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# **Creating the Youth Justice Board: Policy and policy making in English and Welsh youth justice**

## **Abstract**

Despite continuing interest in English and Welsh youth justice policy there has been little critical engagement with the nature of policy itself. Instead, analyses share a common methodological position whereby 'policy' is equated with policy 'products' (such as legislation or ministerial speeches). This paper argues that to understand youth justice policy a wider view is required of what constitutes policy, and where and by whom it is made. It explores how policy is produced in the complex arena of social practice which, following the establishment of the Youth Justice Board for England and Wales (YJB), now constitutes the central operation of the system. Through the creation of the YJB the central youth justice system became essentially undefined. This not only gave YJB officials significant influence in shaping the direction of the youth justice system, but a broad and flexible arena in which to act. Moreover it enabled them to do so according to values and objectives potentially unconnected to ministerial outcomes. Drawing on an ethnographic study of the operation of the YJB, this paper explores the policy making work of YJB officials through the transformation of the role and activities of the YJB itself, comparing the initial parameters of its operation to the way it was defined in action. The paper discusses the implications for understanding New Labour's English and Welsh youth justice policy, and the nature of 'policy' itself.

## **Key words**

Youth justice, policy, Youth Justice Board, New Labour, governance

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**Author**

Dr Anna Souhami, University of Edinburgh, UK

School of Law, Old College, South Bridge, Edinburgh EH8 9YL

[Anna.souhami@ed.ac.uk](mailto:Anna.souhami@ed.ac.uk)

0131 650 2024

**Short Biography**

Anna Souhami is a Lecturer in Criminology in the School of Law, University of Edinburgh.

New Labour's radical programme of reform of the English and Welsh youth justice system under the Crime and Disorder Act 1998 revitalised a continuing academic debate about the nature of contemporary youth justice policy. In particular, there is an on-going concern with uncovering the ideological and theoretical basis of English and Welsh youth justice: the 'deep structures' (Gordon et al 1977) that underpinned the radical restructuring of the system and the implications for both services and the young people subject to them. Much of this debate focused on the reforms themselves (e.g. Crawford 2001, Fionda 1999, Goldson 2000, Haines and Drakeford 1998, Muncie 1999, Newburn 1998, Pitts 2001, Souhami 2007). A smaller body of work has continued to explore the legacy of New Labour's youth justice policy over subsequent years, in particular the extraordinary expansion in volume and reach of legislative activity (e.g. Fergusson 2007, Goldson 2010, 2011, Muncie 2011, Muncie and Goldson 2006).

Through this powerful body of work, a dominant mode of thinking about New Labour's youth justice has emerged in which it is seen as fundamentally incoherent and ultimately destructive. So, for example, strategies directed by an emotive authoritarian punitivism run uneasily alongside rational logics of managerialism and evidence (e.g. Crawford 2001, Fergusson 2007, Goldson 2010). As a result, some have concluded that youth justice under the New Labour administration lacked any clear philosophical basis (e.g. Muncie 2000, Fionda 1999), suggesting that the government were 'overtly indifferent' to the ideological foundation of their policy in general (Fergusson 2007, p182).

These analyses have taken a consistent methodological approach, in which the 'flavour' (Goldson 2010, p166) of Labour's youth justice policy is examined through analysis of the discourse, content and scope of the copious policy 'products'<sup>1</sup> that have been issued over the

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<sup>1</sup> I use the term 'product' to differentiate these better known forms of policy from the wider view of policy and policy making described in this paper. However, the term 'product' is not intended to imply a 'finished' state:

past decade, such as legislation, ministerial statements, action plans and frameworks and Green and White papers. Indeed, these products tend to be treated as synonymous with 'policy' itself.

These products are vitally important and powerful instruments of youth justice policy: they generate and empower some actions and deny others, they make the practices of government knowable and repeatable (Freeman and Maybin 2011), and they are powerfully communicative. They are therefore of particular importance in both directing the overarching direction of the youth justice system and providing an insight into the intentions of a powerful group of central government<sup>2</sup> actors. However, they are not wholly constitutive of policy. Instead, this paper argues that in order to understand the nature of English and Welsh youth justice it is necessary to take a wider view of what constitutes policy, and where and by whom it is made. In particular, it explores how policy is produced in the complex and expansive arena of social practice which, following the establishment of the Youth Justice Board for England and Wales (YJB), now comprises the central operation of the youth justice system.

