

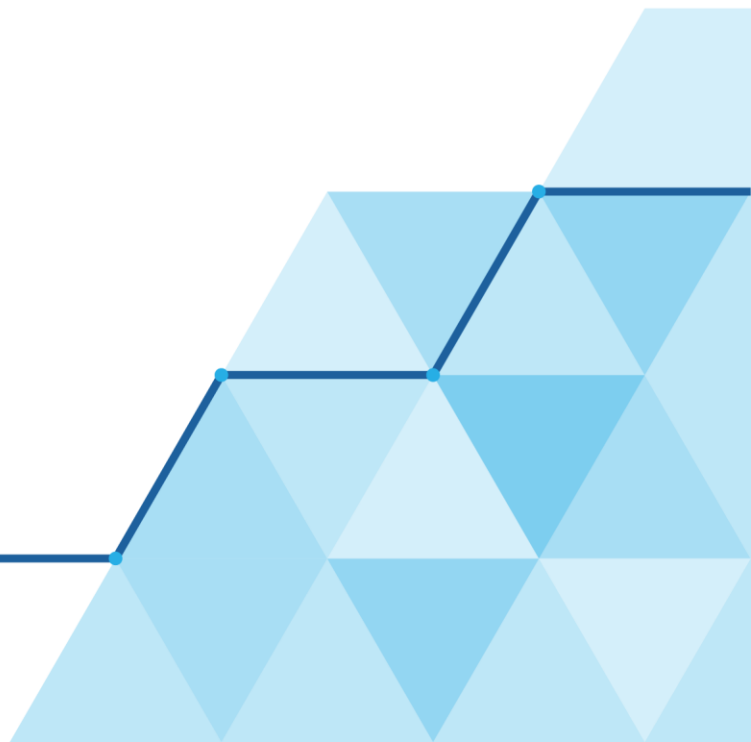


Ministry
of Justice

Consultation on youth remand funding arrangements

This consultation begins on 16 August 2023.

This consultation ends on 08 November 2023.





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of Justice

Consultation on youth remand funding arrangements

A consultation produced by the Ministry of Justice. It is also available at <https://consult.justice.gov.uk/>

About this consultation

To:	Local Authorities Youth Offending Teams Other stakeholders, such as: <ul style="list-style-type: none">• people involved with children’s hearings at courts;• people providing relevant services to looked-after children; and• people with an interest in youth justice.
Duration:	From 16/08/23 to 08/11/23
Enquiries (including requests for the paper in an alternative format) to:	Youth Remand Policy Team Ministry of Justice 102 Petty France London SW1H 9AJ Email: remandreview@justice.gov.uk If your enquiry is related to the e-consultation website, please contact web@justice.gov.uk .
How to respond:	Please submit your response via the Consult Justice link https://consult.justice.gov.uk/youth-justice-policy/youth-remand-funding-consultation
Additional ways to feed in your views:	Stakeholder meetings will also take place in September and October. For further information please use the “Enquiries” contact details above.
Response paper:	A response to this consultation exercise is due to be published in January 2023 at: https://consult.justice.gov.uk/

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Annex A: Youth Custodial Remand Analysis

Executive summary

This consultation asks for views on:

- the Ministry of Justice's youth remand funding arrangements for local authorities in England and Wales; and
- high-level options for the future of the funding, i.e., how remand funding can support the youth justice system's aim of preventing offending and reoffending by children.

The **background** sets out the rationale for reviewing the youth remand funding arrangements, following the commitment in the Ministry of Justice's Remand Review (2022), and given that it is 10 years since the introduction of the current arrangements.

The **current context** outlines how the youth remand cohort has changed since the funding was established in 2013, and the steps that we have taken following the Remand Review.

The **detail on the current remand funding** sets out how the funding (set up in 2013 following the Legal Aid, Sentencing and Punishment of Offenders Act 2012) is calculated and allocated, and how local authorities are charged for remands to custody.

The **assessment of the remand funding** concludes that the funding arrangements have not, as designed, directly incentivised investment in alternatives to custody which can be effective in rehabilitation and the prevention of crime.

The **options for reforming the remand funding** outlines high-level reform options which might support our aims of enabling community alternatives to custody and reducing offending. The options we are seeking views on fall into four broad themes:

- Make no change;
- Change how we allocate the funding (including a regional approach);
- End the funding model and set up a central funding pot into which areas can bid for remand-related initiatives; or
- End the funding to local authorities and put funding to a different use to improve youth justice-related outcomes.

These options are put forward in the policy context wherein local authorities will continue to cover the costs of custodial remands and transport to the secure estate, and remanded children will retain looked-after status.

We will not reform the funding model in this financial year and do not plan to make changes prior to the 2025/26 financial year. We will pilot a regional approach to pooled youth remand funding over two years as part of this work.

Introduction

This paper sets out for consultation the current system of youth remand funding and asks for views about how funding can be used to meet the youth justice system's aim of preventing offending and reoffending by children and young people. The consultation is aimed at Local Authorities, Youth Offending Teams (YOTs) and others working with children in the youth justice system in England and Wales.

Local authority funding sits within the devolved competence of the Welsh Government, as do other relevant services such as health, education, accommodation, housing and children's social care. A Welsh language version of the consultation paper is available.

Copies of the consultation paper are being sent to:

- Association of Directors of Children's Services
- Association of Youth Offending Team Managers
- Local Government Association
- Welsh Local Government Association
- Youth Offending Team Managers Cymru
- Youth Justice Board for England and Wales

However, this list is not meant to be exhaustive or exclusive, and we welcome responses from anyone with an interest in, or views on, the subject covered by this paper.

