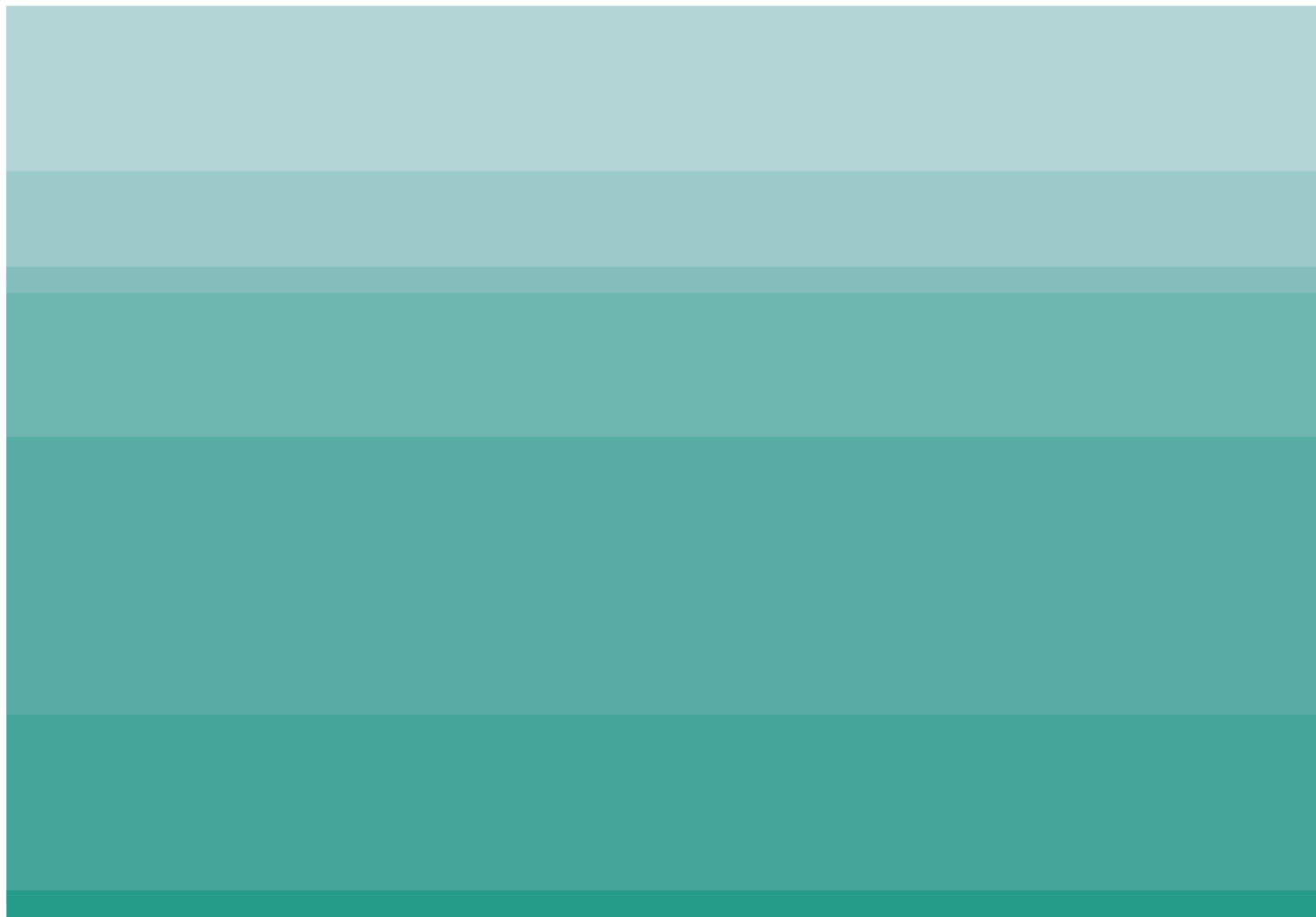


# Youth Court Bench Book

September 2025



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## Foreword

BY THE HONOURABLE Mrs Justice May DBE

The Youth Court Bench Book was last updated in 2024. In line with the Crown Court Compendium and the recent publication of Child Defendants in the Crown Court, the Youth Court Bench Book now refers to all defendants under the age of 18 as “child” or “children”. The change is consistent with terminology used elsewhere in the law to refer to under-18s and encourages the different approach which is required when dealing with children who appear before the youth court.

Further updates include guidance on granting adjournments for consideration of out-of-court disposals for a child who has indicated that they will now make admissions in a case, when they had not previously done so and the case is one which may have been eligible for an out-of-court disposal had an admission been made earlier.

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

I hope this publication will be as well received as previous editions and trust that those who use it continue to find it helpful. I commend the hard work of all those who have compiled and edited it.

I end by paying tribute to the late Lord Justice William Davis, who acted as Judicial Lead before me. Bill’s contribution to youth justice and criminal justice generally was immense; his loss has been felt by all who work in those fields.

The Hon. Mrs Justice May DBE

Judicial Lead for Youth Justice

September 2025

# Introduction

## The youth court

1. The youth court deals with criminal proceedings against those who are aged 10 to 17 years old. Historically, criminal legislation has provided that a “child” is any person under the age of 14 and a “young person” is any person who has attained the age of 14 but is under the age of 18. There is an irrebuttable presumption that no child under the age of 10 can be guilty of an offence.
2. **The principal aim of the youth justice system is to prevent offending.** A court, when dealing with a child, must have regard for their welfare. This is covered in more detail in paragraph 1.11 of the [Sentencing Council Overarching Principles – Sentencing Children and Young People](#) guideline effective from 1 June 2017 (the Children guideline).
3. In addition, the Youth Justice Board’s vision is “a youth justice system that sees children as children, treats them fairly and helps them to build on their strengths so they can make a constructive contribution to society. This will prevent offending and create safer communities with fewer victims”.
4. The Sentencing Council, in the Children guideline, emphasises that the approach to sentencing should be individualistic and focused on the child, as opposed to offence-focused. For a child, the sentence should focus on rehabilitation where possible. A court should also consider the effect the sentence is likely to have on the child (both positive and negative), as well as any underlying factors contributing to the offending behaviour.

