JUDICIAL COLLEGE

Youth Court Bench Book

August 2017

Amendment – May 2016

Sentencing – A structured approach

- The Victim Surcharge amounts payable were increased for offences committed on or after 8 April 2016.

Amendment – August 2017

Changes have been made throughout this bench book to incorporate:

- References to the new youth dedicated Sexual Offences and Robbery guideline published by the Sentencing Council, effective from 1 June 2017.
- Changes introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- Changes to the anti-social behaviour legislation.
- References to the revised *Overarching Principles – Sentencing Children and Young People* issued by the Sentencing Council and effective from 1 June 2017.
- Reference to *The Justices of the Peace Rules 2016.*

Please note that the page numbers have been updated throughout and dates within the footers now show the date of the latest update.

For those with access to our Learning Management System, details of previous updates to this bench book can be accessed via the following link – https://judicialcollege.judiciary.gov.uk/mod/folder/view.php?id=739

Foreword

BY THE HONOURABLE MR JUSTICE WILLIAM DAVIS

The Youth Court Bench Book was last updated in 2015. Important developments since then include:

Publication of the Sentencing Council guideline '*Overarching principles – Sentencing Children and Young People',* which came into effect from 1 June 2017 superseding the 2009 guideline issued by the Sentencing Guidelines Council. It provides comprehensive guidance on the sentencing principles and welfare considerations that a court should have in mind when sentencing children and young people. It also includes specific guidance in relation to sentencing of sexual offences and offences of robbery committed by children and young people.

Publication of the Sentencing Council Allocation Guideline which has been in effect since 1 March 2016 and which provides guidance on how to apply the interests of justice test in relation to venue when a child or young person is charged jointly with an adult.

The updated Youth Court Protocol issued by the Magistrates' Association.

The consequences of the extended power of the Youth Court to commit for sentence as explained in the judgment of the Divisional Court in the South Tyneside Youth Court case.

This Youth Court Bench Book follows the same 'checklist' format as the original version including changes up to July 2017. It provides a reference work suitable for use at court or at home and to assist with effective case management, training events and preparation for appraisal. Each magistrate will also have the benefit of the *Youth Court Pronouncement Cards* which set out the salient points and pronouncements for court sentences, remands and ancillary orders.

I hope this publication will be as well received as previous editions and trust that those who use it continue to find it helpful.

Mr Justice William Davis

Director Criminal Training Judicial College

Judicial Lead for Youth Justice.

August 2017

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INTRODUCTION

The youth court

1. The youth court deals with criminal proceedings against those who are aged 10 – 17 years old. Those under the age of 14 are referred to as 'children' and those aged 14 – 17 as 'young people'. There is an irrebuttable presumption that no child under the age of 10 can be guilty of an offence.

2. The **principal aim of the youth justice system is to prevent offending**. A court, when dealing with a child or young person, must have regard for their welfare. This is covered in more detail in paragraph 1.11 of the Sentencing Council *Overarching Principles – Sentencing Children and Young People* document effective from the 1 June 2017. In addition, the Youth Justice Board have identified six key objectives of the youth justice system:

   a. Swift administration of justice.

   b. Confronting young offenders with their offending behaviour.

   c. Intervention that tackles particular factors that lead youths to offend.

   d. Punishment proportionate to the offending.

   e. Encouraging reparation.

   f. Reinforcing the responsibility of parents/guardians.

3. The Sentencing Council in the *Overarching Principles – Sentencing Children and Young People* emphasise that the approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused. For a child or young person the sentence should focus on rehabilitation where possible. A court should also consider the effect the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour.

Attendance of parent/guardian and third parties

4. Children and young people under the age of 16 who appear before the youth court must have a parent/guardian with them in court, unless the court thinks it

is unreasonable. Those aged 16 and over may be accompanied. This is to encourage parents/guardians to take responsibility. In addition, certain court orders and sentences may be made against the parent/guardian e.g. payment of financial penalties and parenting orders.

5. Only members and officers of the court, parties and other persons directly connected to the case, lawyers, witnesses and bona fide members of the press should be present in the youth court. Additional people may be authorised by the youth court. Members of the press may be present but are restricted as to what information they may report.

Engagement

6. The child or young person and their parent/guardian play a vital role in the proceedings and as such should be involved at all stages. One of the key differences between youth and adult courts is that the magistrates talk directly to the child or young person and their parent/guardian.

7. At the beginning of the case, magistrates may introduce themselves and those present in the courtroom. It may also be helpful to briefly explain the role of each person. This is especially so when a child or young person and their family appear in court for the first time.

8. Post-conviction, magistrates should be encouraged to talk directly to the child or young person. This encourages the child or young person to confront their behaviour, take responsibility for it and its consequences. Magistrates should also engage with the parent/guardian of the child or young person as they may be affected by the proceedings. This may seem straightforward but in practice is less easy.

9. Some children or young people may not want to participate for a variety of reasons including lack of maturity, embarrassment or even nerves. In addition, there is a temptation for the chairman or other parties to fill silent gaps with further questions or remarks.

10. The court should consider what information they are trying to obtain and how it is relevant to the case or the sentencing exercise. Questions should be in plain language and at a level the child or young person can understand. Closed

questions, those that allow only a yes or no answer and legal jargon should usually be avoided.

Equality and diversity issues

11. The Judicial College publishes an Equal Treatment Bench Book (ETBB) which is available on the Courts and Judiciary website: https://www.judiciary.gov.uk/publications/equal-treatment-bench-book/. Chapter 5 of the ETBB is called 'Children and vulnerable adults' and contains useful key points when dealing with children and young people. However, in the light of constantly evolving changes to diversity issues it is important that all youth magistrates, especially youth court chairmen, are familiar with issues that arise regularly in the youth court, such as some children or young people having limited communication skills, inappropriate reactions through emotional immaturity and the effect peer pressure may play. It is important to find out and understand the individual's background as this may influence their behaviour. The young person may have a learning difficulty or disability that affects their communication skills or their ability to understand proceedings. All youth court chairman will have attended training on engaging with children and young people and be experienced with adapting their approach and pronouncements depending on the individuals they are dealing with. It is also important to remember the availability of special measures in the youth court, including the use of intermediaries. There is a lot of useful information on the use of intermediaries on The Advocate's Gateway (www.theadvocatesgateway.org) and in the Criminal Practice Directions 2015 part 3F.24 and 3F.26.
12. The Judicial College *Adult Court Bench Book* also contains information on issues such as different faith traditions, Holy Scriptures, naming systems and terminology.

The courtroom layout

13. Most youth courts are held in less formal surroundings to that of adult courts. Magistrates are encouraged to sit on the same level as the other people present, and the parent/guardian should sit next to their child and remain seated throughout the proceedings.

Youth court protocol

14. The Magistrates' Association has recently updated and published a national guide for youth court panels (see *Appendix A – Magistrates' Association Protocol*). This protocol offers advice. Any decision with regard to the procedures to be adopted in each case will rest with the court; taking into account all of the circumstances of the particular case including the age, maturity and development (intellectual and emotional) of the child or young person before the court. Your youth court panel may be invited to adopt this protocol.

Youth Justice Board (YJB)

15. The YJB was created by virtue of the Crime and Disorder Act 1998.

16. The YJB works to prevent children and young people from offending or re-offending, which includes ensuring that custody is safe and secure. The YJB also address the causes of offending behaviour. Its main functions include:

    a. overseeing youth justice services;

    b. the placing of children and young people remanded or sentenced to custody;

    c. advising the Secretary of State for Justice on the operation of, and standards for, the youth justice system;

    d. providing a 'secure estate' for children and young people, with young offender institutions, secure training centres and secure children's homes;

    e. making grants to local authorities or other bodies for the development of plans that support our targets; and

    f. commissioning and publishing research on preventing youth offending.

Youth Offending Teams (YOT)

17. There is a YOT in every local authority in England and Wales. Each team must include the following representatives:

    a. police

    b. Probation Services

c. Social Services

d. health

e. education.

In addition, a YOT may have the following:

f. drug and alcohol misuse workers

g. housing officers

h. the services of a psychiatrist or psychologist and possibly a range of other specialist posts.

HUMAN RIGHTS – A SUMMARY

1. As a public authority, the court has a duty to act compatibly with the European Convention on Human Rights. The practices, procedures and decisions of the court should be carried out in such a way so as not to breach an individual's human rights. This applies to all those affected, e.g. defendants, victims, witnesses, etc.
2. **Article 6 is the right to a fair trial** and should always be at the forefront of the court's mind – a list of the relevant articles is provided below.
3. The magistrates' court has not seen many human rights challenges. However, it can be a complex area of law and magistrates should always seek the advice of the legal adviser if a Convention point is raised.
4. A party wishing to raise a Convention point should be required to provide a written outline of their argument including supporting case law. This enables the parties, magistrates and legal adviser to consider the point fully.
5. **Is the Convention engaged?**
6. **If so, which right is engaged?** The articles that are most likely to be raised in court are:
   - Article 5 – Right to liberty and security (limited right)
   - Article 6 – Right to a fair trial (part absolute right, part limited right)
   - Article 8 – Right to respect for private and family life (qualified right)
   - Article 10 – Right to freedom of expression (qualified right)
   - Article 11 – Right to freedom of assembly (qualified right)
   - Article 14 – Prohibition of discrimination (qualified right).
7. **Has the right been breached?** The fact that a right is interfered with does not necessarily mean that it has been breached.

8. **Establish the type of right that is engaged:**

- **Absolute right** – Has there been an interference with the individual's Convention right?

  If the answer is yes, there has been a breach of the right – there are no circumstances when such behaviour would be acceptable under the Convention.

- **Limited Right** – Does the interference fall within one of the lawful exceptions within the article?

  Each limited article contains an exhaustive list of the exceptions to the right – if the exception is not in the list, there is a breach. Seek advice from the legal adviser.

- **Qualified right**

  The court will need to ask three questions:

  i. Is the interference prescribed by clear and accessible UK law?

  ii. Does it pursue one of the legitimate aims set out in the article?

  iii. Is it no more than is necessary to secure that legitimate aim?

  If the answer is NO to any of these three questions, there is a breach.

9. The source of the breach will determine how the court deals with it:

- **Primary legislation**

  Can the court find a possible interpretation that will give effect to the Convention right?

  - If YES, then the law must be applied in this way.
  - If NO, then apply national law as it is.

- **Secondary legislation**

  Can the court find a possible interpretation that will give effect to the Convention right?

  - If YES, then the law must be applied in this way.
  - If NO, disregard national law so as to give effect to the Convention right.

- **Practice or precedent**

  Can the court find a possible interpretation that will give effect to the Convention right?

  - If YES, then the law must be applied in this way.
  - If NO, disregard national law so as to give effect to the Convention right.

  Explain why the court has reached the conclusion it has – this structure will provide a basis for the court's reasons.

  Seek the assistance of the legal adviser in preparing the pronouncement and reasons.

REPORTING RESTRICTIONS – A STRUCTURED APPROACH

General rule

1. In recognition of the open justice principle, the general rule is that justice should be administered in public. Proceedings involving children or young people are a statutory exception to this rule.

2. Criminal proceedings should normally be held in open court where members of the public and media are entitled to be present. Fair and accurate reports of proceedings, even where individuals are not identified, should be encouraged where appropriate as they can help promote public confidence. However, members of the public are not usually allowed in the youth court unless they have some connection with the case in question and the magistrates allow it. In practice, because of the restrictions when reporting cases involving children or young people appearing before youth courts, it is unlikely that any member of the media will regularly attend.

   (*Note:* where reference is made to the media, this includes the press, radio, the internet and television.)

Youth court

3. Restrictions automatically apply to most proceedings in the youth court.

4. No report shall be published that reveals the name, address, or school of any child or young person concerned in the proceedings, or that includes any particulars likely to lead to the identification of any child or young person in the proceedings.

5. No pictures shall be published of any child or young person concerned in proceedings.

6. Reporting restrictions extend beyond newspapers, sound and television broadcasts to cover any communication to the public at large or any section of the public. This wide definition includes information published online, for example information posted on social media sites such as Facebook and Twitter.

7. Applications may be made to lift reporting restrictions in certain circumstances:
   a. To avoid injustice to the child or young person.
   b. When charged or found guilty of certain offences and the child or young person is unlawfully at large and it is necessary to bring them back before the court.
   c. Where a child or young person has been found guilty of persistent offending and the court is satisfied it is in the public interest to do so.
8. The power to dispense with anonymity should be exercised with great care and caution as identification may conflict with the welfare of the child or young person. It should not be seen as an additional punishment.
9. **Always seek the advice of the legal adviser when considering the lifting of reporting restrictions.**
10. When an application is made to lift reporting restrictions, any member of the media present should be allowed to make representations before a decision is made.

Lifetime Reporting Restrictions under Section 45A (the "reporting direction")

11. Any Court in England and Wales has the discretion to order, under specific circumstances, a lifetime reporting restriction in respect of a victim or witness under the age of 18 during the proceedings. This allows the court to provide victims and witnesses with individual tailor-made protection within the criminal justice system.
12. A defendant under the age of 18 cannot apply for a lifetime reporting restriction.
13. At any time during proceedings, the court may make a lifetime reporting restriction. To do this, the court must be satisfied that fear or distress on the part of the victim or witnesses in connection with being identified by members of the public as a person concerned in the proceedings is likely to diminish the quality of the victim's or witness's evidence or the level of co-operation they give to any of the proceedings.

14. When considering whether to make a reporting direction the court must take into account a number of factors, including the nature and alleged circumstances of the offence, the age of the victim or witness subject to the application, their social and cultural background and ethnic origins, if relevant, and any views expressed by them. Where the victim or witness is under 16 years old, an 'appropriate person' (e.g.: parent, guardian or representative of the local authority) may assist the court.

15. The court must also have regard to the welfare of the victim or witness who is the subject of the reporting restriction application, whether it would be in the interests of justice to make the reporting direction and the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.

16. The court may make an 'excepting direction' dispensing, to any extent that it specifies, with the restrictions imposed by the reporting restriction. The court has to be satisfied that it is necessary in the interests of justice to make the excepting direction or the court is satisfied that the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax the restriction.

17. Always seek the advice of the legal adviser when considering making or lifting a lifetime reporting restriction.

Youths appearing before an adult court

18. Where children or young people are involved in proceedings before the adult court, various reporting restriction orders may be made but no automatic restrictions apply. The child or young person concerned may be the defendant, the victim or a witness.

19. The court is no longer able to make an order under Section 39 in criminal proceedings. In its place, the court may make an order under Section 45 that will apply until the youth defendant reaches the age of 18, or until the order is otherwise lifted prior to the individual's 18th birthday. If a youth defendant turns 18 during the proceedings, the reporting restriction will expire at the end of the proceedings.

20. An order made under Section 45 will operate broadly in the same way as the Section 39 order.

21. Section 39 orders continue to apply to non-criminal proceedings (civil and family), no matter where they take place.

22. The court may direct that no matter relating to any person concerned in the proceedings while s/he is under the age of 18 should be included in any publication that is likely to lead members of the public to identify him or her as a person concerned in the proceedings. When deciding whether to make the direction, the court must have regard to their welfare.

Where an order is made

23. Where an order is made, either to restrict or remove reporting restrictions, the court must make it clear that an order has been made and announce the terms of the order. It must also announce the reasons for making the order.

24. Failure to comply with a press restriction order is an offence punishable by a fine.

Criminal Behaviour Orders (CBOs) and Anti-Social Behaviour Injunctions (ASBIs)

25. Where a young person is convicted of an offence, the youth court has power to make a CBO. ASBIs are civil injunctions that are available in the youth court for 10 to 17 year olds. These orders can be reported, unless the court make a specific direction to prevent such reporting.

26. In relation to CBOs the details of the order can be reported, i.e. the press could report the CBO and the prohibitions, but not the case details that led to the making of the CBO unless, of course, the court makes an order lifting the restrictions in relation to the offence. This will have to be balanced against the court's duty to have regard to the welfare of the child or young person.

27. The court may make an order preventing the reporting of the CBO or the ASBI. The court would need to have a good reason, other than age alone, for preventing the identification of any child or young person in such proceedings. The court should consider that unless the nuisance is extremely localised, enforcement of the order will normally depend on the general public being

aware of the order and of the identity of the person against whom it is made. Effective enforcement may require the publication of photographs of the offenders, as well as their names and addresses.

Breaches of CBOs and ASBIs

28. A breach of a CBO is a criminal offence and will be prosecuted in the youth court. Breach of an ASBI is also prosecuted in the youth court. However, the automatic reporting restriction preventing the identification of youths does not apply to breach proceedings. This is to allow local communities to be made more aware of such cases in order for the imposition of CBOs to work effectively, e.g. to act as a deterrent.

29. In the absence of a specific reporting direction being made, the publication of breach proceedings is allowed.

ESSENTIAL CASE MANAGEMENT

The role of the court

1. The court must ensure that each case proceeds as expeditiously as possible as is consistent with the interests of justice and the fair trial provisions in Article 6 of the European Convention on Human Rights. This is essential when dealing with children and young people.

2. The principal aim of the youth justice system is to prevent children and young people offending. This key objective of the legislation is more likely to be achieved if cases are swiftly administered, so that every child or young person accused of breaking the law has the matter concluded without delay. This is especially important where there is a history of offending in order that young people may learn that any sentence imposed is a direct consequence of their offending behaviour.

3. Each case must be dealt with on its own merit. The court must play a proactive role to ensure that a case is managed robustly and dealt with promptly.

Effective hearings

4. Many cases can and should be dealt with at the first hearing. The court must expect pleas to be entered on the first occasion and for progress to be made at every hearing. If no progress can be made, it is the court's duty to ask questions to obtain and consider all relevant information.

5. Some adjournments cannot be avoided e.g. for trials to take place, reports etc.

Adjournments

6. When dealing with applications to adjourn, courts should consider the following:

    a. Unnecessary adjournments should be avoided.

    b. Every application should be examined and the party requesting it should be asked to justify it.

    c. Any adjournments granted should be for the shortest possible period to allow for progress.

d. The reason for any adjournment should be made clear and noted on the court file so that all parties know what is expected next time.

e. Justice delayed may be justice denied in respect of all parties, not just the child or young person.

Criminal Procedure Rules (CPR)

7. The CPR brought about a culture of change in the management of criminal cases. Under the CPR everyone involved is responsible for helping to make the case proceed efficiently under the supervision of the court.

8. In December 2009, the Senior Presiding Judge issued guidance on applying the CPR (see *Appendix B – Essential Case Management*). Relevant extracts of the CPR can be found at *Appendix C – Extract from the Criminal Procedure Rules 2015*.

9. The overriding objective is that criminal cases be dealt with justly. This includes:

   a. acquitting the innocent and convicting the guilty

   b. dealing with the prosecution and the defence fairly

   c. recognising the rights of a defendant, particularly the right to a fair trial under Article 6 of the European Convention on Human Rights

   d. respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case

   e. dealing with the case efficiently and expeditiously

   f. ensuring that appropriate information is available to the court when bail and sentence are considered

   g. dealing with the case in ways that take into account:

      i. the gravity of the offence alleged

      ii. the complexity of what is in issue

      iii. the severity of the consequences for the defendant and others affected

      iv. the needs of other cases.

