

To Protect or Punish?

Children, counter-terrorism
and the criminal justice system •



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Professor Conor Gearty KC (Hon) passed away shortly before the publication of this report, for which he wrote the foreword. As a leading scholar in the field of counter-terrorism and human rights, Conor's research and voice have profoundly shaped CRIN's own work and thinking. CRIN is deeply grateful for Conor's intellectual leadership, kindness and commitment to his students. He is deeply missed.

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Glossary.

- ▶ **CONTEST** - The UK government's strategy to reduce terrorism at all levels. It is composed of the 'four Ps' – Prevent, Pursue, Protect, and Prepare.
- ▶ **COPFS** - Crown Office and Procurator Fiscal Service
- ▶ **CPS** - Crown Prosecution Service
- ▶ **CRC** - United Nations Convention on the Right of the Child
- ▶ **DPP** - Detention for Public Protection
- ▶ **GWOT** - Global War on Terror
- ▶ **Fol** - Freedom of Information
- ▶ **IPP** - Imprisonment for Public Protection
- ▶ **MAPPAs** - Multi-Agency Public Protection Arrangements
- ▶ **PACE** - Police and Criminal Evidence Act
- ▶ **TACT** - Terrorism Act 2000
- ▶ **TPIMs** - Terrorism Prevention and Investigation Measures
- ▶ **RLAA** - Remand to Local Authority Accommodation

Foreword.

The law and practice of counter-terrorism is now so embedded in the UK's legal system that it no longer needs the impetus of terrorist atrocity to sustain itself. What began in November 1974 as a crisis measure of strictly limited duration to cope with unprecedented Northern Ireland-related political violence has become a vast bureaucracy of control and punishment, both criminal and administrative. In a way that is both necessary but also (given its content) deeply disturbing, this report draws attention to the impact of these new counter-terrorism regimes on children. Starting in the pre-criminal space, it follows a child's potential journey through pre-trial, trial and sentencing and the impact these different experiences have on children's rights. The report highlights the child rights issues and challenges faced at each stage in the process before concluding with a series of recommendations. Its chilling conclusion is that 'the focus of state law and policy is on pursuing children and not safeguarding them'.

CRIN's Report provides an excellent overview of how our anti-terrorism laws have grown over the years. Its particular value lies in its drilling down (insofar as the limited governmental data permits) on the plight of children caught up in this zealous web of supposed 'terrorism-prevention'. The arenas of punitive criminal power are well-discussed, with the discussion of the 'pre-criminal' being particularly haunting, this new world of blame in advance of action, a place which was once called by a simpler name, 'freedom'.

'Terrorism' law also now extends beyond what the language of terrorism is generally thought to describe. The coercive Leviathan that is anti-terrorism law increasingly swallows up ordinary protest and direct action within its voracious remit, including where this is carried

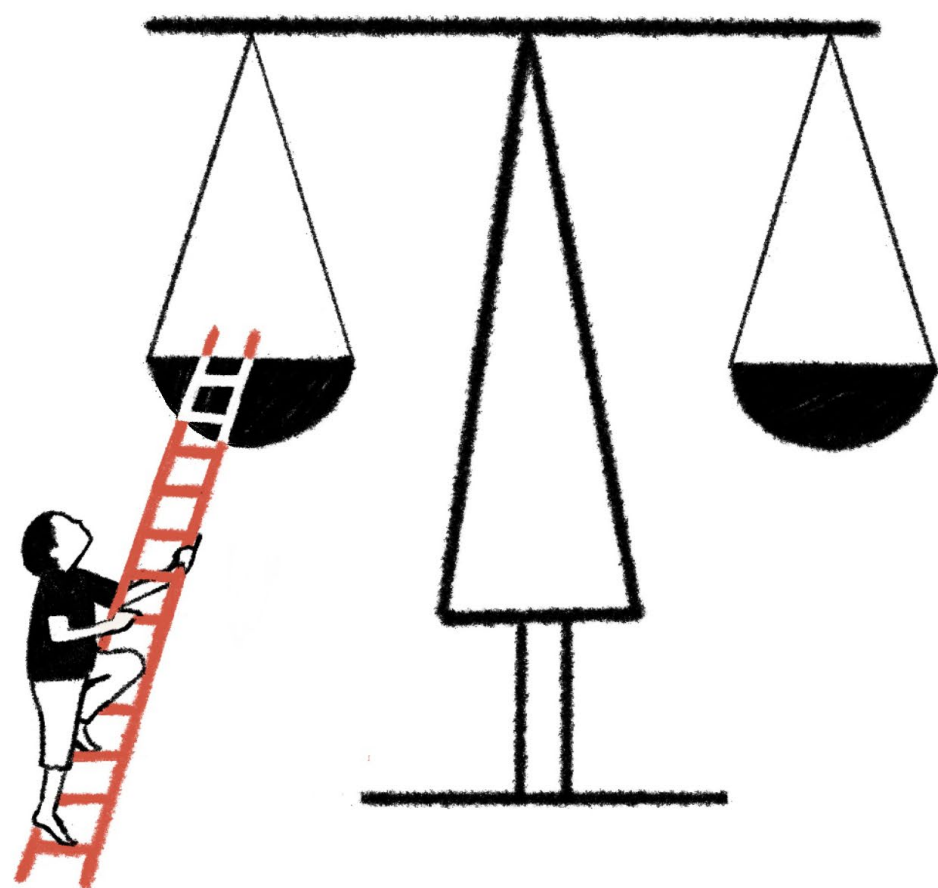
out by children. Whether it is challenging the destruction of Palestine by the UK-supported Israeli state or the wilful disregard of the already-evident catastrophe that is climate change, children meet strong resistance with the law being often deployed to make next to impossible the expression of their perspective. This is exactly what happened in a previous era of youthful protest when the 'kettling' of students and school children in the education-related protests of the 2000s, detaining them for hours at demonstrations, raised the stakes of involvement too high for most young people to be able to continue to participate in such actions. Now with expanded use of anti-terrorism powers and the expansion of terrorism banning orders to reach not just the Al-Qaeda's of this world but those engaged in direct action as well, a new and dangerous front has been opened in the struggle to close down the expression of opinion in general and the public articulation of the concerns of youth in particular.

This report is a snapshot of where we are now and a window into a threateningly dark future. The status quo of counter terrorism law and practice cannot continue. With this excellent report CRIN are doing their bit to highlight its severe impacts on children and their rights.

September 2025

Conor Gearty

Professor Conor Gearty was a leading expert in human rights and civil liberties, with a particular focus on counter-terrorism law. As a professor at the London School of Economics and founding member of Matrix Chambers, his work critically examined the legal and ethical implications of state responses to terrorism in democratic societies.



Introduction .

Counter-terrorism strategies have been expanding steadily since the commencement of the Global War on Terror (GWOT) following attacks on the United States in 2001. For nearly 25 years these developments have often come at the expense of international human rights, particularly those of children.

The United Kingdom (UK) has been no exception to this. Over the past quarter of a century there has been a steady expansion of laws and policies. The laws which address terrorism have grown steadily as have the definitions used to define terrorism. Through this expansion, more and more children have been needlessly drawn into counter-terrorism spaces.

CRIN has been examining how counter-terrorism laws in the UK are affecting the rights of children since 2018. Previously, we have examined how preventative measures are causing harm to children by prioritising national security measures over children's fundamental rights, and have also subverted welfare and safeguarding mechanisms in the name of addressing terrorism.

This 2025 publication critically examines the position of children who have been suspected of, arrested for, charged with, tried, and sentenced for counter-terrorism offences.

A wealth of evidence exists that explores the harmful impact of the current justice system in the UK on children.¹ There is, similarly, a substantial body of research on counter-terrorism laws and policies.² However, little research has been published on the unique position of children who are in contact with the justice system as a result of counter-terrorism laws.

The current justice system (in the context of counter-terrorism) undermines the standards of international children's rights law by prioritising excessive and disproportionate punishment. While public interest and safety can be legitimate aims in models of justice, this does not outweigh the need to ensure that the justice system is founded in principles of child justice, respecting the dignity and worth of every child. Nowhere is this balancing act more difficult than in issues of counter-terrorism, where the consequences of suspected terrorists going on to offend can be catastrophic. While exceptional

breaches of human rights may be needed in genuine emergencies, this report finds - in concurrence with much work on counter-terrorism in the UK and overseas - that these emergency powers are used to justify derogation from rights in routine circumstances. Furthermore, when this use of emergency powers is combined with the wide scope of the child justice system, it is clear that highly vulnerable children are being subjected to laws and procedures designed to be used to deal with hardened, professional criminals bent on political violence and mass atrocity. Rather than a response to legitimate violence, children are often being drawn into this system for looking at materials online. Offensive and dangerous as those materials may be, there is a real risk that these exceptional powers (meaning search, detention and punishment) are being used in ways that are disproportionate to the threat posed by the child, and are therefore a clear breach of international human rights standards.

While researching this report, it also became clear that there is not sufficient publicly available data on the experiences of children in contact with the justice system as a result of counter-terrorism measures. This lack of transparency is itself worrying, if not dangerous. Counter-terrorism often has to be conducted, by its nature, out of public view. This secrecy increases the challenge for anyone who attempts to ensure that it is run within the standards set out by the law (both domestic and international). It also undermines confidence in the system if basic data is not available for analysis by policy makers, civil society, academics, and interested members of the public. This problem is compounded in the context of this report because the child justice system itself takes place almost exclusively behind

closed doors. It is prohibited to observe trials and sentencing hearings in the Youth Court for routine offending. This is for the laudable reasons of protecting the identity of the child and giving them a chance to reform as they grow to adulthood. However, it compounds the methodological challenges of understanding how children are affected by counter-terrorism laws. There is, therefore, a worrying lack of transparency and consistency in data in this area.

This lack of data also makes it difficult for the state to claim that its interventions in counter-terrorism are based on evidence of effectiveness. While initial interventions will, of course, have to be conducted on the basis of theory, they need to be continuously and rigorously tested to ensure that they are effective. Because these interventions require significant reductions in civil liberties and breaches of human rights, current practices can only be justified if they can be proven to prevent, or at least reduce the risk of, large-scale harms caused by terrorist attacks. The onus on proving the viability of such severe interventions currently rests on the intervener. At present, that intervener - meaning the state and its security establishment - has not demonstrated that its interventions are sufficiently effective. Without this evidence of effectiveness, it is not sustainable to claim that these breaches of human rights are justified.

Children's rights should form the touchstone for any policy-making affecting children. Even when faced with the threat of terrorist atrocities, there are rights-compliant ways to deal with children.