## Attendance of parent/guardian and third parties

5. Children under the age of 16 who appear before the youth court must have a parent/guardian with them in court, unless the court thinks it is unreasonable. Those aged 16 and over may be accompanied. This is to encourage parents/guardians to take responsibility. In addition, certain court orders and sentences may be made against the parent/guardian, eg payment of financial penalties and parenting orders.
6. Only members and officers of the court, parties and other persons directly connected to the case, lawyers, witnesses and bona fide members of the press should be present in the youth court. Additional people may be authorised by the youth court. Members of the press may be present but are restricted as to what information they may report.

## Engagement

7. The child and their parent/guardian play a vital role in the proceedings and, as such, should be involved at all stages. One of the key differences between youth and adult courts is that the magistrates talk directly to the child and their parent/guardian.
8. At the beginning of the case, magistrates may introduce themselves and those present in the courtroom. It may also be helpful to briefly explain the role of each person. This is especially so when a child and their family appear in court for the first time.
9. Post conviction, magistrates should be encouraged to talk directly to the child. This encourages the child to confront their behaviour and take responsibility for it and its consequences. Magistrates should also engage with the parent/guardian of the child as they may be affected by the proceedings. This may seem straightforward, but in practice is less easy.

10. Some children may not want to participate for a variety of reasons, including lack of maturity, embarrassment or even nerves. In addition, there is a temptation for the presiding justice or other parties to fill silent gaps with further questions or remarks.
11. The court should consider what information they are trying to obtain and how it is relevant to the case or the sentencing exercise. Questions should be in plain language and at a level the child can understand. Closed questions, those that allow only a yes or no answer and legal jargon should usually be avoided.

### Equality and diversity issues

12. The Judicial College publishes the [Equal Treatment Bench Book \(ETBB\)](#) which is available on the Courts and Tribunals Judiciary website. Chapter 2 of the ETBB is called “Children, young people and vulnerable adults” and contains useful key points when dealing with children. However, in light of the constantly evolving changes to diversity issues, it is important that all youth magistrates, especially youth court presiding justices, are familiar with issues that arise regularly in the youth court, such as some children having limited communication skills, inappropriate reactions through emotional immaturity and the effect peer pressure may play. It is important to find out and understand the individual’s background as this may influence their behaviour. The child may have a learning difficulty or disability that affects their communication skills or their ability to understand proceedings. All youth court presiding justices will have attended training on engaging with children and be experienced with adapting their approach and pronouncements depending on the individuals they are dealing with. It is also important to remember the availability of special measures in the youth court, including the use of intermediaries. There is a lot of useful information on the use of intermediaries in [The Advocate’s Gateway](#) and in Part 6.2.8 of the [Criminal Practice Directions 2023 \(CrimPD\)](#), as amended July 2024.
13. The ETBB also contains information on issues such as different faith traditions, Holy Scriptures, naming systems and recommended terminology.

### The courtroom layout

14. Most youth courts are held in less formal surroundings to that of adult courts. Magistrates are encouraged to sit on the same level as the other people present, and the parent/guardian should sit next to their child and remain seated throughout the proceedings. Subject to security and other practical considerations, a child should not be required to sit in the dock but should be seated in a position from which they can easily communicate with their legal representative. Where, for security or other reasons, it is necessary for the child to be seated in the dock, the supporting adult or family member should ideally be positioned close to, and within sight of, the child. Security and practical considerations are more often likely to arise where a child is produced in custody overnight, particularly where no youth court is available, and where there is limited time to provide appropriate adjustments.

### Youth court protocol

15. The Magistrates’ Association has published a national guide for youth court panels (see [Appendix A: Magistrates’ Association – Youth Court Protocol](#)), which offers advice. Any decision with regard to the procedures to be adopted in each case will rest with the court, taking into account all of the circumstances of the particular case, including the age, maturity and development (intellectual and emotional) of the child before the court. The youth court panel may be invited to adopt this protocol.

## Youth Justice Board (YJB)

16. The YJB was created by virtue of the Crime and Disorder Act 1998.
17. The YJB works to prevent children from offending or reoffending. The YJB also addresses the causes of offending behaviour. Its main functions include:
  - a. overseeing youth justice services
  - b. advising the Secretary of State for Justice on the operation of, and standards for, the youth justice system
  - c. making grants to local authorities or other bodies for the development of plans that support their targets.
18. Additionally, the YJB follows a “Child First” evidence-based approach which can be summarised into the following four tenets:
  - **As children**
    - Prioritise the best interests of children and recognising their particular needs, capacities, rights and potential. All work is child-focused, developmentally informed, acknowledges structural barriers and meets responsibilities towards children.
  - **Building pro-social identity**
    - Promote children’s individual strengths and capacities to develop their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.
  - **Collaborating with children**
    - Encourage children’s active participation, engagement and wider social inclusion. All work is a meaningful collaboration with children and their carers.
  - **Diverting from stigma**
    - Promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system.
19. On 12 October 2022 the YJB published [case management guidance](#) for youth justice service practitioners and managers.

## Youth Justice Service (YJS)

20. There is a YJS in every local authority in England and Wales. Each service must include the following representatives:
  - a. Police.
  - b. Probation Services.
  - c. Social Services.
  - d. Health.
  - e. Education.

In addition, a YJS may have the following:

- a. Drug and alcohol misuse workers.
- b. Housing officers.
- c. The services of a psychiatrist or psychologist and possibly a range of other specialist posts.

