

Bail and Remand for Children

02

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“The Bail Act 1976 creates different exceptions to the right to bail depending on the type of case the court is dealing with. The court will need to find one or more of the criteria before remanding the child or young person in custody.”

- Youth Court Bench Book updated 2023

Introduction

It is imperative that advocates representing children understand that there are different considerations when dealing with bail and remand, and bring those different considerations to the attention of the court to ensure they are consistently and rigourously applied. The Police, Crime, Sentencing and Courts Act 2022 (PCSC Act 2022) made important changes to youth remand amending s91 - 102 of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012). A significant change was to reflect the paramount consideration of welfare of the child by inserting sub-section 4A to s91 of LASPO 2012 as a statutory obligation in remand decisions:

Section 157(2) PCSC Act 2022 – **“Before deciding whether to remand a child to youth detention accommodation in accordance with section 102 the court must consider the interests and welfare of the child.”**

Other key changes include elevating the way in which the court considers whether a custodial sentence in the event of a finding of guilt will be the outcome from ‘a real prospect’ to ‘it is very likely’, similarly that consideration of negative past remand history is not only recent but significant and relevant in all of the circumstances.

Bail applications for children are different from adults for three reasons:

- a. The Youth Justice Service (YJS) has a duty to provide bail support, as well as supervision packages created for the individual child.¹
- b. If bail is refused the child will be remanded to local authority accommodation (LAA) unless the specific conditions are met to justify sending the child to youth detention accommodation (custody).²
- c. The police and the courts are under an obligation to consider the child’s welfare. This means a child is more likely to get bail than an adult and the court will consider repeated bail applications where there are welfare concerns.³

The amendments in the PCSC Act 2022 arose as a result of concerns regarding the numbers of children being remanded in custody awaiting trial, for example this issue was raised by the Independent Inquiry into Child Sexual Abuse (IICSA) in 2019. In a review published by the Ministry of Justice in 2022 of custodial remand of children it is stated that ‘placing a child in custody must always be a last resort’.- See footnote

Practice tips: Familiarity with the Youth Court Bench Book section on bail will be important for the advocate in the Youth Court dealing with remand decisions. Attention is drawn to the flowcharts in the Youth Court Bench Book that apply to remand. N.B. two versions are provided which apply to the different sets of conditions

¹ Section 38(4)(c), Crime and Disorder Act 1998.

² Sections 98 and 99 Legal Aid, Sentencing and Punishment of Offenders Act (“LASPO”) 2012.

³ R (B) v Brent Youth Court [2010] EWHC 1893 (Admin) at para. 17 now enshrined in s91(4A) PCSCA 2022.

Presumption in favour of bail

Like adults, a child accused of, or awaiting sentence for, an offence benefits from the presumption of bail.⁴ However, there are different exceptions depending on the circumstances.

Non-imprisonable offences

Children charged with non-imprisonable offences must be granted bail unless the court is satisfied that there are substantial grounds to believe that they:

- a) would not come back to court/would not commit offences/would interfere with witnesses or obstruct the course of justice **and** they have previously been released on conditional bail but have not kept to the conditions imposed; or
- b) would commit an offence by engaging in conduct that would, or would be likely, to cause physical or mental injury (or a fear of) to an associated person⁵ and they have previously been on bail but have not kept to the conditions imposed.

Bail *may* also be refused (need not be granted) if the court is satisfied the child:

- c) would not come back to court as they have a record of not attending court hearings;
- d) should be kept in custody for their own welfare; or
- e) are already serving a custodial sentence.



⁴ Section 4(1), Bail Act 1976.

⁵ “Associated person” is defined by s.62 of the Family Law Act 1998. It includes those who are or who have been married to each other or in civil partnerships, those who are in or who have had intimate relationships for a significant duration or those who have lived in the same household (other than employees or tenants).

Summary imprisonable offences⁶

The court [must grant bail](#) to children charged with summary imprisonable offences, unless the court is satisfied that there are substantial grounds to believe the child would:

- a) commit offences because they were on bail at the time of this allegation;
- b) commit an offence by engaging in conduct that would, or would be likely to, cause physical and mental injury (or fear of that) to an associated person;⁸ or
- c) not come back to court/commit offences/interfere with witnesses or obstruct the course of justice and they have previously been released on conditional bail but have not kept to the conditions imposed.

Bail *may* also be refused (need not be granted) if the court is satisfied:

- d) the child would not come back to court as they have a record of not attending court hearings;
- e) the child should be kept in custody for their own welfare;
- f) the child is already serving a custodial sentence; or
- g) it has insufficient information to make a decision.