This consultation is concerned with the remand funding arrangements and how this relates to alternatives to custodial remand. However, respondents may want to comment on related youth justice issues where relevant – particularly other accommodation placements for children in contact with the justice system. For example, accommodation for a child when refused bail by the police post-charge, for a child serving a community sentence, or for a child resettling into the community after time spent in custody, whether there on remand or serving a custodial sentence. Many children journey through these stages while being supported by the YOT and local authority.

Background

The government is committed to a youth justice system that delivers justice for victims and communities while recognising the unique needs of children. Remand decision-making is a complex process, and is subject to a stringent legislative framework. Decisions must strike a balance between the welfare of the child and protecting the public, which is why the option to remand to custody must be open to the courts but should always be a last resort.

Children can be remanded in the community into the care of a designated local authority, i.e., a remand to local authority accommodation (RLAA), or remanded into custody in Young Offender Institutions (YOIs), a Secure Training Centre (STC), or Secure Children's Homes (SCHs). From 2024 children may also be remanded to the first Secure School. Placement decisions for custodial remands are ultimately made by the Youth Custody Service (YCS) factoring in the needs of the child. During a custodial remand, YOT staff (in coordination with a social worker) will assess the prospects of further applications for bail or RLAA with other agencies and solicitors.

It is well-documented that custody can have a detrimental impact on children, disrupting connections to family and school, amongst other things. Reduced system contact has instead been shown to reduce the risk of reoffending.¹ Much progress has been made in the last decade to eradicate unnecessary custodial remands. The monthly average number of children remanded to custody fell by 65% between 2010/11 and 2016/17. However, in recent years, the number of children receiving a custodial remand has remained largely stable.

The Ministry of Justice (MoJ) published a [Review of the use of custodial remand for children](#) (2022, the 'Remand Review') which considered issues such as the number of children remanded for fewer than seven days, and the proportion of children who did not go on to get a custodial sentence. It challenged the assumption that remand is regularly 'overused' but did find scope to reduce instances where custodial remand is a default.

Engagement as part of the Remand Review suggested that funding could be a lever for further reducing unnecessary custodial remands. The Remand Review committed to: "in the medium to longer term, consider options to review existing funding arrangements in order to facilitate better use of community provision and services for children at risk of custodial remand."

¹ Youth Endowment Fund (2020) What works; Preventing children and young people from becoming involved in violence & YEF (2021) Evidence and Gap Map; Summary Report – summarises the state of the evidence base underpinning approaches to prevent children offending

The current funding model was designed in response to changes to remand processes brought in by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 based on a belief in the effectiveness of community supervision and education to support children. Part of this approach was to transfer greater financial responsibility for custodial remands to local authorities. The MoJ continues to contribute funding relating to local authorities' costs of remands to YOIs and of the looked-after status of remanded children based on a model that was designed with an aim of incentivising alternatives to custody.

Current context

To consider what could better facilitate the provision of community alternatives for children at risk of custodial remand, we need to understand the current context. Statistics and supporting information on the trends related to custodial remand are at Annex A, building on those in the Remand Review.

Since the funding was established in 2013, there has been a reduction in the monthly average number of children on custodial remand from 338 in 2012/13 to 207 in 2021/22. However, in recent years (including during COVID-19) this number has remained fairly stable even as the number of children in the total custodial population reached record lows. In 2022/23 on average 42% of the youth custody population (including 18-year-olds) were there on remand, compared to 27% in 2018/19. This proportion has increased in recent years due to the sentenced youth custody population falling at a faster rate than the remand population, rather than because of an increase in custodial remands.

Although volumes have fallen (the number of custodial remand episodes a year fell between 2017/18 and 2021/22 from around 1,500 to 1,200, a drop of 21%) in recent years there has been an increase in the time children spent on custodial remand. The median length of time on custodial remand has risen from 39 nights in 2018/19 to 68 nights in 2021/22. There has also been a reduction in the proportion of total custodial remands that are under 91 nights from 82% to 68% between the periods 2013/14-2015/16 and 2020/21-2022/23 respectively. In that timeframe the proportion of remands lasting 1-7 nights has fallen from 23% to 16%.

There has been a slight increase in the use of community remands with intervention in recent years though numbers are still relatively small.² The method for counting these remands changed from 2017/18 onwards so it is not currently possible to compare numbers before this date. Volumes rose by 14% between 2017/18 and 2021/22 from around 875 to 1,000 episodes per year, increasing as a proportion of all remands in this period from 5% to 9%. However, this growth has been mainly driven by increases in the number of bail supervision and support episodes, with remand to local authority accommodation episodes essentially unchanged between 2017/18 and 2021/22 (295 and 301 respectively). With the increased use of diversion for children committing less serious offences, we have seen a large fall in the number of children in the courts, leaving on average a cohort of children that are more likely to be charged with more serious offences (this is explored more below). This is likely to be a contributing reason why we have not

² 'Community remand with intervention' is made up of bail supervision and support, bail with intensive supervision and support (ISS bail), and remand to local authority accommodation.

seen a substantial increase in the proportion of children receiving a community remand with intervention.

Work on community alternatives to custodial remand needs to keep in mind the most common groups in the custodial remand population and how this has changed. Children remanded to custody in 2021-2022 were more likely to be:

- Male (97%), this has been consistent over a number of years;
- Remanded for a violence against the person offence (76%), there has been an increasing concentration of violence against the person offences;
- From an ethnic minority group (58%), the proportion of white children remanded to custody has fallen over time and resulted in ethnic minority groups making up over 50% of the children remanded to custody since 2016/17;
- Older (50% were aged 17), with proportions remaining broadly similar even as volumes fell; and
- From London (33%), though this proportion has fallen since 2011/12 when it was 43%.

The majority (70%) of children remanded to custody were placed in YOIs. The vast majority of bed nights on remand are also in YOIs comprising around 70-80% of bed nights between 2011/12 and 2022/23 (see Annex A).