## Section 1: Human rights – a summary

### European Convention on Human Rights (ECHR)

1. As a public authority, the court has a duty to act compatibly with the ECHR. The practices, procedures and decisions of the court should be carried out in such a way so as not to breach an individual's human rights. This applies to all those affected, eg defendants, victims, witnesses, etc.
  2. Article 6 is the right to a fair trial and should always be at the forefront of the court's mind – a list of the relevant articles is provided below.
  3. The magistrates' court has not seen many human rights challenges. However, it can be a complex area of law and magistrates should always seek the advice of the legal adviser if an ECHR point is raised.
  4. A party wishing to raise an ECHR point should be required to provide a written outline of their argument, including supporting case law. This enables the parties, magistrates and legal adviser to consider the point fully.
  5. **Is a human right under the ECHR engaged? If so, which right is engaged?** The articles that are most likely to be raised in court are:
    - Article 5 – Right to liberty and security (limited right).
    - Article 6 – Right to a fair trial (part absolute right, part limited right).
    - Article 8 – Right to respect for private and family life (qualified right).
    - Article 10 – Right to freedom of expression (qualified right).
    - Article 11 – Right to freedom of assembly (qualified right).
    - Article 14 – Prohibition of discrimination (qualified right).
  6. **Has the right been breached?** The fact that a right is interfered with does not necessarily mean that it has been breached.
  7. **Establish the type of right that is engaged:**
    - **Absolute right** – Has there been an interference with the individual's human rights under the ECHR?
      - If the answer is yes, there has been a breach of the right – there are no circumstances when such behaviour would be acceptable under the ECHR.
    - **Limited right** – Does the interference fall within one of the lawful exceptions within the article?
      - Each limited article contains an exhaustive list of the exceptions to the right – if the exception is not in the list, there is a breach. Seek advice from the legal adviser.
    - **Qualified right** – The court will need to ask three questions:
      - Is the interference prescribed by clear and accessible UK law?
      - Does it pursue one of the legitimate aims set out in the article?
      - Is it no more than is necessary to secure that legitimate aim?
- If the answer is NO to any of these three questions, there is a breach.

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

- **Primary legislation** – Can the court find a possible interpretation that will give effect to the ECHR?
  - If YES, then the law must be applied in this way.
  - If NO, then apply national law as it is.
- **Secondary legislation** – Can the court find a possible interpretation that will give effect to the ECHR?
  - If YES, then the law must be applied in this way.
  - If NO, disregard national law so as to give effect to the ECHR.
- **Practice or precedent** – Can the court find a possible interpretation that will give effect to the ECHR?
  - If YES, then the law must be applied in this way.
  - If NO, disregard national law so as to give effect to the ECHR.

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

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

## Section 2: Reporting restrictions – a structured approach

### General rule

1. In recognition of the open justice principle, the general rule is that justice should be administered in public. Proceedings involving children are a statutory exception to this rule.
2. Criminal proceedings should normally be held in open court where members of the public and media are entitled to be present. Fair and accurate reports of proceedings, even where individuals are not identified, should be encouraged where appropriate as they can help promote public confidence. However, members of the public are not usually allowed in the youth court unless they have some connection with the case in question and the magistrates allow it. In practice, because of the restrictions when reporting cases involving children appearing before youth courts, it is unlikely that any member of the media will regularly attend. The [Judicial College Reporting Restrictions guide](#) contains further information on this subject.

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

### Youth court

3. Restrictions automatically apply to most proceedings in the youth court.
4. No report shall be published that reveals the name, address or school of any child concerned in the proceedings, or that includes any particulars likely to lead to the identification of any child in the proceedings.
5. No pictures shall be published of any child concerned in proceedings.
6. Reporting restrictions extend beyond newspapers, sound and television broadcasts to cover any communication to the public at large or any section of the public. This wide definition includes information published online; for example, information posted on social media sites such as Facebook and X (formerly Twitter).
7. Applications may be made to lift reporting restrictions in certain circumstances:
  - a. To avoid injustice to the child.
  - b. When charged or found guilty of certain offences and the child is unlawfully at large and it is necessary to bring them back before the court.
  - c. Where a child has been found guilty of persistent offending and the court is satisfied it is in the public interest to do so.
8. The power to dispense with anonymity should be exercised with great care and caution as identification may conflict with the welfare of the child. It should not be seen as an additional punishment.
9. Always seek the advice of the legal adviser when considering the lifting of reporting restrictions.
10. When an application is made to lift reporting restrictions, any member of the media present should be allowed to make representations before a decision is made.

## **Lifetime reporting restrictions under Section 45A Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) – the “reporting direction”**

11. Any court in England and Wales has the discretion to order, under specific circumstances, a lifetime reporting restriction in respect of a victim or witness under the age of 18 during the proceedings. This allows the court to provide victims and witnesses with individual tailor-made protection within the criminal justice system.
12. A defendant under the age of 18 cannot apply for a lifetime reporting restriction.
13. At any time during proceedings, the court may make a lifetime reporting restriction. To do this, the court must be satisfied that fear or distress on the part of the victim or witnesses in connection with being identified by members of the public as a person concerned in the proceedings is likely to diminish the quality of the victim's or witness's evidence or the level of co-operation they give to any of the proceedings.
14. When considering whether to make a reporting direction, the court must take into account a number of factors, including the nature and alleged circumstances of the offence, the age of the victim or witness subject to the application, their social and cultural background and ethnic origins, if relevant, and any views expressed by them. Where the victim or witness is under 16 years old, an “appropriate person” (eg parent, guardian or representative of the local authority) may assist the court.
15. The court must also have regard to the welfare of the victim or witness who is the subject of the reporting restriction application, whether it would be in the interests of justice to make the reporting direction and the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.
16. The court may make an “excepting direction”, dispensing (to any extent that it specifies) with the restrictions imposed by the reporting restriction. The court has to be satisfied that it is necessary in the interests of justice to make the excepting direction or the court is satisfied that the effect of the reporting direction is to impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax the restriction.
17. Always seek the advice of the legal adviser when considering making or lifting a lifetime reporting restriction.

