Judicial College

Youth Defendants in the Crown Court

October 2023

Gareth Branston – Heather Norton

Preface

It is a pleasure to introduce the present update to the Youth Defendants in the Crown Court Bench Book, a publication which gathers in one place everything relating to young defendants that a Crown Court judge needs to know. Dealing with children and young people requires all the skills which judges have but operating in a different gear and with a different aim, the focus for those under 18 being on welfare and the prevention of offending. As Bill Davis pointed out in the previous Preface to this work, the number of youths in the Crown Court has and continues to decline, with the result that most judges sitting in the Crown Court will only occasionally have to deal with the trial or sentence of a young person under 18. However, when young people do appear in the Crown Court, whether on their own or jointly charged with adults, very particular considerations apply to them both practically and theoretically. Young people are not, and cannot be treated as, 'mini adults'. Adaptations to court layout and procedures, together with the use of age-appropriate language are just two of the important gear changes involved in dealing with young defendants. This Bench Book is a critically important reference point for all such cases.

The updates in this 2023 edition take account of the new Criminal Practice Directions, the judgment of the Court of Appeal in *R v ZA*, the updated Judicial College Guide to Reporting Restrictions in the Criminal Courts, changes to CPS Legal Guidance on dealing with children as suspects or defendants, and a change to defendants' live links. Warmest thanks are due to HH Judge Heather Norton and HH Judge Gareth Branston, still the joint authors, for the huge amount of work they continue to put into this publication and its regular revision; also, to HH Judge Andrew Hatton for his continued coordination of the preparation of the publication and editing.

Juliet May

The Hon. Mrs Justice May DBE

Judicial Lead for Youth Justice

October 2023

Note from the Judicial College

We hope that you have found, and that you continue to find, this bench book to be a very useful resource. This new edition reflects the law as of 1 October 2023, but some later developments have been incorporated, in particular a Statutory Instrument correcting an error in section 6(7) of the Bail Act 1976, an amendment we knew to be on the way and for which we slightly delayed publication.

This publication is undoubtedly best used as an online resource. There will be revisions and amendments from time to time to ensure that it remains up to date. We will not necessarily advertise them but will simply make modest amendments in the online document as and when necessary. To print it would be a terrible waste of paper and would leave you with a document which may soon be out of date.

There are references within the text to Lord Chief Justice. These are historical references or references to guidance issued by a Lord Chief Justice and so that title has been retained. References to the present have been amended to Lady Chief Justice.

If you have any comments in relation to this publication, please send a message to jcpublications@judiciary.uk marked for my attention.

HHJ Andrew Hatton

Director of Training for Courts (Crime and Magistrates)

Joint Dean of the Judicial College

Contents

1. INTRODUCTION

1-1 Sources of guidance

1A. Criminal Practice Directions 2023

1. Part 6 of the Criminal Practice Directions 2023 ('CrimPD') deals with vulnerable people in the courts, including defendants, especially those who are young.
2. Part 6.4 highlights guidance on considering such matters as ground rules hearings, separate trials, special measures, pre-trial visits, intermediaries, live link, reporting restrictions, courtroom layout, sitting with family members, providing explanations, timetables, the wearing of robes and limiting public access to the court.
3. Part 6.1 deals with vulnerable people in court, including defendants. Part 6.2 deals with intermediaries for both vulnerable witnesses and vulnerable defendants.

1B. Sentencing Council's Guidelines

4. The Sentencing Council's definitive guideline on dealing with youth defendants, entitled *Sentencing Children and Young People – Overarching Principles* (hereafter abbreviated to 'the Youth Guideline'), came into effect on 1 June 2017.
5. Although directed primarily at sentencing, the Youth Guideline contains a wealth of other important information concerning the relevant law, procedure, and proper approach to be applied when dealing with any case involving a young defendant. It is required reading for any judge who is to deal with a child or young person in their court and it is recommended that judges regularly refresh their memories by re-reading the document. Much of the material in this publication is taken directly from the Youth Guideline.
6. Nearly all of the Sentencing Council's definitive sentencing guidelines apply only to offenders who are aged 18 or over at the time of sentence. Alongside the Youth Guideline, however, were published offence-specific guidelines for sexual offences and robbery offences involving young defendants. Furthermore, there are now youth-specific guidelines for offences involving blades and offensive weapons.

1C. Equal Treatment Bench Book

7. Chapter 2 of the *Equal Treatment Bench Book* (ETBB) deals with 'Children, Young People and Vulnerable Adults', including young defendants. It provides guidance on such matters as the rights of defendants to effective participation, the duty to safeguard young defendants, competence, expedited timescales and active case management, special measures, intermediaries, ground rules hearings and adjustments to cross-examination.

1D. Crown Court Compendium Parts I and II

8. Part I of the *Crown Court Compendium* contains relevant guidance on the use of intermediaries, special measures and the evidence of children and vulnerable witnesses.

9. Part II contains a wealth of information about all forms of sentence and ancillary order that may be imposed upon young defendants. Appendix II to that Part also provides guidance for writing and delivering sentencing remarks to children.

1E. The Advocate's Gateway

10. The *Advocate's Gateway* contains freely accessible and regularly updated 'toolkits' for advocates, judges and other professionals who may have to communicate with, or question vulnerable people. These include specific toolkits for planning to question children and young persons and for effective participation of young defendants. The toolkits have been specifically endorsed as representing best practice by both the Court of Appeal and the CrimPD.[1]

1F. Other sources

11. In preparing this document, the authors acknowledge the assistance derived by reference to the following publications:

    (1) 'Archbold Criminal Pleading, Evidence & Practice';

    (2) 'Archbold Magistrates' Courts Criminal Practice';

    (3) 'Blackstone's Criminal Practice';

    (4) 'Blackstone's Handbook of Youths in the Criminal Courts' (Mark Ashford, Naomi Redhouse);

    (5) 'Sentencing Referencer' (Lyndon Harris, Nicola Padfield);

    (6) 'Vulnerable People and the Criminal Justice System' (Penny Cooper, Heather Norton).

1-2 Style and abbreviations

12. The following abbreviations are used and the relevant year appears alongside the abbreviation in the text:

ASBCPA	Anti-social Behaviour, Crime and Policing Act
BA	Bail Act
CAJA	Coroners and Justice Act
CDA	Crime and Disorder Act
CJA	Criminal Justice Act

[1] CrimPD 6.1.2.

CJIA	Criminal Justice and Immigration Act
CJPOA	Criminal Justice and Public Order Act
CrimPD	Criminal Practice Directions
CrimPR	Criminal Procedure Rules
CYPA	Children and Young Persons Act
ECHR	European Convention on Human Rights
ETBB	Equal Treatment Bench Book
FA	Firearms Act
JRCA	Judicial Review and Courts Act
LASPOA	Legal Aid, Sentencing and Punishment of Offenders Act
MCA	Magistrates' Courts Act
MHA	Mental Health Act
PACE	Police and Criminal Evidence Act
PCA	Prevention of Crime Act
PCC(S)A	Powers of Criminal Courts (Sentencing) Act
PCSCA	Police, Crime, Sentencing and Courts Act
SC	Sentencing Code (a term used throughout in preference to Sentencing Act)
SCA	Senior Courts Act
SOA	Sexual Offences Act
VCRA	Violent Crime Reduction Act
YJCEA	Youth Justice and Criminal Evidence Act
Youth Guideline	Sentencing Council's definitive guideline, Sentencing Children and Young People – Overarching Principles

2. OVERARCHING PRINCIPLES

2-1 Fundamental principles

1. An entirely different approach is required when dealing with children and young people to that which courts routinely apply to adult offenders.[2]
2. Any Crown Court dealing with a defendant under the age of 18 must have regard to two parallel and fundamental principles:
   (1) the principal aim of the youth justice system – to prevent offending by children and young persons; and
   (2) the welfare of the child or young person: see SC, s.58.
3. These principles support and amplify the duties of a judge or court:
   (1) to ensure that any defendant receives a fair trial in accordance with Article 6 of the ECHR;
   (2) to conduct a case in accordance with the overriding objective contained in r.1.1 of the CrimPR 2020;
   (3) to act in accordance with Article 3.1 of the United Nations Convention on the Rights of the Child ('the UN Convention') which provides that 'in all actions concerning children…undertaken by…courts of law…the best interests of the child shall be a primary consideration'; and
   (4) to act in accordance with Article 12 of the UN Convention which guarantees the right of a child to express his/her views freely, provides that those views are given due weight and explicitly states that 'the child shall in particular be provided the opportunity to be heard in any judicial…proceedings affecting the child, either directly, or through a representative…in a manner consistent with the procedural rules of national law'.
4. Paragraph 3(1) of sch.22 to the SC (formerly, s.142A of the CJA 2003) would, when brought into force, amend s.58 to provide for the purposes of sentencing for offenders under 18. It would provide that, in addition to the two fundamental principles noted above, the court must have regard to four purposes of sentencing when dealing with an offender aged under 18 in respect of an offence (punishment of offenders; reform and rehabilitation of offenders; protection of the public; making of reparation by offenders). However, this provision **is not in force** and it is unclear whether it ever will be.

1A. Principal aim of the youth justice system

5. It is the principal aim of the youth justice system to prevent offending by children and young persons: CDA 1998, s.37(1).

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[2] See *R v ZA* [2023] EWCA Crim 596 for a statement to this effect, which dealt primarily with matters relating to sentencing but which has application throughout the criminal process.

6. It is the duty of all persons and bodies carrying out functions in relation to the youth justice system to have regard to that principal aim: CDA 1998, s.37(2).

1B. Welfare principle

7. Every court dealing with a child or young person must have regard to the welfare of that child or young person: CYPA 1933, s.44(1).
8. As part of that duty, the court shall, in a proper case, take steps to remove the child or young person from undesirable surroundings and take steps to secure that proper provision is made for his/her education and training: CYPA 1933, s.44(1).
9. The welfare principle requires a court to choose the best option for the child or young person taking account of the circumstances of the offence.
10. The Youth Guideline notes that, in having regard to the welfare of the child or young person, the court must be alert to:
    (1) any mental health problems or learning difficulties/disabilities;
    (2) any experiences of **brain injury or traumatic life experience** (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
    (3) any **speech and language difficulties** and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
    (4) the **vulnerability to self-harm** of children and young people, particularly within a custodial environment; and
    (5) the effect on children and young people of **experiences of loss and neglect and/or abuse**.[3]
11. The court should always ensure it has access to information about how best to identify and respond to **factors regularly present** in the background of children and young people who come before the court, such as:
    (1) deprived homes;
    (2) poor parental employment records;
    (3) low educational attainment;
    (4) early experiences of offending by other family members;
    (5) experience of abuse and/or neglect;
    (6) negative influences from peer associates;
    (7) misuse of drugs and/or alcohol.[4]
12. The court should take account of the fact that there may be **reasons for inappropriate behaviour in court**, on some occasions, by a child or young person, such as:
    (1) nervousness;

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[3] Youth Guideline, para.1.12.
[4] Youth Guideline, paras.1.13-1.14.

(2) lack of understanding of the system;

(3) belief they will be discriminated against;

(4) peer pressure to behave in a certain way because of others present;

(5) lack of maturity.[5]

13. **Looked after children** are over-represented in the criminal justice system. The court must bear in mind the additional complex vulnerabilities likely to be present in their background – for example:

(1) little or no contact with family and/or friends;

(2) special educational needs;

(3) emotional and behavioural problems;

(4) heavy exposure to peers who have committed crime;

(5) history of abuse, neglect or parental absence due to bereavement/imprisonment/desertion;

(6) lesser parental support;

(7) greater likelihood of police involvement in low level offending.[6]

14. **Black and minority ethnic children and young people** are over-represented in the youth justice system and they may have suffered discrimination and negative experiences of authority. The court must take the particular factors which arise in the case of black and minority ethnic children and young people into account.[7]

5 Youth Guideline, para.1.15.
6 Youth Guideline, para.1.16.
7 Youth Guideline, para.1.18.

3. DEFINITIONS

3-1 Age of criminal responsibility

1. It is conclusively presumed that no child under the age of 10 years can be guilty of an offence: CYPA 1933, s.50.

3-2 Children

2. In criminal proceedings, a 'child' is any person under the age of 14: CYPA 1933, s.107.

3-3 Young persons

3. In criminal proceedings, a 'young person' is any person who has attained the age of 14 but is under the age of 18: CYPA 1933, s.107.

3-4 Juveniles

4. The term 'juvenile' is found in some legislation, principally in PACE 1984 and the accompanying Codes of Practice, where it is used to denote any person who is, or who appears to be, under 18.

3-5 Youth defendants

5. It is recognised by the authors that the statutory language is not uniform in its references to defendants aged under 18. Historically, most criminal legislation concerning offenders under 18 has referred to 'children and young persons'. However, the SC refers to an offender under 18 variously as a 'young offender', a 'child', a 'person under 18' and 'an offender aged under 18'. PACE 1984 refers to an arrested person under 18 as a 'juvenile'. The Children Act 1989, s.105(1) provides that every person under the age of 18 is a 'child'.

6. We have directed this publication at 'youth defendants', by which we mean every defendant under the age of 18. We have chosen this label as an easy shorthand and to reflect the fact that most such defendants will have made their first appearance in criminal proceedings in a youth court.

3-6 Youth courts

7. Youth courts are magistrates' courts which are constituted in accordance with the CYPA 1933, s.45 and are sitting for the purpose of hearing any charge against a child or young person. District judges (magistrates' courts) and lay magistrates may only sit in the youth court if they have been authorised by the Lady Chief Justice.

8. Any circuit judge, deputy circuit judge or recorder is qualified to sit as a member of a youth court: Courts Act 2003, s.66(2), (3).

9. It should be remembered that reference to the 'magistrates' court' in many of the statutory provisions relevant to youth defendants will include reference to the youth court.

3-7 Findings of guilt

10. The words ‘conviction’ and ‘sentence’ should not be used in relation to children and young persons who are dealt with summarily. Instead, reference should be made to a person found guilty of an offence, a finding of guilt or an order made upon such finding: CYPA 1933, s.59. No such restriction appears to apply to a child or young person found guilty or dealt with in the Crown Court, but the Crown Court judge may need to be aware of this terminology when dealing with the antecedent history of a youth defendant before the court.[8]

3-8 Parents and guardians

11. In any case involving a youth defendant, the following persons are presumed to have responsibility for that child or young person:
    (1) any person who has parental responsibility for them (within the meaning of the Children Act 1989): CYPA 1933, s.17(1)(a)(i);
    (2) any person who is otherwise legally liable to maintain them: s.17(1)(a)(ii);
    (3) any person who has care of them: s.17(1)(b).
12. A ‘guardian’, in relation to a child or young person, includes any person who, in the opinion of the court, has for the time being the care of the child or young person: s.107.

[8] The requirements of the CYPA 1933, s.59 have not had an influence on the language of subsequent statutes which deal with ‘convictions’ for youth defendants, even if referring to what would be summary ‘findings of guilt’. For the avoidance of confusion, we have referred to ‘conviction’ throughout this publication.

4. ARREST, DETENTION & CHARGE OF A CHILD OR YOUNG PERSON

4-1 Legal Framework

1. How a child or young person should be treated when in police detention is considered in a number of provisions contained in both domestic legislation and international conventions, including:

   (1) The Children Act 2004, s.11, which requires the police to have regard to the need to safeguard and promote the welfare of children in the discharge of their functions;

   (2) The United Nations Convention on the Rights of the Child, in particular:

   (a) Article 37, which states that the arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time; and that every child deprived of their liberty shall be treated in a manner which takes into account the needs of a person of their age, and have the right to legal and other appropriate assistance; and

   (b) Article 40, which sets out specific rights and safeguards for any child alleged to have committed an offence;

   (3) The European Convention on Human Rights, Article 6, which has been held to extend to the investigation stage, including at the police station.[9]

   (4) The Concordat on Children in Custody, the introduction to which states that, 'Children brought into custody are in a particularly vulnerable position; not only because of their age, but also because of the circumstances which brought them into contact with the police.'[10]

2. However, the principal provisions for the treatment of all suspects in police detention in England and Wales are provided by the PACE 1984 and the accompanying Codes, particularly Code C, which sets out the police duties, powers and procedures for the detention, treatment and questioning of persons by police officers. The provisions in Code C apply to all persons, irrespective of age or other protected characteristic, and must be used 'fairly, responsibly, with respect for the people to whom they apply, and without unlawful discrimination'.[11] However, where the suspect is, or appears to be, under 18 (referred to in PACE 1984 as a 'juvenile') then additional safeguards apply.[12]

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9 *Panovits v Cyprus* App.no. 4268/04, 11 December 2008.

10 Home Office – 2017.

11 Code C 1.0.

12 Prior to 2013, the definition of 'juvenile' in PACE was limited to those under 17. Following the decision in *R(C) v Secretary of State for the Home Department and another* [2013] EWHC 982 (Admin), Code C was revised to extend the requirements for juveniles to those aged 17. The definition of 'arrested juvenile' in PACE, s.37 was extended to include any child or young person who appears to be under the age of 18 by the Criminal Justice and Courts Act 2015, s.42, which came into force on 26 October 2015. The extended definition of a juvenile as someone who appears to be under 18.

Failure to comply with any provisions of the Code, but in particular those safeguards, may result in a successful application to exclude any evidence obtained as a result of the breach.

4-2 Arrest

3. The power of arrest is only exercisable if a constable has reasonable grounds for believing that it is necessary to arrest the suspect in accordance with the statutory criteria for arrest which are set out at Code G 2.9. When making that decision, the officer must take into account the circumstances of the suspect, which will include the age of the suspect.
4. Code C 1.1 requires that all persons in custody should be dealt with expeditiously and be released as soon as the need for detention no longer arises. Where the detainee is a child or young person, police guidance states that they should not be held overnight in police cells unless that is absolutely necessary. Consequently, where arrest is deemed necessary, the police should carefully consider the timing of that arrest.
5. The location of any arrest is also a material factor to be considered. Children and young people should not be arrested at their place of education unless that is unavoidable.[13]

4-3 Detention

3A. Determining age

6. Code C 1.5 states that, 'Anyone who appears to be under 18, shall, in the absence of clear evidence that they are older, be treated as a juvenile for the purpose of this Code and any other Code.'
7. The necessity for 'clear evidence' that a detainee is 18 or older means that, where there is any doubt, a precautionary approach must be adopted by the custody officer and the police must treat the detainee as a juvenile; any dispute as to age will be for a court to determine if the suspect is charged with an offence.[14]

3B. Rights of the child or young person

8. All detainees must be advised of their rights on arrival at the police station. Where the detainee is a child or young person, those rights should be explained in clear and age-appropriate terms in a way which meets any communication needs.
9. It is particularly important that a child suspect is made aware of the role of the appropriate adult, their right to legal representation, and their right to complain if they do not feel that they are being treated fairly or lawfully.
10. The rights must be given in the presence of the appropriate adult, or – if given before the appropriate adult arrives – repeated when the appropriate adult attends.

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[13] Code C – Note 11D.
[14] See chapter 15 (para.4C).

3C. Risk assessments

11. Code 3.6 requires the custody officer to carry out a risk assessment in respect of each detainee on arrival in custody to ascertain whether he/she is likely to present specific risks to custody staff, any individual who may have contact with the detainee, or to themselves. As part of the risk assessment, the custody officer should take reasonable steps to obtain information about the detainee that is relevant to their safe custody, security, and welfare. Where the detainee is a child or young person, the police are under the additional obligation, imposed by the Children Act 2004, s.11, to safeguard and promote the welfare of children in the discharge of their functions.

12. Information may be obtained from a variety of sources (eg the youth offending team (YOT), local authority, parent or guardian) as well as from the juvenile detainee themself. When obtaining information directly from the child or young person, guidance issued by the College of Policing[15] points out that the chronological age or physical maturity of a young suspect may not be an accurate indication of emotional maturity, and that the police must carefully assess each young person's ability to engage with the risk assessment process accordingly.

13. The same guidance sets out a series of factors, one or more of which are commonly experienced by children and young people who come into contact with the criminal justice system, which may increase the risks to their safety and wellbeing; including (but not limited to):

    (1) Mental health conditions – eg ADHD, ASD;

    (2) Self-harming behaviours;

    (3) Substance misuse;

    (4) Communication difficulties;

    (5) Below average literacy or numeracy skills;

    (6) A history of abuse, neglect or trauma;

    (7) Immaturity;

    (8) Unstable accommodation;

    (9) Lack of support mechanisms: eg where an unaccompanied asylum seeker or care leaver.

14. Officers should consider the presence of any such risk factors when planning how to support, observe and care for a child or young person who is detained.

15. An increased risk to others, as well as to the child's own safety and wellbeing may be indicated if the child has a history of:

    (1) Aggressive behaviour;

    (2) Gang-related issues;

    (3) Bullying;

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[15] *Authorised Professional Practice: Detention and Custody* – College of Policing – updated 16 June 2023.

(4) Sexually inappropriate behaviour.

16. Where, as part of the assessment process, a previously unknown risk to the child or young person's safety and wellbeing is identified, then appropriate referrals or notifications should be made in line with local and statutory procedures.

3D. Notification of arrest and detention

17. All detainees are entitled, under PACE 1984, s.56, to have a friend, relative, or some other person likely to take an interest in their welfare, informed of their arrest. Where the detainee is under 18, PACE 1984, s.57 imposes an additional duty on the police to take such steps as are practicable to ascertain the identity of a person responsible for that child or young person's welfare, and to notify them that the child or young person has been arrested, the reason for the arrest, and the location where they are being detained. The requirement to notify the person responsible for a child or young person's welfare cannot be delayed.

18. The person responsible for a child or young person's welfare may be:

(1) The parent or guardian;

(2) If the child or young person is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person appointed by that authority or organisation to have responsibility for the child's welfare;

(3) Any other person who has, for the time being, assumed responsibility for the child's welfare.[16]

19. Where the child or young person is subject to a court order, reasonable steps must be taken to notify the 'responsible officer' who supervises or monitors the child; for example, a member of the YOT or, in the case of an electronically monitored curfew order, the contractor providing the monitoring.[17]

20. The parents of a child or young person should normally be informed even if they are not responsible for the child's welfare (eg because they are in local authority care) unless they are suspected of involvement in the offence.[18]

3E. Appropriate adult

21. Whenever a child under 18 is detained or attends the police station for a voluntary interview, an appropriate adult must be notified as soon as practicable. The police must inform the appropriate adult of the whereabouts of the child and young person and, if they have been detained, the fact of detention and the grounds for it. The appropriate adult should be asked to come to the relevant police station as soon as possible.

22. The requirement for an appropriate adult to be informed and required to attend the police station cannot be delayed.

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16 Code C, 3.13.
17 Code C, 3.14.
18 Code C, Note 3C.

23. **Who can act as the appropriate adult?** The following categories of people can be the appropriate adult for a child or young person. In order of preference:
    (1) the child's parent or guardian;
    (2) if the child is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation;
    (3) a local authority social worker;
    (4) a YOT worker;
    (5) some other responsible adult aged 18 or over.[19]
24. The choice of who should act as appropriate adult is one for the custody officer to make, taking all circumstances into account, including the wishes of the child or young person. It is, however, essential that whoever is appointed as the appropriate adult is able to communicate with, and on behalf of, the child or young person, and this may be adversely affected if the child objects to the person appointed.
25. Where a parent or guardian is appointed, they may need assistance to understand their role. The Home Office has produced a 'Guide for Appropriate Adults', which should be provided by the police, and the designated appropriate adult should be allowed time to read it.
26. Local authorities have an obligation under the CDA 1998, s.38(4) to ensure the provision of appropriate adults at any time of day or night.
27. If the child or young person has additional vulnerabilities (eg a mental disorder or learning disabilities), it may be better if the appropriate adult is someone who is experienced and trained in their care rather than a relative who lacks those qualifications. If, however, the detainee prefers a relative or objects to a particular person, then their wishes should, if practicable, be respected.
28. **Who may not act as an appropriate adult?** A person, including a parent or guardian, should not be the appropriate adult if they are:
    (1) suspected of involvement in the offence;
    (2) the victim;
    (3) a witness;
    (4) involved in the investigation;
    (5) a police officer, or a person employed by or under contractual arrangements to provide services to the police;
    (6) a solicitor or independent custody visitor who is present in that capacity;
    (7) a person to whom the child or young person has made admissions before they were asked to act as an appropriate adult;
    (8) a parent or guardian if they are estranged from the child or young person and the child expressly and specifically objects to their presence.

[19] Code C, 1.7(a).

29. **The role of the appropriate adult:** The role of the appropriate adult is to 'safeguard the rights, entitlements and welfare of juveniles and vulnerable persons'.[20] The appropriate adult should therefore:

    (1) help the child or young person to understand their rights and ensure that those rights are protected and respected;

    (2) support, advise and assist the child or young person if they are given or asked to provide information or to participate in any procedure;

    (3) assist the child or young person to communicate with the police and to respect their right to silence if they wish to exercise that right;

    (4) observe whether the police are acting properly and fairly to respect the rights and entitlements of the child or young person and inform an officer of the rank of inspector of above if they are not.

30. **The rights and responsibilities of the appropriate adult:** The following actions must take place in the presence of the appropriate adult:

    (1) an explanation of the detainee's rights and entitlements (if these were given to the detainee before the arrival of the appropriate adult, they must be given again in the appropriate adult's presence);

    (2) any caution (if already given in the appropriate adult's absence, it must be repeated).

31. The appropriate adult is entitled, upon request, to inspect the custody record as soon as practicable after their arrival at the police station, and at any time thereafter whilst the child or young person is detained.[21] When a detainee leaves detention or is taken before a court, they or their legal adviser or their appropriate adult is entitled to a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release.

32. The appropriate adult is not a substitute for free and independent legal advice but does have an important role to play when considering whether legal advice should be sought. Indeed, the appropriate adult has the right to ask for a legal representative to attend, even where the detainee themself does not want to exercise that right.

33. Decisions concerning continued detention can only be made after the appropriate adult has been given the opportunity to make representations.

34. The appropriate adult has a specific role to play in connection with searches, identification procedures and interviews.

35. The detainee has a right to consult privately with the appropriate adult at any time.

3F. Legal advice

36. Like any other suspect, a child or young person has the right to have free and independent legal advice. If the child or young person declines to exercise that right, nevertheless the appropriate adult should consider whether legal advice is

[20] Code C 1.7A.
[21] Code C 2.4.

required and has the right to ask for a legal representative to attend. Ultimately, though, it is for the detainee to decide whether or not they wish to see any legal representative.[22]

37. Where a legal representative does attend, the child or young person has a right to consult with that legal representative in private and, if they wish, in the absence of the appropriate adult.[23]

3G. Conditions of detention, care and treatment

38. **Use of cells:** Where possible, police stations should have a separate designated area within the custody facilities for children and young persons.[24] Code C 8.8 states that juveniles shall not be detained in a police cell unless no other secure accommodation is available, and the custody officer considers either that it is necessary to place them in a cell for the purposes of practical supervision, or that the cell provides more comfortable accommodation than other secure accommodation at the station. Where a juvenile is placed in a cell, a record must be made.

39. A juvenile cannot, under any circumstances, be placed in a cell with a detained adult.[25]

40. **Use of restraints:** Restraints (in addition to detention in a locked cell) can only be used for any detainee where it is 'absolutely necessary' to do so. Particular care must be taken when deciding to use any form of restraint where the detainee is vulnerable, which will include vulnerability through age.[26]

41. **Girls:** Arrangements must be made to ensure that any female detainee under the age of 18 is placed under the care of a female officer or member of police staff.[27] The carer need not be physically present at all times but must be readily available and assigned to the detainee throughout the period of detention, although the caring responsibility can be shared. The detainee should be told that she can ask to see the carer at any time.

42. The carer should visit the detainee and carry out periodic checks on her welfare needs, including any health, hygiene and other personal needs such as the provision of menstrual products.[28]

43. **Association with adults:** Arrangements must be in place to ensure that no detainee under the age of 18 associates with any adult detainee, unless that adult is a relative or is jointly charged with the same offence as the child or young person.

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22 Code C 6.5A.
23 Code C, Note 1E.
24 *Authorised Professional Practice: Detention and Custody* – College of Policing – Updated 16 June 2023.
25 Code C 8.8.
26 Code C 8.2.
27 Children and Young Person's Act 1933, s.31.
28 Code C, 3.20A.

44. The bar on association with adults does not only apply to association at the police station, but also when being conveyed to or from court or whilst waiting to be conveyed.

45. Children and young persons should not be carried in a vehicle together with adult detainees, unless the vehicle has been designed and built to carry them separately and simultaneously.

46. **Checks:** Detainees should normally be checked every hour. Detained juveniles should, wherever possible, be checked more frequently.

47. **Reviews:** Unless an extension is authorised, the maximum time that any detainee can be held in police custody is 24 hours. The police are required periodically to review the necessity for continued detention throughout the period of detention. Where the detainee is a child or young person, that review should ordinarily be conducted in person. At each review, the child or young person must be reminded of their entitlement to free legal advice in the presence of the appropriate adult.

48. When considering whether to authorise an extension of detention under PACE 1984, s.42 (to 36 hours), the authorising officer (superintendent or above) must, in the case of a juvenile, consider the child's special vulnerability, the legal obligation to provide an opportunity for representations to be made, the need to consult and consider the views of the appropriate adult, and any alternatives to police custody.[29]

49. Where an application is made to a court for a warrant of detention or further detention, the use of live link for that purpose will only be authorised if the child or young person is reminded of their right to free legal advice and (if over 14) the young person consents to it in the presence of the appropriate adult. The informed consent of the child's parent or guardian (or representative from the local authority or other organisation with whom the child is in care) will also be required, irrespective of the age of the juvenile detainee.

3H. Interviews

50. It is recognised that, whilst children and young people are capable of providing reliable evidence, they may in certain circumstances be liable to provide information that is, or may be, unreliable, misleading or self-incriminating. Special care should therefore be taken in interview.

51. **Place of interview:** Interviews must be carried out at the police station or other authorised place of detention, unless it is an urgent interview under Code C 11.1.

52. Children and young persons can, in exceptional circumstances, be interviewed at their place of education, but only where the principal (or nominee) agrees. The child's parent or guardian, or other person responsible for the child's welfare, should be informed and the attendance of an appropriate adult secured. Where necessary to avoid unreasonable delay, the principal or nominee can act as the appropriate adult for the purpose of interview, unless

[29] Code C 15.2A.

the child is suspected of committing an offence against the educational establishment.

53. **The role of the appropriate adult in interview:** The appropriate adult must be present during any interview unless one of the exceptions in Code C 11.1 applies (where delaying the interview will lead to interference with the investigation or harm to another person or evidence connected with the offence). The appropriate adult must also be present if the child or young person is asked to provide, or sign, a written statement under caution.

54. The appropriate adult's role in the interview is active, not passive. Code C 11.17 imposes a duty on the police to make it clear to the appropriate adult that they are not expected to act simply as an observer, but are there to:

    (1) advise the person being interviewed;

    (2) observe whether the interview is being conducted properly and fairly; and

    (3) facilitate communication with the person being interviewed.

55. Accordingly, the appropriate adult may intervene if they consider it necessary to help the child or young person understand any question asked or to help the child answer any question. However, the appropriate adult may not prevent or obstruct proper questions being put, or answer questions on the child's behalf. If the police consider that the approach of the appropriate adult is unreasonably obstructive, then an officer not below the rank of superintendent must be consulted, who may, after speaking to the appropriate adult, require them to leave the interview. In those circumstances, the interview cannot continue unless and until the attendance has been secured of an alternative appropriate adult, unless the interview is an urgent one in accordance with Code C 11.18.

56. **The use of live link:** PACE 1984, s.39 now allows interviews to be conducted by live link. Even where the facility for a live link interview exists, however, before granting authority for a live link interview, the custody officer must consider whether the use of live link may adversely affect the ability of the suspect to communicate confidently and effectively. In making that decision, the officer must consider the age, gender and vulnerability of the suspect and the impact on the suspect of carrying out an interview in this way.[30] The solicitor and appropriate adult should be consulted.[31]

57. **Voluntary interviews:** Where the police wish to interview a child or young person on a voluntary basis (ie not under arrest), the child or young person has the same rights and entitlements as a suspect under arrest. In particular, the same rights to legal representation and to an appropriate adult apply.

58. Information about the offence, the reasons why the child or young person is a suspect, the caution and an explanation of their right to free legal advice must all be given in the presence of the appropriate adult.

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30 Code C, 12.9A.
31 Code C, Note 12ZB.

59. Any agreement by a child or young person to participate in a voluntary interview must be 'informed agreement'. The appropriate adult and the parent or guardian must also give their consent.[32]

60. **Wards of court:** Family Practice Direction 12D makes it clear that there is no requirement for the police to obtain the permission of the Family Court before interviewing a child or young person – whether as a suspect or as a witness. However, where any action is taken by the police in relation to a ward of court, the person with day-to-day care and control of the child (or, if applicable, the local authority) should notify the Family Court as soon as possible.[33]

3I. Searches

61. PACE Code C Annex A sets out detailed requirements that must be followed where an intimate or strip search is carried out.

62. **Intimate searches:** Where an intimate search (a physical examination of a person's body orifices other than the mouth) is authorised in respect of a child or young person, such a search must be carried out in the presence of an appropriate adult of the same sex, unless the child or young person specifically requests the presence of an appropriate adult of a different sex who is readily available.

63. An intimate search can only be carried out in the absence of an appropriate adult if:
    (1) the child or young person specifically requests this;
    (2) the request is made in the presence of the appropriate adult; and
    (3) the appropriate adult agrees.

64. The decision must be recorded and signed by the appropriate adult.[34]

65. Any intimate search must be carried out with proper regard to the sensitivity, dignity and vulnerability of the detainee, including their health, hygiene and welfare needs. Every reasonable effort must be made to secure the detainee's co-operation, maintain their dignity, and minimise embarrassment.

66. **Intimate searches for drugs:** Where the intimate search is in respect of a drug-related matter, prior written consent is required. If the detainee is aged under 14, the consent of the parent or guardian is sufficient. Where the detainee is aged 14 to 17, the detainee must give consent as well as his/her parent or guardian.

67. The seeking and giving of consent must, in all cases, take place in the presence of an appropriate adult.

68. **Strip searches:** Where a strip search (search involving the removal of more than the outer layer of clothing) is authorised, which will involve the exposure of intimate body parts, an appropriate adult must be present unless:
    (1) the strip search is urgent because there is a risk of serious harm to the detainee or others; or

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32 Code C, 3.21B(d).
33 *Re: A Ward of Court* [2017] EWHC 1022 (Fam).
34 Code C, Annex A5.

(2) the child or young person specifically requests that the search should take place in the absence of the appropriate adult, and the appropriate adult agrees.

69. Where the detainee has requested a search in the absence of the appropriate adult, a record should be made of the decision and signed by the appropriate adult.

70. Consent is not required for a strip search.

71. Consideration should be given to the safety and welfare of the child in accordance with the Children Act 2004, s.11.

72. **Drug testing:** A juvenile can only be requested to provide a sample for drug testing if he/she has been charged with a 'trigger offence' under PACE 1984, s.63B and is over the age of 14. The request for the sample, the warning of the consequences if the young person refuses, the grounds for the authorisation and the taking of the sample must all take place in the presence of the appropriate adult.[35]

4-4 Charging

73. Where a decision is made to charge a child or young person, they should, where possible, be charged in the presence of the appropriate adult.[36] There is, however, no power to delay charge to enable an appropriate adult to attend. The detainee, and the appropriate adult if available, should be given a copy of the notice of charge.[37]

4A. Youth cautions and youth conditional cautions

74. Where a youth caution or a youth conditional caution is administered, the details should be fully explained to the child or young person in the presence of the appropriate adult, and the YOT should be informed.[38]

4B. Bail and remand

75. Where a child or young person is charged with an offence, and the custody officer authorises continued detention after charge, the custody officer must make arrangements for the child or young person to be taken into the care of the local authority unless they certify, in accordance with PACE 1984, s.38(6), that either:

(1) it is impracticable to do so; or

(2) (where the child or young person is aged 12 to 17) no secure accommodation is available, and other accommodation would not be adequate to protect the public from serious harm from the alleged offender.

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35 Code C, 17.7.
36 Code C, 16.1.
37 Code C, 16.3.
38 See chapter 6.

76. The first exception of 'impracticability' relates to transport and travel requirements. The lack of secure accommodation does not make it impracticable to transfer the child or young person.[39]

77. The second exception only applies where local authority accommodation, other than secure accommodation, would not be adequate to protect the public from serious harm from the child or young person. 'Serious harm' is defined in PACE 1984, s.38(6A) as 'death or serious personal injury' and relates to those charged with murder or with an offence that falls within the SC, sch.18 (serious violent, sexual or terrorism offences).

78. Where this threshold is not met, it is for the local authority to determine the appropriate placement. That decision will centre on welfare needs. Secure accommodation will only be appropriate where the child is likely to abscond.

79. All local authorities have an absolute duty to provide accommodation for children and young people under the Children Act 1989, s.21(2)(b).

4C. Breach of bail

80. The duty to transfer into local authority accommodation does not apply to a child or young person who has been arrested for either breach of bail or on a warrant not backed for bail. Instead, the child or young person must be detained in police custody until they can be produced to a court.[40]

[39] See further Code C, Note 16D.
[40] See chapter 12.

5. THE ROLE OF THE YOUTH OFFENDING TEAM / YOUTH JUSTICE SERVICE

5-1 Youth justice services

1. Part III of the CDA 1998 is concerned with legislating for the criminal justice system, within which ss.37-42 provide for youth justice.

2. Section 38 places a duty on each local authority, in co-operation with the police, Secretary of State, probation service and local health board, to secure that all youth justice services are available within the local authority area. Those youth justice services comprise any of the following:

   (1) the provision of appropriate adults to safeguard the interests of children and young persons detained or questioned by police: s.38(4)(a);

   (2) the provision of assistance to persons determining whether youth cautions or youth conditional cautions should be given: s.38(4)(aa);

   (3) the assessment of children and young persons and provision of rehabilitation programmes for such persons subject to youth cautions: s.38(4)(b);

   (4) the provisions of assistance to persons determining whether (and with what conditions) youth conditional cautions should be given: s.38(4)(ba);

   (5) the supervision and rehabilitation of children and young persons to whom such cautions are given: s.38(4)(bb);

   (6) the provision of support for children and young persons remanded or committed on bail: s.38(4)(c);

   (7) the placement in local authority accommodation of children and young persons remanded to local authority accommodation under the LASPOA 2012, s.91(3): s.38(4)(d);

   (8) the provision of reports or other information required by courts in criminal proceedings against children and young persons: s.38(4)(e);

   (9) the performance by youth offending teams of functions in connection with parenting contracts for criminal conduct and anti-social behaviour under the Anti-social Behaviour Act 2003, ss.25-27: s.38(4)(ee);

   (10) the provision of persons to act as responsible officers in relation to parenting orders, child safety orders and reparation orders: s.38(4)(f);

   (11) the provision of persons to act as responsible officers in relation to youth rehabilitation orders: s.38(4)(fa);

   (12) the supervision of children and young persons sentenced to a youth rehabilitation order which includes a supervision requirement: s.38(4)(fb);

   (13) the supervision of children and young persons sentenced to a detention and training order: s.38(4)(h);

   (14) supervision of children and young persons after the end of a detention and training order under the CJA 2003, s.256AA: s.38(4)(ha);

(15) post-release supervision of children and young persons sentenced to other forms of detention: s.38(4)(i), (ia), (ib);

(16) the performance of functions in providing youth detention accommodation for detention and training orders: s.38(4)(j);

(17) the implementation of referral orders: s.38(4)(k).

5-2 Youth offending teams

3. Section 39 places a duty on each local authority, in co-operation with the same bodies noted above, to establish for the local authority's area one or more youth offending teams. That youth offending team (YOT) may include such persons as the local authority thinks appropriate (s.39(6)) but must include at least one of each of the following:

   (1) a probation officer;

   (2) a social worker;

   (3) a police officer;

   (4) a person nominated by a health authority;

   (5) a person nominated by the chief education officer: s.39(5).

4. It is the duty of the YOT to co-ordinate the provision of youth justice services (s.38(4)) for those in the local authority's area who need them and to carry out such functions as are assigned to the team in the youth justice plan formulated by the local authority under s.40(1): s.39(7).

5. Although the statutory label for those who coordinate the provision of youth justice services and carry out the youth justice plan is a 'youth offending team', most local authorities now refer to their YOT as their 'Youth Justice Service' (YJS) (thereby placing the emphasis on justice rather than offending). We use both initialisms below.[41]

5-3 Youth justice plans

6. Section 40 places a duty on each local authority to formulate and implement, for each year, a youth justice plan setting out how youth justice services in the local authority area are to be provided and funded, and how the YOT/YJS is to be composed and funded, how it is to operate and what functions it is to carry out: s.40(1). The functions assigned to a YOT/YJS as part of the youth justice plan may include, in particular, functions in connection with the local authority's duty to take reasonable steps to encourage children and young persons not to commit offences: s.40(3).

5-4 The YOT/YJS at court

7. YOTs/YJSs play a vital part in the work of the youth justice system. There are now 155 YOTs/YJSs covering all of England and Wales. The duty of the YOT/YJS is to co-ordinate the provision of youth justice services for all those in the local authority's area.

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[41] The label 'youth offending service' (YOS) has also been regularly used in the past.

8. It is invariably the case that a representative from the YOT/YJS attends each sitting of the youth court. Similarly, it is essential that a representative from the YOT/YJS is in attendance at the Crown Court whenever that court is dealing with a child or young person. The absence of a YOT/YJS officer should only be tolerated in exceptional circumstances and for very good reason. At the very least, the court should expect a YOT/YJS officer to be in attendance at first appearance in the Crown Court, the first and last days of any trial and at any sentencing hearing.

9. The YOT/YJS plays a most important part in assisting in the work of the court. Most particularly, the YOT/YJS will assist in dealing with the following matters:

   (1) investigating and confirming the personal circumstances and antecedents of young defendants;

   (2) the provision of bail support, with or without an intensive supervision and surveillance programme (ISSP);

   (3) the preparation of appropriate written reports required by the court as part of the sentencing process;

   (4) the administration of many of the non-custodial penalties imposed;

   (5) the prosecution of defendants who have breached community penalties or the supervision part of a detention and training order.

6. THE DECISION TO CHARGE AND OUT-OF-COURT DISPOSALS

6-1 Introduction

1. In dealing with any offence committed by a child or young person, the police and prosecution have a range of options:
   (1) no further action;
   (2) community resolution;
   (3) youth caution;
   (4) youth conditional caution;
   (5) charge (including written charge and requisition).
2. Diversion away from criminal prosecution and the use of out-of-court disposals are important aspects of applying the principal aim of the youth justice system to prevent offending by children and young persons: CDA 1998, s.37(1).[42] The police and CPS should always consider diversion as an alternative to court proceedings in appropriate cases.
3. A community resolution is a non-statutory, informal and flexible response to low-level offending aimed at first-time offenders. It does not lead to a criminal record.
4. Youth cautions and youth conditional cautions are more formal disposals. They aim to provide an early, positive, proportionate and effective resolution to offending by young people willing to admit their offences.
5. Youth cautions and youth conditional cautions do not have to be used in a set order. They are available if a young person has been previously convicted. They are designed to be a flexible response to offending.
6. The police use the National Police Chiefs' Council 'Child Gravity Matrix' (prior to September 2023, they utilised the ACPO 'Youth Gravity Matrix')[43] to determine whether children and young persons should be considered for out-of-court disposals. The matrix provides most offences with a score, which is calculated on seriousness. The overall score can be affected by aggravating and mitigating factors surrounding the incident.
7. Cases should be kept under continuous review; they can be, and are sometimes, referred to diversion once court proceedings have begun.

