

STILL WORKING WITH “INVOLUNTARY CLIENTS” IN YOUTH JUSTICE

Abstract

A lack of active participation from children and young people in the design and delivery of youth justice services has culminated in the effectiveness of the Youth Justice System being reduced. There has been little independent scrutiny and to add to that strategic direction on how children's voices are or should be accessed in practice. In the light of this, the paper explores the various challenges associated with promoting the active participation of young people who have offended. More specifically, the paper explores the difficulties engaging those who are disengaged as such individuals may perceive the support on offer as unnecessary and intrusive. The paper argues that in order to reconcile a lack of engagement and feelings of disempowerment the priority should be throughout the Youth Justice System to involve young people in decision-making processes. Ideas will be put forward with regard to how youth justice practice could become more participatory and engaging particularly with regard to those who are 'involuntary clients' or in other words difficult to engage. There is a dearth of 'hard' empirical evidence on the effectiveness of participatory approaches in youth justice. However if work with young people who offend is innovative and bespoke to allow for young people's voices to be heard practice could become more effective. But there needs to be the recognition that the ideas put forward in this paper are not 'magic bullets'.

Keywords

Involuntary clients; participation; relationship-based practice; youth justice; young offenders

Introduction

Young people are not often provided with opportunities to actively participate, engage and influence service design and delivery in youth justice (Haines and Case, in press; Hart & Thompson, 2009). This could be due to the idea of participation being inconsistent with an emphasis on punishment (Beyond Youth Custody, 2014). Indeed participatory principles conflict somewhat with the whole premise of youth justice intervention and in particular the notion of just deserts (Beyond Youth Custody, 2014). Moreover, young people who have offended have not only committed a crime but contravened normative social expectations regarding how one is expected to behave and in turn forfeited the right to have a say (Hart & Thompson, 2009). However, in accordance with international standards, treaties, and conventions – most notably the United Nations Convention on the Right of the Child – the participatory rights of children in conflict with the law should be promoted. That said rather than being human rights based, practice is very much focused on compliance, compulsion and coercion (Haines & Case, in press).

This paper explores the various challenges associated with promoting the active participation of young people who have offended. Particularly the paper explores the difficulties engaging those who are disengaged, as such individuals may perceive the support on offer as unnecessary and intrusive. The article argues that the topic of participation is in urgent need of development and thus requires fresh political, academic and practice attention. It also argues that in order to reconcile this lack of

user-led engagement and experiences of disempowerment the priority should be throughout the Youth Justice System to involve young people in decision-making processes.

A lack of active participation from children and young people in the design and delivery of youth justice services has culminated in the effectiveness of the Youth Justice System being reduced (Haines & Case, in press). There has been little independent scrutiny and to add to that strategic direction on how children's voices are or should be accessed in practice (Hart & Thompson, 2009). Ideas will be put forward with regard to how youth justice practice could become more participatory and engaging, particularly with those who are "involuntary clients" or in other words difficult to engage.

Participation in youth justice

To participate is to be involved and have some say over the process. With regard to the use of participatory approaches across the tariff of youth justice interventions and providers of services, 'the involvement of young people in their own assessment is underdeveloped and, even where they provide useful information; this may not be used to inform the plans that are made...' (Hart & Thompson, 2009:4). Indeed rather than promoting their active participation and starting from the child's wants and needs – and embedding such practice throughout assessment, planning, intervention and supervision – practice is very much adult-led and disempowering for the child (Case & Haines, 2009; Haines & Case, in press). It must be acknowledged, though, that the Youth Justice Board recognise the importance of service user involvement in assessment and is in the process of implementing (2014/2015) a new and improved assessment framework that claims to give much greater emphasis to young people's wishes and feelings (Creaney & Smith, 2014; Haines & Case, in press). This tool may allow practitioners to devise broader, more proactive solutions to tackle identifiable issues as the assessment framework intends to be more holistic and sensitive to children's needs and wishes. In so doing, it is future orientated, concerned with strengths and aspirations rather than risky behaviours (Haines & Case, in press).

