

# FIRST HEARINGS IN THE YOUTH COURT

## 01

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*“ We need a radical new approach to preventing children becoming involved in crime and turning children’s lives around when they have spiralled out of control. This means: stopping gangs from exploiting vulnerable children; identifying children at risk of getting involved in crime and diverting them away from that path; reducing the numbers of children in custody to an absolute minimum and transforming secure care for children so that rehabilitation is at its heart ”*

**- Children’s Commissioner, Injustice or In Justice, December 2020**

## Preparation before Court

All prosecution papers are now sent digitally via email. As soon as you know the name of the child, the court and what date they will be appearing, ensure that you email the prosecution requesting a copy of the prosecution papers. To do this you will need to obtain a ‘CJSM’ secure email account. The papers will then be sent to you via email for you to consider prior to discussing the case with the child.

In cases involving media evidence (CCTV, 999 calls etc) you will need to ensure that your instructing solicitor, (if they have been invited themselves), has invited you to view this evidence on the relevant digital media sharing platform, such as egress. To do this you will need to obtain an account for that platform. Please note that, in many cases, this evidence will not have been uploaded by the First Hearing.

Try to obtain as much information as possible from the most appropriate person, whether that is your instructing solicitor or the police station representative, or the Youth Justice Service (YJS) about the child, their home circumstances, any previous convictions or bail packages, and the alleged offence(s).

Find out whether an accompanying adult will be attending court with the child, for example, a parent, carer or guardian. They should be there. It is best to try and have the child’s social worker as opposed to a duty social worker. Ask for the child’s mobile number and that of the accompanying adult in case they are running late or fail to attend court.

If the child has a social worker or someone from the YJS, ensure that they are contacted and told about the hearing. In many cases, it will be helpful for them to attend or to liaise directly with the YJS to share potentially valuable information which might otherwise be overlooked.





## Child on Bail

As a priority, find the child and the child's accompanying adult. Make sure that they have been told to arrive to allow sufficient time for discussion to take place prior to the hearing. Introduce yourself and try to find a conference room or other quiet space where the child will feel more comfortable to speak, and you can explain what is likely to happen.

Explain to the child that you **may** have to speak to the prosecution or the YJS and obtain more information in relation to their case before you can discuss matters with them further. This may also include access to the prosecution papers via the digital system. It may be helpful as well to make sure they know that there could be a **delay** before their case is heard.

Be aware that some youth courts have policies limiting the number of the child's family members or friends who can come into the building (often no more than 2). If an unreasonable approach is being taken by security staff, speak to the usher and/or legal advisor in court who may be able to intervene and make allowances.

## Child in Custody

There may be a queue to see clients in a combined court centre so make sure custody staff know your client is a child; they should get priority.

If appropriate, you may want to ask custody officers if you can go into the child's cell rather than speak to him/her in one of the rooms adapted for conferences.

With your client's consent, inform custody officers of any concerns you or anyone else may have about the child's mental or physical health. In particular, if the child is at risk of self-harm or suicide, make sure that staff note this on the custody file. This is particularly important if the child is refused bail at the end of a hearing and transferred into youth custody.

There is a limit to what you can do but always make it known to other agencies if you are concerned.

# The Youth Justice Service (YJS)



Speak to the YJS at an early stage to find out more about the child and any previous involvement the child may have had with the YJS. This is especially important if a bail package is required. For more information on bail and remand, please refer to the 'Bail and Remand' guide in this series of materials.

Allow the YJS to make copies of the prosecution papers.

Facilitate introductions with anyone who has attended court with the child where appropriate/necessary.

## Communication

It is very important to communicate effectively and appropriately with the child.

Always consider their age and other communication needs that may affect their understanding, such as learning difficulties or communication disorders.

Speak slowly, clearly and avoid complex language and terminology. Try to break down the allegation faced by your client, and the same with your advice, by using non-technical language (phrases to watch out for include "offence", "sentence", "credit for a guilty plea", "adjourn for a report", "allocation/mode of trial"). Ask your client if it would help to write things down/draw diagrams/repeat things etc. Please use the flowchart to help with this.