6-2 Community resolution

8. A community resolution is available for both adult and youth offenders. It is an informal, non-statutory disposal used for dealing with less serious crimes and anti-social behaviour where an offender accepts responsibility. The views of the victim (if any) are taken into account in reaching an informal agreement between the parties which can involve restorative justice techniques. For

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42 See chapter 2.
43 The Child Gravity Matrix

example, the incident may be resolved with an apology, the payment of compensation for damage caused or a promise to clear up any graffiti or damage.

9. A community resolution allows police officers to use their professional judgement when dealing with offenders who have expressed remorse and where victims do not want the police to take more formal action. It is used for offences such as low-level public order, criminal damage, theft and minor assaults. It is an informal, flexible response to relatively minor incidents. Community resolutions are not recorded on the police national computer.

6-3 Youth cautions

3A. Statutory provisions

10. Sections 66ZA and 66ZB of the CDA 1998 give the police the power to administer youth cautions to any child or young person (ie aged 10 to 17 at the time of the caution).

11. Youth cautions have replaced the earlier system of reprimands and warnings. No caution other than a youth caution or a youth conditional caution (see below) may be given to a child or young person: s.66ZA(6).

12. Youth cautions may lead to participation in a rehabilitation programme, which is a programme with the purpose of rehabilitating participants and preventing them from reoffending: s.66ZB(8).The Secretary of State is required to publish guidance as to what should be included in a rehabilitation programme arranged for a person by the youth offending team (YOT/YJS), the manner in which any failure by the person to participate in a programme is to be recorded, and the persons to whom such failure must be notified: s.66ZB(4).

13. A constable may give a child or young person a youth caution if:

    (1) the constable decides that there is sufficient evidence to charge the youth with an offence;

    (2) the youth admits that he/she committed the offence, and

    (3) the constable does not consider that the youth should be prosecuted or given a youth conditional caution for the offence: s.66ZA(1).

14. A youth caution must be given in the presence of an appropriate adult: s.66ZA(2). The constable must explain to the youth and the appropriate adult the effects of such a caution and details of the Secretary of State's guidance: s.66ZA(3), (4).

15. Once a constable gives a youth caution to a person, the constable must, as soon as practicable, refer that person to a YOT/YJS: s.66ZB(1). The YOT/YJS then has a duty to assess the person and, unless they consider it inappropriate to do so, to arrange for that person to participate in a rehabilitation programme: s.66ZB(2). The YOT/YJS's duty is reduced to a power if it is the person's first caution: s.66ZB(3).

16. A youth caution and a failure by the person to participate in a youth caution rehabilitation programme may be cited in criminal proceedings in the same circumstances as a conviction of the person may be cited: s.66ZB(7).[44] There is no separate penalty for failing to comply with a youth caution rehabilitation programme.
17. A defendant convicted at court within two years of receiving two or more youth cautions (or one youth conditional caution followed by a youth caution) cannot be made subject to a conditional discharge unless there are exceptional circumstances: s.66ZB(5), (6).
18. Unlike youth conditional cautions, youth cautions can only be administered by the police.

3B. Guidance

19. In accordance with s.66ZB(4), the Ministry of Justice and Youth Justice Board have issued a document entitled Youth Cautions: Guidance for Police and Youth Offending Teams.
20. In accordance with its statutory functions under ss.38 and 39 of the CDA 1998,[45] the YOT/YJS should be consulted to provide assistance in determining whether a youth caution should be given. The police have ultimate responsibility for making decisions on the suitability of youth cautions but can ask the YOT/YJS to carry out a prior assessment of the young offender to inform this decision.
21. Where there is doubt about whether a prosecution should be brought, the guidance also suggests that it may be useful to seek the advice of the CPS at an early stage. The CPS may be able to advise on the law, the sufficiency of evidence and public interest considerations.
22. The guidance suggests a step-by-step approach to decision-making in this context:
    (1) What is the offence?
    (2) Is there sufficient evidence against the young person to give a realistic prospect of conviction if they were prosecuted?
    (3) Does the young person admit the offence?
    (4) How serious is the offence?
    (5) What is the young person's offending history?
    (6) Is it in the public interest for the young person not to be prosecuted?
23. The guidance reminds the police and YOT/YJS of the importance of involving victims in the youth caution process.

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[44] This may mean that a youth caution can form a statutory aggravating factor when considering the seriousness of an offence (SC, s.65) and it may be capable of being bad character evidence (CJA 2003, ss.98-113).

[45] See chapter 5.

24. Youth cautions for sexual offences are subject to the notification requirements contained in Part 2 of the SOA 2003. The relevant notification period for a person aged under 18 is one year: SOA 2003, ss.80(1)(d), 82(1), (2).

25. A youth caution is spent as soon as it is given: Rehabilitation of Offenders Act 1974, s.8A, sch.2.

6-4 Youth conditional cautions

4A. Statutory provisions

26. Sections 66A to 66G of the CDA 1998 give an authorised person the power to administer a youth conditional caution to any child or young person (ie aged 10 to 17 at the time of the caution). An authorised person is:

    (1) a constable: s.66A(7)(a),

    (2) an investigating officer: s.66A(7)(b), or

    (3) a person authorised by a relevant prosecutor for these purposes: s.66A(7)(c). A relevant prosecutor is the Attorney General, Director of the SFO, Director of Public Prosecutions, the Secretary of State or a person specified in an order by the Secretary of State: s.66H(e).[46]

27. A youth conditional caution is a caution given in respect of an offence which has conditions attached to it with which the offender must comply: s.66A(2).

28. The conditions which may be attached are those which have one or more of the following objects:

    (1) facilitating the rehabilitation of the offender: s.66A(3)(a);

    (2) ensuring that the offender makes reparation for the offence: s.66A(3)(b);

    (3) punishing the offender: s.66A(3)(c).

29. Conditions may include a condition to pay a financial penalty, up to £100, if the offence is one that is prescribed (s.66A(4)(a), s.66C) or a condition to attend at a specified place at specified times for up to 20 hours: s.66A(4)(b), (5).

30. Once a youth conditional caution is administered, the authorised person must refer the offender to a YOT/YJS as soon as practicable: s.66A(6A).

31. A youth conditional caution can only be given if five requirements are satisfied:

    (1) the authorised person has evidence that the offender has committed an offence: s.66B(1).

    (2) a relevant prosecutor, or the authorised person, decides that there is sufficient evidence to charge the offender with the offence and that a youth conditional caution should be given: s.66B(2).

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[46] This is, however, subject to guidance issued by the DPP under PACE 1984, s.37A. That guidance states that, unless exceptional circumstances exist, the authorised person should be a police officer of at least the rank of sergeant, or a suitably qualified police officer (such as an officer seconded to the YOT/YJS) or any other person specifically authorised to do so by the DPP. See further at para.46 below.

(3) the offender admits to the authorised person that he/she committed the offence: s.66B(3).

(4) the authorised person explains (in the presence of an appropriate adult) the effect of the youth conditional caution and warns them (in the presence of an appropriate adult) that a failure to comply with any of the conditions may result in his/her being prosecuted for the offence: s.66B(4), (5).

(5) the offender signs a document which contains details of the offence, an admission by them that he/she committed it, his/her consent to the youth conditional caution and the details of the conditions: s.66B(6).

32. There is a statutory duty on the relevant prosecutor or authorised person to make reasonable efforts to obtain the views of any victim before deciding what conditions to attach: s.66BA.

33. Conditions may be varied by the relevant prosecutor or authorised person, with the consent of the offender: s.66D.

34. If the offender fails, without reasonable excuse, to comply with any of the conditions attached to a youth conditional caution, criminal proceedings may be instituted against them for the offence in question: s.66E(1). In such circumstances, the document signed by the offender (including his/her admission) is admissible in those proceedings: s.66E(2).

35. A defendant convicted at court within two years of receiving a youth conditional caution followed by a youth caution cannot be made subject to a conditional discharge unless there are exceptional circumstances: s.66ZB(5), (6). Indeed, a defendant convicted at court within two years of receiving a youth conditional caution alone cannot be made subject to a conditional discharge unless there are exceptional circumstances: s.66F.

36. Youth conditional cautions for sexual offences are subject to the notification requirements contained in Part 2 of the SOA 2003. The relevant notification period for a person aged under 18 is one year: SOA 2003, ss.80(1)(d), 82(1), (2).

37. A youth conditional caution is spent three months from its imposition: Rehabilitation of Offenders Act 1974, s.8A, sch.2.

4B. Guidance

38. The Secretary of State has issued a Code of Practice for Youth Conditional Cautions in accordance with her obligation under s.66G.

39. The Director of Public Prosecutions has issued relevant guidance under s.37A of PACE 1984: The Director's Guidance on Youth Conditional Cautions.

40. In accordance with its statutory functions under ss.38 and 39 of the CDA 1998,[47] the YOT/YJS should be consulted in any case where a youth conditional caution is being considered. The YOT/YJS will be able to advise whether the young person understands the nature of the proposed caution, whether he/she accepts responsibility for the offence and is willing to admit it, whether he/she is suitable to undertake the required conditions and whether the

[47] See chapter 5.

conditions are likely to have a positive impact on offending behaviour. The YOT/YJS may also carry out a risk assessment, ascertain the views of the victim and recommend specific conditions for inclusion.

41. The Code makes clear that a youth conditional caution is intended as a more robust response than a youth caution where the public interest can be met by offering a conditional caution rather than by prosecution.

42. The Code makes clear that a youth conditional caution should not be given where a court would be likely to impose a significant community sentence or a period of detention for the offence. The decision-maker will take into account:

    (1) the seriousness of the offence;

    (2) the circumstances of the case;

    (3) the age of the offender;

    (4) any views expressed by the victim;

    (5) any wider neighbourhood or community considerations or concerns;

    (6) the background, circumstances and previous offending history of the offender;

    (7) the willingness of the offender to comply with possible conditions;

    (8) the likely effect of the youth conditional caution on preventing offending;

    (9) the likely outcome if the offender was prosecuted;

    (10) other relevant guidance.

43. The Code makes clear that a decision to give a youth conditional caution can be made even after the child or young person has been charged with an offence, if, on review, the prosecutor decides that it may be appropriate. A prosecutor is permitted to make such a decision even in cases where authorised persons are permitted to charge or make the decision to offer a youth conditional caution. The DPP's Guidance sets out the procedures to be followed where a prosecutor's post-charge review concludes that a youth conditional caution should have been offered. The prosecution should be adjourned whilst the YOT/YJS is consulted, and action taken.

44. Previous convictions, cautions or other out-of-court disposals do not preclude the use of a youth conditional caution. But a second youth conditional caution should not generally be given for the same or similar offence or if the offender failed to comply with the conditions of the first.

45. The Code makes clear that all rehabilitative, reparative and punitive conditions must be capable of being completed within 16 weeks of the date of the original offence (if summary-only) or 20 weeks (if indictable).

46. The DPP's Guidance sets out the offences for which the authorised person may offer and administer a conditional caution and those which must be referred to a CPS prosecutor to decide whether a conditional caution can be given. A police officer of the rank of sergeant or above is permitted to make the decision to offer a youth conditional caution for any offence which for an adult would be summary-only or either way. For offences which involve domestic violence or hate crimes, the NCPP Child Gravity Matrix states that a youth conditional

caution can only be given in exceptional circumstances, with the authority of a CPS prosecutor. [48]

47. Authorisation from a Deputy Chief Crown Prosecutor must be sought before offering a youth conditional caution for an indictable-only offence.

48. The Guidance makes clear that, before a youth conditional caution can be considered, there must be sufficient evidence available to provide a realistic prospect of conviction in accordance with the Full Code Test set out in the Code for Crown Prosecutors. The youth conditional caution may be offered where there is a clear and reliable admission to the offence but also where the suspect has made no admission but has not denied the offence or otherwise indicated that it will be contested.

49. The Guidance suggests appropriate financial penalties and levels of compensation (as part of the reparative conditions of a youth conditional caution).

6-5 Code for Crown Prosecutors

50. The Code for Crown Prosecutors contains specific guidance on children and young persons when a prosecutor is making the decision whether to prosecute or not:

> 'The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18.
>
> The best interests and welfare of the child or young person must be considered, including whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.
>
> Prosecutors must have regard to the principal aim of the youth justice system, which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.
>
> Prosecutors should consider the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties.
>
> As a starting point, the younger the suspect, the less likely it is that a prosecution is required.
>
> However, there may be circumstances which mean that, notwithstanding the fact that the suspect is under 18 or lacks maturity, a prosecution is in the public interest. These include where:
>
> i. the offence committed is serious;
>
> ii. the suspect's past record suggests that there are no suitable alternatives to prosecution; and

[48] See above (para.6).

iii. the absence of an admission means that out-of-court disposals that might have addressed the offending behaviour are not available.'[49]

51. The Code contains details of the prosecutor's continuing duty of review.

6-6 CPS legal guidance

52. The CPS has issued Legal Guidance on Children as Suspects and Defendants. Within that guidance, the CPS has set out principles guiding the decision to prosecute:

> 'The CPS is committed to ensuring that the special considerations which apply to cases involving children are enshrined in its working practices and form part of the training of its prosecutors…
>
> A decision to prosecute a child is susceptible to judicial review if it can be shown that the prosecutor has not taken into account all the information about a child's background and the public interest factors set out in the Code. It is crucial that prosecutors therefore record the rationale for their review decisions and, in doing so, address all relevant considerations….
>
> **Senior Crown Prosecutors (SCP)**
>
> All [Senior Crown Prosecutors] can make the decision to prosecute cases involving children. However, in more serious or complex cases, oversight and mentoring should be sought from a Youth Justice Specialist. It is expected that all SCPs will have access to training that equips them to deal with standard cases involving children, including the decision to prosecute cases in Youth Courts and deal with cases involving children jointly charged with adults in the magistrates' court. All trained SCPs can carry out an initial review of files prior to the first hearing to enable a child to enter a guilty plea if offered…
>
> **Public Interest considerations**
>
> The starting point in asking whether a prosecution is required in the public interest is the Code for Crown Prosecutors, in particular paragraphs 4.9 to 4.14 and factors (a) to (g) in that latter paragraph. In addition to those principal considerations, the following may also be important to consider at the public interest stage. In particular, the circumstances of the individual child…may be highly relevant as part of the overall public interest assessment.
>
> It is essential in all cases involving children to ensure that all matters relevant to the public interest decision are clearly identified, considered, and balanced…. The decision to prosecute must only be taken after a full review of the case and the background information, including information concerning the suspect provided by the Youth Justice Service, police, or local authority. Failure to show that the Code and the legal guidance has been followed and properly applied to all the information on the case may result in the decision to prosecute being quashed.
>
> *R (on the application of E, S and R) v DPP* [2011] EWHC 1465 (Admin) concerned allegations of child sexual offences by E on her younger siblings. A

[49] Para.4.14(d).

multi-agency strategy group had formed the view that prosecution was not in the best interests of any of the children. Nonetheless, the decision was taken on full review of the papers to prosecute E. It was the court's view that the rationale for this decision was inadequately expressed.

Please also see *R v Chief Constable of Kent and Another ex parte L, R v DPP ex parte B* [1991] 93 Cr App R 416: whilst rare, decisions to prosecute can be overturned upon judicial review where they are made regardless of or contrary to a settled policy of the DPP…

Diversion from the court process – out of court disposals

Prosecutors, when making charge decisions or reviewing police charged cases, will consider the key principles of the youth justice system outlined earlier and consider whether the case is suitable for diversion.

If the case is suitable to be diverted, it is always preferable that this happens before the case enters the court system. However, prosecutors will advise the police at the point of charge and post-charge if suitable cases have been potentially missed, or if the child subsequently wishes to make admissions an adjournment may need to be requested to allow relevant enquiries to be made. Wherever possible that request will be made prior to the court hearing to prevent the child unnecessarily attending court….

Cautions and conditional cautions after charge

In some circumstances, after a child has been charged with an offence, a prosecutor can invite the court to adjourn a case so that the requisite enquiries can be made, and consideration given to a caution or conditional caution. This includes cases where an admission to an authorised person was not made in interview, pre-charge. If, after review, it is determined that a caution can be given, a clear and unambiguous admission is a statutory requirement prior to the administration of either the simple or conditional caution. If the conditional caution is found to be an inappropriate disposal, the prosecution must continue. All parties should be made aware that this is the position and best practice may be to announce this in open court at the same time as the application is made for an adjournment.'

6-7 Notification of prosecutions

53. There is a duty on the prosecution, in any case where it is proceeding against a young person (ie a child aged 14 to 17), to give notice of the decision to prosecute to the local authority in which the young person resides (or, if not known, in which the offence was committed): CYPA 1969, s.5(8).
54. There is also a duty on the prosecution to give notice of any prosecution against a child under the age of 18 to an officer of the provider of probation services acting in the area for which the court acts: s.34(2).
55. In practice, these notifications are sent to the local YOT/YJS.

7. JURISDICTION: YOUTHS SENT FOR TRIAL

7-1 Introduction

1. Subject to the exceptions set out below, cases involving defendants aged under 18 should be tried in the youth court.

2. As is noted in the Youth Guideline, the youth court is best designed to meet the specific needs of children and young persons. That court allows trials to be conducted in private, in a manner specifically adapted to the needs of young people; it also allows the proceedings to be expedited and avoid the delays that are frequently encountered in Crown Court listing; in many respects, trial in the youth court is much more beneficial to a defendant.[50] A trial in the Crown Court, with the inevitably greater formality and greatly increased number of people involved (including a jury and the public) should be reserved for the most serious cases.[51]

3. It is now mandatory for the Crown Court judge to consider whether to send a youth defendant back to the youth court for trial and to give reasons where they decide not to (save in homicide or firearms minimum sentence cases): SCA 1981, s.46ZA(1), (4).[52]

4. The allocation procedures are set out in detail below. It is obvious that the Crown Court may not be directly concerned with the complexity of the decision-making process in the court below. However, the detail of the manner of sending or committing a young defendant for trial or sentence may be important because it determines the sentencing powers of the Crown Court.

5. It is also important for the Crown Court judge to be alert as to whether a sending for trial (or committal for sentence) is valid. Problems can particularly arise where a young defendant is close to 18 when they make their first appearance in the youth court, as it is their age when the court makes its allocation decision which is relevant.[53] If, however, there is difficulty over a sending (or committal), the Crown Court judge should be very careful to follow the guidance in *R v Gould & others*[54] before considering the use of the Courts Act 2003, s.66 to rectify the position.

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50 *R (BH) v Norwich Youth Court* [2023] EWHC 25 (Admin); [2023] 1 Cr.App.R. 20.

51 *R (on the application of H, A and O) v Southampton Youth Court* [2004] EWHC 2912 (Admin); Youth Guideline, para.2.1.

52 See 7-6 below.

53 *R v Islington Juvenile Court, ex p.Daley* (1992) 75 Cr.App.R. 280, HL. See, for example, *R v Lewis Ford* [2018] EWCA Crim 1751, where the defendant made his first appearance at the youth court as a 17-year-old, had the case adjourned for three weeks and then appeared the day after his 18th birthday. The youth court purported to accept his plea and commit him for sentence pursuant to the PCC(S)A 2000, s.3B (now SC, s.16). The Court of Appeal found that the court had no jurisdiction to take his plea and all subsequent proceedings were invalid. The Court of Appeal reconstituted itself variously as a Divisional Court, Magistrates' Court and Crown Court in an effort to resolve the difficulties.

54 [2021] EWCA Crim 447; [2021] 2 Cr.App.R. 7.

7-2 Children or young persons sent to the Crown Court for trial

6. A person under the age of 18 charged with an indictable offence shall, subject to eight exceptions, be tried in the youth court: MCA 1980, s.24.

7. The exceptions to that principle are contained in ss.51 and 51A of the CDA 1998:

   (1) **Adult co-defendant:** a child or young person charged jointly with an adult sent for trial, if it is necessary in the interests of justice: CDA 1998, s.51(7);

   (2) **Homicide:** A child or young person charged with an offence of homicide: CDA 1998, s.51A(3)(a) and (12)(a);

   (3) **Firearms:** A young person aged 16 or over charged with a firearms offence subject to a mandatory minimum sentence of three years: CDA 1998, s.51A(3)(a), (12)(b) and (12)(c);

   (4) **Grave crimes:** A child or young person charged with an offence to which s.249(1)(a) or (b) of the SC applies and the court considers that it ought to be possible to sentence them to more than two years' detention: CDA 1998, s.51A(3)(b);

   (5) **Terrorism offences:** A child or young person charged with an offence mentioned in s.252A(1)(a) of the SC and the court considers that it ought to be possible to sentence them to more than two years' detention: CDA 1998, s.51A(3)(ba);

   (6) Notice given in **serious or complex fraud:**[55] CDA 1998, s.51A(3)(c) and s.51B;

   (7) Notice given in **a child case:**[56] CDA 1998, s.51A(3)(c) and s.51C;

   (8) **Dangerousness:** A child or young person charged with a specified offence and the court considers that the child or young person would meet the criteria for a sentence under the 'dangerous offender' provisions: CDA 1998, s.51A(3)(d).

8. The nature of the decisions for the youth or magistrates' court under ss.51 and 51A are different depending on the exception:

   (1) Homicide, firearms, serious or complex fraud, child case: the nature of the offence, the fact that the minimum sentence applies or the fact that a notice has been served should be a straightforward matter of fact allowing the lower court to send the matter to the Crown Court forthwith.

   (2) Adult co-defendant: depending on the nature of the offence, the lower court may have to make a grave crimes decision first; if the matter is not sent to the Crown Court under the grave crimes provisions, the court will have to determine whether it is in the interests of justice to send the child or young

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[55] The DPP, Director of the SFO or Secretary of State may give notice that a case of fraud is so serious or complex that it is appropriate for management of the case to be taken over by the Crown Court without delay.

[56] The DPP may, for certain offences, give notice that a case should be taken over and proceeded without delay by the Crown Court in order to avoid prejudice to the welfare of a child who is to be called as a witness.

person to the Crown Court for a joint trial with the adult (or to keep the matter in the magistrates' court for a joint trial with the adult).

(3) Grave crimes or terrorism offences: the lower court will have to make a decision about likely sentence, determining whether a sentence substantially exceeding two years should be available.

(4) Dangerousness: the lower court will have to make a decision about likely sentence, determining whether the criteria for the imposition of an extended sentence would be met.

9. Furthermore, the exception utilised by the youth or magistrates' court under ss.51 and 51A will determine whether a plea or indication of plea has been given in the lower court:

(1) Homicide, firearms, serious or complex fraud, child case: no plea or indication of plea will have been taken.

(2) Adult co-defendant: a plea will have been taken in the lower court.

(3) Grave crimes or terrorism offences: a plea will have been taken in the lower court.

(4) Dangerousness: no plea or indication of plea should have been taken; in reality, it is unlikely that the lower court will have sent the matter for trial under these provisions prior to a plea being taken and more information being obtained.

10. The provisions of the CDA 1998, ss.51 and 51A are complex and require a number of decisions to be made by the youth or magistrates' court. The Youth Guideline provides extremely useful flow charts to assist the court in identifying the decisions that the court has to make and making them in the right order, whether the child or young person is (i) charged alone; (ii) charged with another child or young person; (iii) charged with an adult charged with an indictable-only offence; or (iv) charged with an adult charged with an either-way offence.[57]

2A. Adult co-defendant (sending for trial)

11. Where a child or young person is jointly charged with an adult co-defendant, their first appearance will be in a magistrates' (rather than youth) court: CYPA 1933, s.46(1)(a). If the magistrates' court proceeds to summary trial in relation to the adult co-defendant, the youth defendant will usually also face trial in the adult magistrates' court.[58]

12. Where a magistrates' court sends an adult for trial under the CDA 1998, s.51(1), (3) or (5), and a child or young person is brought before the court on the same or a subsequent occasion either:

(1) charged jointly with the adult with that indictable offence; or

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[57] Youth Guideline, end of section 2. The flow charts (and Youth Guideline as a whole) pre-date the introduction, by the Counter-Terrorism and Sentencing Act 2021, of specific terrorism offences in the allocation provisions. Such offences, however, can be dealt with in the flow charts as if they are grave crime offences.

[58] In certain circumstances, the matter may be remitted to the youth court, but those circumstances are beyond the scope of this publication.

(2) charged with an indictable offence which appears to be related to the adult's offence;

then the court shall, if it considers it necessary in the interests of justice to do so, send the child or young person forthwith to the Crown Court for trial for the indictable offence: CDA 1998, s.51(7). The court's alternative is to remit the youth defendant for trial in the youth court: MCA 1980, s.29(2).

13. The Youth Guideline reminds the court that the proper venue for the trial of any child or young person is normally the youth court, even where that child or young person is jointly charged with an adult. The presumption is that a young defendant will be tried separately from an adult unless it is in the interests of justice for them to be tried jointly.[59]

14. The Youth Guideline gives examples of the factors which should be considered when deciding whether to send the child or young person to the Crown Court for trial:

(1) whether separate trials will cause injustice to witnesses or to the case as a whole;

(2) the age of the child or young person; the younger the defendant, the greater the desirability that he/she be tried in the youth court;

(3) the age gap between the child or young person and the adult; a substantial gap in age militates in favour of a youth court trial;

(4) the lack of maturity of the child or young person;

(5) the relative culpability of the child or young person compared with the adult and whether the alleged role played by the child or young person was minor; and/or

(6) the lack of previous findings of guilt on the part of the child or young person.[60]

15. The Youth Guideline reminds the youth court of its general power to commit for sentence and suggests that this may permit, in appropriate cases, the Crown Court to sentence both offenders despite there having been separate trials in the Crown Court and youth court.[61]

16. In July 2020, William Davis J, Judicial Lead for Youth Justice for England and Wales, issued a note to all magistrates and district judges making allocation decisions to determine whether youth defendants should be sent for trial with adult co-defendants. That note emphasised a seventh, important factor in applying the interests of justice test, namely:

(7) the likely delay in trying the youth in the Crown Court, as compared to the youth court, because of the very large backlog of cases in the Crown Court which had grown, and was growing, during the Covid-19 public health emergency.

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59 Youth Guideline, para.2.11.
60 Youth Guideline, para.2.12.
61 Youth Guideline, para.2.13.

17. The note suggested that this factor may lead to youths being tried separately in the youth court where previously they would have been sent for trial to the Crown Court jointly with the adult defendant(s). This factor is expected to remain valid for the foreseeable future.

18. Furthermore, since 28 April 2022, the Crown Court has had the power to send a person back to a magistrates' court for trial and, in the case of a youth defendant, must consider using that power and give reasons if it does not exercise that power.[62]

2B. Homicide (sending for trial)

19. Where a child or young person is brought before a youth or magistrates' court charged with an 'offence of homicide' then the youth or magistrates' court must send the child or young person forthwith to the Crown Court for trial for the offence: CDA 1998, s.51A(2), (3)(a) and 12(a).

20. There is no definition of 'offence of homicide' in the MCA 1980, the CDA 1998 or the SC. Nor does the Youth Guideline provide any guidance as to what the term means.

21. There have been conflicting views expressed by legal commentators over whether an 'offence of homicide' is (i) any offence which results in a fatality; (ii) any offence in which the death of a person is an essential ingredient of the offence; or (iii) one of a more limited list of offences in which death is an essential ingredient of the offence. The conflict is particularly pertinent when one is considering the six causing-death-by-driving offences.

    It is submitted that, despite failing to define the list save for one specific offence, Parliament intended an offence of homicide to be (iii) one of a more limited list of offences in which death is an essential ingredient of the offence.[63] The following is a summary of those offences which do fall within that list and those involving death which do not:

Offence	Statute	Maximum sentence	Offence of homicide?	Comment
Murder	Common law	Life	YES	
Manslaughter	Common law	Life	YES	
Infanticide	Infanticide Act 1938, s.1(1)	Life	YES	
Child destruction	Infant Life (Preservation) Act 1929, s.1	Life	Probably	Could also be a grave crime or attract an extended sentence under the dangerousness provisions.
Procuring an abortion	Offences Against the Persons Act 1861, s.58	Life	Probably	Could also be a grave crime.

62 SCA 1981, s.46AZ, as inserted by the JRCA 2022, s.11; see 7-6 below.
63 See *Youths Who Kill – When is Homicide not Homicide?* [2019] Crim LR 411.

Offence	Statute	Maximum sentence	Offence of homicide?	Comment
Causing or allowing the death of a child or vulnerable adult	Domestic Violence. Crime and Victims Act (DVCVA) 2004, s.5	14 years	YES	The DVCVA 2004, s.6(5) provides that this offence is 'an offence of homicide' for the purposes of the CDA 1998, s.51A, the MCA 1980, s.24 and the PCCSA 2000, s.8. It is the only offence which is explicitly defined in this way.
Encouraging or assisting suicide (death occurs)	Suicide Act (SA) 1961, s.2	14 years	YES	Could also be a grave crime.
Encouraging or assisting suicide (no death)	SA 1961, s.2	14 years	No	Could also be a grave crime.
Causing death by dangerous driving	Road Traffic Act (RTA) 1988, s.1	14 years	No	Could also be a grave crime or attract an extended sentence under the dangerousness provisions.
Causing death by careless driving	RTA 1988, s.2B	5 years	No	
Causing death by driving unlicensed	RTA 1988, s.3ZB(a)	2 years	No	
Causing death by driving uninsured	RTA 1988, s.3ZB(c)	2 years	No	
Causing death by driving whilst disqualified	RTA 1988, s.3ZC	10 years	No	Could attract an extended sentence under the dangerousness provisions (though unlikely). Is NOT a grave crime.
Causing death by careless driving when under the influence of drink or drugs	RTA 1988, s.3A	14 years	No	Could also be a grave crime or attract an extended sentence under the dangerousness provisions.

Offence	Statute	Maximum sentence	Offence of homicide?	Comment
Aggravated vehicle-taking (where death occurs)	Theft Act 1968, s.12A	14 years	No	Could also be a grave crime or attract an extended sentence under the dangerousness provisions. Death is not an essential ingredient of the offence.
Allowing a dangerous dog out of control (where death occurs)	Dangerous Dogs Act 1991, s.3	14 years	No	Could also be a grave crime. Death is not an essential ingredient of the offence.
Injuring a person by wanton or furious driving (where death occurs)	OAPA 1861, s.35	2 years	No	
Criminal damage with intent to endanger life	Criminal Damage Act 1971, s.1(2)	Life	No	Could be grave crime or attract an extended sentence under the dangerousness provisions.
Arson with intent to endanger life	Criminal Damage Act 1971, s.1(2), (3)	Life	No	Could be grave crime or attract an extended sentence under the dangerousness provisions.
Attempt to commit 'an offence of homicide'	Criminal Attempts Act 1981, s.1	Dependent on offence	No, but may be treated in similar way, dependent on offence	Note that ss.2(1) and (2)(c) of the Criminal Attempts Act 1981 requires any attempted offence to be dealt with in the same way as the substantive offence when it comes to determining the venue for proceedings.
Soliciting to murder (no death)	OAPA 1861, s.4	Life	No	Could also be a grave crime or attract an extended sentence under the dangerousness provisions.
Assisting an offender who has committed 'an offence of homicide'	Criminal Law Act 1967, s.4(1)	10 or 7 or 5 or 3 years depending on offence	No	
Encouraging or assisting	Serious Crime Act	Dependent on offence	No, but may be treated in	Note that s.55 of the Serious Crime Act 2007 provides that an offence under ss.44 or 45 is

Offence	Statute	Maximum sentence	Offence of homicide?	Comment
'an offence of homicide'	2007, s.44 or s.45		similar way, dependent on offence	triable in the same way as the anticipated offence.
Conspiracy to commit 'an offence of homicide'	Criminal Law Act 1977, s.1	Dependent on offence	No	No provision requiring a conspiracy to be tried in the same way as the substantive offence. Conspiracy is indictable-only but the youth court may try such an offence.

2C. Firearms (sending for trial)

22. Where a young person is brought before a youth or magistrates' court charged with an offence and either:

    (1) each of the requirements of s.311(1) of the SC would be satisfied if he/she were convicted of the offence; or

    (2) section 29(3) of the VCRA 2006 would apply if he/she were convicted of the offence;

    then the youth or magistrates' court must send the child or young person forthwith to the Crown Court for trial for the offence: CDA 1998, s.51A(2), (3)(a), (12)(b) and (12)(c).[64]

23. Section 311(1) of the SC is satisfied where:

    (1) an individual is convicted of an offence listed in sch.20 to the SC N(certain offences under the FA 1968 and an offence under s.28 of the VCRA 2006, detailed below); and

    (2) the offence was committed at a time when the individual was aged 16 or over.

24. If that subsection is satisfied, the court is required to impose a minimum sentence upon the individual unless there are exceptional circumstances. For an offender who is aged 16 or 17 when convicted, the minimum sentence is a sentence of detention under s.250 of the SC of three years: SC, s.311(2), (3) and (4).

25. Section 29(3) of the VCRA 2006 applies where:

    (1) at the time of the offence the offender was aged 16 or over;

[64] The retention of subsection (12)(c) in s.51A would seem redundant and liable to confuse following the introduction of the SC. This is because s.311(1) of the SC would be satisfied in relation to any offence to which s.29(3) of the VCRA 2006 applies as such offences are now included in sch.20 to the SC alongside the relevant FA 1968 offences. Section 29(3) also does not provide directly for minimum sentences, though s.51A(12) of the CDA 1998 suggests that it does. See below.

(2) he/she committed the offence of using someone to mind a dangerous weapon (VCRA 2006, s.28) where the dangerous weapon in question was a firearm the possession of which attracts a minimum sentence under s.311 of the SC (listed below).

26. If that subsection is satisfied, the court is required to impose a minimum sentence upon the individual unless there are exceptional circumstances. For an offender who is aged 16 or 17 when convicted, the minimum sentence is a sentence of detention under s.250 of the SC of three years: SC, s.311, as cross-referenced by the VCRA 2006, s.29(3A).

27. The relevant firearms offences which must, therefore, be sent to the Crown Court are:

Simple offences	**Table 1**
FA 1968, s.5(1)(a)	Possessing/purchasing/acquiring: Any firearm designed or adapted to successively discharge two or more missiles without repeated pressure on the trigger.
FA 1968, s.5(1)(ab)	Possessing/purchasing/acquiring: Any self-loading or pump action rifled gun (other than one which is chambered for .22 rim-fire cartridges).
FA 1968, s.5(1)(aba)	Possessing/purchasing/acquiring: Any firearm with a barrel less than 30cm in length or which is less than 60cm in overall length (other than an air weapon, muzzle-loaded gun or firearm designed as signalling apparatus).
FA 1968, s.5(1)(ac)	Possessing/purchasing/acquiring: Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and has a barrel less than 24 inches or is less than 40 inches in length overall.
FA 1968, s.5(1)(ad)	Possessing/purchasing/acquiring: Any smooth-bore revolver gun (other than one chambered for 9mm rim-fire cartridges or a muzzle-loading gun).
FA 1968, s.5(1)(ae)	Possessing/purchasing/acquiring: Any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus.
FA 1968, s.5(1)(af)	Possessing/purchasing/acquiring: Any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system.

Simple offences	Table 1
FA 1968, s.5(1)(c)	Possessing/purchasing/acquiring: Any cartridge with a bullet designed to explode on or immediately before impact. Any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing. Any grenade, bomb or other like missile or rocket or shell designed to explode on or immediately before impact, if capable of being used with a firearm of any description.
FA 1968, s.5(1)(ag)	Possessing/purchasing/acquiring: Any rifle with a chamber from which empty cartridges are extracted using (i) energy from propellant gas, or (ii) energy imparted to a spring or other energy storage device by propellant gas, other than a rifle chambered for .22 rim-fire cartridges (if committed on or after 6 April 2022).
FA 1968, s.5(1)(ba)	Possessing/purchasing/acquiring: Any device (commonly known as a bump stock) designed/adapted so that (i) it is capable of forming part of or being added to a self-loading lethal barrelled weapon and (ii) if it forms part of or is added to such a weapon, it increases the rate of fire of the weapon by using the recoil to generate repeated pressure on the trigger (if committed on or after 6 April 2022).
FA 1968, s.5(1A)(a)	Possessing/purchasing/acquiring: Any firearm disguised as another object.

In combination with weapon listed in Table 1	Table 2
FA 1968, s.5(2A)	Manufacturing/selling/transferring/having in possession for sale or transfer/purchasing or acquiring for sale or transfer a weapon or ammunition described above.
FA 1968, s.16	Possession of weapon or ammunition described above with intent by means thereof to endanger life or enable another person to endanger life.

In combination with weapon listed in Table 1	Table 2
FA 1968, s.16A	Possessing a firearm described above with intent by means thereof to cause or to enable another person to cause any person to believe that unlawful violence will be used.
FA 1968, s.17	Making use of, or attempting to make use of, a firearm described above with intent to resist or prevent the lawful arrest or detention of any person.
FA 1968, s.18	Having a firearm described above with intent to commit an indictable offence, or to resist arrest or prevent the arrest of another.
FA 1968, s.19	Having a firearm described above together with suitable ammunition in a public place.
FA 1968, s.20(1)	Entering a building or part of a building as a trespasser without reasonable excuse while having a firearm described above with them.

In combination with weapon listed in Table 1	Table 3
Section 28 & 29(3) VCRA 2006	Using another to look after, hide or transport a firearm described above under arrangements facilitating the firearm being available for an unlawful purpose.

28. It is important to note that only offenders who are aged 16 or over at the time when the offence was committed can be subject to a minimum sentence. Thus, no offender aged under 16 can be sent under the CDA 1998, s.51A(3)(a) and (12)(b) or 12(c).

29. Although ss.16, 17, 18, 19 and 20(1) of the FA 1968 can be committed with **imitation** firearms, as well as real firearms, it is important to note that an **imitation** firearm does not attract a minimum sentence. Thus, an offence involving an **imitation** firearm will not be sent to the Crown Court under the CDA 1998, s.51A(3)(a) and (12)(b).

30. It is clear that there is likely to be overlap between offences to be sent because they involve firearms and offences to be sent under the dangerousness or 'grave crimes' provisions. (Offences under ss.16, 16A, 17 and 18 of the FA

1968 are specified offences. Offences under ss.16, 17 and 18 carry life imprisonment). Given the layout of s.51A, and simplicity, firearm offences should be sent under s.51A(3)(a) and (12)(b) (firearms) rather than being sent under s.51A(3)(b) ('grave crimes') or s.51A(3)(d) (dangerousness).

2D. Grave crimes (sending for trial)

31. Where a child or young person is brought before a youth or magistrates' court charged with an offence and the offence is such as is mentioned in the SC, s.249(1)(a) or (b) (other than one where the dangerousness criteria are satisfied) and the court considers that, if he/she is found guilty of the offence, it ought to be possible to sentence them in pursuance of the SC, ss.250 and 251(2), then the court shall send them forthwith to the Crown Court for trial: CDA 1998, s.51A(2), (3)(b).

32. The term 'grave crimes' does not appear in the SC, ss.249-251, nor in their predecessor in PCC(S)A 2000, s.91, but did appear in that section's predecessor, the CYPA 1933, s.53. The term remains in common use today (including in the Youth Guideline) and is adopted for convenience here.

33. The offences mentioned in the SC, s.249(1)(a) and (b) are:

    (1) all offences (except murder) punishable for an adult over 21 with imprisonment for at least 14 years: s.249(1)(a);

    (2) sexual assault, contrary to the SOA 2003, s.3: s.249(1)(b)(i);

    (3) child sex offences committed by children or young persons, contrary to the SOA 2003, s.13: s.249(1)(b)(ii);

    (4) sexual activity with a child family member, contrary to the SOA 2003, s.25: s.249(1)(b)(iii);

    (5) inciting a child family member to engage in sexual activity, contrary to the SOA 2003, s.26: s.249(1)(b)(iv).[65]

34. The SC, ss.251 and 252 provide that the Crown Court may sentence a child or young person convicted of a relevant offence to be detained for such period not exceeding the maximum term of imprisonment available to an adult over 21 if the court is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable. The maximum length for a detention and training order is two years.

35. The Youth Guideline makes clear that the test to be adopted by the youth or magistrates' court is 'whether there is a **real prospect** that a sentence in excess of two years' detention will be imposed'.[66]

36. The Youth Guideline also directs the lower court in the following way:

> '[2.10] Before deciding whether to send the case to the Crown Court or retain jurisdiction in the youth court, the court should hear submissions from

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[65] Note that, when dealing with grave crimes, the Youth Guideline makes reference (at para.2.9) to certain specified firearms, ammunition and weapons offences. These offences have no relevance in the context of determining the grave crimes jurisdiction because such offences are found in s.249(1)(c) but not in s.249(1)(a) or (b).

[66] Youth Guideline, para.2.8.

> the prosecution and defence. As there is now a power to commit grave crimes for sentence the court should no longer take the prosecution case at its highest when deciding whether there is a real prospect that a sentence in excess of two years detention will be imposed without knowing more about the facts of the case and the circumstances of the child or young person. In those circumstances the youth court should retain jurisdiction and commit for sentence if it is of the view, having heard more about the facts and the circumstances of the child or young person, that its powers of sentence are insufficient.
>
> …
>
> **Children and young people should only be sent for trial or committed for sentence to the Crown Court when charged with or found guilty of an offence of such gravity that a custodial sentence substantially exceeding two years is a realistic possibility. For children aged 10 or 11, and children/young people aged 12-14 who are not persistent offenders, the court should take into account the normal prohibition on imposing custodial sentences.**'

37. As with the dangerousness provisions below, there is a strong emphasis on the youth court retaining jurisdiction for trial. The High Court has suggested that, in most cases, a decision as to whether there was a real prospect of a sentence under s.250 would generally only be apparent when the court has determined the full circumstances of the offence and has a greater understanding of the offender: *DPP v South Tyneside Youth Court.*[67] It will be a rare case where the youth court declines jurisdiction for trial because the offending is so grave (though that is not to say that the court might not, in due course, conclude that the offending merits a sentence in excess of two years' detention and commit for sentence once the court is fully seized of all the facts and circumstances).[68]

38. It is inevitable that many offences, which could be sent to the Crown Court as grave crimes, could also be sent to the Crown Court under the dangerousness provisions. The drafting of the CDA 1998, s.51A(3)(b) seeks to draw a line between these two groups of potentially overlapping offences and suggests that the court should consider whether to send under the dangerousness provisions before considering whether to send as a grave crime. As is noted in this publication, a magistrates' or youth court is more likely to send an offence for trial because it is a grave crime rather than because the dangerousness provisions are satisfied (not least because the latter provisions require an assessment that at least four years' detention is merited whereas the former determination requires an assessment of greater than two years').

39. The Crown Court now has the power to remit a defendant back to the youth court whenever the lower court has sent the matter for trial as a grave crime:

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67 [2015] EWHC 1455. See also *R (on the application of BB) v West Glamorgan Youth Court* [2020] EWHC 2888 (Admin), in which it was observed that the youth court should only rarely send a young person for trial and only very rarely send a child under 15 for trial under s.51A(3)(b) (grave crime).

68 *R (BH) v Norwich Youth Court* [2023] EWHC 25 (Admin); [2023] 1 Cr.App.R.20, at [30]-[32].

SCA 1981, s.46ZA.[69] The Crown Court must take into account any related offence before it and have regard to any allocation guideline (which includes the Youth Guideline). The Crown Court must give reasons if it does not send a youth defendant back.

2E. Terrorism offences (sending for trial)

40. Where a child or young person is brought before a youth or magistrates' court charged with an offence and the offence is such as is mentioned in the SC, s.252A(1)(a) and the court considers that, if he/she is found guilty, it ought to be possible to sentence them under that section to a term of detention of more than two years, then the court shall send them forthwith to the Crown Court for trial: CDA 1998, s.51A(2), (3)(ba).