That said work with young people who offend tends to be conducted 'on' rather than 'with' children - perhaps understandable in a context of enforcement. Practice has tended to adopt more controlling and repressive mechanisms that are coercive, often non-negotiable in nature and disengaging (Haines & Case, in press). Practitioners rarely provide opportunities to children to actively participate in their care (Beyond Youth Custody, 2014). This could be for a number of reasons not least that practitioners are constrained by the court ordered nature of the work and more specifically the rigid conditions that must be imposed. However, the Referral Order is perhaps one example of where the Youth Justice System has tried to involve young people in the decision-making process.

Referral Orders are community sentences given to children between the ages of ten to seventeen appearing in a youth or magistrates court for the first time. As part of the court order the child attends a panel meeting, where, the space is provided for young people to actively participate in the process. Indeed, as part of the Referral Order the aim is for perpetrators and victims to 'actively participate' in the process -

rather than be passive spectators – in order to resolve the conflict. The idea is that power and control can be equally shared between the two parties. Not only can the victim and the offender have a say and be heard, the perpetrator can be provided with opportunities to repair the harm caused by engaging in positive, constructive activities. However, such restorative principles are built into a system that is punitive and deficit-led where young people are considered wholly responsible for their actions. Indeed, the emphasis is on blaming tendencies rather than understanding the context or wider socio-structural issues such children experience that can have adverse effects on attitudes, behaviour and development. Referral Order panels provide a platform for young people to share their viewpoints on how the harm caused can be repaired. However, it appears young people involved in such panels merely participate rather than actively engage in the process (Newburn, et al., 2002). On the other hand, as part of the children's hearing system in Scotland young people are not only listened to but what they say is acted upon as they are deemed to be key decision makers in the process (McAra & Young, 1997).

Young people in England and Wales involved in crime and subject to court orders, generally, are often unsure of the process in terms of what is involved on their part: children often do not feel in control, they feel powerless (Hazel, 2002 in Robinson, 2014). What happens in practice is children co-operate and comply with the conditions of the order in order to simply 'get through their sentences' (Hazel, 2002 in Robinson, 2014:47). Interestingly, in a study seeking young people's views and opinions on practice supervision Hazel et al., (2002:14) noted that

'while they started out feeling in control of their actions, accounts of young offenders became striking in their lack of "agency". Giving in, submitting, becoming marginalised and losing power were central themes, quite contrary to the assumption of engagement and responsibility that the system hopes to achieve.'

Arguably then, adults need to promote the human rights of children in conflict with the law and inform them of their entitlements in an empowering way. In so doing, practitioners need to commit to eradicating barriers to engagement by ensuring that the starting point of any intervention is the wishes, aspirations and goals of the child not the organisations or professionals priorities (National Youth Agency, 2011; Smith, 2008). Professionals should also aspire to allowing service users the opportunity to take more of an active lead in the design and delivery of services (Creaney, 2014a).

Although the existence of a positive relationship is not the only factor that must be considered when working with children, it can help to facilitate and achieve change. It can result in the service user having confidence in the process and wanting to engage and participate in the design of services/interventions. However, contemporary youth justice practice has been described as disengaging (Haines & Case, in press). Not only are children disengaged but so too are staff as practice has become prescriptive (Haines & Case, in press). Some would argue that practitioners have become deprofessionalised (Pitts, 2001) compelled to adopt in-flexible What Works principles, resulting in staff, and the organisation as a whole losing sight of offenders as children (Barry, 2013). The focus on technical aspects of practice has marginalised the importance of practitioner-young person relationships. This is

disconcerting, especially when we consider that what young people most value from a supervising officer 'is not so much programmes and content but a good supportive relationship with an adult who is not judgemental and is able to offer guidance and advocacy when needed' (France & Homel, 2006:305-306). Furthermore Robinson (2014:263) points out that 'the relationship between the young person and the...case manager...developed in supervision is often crucial in motivating and supporting a young person to comply with and complete other requirements.'

