

Making an Application for a Certificate for Assigned Advocate in the Youth Court

(formerly a Certificate for Counsel)

05

Contents

1. Serious cases in the Youth Court	2
2. The regulations	3
3. Making the application	4
4. Specialist Youth Advocacy	5

Please note that at the time this guide was published Parliament is considering the [Police, Crime, Sentencing and Courts Bill](#) which may bring into force significant changes to this area.



“...the general policy of the legislature [is] that children and young persons should, wherever possible, be tried in the youth court, a court best designed to meet their specific needs, avoiding the greater formality and public involvement of the Crown Court.”

- R (on the application of the DPP) v South Tyneside Youth Court [2015] EWHC 1455 (Admin), paragraph 28

Serious cases in the youth court

There is a presumption that child defendants will be tried in the youth court.¹ Many cases currently heard in the youth court would be tried in the Crown Court if the defendant were aged 18 or over and recent changes mean that serious and complex cases are more likely than ever to be tried in the youth court.²

The youth court deals with far more serious cases than the adult magistrates' court for a number of reasons:

- There is an expectation that children will be tried in the youth court.³
- Youth courts must deal with all cases involving a defendant aged under 18, unless s/he is charged with a grave crime (sexual or violent offences with sentencing maximum for an adult of 14 years or more),⁴ firearms offences with mandatory minimum sentences, or homicide or where s/he is jointly charged with an adult.
- Youth courts have greater sentencing powers; up to a maximum of 2 years Detention and Training Order (DTO).
- Youth courts have the power to commit for sentence.⁵ This means many cases previously tried in the Crown Court will now be tried in the youth court with the possibility they will be committed to the Crown Court for sentence.

For all these reasons, there are likely to be many more applications for a Certificate for an Assigned Advocate in the youth court than in the adult magistrates' court. Where a Certificate is granted, the provision of Legal Aid will be extended to cover an advocate in the case.

¹Section 24 (1) Magistrates' Court Act 1980

²Section 16 Sentencing Code

³R (on the application of the DPP) v South Tyneside Youth Court [2015] EWHC 1455 (Admin)

⁴Section 249(1) Sentencing Code

⁵Section 16-17 Sentencing Code

The regulations

The regulations governing such an application can be found within The Criminal Legal Aid (Determinations by a Court and choice of Representative) Regulations 2013 ('the Regulations') paragraph 16:

Criminal proceedings before a magistrates' court

(1) Subject to paragraph (2), in relation to any criminal proceedings before a magistrates' court, the right of an individual conferred by section 27(4) of the Act does not include a right to select an advocate.

(2) The relevant court may determine that the individual can select an advocate if:

- a) the proceedings relate to an extradition hearing under the [Extradition Act 2003](#) or an indictable offence; and
- b) the relevant court determines that because there are circumstances which make the proceedings unusually grave or difficult, representation by an advocate would be desirable.

Whilst this provision may read as though it is referring to selection of a 'particular' and possibly more experienced advocate (as opposed to any advocate at all), it is in fact the correct provision governing an application for ANY assigned advocate. This is clear from the reading of the Interpretation section of the Act at paragraph 2.

Under paragraph 11 of the Regulations the application must be made in writing, specifying the determination sought and the grounds:

“Determinations by the relevant court under this Part

(1) The relevant court may make a determination under this Part (1) only if it has considered an application made in accordance with paragraph (2).

(2) For the purposes of paragraph (1), an application must:

- a) be made by the individual seeking the determination;
- b) be in writing; and
- c) specify what the relevant court is being asked to determine and the grounds upon which it is being asked to do so.

(3) When it makes a determination under this Part, the relevant court must give reasons.”

There is currently no specific guidance provided to magistrates or District Judges.

In serious sex cases, a ticketed District Judge is allocated to hear the case and will be familiar with considering such applications. Applications in these cases are usually granted.

All either way offences (where an adult/defendant aged over 18 would be likely to receive a custodial sentence of 6 months or more) and all indictable only offences are eligible.

The written application must set out why the case is ‘unusually grave or difficult’. The test of ‘unusually grave or difficult’ is in comparison to a ‘usual case’ of its type. It should be noted that defendants aged 18 or over charged with these offences would be tried in the Crown Court and would have their legal aid certificate extended to cover representation by a solicitor and specialist advocate.

The application must be in writing (see paragraph 3.1 above) and the magistrates or District Judge must give reasons for their decision.



The BSB has announced plans to improve advocacy for children in the youth court. This comes as a [result of research](#) commissioned by the Bar Standards Board (BSB) and CILEx Regulation in 2015 which found some evidence of poor advocacy in the youth courts. The research exposed the fact that junior barristers lacked sufficient knowledge of youth justice law, procedures and provisions, and struggled to communicate effectively with young defendants and witnesses.

The BSB's stated aim is to "help establish advocacy involving youths and within the youth court as an area of specialism so that young people always receive representation of an appropriate standard by [competent advocates](#)."

Barristers practising in the youth court are now expected to be able to demonstrate their competency to represent children and [specialist training is recommended](#) for any youth justice practitioner.⁶

It is a firmly held view by many that youth justice advocacy should become a specialist area and should no longer be a forum where junior advocates make their founding mistakes before moving onto more lucrative work in the adult courts. The [Criminal Bar Association](#) (CBA) is currently looking at initiatives to raise the profile of youth justice work and assist those who practise in this area.

HM Crown Prosecution Service Inspectorate also recently reviewed how the CPS handles serious youth crime. It reported that those cases which did reach court were often complex, serious and difficult in nature. It found there to be regional discrepancies on how well the cases were dealt with and that casework quality was improved by the involvement of specialists.



⁶ R v Grant-Murray & Anor [2017] EWCA Crim 1228

Copyright Notice

The Council of the Inns of Court (COIC) is the owner or the licensee of all copyright in this document. All rights reserved.

You may read, print, copy, download or distribute this document. You may not make commercial use of this document without our permission.

You may not adapt this document without our permission.

You must acknowledge the source of this document.

Every effort has been made to acknowledge and obtain permission to use any content that may be the material of third parties. COIC will be glad to rectify any omissions at the earliest opportunity.

Use of this training document is subject to our terms of use.