41. The offences mentioned in the SC, s.252A(1)(a) are those contained in pt.1 of sch.13 to the SC.

42. The offences contained in pt.1 of sch.13 are:

    (1) Terrorism Act 2000, ss.11, 12, 15, 16, 17, 17A, 18, 19, 21A, 38B, 39, 54, 56, 57, 58, 58A, 58B, 59;

    (2) Anti-terrorism, Crime and Security Act 2001, s.113;

    (3) Terrorism Act 2006, ss.1, 2, 5, 6, 8, 9, 10, 11;

    (4) Counter-Terrorism Act 2008, s.54;

    (5) Terrorism Prevention and Investigation Measures Act 2011, s.23;

    (6) Counter-Terrorism and Security Act 2015, s.10;

    (7) An inchoate offence in relation to any of the above offences.

43. The SC, s.252A deals with required special sentences of detention for terrorist offenders of particular concern. It provides that, where a person aged under 18 is convicted of one of the offences in pt.1 of sch.13 and the court intends to impose a custodial sentence other than a sentence of detention for life or an extended sentence, then the court must impose a sentence under this section. A sentence under s.252A is a sentence consisting of the appropriate custodial term and a further period of one year for which the offender is to be subject to a licence. The total sentence must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

44. There is nothing in s.252A which limits this special sentence to the Crown Court. Indeed, the language of the CDA 1998, s.51A(3)(ba) suggests that there will be s.252A sentences of under two years' detention which could be imposed in the youth court. Allocation decisions in such cases will be dealt with by district judges (magistrates' courts) authorised to deal with terrorism offences.

45. The Youth Guideline does not deal with allocation of terrorism offences specifically. Given that a similar test will be applied to that in the grave crime provisions, namely whether it ought to be possible to sentence the defendant to

[69] See 7-6 below.

detention of more than two years, it is suggested that those making the allocation decision may choose carefully to apply the same real prospect test and consider the same guidance as is provided for grave crimes.[70]

46. It is inevitable that many terrorism offences which could be sent to the Crown Court under these provisions could also be sent to the Crown Court under the dangerousness provisions. The drafting of the CDA 1998, s.51A(3)(ba) seeks to draw a line between these two groups of potentially overlapping offences and suggests that the court should consider whether to send under the dangerousness provisions before considering whether to send as a terrorism offence. A magistrates' or youth court is more likely to send an offence for trial because it requires a special sentence of detention in excess of two years rather than because the dangerousness provisions are satisfied, as the latter provisions require an assessment that at least four years' detention is merited.

47. As with grave crimes, the Crown Court now has the power to remit a defendant back to the youth court whenever the lower court has sent the matter for trial as one meriting more than two years' detention: SCA 1981, s.46ZA.[71] The Crown Court must take into account any related offence before it and have regard to any allocation guideline (which includes the Youth Guideline). Given the nature of the offences and the fact that any sending will have been directed by an authorised district judge, this may be a power which the Crown Court rarely exercises for terrorism offences, though there remains a duty to consider the power and to give reasons for not exercising it.

2F. Serious or complex fraud (sending for trial)

48. Pursuant to s.51B of the CDA 1998, the Director of Public Prosecutions, the Director of the SFO or the Secretary of State may give notice that a case of fraud is so serious or complex that it is appropriate for management of the case to be taken over by the Crown Court without delay.

49. Where a child or young person is brought before a youth or magistrates' court charged with an offence and notice is given to the court under s.51B, then the court shall send the child or young person forthwith to the Crown Court for trial: CDA 1998, s.51A(2), (3)(c).

50. This is an exception which is infrequently, if ever, used.

2G. Child case (sending for trial)

51. Pursuant to the CDA 1998, s.51C the Director of Public Prosecutions may, for certain offences, give notice that a case should be taken over and proceeded with without delay by the Crown Court in order to avoid prejudice to the welfare of a child who is to be called as a witness.

52. Where a child or young person is brought before a youth or magistrates' court charged with an offence and notice is given to the court under s.51C, then the court shall send the child or young person forthwith to the Crown Court for trial: CDA 1998, s.51A(2), (3)(c).

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70 See above, paras.35-37.
71 See 7-6 below.

53. This is an exception which is infrequently used, particularly for youth defendants. In *R v T and K*,[72] the Court of Appeal stated that it considered that there should be no transfer to the Crown Court for trial of a child defendant unless the DPP (acting through those who are empowered to make such decisions) can conclude that a magistrates' court would be likely to find the grave crimes[73] exception satisfied. The Court also stated that, to demonstrate that this had been considered, a statement to this effect should be included in the transfer notice. The CPS's own Legal Guidance on Children as Suspects and Defendants states that the use of such notice "will be rare and the use of this power where a child is concerned should only be for a compelling reason". Once a youth court has determined that a child or young person should be tried summarily, the prosecution cannot reverse that decision by issue of a s.51C notice of transfer.[74]

2H. Dangerousness (sending for trial)

54. Where a child or young person is brought before a youth or magistrates' court charged with an offence and that offence is a specified offence (within the meaning of the SC, s.306) and it appears to the court that, if he/she is found guilty of the offence, the criteria in the SC, s.255(1) for the imposition of an extended sentence of detention under the SC, s.254 would be met, then the court shall send the child or young person forthwith to the Crown Court for trial: CDA 1998, s.51A(2), (3)(d).

55. The criteria for a sentence under the SC, s.255(1) are met where:

    (1) a person aged under 18 is convicted of a specified offence which is listed in:

    (a) s.249(1) as an offence for which a sentence under s.250 is available; or

    (b) s.252A(1)(a) and (b) as an offence for which a sentence under s.252A is available: s.255(1)(a), (b);

    (2) the court considers that there is a significant risk to members of the public of serious harm (death or serious personal injury, whether physical or psychological) occasioned by the commission by the offender of further specified offences: s.255(1)(c);

    (3) the court is not required by s.258(2) to impose a sentence of detention for life under s.250: s.255(1)(d); and

    (4) if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years: s.255(1)(e).

56. Section 308 of the SC provides that, in assessing whether there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences (ie the assessment of dangerousness), the court:

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72 [2001] 1 Cr.App.R. 32.
73 Above, paras.31-39.
74 *R v Fareham Youth Court, ex parte CPS* (1999) 163 JP 812; [1999] Crim.L.R. 325.

(1) must take into account all such information as is available to it about the nature and circumstances of the offence: s.308(2)(a);

(2) may take into account all such information as is available to it about the nature and circumstances of any previous convictions of the defendant: s.308(2)(b);

(3) may take into account any information which is before it about any pattern of behaviour of which the defendant's previous or current offences form part: s.308(2)(c); and

(4) may take into account any information about the defendant which is before it: s.308(2)(d).

57. Schedule 18 to the SC provides for over 80 specified violent offences, over 80 specified sexual offences and over 20 specified terrorism offences. Not all specified offences are listed in s.249(1) (grave crime) or s.252A(1) (terrorism offence attracting required special sentence) and so not all specified offences qualify for an extended sentence of detention.

58. In making its assessment on dangerousness, the youth or magistrates' court will need to have considered the guidance contained in the leading authority of *R v Lang*.[75] Specific guidance is given as to the obligations of a youth court when dealing with a potentially dangerous offender in *R (CPS) v South East Surrey Youth Court* (also referred to as *R v Ghanbari*).[76] In that case, Rose LJ told the youth court that it should bear in mind:

'(i) the policy of the legislature, as correctly identified by Leveson J in *R(H) v Southampton Youth Court*[77], and approved by the Divisional Court in *(R (CPS) v Redbridge Youth Court*[78], is that those who are under 18 should, wherever possible, be tried in a youth court, which is best designed for their specific needs;

(ii) the guidance given by the Court of Appeal (Criminal Division) in particular in para 17 of the judgment in *R v Lang*, particularly in (iv) in relation to non-serious specified offences – i.e. if the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant;

(iii) the need, in relation to those under 18, to be particularly rigorous before concluding that there is a significant risk of serious harm by the commission of further offences: such a conclusion is unlikely to be appropriate in the absence of a pre-sentence report following assessment by a young offender team;

(iv) in most cases where a non-serious specified offence is charged, an assessment of dangerousness will not be appropriate until after conviction, when, if the dangerousness criteria are met, the defendant

75 [2006] 1 WLR 2509.
76 [2006] 1 WLR 2543.
77 [2005] Crim LR 395.
78 169 JP 393.

can be committed to the Crown Court for sentence – a procedure with which the Crown Court has, for many years, been familiar;

(v) when a youth under 18 is jointly charged with an adult, an exercise of judgment will be called for by the lower court when assessing the competing presumptions in favour of (a) joint trial of those jointly charged and (b) the trial of youths in the youth court. Factors relevant to that judgment will include the age and maturity of the youth, the comparative culpability in relation to the offence and the previous convictions of the two and whether the trial can be severed without either injustice or undue inconvenience to witnesses.'

59. The strong emphasis on the youth court retaining cases for trial is further supported in the Youth Guideline, which makes clear that, in making the assessment of dangerousness, 'it will be essential to obtain a pre-sentence report'.[79]

60. The Youth Guideline goes on:

'[2.6] Children and young people may change and develop within a shorter time than adults and this factor, along with their level of maturity, may be highly relevant when assessing probably future conduct and whether it may cause a significant risk of serious harm.

[2.7] In anything but the most serious causes it may be impossible for the court to form a view as to whether the child or young person would meet the criteria of the dangerous offender provisions without greater knowledge of the circumstances of the offence and the child or young person. In those circumstances jurisdiction for the case should be retained in the youth court. If, following a guilty plea or a finding of guilt, the dangerousness criteria appear to be met then the child or young person should be committed **for sentence**.'

61. Thus, it should be vanishingly rare for a youth or magistrates' court to send a child or young person **for trial** under the dangerousness provisions. It may be more common for such a defendant to be committed **for sentence** after a trial in the youth court. Alternatively, where the youth or magistrates' court is dealing with a child or young person charged with a specified offence, there is inevitably a considerable overlap with the grave crime and terrorism offence provisions (despite the attempt to avoid overlap by the wording of the CDA 1998, s.51A(3)(b) and (ba)) and the youth defendant is far more likely to be sent for trial under those provisions.

62. The Crown Court now has the power to remit a defendant back to the youth court whenever the lower court sends the matter for trial under the dangerousness provisions: SCA 1981, s.46ZA.[80] The Crown Court must take into account any related offence before it and have regard to any allocation guideline (which includes the Youth Guideline). The Crown Court must give reasons if it does not send a youth defendant back.

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79 Youth Guideline, para.2.5.

80 See 7-6 below.

7-3 Related offences sent to the Crown Court for trial

63. Where a magistrates' court sends a child or young person for trial with an adult co-defendant under the CDA 1998, s.51(7), it may also send for trial:

    (1) any indictable offence with which he/she is charged, and which appears to be related to the offence sent for trial; and

    (2) any summary offence with which he/she is charged, which appears to be related to the offence sent for trial or any further indictable offence sent for trial, and which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving: s.51(8), (11).

64. Similarly, where a youth or magistrates' court sends a child or young person for trial under any of the exceptions contained in the CDA 1998, s.51A(2) and (3), then the court may also send for trial (either on the same occasion or on a subsequent occasion):

    (1) any indictable offence with which he/she is charged, and which appears to be related to the offence sent for trial; and

    (2) any summary offence with which he/she is charged, which appears to be related to the offence sent for trial or any further indictable offence sent for trial, and which is punishable with imprisonment or involves obligatory or discretionary disqualification from driving: s.51A(4), (5), (9).

7-4 Power of Crown Court to deal with summary offence

65. The power of the Crown Court to deal with a summary offence which has been sent for trial under the CDA 1998, s.51 or s.51A is the same for a youth defendant as it is for an adult defendant: see the CDA 1998, sch.3, para.6.

7-5 Procedure where no indictable-only offence remains

66. Paragraph 13 the CDA 1998, Sch.3 formerly applied to any child or young person who has been sent for trial under s.51 or s.51A but, prior to arraignment, amendment of the indictment results in there being no main offence for which he/she was sent for trial. In such circumstances, the Crown Court is required to remit the child or young person for trial to the youth court in the area from which he/she was sent. That provision has been repealed by the JRCA 2022 and replaced by a general power to remit to the youth court for trial contained in s.46ZA of the SCA 1981 (see below).

7-6 Remittal to the youth court for trial

67. Prior to 28 April 2022, except in the circumstances of the CDA 1998, sch.3, para.13 (above), there was no other power in the Crown Court to remit a youth defendant for summary trial, whether using the SC, s.25[81] or any inherent power: *R(W) v Leeds Crown Court*.[82]

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[81] See 7-7, below, and chapter 8.
[82] [2011] EWHC 2326 (Admin).

68. If, for example, a child or young person had been validly sent for trial with an adult, he/she had to be tried in the Crown Court even if the adult pleaded guilty.

69. As of 28 April 2022, s.11 of the JRCA 2022 amended the SCA 1981 and introduced a new power for the Crown Court to remit adult and/or youth defendants to the magistrates' court for trial: SCA 1981, s.46ZA(1). The power may not be exercised, for a defendant under the age of 18, if the offence in question is an offence of homicide or a firearms offence attracting a minimum sentence: s.46ZA(2)(b). The Crown Court may not exercise the power for a youth defendant unless he/she appears in court or consents to the power being exercised in his/her absence: s.46ZA(3). There is a duty on the Crown Court to consider its power of remittal of a youth defendant and, if it decides not to send the youth defendant back to the youth court, the Crown Court must give reasons for not doing so: s.46ZA(4). In deciding whether to exercise the power of remittal, the Crown Court must take into account any other related offences/defendants before the Crown Court and have regard to the allocation guidelines issued (which include the Youth Guideline): s.46ZA(5). On the face of it, the Crown Court may remit a youth defendant where it simply disagrees with the decision of the lower court to send the defendant for trial. There is no right of appeal against an order of remittal: s.46ZA(7).

7-7 Remittal to the youth court for sentence

70. Section 25(1) of the SC provides for a power and duty to remit young offenders to the youth court for sentence. It applies where any child or young person is convicted and appears before the Crown Court for an offence other than homicide: s.25(1).

71. Where a child or young person has been sent for trial to the Crown Court under the CDA 1998, s.51 or s.51A and he/she is then convicted, the Crown Court is under a duty to remit the case to the youth court acting for the place where he/she was sent to the Crown Court for trial, unless the court is satisfied that it would be undesirable to do so: s.25(2). That remittal will be on bail or in custody: s.26(1), (2). The Crown Court must send the youth court a certificate setting out the nature of the offence and stating that the offender has been convicted and that the case has been remitted for the purposes of being dealt with: s.25(9).

72. The Youth Guideline provides that, in considering whether remittal is undesirable, the Crown Court should balance the need for expertise in the sentencing of children and young people with the benefits of sentence being imposed by the court which determined guilt.[83] The Youth Guideline directs that particular attention should be given to young offenders who are appearing before the Crown Court only because they have been charged alongside an adult offender. It also notes that referral orders are generally not available in the Crown Court but this may be the most appropriate sentence (cf para.76 below).[84]

[83] Youth Guideline, para.2.15.
[84] Youth Guideline, para.2.16.

73. In *R v Lewis*,[85] the Court of Appeal gave a non-exhaustive list of reasons why it might be undesirable to remit a case to the youth court.[86]

    (1) the judge who presided over the trial will be better informed as to the facts and circumstances;

    (2) there is a risk of unacceptable disparity if co-defendants are to be sentenced in different courts on different occasions;

    (3) as a result of the remission, there will be delay, duplication of proceedings and fruitless expense.

74. It should be noted that, in the past, remittal to the youth court has been particularly appropriate where the criteria for a compulsory referral order[87] would be made out in the youth court, as a Crown Court judge was considered to have no power to make such an order at first instance.[88] That position has changed with the case of *R v S*.[89] In that case, the Court of Appeal found that a judge in the Crown Court has the power to remit a youth defendant to the youth court for sentence, pursuant to the SC, s.25(2), and then themselves to exercise the powers (afforded to them by the Courts Act 2003, s.66) of a district judge (magistrates' courts), sitting as a youth court, to impose a referral order. The Court of Appeal applied the law on s.66 as explained in *R v Gould and others*[90] and found *Dillon* and *Koffi* to be incorrectly decided.[91]

75. Section 11 of the JRCA 2022 has now amended s.25 of the SC to provide the Crown Court with a power to remit a youth defendant to the youth court even where that defendant has been committed for sentence by the magistrates' or youth court.[92] This further emphasises that Parliament considers the youth court to be the appropriate court for dealing with youth defendants in all but exceptionally serious matters.

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85 (1984) 79 Cr.App.R. 94.
86 CYPA 1933, s.56(1) applied at the time.
87 See chapter 16 (16-5).
88 See *R v Dillon* [2019] 1 Cr.App.R.(S) 22; *R v Koffi* [2019] 2 Cr.App.R.(S) 17.
89 [2021] EWCA Crim 960; [2023] 1 Cr.App.R.(S) 33. Fulford LJ, Vice President of the Court of Appeal Criminal Division, presided over both this case and that of *R v Gould.*
90 [2021] EWCA Crim 447.
91 In *R v S*, the Court of Appeal did not analyse carefully whether it had been in the interests of justice for S (aged 17) to be sent by the magistrates' court for trial for two offences of domestic burglary. It is suggested that such a sending may not have been in accordance with the guidance given in the Youth Guideline (see paras.12-17 above).
92 See chapter 8.

8. JURISDICTION: YOUTHS COMMITTED FOR SENTENCE

8-1 Introduction

1. Subject to the exceptions set out below, cases involving defendants aged under 18 should not only be tried but also sentenced in the youth court.

2. As is noted in the Youth Guideline, the youth court is best designed to meet the specific needs of children and young persons. Hearings in the Crown Court, with the inevitably greater formality and greatly increased number of people involved should be reserved for the most serious cases.[93]

3. The Crown Court now has the power to remit a youth defendant back to the youth court for sentence even where that defendant has been convicted by the magistrates'/youth court and committed for sentence to the Crown Court: SC, s.25(1), (2A). This power complements the duty on the Crown Court to consider remittal to the youth court for sentence, where the youth defendant is convicted on indictment, unless it would be undesirable to do so: SC, s.25(1), (2).[94]

4. The relevant committal procedures are set out in detail below. It is obvious that the Crown Court may not be directly concerned with the complexity of the decision-making process in the court below. However, the detail of the manner of committing a young defendant for sentence may be important because it determines the sentencing powers of the Crown Court.

5. It is also important for the Crown Court judge to be alert as to whether a committal for sentence (or sending for trial) is valid. Problems can particularly arise where a young defendant is close to 18 when he/she makes his/her first appearance in the youth court, as it is his/her age when the court makes its allocation decision which is relevant.[95] If, however, there is difficulty over a committal, the Crown Court judge should be very careful to follow the guidance in *R v Gould & others*[96] before considering the use of the Courts Act 2003, s.66 to rectify the position.

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93 *R (on the application of H, A and O) v Southampton Youth Court* [2004] EWHC 2912 (Admin); Youth Guideline, para.2.1.

94 See 8-3 below.

95 *R v Islington Juvenile Court, ex p.Daley* (1992) 75 Cr.App.R. 280. See, for example, *R v Lewis Ford* [2018] EWCA Crim 1751, where the defendant made his first appearance at the youth court as a 17-year-old, had the case adjourned for three weeks and then appeared the day after his 18th birthday. The youth court purported to accept his plea and commit him for sentence pursuant to the PCC(S)A 2000, s.3B (now the SC, s.16). The Court of Appeal found that the court had no jurisdiction to take his plea and all subsequent proceedings were invalid. The Court of Appeal reconstituted itself variously as a Divisional Court, Magistrates' Court and Crown Court in an effort to resolve the difficulties.

96 [2021] EWCA Crim 447; [2021] 2 Cr.App.R. 7.

8-2 Children or young persons committed to the Crown Court for sentence

6. Subject to the exceptions already noted in chapter 7, a child or young person must be tried and/or sentenced in the youth court.

7. A child or young person charged with a **homicide** offence or charged with a **firearms** offence for which he/she may be liable to a minimum sentence, or charged with an offence where a notice has been served in a **serious or complex fraud** or in a **child case** must be sent to the Crown Court for trial forthwith. No pleas will be taken in the youth or magistrates' court. The child or young person will be sent for trial and cannot be committed for sentence to the Crown Court.

8. For the remaining exceptions, the youth defendant may be convicted by the youth court before a decision is made to commit them for sentence to the Crown Court.

2A. Grave crimes (committing for sentence)

9. Where a person aged under 18 is convicted (whether on his/her indication of plea or after trial) of an offence mentioned in the SC, s.249(1)(a) or (b), then if the court is of the opinion that that offence (or that offence in combination with associated offences) is such that the Crown Court should have power to deal with the offender by imposing a sentence of detention under s.250, then the court may commit the defendant to the Crown Court for sentence: SC, s.16(1), (2).

10. The term 'grave crimes' does not appear in the SC, ss.249-251, nor in their predecessor in PCC(S)A 2000, s.91, but did appear in that section's predecessor, the CYPA 1933, s.53. The term remains in common use today (including in the Youth Guideline) and is adopted for convenience here.

11. The offences mentioned in the SC, s.249(1)(a) and (b) are:

    (1) all offences (except murder) punishable for an adult over 21 with imprisonment for at least 14 years: s.249(1)(a);

    (2) sexual assault, contrary to the SOA 2003, s.3: s.249(1)(b)(i);

    (3) child sex offences committed by children or young persons, contrary to the SOA 2003, s.13: s.249(1)(b)(ii);

    (4) sexual activity with a child family member, contrary to the SOA 2003, s.25: s.249(1)(b)(iii);

    (5) inciting a child family member to engage in sexual activity, contrary to the SOA 2003, s.26: s.249(1)(b)(iv).[97]

12. The SC, ss.251 and 252 provide that the Crown Court may sentence a child or young person convicted of a relevant offence, to be detained for such period not

[97] Note that, when dealing with grave crimes, the Youth Guideline refers (at para.2.9) to certain specified firearms, ammunition and weapons offences. These offences have no relevance in the context of determining the grave crimes jurisdiction because such offences are found in s.249(1)(c) but not in s.249(1)(a) or (b).

exceeding the maximum term of imprisonment available to an adult over 21, if the court is of the opinion that neither a youth rehabilitation order, nor a detention and training order is suitable. The maximum length for a detention and training order is two years.

13. The Youth Guideline makes clear that the test to be adopted by the youth or magistrates' court is 'whether there is a **real prospect** that a sentence in excess of two years' detention will be imposed'.[98]

14. The Youth Guideline also directs the lower court in the following way:

> '[2.10] Before deciding whether to send the case to the Crown Court or retain jurisdiction in the youth court, the court should hear submissions from the prosecution and defence. As there is now a power to commit grave crimes for sentence the court should no longer take the prosecution case at its highest when deciding whether there is a real prospect that a sentence in excess of two years detention will be imposed without knowing more about the facts of the case and the circumstances of the child or young person. In those circumstances the youth court should retain jurisdiction and commit for sentence if it is of the view, having heard more about the facts and the circumstances of the child or young person, that its powers of sentence are insufficient.
>
> …
>
> **Children and young people should only be sent for trial or committed for sentence to the Crown Court when charged with or found guilty of an offence of such gravity that a custodial sentence substantially exceeding two years is a realistic possibility. For children aged 10 or 11, and children/young people aged 12 – 14 who are not persistent offenders, the court should take into account the normal prohibition on imposing custodial sentences.**'

15. It is inevitable that many offences which could be committed to the Crown Court as grave crimes could also be committed to the Crown Court under the dangerousness provisions (see below). Indeed, the SC, s.17(4) provides that nothing in s.17 (committal for sentence of dangerous young offenders) shall prevent the court from committing for sentence under s.16 instead. It is much more likely that an offence will be committed for sentence because it is a grave crime rather than because the dangerousness provisions are satisfied, not least because the latter provisions require an assessment that at least four years' detention is merited whereas the former determination requires an assessment of greater than two years.

2B. Terrorism offences (committing for sentence)

16. Where a person aged under 18 is convicted (whether on his/her indication of plea or after trial) of an offence within the SC, s.252A(1)(a) and the court is of the opinion that that offence (or that offence in combination with associated offences) is such that the Crown Court should have power to deal with the offender by imposing a sentence of detention under s.252A for a term of more

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98 Youth Guideline, para.2.8.

than two years, then the court may commit the defendant to the Crown Court for sentence: SC, s.16A(1), (2).

17. The offences within the SC, s.252A(1)(a) are those contained in pt.1 of sch.13 to the SC.

18. The offences contained in pt.1 of sch.13 are:

    (1) Terrorism Act 2000, ss.11, 12, 15, 16, 17, 17A, 18, 19, 21A, 38B, 39, 54, 56, 57, 58, 58A, 58B, 59;

    (2) Anti-terrorism, Crime and Security Act 2001, s.113;

    (3) Terrorism Act 2006, ss.1, 2, 5, 6, 8, 9, 10, 11;

    (4) Counter-Terrorism Act 2008, s.54;

    (5) Terrorism Prevention and Investigation Measures Act 2011, s.23;

    (6) Counter-Terrorism and Security Act 2015, s.10;

    (7) An inchoate offence in relation to any of the above offences.

19. The SC, s.252A deals with required special sentences of detention for terrorist offenders of particular concern. It provides that, where a person aged under 18 is convicted of one of the offences in pt.1 of sch.13 and the court intends to impose a custodial sentence other than a sentence of detention for life or an extended sentence, then the court must impose a sentence under this section. A sentence under s.252A is a sentence consisting of the appropriate custodial term and a further period of one year for which the offender is to be subject to a licence. The total sentence must not exceed the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over.

20. There is nothing in s.252A which limits this special sentence to the Crown Court. Indeed, the language of the SC, s.16A suggests that there will be s.252A sentences of under two years' detention which could be imposed in the youth court. Such cases will be dealt with by district judges (magistrates' courts) authorised to deal with terrorism offences.

21. The Youth Guideline does not deal with committal of terrorism offences specifically. Given that a similar test will be applied to that in the grave crime provisions, namely whether it ought to be possible to sentence the defendant to detention of more than two years, it is suggested that those making the allocation decision may choose carefully to apply the same **real prospect** test and consider the same guidance as is provided for grave crimes.[99]

22. It is inevitable that many terrorism offences which could be committed to the Crown Court under these provisions could also be committed to the Crown Court under the dangerousness provisions (see below). Indeed, the SC, s.17(4) provides that nothing in s.17 (committal for sentence of dangerous young offenders) shall prevent the court from committing for sentence under s.16A instead. It is much more likely that an offence will be committed for sentence under these terrorism offence provisions rather than because the dangerousness provisions are satisfied, not least because the latter provisions

[99] See above, paras.9-15.

require an assessment that at least four years' detention is merited whereas the former determination requires an assessment of greater than two years.

2C. Dangerousness (committing for sentence)

23. Where a person aged under 18 is convicted (whether on his/her indication of plea or after trial) of a specified offence (within the meaning of the SC, s.306) and the court is of the opinion that an extended sentence of detention under the SC, s.254 would be available, then the court must commit the offender to the Crown Court for sentence: SC, s.17(1), (2).

24. The criteria for a sentence under the SC, s.254 are met where:

    (1) a person aged under 18 is convicted of a specified offence which is listed in:

    (a) s.249(1) as an offence for which a sentence under s.250 is available; or

    (b) s.252A(1)(a) and (b) as an offence for which a sentence under s.252A is available: s.255(1)(a), (b);

    (2) the court considers that there is a significant risk to members of the public of serious harm (death or serious personal injury, whether physical or psychological) occasioned by the commission by the offender of further specified offences: s.255(1)(c);

    (3) the court is not required by s.258(2) to impose a sentence of detention for life under s.250;

    (4) if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least four years: s.255(1)(e).

25. Section 308 of the SC provides that, in assessing whether there is a significant risk to members of the public of serious harm occasioned by the commission by the defendant of further specified offences (ie the assessment of dangerousness), the court:

    (1) must take into account all such information as is available to it about the nature and circumstances of the offence: s.308(2)(a);

    (2) may take into account all such information as is available to it about the nature and circumstances of any previous convictions of the defendant: s.308(2)(b);

    (3) may take into account any information which is before it about any pattern of behaviour of which the defendant's previous or current offences form part: s.308(2)(c); and

    (4) may take into account any information about the defendant which is before it: s.308(2)(d).

26. Schedule 18 to the SC provides for over 80 specified violent offences, over 80 specified sexual offences and over 20 specified terrorism offences. Not all specified offences are listed in s.249(1) (grave crime) or s.252A(1) (terrorism offence attracting required special sentence), and so not all specified offences qualify for an extended sentence of detention.

27. In making its assessment on dangerousness, the youth or magistrates' court will need to have considered the guidance contained in the leading authority of *R v Lang*.[100] Specific guidance is given as to the obligations of a youth court when dealing with a potentially dangerous offender in *R (CPS) v South East Surrey Youth Court* (also referred to as *R v Ghanbari*).[101] In that case, Rose LJ told the youth court that it should bear in mind:

    (1) the policy of the legislature, as correctly identified by Leveson J in *R(H) v Southampton Youth Court*,[102] and approved by the Divisional Court in *(R (CPS) v Redbridge Youth Court*,[103] is that those who are under 18 should, wherever possible, be tried in a youth court, which is best designed for their specific needs;

    (2) the guidance given by the Court of Appeal (Criminal Division) in particular in para.17 of the judgment in *R v Lang*, particularly in (iv) in relation to non-serious specified offences – ie if the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant;

    (3) the need, in relation to those under 18, to be particularly rigorous before concluding that there is a significant risk of serious harm by the commission of further offences: such a conclusion is unlikely to be appropriate in the absence of a pre-sentence report following assessment by a young offender team.

28. As noted in chapter 7, both the Youth Guideline and previous authorities emphasise that it should be very rare for a young defendant to be sent to the Crown Court for trial under the dangerousness provisions. It is only when the lower court is in possession of more information, including a pre-sentence report, that it may be appropriate to commit the young defendant for sentence under these provisions.

29. It is inevitable that many offences which could be committed to the Crown Court under the dangerousness provisions could also be committed to the Crown Court as grave crimes or terrorism offences (see above). Indeed, the SC, s.17(4) provides that nothing in s.17 shall prevent the court from committing for sentence under s.16 (grave crime) or s.16A (terrorism offence) instead. It is much more likely that an offence will be committed for sentence under the grave crime or terrorism offence provisions rather than because the dangerousness provisions are satisfied, not least because the latter provisions require an assessment that at least four years' detention is merited whereas the former determinations requires assessments of greater than two years.

2D. Grave crimes and terrorism offences related to offence sent for trial

30. Where a youth or magistrates' court sends a child or young person to the Crown Court for trial, it may also commit them to the Crown Court to be dealt with for

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100 [2006] 1 WLR 2509.
101 [2006] 1 WLR 2543.
102 [2005] Crim LR 395.
103 169 JP 393.

any related offence (ie one which could be joined on the same indictment) to which he/she indicates a guilty plea if the related offence falls within:

(1) s.249(1)(a) or (b) (offences punishable with imprisonment for 14 years or more and certain sexual offences); or

(2) s.252(1)(a) (terrorism offences attracting special sentence for offenders of particular concern): SC, s.19(1), (6).

31. Where the youth or magistrates' court does commit a related offence under s.19(1) but is of the opinion that it could also have committed that offence under s.16(2) (grave crime), s.16A(2) (terrorism offence) or s.17(2) (dangerousness), the court must make a statement of that opinion: s.19(3); CrimPR 2020, r.9.15.

2E. Committal in certain cases where offender committed for another offence

32. Section 20 of the SC applies where a youth or magistrates' court commits a person aged under 18 for sentence for an indictable offence under the SC, s.16 (grave crime), s.16A (terrorism offence), s.17 (dangerousness) or s.19 (related offence).

33. The committing court may also commit the offender to the Crown Court to be dealt with in respect of any other offence with which the committing court has power to deal: s.20(2).

8-3 Remittal to the youth court for sentence

40. As of 28 April 2022, s.11(2) of the JRCA 2022 has amended s.25 of the SC to increase the power of the Crown Court to remit an offender aged under 18 to the youth court for sentence. Where a magistrates'/youth court convicts a youth defendant and commits them to the Crown Court for sentence, the Crown Court may now remit that offender back to the youth court acting for the place where the convicting court sat: SC, s.25(2A).

8-4 Powers of the Crown Court on committal for sentence of a youth defendant

34. Section 22 of the SC provides for the power of the Crown Court on committal for sentence of persons under 18 under:

(1) s.16 (grave crime);

(2) s.16A (terrorism offence);

(3) s.17 (dangerousness);

(4) s.19 (offence related to matter sent for trial).

35. In these cases, the Crown Court must inquire into the circumstances of the case and may deal with the offender in any way in which it could deal with him/her if he/she had just been convicted of the offence on indictment: SC, s.22(2).

36. Where the lower court commits a child or young person for sentence for an offence under the SC, s.19(1) without making a statement under s.19(3) that it could have committed under s.16, s.16A or s.17 (see above), the powers of the Crown Court depend on whether the offender is convicted of at least one offence which was sent for trial. If he/she is convicted of such an offence sent

for trial, then the Crown Court retains its full powers to deal with the offender for the offence committed under s.19(1) as if he/she had been convicted on indictment for that offence: s.22(2), (5).

37. If the offender is not convicted of an offence sent for trial alongside the s.19(1) offence, then the Crown Court may only deal with the offender in respect of the offence committed for sentence in any way in which the youth court could have dealt with him/her: s.22(4), (5). Thus, it will be important for the youth court to have made the necessary statement of opinion when utilising s.19.

38. Any duty or power which would fall to be discharged or exercised by the youth or magistrates' court is instead to be discharged or may instead be exercised by the Crown Court: s.22(3).

39. Section 23 of the SC provides for the power of the Crown Court where the youth or magistrates' court commits a person aged under 18 for sentence for an offence under s.20(2) (any other offence with which the committing court has power to deal). The Crown Court must inquire into the circumstances of the case and may deal with the offender for the offence in any way in which the youth court could have dealt with the offender (assuming it had convicted the offender of the offence): s.23(2).

40. Again, any duty or power which would fall to be discharged or exercised by the youth or magistrates' court is instead to be discharged or may instead be exercised by the Crown Court: s.23(6).

41. Rule 28.12(3) of the CrimPR 2020 requires the prosecutor to identify any offence in respect of which the Crown Court cannot deal with a defendant in a way in which it could have done if the defendant had been convicted in the Crown Court, including an offence committed under s.19 of the SC and in respect of which the magistrates'/youth court did not state the opinion to which s.19(3) of the SC refers. The prosecutor should be reminded of this duty when preparing a note for sentence.

8-5 Children or young persons committed for restriction order

42. Though s.37 of the MHA 1983 gives the magistrates' court and youth court the power to make a hospital order upon conviction, neither has the power to make a restriction order under s.41.

43. Section 43 of the MHA 1983, however, allows a magistrates' court or youth court to commit a defendant to the Crown Court to be dealt with in respect of the offence, with a view to making such a restriction order. Those committed may include youth defendants.

44. In order for the lower court to commit to the Crown Court, the following conditions must be satisfied:

    (1) The defendant must be 14 years or older: s.43(1).

    (2) The defendant must have been convicted of an offence punishable on summary conviction with imprisonment: s.43(1).

    (3) The conditions under s.37(1) must be satisfied for the making of a hospital order: s.43(1)(a).

(4) It must appear to the lower court, having regard to the nature of the offence, the antecedents of the offender and the risk of him/her committing further offences if set at large, that if a hospital order is made, a restriction order should also be made: s.43(1)(b).

45. The committal to the Crown Court must be in custody: s.43(1).

46. The Crown Court retains its powers to remand the offender for a report (s.35), remand the offender for treatment (s.36) and make an interim hospital order (s.38) under ss.35, 36 and 38 in relation to any offender so committed: s.43(3).

47. In dealing with the offender, the Crown Court may:

(1) make a hospital order with restriction order: s.43(2)(a);

(2) make a hospital order without restriction order: s.43(2)(a);

(3) deal with the offender in any other manner in which the magistrates' court might have dealt with him/her: s.43(2)(b).

48. The youth court retains the power to commit an offender to the Crown Court under the SC, s.16 or s.16A (above) even where the conditions for the imposition of a hospital order appear to be met and the court is considering a committal under s.43 of the MHA 1983. Section 43(4) preserves this committal power in such circumstances. It will be important to check whether any such committal is under the SC, s.16 or s.16A or the MHA 1983, s.43. In the former two cases, the Crown Court will retain its full powers under the SC, s.254. In the latter case, the Crown Court will have the power to make a hospital order (with or without restriction) but would be limited to the powers of the lower court in dealing with the offender in any other way.

49. Where the youth court commits an offender under the MHA 1983, s.43, it may also commit the offender to be dealt with in respect of other offences: SC, s.20(1), (2).

8-6 Other powers to commit youth defendants to be dealt with

6A. Conviction for offence whilst subject to Crown Court conditional discharge

50. Where an offender, subject to a conditional discharge made by the Crown Court, is convicted of an offence in the magistrates' court or youth court, the convicting court may commit the offender in custody or on bail to the Crown Court: SC, sch.2, para.5(3).

51. If the relevant offence which puts the offender in breach is an indictable offence, the committing court may also commit the offender to the Crown Court to be dealt with for any other offence that the committing court had power to deal with. If the relevant offence which puts the offender in breach is a summary offence, the committing court may also commit the offender to the Crown Court to be dealt with for any other offence which is punishable with imprisonment or driving disqualification: SC, s.20(1)(b), (2), (4)(a).

52. In such circumstances, the Crown Court may re-sentence the offender for the original offence: SC, sch.2, para.7(2). The Crown Court may deal with the offender for the new offence(s) in any way in which the lower court could have

dealt with the offender (assuming it had convicted the offender of the offence): SC, s.23(2).

53. See chapter 18.

6B. Conviction for offence whilst subject to Crown Court YRO

54. Where an offender, subject to a youth rehabilitation order made by the Crown Court, is convicted of an offence in the magistrates' court or youth court, the convicting court may commit the offender in custody or release him/her on bail until he/she can be brought before the Crown Court: SC, sch.7, para.22(2) and (4).

55. If the offender is brought before the Crown Court by virtue of para.22(2) or (4), the Crown Court may revoke and re-sentence for the offence underlying the YRO. In relation to the further offence, the Crown Court may deal with the offender in any way which the convicting court could have dealt with the offender for that offence. This therefore limits the powers of the Crown Court to that of the magistrates' court or youth court: para.23(6)(b).

56. The magistrates' court or youth court will need to ensure that it does not inappropriately limit the powers of the Crown Court in such circumstances. If the new offence of which the offender is convicted may lawfully merit a sentence in excess of the lower court's powers, the committing court should ensure that committal for sentence is pursuant to the SC, ss.16, 16A or 17 rather than pursuant to sch.7.

57. See chapter 18.

6C. Further powers noted by section 24 of the Sentencing Code

58. Section 24 of the SC notes four other powers to commit to the Crown Court to be dealt with for an offence, none of which are likely either to involve a youth defendant or to merit committal in the case of a youth defendant:

    (1) Proceeds of Crime Act 2002, s.70 (considering confiscation order);

    (2) BA 1976, s.6(6) (offence of absconding by person on bail);

    (3) BA 1976, s.9(3) (offence of agreeing to indemnify sureties);

    (4) Vagrancy Act 1824 (incorrigible rogues).

9. JURISDICTION: APPEALS FROM THE YOUTH COURT

9-1 Rights of appeal

1. As with adults, a child or young person dealt with by a magistrates' court or youth court usually has the right to appeal the decision to the Crown Court. The following rights of appeal are noted in particular.

2. **Bail and remand:** The Crown Court may hear an appeal by a youth defendant who has been remanded in custody by a magistrates' court or youth court: SCA 1981, s.81(1)(g). The Crown Court may also hear an appeal by a youth defendant against a condition attached to his/her conditional bail granted by a magistrates' court or youth court: CJA 2003, s.16. The Crown Court may also hear a prosecutor's appeal against the granting of bail to a youth defendant by a magistrates' court or youth court: Bail (Amendment) Act 1993, s.1.

3. **Conviction and sentence:** A child or young person convicted by a magistrates' court or youth court may appeal to the Crown Court against his/her sentence (if he/she pleaded guilty) and against his/her conviction or sentence (if he/she did not plead guilty): MCA 1980, s.108(1). A person sentenced in the magistrates' court or youth court for breach of a conditional discharge may appeal that sentence to the Crown Court: MCA 1980, s.108(2).

4. Where a youth court has convicted a defendant and committed him/her to the Crown Court for sentence, the Crown Court still has jurisdiction to hear any appeal against conviction: *R v Croydon Crown Court*, *ex p. Bernard*.[104]

5. **Financial order against parent:** Where a magistrates' court or youth court orders the parent of a child or young person to pay the fine, costs, compensation or surcharge resulting from the child or young person's conviction, then that parent or guardian may appeal to the Crown Court against such an order: SC, s.380(5).

6. Similarly, where a magistrates' court or youth court orders a parent or guardian of a convicted youth defendant to enter a recognizance to take proper care of the youth and exercise proper control over him/her (a parental bind over) or fines the parent for refusing to enter such a recognizance, then that parent or guardian may appeal to the Crown Court against such an order: SC, s.377(1).

7. Other rights include the right to appeal against:

   (1) an order to pay costs: MCA 1980, s.108(1), (3)(b);

   (2) an order for the destruction of an animal: MCA 1980, s.108(1), (3)(c);

   (3) an order to pay the statutory surcharge: MCA 1980, s.108(4);

   (4) a bind over to keep the peace or be of good behaviour: Magistrates' Courts (Appeals from Binding Over Orders) Act 1956, s.1(1);

   (5) a football banning order: Football Spectators Act 1989, s.22(7);

[104] [1981] 1 WLR 116.

(6) a decision or refusal to extend a custody time limit: Prosecution of Offences Act 1985, s.22(7);

(7) a hospital or guardianship order: MHA 1983, s.45(1), (2);

(8) a determination that an offence has a terrorist connection and so attracts notification requirements: SC, s.69; Counter-Terrorism Act 2008, s.42;

(9) a decision following breach of a youth rehabilitation order or conviction of a new offence whilst subject to a youth rehabilitation order: SC, sch.7, paras.6(11) or 21(6);

(10) a parenting order: SC, s.366(9).

9-2 Powers on appeal

8. As with adult appellants, the Crown Court may, in the course of hearing any appeal correct any error or mistake in the order or judgment incorporating the decision which is the subject of the appeal: SCA 1981, s.48(1).

9. On the termination of the hearing of an appeal, the Crown Court may:

(1) confirm, reverse or vary any part of the decision appealed against;

(2) remit the matter with its opinion to the court whose decision is appealed against;

(3) or make such order in the matter as the court thinks just, and by such order exercise any power which the lower court might have exercised: SCA 1981, s.48(2).

10. The Crown Court has the power, if the appeal is against a conviction or a sentence, to order punishment which is more severe than that awarded by the magistrates' court or youth court: SCA 1981, s.48(4).

11. Where a Crown Court quashes a summary conviction for an aggravated offence, it has the power to substitute a conviction for an alternative, underlying offence which was adjourned sine die by the magistrates' court or youth court as part of the decision appealed against: *DPP v Henderson*.[105]

12. On an appeal in relation to bail, the Crown Court may grant bail, vary or remove a condition of bail or remand the defendant into custody as appropriate.