## **Children appearing before an adult court – Section 45 YJCEA 1999**

18. Where children are involved in proceedings before the adult court, various reporting restriction orders may be made but no automatic restrictions apply. The child concerned may be the defendant, the victim or a witness.
19. The court is no longer able to make an order under s.39 Children and Young Persons Act 1933 (CYPA 1933) in criminal proceedings. In its place, the court may make an order under s.45 YJCEA 1999 that will apply until the child defendant reaches the age of 18, or until the order is otherwise lifted prior to the individual's 18th birthday. If a child defendant turns 18 during the proceedings, the reporting restriction will expire at the end of the proceedings.
20. An order made under s.45 will operate broadly in the same way as the s.39 order.
21. Section 39 orders continue to apply to non-criminal proceedings (civil and family), no matter where they take place.

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

## **Where an order is made**

23. Where an order is made, either to restrict or remove reporting restrictions, the court must make it clear that an order has been made and announce the terms of the order. It must also announce the reasons for making the order.
24. Failure to comply with a press restriction order is an offence punishable by a fine.

## **Criminal behaviour orders (CBOs) and anti-social behaviour injunctions (ASBIs)**

25. Where a child is convicted of an offence, the youth court has power to make a CBO. ASBIs are civil injunctions that are available in the youth court for 10 to 17 year olds. These orders can be reported, unless the court makes a specific direction to prevent such reporting.
26. In relation to CBOs, the details of the order can be reported, ie the press could report the CBO and the prohibitions, but not the case details that led to the making of the CBO – unless, of course, the court makes an order lifting the restrictions in relation to the offence. This will have to be balanced against the court's duty to have regard to the welfare of the child.
27. The court may make an order preventing the reporting of the CBO or the ASBI. The court would need to have a good reason, other than age alone, for preventing the identification of any child in such proceedings. The court should consider that unless the nuisance is extremely localised, enforcement of the order will normally depend on the general public being aware of the order and of the identity of the person against whom it is made. Effective enforcement may require the publication of photographs of the offender, as well as their name and address.

## **Breaches of CBOs and ASBIs**

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

## Section 3: Essential case management

### The role of the court

1. The court must ensure that each case proceeds as expeditiously as possible, as is consistent with the interests of justice and the fair trial provisions in Article 6 of the European Convention on Human Rights (ECHR). This is essential when dealing with children.
2. The principal aim of the youth justice system is to prevent children offending. This key objective of the legislation is more likely to be achieved if cases are swiftly administered, so that every child accused of breaking the law has the matter concluded without delay. This is especially important where there is a history of offending, in order that children may learn that any sentence imposed is a direct consequence of their offending behaviour.
3. Each case must be dealt with on its own merit. The court must play a proactive role to ensure that a case is managed robustly and dealt with promptly.

### Effective hearings

4. Many cases can and should be dealt with at the first hearing. The court must expect pleas to be entered on the first occasion and for progress to be made at every hearing. If no progress can be made, it is the court's duty to ask questions to obtain and consider all relevant information.
5. Some adjournments cannot be avoided, eg for trials to take place, reports, etc. An adjournment will be necessary before taking a plea to allow for consideration of an out-of-court disposal where a child indicates they will now make admissions in a case, not previously having done so, and the case is one which may have been eligible for an out-of-court disposal had an admission been made earlier.

### Adjournments

6. When dealing with applications to adjourn, courts should consider the following:
  - a. Unnecessary adjournments should be avoided.
  - b. Every application should be examined and the party requesting it should be asked to justify it.
  - c. Any adjournments granted should be for the shortest possible period to allow for progress.
  - d. The reason for any adjournment should be made clear and noted on the court record so that all parties know what is expected next time.
  - e. Justice delayed may be justice denied in respect of all parties, not just the child.

### Criminal Procedure Rules (CrimPR)

7. The [CrimPR 2020](#) brought about a culture of change in the management of criminal cases. Under the CrimPR, everyone involved is responsible for helping to make the case proceed efficiently under the supervision of the court.
8. The overriding objective is that criminal cases be dealt with justly. This includes:
  - a. acquitting the innocent and convicting the guilty
  - b. treating all participants with politeness and respect

- c. dealing with the prosecution and the defence fairly
  - d. recognising the rights of a defendant, particularly the right to a fair trial under Article 6 of the ECHR
  - e. respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case
  - f. dealing with the case efficiently and expeditiously
  - g. ensuring that appropriate information is available to the court when bail and sentence are considered
  - h. dealing with the case in ways that take into account:
    - i. the gravity of the offence alleged
    - ii. the complexity of what is in issue
    - iii. the severity of the consequences for the defendant and others affected
    - iv. the needs of other cases.
9. The court must further the overriding objective by actively managing cases. This includes:
- a. the early identification of the real issues
  - b. the early identification of the needs of witnesses
  - c. achieving certainty as to what must be done, by whom, and when, in particular by the early setting of a timetable for the progress of the case
  - d. monitoring the progress of the case and compliance with directions
  - e. ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way
  - f. discouraging delay, dealing with as many aspects of the case as possible on the same occasion and avoiding unnecessary hearings
  - g. encouraging the participants to co-operate in the progression of the case
  - h. making use of technology.
10. In addition, the court has a duty to actively manage the case by giving any direction appropriate to the needs of that case as early as possible.
11. Each party must actively assist the court in fulfilling this duty without, or if necessary with, a direction, and apply for a direction, if needed, to further the overriding objective. This will include communication between the prosecution and defence at the first available opportunity, and in any event no later than the beginning of the day of the first hearing, to establish, among other things, the plea, what is agreed and disputed, and what information or other material is required by either party and why (see CrimPR 2020 Part 3.3).

## Sentencing

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

## Generally

13. The court and all participants must further the overriding objective of the CrimPR by actively managing each case. However, it is the personal responsibility of the magistrates to manage the case actively. If a case cannot be concluded, the court must give directions to ensure that the case can be concluded at the next hearing or as soon as possible after that.
14. Where the word “must” appears in the CrimPR, it means must. The CrimPR must be complied with; they are compulsory, not guidance.
15. Proper evidence must be supplied if a child claims they are unwell and unable to attend court. Medical certificates are covered in the CrimPR 3.5(7)(f). It states: any certificate should specify the date of examination of the child, the nature of the illness, how it prevents the child from attending court and the timescale for prognosis. The court may require expert evidence in support of an application to postpone, cancel or adjourn a hearing by reason of ill-health, from the medical practitioner who provided a certificate in support of the application. The court must give reasons explaining why it has decided to proceed or not to proceed with the trial on the date it is listed. The reasons must be specific to the case.