10. The court must further the overriding objective by actively managing cases. This includes:

    a. the early identification of the real issues

    b. the early identification of the needs of witnesses

    c. achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case

    d. monitoring the progress of the case and compliance with directions

    e. ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way

    f. discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings

    g. encouraging the participants to co-operate in the progression of the case

    h. making use of technology.

11. In addition, the court has a duty to actively manage the case by giving any direction appropriate to the needs of that case as early as possible. Each party must actively assist the court in fulfilling this duty without, or if necessary with, a direction and apply for a direction, if needed to further the overriding objective. This will include communication between the prosecution and defence at the first available opportunity and in any event no later than the beginning of the day of the first hearing to establish among other things the plea, what is agreed and disputed, what information or other material is required by either party and why. CPR 2015 Part 3.3

Sentencing

12. Not all sentences require a full written report. Therefore, in many cases it will be possible to sentence an offender without the need for a full pre-sentence report. The court should consult the YOT to determine whether a report is necessary. It may be possible to use a previous report or to receive an oral or fast delivery report.

Generally

13. The court and all participants must further the overriding objective of the CPR by actively managing each case. However, it is the personal responsibility of the magistrates to manage the case actively. If a case cannot be concluded, the court must give directions to ensure that the case can be concluded at the next hearing or as soon as possible after that.

14. Where the word 'must' appears in the CPR it means **must**. The CPR must be complied with; they are compulsory not guidance.

15. Proper evidence must be supplied if a child or young person claims they are unwell and unable to attend court; a medical certificate that states the child or young person is 'unfit to work' will not generally establish that a person is too ill to attend court. Any certificate should specify the date of examination of the offender, the nature of the illness, how it prevents the offender from attending court and the timescale for prognosis.

Pre-court

16. The prosecution case should contain sufficient information and evidence to enable the first hearing to be effective. The level of information should be proportionate and sufficient for the type of charge, expectation of plea and decisions required by the court.

17. Initial details, consisting of a charge sheet, summary of the evidence or the statements that set out the facts of the matters on which the case will be based and the child's or young person's previous convictions, should be provided to the defence and they should be adequately prepared to ensure the first hearing is effective. Under the Transforming Summary Justice Initiative, in those cases where a not guilty plea is anticipated, the prosecution should have further information available, such as the schedule of unused material.

18. Best practice also requires the prosecutor to be available for consultation prior to the court hearing and for the police to provide the child or young person, and where appropriate their parent/guardian, with information on their obligations e.g. to seek legal advice.

The first hearing

19. The court must take a plea from the child or young person. This obligation does not depend on the extent of initial details, disclosure of unused evidence or the grant of legal aid.

20. Any requests for adjournments should be critically scrutinised and if granted, should be for the shortest possible period.

21. When adjourning cases, a warning should be given to the child or young person clearly explaining the consequences of failing to attend, including the issuing of a warrant and trials proceeding in the child or young person's absence.

(i) Guilty pleas

22. If a guilty plea is entered, the court should pass sentence on the same day, if at all possible. If information is required about the child or young person, it may be possible to use a previous report or receive an oral or fast delivery report from the YOT.

(ii) Not guilty pleas

23. If a not guilty plea is to be entered, the parties must fully complete the 'Preparation for Effective Trial' form prior to the case being dealt with.

24. The court must identify the relevant disputed issues. If the parties do not do so, the court must require them to. If the defence state they are putting the prosecution to strict proof then they should be warned of the consequences (i.e. not being able to advance a positive defence at trial).

25. The defence and prosecution must be ready to identify which witnesses are genuinely required to attend court. Witness dates to avoid should be available.

26. Directions should be made to ensure the progress of the case.

27. The trial date must be fixed as soon as possible.

28. If an apparently weak or non-credible defence is raised, the court should, having read the papers, raise the obvious questions about it and probe the answers given. The court should explore whether a basis of plea is more appropriate or pleas to alternative offences.

29. The need for special measures and interpreters should be identified to enable the court to gauge the length of the trial and put the necessary and appropriate arrangements in hand. The court should set a timetable for the trial.

30. Bad character and hearsay applications, where possible, should be dealt with by binding pre-trial rulings and provision should be made for this at the first hearing.

Preparation for trial

31. The parties' obligations include getting witnesses to court and arranging for the efficient presentation of the evidence including any agreed evidence or admissions.

32. Applications to vacate trial dates should only be granted after rigorous enquiry and the reasons noted.

Special measures

33. Parliament has recognised that children and other vulnerable witnesses need assistance in order to give their best evidence and legislation has been introduced to help achieve this aim specifically in relation to two groups; *vulnerable witnesses*, which includes children under the age of 18, and; *intimidated witnesses*, those likely to suffer in giving evidence because of fear or distress.

34. Where a court has determined a witness is eligible, it must then consider which special measure is likely to maximise the quality of the evidence provided. Any witness under the age of 18 is automatically eligible for special measures. The special measures direction is subject to certain limitations, such as the availability of equipment and the wishes of the child.

35. Available special measures may include any of the following:

    a. Screening a witness from the accused.

    b. Giving of evidence via a live link.

    c. Evidence-in-chief being video recorded and played to the court.

36. Intermediaries are a statutory special measure available for both prosecution and defence witnesses and for the defendant. Intermediaries are

communication specialists who are responsible for facilitating complete, coherent and accurate communication. They will intervene to prevent miscommunication. Whilst intermediaries will assist the court in monitoring the questioning of vulnerable witnesses and defendants, the responsibility to control the process remains with the court. Intermediaries are impartial. They will usually provide the court with a report on how the questioning should be adapted to best meet the individual's needs. In some circumstances, the intermediary will attend the trial to ensure that the questions are communicated fairly.

Use of special measures

37. Police and prosecutors play a key role in ensuring that child and vulnerable witnesses are identified early and supported through the process in the most appropriate way. Where child and vulnerable witnesses are identified, the magistrates are encouraged to ask questions to ensure that appropriate applications for special measures are made and that they are within the relevant timescales and in advance of the trial. This should ensure the smooth running of the case and allow the witness to have certainty about how their evidence will be given.

At trial

38. The court must establish what the disputed issues are and ensure that any live evidence, questions and submissions are directed to that issue.

Explanation of some of the special measures available

Special measure	Relative benefit to witness	Limitations for witness	Current availability/eligibility
Screens	Usually positioned around the witness box to ensure the witness does not see the defendant. Witness not exposed to defendant's non-verbal reactions.	This measure is not intended to stop the defendant from seeing the witness. In practice this will usually be the case, but in some cases the child or young person may be able to see the witness when a screen is used.	Children and young people (those under 18). Witnesses eligible on the grounds of incapacity. Vulnerable witnesses (those eligible on grounds of fear or distress about testifying).
Live TV link	Allows a witness to give evidence from outside the courtroom.	The child or young person will usually be able to see the witness on the TV link.	Children and young people (those under the 18). Witnesses eligible on the grounds of incapacity. Vulnerable witnesses (those eligible on grounds of fear or distress about testifying).
Video recorded evidence-in-chief	Allows an interview with the witness, which has been video recorded before the trial, to be shown as the witness's evidence-in-chief. The witness does not have to report what was said during police interview. May be more compelling – captures the full impact of the crime on the witness.	Defendant will see video recording as part of pre-trial preparation and when it is played in court. Witness still required at court for cross-examination, usually via a live TV link. In court, the witness goes straight to cross-examination.	Children and young people (those under 18). Witnesses eligible on the grounds of incapacity. Vulnerable witnesses (those eligible on grounds of fear or distress about testifying).

REMAND PROVISIONS

Unconditional Bail

1. Unconditional bail applies in the same way as it does in the adult court. The child or young person is released with an obligation to surrender to court on the appointed day at the given time.

Conditional Bail

2. The child or young person is released on bail with conditions attached. These provisions largely apply as they do in the adult court. For example, conditions may be imposed where necessary to ensure that the child or young person:

   a. surrenders to custody

   b. does not commit an offence while on bail

   c. does not interfere with witnesses or otherwise obstruct the course of justice

   d. makes themselves available for the making of inquiries or a report to assist the court with sentencing

   e. attends an interview with a legal representative

   f. or for their own welfare.

3. It is important the court makes appropriate conditions for its concerns, as they do with adults. One of the bail conditions that may be considered in the youth court, following an assessment of the youth by the YOT is Bail Support and Supervision, the details of which will be outlined in court, and is likely to involve home visits.

Conditional Bail with Intensive Supervision and Surveillance (ISS)

4. This is not created by statute. It is an intensive community-based programme for young offenders that can be accessed via existing disposals (i.e. as part of a YRO, conditions on bail or part of supervision following a DTO).

5. The local YOT 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.

6. Breach of bail with ISS is dealt with like any other breach (i.e. arrest and production to the court). May be able to offer an Intensive Supervision and Surveillance package on bail, which will provide a minimum of 25 hours contact time each week, including time at weekends and evenings. Again, the details of the programme will be outlined in court but it will include provision for education, training, interventions to address offending behaviour, family support and a curfew.

Conditional Bail with tagging

7. Curfews with electronic monitoring may be imposed on a child or young person where the following conditions are satisfied:

   a. they have attained the age of 12 years;

   b. they:

      i. are charged with or have been convicted of a violent or sexual 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 repeatedly committing imprisonable offences while remanded on bail or to local authority accommodation;

   c. Electronic monitoring must be available in the area, **and**

   d. YOT must certify to the court that the imposition of the requirement would be suitable.

Remands in custody

8. 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.

9. Whenever a child or young person is refused bail, the court must give reasons for its decision. This applies to all remands in custody including remands to local authority accommodation (even where the child or young person is going

to reside at home with their parents/guardian) and remands to youth detention accommodation, which includes secure accommodation remands and remands to YOIs.

10. Where a child or young person is remanded in custody the remand will be to local authority accommodation unless the strict criteria for a remand to youth detention accommodation are met.

Either-way/Indictable only offences

11. Bail can be refused if the court is satisfied that there are substantial grounds to believe that the child or young person would:

    a. commit offences while on bail, or

    b. not come back to court, or

    c. interfere with witnesses/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 person (or a fear of such). Associated person is defined by section 62 of the Family Law Act 1996. It includes those who are or who have been married to each other or in civil partnerships, those who are in or have had intimate relationships for a significant duration or those who have lived in the same household (other than employees or tenants).

12. The child or young person need not be granted bail if the court is satisfied:

    a. they should be kept in custody for their own protection or welfare, or

    b. they are already serving a custodial sentence, or

    c. it has insufficient information to make a decision, or

    d. they were on bail at the date of the offence, or

    e. they have breached their bail conditions.

13. 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.

Summary imprisonable offences

14. Bail can be refused if the court is satisfied that there are substantial grounds to believe the child or young person would:
    a. commit offences because they were on bail at the time of this allegation, or
    b. commit an offence by engaging in conduct that would or would be likely to cause physical or mental injury (or fear of that) to an associated person, 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.
15. The child or young person need not be granted bail if the court is satisfied:
    a. they would not come back to court as they have a record of not attending court hearings, or
    b. they should be kept in custody for their own welfare, or
    c. they are already serving a custodial sentence, or
    d. it has insufficient information to make a decision.

Non-imprisonable offences

16. The child or young person need not be granted bail if the court is satisfied that there are substantial grounds to believe that they:
    a. would not come back to court/would 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 person and they have previously been on bail but have not kept to the conditions imposed.
17. The child or young person need not be granted bail if the court is satisfied they:
    a. would not come back to court as they have a record of not attending court hearings, or
    b. should be kept in custody for their own welfare, or
    c. are already serving a custodial sentence.

Remand to local authority accommodation

18. If the court is satisfied that there are reasons to withhold bail, the child or young person is remanded to local authority accommodation, with or without conditions, unless the strict criteria for a remand to youth detention accommodation applies.

19. A remand to local authority accommodation is a refusal of bail even where the youth is going to reside at home with their parent or guardian. The relevant time limits for a remand in custody therefore apply (i.e. eight clear days before conviction, four weeks on second appearance, 21 days after conviction etc).

20. Where the court does withhold bail, it must state in open court the designated local authority that is to receive the youth. This will be the local authority where the youth habitually resides or where the offence was committed. The local authority must then provide or arrange for accommodation for that child or young person.

21. The court may impose conditions on the youth when it remands them to local authority accommodation which may be similar to those imposed on bail.

22. The court may also impose electronic monitoring provided five requirements are met:

    a. the youth is 12 years or over; and

    b. the defendant is charged or convicted of an imprisonable offence; and

    c. the offence (or one or more of the offences) is:

        i. a violent or sexual offence; or

        ii. an offence punishable in the case of an adult with imprisonment for a term of 14 years or more; or

        iii. the offence (together with any other imprisonable offences of which the child has been convicted in any proceedings) amount or would, if the child were convicted of that offence, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand;

    d. the court is satisfied that electronic monitoring is available in the area.; and

e. the youth offending team has informed the court that, in its opinion, the imposition of electronic monitoring will be suitable in that case.

23. The court may also impose a condition on a remand to local authority accommodation stipulating that the youth must not be placed with a named person.

24. The court must always consult with the local authority, via the YOT before imposing any conditions on the remand.

25. The court must give reasons for remanding a youth to local authority accommodation and state these reasons in open court, in ordinary language.

26. Where conditions are imposed, the youth can be arrested and brought back before the court for breaching those conditions. Like with breach of bail, they must be brought back before the court as soon as reasonably practicable or within 24 hours of the arrest. If the court is satisfied that the youth has breached the conditions, the court must remand the child.

Remand to youth detention accommodation

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

28. The court does not specify where the youth is to be remanded other than to state that they are being remanded into youth detention accommodation. It will be for the local authority to decide where the youth will be placed, but it could include a secure children's home, a secure training centre or YOI.

29. The court must designate the local authority that is to receive the youth. The designated local authority will be responsible for the associated travel and accommodation costs for the remand. The youth also becomes a "looked after child" and the designated local authority has duties toward the youth to safeguard and promote their welfare. This includes plans for their care, education and health needs.

30. There are two sets of conditions, either of which must be satisfied, before a youth can be remanded to youth detention accommodation. The first set of conditions is effectively based upon the seriousness of the offence and need to

protect the public or prevent the commission of further offences. The second set of conditions is for other imprisonable offences, but the court can only remand if there is a real prospect of a custodial sentence.

First set of conditions:

31. There are four conditions which have to be met before a youth can be remanded under this set of conditions:

    a. The age condition: the youth must be 12 years old or over;

    b. 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;

    c. 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 youth detention accommodation 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

    d. The first or second legal representation condition:

        i. The first condition is that the youth is legally represented; or

        ii. The second condition to be satisfied if 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 was refused (on the grounds of financial resources), or if the youth (having been informed of the right to apply for representation) refused or failed to apply.

Second set of conditions:

32. There are six conditions which have to be met before a youth can be remanded under this set of conditions:

    a. The age condition: the youth must be 12 years old or over;

    b. The sentencing condition: it must appear to the court that there is a real prospect that the youth will be sentenced to a custodial sentence for the offence;

    c. The offence condition: the offence must be an imprisonable offence;

    d. The first or second history condition:

        i. The first history condition is that the youth has a recent history of absconding while subject to a custodial remand, and the offence (or one or more of them) is alleged to have been or has been found to be committed while the youth was remanded to local authority accommodation or youth detention accommodation, or

        ii. The second history condition is that the offence together with any other imprisonable offences of which the youth has been convicted in any proceedings, amount or would, if the youth were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand;

    e. 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 youth detention accommodation 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

    f. The first or second legal representation condition:

        i. The first condition is that the youth is legally represented; or

        ii. The second condition to be satisfied if 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 was refused (on the grounds of financial resources), or if the youth (having been informed of the right to apply for representation) refused or failed to apply.

33. When considering the sentencing condition and the real prospect of custody test above, the court must consult the *Overarching Principles – Sentencing Children and Young people*, issued by the Sentencing Council in June 2017. It will also need to consult the relevant offence guideline. Where there is no offence guideline specifically for youths, the court will need to examine the adult guidelines for the offence and reduce the sentence according to age and maturity, where appropriate. The court must be very mindful that the minimum custodial sentence in the youth court is a DTO of four months. If there is no real prospect of such a sentence, then a remand to youth detention accommodation under this section is not permitted.

Further applications for Bail

34. If the court has refused bail, it is the court's duty at every hearing to consider whether the youth ought to be granted bail. Where a youth has been remanded into custody, they may make a second bail application to the subsequent court and put forward any argument, even those previously argued.

35. If this second application is refused, the next court need not hear arguments it has previously heard. If there has been a change in circumstances, the youth has a right to make further applications. The passage of time itself may be considered to be a change of circumstance in particular cases.

Bail in Murder cases

36. Only a Crown Court judge can grant bail in a murder case. Therefore, the youth court must remand the accused in custody to appear before the Crown Court. However, the court must decide which form of remand to custody to impose, whether it be a remand to local authority accommodation or to youth detention accommodation, if the criteria applies.

Youth detention accommodation – First set of conditions

What substantial grounds are there to refuse bail under the Bail Act 1976?	
Where a child is refused bail they must be remanded to local authority accommodation, with or without conditions (unless they will be remanded to youth detention accommodation). Does this provide sufficient protection? If not, please give your reasons.	
If the court is considering a remand to youth detention accommodation the following questions need to be addressed:	
Is the child over 12 years' old?	
Is the offence a violent or sexual offence or an offence punishable with imprisonment for a term of 14 years or more?	
Is the court of the opinion, **after considering all the options for the remand of the child,** that only remanding the child to youth detention accommodation would be adequate: a) to protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or b) to prevent the commission of imprisonable offences? If the court is of this opinion, please give your reasons, and in particular please address why other types of remand (e.g. conditional bail, remand to local authority with conditions) do not provide adequate protection.	
Is the child represented, or have they applied for representation but had it refused on the grounds of finance, or been granted representation (but had it withdrawn on the grounds of finance or conduct) or refused/failed to apply for representation?	

Designated local authority to be specified.	