9-3 Procedure

13. Part 34 of the CrimPR 2020 deals with appeals to the Crown Court.

14. Where an appeal is from a youth court, the Crown Court hearing the appeal (as opposed to making case management decisions) must comprise:

(1) a judge of the High Court, a circuit judge, a recorder or qualifying judge advocate; and

(2) two, three or four justices of the peace, none of whom took part in the decision under appeal and each of whom is qualified to sit as a member of a youth court: CrimPR 2020, r.34.11(1)(a), (b).

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[105] [2016] EWHC 464 (Admin).

15. The former requirement that a Crown Court hearing an appeal from the youth court must include both a man and a woman on the bench has been removed: Criminal Procedure (Amendment) Rules 2017.

16. It should be noted that the CrimPD provide special rules in relation to appeals from the youth court for sexual offences. Such appeals shall be heard by a resident judge or a nominated circuit judge who is authorised to hear sexual offences in Class 1C or Class 2B, plus two to four justices of the peace who have undertaken specific training to deal with youth matters. It is provided that no appeal against conviction and/or sentence from a youth court involving a Class 1C or Class 2B offence shall be heard by a recorder save with the express permission of the presiding judge of the circuit: CrimPD paras.5.10.11 and 5.10.12.

10. ATTENDANCE OF PARENT OR GUARDIAN AT COURT

10-1 CYPA 1933 section 34A

1. It is a fundamental part of the welfare principle that a child or young person appearing as a defendant at court is accompanied and supported by a parent or guardian.
2. Section 34A(1) of the CYPA 1933 provides the court with the duty (in relation to defendants under the age of 16) and the power (in relation to those aged 16 or 17) to require a parent or guardian to attend court during all stages of the proceedings unless, and to the extent, that the court is satisfied that it would be unreasonable to require such attendance, having regard to all the circumstances of the case.
3. Where a summons or requisition is served on a defendant under 18, the prosecutor or court officer who served it must serve a copy on a parent or guardian of the defendant as well: CrimPR 2020, r.7.4(8)(a). The copy may impose a requirement on the parent or guardian to attend, or a separate summons or requisition may be issued for that purpose: r.7.4(8)(b).
4. Where a local authority has parental responsibility for a child or young person who is brought before a court, the reference in s.34A(1) to parent or guardian is construed as reference to that local authority: s.34A(2).

10-2 Criminal Practice Directions

5. The CrimPD reinforce the need for a young defendant to be accompanied, reminding the court that it 'should ensure that a suitable supporting adult is available throughout the course of the proceedings' and that the court should provide '[t]he opportunity (subject to security arrangements) for a young or otherwise vulnerable defendant to sit with family or other supporting adult…This is especially important where vulnerability arises by reason of age.': CrimPD para.6.4.2(d).

10-3 Youth Guideline

6. The Youth Guideline provides, under the heading 'Parental responsibilities':

> '[3.1] For any child or young person aged under 16 appearing before court there is a statutory requirement that parents/guardians attend during all stages of proceedings, unless the court is satisfied that this would be unreasonable having regard to the circumstances of the case. The court may also enforce this requirement for a young person aged 16 and above if it deems it desirable to do so.
>
> [3.2] Although this requirement can cause delay in the case before the court it is important it is adhered to. If a court does find exception to proceed in the absence of a responsible adult then extra care must be taken to ensure the outcomes are clearly communicated to and understood by the child or young person.'

10-4 Practical considerations

7. If a youth defendant appears in the Crown Court without a parent, the court must enquire as to why they are unaccompanied. It is often helpful to seek the assistance of the YOT/YJS in this enterprise. The court may consider taking steps to ensure attendance. Section 34A(1) and r.7.4(8) of the CrimPR provide the power to issue a summons (and in due course a warrant) to require attendance.

8. It may be that an older sibling or cousin, rather than a parent, will attend to accompany a young defendant to court. Depending on the circumstances, the court may need to make appropriate enquiries to ensure that the accompanying person (a) is an adult; (b) satisfies the definition of 'guardian' for the time being; and (c) is unconnected to the offence before the court.

9. There is no provision in the CYPA 1933 for an 'appropriate adult' in court. The legislation requires that the person present should be a parent or guardian. Section 34A(1) does, however, allow the court a discretion not to require a parent or guardian to attend if it would be 'unreasonable…having regard to the circumstances of the case'. There may be cases where objection is taken to any family member being present in court in the circumstances of the case. In such a situation, the court should comply with its duty to have regard to the welfare of the youth defendant by finding another suitable supporting adult, such as a member of the YOT/YJS.

10. The CrimPR now recognise that a defendant under 18 may be assisted by a 'supporting adult' other than a parent or guardian.[106]

11. In any event, it is clearly good practice to ensure that a parent is aware of the hearing. This can be done by a telephone call from the defendant's legal representative or a member of the YOT/YJS.

12. Whether a parent, a guardian or another adult, the court should ensure that the suitable supporting adult is available throughout the course of proceedings: CrimPD para.6.4.2(d).

[106] See, for example, r.64.1(c) and the note to r.25.1.

11. REPORTING RESTRICTIONS

11-1 General principles

1. The general rule for all cases is that the administration of justice must be carried out in public. Accordingly, in the majority of criminal cases, the public and the media have the right to attend court hearings, and the media have the right to report those proceedings fully and contemporaneously.
2. Although the 'open justice' principle is a fundamental one, there are a number of statutory exceptions to it. In so far as reporting by the media is concerned, those statutory exceptions may impose automatic reporting restrictions,[107] or may provide the court with a discretionary power to impose reporting restrictions in certain circumstances.
3. Where the power is discretionary, reporting restrictions will only be imposed where the court is satisfied that it is necessary to do so on the basis of clear and cogent evidence. Any restrictions that are imposed must be proportionate, going no further than is necessary to meet the relevant objective.
4. It will be for the party seeking the restriction to establish why it is necessary to make such an order.

11-2 Further guidance

5. Further guidance on reporting restrictions can be found in the Judicial College's publication, *Reporting Restrictions in the Criminal Courts* (July 2023).

11-3 Definitions

6. 'Media'[108] includes the press, radio, television, press agencies, and online media including social media websites, and any reporting restrictions thus apply to individual users of social media as well as to publishers and broadcasters.
7. 'Publication' is defined as including 'any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public': CYPA 1933, s.39(3), s.49(3); YJCEA 1999, s.63(1). It therefore includes material published by print media, broadcast media or online media such as X (formerly known as Twitter) and Facebook.

11-4 Restrictions relating to defendants under 18

8. The principal statutory powers which exist to restrict reporting in relation to matters concerning defendants under 18 are contained in:
   (1) CYPA 1933, s.49 – an automatic restriction, which applies to defendants (and witnesses) under 18 in proceedings in, and on appeal from, the youth court;

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[107] For example: s.1 Sexual Offences (Amendment) Act 1992, which protects the identity of a complainant of a sexual offence for life.

[108] Reference to 'the media' is made throughout the Judicial College's publication.

(2) YJCEA 1999, s.45 – a discretionary restriction, which applies to defendants under 18 in proceedings in any court other than the youth court; and

(3) CYPA 1933, s.39 – a discretionary restriction, which applies to defendants under 18 in civil and family proceedings, and proceedings in any court in respect of civil orders dealing with anti-social behaviour (injunctions or criminal behaviour orders).

9. Section 44 of the YJCEA 1999, which provides for an automatic restriction prohibiting the publication of any matter likely to identify a person under 18 who is the subject of a criminal investigation, has not yet been brought into force.

10. The power contained in the YJCEA 1999, s.45A to restrict reporting of criminal proceedings for the lifetime of the person concerned, applies to witnesses and victims but not defendants.

11-5 Proceedings in youth courts and appeals from the youth court: CYPA 1933, s.49

5A. Scope of the restrictions

11. Unlike proceedings in the magistrates' court and Crown Court, proceedings in the youth court are not open to the general public: CYPA 1933, s.47(2). 'Bona fide representatives of newspapers or news agencies' are permitted to attend, and to report upon the proceedings, but they are subject to the restrictions contained in s.49, which provides that they are prohibited from publishing the name, address, school/educational establishment, place of work or still/moving picture of a defendant or witness under the age of 18 if such publication is likely to lead members of the public to identify that person as a person concerned in proceedings: s.49(1), (3A).

12. The restrictions contained in s.49 apply not only to proceedings in a youth court but also to proceedings in the Crown Court on appeal from a youth court and proceedings on appeal from a magistrates' court for breach/revocation/amendment of a youth rehabilitation order: s.49(2).

13. The restrictions are mandatory and automatic.[109] Therefore, the Crown Court need not generally make any specific order relating to it, although it may (if thought appropriate to do so) remind the parties and media that there are automatic restrictions on reporting.

14. These restrictions apply to any defendant or witness under 18 appearing in relevant proceedings in the Crown Court.

15. Unless lifted, these restrictions remain in force until the defendant or witness is 18 and until all proceedings have been completed: s.49(1).

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[109] Save for a qualification under s.49(10), which provides that, if the Crown Court is hearing an appeal from a magistrates' court other than a youth court for breach, revocation or amendment of a youth rehabilitation order, the court must announce that s.49 applies in order for the restriction to apply. In practice, it is difficult to see how s.49 could ever apply in such circumstances given that the adult magistrates' court would only have had jurisdiction where the offender subject to the YRO had already turned 18.

5B. Breach

16. If a publication includes any matter in contravention of the restrictions contained in s.49, the editor and/or publisher shall be guilty of an offence and liable on summary conviction to an unlimited fine: s.49(9).

5C. Variation and lifting of the restrictions

17. Although s.49 reporting restrictions are mandatory, they may be dispensed with to any specified extent if the court is satisfied that it is:
    (1) in the public interest to do so in relation to a child or young person who has been convicted of an offence, in relation to certain proceedings: s.49(4A).
    (2) appropriate to do so to avoid injustice to the child or young person: s.49(5)(a); or
    (3) necessary to do so for the purpose of apprehending a child or young person who is unlawfully at large; and who has been charged with, or convicted of, a violent offence (an offence specified in the SC, sch.18, pt.1), or a sexual offence (an offence specified in the SC, sch.18, pt.2), or a terrorism offence (an offence specified in the SC, sch.18, pt.3), or an offence punishable with imprisonment for 14 years or more in the case of an adult: s.49(5)(b).
18. The court shall only exercise power in s.49(5)(b) in pursuance of an application by the Director of Public Prosecutions: s.49(7)(a).

5D. Procedure

19. In relation to the power under s.49(4A), the court is required to afford the parties to make representations and must take into account any such representations: s.49(4B).
20. In relation to the power under s.49(5)(b), the legal representatives of the defendant must have been given notice of the application by the DPP: s.49(7)(b).
21. The procedure for making an application to vary or lift a s.49 reporting restriction is set out in the CrimPR 2020 Part 6 (see below at section 6B).

11-6 Young defendants in the Crown Court – YJCEA 1999, s.45

6A. Scope of the restriction

22. Section 45 of the YJCEA 1999 provides the court with a discretionary power to make an order imposing reporting restrictions to protect the identification of any young person under 18 who is concerned in criminal proceedings.
23. When deciding whether to make such an order, the court has to balance the strong public interest in open justice with the statutory obligation, set out in the CYPA 1933, s.44 and reflected in the YJCEA 1999, s.45(6), to have regard to the welfare of the child. The court must therefore be satisfied that, in the circumstances of the particular case, the welfare of the young defendant outweighs the public interest in open justice to the extent that a reporting restriction is necessary.

24. Where a s.45 order is made, the court may direct that no matter relating to any person concerned in the proceedings shall, while he/she is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him/her as a person concerned in the proceedings: s.45(3).
25. The matters relating to the person to which the restrictions will apply include, in particular, the name, address, identity of the school/educational establishment, any place of work and any still/moving picture of the child or young person: s.45(8).
26. The power applies to any criminal proceedings in any court: s.45(1).
27. A 'person concerned in the proceedings' is any defendant or witness: s.45(7). The relevance of these words is that it confines the restriction to matters connected to 'the proceedings' and does not prevent publication of the child or young person's name in connection with wholly unrelated matters.
28. The court should ensure that a s.45 order is considered at the earliest opportunity. Where a case is sent or committed from the youth court, then the s.49 automatic restrictions will fall away. If a case is sent by an adult magistrates' court, no s.49 restriction will have applied. A youth or magistrates' court may make a s.45 order which will apply in the Crown Court when the case continues there,[110] but the Crown Court should note such an order or make its own order before it publishes the name of any youth defendant listed for a plea and trial preparation hearing (PTPH) or committal for sentence.

6B. Procedure

29. The procedure to make an application to impose a discretionary reporting restriction (or to vary or remove a restriction) is set out in the CrimPR 2020, Part 6.
30. The court may impose (or vary or remove) reporting restrictions on application by a party or on its own initiative: r.6.4(2), 6.5(2).
31. The court may determine an application at a hearing in public or private or without a hearing: r.6.2(2). Each party and any other person directly affected must be present or have had an opportunity to attend or make representations: r.6.2(3).
32. The court may require an application to be made in writing instead of orally: r.6.3(1)(b).
33. Where a party wishes to make an application for (or to vary or remove) reporting restrictions, they must:
    (1) apply as soon as is reasonably practicable: rr.6.4(3)(a), 6.5(3)(a);
    (2) notify each other party and any other person the court directs (eg a media representative): rr.6.4(3)(b), 6.5(3)(b);
    (3) specify the proposed terms of the order and for how long it should last: r.6.4(3)(c) or specify the restrictions: r.6.5(3)(b);

[110] See CrimPR 2020, r.3.5(3).

(4) explain what power the court has to make the order, and why an order in the proposed terms is necessary: r.6.4(3)(d) or explain why the restrictions should be varied or removed: r.6.5(3)(d).

6C. Representations in response

34. An application for reporting restrictions will often be challenged by the media who, as a person or body 'directly affected' by any proposed order, have a right to make representations to the court.

35. Where any party or person directly affected wants to make representations about an application to impose (or to vary or remove) restrictions, that party or person must, as soon as reasonably practicable (r.6.7(2)(b)):

(1) serve their representations on the court, the applicant, each other party, and any other person the court directs: r.6.7(2)(a);

(2) ask for a hearing if required, and explain why a hearing is needed: r.6.7(2)(c);

(3) explain in their representations the reasons for any objection and specify any alternative terms proposed: r.6.7(3).

36. The requirement that interested parties, such as the media, must be provided with the opportunity to make representations before restrictions are imposed is emphasised in CrimPD para.6.3.55.[111] The current version of Reporting Restrictions in the Criminal Courts recognises that there may be circumstances in which there is an 'urgent need' for at least temporary restrictions, and that in those circumstances the media should be enabled to make representations as soon as practicable after the order has been made. Previous iterations of the CrimPD suggested that any order should provide for any interested party who has not been present or represented at the time of the making of the order, to have permission to apply with a limited period, eg 24 hours. Representations can be made by live link.

6D. Test to be applied

37. When deciding whether an order should be made, the court must:

(1) have regard to the importance of dealing with criminal cases in public and allowing a public hearing to be reported: CrimPR 2020, r.6.2; CrimPD para.2.1.2;

(2) be satisfied that the purpose of the proposed order cannot be achieved by some lesser measure – for example, special measures;

(3) have regard to the welfare of the child or young person: CYPA 1933, s.44;

(4) ensure that the proposed terms of any order are proportionate and comply with the ECHR, Art.10 (freedom of expression).

[111] Although this direction is specifically given in the CrimPD in relation to procedures utilising the YJCEA 1999, s.28, it clearly has wider application.

38. In essence, therefore, what the court is required to do is to carry out a balancing exercise weighing up the welfare of the child or young person on the one hand, and the principles of open justice and freedom of expression, on the other.

39. Section 45 of the YJCEA 1999 replaced similar provisions in the CYPA 1933, s.39 for criminal proceedings.[112] Cases determined under the 1933 Act remain relevant and continue to provide guidance to the principles and practice to be followed in exercising this power.[113]

40. In *McKerry v Teesdale and Wear Valley Justices*,[114] Lord Bingham CJ stated:

> '[19]…It is a hallowed principle that justice is administered in public, open to full and fair reporting of the proceedings in court, so that the public may be informed about the justice administered in their name. That principle comes into collision with another important principle, also of great importance and reflected in the international instruments to which I have made reference, that the privacy of a child or young person involved in legal proceedings must be carefully protected, and very great weight must be given to the welfare of such child or young person.'

41. In *R v Aylesbury Crown Court and others*,[115] the Divisional Court drew attention to the mandatory requirement under the CYPA 1933, s.44 to have regard to the welfare of the child or young person when considering an application for reporting restrictions, as well as to the public interest in open justice and freedom of expression. The court noted that any order restricting publication must be necessary, proportionate and there must be a pressing social need for it. Having done so, they went on to state that:

> '[46] The court must thus balance the welfare of the child or young person, which is likely to favour a restriction on publication, with the public interest and the requirements of Article 10, which are likely to favour no restriction on publication. Prior to conviction, the welfare of the child or young person is likely to take precedence over the public interest. After conviction, the age of the defendant and the seriousness of the crime of which he or she has been convicted will be particularly relevant.
>
> [47] What the court should do is to identify the factors which would favour restriction on publication and the factors which would favour no restriction. The court may also decide…to permit the publication of some details but not all.
>
> [48] If, having conducted the balancing exercise between the welfare of the child or young person, on the one hand, and the public interest and the requirements of Article 10 on the other, the factors favouring a restriction on publication and the factors favouring publication are very evenly balanced, then it seems to us, for the reasons given by Lord Bingham CJ in *McKerry v*

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112 As of 13 April 2015.

113 *R v H* [2015] EWCA Crim 1579. *R v KL* [2021] EWCA Crim 200 [2021] 2 Cr.App.R.4.

114 [2000] 2 WLUK 243; (2000) 164 JP 355; the case was concerned with the power of the youth court to dispense with reporting restrictions for a convicted defendant under the CYPA 1933, s.49(4A).

115 [2012] EWHC 1140 (Admin).

> *Teesdale and Wear Valley Justices*, that a court should make an order restraining publication.'

42. It is suggested that, in the majority of cases where the defendant is under 18, the welfare of the child or young person is likely to outweigh the public interest in public reporting; this is particularly so in a case where the child or young person is only on trial in the Crown Court because he/she has been jointly charged with an adult, and where – were they being tried alone – the trial would be taking place in the youth court where they would have the protection of the automatic prohibition provided by the CYPA 1933, s.49.[116]

43. Note, however, that age alone is not sufficient to justify reporting restrictions. In *R v Lee (a minor)*,[117] the Court of Appeal observed that the mere fact that the defendant was under 18 was not, in itself, an overwhelming or automatic justification for an order restricting the identification of the defendant. There should be no presumption that an order will be made in respect of a young defendant; the court has an unfettered discretion.

44. It is for the party seeking the reporting restrictions to establish that a direction is necessary. There is no specific standard of proof.

6E. Terms of the order

45. The basic order should follow the wording of s.45(3) by which the court may direct that:

> 'no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.'

46. Note that this provision serves to prevent the identification of '**any person concerned in the proceedings**...while he is under the age of 18' (emphasis added). Its application is dependent on age. It is not dependent on what role that young person has in proceedings (eg as the defendant). The order prevents the identification of the person as someone 'concerned in the proceedings'; it follows that the media are not prohibited from reporting on other matters involving the child or young person that are wholly unconnected with 'the proceedings'.

47. The precise terms of the order are for the court to determine, but s.45(8) sets out that the matters relating to the person to which the restrictions will apply include, in particular, the name, address, identity of the school/educational

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116 CPS guidance – *Children as suspects and defendants* [May 2023] – deals with reporting restrictions and makes clear that the prosecution should be in a position to assist the court and to make submissions on the application of s.45. The guidance emphasises that, prior to conviction, the welfare of the child or young person is likely to take precedence over the public interest. After conviction, the age of the defendant and the seriousness of the crime of which they have been convicted will be particularly relevant.

117 [1993] 1 WLR 103.

establishment, any place of work and any still/moving picture of the child or young person.

48. CrimPD 2015 I, 6B stated that the written order must be in precise terms and, where practicable, agreed with the advocates. These requirements have not been replicated in CrimPD 2023. It is, however, recommended that they be followed as representing good practice. Accordingly, the order should include details of:

    (1) the power under which the order was made;

    (2) its precise scope and purpose (eg when it was made, the reason for the order and who is affected by it);

    (3) the time at which it will cease to have effect (if appropriate); and

    (4) whether or not the making, or the terms, of the order may be reported.

49. If a direction is made under s.45 (or if an order is made to vary or remove such a direction), the judge should give reasons for the order which should be recorded in the court record: CrimPR 2020, r.6.8(2)(a). The order itself should be drawn up in writing as soon as possible. It should be framed in appropriate terms to cover all forms of publication.[118] It is the responsibility of the judge to ensure that the order is properly drawn up. Appendix II of *Reporting Restrictions in the Criminal Courts* (July 2023) contains templates for all orders made under any of the discretionary reporting restrictions powers.

50. Copies of the written order should be provided to the parties, the media and any person known to have an interest in reporting the proceedings. The court officer must, as soon as reasonably practicable, arrange for notice of the decision to be displayed somewhere prominent in the vicinity of the courtroom and for the decision to be communicated to reporters: CrimPR 2020, r.6.8(2)(b). The fact that an order has been made should be communicated to anyone who was not present – for example by a note on the daily list, and by affixing a copy of the notice to the courtroom door. Electronic systems should be updated, and all staff and media alerted to the fact that reporting restrictions are in place.[119]

51. Unless varied or lifted at an earlier stage, the order will remain in force until the person concerned is 18. The only power to extend anonymity beyond a defendant's 18th birthday is to be found in the common law jurisdiction to make a 'contra mundum' direction (also known as a *Venables* or *Mary Bell* order). Such directions are exceptionally rare.[120]

6F. Breach

52. Publication in breach of an order made under s.45(3) is an offence punishable on summary conviction with an unlimited fine: YJCEA 1999, s.49.

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118 *R v Ayam Aziz* [2019] EWCA Crim 1568.

119 See *Jurisdictional guidance to support media access to courts and tribunals – Criminal Courts Guide – HMCTS* [updated April 2023].

120 For the principles to be applied, see *RXG* [2019] EWHC 2026.

6G. Variation and removal

53. There are two bases upon which a s.45 order can be varied or removed.

54. Section 45(4) states that the court may, by direction – referred to as 'an excepting direction' – dispense to any extent specified in that direction, with the restrictions imposed by an order under s.45(3) if satisfied that it is necessary and in the interests of justice to do so.

55. The court can also make an excepting direction under s.45(5) if it is satisfied that the effect of the s.45(3) order is to impose a 'substantial and unreasonable restriction' on the reporting of the proceedings, and, that it is in the public interest to remove or relax that restriction.

56. The court may make a direction to vary or remove reporting restrictions on application by a party or person directly affected by it, or on its own initiative. An application to vary or to vary or remove reporting restrictions (whether an automatic or a discretionary order) is most likely to be made following conviction or sentence. As such, the court should remind itself of the general approach to dealing with children and young persons as set out in section 1 of the Youth Guideline.

57. The procedure to be followed when varying or removing reporting restrictions is contained in the CrimPR 2020, Part 6 (see 6B above).

58. Where an application to vary or remove restrictions is made, the judge will still have to perform the balancing exercise between the welfare and Article 8 rights of the child as against the public interest and Article 10 rights to freedom of expression.

59. In *R v Winchester Crown Court*.[121] Simon Brown LJ stated that:

> 'iv) The prospect of being named in court with the accompanying disgrace is a powerful deterrent and the naming of a defendant in the context of his punishment serves as a deterrent to others. These deterrents are proper objectives for the court to seek[122];
>
> v) There is a strong public interest in open justice and in the public knowing as much as possible about what has happened in court, including the identity of those who have committed the crime;
>
> vi) The weight to be attributed to the different factors may shift at different stages of the proceedings and, in particular, after the defendant has been found, or pleads guilty and is sentenced. It may then be appropriate to place greater weight on the interests of the public in knowing the identity of those who have committed crimes, particularly serious and detestable crimes.'

60. Nevertheless, the judge must keep in mind that the principal aim of the youth justice system is to prevent offending,[123] and that, if the identity of the offender is made public, that may have a detrimental effect on his/her rehabilitation – or,

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121 [2000] 1 Cr.App.R. 11, at 13.

122 It will be noted that this observation is in contradistinction to the fact that deterrence is not a recognised purpose in the context of the punishment of a youth defendant nor intended by Parliament so to be in the future: see chapter 2 and chapter 15 (15-2).

123 CDA 1998, s.37.

in some cases, safety – which may in turn impede the effectiveness of that principal aim. The court should also remember that it is a fundamental principle that every court in dealing with a child or young person before it must have regard to their welfare.[124]

61. Moreover, it was made clear in *R v Aylesbury Crown Court and others* that it would be wrong to lift reporting restrictions as a way of 'naming and shaming' the defendant or as an additional punishment.

62. In *Venables and Thompson and News Group Papers Ltd, and A Newspapers Ltd, and MGM Ltd*,[125] it was stated that:

> 'The public interest also demands a good opportunity of rehabilitation, including the opportunity to be brought up in a secure way so as to facilitate their rehabilitation…Removal of anonymity will result in other youths in a YOI or secure unit knowing what the youth had done, which would inevitably be disseminated to the wider public. This could lead to a youth being ostracised or harmed by others in the unit, in their location being disclosed to the media for payment, in the parents of other youths insisting that their children be removed from the units…and in the units being subjected to anonymous threats.'

63. Where, therefore, consideration is given to whether restrictions should be lifted, it would be advisable to seek the views of the YOT/YJS and/or place of detention such as the young offenders' institution (as appropriate) as to what impact identification may have on the offender (or others) in any particular case.

64. An example of a case where it was determined that the public interest outweighed the interests of the young offenders was *R v Markham and Edwards*,[126] a murder case in which the victims were the mother and sister of one of the two child defendants. The Court of Appeal upheld a decision by the trial judge to lift reporting restrictions following conviction on the basis that the defendants were guilty of an exceptionally grave crime in which there was substantial public interest, and where, if the identity of the defendants was not known, it would be impossible to understand that the murders had taken place in a family context, leaving a vacuum that 'exacerbates the risk of uninformed and inaccurate comment.'

65. The President of the King's Bench Division recently reviewed the authorities and summarised the relevant principles concerning the making of an exception direction in *R v KL*:[127]

> '(1) the general approach to be taken is that reports of proceedings in open court should not be restricted unless there are reasons to do so which outweigh the legitimate interests of the public in receiving fair and accurate reports of criminal proceedings and in knowing the identity of those in the community who have been guilty of criminal conduct;

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124 CYPA 1933, s.44(1). See chapter 2.
125 [2001] EWHC QB 32.
126 [2017] EWCA Crim 739.
127 [2021] EWCA Crim 200; [2021] 2 Cr.App.R.4, at [67].

> (2) the fact that the person before the court is a child or young person will normally be a good reason for restricting reports of the proceedings in the way permitted by the legislation; and it will only be in rare cases that a direction under s.45(3) of the 1999 Act will not be given or, having been given, will be discharged;
>
> (3) the reason why removal of a restriction will be rare is the very great weight that the court must give to the welfare of a child or young person. In practical terms, this means that the power to dispense with anonymity must be exercise with "very great care, caution and circumspection"…
>
> (4) however, the welfare of the child or young person will not always trump other considerations. Even in the Youth Court, where the regime requires that proceedings should be held in private, with the public excluded, the court has power to lift restrictions. When a juvenile is tried on indictment in the Crown Court there is a strong presumption that justice takes place in open court and the press may report the proceedings.
>
> (5) the decision for the trial judge is a case specific and discretionary assessment where, guided by the above considerations, a balance falls to be struck between the interests of the child and the wider public interest in open justice and unrestricted reporting…'

66. The fact that the defendant's identity is already known to some people in the community is not necessarily a reason to allow wider publication.[128]

67. Note that reporting restrictions may be lifted in whole or in part; for example, a court may direct that the name of the defendant can be published, but not a photograph, address, or details of the offender's school or place of work.

68. As with an original direction for reporting restrictions, any order for variation or removal must be displayed and communicated as soon as reasonably practicable in accordance with the CrimPR 2020, r.6.8(2). The court's reasons for its decision must be recorded: r.6.8(1).

69. The judge should consider whether or not any restrictions should remain in force until after any appeal (or time to lodge an appeal) has concluded.

11-7 Injunctions and Criminal Behaviour Orders – CYPA 1933, s.39

70. Anti-Social Behaviour Orders (ASBOs) have been replaced, in civil proceedings, by injunctions and, in criminal proceedings, by criminal behaviour orders.

7A. Injunctions

71. Part 1 of the ASBCPA 2014 provides for civil injunctions for anti-social behaviour. It provides a court with the power to grant an injunction against any person aged 10 or over (the respondent), if the court is satisfied that the respondent has engaged or threatens to engage in anti-social behaviour and it is just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour. Such an injunction may

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[128] *R(Y) v Aylesbury Crown Court and Others* [2012] EWHC 1140 (Admin).

include prohibitions and requirements necessary for the purpose of preventing the respondent from engaging in such behaviour: s.1.

72. Where the respondent is aged under 18, an application is made to a youth court: s.1(8)(a). Any breach of an injunction by a respondent aged under 18 will also be dealt with by a youth court: s.10(2)(c), (6)(a). Section 15 of the ASBCPA 2014 provides that an appeal lies to the Crown Court against any decision of a youth court under pt.1 of the 2014 Act.

73. Section 17 of the ASBCPA 2014 expressly disapplies the automatic reporting restrictions contained in s.49 of the CYPA 1933. The youth court and Crown Court, however, do retain a discretion to impose a reporting restriction under s.39 of the CYPA 1933.

74. Pursuant to s.39, the court may direct that the following may not be included in a publication:

    (1) the name, address or school of the child or young person concerned in the proceedings: s.39(1)(a);

    (2) any particulars calculated to lead to the identification of the child or young person: s.39(1)(aa);

    (3) a picture of the child or young person: s.39(1)(b).

75. As part of its power, the court may permit exceptions to such a reporting restriction: s.39(1).

76. Breach of a s.39 direction is a summary offence punishable with an unlimited fine: s.39(2).

7B. Criminal behaviour orders

77. Chapter 1 of pt.11 (ss.330-342) of the SC provides for criminal behaviour orders (CBOs). A court has the power to make a CBO in respect of any offender who has been convicted of an offence and either sentenced or conditionally discharged, where the court is satisfied that:

    (1) the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person: SC, s.331(2)(a), and,

    (2) making the order will help in preventing the offender from engaging in such behaviour: SC, s.331(2)(b).

78. Where a CBO is made against an offender who is under the age of 18, the automatic reporting restrictions contained in the CYPA 1933, s.49 do not apply but the discretionary power to direct reporting restrictions contained in the CYPA 1933, s.39 does apply: SC, s.332(8). This means that, in any appeal from the youth court to the Crown Court concerning the imposition of a CBO, there will be no automatic reporting restrictions concerning the child or young person. The Crown Court will need to consider its powers under s.39.

79. Where a CBO is imposed by the Crown Court at first instance, the court will already have considered whether reporting restrictions should be imposed under the YJCEA 1999, s.45.

80. Where a person appears before a court accused of being in breach of a CBO, the automatic reporting restrictions contained in the CYPA 1933, s.49 do not

apply but the discretionary power to direct reporting restrictions contained in the YJCEA 1999, s.45 does apply: SC, s.339(5).

12. BAIL AND REMAND

12-1 Introduction

1. Article 37(1) of the UN Convention on the Rights of the Child provides that the decision to deprive a child of his/her liberty should be a measure of last resort.
2. The Bail Act (BA) 1976 applies to children and young persons.
3. The Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 introduced a number of fundamental reforms which have intentionally restricted the use of custodial remands for children and young persons.[129] Parliament has further restricted the use of custodial remands by amendments to LASPOA 2012 contained in the PCSCA 2022.[130]
4. Part 14 of the CrimPR 2020 deals with bail and custody time limits.
5. It is vital to remember that the question of bail and remand for children and young persons is a two-stage process:
   (1) Will the defendant be granted bail, whether conditional or unconditional, in accordance with the BA 1976?
   (2) If the defendant is refused bail, will the remand be to local authority accommodation or to youth detention accommodation, in accordance with the LASPOA 2012?

12-2 Youth offending team/Youth justice service

6. The youth offending team (YOT) (now more commonly known as the youth justice service (YJS)) has an essential role to play in bail applications. The local YOT/YJS will provide key information to the court in order to assist its decision whether or not to grant bail and whether or not to remand into local authority accommodation or youth detention. Information from the YOT/YJS is a statutory requirement before certain decisions concerning bail and remand are made.[131]
7. Of course, remand decisions will already have been made before a youth defendant appears in the Crown Court. If further decisions need to be made, a member of the YOT/YJS is required to be present and will provide information about the defendant, such as details of his/her family circumstances, school attendance, response to current community orders and vulnerability.
8. The YOT/YJS may offer specifically tailored bail support packages in certain circumstances or upon request.

12-3 Bail Act 1976

9. For the purposes of bail, a ‘child’ is a person under the age of 14 and a ‘young person’ is a person who has attained the age of 14 and is under the age of 18: BA 1976, s.2(2).

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[129] Further restrictions are also contained in pt.8 of the Police, Crime, Sentencing and Courts Bill, currently before Parliament.
[130] PCSCA 2022, s.157, in force on 28 June 2022.
[131] For example, before imposing an electronic monitoring requirement to a curfew.

10. A child or young person accused of an offence and brought before the Crown Court has the same benefit of the presumption of bail as an adult accused of an offence: BA 1976, s.4. Similarly, a child or young person convicted of an offence whose case is adjourned for the purposes of reports has the benefit of the presumption of bail.

11. As with adult offenders, a child or young person charged with murder cannot be granted bail by the magistrates' court: BA 1976, s.4(7); CAJA 2009, s.115(1). However, the statutory restriction on bail in such cases does not remove the requirement on a magistrates' court to determine the second stage in the remand process, namely whether the defendant will be remanded to local authority accommodation or to youth detention accommodation.

12. The restrictions on bail in cases of homicide and rape contained in the CJPOA 1994, s.25 apply equally to young offenders as they do to adult offenders: BA 1976, s.4(8). Again, however, even if there are no exceptional circumstances which overcome the presumption against bail, the court (whether youth court, magistrates' court or Crown Court) will have to determine whether the defendant will be remanded to local authority accommodation or to youth detention accommodation.

13. The exceptions to bail contained within the BA 1976, sch.1, pt.I (imprisonable offences), pt.IA (imprisonable summary offences) and pt.II (non-imprisonable offences), apply generally to children and young persons as they do to adults, though with certain modifications:

    (1) The 'no real prospect of a custodial sentence' restrictions on the exceptions to bail in pt.I and pt.IA apply only to defendants who have attained the age of 18: BA 1976, sch.1, pt.I, para.1A(1)(a); pt.IA, para.1A(1)(a). This would appear to place a child or young person in a worse position than an adult offender, though it is important to remember that a refusal of bail for a child or young person will not automatically mean a remand into detention.

    (2) The court may refuse bail if satisfied that an adult or a young defendant should be kept in custody for their own protection but there is an additional exception for a child or young person – the defendant need not be granted bail if the court is satisfied that they should be kept in custody for their own welfare: BA 1976, sch.1, pt.I, para.3; pt.IA, para.5; pt.II, para.3. Similarly, the court may impose **conditions** on an adult or young defendant's bail for their own protection or, additionally, for a child or young person's welfare or in their own interests: BA 1976, sch.1, pt.I, para.8(1)(b).

    (3) The exception to bail applicable to drug users in certain areas applies only to defendants who are aged 18 or over: BA 1976, sch.1, pt.I, para.6B(1)(a).

    (4) The provisions contained in the BA 1976, sch.1, pt.I, paras.9AA-9AB apply only to child or young person defendants (and apply only in relation to offences for which the defendant is liable on conviction to imprisonment for life, detention during His Majesty's pleasure or custody for life). These provisions require a court to give particular weight to the fact that a defendant was on bail at the time of the offence or the fact that they previously failed to surrender to custody.

(5) A child or young person defendant accused or convicted of a non-imprisonable offence need not be granted bail if:

(a) it appears to the court that they previously failed to surrender to custody and the court believes that, as a result, they would fail to surrender to custody again: BA 1976, sch.1, pt.II, para.2(za)(i). Such an exception only applies to an adult once convicted of the non-imprisonable offence;

(b) having been released on bail in connection with the proceedings, they have been arrested in pursuance of the BA 1976, s.7 and the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, would fail to surrender, commit an offence, interfere with witnesses or otherwise obstruct the court of justice: BA 1976, sch.1, pt.II, para.5(za)(i). Such an exception only applies to an adult once convicted of the non-imprisonable offence.

Again, though these provisions appear to place a child or young person in a worse position than an adult offender, the refusal of bail will not automatically mean a remand into detention for the young defendant.

14. General provisions as to bail contained in the BA 1976, s.3, including the duty of a person to bail to surrender to custody, apply to children and young persons as they do to adults.

15. A child or young person may be required to comply with conditions whilst on bail: BA 1976, s.3(6). Whereas a condition of bail may be imposed if necessary for an adult or young defendant's own protection, there is an additional power for the court to impose a condition in relation to a child or young person if it is 'necessary for his own **welfare or in his own interests**': BA 1976, s.3(6)(ca).

16. It is important to note, however, that the imposition of electronic monitoring requirements (whether attached to a curfew condition or any other condition) is subject to the BA 1976, s.3AA in the case of a child or young person granted bail. The court may not impose electronic monitoring requirements on a child or young person unless four conditions are satisfied:[132]

(1) **First condition:** The defendant has attained the age of 12 years: s.3AA(2);

(2) **Second condition:** The defendant is charged with, or has been convicted of:

(a) a violent offence (murder or an offence specified in the SC, sch.18, pt.1),

(b) a sexual offence (an offence specified in the SC, sch.18, pt.2),

(c) a terrorism offence (an offence specified in the SC, sch.18, pt.3),

(d) an offence punishable with imprisonment for 14 years or more in the case of an adult, or

(e) one or more imprisonable offences which, taken together with any imprisonable offences of which he/she has previously been convicted (including equivalent offences outside the jurisdiction), would amount to a

[132] Note that these conditions mirror the conditions contained in the LASPOA 2012, s.94, which must be satisfied before the court imposes electronic monitoring requirements on a child or young person remanded to local authority accommodation. See below.

recent history of repeatedly committing imprisonable offences while remanded on bail or subject to a custodial remand (whether a remand to local authority accommodation, youth detention or equivalent outside the jurisdiction): s.3AA(3).

(3) **Third condition:** Electronic monitoring is available in the area (now universally satisfied): s.3AA(4).

(4) **Fourth condition:** The YOT/YJS has informed the court that, in its opinion, the imposition of electronic monitoring requirements will be suitable in this case: s.3AA(5).

17. Note that some offences which are regularly seen do not satisfy the second condition unless committed on bail or remand (for example, possession of an offensive weapon, possession of a bladed article).

18. Rule 14.12(2)(b) of the CrimPR 2020 requires a court to inform an appropriate adult for any defendant under the age of 16 of the identity of the person responsible for monitoring an electronic curfew and the means by which that monitor may be contacted.

19. There is no statutory restriction on attaching a 'doorstep condition' to a curfew requirement for a child or young person (subject to it appearing necessary to the court to achieve a purpose contained in the BA 1976, s.3(6)).

20. If a parent or guardian of a person aged under 17 consents to be surety for the defendant as a condition to their bail, the parent or guardian may not only be required to secure the defendant's attendance at court but may also be required to ensure that they comply with their conditions of bail (such as curfew, reporting etc.): BA 1976, s.3(7).

21. In certain cases, the YOT/YJS will recommend an intensive supervision and surveillance programme (ISSP) as part of a bail package. The principal aim is to prevent the commission of further offences. This is achieved by addressing the needs of the youth defendant by placing a particular emphasis on education and training. An ISSP is available for any child or young person who fulfils the necessary criteria. It only applies in cases where the offence is imprisonable and of sufficient gravity for the court to be considering a custodial remand. Judges should be aware that the ISSP is a limited resource. It is a non-statutory scheme funded by the Youth Justice Board. Even if a defendant is a suitable candidate, a place must be available.

22. The offence of absconding by a person released on bail, contrary to the BA 1976, s.6, applies equally to children and young persons as it does to adults. The maximum sentence in the Crown Court is 12 months' imprisonment. This will mean that the custodial options available to a youth defendant in the Crown Court will be a detention and training order of between 4 and 12 months.[133] [It should be noted that, between 7 February and 17 October 2023 inclusive, the Crown Court's powers were limited to six months because s.6(7) of the BA 1976 had been amended to provide that the maximum sentence in the Crown Court

[133] See chapter 16 (16-7).

would be "a term not exceeding the general limit in a magistrates' court", which was at that time six months. That amendment has now been reversed.][134]

23. A child or young person released on bail is liable to arrest under the BA 1976, s.7 in the same way as an adult released on bail.

12-4 Legal Aid, Sentencing and Punishment of Offenders Act 2012

24. If the court refuses bail in the case of a child or young person, the court must then go on to consider the nature of the remand, in accordance with the LASPOA 2012, ss.91-107.

25. The relevant provisions of the LASPOA 2012 refer to 'child' which means a person under the age of 18: LASPOA 2012, s.91(6).

26. The court may wish to obtain further information from the YOT/YJS before it considers the nature of the remand. In particular, it will frequently be the case that a remand to local authority accommodation will actually amount to a remand to a defendant's home as directed by the local authority. The court will need to consider whether such provision is appropriate in the case, whether conditions will need to be attached to such a remand and whether that information means that the criteria for a remand to youth detention have been met.

4A. Remand to local authority accommodation

27. If the court refuses bail, then it must remand to local authority accommodation in accordance with the LASPOA 2012, s.92 unless the conditions contained in s.98 or s.99 are satisfied.

28. A remand to local authority accommodation is a remand to accommodation provided by or on behalf of a local authority: LASPOA 2012, s.92(1). The court is required to designate the local authority which is to receive the child, which will be the local authority already looking after the child, or the local authority in which the child habitually resides, or the local authority in which the offence or one of the offences was committed: s.92(2)-(3). The local authority will then be under a duty to receive the child and arrange for their accommodation: s.92(4). Such a remand is a custodial remand (for certain purposes; see below) and gives the authority to a person acting on behalf of the designated local authority to detain the child: s.92(5).

29. A court remanding a child to local authority accommodation may require the child to comply with any conditions which could have been attached to a grant

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[134] The 7 February 2023 amendment was an error by the draftsman of the Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023/149. Those regulations amended various provisions which permitted the magistrates' court to impose 12 months' imprisonment for single either-way offences prior to the reduction in that power in March 2023. The draftsman did not recognise that absconding on bail is not an either-way offence but is sui generis and the existing reference to 12 months' imprisonment was to the Crown Court's powers not with reference to those of the magistrates' court. This error has now been corrected by the Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) (Revocation and Amendment) Regulations 2023/1108.

of bail (as long as it has first consulted with the local authority): LASPOA 2012, s.93(1), (4). It is important to note, however, that the imposition of electronic monitoring requirements (whether attached to a curfew condition or any other condition) is subject to s.94. The court may not impose electronic monitoring requirements on a child or young person unless five conditions are satisfied:[135]

(1) **First condition:** The defendant has attained the age of 12 years: s.94(2);

(2) **Second condition:** The defendant is charged with, or has been convicted of, at least one offence which is an imprisonable offence: s.94(3);

(3) **Third condition:** That imprisonable offence is:

(a) a violent offence (murder or an offence specified in the SC, sch.18, pt.1),

(b) a sexual offence (an offence specified in the SC, sch.18, pt.2),

(c) a terrorism offence (an offence specified in the SC, sch.18, pt.3),

(d) an offence punishable with imprisonment for 14 years or more in the case of an adult, or

(e) an offence which, taken together with any other imprisonable offences of which they have been charged or of which they have previously been convicted (including equivalent offences outside the jurisdiction), would amount to a recent history of repeatedly committing imprisonable offences while remanded on bail or subject to a custodial remand (whether a remand to local authority accommodation, youth detention or equivalent outside the jurisdiction): s.94(4).

