical commitment to welfare-oriented and community-based service delivery; an informed and determined embrace of diversionary and decarcerative principles and practices; greater awareness and wider engagement with knowledge-based approaches and a recognisably developed human rights consciousness.

Conversely, we have come to understand the *Highertowns* as sites where ‘negative power’ is expressed through: more rigidly prescriptive and inward-looking leadership styles and practices; a conceptual emphasis on offender management; more ambivalent perceptions of diversion; misguided (including unduly optimistic) perceptions of custodial detention; less refined understandings of the youth justice knowledge-base and an under-developed human rights consciousness.

We are not suggesting that either the three *Lowertowns* or the three *Highertowns* comprise identical entities or archetypes. Rather we contend that it is the inter-locking and relational *combinations* of the respective constituent elements – embedded and enduring tendencies – that shape distinctive penal cultures at the sub-national level in ways that either moderate or inflate the incidence of child imprisonment.

## **Conclusions: lessons and prospects for policy and practice**

A key lesson communicated by our research is that the conversion of *national* youth justice policy into *local* practice – the means by which youth justice is ultimately *made* - is largely contingent on the discretionary and relational actions, adaptations, discernments and decisions of local actors.

More specifically, we have identified the core constituent elements of distinctive penal cultures that account for differential outcomes - principally spatially variable rates of child imprisonment ranging from high to low respectively - and to consider the implications for policy and practice.

The constituent elements of Lowertown penal cultures - crafted by the application of positive power – are vital in four key respects.

- First, they appear to succeed in sustaining lower rates of child imprisonment irrespective of the vagaries of national trends.
- Second, they promise to mitigate problematic phenomena associated with contemporary trends in penal detention alongside other well-documented failings of child imprisonment.



- Third, they signal the means by which youth justice can be made and operationalised, both in accordance with evidence-based approaches and the provisions of international human rights standards.
- Fourth, they provide a foundation for realising the recent United Nations' authoritative injunction to 'develop strategies aimed at replacing the detention of children in penal facilities'.

More immediately, the same constituent elements might be taken to shape staff induction, training and development programmes across the full-range of youth justice agencies and to inform the criteria and assessment methodologies employed by the relevant national inspectorates.

## Introduction

Youth justice is not static or fixed. Rather it is dynamic and ever-changing and it is constantly being *made* (and re-made) within both temporal and spatial contexts (Goldson *et al*, 2021). But even if the necessity to engage with both temporality (analysing reforms over time) and spatiality (examining place-based differences) is increasingly understood - to comprehend youth justice as a 'moving image' - traditionally researchers have tended to adopt the discrete *national* jurisdiction as their principal unit of analysis. This is potentially problematic in so far as it implies that national jurisdictions are homogeneous entities where, at any given time, law, policy and government guidance is applied uniformly and youth justice practices are consistent across the piece. In other words, this way of seeing fails to recognise that, at the very same moments in time, variable practices *within* national jurisdictional borders might be as great, if not greater, than some differences *between* nation states (Goldson and Muncie, 2006; Goldson and Hughes, 2010).

Set against this backdrop, we are principally interested here in the ways in which youth justice is made at the *sub-national* level and how otherwise discrete national jurisdictions - in this case England and Wales<sup>1</sup> - can, in effect, be stratified and distinguished by *local penal cultures* that give rise to markedly different outcomes. More particularly, we focus attention on rates of child imprisonment and, by drawing on secondary quantitative data and primary qualitative research, we aim to both illustrate, and to account for, significant localised variations in such rates (ranging from moderate to excessive penal outcomes).

This research report is publishing 21 years after Youth Offending Teams (YOTs) were established across all Local Authority Areas (LAAs) in England and Wales. The creation of YOTs represented a key element of a major programme of youth justice reform (arguably the most wide-ranging since 1908). The operationalisation of the 'new youth justice' was ostensibly characterised by more rigorous national direction and centralised control (Goldson, 2000). Some commentators speculated that the apparent emphasis on 'high accountability and low discretion' could 'constrain practice' (Eadie

<sup>1</sup> On January 31, 2017, the Wales Act 2017 received Royal Assent. The Act underpinned a new devolution settlement for Wales in which the 'conferred powers model' was replaced on April 1, 2018 with a 'reserved powers model', allowing the National Assembly for Wales to make laws on matters *that are not reserved to the UK Parliament*. To-date, the legislation provides that the 'single legal jurisdiction of England and Wales' comprises a 'general reservation' and 'justice' falls under the aegis of 'specific reservations'. Notwithstanding this, some commentators have argued that a distinctive form of 'child-friendly' youth justice is evolving in Wales that distinguishes it from prevailing practices in England (see for example Haines, 2010; Haines and Case, 2018). This line of argument tends to overlook the significance of sub-national variability, however. Even if the contested argument that Wales is increasingly distinguishing itself from England in the youth justice policy sphere is deemed to stand at the *national level*, it remains the case that substantial *sub-national* variability persists whereby different localities *within* Wales continue to evidence both comparatively high and low levels of child imprisonment.

and Canton, 2002), while others feared that flattening uniformity and perceived de-professionalisation might produce effects tantamount to the 'zombification of youth justice' (Pitts, 2001). However well-founded such concerns might have been at the time, the following two decades have exposed the enduring presence of discernibly differentiated practices and outcomes at both regional and local levels (see below). By exploring such phenomena our research builds upon and extends an established tradition of 'justice by geography' studies. More significantly, by identifying the distinguishing features of (localised) penal cultures - that can either moderate or compound recourse to penal detention - the report signals important lessons and prospects for the development of policy and practice at a time when the United Nations is urging every government around the world to 'develop and implement a national strategy aimed at replacing the detention of children in penal facilities' (Nowak, 2019: 336).

## Re-visiting ‘justice by geography’

Comprehending the vital importance of sub-national contexts - for the purposes of analysing youth justice outcomes - necessitates taking account of the operationalisation of discretion, the individual agency of managers, practitioners and key individuals and the complex ‘partnerships’ that they co-ordinate. This is not to deny the obvious power that government departments (including the Home Office and the Ministry of Justice), national bodies (including the Youth Justice Board) and the related corpora of national statutes, policies, standards and guidance bring to bear on youth justice outcomes, but rather to recognise the significance of local contexts for understanding the inter-relational processes of policy-practice translation and implementation. To recall the classic study of ‘street-level bureaucracy’, Lipsky (1980: xii) perceptively explained:

‘... public policy is not [always] best understood as made in legislatures or top-floor suites of high-ranking administrators, because in important ways it is actually made in the crowded offices and daily encounters of street-level workers’.

With regard to criminal justice in general, and youth justice in particular, Gelsthorpe and Padfield (2003: 1) observe that ultimately ‘it is the day-to-day discretionary actions of [managers and practitioners]... which are the “stuff of justice” and which make for justice or injustice’. Or, to put it another way:

‘... it is important to grasp and understand the complexity of *doing youth justice*. ... dig[ging] into the way the police, social workers, magistrates and the courts are not only involved in youth justice... but also embody what youth justice, on a daily basis, does and is... [its] daily practices... although hierarchy, power and authority are clearly at play... justice practices cannot be understood as merely top-down interventionism’ (Christiaens (2015: 11-12, original emphases).

Taking account of such observations, we contend that a sub-national, local or ‘area studies’ (Nelken, 2017: 428) approach is crucial for understanding how national youth justice policies are ‘visioned and reworked (or made to work) by those “on the ground”’ (Muncie, 2021: 459).

