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### The Central Institutions of Youth Justice

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# **The central institutions of youth justice: government bureaucracy and the importance of the Youth Justice Board for England and Wales.**

## **Author**

Dr Anna Souhami, University of Edinburgh, UK

## **Abstract**

The government's recent 'bonfire of the quangos' put at issue the future of the YJB. Drawing on research with YJB staff, ministers and civil servants, this paper argues a central body like the YJB is crucial for youth justice. The institutions of government bureaucracy are an important part of the 'penal field' (Page 2013) in which policy is produced. An 'arm's length' body outside the civil service allows central decision making to be directed by expertise and child-centred principles. However, the same features that make the YJB important also make it both high risk for ministers and difficult to defend.

## **Key words**

Youth Justice Board, policy, government, bureaucracy, England and Wales

## **Introduction**

In 2010 the Coalition Government came into power promising to ‘restore democracy and accountability to public life’ (Hansard 14 Oct 2010 : Column 505). The landscape of central government, it announced, had become cluttered by quangos. The delegation of state activity to these ‘arm’s length’ bodies wasted public funds, allowed ministers to duck responsibility for their policy areas and gave unelected officials ‘licence to meddle in people's lives’ (ibid). Declaring a ‘complete culture change in government’ (ibid, Column 506), under the Public Bodies Act (2011) the government made provision to abolish or reform over 500 Non-departmental public bodies (NDPBs – the principal form of quango in the UK).

While ostentatious, the government’s reforms were ostensibly neither contentious – the Coalition was merely the latest in a successive series of governments to declare a ‘bonfire of the quangos’ (e.g. Gash and Rutter 2011) – nor connected to any one policy area. Yet the inclusion of the Youth Justice Board for England and Wales (YJB) in its cull pulled the central organisation of youth justice systems into the heart of political debate, bringing to focus the importance of the nature of government institutions at their core.

Created as the cornerstone of the first New Labour administration’s sweeping youth justice reforms under the Crime and Disorder Act 1998, the YJB is an executive NDPB with responsibility for oversight of the English and Welsh youth justice system. It has a broad and powerful range of statutory duties: it monitors the youth justice system, advises the Secretary of State on its standards and operation, identifies effective practice across youth justice services, commissions research, and makes grants to local authority Youth Offending Teams (YOTs) for services it deems effective, commissions places in the juvenile secure estate and places young people in custody.

As an NDPB the YJB is located outside conventional government structures. While it is ultimately accountable to the Secretary of State for Justice and ‘sponsored’ by the Ministry of Justice (MoJ) who fund and audit it, it is not part of any government department and its staff are not civil servants. It has permanence beyond any government department with legislation required to establish and abolish it, and is accountable for its daily operation not to a minister but to a Board and a Chief Executive. It therefore operates ‘on the fringes’ of central government (Pliatzky 1992, p556), outside direct ministerial control. It is the largest NDPB sponsored through the MoJ, currently with a staff of over 200 executive officials who are directed by a Board of 12 members, and a budget of £255m (YJB 2014).

The government argued that the size and political importance of the YJB’s functions required them to be brought directly under ministerial control. The YJB would be abolished and its functions transferred to a new Youth Justice Division within the MoJ. Like the YJB, this new Division would have a Board of expert advisers, and would be led in the first instance by the then YJB Chief Executive John Drew (Hansard 23 Jun 2011 : Column 28WS). In this way, the changes signified by the abolition of the YJB were ostensibly simply a restructuring of government bureaucracy: the central administration of youth justice would no longer be the responsibility of an NDPB but a departmental unit. However, to the surprise of the government, this news was greeted with dismay across the public sector and a vociferous rebellion in the House of Lords, putting at risk the Government’s entire legislative agenda and resulting in a dramatic reprieve for the YJB on the final reading of the Bill.

The fate of the YJB was met with little academic response, with some commentators expressing uncertainty about its significance (e.g. Morgan 2010, Puffett 2011, though see

Souhami et al 2012). Indeed, despite a powerful tradition of critical analysis of penal policy in criminological research more generally, little attention has been paid to the institutions of central bureaucracy through which it is administered (for exceptions see Rock 1995, 2004; on other areas of the civil service see Page 2003, Page and Jenkins 2005, Stevens 2011).

However, drawing on research with senior YJB members, ministers and civil servants, this paper argues that the central organisation of youth justice systems is of crucial importance both for penal outcomes and for academic scholarship. First, it argues that government bureaucracy is a central part of the 'penal field' (Page 2013) in which policy is produced. Second, for this reason it is important that the central administration of youth justice is located outside the civil service, at arm's length to ministers.

This paper therefore argues for the continued existence of the YJB - or a body like it.