This report is structured to examine procedures at each stage of the criminal process, following a child accused of counter-terrorism through the system as a whole.

It explores the following aspects:

- **The 'pre-criminal' section** looks at the process before someone - whether an adult or a child - is arrested for suspected terrorism. It includes an analysis of the ability of the police to stop someone and search them on suspicion of being a terrorist. It also looks at diversion mechanisms, particularly those arising from the Prevent strategy. It considers how these processes deal with children who come into their purview.
- **The 'pre-trial' section** looks at how children are processed from arrest to trial. In particular, it looks into how children experience the extended pre-charge detention periods provided by counter-terrorism legislation. It then goes on to assess how children are managed after they have been charged but are still awaiting trial.
- **The 'trial' section** considers how children are tried, particularly the venue in which they are tried. Serious crimes are tried in the Crown Court yet - as we suggest in our analysis - almost all terrorist offences, short of the most serious, can be dealt with in the Youth Court.
- Finally, **the 'sentencing' section** details what happens when a child pleads guilty or is convicted after trial. The judiciary has a range of options from a youth referral order to a life sentence. There is a lack of data on how this wide discretion is used. However, it seems that the sentences given out in child terrorism cases, like those given in adult terrorism cases, are particularly harsh. There is no evidence that such a punitive approach is effective in increasing public safety or rehabilitating the child. Therefore, it is clearly time for a deep review of

child terrorism sentencing - perhaps as part of an overall review of youth justice sentencing.

In every one of these phases, there is a huge amount of discretion available to the decision-maker - be it the police, the Crown Prosecution Service (CPS), the magistrates, District Judges, Crown Court Judges, or Juries. Decisions adverse to the child can be very difficult to reverse, even when they are made on dubious or even discriminatory grounds. It is the contention of this report that at whatever stage of the criminal justice system, the decision-maker must act in the best interest of the child, and their decision must be weighted towards child rights, safeguarding, and rehabilitation.

A note on the UK's three criminal jurisdictions

This report predominantly focuses on the law as it applies in England & Wales. The UK comprises three jurisdictions (England & Wales, Northern Ireland and Scotland). Each has its own criminal process and youth justice systems. While many of the principles are similar, there have been divergences over the years. In the area of children affected by counter-terrorism measures, these differences can be quite distinct. One example of distinction is that there is no 'Prevent duty' in **Northern Ireland**. That means that educators are not under the same obligation to report children in their care for suspicions of radicalisation. The jurisdiction has a long history of disunity and terrorist victimisation, including attacks committed by children. The Independent Reviewer of Terrorist Legislation has said in his most recent report (2023) that he has been told of innovative diversion techniques used by security operatives in Northern Ireland.³ This report is light on detail, but the implication is that based on the experience of authorities there, they have a more nuanced approach to diversion than in England & Wales.

In **Scotland** the Independent Reviewer describes a very different approach to dealing with children who might be involved in terrorism:

Interesting points of comparison for the treatment of children arrested for terrorism offences in Scotland, compared to the rest of the United Kingdom, is firstly the existence and role of the Scottish Children's Reporter Administration and the powers of Children's Hearings to deal with children who offend or are in need of care (separate from the criminal justice system but capable of imposing compulsory measures); and

secondly the role of the Crown Office and Procurator Fiscal Service (COPFS) in recommending a range of measures even after a criminal case is reported by Police Scotland.⁴

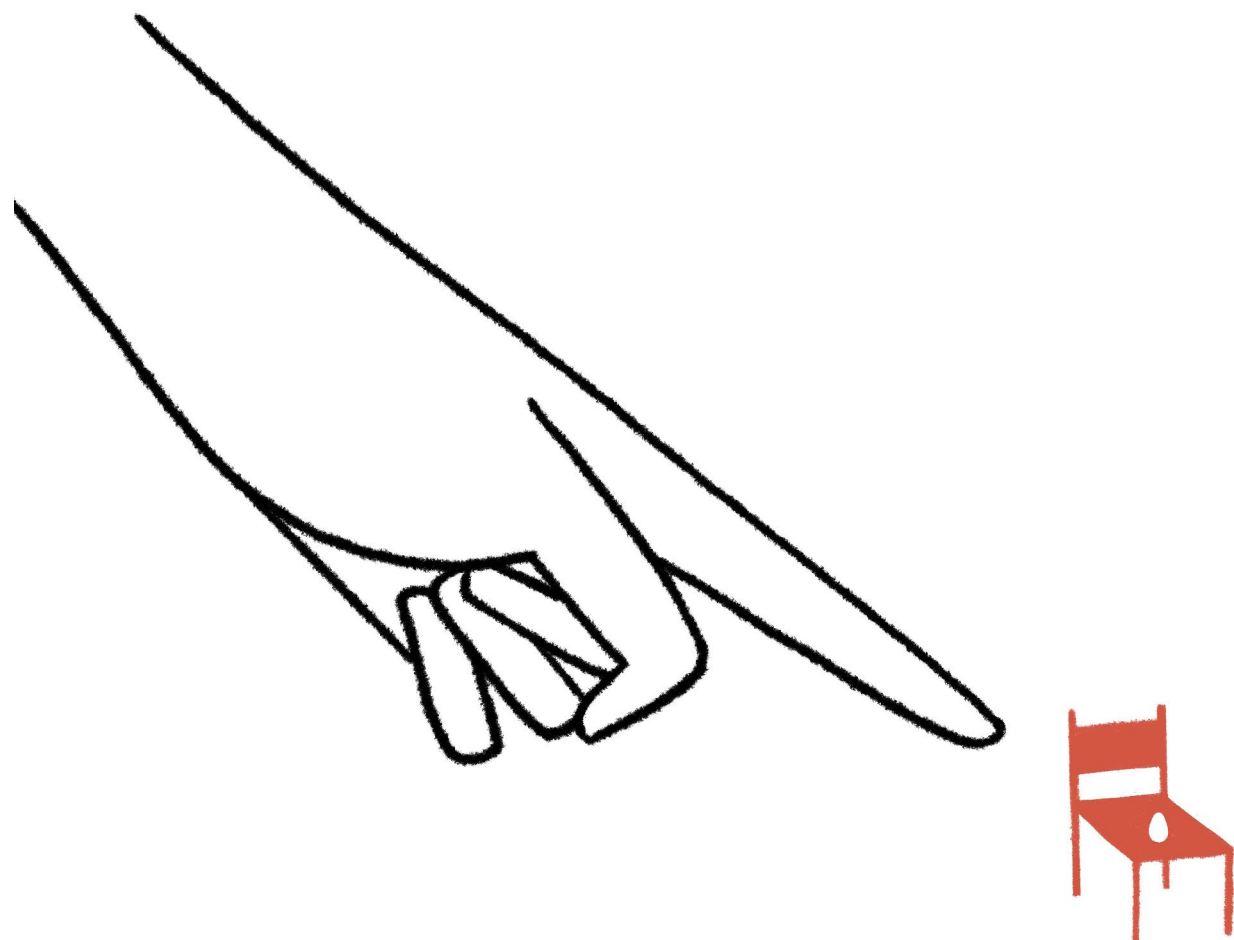
They go on to explain that the COPFS has a number of alternatives to prosecution available. These include referring a case to the Scottish Children's Reporter Administration or using diversion from prosecution 'where the accused child is offered a programme of input from Social Work or other relevant services suitable to their needs. The child needs to consent but does not need to admit guilt'.⁵ The police closely coordinate with the COPFS in managing terrorist cases and the Reviewer has been told these options have not been used in any such cases relating to children. These differences are significant and appear to mark a much greater willingness on the part of Scottish authorities to look at resolution of cases that do not involve criminal sanction.

Both these examples demonstrate that, in the other jurisdictions of the UK, a greater emphasis is placed on diversion than in England & Wales. This report cannot gauge the complex and nuanced reasons which might explain these differences. However, these divergent approaches beg the question as to why some parts of the UK can have a counter-terrorist system that is more child rights-compliant than England & Wales, at least in relation to the question of diversion.

A brief history of contemporary counter-terrorism law in the UK

- **Terrorism Act 2000** - Provided a core framework for defining terrorism and granting police powers.
- **Anti-Terrorism, Crime and Security Act 2001** - Introduced in the wake of the 9/11 attacks, it allowed for indefinite detention without charge for foreign nationals suspected of terrorism; this was later ruled unlawful in 2004.
- **Prevention of Terrorism Act 2005** - Introduced control orders including restriction on movement and communication.
- **Terrorism Act 2006** - Created offences of encouragement, glorification, and dissemination of terrorism and criminalised acts preparatory to terrorism.
- **Counter-Terrorism Act 2008** - Allowed police to retain DNA and fingerprints of suspects not convicted and broadened police surveillance and data access.
- **Terrorism Prevention and Investigation Measures (TPIMs) Act 2011** - Replaced control orders with TPIMs which still allowed significant restrictions without charge.
- **Counter-Terrorism and Border Security Act 2019** - Further expanded offences to cover viewing extremist material online and broadened stop and search powers.
- **Counter-Terrorism and Sentencing Act 2021** - Created new sentences and ended early release for serious terrorism offences.

Over the past 25 years we have seen a seemingly irrepressible expansion of terrorism laws in the UK, with little effort made to evaluate its effectiveness and wider impact. In particular, we have seen a trend in criminalising actions prior to any terror attack being carried out. This has seen in turn a steady widening in the definition of terrorism in the UK. The result now is that dramatically more people risk being drawn into the auspices of counter-terror policing and the courts system who never had any intent of committing violent atrocities.



Part 1

Pre-criminal.

Since the commencement of the GWOT, there has been a steady development in criminal law to criminalise actions that previously did not attract criminal liability because they had taken place too early in the development of a criminal act. These newly criminalised acts are referred to by criminologists as 'pre-crime' as they included more and more abstract forms of planning and preparation than had previously been caught by the criminal law of attempt.⁶ This stems from the preventive aspirations of the GWOT. However, the introduction of this term fundamentally changes the philosophical underpinnings of criminal law. People are now criminalised, and receive severe penalties, for what they *might* do rather than what they *have* done.

The pre-criminal space is not limited to the creation of criminal offences in the preparatory stages, but also includes other forms of intervention where no offence has been committed at all. This section looks at three of those: counter-terror 'stop and search' by the police, efforts to de-radicalise people suspected of being at risk of engaging with and/or adopting extremist ideologies through the Prevent programme, and finally it considers the growing challenge of online spaces in relation to terrorism.