Reflecting upon what they term ‘local justice’, Bell and Dadomo (2006: 350) note that ‘research findings have indicated great differences of approach in different areas - or even in adjacent areas’. It is not just different *approaches* that are of primary interest here, however, but rather the extent to which such variability gives rise to differential *outcomes*. As stated above, our research chimes with a wider body of work that focuses upon ‘justice by geography’, a term first coined by Tutt and Giller (1987) to describe the spatially contingent nature of ‘justice’ and the extent to which national policies are conditioned by local practices. Such studies are long-established and include (in

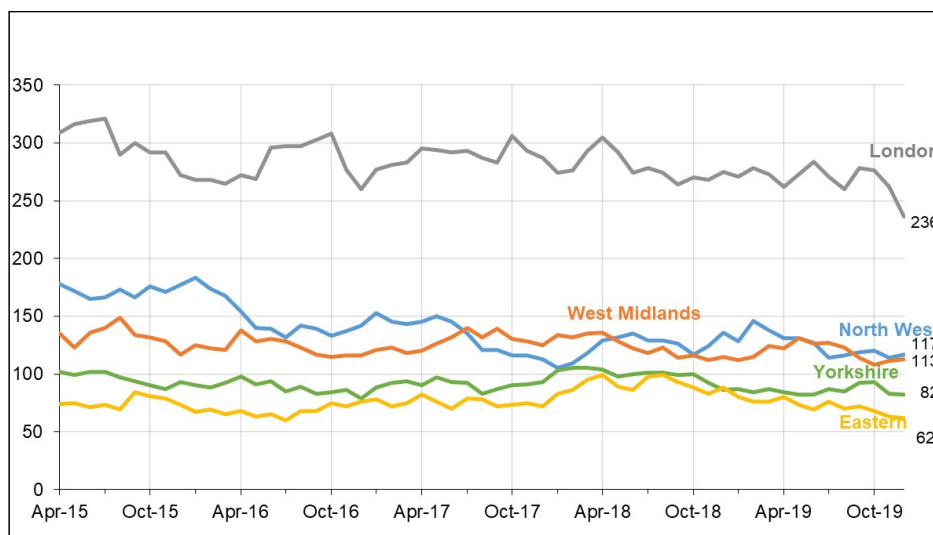
chronological order) the work of: Giller and Morris (1981) on the role of discretion in social work decision-making in respect of 'delinquents'; Parker *et al* (1989) on the means by which similarly serious cases elicit dissimilar sentences in the Magistrates Courts; Hucklesby (1997) on localised (and differing) court practices in bail adjudications; Phillips and Brown (1998) on spatialised variations in post-arrest police decision-making; Bateman and Stanley (2000) on the significance of court reports in accounting for differential rates of custodial sentencing; Kemp and Gelsthorpe (2003) on geographically diverse pre-court decision-making and, most recently, the Home Office (2020) on fluctuating patterns of police stop-and-search practices between different force areas.

We are indebted to this body of work, alongside several additional cognate studies that have highlighted widely varying localised practices in the youth justice sphere (see, for example, Sutherland, 2009; Haines and Case, 2012; Kelly, 2012; Drake *et al*, 2014; Armitage *et al*, 2016). Notwithstanding their importance however, for present purposes we are not principally concerned with analyses that centre *discrete stages* of the youth justice process, for example pre-arrest, pre-court, court and/or sentencing, or with examining geographical variability in relation to *specific practices/interventions* for example, stop-and-search, prosecution decision-making, bail and remand determinations, assessments (including 'risk' assessments), the preparation of court reports and the presentation of sentencing proposals, court adjudications and/or sentencing itself. Rather, by taking child imprisonment as a marker or emblematic signifier of the 'deep-end' of youth penalty, we are interested in exploring *qualitatively* the contrasting constituent elements of *penal cultures* – inter-relational milieu comprising values, principles, professional dispositions, actions, knowledge-informed orientations and modes of human-rights consciousness – that produce locally differentiated outcomes. Before we attend to such qualitative analysis, however, we first review a range of quantitative data that re-affirms regionally and locally differentiated outcomes with regard to patterns of child imprisonment.

## Re-affirming justice by geography: regional and local variations in child imprisonment

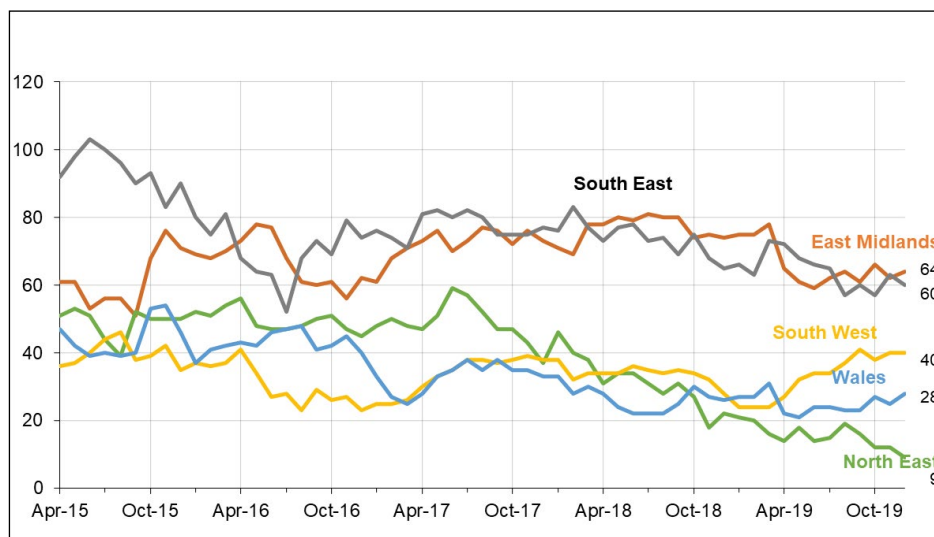
As stated earlier, despite the march of political devolution England and Wales there essentially remains a nationally centralised criminal justice polity and a single youth justice jurisdiction. Notwithstanding this, *national* youth justice policy is applied in England and Wales via a sub-national network of more than 150 YOTs – mostly located within discrete LAAs - and evidence provides that such geographical diffusion gives rise to *locally* differentiated outcomes. More broadly, youth justice administration is configured around ten geographical ‘regions’ and data collected by Her Majesty’s Prison and Probation Service (HMPPS) also appears to reveal similar *regional* diversity. For example, HMPPS (2020) data draws a distinction between regions with ‘high’ and ‘low’ ‘population shares’ of child prisoners (see Figures 1 and 2 respectively).

**FIGURE 1: Numbers of child prisoners (aged 10-17 years) in England and Wales by Region (with Highest Population Share): April 2015 - December 2019**



Source: Data derived from Her Majesty’s Prison and Probation Service (2020).

**FIGURE 2: Numbers of child prisoners (aged 10-17 years) in England and Wales by Region (with Lowest Population Share): April 2015 - December 2019**



Source: Data derived from Her Majesty’s Prison and Probation Service (2020).

Interpretation of such regionally-differentiated outcomes requires care however. The HMPPS data is presented in terms of actual *numbers* rather than *rates* and given the dissimilarity in both the sizes and demographic compositions of the ten regions, different penal counts/profiles are not entirely surprising. But even allowing for this, if we turn attention to the temporal patterning of child imprisonment (over the period April 2015 – December 2019) it reveals further regionally-based divergences (see Figure 3).