The Remand Review also noted some of the current issues in the provision of children's accommodation. The number of looked-after children in England increased by 16% from 2015 to 2021.³ The high cost of placements has also been well-documented through published reviews, as well as the issues with availability of suitable placements to suit the right needs, and in the right place. These issues are exacerbated in relation to remand as placements that can serve as an alternative to a custodial remand need to be convincing to the court as well as arranged and presented at short notice. The availability of remand fostering placements has also markedly declined over this period. There were 125 'fostering as remand fostering' placements in England in 2021-22, a decline from 310 in 2017-18 and from 175 in 2020-21.⁴

Actions that we have taken since the Remand Review (January 2022)

The Remand Review made several proposals to improve remand processes, focusing on system-wide incremental actions as a remand involves independent actions by numerous

³ <https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions#releaseHeadlines-tables>

⁴ [Fostering in England 1 April 2021 to 31 March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/fostering-in-england-1-april-2021-to-31-march-2022)

In Wales the sector has moved away from recruiting specialist 'types' of foster carers.

agencies and services.⁵ The Remand Review found multiple issues affecting the uptake of community alternatives to custodial remand, for example:

- a lack of detail about the proposal presented to court;
- inconsistent availability of Bail with Intensive Supervision and Support (ISS);
- inconsistent multi-agency working and information sharing;
- difficulties in partnership working between children's services and YOTs; and
- courts' lack of confidence in a RLAA when the address was the family home, or due to concerns about unsuitable placements.

Since publication, the MoJ has taken a system-leadership approach across the youth justice system to implement the proposals to tackle those issues, including:

- Requiring all YOT Management Boards to undertake a regular review of remand as part of their local Youth Justice Plans;
- Updating Case Management Guidance (CMG) to give more flexibility in the composition of Bail ISS, and to clarify that financial or resourcing pressures are not a sufficient reason to not offer a bail package;
- Promoting best practice from the Remand Review amongst local partners to improve partnership working to increase their ability to bring alternatives to court;⁶
- Publishing and promoting additional guidance on RLAA (i.e., the legal provisions and best practice) with input from legal practitioners;⁷
- Sharing new examples of robust RLAA and bail packages where the child is accommodated at home on the Youth Justice Board's (YJB) Resource Hub;
- Commissioning a joint thematic inspection on youth remand by HMI Probation, HMI Prisons and Ofsted, which is due to report in autumn 2023;
- Ensuring enhanced training is available for the magistracy and judiciary on the new youth remand tests;
- Updating the wording on the use of the secure dock in courts in the latest Youth Court Bench Book (2023); and

⁵ Useful system map is available at p38-40 [Review of Custodial Remand for Children January 2022 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁶ Checklist of actions from the MoJ Review of Custodial Remand for local partners [MoJ \(Ministry of Justice\) Review of Custodial Remand For Children \(January 2022\) - Youth Justice Resource Hub \(yresourcehub.uk\)](https://yresourcehub.uk)

⁷ [rlaa-issues-circular-annex.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- The Home Office is working with NPPC and other policing stakeholders to promote the principles of the 2017 *Concordat on Children in Custody* to prevent the detention of children in police stations following charge.

The Department for Education (DfE) has also since consulted on its implementation plan for reforming children’s social care, [Stable Homes, Built on Love](#), and will take immediate action to boost the number of the right homes in the right places available for children as a matter of urgency – including through investing over £24million to expand their fostering recruitment and retention programme – review all legislation, regulations and standards of care; introduce a financial oversight regime for independent private and voluntary providers of foster homes and children’s homes, and deliver national support with forecasting, procurement and market shaping to local authorities.

The amended legal tests

The Remand Review proposed legal changes to the LASPO tests to further strengthen the tests the courts must apply in remand decisions and to reinforce the existing presumption of community remand. These amendments came into force via the Police, Crime, Sentencing and Courts (PCSC) Act in June 2022⁸ and made the following changes:

- introduced a statutory duty on the courts to consider the best interests and welfare of the child;
- tightened the sentencing condition to where custody seems ‘very likely’;
- applied the sentencing condition to both the first and second set of conditions;
- amended the second set of conditions to ensure that the ‘history’ is relevant in all the circumstances and is both ‘recent and significant’;
- strengthened the necessity condition to ensure that, when bail is refused, courts should remand the child in the community unless the risk they pose cannot be safely managed there; and
- introduced a statutory obligation for the courts to record their reasons for imposing custodial remand.

Impact

Initial engagement with the judiciary and YOTs suggests that while remand decisions remain very complex, the PCSC tests are ensuring greater consideration of community options. We have heard from some stakeholders that the legal changes and the Remand Review have had a galvanising effect with court partners and local justice partners, legal advocates and others particularly resulting in increased scrutiny about the suitability of RLAA before considering custodial remand.

Some YOTs and children’s services have told us that in response to the Remand Review and the legal changes they have started to see more RLAAAs and are preparing for more.

⁸ [Circular on the PCSC Act youth remand amendments \(publishing.service.gov.uk\)](#)

They have created new local protocols to ensure that the status and eligibilities of remanded children as looked-after are well understood, and they can work together quickly coordinate placements and support for the child.

Although the custodial remand population has remained largely stable, feedback from stakeholders suggests that without the changes to introduced by the PCSC Act there might have been an increase in custodial remand numbers. The offence trends explored in Annex A may also support the idea that the average monthly custodial remand population is remaining stable due to longer remands, rather than an increase in volumes.

However, while this work has brought about change, there was no increase in the proportion nationally of community remands with interventions in 2021/22 compared to the year before. We continue to hear that some of the structural barriers (such as access to accommodation) need to be addressed to achieve a step change in alternatives to custodial remand.