Give the child time to process your advice before trying to take instructions.

It may help to watch the film created by the ICCA to assist you in communicating effectively with a young person at court.

Further note that the terminology used in a Youth Court itself differs to the Crown and Magistrates' Court. The child and any youth witnesses will be referred to by their first names. The words 'conviction' and 'sentence' should not be used. Instead, they should respectively be referred to as 'a person found guilty of an offence/a finding of guilt' and 'an order made upon such a finding [of guilt]'.

## Background information

It is important to obtain as much background information as possible. Advocates will have to establish a rapport with the child before asking personal questions. Discussing these broader topics may also provide you with information relevant to how the child processes information and their ability to effectively participate. For example:

- Personal circumstances: who is in their family, or who do they live with?
- Accommodation issues: overcrowding, disputes with those in the household?
- Health: any medical conditions or diagnosis, including any mental illness? Are they currently on any medication? Will it be helpful to get your client's signed consent to obtain their medical records?
- Education: are they at school or college? Do they get any extra help? Do they have a statement of Special Educational Needs (SEN) or Education, Health and Care (EHC) plan?
- Activities: do they undertake any activities, such as sport, music, work, or have community/religious involvement?
- Previous convictions/police involvement: have they been in trouble with the police before? Where a PNC print has been provided, do they accept its accuracy? Can they provide mitigating details of offending not obvious on the face of the record?



## Sources of Information

Where appropriate, ask the accompanying adult questions to elicit information about the child's personal circumstances and welfare. This may help you assess their fitness to plead and/or ability to effectively participate. An adult may tell you things that a child will not, cannot or does not consider important.

## Potential pressures influencing decision-making

Be sensitive to any potential pressures on the child which may influence his/her decision-making such as not wanting to get in trouble with parents or teachers. Beware of the well-meaning accompanying adult who can sometimes be unwilling to accept advice about the strength of the evidence. For this reason, it is sometimes important to spend some time speaking to the child without their accompanying adult present.

It can be appropriate to ask an accompanying adult to leave the room whilst you take instructions. However, this can be difficult to achieve in every case and you will have to judge how best to balance the interests of the client between being supported and being able to speak freely.

## Intermediaries

Consider whether the child would benefit from an intermediary. The ICCA has developed a crib sheet to assist with the use of intermediaries.

The case of [R \(on the application of TI\) v Bromley Youth Court \[2020\] EWHC 1204 \(Admin\)](#) provides a review of the case law on the relevant considerations for the court as to whether an intermediary should be appointed.

## Practical Matters

Remember to ask the child about **future hearing dates** in order to avoid clashes with their schooling, exams and other commitments. They will not necessarily realise that agreeing to a June court date will clash with exams and revision. They may believe that they have no choice in the matter.

Consider whether the case is suitable for representations (either at court or thereafter in writing) about the possibility of an out-of-court disposal, a review of the decision to prosecute or the acceptability of a plea to a lesser offence.

It may help to consider the [ACPO Youth Offender Case Disposal Gravity Factor Matrix](#). The Youth Court Bench Book and CPS guidance allow for adjournments for diversion. This might be relevant for children who did not make admissions in their police interview or who made admissions and out-of-court disposals have not been adequately considered.

The [Code for Crown Prosecutors](#) states that Crown Prosecutors must consider the best interests of a child and the impact of proceedings on their future prospects, amongst other public interest factors, in deciding whether a prosecution is needed. The maturity, as well the age, of the child should be considered. Before coming to a prosecuting decision, prosecutors must consider all the circumstances surrounding the offence and the circumstances of the youth.

If the case has already reached court, this does not necessarily mean it is too late for disposal by way of a youth caution (YC)/youth conditional condition (YCC). [The CPS legal guidance on children as suspects and defendants](#) states that, if a case has proceeded to court, but the prosecutor decides that a YC or YCC can be justified, the matter should be adjourned for consideration of that disposal. However, it will only be in exceptional circumstances that a YC or YCC are given after a correct charging decision has been made. Furthermore, proceedings should not be taken against a youth offender solely to secure access to the welfare powers of the court.