**FIGURE 3: The temporal patterning of regionally-based child imprisonment (aged 10-17 years) in England and Wales: April 2015 - December 2019**

Region	Child/Young Prisoners (n): April 2015	Child/Young Prisoners (n): December 2019	Rate of change (< downwards and upwards>)
London	309	236	< 34%
North West	178	117	< 34%
West Midlands	123	113	< 8%
Yorkshire	102	82	< 20%
Eastern	74	62	< 16%
South East	92	64	< 30%
East Midlands	61	60	< 2%
North East	51	9	< 82%
Wales	47	28	< 40%
South West	36	40	10% >

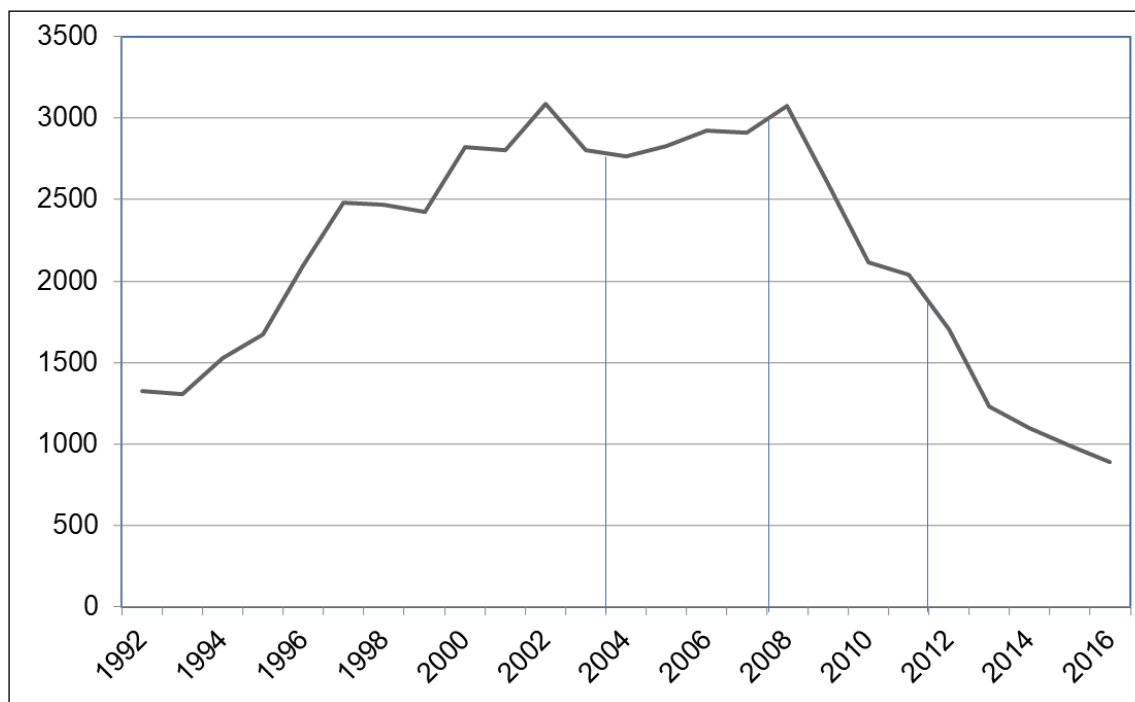
Source: Data derived from Her Majesty’s Prison and Probation Service (2020).

The South West region is an outlier, comprising the only region in which an uplift in the number of child prisoners is evident over the specified period. Moreover, variability is apparent between each of the remaining regions where the temporal patterning of penal detention follows a downward trajectory. The rate at which child imprisonment reduced in the East Midlands (2%) and the West Midlands (8%), for example, was relatively modest, whereas in London (34%), North East (34%) and Wales (40%) the corresponding trends are more striking and in the North East region (82%) it is more striking still.

To refine the analysis further - from regional-level to local-level (YOT/LAA) - we collated and analysed secondary quantitative data that allowed us to examine localised variance in child imprisonment over an earlier eight-year period 2004/05-2011/12. We adopted a similarly extended period to mitigate any aberration effects (short-term dips or spikes) that might otherwise skew the data and to ensure that identifiable patterns held firm over time. Furthermore, the eight-year period can broadly be divided into two sub-periods that take account of interesting national-level counter-trends: 2004/05-2007/08 when the

number of child prisoners was high and relatively constant (from circa 2,763 on an average day in 2004/05 to circa 3,072 on an average day in 2007/08), and 2008/09-2011/12 when the number of child/young prisoners began to drop very significantly (from circa 2,596 on an average day in 2008/09 to circa 1,228 on an average day in 2011/12) (see Figure 4) (for analysis and explanation of such counter-trends see Goldson, 2015; Goldson *et al*, 2021).

**FIGURE 4: Numbers of child prisoners (aged 10-17 years) in England and Wales 1992 – 2016 - with emphasised sub-periods (2004/05-2007/08 and 2008/09-2011/12)\***



Sources: Years 2000-2016 (Ministry of Justice and Youth Justice Board for England and Wales 2017); Years 1992-1999 (House of Commons 2003).

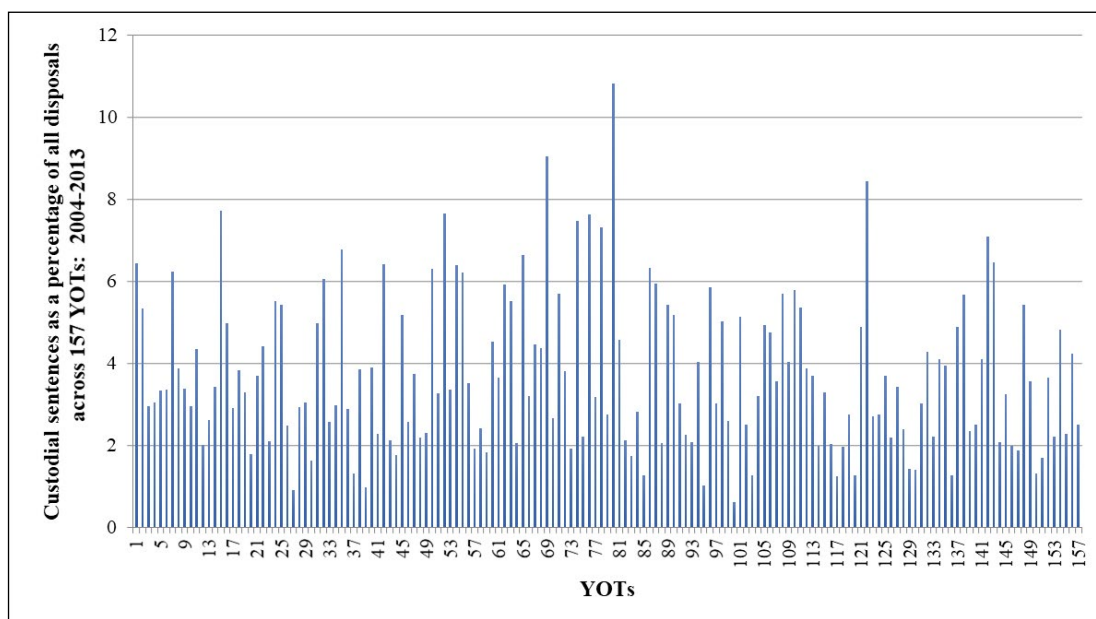
\* Number of 10-17-year-olds detained in SCHs, STCs and YOIs on June 30 of each year.