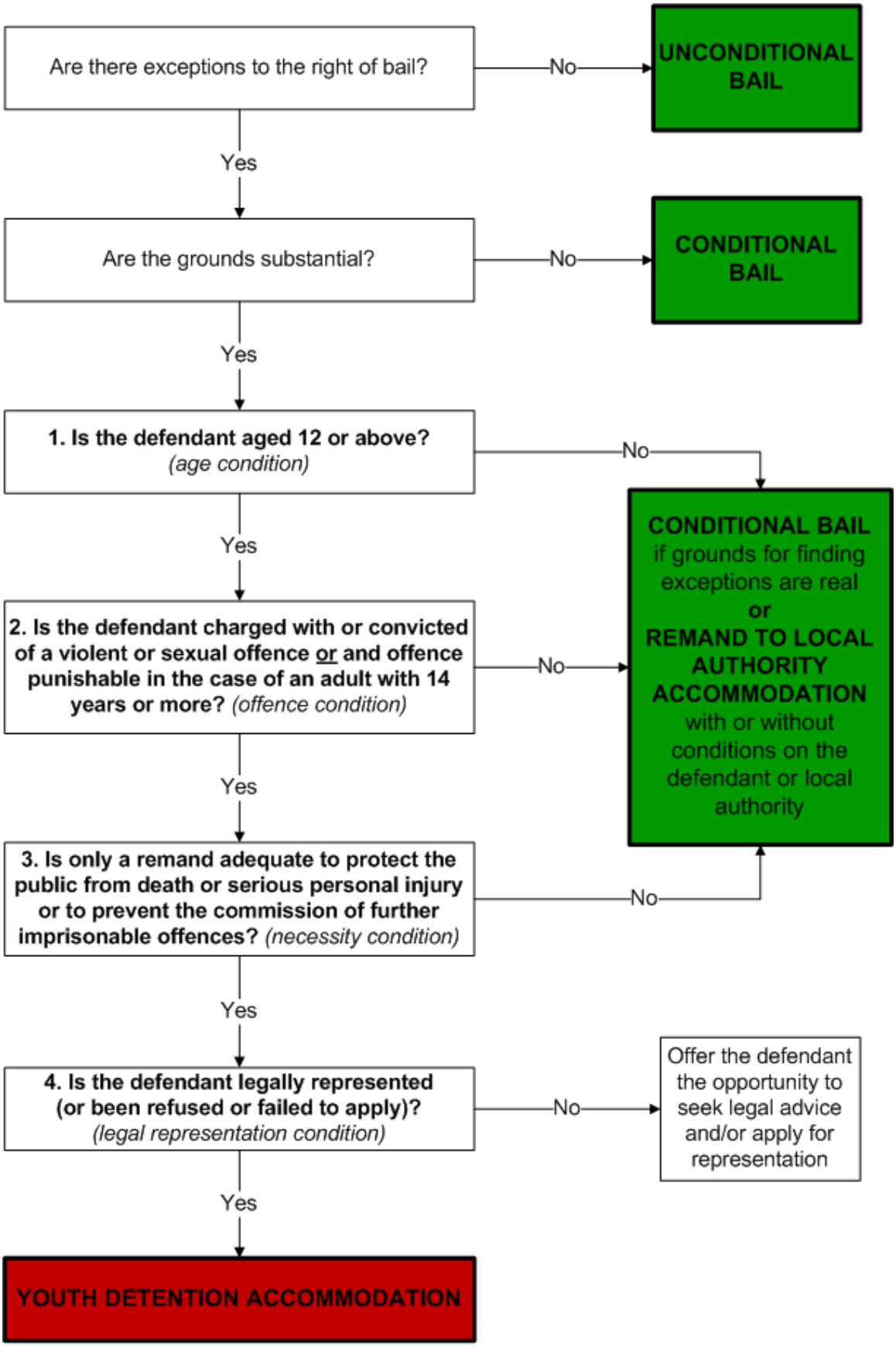
Youth detention accommodation – Second set of conditions

What substantial grounds are there to refuse bail under the Bail Act 1976?	
Where a child is refused bail they must be remanded to local authority accommodation, with or without conditions (unless they will be remanded to youth detention accommodation). Does this provide sufficient protection? If not, please give your reasons.	
If the court is considering a remand to youth detention accommodation the following questions need to be addressed:	
Is the child over 12 years' old?	
Does it appear to the court that there is a real prospect that the child will be sentenced to a custodial sentence for the offence? Please give your reasons and refer to the adult court guidelines, with any appropriate reduction due to the age of the child.	
Is the offence imprisonable?	
Does the child have a recent history of absconding while subject to a custodial remand, and is the offence alleged to have been committed while the child was on remand? OR Is there a recent history of committing imprisonable offences while on bail (when considering the offence before you, and any	

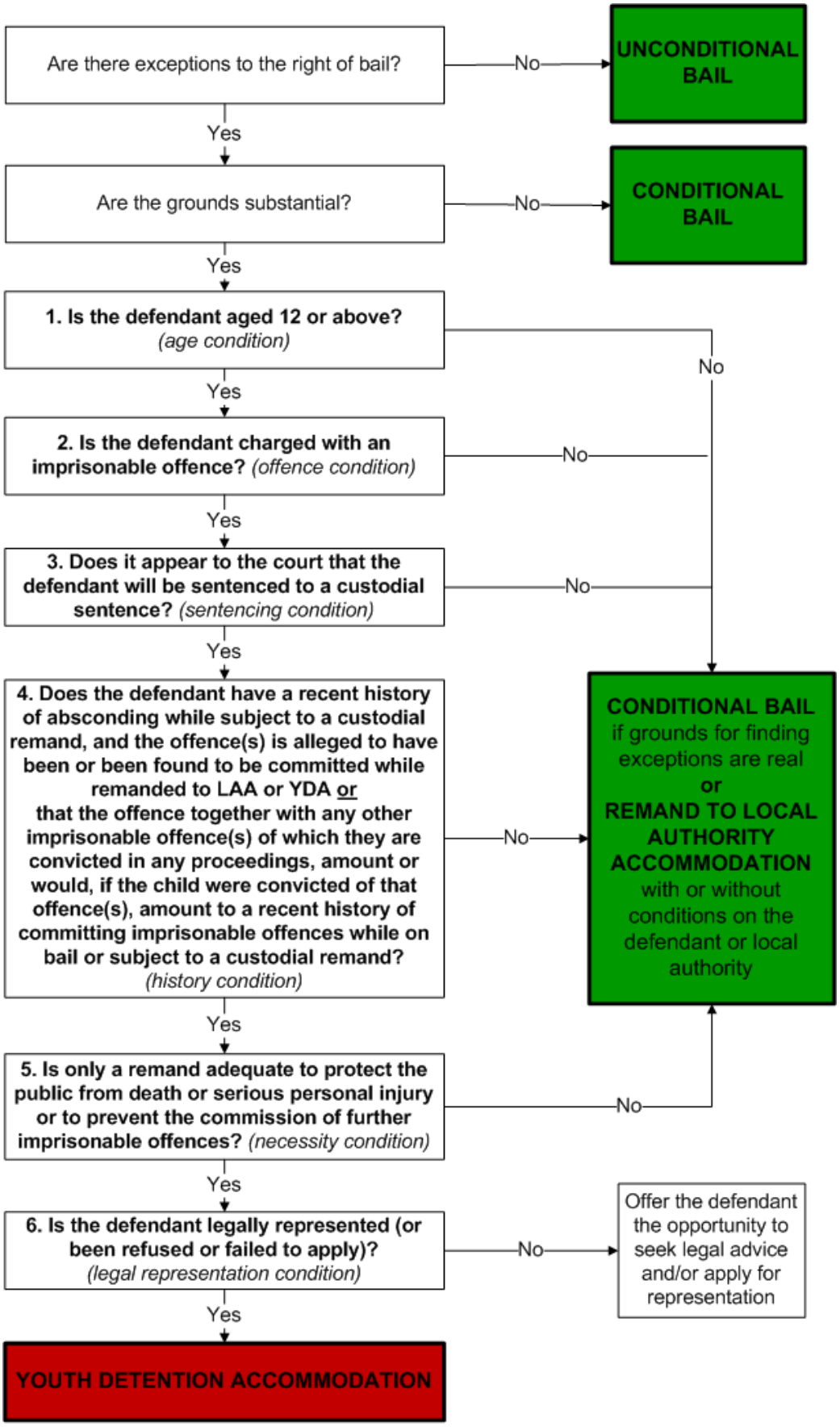
other imprisonable offences of which the child has been convicted)?	

Is the court of the opinion, **after considering all the options for the remand of the child**, that only remanding the child to youth detention accommodation would be adequate to: a) protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or b) prevent the commission of imprisonable offences? If the court is of this opinion, please give your reasons, and in particular please address why other types of remand (e.g. conditional bail, remand to local authority with conditions) do not provide adequate protection.	
Is the child represented, or have they applied for representation but had it refused on the grounds of finance, or been granted representation (but had it withdrawn on the grounds of finance or conduct) or refused/failed to apply for representation?	
Designated local authority to be specified.	

Youth remand criteria – First set of conditions



Youth remand criteria – Second set of conditions



JURISDICTION AND GRAVE CRIMES – A STRUCTURED APPROACH

General rule

1. **The youth court has jurisdiction in respect of all criminal proceedings against children and young persons under the age of 18 years**. There is an irrebuttable presumption that no child under the age of 10 years old has any criminal liability.

2. **A child or young person under the age of 18 shall be dealt with summarily in the youth court** unless the matter falls within one of the categories below, in which case the youth shall be sent forthwith to the Crown Court for trial:

   a. When charged with homicide.

   b. When charged with a relevant firearms offence, which if convicted would be subject to a minimum statutory sentence.

   c. When notice is given to the court that there is evidence of a fraud of such seriousness or complexity that the management of the case should, without delay, be taken over by the Crown Court.

   d. When notice is given by the DPP that a child will be called as a witness and for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with, without delay, by the Crown Court.

   e. When charged with a specified offence and it appears to the court that an extended sentence (minimum four years detention), under the dangerous offender provisions, is likely to be needed.

3. Homicide is not defined in statute but would ordinarily include murder and manslaughter. It is now clear from the guidance provided in the *Youth Court Jurisdiction in the Modern Approach* (July 2015) that deaths from road traffic incidents are not offences of homicide. However, these offences carry a maximum of 14 years imprisonment and so are capable of being grave crimes.

4. In certain other cases, the court must follow the plea before venue procedure, namely where:

a. The youth is charged jointly with an indictable offence (and appears on the same or subsequent occasion) with an adult who is sent to the Crown Court for trial for that offence (see the *Adult Court Bench Book* for details on this).

b. The youth is charged with an indictable or summary offence (punishable with imprisonment or disqualification from driving) where they have been sent for trial for a related offence on the same or previous occasion.

c. When charged with an offence capable of being a grave crime.

5. Where a child or young person reaches the age of 18 during the proceedings, the youth court may, if it thinks fit, proceed with the hearing and conclude the case or transfer the case to the adult court. It cannot deal with a further charge once it is known that a child or young person has reached the age of 18.

What is a grave crime?

6. For a child or young person aged between 10 – 17 years old offences capable of constituting a grave crime are:

a. Any offence that in the case of an adult carries 14 years or more imprisonment.

b. An offence of sexual assault.

c. Child sex offences committed by a child or young person.

d. Sexual activity with a child family member.

e. Inciting a child family member to engage in sexual activity.

7. If a child or young person is convicted of a grave crime in the Crown Court, they may be sentenced to long term detention.

8. The court can only commit the offence to the Crown Court for trial, or sentence, if it is satisfied the offence is a grave crime namely, if convicted, the child or young person should be sentenced to long term detention. The Crown Court can impose a period of detention on **any** youth aged 10 – 17 years old.

9. The grave crime decision is effectively a prediction of sentence exercise and is important because:

a. the maximum term of detention in the youth court is 24 months

b. there is no power to impose a sentence of detention on a child aged 10 – 11 years old in the youth court

c. there is no power to impose a sentence of detention in the youth court on a child aged 12 – 14 years old unless they are categorised as persistent offenders

The test to be applied for 10 – 11 year olds and 12 – 14 year old non-persistent offenders

10. Is the offence of such gravity that, despite the normal prohibition on a custodial sentence for a person of this age, a sentence substantially exceeding two years is a realistic possibility?

The test to be applied for 12 – 14 year old persistent offenders and 15 – 17 year olds

11. Is the offence of such gravity that a sentence substantially exceeding the two year maximum for a DTO is a realistic possibility?

12. The word, substantially, has not been defined in law. When considering representations on grave crimes, the court must find that there is a real, and not merely theoretical possibility of the above tests being satisfied. The *Overarching Principles* (June 2017) now indicates that there is no requirement to take the prosecution case at its highest and that in most cases it is likely to be impossible to decide if there is a real prospect of a sentence in excess of two years until after a conviction. Para 2.10

13. **Trials in the Crown Court should be reserved for the most serious cases**, which recognises the greater formality of the proceedings and the greatly increased number of people involved.

14. Youths aged between 12 – 14 years old can only receive a detention and training order in the youth court, if they are deemed to be **persistent**. They will also only rarely attract a period of detention under the grave crime provisions.

15. Those aged 10 – 11 years old cannot be the subject of a detention and training order. They will attract detention under the grave crime provisions even more rarely.

16. Courts must not commit children or young people for trial because they do not have the power to sentence them to detention in the youth court.

Plea before venue procedure

17. The plea before venue procedure to be followed is:

    a. The legal adviser should read the charge to the youth and explain to the youth that they may indicate whether they would plead guilty or not guilty.

    b. The legal adviser should explain to the youth, that if they indicate a guilty plea, they may be committed to the Crown Court for sentence if the offence is:

        i. one which the court determines should be punished with long term detention for grave crimes; or

        ii. a specified offence and the court considers they meet the criteria for the imposition of an extended sentence under the dangerous offender provisions.

    c. If the youth indicates a guilty plea, they are treated as having been tried summarily and convicted. The court may proceed to deal with them or commit for sentence as a grave crime or dangerous offender.

    d. If the youth fails to indicate a plea or indicates a plea of not guilty, the court must determine whether to proceed to summary trial or to send the youth to the Crown Court for trial. The youth may be sent to the Crown Court for trial where they are charged with a grave crime and the court considers that if they are found guilty of the offence, it ought to be possible to impose long term detention.

    e. The prosecutor should outline the facts of the case and make any representations, including the likely sentence, and outline any previous findings of guilt.

    f. The defence should make representations including any personal mitigation.

    g. The legal adviser should give any relevant advice on sentencing including any Court of Appeal or Sentencing Council guidance (this may be specific

guidelines for the youth court e.g. the Robbery guideline or Sexual Offences guidelines effective from 1 June 2017 or based on adult court guidelines).

h. If there is no specific offence guideline for the youth, and the custody threshold has been passed, the court will need to consider the custodial sentence that would have been appropriate for an adult offender charged with the same offence.

i. Bearing in mind the approach set out in *Overarching Principles – Sentencing Children and Young People (June 2017)*, the court will then need to reduce this equivalent adult sentence according to the defendant's age and maturity. When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15-17 and allow a greater reduction for those aged under 15. In most cases, when considering the appropriate reduction from the adult sentence, the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.

j. The court should determine whether, if convicted, a sentence beyond its powers should be available. (A sentence substantially exceeding two years in the case of 10 – 11 year olds and 12 – 14 year old non-persistent offenders, and substantially exceeding two years in the case of 12 – 14 year old persistent offenders and 15 – 17 year olds).

k. The court will announce its decision. It must make clear the basis for its decision.

l. If the court decides at this stage, that it should proceed to summary trial, as a sentence beyond its powers is not necessary, the court retains a power to commit to the Crown Court on conviction after summary trial. The youth should be warned that the court retains this power when jurisdiction is accepted. The effect of this is to make the power to commit to the Crown Court for sentence available to the youth court if the youth is convicted on summary trial of an offence capable of being a grave crime and the court is of the opinion that the offence, or the combination of the offence and one or

more offences associated with it, is such that the Crown Court should have the power to sentence the child or young person to long-term detention.

Linked offences

18. If a youth is sent to the Crown Court for one or more offences, the court may, at the same time, or on a subsequent occasion send them to the Crown Court for trial for any related indictable offence or summary offence punishable with imprisonment or disqualification from driving.

19. Where a youth is sent to the Crown Court for trial in relation to a grave crime and indicates an intention to plead guilty to related offences, the court may commit them to the Crown Court for sentence on those other matters.

20. Where the court commits a youth for sentence, the court may also commit for sentence any other indictable offence or summary offence (provided it is punishable with imprisonment or disqualification under the Road Traffic Offenders Act 1999) to which the youth pleads guilty.

Youth charged jointly with an adult

21. See the *Adult Court Bench Book* for details on the procedure to be applied and refer to your legal adviser. (In this situation the youth should appear before the adult court and not the youth court).

Offence capable of being a dangerous offence and a grave crime

22. Some violent and sexual offences are capable of being both dangerous offences and also grave crimes. Neither provision should be ignored.

23. If this is the case, the court will first need to determine if the offence should be sent forthwith to the Crown Court for trial under the dangerous offender provisions. The court would need to be satisfied of the criteria, namely that if they are found guilty, the criteria for the imposition of an extended sentence (minimum four years detention) would be met (see *Dangerous Offenders* section later in this bench book). **Bearing in mind the restrictions, this is a power that is likely to be used only rarely.**

24. If the court decides that the dangerous offender provisions are not met, or there is insufficient information to make a determination at this stage, the court should proceed to the plea before venue procedure.

25. If a guilty plea is indicated, the court will need to decide if the youth should be committed to the Crown Court for sentence for long term detention for grave crimes or for the imposition of an extended sentence under the dangerous offender provisions.

26. If no plea is indicated or a not guilty plea is indicated, the court will consider whether the case is a grave crime. If the court determines the offence is a grave crime and the youth ought to be sentenced to long term detention, they will be sent to the Crown Court. If not a grave crime, the court will proceed to summary trial.

27. Where a defendant is convicted of a specified offence on summary trial and it appears to the court that the criteria for the imposition of an extended sentence would be met, the court must commit them to the Crown Court for sentence. Due to the strict criteria, it is a power which is likely to be used very sparingly.

28. Where a defendant is convicted of an offence capable of being a grave crime on summary trial and it appears to the court that the offence is such that the Crown Court should have the power to sentence the child or young person to long-term detention, the court must commit them to the Crown Court for sentence.

29. In most cases, if jurisdiction is accepted, the case will be concluded in the youth court.

Allocation procedure for a young defendant (flowchart)

DANGEROUS OFFENDERS

What is a dangerous offender?

1. Children and young people under the age of 18 are dangerous offenders if:

   a. they are found guilty of certain specified violent or sexual offences committed after 4 April 2005, **and**

   b. the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences, **and**

   c. the Crown Court would impose an extended sentence of at least four years.

The legal adviser will inform you if the offence is one to which the dangerous provisions apply.

Assessing dangerousness

2. It is for the court to decide whether there is a significant risk to members of the public of serious harm caused by the child or young person committing further specified offences.

3. It **must** take into account all such information as is available about the nature and circumstances of the offence.

4. It **may** take into account any information before it about any pattern of behaviour of which the offence forms part and any information about the child or young person.

5. The Sentencing Council, *Overarching Principles – Sentencing Children and Young People (June 2017)*, reminds the court that criteria relating to future offending and the risk of serious harm must be assessed in the light of the maturity of the child or young person, the possibility of change in a much shorter time than would apply for an adult and the wider circumstances of the child or young person.

6. In anything but the most serious cases it may be impossible to form a view on dangerousness until post-conviction when, if dangerousness criteria are met, the court should commit for sentence.

The powers of the youth court

Sending for trial

7. Where a court is satisfied that a child or young person is charged with a specified offence and, if found guilty, would be of the opinion that they are dangerous, and the offence merits the imposition of an extended sentence of at least four years, it shall send the matter to the Crown Court for trial forthwith. This is a power that will be used only rarely. **Children or young people should normally be dealt with in the youth courts.** It can only be used if the court has enough information about any significant risk of serious harm, and the offence merits a four year determinate sentence.