This paper therefore takes a different approach to that currently dominant in criminological writing and elsewhere. Its focus is not the 'products' of central policy or their construction, but the arrangements and activities of officials, in this case YJB personnel. Through this approach it departs from the 'abiding cliché' (Page and Jenkins 2005, p2) that policy is set by a relatively narrow group of ministers and elite Whitehall advisers, with the surrounding bureaucracy concerned simply with the details of implementation or 'codification' (e.g. Fergusson 2007). By this view, there is a clear practical and conceptual divide between

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policy outputs may of course continue to be shaped as they are put into action, as this paper shows (see also e.g. Freeman and Maybin 2011, Hill 2009).

<sup>2</sup> As this article shows, the boundaries of 'central government' are increasingly permeable and difficult to define. However by this term I intend to differentiate between Departmental actors (such as civil servants and ministers) and others, including the YJB.

central policy formulation and delivery and the actors tasked with each. The YJB itself has been seen as involved solely with the implementation of policy and not its formulation: by this view, it is simply a vehicle for the delivery of ministerial objectives, ensuring that ‘policies ...go all the way down’ (Pitts 2001, p5)<sup>3</sup>. However, as I will show, this division is false. While ostensibly concerned with ‘delivery’, the work of YJB officials intrinsically constitutes policy making.

Indeed, the notion of a separation between formulation and implementation has long been challenged in relation to front-line service delivery. Here research has repeatedly shown how practitioners create policy in the discretionary decisions they employ through the course of their work (Lipsky 1980). That there remains an enduring assumption of a policy/implementation divide in the context of executive government in part reflects a widely noted lack of empirical research on what, precisely, central government actors do. This omission strongly contrasts with a rich body of research on the work of those who deliver services, and appears to be symptomatic of an underlying assumption in thinking about policy in which it is conceptually distinct from and often contrasted with ‘practice’ (Freeman et al 2011). As Freeman et al put it, ‘practice’ is viewed as the domain of front line service delivery alone: it is something that happens ‘after’ policy (2011, p128).

Further, the few extant studies on the everyday work of civil servants (Stevens 2011, Page 2003, Page and Jenkins 2005) show that officials whose roles are conventionally taken to be limited to administration are in fact routinely engaged in policy formulation. In their study of middle-ranking civil servants, Page and Jenkins (2005) argue that policy making is an inevitable consequence of translating policy ideas into action: the details of ministerial directives require elaboration by those officials charged with implementing them, yet

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<sup>3</sup> This position was explicitly voiced in debates about the YJB’s abolition: e.g. Hansard 28 March 2011, Column 957.

discretion in relation to even small questions of implementation can result in the initiation of new ideas, or define the overall shape of a policy.

However, the policy making roles of YJB officials are particularly important in understanding English and Welsh youth justice policy. In a politically volatile area, even those 'implementation' decisions formally delegated to officials such as commissioning prison places or determining which targets are to be measured are inextricable from wider political objectives (see also Gains 2003). However, the freedom of YJB officials to shape the direction of the youth justice system extends far beyond that which could reasonably be termed the details of policy. As I will show, the structural and statutory framework of the YJB not only gave officials a wide range of powers to direct youth justice services, but made the parameters of their remit highly elastic and ambiguous. In these circumstances, any putative division between implementation and formulation becomes irrelevant: instead, as Dunleavy puts it, "policy is just what professionals in the field do" (1981, p13).

Moreover, while research has shown that way civil servants make policy is strongly directed by the expectations of their ministers rather than any other personal or organisational values (Page 2003, Page and Jenkins 2005, Campbell and Wilson 1995, Hill 2009), this has not been the case within the YJB. Instead, the features of its establishment as an NDPB enabled decision making produced by officials to be structured according to emergent values and objectives unconnected to ministerial outcomes, and, on occasion, consciously in opposition to them.

The following pages explore these issues through a central strand of New Labour's youth justice policy: the development of the role and activities of the YJB itself. The establishment of the YJB was pivotal to New Labour's strategy to reform the management of youth offending. It was a radical innovation in the organisation of English and Welsh youth justice,

setting in place a new series of relationships and activities at both a central and local level.

However, as I will show, the arrangements and scope of its practices were markedly reconfigured through the development of the YJB, transforming New Labour's policy.

To explore these it draws on an extended ethnographic study of the operation of the YJB. For one calendar year (2006-7) research focused on the internal operation of the YJB, including observations of almost all YJB internal activities and meetings and over fifty interviews with Board members and officials in all roles throughout the organisation. Further research explored the regional operation of the YJB, including observations of monitoring activities and interviews with regional YJB and YOT staff <sup>4</sup>.

It is important to note that the YJB has of course continued to evolve over recent years.