To introduce further refinement over the specified time period, we collated and analysed additional secondary quantitative data that enabled us to calculate the imposition of custodial disposals on children *as a percentage/rate of all court disposals* (at the YOT/LAA-level) (see Figure 5). The data reveal very significant patterns of variance across the YOTs where custodial sentences as a percentage/rate of all court disposals range from a low of circa 0.6% to a high of circa 10.8%

The temporally enduring nature of spatially differentiated outcomes (at both regional and local levels) not only appears to re-affirm justice by geography, it also complicates and disfigures the meanings that are conventionally attributed to the very concept of ‘justice’. The key challenge, however, is not simply to *illustrate* and *observe* such regionally and locally differentiated outcomes but rather to attempt to *comprehend* and *explain* them.



**FIGURE 5: Imposition of custodial disposals on children (aged 10-17 years) as a percentage/rate of court disposals across all YOTs in England and Wales: 2004/05-2011/12**



Sources: Data derived from Ministry of Justice (2005; 2006; 2007; 2008; 2009; 2010; 2011; 2012; 2013).

A strikingly consistent message deriving from a number of international studies is that regionally and locally differentiated outcomes - justice by geography - cannot be satisfactorily explained by any singular reference to distributional differences in the gravity (seriousness) and/or to the incidence (extent) of recorded crime (see for example Krisberg *et al* 1984; Feld 1991; Cunneen and Luke 1995; King 2008). Indeed, such studies echo an 'axiom' of the wider sociological literature - 'punishment and penal measures are, to a considerable degree, independent of crime' and:

'... the sociological insight... is that neither individual crimes nor aggregate crime rates determine the nature or extent of penal measures. It is not "crime" that dictates... penal sentences... but the ways in which crime is socially perceived and problematized and the political and administrative decisions to which these perceptions give rise (Garland, 2013: 486).

If it can be said, therefore, that spatially differentiated patterns of child imprisonment do not simply mirror regional/local variations in (recorded) youth crime, then we are obliged to look elsewhere for explanation. Here we appeal to the concept of penal cultures to provide insights into the manner in which youth justice is made at local levels in ways that give rise to differential outcomes. But first we must be assured – as much as is practicable – that our research design and methods genuinely allow for comparing like-with-like.

## Matching and mining localities: quantitative and qualitative methods

As noted above, by initially collating and analysing secondary quantitative data over the period 2004/05-2011/12 it allowed us to calculate the imposition of custodial disposals on children as a percentage/rate of all disposals at the YOT/LAA-level and it revealed very significant patterns of variance (see Figure 5 above). In order to drill deeper, purposive sampling was adopted to identify six primary research sites (YOTs/LAAs): two in the north of England, two in the south of England and two in Wales. Within each regional pairing one site had a comparatively high rate of child imprisonment (as a percentage/rate of all court disposals issued during the period 2004/05-2011/12) and the other a comparatively low rate of child imprisonment (over the same period). To protect the identity of each site, we refer to them as *Highertown One and Lowertown One* (northern England), *Highertown Two and Lowertown Two* (southern England) and *Highertown Three and Lowertown Three* (Wales).

To ensure the validity and methodological integrity of the comparative focus, the paired sites were *matched* by taking account of numerous forms of census and other publicly available quantitative data including: the size of the general population; the size of the youth population (10-17 years); the youth population as a proportion of the general population; the ethnic composition of the population; the area ranking of the research sites by reference to indices of multiple deprivation; the percentage of children living in poverty; the percentage of children claiming and/or eligible for free school meals; unemployment rates; employment distribution profiles (the percentage of employed persons engaged in the following categories of employment: 'elementary/manual', 'service industries', 'trades', 'secretarial', 'managers/professional' and 'technical'); the percentage of benefit claimants; police recorded crime rates *per se* and, more specifically, police recorded youth crime rates. In this way, we are as certain as possible that the paired sites are genuinely comparable; comprising strikingly similar demographic and socio-economic profiles but notably dissimilar penal profiles when measured in terms of child imprisonment as a percentage/rate of all court disposals.

Finally, to test the extent to which the variable rates of child imprisonment (across the six primary research sites) held firm over a longer period of time (beyond 2004/05-2011/12), we have analysed 'local pivot data' provided by the Ministry of Justice and the Youth Justice Board for an additional six-year period (years ending March, 2013/14-2018/19) (see Figure 6).

During this latter six-year period it can be seen that for every 56 children facing the prospect of imprisonment in Lowertown One, 109 children faced a similar prospect in Highertown One. For Lowertown and Highertown Two, the corresponding prospects were 60-80 respectively and in Lowertown and Highertown Three they stood at 60-97. Such variability is striking, but it is also important to note that the dissimilarities between the selected sites are not necessarily characteristic of

the most extreme or polarised expressions of localised youth court adjudications in England and Wales. The distribution of court disposals in some other YOT localities actually show higher or lower proportions of custodial outcomes over corresponding periods of time (Bateman, 2020: 108). But rather than focusing on relatively unrepresentative outliers, we have preferred to select large urban YOTs/LAAs that are genuinely comparable (in terms of their socio-economic and demographic profiles) and sufficiently diverse (with regard to differential outcomes) to facilitate a legitimate exploration of the material effects of contrasting penal cultures at localised levels.

**FIGURE 6: Imposition of custodial disposals on children (aged 10-17 years) as a percentage/rate of all court disposals in the primary research sites over the six-year period: 2013/14 – 2018/19\***

Site	Custodial disposals as a percentage/rate of all court disposals
Highertown 1 (North)	10.9%
Lowertown 1 (North)	5.6%
Highertown 2 (South)	8.0%
Lowertown 2 (South)	6.0%
Highertown 3 (Wales)	9.7%
Lowertown 3 (Wales)	6.0%

\* Years ending March

Source: Data derived from Ministry of Justice and Youth Justice Board (2020)

If the processes of identifying and *matching* our primary research sites have been underpinned by secondary analyses of (a substantial volume of) quantitative data, the *mining* of the same sites has been enabled by in-depth qualitative inquiry. In total (across the six primary research sites), 91 youth justice professionals and allied experts were interviewed including: prosecution lawyers; judges and magistrates; YOT managers and practitioners; police officers; representatives from government and non-government organisations; policy officers and independent consultants. The substantial volume of qualitative data generated by the interviews was analysed thematically, and it has served to directly inform our understanding of both the *constituent elements* and the *differential outcomes* of local penal cultures. To express this differently, by combining quantitative and qualitative methods we have been able to examine the spatially contrasting balances that are struck between what Garland terms ‘negative’ and ‘positive’ power in the making of youth justice in the Highertowns and the Lowertowns respectively:

‘How [local] penal authorities rationalize their actions, how they conceptualize the challenges they face, how they problematize the fields in which they operate and the objects of their actions, and how they define the proper ends and means of penal practice... Penal power may use coercive means such as confinement [or] exclusion... Or it may use educational and welfare techniques to promote training and reintegration. All modern states use both negative (i.e., incapacitating) and positive (i.e., capacity-building) penal power, but the balance between them varies’ (Garland, 2013: 151).

# Making youth justice: the constituent elements and differential outcomes of local penal cultures

By subjecting our qualitative data to thematic analysis we aimed to identify the specific constituent elements of local penal cultures that – in *relational combination* - appear to *explain and account for* comparatively high or low rates of child imprisonment. For present purposes, six such elements are especially significant.