However, two clarifications are necessary. First, the argument presented here is structural: it is concerned with the institutions of central bureaucracy. It is not an evaluation of the current operation of either the YJB or the civil service, nor the individuals within it. Second, it is important not to overstate the transformative potential of the YJB. The YJB is not a reforming or campaigning organisation but a body of government administration. It operates within the constraints of a system that has been described as 'a conduit of social harm' (Goldson 2010, see also e.g. Goldson 2013, Muncie 2011) whose architecture still betrays some evidence of the climate of populist punitivism in which it was created (most notably it has the lowest age of criminal responsibility in the European Union other than Scotland<sup>1</sup>) and the effects of a prolific and expansive legislative activity<sup>2</sup>. However, the central argument of

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<sup>1</sup> The age of criminal responsibility in Scotland is eight: children can be referred to a Children's Hearing on offence grounds from this age. However, since the Criminal Responsibility and Licensing Act (2010) they cannot be prosecuted by a criminal court under the age of 12.

<sup>2</sup> However, as I discuss below, there is evidence of an important departure from the criminalising and incarcerating strategies of early New Labour youth justice, with a recent marked decline in the numbers of first time entrants to the youth justice system and a dramatic fall in prison population..

this paper is that the institutions of government bureaucracy are not all the same. Through its removal from the civil service, the YJB allows for the expert administration of youth justice and introduces a competing logic which provides the opportunity for decision making to be structured by the best interests of the child rather than ministerial outcomes. Its effects are therefore subtle but important: it provides a buffer against both populist ministerial impulses and the deficiencies of Whitehall<sup>3</sup>.

### **The research**

The research reported here builds on a major research study of the operation of the YJB. The first phase of research involved ethnographic fieldwork of the YJB in one calendar year, 2006-7. Research included observations of almost all YJB internal activities and meetings, over fifty depth interviews with Board members and officials in all roles throughout the organisation, documentary analysis, and interviews and focus groups with YOT staff. The bulk of the data presented in this paper reports on a second, more recent phase of research which has followed the proposed abolition and reprieve of the YJB through interviews with senior YJB officials and Board members, including three former Chairs; senior officials (Director level and above) in the MoJ who oversaw the public body reforms; and the early architects of the legislation including former Home Secretary and Secretary of State for Justice Jack Straw and Lord Norman Warner, who as adviser to Jack Straw created the Crime and Disorder Act 1998 that established the YJB and was its first Chair. Most of the interviews reported here have been conducted over the last twelve months.

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<sup>3</sup> Again, this paper is concerned with the possibilities enabled by the YJB's structural location. It does not suggest that these possibilities were wholly understood or intended by the architects of the YJB (though neither does it suggest they were wholly inadvertent). Indeed, as described below, the YJB was established to usher in a programme of youth justice quite unlike the child-centered, diversionary approach it now champions. Moreover, it was initially staffed by a team of senior officials very closely allied to the New Labour administration and its objectives were largely indistinguishable (see Souhami 2014 for further discussion). However, this brings into focus the importance of its structural location: as this paper argues, it is the YJB's positioning outside departmental structures that has enabled decision making at the center to become structured by the best interests of the child rather than ministerial agendas.

While every effort has been made to maintain anonymity of the research participants, this is inevitably challenging in the context of elite political actors. Where necessary to the argument I have provided some contextual detail of the respondent's role: for example, 'a former Chair' or 'senior official'. MoJ officials were asked to nominate the titles by which they would be described. However some research participants (such as Jack Straw and Lord Warner) are inevitably identifiable: interviews were therefore conducted on this basis. Further, it has not always been possible to maintain the anonymity of Rod Morgan, a former YJB Chair, due to the public nature of events reported here. In these cases I have been careful to use data only to illuminate positions already in the public domain.

As I have shown elsewhere (Souhami 2014), the way the YJB operates and is understood by its members has transformed over the course of its life. The interpretation of its role and relationships at any moment are intrinsically connected to both the broader political and social context in which it is located and the personalities of key actors (see also Rock 2004). In an arena as volatile as youth justice, institutions, actors and the environment in which they operate change particularly rapidly. The long-term focus of the study is intended to allow both change and continuity to emerge: it both captures the flux and transformation that continues to surround the YJB, and allows for the identification of enduring themes which at some times may become clear and at others obscured. It is such underpinning issues which are the focus of this paper.

## **The importance of government bureaucracy**

The neglect of government bureaucracy in criminological research reflects an enduring assumption in both academic and policy debates that it is unconnected to the formulation of policy. 'Policy' is seen as solely the domain of ministers and a relatively narrow group of

elite civil servants who advise them, with the role of the supporting bureaucracy – whether the civil service or NDPBs such as the YJB – simply to implement it (Page and Jenkins 2005). Indeed, this is mirrored in a ‘normative institutional understanding’ (Gains 1999, p716) of a clear split between responsibility for policy formulation and administration among both ministers and civil servants themselves. The assumption of such a divide is unsurprising. The purpose of government bureaucracy is, after all, to support ministers (e.g. Campbell and Wilson 1995): it does not have the political or constitutional authority to define its own objectives. However, as I have argued (Souhami 2014), in reality the division is less clear: government officials are intrinsically involved in policy making.

