

## Blurring boundaries: young people, safeguarding and the criminal justice system

### The interviewees

The discussion that follows is based on interviews with three experts in young people and the criminal justice system:

**Tony Sagers (Threat, Risk and Harm Consultant)**

**Dr Craig Barlow (Independent Forensic Social Worker and Criminologist**

<http://www.craigbarlow.co.uk> and <http://www.hull.ac.uk/work-with-us/research/case-studies/promoting-social-justice>)

**Dr Tim Bateman (Reader in Youth Justice, University of Bedfordshire).**

### Background

When trying to understand the experiences of children who have been sexually or criminally exploited, it is important to recognise that many young people may have been both victimised whilst also simultaneously victimising others. [Some](#) have argued that it is important that services are able to see a young person as both a victim and as having had experiences of perpetration, rather than enforcing a false divide between victim and perpetrator. For example, [Firmin](#) argues that only in addressing their welfare needs, alongside an enforcement response, can we effectively address their harmful behaviours and prevent exploitation.

This resource seeks to explore this 'blurred boundary' between the youth justice system and safeguarding – where young people can be criminalised as a result of exploitation, or alternatively, treated as a child in need of safeguarding, or in some instances both. Through discussion of the differences and similarities in the views of the experts interviewed, consideration is given to the issues, controversies and implications of trying to reach a more balanced approach.

### The balance and tensions between safeguarding and enforcement within the youth justice system

Differing perspectives emerged during these discussions as to what the current balance was between safeguarding and enforcement within the youth justice system, and what changes had occurred in recent times.

Tony Sagers observed that significant changes had taken place within police forces across the country in terms of how they respond to children that come to their attention and who may have been criminally exploited. Sagers has observed more focused efforts in '*extracting children from vulnerable environments and assisting them to remain safe instead of prosecuting them and putting them back into the same world that they were taken out of the day before*'. Whilst acknowledging there is still a lot of progress to be made, he emphasised the importance in recognising the current efforts being made by frontline practitioners to address a very complex problem.

Dr Craig Barlow and Dr Tim Bateman were concerned that there had been a lack of significant development in correcting the safeguarding/ enforcement 'imbalance' within the youth justice

system. When children are found to have broken the law, other safeguards that usually apply to children are still often waived. Dr Bateman argued that the 'divorce' between safeguarding and punishment is deeply embedded within the youth justice system, and remains enshrined in practice.

While the notion that children may be subject to exploitation is a live one within the youth justice system, both Dr Bateman and Dr Barlow observed that these children are not receiving the multiagency safeguarding response they require. In order to safeguard children who have been exploited but who have also committed a crime, both the youth justice system and the child protection system need to work together. However, this is often not happening.

Dr Bateman referred to consistent messages from Youth Offending Teams (YOTs), that *'when a child is allocated within a YOT they are de-allocated as a child in need [CIN], so you are either in the justice system or you are in the child protection system but local authorities won't deploy resources to both'*. Dr Craig Barlow similarly noted that even when practitioners within the youth justice system are identifying a young person as possibly being a victim of exploitation, sufficient to enter them into the National Referral Mechanism (NRM), this was not always triggering a parallel referral and intervention by children's social services. Work is needed to ensure that an NRM intervention triggers the statutory safeguarding duties of the relevant local authority.

*"Instead of the NRM process happening in conjunction with the safeguarding enquiry, it is just getting a NRM intervention now... [It] means that very often you've got a vulnerable young person in custody who we already suspect is a victim of abuse and exploitation, and if they are acquitted or if charges are dropped in that case, they are returning to the same environment from whence they came. So the risk of re-victimisation is really high under those circumstances... At the very least [we should be building] the space for a multi-agency child safeguarding strategy in relation to that child, and that doesn't seem to be happening as far as I can tell."* Dr Craig Barlow - Independent Forensic Social Worker and Criminologist

Dr Tim Bateman acknowledges that whilst the child protection system and youth justice system are not yet effectively collaborating to safeguard children, there has been a boundary shift in terms of which sector a child is more likely to fall within. Over the past decade we have seen the youth justice system rapidly contract, whilst the children in care population has grown significantly. A much larger number of children are now entering the child protection system than was previously the case, and the scope for a *'punitive, criminal justice response is narrower than it once was.'*

The interviews raised several questions about whether trying to achieve a balance between safeguarding and enforcement within the youth justice system is achievable or appropriate. Tony Siggers believed the system can both prosecute and safeguard, and has a duty to do both. A nuanced approach is needed that enables frontline practitioners to assess, for each individual case, whether a criminal justice approach should be taken, a safeguarding approach, or both.