The long-term effects of amending the changes in PCSC Act are still being realised and will be monitored. Work is ongoing to understand the recorded reasons for remand decisions.

Emerging issues

The MoJ is now working to increase our understanding of some of the latest trends in remand which interplay with the funding and the use of alternatives to custody. For example, an increase in longer remands which may be affected by the impact of the National Referral Mechanism (NRM), the increasing proportion of violent offences, the time taken from charge to trial, or an increase in multi-handed cases.

The timeliness of cases in the Crown Court remains a priority for the government. We have put in place a variety of different measures to tackle outstanding caseloads over the past three years and the Crown Court Improvement Group has recently published a revised and updated Better Case Management handbook, focussed on improving the efficiency of the system.

The Home Office launched the Devolved Decision-Making for Child Victims of Modern Slavery Pilot Programme. The pilot tests devolving responsibility for NRM decisions for child victims of modern slavery to local authorities. A Reasonable Grounds decision should be made no later than 45 days from the date the pilot sites receive the referral, and a Conclusive Grounds decision should be made no later than 45 days after a Reasonable Grounds decision is made. The Home Office is working closely with local authorities and stakeholders to monitor the pilots and will continue to assess next steps.

We will also continue to build our understanding of relevant issues, such as:

- what works in community supervision in the context of serious offending – for example, where and why there are serious breaches of bail or community remands, keeping in mind the impact on victims. As well as looking at the impact of the recent change to encourage flexibility in the composition of Bail ISS;
- the number of children who are remanded as first-time entrants into the youth justice system which will impact on the ability of partners to rapidly collate a package as an alternative to custody. It will also impact on the effectiveness of some interventions and investments to prevent custodial remands; and
- outcomes at trial for children after a custodial remand - headline figures show a high proportion not sentenced to custody, or acquitted, however the sentencing decision weighs up many factors, some of which will not have been known at the time of the decision to remand.

These changes to the use and profile of custodial remand, plus the continuing and emerging issues, show that whilst progress has been made over the decade and since the Remand Review, there are clear signs that we need to do more if we are to increase the use of alternatives to custody. This aim is a continuation of that which the remand provisions in LASPO sought to achieve – so we examine below what part the funding has played, before looking at how the funding might be reformed to be more effective in achieving these aims.

Current funding arrangements

LASPO was landmark legislation which brought in stringent tests for custodial remand and established a presumption that where a child could not be granted bail, then the court must remand a child to local authority accommodation. It also;

- put all children under one remand framework, treating 17-year-olds as children;⁹
- granted remanded children ‘looked-after child’ (LAC) status whether remanded into the care of the local authority or in youth detention accommodation;¹⁰ and
- fully devolved responsibility for the costs of remands to youth detention accommodation meaning local authorities cover the costs of remands of children to YOIs (as well as ongoing financial responsibility for remands to SCHs and STCs).¹¹

From April 2013, local authorities no longer received financial assistance from the YJB towards their costs of remands to SCHs and STCs.

These changes were made as it was previously felt that local authorities had little incentive to offer courts alternatives to custody because they did not cover the costs of remands to YOIs. In addition, the changes were intended to incentivise local children’s services and Youth Offending Teams (YOTs) to collaborate on community initiatives to prevent offending escalating and in alternatives to custody.

The MoJ consulted with local authorities in 2012 (*The new remand framework for children: Allocation of new burdens funding to local authorities*), in recognition of the ‘new burden’ of financial responsibility that these changes placed on local authorities. The MoJ agreed that local authorities in England and Wales would receive an annual payment (from 2013/14) as a contribution towards cost recovery on local authorities for custodial remands, and for supporting remanded children as looked-after, and that this funding system be kept under review.¹²

The MoJ’s remand funding allocation contributes to just part of local authority spending on youth remand and bail provision.

⁹ However, only children over 12 can be remanded to youth detention accommodation.

¹⁰ LASPO Section 92 ad 104(1). See the Children’s Act 1989 Guidance and Regulations Volume 2 (DfE, 2021). There are some exceptions to LAC provision when remand is the sole reason for the LAC status, such as no requirement to automatically make a ‘plan for permanence’, and in the case of custodial remand a Detention Placement Plan considered their welfare in placement and their plans for afterwards.

¹¹ See LASPO s103(2) and the Children’s Act, section 22-23.

¹² LASPO 2012 s103(4) gives the SoS the power to provide grant funding but does not mandate it. Payments should not be confused with the Youth Justice Grant core funding for YOTs made under s.41(5)(g) of the Crime and Disorder Act 1998.

The model provided unring-fenced funding (i.e., there is flexibility in how funds can be used) to enable investment in alternatives to custody and for the local area to reduce use of custody however they deemed best. It was anticipated that when a remand to custody was avoided, the difference that would have been spent on custody could instead be spent to develop local remand services.

Local authorities are charged a ‘sector price’ for each remand to custody, i.e., a set price per night per child, depending on the sector. This means that all remand bed nights across the YOIs are charged at the same rate. The sector price is calculated using past remand occupancy levels in all the establishments within a sector, in combination with the costs of services at each establishment.¹³ This methodology has not changed over time. The sector price is designed to ensure that the same charge applies to all users, to make planning easier for local authorities once a remand commences. The YCS invoices the designated local authority on a monthly basis for the cost of nights a child spent on remand in custody based on the sector prices.¹⁴

The sector prices have risen over time due to increasing staffing and maintenance costs, contract inflation and other inflationary pressures:

Table 1: Sector prices for bed nights for remands in youth custody at 01 April (2014-2024)

Year	Young Offender Institution (YOI)	Secure Training Centre (STC)	Secure Children’s Home (SCH)
2013/14	£163	£579	£580
2014/15	£158	£581	£561
2015/16	£177	£497	£559
2016/17	£177	£490	£574
2017/18	£191	£536	£579
2018/19	£189	£546	£579
2019/20	£240	£612	£699
2020/21	£321	£453	£762

¹³ More detail on the methodology can be found here: [Payment and cost recovery arrangements in respect of children detained on remand in youth detention accommodation | The British Library \(bl.uk\)](#) The amount to be charged per night is updated in via amendments to [The Recovery of Costs \(Remand to Youth Detention Accommodation\) \(Amendment\) Regulations 2023 \(legislation.gov.uk\)](#)

In future the Secure School will be included in the process of setting sector prices.