First, officials have to elaborate ministerial directions to put them into action. As Page and Jenkins put it, ‘if politicians knew how they wanted the problems solved sufficiently to give their administrative subordinates direct instructions, they would not need policy bureaucracies’ (2005, vi). As research in the civil service has shown, as a result officials are routinely involved in formulating policy: discretion in relation to even small questions of implementation can define and change the shape of a policy (Page 2003, Page and Jenkins 2005). In an NDPB where entire functions are delegated, the scope for discretion is considerable. This is particularly the case in the YJB where the parameters of their statutory functions are ambiguous: their duty to ‘advise the Secretary of State’ for example is open to multiple interpretations (see Souhami 2014 for further discussion). Second, in politically charged areas in particular, even ‘implementation’ decisions formally delegated to NDPBs can themselves constitute policy (Gains 2003). Most obviously, the YJB’s role in commissioning or decommissioning secure estate places directly shapes the size and nature of the secure estate and is thus inextricable with broader youth justice strategy. Third, bureaucracy is a site at which policy ideas emerge and are promoted or resisted. As well as



providing formal advice, officials at all levels are engaged in informal processes of influence and negotiation. Further, as I discuss below, rather than neutral arbiters of technical information, officials instead create particular constructions of problems and solutions - 'good stories' which can be presented to ministers (Majone 1989, Stevens 2011).

Central government officials are therefore not only routinely involved in decision making, but shape how problems are constructed and thus what is considered possible. For this reason, as I will show, the institutional context of government administration is of central importance.

### **The importance of NDPBs: 'We could never be civil servants'**

The architects of the Crime and Disorder Act 1998 explained that the establishment of the YJB outside departmental structures was fundamental. A central body was required to oversee not just New Labour's sweeping programme of reform but the interventionist and closely managed youth justice system that emerged. Lord Warner explained that his extensive career as a civil servant convinced him that the vast, multi-function civil service simply could not provide the attention to operational detail required. The Home Office had a particularly poor reputation in its capacity for implementation:

One of the people keenest on the YJB was me. ... I had no confidence, absolutely zero confidence, that the Home Office could manage anything. The history of the Home Office since then has demonstrated how justified I was.

As a single purpose, dedicated body the YJB could provide an operational oversight of the reforms: as Jack Straw put it, they could act as 'the midwives of change'. More generally, they could provide a specific focus for youth justice both in operational management and in central policy making, ensuring in particular it was treated differently to the adult system. As

Jack Straw explained, if the YJB was abolished ‘the danger is that [the MoJ] wouldn't be paying attention to it [youth justice]. And Secretaries of State might not be paying attention to it’.

Second, the creation of the YJB outside departmental structures recognised the limitations of the civil service in producing youth justice policy. Youth justice was one of the many ‘wicked issues’ preoccupying the first New Labour government that cut across departmental remits. The Audit Commission’s (1996) report *Misspent Youth* on which the reforms had closely drawn had argued that, given the multiple disadvantage experienced by young offenders, a multi-agency approach was vital in central government as well as local services. Yet, as Lord Warner explained, cross-departmental policy development could not be achieved within existing structures:

The Home Office had a terrible reputation for working across Whitehall. ... Cross departmental working is difficult across Whitehall anyway, but they're one of the extreme cases.

Further, youth justice policy needed external input: as Lord Warner explained, it ‘requires you to interact with the world outside. You have to talk to people who know more’.

However, this was impossible within an ‘insulated’ civil service (also Kemp 1990). Instead, civil servants were ‘Whitehall Westminster captives.... They don't have lasting, long term, relationships of trust with the interests they need to work in’. As a senior YJB official put it, ‘[for] senior civil servants their career stands and falls on their ability to satisfy ministers, and by and large that means working with ministers in Westminster’. By contrast, their position outside departmental structures allowed YJB members to ‘get out of Westminster and go out and meet people, talk to them’: this was ‘how we build up the fund of knowledge that we have about what is actually happening out there and bring it back in to Whitehall’.

Third, placing the YJB outside departmental structures liberated it from a notoriously conservative, compliant and risk-averse civil service culture (e.g. Brooks and Bate 1994, Driscoll and Morris 2001, Kemp 1990). This had the immediate benefit of allowing the innovation and speed required to implement New Labour's extensive programme of reform. But it also allowed for a more exploratory, critical mode of functioning. For example, Lord Warner described his relative freedom as first YJB Chair:

We could do what a government department can't do. We were able to let our hair down in discussions. We could also say we didn't know, we didn't have all the answers, 'let's have a conversation about how this is going to work'. Civil servants can't say they don't have the answers.