There a Guidance document from the MoJ and YJB on Youth Cautions. Furthermore, there is [Legal Guidance](#) from the CPS assisting as to the circumstances in which a YCC may be appropriate.

The decision to prosecute 'looked after children' for offences committed within a children's home should be examined carefully against the guidance.

The CPS Guidance states that a criminal justice disposal should not be regarded as an automatic response to offending behaviour by a care-experienced child, irrespective of their criminal history. Check that the police/prosecution have properly considered the checklist. This is important to prevent care-experienced children being unnecessarily prosecuted. Courts should be sympathetic to any application to adjourn proceedings where such a review has not taken place. As the Children's Commissioner has pointed out, "at every stage of a child's journey through the criminal justice system, opportunities are being missed to get to the root causes of offending and put children's best interests at the heart of the response. When children's home staff call the police on a child for damaging property, rather than ground them or dock their pocket money as a parent might."<sup>4</sup>

The CPS starting point is the Code for Crown Prosecutors but in addition they must consider the circumstances of the child, including their accommodation, family background and the physical and mental health of the child. The decision to prosecute must only be taken after a full review of the case and the background information, including information concerning the suspect provided by the YJS, police, or local authority.



Remember that the hearing will be in private and that usually only one accompanying adult will be allowed to accompany the child. Your client may be unfamiliar with the layout of the courtroom, where to sit and when to stand or speak, and even whether 'phones should be used or hats removed. Your client will usually sit near you and advocates may remain seated unless directed otherwise.

Where your conference has raised concerns about fitness to plead or effective participation, it is essential that you are aware of the statutory framework relevant to the specialised magistrates' court approach covering such defendants.

The case management of such cases can vary. As with any area that might lead to discussions on the correct law or procedure, consulting with the Legal Advisor prior to the hearing will be of assistance.

If the case is going to trial, consider seeking a defendant's evidence direction (see [Criminal Procedure Rules](#) or other adaptations for the child, such as an intermediary (see above).

If the child is pleading guilty, you will not necessarily need a pre-sentence report, for example, if the compulsory Referral Order conditions are met. If you are seeking a pre-sentence report, it will help to give both your client and the court a realistic estimate from the YJS for how long it will take them to prepare a report and information they might be assisted by (e.g., medical reports, statement of SEN/EHC plan). Make a note of any such information, so that the child's instructing solicitor can assist the child/their family in obtaining it.





# Allocation

There is a presumption that a child will be tried and sentenced in the Youth Court. <sup>6</sup>The presumption recognises that it is the Youth Court which is best designed to meet the specific needs of a child. However, this is subject to exceptions which are covered comprehensively in Judicial college, Child defendants in the Crown Court and also the Sentencing Council: [Sentencing Children and Young People Definitive Guideline](#).

## Grave crimes

One of the exceptions is where the child is charged with a grave crime and the court considers that the appropriate sentence is to be more than two years' detention. In such cases the court has to make the allocation decision based on the likely sentence: is there is a real prospect that a sentence in excess of two years' detention will be imposed.<sup>7</sup> The Divisional Court<sup>8</sup> has recently emphasised that in these types of cases, practitioners must ensure the court is aware of the principles set out in [R \(on the application of DPP\) v South Tyneside Youth Court \[2015\] EWHC 1455 \(Admin\)](#) at [29-31]. In summary, the court will usually be best placed to determine whether the real prospect test is met after trial: it will only be in 'rare' cases where a child is sent for trial, and where the child is under 15, it should be very rare.<sup>9</sup>



<sup>6</sup> Section 24, Magistrates Courts' Act 1980

<sup>7</sup> Sentencing Council: Sentencing Children and Young People Definitive Guideline at [2.8].

<sup>8</sup> R (on the application of B) - and - West Glamorgan Youth Court - and - Crown Prosecution Service [2020] EWHC 2888 (Admin)

<sup>9</sup> Ibid at [14].



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