Further, as policy is inevitably shaped by the aims of key actors (e.g. Rock 2004) the way the YJB constituted itself at this time inevitably reflects the personalities and interpretations of those in post. However, as I will show, the political and structural climate surrounding the YJB at this time illuminates particularly clearly both the ambiguities in the remit and territory of the YJB and the creativity this afforded. Consequently it was a moment at which the policy work of officials was brought into focus – and, moreover, the ways in which their activities were able to diverge from that set out in the policy 'products' issued by central government.

## **Establishing the YJB**

Through the establishment of the YJB, the New Labour government aimed to produce a consistent and coherent system of youth justice across England and Wales<sup>5</sup> (Home Office 1997 a, b). The creation of a single body dedicated to youth justice at the centre was intended

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<sup>4</sup> Following Page and Jenkins (2005) and Rock (2004) I have tried to give a sense of the diversity of research participants in this paper by providing contextual detail of their role where relevant: a Board Member, Chair, senior official, the architect of the regional strategy, and so on.

<sup>5</sup> While further discussion is out of the scope of this paper, it is important to note that youth justice services are partially devolved in Wales and there are therefore some important differences in the YJB's responsibilities and operation.



to draw together the oversight of the system which had previously been spread across government departments. This, it was argued, would provide a clear direction and purpose to the system, allow for consistent standards in local services and give youth justice a specific policy presence in central government, ensuring that it would be considered separately from adult criminal justice matters (Home Office 1997a, b).

To achieve this, the YJB was established outside existing government departments, as an executive non-departmental public body (NDPB). It was directly accountable to the Secretary of State and its 'sponsor' department (initially the Home Office, now the Ministry of Justice) but at 'arm's length' to Whitehall: it operated outside the civil service, with its own structures of governance - a Board of up to 12 members headed by a Chair - and a staff of advisers headed by a Chief Executive.

The rationale for the creation of the YJB as an NDPB reflected that of the 'hiving off' (Pliatsky 1992) of executive functions of government to arm's length organisations<sup>6</sup> more broadly (see Efficiency Unit 1988). First, it was argued that as a specialist, single-purpose body the YJB could provide detailed management of the implementation of Labour's youth justice reforms which a vast, multi-function civil service could not. Second, its NDPB status would liberate it from a notoriously conservative, cautious and bureaucratic civil service culture (e.g. Brooks and Bate 1994, Driscoll and Morris 2001, Kemp 1990), allowing for speed and innovation in implementation. Third, removing the YJB from a 'closed and monolithic' (Kemp 1990, p187) civil service would make lines of accountability clearer and bring greater transparency to the youth justice system (Home Office 1997a). Fourth, and crucially, the creation of a Board allowed for the formal incorporation of expert independent

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<sup>6</sup> The term 'arms-length organisations' reflects that of contemporary policy and refers to the range of public bodies that are not part of the conventional civil service structure, including NDPBs. The YJB is described as both an NDPB and an 'arms-length organisation' in Government documentation and, reflecting that, in this paper too.

advisers into the central policy making process. This allowed the new youth justice strategy to be ‘properly grounded in the experience of practitioners and other experts’ (Home Office 1997a, 56). This was an important departure from the forms of expertise prioritised in the civil service, in which substantive specialisation is avoided: careers are structured around experience of a wide range of policy areas in order to maintain a detached overview of departmental work and process (e.g. Campbell and Wilson 1995, Rock 2004, Stevens 2011).

Further, the YJB was given a broad range of statutory functions. First, it became responsible for advising the Home Secretary (now the Secretary of State for Justice) on the operation and standards for youth justice system. Second, it was given the duty of monitoring all aspects of the performance of the youth justice system to ensure standards were set. In order not to deflect from its monitoring and standard-setting role, it was decided the YJB should not manage directly youth justice services, now delivered through newly-created Youth Offending Teams (YOTs) (Youth Justice Task Force 1998, para 66, see also Souhami 2007)<sup>7</sup>. So, while the YJB charged YOTs with a series of centrally defined duties and targets, they were given considerable control in the way in which these are carried out (Home Office 1997a, 1997b). Typical of this type of ‘governing at a distance’ (e.g. Rose and Miller 1990) the devolving of autonomy to YOTs was accompanied by a tightening of central regulation and surveillance, and the YJB was given the power to require agencies to provide information for this purpose. Third, reflecting an explicit refocusing of youth justice services through notions of ‘evidence’ and demonstrable outcomes (Audit Commission 1996), the YJB was given a range of responsibilities connected to identifying and promoting ‘effective practice’, including commissioning and publishing research and providing financial assistance to develop projects in line with the approaches it identified (1998, para8.34). For this purpose, it

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<sup>7</sup> The YJB has a different relationship with the juvenile secure estate: while it does not run secure institutions, it holds commissioning/purchasing and contract compliance functions which necessarily bring about a more direct involvement in the operation of these institutions.

was established as an executive body, with its own budget and the power to allocate grants. Fourth, from April 2000 it was given the additional responsibility of commissioning and purchasing secure places for children under 18.