8. If the matter is sent for trial, the Crown Court will, if there is a conviction, consider imposing an extended sentence.

Committing for sentence

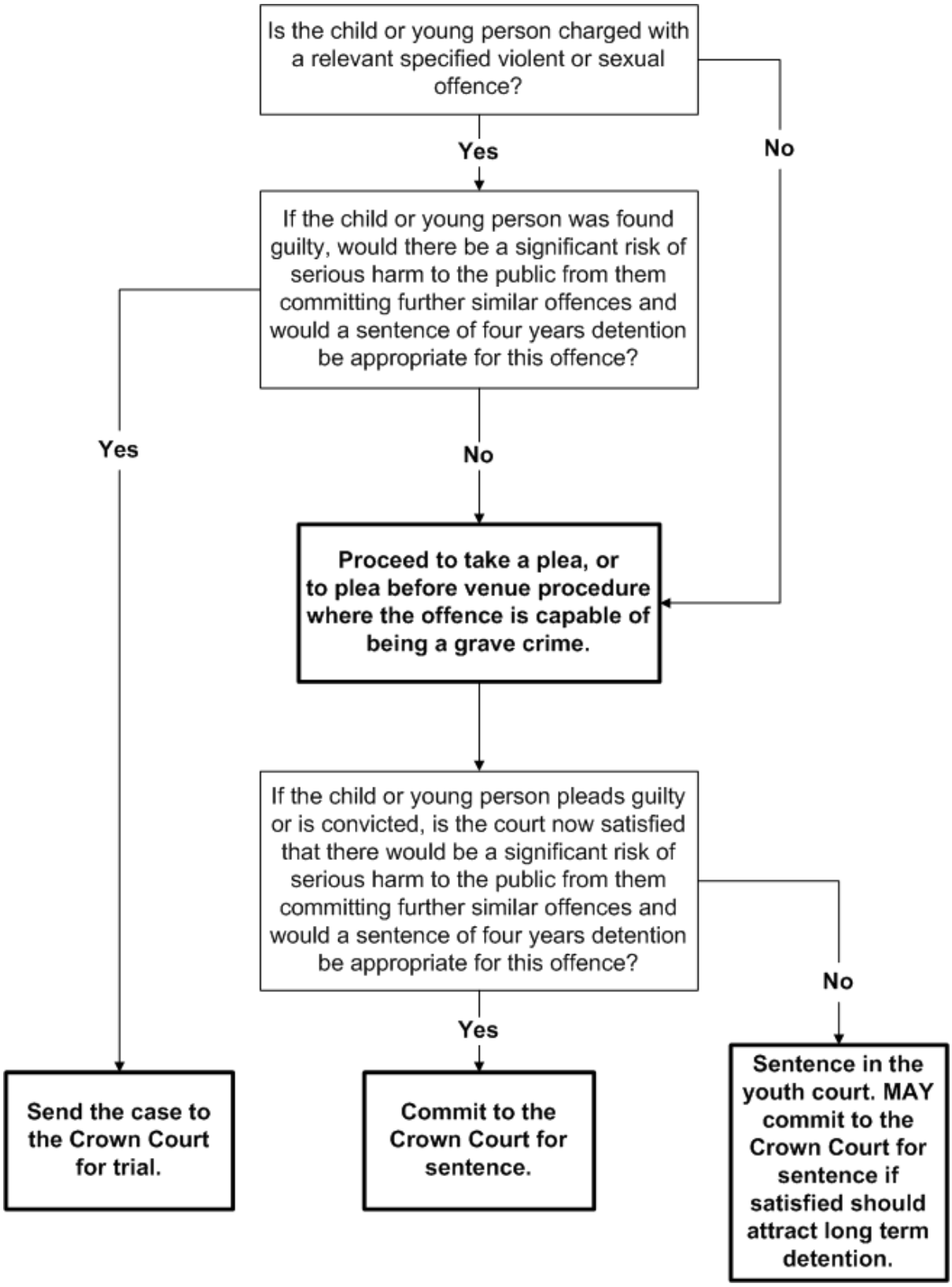
9. Where a court is satisfied that a child or young person is found guilty of a specified offence and is of the opinion that they are dangerous, and the offence merits an equivalent determinate sentence of at least four years, it shall commit the matter to the Crown Court for sentence. Again, this is a matter that will only be used very rarely, given the above restrictions. If committed for sentence, the Crown Court will consider whether to impose an extended sentence of detention.

What is an extended sentence?

10. An extended sentence is made up of an appropriate custodial sentence plus an extension period, which is the period the court considers necessary to protect members of the public from serious harm from the child or young person by the commission of further specified dangerous offences.

11. The appropriate custodial term is the punitive element of the sentence and must be at least four years. The extension period is the period of licence the court considers necessary to protect members of the public from serious harm. This cannot be more than five years for violent offences or eight years for sexual offences. The total period cannot exceed the maximum term of detention allowed for that offence.

Dangerous offender flowchart



YOUTH COURT MAXIMUM PENALTIES CHART

Assault/Violent Offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Assault Occasioning Actual Bodily Harm (Racially or religiously Aggravated)	7 years custody	2 years DTO	No	Yes
Assault Occasioning Actual Bodily Harm	5 years custody	2 years DTO	No	Yes
Assault on a Police Constable	6 months custody	6 months DTO	No	No
Assault with Intent to resist arrest	2 years custody	2 years DTO	No	No
Common Assault, (Racially or religiously aggravated)	2 years custody	2 years DTO	No	No
Grievous Bodily Harm with Intent	Life	2 years DTO	Yes	Yes
Unlawful Wounding / grievous bodily harm	5 years custody	2 years DTO	No	Yes
Threats to kill	10 years custody	2 years DTO	No	Yes
Rape/Attempted Rape	Life	2 years DTO	Yes	Yes
Robbery	Life	2 years DTO	Yes	Yes
Manslaughter	Life	Not applicable	Not applicable	Not applicable
Murder	Life	Not applicable	Not applicable	Not applicable

Criminal Damage offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Criminal Damage (over £5,000)	10 years custody	2 years DTO	No	No
Racially aggravated Criminal Damage	14 years custody	2 years DTO	Yes	No
Criminal Damage (under £5,000)	3 months custody	YRO	No	No
Threats to commit Criminal Damage	10 years custody	2 years DTO	No	No

Road traffic/vehicle offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Allowing self to be carried in a vehicle taken without consent	6 months custody	6 months DTO	No	No
Causing Death by Careless or inconsiderate Driving	5 years custody	2 years DTO	No	No
Causing Death by Dangerous Driving	14 years custody	2 years DTO	Yes	Yes
Causing Death by Driving when under the influence of drink or drugs	14 years custody	2 years DTO	Yes	Yes
Causing Death by Driving: unlicensed, disqualified or uninsured drivers	2 years custody	2 years DTO	No	No
Dangerous Driving	2 years custody	2 years DTO	No	No
Driving while disqualified	6 months custody	6 months DTO	No	No
Excess Alcohol - Driving / attempting to drive	6 months custody	6 months DTO	No	No
Excess Alcohol - in charge	3 months custody	YRO	No	No
Fail to Provide Specimen for analysis (drive / attempt to drive)	6 months custody	6 months DTO	No	No
Taking Vehicle without consent (TWOC)	6 months custody	6 months DTO	No	No
Vehicle interference	3 months custody	YRO	No	No

Dishonesty offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Burglary (dwelling)	14 years custody	2 years DTO	Yes	No
Burglary (non-dwelling)	10 years custody	2 years DTO	No	No
Handling Stolen Goods	14 years custody	2 years DTO	Yes	No
Making off without payment	2 years custody	2 years DTO	No	No
Theft	7 years custody	2 years DTO	No	No
Going Equipped to steal	3 years custody	2 years DTO	No	No
Obtaining Services Dishonestly	5 years custody	2 years DTO	No	No

Drug offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Possession of a Class A drug	7 years custody	2 years DTO	No	No
Possession of a Class B Drug	5 years custody	2 years DTO	No	No
Possession of a Class C Drug	2 years custody	2 years DTO	No	No
Possession of Class A drugs with intent to supply	Life	2 years DTO	Yes	No
Possession of Class B drugs with intent to supply	14 years custody	2 years DTO	Yes	No
Possession of Class C drugs with intent to supply	14 years custody	2 years DTO	Yes	No
Cultivation of Cannabis	14 years custody	2 years DTO	Yes	No

Public Order Act offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Section 5 Disorderly behaviour	Level 3 fine	Fine or YRO	No	No
Racially aggravated Sec 5	Level 4 fine	Fine or YRO	No	No
Section 4	6 months custody	6 months DTO	No	No
Racially aggravated Sec 4	2 years custody	2 years DTO	No	No
Section 4A Disorderly behaviour with intent to cause harassment, alarm or distress	6 months custody	6 months DTO	No	No
Racially aggravated Section 4A	2 years custody	2 years DTO	No	No
Section 3 Affray	3 years custody	2 years DTO	No	No
Section 2 Violent Disorder	5 years custody	2 years DTO	No	Yes

Sex offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Exposure	2 years custody	2 years DTO	No	No
Fail to comply with, sex offenders register	5 years custody	2 years DTO	No	No
Possession Indecent Photographs of Children	5 years custody	2 years DTO	No	Yes
Sexual Assaults	Between 7 – 14 years custody	2 years DTO	Yes	Yes
Voyeurism	2 years custody	2 years DTO	No	No

Miscellaneous offences	Maximum penalty in law	Maximum penalty in the youth court	Grave crime?	Dangerousness?
Possession of an Offensive Weapon	5 years custody	2 years DTO	No	No
Possession of a Bladed Article	4 years custody	2 years DTO	No	No
Harassment – putting people in fear of violence	5 years custody	2 years DTO	No	Yes
Harassment (without violence)	6 months custody	6 months DTO	No	No
Breach of Criminal Behaviour Order	5 years custody	2 years DTO	No	No
Breach of Restraining Order	5 years custody	2 years DTO	No	No
Witness Intimidation	5 years custody	2 years DTO	No	No
Blackmail	14 years custody	2 years DTO	Yes	No
Bomb Hoax	7 years custody	2 years DTO	No	No
Perverting the Course of Justice (common law)	Life	2 years DTO	Yes	No
Fail to Surrender to Bail	3 months custody when tried summarily	YRO	No	No
False Imprisonment (common law)	Life	2 years DTO	Yes	Yes
Firearm, carrying in a public place	7 years custody (12 months for imitation firearms)	2 years DTO (12 months for imitation firearms)	No	No
Firearm, carrying in a public place – Air Weapon	6 months custody	6 months DTO	No	No

SENTENCING – A STRUCTURED APPROACH

Sentencing principles

1. When sentencing a youth, the court must have regard to the principal aim of the youth justice system (to prevent offending by those under 18) and the welfare of the child or young person.

2. The youth of an offender is widely recognised as requiring a different approach to that used when sentencing adults. Sentence will differ depending on the age and maturity of the offender concerned. However, sentence must remain proportionate to the seriousness of the offence. The *Overarching Principles – Sentencing Children and Young People* provides additional details regarding sentencing principles from paragraph 4.1 – 4.10.

3. There is also an expectation that a child or young person will be dealt with less severely than an adult offender.

4. In determining the sentence, the key elements are detailed in para 4.1 of the *Overarching Principles – Sentencing Children and Young People* and include the:

   a. age of the child or young person (chronological and emotional)

   b. seriousness of the offence

   c. likelihood of further offences being committed

   d. extent of harm likely to result from those further offences.

5. Far more than with adults, the approach to sentence will be individualistic.

6. Proper regard should be had to the mental health and capability of the child or young person, and to any learning disability, learning difficulty, speech and language difficulty or other disorder, any of which is likely to affect the likelihood of those purposes being achieved.

What sentencing guidance is available?

7. The Sentencing Council, formerly the Sentencing Guidelines Council (SGC) is responsible for issuing sentencing guidelines that all courts must consider when

sentencing children or young people. Any court departing from SC guidelines have to give their reasons for doing so.

8. In November 2009, in addition to the existing guidelines on offence seriousness, credit for guilty plea and specific offence guidelines such as robbery and sexual offences, the SGC issued a definitive guideline *Overarching Principles – Sentencing Youths*. This has now been updated and from 1 June 2017 the Sentencing Council have introduced the new *Overarching Principles – Sentencing Children and Young People.*

9. The court also needs to have regard to any Court of Appeal sentencing guidance – the legal adviser will have access to up to date case law.

The Scaled Approach

10. The YOT are responsible for writing reports on children or young people who offend and appear before the court for sentence. Each individual is assessed via the ASSET tool (which assesses the likelihood of reoffending and risk of serious harm) and using the Scaled Approach (which is a model of interventions delivered by YOTs) the result identifies any specific problems and positive factors so suitable programmes can be devised. These programmes address the needs of the young person with the intention of preventing further offending and address the key areas of concern in the young person's life.

11. The Scaled Approach aims to ensure that interventions are tailored to the individual and based on an assessment of their risks and needs. The intended outcomes are to reduce the likelihood of reoffending for each child or young person by:

    a. tailoring the intensity of intervention to the assessment

    b. more effectively managing risk of serious harm to others.

12. The Scaled Approach should be used by the YOT to determine the level of intervention required when a child or young person is subject to YOT intervention through a referral order contract, a YRO or during the community element of a custodial sentence.

13. The level of intervention is informed by the assessment process, and should be used to guide:

    a. sentence proposals made to the court

    b. reports to youth offender panels

    c. the intervention provided during the YOT's subsequent management of the order.

14. The SC Guidelines refer to the three intervention levels as follows:

    Standard level – for those who show a low likelihood of reoffending **and** a low risk of serious harm; in these circumstances, the order primarily will seek to repair the harm caused by the offence – typically, this will involve interventions to meet the requirements of the order and the engagement of parents in those interventions and/or in supporting the child or young person.

    Enhanced level – for those who show a medium likelihood of reoffending or a medium risk of serious harm; in these circumstances, the order will, in addition, seek to enable help or change as appropriate – typically, this will involve greater activity in motivating the child or young person and in addressing the reasons for non-compliance with the law and may involve external interventions.

    Intensive level – for those with a high likelihood of reoffending **or** a high or very high risk of serious harm; in these circumstances, the order will, in addition, seek to ensure control of the child or young person, as necessary, to minimise the risk of further offending or of serious harm – typically, this will involve additional controls, restrictions and monitoring.

15. Following the assessment of the child or young person, practitioners should use a framework to determine the most suitable level of intervention for managing that particular child or young person. This will form the basis of the proposal to the court or the youth offender panel. The framework sets intervention levels of standard, enhanced and intensive.

16. In addition to the statutory supervision of children or young people in custody and on community orders, a YOT can also deliver a range of preventative programmes to those subject to final warnings and reprimands and those at risk of offending.

17. It is anticipated by the Youth Justice Board that the scaled approach will result in:

    a. More efficient and effective allocation of YOT resources.

    b. Fewer young people in custody.

    c. Strengthened case management across the youth justice system.

    d. Improved practice in assessment quality, the writing of reports and intervention planning.

    e. More tailored interventions based on an assessment of a young person's risks and needs.

18. The *ASSET system – Core Profile (static and dynamic factors)* will be used to assess the child or young person's likelihood of reoffending. Static factors include: offence type, age at first conviction, number of previous convictions. Dynamic factors include: living arrangements, family and personal relationships, education, lifestyle, neighbourhood, substance use, health, attitudes to offending, motivation to change.

19. If applicable, the *ASSET – Risk of Serious Harm* tool will be used to assess any risk of serious harm to others.

20. The highest score will be used to determine the overall intervention level (standard/enhanced/intensive) – professional judgement of the YOT officer will also apply.

21. The information from ASSET and professional judgement will be used to inform the report to the court or youth offender panel. The report needs to assist in determining the best way of dealing with the child or young person who has offended. The assessment will determine the overall intervention level and will guide the proposal made to the court or the type of intervention the youth offender panel may consider when agreeing a contract.

22. Using the Scaled Approach (and the guidelines) may mean that YROs, for example, are used more than once. It may mean that a YRO does not have to increase in severity each time it is used. The sentence will be tailored individualistically each time the defendant is before the court.

23. As part of their decision making process, courts should be entitled to ask which intervention level will be used by the YOTs, prior to imposing a referral order or a YRO.

Intervention Level	Function	Typical case management approach	Possible sentence requirement/component (not exhaustive)
STANDARD	• Enabling compliance and repairing harm	• Organising interventions to meet basic requirement of order • Engaging parents in interventions and/or to support young person • Monitoring compliance • Enforcement	• Reparation • Stand-alone unpaid work • Supervision • Stand-alone attendance centre
ENHANCED	• Enabling compliance and repairing harm • Enabling help/change	• Brokering access to external interventions • Co-ordinating interventions with specialists in YOT • Providing supervision • Engaging parents in interventions and/or supporting young person • Providing motivation to encourage compliance • Proactively addressing reasons for non-compliance • Enforcement	• Supervision • Reparation • Requirement/component to help young person to change behaviour e.g. drug treatment, offending behaviour programme, education programme • Combination of the above
INTENSIVE	• Enabling compliance and repairing harm • Enabling help/change • Ensuring control	• Extensive • Help/change management function plus additional controls, restrictions and monitoring	• Supervision • Reparation • Requirement/component to help young person to change behaviour • Requirement/component to monitor or restrict movement (e.g. prohibited activity, curfew, exclusion or electronic monitoring) • Combination of the above

Assessing the seriousness of the offence

24. The seriousness of the offence is the starting point for sentencing. The court must consider the level of culpability of the child or young person and any harm that the offence caused, was intended to cause or might foreseeably have caused.

The approach to determining sentence

25. When determining sentence, the court will:

    a. assess the culpability of the child or young person and the harm caused (or intended or foreseeable) taking into account aggravating and mitigating factors relating to the offence (note the statutory factors and other aggravating factors highlighted in para 4.7 of the *Overarching Principles*.)

    b. consider any mitigating factors that apply to the child or young person and then apply any reduction for a guilty plea, where appropriate

    c. having taken account of all these factors, determine sentence including any relevant ancillary orders.

Additional factors

26. There is an expectation that a child or young person will be dealt with less severely than an adult offender. In most cases, a child or young person is likely to benefit from being given a greater opportunity to learn from their mistakes.

27. Offending by a child or young person is frequently a phase that passes rapidly.

28. A criminal conviction at this stage of a person's life may have a disproportionate impact on the ability of the child or young person to gain meaningful employment and play a worthwhile role in society.

29. The impact of punishment is felt more heavily by children or young people in the sense that any sentence will seem to be far longer in comparison with their relative age compared with adult offenders.

30. Children or young people may be more receptive to changing the way they conduct themselves and be able to respond more quickly to interventions.

31. Children or young people will be no less vulnerable than adults to the contaminating influences that can be expected within a custodial context and probably more so.

Which sentencing threshold has been passed?

Referral orders

32. If a child or young person appears before a court for the first time and pleads guilty to an imprisonable offence, the court **must** impose a referral order unless it is considering an absolute discharge, a conditional discharge, a hospital order or custody.

33. The court **may** impose a referral order where a child or young person appears before the court and pleads guilty to at least one offence.