This freedom is of course strongly limited: a senior YJB official explained, 'at the back of all officials minds are, if you step too far beyond what you know the minister believes, then they'll stop listening to you altogether. It's a trade-off'. However, there was a strongly-felt contrast with civil servants in the ability of YJB officials to express ideas counter to ministerial agendas: as a senior YJB official put it, their independence from the civil service made staff feel 'more at ease to say what they really believe'.

### **NDPBs and expert knowledge**

Finally, and crucially for this discussion, removing the administration of youth justice from the civil service allowed for it to be conducted by people with substantive expertise. Careers in the civil service are structured around 'generalism' in which specialisation is deliberately avoided and civil servants expected to move to new posts frequently (e.g. Campbell and Wilson 1995, Kemp 1990, Stevens 2011). This approach is intended to give officials

experience of a wide range of policy areas, in order to develop their expertise in the technicalities of the policy process and encourage new ways of thinking (Rock 1995, Campbell and Wilson 1995). Further, short-term posts reduce the possibility of officials developing an intellectual or ideological attachment to any particular approach to a policy problem (Page and Jenkins 2005, p148). In this way, civil service careers are structured to provide the technical skills needed to support ministers who themselves are only in post a short time. Yet as a result, expert knowledge of the policy area within departments is rare, both among civil servants and the ministers they support. By contrast, work in an NDPB requires a sustained period of office in a single area of executive activity, allowing for specialisation and continuity of knowledge. Even those YJB officials with backgrounds in administration rather than youth justice are therefore able to gain a subject expertise which would be impossible within the civil service. However, because NDPBs are located outside the civil service, they are also able to involve experts in their substantive work (also Pliatzky 1992). The overall strategy of the organisation is set by a Board consisting of those with expertise in youth justice and related areas; further, because executive officials are not civil servants they can be appointed from relevant professional backgrounds. For example, during the ethnographic fieldwork for this study, the majority of the 212 YJB executive staff had backgrounds in YOTs, local government or related areas, with 25% of all staff on short term secondment from service delivery (a programme intended to maintain the currency of practice knowledge in the YJB).

An NPDB therefore uniquely provides the structural opportunity for the expert administration of youth justice. As senior YJB officials put it, civil servants were necessarily ‘professional amateurs’ (see Fulton 1968): ‘people who know nothing about youth justice, what the basics are’. By contrast, Board members and officials described themselves as ‘people who really

know about their sector’, who have an ‘empathy and understanding and direct experience of what [practitioners] are talking about’<sup>4</sup>. In a complex, cross cutting policy area such as youth justice which concerns complex needs and multiple disadvantage, expertise and continuity of knowledge is particularly vital<sup>5</sup>. However, the absorption of non-civil servant specialists into government bureaucracy had a further important effect: it introduced a competing logic into central administration.

The civil service is organised according to a logic of bureaucratic rationality: its primary objective is to support ministers in an efficient and effective way (e.g. Campbell and Wilson 1995). While civil servants have considerable discretion, this is closely directed to meet the expectations of their ministers rather than any other personal or organisational goals (Page and Jenkins 2005, Campbell and Wilson 2005). Indeed, civil servants are expected to be ‘politically promiscuous’ (Rose 1987) so that they can work on behalf of any elected government. However, the expertise of YJB staff disrupted this organising logic.

First, the appointment of staff on the basis of their expertise encouraged staff to base decision making on expert knowledge rather than ministerial agendas. As a senior YJB official explained, this was particularly the case for Board members who are ‘appointed on their individual merits and .. definitely feel rightly that they have a right to articulate something that they know is not going in the direction of official policy and they have a right to be heard on that’. But in addition, professional expertise is itself ideologically structured. It does not just consist of ‘technical’ knowledge but ‘practical’ knowledge which is developed through professional experience (e.g. Schön 1983). It is therefore inextricable with the values of professional traditions. As youth justice social work gives primacy to the welfare and best

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<sup>4</sup> In fact, claims to expertise among YJB staff were contested, with some questioning the skills and experience of their colleagues. However, for this paper the crucial point is the technical expertise enabled by the structural location of the YJB in contrast to the civil service.

<sup>5</sup> Indeed this was a central argument to save the YJB. As one peer put it, ‘The most damaged, difficult and needy children in our community... must be managed by people with specific experience and expertise’ (Baroness Linklater of Butterstone, Hansard 28 March 2011: Column 963).

interests of the child, it is unsurprising that these priorities were explicitly reflected in the way YJB staff thought about their work. For example, staff described their own work and that of the YJB as motivated by ‘want[ing] to improve the lives of children’, to ‘make a difference to kids and local communities’.