(4) **Fourth condition:** Electronic monitoring is available in the area (now universally satisfied): s.94(5).

(5) **Fifth condition:** The YOT/YJS has informed the court that, in its opinion, the imposition of electronic monitoring requirements will be suitable in this case: s.94(6).

30. A court remanding a child to local authority accommodation may, after consulting with the local authority so far as is reasonably practicable, impose requirements on the local authority for securing the compliance by the child of any conditions: LASPOA 2012, s.93(3)(a), (4), (9).

31. The court remanding a child to local authority accommodation may, after consulting with the local authority so far as is reasonably practicable, impose requirements on the local authority stipulating that the child must not be placed with a named person: LASPOA 2012, s.93(3)(b), (4) (9).

32. As with a remand on bail, in certain cases the YOT/YJS may recommend an ISSP as part of the conditions attached to a remand into local authority accommodation (see para.21 above).

[135] Note that these conditions mirror the conditions contained in the BA 1976, s.3AA, which must be satisfied before the court imposes electronic monitoring requirements on a child or young person remanded on bail. See above.

33. The court is under a duty to explain to the child defendant in open court and in ordinary language why it is imposing (or, where it does so, varying) conditions: LASPOA 2012, s.93(7)(a).

34. If a constable has reasonable grounds for suspecting that a child has broken any of the conditions of their remand to local authority accommodation, he/she may be arrested and must be brought before a magistrates' court within 24 hours: LASPOA 2012, s.97(1).

35. A remand to local authority accommodation is a 'custodial remand' within the meaning of LASPOA 2012, Chapter 3 (ss.91-107), which means it is relevant to the history conditions contained in s.99 (below): s.94(9). However, a remand to local authority accommodation is **not** a 'remand in custody' for the purposes of the CJA 2003, s.240ZA, which means that such a remand does not count as time served by the offender as part of his/her sentence: CJA 2003, s.242(2).

36. A remand to local authority accommodation does attract custody time limits: Prosecution of Offences Act 1985, s.22(1), (11).

4B. Remand to youth detention accommodation

37. A remand to youth detention accommodation is a remand to a secure children's home, secure college, secure training centre, young offender institution or accommodation of a description used for the purposes of a detention and training order: LASPOA 2012, s.102(1)-(2).

38. There is a presumption that any child or young person who is refused bail will be remanded to local authority accommodation. The court may only remand a child or young person to youth detention accommodation if the first set of conditions in the LASPOA 2012, s.98 or the second set of conditions in s.99 are satisfied.

39. It is suggested that it is most helpful for the Crown Court judge to consider these provisions using the following steps (not quite in accordance with the order in which they are set out in s.98 or s.99).

40. STEP 1: **Interests & welfare:** Before deciding whether to remand a child to youth detention accommodation under either section, s.91(4A) LASPOA 2012 emphasises that the court must consider the interests and welfare of the child. The court is required to state in open court that it has done this: s.102(4)(za).

41. The first set of conditions for a remand to youth detention accommodation are set out in the LASPOA 2012, s.98:

    STEP 2: **Age** condition: The child has reached the age of 12: s.98(2);

    STEP 3: **Legal representation** condition: Either:

    (a) the child is legally represented before the court: s.98(5); or

    (b) the child is not legally represented and:

        i. publicly funded representation was provided but withdrawn because of the child's conduct or because their financial resources meant they were not eligible: s.98(6)(a);

        ii. the child applied for publicly funded representation but their financial resources meant they were not eligible: s.98(6)(b);

iii. the child was informed of their right to apply for publicly funded representation and was given the opportunity to do so but they refused or failed to apply: s.98(6)(c).

STEP 4: **Offence** condition: At least one offence with which the child is charged or convicted is:

(a) a violent offence (murder or an offence specified in the SC, sch.18, pt.1),

(b) a sexual offence (an offence specified in the SC, sch.18, pt.2),

(c) a terrorism offence (an offence specified in the SC, sch.18, pt.3), or

(d) an offence punishable with imprisonment for 14 years or more in the case of an adult: s.98(3).

STEP 5: **Sentencing** condition: It appears to the court that it is very likely that the child will be sentenced to a custodial sentence: s.98(2A).

STEP 6: **Necessity** condition: The court is of the opinion, having considered all options, that only remanding 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 committed by the child, or

(b) to prevent the commission by the child of imprisonable offences

and that the risks posed by the child cannot be managed safely in the community: s.98(4).

42. As far as the legal representation condition is concerned, any defendant under the age of 18 is deemed to have financial resources such that they are eligible for legal representation: Criminal Legal Aid (Financial Resources) Regulations 2013, reg.22.

43. Note that some offences which are regularly seen do not satisfy the offence condition in s.98 (for example, possession of an offensive weapon, possession of a bladed article).

44. The second set of conditions for a remand to youth detention accommodation are set out in the LASPOA 2012, s.99:

STEP 2: **Age** condition: The child has reached the age of 12: s.99(2);

STEP 3: **Legal representation** condition: either:

(a) the child is legally represented before the court: s.99(8); or

(b) the child is not legally represented and:

i. publicly funded representation was provided but withdrawn because of the child's conduct or because their financial resources meant they were not eligible: s.99(9)(a);

ii. the child applied for publicly funded representation, but their financial resources meant they were not eligible: s.99(9)(b);

iii. the child was informed of their right to apply for publicly funded representation and was given the opportunity to do so but they refused or failed to apply: s.99(9)(c).

STEP 4: **Offence** condition: At least one offence with which the child is charged or convicted is an imprisonable offence: s.99(4);

STEP 5: **History** condition: either:

(a) the child has a recent and significant history of absconding while subject to a custodial remand, and it appears to the court that the history is relevant in all the circumstances of the case, and at least one of the offences they now face is alleged to have been committed while the child was remanded to local authority accommodation or youth detention accommodation: s.99(5); or

(b) the offence or offences now faced, together with any other imprisonable offences of which the child has been convicted, would amount to a recent and significant history of committing imprisonable offences while on bail or subject to a custodial remand, and this appears to the court relevant in all the circumstances of the case: s.99(6).

STEP 6: **Sentencing** condition: It is very likely that the child will be sentenced to a custodial sentence: s.99(3);

STEP 7: **Necessity** condition: The court is of the opinion, having considered all options, that only remanding 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 committed by the child, or

(b) to prevent the commission by the child of imprisonable offences

and that the risks posed by the child cannot be managed safely in the community: s.99(7).

45. As far as the legal representation condition is concerned, any defendant under the age of 18 is deemed to have financial resources such that they are eligible for legal representation: Criminal Legal Aid (Financial Resources) Regulations 2013, reg.22.46. It is sometimes overlooked that the second history condition in the LASPOA 2012, s.99 requires offences to have been committed whilst on bail or whilst subject to a custodial remand. In practice, each of the history conditions in s.99 is infrequently satisfied.

46. FINAL STEP: **Reasons:** If remanding to youth detention accommodation, the court must state in open court that it is of the opinion that the necessity condition is satisfied and must explain to the child in open court and ordinary language why it is of that opinion: LASPOA 2012, s.102(4). Furthermore, the court must ensure that its reasons are given **in writing** to the child, to their lawyer and to the YOT/YJS: s.102(5)(za). Where a court remands to youth detention accommodation, the court is required to designate the local authority to make arrangements, which will be the local authority already looking after the child or the local authority in which the child habitually resides or the local authority in which the offence or one of the offences was committed: LASPOA 2012, s.102(6)-(7J).

47. A child who is remanded to youth detention accommodation is to be treated as a child who is looked after by the designated authority: LASPOA 2012, s.104(1).

48. A remand to youth detention accommodation is a 'custodial remand' within the meaning of LASPOA 2012, Chapter 3 (ss.91-107), which means it is relevant to the history conditions contained in s.99 (above): s.94(9). Furthermore, unlike a remand to local authority accommodation, a remand to youth detention accommodation **is** a 'remand in custody' for the purposes of the CJA 2003, s.240ZA: CJA 2003, s.242(2). This means that such a remand does count as time served by the offender as part of his/her sentence. This is applicable if the sentence is one of detention in a young offender institution, detention under the SC, s.250, detention for life, an extended sentence or a special sentence for an offender of particular concern of detention: CJA 2003, s.240ZA(11). Since 28 June 2022, time on remand to youth detention accommodation has also automatically counted towards time served on a detention and training order.[136]

    A remand to youth detention accommodation does attract custody time limits: Prosecution of Offences Act 1985, s.22(1), (11).

[136] See chapter 16 (16-7).

13. CASE MANAGEMENT

13-1 Introduction

1. In preparation for trial, CrimPR 2020, r.3.8(3)(b) requires the court to take 'every reasonable step…to facilitate the participation of any person, including the defendant'.
2. Facilitating participation includes 'enabling a[n]…accused to give their best evidence and enabling an accused to comprehend the proceedings. The pre-trial and trial process should, so far as necessary, be adapted to meet those ends': CrimPD para.6.1.1.
3. In making such adaptations, where the defendant is a child or young person, the court is also required to have regard to the welfare of that young defendant: CYPA 1933, s.44.
4. The Court of Appeal has recently reminded the Crown Court of the importance of facilitating the effective participation of a youth defendant and the various measures (detailed below) which should be employed to that end.[137]
5. Facilitating participation requires the judge to be proactive in cases which involve a young defendant. As was observed by the European Court of Human Rights in *T v UK*, *V v UK (Thompson and Venables)*,[138] if the 'full rigours of an adult public trial' are applied in the trial of a child, the defendant may thereby be deprived of the opportunity to participate effectively in his/her trial; a young defendant must be dealt with in a manner which takes account of their age, level of maturity and intellectual and emotional capacity.

13-2 Pre-trial: the PTPH

6. In *R v Grant-Murray*,[139] the court stressed the importance of focusing on the needs of a young or vulnerable defendant at the earliest possible stage in the proceedings. In order to achieve that focus, the court invited the Criminal Procedure Rule Committee to include, in a revised PTPH form, a checklist of all the relevant matters that need to be considered when a child or young person is tried in the Crown Court. The current version of the PTPH form[140] contains that checklist in an expandable box headed 'Young/Vulnerable/Intimidated Defendants – Measures to assist that can be granted at PTPH'.
7. This comprehensive list of measures refers to and closely follows CrimPD 2015 3C-3G. Many of these measures are reproduced in CrimPD 2023 at 6.4. The checklist requires the judge to consider, at this early stage, both pre-trial issues and any adaptations that should be made to the trial process.

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137 *R v ZA* [2023] EWCA Crim 596.
138 [2000] 30 EHRR 121.
139 [2017] EWCA Crim 1228.
140 Effective from July 2019. Though this version of the PTPH form still refers to the CrimPD 2015, all of the checklist remains valid.

8. Proper consideration of the particular needs of the young defendant is essential and the judge will be required to give reasons for any departure from the relevant provisions of the CrimPD.
9. In deciding which adaptations are appropriate, in so far as possible the Crown Court should adopt the practice and procedure that applies in the youth court. The court should, in addition, keep in mind that a young defendant may well be vulnerable for reasons in addition to youth.
10. Measures that the court must consider at the PTPH are set out below.

2A. Attendance of parent or guardian

11. See chapter 10.

2B. Determining age – 'deeming'

12. The age of a youth defendant is a very important matter, particularly in relation to determining the jurisdiction of the youth court, the appropriate method for allocation to the Crown Court and for the purposes of sentencing. The Crown Court will expect the magistrates' court or youth court to have made the relevant finding as to a youth defendant's age and there is no right to appeal that finding to the Crown Court, but new material may come to light which requires the Crown Court to consider the matter again.
13. See chapter 15 (at 5C).

2C. Reporting restrictions

14. See chapter 11.

2D. Legal representation

15. Any defendant under the age of 18 is deemed to have financial resources such that they are eligible for legal aid representation: Criminal Legal Aid (Financial Resources) Regulations 2013, reg.22.
16. The defence representative has a duty to provide information about a young defendant's welfare to assist the court in making appropriate arrangements: CrimPD para.6.4.2(j).

2E. Pre-trial visit and familiarisation

17. The court should give consideration to an opportunity for a youth defendant to visit, out of court hours and before the trial/sentencing hearing, the courtroom in which the hearing is to take place so that they can familiarise themselves with it. Any intermediary for that youth defendant should accompany the defendant on a pre-trial visit: CrimPD para.6.4.2(b).
18. If a youth defendant's use of live link is being considered, they should have an opportunity to have a practice session (but see below): CrimPD para.6.4.2(c).

2F. Arrangements for attendance at court

19. **Suitability of video link for non-trial hearings:** It will usually be appropriate for the child or young person to be produced in person at the Crown Court. This is to ensure that the court can engage properly with the youth and that the

necessary level of engagement can be facilitated with the YOT/YJS, defence representatives and/or any supporting adult. The criminal courts now have a wide-ranging power to permit any person, including the defendant, to take part in criminal proceedings, through a live link, where it is satisfied that it is in the interests of justice to do so.[141] The court should deal with any application for use of a live link on a case-by-case basis, taking into account all the relevant circumstances, and any guidance given by the Lord Chief Justice.[142] Such hearings that may be appropriate include onward remand hearings at which there is no bail application or case management hearings, particularly if the youth is already serving a custodial sentence. Unless outweighed by travel, health or security considerations, the need to engage effectively with a child or young defendant and to facilitate communication will ordinarily require that the defendant attends all hearings in person. It is suggested that the use of a live video link should only be authorised where it is in the best interests of the young defendant: for example, where the defendant would otherwise have disproportionately long travel times.

20. Where the defendant is under 18, the relevant YOT/YJS must be given the opportunity to make representations before any live link direction is made, varied or rescinded.[143] Where a live link hearing is directed for a youth defendant, arrangements must be made in advance to enable the YOT/YJS worker to be at the secure establishment where the youth is in custody or to have sufficient access via a live link booth before and after the hearing.[144]

21. The Lord Chief Justice has made clear that it will rarely be appropriate for a youth to be sentenced over a live link. Such arrangements may, however, be acceptable where the youth is (i) already serving a custodial sentence and the sentence to be imposed is bound to be a further custodial sentence or have no material impact on the sentence being served; (ii) detained in a secure establishment a long way from court and being produced would materially affect them, (iii) so disturbed that their production would be a significant detriment to their welfare.[145]

22. **Preventing intimidation and abuse at court:** Where the defendant is required to attend court in person, the court must take such measures as are necessary to ensure that the defendant is not exposed to intimidation, vilification or abuse, particularly in cases which may attract widespread public or media interest. The assistance of the police should be enlisted: CrimPD para.6.4.2(i).

23. Appropriate measures may include making arrangements for the defendant to arrive or leave at a particular time or via a non-public entrance/exit; giving a clear reminder to media representatives and others that the taking of photographs in, or when entering or exiting, the court building or its precincts is prohibited (CJA 1925, s.41); making or reminding media representatives of any reporting restrictions.

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141 CJA 2003, s.51.
142 Live Links in Criminal Courts Guidance was issued in July 2022.
143 CJA 2003 s 51(4)(c); s 52 (3)(c); s 52(9).
144 See Lord Chief Justice's Guidance at para.10.
145 See above *Guidance* at para.11.

24. Section 31 of the CYPA 1933 requires that arrangements should be in place at every court to prevent a youth defendant from associating with any adult defendant who is not jointly charged with them.

2G. Listing and timetabling

25. Any case that involves a young or otherwise vulnerable person – whether as a defendant or witness – should be listed as a priority case with delay kept to a minimum. Ideally, the PTPH and any other pre-trial hearings should be dealt with first in the court list.

26. The timetable for trial should be considered at the PTPH, and again at a ground rules hearing. Care must be taken to ensure that the trial date does not clash with public exams or other significant dates for the young person, and that sufficient time is allowed to accommodate more frequent breaks than might be required for an older defendant. The case must be timetabled to accommodate a young defendant's ability to concentrate: CrimPD para.6.4.2(e).

2H. Communication

27. It is common for most, if not all, young defendants to have communication needs, whether due to their age alone or in combination with other vulnerabilities. All hearings – including the PTPH and any pre-trial hearings – should therefore be conducted in clear language that the defendant can understand. It is the responsibility of the judge to ensure that the defendant understands what is happening at each stage of the proceedings and to ensure that all appropriate and necessary explanations have been given to the defendant. The judge should satisfy themselves that the advocates are competent to conduct a case which involves a young defendant and have undergone appropriate training. This is a requirement emphasised by the Court of Appeal in *R v Grant-Murray*[146] and *R v Rashid*.[147] The court should remind the advocates of the need to follow the relevant Advocate's Gateway Toolkits[148] and the Inns of Court College of Advocacy 20 Principles of Questioning.[149] The court is also directed to use the toolkits themselves as an aid to case management: CrimPD para.6.1.2.

28. For some defendants, it may be necessary to appoint an intermediary for some or all of the trial. Although the PTPH form provides for the judge to make relevant orders at the PTPH, in practice it will rarely be possible or appropriate to do so at that stage and a formal application at stage 2 will be required. Any such application must comply with pt.18 of the CrimPR 2020. Intermediaries are dealt with further below.

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146 Above, at [226].
147 [2017] EWCA Crim 2; [2017] 1 Cr.App.R. 25, at [80].
148 Advocate's Gateway Toolkits
149 20 Principles of Questioning

2I. Other measures to assist the defendant

29. Other measures to assist the defendant – such as a live link direction, or the appointment of an intermediary – are likely to require a formal application, ordinarily at stage 2. These are dealt with below.

2J. Adaptations to the court process

30. **Referring to the defendant by name:** Defendants under the age of 18 should ordinarily be referred to by their first name.

31. **Courtroom layout:** The court is required to give consideration to the need to sit in a court in which communication is more readily facilitated: CrimPD para.6.4.2(a). Subject to the need for appropriate security arrangements, the proceedings should, if practicable, be held in a courtroom in which all the participants are on the same, or almost the same, level. In the Crown Court, where possible, young defendants should either be dealt with in a courtroom which does not have a raised dock or, if it does, the defendant should be permitted to sit outside that dock (see further below). The reality for most Crown Courts is that the judge is likely to be sitting on a raised level.

32. **Where the defendant should sit:** Subject to security and other practical considerations, a young defendant should not be required to sit in the dock but should be seated in a position from which he/she can easily communicate with his/her legal representatives: CrimPD para.6.4.2(d).

33. **Who should sit with the defendant:** As noted in chapter 10, a youth defendant should be accompanied by a parent or guardian at all court appearances. Where the defendant is seated outside the dock, he/she should be permitted to sit with their parent or guardian or other suitable supporting adult, such as a social worker, who should be available throughout the trial: CrimPD Para.6.4.2(d). Where, for security or other reasons, it is necessary for the young defendant to be seated in the dock, the supporting adult or family member should ideally be positioned close to, and within sight of, the defendant.

34. **Dress:** The judge should consider whether robes and wigs should be worn and should take account of the wishes of a young defendant (and any vulnerable witness). Whether robes and wigs are worn by the judge and advocates may depend substantially upon the age of the defendant and the court will also consider the impact on any non-vulnerable defendants in a multi-handed trial. Just as with a young witness, the younger the defendant the less likely it is for robes and wigs to be appropriate: CrimPD para.6.4.2(g). Informality of dress does not only apply to the lawyers. It is generally desirable that those responsible for the security of a young vulnerable defendant in custody should not be in uniform, and that there should be no recognisable police presence in the courtroom save for good reason: CrimPD para.6.4.2(h).

35. **Restrictions on access to the courtroom:** Open justice is a fundamental principle of our justice system. Subject to some very limited exceptions, court proceedings should be conducted in open court in the presence of any member of the public, who wishes to attend, and any media representatives who are entitled to report upon those proceedings.

36. The court does, however, have powers to exclude persons other than the accused, legal representatives and interpreters from the court. First, the court

can do so as a 'special measures' directions for eligible vulnerable witnesses, though this direction is only available where the proceedings relate to a sexual offence; to an offence under the Modern Slavery Act 2015, ss.1 or 2, or it appears to the court that there are reasonable grounds for believing that some person other than the accused has sought, or will seek, to intimidate a witness: YJCEA 1999, s.25. Any direction under this provision excluding the press must permit one nominated representative of the press to remain.

37. Secondly, the court may direct that persons not directly concerned in the case may be excluded where a child or young person is called as a witness in proceedings involving an offence or conduct contrary to decency or morality: CYPA 1933, s.37(1). The court cannot exclude bona fide representatives of the press under this power.

38. Finally, the court is encouraged by the CrimPD to be prepared to use its powers in a trial involving a vulnerable defendant to restrict attendance by members of the public to a small number, perhaps limited to those with an immediate and direct interest in the outcome. The court may also restrict the number of reporters attending the courtroom to such number as is judged practicable and desirable, though always being mindful of the principle of open justice: CrimPD para.6.4.5.

39. Where access to the courtroom has been limited by the court, arrangements should be made for the proceedings to be relayed, audibly and, if possible, visually, to another room in the same court complex to which the media and the public have access (if there appears the need). Those making use of such a facility must be reminded that it will be treated as an extension of the courtroom and so they should conduct themselves accordingly: CrimPD para.6.4.6.

2K. Severance

40. Where a young defendant is jointly indicted with one or more adult defendants, the court should nevertheless make such adaptations as necessary for the trial process to ensure that the young defendant can comprehend and participate effectively in the trial process and has a fair trial: CrimPD para.6.4.3. If the circumstances of the joint case are such that that is not possible, then the court should consider whether the young defendant should be tried separately.

41. In such circumstances, the court must consider its power to remit the youth defendant to the youth court for trial under the SCA 1981, s.46ZA.[150]

13-3 Special measures

3A. Live link direction

42. None of the eight 'special measures' provided for in the YJCEA 1999, ss.23-30 applies to vulnerable defendants. The only specific statutory special measure for defendants was provided by s.33A of that Act. This section permitted the court, on application by the accused, to give a live link direction for the purpose of any oral evidence to be given by the accused: s.33A(2), (3).

[150] See Chapter 7 (7-6).

43. Such directions were rarely made. The court could only make such a direction in respect of a defendant under 18 if satisfied that:

    (1) the defendant's ability to participate effectively in the proceedings as a witness giving oral evidence in court would be compromised by their level of intellectual ability or social functioning: s.33A(4)(a), and

    (2) use of a live link would enable the defendant to participate more effectively in the proceedings as a witness (whether by improving the quality of their evidence or otherwise): s.33A(4)(b), and

    (3) it is in the interests of justice to make such a direction: s.33A(2).

44. Section 33 was amended by the PCSCA 2022 and now only applies to 'service courts'. The power to give a live link direction now resides in the CJA 2003, ss.51-52A, as amended by the PCSCA 2022, and applies to all parties to proceedings in the criminal courts, including defendants.

45. The power to make a live link direction under the CJA 2003, s.51 is wider than it was under the YJCEA 1999, s.33A. Whereas a defendant's live link direction under the 1999 Act was subject to limitations on the circumstances in which such an order could be made and the purpose for which a live link could be used, a s.51 order can be made for the entirety of the trial (not just for the purpose of the defendant's evidence), for pre- and post- trial hearings, and for the sentencing hearing. Neither is the court limited by the pre-conditions that applied to a s.33A order. All that is required is for the court to be satisfied that it is in the interests of justice for the person, to whom the direction relates, to take part in the proceedings through a live link, taking into account any guidance given by the Lord Chief Justice, the circumstances of the case, any representations by the parties, and – where the defendant is under 18 – any representations made by YOT/YJS.

46. Where a live link direction is made, the defendant should be given the opportunity to practise using the link in advance: CrimPD para.6.4.2(c).

3B. Other measures

47. Although limited in the number of statutory special measures available to it to assist a defendant, the court has an inherent power – or perhaps more appropriately defined as a responsibility – to take whatever measures are appropriate and necessary to facilitate the defendant's effective participation in the trial and to ensure that the trial is fair: CrimPR 2020, r.3.2(2)(b); ECHR, Article 6. The court is therefore required to make an assessment of the defendant's needs and to adapt the court processes accordingly. Facilitating participation includes enabling the defendant to give their best evidence, to comprehend the proceedings, and to engage fully with their defence. In addition to the adaptations to the court layout and procedure noted above, there would appear to be no reason why the court could not, for example, allow a defendant to give evidence from behind a screen.

48. Note that there is provision, on the PTPH form and pursuant to CrimPD para.6.4.2(j), for the court to direct the defence to provide a note, with any supporting material, by stage 2, providing all necessary welfare information to the court as to the timetabling of the trial and regularity of breaks and any other measures required so that the defendant can maintain concentration.

13-4 Intermediaries

4A. The role of the intermediary

49. The role of an intermediary is to facilitate communication between the defendant and any other party such as the police, advocate or judge. In pursuance of that function, the intermediary will check on the defendant's ability to understand and process information, will advise upon measures needed to ensure that the defendant can maintain attention, and alert the judge to any difficulties that the defendant is having in following the trial. If the defendant chooses to give evidence, the intermediary will advise upon question style, vet any written cross-examination plan, and intervene, if necessary, during questioning to ensure that questions are phrased in a way that the defendant can understand. Outside of the courtroom, the intermediary is expected to assist in conference to ensure that the defendant can understand advice and give instructions. Notwithstanding all of the above, however, a defendant's intermediary is not a part of the defence team; neither are they an advocate for the defendant, an appropriate adult or a supporter. The intermediary is independent and, although not an 'expert witness', owes their duty to the court: CrimPR 2020, r.18.30; CrimPD para.6.2.1.

4B. Availability

50. The provision of an intermediary is a special measure available to any eligible prosecution or defence witness but not for the defendant themselves: YJCEA 1999, s.29.

51. Parliament has legislated for the provision of an intermediary for a vulnerable defendant for the purposes of examination: YJCEA 1999, ss.33BA-33BB, as inserted by the CAJA 2009, s.104. As enacted, these provisions would allow a court, dealing with a defendant under the age of 18 at the time of the application, to make a direction for the examination (questioning) of the defendant to take place through an intermediary if the defendant's ability to participate effectively in the proceedings, as a witness giving oral evidence in court, is compromised by their level of intellectual ability or social functioning, and where such a direction is necessary in order to ensure a fair trial. These provisions have not been brought into force.

52. It has, however, been widely recognised for some years that the court may use its inherent powers to make a direction for a defendant's intermediary when it is necessary to do so. Such a direction may provide for an intermediary for the defendant's evidence alone or for the entirety of the trial. The direction may, in some instances, include pre-trial conferences and court attendances: *R(AS) v Great Yarmouth Youth Court*.[151]

53. Important guidance on intermediaries is given in CrimPD pt.6.2, in particular in respect of defendants under 18, at CrimPD paras.6.2.4 to 6.2.9. Substantial amendments to pt.18 of the CrimPR 2020 in April 2021 have now brought into force legislative provision for intermediaries for defendants, particularly at rr.18.23 to 18.28.

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[151] [2011] EWHC 2059 (Admin).

54. There is general recognition that many young people have greater communication needs than adults, such as short attention span, suggestibility and reticence in relation to authority figures: CrimPD para.6.2.8. An intermediary assessment should therefore be considered for any witness or defendant under 18 who seems liable to misunderstand questions or to experience difficulty expressing answers, including those who seem unlikely to be able to recognise a problematic question (such as one that is misleading or not readily understood), and those who may be reluctant to tell a questioner in a position of authority if they do not understand: CrimPD para.6.2.9.

55. Any application for an intermediary for a defendant under 18 should be examined with care and decided on a case-by-case basis.

56. The CrimPR 2020 now provide that the court must exercise its power to appoint an intermediary to facilitate a defendant's effective participation in the trial where the defendant's ability to participate is likely to be diminished by reason of age, if the defendant is under 18 (or by reason of mental disorder), and the appointment is necessary for that purpose: r.18.23(1).

4C. Necessity

57. There is no presumption however that a defendant under 18 will be assisted by an intermediary and, even where an intermediary has the potential to improve the trial process, appointment is not mandatory. The court must adapt the trial process to address a defendant's communication needs, considering other measures designed to accommodate the needs of a vulnerable defendant: CrimPD paras.6.2.4 to 6.2.5.

58. The fact that a defendant's intermediary may be desirable, does not mean that one will always be necessary: see *R v Rashid*,[152] in which the Court of Appeal stated that 'in the overwhelming majority of cases, competent legal representation and good trial management' will ensure that the court can 'assist the defendant to give best quality evidence, participate in his trial and receive a fair trial'.

59. This was re-affirmed in *R v Thomas*,[153] in which it was held that whether an intermediary is 'necessary' is a fact-sensitive decision for the judge to make, having conducted an assessment both of the relevant circumstances of the defendant and also of the circumstances of the particular trial. A judge is not required to follow the recommendations of a psychologist and an intermediary, however strongly expressed they may be.[154]

> '[36]…Any difficulty experienced by the defendant must be considered in the context of the actual proceedings which he or she faces…
>
> [37]…Intermediaries should not be appointed as a matter of routine trial management, but instead because there are compelling reasons for taking this step, it being clear that all other adaptations to the trial process will not

[152] [2017] 1 WLR 2449, at [73].
[153] [2020] 4 WLR 66; [2020] EWCA Crim 117.
[154] See *TI v Bromley Youth Court* [2020] EWHC 1204 (Admin) at [43].

sufficiently meet the defendant's needs to ensure that he or she can effectively participate in the trial.'

60. In *TI v Bromley Youth Court*,[155] it was held that when considering an application for an intermediary, the judge should keep in mind three essential points:

    (1) Firstly, any defendant in criminal proceedings must have a fair trial. Where he/she cannot participate effectively in the proceedings, whether in whole or in part, he/she will not have a fair trial.

    (2) Secondly, where the defendant is under 18, particular problems may arise with regard to issues of concentration and understanding which may affect their ability to participate in their trial.

    (3) Thirdly, the court is under a duty to have regard to the young person's welfare: CYPD 1933 s.44.

61. If, having done so, the judge concludes that an intermediary is necessary for the effective participation of the defendant in the trial process, then an intermediary should be appointed. The Divisional Court in *TI* said that 'in a case where the evidence demonstrates that the defendant lacks the capacity to participate unaided in the trial process, it is incumbent on the judge to explain how the court will enable the defendant effectively to participate in the proceedings despite that evidence.'

62. Where an intermediary is approved for the defendant, it is for the court to determine the terms upon which the intermediary will be appointed (ie whether for the duration of the trial or for the defendant's evidence only). It is not for the intermediary provider to dictate the duration of the need for an intermediary; it is for the judge to decide the extent to which such an appointment is necessary: CrimPD para.6.2.6.[156]

63. Even where an application for an intermediary is granted however, the trial will not necessarily be rendered unfair by the absence of an intermediary (for example, because a suitable intermediary cannot be found, or because the instructed intermediary declines to act on the terms provided), provided that the judge takes such other steps as are necessary to adjust the processes of the court to enable the defendant to have a fair trial and to participate in that trial without the assistance that the intermediary would have provided. In such a case, a ground rules hearing should be convened to ensure that every reasonably step is taken to facilitate the defendant's participation: CrimPD para.6.2.7.

64. The starting point when considering what adjustments are necessary should always be the intermediary or psychologist's report and any recommendations made in it – especially in relation to the language to be used, how questions should be phrased, and the frequency and length of breaks that may be required. If the judge has rejected a recommendation for an intermediary where the evidence demonstrates that the defendant lacks the capacity to participate unaided in the trial process, it is incumbent on the judge to explain how the

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155 Ibid.

156 See *R v Biddle* [2019] EWCA Crim 86.

court will enable the defendant effectively to participate in the proceedings despite that evidence.[157]

65. In some situations, particularly where an intermediary has been granted but is in the event unavailable for trial, it may be appropriate for an agreed summary of the defendant's communication difficulties to be placed before the jury: see *R v Pringle*.[158]

4D. Application

66. Application is made in the first instance to the Legal Aid Agency for prior authority to fund a pre-trial assessment. If the application is refused, an application may be made to the court to use its inherent powers to direct a pre-trial assessment and funding thereof. In such a case, court staff are responsible for arranging payment from Central funds.

67. Any application for a defendant's intermediary should follow the procedure set out in pt.18 of the CrimPR 2020.

68. An application for a defendant's intermediary must be made in writing, and served on the court and other parties, as soon as reasonably practicable and in any event not more than 10 business days after the defendant pleads not guilty in the Crown Court: r.18.4. The court must promptly determine an application and announce the reasons for its decision at a hearing in public: r.18.5. Any application to vary or discharge the appointment of an intermediary must also be made in writing, and served on the court and other parties, as soon as reasonably practicable after becoming aware of the relevant grounds: r.18.24. Representations in response to an application to order, vary or discharge the appointment of a defendant's intermediary must be served on the court and other parties no more than 10 business days after service of the relevant application or notice: r.18.25. Any applicant or respondent can ask for a hearing but must explain why one is needed: r.18.25(2)(c).

69. In determining whether the appointment of a youth defendant's intermediary is necessary to facilitate the defendant's effective participation in trial, the court must have regard to:

    (1) the defendant's communication needs;

    (2) the recommendations in any intermediary's report;

    (3) any views expressed by the defendant about having an intermediary or receiving the benefit of other measures;

    (4) the likely impact of their age, intellectual ability or social functioning on their ability to give evidence and understand what others say and do;

    (5) the impact of any mental disorder on the defendant;

    (6) the adequacy of arrangements for questioning the defendant without an intermediary;

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157 *TI v Bromley Youth Court* (above) at [43].

158 [2019] EWCA Crim 1722.

(7) any assistance the defendant has received in the past in police interviews or other legal proceedings;

(8) any mental health assessment;

(9) any expert medical opinion;

(10) any other matter that the court thinks relevant: r.18.23(2).

70. The court may appoint an intermediary for every hearing, for specified hearings or parts of hearings or for a specified purpose during a hearing: r.18.23(3). The appointment of an intermediary extends to facilitating communication between the defendant and their lawyers, unless otherwise directed: r.18.23(4).

71. The court may vary or discharge the appointment of an intermediary but must not do so unless satisfied that, since the appointment direction was made, the defendant's communication needs or any other material circumstance has changed materially and the defendant will be able to participate effectively in the trial despite the variation or discharge: r.18.23(5), (6).

4E. Pre-trial visit

72. Where an intermediary is being used to help the defendant to communicate at court, the intermediary should accompany the defendant on any pre-trial visit to the court: CrimPD para.6.4.2(b).

13-5 Ground Rules Hearings

73. In all cases in which there is a young defendant, a ground rules hearing (GRH) should be held in advance of the trial and, again, before the young defendant gives evidence. Such a hearing will ensure that any communication or other needs of the defendant are met. A GRH is required in all trials involving an intermediary but the need for such a hearing is not dependent on there being such an appointment or even an assessment. The greater the level of vulnerability, the more important it will be to hold such a hearing: CrimPD para.6.1.4.

74. In *R v Pringle*, it was emphasised that there should be a GRH 'to give guidance as to what form of questions would, and would not, be appropriate, to take a properly assessed decision about providing regular breaks, and to consider seriously the other special measures requested'.[159]

75. In order to assist the court to make appropriate directions at a GRH, the judge at PTPH may direct the defence to provide a note, with any supporting material, by stage 2, providing all necessary welfare information to the court. This will allow the court to make all necessary decisions as to the timetabling of the trial, the regularity of breaks and any other measures required so that the defendant can maintain concentration, communicate properly and participate effectively in his/her trial. Such material can be considered at the GRH. Supporting material may include medical or other expert reports, education records or information from teachers, supporter workers or others closely involved with the young person.

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[159] [2019] EWCA Crim 1722 at [101].

76. Where an intermediary assessment has been carried out, the GRH will ordinarily involve the careful consideration of the assessment report (which should be made available to all parties) and the recommendations made therein. The intermediary must be present in order to assist the court and the advocates with those recommendations (though the intermediary is not required to take the oath at that stage): CrimPD paras.6.1.4 and 6.2.10.

77. At the GRH, the judge should give directions both for the trial process as a whole and for the defendant's evidence. These directions should be revisited in a further short GRH immediately before the start of the defence case. Directions given should ordinarily follow the recommendations in any available intermediary report, and may include directions for timetabling, breaks, and adaptations to process and procedure. In an appropriate case, there is no reason in principle why a judge should not impose limitations on the length and type of questioning and, if necessary, require a cross-examination plan for a young defendant where such restrictions and adaptations are necessary to achieve fairness and effective participation.

78. A 'trial practice note' should be created at the conclusion of the GRH setting out the agreed ground rules including any adaptations to the trial process and any limitations of questioning. This can be used at trial to ensure that the agreed ground rules are complied with. Any limitations on questioning must be clearly defined. The note should be uploaded to the digital case system: CrimPD para.6.1.5. There is a helpful Ground Rules Hearing Checklist on the Advocate's Gateway, which specifically provides for directions for vulnerable defendants and which can form the basis of a trial practice note.

79. Where limitations are imposed, the judge has a duty both to ensure that they are complied with and to explain those limitations, and the reasons for them, to the jury in advance of questioning: CrimPD para.6.1.9.

80. Further guidance can be found in Toolkit 1 (Ground rules hearings and the fair treatment of vulnerable people in court) on The Advocate's Gateway.

14. TRIAL MANAGEMENT

14-1 Introduction

1. Throughout the trial process, the court must have regard to the welfare of the young defendant and to the principal aim of the youth justice system, to prevent offending by children and young persons.

14-2 Trial management

2A. Pre-trial preparation

2. Prior to trial, a pre-trial visit to the court by the defendant should be facilitated so that they can familiarise themselves with the layout of the court; where applicable, the intermediary (if any) should accompany the defendant on this visit: CrimPD para.6.4.2(b).

2B. Listing

3. The trial should be listed expeditiously and wherever possible should not be preceded, or interrupted, by other cases.

2C. Timetabling

4. The trial must be conducted according to a timetable which takes account of the defendant's ability to concentrate, any other identified needs and their welfare, and as directed by the judge at the PTPH or ground rules hearing (GRH): CrimPD para.6.4.2(e). Timetabling should be kept under review at all times with additional breaks if necessary.

2D. Attendance of parent or guardian

5. See chapter 10.

2E. Effective participation

6. See chapter 13. The Court of Appeal has recently reminded the Crown Court of the importance of facilitating the effective participation of a youth defendant and the various measures (detailed in chapter 13 and below) which should be employed to that end.[160]
7. The court must ensure, by any appropriate means, that the defendant can comprehend and participate effectively in the trial process: CrimPD para.6.4.3.
8. Directions given at PTPH and at the ground rules hearing must be followed and kept under review. Requirements for clear, concise, and 'non-legal' language apply not just to the questioning of the defendant, but throughout the trial – including speeches. Effective participation will not be achieved unless the defendant understands what is happening.
9. At the beginning of proceedings, the court should ensure that what is to take place has been explained to a young defendant in terms that they can

[160] *R v ZA* [2023] EWCA Crim 596.

understand. In particular, the court should ensure that the role of the jury has been explained.

10. The court should remind those representing the young defendant, and the supporting adult, of their responsibilities to explain each step as it takes place and explain the possible consequences of a guilty verdict. The court should also remind any intermediary of the responsibility to ensure that the young defendant has understood the explanations given to them.

11. The whole trial should be conducted in language that the defendant can understand and that questions to witnesses are short and clear.

12. A further short GRH must be held before the defendant gives evidence. If a live link direction has been made, the defendant should be given the opportunity to practise using the link in advance: CrimPD para.6.4.2(c).

13. Questioning of the defendant must be conducted in accordance with any directions and limitations imposed by the judge at the ground rules hearing and the intermediary assessment if any. Advocates must be familiar with, and apply the guidance provided in the relevant Advocate's Toolkits and the Inns of Court College of Advocacy *20 Principles of Questioning*: CrimPD para.6.1.2.

2F. The judge's role

14. The judge has a duty to ensure that the welfare needs of the young defendant are met and to be proactive in ensuring that they understand each stage of the proceedings and are able effectively to participate in them.

15. Where limitations have been imposed on questioning, the judge has a duty to ensure that they are complied with. If an advocate fails to comply, then the judge should intervene. See *R v Cox*.[161]

2G. Restricting attendance of others at trial

16. Where a youth defendant is on trial, the court should be prepared to consider restricting attendance by members of the public in the courtroom to a small number, perhaps limited to those with immediate and direct interest in the outcome. The court should rule on any challenged claim to attend: CrimPD para.6.4.5.

17. However, facilities for reporting the proceedings (subject to any reporting restrictions) must be provided. The court may restrict the number of reporters attending in the courtroom to such number as is judged practicable and desirable. In ruling on any challenged claim to attend in the courtroom for the purpose of reporting, the court should be mindful of the public's general right to be informed about the administration of justice: CrimPD para.6.4.5.

18. Where it has been decided to limit access to the courtroom, whether by reporters or generally, arrangements should be made for the proceedings to be relayed, audibly and if possible, visually, to another room in the same court complex to which the media and public have access, if it appears that there will be a need for such additional facilities: CrimPD para.6.4.6.

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[161] [2012] EWCA Crim 549.

14-3 Competence of young defendant

3A. Competence generally

19. At every stage in criminal proceedings, all persons are (whatever their age and whether a defendant or not) competent to give evidence: YJCEA s.53(1).

20. A person is not competent to give evidence in criminal proceedings if it appears to the court that they are not a person who is able to understand questions put to them as a witness and give answers to them which can be understood: s.53(3).

21. No defendant (of any age, whether jointly charged or not) is competent to give evidence for the prosecution, whilst they remain liable to be convicted: s.53(4), (5). A person charged in criminal proceedings shall not be called as a witness in proceedings except upon their own application: Criminal Evidence Act 1898, s.1.

22. Any question as to the competence of a defendant or witness to give evidence must be made before the witness is sworn,[162] preferably at the beginning of the trial.[163] It should not be dealt with as an act of 'ratification' after the evidence has been given. The question shall be determined in the absence of the jury: YJCEA 1999, s.54(4). Expert evidence may be adduced (s.54(5)) but the test is within the competence of the court and there is no need for expert evidence unless there are special circumstances, such as where a child is mentally disabled: *G v DPP*.[164] It is for the party calling the witness to satisfy the court on the balance of probabilities as to the witness's competence: s.54(2).

23. The procedure for determining competence is the same for children as it is for adults. If a child can understand and communicate only in a way that their parent can understand, they may not be competent as a witness, but if a child can understand questions put to them in simple English and is able to give answers that the court can understand, they should be allowed to give evidence: *R v Macpherson*.[165]

24. Though dealing with a young witness well below the age of criminal responsibility, the Court of Appeal gave important guidance as to determining competence in *R v Barker*[166] from which the following can be distilled:

    (1) What is required is not the exercise of a discretion but the making of a judgment as to whether the child fulfils the statutory criteria.

    (2) The approach must be child-specific; there are no presumptions or preconceptions.

    (3) Although chronological age will inform the decision, in the end it is a decision about an individual child.

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162 *R v Hampshire* [1995] 2 Cr.App.R. 319.
163 *R v Yacoob* 72 Cr.App.R. 313.
164 [1997] 2 Cr.App.R. 78.
165 [2005] EWCA Crim 3605.
166 [2010] EWCA Crim 4.

(4) None of the characteristics of childhood nor the use of special measures (if any) carry any implicit stigma that children should be deemed less reliable than adults.

(5) Determining competence is not determining whether the witness will tell the truth or determining the weight to be attached to his/her evidence.

(6) Competency is not failed because the forensic technique of the advocate or the process of the court have to be adapted to allow a witness to give their best evidence.