34. The length of any referral order should be determined in accordance with the guidance given in para 6.22 *Overarching Principles – Sentencing Children and Young People*.

Absolute or conditional discharge or reparation order

35. This will be appropriate where the offence does not merit the imposition of immediate punishment other than reparation. Where a court has power to make a reparation order but does not do so, it must give reasons.

36. The court cannot impose a conditional discharge when a youth is convicted of an offence if they have:

    a. had two or more cautions, or

    b. received a conditional caution followed by a caution

    and the offence has been committed within two years of the last of those cautions, unless there are **exceptional circumstances** relating to the offence or the offender which must be specified.

Financial penalty

37. A financial penalty may be considered where the offence merits an immediate punishment, but is not serious enough to warrant the restriction of liberty involved in a community sentence.

38. The level of fine will relate to the seriousness of the offence and to the offender's financial circumstances. If the child or young person is aged 10 – 15 the court has a duty to order the parent or guardian to pay any fine. Where the young person is aged 16 or over, this duty becomes discretion.

39. It can be a compensation order, a fine, or both and can be imposed even if the offence passes the community sentence threshold e.g. may be appropriate if the child or young person is a low risk offender. The level of fine imposed must not exceed the amount of any costs awarded. The maximum fine for 10–13 year olds is £250 and for 14–17 year olds it is £1,000.

Community order (the YRO)

40. The offence is serious enough to warrant a restriction of liberty, but not so serious as to justify a custodial sentence. A court may impose a community order for an offence that is not imprisonable although the court should be careful that the sentence is proportionate to the seriousness of the offence.

41. When considering the decision as to the length of any YRO and the nature and extent of the requirements to be included, the key factors are the:

    a. assessment of offence seriousness (low, medium or high)

    b. purpose(s) of sentencing the court wishes to achieve

    c. risk of reoffending

    d. ability of the child or young person to comply

    e. availability of requirements in the local area.

42. Before making an order, the court considers a report by the YOT. This will identify an appropriate balance between the seriousness of the offence, the risk of harm in the future from any further offences committed and the needs of the offender. For additional information please refer to the earlier paragraphs on the Scaled Approach.

Custodial sentence

43. The offence is so serious that neither a fine alone nor a YRO can be justified. The minimum custodial sentence in the youth court is four months detention and training order. Custody should be seen as a last resort. The court must

give reasons for imposing a custodial sentence including why a YRO with ISS or fostering cannot be justified.

Committal to the Crown Court for sentence

44. Only available if the child or young person is:

    a. convicted of an offence capable of being a grave crime on summary trial and it appears to the court that the offence is such that the Crown Court should have the power to sentence the child or young person to long-term detention, or

    b. categorised as dangerous and the public needs protecting from future serious harm from a violent or sexual offender, a committal to the Crown Court for an extended sentence may be considered. This would need to be a sentence of at least four years imprisonment.

Should the child or young person be given credit for an early guilty plea?

45. In all cases where the child or young person has pleaded guilty, the court must take into account the stage at which the early plea was indicated and in what circumstances.

46. The Sentencing Council revised guideline *Reduction in Sentence for a Guilty Plea* provides that the level of reduction should reflect the stage at which the child or young person indicated a willingness to admit the offence for which they are being sentenced.

47. The following sliding scale of reduction should be applied, depending on when the guilty plea was entered.

    a. A maximum of one third where the guilty plea was entered at the first reasonable opportunity.

    b. A maximum of one quarter where a trial date has been set.

    c. A maximum of one tenth for a plea entered at the door of the trial court or after the trial has begun.

48. Where the court is satisfied that there were particular circumstances which significantly reduced the child or young person's ability to understand what was

alleged, or otherwise made it unreasonable to expect the child or young person to indicate a guilty plea **sooner than was done**, a reduction of one third should still be made.

49. As part of the pronouncement of the sentence, the court should state the following:
    a. whether a reduced sentence has been imposed as a result of the plea
    b. how much discount has been given
    c. why that amount of discount has been applied
    d. what the sentence would have been had a guilty plea not been entered.
50. Apply the appropriate discount to the punitive element of the provisional sentence. (*Note:* Discount does not apply to ancillary orders.)
51. Other ancillary orders can include:
    a. costs
    b. endorsement of driving licence
    c. disqualification
    d. Criminal Behaviour Orders (CBOs)
    e. forfeiture or confiscation
    f. parenting orders.
52. Check the final decision in respect of the following:
    a. overall seriousness of the offence(s)
    b. movement from the initial level of sentence for the type of offence
    c. appropriate restrictions on liberty
    d. offender's circumstances
    e. totality of sentence – where the court is dealing with a child or young person in respect of several offences and has calculated the sentence in respect of each, the court should review the aggregate sentence and decide whether the total sentence is just and appropriate.
53. As a referral order is a sentence that is only available upon pleading guilty, there should be **no** further reduction of the sentence to reflect the guilty plea.

54. The reduction in a sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another, for example, by reducing a custodial sentence to a community sentence or by reducing a community sentence to a different means of disposal. Alternatively, the court could reduce the length or severity of any punitive requirements attached to a community sentence. Paragraph 5.10 *Overarching Principles – Sentencing Children and Young People* (June 2017).

Victim surcharge

55. The court **must** impose a surcharge on under 18s. The amount depends on the sentence imposed. For offences committed on or after 8 April 2016 the amounts are as follows (the amount for offences committed before 8 April is shown in brackets):

    a. a conditional discharge – £15 (£10);

    b. a Referral Order – £20 (£15);

    c. a fine – £20 (£15);

    d. a Youth Rehabilitation Order or Community Order – £20 (£15);

    e. a Detention and Training Order - £30 (£20).

56. There is no surcharge to be imposed if the only order the court makes is an absolute discharge or a Reparation Order.

Reasons and pronouncements

57. It is good practice to check the decision with the legal adviser. They will be able to provide guidance on any restrictions as to availability of sentence, the need for consents, the need for reasons, etc.

58. The following matters must always be included in the pronouncement.

    a. The effect of the sentence.

    b. The effect of non-compliance with the order.

    c. Any power of the court to vary or review the order.

    d. The effects of failure to pay any fine imposed.

e. Why the court has decided that the offence is serious enough for a community sentence or so serious that a custodial sentence must be imposed.

f. Whether the court has applied a reduction in sentence for a guilty plea, if so why, how much and what the sentence would have been if there had been no reduction.

g. Any aggravating or mitigating factors the court has regarded as being of particular importance.

h. Reasons for sentence, and any departing from the SC guidelines.

59. Use the pronouncements contained in the *Youth Court Pronouncement Cards* as the basis for the pronouncement. However, the court should be satisfied that the child or young person has understood the sentence imposed and the chairman may wish to adapt the language used so that it is appropriate to the child or young person the court is dealing with.

60. A written record of the reasons for the sentence should be kept (ideally on a form provided by the court) and handed to the legal adviser to keep with the court papers. The legal adviser can assist with the preparation of reasons.

Parenting orders

61. As part of the sentencing exercise, the court should consider whether a parenting order is appropriate.

62. A parenting order is a programme of activities agreed between the parent/guardian and the YOT worker:

    a. to help the parent/guardian develop their parenting skills in order to prevent the youth offending or becoming involved in criminal activity, and

    b. requires the parent/guardian to exercise control over their child's behaviour.

63. The order requires the parent/guardian to attend counselling or guidance sessions and will contain requirements that are considered desirable in the interests of preventing the commission of further offences or antisocial behaviour.

64. An order may be made when a youth is convicted of an offence, made the subject of a sex offender order or a child safety order (a civil order usually made in the family court). The court should consider making a parenting order if it believes that the parents of the child would benefit from the help and support offered by such an order. Many parents enter into agreements with a YOT on a voluntarily basis.

65. The duration of any order should be determined by what is reasonable and effective in the individual case but the maximum period is 12 months.

66. If a child or young person is under the age of 16 and the court does not make an order, the court must give reasons.

67. Breaches of a parenting order are dealt with in the adult court and are punishable by a fine of up to £1,000.

68. Before making a parenting order, the court must explain clearly the effects of the order and the consequences of failing to comply with it.

Sentencing options

Age next birthday	**10 – 13**	**14**	**15**	**16 – 17**
Absolute discharge	✓	✓	✓	✓
Conditional discharge Note: Cannot be imposed if the youth has received a final warning, or two or more cautions, or a conditional caution followed by a caution, in the previous 24 months unless exceptional circumstances are found.	✓	✓	✓	✓
Referral order Note: **Must** be imposed if first imprisonable offence **and** the youth pleads guilty and court is not considering a discharge or custody. **May** be imposed in any other case where the youth has entered a plea of guilty to the offence (or at least one of the offences before the court)	✓	✓	✓	✓
Fine Note: For youths aged 10 – 15, the order must be made against a parent/guardian unless unreasonable in circumstances.	✓ **Maximum £250**	✓ **Maximum £1000**	✓ **Maximum £1000**	✓ **Maximum £1000**
Compensation and costs Note: Compensation takes priority over any costs or fine. Costs cannot exceed any fine imposed.	✓	✓	✓	✓
Reparation order Note: Where the court has power to impose a reparation order but does not do so, reasons must be given.	✓	✓	✓	✓
YRO	✓	✓	✓	✓
DTO	✗ **Aged 10-11** ✓ **Aged 12-13 if deemed persistent offender**	✓ **If deemed persistent offender**	✓	✓

REFERRAL ORDERS

What is a referral order?

1. The child or young person will be referred to a youth offender panel, which investigates the causes of the offending and its consequences with the child or young person and their family. The panel is made up of a panel adviser from the local Youth Offending Service and trained community volunteers (who serve three year periods up to a maximum of six years).

2. A contract is agreed between the panel and the child or young person, which includes reparation and a programme of activities that are aimed at preventing reoffending. If the child or young person fails to agree a contract or does not comply with a contract (which includes not signing the contract), the panel has the power to refer the case back to court. Where a child or young person completes the contract, the conviction will become spent. However, only the referral order will become spent at the end of the contract period. This does not apply to any ancillary orders imposed.

The work of the panel

3. The terms of the contract are agreed with the child or young person and are guided by the principles of restorative justice. It should include a programme of interventions to address the factors underlying the offending behaviour and allow the child or young person to:

   a. take responsibility for the consequences of their actions

   b. make reparation to any victim(s)

   c. carry out unpaid work in the community.

4. All terms should work towards achieving the child or young person's re-integration to the community. Regular panel meetings are held to review the progress of the order. They are usually held in the area where the child or young person lives, as the child or young person must attend all meetings. If the child or young person is under 16, the court must order at least one appropriate adult to attend the meetings. Where the young person is aged 16 – 17 the court has discretion as to whether to order an appropriate adult to attend the meeting. No order should be made where the court is satisfied it would be

unreasonable to do so. An appropriate adult is the parent or guardian of the child or young person. Where a child or young person is a looked after child by the local authority, the local authority or the person who is a parent or guardian with whom the child or young person is allowed to live with, is the appropriate adult. Victims may also be invited to attend or to have their views represented at the meetings.

Custody threshold referral orders

5. 'Custody threshold' cases are those where the court has indicated that custody is being considered but, as a first time guilty plea case, a referral order is the only available non-custodial alternative and also cases where the court has a discretion to make a referral order instead of a detention and training order.

6. In these cases, the Youth Offending Services will present a referral order option with an **intensive contract**. During the period of adjournment for the PSR, an informal 'pre-sentence panel' may have been convened. The panel will consider the likely content of the intensive contract and use it to inform the court. If made, the first formal panel meeting should be set within five working days of the court hearing (rather than 20 working days for a non-intensive referral order).

7. In such cases, the Youth Offending Services must consider commissioning similar resources to those available for other high tariff community sentences; including the full range of community intervention options and restrictions.

Duration of the order

8. Any referral order must be between 3 – 12 months. The contract compliance period starts on the day the contract is signed, not from the date the order was made by the court.

9. On making a referral order, the court must explain to the child or young person:

   a. the effect of the order,

   b. the consequences if no contract takes place between the child or young person and the panel,

c. the consequences if the child or young person fails to comply with any of the terms of the contract, and

d. that the parent or guardian can be fined and/or imprisoned for failure to attend the meeting if so ordered.

Additional powers

10. When imposing a referral order, the court must impose the surcharge and may also make certain ancillary orders such as costs, compensation, endorsement and disqualification. Some orders cannot be combined with a referral order.

    The following orders cannot be combined with a referral order:

    a. Conditional discharge.

    b. Reparation order.

    c. Fine.

    d. Any community sentence.

Compulsory orders

11. A referral order **must** be imposed where:

    a. a child or young person pleads guilty to an **imprisonable offence**, and

    b. a child or young person has never been convicted by a court in the United Kingdom of any offence other than the offence and any connected offences (defined as offences that are being dealt with at the same time), and

    c. the offence is not one for which the sentence is fixed in law, and

    d. the court is not proposing to impose an absolute discharge, a conditional discharge, a hospital order or a custodial sentence.

    (*Note:* absolute discharges, conditional discharges and any previous bind overs are not convictions for referral order purposes. If these alone appear on the record they will not be a bar to the defendant receiving a compulsory referral order.)

Discretionary orders

12. The use of referral orders has been extended since their introduction. A referral order may be made if the discretionary referral order conditions are met. They may be imposed in the following circumstances:

    a. Whenever a child or young person appears before the court for sentence provided that there is a guilty plea to at least one of the offences for which the child or young person falls to be sentenced. The offence does not have to be imprisonable.

    b. When a child or young person has previously had a referral order. There is no limit to the number of referral orders a child or young person can receive. (The child or young person does not have to be recommended as suitable for a subsequent referral order by the YOT nor does the court have to find exceptional circumstances.)

Referrals back to court

13. The panel has power to vary the terms of an order provided the child or young person agrees. It may also review any non-compliance with the contract. If accepted by the child or young person, the panel may allow the order to continue either in its original terms or with an agreed variation.

14. However, a child or young person will be referred back to court if they:

    a. fail to agree the terms of a contract (or any amendment)

    b. refuse to sign a contract (or any variation)

    c. fail to comply with the terms of a contract

    d. fail to attend a panel meeting.

15. The panel will prepare a report for the court explaining the reasons why the case has been referred back to court. If the court is satisfied that it was reasonable for the panel to make the findings they have made, as outlined in that report and that it was reasonable in the circumstances to have referred the child or young person back to court, the court may:

    a. .Revoke the order and re-sentence: The court can revoke the referral order and re-sentence for the original offence(s); or

b. Take no action: The court can take no action and allow the order to continue;

16. There are additional powers available where a young person is referred back to court for failure to attend a panel meeting, to comply with the terms of the contract or to satisfactorily complete the contract, namely:

a. Fine: The court can impose a fine (up to £2500); or

b. Extend the existing contract: The contract can be extended up to a maximum period of 12 months. (The power to extend is not available if the contract has already expired when the child or young person appears before the court.)

However, these additional powers can only be used if:

a. the contract has been signed;

b. the child or young person has failed without reasonable excuse to comply with a term of that contract; and

c. the child or young person is before the court.

17. The panel may also refer a case back to court with a request that the court extends the period of the referral order contract, provided the original contract period was less than 12 months. If it appears to the court to be in the interests of justice, having regard to the circumstances that have arisen since the contract took effect, the court may extend the contract period by up to three months. The child or young person must be present in court if this order is made. Such an application is likely to be made in circumstances where the child or young person has been unable to comply with the order (such as illness, being out of the jurisdiction with permission, or where non-compliance with the order does not warrant revocation of the order and re-sentencing but rather an extension would be sufficient to punish the non-compliance).

18. The panel may also refer an order back to court for it to be revoked. It may request that the court revoke the order or revoke and re-sentence. The circumstances in which the panel may do this include where the child or young person has made good progress under the contract. If the court does not agree

to revoke the order, the panel may not make a similar application for three months except with the consent of the court.

Further offending

19. Where a child or young person, who is already subject to a referral order, appears before the court to be dealt with for an offence, irrespective of when the offence(s) were committed, the court has a number of options available:

    a. Extend the Compliance Period: Where the existing referral order is less than 12 months, the court can extend the compliance period up to a maximum of 12 months. (This is irrespective of whether the offence was committed before or after the referral order was imposed or whether or not the contract has been signed. There is no requirement to find exceptional circumstances to extend the compliance period);

    b. Impose an absolute or conditional discharge: the court may impose an absolute or conditional discharge. This would not revoke the existing referral order;

    c. Revoke and Re-Sentence: If the court decides to sentence the young person in another way, it may (but need not) revoke the existing referral order and re-sentence for the original offence(s) along with the new offence(s), except the court cannot make another referral order;

    d. Impose a further referral order: Since no order made by way of sentence for a new offence will have the effect of revoking the existing referral order, it follows that the court may impose a new referral order for the new offence, provided the discretionary referral order conditions are satisfied. In these circumstances the court can order that the new contract will only take effect upon the existing referral order being discharged or revoked.

YOUTH REHABILITATION ORDER (YRO)

What is a YRO?

1. This is the only community order available in the youth court for offences committed on or after 30 November 2009. It must include one or more of the 15 requirements set out on the following pages.

Criteria

2. The offence must be deemed 'serious enough' to warrant a community order but need not be imprisonable.

3. Before making a YRO, the court must obtain and consider information about the child or young person's family circumstances and the likely effect of such an order on those circumstances. In addition, the court must ensure that any requirements are compatible with each other and do not conflict with the offender's religious beliefs or interfere with their education.

4. A court cannot impose a further YRO at a time when a YRO is already in force unless it revokes the earlier order.

Duration of an order

5. There is no minimum term but it must not exceed three years. The court must specify the end date of the YRO.

6. Different requirements attached to an order may be made for different periods as specified in the order. However, where an order is made comprising two or more requirements, the order should specify a date by which each requirement must be complied with. The date of the last requirement to be completed must be the same as the end date of the order.

The requirements

1. Activity

- The child or young person must participate in activities on such number of days and at such a place as may be specified in the order. This includes presenting themselves at a place specified and to comply with the instructions given by the person in charge of the said place or activity.

- The number of days must not be more than 90 days. If the activity requires the offender to participate in a residential exercise the period may not be more than seven days.
- The court may not impose an activity requirement unless it has consulted a member of the YOT and is satisfied it is feasible to secure compliance with the order and that appropriate provision can be made for the child or young person to participate in the activity.
- Where such an order requires the consent of a third party, it cannot be included unless that person has given their consent.

2. Attendance centre

- This requires a child or young person to attend at an attendance centre for the number of hours specified and during that period to engage in occupation or receive instructions under the supervision of the officer in charge of the centre.
- Where the young person is aged 16 (at the time of conviction) or over, they may be required to attend for not less than 12 hours but not more than 36.
- Where the young person is aged 14 – 15 (at the time of conviction), the periods are not less than 12 but not more than 24.
- Where the child is under the age of 14 (at the time of conviction), the maximum period is 12 hours.
- The court must be satisfied that an attendance centre is available and reasonably accessible to the child or young person.
- The first time at which the child or young person is required to attend is notified to them by the responsible officer. Subsequent attendance is fixed by the officer in charge of the centre. Attendance is no more than one occasion on any day and no more than three hours on any occasion.

