Journal Article

Wake up Call: Achieving Compliance with Youth Justice Orders

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Abstract

Community disposals, which are privileged over custody as a response to young offenders, incorporate both punitive and rehabilitative elements in order to punish, deter and rehabilitate. Failure to comply with them has serious implications for young people, in both the short and longer term. In the literature a clear distinction is made between short term formal compliance with requirements of community orders, and more substantive (less measurable) engagement with the spirit of the endeavour to help young people turn away from crime. The article draws on a small qualitative study of young people in receipt of community orders and YOT workers, to explore aspects of supervision of young people in receipt of community disposals. In particular it focuses on ways in which YOT workers support young people to achieve compliance, how this support is received by young people and the implications for their longer term outcomes. The article suggests that while driven by an imperative to avoid breach among young people, levels and type of support provided may not necessarily enable young people to realize the longer term objective of desistance from crime.

Introduction

A succession of UK Criminal Justice legislation, from the early 1990s onwards, has privileged the use of community (rather than custody) disposals for young people who offend (see Bottoms, 2001). While aiming to prevent re-offending through interventionist welfare approaches, community orders maintain an emphasis on punishment which serves to signal disapproval and to act as a deterrent (Bottoms, 2001; Moore, 2000; Muncie, 1999). The understanding of community orders as a form of punishment in the community, demanding of rigorous enforcement, arguably helps to improve confidence in non-custodial disposals among those less convinced of their efficacy (Hedderman and Hough, 2004). Thus, community disposals are generally presented as both punishment and rehabilitation as in, for example, the 1992 national standards for the supervision of offenders (Cadman, 2005; Home Office, 1992).

Community based orders rely to a great extent upon the co-operation and compliance of young people. Failure to comply, irrespective of the seriousness of the initial offences, may result in custodial sentences. Non-compliance has additional ramifications for young people, in that it arguably has implications for the development of skills necessary for them to turn away from crime in the future. In addition, non-compliance has the potential to undermine the legitimacy of such sentences as a deterrent to offending in the eyes of policy makers as well as young people themselves. It is a matter of some concern, therefore, that breach offences may account for around one-fifth of all primary offences for which children are sentenced to custody (Jacobson et al., 2010). These include breach of licence conditions, community sentences, anti-social behaviour orders, conditional discharges, and failure to surrender to bail. With the exception of the Intensive Supervision and Surveillance element of a Youth Rehabilitation Order, statistics do not differentiate between the types of statutory orders breached (Hart, 2010). However, it is known that, while more recently the use of custody has fallen among young people, breach levels have not fallen to match this reduction and, for example, during 2009/10 an average of 9 per cent of children in custody were there because they had breached a statutory order (Hart, 2011). This is particularly worrisome as those who have the most difficulty in complying with orders are not necessarily the most serious offenders.

A recognized risk factor for persistent offending among young people is social disadvantage. As a consequence of their backgrounds it is argued that children and young people may have difficulty in understanding what orders require of them, be living very chaotic lives, and/or have low self-efficacy and external locus of control (Maruna, 2001). All of these factors may affect young people's compliance with community orders.

A key aspect of compliance is motivation. That is, individuals comply for different reasons. Bottoms (2001), describes four types of compliancy. These are: instrumental/prudential (which is driven by self-interested calculation); normative (motivated by moral obligation); habit/routine (by tradition); and constraint (a function of coercion). Compliancy by constraint implies that the individual is cowered into submission by coercion, even where the penalties are not perceived as a deterrent. While, however, it has been argued that deterrence has subjective importance for young people (Von Hirsch et al., 1999), harsher penalties may lead to resentment and increase non-compliance (Bottoms, 2001). Community penalties require young people to do things (such as keeping appointments with YOT workers and participating in activities) that they may otherwise not have done and they may not respond well to threats (Canton, 2008). Conversely, interpersonal contact and relationships between service users and practitioners are deemed to be very important in encouraging compliance and engagement (Farrell, 2002a; Hughes, 2011; McNeill et al., 2005; Maruna, 2001). McNeill (2005) concludes that practitioners might usefully reflect on the importance of verbal messages which are relayed to those on community orders, and the way in which these are delivered. Here, it has been noted that deterrence is most effective where individuals have strong stakes in conformity as a function of their ties to individuals and communities (Sherman, 1992).