## 1. Leadership

Empirical studies exploring the impact of leadership within criminal justice agencies are limited in number and scope (Stojkovic *et al*, 2015), although the studies that are available illuminate the significance of charismatic leaders in shaping occupational and organisational cultures (Eadie and Canton, 2002; Stojkovic and Farkas, 2003; Stohr and Collins, 2009; Stojkovic *et al*, 2015). Stohr and Collins (2009: 184, emphasis added) define leadership as an:

‘... ongoing process of activity involving organising, decision making, innovating, communicating, team building, *culture creation* and moulding’.

The impact(s) of different forms of leadership on ‘culture creation’ (shaping local penal cultures, either positively or negatively) was a central theme running through the interview data. In particular, several interviewees referred to the importance of enthusiastic, supportive, purposeful, value-led, knowledge-grounded, credible and outward-facing leaders who inspired confidence and built trust (within and between agencies) and helped – they believed – to explain lower rates of child imprisonment (cf. Telford and Santatzoglou, 2011). In *Lowertown Three*, for example, several practitioners reported that the YOT Manager was very influential in creating a progressive culture that included exercising professional discretion, a willingness – when deemed appropriate/necessary - to digress from the slavish application of national policy and practice directives and the adoption of a consistently supportive disposition. The following quote is illustrative of this:

‘... legislation and national standards are... not the be all and end all because within legislation and standards there’s flexibility and I think as a YOT we have searched out that flexibility... The YOT Manager has always been very supportive, if we think an element of legislation is not quite what we need, we will look at it and he will say “look if you think that there is a better way of doing it, we will do it”. He will also defend and promote this position with other agencies’ (Lowertown Three, YOT Youth Court Manager).

The YOT Manager was credited with driving and promoting the development of community-based practices across different agencies, securing support for such practices and earning the trust of the courts. Moreover, the extract above reflected a wider belief - expressed by numerous interviewees - that the YOT Manager's leadership was vital in sustaining a local penal culture underpinned by minimal resort to custodial detention.

In contrast, interview data drawn from practitioners in *Highertown Three* suggested that the leadership style was both rigidly prescriptive and inward looking with minimal evidence of the YOT Manager fulfilling an ambassadorial inter-agency function. Several interviewees referred to low-morale and an environment in which key agencies - including the courts and the police - had limited confidence in the YOT:

'I don't think we are very good as a YOT... at publicising the breadth of the work we do... It's always perceived to be about "oh the YOT is working with someone that has committed horrendous offences"' (Highertown Three, YOT Practitioner - Post-Court).

'... certainly, here we are not very good at selling ourselves... we should be out there... selling ourselves... When the inspection report comes out it will be quite clear that it is a failing YOT' (Highertown Three, Intensive Supervision and Surveillance Practitioner).

At the time of our fieldwork (qualitative data collection), the YOT in *Highertown Three* had just been inspected. Initial feedback from inspectors implied that they deemed it to be 'failing'. The YOT Manager reflected on the inspectors' preliminary findings during interview:

'... it was what I was expecting. I think it came as a bit of shock to some of the staff... But basically, to a certain extent they don't have it bad here compared to being in some other places... But some people will always moan [laughs]... I think they thought that the inspectors would come in and empathise with them over their terrible workload which they haven't got and the fact that they came in, and basically told them they didn't know when they were well off and that they should get off their backsides and get on with stuff, came as a bit of a shock [laughs]' (Highertown Three, YOT Manager).

The low morale that was reported by several practitioners in the *Highertown Three* YOT revealed apparent tensions with management that stood in stark contrast to *Lowertown Three*, where the presence of a charismatic leader offering support, setting the tone, driving innovative practice and promoting the successful work of the YOT to other key agencies, created a positive penal culture.

In *Lowertown One*, interviewees also referred to the role of knowledge-grounded, value-led and externally communicative leaders - both past and present - in establishing and maintaining a positive and innovative penal culture:

'The previous YOT Manager... he had worked solidly for 20 years-plus to maintain a very close on-going relationship with the courts... I mean there was one day I went down to the magistrates' liaison meeting and... the YOT Manager at the time spent an hour and a half justifying and extolling why custody was a less preferred option to working with young people than services in the community, with a real passion. With a real passion and we have maintained that with absolute consistency all the time that I have been in local government' (Lowertown One, YOT Practitioner – Community Supervision).

The leadership style and philosophy of the current YOT Manager (at the time of interview) in *Lowertown One* was also regarded as being pivotal to sustaining a local penal culture that privileged child welfare and maintained a low use of custody. The YOT Manager explained the approach:

'We are constantly trying to reinvent and reinvigorate new ways of doing things and again that links into the confidence agenda. We have this thing called the "hoop of hope"... A basic continuous improvement cycle that goes along the lines of... if somebody had a great idea and would like to do X and you say to your partners if you let us do X this will be the result. So, they allow us to do X. We do it and it produces the results that we said it would. They are happy... We then have another idea... and so on... I think that's what we are good at... You need to constantly engage staff in new ways of working and take partners along with you' (Lowertown One, YOT Manager).

Not unlike *Lowertown Three*, the YOT Manager in *Lowertown One* was regarded as being a key player and vital influencer in driving progressive practice, both within the YOT and across the local youth justice partnership. Similar perceptions were evident in *Lowertown Two* where a police officer seconded to the YOT reflected:

'I mean I don't want to reduce this just down to personalities, but I think... [that] it is important to recognise that it does have a massive impact if you have got certain key players within the system' (Lowertown Two, Police Officer).

## **2. Philosophical foundations and service configurations: penal welfare v offender management**

The qualitative data implies that the philosophical underpinning of local penal cultures – often embodied within different service configurations – correlates with particular practice outcomes. In this sense, the *Lowertowns* were more inclined towards 'penal welfare' orientations (and they were literally located in Local Authority Children's Services Divisions), whereas the *Highertowns* tended to privilege notions of 'offender management' (and were more likely to be located within Local Authority Community Safety Divisions). So, although interviewees across all sites made some, albeit varying, reference to welfare principles as laid down in legislation (principally the Children and Young Persons Act 1933 and the Children Act 1989), the penal-welfare emphasis was



palpably stronger in the *Lowertowns* where it also tended to be coupled with an explicit commitment to welfare-centred and community-based practices:

‘... we are characterised by historically low custody rates. A welfare orientated perspective I would say, and that characterises itself by the staff being very committed to the welfare and needs of young people and prepared, on both a multi-agency basis and also in terms of our individual efforts, to go well beyond the line to give people the opportunities that they need... The beating heart for me is around [the belief that] young people can change’ (Lowertown One, YOT Practitioner – Community Supervision).

‘We are very much a welfare-based YOT. Our previous YOT Manager was very welfare-based and fought fiercely for that even when the [national] trend was different and more punitive... That was always the agenda, that what we were dealing with was disadvantaged young people, who had a multitude of problems, who were very complex, who were probably children who had been failed in other systems along their life, and that is what we were dealing with, and yes they offend but they are not just, or not only, offenders’ (Lowertown One, YOT Court Orders and Remand Manager).

The sentencers from the *Lowertown One* youth court also appeared to share, and operate within, a welfare-orientated penal culture:

‘Isn’t that the way it should be? The youth court is really an adjunct of the family court, rather than an adjunct of the magistrate’s court... the principles that you are applying are more welfare principles than they are criminogenic principles in truth’ (Lowertown One, District Judge).