3. Curfew

- This requires the child or young person to remain indoors at a specified place for specified periods.

- The maximum period is 12 months. This may not include periods that amount to less than two hours or more than 16 hours in any day.
- The court must obtain and consider information about the place proposed, including the effect and attitude of persons likely to be affected by the offender's presence.
- The order must include an electronic monitoring requirement unless the court considers in the particular circumstances of the case that it is inappropriate to do so. Where such an order requires the consent of a third party, it cannot be included unless that person has given their consent. The court must be satisfied that arrangements for electronic monitoring are available in the local justice area proposed. Where electronic monitoring is imposed, the responsible officer must notify the following of the time when the period is to begin:
  - the child or young person
  - the person responsible for the monitoring
  - any other person without whose co-operation it would not be possible to secure that the monitoring takes place.

4. Drug testing

- This requires the child or young person to provide samples, for the purposes of ascertaining whether there is any drug in their body, in accordance with instructions given by the YOT officer or treatment provider. The order must also contain a drug treatment requirement.
- The court may not impose a drug testing requirement unless it is satisfied that arrangements are in force in the local justice area where the offender resides, and the offender agrees.
- The order must specify for each month the minimum number of occasions on which samples are to be provided and may specify times and circumstances in which the YOT officer may require samples to be provided and the descriptions of the samples to be provided.

5. Drug treatment

- This requires a child or young person to submit to treatment, under the direction of a person having the necessary qualifications or experience (known as the 'treatment provider'), with a view to reducing or eliminating their dependency and/or their propensity to misuse drugs. The treatment may be as a resident or non-resident but the order must not specify the nature of the treatment.
- The court may not impose a drug treatment requirement unless it is satisfied the child or young person is dependent on or has a propensity to misuse drugs and the dependency or propensity is susceptible to treatment.
- The court may not impose a drug treatment requirement unless it is satisfied that arrangements for implementing the treatment are in force in the local justice area where the child or young person resides, that arrangements can be made for the treatment, that it has been recommended by a member of the YOT, and the offender has agreed.
- 'Drugs' means a controlled drug as defined by the Misuse Drugs Act 1971.

6. Education

- This requires the child or young person to comply with 'approved education arrangements'. This means arrangements for the child or young person's education made for the time being by their parent or guardian and approved by the local authority specified in the order. This must be the local authority where the child or young person resides.
- The court may not impose an education requirement unless:
  - it has consulted the local education authority, and
  - is satisfied that in the view of that authority arrangements exist for the child or young person to receive efficient full-time education suitable to their age, ability, aptitude and special educational needs, and
  - the requirement is necessary to secure the good conduct of the offender or for preventing further offending.

- Any period specified must not include any period after which the child or young person has ceased to be of compulsory school age.

7. Exclusion

- This prohibits the child or young person from entering places specified in the order. The order may specify different places for different periods but the period must not be for more than three months.
- The order must include an electronic monitoring requirement unless the court considers in the particular circumstances of the case that it is inappropriate to do so. Where such an order requires the consent of a third party, it cannot be included unless that person has given their consent. The court must be satisfied that arrangements for electronic monitoring are available in the local justice area proposed. Where electronic monitoring is imposed the responsible officer must notify the following of the time when the period is to begin:
  - the child or young person
  - the person responsible for the monitoring
  - any other person without whose co-operation it would not be possible to secure that the monitoring takes place.

8. Intoxicating substance treatment

- This requires a child or young person to submit to treatment, under the direction of a person having the necessary qualifications or experience, with a view to reducing or eliminating their dependency and/or their propensity to misuse intoxicating substances. The treatment may be as a resident or non-resident but the order must not specify the nature of the treatment.
- The court may not impose an intoxicating substance requirement unless it is satisfied the child or young person is dependent on or has a propensity to misuse intoxicating substances and the dependency or propensity is susceptible to treatment.
- The court may not impose an intoxicating substance requirement unless it is satisfied that arrangements can be made for the treatment intended, that it

has been recommended by a member of the YOT and the child or young person has agreed.

- 'Intoxicating substance' means alcohol or any other substance or product which is, or whose fumes are capable of being inhaled or otherwise used for the purpose of causing intoxication. It does not include controlled drugs.

9. Local authority residence

- This requires a child or young person to reside in accommodation provided by, or on behalf of a local authority specified in the order. The order must also specify the local authority in whose area the offender will reside.
- The requirement may also stipulate that a child or young person is not to reside with a person specified in the order.
- The court may not impose a local authority residence requirement unless it is satisfied that the behaviour, which constituted the offence, was due to a significant extent to the circumstances in which the child or young person was living and that the imposition of such a requirement will assist in the their rehabilitation. It must also consult the child or young person's parent/guardian and the local authority that will accommodate the child or young person.
- The maximum period is six months but must not include any period after which the offender has reached the age of 18.
- The offender must be, have been offered or have failed to apply for legal representation.

10. Mental health treatment

- This requires a child or young person to submit to treatment for a specified period under the direction of a registered medical practitioner with a view to improving their mental condition. The treatment may be as a resident or non-resident but the order must not specify the nature of the treatment.
- The court may not impose a mental health treatment requirement unless it is satisfied, that the mental condition may be susceptible to treatment but not

such that a hospital or guardianship order is necessary and arrangements can be made for the treatment and the child or young person has agreed.

- During the order, if the medical practitioner is of the opinion that the treatment can be better or more conveniently given at a place not specified in the order they may make those arrangements accordingly.

11. Programme

- This requires the child or young person to participate in a set of activities as specified in the order at a place on such number of days as may be specified. This may include a requirement to reside at a specified place if that is necessary for the programme to be completed.
- The court may not impose a programme requirement unless it has been recommended by a member of the YOT as being suitable and the programme is available at the place proposed.
- Where such an order requires the consent of a third party, it cannot be included unless that person has given their consent.

12. Prohibited activity

- The child or young person must refrain from participating in activities specified in the order on a day (or days) specified or during a period as specified.
- The court may not impose a prohibited activity requirement unless it has consulted a member of the YOT.

13. Residence

- This requires the young person to reside with either an individual (who must consent) or at a place specified in the order.
- The young person must be aged 16 or over at the time of conviction.
- The court must consider the home circumstances of the young person.
- The court may not impose a residence requirement that specifies a hostel or other institution unless it has been recommended by a member of the YOT.

14. Supervision

- The child or young person must attend appointments as specified by the YOT officer at such times and places as specified by the YOT officer.
- The period of supervision must be equal in length to the term of the order.

15. Unpaid work

- This is available for 16 and 17 year olds only (at the time of conviction). This requires the young person to perform unpaid work in the community. The court must be satisfied the offender is a suitable person to perform such work and that suitable work is available in the local justice area where the offender resides.
- The minimum period is 40 hours and the maximum is 240 hours.
- Any order imposing unpaid work remains in force until the number of hours specified have been completed but the expectation is that it should be competed within 12 months.

YRO requirements table

	10 – 13 years old	14 years old	15 years old	16 – 17 years old
1. Activity requirement	✓ Max. 90 days	✓ Max. 90 days	✓ Max. 90 days	✓ Max. 90 days
2. Attendance Centre requirement	✓ Aged 10 -13 at date of conviction Max 12 hours	✓ Aged 14 at date of conviction 12 - 24 hours	✓ Aged 15 at date of conviction 12 - 24 hours	✓ Aged 16+ at date of conviction 12 - 36 hours
3. Curfew requirement	✓ Max. 12 months	✓ Max. 12 months	✓ Max. 12 months	✓ Max. 12 months
4. Drug testing requirement	✓ Offender must consent	✓ Offender must consent	✓ Offender must consent	✓ Offender must consent
5. Drug treatment requirement	✓ Must be recommended and the offender must consent	✓ Must be recommended and the offender must consent	✓ Must be recommended and the offender must consent	✓ Must be recommended and the offender must consent
6. Education requirement	✓	✓	✓ Not any period after offender has ceased to be compulsory school age	✓ Not any period after offender has ceased to be compulsory school age
7. Exclusion requirement	✓ Max. 3 months	✓ Max. 3 months	✓ Max. 3 months	✓ Max. 3 months
8. Intoxicating substance treatment requirement	✓ Must be recommended and the offender must consent	✓ Must be recommended and the offender must consent	✓ Must be recommended and the offender must consent	✓ Must be recommended and the offender must consent

	10 – 13 years old	14 years old	15 years old	16 – 17 years old
9. Local authority residence requirement	✓ Max. 6 months	✓ Max. 6 months	✓ Max. 6 months	✓ Max. 6 months. Not any period after offender reached aged 18
10. Mental health treatment requirement	✓ Court must be satisfied the condition may be susceptible to treatment and the offender must consent	✓ Court must be satisfied the condition may be susceptible to treatment and the offender must consent	✓ Court must be satisfied the condition may be susceptible to treatment and the offender must consent	✓ Court must be satisfied the condition may be susceptible to treatment and the offender must consent
11. Programme requirement	✓ Must be recommended	✓ Must be recommended	✓ Must be recommended	✓ Must be recommended
12. Prohibited activity requirement	✓	✓	✓	✓
13. Residence requirement	✗	✗	✗	✓ Aged 16+ at date of conviction
14. Supervision requirement	✓	✓	✓	✓
15. Unpaid work requirement	✗	✗	✗	✓ 40 – 240 hours

YOUTH REHABILITATION ORDER WITH INTENSIVE SUPERVISION AND SURVEILLANCE (YRO WITH ISS)

What is a YRO with ISS?

1. This is a community order which **must** include the following requirements:

   a. supervision

   b. curfew

   c. electronic monitoring

   d. activity of more than 90 days but not more than 180 days (known as an 'extended activity' requirement).

Criteria

2. The offence must be imprisonable and the court of the opinion that the offence is 'so serious' that a custodial sentence would be appropriate. In addition, where the child or young person is under the age of 15 at the time of conviction, the court must be satisfied that they are a persistent offender.

3. The order must not impose a fostering requirement.

Duration of an order

4. A YRO with ISS cannot be imposed for less than six months and may extend up to a maximum of three years. However, different requirements attached to the order may be made for different periods as specified in the order.

5. Where an order is made comprising of two or more requirements, the order should specify a date by which each requirement must be complied with. The date of the last requirement to be completed must be the same as the end date of the order.

YOUTH REHABILITATION ORDER WITH FOSTERING (YRO WITH FOSTERING)

What is a YRO with fostering?

1. This is a community order with a 'fostering requirement', which means that for a period specified in the order the offender must reside with a local authority foster parent.

2. It **must** include a supervision requirement.

3. The order must specify the local authority that will be responsible for placing the offender with a local authority foster parent.

Criteria

4. The offence must be imprisonable and the court of the opinion that the offence is 'so serious' that a custodial sentence would be appropriate. In addition, where the child or young person is under the age of 15 at the time of conviction, the court must be satisfied that they are a persistent offender.

5. The court must be satisfied that the behaviour, which constituted the offence(s), was due to a significant extent to the circumstances in which the child or young person was living and the imposition of a 'fostering requirement' would assist in the their rehabilitation.

6. The court must consult the child or young person's parent/guardian and the local authority that will place them with a local authority foster parent.

7. The court may not impose a fostering requirement unless it is satisfied that the child or young person was legally represented at the time the court is considering imposing the requirement or had been granted representation that was withdrawn due to their conduct or was told of their right to apply but refused and/or failed to apply.

8. The court must be satisfied that it has been notified by the Secretary of State that arrangements have been made for implementing such a requirement.

Duration of an order

9. The period specified for which the child or young person must reside with a local authority foster parent must end no later than 12 months from the date the order takes effect, and must not include any period after the child or young person has reached the age of 18.

DETENTION AND TRAINING ORDER (DTO)

What is a DTO?

1. A DTO is a custodial sentence for a child or young person made up of a period of detention and training followed by a period of supervision once released from custody back into the community. The custodial element is normally half of the term imposed. The child or young person is subject to supervision on their release from custody until the end of the order. A supervising officer will be appointed when the order is imposed.

2. The minimum DTO is four months and the maximum is 24 months. Any DTO must be for 4, 6, 8, 10, 12, 18 or 24 months. Consecutive DTOs may be imposed leading to an aggregate not being one of the permitted terms, provided the total does not exceed the maximum period.

Criteria

3. The offence must be so serious that only a custodial sentence is justified; or where the offence is a violent or sexual one, the court must be satisfied that only such a sentence is adequate to protect the public from serious harm from the offender.

4. The court may further impose a DTO if the child or young person has breached a YRO with ISS, which itself was imposed for wilfully and persistently failing to comply with a YRO. This is notwithstanding that the original offence was not imprisonable or did not cross the custody threshold. If the original offence was not imprisonable, the court would be restricted to passing a DTO of four months.

5. Before passing a DTO, the court must consider whether a YRO with ISS, or a YRO with fostering could be justified instead. If not, the court must explain this in its reasons.

Age of the offender

6. There is no power to impose a DTO on children or young people who are:

   a. Aged 10 or 11 unless only custody is sufficient to protect the public from further offending (DTO for this age group is at the discretion of the Home Secretary – these provisions are not yet in force).

   b. Aged 12–14 unless the court is of the opinion that they are **persistent offenders**.

7. **Persistent offenders** has not been defined. However, in most circumstances the normal expectation is that the child or young person will have previously had some contact with authority in which the offending conduct has been challenged. A finding of persistence may be derived from previous findings of guilt, or reprimands and warnings (penalty notices of disorder may not be sufficiently reliable as they do not require any admission of guilt).

8. Whilst not setting a minimum standard, the Sentencing Council advise that a child or young person is certainly likely to be found to be persistent where they have been convicted of, or reprimanded or warned, in respect of an imprisonable offence on at least three occasions in the last 12 months of a comparable nature.

9. The Sentencing Council also highlight that where a child or young person is being sentenced in a single appearance for a series of separate, comparable offences committed over a short space of time then the court could justifiably consider the child or young person to be a persistent offender, despite the fact that there may be no pervious findings of guilt.

Duty of the court

10. When setting the length of the DTO, the court must take into account any time spent remanded in custody. The court must also take into account any time spent subject to a qualifying bail condition with a curfew and electronic monitoring (nine hours or more per day on electronic tag qualifies for this). An adult would usually have their custodial sentence reduced by half a day for each day they were on an electronic tag for nine hours or more (rounded up to the nearest whole day).

11. These periods on remand are not deducted or taken into account by the prison authorities when determining the date of release. Therefore, the court must take them into account when setting the appropriate length of DTO. **The periods on remand in custody or subject to qualifying electronic tagging may mean the court should impose a DTO of a lesser length or not impose a DTO at all.**

12. A DTO is a sentence of last resort. Prior to the imposition of a DTO, the court must ensure that the child or young person cannot be dealt with by a lesser sentence, such as a fine or a YRO. **It must also justify why a YRO with ISS or a YRO with fostering could not be imposed.**

Setting the length of a DTO

13. If the court has decided that a DTO must be imposed, it needs to determine the appropriate length. The length must be the shortest term commensurate with the seriousness of the offence.

14. If there are offence specific guidelines (e.g. the Robbery or Sexual Offences guideline effective from 1 June 2017), the court must have regard to these.

15. Where there are no offence specific guidelines, the court must look to the sentence that may have been appropriate for an adult offender convicted of the same matter.

16. Where the young person is 15 – 17 years old, the court needs to consider the maturity of the offender as well as chronological age. It may be appropriate to consider a starting point from half to two thirds of that which would have been identified for an adult offender.

17. If the child or young person is aged 14 or less, the length of the custodial sentence will normally be shorter than for a young person aged 15 – 17 convicted of the same offence.

18. The court needs to be flexible when coming to the appropriate starting point, bearing in mind the age of the child or young person, their maturity, and the sophistication of the offence.

19. The closer a child or young person was to age 18 when the offence was committed and the greater the maturity of the child or young person or the

sophistication of the offence, the closer the starting point is likely to be to that appropriate for an adult.

Example 1

The court is dealing with a 15 year old who pleads guilty to assault occasioning actual bodily harm. The court has not deemed the offence to fall within the dangerousness provisions and so has accepted jurisdiction. However, it is a serious matter being a pre-meditated assault resulting in a fairly serious injury. In accordance with the Guidelines for this offence, the court has determined that the appropriate starting point for an equivalent adult offender would be 12 months custody.

Bearing in mind age and maturity, the court has decided to reduce this by half = six months.

The court then considers the guilty plea, and decides a reduction is appropriate so moves down to the next level of DTO = four months.

(If this child or young person had been remanded into custody, or remanded on bail with a qualifying condition of a curfew with electronic monitoring, the court must take this into account. When taking this into account, the court may determine that it is no longer appropriate to impose a DTO.)

Example 2

The court is dealing with a 17 year old charged with driving a vehicle under the influence of excess alcohol.

The alcohol reading was extremely high, being four times the legal limit; the driving was erratic and involved a crash. The court bears in mind the seriousness of the offence, in particular the potential harm that could have been caused. The court considers the adult guidelines and decides an equivalent sentence for an adult would have been the maximum of six months custody.

The court decides that it would be appropriate to impose a sentence of two thirds of this sentence, bearing in mind age and maturity = 4 months.

However, the court decides it is appropriate to give 25% credit for a late guilty plea entered after a trial date had been set: 4 months minus 25% = 3 months.

Four months is the minimum length of DTO so, following the Guidelines, a DTO can no longer be imposed. A YRO plus ancillary orders (disqualification from driving, and costs) now becomes the likely sentence.

BREACHES AND FURTHER OFFENDING DURING THE CURRENCY OF COURT ORDERS

Commission of further offences during the period of a conditional discharge

1. If it is proved to the satisfaction of the youth court that the child or young person committed an offence during the period of conditional discharge, the court may re-sentence the original offence in any way in which it could have dealt with the case had the child or young person just been convicted of it. If the conditional discharge was made by a different youth court, the consent of that court is required.

2. If the order was made by the Crown Court, the youth court may commit the child or young person to custody or release them on bail until they can be brought or appear before the Crown Court.

Breaches of a reparation order

3. If it is proved to the satisfaction of the appropriate court that the child or young person has failed to comply with a reparation order, the court may:

   a. order the child or young person to pay a fine not exceeding £1,000, or

   b. deal with the child or young person in any way in which they could have been dealt with for that offence had the court not made a reparation order.

4. Applications may also be made, by the YOT officer or the child or young person, to revoke the order, or cancel/insert provisions into the order that were/could have been originally included.

Breaches of a YRO

5. If it is proved that the child or young person has failed to comply without reasonable excuse with a YRO, the court **may** deal with them in any one of the following ways by:

   a. ordering the child or young person to pay a fine not exceeding £2,500, or

   b. amending the terms of the YRO so as to impose any requirement that could have been included in the order when it was made, or

c. dealing with the child or young person for the offence in respect of which the order was made in any way in which the court could have dealt with the offender for that offence.

6. Unlike adult community orders, the court is not obliged to deal with the child or young person in one of these three ways. The court may decide to take no action and allow the order to continue.

7. If the court orders a fine, it will need to bear in mind that the parents/guardian may have to pay the fine depending on the age of the child or young person.