## Pre-court

16. The prosecution case should contain sufficient information and evidence to enable the first hearing to be effective. The level of information should be proportionate and sufficient for the type of charge, expectation of plea and decisions required by the court.
17. Initial details, consisting of a charge sheet, summary of the evidence or the statements that set out the facts of the matters on which the case will be based, and the child’s previous findings of guilt, should be provided to the defence and they should be adequately prepared to ensure the first hearing is effective. Under the Transforming Summary Justice Initiative, in those cases where a not guilty plea is anticipated, the prosecution should have further information available, such as the schedule of unused material.
18. Best practice also requires the prosecutor to be available for consultation prior to the court hearing and for the police to provide the child, and where appropriate their parent/guardian, with information on their obligations, eg to seek legal advice.

## The first hearing

19. The court must take a plea from the child. This obligation does not depend on the extent of initial details, disclosure of unused evidence or the grant of legal aid.
20. Any requests for adjournments should be critically scrutinised and, if granted, should be for the shortest possible period. An adjournment will be necessary before taking a plea to allow for consideration of an out-of-court disposal where a child indicates they will now make admissions in a case, not previously having done so, and the case is one which may have been eligible for an out-of-court disposal had an admission been made earlier.
21. When adjourning cases, a warning should be given to the child clearly explaining the consequences of failing to attend, including the issuing of a warrant and trials proceeding in the child’s absence.

## Guilty pleas

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

## **Not guilty pleas**

23. If a not guilty plea is to be entered, the parties must fully complete the Preparation for Effective Trial in Youth Court form prior to the case being dealt with.
24. The court must identify the relevant disputed issues. If the parties do not do so, the court must require them to. If the defence state they are putting the prosecution to strict proof, then they should be warned of the consequences (ie not being able to advance a positive defence at trial).
25. The defence and prosecution must be ready to identify which witnesses are genuinely required to attend court. Witness dates to avoid should be available.
26. Directions should be made to ensure the progress of the case.
27. The trial date must be fixed as soon as possible.
28. If an apparently weak or non-credible defence is raised, the court should, having read the papers, raise the obvious questions about it and probe the answers given. The court should explore whether a basis of plea is more appropriate or pleas to alternative offences.
29. The need for special measures and interpreters should be identified to enable the court to gauge the length of the trial and put the necessary and appropriate arrangements in place. The court should set a timetable for the trial.
30. Bad character and hearsay applications, where possible, should be dealt with by binding pre-trial rulings and provision should be made for this at the first hearing.

## **Preparation for trial**

31. The parties' obligations include getting witnesses to court and arranging for the efficient presentation of the evidence, including any agreed evidence or admissions.
32. Applications to vacate trials must be made promptly and in writing on the standard form, in advance of the date of the trial. Any application should be served on each party at the same time as it is served on the court. As a general rule, such an application will be dealt with outside the courtroom in advance of the hearing under CrimPR 3.5 applying the preceding principles. The parties must provide full and accurate information to the court to enable it to assess where the interests of justice lie.
33. In order to prepare for trial, the court must take every reasonable step to facilitate the participation of any person, including the defendant. This includes finding out whether the child needs interpretation because they do not speak or understand English or have a hearing or speech disorder.

## **Special measures**

34. Parliament has recognised that children and other vulnerable witnesses need assistance in order to give their best evidence and legislation has been introduced to help achieve this aim, specifically in relation to two groups: vulnerable witnesses, which includes children under the age of 18; and intimidated witnesses, those likely to suffer in giving evidence because of fear or distress.
35. Where a court has determined a witness is eligible, it must then consider which special measure is likely to maximise the quality of the evidence provided. Any witness under the age of 18 is automatically eligible for special measures. The special measures direction is

subject to certain limitations, such as the availability of equipment and the wishes of the child.

36. Available special measures may include any of the following:
- Screening a witness from the accused.
  - Giving of evidence via a live link.
  - Evidence-in-chief being video recorded and played to the court.
37. Intermediaries are a statutory special measure available for both prosecution and defence witnesses and for the defendant. Intermediaries are communication specialists who are responsible for facilitating complete, coherent and accurate communication. Intermediaries can support the person at court or at a conference to prepare for a hearing. They can support a child attending court, or someone who has a physical, neurological or mental-health condition that affects their ability to participate fully during a hearing. They will intervene to prevent miscommunication. Whilst intermediaries will assist the court in monitoring the questioning of vulnerable witnesses and defendants, the responsibility to control the process remains with the court. Intermediaries are impartial. They will usually provide the court with a report on how the questioning should be adapted to best meet the individual's needs. In some circumstances, the intermediary will attend the trial to ensure that the questions are communicated fairly.

### **Use of special measures**

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

### **At trial**

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

### **The need to adapt procedures**

40. It is now generally accepted that if justice is to be done for the child or the vulnerable witness, a radical departure from the traditional style of advocacy will be necessary. Advocates must adapt to the child and not the other way round.
41. The court is expected to adapt normal trial procedures and take every reasonable step to facilitate the participation of a child. Flexibility is key, as is the welfare of the individual.

### **Modern slavery**

42. The Modern Slavery Act 2020 provides a defence which can be raised by someone who is suspected to be a victim of modern slavery. The provision of this defence recognises that there are circumstances where the victims who have been trafficked, made to provide forced labour or otherwise exploited, do not have culpability for their criminal act and so it would not be just to convict them of these acts. The defence does not cover all criminal offences. It is

important that you check with your legal adviser that the defence is available for the particular offence alleged.