It is undoubtedly the case that work in the YJB was also directed to organisational goals, including ensuring its own survival. Similarly, it is also the case that senior civil servants, including those interviewed here, were personally concerned with the best interests of young people. However, the key issue is that in contrast to the civil service, YJB officials were able to structure decision making according to principles which were potentially unconnected to ministerial outcomes. As a former YJB Chair put it, this was why ‘we could never be civil servants’:

Civil servants .. get up in the morning, and their reason for living is to make sure the minister’s happy with what they do. They’re there to serve the minister. Now, that’s fine, but I couldn’t spend a day of my life doing that. Not as my only end.

In this way, while the YJB was established as a central strand of New Labour’s attempt to bring a greater control of the functioning of the youth justice system, its non-departmental location in fact allowed for the introduction into the heart of central government decision making based on professional expertise and principles in the best interests of the child, even where this was contrary to ministerial agendas. This made the YJB a highly risky organisation for central government.

## The risks of the YJB

The arm's length relationship of an NDPB to central government in itself creates significant risks for ministers. As Jack Straw explained, ministers are accountable for an area of policy over which they have no direct control:

If you are Secretary of State ...you need to be able to have power over what's going on, and not be in a position of responsibility without power. Because when the shit hits the fan... the Secretary of State is the person who is there, and it's his or her career on the line.

Further, as Lord Warner explained, it exacerbates a cultural as well as pragmatic anxiety about loss of control within Whitehall: 'Home Office civil servants are all about control. Always. Forever. Institutionally. It's in their bloodstream'. Despite these risks, the political will for the 'modernisation' of youth justice in 1998 tipped the balance in favour of the creation of the YJB. However, by 2011 the political mood had changed: youth justice was no longer a priority, and the abandoning of New Labour projects helped the Coalition herald a new era of reforming government. But in addition, the risks posed by the YJB were exacerbated by the effects of organisational separation.

Its status as an NDPB automatically separated the YJB administratively from the civil service: staff had different pay and conditions, different administrative routines, and for much of the YJB's life, were housed in a different building<sup>6</sup>. Yet these important aspects of organisational life were reinforced by a more fundamental separation in occupational identity. YJB staff positioned themselves against the civil service through their practitioner backgrounds and ownership of expert knowledge. For example, a former Chair described

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<sup>6</sup> The YJB is currently located in the same building as the MoJ, though in a separate area from civil service colleagues. This move was ostensibly enforced as a result of austerity measures, though was felt by YJB staff to be a move to bring the YJB under closer MoJ control.

civil servants as ‘bright young things who know nothing’ in contrast to YJB staff who ‘actually know what they are talking about’. As Parker (2000) argues, such claims of similarity and difference – of ‘us’ and ‘them’ - are central to the way organisational members construct a sense of occupational belonging and identity. Ownership of expert knowledge was therefore a means by which the YJB became seen by its members as a distinctive organisation. As a senior YJB official put it, ‘the Home Office aren’t the experts, we are’.

The distinctiveness from the MoJ was fundamental to the identity and sense of purpose of the YJB. Staff were keen to preserve their sense of separation even through their administrative processes: for example, the YJB did not communicate with ministers through submissions – the written form of advice used by the civil service. As a former Chair put it, ‘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’. Yet within the MoJ these statements of separation were received very differently. The YJB was seen as simultaneously making false claims of independence while demonstrating their naiveté. A senior MoJ official explained: ‘A letter is the way that departments communicate between each other, so we very rarely do it internally. ... You’re not another department, you’re arm’s length, [there’s] not a bloody international boundary, you’re part of the departmental family’. More generally, MoJ officials described an atmosphere of mutual suspicion: the YJB was a ‘mistrusting’ organisation, it had a ‘sense of maverickness’, it had ‘gone UDI’ (a civil service acronym for ‘Unilaterally Declared Independence’).

However, the mistrust of the YJB was fostered by its potential for conflict. The sole ownership of expertise within the YJB introduced competing claims to expert authority which formed a powerful means of resistance to ministers and advisers. This reflects Weber’s central problem of bureaucratic power, in which he suggests that a permanent bureaucracy creates challenges for the authority of ministers who are in office a short time and thus have



less experience than their advisers (Weber 1946). While the generalist approach of the civil service mitigates the disruptive effects of technical expertise on hierarchical authority (Page and Jenkins 2005, p148) this is not the case in an expert body such as the YJB. Given the YJB's potential disconnect with ministerial initiatives, this inevitably creates the potential for conflict.