¹⁴ The court designates the local authority. Costs are not recoverable after a child’s 18th birthday, if remand overlaps with a custodial sentence, or from the day a sentence begins.

2021/22	£315	£574	£753
2022/23	£307	£733	£770
2023/24	£328	£838	£834

In some years there has been a small variation in prices in year.

The overall funding pot paid to local authorities is designed to reflect a reasonable estimate of use multiplying the previous year's YOI use and the coming year's YOI remand sector price. The remand payments are broken down into three broad allocations:

a) contribution to the bed costs for remands to YOIs – each individual payment reflects the relevant local authority's average YOI use over the previous three years to give a reasonable estimate of their YOI remand costs and cover a proportion for the coming year.

b) contribution to the costs associated with remanded children becoming LACs – including to help with LAC visits, interpreter costs at those visits (where necessary) and travel to support visits. It also contributes to the travel costs of a family member or carer attending visits to reflect statutory guidance.¹⁵ It also acknowledges that some remanded children will become eligible for leaving care services.¹⁶ A reduction is applied to this portion because of the number of children who would have still been 'looked-after' were they not to have been remanded securely.¹⁷

c) considers the costs of journeys to and from STCs and SCHs – the YCS has continued to fund transportation and as such a deduction from the allocation is made for escorting children, based on use of SCHs and STCs over the past two years.

The breakdown within the funding for this year is shown below as an example.

¹⁵ LAC cost contributions use the Unit costs are taken from the Personal Social Services Research Unit (PSSRU) report *Unit Costs of Health and Social Care 2015* as a basis with an uplift for inflation.

¹⁶ If they have been on remand for more than 13 weeks, from the age of 14 (including one day on or after their 16th birthday).

¹⁷ Based on original estimates that 25% of children in custody were previously looked-after.

Table 2: Breakdown of remand funding allocation (2023-24)

Year	Allocation relating to YOIs	Costs related to LAC	Costs related to support visits to LAC	Deduction for the cost of transport to STCs and SCHs	Total
2023/24	£18,072,000	£3,963,000 of which £525,000 is for care leavers' services	£323,000	£946,000	£21,312,000*

*Less £100,000 for regional pilot costs this year

Even though the overall annual remand bed nights used in YOIs have decreased, the amount of funding paid has increased (see Table 3), this is due to the increased sector prices of YOIs. There has been more variation in the SCH and STC bed nights due to changes in the estate, but it is also true that an increased sector price has increased the costs to local authorities. Without a change to the model, it is possible that the overall funding and costs will continue to rise whilst not achieving a reduction in the use of custodial remand.

Table 3: MoJ remand funding and local authority spend (England and Wales) on custodial remand

	Total remand funding to local authorities	Total spent by local authorities on YOI remand beds	Total spent by local authorities on STC remand beds	Total spent by local authorities on SCH remand beds	Total spent by local authorities on all custodial remand beds
2014/15	£14.7m	£10m	£10.7m	£3.8m	£24.5m
2015/16	£14.3m	£9.8m	£7.2m	£4.9m	£21.9m
2016/17	£10.8m	£8.9m	£5.4m	£3.8m	£18.1m
2017/18	£9.4m	£11.1m	£8.2m	£4.1m	£23.4m
2018/19	£11.6m	£12.2m	£8.8m	£4.8m	£25.8m
2019/20	£16.5m	£15m	£9.6m	£5.2m	£29.8m
2020/21	£22.2m	£19.3m	£6.1m	£5.7m	£31.1m
2021/22*	£21.3m	£16.3m	£5.4m	£8.4m	£30.2m

Total	£120.8m	£102.6m	£61.4m	£40.7m	£204.7m
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- *Funding was paid in 2013/14 but figures are not available in this format.*
- *Data from 2021/22 is provisional.*
- *Funding in 2022/23 was £20.3m, verification work continues on the spend.*

Assessment of funding arrangements

It was anticipated in 2013 that giving local authorities financial responsibility for YOI remands, as part of a move towards community-based approaches, would incentivise investment in community-based alternatives.

Many local authorities came up with new ways to support children, including working together across boundaries. As outlined above, there has been a reduction in custodial remands since 2013/14.

However, there has not been a sizeable increase between 2017/18 and 2021/22 in the share of community remands with interventions (particularly RLAA which became the presumed remand in the legal changes). The exact reasons for this are not clear. It may be that investment in community alternatives has reduced since 2017 due to other pressures. However, given that there is no reporting mechanism with this funding, and the provision of accommodation and services overlap with those provided by wider children's services (for example, the creation of accommodation which also serves a wider group of children as well as those on remand) it is difficult to directly assess the impact on behaviour. Some feedback has been that there were initially new efforts in relation to alternatives to remand alongside the LASPO changes but that this focus was lost once the funding and legal tests became 'business as usual'. Another reason might be that alternatives presented cannot provide the level of robust support expected by the courts to protect the public in light of violent offending.

The assessment below outlines why we do not think that the current funding model can support efforts to increase community alternatives to custody in this context.