### **Policy making in the YJB**

These statutory functions gave the YJB a central role in shaping the youth justice system. Not only did it have a formal role in advising ministers, but it delineated the acceptable standards, priorities and forms for local services and defined what was to be considered appropriate evidential supports. Its activities were therefore pivotal in directing not only the organisation and activities of the youth justice system but what was thinkable within it. But in addition, one of the most distinctive features of New Labour's youth justice is that its central operation became essentially undefined.

First, its functions and location established the YJB as a series of bridges: across government departments and areas of policy, between welfare and justice imperatives, local and central government, policy and service delivery, children's services and criminal justice. It therefore operated on essentially indeterminate territory, in the spaces between accustomed practices. Second, its statutory duties were inherently ambiguous. Functions such as 'advising' the home secretary or 'monitoring' the youth justice system were hugely elastic and open to multiple interpretations. Third, the structural relationships within which it operated were intrinsically slippery. Through its 'arm's length' relationship, the YJB occupied a contingent position: not quite inside central government, but not quite outside it either. Further, the devolving of autonomy in local service delivery to YOTs alongside a simultaneous increasing of central scrutiny and control set in place what Crawford has termed a 'decentring-recentring dialectic' in its relationship with local services, in which 'power and control are not resolved in any unilinear direction' (Crawford 1994, p503-4). The relationships between central

government, the YJB and YOTs were therefore not a conventional hierarchy in which the interests and authority of each could clearly be demarcated. Instead, the flows of power and activity between them were in flux.

In this way, the essential ambiguity of the structural and legislative parameters of its operation not only gave YJB officials significant influence in shaping the direction of the youth justice system, but a broad and undefined arena in which to act. The effects of this scope for creativity can be seen through the transformation of the role and activities of the YJB.

## **Creating the YJB**

At the time of its establishment in 1998, the YJB was closely connected to its ministerial sponsors. Both its personal relationships and objectives were strongly entwined with the New Labour project. It was housed in the Home Office alongside civil service staff, and consisted of a Board of 12 and a staff of six advisers, of whom many had strong connections with the Home Office and had been closely involved in the development of New Labour's youth justice reforms. The first Chair, Norman Warner, had been (then) Home Secretary Jack Straw's senior policy adviser while in opposition and had helped draft Labour's emergent youth justice strategies. The Chief Executive, Mark Perfect, was the co-author of the Audit Commission's (1996) report on which the reforms had drawn; other staff and Board members had been involved in the 'Youth Justice Task Force' established by the Government to advise on their implementation.

Once in government, New Labour's early youth justice strategy continued to be generated directly by the nascent YJB. As one YJB official described it, "the original Board members came in and they sat round the table and wrote the policies." Further, given the centrality of

youth justice to New Labour's election priorities, the YJB were closely associated with the Government's wider political imperatives. For example, one of New Labour's five election 'pledges' was a promise to halve the time between arrest and sentence for persistent young offenders, from 142 to 71 days, within five years. This made the YJB responsible for an area of work against which the new Government had staked its credibility (see also Pitts 2001). As an official in the early YJB explained, he and his colleagues saw their task as closely connected to New Labour's broader policy agenda:

At that particular stage it was about putting something in place which [the Board] had been the architects of but in such a way that it was seen to and did benefit the Labour Party in terms of being successful.

However, the YJB's structural distance from central government was considered fundamental to its role. It afforded a powerful freedom of acting and thinking, in contrast to the increasingly stifled role of advisors within the civil service (see Campbell and Wilson 1995). Alongside their privileged 'insider' status, this was thought to make the YJB highly effective. An official explained:

He [Norman Warner] was very robust in discussions with ministers, he told them exactly what he thought, but he could get away with that because of the political patronage that he had from Jack [Straw]"

## **Distancing**

However, by the time this research began in 2006, a series of organisational, structural and political shifts had eroded the close connection between the YJB and its sponsor unit.

First, the YJB had lost its privileged position. Blair was coming to the end of his period of office amid plummeting popularity. Senior YJB staff described a fraught atmosphere among

ministers: there was “a crisis of confidence”; “signs of panic buttons being hit”. Reflecting this, government departments were continually split and reorganised, leading to sudden transformations in initiatives, priorities and careers<sup>8</sup>. At the same time, Cabinet Office increased its control of new policy initiatives through the establishment of the Prime Minister’s Delivery Unit. As the Chair said, “Number 10 is controlling the minutia of departmental policy, certainly in our neck of the woods”. The result was incoherence in espoused objectives within and between departments. This was particularly strongly felt in relation to youth justice, which straddled multiple policy areas. In contrast to 1998 therefore, there was no clear political programme of which the YJB was part. Instead, youth justice had lost its status: as the Chair put it, “We are not in the Home Secretary’s in-tray”. Further, in the churn of central government the YJB had lost their personal connections with ministerial staff and thus their patronage. The Chair struggled to initiate meetings with the Home Secretary; Board Members reported they rarely met with ministers. This reinforced the YJB’s disconnect from central government: Board Members reported they did not feel ‘involved’ or ‘valued’ by their sponsor department.