Bottoms (2001) suggested that community penalties rely overly on (short term) compliance with their specific legal requirements. Indeed, McNeill and Batchelor (2004: 65) have argued that interventions with young people 'must be grounded, strategically and practically, in an understanding of the wider social context both of offending and of desistance'. However, it is possible for offenders to technically comply with orders, without actually engaging with them in a meaningful way. Here, Robinson and McNeill (2008) distinguish between formal (meeting minimum requirements) and substantive compliance which involves active engagement and co-operation. The issue becomes how to move young offenders from formal to substantive compliance. While young people may initially comply for instrumental reasons (such as threat of breach), this is not likely to yield substantive compliance. This is what McBarnett (2003) describes as compliance with the letter rather than the spirit. Conversely, other young non-compliant offenders may possess

the requisite demeanour for substantive engagement while lacking the means to be compliant (Braithwaite, 2003).

Farrell (2002b) highlights problems with policies which privilege formal compliance. First they may conceal defiant demeanour. Second they are problematic for those who want to comply but encounter difficulties in doing so. Third they may reinforce general understanding of orders as a superficial exercise (mainly involving turning up for meetings and signing in) and fourth they may undermine the legitimacy of the disposal for offenders. The desired movement from formal to substantive (and longer term) compliance is argued to require supervisory skills which enable the internalization of controls underpinning commitment, such as beliefs, attachments and routines (Bottoms, 2001). As Tyler (2006) notes, the effectiveness of such internalized controls will be a function of their self-perpetuation.

Approaches to enforcement inform the supervisory style used by YOT workers and thus impact upon those supervised (Bateman, 2011). Levels of breach differ between different areas, highlighting how the spirit of enforcement, and localized practice, is very important (Bateman, 2011). While the primary objective of supervision may be to assist young people in developing responsible and law abiding lives (Home Office, 1992), the imperative to avoid breach affects the culture of those who supervise them. YOT managers may be concerned about reputational risks to their service where children return to court for further offences. They may also be concerned about how breach may be interpreted, by the Inspectorate, as a reflection of the service, and this, in turn, may undermine overall confidence in community sentences (Hart, 2011).

Because threat of breach may raise both practical and emotional difficulties for young people, achieving compliance means judicious use of encouragement as well as threat (Hearnden and Millie, 2004). It has been argued that fairness, patience, attention, explanation and persuasive force are more effective than threat and that appropriate responses to young people should be contextually appropriate and not reducible to rules or susceptible to audit (Bottoms, 2001). The assumption that targets, which shape organizational practises, improve service provision has been contested (Carlen, 2005; Power, 1977). As currently constituted, targets only measure management and enforcement dimensions of practice (Davies and Gregory, 2010). Arguably, the two types of compliance (instrumental and engagement, or formal and substantive) are sensitive to different types of measurement. Whilst the first can be measured in quantitative terms, the latter cannot. Audits measure quantity and time, and effort is often directed towards numerical outcomes rather than quality of assessments (Merrington and Stanley, 2007). Further, as noted by Freeley and Simon (1992), preoccupation with organizational targets may obscure wider objectives. While numerical evidence is used to evidence what works (Carlen, 2008), it has

been argued that practitioner focus on meeting targets may comprise their success in realising meaningful outcomes (Farrow, 2004). The literature clearly suggests, in terms of what works, that a combination of clear rules and emotional warmth/support produces best outcomes (Sinclair, 1971).

The article explores issues of compliance with Referral Orders and Youth Rehabilitation Orders among young offenders, and the implication of styles of supervisory support, for the achievement of short and long term outcomes.