43. The National Referral Mechanism (NRM) is a framework for identifying victims of trafficking or modern slavery. Cases are referred to the Single Competent Authority (SCA) and they trigger the two-stage NRM process.
- Stage 1 – reasonable grounds test. There is a target timeframe of five working days for the NRM team to decide if there are reasonable grounds to believe the individual is a potential victim of trafficking or modern slavery.
  - Stage 2 – conclusive grounds decision. Following a positive outcome at stage 1, there is then a reflection and recovery period of 45 days while the SCA reviews the case and makes a substantive decision.
44. Courts should consider departing from the usual Transforming Summary Justice timescales when fixing a trial date to take into account a referral to NRM. An indication of plea should still be taken and courts should proceed to complete the Preparation for Effective Trial Form and set a trial date, taking into account the 45-day period for the NRM referral conclusive grounds to be completed.

## Explanation of some of the special measures available

| Special measure                  | Relative benefit to witness                                                                                                                                                                                                                                                                     | Limitations for witness                                                                                                                                                                                                                                | Current availability/eligibility                                                                                                                                                                                            |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Screens                          | Usually positioned around the witness box to ensure the witness does not see the child defendant. Witness not exposed to child defendant's non-verbal reactions.                                                                                                                                | This measure is not intended to stop the child defendant from seeing the witness. In practice this will usually be the case, but in some cases the child may be able to see the witness when a screen is used.                                         | <ul style="list-style-type: none"> <li>• Children.</li> <li>• Witnesses eligible on the grounds of incapacity.</li> <li>• Vulnerable witnesses (those eligible on grounds of fear or distress about testifying).</li> </ul> |
| Live TV link                     | Allows a witness to give evidence from outside the courtroom.                                                                                                                                                                                                                                   | The child will usually be able to see the witness on the TV link.                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>• Children.</li> <li>• Witnesses eligible on the grounds of incapacity.</li> <li>• Vulnerable witnesses (those eligible on grounds of fear or distress about testifying).</li> </ul> |
| Video recorded evidence-in-chief | Allows an interview with the witness, which has been video recorded before the trial, to be shown as the witness's evidence-in-chief. The witness does not have to report what was said during police interview. May be more compelling – captures the full impact of the crime on the witness. | Child defendant will see video recording as part of pre-trial preparation and when it is played in court. Witness still required at court for cross-examination, usually via a live TV link. In court, the witness goes straight to cross-examination. | <ul style="list-style-type: none"> <li>• Children.</li> <li>• Witnesses eligible on the grounds of incapacity.</li> <li>• Vulnerable witnesses (those eligible on grounds of fear or distress about testifying).</li> </ul> |

## Section 4: Remand provisions

### Unconditional bail

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

### Conditional bail

2. The child is released on bail with conditions attached. These provisions largely apply as they do in the adult court. For example, conditions may be added to the child's bail only if necessary:
  - a. to ensure attendance at court
  - b. to prevent offending on bail
  - c. to prevent interference with witnesses or obstruction of the course of justice
  - d. for their own welfare
  - e. to ensure they are available for enquiries or reports
  - f. to ensure they attend an appointment with their legal representative before the next hearing.

“Necessary” means a real, not fanciful, risk of one of the above occurring.

3. It is important the court makes appropriate conditions for its concerns, as it does with adults. One of the bail conditions that may be considered in the youth court, following an assessment of the child by the Youth Justice Service (YJS), is bail support and supervision, the details of which will be outlined in court, and is likely to involve home visits.

### Conditional bail with intensive supervision and surveillance (ISS)

4. This is not created by statute. It is an intensive community-based programme for children that can be accessed via existing disposals (ie as part of a youth rehabilitation order (YRO), conditions on bail or part of supervision following a detention and training order (DTO)).
5. The YYS will indicate whether the child is suitable for ISS, but it is a matter for the court whether bail is granted and whether ISS conditions are attached.
6. Breach of bail with ISS is dealt with like any other breach (ie arrest and production to the court). The YYS may be able to offer an ISS package on bail, which will provide up to 25 hours' contact time each week, including time at weekends and evenings. Again, the details of the programme will be outlined in court, and elements may include provision for education, training, interventions to address offending behaviour, family support and a curfew.

### Conditional bail with tagging

7. Curfews with electronic compliance monitoring may be imposed on a child where all the following conditions are satisfied:
  - a. They have attained the age of 12 years.

- b. They:
  - i. are charged with or have been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or
  - ii. have a recent history of repeatedly committing imprisonable offences while remanded on bail or to local authority accommodation.
- c. Electronic monitoring is available in the area.
- d. The YJS certifies to the court that the imposition of the requirement would be suitable.

## **Conditional bail with location monitoring**

- 8. Conditional bail with location monitoring may be imposed on a child where all the following conditions are satisfied:
  - a. They have attained the age of 12 years.
  - b. They:
    - i. are charged with or have been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; **or**
    - ii. have a recent history of repeatedly committing imprisonable offences while remanded on bail or to local authority accommodation.
  - c. Location monitoring is available in the area.
  - d. The YJS certifies to the court that the imposition of the requirement would be suitable.
  - e. The child must:
    - i. have a fixed address with an electricity supply
    - ii. have a parent or guardian present for tag fitting.

## **Refusal of bail/remands in custody**

- 9. The Bail Act 1976 creates different exceptions to the right to bail depending on the type of case the court is dealing with. The court will need to find one or more of the criteria before remanding the child in custody.
- 10. Whenever a child is refused bail, the court must give reasons for its decision. This applies to all remands in custody, including remands to local authority accommodation (even where the child is going to reside at home with their parents/guardian) and remands to youth detention accommodation, which includes secure accommodation remands and remands to young offender institutions (YOIs).
- 11. Where a child is remanded in custody, then the remand must be to local authority accommodation unless the strict criteria for a remand to youth detention accommodation are met.
- 12. Custody time limits (CTLs) apply in all cases where a child is refused bail and either remanded to local authority accommodation or youth detention accommodation. CTL dates must be confirmed in court at every hearing.