Second, its distance from Whitehall was reinforced by organisational changes within the YJB. Over eight years it had dramatically expanded. From a Board and staff of six advisers in 1998, by 2006 it had become an organisation of 212<sup>9</sup>. It was now physically separated from the Home Office in a dedicated building. This both removed officials from the scrutiny and influence of ministerial staff and allowed for the development of new ways of working, routines and processes. The development of even these mundane aspects of organisational

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<sup>8</sup>During the research period, the Home Office appeared particularly vulnerable: public outcry about the handling of foreign national prisoners led to the forced resignation of Charles Clarke, then Home Secretary, and his replacement by John Reid who resigned less than a year after that. The Home Office was put under review and found unfit for purpose. The prison population reached crisis point, leading to public criticism of Government policy by senior criminal justice officials including the Chair of the YJB, Rod Morgan, and culminating in his resignation in January 2007.

<sup>9</sup> By the 1<sup>st</sup> April 2010 the YJB had increased to nearly 400 staff. At the time of writing, this has been reduced to 234.

life reinforced and constituted officials' sense of the YJB as an organisation distinct from Whitehall. For example, the Chair was adamant he would not communicate with ministers through the form of written 'submissions' used in the civil service:

I am never going to write a submission. Because I am not a civil servant, I am independently appointed and I don't write very often to ministers and when I do it's going to be a personal letter, Dear John.

Third, the YJB became seen by staff as the sole owner of youth justice expertise, strongly differentiating it from the Home Office. Throughout the organisation, members described their expert input as the defining purpose of the YJB: its statutory duties of monitoring and research underpinning its role to 'deliver evidence', 'say what works and what doesn't work'. Members' sense of the YJB as an expert body was reinforced by its composition. Reflecting its ability as an NDPB to recruit outside the civil service, the majority of officials had been appointed from YOTs, local government or related fields, and at the time of the research approximately 25% were on short term secondments from service delivery. Staff described their practice experience and associated claims to expertise as a central part of the identity of the YJB: as one official put it, "we've lived and breathed this stuff". In other words, the expert input of the YJB was now seen to derive not just the Board as originally envisaged (Home Office 1997a, b), but was permeated throughout the entire organisation.

Within the YJB the nature of the expertise was in fact at issue: for example, some noted that the connection with practice was in fact increasingly distant for many YJB staff; questioned the extent or value of the professional expertise of their colleagues; or criticised the quality of data and analysis produced within the organisation. However, crucially, the YJB was seen as expert in comparison with civil servants or ministers who, as discussed above, rarely had substantive knowledge. The YJB therefore became seen as an organisation in which expertise

in youth justice was solely located. As a senior official put it, “the Home Office isn’t the experts, we are”. This had two important effects for this discussion. First, it became a means by which YJB staff could position themselves against central government actors, thereby defining and describing their own distinctive identity (see Parker 2000). Second, this created a shift in the power relations between the YJB and its sponsor unit. The lack of technical expertise among civil servants is central to ministers’ ability to maintain control over the permanent bureaucracy on which they depend (Page and Jenkins 2005, Campbell and Wilson 1995, see Weber 1948). Without substantive authority, civil servants are unlikely to develop intellectual or ideological attachments to a particular strategy or approach which challenges those favoured by ministers (Page and Jenkins 2005, p148). This was subverted within the YJB. Members commonly described principles of managing youth offending which were perceived to derive from and be given authority by their expertise, and which transcended commitment to ministers. For example, one Board Member said, “I couldn’t operate in that manner, [with] unquestioning loyalty to implement government policy come what may. I’d have to leave”.

In this way, eight years after its establishment the positioning and identity of the YJB had significantly shifted. Within the YJB it had come to be seen as a body separate from its sponsor unit, with a distinct mission and values given authority by its ownership of substantive expertise. The freedom afforded by the highly elastic structural and legislative parameters - and its loss of scrutiny by central government - enabled new interpretations of its role and functions to develop in line with its emergent identity. As I will show, the interpretations which emerged transformed the central policy environment in a way which markedly diverged from that set out in the Crime and Disorder Act 1998. The following pages explore two aspects of this transformation: the reconfiguration of its role and relationships with central government and in localities.