*"A balanced approach is needed because you do need to prosecute some young people and you do need to safeguard many of them and for some you need to do both. So it could just be a criminal justice approach if the person is assessed to not be at risk because they are higher up the pecking order, or it could just be a safeguarding approach if it is very apparent that they are dealing under the coercive control of others and therefore they are a victim, or it could be both."* Tony Siggers - Threat, Risk and Harm consultant

Questions also arose in these discussions about whether the victim status of an exploited child should make them immune from being prosecuted for exploiting others. One standpoint is that whilst their exploitation should play a factor in how the youth justice system deals with them, justice

must surely still be found for their victims. Whether justice requires the criminal prosecution of children is yet another question that warrants further discussion.

*“If you are the parent of the 14 year old being exploited by the 16 year old, how do you expect to get justice for what happened to your child if the 16 year old is a victim of a 19 year old and because of that they are deemed entirely a victim of exploitation themselves. So the challenge of victim status for county lines in particular has been ‘what’s happening to them and what are they doing to someone else?’” Tony Saggars - Threat, Risk and Harm consultant*

The notion that a criminal justice system could never achieve the necessary balance to safeguard children and young people effectively also emerged from the interviews. A system built to punish may never be able to safeguard fully the welfare of children and young people. Dr Tim Bateman also argued it was important to question the need for a youth justice system at all (whilst acknowledging strong arguments on both sides). Whilst this country may be incredibly wedded to the concept, it is not a given for children to be treated as criminals. Scotland and Japan are two prime examples. Scotland has no separate youth justice system for children aged 16 and under, instead those who commit offences enter the same system as children in care or in need, and Japan does not punish anyone under the age of 21. These systems are based on the recognition and understanding that much criminal behaviour is a consequence of exploitation and a lack of safeguarding. Must we therefore also consider another option, not just that we try to achieve the correct safeguarding balance within the youth justice system, but that we eradicate that system altogether?

### **Workforce challenges**

There was a clear consensus about the workforce challenges within the youth justice system that makes it hard to safeguard children effectively. All three experts touched on the fragmentation of services over the past few decades, citing a lack of cohesive working and information sharing amongst practitioners from different sectors.

Dr Tim Bateman referred to the need for greater movement of staff between child protection and youth justice settings. Dr Craig Barlow reflected on how he used to train police officers and social workers together on areas such as Achieving Best Evidence (ABE) interviews, but that this no longer happens. He saw this as one of many indicators of the service fragmentation that had led to a lack of mutual understanding between the two sectors.

*“I used to train police officers and social workers together for ABE interviews but I haven't had a joint course commissioned for several years now. I think right there, that fragmentation is where your difficulty lies. Social workers do not understand the criminal justice system and its needs. Similarly, the criminal justice system does not understand the child protection and civil justice system and how they work, so you end up sometimes with a tension between the two environments.”*  
*Dr Craig Barlow - Independent Forensic Social Worker and Criminologist*

Tony Saggars acknowledged the country wide disparity in terms of best practice in this area, but also highlighted examples of good practice. For example, he spoke about areas where youth workers were going out on patrol with police officers during this current COVID-19 epidemic, to ensure that whoever they came across reaped the benefits of their collective resources. It is important for such examples to be shared widely and communicated in an accessible format.

All three experts also commented on how practitioners within the youth justice system are not being equipped with the knowledge, skills and tools to safeguard children and young people, and are

lacking any coherent guidance to support this process. This leads to practitioners lacking confidence and feeling deskilled.

### **What could the future look like?**

It is important to first look backwards and understand the past, in order to appreciate the pathway to the present context, and how we might be able to move forward. Dr Tim Bateman reflected on a time when safeguarding was far more embedded within the criminal justice system, and work within this sector was seen as a social work task. In fact, you could only work in probation if you had a social work qualification. A fundamental shift in criminal justice policy narratives during the late 1990s resulted in offending no longer being seen as a social work issue. In turn this has influenced the youth justice system, and YOTs are created on the assumption that jobs within the youth justice sector do not include social work roles. This also has implications for children's services:

*"Many kids who would come to the attention of children's services as teenagers would also be in trouble with the law, and there was an increased tendency to see those kids as young offenders and less of a tendency to see them as clients of children's services." Dr Tim Bateman - Researcher with expertise in youth crime and youth justice*

Dr Craig Barlow talks about how safeguarding systems, training and tools are geared towards younger children and intra familial abuse and neglect, not adolescents and extra-familial abuse. Consequently, a lot of social workers feel less confident when dealing with adolescents or exploitation.

Dr Tim Bateman raises questions about whether many of the issues identified and addressed by contextual safeguarding, are in part a consequence of this wider policy shift, where social work no longer had a role within the realm of criminal justice. Did this shift contribute towards children's social services increasingly focusing on younger children and social workers increasingly losing expertise in working with adolescents? Did the shift lead to 'safeguarding' becoming increasingly associated with younger children and protecting them within the family environment?