Stop and search for counter-terrorism purposes

The police power to search people without a warrant from a court or senior office is known as 'stop and search'. It has a long and problematic history which has included consistent discriminatory application, notably leading to the Brixton riots in 1981.⁷

The *Scarman Report* into the riots found that the 'sus laws' allowing police to stop and search, based on suspicion alone, contributed to the disorder. Eighteen years later, the *MacPherson Report*,⁸ arising from the Metropolitan Police's ('the Met') handling of the racist murder of Stephen Lawrence, found the Met to be institutionally racist. Stop and search powers were found to be used in a consistently discriminatory fashion. A 2021 follow-up report by the House of Commons Home Affairs Committee also found that 'ethnic disproportionality in stop and search is worse than it was twenty-two years ago'.⁹

There is, therefore, a continuous thread of criticism of stop and search dating back to at least the early 1980s when the *Scarman Report* was released. Public and academic scrutiny of the practice by public bodies, academics,¹⁰ and NGOs,¹¹ including in the *MacPherson Report* and by the House of Commons, has found that it is discriminatory. This conclusion persists despite many efforts by police forces to improve the practice and provide guidance on its use.

It is hard to avoid the conclusion that the general mechanisms of stop and search continue to be felt most egregiously by the most marginalised members of society - and this usually has an ethnic bias in practice. For children affected by counter-terrorism measures in particular, this often means that certain young people - notably those who are (or appear to be) Muslim - bear the brunt of this crude and ineffective policing tactic.

The power to stop and search can be found in three places in the Terrorism Act 2000¹² and each is slightly different.

- **Section 43 (s43)** stops are the 'conventional' counter-terror stop and search power. A police officer can stop and search anyone they reasonably suspect of being a terrorist.

- **Section 47A (s47A)** allows a senior police officer to set out a time-period and location where anybody present may be searched without the need for reasonable suspicion.¹³
- **Schedule 7 (sch7)** allows for police or customs officers within a border area to search and detain (for up to six hours) anybody to determine if they are a terrorist. There is no requirement for prior authorisation or reasonable suspicion.

Although s47A powers have been used, they have been rarely applied.¹⁴ Schedule 7 powers are also contained by their relationship with a port or airport. It is, therefore, section 43 powers that are used in the majority of counter-terror stop and searches. Such stops must be on the basis of 'suspicion' and are governed by Home Office guidelines.¹⁵ This serves to ostensibly restrict stops to situations where the officer has some reason to stop the child. The guidance is so loosely drafted as to be almost meaningless. The initial definition of reasonable grounds for suspicion include 'relevant facts, information, and/or intelligence'.¹⁶ However, the following paragraph makes clear that:

Reasonable suspicion may exist without specific information or intelligence but on the basis of the behaviour of a person. For example, reasonable suspicion that a person is a terrorist may arise from the person's behaviour at or near a location which has been identified as a potential target for terrorists.¹⁷

Given that all public transport is a potential target for terrorists, this provides a very wide remit to search someone that an officer believes to be a terrorist. The data that is publicly available suggests that their suspicions are not very accurate.

Police statistics suggest that over the past ten years roughly 10% of searches initiated by the Met under these Terrorism Act powers have led to arrests.¹⁸ This peaked at 12% in 2016. Although it is worth noting that arrest rates in the five years before that never got over 7% and were as low as 3% in 2011.¹⁹ This means that officers' 'suspicions' are a highly inaccurate barometer of when an arrestable offence is taking place. Indeed, when the number of arrests that lead to actual convictions is taken into consideration, the success rate of stop and search as a tactic is minimal. Between 11 September 2001 and March 2023, 5,278 arrests were made - of which 975 (18%) resulted in charges.²⁰ If the point of stop and search is to identify and prosecute terrorists, then it is a crude, scattergun approach to that aim.

This conclusion is based on data which is not classified by age. However, what data that is available on children subject to these powers does not show a very different trend. A Freedom of Information Request made by CRIN in November 2023 shows that 72 children were subject to stop and search between 2020–2023 under the Police and Criminal Evidence Act 1984 (PACE), where the reason for arrest was section 43 of the Terrorism Act 2000.²¹ 64 were boys and 8 were girls. Of the 72, their ethnicity was self-defined as:

- 45.8%**
33 self-defined as White
- 20.8%**
15 self-defined as Black/Black British
- 12.5%**
9 self-defined as Asian/Asian British
- 20.8%**
15 self-defined as mixed or other

Considering that 81.5% of the British population are white, it is easy to see that

there is an over representation of Black, Asian and Minority Ethnic (BAME) children in these statistics.²² However, it is not only the ethnic breakdown of those arrested that undermines the value of the powers, the outcome data also undermines the credibility of the process. 64 of the 72 searches led to 'no further action' and only 4 led to arrest.²³ It is helpful to lay out the outcome data here:

- 5.56%**
of searches led to an arrest
(3 in 2020/21, 0 in 2021/22 and 1 in 2022/23)
- 1.39%**
of searches resulted in community resolution
(1 in 2022/23)
- 2.78%**
of searches resulted in verbal warnings
(2 in 2021/22)
- 1.39%**
of searches resulted in a penalty notice for disorder (PND)
- 88.1%**
of searches led to 'no further action'

Again, this raises the question of how effective stop and search is in countering terrorism. If less than 6% of stops are leading to arrests, how reliable are the 'suspicions' upon which the stops are based? How effective is the process at punishing terrorists or those accused of supporting terrorist offences, if they lead to so few arrests?

These few arrests presumably lead to even fewer convictions. Home Office data shows that between 11 September 2001 and 31 December 2024, 337 children were arrested for terrorism related activity. Of these, 105 were charged and 83 of those were convicted for terrorism-related activity. It is not clear

that all of these arrests were as a result of s43 stops (indeed it is likely that they were not). These figures are raised to make the point that arrests only lead to conviction in under 25% of cases.

Stop and search as a general tool has been found by academics to have at best a 'marginal' impact on general crime levels, with perhaps some impact on drug crime.²⁴ There is no evidence of its success in combating terrorism. There is, however, significant evidence of the harms caused by the process to the individuals stopped and the communities to which they belong. Flacks' 2017 study points out that stop and search of minors has not been subject to much scrutiny.²⁵ He finds that, not only is it ineffective, but it causes damage to police/community relations. Another study by Bradford found that stop and search may in fact increase offending.²⁶

Given the tiny proportion of searches that lead to conviction, it is hard to see the value of this controversial police power. This is particularly the case when dealing with children. Those children who are to be affected by counter-terrorism policing are even more vulnerable. The imposition of a security 'levy' on particular communities cannot be supported by the evidence the state has on the effectiveness of stop and search.

Diversion mechanisms - Prevent and beyond

Once a child has been brought within the purview of the criminal justice system, whether by stop and search or an arrest arising by some other means, there is the possibility that they are dealt with by a non-criminal process. This is often referred to as 'diversion', and it is a cornerstone of youth justice.²⁷

Everyone, whether adult or child, who is 'diverted' from the criminal process has a better chance of moving on from the contact with the justice system. It is also a side benefit of diversion that it is more cost effective than more punitive alternatives. However, there are some forms of offending that would never merit diversion - and there is a spectrum from there to the least serious forms of criminal activity to the very serious. Many of the types of offending that children are accused of are perfect for diversion. Children are often first time offenders committing less serious offences, making them ideal for diversion because of the characteristics of youth. For example, they are often still developing or finding themselves, and have great scope for rehabilitation as they grow in education, life experience, and cognitive capacity. Alongside the potential effectiveness of diversion for children, it is also something that is mandated by international human rights norms such as the UN Convention on the Rights of the Child.²⁸ As the Independent Reviewer of Terrorist legislation, Jonathan Hall KC, noted, the international human rights framework:

[M]eans that authorities are encouraged to consider dealing with children, where appropriate, without recourse to judicial proceedings, and keeping deprivation of liberty as a measure of last resort and for the shortest possible time. In the latest review of its Global Counter-Terrorism Strategy, the UN General Assembly reiterated its call for States to "consider alternatives to prosecution and detention."²⁹

For non-terrorist criminal activity, children can benefit from youth cautions and youth conditional cautions.³⁰ These are diversionary mechanisms where a child who accepts their criminal conduct receives a formal warning (the latter including specific conditions such as community work). However, CPS guidance is such that youth conditional cautions can

be granted to any child facing an allegation of an offence that would be classified as summary only - or 'either way' - in an adult court. That means all offending which is not so serious as to be only triable in the Crown Court. Many instances of precursor terrorist offending will be indictable only, meaning they are often referred to Crown Court (for example section 5 preparation of terrorist acts).³¹ Others - such as dissemination of terrorist publications,³² or training for terrorism -³³ can be the subject of trial before a judge without a jury, often referred to as 'summary'. In such circumstances, youth cautions and youth conditional cautions could be used as alternatives to prosecution.

Any study of children affected by the criminal justice system in the counter-terrorism context (such as this report) comes up against the recurring problem that there is very little data available to assess. In this case, it is difficult to tell how these youth cautions might be used. The relatively small number of children who are caught up in the counter-terrorism criminal process - and the need to ensure that each is treated according to their unique circumstances - would make analysis of any data (were it to exist) difficult if not impossible. Yet, it seems from this analysis of the counter-terrorist strategies that are currently in place that when a diversionary mechanism is to be used, it takes place within the 'Channel' programme.

Channel is a system of referral of someone at risk of radicalisation to state agencies that can be made by any person (including the person to be referred). It sits within the 'Prevent' programme, which is one part of the UK Government 'CONTEST' strategy to combat terrorism.³⁴ CONTEST contains a number of programmes, including Prevent and 'Pursue'.³⁵ Pursue covers the work to undermine terrorism by gathering evidence leading to arrest, conviction, and punishment.

Prevent seeks to undermine terrorism by intervening early to prevent people becoming involved in terrorism.

Prevent is by far the most controversial of the CONTEST programmes, and it is particularly contentious - and difficult to assess - when it comes to children's rights. The increase in the online nature of terrorist activity has made terrorist materials and ideas much more accessible to children (The Independent Reviewer of Terrorist Legislation has even said that '[t]he internet is the new frontier for counter-terrorism').³⁶ The lesser offences, such as dissemination of terrorist information, mean that isolated, vulnerable children (some of whom may be neurodivergent) are able to commit terrorist offences relatively easily.³⁷ Such children seem ideal candidates for diversion. However, in the counter-terrorism context, almost all diversion appears to happen through Channel - a programme that was not designed to be a youth diversion scheme and one which has not kept pace with evolving challenges, particularly in the digital space where these terrorist materials are available.