## **The YJB and central government**

By the time of the research, there had been an important reconfiguration of the YJB's relationships with central government. The YJB's arm's length status as an NDPB became reframed as 'independence', in which the YJB acted as - in the Chair's terms - a 'critical friend', raising concerns about the direction of government strategies on the basis of their expertise. The elasticity of the YJB's legislative and structural parameters allowed the interpretation of their role to be constructed as part of their statutory duties. A recently appointed Board Member explained:

I think when you look at the objectives of the Youth Justice Board, serving the minister should mean actually promoting what will reduce first entrants, what will reduce re-offending ... and if we're true to that then serving the minister is serving the children ... it's in line with our mission.

Further, the Chair argued that this role was central to the YJB's identity as an NDPB and the defining feature of their contribution to the central policy process.

There's no point in having an NDPB unless we do step out of line occasionally, unless we do challenge, otherwise what's the point in you existing, you might just as well be a division in the Home Office.

Moreover, a view emerged within the YJB that it was their duty to make such 'advice' public when traditional channels had failed. For example, a Board Member said:

If the Youth Justice Board delivers evidence and the government rejects it or does not act upon it, I think we have a responsibility to be vocal about that...that is exactly the time that you stand up as a non-departmental public body and you say this isn't acceptable.

In this way, the YJB began to position themselves as independent critics of government policy. This realignment of their central relationships came into focus during the research period when the Chair, Rod Morgan, gave a series of interviews strongly criticising the Government for ‘demonizing’ young people through the rise in Anti-Social Behaviour Orders (ASBOs) (e.g. Goodchild 2006) and widely publicising a crisis in the rising prison population. He argued that conducting these interviews was not only allowed by the remit of the YJB, but in fact required by his statutory duties as Chair:

We have a statutory duty to advise ministers as well as to monitor what’s going on and if we think that there are aspects of the way policy is being interpreted which is counter-productive which is making things worse rather than better, which is inconsistent with things that the government has said it wishes to do ... then we have a duty to say it.

However, the role of being what one official described as an ‘opponent to Government policy’ was contested within the YJB. Some officials felt it stretched the boundaries of their relationships too far – as one put it, ‘we are not a campaigning organisation’. Moreover, it made the YJB vulnerable: because of its contingent structural relationship, overt criticism put not only its influence but its continued existence at risk. For example, officials were not consulted in the development of the Respect Action Plan (Respect Task Force 2006) despite its overlap with YJB interests, only learning of its publication the day before its launch. Many staff believed this was ‘payback’ for the Chair’s criticism. As one Board Member put it, “when he is being very public and criticising government technically and legally he’s entitled to do that ... it’s just that in terms of trying to make things work it’s not a very clever idea” (for further discussion of this point, see Souhami 2011).

Yet while the form and extent of the YJB's criticism was at issue, its importance for this paper is that it was under discussion at all. It demonstrates the extent of the shift in self-image within the YJB, allowing for both the reconfiguration of central relationships and the possibility of acting in accordance with this new self-image, however cautiously. This is discussed further below.

### **The YJB and localities**

The YJB's activities in localities had dramatically transformed by the time of this research. In contrast to the small staff of a Board and advisers working closely with Cabinet on broad strategic issues in 1998, in 2006 the YJB had expanded its activities into the arena of service delivery and into local policy negotiations across England and Wales.

The YJB's statutory functions did not allow for direct input in local services<sup>10</sup>. If YOTs failed to achieve their targets or provide their data returns, the YJB could require the local authority to intervene but could not do so itself. The YJB contributed significantly to YOT funding (in 2006, approximately 20% of all YOT funding) which it could potentially withdraw: however, it was acknowledged by YJB staff that withdrawing funding would harm already struggling services and at the time of the research this sanction had never been used. Its only meaningful statutory involvement in YOTs therefore was to require information for monitoring purposes.

Early documentation connects the YJB's monitoring function closely to New Labour's overarching youth justice strategy. It was charged with monitoring all youth justice agencies, including the courts, to ensure the aim of preventing offending was met, to raise standards and to increase transparency and accountability across the youth justice system (Home Office

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<sup>10</sup> Although there is a closer relationship with secure estate provision, as above note 7. There is extensive monitoring activity in the secure estate but this is for monitoring contractual compliance rather than the statutory function discussed here.

1997a, Youth Justice Task Force 1998). However, by 2006 a particular interpretation had evolved in the YJB in which it monitored not the system as a whole, but service delivery within YOTs.