Lack of incentivisation

Local authorities can be perceived to be financially disadvantaged by working to find an appropriate RLAA placement because their subsequent annual remand funding allocation is based on only their YOI usage means that. A child being remanded in a YOI would result in subsequent funding for the local authority under this model. Whereas the effort to collate and present a successful RLAA proposition to the court does not result in costs that are considered in future funding (i.e., the budget which is seen by those working in youth justice). Spending on RLAAs will instead be factored into other calculations for future allocations of broader funding to local authorities.

However, many local authorities and YOTs are not incentivised or disincentivised in these ways by the funding model because of their commitment to avoiding the damaging effects of custody and to a child-first approach. Moreover, there is less incentivisation because the

remand funding allocation (whether resulting in a surplus or a deficit in year) is so small compared to wider children's services budgets.

It is relevant to note that the London Accommodation Pathfinder (LAP), which the MoJ and the YJB have sponsored, has developed independently of the remand budgets. The LAP aims to provide accommodation units for children and young people (particularly from ethnic minority backgrounds) on remand or a community sentence. The LAP is an impressive, collaborative project across multiple local authorities and partners, including London Councils, the NHS and charities. It has required upfront capital and resource investment from the local authorities, as well as project funding from the YJB. A key part of the project was ensuring that the bed night costs will be less than a custodial remand or other placements, but it will also provide specific wrap-around supervision, activities, and therapeutic support for the children to work on pro-social identity and address the root causes of any offending behaviour.

In summary, it is notable that the remand funding model does not have the built in incentivisation that was expected during the funding's design.

Unpredictability and inability to forecast

The original design intention was that giving unrestricted funding would lead to innovation, or even pooling budgets. Though some areas have made great strides in creating bespoke bail and remand services, the reality of making small payments to individual local authorities means this is not widespread. Other practical considerations have made investment in alternatives harder, even if there is a strong desire to increase community alternatives to custody.

The calculation of future funding based on the previous three years' YOI use does not allow for budgeting or flexibility. Due to the unpredictability of remands, expenditure on YOI remands at the individual local authority level can therefore be much higher or lower than the funding mechanism predicts, leading to local authorities receiving varied amounts across the years.

Remand funding distribution also varies greatly between local authorities because of the formula, the variation in size of local authority and the small cohort. In 2022/23 of 163 payments the mean average was £103,000, the median average was £59,000, and the largest payment was £1.16m. This financial year 16 local authorities received no payment.

The Remand Review found that the fear of future 'spike events' (where multiple children may be remanded at the same time and can result in costs much higher than was anticipated in the funding allocation at the start of the year) limits investment in alternatives. Remand volumes are volatile due primarily to the relatively small size of the cohort at a local level, and the costs are unpredictable due to various dependencies i.e., the court's decision to remand into custody, the decision about the suitable custodial sector, and the length of time on remand. That said, the court's decision to make the

remand custodial should only be after considering RLAA, and local partners should, if appropriate, present further applications for bail or RLAA.

Although the funding allocation takes into account the increased sector prices of YOIs each year, the high costs of some custodial remands may prevent local authorities from 'investing to save' in community alternatives. This is particularly the case for local authorities where a custodial remand is rare and therefore funding is small. Instead, local authorities may be inclined to save the funding to cover the costs of custodial remands that could come later in that year, or notionally re-allocate it to make up for the costs of remands from previous years.

The remand funding was not intended to cover all the costs of custodial remands, but predominantly to help local authorities manage the transition into the extra financial burden introduced by LASPO of remands to YOIs. Local authorities cover costs associated with STC and SCH remands from their wider funding for children's services. The overall costs of SCH and STC remands are growing in line with increased costs for most children's residential placements.

Unpredictability also affects investment in bail support; we are told that some areas struggle to justify investment in Bail ISS provision when the future number of children who might use the services are unknown. Some local financial processes do not allow budget holders to carry forward funds from previous years, whereas the initial design anticipated an ability to carry over funding for remand work.

Overall, the funding provided to local authorities through these payments has been more than they have spent on remands to YOIs in the period since the funding was established. However, as outlined above, any remand funding allocation not spent on remands to YOIs might be re-allocated within local budgets, as opposed to being viewed as a 'surplus' to be invested in community alternatives to custody as was imagined during the funding design.

Community alternatives have become more expensive

Community alternatives such as Bail ISS or RLAA (where the child is accommodated at their home address) can be considerably cheaper than custody, one estimation for the Remand Review was £202 per night in 2020.¹⁸ However, community accommodation can now be more expensive than custodial remand, in part due to a lack of availability of placements that can accommodate children charged with serious offences. This is a reverse of the assumption in 2013.

The available data indicates that the average cost of an open children's home place (£695 per night) is more expensive than a YOI (£328 per night), which represent most custodial

¹⁸ And funding from the Youth Justice Grant can be used to support community provision such as Bail ISS
Section 38(4)(c) of the Crime and Disorder Act 1998 imposes a statutory duty on local authorities and their partners to provide "support for children and young persons remanded or committed on bail while awaiting trial or sentence".

remand places.¹⁹ Therefore, local authorities may spend less on a YOI than a community residential option, not creating any financial incentive to remand into the community.

From engagement with local authorities we know that there are also extremely expensive community options when they are designed around a child with certain risks or vulnerabilities at short notice, stretching past £20,000 a week. The availability of remand fostering placements have declined steeply. Other specialist placements can be hard to source, for example, an HMI Prisons thematic inspection on [Outcomes for Girls in Custody \(2022\)](#) found that ‘vulnerable girls could not access the support they needed in the community and were sometimes remanded to custody because there was nowhere else for them to go’.

The fact that alternative packages or placements need to be available for a relatively small number of children who may have been charged with very serious offences can increase costs hugely and exacerbate difficulties in commissioning or market creation, and may require new solutions.