(7) The competency test can be re-analysed at the end of the child's evidence.

25. In practice, if there is a question as to the competence of a young defendant, it would be likely that their legal representatives would not seek to call them as a witness and would seek a ruling from the court to exclude adverse comment and inference.

3B. Competence of mentally disordered youth defendant

26. A witness who is prevented from giving rational testimony by reason of mental illness is not competent. The court should ascertain whether the witness is capable of understanding the questions put to them or to give answers which can be understood, pursuant to YJCEA 1999, ss.54-57.

14-4 Child or young person's oath

27. No witness may be sworn unless they have attained the age of 14 and have a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath: YJCEA 1999, s.55(2). Any witness able to give intelligible testimony (ie understanding the questions and giving answers which can be understood) shall be presumed to have a sufficient appreciation of the requisite solemnity and responsibility unless evidence to the contrary is adduced: s.55(3), (8). It is for the party seeking to have the witness sworn to satisfy the court, on the balance of probabilities, that the witness has attained the age of 14 or has sufficient appreciation of the requisite matters: s.55(4). Any proceedings to determine these issues shall be held in the absence of the jury: s.55(5). Expert evidence is admissible: s.55(6).

28. Any witness (including a defendant) aged 14 to 17 may take an oath before giving evidence but the words of the oath must be in the form 'I promise before Almighty God…' rather than 'I swear by Almighty God…', though an oath taken in the latter form will be deemed to have been duly administered and taken: CYPA 1963, s.28.

29. A witness aged 14 to 17 may affirm, rather than make a religious promise. No precise wording is provided by statute, but many courts use simply the following form of words: 'I promise that I shall tell the truth'.

30. Any witness who is competent but precluded by the YJCEA 1999, s.55(2) from giving sworn evidence – for example, a witness aged 10 to 13 – shall give unsworn evidence: YJCEA 1999, s.56(2).

14-5 Youth defendant giving evidence

31. The judge is responsible for controlling questioning. Over-rigorous or repetitive cross-examination of a child or vulnerable witness, including the defendant, should be stopped: CrimPD para.6.1.6.

32. Discussion of ground rules is required in any trial where the defendant has the benefit of an intermediary. Such a ground rules hearing will minimise interventions by a judge if questioning taking into account the individual's vulnerability is discussed in advance: CrimPD para.6.1.6.

33. Discussion of ground rules is good practice, even if no intermediary is used, in all youth defendant cases.

34. Where a direction to appoint an intermediary for a youth defendant is ineffective, it remains the court's responsibility to adapt the trial process to address the defendant's communication needs: CrimPD para.6.2.7.

35. Where limitations on questioning are necessary and appropriate, they must be clearly defined. The judge has a duty to ensure that they are complied with and should provide the jury with an appropriate explanation. If an advocate fails to comply with the limitations, the judge should give relevant directions to the jury when this occurs and prevent further questioning that does not comply with the ground rules settled upon in advance: CrimPD para.6.1.7.

36. It is recognised that accommodating the needs of young and/or otherwise vulnerable people may require a radical departure from traditional cross-examination. The form and extent of appropriate cross-examination will vary from case to case. When the defendant is young, the court may dispense with normal practice and impose restrictions on the advocate 'putting the case', particularly where there is a risk of a young defendant failing to understand, becoming distressed or acquiescing to leading questions: CrimPD para.6.1.8.

37. It may be appropriate for the judge to identify apparent inconsistencies to the jury rather than have them put in cross-examination: CrimPD para.6.1.9.

38. If there are co-defending representatives, which may mean that a youth defendant is subject to cross-examination by more than one advocate, the judge may need to limit the repetition of topics being put to the young defendant: CrimPD para.6.1.10.

39. See chapter 13.

14-6 Jury directions

40. In addition to the normal directions, where a youth defendant is on trial, the judge should give additional directions to the jury about the following matters, as applicable.

6A. Adaptations to the court process

41. Where adaptations have been made to the layout of the court or to normal court procedures, the judge should explain to the jury at the outset what those adaptations are and why they have been made. This may require an explanation to the jury of the particular needs and difficulties that the defendant has. The judge should discuss what should be said with the advocates in

advance; care will be needed in cases where the defendant's difficulties are, or may be relevant, to an issue in the case. The judge should make it clear that any adjustments made are to ensure fairness and to enable effective participation in the trial.

6B. Intermediaries

42. Where the defendant has an intermediary, the judge should explain their role to the jury and explain why an intermediary is being used. The judge should explain that an intermediary is not an expert; that they are independent; that their role is to facilitate communication between the defendant and the court; and that the intermediary will intervene if there is an issue with communication.

43. Where an intermediary has been appointed for the duration of the trial, the judge should give the direction at the outset. Where the intermediary is only present for the defendant's evidence, then the warning would be more appropriately given at that stage.[167]

6C. Other supporters

44. The presence of a parent or guardian by the youth defendant should be explained. Where the defendant has any alternative or additional form of support – such as a social worker – that person's identity and presence should be explained to the jury.

[167] See Crown Court Compendium Part I, section 3-7.

15. SENTENCING: GENERAL PRINCIPLES

15-1 Overarching principles

1. When sentencing an adult, the focus will generally be on the seriousness of the offence.[168] When sentencing a child or young person, however, the focus shifts from the offence to the offender. Sentences should be tailored to the individual offender having regard to:
   (1) **The statutory obligation to have regard to the welfare of the child or young person:** CYPA 1933, s.44. In an appropriate case this will include taking steps to remove the child or young person from undesirable surroundings, and securing that proper provision is made for their education and training; and
   (2) **The principal aim of the youth justice system, namely to prevent offending by children and young persons:** CDA 1998, s.37.[169]
2. Where possible, sentences should be rehabilitative rather than punitive; a custodial sentence will always be the sentence of last resort for a child or young person and should only be imposed when the offence is so serious, and the child's level of culpability is such, that no other outcome is appropriate. A custodial sentence of any length is likely to have a far greater impact on a child or young person than on an adult and may have an adverse effect on their education and future reintegration into society.
3. Young offenders, particularly those who are looked after children, may have complex needs and be vulnerable, whether due to their age or their background circumstances. When considering issues of culpability therefore, the sentencing judge should consider all factors which may serve to diminish the child or young person's culpability.
4. Judges should have regard not only to the child's chronological age but also their level of immaturity and should take into account the extent to which the offending behaviour may be reflective of normal adolescent behaviour or experimentation.
5. As stated in *R v N, D and L*:[170]

   '[27]…The youth of the offender is widely recognised as requiring a different approach from that which would be adopted in relation to an adult…In many cases the maturity of the offender will be at least as important as the chronological age.

   [28]…There will from time-to-time be individual offenders whose maturity levels are well in advance of those to be expected of most youths of a similar chronological age. All these decisions are specific and individual. They must reflect all of the material available to the sentencing judge, including the circumstances of the offence and the behaviour of the offender whose case is under consideration in the context of that offence. If justified, the maturity

168 Section 63 of the SC.
169 Section 58 of the SC confirms that nothing in the Code affects these fundamental principles.
170 [2011] 1 Cr.App.R.(S) 22.

of the youth is a factor to which weight should properly be given because on this basis such mitigation arising from the youth of the offender is or would be properly reduced or diminished, sometimes (on rare occasions) to virtual extinction.'

6. It is 'categorically wrong' to set about the sentencing of children and young people as if they are 'mini-adults'. An entirely different approach is required. It has long been recognised that the brains of young people are still developing up to the age of 25 in areas affecting emotional control, restrain, awareness of risk and consequential thinking. It is also known that adverse childhood experiences, educational difficulties and mental health issues negatively affect the development of those adult thought processes. Very particular considerations apply to sentencing children and young people who commit offences.[171]
7. The Youth Guideline reminds the court of the duty, where a child or young person is found guilty before the Crown Court of an offence other than homicide, to remit the case to the youth court unless it would be undesirable to do so, pursuant to the SC, s.25(2). Furthermore, where a youth defendant has been committed for sentence by the magistrates' or youth court, the Crown Court should now consider whether it would be appropriate to remit the youth defendant back to the youth court for sentence: SC, s.25(2A).[172]

15-2 Approach to sentence

2A. Purposes of sentencing

8. Section 57 of the SC provides for the purposes of sentencing an adult, namely an **offender aged 18 or over** when convicted:
   (1) the punishment of offenders;
   (2) the reduction of crime (including its reduction by deterrence);
   (3) the reform and rehabilitation of offenders;
   (4) the protection of the public, and
   (5) the making of reparation by offenders to persons affected by their offences.
9. Paragraph 3(1) of sch.22 of the SC would, if ever brought into force, amend s.58 to provide for the purposes of sentencing a youth defendant, namely an **offender aged under 18** when convicted. That would require the court, when dealing with an offender aged under 18 for an offence, to have regard to:
   (1) the principal aim of the youth justice system (to prevent offending or re-offending by persons aged under 18);
   (2) the welfare of the offender;
   (3) the following purposes of sentencing:
      (a) the punishment of offenders,
      (b) the reform and rehabilitation of offenders,
      (c) the protection of the public, and

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171 *R v ZA* [2023] EWCA Crim 596, at [52].
172 Youth Guideline paras.2.15, 2.16. See 7-6 and 8-3 above.

(d) the making of reparation by offenders to persons affected by their offences.[173]

10. This provision, however, has never been brought into force.[174]

2B. Determining the sentence

11. The Youth Guideline sets out the 'key elements' to consider in determining sentence:

    (1) the principal aim of the youth justice system (to prevent re-offending by children and young people);

    (2) the welfare of the child or young person;

    (3) the age of the child or young person (chronological, developmental and emotional);

    (4) the seriousness of the offence;

    (5) the likelihood of further offences being committed; and

    (6) the extent of harm likely to result from those further offences.[175]

12. In common with the approach to adult sentencing, the court is required to follow any applicable sentencing guideline and, in each case, to consider: the seriousness of the offence, the harm caused and the extent to which it was intended or foreseen, the culpability of the offender and any aggravating or mitigating features.

13. The crucial difference between the approach to adult sentencing and sentencing a youth defendant is the need always to have in mind the principal aim of the youth justice system and the welfare of the offender.

14. All sentences therefore should be tailored to the individual offender.

2C. Seriousness of the offence

15. In determining the seriousness of the offence, the sentencing judge is required to follow any applicable sentencing guidelines. It is vital to remember that most sentencing guidelines are not directly applicable to youth defendants and should not be considered unless and until permitted in accordance with the Youth Guideline. This means that an adult sentencing guideline should not be consulted unless the court is satisfied that the offence crosses the custody threshold, and no other sentence is appropriate[176] (see below).

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[173] Though Parliament has not included deterrence within the purposes of sentencing youth defendants, the Court of Appeal in *R v Smickele* [2013] 1 Cr.App.R.(S) 64 stated that it was not the law that deterrence could play no part in the sentencing of young offenders, though welfare and individual treatment may make high levels of deterrent sentencing less appropriate. The Youth Guideline, as originally drafted in 2017, included reference to this statement (at para.1.10) but this has since been removed. There is now no reference to deterrence in the Youth Guideline.

[174] The provision was inserted, as CJA 2003, s.142A, by CJIA 2008, s.9(1) which received Royal Assent on 8 May 2008.

[175] Youth Guideline, para.4.1.

[176] Youth Guideline, para.6.45.

16. The Youth Guideline includes a list of aggravating and mitigating factors which should be considered.[177]

2D. Culpability of the offender

17. The Youth Guideline sets out as factors that should be considered when assessing the culpability of a young offender:
    (1) The extent to which the offence was planned.
    (2) The level of force used (if any).
    (3) The extent to which the offender was aware of the possible consequences of their actions.
    (4) The inherent vulnerability of children and young people (compared with adults).
    (5) Any mental health problems or learning disabilities.
    (6) Their emotional and developmental age.
    (7) Any external factors that may have affected their behaviour.[178]
18. As to mental health problems or learning difficulties, it should be noted that the Sentencing Council's definitive guideline, '*Sentencing offenders with mental disorders, developmental disorders or neurological impairments*', applies only to offenders aged 18 or older. Guidance on such issues for youth defendants can be found in *R v PS, R v Dahir*; *R v CF*.[179] A close focus is required on the mental health of the youth defendant at both the time of the offence and the time of sentence. Where a serious offence has been committed, both the court and those representing the defendant must be alert to the possibility that mental health may be a relevant feature of the case. The younger the offender, and the more serious the offence, the more likely that it is that the court will need the assistance of expert reports.[180] See also paras.1.11 to 1.14 of the Youth Guideline.
19. Examples of external factors may include time spent as a looked after child; exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse; disrupted accommodation or education; lack of familial support; victim of neglect or abuse; experiences of trauma and loss.

2E. Age

20. It is now well recognised that, although the availability of a particular type of sentencing outcome depends upon the chronological age of the offender (whether at the date of the commission of the offence or upon conviction as appropriate), levels of culpability may be affected as much by their emotional or developmental age and levels of maturity as by their chronological age. Levels

177 Youth Guideline, para.4.7.
178 Youth Guideline, para.4.5.
179 [2019] EWCA Crim 2286; [2020] 2 Cr.App.R.(S) 9.
180 Ibid at [20].

of immaturity or vulnerability may continue to have an effect on culpability even after the offender has reached adulthood.[181]

15-3 Sentencing guidelines

21. The Youth Guideline gives details not only of the overarching principles, as set out above, but also provides examples of the factors specific to many children and young people which bear upon the correct approach to sentencing.

22. Judges and advocates alike are expected to be familiar with the Youth Guideline, and to follow the approach to sentencing set out therein. The Youth Guideline is the first and foremost guideline which must be followed when sentencing a youth defendant. Moreover, the principles set out in the Youth Guideline continue to be relevant and must be followed when sentencing an adult defendant for offences committed when they were a youth.[182]

23. It is important to note that most of the Sentencing Council's other guidelines, both offence-specific and overarching principles, apply only to offenders who are aged 18 and older at the date of sentence. They do not directly apply to offenders aged under 18.

24. Aside from the overarching principles Youth Guideline, there are currently just three youth-specific Sentencing Council guidelines:

    (1) Sexual offences.

    (2) Robbery.

    (3) Bladed articles and offensive weapons.

25. In addition, the following guideline applies to all offenders aged 16 and older:

    (1) Overarching Principles: Domestic abuse.

26. Finally, the following guidelines apply to all offenders, no matter of what age:

    (1) Offences taken into consideration.

    (2) Totality.

27. Where the court is dealing with an offence which is not covered by a youth-specific guideline, it is **only if** the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, that the court may, as a preliminary consideration, consult the equivalent adult guideline in order to decide upon the appropriate length of sentence.[183]

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181 See Youth Guideline, paras.4.9, 4.10.

182 *R v Limon* [2022] EWCA Crim 39; [2022] 2 Cr.App.R.(S) 21; *R v Ahmed; R v Stansfield; R v Priestley; R v RW; R v Hodgkinson* [2023] EWCA Crim 281; [2023] 1 WLR 1858.

183 Youth Guideline, para.6.45.

28. It is vital that the court does not look to an adult guideline too early in the sentencing process.[184] As the Court of Appeal stated in *R v ZA*:[185]

> '[55] It will generally be unhelpful for the prosecution to start by directing the court straight to paragraph 6.46 of the overarching youth guideline, which contains a suggestion that an appropriate custodial sentence for a youth may be "half to two-thirds of the adult sentence". This is to ignore all previous sections of that guideline, where important principles are set out and developed, designed to emphasise the necessity for an individualistic approach and to guide the court in adopting that approach to the particular child or young person before it for sentence.'

29. As noted above, the Sentencing Council's definitive guideline, '*Sentencing offenders with mental disorders, developmental disorders or neurological impairments*', applies only to offenders aged 18 or older. The guideline states in terms that, 'this guideline must not be used for offenders under the age of 18, as mental health and related issues can be substantially different in both diagnosis and impact for children and young people'.

15-4 Guilty plea

30. The Sentencing Council's definitive guideline on reduction in sentence for a guilty plea (1 June 2017) applies to individual offenders aged 18 and older. Instead, section 5 of the Youth Guideline gives guidance on guilty pleas in all cases involving children or young persons being sentenced in the youth court, magistrates' court or Crown Court.

31. The Youth Guideline closely mirrors the adult guideline on reduction for a guilty plea with appropriate modifications reflecting the different forms of sentence.

32. If the court has determined that the custody threshold has been crossed and no other sentence is appropriate, and it is permitted to consult the equivalent adult guideline to decide upon the appropriate length of sentence, then the court will apply an appropriate reduction to reflect the developmental age and maturity of the youth defendant.[186] Reduction on the grounds of youth should take place before any reduction for a guilty plea.[187]

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184 See, for example, *R v H* [2018] EWCA 541 (Crim), where the Court of Appeal emphasised the importance of approaching sentence by following the steps set out in the Youth Guideline and criticised the sentencing judge for considering the adult guideline as a first step. The correct approach was also emphasised in *R (BB) v West Glamorgan Youth Court* [2020] EWHC 2888 (Admin); [2021] 1 Cr.App.R.(S) 62, at [17]; and in *R v JRO* [2022] EWCA Crim 85.

185 [2023] EWCA Crim 596.

186 Youth Guideline, paras.6.45 to 6.46.

187 *R v RB* [2020] EWCA Crim 643; [2021] 1 Cr.App.R.(S) 1, in which the Court of Appeal noted that the sequence would usually make no arithmetic difference but may do in one limited situation.

15-5 Age

5A. Relevant age for determination of sentence

33. **The basic rule:** For the majority of offences, the relevant age used to determine which sentences are available is the offender's age at the date of conviction.[188] The date of conviction is the date on which the defendant either pleads guilty or is found guilty.[189]

34. **Exceptions to the basic rule:** The exceptions to the basic rule are found where prescribed custodial sentencing provisions apply. In many (but not all) such cases, the relevant age for sentencing purposes is the date of the commission of the offence, rather than the date of conviction. Note that for certain repeat offences, minimum prescribed sentences do not apply where the offender was under 18 at the date of offence.

Offence	Minimum prescribed sentence	Relevant age and conditions	Legislation
Murder.	Detention under His Majesty's pleasure.	Applies when under 18 at the date of offence.	SC, s.259
Drug trafficking (third offence).	7 years' imprisonment/YOI.	Only applies where 18 or over at the time that the third offence was committed.	SC, s.313(2), (6)
Domestic burglary (third offence).	3 years' imprisonment/YOI.	Only applies where 18 or over at the time that the third offence was committed.	SC, s.314(2), (6)
Firearms offences contrary to Firearms Act 1968 – ss.5(1)(a), (ab-ag), (ba) and (c); 5(1A)(a), 5(2A), 16, 16A, 17-20.	3 years' detention under s.250.	Only applies where 16 or 17 at the date of the offence.	SC, s.311(1)
Using someone to mind a weapon	3 years' detention under s.250.	Only applies where 16 or 17 at the date of the offence.	SC, s.311(1)

[188] *R v Morgan* [2014] EWCA 2587.
[189] *R v Danga* [1992] 13 Cr App R (S) 408.

Offence	Minimum prescribed sentence	Relevant age and conditions	Legislation
(relevant firearm).			
Possession of an offensive weapon (second offence).	DTO 4 months.	Only applies where 16 or 17 at date of offence and where the offender has a relevant previous conviction.	SC, s.315
Threatening with an offensive weapon.	DTO 4 months.	Only applies where 16 or 17 at the date of conviction.	SC, s.312
Possession of a bladed article (second offence).	DTO 4 months.	Only applies where 16 or 17 at the date of the offence and where the offender has a relevant previous conviction.	SC, s.315
Having a bladed article or offensive weapon on school premises (second offence).	DTO 4 months.	Only applies where 16 or 17 at the date of the offence and where the offender has a relevant previous conviction.	SC, s.315
Threatening with a bladed article.	DTO 4 months.	Only applies where 16 or 17 at the date of conviction.	SC, s.312
Possessing a corrosive substance (second offence).	DTO 4 months.	Only applies where 16 or 17 at the date of second offence and conviction and where the offender has a relevant previous conviction.	SC, s.315 Only applies where offence committed on or after 6 April 2022

5B. Crossing a relevant age threshold

35. It will frequently be the case that, in the time that has elapsed between the date of the commission of the offence and the date of conviction, the offender has crossed a relevant age threshold. As a consequence, the offender may be liable to a greater maximum sentence, or indeed different sentence entirely, than that which would have been available at the time that they committed the offence.

36. Where this occurs, the court should take as its starting point the sentence likely to have been imposed on the date on which the offence was committed: *R v Ghafoor.*[190] The Youth Guideline states that it will rarely be appropriate for a more severe sentence to be imposed than the maximum that the court could have imposed at the time the offence was committed (though a sentence at or close to that maximum may be appropriate).[191]

37. This principle is particularly important when the young offender crosses the threshold from 14 to 15, as an offender under the age of 15 cannot be given a detention and training order (or YRO with intensive supervision and surveillance or YRO with fostering) unless they are a persistent offender. If an offender under 15 is not a persistent offender, they cannot be made subject to a custodial sentence unless they qualify for long-term detention, a required special sentence for terrorist offenders of particular concern, an extended sentence, detention for life or detention during His Majesty's pleasure.[192] Therefore, an offender who was 14 at the time they committed an offence but 15 when convicted and sentenced should generally receive a non-custodial sentence in accordance with the principle in *Ghafoor*.

38. Section 29(1) of the CYPA 1963 provides that, where proceedings for a youth defendant are begun and they then attain the age of 18 before the conclusion of proceedings, the court may deal with the case and make any order which it could have made if they had not attained that age. This means that the court may, for example, impose a DTO on a youth defendant who turns 18 before conviction, despite the clear wording of the SC, s.234(1)(a) ('if the offender is aged under 18, but at least 12, when convicted').[193] This power will depend on the defendant having made their first appearance in court before they turned 18.

39. Where the defendant has become an adult since the date of the offence, the court must still apply the Youth Guideline (unless satisfied that it would be contrary to the interests of justice to do so). This applies irrespective of the age of the offender at the date of sentence; it thus applies even if the defendant is a mature adult being dealt with for historic offences committed many years previously as a child: *R v Ahmed; R v Stansfield; R v Priestley; R v RW; R v Hodgkinson*.[194] In such circumstances, though, the court will still have to take into account the purposes of sentencing adult offenders, pursuant to the SC, s.57.

5C. Determining age – 'deeming'

40. The age of a young defendant is a very important matter. Occasionally, the age of the defendant is not known or is in dispute. Such disputes may arise most frequently where a defendant was born abroad and came to this country without proper documentation (because they are a refugee seeking asylum, they are a

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190 [2002] EWCA Crim 1857. See the Youth Guideline, para.6.2.
191 Para.6.3.
192 See chapter 16.
193 *A v DPP* [2002] EWHC 403 (Admin); [2002] 2 Cr.App.R.(S) 88.
194 [2023] EWCA Crim 281; [2023] 1 WLR 1858. See also *R v Limon* [2022] EWCA Crim 39; [2022] 2 Cr.App.R.(S) 21; *R v M* [2020] EWCA Crim 1386; *R v Amin* [2019] EWCA Crim 1583; [2020] 1 Cr.App.R. 36; *R v Scothern* [2021] 1 WLR 1735.

trafficked person or for some other reason). However, it may also arise in cases involving those born here. Where age is in issue, this can impact not only on the sentencing powers of the Crown Court but even on the relevant statutory provision by which the defendant arrives at the Crown Court (if, for example, there was a dispute as to whether he/she was under or over 18 at the time of the sending/committal).

41. Such uncertainty will need to be resolved by the court, which is under a duty to determine the age of the defendant. There is no onus of proof on the defendant themselves. Ordinarily, the Crown Court will expect the magistrates' court or youth court to have made the relevant finding, but the matter may still be in dispute when the defendant arrives at the Crown Court.

42. **Legislation and authorities:** Section 99(1) of the CYPA 1933 provides that:

> 'where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case…and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person…'

43. Section 405 of the SC provides that, for any provision of the Code which requires a person's age to be determined by the court, 'the person is to be deemed to be whatever age the person appears to the court'. The court 'must consider any available evidence'. Section 117 of the CDA 1998 provides for deeming in similar terms.[195]

44. If there is any real doubt about the defendant's age, it is usually right for the matter to be adjourned so that it may be more satisfactorily determined: *R v Steed*;[196] *R v O*.[197]

45. The leading authority on assessing age is *B v The Mayor and Burgesses of the London Borough of Merton* [2003] EWHC 1689 (Admin), in which it was stated that:

> '[36] The assessment of age in borderline cases is a difficult matter, but it is not complex. It is not an issue which requires anything approaching a trial, and judicialisation of the process is in my judgment to be avoided. It is a matter which may be determined informally, provided safeguards of minimum standards of inquiry and of fairness are adhered to.
>
> [37] It is apparent from the forgoing that, except in clear cases, the decision maker cannot determine age solely on the basis of the appearance of the applicant. In general, the decision maker must seek to elicit the general background of the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years.

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195 Section 164(1) of the PCC(S)A 2000 and s.1(6) of the CJA 1982 are in similar terms in relation to the very limited provisions which are still in force thereunder.

196 (1990) 12 Cr.App.R. (S) 230.

197 [2008] EWCA Crim 2835.

> Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to make an assessment of his credibility, and he will have to ask questions designed to test his credibility.'

46. The importance of *Merton* compliant assessments has since been emphasised by the High Court.[198] The Court of Appeal has dealt with the question of age deeming where defendants may be the victims of human trafficking: *R v L(C); R v N(HV); R v N(TH); R v T(HD)*.[199] Judge CJ, in giving the judgment of the Court, observed:

> '[22] When the issue arises, we agree that compliance with these provisions in contemporary society requires much more than superficial observation of the defendant in court or in the dock to enable the judge to make an appropriate age assessment. The facial features of the defendant may provide a clue or two, but experience has shown that this is very soft evidence indeed and sometimes leave them with a misleading appearance. We also appreciate that young people from an ethnic group with which the court is unfamiliar may seem older, or indeed younger, than those from ethnic groups with which the court has greater experience. Therefore, when an age issue arises, the court must be provided with all the relevant evidence which bears on it. Although the court may adjourn proceedings for further investigations to be conducted, these have to be undertaken by one or other or both sides, or by the relevant social services. The court is not vested with any jurisdiction, and is not provided with the resources, to conduct its own investigations into the age of a potential defendant until after the investigation has completed its course and the individual in question is brought before the court.
>
> [24] The Children's Commissioner invites us to consider the impact of art.10(3) of the Anti-Trafficking Convention, which provides:
>
> > 'When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.'
>
> [25] The explanatory report to the Anti-Trafficking Convention also refers to a requirement that the parties should 'presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about their age'. In our judgment art.10(3) addresses evidential issues. Where there are reasons to believe that the defendant is a child, then he should be treated as a child. In other words, it is not possible for the court to brush aside evidence which suggests that the defendant may be a child. The issue must be addressed head on. If at the end of an examination of the available evidence, the question remains in doubt, the presumption applies and the defendant must be treated as a child. There is therefore no relevant difference between the approach required by art.10(3) of the Anti-Trafficking

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198 For example, *N v Staines Magistrates' Court* [2009] EWHC 3081 (Admin); *R (M) v Hammersmith Magistrates' Court* [2017] EWHC 1359 (Admin).

199 [2013] EWCA Crim 991; [2013] 2 Cr.App.R. 23.

> Convention and the guidance provided by the Director of Public Prosecutions.'

47. Recently, the Court of Appeal in *R v Mohammed*[200] re-affirmed that *Merton* remains the leading case in the area:

> '[58] …In summary only, the assessment of age and borderline cases is a difficult but not complex matter. It does not require anything approaching a trial, and judicialization of the process is to be avoided. It is a matter which may be determined informally, provided that safeguards of minimum standards on inquiry and fairness are adhered to. Except in clear cases, the decision maker cannot determine age solely on the basis of appearance of the applicant. In general, the decision maker must seek to elicit the general background to the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to test and assess his credibility.'

48. **The 'deeming hearing':** For the purposes of determining age, the court 'shall take such evidence as may be forthcoming', which may include:
    (1) oral evidence from the defendant, their family or friends concerning their stated age and details of their history;
    (2) domestic documentation (birth certificate, passport etc.) including the PNC;
    (3) foreign documentation (birth certificate, passport, ID card etc.)
    (4) the physical appearance of the defendant;
    (5) input from the YOT/YJS;
    (6) input from any other agency which may have involvement with the defendant or their family.
49. The YOT/YJS will have a wide experience of dealing with young people and will have a valuable part to play in assisting the court.
50. At the end of any hearing, the court will deem the defendant to be of a particular age, or within a certain age group. That decision should be recorded on the court record. The assessment of age is always a matter for the court; the judge is not bound by any position adopted by or agreed between the parties.[201]
51. **Later discovery of true age:** If new evidence emerges during future progress of the case, the court may reopen the question of age and may alter its original decision. However, this must be based on new factors which have come to light.
52. The later discovery that a defendant's age is different to that originally thought does not, however, affect the validity of any decision already made. Section 99(1) of the CYPA 1933 provides that '…an order or judgment of the court shall not be invalidated by any subsequent proof that the age has not been correctly stated to the court…'. No sentence passed shall be rendered unlawful.

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200 [2021] EWCA Crim 1375.
201 Ibid.

15-6 Types of offender

6A. Persistent offenders

53. Where the offender is aged under 15, the following sentences will be unavailable, **unless** the young person is a 'persistent offender':
    (1) Youth rehabilitation order (YRO) with intensive supervision and surveillance (ISS).
    (2) Youth rehabilitation order with fostering.
    (3) Detention and training order (DTO).
54. There is no statutory definition of 'persistent offender'. Rather, as observed by Macduff J in *R v M*,[202] 'Persistence is a creature which, perhaps like an elephant, should be capable of being recognised when it is encountered without further definition.'
55. Whether an offender can properly be assessed as a persistent offender must be decided on a case-by-case basis, taking into account the following matters:
    (1) Is there a history of previous offending? Previous offending may be demonstrated by reprimands, warnings or cautions as well as by previous convictions.
    (2) Is the offender a persistent offender, or just a repeat offender? A young person who has only committed one previous offence cannot reasonably be described as a 'persistent offender', but a person who has been sentenced on just one occasion but for multiple separate offences may be.
    (3) Has there been a change in the rate and pattern of offending? A reduction in the level of offending may indicate attempts on the part of the child or young person to avoid criminal behaviour.
56. The Youth Guideline now gives greater guidance based on Court of Appeal authority.[203]
57. In general, it is expected that the youth defendant will have had previous contact with authority as the result of criminal behaviour, including previous findings of guilt and admissions of guilt in out-of-court disposals. A child or young person who has committed one previous offence cannot reasonably be classed as persistent. The committing of two or more previous offences is not necessarily assumed to be persistent. The court must look not only at the number of previous offences but also the lapse of time between offences.
58. The court would be justified in classing a child or young person as a persistent offender if there have been three findings of guilt (or admissions of guilt out-of-court) in the previous 12 months for imprisonable offences of a comparable nature.
59. The court may also be justified in classing a child or young person as a persistent offender where they are being sentenced in a single appearance for a series of separate, comparable offences committed over a short space of time,

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202 [2008] EWCA 3329 at [8].
203 Youth Guideline, paras.6.4 to 6.10.

despite the fact that there have been no previous findings of guilt: *R v S*.[204] In such a case, the court should consider whether the offender has had prior opportunity to address their offending behaviour before imposing one of the optional sentences available for persistent offenders only. If the court determines that they have not had such an opportunity and believes that an alternative sentence has a reasonable prospect of preventing re-offending then this alternative sentence should be imposed.

60. The court should also consider any evidence of a reduction in the level of offending which may indicate that the child or young person is attempting to desist from crime.

61. Where a young offender is found to be a persistent offender, the court is not thereby obliged to impose a particular type of sentence; the overarching principles continue to apply, and the sentence should be tailored to the individual offender.

6B. Dangerous offenders

62. As with an adult offender, a youth defendant will only be liable to be sentenced as a dangerous offender where the offence is a specified violent, sexual or terrorism offence listed in the SC, sch.18 and the court considers that:

    (1) there is a significant risk of serious harm from future specified offences committed by the offender; and

    (2) a custodial sentence of at least four years would be justified for the offence.

63. When considering future risk as it pertains to a youth defendant, however, the court should keep in mind the offender's level of maturity and the fact that a young person will change and develop more rapidly than an adult as they get older: *R v Lang*.[205] For this reason, it is suggested that a youth defendant will rarely be found to be dangerous.

15-7 Procedural requirements

7A. In person, not via a video link

64. In order to ensure that proper engagement can be facilitated between the court and the youth defendant, and between the youth defendant and their YOT/YJS worker, defence representative and supporting adult, a youth defendant should ordinarily be produced in person at court rather than over a video link; it will rarely be appropriate for a youth to be sentenced over a live link. Any application for a live link should be considered on a case-by-case basis, after consultation with the parties and the YOT/YJS, who have a statutory duty to explain the sentence to the youth.

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[204] [2000] 1 Cr.App.R. (S) 18.
[205] [2005] EWCA Crim 2864.

65. The Lord Chief Justice has given guidance making it clear that it will rarely be appropriate for a youth to be sentenced over a live link. [206] Such arrangements may, however, be acceptable where the youth defendant is:
    (1) already serving a custodial sentence and the sentence to be imposed by the court is bound to be a further custodial sentence or have no material impact on the sentence being served;
    (2) detained in a secure establishment a long way from the court and being produced would materially affect them;
    (3) so disturbed that their production would be a significant detriment to their welfare.
66. Where, exceptionally, a live link is used, arrangements must be made in advance of any live link hearing to enable the YOT/YJS worker to be at the secure establishment where the youth is in custody; or, in the event that such arrangements are not practicable, to have sufficient access to the youth via the live link booth before and after the hearing.[207]

7B. Legal representation

67. Whether on summary conviction, conviction on indictment, or on a committal for sentence to the Crown Court, the court is prohibited by the SC, s.226 from imposing a custodial sentence on any offender under the age of 21 who is not legally represented unless:
    (1) the offender has refused to apply for relevant representation, having been informed of their right to apply for it and having had the opportunity to do so;
    (2) their application for relevant representation was refused on financial grounds; or
    (3) relevant representation was made available to them but withdrawn because of their conduct or on financial grounds.
68. It should be noted that reference in the SC, s.226 to an offender having their application for relevant representation being refused on financial grounds has no relevance to any youth defendant because any defendant under the age of 18 is deemed to have financial resources such that they are eligible for legal aid representation: Criminal Legal Aid (Financial Resources) Regulations 2013, reg.22.
69. The same requirements for legal representation apply when the court is considering making a youth rehabilitation order with either a local authority residence requirement or a fostering requirement: SC, sch.6, paras.25, 27.

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206 Para.11 of the *Live Links in Criminal Courts Guidance* issued in July 2022 by the Lord Chief Justice pursuant to the CJA 2003, s.51(5).

207 Above *Guidance*, para.10.

7C. Attendance of parent or guardian

70. It is particularly important that a parent or guardian attends any sentence hearing, not only to provide support for the youth defendant, but also because the court may be considering making orders against the parent or guardian.
71. Before passing sentence, the court has a duty to give the defendant an opportunity to make representations and introduce evidence relevant to sentence. Where the defendant is under 18, the court may give the defendant's parents, guardian or other supporting adult, if present, such an opportunity as well: CrimPR 2020, r.25.16(6).
72. See chapters 10 and 17.

7D. Necessity for report

73. Section 30(3) of the SC provides that, in relation to an offender aged under 18, the court must obtain and consider a pre-sentence report before forming any relevant opinion. This requirement applies to the following assessments:
    (1) Determining whether an offence is serious enough to warrant making a youth rehabilitation order: s.179(4).
    (2) Determining whether an offence is serious enough to cross the custodial threshold such that a youth rehabilitation order with intensive supervision and surveillance or with fostering is warranted: s.180(4).
    (3) Determining what particular requirement or requirements are suitable as part of a youth rehabilitation order: s.186(4).
    (4) Determining whether the restrictions imposed by a youth rehabilitation order are commensurate with the seriousness of the offence: s.186(8).
    (5) Determining whether an offence is serious enough to cross the custodial threshold: s.230(7).
    (6) Determining the length of any discretionary custodial sentence: s.231(8).
    (7) Determining whether there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences, for the purposes of imposing an extended sentence: s.255(2).
    (8) Determining whether there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences, for the purposes of imposing a sentence of detention for life: s.258(3).
74. A pre-sentence report will only be unnecessary if there is a previous report in existence which the court has considered and, as a result, determines that no new report is required: SC, s.30(3).
75. A pre-sentence report for a youth defendant must be in writing if it is required for determining matters relating to a custodial sentence or dangerousness: s.31(5).
76. A full copy of any written pre-sentence report must be provided to the prosecution, defence legal representative and to the offender's parent or guardian, or local authority with parental responsibility, present at court. The report may be redacted if it contains information which would be likely to create a significant risk of harm to the offender if disclosed: SC, s.32(2)-(4).

7E. Communicating the sentence to a child or young person

77. Section 52(3) of the SC requires the court to explain to an offender in ordinary language:
    (1) the effect of the sentence;
    (2) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence;
    (3) any power of the court to vary or review any order that forms part of the sentence; and
    (4) the effects of failure to pay a fine, if the sentence includes a fine.
78. Rule 25.16 of the CrimPR 2020 reiterates this duty and emphasises that the court must give its explanation in terms the defendant can understand (with help, if necessary).
79. Part II of the Crown Court Compendium (Sentencing) now contains *Appendix II: Communicating Sentences to Children*, which provides valuable guidance for writing and delivering sentencing remarks to all defendants aged under 18 years.
80. Appendix II includes information about children's speech, language and communication needs; references about the court's legal obligations to ensure effective participation and communication; guidance as to how best to communicate with children before, during and after the sentencing hearing; directions as to preparing appropriate sentencing remarks; a checklist for adopting the best methods for communicating the sentence; and a glossary of legal terms with child-friendly explanations.
81. The Court of Appeal recently endorsed the use of this appendix, stating:

    '[88] …When sentencing a child or young person this means taking care to explain the sentence, and the reasons for it to them in a way and using words that they can easily grasp. Remarks which properly speak to the child or young person before the court require time to get right but experience shows that it can make a real difference.'[208]

7F. Listing and sentencing notes

82. The Court of Appeal has observed that sentencing children and young people is a difficult and time-consuming endeavour, if it is to be done properly in accordance with Sentencing Council guidance. Judges' lists will require more time than is often given to 'prepare for a sentencing hearing, for the hearing itself and then for the judge to take time to reflect and to weigh up all relevant, often conflicting, considerations in arriving at the appropriate sentence'.[209]
83. The Court of Appeal has also stated that full and accurate sentencing notes from prosecution and the defence are critical in ensuring that the judge's deliberations are directed correctly by reference to material considerations set out in the relevant Sentencing Council guidelines, together with reference to important assistance with sentencing and the sentencing process located in the

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208 *R v ZA* [2023] EWCA Crim 596.
209 Ibid, at [49].

CrimPD and in this publication.[210] Such notes must ensure that they refer to the Youth Guideline and to any youth-specific offence guidelines. Failure to do so is likely to result in a sentence that is both wrong in principle and manifestly excessive.

84. The Court of Appeal has suggested the following checklist for counsel and courts undertaking what are invariably complex and difficult sentencing exercises:[211]

> '(1) Court listing should ensure that there is sufficient time for the judge, even if that judge heard the trial and knows the case well, to read and consider all reports and to prepare sentencing remarks in age-appropriate language.
>
> (2) Consideration should be given to listing separately, and as a priority, the sentence of any child(ren) or young person(s) jointly convicted with adult co-defendants.
>
> (3) The courtroom should be set up and arranged to ensure that the child or young person to be sentenced is treated appropriately, namely as a vulnerable defendant entitled to proper support. So far as possible the judge should be seated on a level with the child or young person and the latter should be able to sit near to counsel, with parental or other support seated next to them…
>
> (4) Counsel must expect to submit full sentencing notes identifying all relevant Sentencing Council Guidelines, in particular any youth-specific guideline(s), addressing material considerations in an individualistic way for each defendant separately (if more than one young defendant is to be sentenced). Where an individualistic approach is mandated, as it is for a child or young person, a note which addresses all defendants compendiously risks missing important distinctions. These notes should be uploaded well in advance of the sentence hearing.
>
> (5) The contents of the Youth Justice Service pre-sentence report and any medical/psychiatric/psychological reports will be key. Courts should consider these reports bearing in mind the general principles at section 1 of the overarching youth guideline, together with any youth-specific offence guideline, carefully working through each.
>
> (6) In general it will not be helpful to go straight to paragraph 6.46 of the overarching youth guideline without having first directed the court to general principles canvassed earlier in that guideline, as well as to any youth-specific guideline. The stepped approach in the overarching youth guideline and any youth-specific guideline should be followed. Working through the guideline(s) in this way will enable the court to arrive at the most appropriate sentence for the particular child or young person, bearing in mind their individual circumstances together with the dual aims of youth sentencing.
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> (7) If the court considers that the offence(s) is (are) so serious as to pass the custody threshold, the court must consider whether a YRO with ISS can be imposed instead. If it cannot, then the court must explain why.'

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210 Ibid, also at [49].
211 Ibid, at [82].

16. SENTENCING: SPECIFIC SENTENCES

16-1 Available sentences

1. The available sentences for child and young offenders aged 10-17 are as set out in the table below:

Sentence	10-11	12-14	15-17	Notes
Absolute or conditional discharge	✔	✔	✔	
Reparation order	✔	✔	✔	Only available where the offender was convicted before 28 June 2022.
Fine	✔	✔	✔	Where the offender is under 16, the court must order any financial penalty to be paid by the offender's parent or guardian and may so order when aged 16 or 17.
Referral Order	✔	✔	✔	The mandatory sentence for most first-time young offenders who plead guilty. Only available in the youth or magistrates' courts.[212]
Youth Rehabilitation Order (YRO)	✔	✔	✔	
YRO with Intensive Supervision and Surveillance (ISS)	✔*	✔*	✔	*Only available for offenders aged 10-14 who are persistent offenders.
YRO with Fostering	✔*	✔*	✔	*Only available for offenders aged 10-14 who are persistent offenders.
Detention and Training Order (DTO)	✗	✔*	✔	*Only available for offenders aged 12-14 who are persistent offenders.
Detention under s.250 of the SC	✔	✔	✔	Where the offender is to be sentenced for a 'grave crime'. Generally, only appropriate where a sentence in excess of 2 years is merited.

[212] But see chapter 7 (7-7) and below.

Sentence	10-11	12-14	15-17	Notes
Special sentence of detention for terrorist offenders of particular concern	✔	✔	✔	Will generally only be sent or committed to the Crown Court where a sentence of detention in excess of 2 years is merited.[213]
Extended sentence of detention	✔	✔	✔	Only available where convicted of a specified offence, where the dangerousness criteria are met, where a custodial sentence of at least 4 years is merited but where the court is not required to pass a sentence of detention for life under s.91.
Detention for life	✔	✔	✔	Only available where convicted of a serious offence, where the dangerousness criteria are met, where the offence is one for which the defendant would otherwise be liable for detention for life under s.91, and where the court considers that the seriousness of the offence(s) justifies a sentence of detention for life under s.91.
Detention during His Majesty's pleasure	✔	✔	✔	Sentence fixed by law for murder only.

16-2 Absolute or conditional discharge

2. Sections 79 to 82 of the SC provide for absolute and conditional discharges.
3. These disposals are available for any offender aged 10 or over.
4. They are available if the court is of the opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment: ss.79(3), 80(4).
5. The maximum length of a conditional discharge is three years: s.80(5).
6. Neither disposal is available where the offence is one to which the mandatory sentence requirement applies: ss.79(2)(b), 80(2)(b).