The YJB's micro-level interest in YOT practice was initially enabled by the allocation of grants for specific purposes, such as those created through the 'Development Fund' established at the YJB's inception, and later, funding for prevention schemes such as Youth Inclusion Programmes (YIPs). This funding of centrally prescribed schemes allowed a close specification and scrutiny of the way the funds were used: the YJB appointed monitors to advise YOTs on the establishment of the programmes and check they were being delivered according to centrally-prescribed guidance. Yet alongside this, the monitoring function became intrinsically connected with improving YOT performance more widely. Monitoring frameworks now required YOTs to provide vast amounts of case level data about their work with children, partner agencies and programmes. These data were not used to further the YJB's statutory function to advise the Home Secretary (where broader aggregate figures were required) but instead were fed back to YOTs to indicate where services needed improvement. To support this activity, regional offices were established throughout England and Wales, staffed by a team of Monitors who regularly visited local YOTs to 'validate' the data produced. Monitoring staff were required to have backgrounds in youth justice or related fields, and described their role as providing meaningful input to YOT practice: as one put it, "we advise, assist, befriend... we're like a critical friend". Moreover, the YJB began to intervene in services directly. A team of 'performance improvement consultants' was created to construct programmes of work in areas in which regional staff thought YOTs were struggling.

The development of this activity was structured by a number of emerging principles in the YJB which were unconnected to the framework which established it. Most importantly,

throughout the YJB monitoring activity was firmly framed as ‘support’ for YOTs which, as those with substantive expertise, only they could supply. So, for example, data were described as a tool for YOTs: the official responsible for monitoring explained, “It’s the YOTs data. It’s not our data. ...It should be about them not about us”. Monitors described their work as “casework”; “it’s about better outcomes for young people”; “it’s like working with young people a couple of levels up”. YJB staff explained that, as experts the role of support was vital for the YJB.

‘If we don’t do it, who else will? There’s no one else the YOTs can turn to. The only experience of youth offending is in YOTs, and at the centre. There’s no one else.’

(YJB official)

But in addition, this activity allowed the YJB an important influence in localities, despite having no statutory presence. The role of ‘influencing’ was not part of the YJB’s statutory duties. Instead, it evolved in relation to a radical restructuring of local government over the course of the decade, in which the strategy, priorities, funding and management of services increasingly became devolved to localities. The structures set in place to support monitoring activity now located YJB staff in the centre of local networks and negotiations. An architect of the regional monitoring structure explained this was an explicit aim of its development:

It was the YJB feeling, hang on, we’re the experts but we’re not being listened to so we need to have people out there who will be heard... I think it was a naked grasp for power, influence. We’ve got to be out there.

Further, although not explicitly acknowledged by officials, the new forms of monitoring activities inevitably extended and reinforced the YJB’s control over local services. Although the interventions in YOTs were constructed as ‘support’ - and may have been received as such – at the same time they allowed for the extension of central surveillance and

intervention into areas of the youth justice system beyond those ostensibly allowed by the YJB's statutory functions, enlisting YOTs and local authorities into their own self-regulation (e.g. Rose 1999).

In this way, the interpretation of the YJB's monitoring function became markedly transformed over its life. Officials were able to extend the role of the YJB beyond its statutory duties to intervention in services at a local and regional level. These developments not only reconfigured the relationships with localities, but the boundaries of the YJB. A new series of actors and networks now became drawn within YJB activities, creating flows of people, practices and ideas between the centre and localities, policy and service delivery. As I argue below, this has significant implications for the development of youth justice policy.

### **Policy and policy making in English and Welsh youth justice**

An empirical exploration of the central operation of the English and Welsh youth justice system shows how policy is produced in the activities of officials within the surrounding bureaucracy. Instead of simply involved with implementation, officials throughout the YJB were intrinsically engaged with policy formulation. Through their activities, the central architecture of the youth justice system was radically reconfigured, transforming its operation.

The policy making roles of YJB officials are particularly important in the context of English and Welsh youth justice. Through the establishment of the YJB, the New Labour Government created a powerful yet undefined organisation at the centre. While the indeterminacy of its legislative and structural framework was initially obscured by the 'insiders at arm's length' relationship adopted by the early YJB, the shifting dynamics of the

organisational and political context revealed the essential ambiguity of the parameters of its operation, allowing the YJB the flexibility to evolve in ways which were enabled by but not envisaged in New Labour's original policy. Further, a mutual distancing between the YJB and central government enabled the strategies produced by officials to be structured according to values and objectives unconnected to those of its sponsor unit. Paradoxically therefore, while New Labour's youth justice programme has been widely criticised for sharply curtailing discretion and flexibility in local services (e.g. Pitts 2001), it allowed for a new creativity in its central operation<sup>11</sup>.