Either-way and indictable-only offences⁸

In respect of either-way and indictable-only offences, the court *must* grant bail unless it is satisfied that there are substantial grounds to believe that the child would:

- a) commit further offences while on bail;
- b) fail to surrender to court;
- c) interfere with witnesses or obstruct the course of justice; or
- d) commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person⁹ (or a fear of such).

⁶ Schedule 1, Part 1A, para 2, Bail Act 1976

⁷ See n6

⁸ Schedule 1, Part 1, para 2, Bail Act 1976

⁹ See n6

The court *may* refuse bail if it is satisfied that:

- e) the child should be kept in custody for their own protection or welfare;
- f) the child is already serving a custodial sentence;
- g) the court has insufficient information to decide;
- h) the child was on bail at the date of the offence; or
- i) the child has breached existing bail conditions.
- j) where a case is being adjourned for the preparation of reports or enquiries, a court may also refuse bail if it appears to the court that the child or young person would not co-operate to enable a report to be prepared.

Unconditional Bail

Unconditional bail applies as it does in the adult courts. A child should be released with an obligation to surrender to court on the appointed day at the given time.

If the child fails without reasonable excuse to attend court (or the police station) at the appointed time, they will be guilty of a separate offence under the Bail Act 1976.¹⁰

Advocates need to ensure that this information is understood by the child and his/her guardian.

Conditional Bail

Conditional bail means that the child is released on bail with conditions attached.¹¹ These provisions apply as they do in the adult courts. However, unlike for adults, a condition of bail may also be imposed if it is necessary for the child's own welfare or it is in their own interests.¹² An advocate will spend more time at court with the child than the YJS worker and can be creative in suggesting bail conditions to the YJS and the court; for example, attendance at community or religious commitments or observing an exclusion zone. For examples of how best to take instructions and achieve the best possible outcomes for a child, please [refer to the guide on first hearings](#) and watch [the ICCA film](#) about effective communication with children at court.

By way of example, conditions may be imposed where necessary to ensure that the child:

- does not commit an offence while on bail;
- does not interfere with witnesses or otherwise obstruct the course of justice;
- makes themselves available for the making of enquiries or a report to assist the court with sentencing;
- attends an interview with a legal representative; and/or
- for their own welfare.

¹⁰ Section 6, Bail Act 1976

¹¹ Section 3(6), Bail Act 1976

¹² Section 3(6)(ca), Bail Act 1976

Where there are grounds for refusing bail, the YJS will carry out an assessment and prepare a “bail report”. Levels of bail support provided by the YJS vary in intensity depending on the seriousness of the offence(s) and the child’s previous bail history:

- *Bail support and supervision*, the details of which will be proposed in a report prepared by the YJS and is likely to involve home visits.
- [*Conditional bail with tag*](#) - curfews with electronic monitoring may be imposed on a child or young person where the following conditions are satisfied:
 - they have attained the age of 12 years;
 - they are (i) charged with or have been convicted of a specified violent or sexual or terrorism offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or (ii) have a recent history of committing imprisonable offences while remanded on bail or to local authority accommodation;
 - electronic monitoring must be available in the area, and
 - the YJS must certify to the court that the imposition of the requirement would be suitable.
- *Conditional bail with Intensive Supervision and Surveillance (ISS)* is an intensive community-based programme for young offenders¹³ that can be accessed via existing disposals (i.e., as part of a YRO, conditions of bail or part of supervision following a DTO). The local YJS will indicate whether the offender is suitable for ISS but it is a matter for the court whether bail is granted and whether ISS conditions are attached. Conditions may include tagging and voice verification. It only applies in cases where the offence is imprisonable and of sufficient gravity for the court to be considering a custodial remand. [*The YJS will decide whether to offer an ISS bail package*](#). If offered, this must provide a minimum of 25 hours structured time over 7 days each week, including the core elements of: education, training or employment (15 of the 25 high intensity hours should be timetabled in this category); family support (i.e., sessions with the parents or carers to ensure that they understand the child or young person’s licence requirements and what they can do to encourage compliance); an interpersonal skills (i.e., work to support the factors that can increase resistance and desistance; and an electronically-monitored curfew). The aim of the package is to prevent the commission of further offences.
- Where the parent or guardian of a child under the age of 17 consents to act as surety for the child, as a condition to bail, they may be required to secure the child’s attendance at court and their compliance with the conditions of bail.