This was seen particularly clearly in 2006 at the end of Rod Morgan's tenure as Chair of the YJB. Fears that a fraught Home Office had lost control of the law and order agenda had led the New Labour government to promote punitive, headline-grabbing initiatives, such as the 'Respect' agenda which focused on youthful antisocial behaviour. Morgan advised that extensive research evidence demonstrated such strategies were both criminalising and criminogenic (e.g. McAra and McVie 2007). However, in the political climate his advice was not acceptable and ignored by ministers. Morgan felt so strongly that his advice was both morally and factually correct that he gave a series of press interviews critical of government policy. He argued that it was the YJB's 'duty' as an expert advisory body to make their advice public where private channels of communication had failed: '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... then we have a duty to say it'.

However, for ministers this made the YJB both embarrassing and irritating. The immediate consequence was that Morgan's tenure as Chair was not renewed in 2007. However, more broadly it drew attention to the political risks posed by the YJB. As an MoJ senior policy official said:

I think the one accusation you might have levelled at Rod [Morgan] was that his behaviour nearly caused the abolition of the YJB. ...Francis Maude in particular

looked at the YJB and said, well why are we paying to be shouted at by people who are supposed to be delivering stuff on our behalf?

Moreover, the YJB was now a financially important organisation. Their role as commissioner of the juvenile secure estate had significantly increased their budget, particularly when the prison population was at capacity and the estate very large. Its risks to the department were therefore considerable. A senior MoJ official explained, 'it [YJB] was a half a billion pound organisation ... and it was a player, it was bigger than some departments'.

## **Abolishing the YJB**

In this way, the expert authority and normative principles introduced by the YJB's structural separation from the civil service not only made it an important body in the administration of youth justice, but a politically and financially risky one. However, once under negative scrutiny, the separation of the YJB from the bureaucratic rationality of the civil service also made it difficult to defend. The remainder of this article describes three key aspects of vulnerability, which also suggests what a youth justice system might look like without an NDPB at its core.

### **1. Evidence of success**

The question of whether the YJB has been successful in its overarching aim to reduce reoffending was central in its reprieve. The government not only failed to consider whether any of the 500 arm's length bodies in its cull actually worked (e.g. House of Commons Committee of Public Accounts 2011, p3), but made its decision to abolish the YJB as the youth justice system experienced a marked decline in the numbers of first time entrants to the system (a fall of 67 per cent from 83,312 in 2002/03 to 27,854 in 2012/13) and the under-18 custodial population (a fall of 49 per cent from 3,029 in 2002/03 to 1,544 in 2012/13)

(YJB/Ministry of Justice 2014)). These trends were held as evidence of the YJB's success: in the final House of Lords debate Lord Woolf argued that 'it would be sacrilege if. we took out of the criminal justice system something that works' (Hansard 28<sup>th</sup> March 2011: Column 961).

It is likely these trends are to some extent connected to the activities of the YJB. They not only had the expertise to identify solutions and act independently, but most importantly their location as a central but outward-facing body put them in a powerful position to lobby magistrates and criminal justice agencies, thereby facilitating a 'systems management' approach. As a former Chair put it, the Board have 'got relationships with magistrates, the police, police and crime commissioners, 43 of them, we're out there all the time, chief executives, Local Government Association, whatever'.

However, the difficulty for the YJB is that any change in rates of offending cannot be straightforwardly connected to what it does. First, as a cross-cutting policy area, changes in other areas of criminal justice, health or education can have a potent effect on rates of offending, whether indirectly through their impact on the lives of vulnerable young people, or through changes to counting rules, definition, or process. This was demonstrated clearly by the Offences Brought to Justice (OBTJ) initiative instituted by the Home Office in 2002, which created incentives for police officers to target relatively trivial youth crime, thereby driving up the numbers of young people entering the system (e.g. Justice Select Committee 2013, p8). These factors are themselves shaped by the broader political climate (e.g. see Bateman (2012) on the fall in prison population).

Moreover, it is in any case difficult to draw a direct connection between the services the YJB supports and changes in offending behaviour. Youth justice work is focused on what Schön (1983, p42) has famously described as a 'swampy lowland where situations are confusing

“messes” incapable of technical solution’. Practitioners’ work involves improvising solutions to complex problems by drawing on background knowledge and expertise. It is therefore both difficult to describe and can only be loosely coupled with outcomes (Meyerson 1991, Souhami 2007).

The difficulty in demonstrating ‘success’ was implicitly understood within the YJB: while staff were certain that the decline in first time entrants and prison population were to some extent connected to their work, they recognised that, as a former Chair put it: ‘the reasons for things is so difficult to pin down in youth justice’. The demands of civil servants for evidence of the outcomes of services was seen as indicative of their lack of understanding of the field. For example, a former Chair said:

Sometimes you can’t prove it, but you know, we can *feel* it. I’ve had so many civil servants say to me ... ‘oh, perhaps we could do this!’ and I’m saying, ‘I don’t think that will work’. And they say ‘well how do you know?’ and I think well, actually, because compared to you I’ve been working in this business for about forty years ... I’ve seen it all, and I can tell you if you do that ... it will not get the end result. But I can’t prove it, how can you, you know?