8. If the court amends the terms of the order, it can add requirements or it can substitute new requirements for those already contained in the order. If these requirements are not capable of being completed before the expiry term of the order, the court can extend the order by up to six months to allow the additional requirements to be completed, even if this will take the order beyond the three year maximum. The order may only be extended once.

9. If the court decides to re-sentence the child or young person, it must take into account the extent to which they have complied with the YRO. When re-sentencing, the court is restricted by the seriousness threshold that the original offence crossed.

10. If the original offence passed the custodial threshold but the court instead imposed a YRO, and the court is now considering a custodial sentence as a result of re-sentencing following a breach, the court should be satisfied that all necessary steps have been taken by the YOT to ensure the child or young person has been given appropriate opportunity and support necessary for compliance.

11. The primary objective when sentencing for breach of a YRO is to ensure that the child or young person completes the requirements imposed by the court.

Further offences during the currency of a YRO

12. If the child or young person is convicted of an offence whilst a YRO is in force, the court **may** revoke the order, or revoke and re-sentence the child or young person if this is in the interests of justice. If re-sentencing, the court must take into account the extent to which they have complied with the order.

13. The court **must not** make a new YRO when another YRO is already in force. However, more than one YRO **can** exist if they are imposed on the same occasion. Therefore, if the court wishes to impose a further YRO for the new offence, it will need to revoke the old order, or revoke it and re-sentence to a YRO to run alongside the new one.

Wilful and persistent breach of a YRO

14. If the court has decided to re-sentence the child or young person after a breach of the order, and the child or young person has **wilfully** and **persistently** failed to comply with the YRO, the court may impose a YRO with ISS (notwithstanding any of the restrictions that would usually apply to imposition of such an order).

15. The term **persistently** has not been defined. The SGC do not set a minimum bar before which a child or young person can be deemed to have wilfully and persistently failed to comply with an order. However, they give the following example:

    "Almost certainly a child or young person will have 'persistently' breached a YRO where there have been three breaches (each resulting in an appearance before a court) demonstrating a lack of willingness to comply with the order."

Breach of a YRO with ISS

16. If a YRO with ISS is breached, the court may impose a custodial sentence, (this is notwithstanding that the original offence was not so serious as to warrant a custodial sentence in the case of a YRO with ISS being imposed for wilful and persistent breach of a YRO). The court should be satisfied that all necessary steps have been taken by the Youth Offending Service to ensure the child or young person has been given appropriate opportunity and support necessary for compliance.

17. If the original offence being dealt with did not pass the custody threshold or did not carry a term of custody in the youth court, the court may make a DTO for a term not exceeding four months.

Breach of a DTO

18. If a child or young person breaches a supervision requirement after release from custody, they will be brought back before the court. If the breach is proved, the court may:

    a. impose a further period of custody of up to three months or a period equivalent to the date from when the breach was committed until the end of the order whichever is the shortest period;

    b. impose a further period of supervision of up to three months or a period equivalent to the date from when the breach was committed until the end of the order whichever is the shortest period;

    c. impose a fine of up to £1,000; or

    d. take no action.

Commission of further offences during a DTO

19. If a child or young person is found guilty of a further imprisonable offence during the currency of the order, the court may impose a further period of detention. This period cannot be any longer than the period between the date of the new offence and when the original order would have expired. It can be served concurrent with or consecutive to any new sentence imposed.

CRIMINAL BEHAVIOUR ORDER (CBO) AND ANTI-SOCIAL BEHAVIOUR INJUNCTION (ASBI)

What is a CBO?

1. A CBO is an order which is available on conviction for any criminal offence by any criminal court. It is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. A CBO prohibits a child or young person from doing anything specified in the order or requires them to do anything described.

2. Prohibitions and requirements in a CBO must, so far as practicable, be such as to avoid:

   a. any interference with the times, if any, at which the child or young person normally works or attends school or any other educational establishment; and

   b. any conflict with the requirements of any other court order or injunction to which the child or young person may be subject..

Grounds for an order

3. The court must consider that two conditions are met:

   a. that the court is satisfied, beyond reasonable doubt, that the child or young person has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and

   b. that the court considers that making the order will help in preventing the child or young person from engaging in such behaviour.

When can an order be made?

4. The youth court is the only venue for CBOs made in respect of offenders under 18. The youth court has the power to make a CBO where a young person is convicted of an offence. The court may only make a CBO against a young person on application by the prosecution. The court cannot make a CBO of its own volition. The prosecution must consult the YOT for its views before making an application for a CBO.

5. The court may make a CBO against the child or young person only if it is made in addition to:

   a. a sentence imposed in respect of the offence, or

   b. an order discharging the child or young person conditionally.

6. The CBO can relate to wider relevant behaviour than that proved in the criminal conviction. Hearsay evidence is allowed in CBO proceedings.

Duration of an order

7. The minimum period for a CBO is one year. The maximum is three years, but the order should only be made for as long as the court considers necessary for the protection of the community from the individual in question. The order must be reviewed annually. In certain circumstances, it may be varied or discharged.

8. A CBO takes effect on the day it is made, save where the offender is subject to another CBO when the new order may be made so that it takes effect on the day on which the previous order ceases to have effect.

9. A CBO must specify the period ("the order period") for which it has effect and may specify periods for which particular prohibitions or requirements have effect. The order must be reviewed annually.

Interim Order

10. Where a court adjourns the hearing of an application for a CBO, the court may make an interim order that lasts until the final hearing of the application or until further order, if the court thinks it just to do so.

11. The court has the same powers for breach of an interim CBO as it does for breach of the full CBO.

Breaches of a CBO

12. Breach proceedings for children or young people will be dealt with in the youth court.

13. Breach of an order is a criminal offence. The Crown Prosecution Service (CPS) conduct any prosecutions. The standard of proof is the criminal standard 'beyond reasonable doubt'.

14. The maximum penalty on conviction in the youth court is a 24 months DTO or a fine not exceeding £1000 (£250 if under the age of 14) or both. All youth court disposals are available except a conditional discharge.

15. The sentence for any breach of an CBO will depend on:

    a. the nature of the breach

    b. the seriousness of the breach

    c. why the order was imposed in the first place

    d. whether it is the first or continued breach of the order.

Anti-social Behaviour Injunction (ASBI)

What is an ASBI?

16. An Anti-social Behaviour Injunction ('injunction') is a civil power that can be applied for in respect of any person aged 10 and above. It is an order designed to offer protection to victims and communities by preventing anti-social behaviour, committed by individuals, from continuing and/or escalating. Despite being a civil sanction, before making an application to court, all other approaches should have been considered as a court injunction should be a last resort.

17. Anti-social behaviour is defined within the legislation. It is conduct:

    a. that has caused, or is likely to cause, harassment, alarm or distress to any person (non-housing related)

    b. capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, (housing-related)

    c. capable of causing housing related nuisance or annoyance to any person (non-housing related).

Which court?

18. For those under the age of 18 applications must be made to the youth court.

19. Where the application involves more than one respondent (some of whom are aged 18 or over) but at least one of those is a youth (aged under 18), the applicant may apply to the youth court to hear the cases together as a 'joint hearing'. The youth court must be satisfied that it is in the interest of justice to hear the 'mixed aged' case together.

Who can apply?

20. A number of agencies are entitled to make the application. They include:

    - A local authority
    - A housing provider
    - A chief officer of police for a police area
    - The chief constable of the British Transport Police Force
    - Transport for London
    - The Environment Agency.

21. The court can only grant an injunction on application; it cannot do so of its own volition.

The test

22. The court may only grant an injunction if it is satisfied that two conditions are met:

    a. The court must be satisfied, on the balance of probabilities, that the respondent has engaged, or threatens to engage, in anti-social behaviour, **and**

    b. The court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

The application

23. Applications for injunctions against respondents under the age of 18 are made to the youth court.

24. An application may be made with or without notice to the respondent (i.e., ex parte). Before making an application, the applicant **must** consult the YOT about the application and inform any other body or individual appropriate to the application. The duty to consult the YOT does not apply to an ex parte application.

Terms of the Order

25. An injunction may:

    a. Prohibit the respondent from doing anything described in the injunction ('a prohibition') and/or

    b. Require the respondent to do anything described in the injunction ('a requirement').

26. Any prohibitions and/or requirements must, so far as practicable, avoid any interference with times a respondent would normally work, attend school or other educational establishment and any conflict with any other court order.

27. If the order includes a requirement, it must specify the individual or organisation that is responsible for supervising compliance with that requirement and must hear from them about both the suitability and enforceability of a requirement before including it in the injunction. Where there are two or more requirements the court must consider their suitability with each other.

28. Where an injunction is granted ex parte the respondent cannot be required to participate in particular activities.

29. For all injunctions there is a requirement that the respondent keeps in touch with the person responsible for supervising compliance with it and notifies that person of any change of address.

Power of arrest

30. The court may attach a power of arrest to any prohibition or requirement, other than one which requires the respondent to participate in particular activities, in the injunction.

31. Power of arrest may only be attached if the court thinks that:

    a. the anti-social behaviour in which the respondent has engaged, or threatens to engage, consists of, or includes the use of, or threats to use, violence against another person **or**

    b. there is significant risk of harm to other persons from the respondent.

32. Significant risk of harm is defined in the Act as including serious ill treatment or abuse, whether physical or not.

33. The injunction may specify a period for which the power of arrest is to have effect. This may be for a shorter period than the prohibition or requirement to which it relates.

Duration

34. The order takes effect on the day it is made and must specify the period for which it has effect. In the youth court, for those under 18, it must be no more than 12 months.

35. An injunction may specify different periods for which particular prohibitions or requirements have effect within the order.

Interim injunctions

36. The court may adjourn an application for an injunction and grant an interim injunction if the court thinks it just to do so. An interim injunction may last until the final hearing or until further order.

37. Where an injunction is granted ex parte the respondent cannot be required to participate in particular activities.

38. Where any application is adjourned the court has power to remand the respondent. A respondent under the age of 18 may only be remanded on medical grounds.

Variation/discharge

39. An injunction may be varied or discharged on application by the applicant or the respondent.

40. If an application is dismissed a further application cannot be made by the same applicant unless the applicant has the consent of the court that made the order or the agreement of the other party.

Breaches

41. Breach of an injunction is not a criminal offence but any breach must be proved to the criminal standard of proof, beyond reasonable doubt.

42. If the breach is proved the court may:

    a. take no action;

    b. impose a supervision order of up to 6 months. This may include one or more of the following requirements:

        i. a supervision requirement (may not exceed 6 months);

        ii. an activity requirement (must be for not less than 12 days and not more than 24 days); or

        iii. a curfew requirement (must be for not less than 2 hours but not more than 8 hours. The court may order that the curfew is electronically monitored); or

    c. impose a detention order of up to 3 months.

43. In considering whether and how to exercise its powers the court must consider any representations from YOT.

44. Failure to comply with a supervision order may result in the respondent being brought back to court. The court may revoke the order and impose a new one or impose a detention order. The court must consider the representations of

YOT before exercising its powers. These powers cannot be exercised after the respondent turns 18.

45. A detention order is only available for respondents aged 14 – 17. The court must be satisfied that the severity or extent of the breach means that no other power available is appropriate. Any detention order will be served in Youth Detention Accommodation.

46. An application may be made to amend operative period of the supervision order, the activity requirement or the curfew requirement, or to amend the order on change of residence. An application can also be made to revoke a supervision or detention order. An application can be made to revoke a detention order if it appears it is in the interests of justice to do so, having regard to the circumstances that have arisen since the order was made. If the application is dismissed, then no further application can be made without the consent of the court or the agreement of the other party.

47. Where there is a power of arrest attached to the injunction, a constable may arrest the respondent if they have reasonable cause to suspect that they are in breach. The respondent must be brought before a magistrate within 24 hours of the time of arrest (excluding Sundays and Bank Holidays). The magistrate must remand the respondent to the youth court that granted the order. However, if the order was made by a youth court and the respondent is now 18 or over it will be to the county court.

48. Where there is no power of arrest and the person who applied for the injunction thinks the respondent is in breach of the injunction, they may apply to a magistrate for a warrant of arrest. There must be reasonable grounds for believing the respondent is in breach before granting any warrant. Any warrant granted will require the respondent to be brought before the youth court who granted the injunction or if the respondent is now aged 18 or above to the county court. If a constable arrests a respondent for breaching the injunction they must inform the applicant.

49. If a person is arrested for breach, the court may deal with the breach or adjourn proceedings for no more than 28 days. If the court does adjourn, civil bail applies.

Publicity

50. When a child or young person appears before the court for a CBO or for an ASBI , the usual automatic press restrictions do not apply. The court will need to consider whether or not to use its discretionary powers to make any order restricting publicity balancing the interests of the public to know about such cases against the welfare of the child or young person concerned.

51. The publication of the name, address and even a photograph of a child or young person may be appropriate where an ASBO has been granted if such publicity would ensure the enforcement of the order. The success of such orders requires the general public, especially in the local area, to be aware of the order and the identity of the person against whom it has been made.

52. Publicity should not be used as a punishment.

APPENDIX A – MAGISTRATES' ASSOCIATION PROTOCOL

This protocol is provided by the Youth Courts Committee of the Magistrates' Association.

The principal aim of the youth justice system is to prevent offending by children and young people, and a court must have regard to this principal aim as well as taking into account the welfare of the offender.

A court sentencing a young person must be aware of the obligations under a range of international conventions. These emphasise the importance of avoiding unnecessary 'criminalisation' of young people whilst ensuring that they are held responsible for their actions and, where possible, take part in repairing the damage that they have caused. The youth court aims to promote reintegration rather than impose retribution.

The general principle must be that youth trials and sentencing take place in a youth court, separate from an adult court.

Unless there are truly exceptional circumstances, young people should appear at court in person, before a youth court with magistrates or district judges (magistrates' court) trained in youth matters. Wherever possible, adult courts dealing with a young person with regard to bail should grant unconditional or conditional bail and adjourn the case to be heard in a youth court at the earliest opportunity.

Section 53 of the Criminal Justice and Courts Act 2015 gives magistrates the ability to send young offenders to the Crown Court for sentence following conviction if they consider that their sentencing powers (a detention and training order of up to two years in duration) are insufficient. There are very few offences which cannot, by law, be tried in the youth court. The exceptions include murder, attempted murder and manslaughter, and those offences which carry mandatory minimum sentences. Where a child or young person is jointly charged with an adult (someone aged 18 or over), the youth must be tried summarily unless the court considers it to be in the interests of justice for both the youth and the adult to be committed to the Crown Court for trial.

The youth court will:

- Engage with young people and their parents, guardians or carers
- Make the court less formal than the adult court
- Create an atmosphere which encourages dialogue and ensures that parents, guardians or carers understand their individual responsibilities in preventing further offending behaviour
- Develop mechanisms for the feedback of information to magistrates to enable sentencing to be as effective as possible in reducing further offending. The local authority, under Section 9 Children and Young Persons Act 1969, has a duty to provide the court with information on a young person's home surroundings, school record, health (including mental health) and character which it considers will assist the court. The youth court may request local authorities either to investigate or further investigate and provide the requested information.

This protocol provides advice only. Any decision with regard to the procedures to be adopted in each case will rest with the justices (having taken advice from the legal adviser) or the district judge (magistrates' court), taking into account all of the circumstances of the

particular case including the age, maturity and development - both intellectual and emotional - of the young person before the court.

This protocol has been adopted by the ..... Youth Court Panel

and will be effective from ..... until further review.

1. Statutory Duties

It is important to draw attention to the following statutory responsibilities of the youth court in relation to communication with children and young persons and their parents, guardians or carers. These responsibilities are in addition to the general duty for magistrates to give reasons for their decisions.

Rule 6 of the Magistrates' Courts (Children and Young Persons) Rules 1992 requires the court to explain to the child or young person the nature of the proceedings and the substance of the charge in simple language, suitable to their age and understanding.

Where a child or young person has pleaded guilty or been found guilty of an offence, Rule 11 of the same Rules imposes a duty on the court, before finally disposing of the case or remitting it to another court, to inform the child or young person, his parent or guardian or any person assisting them, of the manner in which it proposes to deal with the case. The court must then allow any of those people an opportunity to make representations. When making an Order, the court must explain to the child or young person the general nature and effect of the Order.

2. Court Building and Layout

Ideally, courthouses should provide:

- Separate entrances to the court for adults and youths
- Separate waiting areas for youths
- Separate waiting areas for witnesses

Changes to the layout of the court room will be made after consultation with the bench, justices' clerk, the court manager and youth court users.

The arrangement of furniture in the court may be changed from time to time to encourage children and young people and their parents, guardians or carers to participate in proceedings. It is essential for magistrates to communicate directly with children and their parents, guardians or carers and this can be achieved most effectively in a less formal atmosphere.

The defendant will not normally be in the dock, unless security considerations dictate otherwise (see section on secure docks below). All parties present in court will stand when the magistrates are entering or leaving the courtroom.

3. Secure Dock

For courtrooms with a secure dock, subject to the court's discretion to order otherwise, a young person will be produced in the secure dock only if:

1. They have attained the age of 15; and
2. They are produced to the court from custody; and
3. He or she is charged with an offence of:
    i. A violent nature (other than common assault but including witness interference and offences specified in Schedule 15 of the Criminal Justice Act 2003), or
    ii. A sexual nature, or
    iii. Possession of a real or imitation firearm or other weapon

A young person will also be produced in the secure dock where the court so orders it of its own volition or upon representations.

A secure dock should be used for youths only in appropriate circumstances, and its use should not become the rule, even for those produced in custody. Only those charged with the most serious offences, or whose behaviour has given rise to serious concern, should be required to appear in the secure dock. The court's expectation with regards to use of the secure dock should be communicated to those bringing the young person into court from custody, where relevant.

4. Engagement

Youth court chairs have the opportunity to:

- Engage with young offenders and their parents, guardians or carers in focusing upon offending behaviour
- Create a youth court which is more open and commands the confidence of victims and the public
- Place a strong emphasis on using sentencing to prevent future offending

Magistrates should understand when and how engagement should take place.

The following issues should be considered:

- Awareness of difficulties with communication experienced by many of the young people who appear in the youth court, including learning difficulties, developmental issues, mental health issues and issues of self-esteem
- Involvement of wingers, legal advisers, the press and victims as appropriate
- Handling of advocates – ensuring the young offender speaks for themselves where appropriate and is questioned appropriately, taking into consideration their understanding and maturity
- Conducting engagement within an appropriate timetable
- Remembering to demonstrate active listening, using age-appropriate language and being aware of body language
- Managing any revised court layouts and assessing how these may affect court proceedings
- Upholding the dignity of the court

Ensuring pre-conviction that all participants understand their roles in court:

- Emphasising the importance and seriousness of the occasion

- Avoiding significant engagement at this stage

Engaging with parents, guardians and carers to focus upon issues regarding:

- Behaviour at home, school and/or work issues, interests and activities and peer group involvement
- Involvement in the care and control of the young person to ensure that informed decisions can be made regarding the appropriateness of parental orders

Assisting young offenders to understand the seriousness of their actions in order to promote responsibility and demonstrating that the court is concerned with the offender as an individual by passing an appropriate sentence in accordance with the Sentencing Council's Definitive Guideline, *Overarching Principles - Sentencing Youths*, and any relevant offence-specific youth guidelines.