Children do value a good relationship with their supervising officer who listens to them and is trusting and respectful. Indeed, there is an increased likelihood that children will actively engage rather than merely participate if such a positive relationship has been formed (Creaney, 2014b). However even if a positive working relationship between the child and practitioner exists, children may see their level of involvement as 'passive ... – something that happens to them or is done to them rather than something they can actively engage with and help shape and design' (Hart & Thompson, 2009:24).

The practitioner/young person relationship

Practitioners working with young people who offend cannot refer to an established literature regarding what works in creating and sustaining positive working relationships (Burnett, 2004; Mason & Prior, 2008). Furthermore, it appears to be the case that there is rather a limited evidence base on the 'effectiveness' of such interpersonal practice (Mason & Prior, 2008:24) in youth justice. Perhaps this is due to 'the relationship between worker and offender [being] seen latterly as less instrumental in promoting change and the emphasis [shifting]...towards technical skill and management of people through a process' (Burnett & Roberts, 2004 in Farrow et al., 2007:13). Arguably then, the position of relationship-based practice in youth justice needs 'fresh attention' (Farrow et al., 2007; Trotter, 2006). After all, it is unlikely that a child or young person will comply with the requirements of an order, engage in the intervention programme and stop offending without receiving 'one-to-one supervision' (Farrall, 2002): 'practice skills in general and relationship skills in particular are at least as critical in reducing reoffending as programme content' (McNeill et al., 2004:6).

The development of a positive relationship, built on empathy and genuineness for example, is a very important aspect of work with children (Brandon et al., 1998:71). Furthermore Trevithick (2005) notes that rapport has to be built into the process in order for the child to engage in the intervention or programme on offer:

'...[rapport] creates the favourable conditions necessary for people to be able to discuss and reveal problems or difficulties, successes or failures, and strengths or weaknesses in ways that aid understanding and allow for a realistic plan of action to be created' (Trevithick, 2005:148, cited in Mason & Prior, 2008:25-26).

However it can be difficult to develop rapport as children may not want to become involved or may feel that they are being coerced into engaging in the programme. Arguably, a certain amount of persuasion may be important here alongside being directive (Mason & Prior, 2008).

What can make practice difficult for criminal justice professionals is that they take on a dual role. Professionals practice in a context of ambivalence whereby they may, at times, experience difficulties with caring (welfare) and controlling (justice) aspects of their work. There is the criticism that welfarism abandons legal safeguards and violates due process by 'leaving children to the discretionary, permissive powers of professionals while subjecting them to indeterminate measures without recourse to review or accountability' (Scruton & Haydon, 2002:311). On the other hand, although justice-based approaches are apparently fair and transparent, in practice what may result is vulnerable children being adulterised and responsabilised where the aetiological complexity of the crime is overlooked in favour of the swift administration of justice (Goldson, 2002:12). Trotter (2006:4) sheds some light on how difficult reconciling the 'legalistic' (or enforcement) and 'helping' roles can be:

'It is difficult for a worker to fulfil a helping role with a probationer when they are also taking action to have a probation order cancelled. Similarly, it can be difficult to fulfil the legal role where a close helping relationship has developed between the worker and client... Coming to terms with this dual role is one of the greatest challenges in work with involuntary clients.'

To prevent confusion with regard to which approach is best, although this dilemma can be difficult to reconcile, one way to potentially overcome such issues is to clarify roles and responsibilities in practice:

'This involves ongoing discussions about issues such as authority and how it might be used, the dual role of the worker as helper and social controller, the aims and purpose of the intervention from both client and worker perspectives, as well as issues relating to confidentiality.' (Trotter, 1999:18, emphasis added)

There is an increased likelihood that positive outcomes will result when roles (and so too the aims and purpose of the intervention) are clarified, particularly in a collaborative way. Individuals will then be more likely to engage in the programmes of support on offer having had an opportunity to put forward their perspective. Arguably, though, role clarification should not be static, it should be dynamic and ongoing to ensure an appropriate healthy balance - between care and control - is sustained. Interestingly, ground rules can be helpful here for both the client and professional as matters that are negotiable and those that are non-negotiable can be discussed by both parties and an agreement can be reached. It can also be explained here what behaviour will not be tolerated but, perhaps more importantly, explained how this will be challenged in a respectful way where the child will be valued – at all times - in an inclusive manner where the behaviour or the act will be separated from the person (Trotter, 2006).