[213] See chapters 7 and 8.

7. Unless there are exceptional circumstances, a conditional discharge is not available where the youth defendant has, within the previous two years received either two youth cautions or a youth conditional caution followed by a youth caution: s.80(3); CDA 1998, s.66ZB(6), s.66F.

8. Nor is conditional discharge available for:

   (1) breach of a sexual harm prevention order: SOA 2003, s.103I(4); SC, s.354(5);

   (2) breach of a criminal behaviour order: SC, s.339(3).

9. A conditional discharge made on appeal from the magistrates' court to the Crown Court is deemed to have been made by the magistrates' court from which the appeal came: SC, sch.2, para.2(a).

16-3 Reparation order

10. Sections 109 to 116 of the SC provide for reparation orders. Section 162 of the PCSCA 2022 has now abolished reparation orders. Reparation orders are only now available where the offender was convicted of the offence before 28 June 2022.

11. This sentence is available for any youth offender aged 10 to 17.

12. This sentence is not available for an offence for which the sentence is fixed by law: s.110(1)(b).

13. The court may make an order requiring the offender to make reparation to:

   (1) a particular person or particular persons: s.109(1)(a); or

   (2) to the community at large: s.109(1)(b).

14. A reparation order shall not require the offender to work for more than a total of 24 hours: s.112(6)(b). The order must include requirements which are commensurate with the seriousness of the offence or offences: s.112(3). Requirements should, so far as practicable, avoid conflict with the offender's religious beliefs or with any other court order, and should not interfere with his/her attendance at any educational establishment: s.112(7). Any reparation required by the order will be under the supervision of a responsible officer (probation, social worker or member of the YOT/YJS): s.114(1).

15. Reparation does not include the payment of compensation: s.109(2). Reparation shall be made within three months from the date of making the order: s.114(2).

16. A reparation order may be made in addition to another disposal but not if the court is passing a custodial sentence, YRO or referral order: s.110(1)(c).

17. A reparation order may not be made in respect of an offender who is currently subject to a YRO unless the court revokes the YRO: s.110(3).

18. Before making a reparation order, the court must obtain a written report (from probation, a social worker or the YOT/YJS) indicating the type of work suitable for the offender and the attitude of the victim(s) to the proposed requirements: s.111. A reparation order cannot require an offender to make reparation to a person without that person's consent: s.112(5).

19. If the court has the power to make a reparation order but does not do so, it must give reasons for its decision not to: s.54.

20. The order must name the local justice area in which the offender resides or will reside: s.113(2).

16-4 Fine

21. Sections 118 to 132 of the SC provide for fines.

22. This sentence is available for any offender aged 10 or over.

23. The Crown Court's powers are unfettered where the youth defendant is convicted on indictment. However, where a child (aged 10 to 13) is found guilty by a magistrates' court, the maximum fine is £250: s.123(2)(a). Where a young person (aged 14 to 17) is found guilty by a magistrates' court, the maximum fine is £1,000: s.123(2)(b). This will limit the Crown Court's powers where the defendant is committed to it for sentence.

24. Where the child or young person is aged under 16, the court must order the fine to be paid by the offender's parent or guardian: ss.128, 380. Where the young person is aged 16 or 17, the court may order the fine to be paid by the parent or guardian: ss.128, 380. See chapter 17 for further details.

25. The Youth Guideline observes that, in practice, many children and young people will have limited financial resources and the court will need to determine whether imposing a fine will be the most effective disposal. If ordering a fine against the youth defendant themselves, the court should bear in mind that any money they may have is specifically required for travel costs to school, college or apprenticeships and lunch expenses.[214]

26. If the court orders costs to be paid alongside a fine, the amount of the costs must not exceed the amount of the fine: Prosecution of Offences Act 1985, s.18(5).[215]

16-5 Referral order

27. Sections 83 to 108 of the SC provide for referral orders.[216]

28. This sentence is available in the youth court and magistrates' court for any offender aged 10 to 17.

29. For a long time, a Crown Court judge was considered to have no power to make a referral order at first instance.[217] That position has changed with the case of *R v S*.[218] In that case, the Court of Appeal found that a judge in the Crown Court has the power to remit a youth defendant to the youth court for sentence, pursuant to the SC, s.25(2), and then themselves to exercise the powers (afforded by the Courts Act 2003, s.66) of a district judge (magistrates' courts),

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214 Paras.6.17 to 6.18.
215 See Youth Guideline, para.6.17.
216 See Youth Guideline, paras.6.19 to 6.22.
217 See *R v Dillon* [2019] 1 Cr.App.R.(S) 22; *R v Koffi* [2019] 2 Cr.App.R.(S) 17.
218 [2021] EWCA Crim 960; [2023] 1 Cr.App.R.(S) 33. Fulford LJ, Vice President of the Court of Appeal Criminal Division, presided over both this case and that of *R v Gould.*

sitting as a youth court, to impose a referral order. The Court of Appeal applied the law on s.66 as explained in *R v Gould and others*[219] and found *Dillon* and *Koffi* to be incorrectly decided.[220] Though the Crown Court's duty to remit a youth defendant for sentence to the youth court may be particularly imperative where the compulsory referral order conditions (see below) would be satisfied, *R v S* does not, however, lay down an inflexible rule that the judge of the Crown Court must constitute themselves as a DJ(MC) for the purposes of passing a referral order in such circumstances.[221]

30. A referral order has always been available in the Crown Court on appeal.

31. A referral order is an order which requires an offender to attend each of the meetings of a youth offender panel established by a YOT/YJS and by virtue of which the offender is required to comply, for a particular period, with a programme of behaviour to be agreed between the offender and the panel: s.83(1). A referral order shall specify the YOT/YJS responsible for establishing the youth offender panel: s.86(1). The order must specify the period (3 to 12 months) for which any youth offender contract is to take effect by virtue of the order: s.86(1)(b), (2). The court determines the length of the order, but the youth offender panel determines the requirements.

32. A referral order is only available upon a plea of guilty. As such, there should be no further reduction of the sentence to reflect the guilty plea.[222]

33. Once a referral order is made, the YOT/YJS shall establish a youth offender panel for the offender and arrange for meetings of that panel: ss.91, 92, 95. That panel shall agree a youth offender contract with the offender at the first meeting which will consist of a programme of behaviour the principal aim of which is the prevention of re-offending by the offender: s.96. The programme may include provision for financial or other reparation, mediation sessions, unpaid work or community service, a curfew, a requirement to attend school or work, specified activities, exclusion from specified places or persons etc: sch.3, para.2. The requirements are set by the panel rather than the court.

34. A referral order is not available where the offence is one for which the sentence is fixed by law: s.84(1)(c).

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219 [2021] EWCA Crim 447.

220 In *R v S*, the Court of Appeal did not analyse carefully whether it had been in the interests of justice for S (aged 17) to be sent by the magistrates' court for trial for two offences of domestic burglary. It is suggested that such a sending may not have been in accordance with the guidance given in the Youth Guideline (see chapter 7, paras.12-14 above).

221 See *R v Y, Coffey & Coffey* [2023] EWCA Crim 977, in which the judge sentenced two youth defendants (aged 16 and 17) alongside an adult, imposing a YRO and YRO with intensive supervision and surveillance respectively following guilty pleas to their first offences. The judge declined to remit to the youth court on the ground that it was necessary in the interests of consistency to sentence all defendants together for this violent disorder. The Court of Appeal was not satisfied that this decision fell outside the bounds of what was reasonable in the circumstances.

222 Youth Guideline, para.5.15.

35. A referral order is not available where the court is proposing to impose a custodial sentence or make a hospital order: s.84(1)(d).

36. A referral order is not available where the court is proposing to make an absolute or conditional discharge: s.84(1)(e).

37. **Compulsory referral order:** If sentence is not fixed by law and the court is not intending to impose custody, a discharge or make a hospital order, then the youth or magistrates' court **must** make a referral order where:

    (1) the offence is punishable with imprisonment;

    (2) the offender has pleaded guilty to the offence and to any connected offence; and

    (3) the offender has no previous convictions in the UK for any offence: s.85(1)(a), (2).

38. **Discretionary referral order:** If sentence is not fixed by law and the court is not intending to impose custody, a discharge or make a hospital order, the youth or magistrates' court **may** make a referral order where:

    (1) the compulsory conditions are not satisfied; and

    (2) the offender has pleaded guilty to the offence or to any connected offence: ss.84(1), 85(1)(b).

39. Reports are not mandatory prior to the making of a referral order. They are not usually obtained where the compulsory referral conditions for a relatively minor offence make the order inevitable. A report will be required where a referral order is available but the court is considering whether the offence is so serious that a custodial sentence is the only option: SC, s.30(3), s.230(7). If the Crown Court judge has remitted the matter back to the youth court and is then exercising their powers under the Courts Act 2003, s.66 (pursuant to the guidance in *R v S*), they should note that, where the compulsory referral conditions apply to a first offence, no fine or youth rehabilitation order is available to the court. There is often a stark choice for the court to make between the making of a referral order and the making of a detention and training order.

40. A referral order can be combined with an absolute discharge or another referral order for a connected offence: s.89(2). But a referral order cannot be made in combination with a YRO, fine, reparation order, conditional discharge, bind over or parental bind over: s.89(3), (4).

41. Where the criteria for making a referral order would be met if the child or young person was sentenced in the youth or magistrates' court, and a referral order is the most appropriate sentence, the Crown Court should remit the offender to the youth court. The Crown Court judge should then determine whether they will exercise the jurisdiction of a DJ(MC) sitting as a youth court under the Courts Act 2003, s.66 or have the matter dealt with by the youth court itself. The latter course may be particularly attractive if the Crown Court does not have the benefit of a YOT/YJS worker at court.

16-6 Youth rehabilitation order

6A. YRO – Basic order

42. Sections 173 to 199 of, and sch.6 to, the SC provide for youth rehabilitation orders.[223]

43. This sentence is available for any offender aged 10 to 17 at the date of conviction. A YRO cannot be imposed by the youth court (or Crown Court on appeal) where the criteria for a compulsory referral order are met.

44. A YRO is the youth equivalent of a community order. At least one of the following requirements must be included within a YRO (s.173(1)):

    (1) **activity** (and **extended activity**) requirement:

        (a) requirement that offender must participate in specified activities, which can include residential exercises, for up to 90 days (activity) or 91 to 180 days (extended activity): sch.6, paras.1-8;

        (b) extended activity requirement only available for a YRO with intensive supervision and surveillance (see below): s.185(1);

    (2) **supervision** requirement:

        (a) requirement that offender attend appointments with the responsible officer or another person determined by the responsible officer, for up to the full length of the order (maximum three years): sch.6, para.9;

    (3) **unpaid work** requirement:

        (a) only available if offender is aged 16 or 17 at the time of conviction: s.185(2);

        (b) requirement to perform 40 to 240 hours of unpaid work, generally within 12 months (but remains in force until completed): sch.6, paras.10-11;

    (4) **programme** requirement:

        (a) requirement that offender participate in specified systematic set of activities, which may have a residential component sch.6, paras.12-13;

    (5) **attendance centre** requirement:

        (a) requirement that offender attend attendance centre and receive instruction for:

            i. 12-36 hours if aged 16 or over,

            ii. 12-24 hours if aged 14 or 15,

            iii. up to 12 hours if aged 10-13: sch.6, paras.14-15;

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[223] See Youth Guideline, paras.6.23 to 6.31. Clause 137 of, and sch.16 to, the Police, Crime, Sentencing and Courts Bill, when enacted, will make amendments to the provisions relating to YROs.

(6) **prohibited activity** requirement:

(a) requirement that offender refrain from participating in specified activities on specified days or for a period;

(b) may include requirement not to possess, use or carry a firearm: sch.6, paras.16-17;

(7) **curfew** requirement:

(a) requirement that offender must remain for specified periods at a specified place:

(b) 2-16 hours per day (if convicted prior to 28 June 2022); 2-20 hours per day but no more than 112 hours per week (if convicted on or after 28 June 2022);

(c) only for up to 12 months;

(d) must also include electronic monitoring requirement (except in certain limited circumstances): sch.6, paras.18-19;

(8) **exclusion** requirement:

(a) provision prohibiting offender from entering a specified place (or places) for a period of up to 3 months;

(b) must also include electronic monitoring requirement (except in certain limited circumstances): sch.6, paras.20-21;

(9) **residence** requirement:

(a) only available if offender was aged 16 or 17 at the time of conviction;

(b) requirement for offender to reside with a specified individual or at a specified place: sch.6, paras.22-23;

(10) **local authority residence** requirement:

(a) requirement for offender to reside in accommodation provided by the local authority for a specified period of up to 6 months or until the offender turns 18 (whichever is sooner);

(b) offender must be legally represented or have had the opportunity for legal representation: sch.6, paras.24-25;

(11) **fostering** requirement:

(a) not available for a basic YRO (see below): s.185(3), sch.6, paras.26-27;

(12) **mental health treatment** requirement:

(a) requirement for offender to submit to treatment (which may be residential) under the direction of registered medical practitioner/psychologist with a view to improving their mental condition;

(b) the offender must express a willingness to comply: sch.6, paras.28-30;

(13) **drug treatment** requirement:

(a) requirement that offender submits to treatment under the direction of a specified person with a view to reducing dependency on, or propensity to misuse, drugs;

(b) the offender must express a willingness to comply sch.6, paras.31-33;

(14) **drug testing** requirement:

(a) requirement that offender provide samples for the purpose of ascertaining whether there is any drug in their body during the treatment period under a drug-treatment requirement;

(b) the offender must express a willingness to comply: sch.6, paras.34-35;

(15) **intoxicating substance treatment** requirement:

(a) requirement that offender submits to treatment under specified person with a view to the reduction or elimination of their dependency on, or propensity to misuse, intoxicating substances;

(b) the offender must express a willingness to comply sch.6, paras.36-38;

(16) **education** requirement:

(a) requirement that offender must comply with an approved education arrangement, made by their parent or guardian and approved by the local authority;

(b) cannot extend beyond compulsory school age or the date up to which the offender has a duty to participate in education or training under pt.1 of the Education and Skills Act 2008: sch.6, paras.39-40;

(17) **electronic monitoring** requirement[224]:

(a) requirement for securing the electronic monitoring of the offender's compliance with other requirements;

(b) mandatory if the YRO imposes a curfew or exclusion requirement unless the court considers it inappropriate or it requires the consent of another person whose cooperation will not be secured;

(c) not available unless the YRO includes at least one other requirement: s.185(4), sch.6, paras.41-44.

45. As with any community order, the court must not pass a YRO unless it is of the opinion that the offence(s) was serious enough to warrant such a sentence: s.179(2). Just because the matter is so serious does not require the court to pass such a sentence: s.179(5).

46. A YRO is not available where the sentence is fixed by law or a minimum sentence is required: s.177(3).

[224] From a date to be appointed, renamed as an 'electronic compliance monitoring requirement': SC, sch.6, para 41 as amended by the PCSCA 2022, sch.17(2), para.12. Schedule 17 of the PCSCA 2022 will also create a separate, freestanding 'electronic whereabouts monitoring requirement', which will enable an offender's whereabouts to be monitored through GPS.

47. Before making a YRO, the court must obtain and consider information about the offender's family circumstances and the likely effect of the YRO on those circumstances: s.179(6).

48. A number of requirements need specific consultation with the YOT (or probation) prior to imposition (activity, programme, prohibited activity, residence). A number of requirements may not be included if they require the consent of a person other than the offender and the responsible officer, unless that person consents (activity, programme). Other requirements require specific information from other persons on the impact of such requirements (eg curfew, local authority residence). Certain of the requirements require copies of the YRO to be provided also to specified persons (activity, attendance centre, exclusion, residence, local authority residence, mental health treatment, drug treatment, drug testing, intoxicating substance treatment, education, electronic monitoring).

49. Where two or more requirements are imposed, they must be compatible with each other and not conflict with any religious beliefs, attendance at work or school, or any other court order: s.186(10), (11).

50. A YRO can be ordered to take effect on a later date, including at the conclusion of the detention part of a DTO or at the full expiry of a DTO: ss.181(1), 198(2). A YRO cannot be made when a reparation order or other YRO is in force unless the court revokes the earlier order: s.181(4). The court can make concurrent YROs for multiple offences but it cannot combine YROs of a different type (eg it cannot combine a basic YRO together with a YRO with intensive supervision and surveillance or with a YRO with fostering): s.183(2).

51. The court may include requirements of the same kind in two or more YROs and, if it does, must direct whether those requirements are to run concurrently with, or consecutively to, other requirements of the same kind: s.183(4), (5). If requirements run consecutively, they cannot exceed the specified maximum for that requirement: s.183(7).

52. A YRO must specify an end date by which time all requirements must have been completed, which must be not more than three years after the date on which the order takes effect. There is no minimum length for a basic YRO: s.187.

53. Where a Crown Court makes a YRO, it may include a direction that the order be subject to magistrates' court supervision (ie proceedings for breach, amendment, revocation), though the lower court retains a power to commit the matter back to the Crown Court in due course: s.189. See chapter 18.

6B. YRO with intensive supervision and surveillance

54. A YRO may be a YRO with intensive supervision and surveillance (ISS): SC, s.175.[225]

55. A YRO with ISS may only be made if:

[225] See Youth Guideline, paras.6.32 to 6.36.

(1) the court is dealing with an offence punishable with imprisonment (unless dealing with a wilful and persistent failure to comply with a YRO; see chapter 18): s.178;

(2) the court is of the opinion that the offence(s) is so serious that, but for the availability of a YRO with ISS, a custodial sentence would be appropriate (or, if the offender was aged under 12, it would have been appropriate for an offender aged 12): s.180(2)(a); and

(3) if the offender was aged under 15 at the time of conviction, the court is of the opinion that he/she is a persistent offender: s.180(2)(b).

56. A YRO with ISS will include:

(1) an extended activity requirement of between 90 and 180 days: s.175(1)(a), sch.6, para.2;[226]

(2) a supervision requirement: s.175(1)(b); sch.6, para.9;

(3) a curfew requirement with mandatory electronic monitoring requirement unless the court considers it inappropriate or it requires the consent of another person whose cooperation will not be secured: s.175(1)(c); sch.6 paras.18-19, 41-44. [227]

57. A YRO with ISS may also impose any other requirement that could be attached to a basic YRO, save for a fostering requirement: s.175(2). If dealing with more than one offence, a YRO with ISS cannot be made at the same time as a basic YRO or YRO with fostering: s.183(2). However, the court can make concurrent YROs with ISS for multiple offences. If it does, all orders must take effect at the same time: s.183(3).

58. A YRO with ISS must be at least six months in length: s.187(2)(b). It can be no longer than three years in length: s.187(2)(a).

59. Where the court makes a YRO with ISS, it must explain why it is of the opinion that the offence is serious enough to warrant the making of a YRO and why it would otherwise merit a custodial sentence: s.52(8).

6C. YRO with fostering

60. A YRO may be a YRO with fostering: SC, s.176.[228] A fostering requirement is a requirement that the offender must reside with a local authority foster parent for

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226 From a day to be appointed, the PCSCA 2022, sch.17, para.17 amends the SC, sch.6, para.2 to increase the maximum number of extended activity requirement days available to 365, where the offender was convicted on, or after, the coming into force of that section. This change is to be piloted from 3 July 2023 in the HMCTS regions of London, North East, West Midlands and Wales before determining whether it will be rolled out nationally. The pilot covers both magistrates'/youth courts and Crown Courts.

227 From a day to be appointed, the PCSCA 2022, sch.17, para.16 amends the SC, s.175 to include the mandatory additional requirement of an electronic whereabouts monitoring requirement. This change is to be piloted from 3 July 2023 in the HMCTS regions of London, North East, West Midlands and Wales before determining whether it will be rolled out nationally. The pilot covers both magistrates'/youth courts and Crown Courts.

228 See Youth Guideline, paras.6.32 to 6.34, 6.37 to 6.41.

a particular period: sch.6, para.26(1). A YRO with fostering must also impose a supervision requirement: s.176(1)(b); sch.6, para.9.

61. A YRO with fostering may only be made if:

    (1) the court is dealing with an offence punishable with imprisonment (unless dealing with a wilful and persistent failure to comply with a YRO; see chapter 18): s.178;

    (2) the court is of the opinion that the offence(s) is so serious that, but for the availability of a YRO with fostering, a custodial sentence would be appropriate (or, if the offender was aged under 12, it would have been appropriate for an offender aged 12): s.180(2)(a); and

    (3) if the offender was aged under 15 at the time of conviction, the court is of the opinion that he/she is a persistent offender: s.180(2)(b).

62. A YRO with fostering is available if the court is satisfied:

    (1) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living: sch.6, para.27A(a), and

    (2) that the imposition of a fostering requirement would assist in the offender's rehabilitation: sch.6, para.27A(b).

63. Before imposing such a requirement, the court must consult the offender's parents or guardians (unless impracticable) and consult the local authority which is to place the offender with a local authority foster parent: sch.6, para.27C.

64. A YRO with fostering may also impose any other requirement that could be attached to a basic YRO, save for ISS: ss.175(2), 176(2). If dealing with more than one offence, a YRO with fostering cannot be made at the same time as a basic YRO or YRO with ISS: s.183(2). However, the court can make concurrent YROs with fostering for multiple offences. If it does, all orders must take effect at the same time; they cannot run consecutively: s.183(3).

65. A YRO with fostering must be for no longer than 12 months and must not extend beyond the offender's 18th birthday. There is no minimum fostering period: sch.6, para.26(3).

66. A court may not impose a YRO with fostering unless the offender is legally represented or has had the opportunity for legal representation: sch.6, para.27D.

67. Where the court makes a YRO with fostering, it must explain why it is of the opinion that the offence is serious enough to warrant the making of a YRO and why it would otherwise merit a custodial sentence: s.52(8).

16-7 Detention and training order

68. Sections 233 to 248 of the SC provide for detention and training orders (DTOs).[229] A DTO is the standard custodial sentence imposed on an offender under the age of 18. The sentence consists of two parts: (a) a period of

[229] See Youth Guideline, paras.6.50 to 6.53.

detention and training in such youth detention accommodation as may be determined by the Secretary of State, followed by (b) a period of supervision by a probation or YOT officer: ss.233, 241(1), 242(2). The period of detention and training is usually one-half of the order (s.241(2)) but there are provisions for early release and delayed release: s.241(3)-(5). The period of supervision begins upon release, whenever that is: s.242(1).

69. The sentence is available for any imprisonable offence: s.234(1)(b).

70. The sentence is available for a young offender aged 12 to 17: s.234(1)(a). For an offender aged 12, 13 or 14, it is only available if the court is of the opinion that he/she is a persistent offender (see chapter 15): s.100(2)(a). The sentence is not currently available for an offender aged 10 or 11.[230]

71. The court may impose a DTO on a youth defendant who turns 18 before conviction, despite the clear wording of the SC, s.234(1)(a) ('if the offender is aged under 18, but at least 12, when convicted').[231] This power will depend on the defendant having made his/her first appearance in court before he/she turned 18.

72. Until 28 June 2022, the term of a DTO in respect of an individual offence could only be for specified periods: 4, 6, 8, 10, 12, 18 or 24 months: s.236(1). From 28 June 2022, the term of a DTO may be for any period of at least four months but not exceeding 24 months: SC, s.236(1).[232] The minimum term means that a DTO is not available for a youth defendant where the maximum period of imprisonment for an adult would be less than four months (eg criminal damage under £5,000; resisting/obstructing a police constable). The term of a DTO may not exceed the maximum term of imprisonment available for an offender aged 21 or over: s.236(2). A court can order that a DTO runs consecutive to another DTO imposed by that court or any other court (s.237(2), (3)) but the court cannot make an order the effect of which would be that the offender would be subject to DTOs for a total term which exceeds 24 months: s.238(1). A court cannot impose a DTO consecutive to an existing DTO under which the period of supervision has already begun; it can impose a consecutive DTO if the offender is still in detention on the previous DTO: s.237(3).

73. The court may also order a DTO to run consecutively to a sentence of long-term detention (SC, s.250) or to a special sentence of detention for terrorist offenders of particular concern (SC, s.252A), as long as the offender has not already been released on licence: s.237(4).

74. Any case that warrants a DTO of less than four months must result in a non-custodial sentence.[233]

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230 Section 100(2)(b) of the PCC(S)A 2000 (now found in sch.22, para.27 of the SC) provides the power to the court to make a DTO for an offender under the age of 12 if the court is of the opinion that only a custodial sentence would be adequate to protect the public from further offending by them. This provision has never been brought into force.

231 *A v DPP* [2002] EWHC 403 (Admin); [2002] 2 Cr.App.R.(S) 88, applying the CYPA 1933, s.29(1).

232 As amended by the PCSCA 2022, s.158.

233 See Youth Guideline, para.6.43.

75. Up until 28 June 2022, time remanded in detention did not automatically count towards a DTO. Nor did time spent remanded on a qualifying curfew count towards the sentence. Section 239 of the SC therefore provided (for DTOs made prior to 28 June 2022) that, in determining the term of a DTO, the court had to take regard of any period in custody (including police detention and detention under the MHA 1983 but not including remand to local authority accommodation) or on bail subject to a qualifying curfew in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

76. Section 160 of, and sch.16 to, the PCSCA 2022 has now changed that position. Where a court makes a DTO on or after 28 June 2022, the CJA 2003, s.240ZA has been amended to provide that time remanded to youth detention accommodation does automatically count as time served. Similarly, the CJA 2003, s.240A has been amended to provide that time spent on bail subject to a qualifying curfew does count towards time served, although the period to be credited will have to be declared by the court.[234]

77. Conversely, it should be noted that a remand to local authority accommodation, even where an electronically monitored curfew of at least nine hours is imposed as a condition of that remand, does not automatically count towards time served on a DTO (or any other custodial sentence). This is because a remand to local authority accommodation is neither a custodial remand (for these purposes[235]) nor a remand on bail. It is suggested that the court should have regard to any such curfew in determining the term of a DTO.

78. A DTO of up to 24 months may be imposed on a child or young person if the offence is one which, but for the plea, would have attracted a sentence of detention in excess of 24 months under the SC, s.250.[236]

79. A custodial sentence must only be imposed on a youth defendant as a measure of last resort. If a custodial sentence is imposed, a court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with intensive supervision and surveillance (ISS) or fostering could not be justified.[237] The Court of Appeal has recently reminded Crown Courts of the importance of considering YRO with ISS as a direct alternative to custody.[238]

80. It is only if the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, that the court may consult the equivalent adult guideline in order to decide upon the appropriate length of sentence. 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 to 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases, when considering the appropriate reduction

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234 SC, s.325.
235 It is a custodial remand for the purposes of LASPOA 2012; see Chapter 12 (12-4).
236 Youth Guideline, para.5.14.
237 Youth Guideline, para.6.42.
238 *R v ZA* [2023] EWCA Crim 596.

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**. The individual factors relating to the offence and the youth defendant are of the greatest importance and may present good reason to impose a sentence outside of this range. If a judge passes a sentence in excess of two-thirds of that which would have been appropriate for an adult, the Court of Appeal will expect to see an explanation in the sentencing remarks of why a reduction of one-third or more is not being made and why the defendant's developmental age and maturity justify the sentence.[239]

81. The court should bear in mind the negative effects a custodial sentence can have. The welfare considerations for the youth defendant are particularly important when considering a custodial sentence. The court should note the potential impact on future prospects and opportunities; the heightened susceptibility to contaminating influences in a custodial setting; the high reconviction rate for children and young people who have had custodial sentences; and the risk of self-harm and suicide.[240]

16-8 Detention under section 250 of the SC

82. Section 250 of the SC provides the Crown Court with the power to order detention of youth defendants for longer than the maximum DTO period of two years in certain cases where the offender has committed a 'grave crime'.[241] Such detention is in such place and under such conditions as the Secretary of State may direct or arrange: s.260.

83. The power is available where a person aged under 18 is convicted of:

    (1) an offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more (but not where the sentence is fixed by law): s.249(1)(a);

    (2) sexual assault: s.249(1)(b)(ii);

    (3) child sex offences committed by children or young persons: s.249(1)(b)(ii);

    (4) sexual activity with a child family member: s.249(1)(b)(iii);

    (5) inciting a child family member to engage in sexual activity: s.249(1)(b)(iv);

    (6) (if the offender was aged 16 or 17 at the time of the offence) an offence listed in sch.20 (firearms offences carrying a minimum sentence under the s.311).

84. The court must be of the opinion that neither a YRO nor a DTO is suitable before such a sentence is passed: s.251. A sentence of detention under s.250 should therefore not generally be passed for a period of less than 24 months.

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239 *R v Moorhouse & Coates* [2019] EWCA Crim 2197; [2020] 1 Cr.App.R.(S) 66. See also *R v Henry-Smith* [2022] EWCA Crim 1674; [2023] 2 Cr.App.R.(S) 7.

240 Youth Guideline, paras.6.45 to 6.49.

241 The term 'grave crime' does not appear in the SC nor did it appear in the PCC(S)A 2000, s.91. It did, however, appear in the latter section's predecessor, the CYPA 1933, s.53. The term remains in common use today (including in the Youth Guideline) and is adopted for convenience in this publication.

85. The maximum period of detention is the same as the maximum term of imprisonment which could be imposed on an adult offender: s.252. This means that the maximum sentence for some offences will be detention for life (see below).

86. If the youth defendant has been remanded to youth detention accommodation prior to sentence, such remand does count as time served as part of their sentence if the final sentence is detention under s.250: CJA 2003, ss.240ZA, 242(2)(b).

87. If the youth defendant has been subject to a qualifying curfew prior to sentence to detention under s.250, then the CJA 2003, s.240A applies and the court must direct that the credit period is to count as time served by the offender as part of the sentence: SC, ss.325-326.

88. If the court imposes a sentence of detention under s.250 in the case of an offender who is subject to a DTO, the court may, if the offender has not yet been released for supervision under the DTO, order that the sentence of detention is to take effect at the time when the offender would otherwise be released for supervision. If the offender has already been released for supervision, the sentence of s.250 detention takes effect immediately: SC, s.253.

89. A custodial sentence must only be imposed on a youth defendant as a measure of last resort. If a custodial sentence is imposed, a court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with intensive supervision and surveillance (ISS) or fostering could not be justified.[242] The Court of Appeal has recently reminded Crown Courts of the importance of considering YRO with ISS as a direct alternative to custody.[243]

90. It is only if the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, that the court may consult the equivalent adult guideline in order to decide upon the appropriate length of sentence. 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 to 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. 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**. The individual factors relating to the offence and the youth defendant are of the greatest importance and may present good reason to impose a sentence outside of this range. If a judge passes a sentence in excess of two-thirds of what would have been appropriate for an adult, the Court of Appeal will expect to see an explanation in the sentencing remarks of

[242] Youth Guideline, para.6.42.
[243] *R v ZA* [2023] EWCA Crim 596.

why a reduction of one-third or more is not being made and why the defendant's developmental age and maturity justify the sentence.[244]

91. The court should bear in mind the negative effects a custodial sentence can have. The welfare considerations for the youth defendant are particularly important when considering a custodial sentence. The court should note the potential impact on future prospects and opportunities; the heightened susceptibility to contaminating influences in a custodial setting; the high reconviction rate for children and young people who have had custodial sentences; and the risk of self-harm and suicide.[245]

16-9 Special sentence of detention for terrorist offenders of particular concern

92. Section 252A of the SC provides for a required special sentence of detention for terrorist offenders of particular concern. Such a sentence is a sentence of detention which is equal to the aggregate of:

    (1) the appropriate custodial term, and

    (2) a further period of one year for which the offender is to be subject to a licence: s.252A(4).

93. The sentence is available where a person aged under 18 is convicted of an offence listed in pt.1 of sch.13 to the SC: s.252A(1)(a). These offences are:

    (1) Terrorism Act 2000, ss.11, 12, 15, 16, 17, 17A, 18, 19, 21A, 38B, 39, 54, 56, 57, 58, 58A, 58B, 59;

    (2) Anti-terrorism, Crime and Security Act 2001, s.113;

    (3) Terrorism Act 2006, ss.1, 2, 5, 6, 8, 9, 10, 11;

    (4) Counter-Terrorism Act 2008, s.54;

    (5) Terrorism Prevention and Investigation Measures Act 2011, s.23;

    (6) Counter-Terrorism and Security Act 2015, s.10;

    (7) an inchoate offence in relation to any of the above offences.

94. The offence must have been committed on or after 30 April 2021: s.252A(1)(b).

95. The sentence only applies if the court considers that the offence is so serious that neither a fine alone nor a community sentence can be justified for the offence: s.252A(1)(d), s.230(2). Conviction for one of the specified terrorism offences does not, therefore, automatically mean that a special sentence of detention will be imposed. In determining whether the custody threshold has been crossed, however, the court must disregard any restriction on its power to impose such a sentence by reference to the age of the offender: s.252A(2). This means that such a sentence could be imposed upon a youth defendant under the age of 15 who is not a persistent offender and could, in theory, be imposed on a youth defendant as young as 10 or 11.

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[244] *R v Moorhouse & Coates* [2019] EWCA Crim 2197; [2020] 1 Cr.App.R.(S) 66. See also *R v Henry-Smith* [2022] EWCA Crim 1674; [2023] 2 Cr.App.R.(S) 7.

[245] Youth Guideline, paras.6.45 to 6.49.

96. There is nothing in s.252A which limits this special sentence to the Crown Court. Indeed, the language of the sending and committal provisions (CDA 1998, s.51A(3)(ba) and SC, s.16A) suggests that there will be s.252A sentences of under two years' detention which could be imposed in the youth court. Sentencing in such cases will be dealt with by district judges (magistrates' courts) authorised to deal with terrorism offences.

97. If the court imposes a sentence of detention under s.252A in the case of an offender who is subject to a DTO, the court may, if the offender has not yet been released for supervision under the DTO, order that the sentence of detention is to take effect at the time when the offender would otherwise be released for supervision. If the offender has already been released for supervision, the sentence of s.252A detention takes effect immediately: SC, s.253.

16-10 Extended sentence of detention

98. Sections 254 to 257 of the SC provide the Crown Court with the power to impose an extended sentence of detention on a youth defendant for certain violent, sexual or terrorism offences.[246] An extended sentence of detention is a sentence of detention the term of which is equal to the aggregate of:

    (1) the appropriate custodial term, and

    (2) the extension period for which the offender is to be subject to a licence: s.254.

99. The power applies where:

    (1) a person aged under 18 is convicted of a violent, sexual or terrorism offence specified in sch.18 to the SC which is also listed in s.249(1): s.255(1)(a), (b);

    (2) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences ('the assessment of dangerousness'): s.255(1)(c);

    (3) the court is not required to impose a sentence of detention for life: s.255(1)(d); and

    (4) the appropriate custodial term would be at least four years: s.255(1)(e).

100. The appropriate custodial term is the term of detention that is commensurate with the seriousness of the offence(s): ss.231(2), 256(2).

101. The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences: s.256(3). It must be at least one year: s.256(4)(a). It must be no more than five years for a specified violent offence (s.256(4)(b)(i)); no more than eight years for a specified sexual offence (s.256(4)(b)(ii)); and no more than ten years for a specified terrorism offence (s.256(4)(b)(iii)). The overall sentence

[246] See Youth Guideline, paras.6.57 to 6.59.

must not exceed the maximum term of imprisonment available for an offender aged 21 or over: s.256(5).

102. In making the assessment of dangerousness under s.255(1)(c), the court:

(1) must take into account all such information as is available to it about the nature and circumstances of the offence: s.308(2)(a);

(2) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted anywhere in the world: s.308(2)(b);

(3) may take into account any information about any pattern of behaviour of which the above forms part: s.308(2)(c); and

(4) may take into account any information about the offender which is has before it: s.308(2)(d).

103. An extended sentence is not an available sentence for any offence which would not otherwise qualify for a sentence of detention under s.250. Hence it must be an offence listed within s.249(1) (mainly offences which carry at least 14 years' imprisonment).

104. If the youth defendant has been remanded to youth detention accommodation prior to sentence, such remand does count as time served as part of their sentence if the final sentence is an extended sentence of detention: CJA 2003, ss.240ZA, 242(2)(b).

105. If the youth defendant has been subject to a qualifying curfew prior to sentence to extended detention, then the CJA 2003, s.240A applies and the court must direct that the credit period is to count as time served by the offender as part of the sentence: SC, ss.325-326.

16-11 Detention for life

106. Section 258 of the SC, in combination with s.250, provides the Crown Court with the power to impose detention for life on an offender aged under 18 at the date of conviction. This is a discretionary sentence rather than a sentence fixed by law: s.258(4).

107. The power applies where:

(1) a person aged under 18 is convicted of a sch.19 offence (ie specified violent, sexual or terrorism offences punishable in the case of a person aged 21 or over with imprisonment for life): ss.258(1)(a), 307;

(2) the court considers that the seriousness of the offence(s) is such as to justify the imposition of a sentence of detention for life: s.258(1)(b); and

(3) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences ('the assessment of dangerousness'): ss.258(1)(c), 306(1), 308.

108. In making the assessment of dangerousness under s.258(1)(c), the court:

(1) must take into account all such information as is available to it about the nature and circumstances of the offence: s.308(2)(a);

(2) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted anywhere in the world: s.308(2)(b);

(3) may take into account any information about any pattern of behaviour of which the above forms part: s.308(2)(c); and

(4) may take into account any information about the offender which is has before it: s.308(2)(d).

109. If the court concludes that a sentence of detention for life is required, that sentence is imposed under s.250.

110. The court must determine the minimum term to be served before the early release provisions are to apply to the offender, taking into account the seriousness of the offence(s) and time spent on remand in detention or subject to a qualifying curfew: ss.321-324.

111. See SC, ss.321-324.[247]

112. A new s.258A has been inserted into the SC by the PCSCA 2022, s.3(6). This requires the imposition of a sentence of detention for life under s.250 for the manslaughter of an emergency worker, unless the court is of the opinion that there are exceptional circumstances which relate to the offence or the offender and justify not doing so: s.258A(2).[248]

113. The required sentence must be imposed where:

(1) a person under 18 is convicted of manslaughter, but not including:

(a) manslaughter by gross negligence, or

(b) manslaughter mentioned in s.2(3) or 4(1) of the Homicide Act 1957, or s.54(7) of the CAJA 2009 (partial defences to murder), and

(2) the offence was committed on or after 28 June 2022 and when the person was aged 16 or over, and

(3) the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

16-12 Detention during His Majesty's pleasure

114. Section 259 of the SC requires the Crown Court to sentence any person convicted of murder, who was aged under 18 at the time of the offence, to be detained during His Majesty's pleasure.[249] The date of conviction is irrelevant. It is the date of the offence which is relevant to the sentence.

115. This is a mandatory life sentence.

116. The court must determine the minimum term to be served before the early release provisions are to apply to the offender, taking into account the

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[247] A detailed analysis of the provisions dealing with setting the minimum term is beyond the scope of this publication.

[248] This provision is known as 'Harper's Law', after the killing of PC Andrew Harper in 2019.

[249] Although s.259 currently refers to detention during 'Her Majesty's' pleasure, this should be read in line with the provision of s.10 of the Interpretation Act 1978 to references to the Sovereign in any Act.

seriousness of the offence(s) and time spent on remand in detention or subject to a qualifying curfew: ss.321-324, sch.21.

117. The appropriate starting point for an offender aged under 18 when they committed the offence of murder, and where convicted before 28 June 2022, is 12 years: sch.21, para.6. For offenders convicted on or after 28 June 2022, the PCSCA 2022, s.127 amends sch.21 to provide that variable starting points apply, depending on the nature of the murder and the age of the offender when the offence was committed, as set out in the table below:[250]

Age of offender when offence committed	**Paragraph 3(1) starting point if offender had been 18**	**Paragraph 4(1) starting point if offender had been 18**	**Paragraph 5(1) starting point if offender had been 18**
17	27 years	23 years	14 years
15 or 16	20 years	17 years	10 years
14 or under	15 years	13 years	8 years

118. Notwithstanding the prescribed starting points, the sentencing judge remains under a duty to apply the Youth Guideline.

119. The age of the offender is a listed mitigating factor: sch.21, para.10(g).

120. The court must give reasons for its decision concerning the minimum term: s.322(4).[251]

16-13 Minimum sentences of detention

13A. Minimum sentences applying to youth defendants

121. The court is required to impose the relevant minimum sentence for all offences that fall within the SC, s.311 (firearms), s.312 (threatening with weapon/bladed article) and s.315 (repeat offence involving weapon/bladed article/corrosive substance.

(1) s.311: The court must impose at least the minimum sentence unless the court is of the opinion that there are **exceptional circumstances** which (a) relate to the offence or to the offender, and (b) **justify not doing so**.

(2) s.312/315: Where the qualifying offence took place before 28 June 2022, the court must impose at least the minimum sentence unless the court is of the opinion that there are **particular circumstances** which (a) relate to the

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250 Note observations in *Attorney-General's Reference (R v SK)* [2022] EWCA Crim 1421; [2023] 1 Cr.App.R.(S) 26 as to the table not being determinative because of differences which may exist, for example, between an offender who has just turned 15 when compared to one approaching their 17th birthday. The Court of Appeal reminded judges to look beyond simple chronological age.

251 A detailed analysis of the provisions dealing with setting the minimum term is beyond the scope of this publication.

offence or the offender, and (b) would **make it unjust** to do so in all the circumstances.

(3) s.312/315: Where the qualifying offence took place on or after 28 June 2022, the court must impose at least the minimum sentence unless it is of the opinion that there are **exceptional circumstances** which (a) relate to the offence or the offender, and (b) **justify not doing so**.

122. The following is a summary of the minimum determinate sentences applicable to youth defendants:

Offence	**Minimum prescribed sentence**	**Relevant age and conditions**	**Legislation**
Firearms offences contrary to Firearms Act 1968 – ss.5(1)(a), (ab-f), and (c); 5(1A)(a), 16, 16A, 17-20	3 years' detention under s.250	Only applies where 16 or 17 at the date of the offence	SC, s.311
Using someone to mind a weapon (relevant firearm)	3 years' detention under s.250	Only applies where 16 or 17 at the date of the offence	SC, s.311
Threatening with an offensive weapon	DTO 4 months	Only applies where 16 or 17 at the date of conviction	SC, s.312
Threatening with a bladed article	DTO 4 months	Only applies where 16 or 17 at the date of conviction	SC, s.312
Possession of an offensive weapon (second offence)	DTO 4 months	Only applies where 16 or 17 at date of offence and where the offender has a relevant previous conviction	SC, s.315
Possession of a bladed article (second offence)	DTO 4 months	Only applies where 16 or 17 at the date of the offence and where the offender has a relevant previous conviction	SC, s.315

Offence	Minimum prescribed sentence	Relevant age and conditions	Legislation
Having a bladed article or offensive weapon on school premises (second offence)	DTO 4 months	Only applies where 16 or 17 at the date of the offence and where the offender has a relevant previous conviction	SC, s.315
Possessing a corrosive substance (second offence)	DTO 4 months	Only applies where 16 or 17 at the date of second offence and conviction and where the offender has a relevant previous conviction	SC, s.315

123. **Firearms/Minding weapons:** The minimum sentence for possession of a prohibited firearm applies where the offence was committed at a time when the offender was aged 16 or over: SC, s.311(1)(b).

124. Where the offender is aged 16 or 17 at the time of conviction, the minimum sentence is a sentence of detention under s.250 for three years: SC, s.311(4)(a).

125. Similarly, the minimum sentence for using another person to look after, hide or transport a prohibited firearm applies where the offence was committed at a time when the offender was aged 16 or over. The minimum term, where the offender is aged 16 or 17 at the time of conviction, is three years: SC, s.311(4)(a).