Practitioners within *Lowertown Two* also articulated a commitment to welfare and decarceration. The YOT Manager described the ethos of the local penal culture by emphasising diversion and prevention:

‘But as I say we try and put a lot of effort into diversion and prevention... I was asked [during the job interview] what my vision for the service would be, and I still believe it now, it is that we should become increasingly diversionary. We should try and stop so many kids coming through the system and get to the root causes... You are sitting on a riverbank and a body floats down the river and you fish it out. And then another one comes and you fish that out and then another two and then another one. So, do you stand there and carry on fishing out bodies? Or do you go up stream and find out what is going on?’ (Lowertown Two, YOT Manager).

In contrast, the *Highbertown Two* YOT is located within the Local Authority’s ‘Community Safety and Offender Management Services’ Division – as distinct from the Children’s Services Division – and this appeared to colour practitioners’ conceptions of their role as implied both by the Youth Justice Service Manager and a YOT practitioner:

'The thing I would say here is that being part of the Community Safety and Offender Management side is that you are far more up to speed with the impact on the victim and the community as a whole. YOTs that are just in children's services and just insular, are maybe almost too welfare-based because they just see the young person in front of them, and as important as they think that is, they don't often see the impact. So, my anti-social behaviour team, whose entire work comes off of complaints and fear from the community and public, see things from an entirely different perspective... And [youth justice staff]... all sit out there together and they work on the cases together which is really really useful... you don't get an understanding of the need for justice from just welfare-based sentencing... I mean I probably would say this but, I feel it gives us a bit more of a balanced approach on enforcement' (Highertown Two, Youth Justice Service Manager)

'If they [children] are re-arrested quite often I will have a chat with the police officer here and we will decide what is the best course of action... For example, one young woman... we were asked to consider an out-of-court disposal. But given the case history, her type of offence etc. it was just not possible. You know, we could not do it. We could not justify it, it would not have been fair in terms of holding up justice' (Highertown Two, YOT Practitioner - Assessment).

The notions of 'enforcement' and 'holding up justice' in the interests of the wider community, were expressed by many interviewees in *Highertown Two*.

Furthermore, in contrast to the welfare-based dispositions of the *Lowertowns*, *Highertown One* interviewees also revealed a local penal culture in which heightened 'victim' awareness was clearly embedded. Indeed, many interviewees reflected that representing victims' voices and needs was vital and explained that they were following a 'government driver' to ensure that 'victims can make their voices heard... [as] the victim is very important' (Highertown One, YOT Police Officer). The idea of 'defending victims out there and defending the community' (from the impacts of youth offending) (Highertown One, YOT Court Manager) was a common trope when interviewees were invited to reflect upon the principal aims of their work:

'I think it's very important that we don't lose sight of the fact that, although they are only young people, they are committing crimes and there is a victim on the other side of all of this. And I think it is very important that victims are aware that the courts, when they sit, are as interested in them feeling validated as helping the young people... But not really at the expense of the victim. I think we really must not forget, in amongst all of this, there is always a victim at the back of it somewhere' (Highertown One, Youth Court Magistrate)



### 3. Perceptions of diversion

It is received wisdom in international research that optimising diversion (at the ‘shallow end’ of youth justice systems) normally has the effect of driving down rates of child imprisonment (at the ‘deep end’ of the same systems). In this way, McAra and McVie (2015: 133) advocate ‘minimal intervention and maximal diversion from formal systems of social control’ in light of the fact that ‘young people who have repeated and intensive forms of contact with agencies of justice have the worst long-term outcomes’ (including increased prospects of penal detention) (see also Sampson and Laub, 1993; Smith, 2017; McAra and McVie, 2019). Notwithstanding this, the qualitative data across the six primary research sites revealed considerable variation in both practitioner values and attitudes, and in YOT systems and processes, in relation to diversion and the use of pre-court disposals.

The data shows that the principle and practice of diversion was central to the local penal cultures in each of the *Lowertowns*. In *Lowertown One*, for example, interviewees reported that diversion was a key element of their practice: ‘diverting young people...is the best thing’ (Lowertown One, Crown Prosecution Service Lawyer) for most young people given that they ‘won’t have a criminal record’ (Lowertown One, Youth Court Magistrate). Support for diversionary practices (including magistrate and police support) was also evident in *Lowertown Two* where a prevailing belief was that such practices provide ‘an opportunity for those who made a mistake to see the error of their ways’ (Lowertown Two, Youth Court Magistrate). A police officer seconded to the YOT in *Lowertown Two* compared the practices in respect of charging decisions and categorising offence seriousness to other YOTs in different LAAs:

‘When we did the visits [to other YOTs] we just got the feeling that it was just a general difference in terms of the staff that they had and who was talking to who. I thought it was as simple as that actually. The member of staff who we liaise with here is of the basic opinion that kids will be kids and they will grow out of it [offending], end of story. But it is not the same elsewhere’ (Lowertown Two, Police Officer).

Similarly, a culture of maximising diversion was also apparent in *Lowertown Three*:

‘I am really really behind diversion to be honest... as teenagers we are all capable of doing something wrong so why not say to them “take on board that what you have done is wrong, but don’t let that ruin your life, get back on track and get straight back on track” and in most cases that works... I think everybody is behind it to be honest... up at the YOT they are 100 per cent behind it’ (Lowertown Three, Police Sergeant).

In contrast to the *Lowertowns*, a culture of scepticism and ambivalence towards diversion was evident amongst many practitioners in the *Hightowns*. Here a dominant theme to emerge from the qualitative data was that the (post-2008) national policy trend towards increasing diversion (see Goldson, 2015)

effectively allowed repeat offenders to evade justice. Although some of the *Highertown* practitioners expressed support for diversion in low-level one-off cases due to the ‘exuberance of youth or part of growing up’ (Highertown One, Youth Court Magistrate), many interviewees - particularly magistrates and district judges – articulated concerns regarding more widespread applications of diversionary practices:

‘The other thing that worries me... is the term “first offender”. Yes, they are first offenders in so much as... it’s the first time they’ve been in court, but they’ve got several youth cautions, several warnings, several reprimands... So, they’ve got no criminal record and as such they are not “offenders”, but they might have five or six run-ins with the criminal justice system... I can’t justify this. I feel that a number of those have become hardened criminal-mind types’ (Highertown Three, Youth Court Magistrate).

‘I would say that it is the view of most district judges, most magistrates certainly as well, that whilst I’m not applauding the bringing of youths into the criminal justice system, I do think that the diversionary system is probably too liberal’ (Highertown Three, District Judge).

#### **4. Perceptions of custodial detention**

Domestic and international law, together with numerous human rights standards that have been ratified by the UK government, provide that penal custody should only ever be used as a ‘last resort’. At the national level, the ‘definitive sentencing guideline on sentencing children and young people’ also serves to remind magistrates and judges that:

‘under both domestic and international law, a custodial sentence must only be imposed as a “measure of last resort” [and] statute provides that such a sentence may be imposed only where an offence is “so serious that neither a fine alone nor a community sentence can be justified”’ (Sentencing Council, 2017: para. 6.42).

Notwithstanding the benchmarks set out in law and associated national guidelines, however, we encountered markedly different perceptions of custodial detention between the *Lowertown* and *Highertown* sites in three principal forms.