Questions

- Question 1** In your opinion, has the current remand funding supported alternatives to custody?
- Question 2** What type of bail with intervention or remand to local authority package do you think best meets the needs of children and protects the public? Do the community alternatives in your area meet demand?
- Question 3** What influences the likelihood of community alternatives to custodial remand being presented to courts in your local area? Why do you think we have not seen a significant increase in the use of alternatives to custody?

¹⁹ This is still less than STC (£838 per night) and SCH costs (£824 per night). Source of open children’s home daily figure 2021 Competition and Markets Authority Review derived from Personal Social Services Research Unit.

Options for reforming the funding

The options set out below consider a wide range of approaches in light of the issues outlined above. They are high-level because input is being sought from stakeholders at an early stage. The options below build on the position that local authorities will continue to cover the costs of all custodial remands and transport to the secure estate, as well as continuing to support remanded children as looked-after.

Options will be appraised in line with guidance in HM Treasury's Green Book and will be considered alongside a Spending Review process if necessary. We will not reform the funding model in this financial year and do not plan to make changes prior to the 2025/26 financial year. Legislative powers will be required to implement some options.

We will continue to work with DfE, the Department for Levelling Up, Housing & Communities (DLUHC) and the Welsh Government to ensure that the continuing costs to local authorities of remands to SCHs, the STC and RLAAAs are fully understood and updated in other funding assessments.

Options to consider for reform

In developing any reforms, we will be guided by the overall system aims of reducing offending and considering the welfare of children, and these key objectives;

- Enabling the creation of more robust alternatives to custodial remand;
- Ensuring a system that delivers better value for money; and
- Reducing the administrative burden created by the current system.

Option 1: Make no change

- The funding model could be continued if new evidence demonstrates that the current model does, or can, lead to an effective system, and can help us to achieve these objectives.
- However it should be noted that under this current formula, the amount of remand funding given to local authorities could reduce over time if custodial remands to YOIs reduce due to various factors.
- A new model would consider whether there are successful aspects of the current funding arrangements that we should learn from.

Option 2: Continue the funding but change how we pay

2a: Design a regional model for payments

- We could allocate payments to regional local authority groupings on the basis that remand volumes are less variable when averaged across multiple local authorities. Regionalise funding could give greater certainty and enable increased spending power for alternatives to custody, also covering those local authorities who receive no funding some years.
- This would maintain local discretion on how to design services to meet local need but could also ensure sharing best practice in designing interventions and commissioning placements for children at risk of remand.
- We have re-allocated a small amount of funding (£200,000) from the remand funding across 2023/24 and 2024/25 to test this option. Ten local authorities in the Greater Manchester region will be granted this funding to pilot and evaluate using pooled remand funding. They also have a guarantee that their allocation of remand funding in 2024/25 will not be less than in 2023/24. The resulting process evaluation will support our assessment of this option. It will also enable the continued sharing of best practice in interventions for children at risk of custodial remand, even if funding is not reformed in this way.
- In the pilot, the local authorities are voluntarily pooling their remand funding, but the eventual policy could be to mandate regional working.
- Consideration would need to be given to the appropriate regional groupings given variations in geographies and local ways of working (and specific considerations for Wales). We would also need to be mindful of the difficulties around children being placed out of area and the benefits of placements near to home, but also the realities of the courts setting broad, geographic exclusion zones in the community.

2b: Change the formula for calculating the allocations

- To tackle the issues with forecasting and to enable investment in remand services or alternatives to custody, we could look to amend the distribution between local authorities to give greater certainty over time. Or we could consider an allocation method that recognises investment in alternatives for those who manage to avoid remanding children to custody and make a difference in their remand trends.
- Given the offending profile of children on remand, we could consider aligning the remand funding allocation to other funding formulas to ensure focus on key drivers of offending. This could involve reallocating more funding to areas with more serious youth violence (i.e., the offences that are more likely to lead to a child being remanded into custody), or other associated risk factors.
- Consideration would need to be given to whether there is fair method that can consider historic trends over a longer period, can avoid duplication and can

consider ways to measure seriousness of offending, crime levels and alternative investments in services.

2c: Roll the remand funding into existing funding mechanisms

- The remand funding could be consolidated with wider local authority funding through the local government finance settlement (LGFS) which can enable local priorities to be better considered. This is not an uncommon outcome when new burdens funding is reviewed.
- This could look just at the whole allocation of funding, or separate out the allocation relating to LAC costs. Consideration would need to be given to funding for Wales for looked-after children in the context of devolution and associated funding principles.
- This could encourage the provision for children on remand to be seen as increasingly part of the main services to all looked-after children.
- Alternatively, we could consider combining the remand funding with the annual core grant to YOTs. Many YOT managers have oversight of the remand payment anyway and so this could give increased certainty through a combined budget and reduce administrative burdens. Given that the core funding to YOTs through the Youth Justice Grant (£88.6m in 2022/23) includes supporting children on bail, this could further align youth justice funding with joined up work locally.
- Consideration would need to be given to how this affects local authorities' and YOTs' ways of working together to realise the full benefits of LAC status for remanded children.
- In recent years the government has provided increases to the Youth Justice Grant. However, the current grant funding formula has not been updated since 2011 and re-visiting the formula will remain under review - this will need to be considered should remand funding be combined with the grant.

Option 3: End the funding model and set up a central funding pot

Local authorities to bid in for funding centrally

- We could create a scheme for local authorities, either individually or as part of a consortia, to bid for funding for innovative community alternatives to custodial remand. This could more closely align the funding to the increased use of alternatives to custody that we collectively seek. We could set guidelines for the bids, or allow local authorities to decide how best to deliver outcomes for children and reduced offending and ensure public safety within best practice models.
- Consideration would need to be given to whether bids would need to be for novel ideas or to counteract a lack of provision in some areas – as well as considering the interplay with funding available from the DfE for accommodation for children.
- Given the challenges in children's accommodation in specialist provision, and the ways that the current remand funding does not incentivise up-front investment due

to unpredictable income, consideration would have to be given to multi-year funding.