Research on Channel and Prevent consistently finds that they have outcomes which over-represent members of particular communities, notably Muslims. The reasons for this, as with over-representation of particular groups in the criminal process, are complex.³⁸ There may be overt racist policies or accumulated instances of unconscious bias. However, the evidence is clear: certain communities pay a price for Prevent that others do not.

Prevent is also leading to the unnecessary criminalisation of children by drawing them into the criminal justice system at a relatively young age. The broad definition of terrorist 'pre-criminal' or 'precursor' offences means that immature, misjudged internet searching

can amount to offending. The Prevent duty to report suspected terrorists (according to Home Office guidance)³⁹ means that places which vulnerable children might previously have felt were 'safe spaces', such as schools or local authority care arrangements, are now agents of the criminal justice system. These places may still provide the child with support, but they are also obliged to refer that child to the police and their assorted bodies within the Prevent programme. (CRIN's previous work *Preventing Safeguarding The Prevent Strategy and Children's Rights* documents the ways in which Prevent has put policing priorities above children's rights and welfare.)⁴⁰ Effectively, Prevent systems are being used to seemingly 'plug the gaps' in the justice system. But Prevent was not designed to act as a 'catch-all' for issues which may not even be criminal or illegal, nor to act as a diversionary scheme for criminal offending. Prevent is not working at what it was designed to do (which is to prevent radicalisation) and it is especially ineffective as a form of diversion (or even rehabilitation when used as part of a sentence). Amnesty International similarly found that 'Prevent appears to be used as a plaster for the problems created by introducing a wide range of precursor offences that can easily be committed online'.⁴¹

While children who are referred to Channel must consent to be part of the programme, they consent in circumstances which lack procedural safeguards and transparency. A referred child, with consent of their parent or guardian, may be put in Channel - but they have no way to know the evidence that gave rise to the referral, nor to contest its veracity or correct errors upon which their case is based.

Children in Channel are then provided support from various agencies of the state, and this is coordinated by the police and local

authorities. Such joined up thinking based on evidence sharing may well be welcomed if it is able to be harnessed in the best interests of the child; however, this is not always the case with Prevent. For example, if a child is convicted, the support from Channel is supposed to end (although this does not always happen in practice). Indeed, many people referred to Prevent have gone on to offend, occasionally in very high profile and catastrophic ways.⁴² These failings of Prevent may raise questions about its effectiveness, but they also raise questions about why someone should have to wait until they are at risk of radicalisation before they can access public support that is coordinated between different agencies of the state. Based on this analysis, the use of the Prevent programme comes too late in a child's life to have its greatest effect. Like the criminal punishment of children generally, the programme does not achieve its aims, and only serves to penalise those who have been failed by the under-resourcing of support services that has taken place in the UK for decades.

The Prevent programme has just undergone a review by David Anderson, the Interim Independent Reviewer of Prevent. His report has found Prevent to be a useful tool in deradicalisation but recommends, amongst other things, that Prevent be placed within a broader framework of violence reduction.⁴³ It further recommends that Prevent work on rights-compliant approaches to tackling online radicalisation,⁴⁴ as well as increase its transparency, which includes better public sharing of statistics about the programme.⁴⁵

Fitting Prevent into a broader eco-system of support to prevent violence would be welcomed; however, there also needs to be a suitable diversionary system in place for children who are radicalised or accused of terrorism. This needs to be child rights-compliant and accessible to children who

have admitted guilt, as well as those who have not. This adjustment will naturally need to have a strong focus on the online behaviours, which have become the 'new frontier' of counter-terrorism, in the words of Jonathan Hall KC.⁴⁶

The final recommendation in the *Anderson Review* - that transparency be increased - is a response to a problem that is seen not only by those trying to understand Prevent, but by anyone trying to understand any aspect of the counter-terrorist system. It is imperative that counter-terrorism agencies demonstrate their effectiveness and social contribution in as transparent a manner as possible.

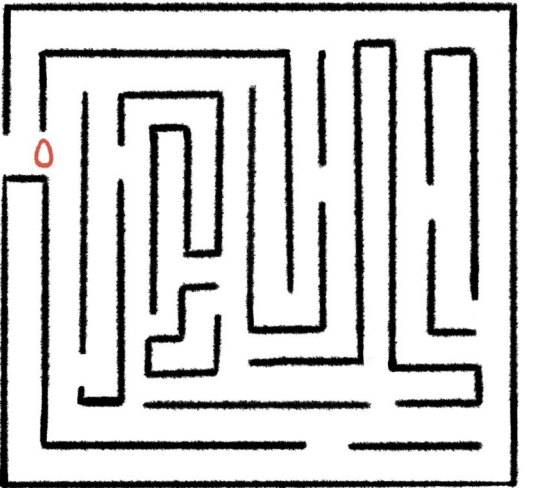
Online spaces

The impact of stop and search and programmes such as Prevent have long been sources of controversy and debate. In contrast, the online space and its role in drawing children into violence has received less attention from legislators and policy makers. This oversight has occurred despite the Director General of MI5 stating that 'it's hard to overstate the centrality of the online world in enabling today's threats'.⁴⁷

In other contexts, the safeguarding of children in digital spaces has been a source of discussion for a number of years in the UK - especially in regards to children's welfare, self-harm, and access to inappropriate content. This led to the Online Safety Act 2023, which was developed under the previous government and is principally being implemented by OFCOM.⁴⁸ While elements focus on terrorist content it is by no means the central purpose of the Act and, even in its infancy, it has received criticism from a number of children's charities, including the Molly Rose Foundation, regarding its effectiveness in safeguarding children.⁴⁹

Given warnings from the police and security services that the online space is a principal driver of terrorist threats, it seems likely that the government may be pressured into further legislation. However, further regulation risks infringing on child rights, especially if this legislation is focused on individual behaviour. At the same time, there is clearly a multitude of harmful content and bad actors online wishing to exploit children and inspire them to engage in violent atrocities. While a solution to this issue is not easy or straightforward, any steps taken by the state must be rights-compliant and be focused on safeguarding children.

The focus of any reforms must include educating children in how to engage with the online platforms safely. This includes receiving appropriate education and support to access online platforms safely, and any children exposed to violent content should be supported through a safeguarding lens in education, social, and health care settings - not in a pre-criminal policing setting. Solutions to counter-terrorism should sit within a broader safeguarding strategy within the education system, which develops children's political literacy and critical thinking skills.





Part 2

Pre-trial.

This section looks at two aspects of the pre-trial process: investigation and detention. The investigation section looks at how crimes investigated before charge are processed and the outcomes for them when children are involved, including pre-charge detention. The detention section looks at how children are treated by the criminal process when it comes to detention prior to their trial.

Investigation and detention before charge

One of the most controversial policies proposed in the months following the July 2005 London bombings was the extension of time for detention without charge for terrorist suspects. Tony Blair's Labour government wanted to increase this period to 90 days, which would have made it one of the longest in Europe. This proposal was defeated after 49 Labour MPs rebelled against their party position.⁵⁰ Notwithstanding this rebellion, the period in which a suspected terrorist could be detained without charge was raised to 28 days. This was later reduced to 14 days by the Conservative government of David Cameron in 2011. For comparison

it is useful to note that, for non-terrorist allegations, the longest someone can be detained without trial is four days.⁵¹

It is clear from the legislative history of these provisions that there is an almost insatiable appetite amongst policing and national security professionals for longer periods of detention without charge. It was upon police advice that the 90 days proposal was based.⁵² It is also important to note that the provisions allowing for much shorter periods of pre-charge detention have been in place for almost 20 years. There is no evidence that any harm was done to UK civilians or infrastructure targets because the police were unable to interview anybody for a further 62 days without charge.

Section 41 of the Terrorism Act 2000 contains arrest powers that allow officers to detain any person, including a child, who they 'reasonably suspect' to be a 'terrorist'. Unlike arrests for non-terrorist allegations, there is no need for suspicion to be connected to a specific offence and there is no need for a warrant. CRIN has established, using its Freedom of Information Act requests, that 43 children were arrested under this power between 2012–2022.⁵³

These arrests occur in the context of a steady growth in the number of terror offences that have been added to the statute book since the beginning of the Global War on Terror (GWOT) in 2001. The wide arrest powers contained in section 41, combined with the minimal oversight of the pre-charge detention length, mean that significant infringements of liberties are now used regularly. These types of infringements would not have been considered before the GWOT; they are now routinely used to detain children.

Although many draconian powers have not yet been used on children, their application continues to be an option for national security operatives. For example, the Terrorism Prevention and Investigation Measures (TPIMs) that replace the highly controversial 'control orders' can be imposed on children.⁵⁴ TPIMs are legal tools which are used to manage and restrict the activities of individuals suspected of involvement in terrorism where there is not enough evidence to prosecute them. These measures can include significant restrictions on liberty such as residence requirements, exclusion zones, electronic monitoring, and restriction of access to internet enabled devices.⁵⁵

This 'mission creep' of anti-terror legislation continued with the introduction of temporary exclusion orders in the Counter-terrorism and Security Act 2015.⁵⁶ These orders

allow the Home Secretary to exclude a suspected terrorist from the UK for up to 2 years notwithstanding their British citizenship. Such orders would normally be made through application to the High Court, although in urgent circumstances the orders can be imposed without judicial oversight.⁵⁷ This is a significant power and it is open to be used against children.

The scope of terror legislation widened even further in 2019 with the Counter-terrorism and Border Security Act. This Act increased the extraterritorial jurisdiction of the UK justice system to process overseas terrorist offending. It also amended the Terrorism Act 2000 to ensure that possessing terrorist-related materials that have been found on the internet in particular was explicitly criminalised.⁵⁸ The range of materials that a child might download which would amount to a criminal offence is now broad, vaguely defined, and also easy to access. It is not difficult to make the case that over-criminalisation of children is a real risk within the current criminal law of terrorism.

A Freedom of Information request of the Crown Prosecution Service made by CRIN in 2023 stated that no one under the age of 18 has been charged under the 2019 Act.⁵⁹ Indeed, there does not appear to have been any TPIMs or temporary exclusion orders imposed upon children since these measures were introduced. This restraint is welcome; however, although these extremely powerful measures have not yet been used on children, their very existence demonstrates the incompatibility of the current counter-terrorism legal framework with children's rights. That the state has granted itself these powers to control children as it does adults indicates that it has not considered the specific rights and needs of children, or otherwise considered the safeguarding and protective obligations the state has towards

them. The existence of these powers, and the absence of legally binding bars to their use on children, makes the clear statement that the UK reserves the right to place children under the problematic control of TPIMs. The government is asserting its right to exclude children from their own country while broadening the use of criminal laws to include internet browsing - an act which may not appear to be obviously criminal to immature, inexperienced, or otherwise vulnerable children.