First, we found evidence of an abiding and rather unrefined notion of the supposed merits of punitive ‘shock’ treatment in the *Highertowns*, as expressed, for example, by both the magistrate and the YOT Manager below:

‘We would like to say, “lock them up”. The short, sharp, shock may do it and we do that to some people when they are in court lolling around trying to buck the system’ (Highertown Two, Youth Court Magistrate).

‘I have often thought ideally you would have something that was about two or three days that would frighten them. I don’t know whether “frighten” is the right word but would make people think well this isn’t a nice place to be... I certainly know a Crown Court judge who did it to three girls once... he decided to put off sentencing to the next day. So, we heard all the arguments and he sent them to a YOI overnight and then he brought them back the next day and gave them all community punishments and I think he was quite clear in his summing up. He said, “you now know what it would be like if I had given you a prison sentence, go away, do your community punishment and don’t come back before me again”’ (Highertown Three, YOT Manager).

Second, different ‘thresholds’ appeared to obtain across the research sites with regard to the operationalisation of the ‘last resort’ principle. The Highertown interviewees seemed to be significantly less tolerant than their *Lowertown* counterparts, particularly in respect of children who are deemed to be ‘non-compliant’, and this obtained even for ‘lower level’ offences:

‘... most of the custodial sentences are for offences that are lower level... It’s not unusual to get custodial sentences here. Sometimes there is a culture where people can get frustrated with a young person’s lack of ability to comply and... they’ll resort to custody and I think that happens in the YOT’ (Highertown One, YOT Manager).

‘... it does sometimes happen, particularly if a youngster refuses to engage with the YOT, that a quite minor offence can end up passing the custody threshold simply because the youngster has refused on various occasions or breached their order and has been brought back to court and given a more onerous order and not done that... Ultimately you can get to a stage where you are thinking this was a relatively minor offence... for something that should normally be dealt with in a community situation but you end up sending him to custody’ (Highertown Two, Youth Court Magistrate).

In contrast, YOT practitioners and court officials in the *Lowertowns* appeared to apply more latitude:

‘I don’t think [custody] should be imposed because of our frustrations about our inability to change them or work with them... if at all, only when there is a real serious risk of harm to others’ (Lowertown Two, YOT Community Supervision Manager).

‘I think there’s a general agreement here that you only use custody in exceptional cases and an awful lot of that has to do with completely exhausting our sentencing possibilities... you will try and sentence with a view to tackling the underlying problem and you won’t just do it once and go “you’ve failed”. You’ll keep on trying’ (Lowertown Two, District Judge).

Third, beyond the base logics of ‘shock’ incarceration and lower tolerance thresholds, interviewees drawn from the *Highertowns* appeared to have a (misplaced) ‘faith’ that custodial sentencing might yield positive benefits:

‘The help and support that’s needed... is available in a young offenders unit and there are certain young people in this world who can only benefit by going away’ (Highertown One, Youth Court Magistrate).

‘I’ve been to quite a few of the young offenders institutes and [name of YOI] is an amazing place... The education they were giving was absolutely superb and they [prison staff] were just getting through to them [young prisoners]’ (Highertown Three, Youth Court Magistrate).

Whilst such findings resonate with the work of Solanki and Utting (2009) who also found that some magistrates believed that custody could offer rehabilitative structure and support, such optimism was not so readily shared by magistrates in each of the three *Lowertowns*:

‘I am not convinced that putting young people into custody stops them reoffending... These places are like Fagan’s den if you like’ (Lowertown One, Youth Court Magistrate).

‘I think it’s such a sign of dreadful failure and I’ve been to [name of YOI]... I mean that isn’t a place that’s going to be a really helpful environment for young people... I mean what is to be gained by putting young men all in one place, all sort of seething away together, I mean I don’t call that rehabilitation’ (Lowertown Two, Youth Court Magistrate).

I think that they always benefit more out of custody than in custody because once they go into custody they are mixing with like offenders and when they come out they’re not going to get the support that they would if they’d actually gone through a [community] order. So, the chances are that they’re just going to go through the cycle all over again (Lowertown Three, Youth Court Magistrate)

## 5. Knowledge-informed approaches

The ambivalence to diversion, alongside the (unduly) optimistic perception of custodial detention, that we found in the *Highertowns* betrays key messages that might otherwise be drawn from a substantial volume of international research and practice-based knowledge. Conversely, explicit knowledge-informed approaches were apparent in the *Lowertowns* – especially *Lowertowns One* and *Two* – where partnerships with local universities had been established and reciprocal knowledge-exchange was an intrinsic feature of practice culture.

Interviewees in *Lowertown One* referred to collaborative work with the local university - including research on the effectiveness of their interventions – as a vital component of knowledge-informed or evidence-based approaches: ‘so, for example, we have a formal partnership with Lowertown One University’

(Lowertown One, YOT Court Manager). Moreover, the YOT manager ensured that research findings were shared with relevant agencies – including the police and the courts - by way of ‘presentations to partners around evidence-based practice’ (Lowertown One, YOT Manager). A YOT practitioner referred to the role of the local university in researching ‘triage’, a practice activated at the point when a child enters police custody following arrest. The model – borrowed from the hospital practice of triage – aims to ensure that all children in police custody are rapidly assessed to ensure that they are processed without delay. It provides an opportunity, in appropriate cases, for expeditious diversion wherein the police take no further action:

‘... if you look at something like triage we have had the local university examining our figures and triage was producing a re-offending rate within a year to 18 months of about half of what [more interventionist] final warnings were over the same period’ (Lowertown One, YOT Interventions Manager).

Forming such partnerships and sharing research both within the YOT, and with relevant partner agencies, served to legitimise and affirm diversionary practice, consolidate partner confidence in the YOT and inform a more progressive penal culture.

Similarly, a custom of applying research to inform practice and to ‘educate’ practitioners and partner agencies was also evident in *Lowertown Three*. YOT practitioners referred to the ‘resident researcher’ (an academic from the local university) and to establishing links with European criminal justice agencies to inform their practice from an international perspective. The remand manager explained how the YOT, in collaboration with the university, had gathered evidence that was ultimately used to persuade local councillors to close the remand centre and to fund a project providing community alternatives:

‘Now the beauty of the way that we work is that knowledge is power and you can use the research to highlight where the issues are. If you apply research you can adjust your resources appropriately’ (Lowertown Three, YOT Remand Manager).

## 6. Human rights consciousness

Further to the findings presented above – perhaps especially in respect of philosophical approaches and perceptions of diversion and custodial detention – it is perhaps not surprising that familiarity with the provisions and obligations laid down by international standards, rules, conventions and treaties (human rights consciousness) was most apparent in the *Lowertowns*. The Court Services Manager in *Lowertown One* and the YOT Manager in *Lowertown Three* were both unequivocal:

‘I think it is extremely important in terms of ensuring that young people are treated with fairness, respect and that the criminal justice system embraces that... I think the UN Convention on the Rights of the Child underpins all of

the work around supporting young people. We don't bring young people into the criminal justice system unnecessarily and those young people who are in the system who have committed harm aren't punished disproportionately... We have reduced the number of young people brought into the youth justice system unnecessarily and we are heading in the right direction in terms of the number of young people we send to custody. I would love to say that we could eliminate it [custody] altogether... I think the UN Convention on the Rights of the Child is very helpful in making sure that young people are given all of those opportunities to have support... it's certainly there, as far as I'm concerned, I'm familiar with it enough to value it as a set of important guiding principles' (Lowertown One, Court Services Manager).