Trevithick (2012) refers to the importance of practitioners using language that is understandable and not reliant on jargon. Throughout the stages of assessment, planning and intervention in youth justice, professionals do not consistently use clear and accessible language (Robinson, 2014). This is disconcerting, especially when we consider that at the onset of a court order children often feel uncertain about the process (Robinson 2014). Using language that is unclear may compound rather than help to tackle the issues children are experiencing. Rather, practitioners should

explain what is expected of the child in a clear way, in accordance with understanding such factors as age and maturity.

Rather than focussing on individual deficits, strengths-based models should be promoted. Practice should be: empowering and consultative (not prescriptive), child-centred (not adult centric) and capable of providing children with a platform to share an insight into their lived experiences (Haines & Case, in press). There should be a commitment to practice being holistic whereby meaningful help and support is available for young people based on what they need regardless of whether or not it is related to the child's offending. Such needs may revolve around 'recreational, educational and employment opportunities' (Rogowski, 2013:12). The above recommendations, though, may be difficult to implement and it may be more challenging to instil a culture of 'active participation', due to the risk-averse context of the work. More specifically, the professional is perhaps working with 'involuntary clients' (those not so receptive) who are involved in statutory procedures. Notwithstanding these challenges, Chapman and Hough (1998:26) outline some key principals, values and ethical standards that should inform work with young people who offend:

'an inclusive approach which respects difference, avoids labels, encourages the active participation of the individual in all processes...based upon the belief in the capacity of the individual to make changes in behaviour and offers equal and appropriate access to services and programmes.'

Work with young offenders, then, should principally involve seeking to gather the viewpoints of children on their own lives. In so doing practitioners view children as human beings not human becomings where the responsibility is with the practitioner to make sense of such lived experiences (Farrow, et al., 2007:87) choices and relationships. These points are important as practitioners, at times, will be tasked with empowering the disempowered and/or those who experience learning and developmental difficulties who may struggle when expressing opinions. There exist strengths based models that draw on such ideas and that have been prominent in work with adult offenders – most notably the Good Lives Model (GLM). This model is considered to be an 'effective' way of securing the engagement of the individual, as it provides a positive framework, balancing risks with the promotion of securing personal goods (i.e. friendship and happiness) and the accomplishment of goals (McNeill, 2006:85). The GLM differs somewhat to practice models that emphasise the risk management of offenders, as it draws on problem/solution solving techniques, offence resolution and empowering the individual to actively participate in the process (Scruton & Haydon, 2002).

Working towards desistance: looking at routes out of crime

Desistance researchers aim to understand why and how people stop offending. They are concerned with the process of ceasing from offending and in particular the need to support such individuals through that process. Here, desistance researchers note that approaches in the youth/criminal justice arena should not be informed by a 'one-size fits all' mentality but tailored to the identified needs of the person who has offended (Weaver & McNeill, 2010), in particular making note of their emotional and developmental needs. Alongside this, the approach should be informed by a

relationship that is based on honesty and openness (Farrall, 2002). The points raised here are very relevant in relation to the treatment of children who offend as there has been less focus, in recent times, on the social and personal aspects of their lives: these factors are crucial in the desistance process and for this reason require 'greater attention' (Farrall, 2002).

Desistance from offending may occur as a result of the existence of 'turning points' in the life of a child or young person (Sampson & Laub, 1993). However, in relation to children who are engaging in crime and embroiled in the youth justice system 'turning points' may be few and far between (Barry, 2013). Children subjected to youth justice processes – who are often in a state of transition - are often provided with limited opportunities to adopt a non-criminal identity and live a law-abiding lifestyle. Indeed for individual children there are 'few opportunities to take on responsibilities and few means of gaining revised personal values based on the recognition of others' (Barry, 2013:358). Furthermore, there are limited constructive opportunities available (including leisure activities, education and employment opportunities) – where personal, social and emotional development can potentially be enhanced- to help young people desist from crime successfully. This is perhaps most disconcerting as children who engage in crime and are subject to youth justice processes often reside in unloved areas and in turn experience a wealth of social inequalities (Yates, 2010). Although there is a danger that professionals may get too close (Smith, 2008) within the desistance literature, it is argued that a passionate, caring and helpful practitioner who engages 'effectively' with the child can increase the likelihood of positive outcomes occurring. Furthermore as opposed to responsabilisation, a practitioner who offers encouragement and is supportive throughout the process is deemed 'crucial' in the desistance process.