While navigating this system, pre-trial period children also need to be properly legally represented. Lawyers working on the case need to have specialised training, not only in youth justice, but on counter-terrorism. This would likely involve a rethink of legal aid provision in the space of youth justice and counter-terrorism

Detention before trial

Terrorism cases may involve complex investigations and difficult arrests. However, this complexity should not be used as a justification to imprison children. Arrest generally means that a child is unable to access rehabilitation services such as those run in Prevent. In some cases, this might deprive a child who is awaiting trial access to important mental health services that Prevent might provide.⁶⁰ For example, the Independent Reviewer has documented a case where a child who worked with Prevent after arrest and was able to manage their risk to such a degree that the courts decided not to proceed with prosecution.⁶¹ This case is notable for its uniqueness; however, it does show that alternatives to prosecution can be sought for a child even after arrest. Indeed, the Reviewer went on to say that 'it is often only where CT Police have shown their hand through arrest ("gone overt") that it is possible to discuss

the child's conduct outside the counter-terrorism system, with schools, doctors or local authorities'.⁶²

Once a child has been charged, the courts must decide if the child is granted bail pending trial or detained elsewhere while they wait for their case to be completed. There is a spectrum of delay at this point in the criminal process. There might be a long wait for a trial in the Crown Court if they contest serious allegations against the child; as of the time of this report, the Law Society has highlighted a backlog of over 76,000 cases in the system.⁶³ Alternatively, it may be a shorter wait for a sentencing hearing in the Youth Court if the child pleads guilty to lesser offending. However, regardless of the delay, the courts have to decide where the young person will live in the interim. There are three available options:

- Bail
- Remand to Local Authority Accommodation
- Detention

In theory, unconditional bail is the default setting for those awaiting criminal trial. It involves the court ordering that the defendant return for their next hearing. This can be unconditional - and it is entirely up to the defendant that they return on time for their next court date. Bail may also be granted with conditions, especially in counter-terrorism cases. These can be lenient conditions, such as being required to live at a certain address. However, they can also range to include serious restrictions on the child's liberty such as electronically monitored bail, exclusion from certain locations, bars on contact with certain people, and prevention from using the internet. The court imposes these conditions to assure itself that the child will return for

the next court date, will not commit offences while on bail, and will not interfere with witnesses or obstruct the course of justice. Bail, from the perspective of the police and judiciary, is always a risk. No condition can entirely prevent future criminal activity, and defendants are regularly brought back to court for breaching bail conditions.

Where bail is refused, and the child does not meet the test for detention, they are Remanded to Local Authority Accommodation (RLAA), meaning the local authority is under a duty to provide this accommodation to the child.⁶⁴ Usually this will involve living at home, with a relative, in foster care, or in a children's home. In limited circumstances children can be placed in secure accommodation by the local authority. This is accommodation which the child cannot leave. The local authority must make an application to place the child in secure accommodation if, when staying in non-secure accommodation, they are likely to abscond or harm themselves or others.⁶⁵ Depending on the age and gender of the child, they can be placed in a secure children's home, a secure training centre, or a young offenders institution.

For a child to be placed in detention they must meet a series of 5 conditions governed by the Legal Aid Sentencing and Punishment of Offenders Act 2012:⁶⁶

- They must be over the age of 12 - (The 'Age Condition')⁶⁷
- It must appear to the court 'that it is very likely that the child will be sentenced to a custodial sentence for the offence' - (The 'Sentence Condition')⁶⁸
- The allegation must be of sufficient seriousness: the offending must attract a maximum sentence of 14 years or more for an adult, or be sexual, violent,

or terrorist in nature - (The 'Offence Condition')⁶⁹

- Detention must be considered the only way to prevent future death, violence, or imprisonable offending by the child - (The 'Necessity Condition')⁷⁰
- The child must be legally represented (or be unable to be represented) - (The 'Representation Condition')⁷¹

This framework is built from the non-terrorist youth justice system, and there are two things of particular note in relation to children accused of terrorist offending; these concerns relate to the second and third conditions of the Act (sentencing and offence).⁷² The sentencing condition requires that the court predict that it is 'very likely' that the child will be sentenced to imprisonment. However, the empirical data shows that it is not likely that a child will be so sentenced, as only about one third of children who are in detention awaiting trial end up receiving a prison sentence.⁷³

The second point relates to the inclusion of terrorism within the offence condition. This was added by the Counter-terrorism and Border Security Act 2019,⁷⁴ which significantly broadens the potential net for remanding children in detention before trial. This point encompasses even the most minor infringements of internet search crimes. In this context, it shows that even minor terrorist offending, particularly for online offences, are attracting potential treatments which have traditionally been reserved for the most serious offending. Both of these considerations must be of grave concern when monitoring children's rights.

The Independent Reviewer of Terrorist Legislation did address the use of remand under section 41 in his 2022 report.⁷⁵

He was reassured that the offence condition created a very high bar for a child to meet before they were to be detained. He further stated that it was unlikely to be met 'in many of the most common cases involving possession of terrorist information'.⁷⁶ After noting that detention should be a last resort and that secure local authority accommodation is inadequate in England & Wales, however, he goes on to state that he is satisfied that detention can be an acceptable approach to managing children awaiting trial:

I am confident, having spoken to a range of police officers involved in TACT detention of juveniles, that TACT detention can provide a calm and predictable environment in which, for example, favourite foods and DVDs are provided. Sadly, the overall standards of care can contrast favourably with home life. Assuming secure accommodation is not appropriate, leaving TACT detention for temporary accommodation with a foster family perhaps involving lengthy travel, settling in, eating, sleeping, and then more travel to court the following day may amount to an unwelcome and potentially distressing change of scene.⁷⁷

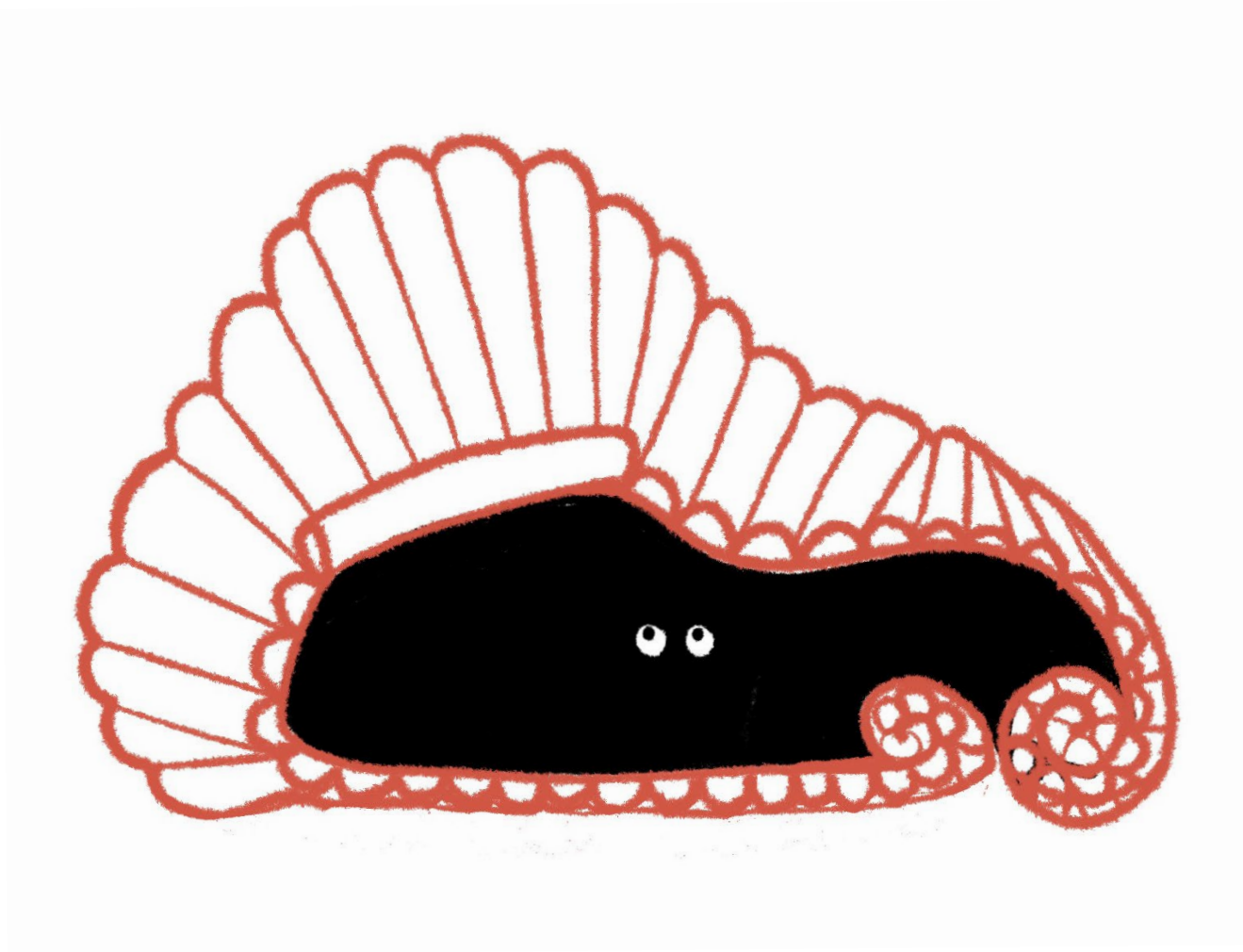
The picture painted by the reviewer is not a pretty one. It is almost always preferable, from a child welfare perspective, to have a child in local authority accommodation than in detention pursuant to terrorism legislation.

Overall, the entire pre-trial process for terrorist allegations is fraught with human rights challenges. When applied to children, these challenges stand out even more starkly. There is huge discretion granted to police officers regarding how long children can be detained for under section 41. Detention should always be a last resort - and it is concerning that there is a lack of guidance

on how to deal with the decision to detain a child in custody. On the one hand, this power gives officers a greater level of professional discretion, and may also allow them to put bespoke measures in place that may be in the child's best interests. However, the lack of guidance also reduces the transparency into how the system works, making it much more difficult to identify poor practice and hold to account those who engage in misconduct.