'We have to consider... at a policy level that we are dealing with children... with a significant responsibility relating to, not just criminal justice, but social justice as well... So, the balance between rights and responsibilities becomes not just about talking to young people about what they have done wrong, but also about enabling them to access their rights and entitlements to education, to support from professionals, to sports, to culture, to leisure activities. A whole range of things, which are built in as expectations through the UN Convention of the Rights of the Child, which, after all, we as a country have signed up to... So, what we are looking for is a process that educates rather than one that punishes. That's a very critical factor' (Lowertown Three, YOT Manager).

Indeed, human rights consciousness pervaded the penal cultures of the *Lowertowns* and was expressed by the full range of practitioners, including magistrates and police officers:

'... it [UNCRC] was certainly presented to us when we trained and ... I am still respecting fully human rights' (Lowertown One, Youth Court Magistrate).

'... we have legal advisers who are fully *au fait* with it [UNCRC] and they keep us advised' (Lowertown One, Youth Court Magistrate).

'... well I am supportive of the Convention... yes, of course' (Lowertown One, Youth Court Magistrate)

'It [UNCRC] is empowering. I think young people need to know about this... They [children known to the YOT] were complaining "this is not fair, that's not fair" [being banned from the commercial shopping district]. So, I remember speaking to the young people and saying "I don't think that is right, you need to speak to the Children's Commissioner directly"... We are huge on participation here. You know part of this process is getting the young person to participate in any way that is possible. It's inclusive and we want them to participate... It's about children's rights' (Lowertown Three, Police Officer).

Conversely, many interviewees from the *Highertowns* expressed negative perspectives in respect of the human rights of children and young people in youth justice systems, ranging from ignorant and mildly ambivalent to overtly resistant:

‘I have to admit I don’t even know what it is. Human rights framework? Is it something to do with the European Union? I have never heard anybody speak about it. I have never spoken about it. I don’t know about it’ (Highertown One, Police Officer).

‘Well we’ve all had training on it when it first came out... and we were all a bit anxious about it at first, but it never seemed to really materialise into... preventing us, Magistrates, from doing what we thought... we haven’t changed... I haven’t really noticed that much myself as a Magistrate... not really noticed that much difference’ (Highertown Two, Youth Court Magistrate).

‘People are aware of it. But it does not have any effect... Not at all’ (Highertown One, YOT Operations Manager).



## Synthesising the constituent elements of local penal cultures

Through an extended programme of empirical research in England and Wales we have explored how youth justice (and related agency) managers and practitioners, within distinctive YOTs/LAAs - *Lowertowns* and *Hightowns* - construct and operationalise local penal cultures.

In sum, we conceive the *Lowertowns* as applying 'positive power' through a combination of: charismatic, enthusiastic, supportive, purposeful, value-led, knowledge-grounded, credible and outward-facing leadership; a philosophical commitment to welfare-oriented and community-based service delivery; an informed and determined embrace of diversionary and decarcerative principles and practices; greater awareness and wider engagement with knowledge-based approaches and a recognisably developed human rights consciousness.

Conversely, we have come to understand the *Hightowns* as sites where 'negative power' is expressed through: more rigidly prescriptive and inward-looking leadership styles and practices; a conceptual emphasis on offender management; more ambivalent perceptions of diversion; misguided (including unduly optimistic) perceptions of custodial detention; less refined understandings of the youth justice knowledge-base and an under-developed human rights consciousness.

We are not suggesting that either the three *Lowertowns* or the three *Hightowns* comprise identical entities or archetypes. Rather we contend that it is the inter-locking and relational *combinations* of the respective constituent elements – embedded and enduring tendencies – that shape distinctive penal cultures at the sub-national level in ways that either moderate or inflate the incidence of child imprisonment.



## Conclusions: lessons and prospects for policy and practice

As stated earlier, this research report is publishing to coincide with the 21<sup>st</sup> anniversary of a major programme of youth justice reform, including the establishment of Youth Offending Teams (YOTs) across all Local Authority Areas (LAAs) in England and Wales (in April 2020). In the two decades that have followed the size, shape and form of the youth justice system and, more significantly, the population of children criminalised and punished, has fluctuated significantly (Goldson, 2015; Bateman, 2020; Goldson, 2020). If the first decade of the period was characterised by extraordinary net-widening and penal expansion, the latter decade has witnessed polar opposite effects - substantially fewer children have entered the youth justice system and the number of children exposed to punishment by penal detention has also diminished quite dramatically. Indeed, the most recent national statistics indicate that the number of children receiving a caution or a court sentence in England and Wales has fallen by 82% over the last ten years and 12% over the last year (ending March 2020). Similarly, the number of child prisoners has fallen by 68% over the last decade and 9% over the last year (Ministry of Justice and Youth Justice Board, 2021: 2). Set against the longer timeframe, the more recent *national* trends are welcome but, as we have discussed, such trends are not evenly distributed. Substantial variations prevail within otherwise comparable localities and justice by geography continues to stand the test of time.

Furthermore, the very same - and otherwise welcome - national statistics also evidence deeply problematic phenomena. The use of force on child prisoners (officially designated as 'Restrictive Physical Interventions'), for example:

'... increased by 19% in the last year, to around 7,500 incidents [and] the number of self-harm incidents has increased by 35%, to around 2,500. For both measures, this is the highest number of incidents in the last five years' (Ministry of Justice and Youth Justice Board, 2021: 2).

Similarly, almost one-in-three child prisoners are now being held on remand amounting to 'the largest proportion [of child remand prisoners] in the last ten years' (ibid: 33). Moreover, the 'racialisation of youth justice' (Goldson *et al*, 2021) has deepened over the last decade, with BAME young people accounting for 52% of child prisoners year-ending March 2020 compared with 28% year-ending March 2010 (Ministry of Justice and Youth Justice Board, 2021: 42).

Located against this backdrop, a key lesson communicated by our research is that the conversion of *national* youth justice policy into *local* practice – the means by which youth justice is ultimately *made* - is largely contingent on the discretionary and relational actions, adaptations, discernments and decisions

of local actors. More specifically, we have identified the core constituent elements of distinctive penal cultures and, by distinguishing between ‘negative’ and ‘positive’ forms of power, we have aimed to account for differential outcomes - principally spatially variable rates of child imprisonment ranging from high to low respectively - and to consider the implications for policy and practice.

The constituent elements of *Lowertown* penal cultures - crafted by the application of positive power – are vital in four key respects. First, they appear to succeed in sustaining lower rates of child imprisonment irrespective of the vagaries of national trends. Second, they promise to mitigate the problematic phenomena referred to above, alongside other well-documented failings of child imprisonment. Third, they signal the means by which youth justice can be made and operationalised, both in accordance with evidence-based approaches and the provisions of international human rights standards (Goldson, 2019). Fourth, they provide a foundation for realising the United Nations’ authoritative injunction to ‘develop strategies aimed at replacing the detention of children in penal facilities’ (Nowak: 2019: 336). More immediately, perhaps, the same constituent elements might be taken to shape staff induction, training and development programmes across the full-range of youth justice agencies and to inform the criteria and assessment methodologies employed by the relevant national inspectorates.

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The Howard League for Penal Reform is a national charity working for less crime, safer communities and fewer people in prison. We campaign and research on a wide range of issues including short term prison sentences, real work in prison, community sentences and youth justice. We work with parliament and the media, with criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change to create safer communities.

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