¹³ Intensive Supervision and Surveillance (ISS) can also form part of a Youth Rehabilitation Order (YRO) or part of supervision following a Detention and Training Order (DTO).

Remand to Local Authority Accommodation (RLAA)

Whenever a child is refused bail, the court must give (and record if a custodial remand) the reasons for its decision. Children refused bail are remanded into local authority accommodation unless the conditions for youth detention accommodation (YDA) are satisfied, in which case the court may remand the child into YDA ¹⁴

Subject to consulting the local authority via YJS, the court can attach any conditions to the remand that would have been available on conditional bail (subject to the same conditions which need to be met above for electronic monitoring). The court can also impose a condition requiring that the child must not be placed with a named person. The court must decide whether the local authority accommodation needs to be secure or non-secure.

Once a court has remanded a child to local authority accommodation, the YJS will decide where to place the child. This might mean that the child resides at their home address. Alternatively, if the home address is unsuitable, placements may be made with another relative or a foster carer.

Where the court does not grant bail, it must state in open court the designated local authority that is to receive the youth. This will be the local authority already looking after the child or where the youth habitually resides or where the offence was committed. The local authority must then provide or arrange for that child or young person.

A remand into LAA is not a remand into custody for the purposes of section 240ZA of the Criminal Justice Act 2003 and consequently such a remand does not count as time served by the offender as part of their sentence. ¹⁵



¹⁴ Section 91(4) and s102, LASPO 2012.

¹⁵ Section 242(2) Criminal Justice Act 2003.

Remand to Youth Detention Accommodation (YDA)

If the court is satisfied that there are reasons to withhold bail and further criteria are met (see below), the court may remand the child or young person to YDA.¹⁶

The court does not specify where the child is to be remanded other than to state they are being remanded into YDA. It will be for the local authority to decide where the child will be placed, but it could include a Local Authority Secure Children's Home (LASCH), Secure Training Centre (STC) or a Young Offender's Institution (YOI). Young Offender Institutions are run by the Prison Service and private companies for children aged 15 to 21 (people under 18 are held in different buildings). STCs are run by private companies for people aged up to 17 and there are 30 hours of education and training a week, following a school day timetable.

The court must, however, designate the local authority that is to receive the child (which will be the local authority already looking after the child or the local authority in which the child habitually resides or the local authority in which the offence or one of the offences was committed). The designated local authority will be responsible for the travel and accommodation costs for the remand. The child also becomes a "looked-after child" and the designated local authority has duties toward the child to safeguard and promote their welfare. This includes plans for their care, education and health needs.

There are two sets of alternative conditions¹⁷, either of which must be satisfied before a child can be remanded into YDA. The first set of conditions is effectively based upon the seriousness of the offence and the need to protect the public or prevent the commission of further offences. The PCCS Act 2022 amendments added into the first set of conditions a sentencing conditions that was previously absent. The second set of conditions apply to other imprisonable offences, but the court can only remand if there is a real prospect of a custodial sentence.



¹⁶ Section 91, LASPO 2012

¹⁷ LASPO 2012: The New Framework, Ministry of Justice Circular No. 2012/06 (p.11 Mo) Youth Detention Accommodation Flowchart.

The first set of (four) conditions¹⁸ which must be met before a child can be remanded under this regime are:

- 1) The age condition: the youth must be 12 years-old or over;
- 2) The offence condition: the offence (or one or more of the offences) must be a violent or sexual offence or an offence punishable, in the case of an adult, with imprisonment for a term of 14 years or more; AND it is very likely that the child will receive a custodial sentence.
- 3) The necessity condition: the court must be of the opinion that, after considering all of the options for the remand of the youth that only remanding the youth to detention accommodation would be adequate in order to: (i) protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or (ii) to prevent the commission by the child of imprisonable offences; and the risk posed by the child cannot be managed safely in the community.
- 4) The legal representation condition: either that the youth is legally represented, or the youth was represented but the representation was withdrawn (due to the youth's conduct or their financial resources); or if the youth applied for representation but it was refused (on the grounds of financial resources); or if the youth (having been informed of their right to apply for representation) refused or failed to apply.