The instilling of hope and self-confidence is prioritised in the desistance process. The level of support offered should not be determined solely by the criminogenic needs of the young person who has offended. Intervention should be driven by the need to promote positive aspects of a child's life, drawing on strengths based approaches and informed by the literature on resilience. Most importantly, it involves 'fostering a sense that the young person can change, and reinforcing an awareness of what he or she has to offer' (Nacro, 2007:5). Desistance literature and research provide a 'welcome bulwark against the 'risk' and 'What Works' agenda' (Nugent & Barnes, 2013:21) by shifting the focus away from the child's deficits and onto their strengths - promoting active participation. Such ideas contrast somewhat with the emphasis on compliance, compulsion and coercion (Haines and Case, in press). Strengths-based participatory practice is somewhat inconsistent with an emphasis on punishment (Beyond Youth Custody, 2014). Indeed participatory principles conflict somewhat with the whole premise of youth justice intervention and in particular the notion of just deserts. Moreover, young people who have offended have not only committed a crime but contravened normative social expectations regarding how one is expected to behave and in turn forfeited the right to have a say (Beyond Youth Custody, 2014). However, in accordance with international standards, treaties, and conventions – most notably the United Nations Convention on the Right of the Child – the participatory rights of children in conflict with the law should be promoted.

Conclusion

One could question why children who offend are helped when non-offenders, who may well be experiencing similar problems, may not be entitled to such support. Furthermore, it could be questioned whether such individuals are entitled to 'have their say' given their offender status (Creaney, 2014a; 2014b). On the other hand, regardless of their status as offenders, as a society, we have an obligation to help a child who is in conflict with the law, provide support and steer them away from a life of crime (Robinson & Crow, 2009). Notwithstanding these philosophical debates, practice with young people who have offended should be client-driven and voluntary, rather than, as is so often the case, adult-led (Haines & Case in press). The focus should not be on delivering an intervention with the intention of returning the offender 'to some predestined pattern of thought and behaviour' (Robinson & Crow, 2009:12) - where conformity is deemed to be crucial and any work proposed is set to be imposed on young people. Rather, informed consent and willing participation should be promoted throughout the youth justice system. Being 'actively' involved in youth justice processes can improve outcomes for young people. However further opportunities need to be created for young people to become involved and engaged and influence decision making (Creaney & Smith, 2014). This could be through establishing steering groups or advisory boards and/or allowing young people the opportunity to advise other settings on ways of improving service delivery (Beyond Youth Custody, 2014). There are a number of challenges to overcome though, if such initiatives are to be developed not least the fact that the criminal justice system in England and Wales is overwhelmingly concerned with punishment and retribution: notions of participation and engagement appear partial and peripheral. Systematic efforts should be made to increase knowledge on the child's right to have a say on matters that affect them.

Notwithstanding the challenges mentioned above, practice intervention needs to be timely, appropriate and realistic 'capturing and giving expression to the young person's feelings and priorities' (Robinson, 2014:268). With regard to involuntary clients or those difficult to engage such individuals may be unwilling to take part and they may deem the support on offer as intrusive and unnecessary (Trotter, 1999). However, as I have argued within the paper, in order to help overcome such difficulties it is important to ensure that the goals set out in the intervention plan are realistic and achievable and decided 'with' rather than 'for' clients (Haines & Case, in press). What should exist is an understanding that 'the worker will...[never] know more about people and their problems than they [i.e. children] do themselves' (Smale & Tuson, 1993:16). Although services will have their own agendas with regard to outcomes, this should not be 'at the expense of young people's own goals and aspirations which may have little to do with these' (Smith, 2008:189).

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