Methods

The article draws on a qualitative study of those in receipt of, and those supervising, Referral Orders (RO) and Youth Rehabilitation Orders (YRO), in a North Wales Youth Offending Team, to examine implications of supervisory styles. The study comprised a focus group with service providers ($n = 5$), (including Community or Detention and Training Order Co-ordinators and panel members) and semi-structured interviews with a purposive sample ($n = 21$) of young people (aged between 12 and 17) in receipt of community orders. In order to preserve anonymity, and as a condition of access we are limited to the level of information we can provide about participants. However we are permitted to disclose that nine of the young people were in receipt of Referral Orders and 12 were in receipt of Youth Rehabilitation Orders. Of the 21 young people only one was female, and she was completing a Referral Oder. Young people were contacted by the members of the YOT team and invited to participate. Participation was entirely voluntary. A £10 voucher was given to young people in recognition of their participation, although it should be noted that these were given at the end of the interview and participants were not aware initially that they would receive anything for taking part. Interviews were held in the YOT Office and were carried out in two tranches. At the first tranche 31 young people were invited to take part, 15 of whom participated. A second tranche was arranged to which 12 of the non-participants were re-invited, of whom six agreed to be interviewed. A focus group ($n = 5$) was held with members of the YOT. Focus group discussion focused upon participant perceptions about compliance levels, perceived barriers to and facilitators of compliance, and supervisory support for young people. Young people's interviews focused upon their understanding of orders, the reasons for compliance or non-compliance, barriers and facilitators to compliancy and supervisory styles of YOT staff. The focus group and young people's interviews were audio recorded with participant consent and fully transcribed. The study was approved by Glyndwr Research Ethics Committee. Following transcription of audio recordings, and familiarization with the data, a thematic analysis, informed by grounded theory and constant comparison techniques, was undertaken. Data were stored and managed using NVivo (qualitative data

analysis software package). In the interests of anonymity, YOT workers and young people have been allocated identifiers (S1–S5) and (YP1–YP21) respectively.

Findings

Given issues surrounding compliance raised in the literature, we were interested in finding out young people's reasons for attendance or non-attendance at YOT appointments linked to community orders. Reasons for non-attendance among young people, provided by YOT workers, was that either young people 'do not care' (S4), and/or because they were not 'on top of everything else in their lives' (S5). While some YOT workers suggested that 'fear of consequences in a lot of our young people is not an issue' (S1), for the most part, the anticipated consequences of non-attendance, were described by many young people as the main reason why they attended appointments. Most of the young people on ROs appeared aware of the implications of non-attendance:

> You have like three ticks and I think it's like you get your first warning if you miss one and then there's a written warning or something and then if you've missed a third time you get breached and you can go back to court I think and they'll give you a certain amount of months extension or something like that. (YP9)

For young people on YROs the consequences of breaching an order were perceived as more serious, 'If I don't turn up, I'll go straight to jail so it keeps me away from going to jail' (YP15). It was clear from some young people's accounts that past experience of breaching was a deterrent to future non-compliance, especially when more serious consequences were anticipated. For example, when asked why he was now keeping appointments, following a court attendance because of non-compliance, a young YRO recipient said 'because if I go to court again, that's when I get sent down, I'm on my last chance'' (YP13). Similarly YP16 said:

> My attendance wasn't good before, but it is now. I got breached before and went back to court and now I attend….They have given me one last chance, I don't want to go back to court. I just comply anytime as I don't want to go back to court. (YP16)

As the above accounts suggest, young people indicated that patterns of compliance (when they attended appointments and when they missed them), were often strategic. YOT workers also talked about young people's strategies which informed attendance at appointments. While it was acknowledged that in some cases this involved young people doing the minimum (in terms of attendance), to realize the maximum gain (avoidance of penalties), in other cases young people's strategies were to achieve quite different ends.