Detention should be the last resort, and the powers that are given to the police and the courts should reflect this. At present, these powers are too broad, lack any guidance on how the wide range of terrorist offences should be dealt with, risk unnecessarily traumatising already vulnerable children by removing them from their support networks, and prevent access to vital services during the criminal justice process. Prison is rarely an effective venue for rehabilitation or well-being, and this is even more true when it comes to children.





Part 3

Trial.

When a child pleads not guilty to an alleged offence, or otherwise denies the offending, the state must proceed to trial to prove their guilt in order to impose a criminal sanction. The trial is a hearing where the state presents its case and the child has an opportunity to have their side of the case heard. In England & Wales there are two venues in which a criminal trial can take place when the defendant is under 18: the Youth Court and the Crown Court.

As its name suggests, the Youth Court is designed to process children through the criminal justice system. It has reporting restrictions that prevent children's names from being reported. Within the confines of its in camera hearings, the Youth Court strives for a greater sense of informality. Advocates and judges use the child's first name. The rooms are usually less formal than an adult court and efforts are made to make the hearings less intimidating to the child.

The Crown Court is almost the antithesis of this environment. Often set in grand buildings, the courtroom has to accommodate a judge and jury, barristers in wigs and gowns, and a public viewing gallery. Some of the country's

Crown Courts have their hearings in cavernous rooms which children may find intimidating. Indeed, it was in order to create a sense of grandeur and an awe in the face of the law that many Crown Court buildings were designed as they are. This grandeur and conscious desire to intimidate by design is hostile to child rights. Children cannot be expected to handle and process the rituals of a Crown Court while dealing with perhaps the most stressful and consequential moment in their lives thus far. For this reason most youth offending is dealt with in the Youth Court.

Aside from these atmospheric aspects, the defining feature of a Crown Court trial is that decisions of fact are taken by a jury of 12 members of the public. These jury

members are guided by a judge, who will be a more senior member of the judiciary than a judge in the Youth Court.⁷⁸ This separation of the tribunal of fact (the jury) from the tribunal of law (the judge) allows for careful handling of evidence, while also allowing the judge to consider if evidence is properly admissible before the jury sees it. In the Youth Court a judge must consider the evidence, and if it is not admissible, they must dismiss it from their decision making.

Cases involving serious offending will always be heard in the Crown Court for both adults and children.⁷⁹ For less serious offending, cases are heard in the lower court. This is called the Magistrates Court for adults and the Youth Court for children. If the alleged offending carries a sentence less than 6 months (for adults) and 2 years (for children), it must be heard in the lower court. These decisions are fairly straightforward, however. The more challenging question of ‘mode of trial’ appears when the offending is in the middle ground.

Adults can choose to have their trial in the Crown Court in cases with a maximum sentence greater than six months. However, children do not have this choice. The decision to transfer a Youth Court case to the Crown Court is based on an intricate set of legal considerations.⁸⁰ However, it is notable that the wishes of the child (upon considering their advocate’s legal advice) is not one of those considerations as to where their trial will be set. As the Youth Court does not have sentencing powers greater than the imposition of a two year prison sentence (called a ‘detention and training order’ when applied to a child), it must transfer the case to the Crown Court if the alleged offence is likely to merit a sentence above that threshold.

When dealing with matters as serious as national security, the safety of the state,

and the prevention of atrocities, it may seem odd to express concern about ‘mode of trial’, i.e. which court a trial takes place in. In the case of serious offences such as perpetrating or attempting an attack, this concern would be valid - there would be no question that the trial should take place in the Crown Court. However, it is indicative of the expansion of terrorism laws since 2000 (as a part of the GWOT) that there are now more inchoate or preparatory offences, such as preparation for terrorism. Indeed, the law now captures much lower levels of criminality within the ambit of terrorism. This means many children who come into contact with the criminal justice system due to alleged terrorist offending do so for relatively minor matters.

With the rise of the application of preparation offences - which includes researching ideas related to terrorism - the level of offending covered by definitions of ‘terrorism’, including allegations of terrorist offending by children, is not particularly high. Indeed, many cases of children alleged to be involved in terrorism are situations where the child is alone and online, without external relationships or harmful contact with the public. Although their searches may lead to harm further down the line, it is far from the seriousness of offending envisaged in the original ‘grave offences’ exception to the principle that means most children will be dealt with in the Youth Court.

It is difficult to know whether Crown Court trials can ever be truly ‘child friendly’. Certainly, adjustments and modifications can be made to Crown Court trials to make them less intimidating. Allowing children to sit with an appropriate adult, close to their lawyer, and outside a secure dock may help - as would less formal court attire (such as removing wigs). Similarly, it may be useful to use videolinks for presenting the child’s evidence and for cross examination.

In certain cases it may also help to use an intermediary. But, at the end of the day, can any of these modifications sufficiently distill the criminal process into one that is understandable and rights-compliant for the child?⁸¹

There are significant important reasons for trial by jury, especially in cases of the most serious offending.⁸² Jury trials enhance the democratic legitimacy of the trial process itself. On a practical level, the separation of tribunals of law and fact makes for a slower and more deliberate evaluation of the evidence presented. Indeed, this pace may be an advantage for many defendants - including for children - as they may consider that they have a better chance of securing an acquittal. Yet, such a conclusion might also depend on factors such as the maturity, personality, and intellectual capacity of the child, the complexity of the legal framework used in the anticipated trial, or the strength and type of the evidence against them. This evaluation of what is best for the child is best made by the child themselves, after consultation with their legal advisors. To take away that autonomy from capable children is not in keeping with Article 12 of the CRC, which provides that a child capable of forming views on how they should be treated in a judicial context should be meaningfully consulted on that treatment.⁸³

Even in situations where jury trial might be considered an advantage to the child, that advantage is only likely to be meaningful if the child is able to understand the process and give meaningful instructions to their advocate. In many cases, the very nature of the Crown Court process may overwhelm the child’s ability to understand and engage with the substance of the case against them. In counter-terrorism cases, this is particularly important.

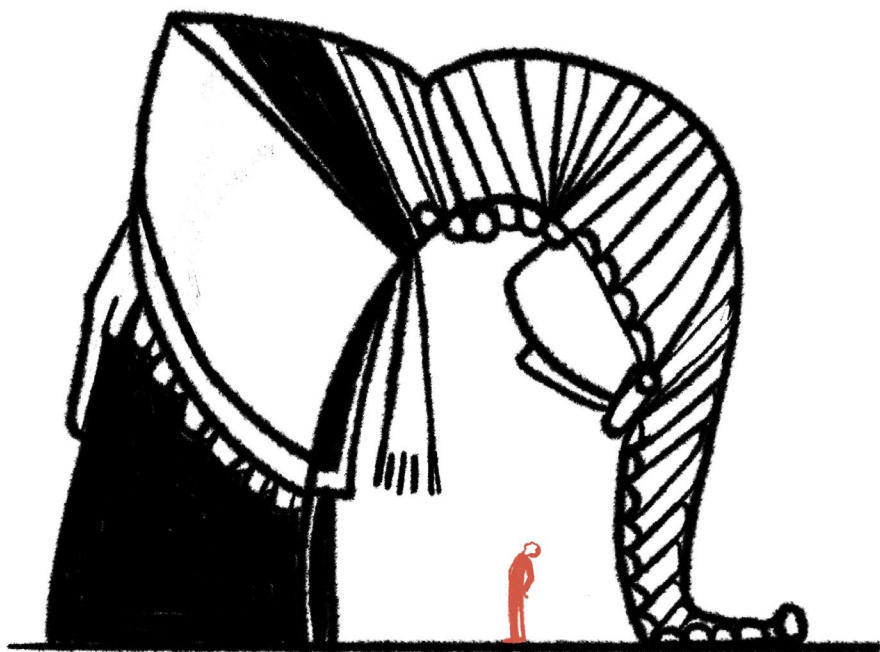
Child victims and witnesses of terrorism

While children are occasionally accused of terrorist acts, they have also been victims and witnesses of horrendous terrorist attacks. While not the focus of this report, the rights of child witnesses and victims cannot be forgotten.

Where children are witnesses to terrorist offences, it is crucial that they are provided with appropriate support and care from specialists in education, health, and social care settings. Witness rights as set out in The Witness Charter must also be met.⁸⁴

As for child victims of terrorism, it is crucial these children receive specialist support to recover. This should include specialist mental health support for as long as the child needs it. Victims rights as set out in the Victims Code must also be respected.⁸⁵

Although there is no doubt that alleged participation in atrocities and serious violence leads to the child’s case being heard in the Crown Court, as discussed, there is such a wide range of behaviours that fall under the purview of terrorism legislation that are not as serious. Many of these offences could be dealt with efficiently by a Youth Court. The current statutory framework sets out that most terrorist offending must automatically be tried in the Crown Court. When we consider



that many of the children likely to be caught up in so-called 'lone wolf' internet activities are also some of the most vulnerable children in the justice system, it is unsatisfactory that they are not being dealt with in the more child rights-compliant setting.

The Youth Court is not without its flaws.⁸⁶ Like many UK public services, it is underfunded and overloaded. However, the Court's overall aim - to try and sentence children humanely and in a setting in which they are able to participate as fully as possible - is laudable, and the Youth Court is far more child rights-compliant than the Crown Court. In circumstances where less serious offending has taken place, it seems unnecessary to be utilising the overcrowded Crown Court (with its backlog of 76,000 cases)⁸⁷ when the Youth Court is likely to be so much better suited for the child concerned.

It is CRIN's contention that children should be tried and sentenced in the Youth Court in all but the most serious cases, particularly when the case is a first offence. Failing that, the Crown Court should be as adaptable as possible to the principles of the Youth Court. To justify a Crown Court trial, there should also be a real prospect of a sentence greater than two years or some other complicating factor needs to be involved. Much alleged terrorist offending will already meet the seriousness threshold of a potential two year sentence, which means that this offending will be dealt with in the Crown Court; however, there are other innovative ways to deal with the legal complexities of terrorism legislation that have not been explored.

Even if the severity of the potential sentence is the most important consideration for deciding whether to send a child to the Crown Court, could more imaginative,

alternative approaches not be considered to ensure that cases are managed in a more child rights-compliant way? If the problem is that the case is too legally complex for a District Judge, then a Circuit Judge (who normally sits in the Crown Court) or even a High Court Judge could be deployed to the Youth Court. This is not an unusual practice, and many High Court Judges sit in Crown Courts across the country when a case is sufficiently grave or complex to merit the attention of a more senior member of the judiciary. Similarly, rather than send a child to the Crown Court for sentencing, a more child rights-compliant approach would be to send a Circuit Judge to the Youth Court for the sentencing hearing. The Circuit Judge could reconstitute the Youth Court as a Crown Court for the hearing. They could sit in a business suit rather than a wig and robes and the sentencing hearing could be conducted in a setting more conducive to the child's inclusion in the process, well-being, and understanding of the process.