Dr Tim Bateman's recent research, ['Surviving incarceration'](#) found that children who are incarcerated and were previously within the care of the state, are not being safeguarded against exploitation, and in some cases are in fact being made more vulnerable to exploitation and to punitive responses from the youth justice system. The research included 48 interviews with children who were either in custody or had been released within the preceding 12 months. A consistent message to emerge from the research was that for children in care there were systemic factors that made it more likely that their choices would result in a route into custody, and factors outside of their control that made it more likely that they would adopt a 'street-based' livelihood and subsequently criminal activity.

*"Children in care within our research weren't actually more protected from the rigors of the justice system than children who didn't have that relationship to the care system... their experiences of care made it more likely that they were on the streets, more likely that the criminal justice agencies would become involved and more likely that they would find the experience of custody difficult. You would like to think that if children were the responsibility of the local authority, those children would have extra protections and safeguards, they would be in a better position than other children in custody for example, and that isn't the case." Dr Tim Bateman - Researcher with expertise in youth crime and youth justice*

With a safeguarding system that faces these challenges, it is important to acknowledge that it is not enough to simply break down the barriers between children's services and the youth justice system, or to better embed safeguarding within the youth justice system. Furthermore, it calls into question ambitions to close the youth justice system down all together and hand all the responsibility over to children's services. Concerns were raised about whether closing youth justice service provision might lead to a huge rise in the number of adolescents slipping through the cracks of all services. So how can we shift towards a more inclusive safeguarding approach within the youth justice system?

Questions were raised about whether a pragmatic and realistic approach is required versus a more radical and confrontational approach. For example, Tony Saggars argues that asking for a complete system upheaval and criticising those who are needed on side for change to occur is not a sensible way forward.

*"People could take a step back... recognise that not everything they want is going to get delivered. [push for] some incremental changes over time by saying to government 'this entire policy is not broken but there are elements of it that need to be improved'. People that are constantly saying 'all of it is broken, none of it works, we need complete change' - they are never going to get that because for a start the criticism that they are directing is largely towards the people they are then appealing to to make the changes and that is not necessarily an intelligent way to professionally achieve change. So for me policy around county lines does need to change, that is why I am very committed to my strategic involvement with the TCE programme but it needs to be pragmatic and it needs to be realistic, lets change the things that are going to have the biggest impact."* Tony Saggars - Threat, Risk and Harm consultant

Dr Tim Bateman also raised some interesting points about how YOTs could move forward – citing different models across the UK. Many YOTs are beginning to do more prevention work, engaging with young people before they get arrested. So could this more preventative role within YOTs be formalised and rolled out across the country? Alternatively, YOTs could be dismantled (as in Surrey or Hackney) – where youth justice is now being addressed by a wider generic service for adolescents and includes a range of different teams (e.g. Connexions, children's services and adolescent teams). Could these models have a greater potential for creating a more nuanced response to children who offend but are also exploited and helping create a better balance between safeguarding and punishment? Due to the localism agenda, and central government exerting less influence on local policy (particularly in relation to youth justice), it is hard to monitor the general trends across the country in terms of direction of travel for YOTs – but perhaps this would be an interesting and necessary piece of research going forward?

In reference to Firmin's [contextual safeguarding](#) work, Dr Craig Barlow described the theoretical [framework](#) he had developed to help practitioners (particularly defence counsels) identify, understand and interpret patterns of child criminal exploitation. The model addresses the failure of most tools and frameworks to effectively capture the context and nature of exploitative relationships. Most tools do not consider the objectives of the offender or the environmental factors that are conducive to the patterns of exploitation. This is the basis of Dr Barlow's explanatory model *which*:

*'...includes looking at what makes a suitable target for exploitation, the motivations of the perpetrators, the conducive environment, and how these three domains interact with each other systemically to generate an opportunity for the emergence of a pattern of exploitation'.*

Feedback from practitioners is that the model helps them: to conduct their interviews; structure their reports; open up new lines of enquiry; and facilitate constructive conversations between different professionals by giving them a shared framework to make sense of complex issues. Barlow hopes that the model can help refine practitioner's understanding of how a child can sit simultaneously in a victim and a perpetrator role, and that *'by understanding their relationship with and to the organised crime group that are exploiting them we can make decisions that are proportionate in terms of intervention'*.

### **The role of 'choice and agency' in the victim/perpetrator overlap**

The interviews explored the contentious issue of whether there is ever an element of 'choice' at play for children who are being both exploited and causing harm to others. All three experts spoke about the importance of acknowledging and understanding that these children are making choices and decisions every day, many of which are incredibly balanced and rational, given the context and conditions they are living in. There can be a tendency to strip away the agency of children who are exploited in an effort to 'protect' their victim status. Tony Sagers highlighted the dangers in doing so, noting that in taking away their agency, we risk alienating the very group we wish to protect and failing to respect or fully understanding their situation and agency.