## **Either-way/indictable only offences**

13. Bail can be refused if the court is satisfied that there are substantial grounds to believe that the child would:
  - a. commit offences while on bail; or
  - b. not come back to court; or
  - c. interfere with witnesses/obstruct the course of justice; or
  - d. commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury to an associated person (or a fear of such). “Associated person” is defined by s.62 Family Law Act 1996. It includes those who are or who have been married to each other or in civil partnerships, those who are in or have had intimate relationships for a significant duration, or those who have lived in the same household (other than employees or tenants).
14. The child need not be granted bail if the court is satisfied:
  - a. they should be kept in custody for their own welfare; or
  - b. they are already serving a custodial sentence; or
  - c. it has insufficient information to make a decision; or
  - d. they were on bail at the date of the offence; or
  - e. they have breached their bail conditions.
15. Where a case is being adjourned for the preparation of reports or enquiries, a court may also refuse bail if it appears to the court that the child would not co-operate to enable a report to be prepared.

## **Summary imprisonable offences**

16. The child need not be granted bail if:
  - a. it appears to the court that the child has previously failed to surrender to custody **and** the court believes, in view of that failure, that the child would fail to surrender to custody; or
  - b. it appears to the court that the child was on bail in criminal proceedings on the date of the alleged offence **and** the court is satisfied that there are substantial grounds to believe that the child would commit an offence; or
  - c. the court is satisfied that there are substantial grounds for believing that the child, if granted bail, would commit an offence by engaging in conduct that would, or would be likely to, cause physical or mental injury (or fear of that) to an associated person.
17. The child need not be granted bail if the court is satisfied:
  - a. they should be kept in custody for their own welfare; or
  - b. they are already serving a custodial sentence; or
  - c. it has insufficient information to make a decision; or
  - d. the child has been arrested for failing to surrender or failing to comply with bail conditions in these proceedings **and** the court is satisfied that there are substantial grounds to believe the child, if granted bail, would:
    - i. fail to surrender; or

- ii. commit an offence on bail; or
- iii. interfere with witnesses or otherwise obstruct the course of justice.

## **Non-imprisonable offences**

18. The child need not be granted bail if the court is satisfied that there are substantial grounds to believe that they:
- a. would not come back to court/would commit offences/would interfere with witnesses or obstruct the course of justice and they have previously been released on conditional bail but have not kept to the conditions imposed; or
  - b. would commit an offence by engaging in conduct that would, or would be likely, to cause physical or mental injury (or a fear of) to an associated person and they have previously been on bail but have not kept to the conditions imposed.
19. The child need not be granted bail if the court is satisfied they:
- a. would not come back to court as they have a record of not attending court hearings; or
  - b. should be kept in custody for their own welfare; or
  - c. are already serving a custodial sentence.

## **Remand to local authority accommodation**

20. If the court is satisfied that there are reasons to withhold bail, the child must be remanded to local authority accommodation, with or without conditions, unless the strict criteria for a remand to youth detention accommodation apply.
21. A remand to local authority accommodation is a refusal of bail, even where the child is going to reside at home with their parent or guardian. The relevant time limits for a remand in custody therefore apply (ie eight clear days before conviction, four weeks on second appearance, 21 days after conviction etc).
22. Where the court does withhold bail, it must state in open court the designated local authority that is to receive the child. This will be the local authority where the child habitually resides or where the offence was committed. The local authority must then provide or arrange for accommodation for that child.
23. The court may impose conditions on the child when it remands them to local authority accommodation which may be similar to those imposed on bail.
24. The court may also impose electronic monitoring, provided five requirements are met:
- a. The child is 12 years old or over.
  - b. The child is charged or convicted of an imprisonable offence.
  - c. The offence (or one or more of the offences) is:
    - i. a violent or sexual offence; or
    - ii. an offence punishable in the case of an adult with imprisonment for a term of 14 years or more; or
    - iii. the offence (together with any other imprisonable offences of which the child has been convicted in any proceedings) amount or would, if the child were convicted of that offence, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

- d. The court is satisfied that electronic monitoring is available in the area.
  - e. The YJS has informed the court that, in its opinion, the imposition of electronic monitoring will be suitable in that case.
25. The court may also impose location monitoring, provided six requirements are met:
- a. The child is 12 years old or over.
  - b. The child is charged or convicted of an imprisonable offence.
  - c. The offence (or one or more of the offences) is:
    - i. a violent or sexual offence; or
    - ii. an offence punishable in the case of an adult with imprisonment for a term of 14 years or more; or
    - iii. the offence (together with any other imprisonable offences of which the child has been convicted in any proceedings) amount or would, if the child were convicted of that offence, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
  - d. The court is satisfied that location monitoring is available in the area.
  - e. The YJS has informed the court that, in its opinion, the imposition of electronic monitoring will be suitable in the child's case.
  - f. The child must:
    - i. have a fixed address with an electricity supply; and
    - ii. have a parent or guardian present for tag fitting.
26. The court may also impose a condition on a remand to local authority accommodation stipulating that the child must not be placed with a named person.
27. The court must always consult with the local authority, via the YJS, before imposing any conditions on the remand.
28. The court must give reasons for remanding a child to local authority accommodation and state these reasons in open court, in ordinary language.
29. Where conditions are imposed, the child can be arrested and brought back before the court for breaching those conditions. Like with breach of bail, they must be brought back before the court as soon as reasonably practicable or within 24 hours of the arrest. If the court is satisfied that the child has breached the conditions, the court must remand the child.

## **Remand to youth detention accommodation**

30. There is a presumption that any child who is refused bail will be remanded to local authority accommodation. If the court is satisfied that there are reasons to withhold bail and further criteria are met (see below), the court may remand the child to youth detention accommodation.
31. The court does not specify where the child is to be remanded, other than to state that they are being remanded into youth detention accommodation. It will be for HM Prison and Probation Service (HMPPS) to decide where the child will be placed, but for boys it could include a secure children's home, a secure training centre or YOI, and for girls a secure children's home or a secure training centre.