Our recommendation is that alternatives, such as the possibilities listed above, should be taken as a rights-compliant approach for children facing trial for terrorist offences.



Part 4

Sentencing.

The central power of the criminal justice system is the power to impose punishment. This is supposed to take place after a guilty plea or a careful analysis of the evidence at trial leads to conviction. A further careful analysis of the offence and the offender's circumstances allows the sentencing judge to determine the appropriate penalty to be imposed. Time spent on remand for allegations that do not lead to conviction or periods spent subject to pre-criminal supervision (such as with Prevent) are therefore not criminal sentences, but administrative approaches to prevent crime.

In the context of criminal justice responses to children and counter-terrorism, CRIN's research has a clear finding: that sentencing of such children involves an over-reliance on incarceration and a lack of willingness to properly explore alternatives to imprisonment. When many of the cases involve offending which is online, isolated, and often not even preparatory in nature, this reliance on incarceration seems to be excessive and out of keeping with justifiable standards of consistency. Sentencing, and indeed all interventions in the lives of children, should instead be conducted in a way

that is compliant with international and domestic human rights standards as they apply to children.

CRIN recommends that the counter-terrorism sentencing process focus upon the best interests of the child being sentenced. This will usually mean focussing on rehabilitation and the reform of the individual child, to allow them to return to mainstream society as effectively as possible. With children, this opportunity for reform is much greater than with adults and should be seized on. Rehabilitation is better for long-term public

safety than a penalty that leaves a person traumatised by retributive sentencing, especially at a young age.

At present, this rehabilitative focus is not easy to fit into the current sentencing framework. Even if children are granted lower starting points for sentence calculation than adults, the fact remains that the sentencing exercise takes place using the same intellectual framework as adult sentence calculation (which is undeniably punitive). Sentences for adults in the context of counter-terrorism are particularly punitive, and this is reflected in outcomes for children despite the need for separate measures. A new systematic vision is needed to ensure there are distinct measures that support children to move away from terrorist, or terrorist adjacent, offending.

The Independent Reviewer states that he detects 'no rush on the part of either CT Police or the Crown Prosecution Service (Counter-Terrorism Division) to see children charged with terrorism offences'.⁸⁸ Yet, it is apparent from the limited statistics which are available that many children are getting drawn into the criminal justice system, often for online and non-violent offending. While most of the recorded outcomes do not involve prison sentences, they do involve a predominantly punitive element. It is hard to see how this punitive approach would change without a major re-think on sentencing as a whole.

Lack of transparency due to lack of publicly available data

It is difficult to fully understand how sentencing operates for children convicted of terrorism offending. This is due to a number

of factors. First, sentencing in the Youth Court takes place in private, while reporting restrictions will usually be in place for children sentenced in the Crown Court. Second, there is a lack of data on child sentences in terrorism cases. It is not clear if this data is not collected at all or if the state is unwilling to make the information public. However, CRIN has been unable to obtain meaningful data on terrorism sentencing outcomes for children.

This lack of transparent and publicly available data makes it difficult to establish patterns or trends, as well as making it impossible to evaluate how different interventions relate to sentences imposed. This difficulty is compounded by the fact that sentencing of children for terrorism-related offending is often based on the very specific facts of individual cases. This bespoke approach is to be welcomed - each child is different and should be treated as an individual - however, without verifiable data, it is harder to determine if sentences are being imposed consistently. For example, there is some evidence that sentences may be more severe for offending that could be described as 'Islamist extremism' when compared to sentences for those described as 'right wing extremists'.⁸⁹ We would need properly transparent data to be able to assess if this is a fair analysis. The lack of data is apparent throughout CRIN's work in this area. Applying a criminal sanction on a child is a serious business and, when the potential sentences are as high as they are in terrorism cases, it is incumbent on the state to be open in how it is imposing such sanctions.

Without this transparency, it is difficult to know if the sentences are being imposed consistently - and also to know if they work. When the actions of sentencing are so serious, the onus must be on the actor to justify them. It is for the state to demonstrate that these major impositions on the lives of

children are applied fairly and effectively. Without quality data, this is impossible to fully assess.

There is also a failure to evaluate whether current rehabilitative programmes are working, or at least a failure on the part of the government to make those evaluations public. While assessing the effectiveness of such programmes is difficult, if no effort is made to assess them, then there is the real risk that they are pointless. This is both a fiscal failure and an ethical failure: it is an egregious waste of money to punish children with no societal benefit in de-radicalisation or rehabilitation.

Custodial sentences seem to be used extensively and, although there is some evidence of promising practices when it comes to accounting for age and maturity in sentencing decisions, there doesn't seem to be consistent engagement with the significance of rehabilitation as a central aspect of the justice system. It is not at all clear that custody is being genuinely treated as a sentence of last resort when it comes to children.

There are better approaches that could be taken to terrorist sentencing, and some of these approaches can be seen overseas. The UN's Global Study on Children Deprived of Liberty sets out the examples of Indonesia and Tunisia.⁹⁰ In Indonesia, the minimum sentences for terrorism-related offences do not apply to children, and children so charged are to be brought before a specialised child court. The law specifically prohibits life and capital sentences for children in terrorist cases.⁹¹ In Tunisia, the approach is one which grants children 'guarded freedom' for one to three years as part of their reintegration following a terrorism charge.⁹² The Tunisian programme is supervised by social workers rather than probation officers and includes education, sports, and vocational training.⁹³

There are other ways to think about sentencing that look away from the punitive towards treating children with dignity and humanity, while helping them reintegrate into society.

Finally, it is important in the counter-terrorism context to say that, notwithstanding the severity of the potential harm caused by the worst examples of this type of offending, there are strong human rights arguments against the use of life sentences for children in all circumstances. Life sentences are philosophically difficult to justify for children and do not have widespread acceptance or use outside the common law world.⁹⁴

Children have a great capacity for reform and rehabilitation. A life sentence, even one with a relatively short minimum term, is an erosion of the hope that is necessary for children to rehabilitate. Children process time differently to adults and a life sentence can easily overwhelm them.

The internationally accepted definition of a life sentence is one with no definitive endpoint, so it includes many sentences within the complex thicket of UK sentencing law. For example, the disastrous indeterminate sentence for public protection (IPP) or detention for public protection (DPP) when imposed on a person under the age of 18 - which was introduced in 2003 - imposed sentences that operate almost exactly as life sentences for relatively minor offending, such as robbery.⁹⁵ Repealed in 2012, there remain thousands of prisoners still trying to convince the Parole Board that they should be released from sentences judges had initially calibrated to be worth a couple of years. Although this data is not clear or easy to access, there also appears to be a significant number of people serving out such indeterminate sentences for offences committed while they were under the age of 18.

This means there are three types of life sentences which may be experienced by prisoners who were children at the time of their offending. These are:

- Detention during His Majesty's pleasure - (HMP Detention)
- Detention for life - (Life)
- Detention for public protection - (DPP)

The first two sentences are functionally the same, although HMP Detention can only be imposed for murder.⁹⁶ Today the IPP sentences are no longer in place for new offenders, and children are no longer at risk of suffering the indignities of this sentence (which has been referred to by the UN Special Rapporteur on Torture as 'psychological torture').⁹⁷ However, the DPP sentence remains a cautionary tale for legislators when considering criminal justice policy. It was imposed by the Labour Party in 2003 and is indicative of how easy it is to escalate equitable punishment far beyond what is reasonable. Sentencing for breaches and associated offending of the Terrorism Act is the perfect place for sentencing inflation to occur again, especially if legislators and policymakers do not constantly resist the urge to legislate for longer sentences in this area.

There is a real risk when sentencing children for terrorism and associated offences that sentencing will drift towards the overly harsh and disproportionate. The breadth of human behaviour now covered by terrorism legislation is enormous, and the leeway given to counter-terrorism professionals is also significant. Sentencing children to detention should be an absolute last resort rather than a reflection of an overall, growing trend towards longer detention sentences.

This is particularly important for children affected by counter-terrorism strategies.

People who are labelled 'terrorist' are often other-ed in a way which goes beyond the normal stigmatisation process of the criminal justice system. Indeed, the purpose of terrorism legislation is often to simplify the process of obtaining convictions of people who are accused of committing acts which were already criminal (such as murder, assault, or criminal damage). This simplification is often deliberately at the expense of human rights, such as the right to fair trial or the right not to be arbitrarily detained. The terrorist threat justifies the creation of a person (and 'other') who are outside the human rights our society grants to those subject to its protections. Children in the criminal justice system are also subject to this kind of vilification. This can be seen in the fact that we do not process children in 'children's courts' but in 'youth' courts. The language of 'children' invokes our sympathy and a responsibility to protect. The language of 'youths' invokes a sense of fear - a categorisation and collection of threatening young people rather than a vulnerable life stage. We submit that the combination of both vilified terms - that of 'terrorist' and 'youth' - is one in which it is easy to forget the humanity of the child in front of the sentencing court. This double vilification leads to a grave risk of disproportional severity in sentencing for children.

'Best interests of the child' approach to sentencing

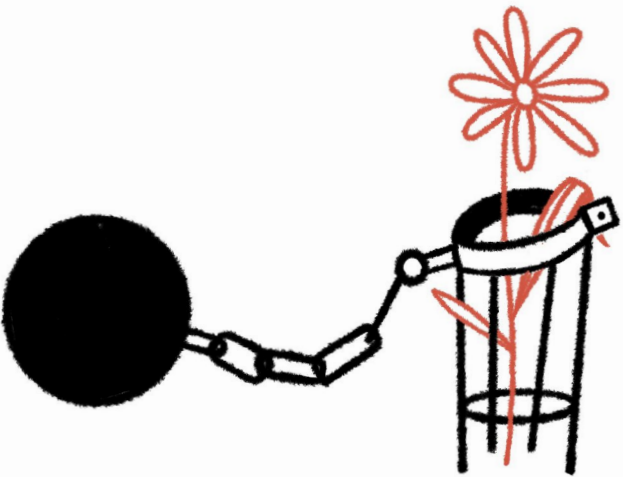
CRIN recommends that the best interests of the child become the central concern of a sentencing court in terrorism cases. If this approach were taken, the focus on retribution would give way to rehabilitation and the support necessary to develop into flourishing, contributing members of society.