Option 4: End funding to local authorities, and funding be used in alternative ways to improve youth justice related outcomes.

4a: Explore central provision of a national community accommodation model.

- We could explore centrally commissioning a network of accommodation units in the community to accommodate the children most at risk of custodial remand across the country. This might address the upfront costs of creating accommodation and the issues created by low volumes of remanded children locally and the low value of funding when spread out across all local authorities. Given the current offence mix of children on custodial remand, this could include specialist placements suitable for children charged with violent and sexual offences, and consider support for other complex needs.
- A national model could be contracted to an organisation specialised in supporting children and could support children to stay in placement while transitioning onto a community sentence or support their resettlement if acquitted of the charge(s).
- We would need to consider a realistic geographic spread to ensure that children could be within a reasonable distance from home.
- This option could take some time to establish and there would be significant issues to consider around commissioning, charging for bed use, covering voids and how local authorities could book beds. We could consider learning from the LAP as part of this work and could consider how to use national levers to encourage remand foster placements too.

4b: Increase spending on improving provision within the secure estate

- Although the aim of LASPO and the PCSC Act changes are to promote children being managed in the community, protecting the public also remains a key aim. Given the current context of the offence mix of children on remand, and the stabilisation of numbers on remand, it is likely that there will continue to be children remanded to custody for periods while their trial is prepared.
- We could consider improvements to the provision for remanded children – this might also support their resettlement and reintegration improving the outcomes for children in the longer term. This would not negate work with partners to make all possible improvements to the remand decision making processes, and work on increasing alternatives to custody, however it responds to the funding not being shown to support that work.

Considerations

Options 3 and 4 particularly would need to consider how best to transition away from the current funding arrangements, such as tapering off the current funding by a set date.

We would undertake another new burdens assessment before pursuing future options to reform the current funding model. Work could also entail reviewing or updating the methodologies used to calculate sector prices.

Our future work will take into account learning from our regional remand funding pilot and other youth justice pilots (such as the LAP), as well as:

- Children's social care reforms, and work on complex needs provision;
- The DfE's plans to deliver two pathfinder Regional Care Cooperatives (RCCs) in England in this Spending Review period;
- Future operating models for the youth secure estate and the opening of the first Secure School (Oasis Restore) in 2024;
- The findings of the joint thematic inspection on youth remand;
- The Welsh Government's proposed changes to legislation on children's social care;
- The DfE commitment to consult on a new formula for the distribution of children and young people's services funding to local authorities; and
- The government's approach to funding for local authorities.

Questions

- Question 4** What are your thoughts on the funding model remaining the same (**Option 1**)?
- Question 5** How do you think a regional model (**Option 2a**) could affect the availability of community alternatives to custody?
- Question 6** How easy or difficult would it be for your region to adopt a regional model (**Option 2a**)?
- Question 7** Do you think our aims would be better met by amending the funding mechanism (**Option 2b & 2c**)? What are your thoughts on consolidating the funding relating to LAC status into wider funding for children's services?
- Question 8** Do you think that enabling funding via bids would affect the availability of alternatives to custody (**Option 3**)?

- Question 9** Do you think that a central approach could support alternatives to custody (**Option 4**)?
- Question 10** Which option do you think would best meet our objectives (on p21)?
- Question 11** Do you have an alternative proposal for amending remand funding? Please explain how this is different from the options outlined in this document.
- Question 12** If the funding changed, what transition arrangements would be the most important to you?

Equalities Statement

Equality duties

Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have “due regard” to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

Paying “due regard” needs to be considered against the nine protected characteristics under the Equality Act. The nine protected characteristics are race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, and pregnancy and maternity.

The consultation document and Annex A outline some of the available data in relation to age, race and sex of children remanded to custody, and builds on previous statements such as that for the [remand measures in the PCSC Act: Youth measures in the Police, Crime, Sentencing and Courts Bill: Equalities Impact Assessment - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344242/remand_measures_in_the_PCSC_Act_Youth_measures_in_the_Police_Crime_Sentencing_and_Courts_Bill_Equalities_Impact_Assessment_-_GOV.UK.pdf)

The consideration of the impact of proposals and the implementation of any proposals is an ongoing duty. We will set out those reforms we intend to implement. At that stage we will publish a full Equalities Statement which will also take into account responses received to the consultation.

Question 13 What do you consider to be the equalities impacts on individuals with protected characteristics as a result of the proposals? Are there any mitigations the government should consider? Are there potential positive equalities outcomes the government should consider? Please provide reasons and data if possible.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

- Question 1** In your opinion, has the current remand funding supported alternatives to custody?
- Question 2** What type of bail with intervention or remand to local authority package do you think best meets the needs of children and protects the public? Do the community alternatives in your area meet demand?
- Question 3** What influences the likelihood of community alternatives to custodial remand being presented to courts in your local area? Why do you think we have not seen a significant increase in the use of alternatives to custody?
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- Question 13** What do you consider to be the equalities impacts on individuals with protected characteristics as a result of the proposals? Are there any

mitigations the government should consider? Are there potential positive equality outcomes the government should consider? Please provide reasons and data if possible.

Question 14 Do you have any other comments on these issues?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 08 November 2023 via the Consult Justice link.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Extra copies

Further paper copies of this consultation can be obtained from:

Youth Remand Policy Team
Ministry of Justice
102 Petty France
London SW1H 9AJ

and it is also available on-line at <https://consult.justice.gov.uk/>.

If required, alternative format versions of this publication can be requested also.

Publication of response

A paper summarising the responses to this consultation will be published in three months' time. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018

(DPA), the UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles_1_.pdf



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