126. No reduction in sentence below the minimum is permitted for a guilty plea: *R v Jordan*; *Alleyne*; *Redfern*.[252]

127. **Threatening with an offensive weapon:** The minimum sentence for any offence of threatening another person with an offensive weapon in a public place applies where the defendant is aged 16 or over when convicted: SC, s.312(3)(a).

128. Where the defendant is aged 16 or 17 at the time of conviction, the minimum sentence is a detention and training order of at least four months: SC, s.312(3)(a).

129. It should be noted that an offender aged 16 or 17, when convicted of such an offence which attracts a minimum sentence, is entitled to full credit for their guilty plea (as opposed to an adult offender whose sentence cannot fall below 80% of the minimum): SC, s.73(5). Given that the minimum DTO is four

[252] [2004] EWCA Crim 3291; Youth Guideline, para.5.20.

months, this means that such an offender may be entitled to a non-custodial sentence.

130. **Threatening with a bladed article:** The minimum sentence for any offence of threatening another person with a bladed article in a public place or on school premises or further educational premises applies where the defendant is aged 16 or over when convicted: SC, s.312(3)(a).

131. Where the defendant is aged 16 or 17 at the time of conviction, the minimum sentence is a detention and training order of at least four months: SC, s.312(3)(a).

132. It should be noted that an offender aged 16 or 17, when convicted of such an offence which attracts a minimum sentence, is entitled to full credit for their guilty plea (as opposed to an adult offender whose sentence cannot fall below 80% of the minimum): SC, s.73(5). Given that the minimum DTO is four months, this means that such an offender may be entitled to a non-custodial sentence.

133. **Possessing an offensive weapon in public (second offence):** The minimum sentence for a second offence of possessing an offensive weapon in a public place applies where the offence was committed at a time when the defendant was aged 16 or over: SC, s.315(1)(c)(i). The previous relevant conviction could have been committed when the defendant was aged under 16.

134. Where the defendant is aged 16 or 17 at the time of conviction, the minimum sentence is a detention and training order of at least 4 months: SC, s.315(3)(a).

135. It should be noted that an offender aged 16 or 17, when convicted of such an offence which attracts a minimum sentence, is entitled to full credit for their guilty plea (as opposed to an adult offender whose sentence cannot fall below 80% of the minimum): SC, s.73(5). Given that the minimum DTO is four months, this means that such an offender may be entitled to a non-custodial sentence.

136. **Possessing a bladed article in public (second offence):** The minimum sentence for a second offence of possessing a bladed article in a public place applies where the offence was a committed at a time when the defendant was aged 16 or over: SC, s.315(1)(c)(i). The previous relevant conviction could have been committed when the defendant was aged under 16.

137. Where the defendant is aged 16 or 17 at the time of conviction, the minimum sentence is a detention and training order of at least four months: SC, s.315(3)(a).

138. It should be noted that an offender aged 16 or 17, when convicted of such an offence which attracts a minimum sentence, is entitled to full credit for their guilty plea (as opposed to an adult offender whose sentence cannot fall below 80% of the minimum): SC, s.73(5). Given that the minimum DTO is four months, this means that such an offender may be entitled to a non-custodial sentence.

139. **Possessing a bladed article or offensive weapon on school premises (second offence):** The minimum sentence for a second offence of possessing a bladed article or offensive weapon on school premises applies where the offence was committed at a time when the defendant was aged 16 or over: SC,

s.315(1)(c)(i). The previous relevant conviction could have been committed when the defendant was aged under 16.

140. Where the defendant is aged 16 or 17 at the time of conviction, the minimum sentence is a detention and training order of at least four months: SC, s.315(3)(a).

141. It should be noted that an offender aged 16 or 17, when convicted of such an offence which attracts a minimum sentence, is entitled to full credit for their guilty plea (as opposed to an adult offender whose sentence cannot fall below 80% of the minimum): SC, s.73(5). Given that the minimum DTO is four months, this means that such an offender may be entitled to a non-custodial sentence.

142. **Possessing a corrosive substance (second offence):** The minimum sentence applies for a defendant who has a previous, relevant conviction (possessing offensive weapon/bladed article/corrosive substance) and the defendant was aged 16 or over when they committed the offence: SC, s.315(1)(c)(i), sch.22, para.82. The minimum sentence for a person aged 16 or 17 at the time of conviction will be a detention and training order of at least four months: SC, s.315(3)(a), sch.22, para.82.[253]

143. It should be noted that an offender aged 16 or 17, when convicted of such an offence which attracts a minimum sentence, is entitled to full credit for their guilty plea (as opposed to an adult offender whose sentence cannot fall below 80% of the minimum): SC, s.73(5). Given that the minimum DTO is four months, this means that such an offender may be entitled to a non-custodial sentence.

13B. Minimum sentences which do not apply to youth defendants

144. The following minimum determinate sentences do not apply to youth defendants:

Offence	Minimum prescribed sentence	Relevant age and conditions	Legislation
Drug trafficking (third offence)	7 years' imprisonment/YOI	Only applies where 18 or over at the time that the third offence was committed	SC, s.313

[253] Minimum sentences for offensive weapons/bladed article offences were introduced on 17 July 2015 by the Criminal Justice and Courts Act 2015. In order to qualify, the qualifying offence clearly had to be committed on or after 17 July 2015. That 'relevant date' was transferred into the SC, including in s.315, when minimum sentences were transferred there. The draftsman has now included a further gloss on the 'relevant date', requiring a corrosive substance offence to have been committed on or after 6 April 2022: s.315(1A)(a). This, though, would seem redundant as the offence of possessing a corrosive substance only came into force on 6 April 2022 so no such offence could be committed before that date.

Domestic burglary (third offence)	3 years' imprisonment/YOI	Only applies where 18 or over at the time that the third offence was committed	SC, s.314

145. **Drug trafficking:** The minimum sentence of seven years for a third, class A drug trafficking offence applies only to an offender who is 18 or over at the time that his/her third relevant offence is committed (though either or both of the previous relevant convictions may have occurred when the defendant was a child or young person): SC, s.313(1)(b)(i).

146. **Domestic burglary:** The minimum sentence of three years for a third domestic burglary offence applies only to an offender who is 18 or over at the time that his/her third relevant offence is committed (though either or both of the previous relevant convictions may have occurred when the defendant was a child or young person): SC, s.314(1)(b)(i).

16-14 Suspended sentences

147. There are no custodial sentences available for those aged under 18 which can be suspended.

16-15 Criminal behaviour orders

148. Sections 330 to 342 of the SC provide for criminal behaviour orders (CBOs).

149. Where an offender is convicted of an offence, the court may make a CBO if:

    (1) the court is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person: s.331(2)(a); and

    (2) the court considers that making the CBO will help in preventing the offender from engaging in such behaviour: s.331(2)(b).

150. Where the offender is under the age of 18 at the time of the application, the prosecution must find out the views of the local YOT/YJS: s.331(5).

151. In so far as proceedings relate to the making of a CBO, the mandatory reporting restrictions contact in the CYPA 1933, s.49 do not apply but the discretionary power to prohibit publication contained in the CYPA 1933, s.39 does apply: s.332(7), (8). See chapter 11.

152. A CBO made before the offender has reached the age of 18 must be for a fixed period of between one and three years: s.334(4).

153. If the offender will be under the age of 18 twelve months after the CBO takes effect (or is varied), then there must be a review of the CBO by the chief officer of police: ss.337(1), (2), 338.

154. Breach of a CBO is a criminal offence. In any proceedings for such an offence against a person aged under 18, the mandatory reporting restrictions contact in the CYPA 1933, s.49 do not apply but the discretionary power to restrict publication contained in the YJCEA 1999, s.45 does apply: s.339(5). See chapter 11.

16-16 Notification requirements

16A. Notification requirements for sexual offences

155. Sections 80 to 92 of the SOA 2003 provide for notification requirements for persons dealt with in respect of certain sexual offences.

156. Notification requirements apply if the offender is convicted (or found not guilty by reason of insanity or found under a disability but found to have done the act charged or is cautioned) for an offence listed in sch.3 to the SOA 2003: s.80(1). It is important to note that notification requirements for many offences will only apply if certain threshold conditions listed in sch.3 are also fulfilled. Several of these threshold conditions concern the age of the offender, meaning that a youth defendant is less likely to be subject to notification requirements than their adult equivalent.

157. The relevant offences involving threshold criteria which relate to the age of the offender are shown in the table below:

OFFENCES	**THRESHOLD CONDITIONS**
Protection of Children Act 1978	
Taking, making or distributing indecent photographs (s.1)	If photo or pseudo-photo showed person under 16, AND (a) Offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
Customs and Excise Management Act 1979	
Fraudulent evasion of duty in relation to indecent or obscene articles (s.1)	If prohibited goods included indecent photos of persons under 16, AND (a) Offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
Criminal Justice Act 1988	
Possession of indecent photograph (s.1)	If photo or pseudo-photo showed person under 16, AND (a) Offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
SOA 2003	
Rape (s.1),	All offenders

OFFENCES	THRESHOLD CONDITIONS
Assault by penetration (s.2)	
Sexual assault (s.3)	(a) If offender was under 18 AND sentenced to at least 12 months; OR (b) Offender over 18 AND victim was under 18 OR offender sentenced to imprisonment, OR detained in hospital OR made subject to community order of at least 12 months
Causing sexual activity without consent (s.4) Rape of a child under 13 (s.5) Assault of a child under 13 by penetration (s.6)	All offenders
Sexual assault of child under 13 (s.7)	(a) If offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
Causing or inciting a child under 13 to engage in sexual activity (s.8) Sexual activity with a child (s.9) Causing or inciting a child to engage in sexual activity (s.10) Engaging in sexual activity in the presence of a child (s.11) Causing a child to watch a sexual act (s.12)	All offenders
Child sex offences committed by children or young persons (s.13)	If offender sentenced to at least 12 months
Arranging or facilitating child sex offence (s.14)	(a) If offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
Meeting a child following sexual grooming etc. (s.15) Sexual communication with a child (s.15A)	All offenders
Offences in abuse of position of trust (ss.16-19)	If offender sentenced to imprisonment OR detained in hospital OR made

OFFENCES	THRESHOLD CONDITIONS
	subject to community order of at least 12 months
Familial child sex offences (ss.25-26)	(a) If offender was 18 or over, OR (b) Offender was under 18 AND sentenced to at least 12 months
Offences against person with a mental disorder impeding choice (ss.30-37)	All offenders
Offences by care workers (ss.38-41)	(a) If offender was under 18 AND sentenced to at least 12 months; OR (b) Offender over 18 AND offender sentenced to imprisonment OR detained in hospital OR made subject to community order of at least 12 months
Paying for sexual services of child (s.47)	(a) If offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
Causing or inciting (s.48), controlling (s.49) or arranging or facilitating (s.50) child prostitution or pornography	(a) If offender was 18 or over; OR (b) Offender was under 18 AND sentenced to at least 12 months
Administering a substance with intent (s.61)	All offenders
Committing an offence (s.62) or trespass (s.63) with intent to commit a sexual offence	(a) If offender was under 18 AND sentenced to at least 12 months; OR (b) Offender over 18 AND victim was under 18, OR offender sentenced to imprisonment, OR detained in hospital OR made subject to community order of at least 12 months
Sex with an adult relative (ss.64 or 65)	(a) If offender was under 18 AND sentenced to at least 12 months; OR (b) Offender over 18 AND offender sentenced to imprisonment, OR detained in hospital OR made subject to community order of at least 12 months

OFFENCES	THRESHOLD CONDITIONS
Exposure (s.66), voyeurism (s.67), intercourse with an animal (s.69) or sexual penetration of a corpse (s.70)	(a) If offender was under 18 AND sentenced to at least 12 months; OR (b) Offender over 18 AND the victim was under 18, OR offender sentenced to imprisonment, OR detained in hospital OR made subject to community order of at least 12 months
Voyeurism: additional offences (s.67A)	If offence committed for sexual gratification AND (a) Offender was under 18 AND sentence to at least 12 months; OR (b) Offender over 18 AND the victim was under 18, OR the offender sentenced to imprisonment OR detained in hospital OR made subject to community order of at least 12 months
Criminal Justice and Immigration Act 2008	
Possession of extreme pornography (s.63)	If offender was 18 or over AND sentenced to at least 2 years
Coroners and Justice Act 2009	
Possession of prohibited images of children (s.62(1))	If offender was 18 or over AND sentenced to at least 2 years
Serious Crime Act 2015	
Possession of paedophile manual (s.69)	(a) If offender was 18 or over; OR (b) Offender under 18 AND sentenced to at least 12 months

158. The notification period applies to a DTO, detention under the SC, s.250 or s.252A, an extended sentence of detention and detention for life in the same way as it does to a sentence of imprisonment: SOA 2003, s.131.

159. If the offender is a youth, however, the notification period will be half of the period specified for an adult: s.82(2).

160. A person sentenced to a DTO for a particular length is to be treated, for notification purposes, as if they had been sentenced to a custodial term of half

that length: *R v Slocombe*.[254] For example, a person sentenced to a DTO of 12 months is treated, for notification purposes, as a person sentenced to detention for six months. As many of the threshold conditions require an offender under 18 to be sentenced to the equivalent of at least 12 months' imprisonment, this means that only those receiving a DTO of 24 months will qualify.

161. The relevant notification periods for those aged under 18 are:

Description of relevant offender	Notification period
A person sentenced to a term of detention of 30 months or more (or admitted to a hospital order subject to a restriction order)	Indefinite period
A person sentenced to detention for a term of more than six months but less than 30 months	5 years
A person sentenced to detention for a term of six months or less (or admitted to hospital without being subject to a restriction order)	3½ years
A person cautioned	1 year
A person conditionally discharged	The period of the conditional discharge
A person of any other description sentenced to a community penalty or fine	2½ years

162. Where the offender whose offence attracts notification requirements is under 18, the court may direct that the notification requirements apply to any parent who has parental responsibility for the offender: s.89(1). If such a direction is made, the notification obligations are treated as obligations on the parent, but the parent must ensure that the young offender attends at the police station with him/her when a notification is being given: s.89(2). Such a direction will apply until the young offender attains the age of 18 (or sooner, if the court directs): s.89(3).

16B. Notification requirements for terrorism offences

163. Part 4 (ss.40-61) of the Counter-Terrorism Act 2008 provides for notification requirements for persons dealt with in respect of certain terrorism offences. The notification requirements apply to a person who is aged 16 or over at the time of being dealt with for a relevant offence: s.44.

164. The notification period for any offender aged 16 or 17 at the time that they were convicted of a relevant terrorism offence is ten years: s.53(1)(c).

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254 [2005] EWCA Crim 2997; [2006] 1 Cr.App.R. 33.

16-17 Hospital and guardianship orders

165. The Crown Court may impose a hospital order or guardianship order upon a youth defendant when the requirements of the MHA 1983, s.37 are satisfied.

166. A restriction order under the MHA 1983, s.41 may be imposed upon a youth defendant. No age restriction is referred to in s.41, but the magistrates' court and youth court only has the power to commit to the Crown Court an offender of or over the age of 14 for the making of a hospital order with restriction: s.43.

16-18 Surcharge

167. Different surcharge amounts apply to any offender who was under 18 at the time that the offence(s) was/were committed when compared to an adult offender:[255]

	Pre-28 June 2019	**28 June 2019 to 13 April 2020**	**14 April 2020 to 15 June 2022**	**16 June 2022 and after**
Conditional discharge	£15	£16	£17	£20
Fine	£20	£21	£22	£26
Referral order	£20	£21	£22	£26
YRO	£20	£21	£22	£26
Custodial sentence (any length)	£30	£32	£34	£41

168. Where the child or young person is aged under 16, the court must order the surcharge to be paid by the offender's parent or guardian: SC, s.380(1)(a). Where the young person is aged 16 or 17, the court may order the surcharge to be paid by the parent or guardian: s.380(1)(b). See chapter 17 for further details.

[255] The Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696), as amended.

17. SENTENCING: ORDERS AGAINST PARENTS OR GUARDIANS

17-1 Fines, costs, compensation and surcharge

1. Where a child or young person is convicted of any offence and the court is considering ordering the payment of a fine, compensation, costs and/or the surcharge, then the court has the duty and power to order that the amount is paid by the parent or guardian instead of by the offender themselves: SC, ss.42(4), 128, 140, .380(1), 381.
2. Where the offender is aged under 16, the court has a duty to order the parent or guardian to pay: s.380(1)(a). Where the offender is aged 16 or 17, the duty is replaced by a power to order the parent or guardian to pay. The court has a discretion to order the defendant themselves to pay: s.380(1)(b).
3. Such an order shall be made against the parent or guardian unless the court is satisfied that the parent or guardian cannot be found or that it would be unreasonable to make such an order for payment, having regard to the circumstances of the case: s.380(2). One example of where it is likely to be unreasonable to make a parent pay a financial penalty may be where the parent themselves is the victim of the offence.
4. Before making such an order, the parent or guardian must be given the opportunity of being heard: s.380(3). If a parent or guardian fails to attend court on being required, the court may make an order in their absence: s.380(4). Before exercising its powers to order the parent or guardian to pay the financial penalty, the court may order the parent or guardian to provide details of their financial circumstances: s.35(4). Failure by the parent to provide such information without reasonable excuse is a summary offence liable to a fine of up to £1,000: s.36(1), (2). If the parent does fail to provide that information, the court may make such determination as it thinks fit: s.382(1).
5. Where a defendant is in the care of a local authority, the court has the duty or power to make an order against that local authority: s.404(1), (2). Note, however, that, where a defendant is remanded to local authority accommodation, that remand does not bestow parental responsibility upon that local authority, with the result that the local authority is not liable to pay any financial order under s.380.[256] This is notwithstanding the fact that a child defendant remanded into local authority accommodation does become a 'looked after child': Children Act 1989, s.22, Local Authority Social Services Act 1970, s.1A, sch.1.

[256] *North Yorkshire CC v Selby Youth Court* [1994] 1 All ER 991.

17-2 Parenting orders

6. There are a number of circumstances where a court dealing with a child and young person may make a parenting order in respect of a person who is a parent or guardian of that child or young person: SC, s.366 and CDA 1998, s.8(2). The relevant circumstances in the Crown Court will be where:

   (1) a child or young person is convicted of an offence: SC, s.366(1);

   (2) in respect of a child or young person:

      (a) a criminal behaviour order is made; or

      (b) a sexual harm prevention order is made: CDA 1998, s.8(1)(b).

2A. Parenting order upon conviction

7. A parenting order upon conviction is an order which requires the parent to comply with requirements specified in the order and to attend such counselling or guidance programmes as may be specified: s.365(1). A counselling or guidance programme need not be included if the parent has been made subject to a previous parenting order.

8. If the offender is aged under 16 at the time of conviction, the court must make a parenting order if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender: s.366(3)(a). If not so satisfied, the court must state in open court why: s.53(1)(a), s.366(3)(b). The mandatory making of a parenting order does not apply if the court makes a referral order, but if considering combining both orders then the court must consider a report by an appropriate officer: ss.366(3), 367.

9. If the offender is aged 16 or 17 at the time of conviction, the court may make a parenting order if satisfied that the order would be desirable in the interests of preventing the commission of a further offence by the offender: s.366(4).

10. A parenting order will be for up to 12 months: s.365(1)(a). Any counselling or guidance programme will be for not more than three months: s.365(1)(b).

11. An order will include such requirements as the court considers desirable to prevent the young defendant committing further offences: s.366(6). The requirement to attend a counselling or guidance programme may include a residential course: s.365(3). The requirements should not interfere with religious, educational or employment commitments: s.372(2).

12. The court must obtain a report about the defendant's family circumstances and the likely effect of such an order where the child or young person is under the age of 16: s.366(8).

13. Before making a parenting order, the court must explain to the parent the effect of the order and of the requirements proposed to be included in it, the consequences of failure to comply and the power of the court to review the order on the application of the parent or responsible officer: s.372(3). The court may vary or discharge the order on the application of the responsible officer or the parent: s.374. If a parent fails to comply with a requirement under a parenting order without reasonable excuse, they shall be liable upon summary conviction to a fine of up to £1,000: s.375.

14. The Crown Court will need to consider parenting orders at first instance but also on appeal in relation to parenting orders made in the youth court: ss.366(9), 367(7).

15. Parenting orders do not apply where a local authority has parental responsibility for the offender: s.371.

16. Parenting orders are designed to encourage parents to accept responsibility for their children's offending and to provide appropriate support and discipline to prevent further offending. The Youth Guideline notes that, in most circumstances, a parenting order is likely to be more appropriate than a parental bind over.[257]

2B. Parenting order in other circumstances

17. The power to make a parenting order may also arise in the Crown Court where the court is making a criminal behaviour order (CBO) or sexual harm prevention order in relation to a child or young person: CDA 1998, s.8(1)(b); SC, ss.342, 355. The making of a parenting order is dependent on the court being satisfied that the 'relevant condition' is fulfilled (CDA 1998, s.8(2)), namely that a parenting order would be desirable in the interests of preventing any repetition of the kind of behaviour which led to the order being made: s.8(6).

18. As with an order upon conviction, the parenting order will be for up to 12 months: s.8(4)(a). An order will include such requirements as the court considers desirable to prevent the young defendant committing further offences: s.8(4)(a), (7). The parenting order can include a requirement to attend (for up to three months) such counselling or guidance programmes as may be specified: s.8(4)(b), including a residential course: s.8(7A). The requirements should not interfere with religious, educational or employment commitments: s.9(4).

19. Where the court is making a CBO in relation to a defendant aged under 16, the making of a parenting order is mandatory if the relevant condition is fulfilled: s.9(1B)(a).[258] The court must state reasons where it finds that the relevant condition is not fulfilled: s.9(1B)(b). The court must obtain a report about the defendant's family circumstances and the likely effect of such an order where the child or young person is under the age of 16: s.9(2).

20. Before making a parenting order, the court must explain to the parent the effect of the order and of the requirements proposed to be included in it, the consequences of failure to comply and the power of the court to review the order on the application of the parent or responsible officer: s.9(3). The court may vary or discharge the order on the application of the responsible officer or the parent: s.9(5). If a parent fails to comply with a requirement under a parenting order without reasonable excuse, he/she shall be liable upon summary conviction to a fine of up to £1,000: s.9(7).

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257 Youth Guideline, para.3.3.

258 s.9(1B) does not appear to impose this duty in relation to a SHPO.

17-3 Parental bind overs

21. A parental bind over can be made where a person aged under 18 is convicted of an offence: SC, s.376(1). A parental bind over consists of an order that the parent or guardian enter into a recognizance (of up to £1,000) to take proper care of a youth defendant and to exercise proper control over him/her: s.376(2), (8). Where the court makes a youth rehabilitation order, a parental bind over may include a provision that the parent or guardian ensures that the offender complies with the YRO: s.376(6).
22. Where the defendant is aged under 16, the court has a duty to make a parental bind over if satisfied that it would be desirable in the interests of preventing the commission by the defendant of further offences. If the defendant is aged 16 or 17, the court has a power to make such an order: s.376(4)(a).
23. If a court does not exercise its powers to make such an order, it must state in open court why it is not desirable to make such an order in the interests of preventing the commission of further offences: s.53(1)(c), s.376(4)(b).
24. The order requires the consent of the parent or guardian, but an unreasonable refusal to consent can lead to a fine of up to £1,000: s.376(2).
25. The order cannot last longer than three years or past the defendant's 18th birthday: s.376(7).
26. The court must take account of the parent or guardian's means: s.376(9). The order may be revoked or varied on application of the parent or guardian if there has been a change in circumstances: s.377(3).
27. Where a court makes a referral order, the court may not make a parental bind over in relation to that offence or any connected offence: s.89(4).
28. The Youth Guideline notes that, in most circumstances, a parenting order is likely to be more appropriate than a parental bind over.[259]
29. The Crown Court will need to consider parental bind overs at first instance but also on appeal in relation to parental bind overs made in the youth court: s.377(1).

17-4 Referral orders – attendance of parent or guardian

30. A court making a referral order in relation to a youth defendant may make an order requiring any one or more parent or guardian to attend the meetings of the youth offender panel: SC, s.90(2).
31. Such an order is mandatory where the youth defendant is aged under 16 when the court makes the order: s.90(2)(b).
32. Where the youth defendant is under 16 and a looked-after child, a representative of the local authority must be required to attend the meetings of the youth offender panel: s.90(3), (6).
33. The court need not make an order requiring a parent or guardian to attend such meetings to the extent that it would be unreasonable to do so: s.90(4).

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[259] Youth Guideline, para.3.3.

17-5 Notification requirements

34. Where an offender under the age of 18 is convicted of a sexual offence attracting notification requirements, the court may direct that the notification requirements apply to any parent who has parental responsibility for the offender: SOA 2003, s.89(1). If such a direction is made, the notification obligations are treated as obligations on the parent, but the parent must ensure that the young offender attends at the police station with them when a notification is being given: s.89(2). Such a direction will apply until the young offender attains the age of 18 (or sooner, if the court directs): s.89(3).

18. SENTENCING: BREACHES, REVOCATIONS & AMENDMENTS

18-1 Introduction

1. If a child or young person is found guilty of breaching an order or commits a further offence during the period of an order, the court will have various options available depending on the nature of the order. The primary aim of the court should be to encourage compliance and seek to support the rehabilitation of the child or young person.[260]

18-2 Conditional discharge

2. Section 81 of, and sch.2 to, the SC provide for where a defendant commits a new offence during the period of a conditional discharge.[261] Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may re-sentence the offender for the original offence: sch.2, paras.6, 7.
3. Where the court has power to re-sentence an offender, the court may deal with the offender in any way in which it could deal with them if they had just been convicted before it of the offence. But if the offender was aged under 18 at the time of the conviction leading to the conditional discharge, the court must treat them as being of that age during re-sentence: s.402(1), (2).
4. In proceedings before the Crown Court for breach of a conditional discharge, the question of whether the person is in breach of a conditional discharge shall be determined by the court and not by the verdict of a jury: sch.2, para.7(3).

18-3 Reparation order

5. Section 115 of, and sch.5 to, the SC provide for breach, revocation and amendment of reparation orders.[262]

3A. Failing to comply with requirement of a reparation order

6. Any breach of a reparation order will first be brought before the youth court: sch.5, para.1(2)(a). Where the youth court is satisfied that an offender has failed to comply with any requirement of a reparation order, the court:
   (1) whether or not it revokes or amends the order, may order the offender to pay a fine not exceeding £1,000: para.2(2)(a);
   (2) if the order was made by a magistrates' court, may revoke the order and deal with the offender in any way in which they could have been dealt with for that offence by the court which made the order: para.2(2)(b); or

260 Youth Guideline, para.6.12.
261 See Youth Guideline, paras.7.1 to 7.3.
262 See Youth Guideline, paras.7.4 to 7.6.

(3) if the order was made by the Crown Court, may commit them in custody or on bail to appear before the Crown Court: para.2(2)(c).

7. If the offender then appears before the Crown Court in relation to an order made by that court, and the Crown Court is satisfied that they have failed to comply with the requirement, then the Crown Court re-sentence them; ie it may deal with them, for the offence in respect of which the order was made, in any way in which it could have dealt with him/her for that offence if it had no made the order: para.3(2). The court must take into account the extent to which the offender has complied with the requirements of the reparation order: para.2(6). If the Crown Court re-sentences the offender, it must revoke the current reparation order: para.3(3).

8. An offender has a right to appeal to the Crown Court against any decision made by the youth court under para.10.

3B. Revocation of a reparation order

9. The offender (or responsible officer) may apply to a youth court to revoke or amend a reparation order: para.5. The offender may appeal to the Crown Court against an amendment of a reparation order or a dismissal of an application to revoke a reparation order: para.10.

10. Reparation orders were rarely made and the PCSCA 2022, s.162 abolished such orders from 28 June 2022.

18-4 Referral order

11. Section 104 of, and sch.4 to, the SC provide for offenders referred back to court or convicted whilst subject to a referral order.[263]

4A. Breach of condition of referral order

12. Though referral of an offender for breach of a referral order will be to a youth court (or magistrates' court if he/she has turned 18), where that court deals with the offender by revoking the referral order and re-sentencing them for the original offence, the offender may appeal to the Crown Court against that sentence: sch.4, para.8.

13. A youth offender panel (with whom an offender subject to a referral order must meet) may refer the offender back to court if the offender:

(1) fails to attend any part of a meeting: SC, s.92(3);

(2) fails to agree a contract with the panel: s.98(3);

(3) fails to sign the contract with the panel: s.98(4);

(4) is in breach of a term of the contract: s.100(3);

(5) fails unreasonably to sign a variation in the contract: s.100(6);

(6) seeks to be referred back to court and the panel is of the view that there is a change of circumstances which may lead to a revocation: s.100(8);

[263] See Youth Guideline, paras.7.7 to 7.11.

(7) has not satisfactorily complied with the order by the time of the final meeting: s.101(5);

(8) is making good progress such that revocation is appropriate: s.102(2).

14. If the appropriate court is satisfied that the panel was entitled to find the facts that it did or that it reasonably exercised its discretion, the court may exercise its power to revoke the referral order: sch.4, para.7(1), (2).

15. Following revocation, the court may re-sentence the offender, ie deal with them in any way in which they could have been dealt with for that offence by the court which made the order (assuming that a referral order is not available): para.7(4). In dealing with them, the court must have regard to the circumstances of their referral back to court and their compliance with the terms of the contract, if any: para.7(5). The offender must be present before the court if the court is going to revoke the order and, if appropriate, deal with them: para.7(6).

16. Where the reason for the referral back to court is that the offender:

(1) has failed to attend any part of a meeting: s.92(3);

(2) is in breach of a term of the contract: s.100(3);

(3) has not satisfactorily complied with the order by the time of the final meeting: s.101(5);

the court may, if satisfied that they have failed without reasonable excuse to comply with the terms of the contract, not revoke the order but fine the offender up to £2,500 or (if the contract has not expired) extend the length of the contract (but not so that the contract is longer than 12 months): sch.4, para.9. The offender must be present if the court is going to fine or extend the contract: para.9(1)(b).

17. The Youth Guideline summarises the options:[264]

(1) revoke the referral order and re-sentence using the range of sentencing options (other than referral order) that would have been available to the court that originally sentenced; if in the adult court, then the court is limited to the power available to the court at the time of the original sentence;

(2) allow the referral order to continue with the existing contract;

(3) extend the length of the referral order up to a maximum of 12 months (in total);

(4) impose a fine up to a maximum of £2,500.

4B. Referral of parent

18. A parent of an offender may be referred back to the youth court for a failure to attend meetings of the youth offender panel. Referrals in this case can only be made to the youth court: ss.93, 368(1).

19. The youth court may make a parenting order in respect of the parent if:

[264] Para.7.7.

(1) it is proved to the satisfaction of the court that the parent has failed without reasonable excuse to attend the meetings of the youth offender panel having been required to do so by the sentencing court: s.368(2)(a); and

(2) the court is satisfied that the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender: s.368(2)(b).

20. In such circumstances, a parenting order will be an order requiring the parent to comply with specified requirements for up to 12 months and to attend such counselling or guidance programme as is specified for up to three months: s.365(1).

21. An appeal lies to the Crown Court against the making of a parenting order in such circumstances: s.368(7).

4C. Further offence committed during referral order

22. Where any court (including the Crown Court) deals with an offender, who is subject to a referral order, for an offence (whether committed before or after the imposition of the referral order), then unless the court imposes an absolute or conditional discharge, the court may revoke the referral order if it appears to the court to be in the interests of justice so to do: sch.4, para.17(2)(a).

23. If the court revokes the order, and if it appears in the interests of justice to do so, the court may re-sentence the offender; ie deal with the offender for the offence in respect of which the referral order was made in any way (assuming that a referral order is not available) that they could have been dealt with for that offence by the court which made the order: para.17(2)(b). In doing so, the court shall have regard to the extent of their compliance with the contract, if any: para.17(4).

18-5 Youth rehabilitation order

24. Section 195 of, and sch.7 to, the SC provide for breach, revocation or amendment of YROs.[265]

5A. Failing to comply with YRO

25. If the responsible officer is of the opinion that an offender has, without reasonable excuse, breached a requirement of a YRO, that responsible officer may either give the offender a warning describing the breach, stating that it is unacceptable and informing them of the consequences of further breaches during the warned period (12 months) and record that fact: sch.7, paras.4(1), (4)(a), (5), (6), (7); or cause an information to be laid: para.4(1), (4)(b). If the offender has breached a requirement three times within a 12-month period, then the responsible officer must cause an information to be laid: para.4(2), (3), (6).

26. Where an information is laid, a justice of the peace is then empowered to issue a summons requiring the offender to appear in court: para.5(2)(a). If the information is in writing, a justice of the peace may issue a warrant for the offender's arrest: para.5(2)(b).

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[265] See Youth Guideline, paras.7.12 to 7.20.

27. Thus, an offender will usually only appear in court if they have failed to comply with a requirement under a YRO on at least two occasions (and usually three occasions) in a twelve-month period. It will usually not be their first breach.

28. A YRO made by the Crown Court may include a direction under s.189 that the order is to be subject to magistrates' court supervision. Such an order is treated in the same way as a YRO made by the magistrates' court for breach purposes, though the lower court retains a power to commit the offender to the Crown Court to be dealt with for such a breach: sch.7, paras.2(b), 6(3).

29. A YRO made by the Crown Court without a s.189 direction is treated as a Crown Court YRO for breach purposes: para.2(a). For such an order, the summons or warrant must direct the offender to appear before the Crown Court: para.5(3)(a).

30. In all other cases, the summons or warrant will direct the offender to appear before:

    (1) a youth court if the offender is aged under 18: para.5(3)(b), (4)(a);

    (2) a magistrates' court if the offender is aged 18 or over: para.5(3)(b), (4)(b).

31. The procedure in court follows the procedure one follows for trial of an offence, with necessary modifications: CrimPR 2020, r.32.4 applying pt.24. Thus:

    (1) the hearing must be in public, but the court has its normal powers to sit in private or withhold information or impose reporting restrictions: r.24.2(1)(a), (b);

    (2) the failure(s) to comply must be read out to the offender: r.24.2(2)(a);

    (3) the allegation and procedure must be explained in terms the offender can understand: r.24.2(b);

    (4) the offender must be asked whether they admit or deny the failure to comply: r.24.2(2)(d), (e).

32. If the offender denies the failure to comply, the matter will be set down for trial in the usual way. The YOT/YJS will need to call evidence to prove the failure. Evidence may be given in person, in writing or by admission. The offender may call evidence: rr.24.3 to 24.6.

33. A failure to comply with a mental health treatment requirement, drug treatment requirement or intoxicating substance treatment requirement cannot be proven if the offender merely refused to undergo any surgical, electrical or other treatment and that refusal was reasonable in all the circumstances: SC, sch.7, para.8.

34. If the offender admits the failure to comply with a YRO, or the court is satisfied after trial that they failed without reasonable excuse to comply, the Crown Court will convict them and deal with them under sch.7, para.7.

35. The court may require the offender to complete a means form. A pre-sentence report (a breach report) will almost always have been prepared. The YOT/YJS prosecutor will summarise the prosecution case (if it has not already been opened) and provide any relevant information for how the matter should be dealt with: CrimPR 2020, r.24.11.

36. Unlike for breach of an adult community order or suspended sentence order, the court is not required to take action. The court will deal with the offender in one of the following ways:

    (1) take no action and allow the order to continue;

    (2) order the offender to pay a fine of up to £2,500: SC, sch.7, para.7(2)(a);

    (3) amend the terms of the YRO so as to impose any requirement in addition or substitution which could have been ordered when the order was originally made: para.7(2)(b):

        (a) such requirements must be capable of being complied with before the stated end date of the YRO, though the court can also extend (on one occasion) the end date by up to six months (but to no longer than three years after YRO first made): para.10(3)-(6);

        (b) such amendment can include adding a new unpaid work requirement of 20-240 hours: para.10(7);

        (c) such amendment cannot include an extended activity requirement or fostering requirement if the YRO does not already include such a requirement: para.10(8); the court would need to revoke and re-sentence in order to impose these requirements;[266]

        (d) an amendment of a fostering requirement can extend to 18 months after the YRO was made (but not beyond the offender's 18th birthday): para.10(9), (10).

    (4) re-sentence the offender; ie deal with them, for the offence in respect of which the YRO was made, in any way in which the Crown Court could have dealt with them for that offence: para.7(2)(c); the court must revoke the YRO if still in force: para.7(6).

        (a) If the offender has wilfully and persistently failed to comply with the YRO, the court may impose a YRO with intensive supervision and surveillance (ISS) even if the original offence is not imprisonable or does not cross the custody threshold: para.11(2).

        (b) If the offender has wilfully and persistently failed to comply with the YRO, and the order was a YRO with ISS, then the court may impose a custodial sentence (for an offence punishable with imprisonment) notwithstanding that the original offence did not cross the custody threshold in terms of seriousness: para.11(3).

        (c) If the offender has previously been re-sentenced to a YRO with ISS because of wilful and persistent failure to comply, and the court is having to deal with continuing wilful and persistent failure to comply, then the court may impose a four month detention and training order, even if the offence was not punishable with imprisonment: para.11(4).

37. In dealing with the offender, the court must take into account the extent to which the offender has complied with the requirements of YRO: para.7(5).

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[266] See Youth Guideline, para.7.14.

38. In the Crown Court, any question whether the offender has failed to comply with the YRO is to be determined by the court and not by the verdict of a jury: para.7(7).

39. The Youth Guideline[267] directs that the court should ensure that it has sufficient information to enable it to understand why the order has been breached and should be satisfied that the YOT/YJS and other local authority services have taken all steps necessary to ensure that the offender has been given appropriate opportunity and the support necessary for compliance. This is particularly important if the court is considering imposing a custodial sentence.

40. The Youth Guideline[268] suggests that, where the failure arises primarily from non-compliance with reporting or other similar obligations and a sanction is necessary, the most appropriate response is likely to be the inclusion of (or increase in) a primarily punitive requirement such as curfew, unpaid work, exclusion, prohibited activity or a fine. However, continuing failure to comply with the order is likely to lead to revocation of the order and re-sentencing for the original offence.

41. Additional powers are available to the court where the child or young person has 'wilfully and persistently' failed to comply with the order. The Youth Guideline[269] provides that an offender will almost certainly be considered to have 'wilfully and persistently' breached a YRO where there have been breaches that have demonstrated a lack of willingness to comply with the order that have resulted in an appearance before court.

42. The Youth Guideline[270] states that 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.

5B. Revocation of YRO with or without re-sentencing

43. A youth court or magistrates' court may revoke a YRO, or both revoke a YRO and re-sentence the offender for the offence, if it appears to that court to be in the interests of justice so to do: para.12. If the lower court re-sentences the offender, the offender may appeal to the Crown Court against that sentence: para.12(5).

44. The Crown Court retains its own powers to revoke a YRO which it imposed and which was not released to the supervision of the lower court. The Crown Court may revoke such a YRO, or both revoke the YRO and re-sentence the offender for the offence, if it appears to the Crown Court to be in the interests of justice to do so: para.13. The circumstances in which a YRO may be revoked include the offender making good progress or responding satisfactorily to supervision or treatment: para.12(5). In dealing with the offender, the Crown Court must take into account the extent to which the offender has complied with the YRO: para.12(6).

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267 Para.7.15.
268 Para.7.16.
269 Para.7.17.
270 Para.7.18.

5C. Amendment and extension of YRO

45. In relation to a YRO imposed by the Crown Court and not released to the supervision of the lower court, on application by the offender or responsible officer, the Crown Court has the power to:

    (1) substitute a new specified local justice area if the offender is to reside in a new location: para.15(1), (2);

    (2) amend a YRO by cancelling any of the requirements or replacing any of those requirements: para.15(1), (3).

46. Any new requirement must be capable of being complied with before the end date of the YRO: para.17(3).

47. A YRO with fostering can be amended with a new fostering requirement, in which case this can be extended to finish 18 months after the original order was imposed (as opposed to 12 months), though it still cannot extend beyond the offender's 18th birthday: para.17(6).

48. The court may not amend to impose a mental health, drug treatment, or drug testing requirement unless the offender has expressed a willingness to comply: para.17(7).

49. The Crown Court may, on the application of the offender or responsible officer, extend the period of a YRO which it imposed, and which has not been released to the supervision of the lower court: para.18. The extension cannot be made for more than six months beyond the original length of order and cannot extend the YRO to a period longer than three years: para.18(3). The court may also extend the period in which an unpaid work requirement is to be completed beyond 12 months: para.19.

5D. Commission of new offence during YRO

50. A conviction for a further offence during the currency of a YRO does not itself constitute a breach of a YRO. However, sch.7, paras.20-23 give the courts powers to deal with an offender who is convicted of a further offence while a YRO is still in force.

51. The youth court and magistrates' court will deal with YROs imposed therein or released to the supervision of the lower court by the Crown Court. However, the offender may appeal to the Crown Court against any re-sentence imposed: para.21(6). Furthermore, the lower court retains the power to commit the offender to the Crown Court where the YRO was made by the Crown Court but released to the lower court: para.22(2).

52. Where a YRO was imposed by the Crown Court without a direction releasing breaches to the lower court, and the offender is convicted in the youth court or magistrates' court, the lower court may commit the offender in custody or release them on bail until they can be brought before the Crown Court: para.22(4).

53. Where an offender is brought before the Crown Court, either following conviction in the lower court or on conviction in the Crown Court, the Crown Court may:

    (1) revoke the YRO: para.23(2)(a);

(2) revoke the YRO and re-sentence the offender; ie deal with them in any way in which the court which made the order could have dealt with them: para.23(2)(b).

54. The Crown Court must not exercise these powers unless it considers that it would be in the interest of justice to do so, having regard to circumstances which have arisen since the YRO was made: para.23(2). If re-sentencing, the Crown Court must take into account the extent to which the offender has complied with the order: para.23(5).

55. If the offender has been committed to the Crown Court, pursuant to para.22, following conviction in the lower court, the Crown Court may deal with the offender for the new offence in any way which the convicting court could have dealt with them for that offence: para.23(6).

18-6 Detention and training order

6A. Breach of supervision requirement

56. Section 243 of, and sch.12 to, the SC deal with the situation where a detention and training order (DTO) is in force and it appears that the offender has failed to comply any requirements during their period of supervision.[271]

57. Any breach of the supervision requirements of a DTO will be dealt with by the youth court: sch.12, para.2(3). If it is proved to the satisfaction of the youth court that they have failed so to comply, the court may:

(1) order the offender to be detained for a period of three months or a period equivalent to the period beginning with the date of the failure and ending with the last day of the DTO (whichever is shorter): para.3(2)(a), (3);

(2) order the offender to be subject to supervision for a period of three months or a period equivalent to the period beginning with the date of the failure and ending with the last day of the DTO (whichever is shorter): para.3(2)(b), (3);

(3) impose a fine of up to £1,000: para.3(2)(c);

(4) take no action.

58. An offender may appeal to the Crown Court against any penalty imposed: para.3(11).

6B. Commission of new offence during supervision part of DTO

59. Section 243 of, and sch.12 to, the SC deal with the situation where a DTO is in force and the offender is convicted of an (imprisonable) offence committed before the end of the DTO (whilst they are on supervision).[272]

60. The court before which the offender is convicted of the new offence may, whether or not it passes any other sentence on them, order them to be detained

[271] See Youth Guideline, para.7.21.
[272] See Youth Guideline, paras.7.22 to 7.23.

in such youth detention accommodation as the Secretary of State may determine for the whole or any part of the period which:

(1) begins with the date of the court's order; and

(2) is equal in length to the period between the date on which the new offence was committed and the end of the DTO: sch.12, para.7(1)-(4).

61. That period of detention can be served concurrently with, or consecutive to, any sentence imposed for the new offence: para.7(6).