The second set of (six) conditions apply to other imprisonable offences where there is a real prospect of custody. They are as follows:

- 1) The age condition: the youth must be 12 years-old or over.
- 2) The sentencing condition: it must appear to the court that it is very likely that the child will be sentenced to a custodial sentence in respect of the offence;¹⁹
- 3) The offence condition: the offence must be an imprisonable offence;²⁰
- 4) The first or second history condition:
 - a. the first history condition is that the child has a recent and significant history of absconding while subject to a custodial remand, and the offence the court is now considering (or one or more of them) is alleged to have been committed while the child was remanded to local authority accommodation or youth detention accommodation; or
 - b. the second history condition is that the offence the court is now considering, together with any other imprisonable offences of which the child has been convicted in any proceedings, amounts or would amount, if the child were convicted of that offence or those offences, to a recent and significant history of committing imprisonable offences while on bail or subject to a custodial remand and this appears to the court to be relevant in all of the circumstances of the case;²¹

¹⁸ Section 98(3), LASPO 2012.

¹⁹ Section 91(3), LASPO 2012.

²⁰ Section 91(4), LASPO 2012.

²¹ Section 99(5)(6) LASPO 201

5) The necessity condition: the court must be of the opinion that (after considering all of the options for the remand of the child) that only remanding the child to YDA would be adequate to (i) protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or (ii) to prevent the commission by the child of imprisonable offences; and the risk posed by the child cannot be managed safely in the community. And:

6) The first or second legal representation condition:

- a. the first condition is that the child is legally represented; or
- b. the second condition is that the child was represented but the representation was withdrawn (due to the child's conduct or their financial resources); or the child applied for representation but was refused (on the grounds of financial resources); or the child (having been informed of their right to apply for representation) refused or failed to apply²²

If remanding into YDA, the court must state in open court that it is of the opinion that the necessity condition is satisfied and explain this to the child, using ordinary language, why it is of that opinion.

A remand into YDA is a remand into custody for the purposes of section 240ZA of the Criminal Justice Act 2003 and consequently such a remand does count as time served by the offender as part of their sentence, subject to the sentence imposed – for the approach to be applied where the child is sentenced to a Detention and Training Order see the **Definitive Guideline on Sentencing Children and Young People** at [6.53].

Practice tips:

Try to ensure you obtain a useful chronology of offending and any previous breaches of bail to make appropriate submissions to the court as to what is significant and relevant. Be prepared to put forward other conditions to address what other means there might be to adequately deal with the risk (necessity condition).

If the event the court does order a custodial remand:

For many children the prospect of being remanded in custody - especially if it is for the first time – is likely to be terrifying. They may not be able to envisage what is going to happen or what to expect. It is necessary to talk through this stage carefully with a child. Explain:

- That they will be able to make calls home and to a solicitor (make sure the child has a list of telephone numbers they will need)
- That they will be eligible for visits from family members, a solicitor and the YJS worker.
- That they will be assigned a key worker in custody
- That education will form part of their detention, so ask if they have a statement of SEN/an EHC plan so the solicitor/family member can forward it to the YDA as soon as possible.

²² Sections 98(4) and 99(7) LASPO 2012.

²³ Section 242(2) Criminal Justice Act 2003..

- Make sure the child knows how long it will be until the next hearing.
- Obtain practical information if a child is being remanded in custody (e.g. medical conditions, medication, history of self-harm/suicide attempts, caring responsibilities, upcoming appointments including medical, exams or job interviews).
- Obtaining third party material – SEN/psychological reports and other information made assist with making a further bail application.

Bail for children charged with murder/homicide

Because only a Crown Court judge can grant bail in a murder case, ²⁴ the youth court must remand the child in custody to appear before the Crown Court. In doing so the youth court must decide the form of remand to custody to impose – a remand to local authority accommodation or to youth detention accommodation – applying the relevant criteria.

Refusal of bail

If the court has refused bail, it is the court's duty at every hearing to consider whether the child ought to be granted bail. Where a child has been remanded into custody, a second bail application may be made before any subsequent court and any argument may be advanced, even if previously argued. If this second application is refused, the next court need not hear arguments it has previously heard. However, if there has been a change in circumstances, the child has a right to make further applications.

However, note that even where there has been no change in circumstances, nor any new considerations are available to put before the court, the court should still consider the bail position: [R \(B\) v Brent youth court \[2010\] EWHC 1893 \(Admin\)](#) at paragraph 17.

The requirement for the court to now record its reasons in the event of a custodial remand may assist in bringing Judicial Review proceedings to challenge unlawful remand decisions.

Breach of bail

Breach of bail is dealt with like any other breach (i.e., arrest and production to the court).

Custody time limits

The custody time limits that are applicable to children who have been remanded into YDA or LAA can be found in the CPS Guidance.

²⁴ Section 4(7), Bail Act 1976 and section 115(1), Coroners and Justice Act 2009

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