The most extreme example of this was where a young person was described as acting in such a way to secure custody:

> One young person actively went out of her way to be sent to custody as she saw it as a way of coming off her drug habit. It will be and should be good for her, but in terms of our custody statistics it's not good. (S1)

However, from young people's accounts strategies mainly involved making a calculated judgement about which meetings it was absolutely necessary to attend, and ones which were not so necessary (and which carried few or no penalties). Here it is noteworthy that YOT workers argued that young people's deployment of this type of strategy was in part a function of inconsistent sentencing which sent the 'wrong message' to young people, and undermined the seriousness of the youth justice process:

> The inconsistency of magistrates also does not help the situation, some magistrates will be harsher and others more lenient, it gives different messages to the young people. Some young people think they won't get sent to custody and therefore try to push the boundaries. (S5)

From young people's accounts, ROs appeared to be, for the most part, treated less seriously than YROs, where breaching was associated with custody. Hence, the risk of penalties for missing RO appointments was generally perceived by young people as either low or relatively inconsequential. Hence one young person described the referral order as 'more of a warning really' (YP2), that 'brushes off (because) it's not proper like' (YP19). Because of this the imperative to comply appeared undermined:

> Because it was like near the end I thought if I just missed a couple then got to the last one, then I'd just start going then because there's not a lot of time left anyway.... I think I've got two months left.... (YOT worker) says [I need to come] every two weeks because I'm near the end. (YP12)

As the implications of non-compliance loomed larger and more serious young people appeared more inclined to keep scheduled appointments. One young person, when asked whether he had worried about going to prison because of non-compliance, said 'yeah, but it wasn't enough because I knew I had a second chance' (YP13). When asked why he was now complying he said 'that's it now, I've got to go' (YP13).

Irrespective of the role which penalties may play in compliance (at least in the short term) it was clear that, as Maruna (2001) and others have suggested some young people had problems complying because of their personal circumstances. For these young people,

non-compliance might be a function of other greater priorities, or difficulties, in their lives rather than intentionality. In some cases, life seemed overwhelming and/or chaotic and this made adherence to any routine or schedule, problematic. Some said they had missed appointments because they, 'forgot or thought it was on a different day or something' (YP12), mistook the time, or incurred unexpected circumstances such as, 'there's been something wrong with the car' (YP10). When asked whether lack of money for transport had prevented him from attending appointments, one young man said:

> …loads of times (and) because I've got no credit or nothing, I can't phone up. I have to wait and wait and wait for them to phone me but if they don't phone me, that means I'm breaching my order. (YP15)

YOT workers acknowledged the important role of families in supporting young people to comply with orders, noting how in cases where parents were on board, 'it is highly likely that they will succeed, but a lot of the time they (parents)are not' (S2). Here, YOT workers made reference to 'chaotic parents who collude with young people' (S4), because of their own dysfunctional behaviours associated with 'mental health problems and/or substance abuse' (S2). YOT workers stressed the importance of working with families to turn circumstances around for young people:

> You have to work with each family differently, what will motivate them as a family. Sometimes explaining to the family that their help could reduce the barriers with the young people. (S1)

From respondent accounts it appeared that where young people lack back-up support from either (as in the case of looked after children) care staff, 'who pick them up and transport them to us' (S1), or families where for example 'granddad reminds me of the meetings, he has the timetable and the messages and tells me and brings me down here' (YP21) YOT workers took this responsibility on themselves. Indeed YOT staff were, for the most part described, by young people as very sympathetic to the problems which they encountered in keeping appointments. Many young people said that their YOT workers sent them texts , 'like 20 minutes before my appointment I'll have a message just saying hi' (YP9), telephoned and/or wrote to them, 'three days before the meeting and then he rings me the day before to make sure I got the letter and to remind me' (YP17). In addition to reminders about meetings, young people said they might be collected by YOT workers and transported to the office, 'he rung me I think it was twenty to nine, and he turned up at mine

at quarter past nine' (YP8), or visited at home 'he did come to see me twice [at home] when we had all different appointments with doctors and things' (YP14). Support from workers was summed up by one young man as, 'they are doing everything they can to help me and all of that, they can't do anymore' (YP4). In this respect, staff accounts concurred with the description of them provided by the young people:

> When a young person comes in we could look at Bluetooth automatically updating his phone with reminders. We are using technology to our advantage and to engage with the young people. In order to try and engage the young people we are texting, phoning home visits. We are being flexible (S3)

Examples where flexibility is exercised included the case of a young man, whose life was perceived as 'so chaotic' (S2) that, 'If I give him an appointment in a day and he turns up at any time that day it is good' (S2), To reiterate, the role YOT workers played in assisting them to meet objectives appeared to be appreciated by some young people who struggled to attend appointments. Moreover, where workers were perceived as 'on side', flexible and supportive, young people were more likely to express a sense of obligation to not let them down, 'If I never turned up and I'd be letting [my YOT worker] down because he would be waiting for me' (YP4). In other cases, however, relationships with workers did not appear to yield the same sentiments. Where, for example, YOT workers were not perceived as complying with their wants, some young people might be resistant or even obstructive:

> I guarantee that every teenager that comes here will think the same, and if their care worker is strict with them, they'll be a pain in the arse for them.... (YP8)

Hence, there were examples in the data of young people who appeared to appreciate workers' assistance only when it fitted with their own agendas. In the following narrative, a young man indicates how despite his YOT worker's efforts to assist him to attend appointments, this support is only accepted where it suits. Hence, while he accepts assistance to attend routine appointments, he does not comply with the order where scheduled meetings are anticipated as longer and more onerous:

> Who wants to come and sit here for three hours? … They're just meetings and that saying the same things every time you turn up…it tells you on your timetable but normally every time I see meetings like that, I just phone in and say I can't make it but they come and pick me up (so) if I don't like it I'll just phone up and say I'm ill. (YP15)

In some cases YOT worker assistance with attendance appeared to be a taken for granted convenience. Where, for example, the consequence of missing appointments was not perceived as serious, reasons provided by young people for non-compliance were thin. For example one young person said, 'sometimes I'll just be tired, sometimes it might be weather…but sometimes you're thinking 'Ah I just really can't be bothered' (YP11); one said 'I couldn't be bothered so I stayed in bed' (YP1); and another said he was disinclined to attend because his appointments were, 'always like 10 or 11 o'clock and it's a right blag because if I want to walk here I have to get up at like nine' (YP9). In some instances, YOT workers' imperative to assist clients in avoiding breach, appeared to render them highly compliant to young people's preferences:

> We have spoken to young people about why they are not coming to us. Some say that they can't get out of bed in the morning and therefore why are we asking for them to come in the morning? Why don't we review this, in order to increase compliance? We can arrange meetings for the afternoons in order to meet the individual needs of the young people (S3).

When describing their part in assisting young people to comply with community orders, YOT workers acknowledged themselves as both powerful and responsible in the role, noting how, 'at the end of the day you are in a powerful position (because) you can breach those young people' (S1). While driven by an imperative to avoid the repercussions of breach on young people's lives, YOT workers were simultaneously aware of the risk of young people developing dependency, describing how their supportive actions may lead to 'some young people (who) can become quite dependant on you' (S4) . Here a tension was acknowledged between the supportive actions of YOT workers and the implications of these for long term outcomes for the young people whom they supervise

Discussion

The article draws on a small qualitative study of young people and YOT workers attached to a YOT in Wales. Given that compliance (with community disposals) was an issue among the study population, it is not surprising that recruitment of young people to the study was problematic. It is arguable that the young people least likely to attend appointments were equally least likely to attend a research interview. Invitations to take part in the study were issued by YOT workers, who provided young people with information sheets about the study and who stressed that participation was voluntary (with no repercussions for non-attendance). Young people were invited to attend an interview with a researcher, at the YOT office, at a set time and date. Those who did not turn up following the first invitation were

invited a second time, and half of these young people attended the interview. Because, arguably, the sample was biased towards young people more likely to comply, the generalizability of the findings are limited. It is also acknowledged that accounts fulfil specific functions for respondents, often presenting them in a positive light (Blaxter, 1990). Given that the respondents were all young offenders and that they were recruited to the study by the YOT team, which is where the interviews were conducted, it is highly possible that some respondent accounts attempted a measure of identity repair. Notwithstanding these limitations, the data set was very interesting and appeared to speak directly to issues of current interest around supervision and compliancy of young people.