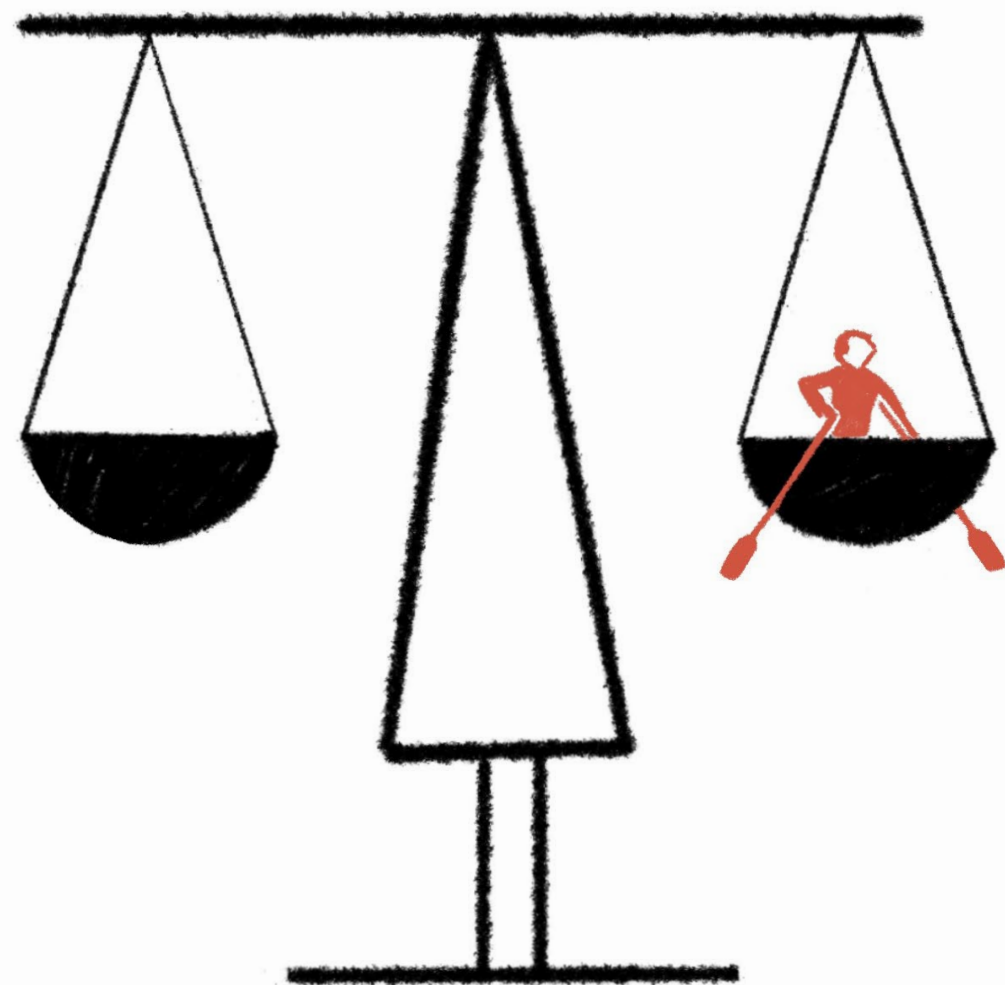
The evidence from youth justice experts is that punitive interventions are not effective at this. Children involved in terrorism are likely to have been the subject of some form of grooming (online or otherwise) and many will be suitable for diversion from radicalisation, especially if the punitive approach to sentencing is overlooked in favour of a more pragmatic approach.

For many children affected by counter-terrorism policies, there will be an underlying trauma that needs to be dealt with. This is likely to be compounded by prison sentences or other punitive approaches. A more imaginative, pragmatic approach to sentencing is likely to be far better at delivering long-term public safety benefits, as well as better for the humanity and dignity of the child.

This approach has been effective in other areas of sentencing, including the sentencing of children who have been trafficked or been used as child soldiers (or otherwise associated with armed groups).⁹⁸ There is no denying that these children, as with children accused of terrorism, have sometimes committed serious offences. However, these children can also be dealt with in a manner that prioritises humanely returning them to society, while aspiring to do so in a way that allows them to contribute to society upon their return. The current approach to sentencing, with its focus on punishment, does not do that.

It is hard not to conclude that sentencing of children convicted of terrorist offences has lost the necessary balance between punitiveness and rehabilitation. The time is right for a complete review of the sentencing regime for children in the criminal courts. The Government has recently received the report of David Gauke,⁹⁹ which it commissioned to look into the entire adult sentencing framework. It found that sweeping changes were necessary to improve the effectiveness of the criminal process and to attempt to make it financially sustainable. Yet, the sentencing of children was specifically excluded from the remit of the review. As Parliament and the Executive digests the Gauke Report, there is an urgent need to conduct a similar review of the way in which children are sentenced, including those accused of terrorist offending. The child sentencing framework is based upon its adult counterpart. If the adult system needs to be significantly altered, then it is clear that substantial change needs to be made to youth sentencing as well, bringing it up to date and ensuring best outcomes for children.





Conclusions and recommendations .

This report, if looked at through the eyes of a child, makes for a chilling read. The vast majority of children will be unaware of how easily they could be drawn into the auspices of counter-terror policing, how freely their rights could be infringed upon, and the life-long implications of potential convictions. Through pre-criminal, pre-trial, trial, and sentencing stages, the focus of state law and policy is on pursuing children and not safeguarding them. This is illustrated from a number of themes from this report.

The first overall theme from this work is that a significant number of children who come into contact with the counter-terrorism system do so because of **activities conducted online**. Many of these online behaviours may arise out of structural challenges faced by the child, such as loneliness, family instability, or neurodivergence. Such offending, as Jonathan Hall KC notes, may amount to being nothing more than a 'keyboard warrior'.¹⁰⁰ While such behaviour may lead to more serious or violent offending, or else encourage others to pursue such actions, it is not clear that the counter-terrorism community has the capacity to properly process this kind of behaviour. Indeed, Lord Andersen's report on Prevent recommends that they improve in this area.

While the first theme of this report relates to the substance of the offending that draws children into counter-terrorism jurisdiction, the second point is one of methodology.

Consistently, throughout the research for this report, we have found that there is **a lack of publicly available data** on children affected by counter-terrorism measures. Naturally, professionals who consider themselves to be dealing in national security are reticent about sharing data on their work. However, counter-terrorism operates in a legal framework which has been given significant social licence and financial resources, due to the serious harm that it is potentially protecting us from. Both social licence and financial resources are only granted if it can be shown that the beneficiary is using them reasonably. The burden is on the beneficiary to demonstrate that their work is reasonable. This can only be done if data is gathered carefully and shared consistently. Without sharing such data, as is the case with children and counter-terrorism, a presumption inevitably can develop that the system is not working, fair, rights-compliant or value for money.

That the state should deal with children in a way that is in the **best interests of the child** is a core tenet of child rights. This is set out in Article 3 of the CRC: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' This is clearly not the case for children affected by counter-terrorism measures. It is hard to make the case that the 'stop and search' of children, pre-trial detention of children, and punitive sentencing of children is in their best interests.

Terrorism **sentencing is highly punitive**. The sentencing paradigm for children is based on a watered-down version of the adult sentencing regime which is itself overtly punitive. There is no evidence that this punitive approach works for either adults or children. In the context of child sentencing for terrorism, it is not clearly demonstrated that imprisonment is a last resort. The best interests of the child would emphasise the importance of rehabilitation over punishment.

Children are uniquely vulnerable when caught up in terrorism-related justice. These unique vulnerabilities are often forgotten in this context. CRIN has found **no evidence that improving compliance with children's rights would reduce security**.

As a nation we have a choice. Do we continue to treat children with suspicion, pushing them further into the auspices of the criminal justice system? Or do we offer them safeguarding, support, and rehabilitation? The UK's current trajectory leans towards the former, but it's not too late to change directions. Rather than punishing children, we can choose to protect them.

Recommendations

Cross cutting recommendations:

1. All decisions relating to children in counter-terrorism should be made in the best interests of the child. This is a minimum requirement of the UN Convention on the Rights of the Child.
2. Child specific statistics on all steps of the criminal process should be produced quarterly and be made publicly available. These statistics should be used consistently by the police, Prevent, the Prison and Probation Service, the Independent Reviewer of Terrorist Legislation, the Prevent Commissioner, and other counter-terrorism professionals.

Recommendations relating to pre-criminal policies and laws:

3. All children should receive appropriate education and support to access online platforms safely. Those children exposed to violent content should be supported through a safeguarding lens in education, social, and health care settings.
4. Diversion programs, such as Prevent, should not be used in lieu of traditional social services, mental health support, or educational work. This is consistent with the recommendation of Lord Anderson that Prevent be part of a wider safeguarding framework that is able to assist children to understand and avoid problematic behaviours.¹⁰¹ CRIN is strongly of the view that the Home Office should not manage such a safeguarding framework.

5. Stop and search of children under terrorism laws should be removed.

Recommendations relating to pre-trial arrest and detention:

6. New guidance and training should be given to police on child rights-compliant detention of children.
7. Funding should be provided for specialist youth criminal defence lawyers for handling terrorism cases given the unique legal powers attached to these cases.
8. Access to support and potential rehabilitation or diversion from behaviours that risk radicalisation should not be tied to admission of guilt. It should also be possible to undertake this work while the child is facing prosecution.
9. Detention awaiting trial for children should only be used as a last resort. It is almost always inconsistent with the best interests of the child and contrary to effective rehabilitation; in practice, pre-trial detention should be a genuinely exceptional occurrence, if it happens at all.

Recommendations relating to the trial of children under terrorism laws:

10. The decision to go to Crown Court for all but the most serious crimes should only be made with the consent of a child who is legally represented and capable of making such a decision.
11. Court procedures should be kept in the nearest suitable Youth Court. They should not be transferred to London.

12. Crown Court sentencing and administrative hearings should be heard in a Youth Court environment, with the Circuit or High Court judge attending in attire suited to such a setting. Children should rarely be sent to the Crown Court for online offending; such an occurrence should be genuinely exceptional.

Sentencing should focus on the best interest of the child. CRIN's recommendations on sentencing are:

13. Detention should genuinely be treated as a last resort, or even eliminated, for children accused of internet offending.
14. Life sentences are never appropriate for children, even in cases of serious terrorist offending.
15. An independent review of Youth Sentencing should be carried out. This should be similar to the work done in David Gauke's Independent Sentencing Review. Routes to rehabilitation should be given priority above custodial sentences when the sentencing of children for terror offences is considered.

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