The creation of the YJB significantly disrupted the 'small worlds' (Rock 1995) of Whitehall policy making. Its establishment as an NDPB in itself introduced less cohesive and controlled forms of working alongside the 'older models' of civil service practices (Rock 1995, p2). Yet the way the YJB constituted itself further complicated the policy arena. First, the reframing of its role in central government as a 'critical friend' in effect incorporated critical input in formal policy processes on a statutory basis. Secondly, it blurred the boundaries between the centre and localities, between central and regional government, service delivery and policy, drawing a new series of actors, interests and activities into the central operation of the system.

This paper is not primarily concerned with the effects of these new arrangements on the substantive direction of the policy 'products' generated by central government (such as legislation, Green and White papers, and so on). However, it is likely their impact in this area will be complex. The central and local relationships established by the YJB were both asymmetric and precarious: those connected to the YJB had little 'penal capital' (Page

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<sup>11</sup> While further discussion is out of the scope of this paper, it is important to note that the scope of activities of the YJB – an unelected public body - raises important questions for accountability in central government.

2013) in a field occupied by powerful state actors. So, for example, the YJB's critical input was necessarily moderated in order to ensure its continued influence with departmental actors and thus its continued survival. As a result, Rod Morgan has argued that during his tenure as Chair the YJB had little meaningful impact on the substance of central policy (Morgan 2010). Similarly, the local actors who were drawn into the YJB's networks were relatively poorly positioned in the penal field and consequently struggled to exercise influence within it. Indeed, the absorption of local agents into the YJB's networks could be argued to reflect not what the YJB has termed a 'partnership' but a reconfiguration of processes of control: reflecting the extent to which the YJB is 'power dependent' on local agents, the exercise of power has been reframed as negotiation and bargaining to persuade others to carry out their commands (Edwards and Hughes 2005, p351).

However, while the absorption of new interests, actors and activities into the YJB does not straightforwardly suggest an ability to influence the shape of central policy products, nor does it straightforwardly preclude it. The reconfiguration of the YJB's relationships is in itself likely to have a more subtle and pervasive impact on the direction of centrally generated policy. First, it established new sites of contestation at which ideas can emerge and be resisted. At the least, these have disrupted the "strong tradition of deference and conformity" (Brooks and Bate 1994 p186) entrenched in civil service policy making (also Driscoll and Morris 2001, Kemp 1990, Rock 2004, Stevens 2011). Second, the composition of the 'penal field' (Page 2013) is itself important as it configures what is thinkable within it. In other words, even if the relationships established by the YJB were asymmetric, the new forms of expertise, experience and practices that they generated were significant. They interrupted the 'closed and monolithic' (Kemp 1990, p187) nature of the civil service, allowing for the introduction of new forms of professional knowledge, values and ways of thinking. In this



way they shaped what was considered possible: both in terms of the solutions to each uncertain problem, and in the forms of capital through which actors draw their authority (see also Page 2013). Simply put, it matters who is included in the penal field.

Most importantly however, the developments in the YJB show that these products are not wholly constitutive of policy. Instead, policy is also produced in a complex field of social practice, incorporating a diverse range of actors, practices, relationships and networks. This suggests a number of implications for thinking about policy in criminological research. First, it indicates the importance of a more expansive view of policy and policy making that extends beyond a preoccupation with policy products. This is not to suggest that these products are not vital subjects of critical analysis: as discussed above, they are of course particularly powerful and important instruments in the policy process. Yet without a wider view of policy making the strategies and principles that set the direction of services cannot fully be captured. Second, while research tends to treat policy products as static instruments, the research reported here suggests they should instead be understood as dynamic and evolving. In particular, it shows how policy emerges through action. Rather than simply reproducing a 'blueprint' for its operation, the YJB defined itself through what it did. Third, it shows how policy emerges in the spaces between defined parameters of legislation and guidance. So, while the Crime and Disorder Act 1998 and surrounding documentation set out a framework for the role and activities of the YJB, the incomplete and ambiguous nature of this framework allowed the central operation to develop in new and important ways. Fourth, the policy that is produced in these practices can diverge in important ways from that set out in the products that generated them.

In the context of youth justice, this opens up the possibility that the ‘flavour’ (Goldson 2010, p166) of youth justice in England and Wales may in practice differ from the incoherent, authoritarian and punitive themes underpinning the plethora of official policy products issued by central government. But most importantly, it suggests that to understand the ‘deep structures’ (Gordon et al 1977) that underpin youth justice policy, a conceptual and methodological shift is required, from a relatively narrow focus on the products of policy making to the practices of those who make it. In other words, to understand the nature of youth justice policy, we need to explore what policy makers do.

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