Instead, the YJB needed to make the figures qualitative: as the Chair put it, to ‘tell the story in a way which is reasonable’ and which convinced MoJ analysts and policy makers of their value.

However, the challenge for the YJB is not just that the evidence they can present is experiential rather than technical, but that, despite its legitimating rhetoric of bureaucratic rationality, the work of policy officials is equally intuitive and ideologically invested. Evidence is selected, ignored or interpreted to legitimize particular programmes and

undermine others, particularly in relation to contested policy areas (e.g. Majone 1989, Nelkin 1975). Similarly, what is considered 'evidence' reflects underlying values, with forms of evidence deemed 'scientific' or 'technical' given greater authority than others, and the expert knowledge of those professions involved in social regulation (doctors, lawyers, economists) given greater authority than occupations such as social work which are deemed to represent a knowledge base that is too closely tied to 'special interests' (Brint 1990, p377). In this context, the expert knowledge and intuitive evidence offered by the YJB are low status, and can be countered with alternative stories of higher authority. So, for example, MoJ officials accounted for the decline in first time entrants by factors more amenable to quantification such as demography ('there was less young people born 15 years ago'), the scrapping of OBTJ, a broader decline in offending across Europe, or even the removal of lead from petrol which American environmental research has claimed is associated with a decline in criminality (e.g. Reyes 2007).

At the time of this research, the YJB's narratives of success remained largely persuasive. For example, an MoJ senior policy official explained why he defended YOT budgets against further cuts:

[YJB Chair and Chief Exec] did a good job of convincing me and my boss ... who holds the budget ...that money has been directly involved in the fall of first time entrants coming into the system. .... So if that's come down, we close places, so we save 200 million pounds for the estate. If that was to go up then we have to build our way out of a problem again. And that if we keep on reducing the YOT grant, then they will take their eyes off some of the prevention work, and the number of first time entrants will go up again.

However, the shift in mood towards the YJB in central government and the increasing pressures for stringent cuts revealed the vulnerability of these narratives. The senior policy official added, ‘the difficulty is ... they still can't prove that that money is having that effect, everyone just kind of thinks that it probably is’. Authoritative evidence was becoming particularly important in a climate in which, as the senior policy official put it, the current Secretary of State, Chris Grayling was ‘very managerial, and interested in what's the unit cost of everything, and what's this pound buying me’. Moreover, scrutiny of the effects of the YJB broadened critical attention to the efficacy of the entire youth justice system. As the senior policy official explained, ‘I've no doubt there's probably some really good work going on in YOTs, we just can't prove it’:

When you've got a minister like Chris, one of the things for the next parliament will be, well if we're throwing 100 million quid [YOT core grant] at this and it's not buying me any better reoffending outcomes, then I'll spend that 100 million quid in a different way. It's what any new minister will think if I can't tell them what it's buying them.

In this way, the removal of the YJB from the legitimating rhetoric of rationality not only risked their own survival, but that of wider youth justice structures too.

## **2. Emotion**

Second, the explicitly normative basis of the YJB's work was experienced by senior MoJ officials as conflicting with the style of bureaucratic rationality prized within civil service culture. As a senior policy official put it: ‘as an organisation, they have been and are still, in some areas, dysfunctional ...because they are full of specialists, and it's an emotional organisation’.

In part, this dysfunctionality was attributed to the non-civil servant backgrounds of YJB staff: a result of ‘having so many people who have been practitioners’, ‘an old school probation way of doing things’. In other words, staff simply did not have the technical and managerial skills prioritised within the civil service. So, for example, MoJ officials described their frustration at the YJB’s auditing procedures, accounting and governance arrangements which did not meet expected departmental standards. A senior official explained

They are not bureaucrats, and I use that in the positive sense of the word... [emotion] could make them blind to the fact that there were things that they needed and should've been doing, and I mean things like governance ... There was a complete lack of attention to the proper administration of the organisation. Because it was all about the kids!

Further, the normative basis of the YJB’s work was thought to produce a heightened emotionality which intruded on the bureaucratic rationality on which the civil service is ostensibly based. A senior policy official explained:

There's an awful lot of meetings out there where people go, ‘but these are children!’ And I’m like, I know, you know, but we were talking about a budget issue or something, but they feel the need to remind me that it's children we're talking about.

However, it was acknowledged by senior officers that the MoJ was not as always as rational as it may seem: instead, its scrutiny of YJB governance arrangements was itself emotionally fuelled. The defeat in the House of Lords had led to an overt antagonism towards the YJB among ministers and the department as a whole. A senior policy official explained:

‘Organisations don't like losing, do they? So ... we lost, we went into a bit of a spasm of, you know, we don't like this. So we made life pretty difficult for the YJB’. Instead, the perceived conflict in the YJB’s style of operation appeared to be indicative of a deeper conflict in

organisational aims, in which the YJB prioritised principles of welfare above organisational goals including efficiency and effectiveness.