*"We are at risk of alienating the very victim group that we should be protecting by just saying as adults 'you don't know what you are thinking - we do - you are not responsible for your thought processes, you were all tricked - you were all groomed.'... we neglect to sit down with individuals and understand them fully and give them respect."* (Tony Sagers)

All three agreed it was equally important to understand the experiences, context and systemic factors that surround a child, which can make it more likely that their choices would be limited and circumscribed into routes that lead them into the youth justice system. Dr Craig Barlow referred to the extreme levels of violence, fear and threats that these children who are exploited and abused are often facing that can help us understand the choices that they make.

*"There are really difficult, tricky decisions that are being faced by these young people every single day in their waking life."* (Dr Craig Barlow)

*"What was really striking was this was a group of children, almost without exception, who described spending nearly all their time outside on the streets... they had little constructive intervention from services, almost none were in any formal education. They were in effect surviving on the street... they didn't have the structures around them that you would expect children to have. The circumstances in which they found themselves were ones that made them very vulnerable to getting into trouble but also to being victims of violence and exploitation by others..."* (Dr Tim Bateman)

From a slightly different perspective, Tony Sagers referred to a model he has developed to help explain and understand the nuanced 'scale' of choice and agency that children who are criminally exploited may be on. He calls it the 5 c's – *'complicit, compliant, compelled, coerced, cheated'* – that can help guide frontline practitioners in better understanding the role that a child might play in the criminal activities they may have engaged in. This guide explores the nuanced scale of choice that may be at play with any given child. For example, the child might be 'compliant' in relation to the criminal activity they took part in, meaning they got involved because of peer pressure and naivety. Or they might have been 'compelled', meaning for example that a child's vulnerabilities, such as poverty or deprivation, might have been identified and capitalised upon in order to groom them into taking part in county lines. Tony Sagers emphasises that understanding and acknowledging the

nuanced choices children make is important, not so that we can *'charge and criminalise'* them, but so we can understand *'the social, the economic and the emotional aspects'* of why children choose to get involved in county lines, and begin to challenge and change their perceptions.

Dr Craig Barlow highlighted the important role that the Modern Slavery Act can play in helping us navigate the complexity and nuance of 'choice' in the context of criminal child exploitation from a legal perspective. The [Modern Slavery Act](#) is a legal tool which can be used to demonstrate that someone who has engaged in a criminal activity has done so as a direct consequence of being coerced and controlled. However, Dr Barlow notes two key issues, there is not enough training for legal professionals on this particular legislation, and the patterns of coercion and control that have to be evidenced for the relevant defence under the Modern Slavery can be extremely challenging to prove.

### **Differences between CSE and CCE**

Several differences between child sexual exploitation and child criminal exploitation were highlighted, when discussing the balance between enforcement and safeguarding within the youth justice system.

Tony Siggers noted that spreading the message that all children are victims of child criminal exploitation could only add to the motivation of gangs to groom and recruit them. This fear may act as yet another barrier to achieving a more balanced safeguarding approach in relation to child criminal exploitation.

Dr Tim Bateman suggested that with child sexual exploitation, the shift to children being treated as victims as opposed to criminals faced relatively little opposition across the different relevant sectors. He believes it will be harder to affect the same change in relation to children who are criminally exploited because *'by and large children who are involved in sex work are not doing a huge degree of harm to other people but kids involved in child criminal exploitation are quite often inflicting fairly high levels of violence... [therefore] how you respond to it is still much more difficult than with child sexual exploitation.'*

Do children who are criminally exploited tend to cause more harm to others than children who are sexually exploited? Or is this simply a perception? It was certainly acknowledged in these discussions that victims of both criminal and sexual exploitation can sometimes elevate themselves out of harm's way by becoming part of 'larger exploitative machine' and grooming others.

### **Conclusion**

This set of interviews highlighted a range of issues that are currently subject to debate in regard to views of young people as victims or victimising others, and the nature of service responses. The following Questions for Reflection aim to help you consider your experiences and perceptions of these issues.

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### **Questions for reflection**

- **What, in your experience, is the balance between 'safeguarding' and 'criminal justice' in responses to young people who have been exploited?**

- In your view, does the extent to which children and young people are viewed as 'victims' depend on the type of exploitation or extra-familial harm? Or does it depend on personal characteristics such as gender?
- What ways of working might reinforce a separation between a 'safeguarding' and 'criminal justice' response?
- Are there some groups of children and young people who are more likely to receive either a 'safeguarding' or 'criminal justice' response?