The study findings resonate with the literature in that patterns of compliance among young people on community orders, in many cases, appeared instrumental (Robinson and McNeill, 2008). That is, compliance behaviour was strategically informed to achieve the most expedient outcome, in some cases at least cost. In deploying these strategies young people seemed largely cognisant of the consequences, namely the risks of sanctions, attendant on non-compliance. Arguably they learnt about these from other young people, YOT staff and/or experientially from previous experiences of the youth justice process.

YOT workers readily acknowledged the problems which some young people experience with compliancy. As noted by Maruna (2001) these were largely understood by YOT workers as a function of social deprivation, other personal circumstances and lack of family support, rather than the fault of the young person. In such cases staff understood it as their role to step up to the mark and supply support absent from families to overcome practical difficulties regarding young people's attendance at appointments. High levels of assistance provided by YOT staff reflect their understanding that breaching orders (through failure to attend appointments) can have severe repercussions for young people. In the short term breaching an order may lead to custodial sentencing, and in the longer term it may have implications for young people's ability to turn away from crime

The data suggest that in some cases staff support was highly valued by young people, who grew to like their YOT workers, whom they saw as on their side, and to whom they developed a sense of obligation. This supports Sherman's (1992) observation that individual ties to individuals or communities often underpin conformity. Arguably, these bonds, which fostered unwillingness, among some young people, to let workers down by missing appointments may assist in the facilitation of real engagement rather than simply formal compliance.

It is with formal compliance that the paper takes real issue. It was clear from many accounts that while staff assistance is undoubtedly seen as important, and even necessary, for avoiding breach (and the longer term implications of this for young people's lives), it could

be argued that it was the staff themselves who took on the responsibility of the order rather than the young people who were subject to the order.

The distinction, highlighted by Robinson and McNeill (2008), between formal compliance and substantive engagement is critical here. Where YOT staff support yields only formal compliance and does not foster more substantive engagement the effectiveness of the intervention is limited. Moreover, even in cases where young people are grateful for the support, develop good relationships with their YOT workers and a sense of obligation towards them ensues, there is the issue of dependency to consider. The type and level of support (constant reminders, transporting young people to appointments and holding meetings at young people's homes) does little, we suggest, to foster enablement among this group. Conversely, among some young people it arguably fosters dependency.

The literature notes how localized YOT cultures, as a function in some measure of targets and audit, inform the supervisory behaviours adopted by YOT workers in the interest of avoiding breach among the young people on community orders (Bateman, 2011; Hart, 2011). YOT workers' accounts in our study suggested that their desire to avoid breach was driven less by organizational goals and audit than by a very real concern to assist young offenders to turn around their lives. However the focus of avoiding breach at all costs does not bode well for the enablement of young people which is crucial to the longer term goals of substantive engagement. It is substantive engagement, rather than formal compliance which arguably facilitates development of those skills and demeanours which help young people. In other words, short-term consequence-driven compliance does not speak to the engagement arguably necessary for successful longer term outcomes for these young people.

This begs the question, therefore, of whether we should be so concerned with (a) measuring compliance and (b) using this measurement against young people (and indeed YOT staff) who fail to come up to standard. If our concern is with meaningful, rather than 'tick box' compliance then this has implications for the way in which YOT staff work with young people. That is, for example, efforts currently made to remove practical obstacles which potentially deter young people from complying may be more usefully diverted towards persuading young people of the value of compliance. Equally, indicators of YOT performance (such as young people's compliance with orders), might be usefully replaced by alternative indicators which capture better the spirit of meaningful engagement. The purpose of this article, however, is not to speculate what these might be but to continue the debate on issues of compliance and highlight some implications for practice and policy.

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