Engaging post-conviction with the young offender and their parent, guardian or carer to:

- Understand the motivation behind the offence
- Encourage the young person to accept responsibility for their part in the offence and to understand the consequences for themselves, their family and the victim(s)
- Address behaviour which may contribute to future offending

5. Defendants

The Chair should explain to the child or young person - and to any parent, guardian or carer in attendance - the roles of the various people present in court. Where a child or young person is not making a first appearance on the matter in hand (i.e. at a previously adjourned hearing or at a pre-trial review), the Chair should sensitively and appropriately check the understanding of the young person, and may decide to explain again.

The defendant's full name, address, date of birth and age will be confirmed, as will the identity of their parent, guardian or carer. The defendant will be addressed by their first name alone from this point forward.

The legal adviser will explain to the child or young person the nature of the charge in ordinary language. The court will not proceed further until it is satisfied that the child or young person understands the allegations made.

Defendants will be required to stand in court to be identified, when the charges are put to them and when the court is disposing of the case. During the rest of the proceedings, they should be allowed to remain seated. Other court users should be seated throughout, apart from when the magistrates are entering or leaving the court. The young person should be seated next to their parent or guardian.

At the start of a trial, the Chair will check that the child or young person and any parent, guardian or carer in attendance understands the procedure to be followed, including the order of evidence and speeches. .

The Chair should make it clear to defendants who have pleaded guilty or been found guilty that they may be asked questions during the course of the proceedings. The purpose of questioning is to:

- Ensure the bench has all the relevant information before disposing of the case and

- Encourage the offender to recognise his or her wrongdoing and to accept responsibility for it

Before finally disposing of a case, the Chair may, where appropriate, outline in open court the manner in which the court intends to deal with the case and may invite representations on the intended disposal.

The court will explain the nature and effect of its Order to the child or young person, and to his or her parent, guardian or carer, and will check the child or young person's understanding of the court's decision.

Consideration should always be given to the length of court sittings and how often it will be necessary to take breaks. This is particularly relevant to trials, and to those with identified learning difficulties.

6. Parents and Guardians

It is essential that parents, guardians or carers attend court with their children. Magistrates expect the YOT to have made every effort to ensure such attendance. Despite the pressures of dealing speedily with an offence, there may be occasions when an adjournment is the best course of action to ensure that the parent, guardian or carer is made aware in person that the court takes the concept of parental responsibility very seriously. Not only can they provide essential information about the child, but some sanctions cannot be applied in their absence (e.g. binding them over to take care and control of their children; making them responsible for financial penalties).

Courts do have the power to summons a parent/guardian to court, and Legal Advisers will be able to provide further information. They also have the option of imposing a Parenting Order on a parent/guardian who is not present in court so long as an explanation is provided (e.g. in writing) of the effect of the Order, the requirements included in it, the consequences which may follow if they fails to comply with the requirements and the power of the court to review the order on application. It is usually desirable to ensure both parents, where applicable, attend court and are involved in any parenting intervention.

Voluntary engagement with parents/guardians is preferable to a Court Order and the court would not be expected to give a Parenting Order where the parents/guardians are fully compliant with the support offered by the YOT on a voluntary basis.

The expectation should be that parents, guardians or carers also attend court with a 17-year-old defendant. Magistrates will need to balance the requirement to deal speedily with a case with the seriousness of the offence and the fact that a 17-year-old is still a child.

Parents, guardians or carers may be seated throughout the proceedings, but they should stand when the chair is announcing orders which affect them personally.

Where any unrepresented child or young person enters a plea of guilty, the bench's Legal Adviser will ascertain from any parent, guardian or carer in attendance that they are satisfied - on the basis of what he or she understands from the police and from the defendant - that the offence is properly admitted. The same will apply to offences to be taken into consideration.

Parents, guardians or carers should be encouraged to address the court before sentence.

7. Witnesses

Witnesses should be asked to stand whilst taking the Oath or Affirmation and thereafter should be invited to be seated whilst they give their evidence.

Trial preparation forms and hearings will identify when witnesses wish to give evidence under special measures. It is the role of the Chair to ensure that the inclusion of these measures in a trial does not create any impression that the fairness of the proceedings is compromised.

Witnesses will normally be allowed to remain in court after they have finished giving their evidence. However, this will be at the court's discretion. Should they be told to leave, the Chair will give an explanation.

8. Victims

All victims should have the opportunity to attend youth court hearings, both trials and sentencing, if they wish to do so, unless the particular circumstances of the case mean that it would not be in the best interests of justice. If a victim is excluded, the Chair should explain why.

The alleged victims of a crime will usually be entitled to attend youth court proceedings as people directly concerned with the proceedings. On attending, they should be directed by court staff to liaise with the Witness Service about the practicalities of having access to the youth court.

A Victim Personal Statement will normally be presented by the prosecution. This should be considered during the sentencing exercise and could be used as a starting point for engagement with the young person in considering the consequences of their actions.

9. Looked After Children

The youth court should always recognise the particular experiences and difficulties of young people who are looked after, and the need to protect their welfare. Looked after children should be accompanied in court by a carer who is fully familiar with their circumstances.

10. Attendance of Others

The youth court is a closed court and only people directly involved in the case should normally be present. Other people should only be allowed into court with the express permission of the bench, having heard appropriate representations

11. Advocates

It is acknowledged that specialist youth training for all advocates practising in the youth court would be advantageous. At the very least, all parties in the proceedings should attempt to use plain language for legal and technical terms where possible, and should be familiar with this Youth Court Protocol.

12. Media

Members of the press are entitled to be present in the youth court.

The court may lift reporting restrictions where offenders have pleaded guilty or been found guilty and it is in the public interest to do so, but this should be exceptionally rare. The court may make such an Order on application, or of its own volition.

13. Working with Youth Offending Teams

It is essential that there is a relationship of open communication and trust between the youth court magistrates and the local YOT. The HMCTS/YJB booklet 'Making it Count in Court' is available as a download or a hard copy and can be ordered free of charge from www.yjb.gov.uk. This booklet contains ideas for liaison with YOTs, such as holding regular meetings between youth court panel chairs and YOT managers.

14. Monitoring

This Protocol will be reviewed by the Youth Court Panel on an annual basis.

Revised February 2017

APPENDIX B – ESSENTIAL CASE MANAGEMENT

SENIOR PRESIDING JUDGE
FOR ENGLAND AND WALES

ESSENTIAL CASE MANAGEMENT: APPLYING THE CRIMINAL PROCEDURE RULES[1]

A) Generally

- The court[2] must further the Overriding Objective of the Rules by actively managing each case *[Crim PR3.2(1)]*.
- The parties must actively assist the court in this without being asked *[Crim PR 3.3(a)]*. But at every hearing, including at trial, it is the personal responsibility of the Magistrates or District Judge actively to manage the case *[Crim PR 3.2]*.
- Unnecessary hearings should be avoided by dealing with as many aspects of the case as possible at the same time *[Crim PR 3.2(2)(f)]*.

B) The first hearing: taking the plea

At every hearing (however early):

- Unless it has been done already, the court must take the defendant's plea *[Crim PR 3.8(2)(b)]*. This obligation does not depend on the extent of advance information, service of evidence, disclosure of unused material, or the grant of legal aid.
- If the plea really cannot be taken[3], or if the alleged offence is indictable only, the court must find out what the plea is likely to be *[Crim PR 3.8(2)(b)]*.

C) If the plea is 'guilty'

- The court should pass sentence on the same day, if at all possible (unless committing for sentence).
- If information about the defendant is needed from the Probation Service, it may be that a report prepared for earlier proceedings will be sufficient or a 'fast delivery' report (oral or written) may be prepared that day, depending on local arrangements.
- If a 'Newton' hearing is needed, the court, with the active assistance of the parties, must identify the disputed issue *[Crim PR 3.2(2)(a); 3.3(a)]* and if possible, determine it there and then or, if it really cannot be decided, give directions specifically relating to that disputed issue to ensure that the next hearing is the last.

D) If the plea is 'not guilty'

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1 *It is important to note that all participants in criminal cases, including Magistrates, District Judges, and Justices' Clerks must follow and apply the Criminal Procedure Rules. The Rules are not mere guidance. Compliance is compulsory. The word "must" in the Rules means* ***must****.*

2 *The expression 'court' includes Magistrates, District Judges, and Justices' Clerks exercising judicial powers [Crim PR 2.2(1)].*

3 *Exceptions to the rule requiring the plea to be taken are rare and must be strictly justified.*

The key to effective case management is the early identification by the court of the relevant disputed issues *[Crim PR 3.2(2)(a)]*. From the start, the parties must identify those issues and tell the court what they are *[Crim PR 3.3(a)]*. If the parties do not tell the court, the court must require them to do so.

- The relevant disputed issues must be explicitly identified and the case must be managed by the court to ensure that the 'live' evidence at trial is confined to those issues.
- The parties must complete the prescribed case progression form *[Crim PR 3.11; Consolidated Practice Direction V.56.2]* and the court must rigorously consider each entry on the form in order to comply with its duty actively to manage the case by making properly informed directions specific to each case.
- Only those witnesses who are really needed in relation to genuinely disputed, relevant issues should be required to attend. The court must take responsibility for this (and not simply leave it to the parties) in order to comply with the Overriding Objective of the Rules *[Crim PR 1.1(2)(d), (e)]*.
- The court's directions must include a timetable for the progress of the case (which can include a timetable for the trial itself) *[Crim PR 3.8(2)(c)]*.
- The time estimate for the trial should be made by considering, individually, how long each 'live' witness will take having regard to the relevant disputed issue(s).

E) The parties' obligations to prepare for trial include:

- Getting witnesses to court *[Crim PR 3.9(2)(b)]*.
- Making arrangements for the efficient presentation of written evidence/other material *[Crim PR 3.9(2)(c)]*.
- Promptly warning the court and other parties of any problems *[Crim PR 3.9(2)(d)]*.

F) At trial

Before the trial begins, the court must establish, with the active assistance of the parties, what disputed issues they intend to explore *[Crim PR 3.10(a)]*.

The court may require the parties to provide:

- A timed, 'batting order' of live witnesses *[Crim PR 3.10(b)(i), (ii), (ix)]*.
- Details of any admissions/written evidence/other material to be adduced *[Crim PR 3.10(b)(vi), (vii)]*.
- Warning of any point of law *[Crim PR 3.10(b)(viii)]*.
- A timetable for the whole case *[Crim PR 3.10(b)(ix)]*.

During the trial the court must ensure that the 'live' evidence, questions, and submissions are strictly directed to the relevant disputed issues.

G) The Rules

For a full version of the Rules, see:
http://www.justice.gov.uk/criminal/procrules_fin/rulesmenu.htm

Lord Justice Leveson
Senior Presiding Judge for England and Wales
December 2009

APPENDIX C – EXTRACT FROM THE CRIMINAL PROCEDURE RULES 2014

The Rules apply to all criminal courts at all levels. They are regularly amended and updated. The following extracts are accurate as of 1 May 2015 and include the amendments made by The Criminal Procedure (Amendment) Rules 2015.

1.1 **The overriding objective**

(1) The overriding objective of this new code is that criminal cases be dealt with justly.

(2) Dealing with a criminal case justly includes—

(a) acquitting the innocent and convicting the guilty;

(b) dealing with the prosecution and the defence fairly;

(c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;

(d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;

(e) dealing with the case efficiently and expeditiously;

(f) ensuring that appropriate information is available to the court when bail and sentence are considered; and

(g) dealing with the case in ways that take into account—

(i) the gravity of the offence alleged,

(ii) the complexity of what is in issue,

(iii) the severity of the consequences for the defendant and others affected, and

(iv) the needs of other cases.

1.2 **The duty of the participants in a criminal case**

(1) Each participant, in the conduct of each case, must—

(a) prepare and conduct the case in accordance with the overriding objective;

(b) comply with these Rules, practice directions and directions made by the court; and

(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.

(2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule.

1.3 **The application by the court of the overriding objective**

The court must further the overriding objective in particular when—

(a) exercising any power given to it by legislation (including these Rules);

(b) applying any practice direction; or

(c) interpreting any rule or practice direction.

……

3.2 **The duty of the court**

(1) The court must further the overriding objective by actively managing the case.

(2) Active case management includes –

(a) the early identification of the real issues;

(b) the early identification of the needs of witnesses;

(c) achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case;

(d) monitoring the progress of the case and compliance with directions;

(e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

(f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

(g) encouraging the participants to co-operate in the progression of the case; and

(h) making use of technology.

(3) The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.

3.3 **The duty of the parties**

Each party must –

(a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and

(b) apply for a direction if needed to further the overriding objective.

3.5 **The court's case management powers**

(1) In fulfilling its duty under rule 3.2 the court may give any direction and take any step actively to manage a case unless that direction or step would be inconsistent with legislation, including these Rules.

(2) In particular, the court may –

(a) nominate a judge, magistrate or justices' legal adviser to manage the case;

(b) give a direction on its own initiative or on application by a party;

(c) ask or allow a party to propose a direction;

(d) for the purpose of giving directions, receive applications and representations by letter, by telephone or by any other means of electronic communication, and conduct a hearing by such means;

(e) give a direction -

(i) at a hearing, in public or in private, or

(ii) without a hearing;

(f) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(g) shorten or extend (even after it has expired) a time limit fixed by a direction;

(h) require that issues in the case should be –

(i) identified in writing,

(ii) determined separately, and decide in what order they will be determined; and

(i) specify the consequences of failing to comply with a direction.

(3) A magistrates' court may give a direction that will apply in the Crown Court if the case is to continue there.

(4) The Crown Court may give a direction that will apply in a magistrates' court if the case is to continue there.

(5) Any power to give a direction under this Part includes a power to vary or revoke that direction.

(6) If a party fails to comply with a rule or a direction, the court may –

(a) fix, postpone, bring forward, extend, cancel or adjourn a hearing;

(b) exercise its powers to make a costs order; and

(c) impose such other sanction as may be appropriate.

3.6 **Application to vary a direction**

(1) A party may apply to vary a direction if –

(a) the court gave it without a hearing;

(b) the court gave it at a hearing in that party's absence; or

(c) circumstances have changed.

(2) A party who applies to vary a direction must –

(a) apply as soon as practicable after becoming aware of the grounds for doing so; and

(b) give as much notice to the other parties as the nature and urgency of the application permits.

3.7 **Agreement to vary a time limit fixed by a direction**

(1) The parties may agree to vary a time limit fixed by a direction, but only if—

(a) the variation will not –

(i) affect the date of any hearing that has been fixed, or

(ii) significantly affect the progress of the case in any other way;

(b) the court has not prohibited variation by agreement; and

(c) the court's case progression officer is promptly informed.

(2) The court's case progression officer must refer the agreement to the court if in doubt that the condition in paragraph (1)(a) is satisfied.

3.8 **Court's power to vary requirements under this Part**

(1) The court may—

(a) shorten or extend (even after it has expired) a time limit set by this Part; and

(b) allow an application or representations to be made orally.

(2) A person who wants an extension of time must—

(a) apply when serving the application or representations for which it is needed; and

(b) explain the delay.

3.9 **Case preparation and progression**

(1) At every hearing, if a case cannot be concluded there and then the court must give directions so that it can be concluded at the next hearing or as soon as possible after that.

(2) At every hearing the court must, where relevant –

(a) if the defendant is absent, decide whether to proceed nonetheless;

(b) take the defendant's plea (unless already done) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty;

(c) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial or (in the Crown Court) the appeal;

(d) in giving directions, ensure continuity in relation to the court and to the parties' representatives where that is appropriate and practicable; and

(e) where a direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

(3) In order to prepare for the trial, the court must take every reasonable step—

(a) to encourage and to facilitate the attendance of witnesses when they are needed; and

(b) to facilitate the participation of any person, including the defendant.

(4) Facilitating the participation of the defendant includes finding out whether the defendant needs interpretation because—

(a) the defendant does not speak or understand English; or

(b) the defendant has a hearing or speech impediment.

(5) Where the defendant needs interpretation—

(a) the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend;

(b) interpretation may be by an intermediary where the defendant has a speech impediment, without the need for a defendant's evidence direction;

(c) on application or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless—

(i) translation of that document, or part, is not needed to explain the case against the defendant, or

(ii) the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences;

(d) on application by the defendant, the court must give any direction which the court thinks appropriate, including a direction for interpretation by a different interpreter, where—

(i) no interpretation is provided,

(ii) no translation is ordered or provided in response to a previous application by the defendant, or

(iii) the defendant complains about the quality of interpretation or of any translation.

(6) Facilitating the participation of any person includes giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.

(7) Where directions for appropriate treatment and questioning are required, the court must—

(a) invite representations by the parties and by any intermediary; and

(b) set ground rules for the conduct of the questioning, which rules may include—

(i) a direction relieving a party of any duty to put that party's case to a witness or a defendant in its entirety,

(ii) directions about the manner of questioning,

(iii) directions about the duration of questioning,

(iv) if necessary, directions about the questions that may or may not be asked,

(v) where there is more than one defendant, the allocation among them of the topics about which a witness may be asked, and

(vi) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer.

3.10 **Readiness for trial or appeal**

(1) This rule applies to a party's preparation for trial or appeal, and in this rule and rule 3.11 'trial' includes any hearing at which evidence will be introduced.

(2) In fulfilling the duty under rule 3.3, each party must –

(a) comply with directions given by the court;

(b) take every reasonable step to make sure that party's witnesses will attend when they are needed;

(c) make appropriate arrangements to present any written or other material; and

(d) promptly inform the court and the other parties of anything that may –

(i) affect the date or duration of the trial or appeal, or

(ii) significantly affect the progress of the case in any other way.

(3) The court may require a party to give a certificate of readiness.

3.11 **Conduct of a trial or an appeal**

In order to manage a trial or an appeal, the court –

(a) must establish, with the active assistance of the parties, what are the disputed issues;

(b) must consider setting a timetable that –

(i) takes account of those issues and of any timetable proposed by a party, and

(ii) may limit the duration of any stage of the hearing;

(c) may require a party to identify –

(i) which witnesses that party wants to give evidence in person,

(ii) the order in which that party wants those witnesses to give their evidence,

(iii) whether that party requires an order compelling the attendance of a witness,

(iv) what arrangements are desirable to facilitate the giving of evidence by a witness,

(v) what arrangements are desirable to facilitate the participation of any other person, including the defendant,

(vi) what written evidence that party intends to introduce,

(vii) what other material, if any, that person intends to make available to the court in the presentation of the case, and

(viii) whether that party intends to raise any point of law that could affect the conduct of the trial or appeal, and

(a) may limit –

(i) the examination, cross-examination or re-examination of a witness, and

(ii) the duration of any stage of the hearing.

3.12 Case management forms and records

(1) The case management forms set out in the Practice Direction must be used, and where there is no form then no specific formality is required.

(2) The court must make available to the parties a record of directions given.

(3) Where a person is entitled or required to attend a hearing, the court officer must give as much notice as reasonably practicable to—

(a) that person; and

(b) that person's custodian (if any).

Judicial College
jcpublications@judiciary.gsi.gov.uk