It is important to note that the value of the YJB's ability to prioritise normative objectives above organisational goals was recognised by MoJ officials. As one senior official explained, YJB staff were 'hugely passionate about making sure they were making the right decisions for the kids... it wasn't just a process, these were living human beings, and not only that, very vulnerable and young ones'. Indeed, as a senior policy official put it, 'if you replaced them all with people like me tomorrow it would be a disaster'. Without the YJB, he explained, youth justice risked becoming 'another commodity, another bit of the estate that we have to kind of manage ... frankly what we do with the adults'. Moreover, as a senior official explained, it had an important effect on central policy-making:

I think the fact that people cared... having the ex-practitioners and people who had worked in those industries working in the YJB brought a knowledge about the realities of these kids into the organisation. And that, I think, helped deepen the richness of the debate that you would have about policy, about the art of the possible.

Yet nonetheless the difference in organisational goals created a fundamental conflict. The YJB simply didn't fit with the aims and style of executive government and as such was seen by its ministerial sponsors as unfit for purpose. As a senior policy official put it, 'having those people run an organisation at all the levels, I'm not sure is healthy....it needs people who can run an organisation, not people who joined it in order to change people.'



### 3. Control

Finally, there is a fundamental tension in the YJB's establishment at arm's length from central government to protect it from ministerial control, and the cultural and political pressures on departments for that control. As a senior policy official put it;

One of the big drivers for ministers wanting to abolish this [YJB] is to have some control over them....Control of the policy, what people are saying.. you would never have a Rod Morgan problem again.

Similarly, the delegation of operational matters to the YJB prevents ministers from close involvement in the details of youth justice services:

You know, we meddle hugely in the adult estate, we're forever telling NOMS that people should be going to bed at 11pm or whatever...stuff that's generally operational stuff, but ministers care about 'cause there's a huge amount of political risk in it. And they're unable to do that in the youth estate, as easily<sup>7</sup>.

(Senior policy official, MoJ)

In the asymmetric power relationship between the YJB and its departmental sponsors, the extent to which it is able to protect services from ministerial interference is limited. However, as this indicates, at the least the YJB adds a layer of insulation between ministerial impulses and implementation. For ministers with an impulse to meddle, this is problematic.

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<sup>7</sup> Ironically, it has now been announced that Chris Grayling has instructed all YOI governors to enforce a 10.30pm cell lights-out policy. This demonstrates the hierarchy in which the YJB operates: while it can persuade, ministerial decisions remain paramount. The key issue for this paper however is that, unlike its civil service colleagues, the YJB is both more able and motivated to persuade

## Conclusion

The ‘new youth justice’ set in train by New Labour’s Crime and Disorder Act 1998 continues to be criticised by youth justice scholars who have powerfully illuminated its damaging legacy. However, this paper argues that the central institutional architecture it put in place is an important and unheralded aspect of New Labour’s reforms. The establishment of an executive NDPB removed the administration of youth justice from the civil service and placed it at arm’s length from ministers, within a specialist body. This not only allowed for expertise, continuity and an oversight of cross-cutting policy areas that impact on vulnerable young people, but introduced a competing series of claims to expert and moral authority, enabling decision making at the centre to be structured by the best interests of the child rather than ministerial agendas. This is particularly important given the centrality of government bureaucracy in configuring both policy outcomes and what is thinkable within central government. As the MoJ official cited here put it, the YJB deepened debate about ‘the art of the possible’.

Yet there is a paradox in the YJB’s position as an NDPB: the same structural features that make its organisational location so important are also those which make it both risky for central government, and difficult to defend. Despite an initial confidence in the survival of the YJB after the government’s humiliation over its failed abolition, the research reported here suggests its future remains uncertain.

It is of course right that the delivery of executive functions of government should continue to be held up to scrutiny. Moreover, there are undoubtedly ways in which the YJB could be usefully reformed: for example, a transfer in sponsorship from the MoJ to the Department for Education (or, more pragmatically, a renewal of its joint sponsorship arrangement with the

MoJ and the (then) DCSF from 2007-2010<sup>8</sup>) would undoubtedly support the YJB in giving greater priority to young people's welfare needs. However, it is paramount that a specialist body dedicated to youth justice remains at the heart of the youth justice system. The institutions of central bureaucracy are not all the same. Instead, the central organisation of youth justice systems is of fundamental importance: both as a focus of criminological study, and, most importantly, to the young people who are subject to them.

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<sup>8</sup> Of course, as well as politically cumbersome this presented problems for youth justice services in Wales where children's services are devolved. Nevertheless this offers a promising approach.

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