32. A child who is remanded to youth detention accommodation is to be treated as a child who is “looked after” by the designated authority. There are two sets of conditions, one of which must be satisfied before a child can be remanded to youth detention accommodation. The first set of conditions is effectively based upon the seriousness of the offence and need to protect the public or prevent the commission of further offences. The second set of conditions is for other imprisonable offences.
33. When considering the sentencing condition (see below), it should be clear from the facts before the court regarding the offence, taken with other relevant factors, such as the child’s previous findings of guilt, that it is very likely that the child would be sentenced to custody. The court must consult the Sentencing Council’s Sentencing Children and Young People guideline (the Children guideline), issued in June 2017. It will also need to consult the relevant guideline. Where there is no offence guideline specifically for children, the court will need to examine the adult guidelines for the offence and reduce the sentence according to age and maturity, where appropriate. The court must be very mindful that the minimum custodial sentence in the youth court is a DTO of four months. If there is not a very likely risk of such a sentence, then a remand to youth detention accommodation under this section is not permitted.

## First set of conditions

34. There are six provisions which have to be met before a child can be remanded under this set of conditions. It is suggested that the court use the following steps:
- **STEP 1 – Interests and welfare condition:** before deciding whether to remand a child to youth detention accommodation 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.
  - **STEP 2 – Age condition:** the child must be 12 years old or over.
  - **STEP 3 – Sentencing condition:** it must appear to the court that it is very likely the child will be sentenced to a custodial sentence for the offence or one or more of those offences with which the child is charged or convicted.
  - **STEP 4 – Offence condition:** at least one offence with which the child is charged or convicted is a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.
  - **STEP 5 – Necessity condition:** the court must be of the opinion that, after considering all of the options for the remand of the child, only remanding the child to youth detention accommodation would be adequate to:
    - protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or
    - prevent the commission by the child of imprisonable offences; **and** the risks posed by the child cannot be managed safely in the community.
  - **STEP 6 – The first or second legal representation condition:** the first condition is that the child is legally represented. Failing this, it is enough for the second condition to be satisfied if the child was represented but the representation was withdrawn (due to the child’s conduct or their financial resources), or if the child applied for representation but was refused (on the grounds of financial resources), or if the child (having been informed of the right to apply for representation) refused or failed to apply.

35. **FINAL STEP – Reasons:** where a court remands a child to youth detention accommodation, the court must state in open court and in ordinary language to the child the reasons for the custodial remand and that it has considered remanding the child to local authority accommodation and the interests and welfare of the child. Furthermore, the court must ensure that its reasons are given in writing to the child, to their lawyer and to the YJS.

## Second set of conditions

36. There are seven conditions which have to be met before a child can be remanded under this set of conditions. It is suggested that the court should consider these provisions using the following steps:
- **STEP 1 – Interests and welfare condition:** before deciding whether to remand a child to youth detention accommodation, 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.
  - **STEP 2 – Age condition:** the child must be 12 years old or over.
  - **STEP 3 – Sentencing condition:** it must appear to the court that it is very likely that the child will be sentenced to a custodial sentence for the offence or one or more of those offences with which the child is charged or convicted.
  - **STEP 4 – Offence condition:** at least one offence with which the child is charged or convicted must be an imprisonable offence.
  - **STEP 5 – First or second history condition:**
    - the first history condition is that 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; or
    - the second history condition is that 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.
  - **STEP 6 – Necessity condition:** the court must be of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate to:
    - protect the public from death or serious personal injury (physical or psychological) occasioned by further offences; or
    - prevent the commission by the child of imprisonable offences; **and** the risks posed by the child cannot be managed safely in the community.
  - **STEP 7 – First or second legal representation condition:** the first condition is that the child is legally represented. Failing this, it is enough for the second condition to be satisfied if the child was represented but the representation was withdrawn (due to the child's conduct or their financial resources), or if the child applied for representation but was refused (on the grounds of financial resources), or if the child (having been informed of the right to apply for representation) refused or failed to apply.

37. **FINAL STEP – Reasons:** Where a court remands a child to youth detention accommodation, the court must state in open court and in ordinary language to the child the reasons for the custodial remand and explain that it has considered remanding the child to local authority accommodation and the interests and welfare of the child. Furthermore, the court must ensure that its reasons are given in writing to the child, to their lawyer and to the YJS.

### **Further applications for bail**

38. If the court has refused bail, it is the court's duty at every hearing to consider whether the child ought to be granted bail. Where a child has been remanded into custody, they may make a second bail application to the subsequent court and put forward any argument, even those previously argued.
39. If this second application is refused, the next court need not hear arguments it has previously heard. If there has been a change in circumstances, the child has a right to make further applications. The passage of time itself may be considered to be a change of circumstance in particular cases.

### **Bail in murder cases**

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

## First set of conditions – form

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| What substantial grounds are there to refuse bail under the Bail Act 1976?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |
| Where a child is refused bail, there is a presumption that they must be remanded to local authority accommodation, with or without conditions. Does this provide sufficient protection? If not, please give your reasons.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |
| <b>If the court is considering a remand to youth detention accommodation, the following questions need to be addressed:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| Has the court considered the interests and welfare of the child?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |
| Is the child over 12 years old?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| Is it very likely the child will receive a custodial sentence?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |
| Is the offence a violent or sexual offence or an offence punishable with imprisonment for a term of 14 years or more?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |
| <p>Is the court of the opinion, <b>after considering all the options for the remand of the child</b>, that only remanding the child to youth detention accommodation would be adequate:</p> <ul style="list-style-type: none"> <li>a) to protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or</li> <li>b) to prevent the commission of imprisonable offences; <b>and</b> that the risks posed by the child cannot be managed safely in the community?</li> </ul> <p>If the court is of this opinion, please give your reasons and, in particular, address why other types of remand (eg conditional bail, remand to local authority with conditions) do not provide adequate protection or why this cannot be managed safely in the community.</p> |  |
| Is the child legally represented? Or, failing this, was the child represented but the representation was withdrawn (due to the child's conduct or their financial resources), or the child applied for representation but was refused (on the grounds of financial resources), or the child (having been                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |

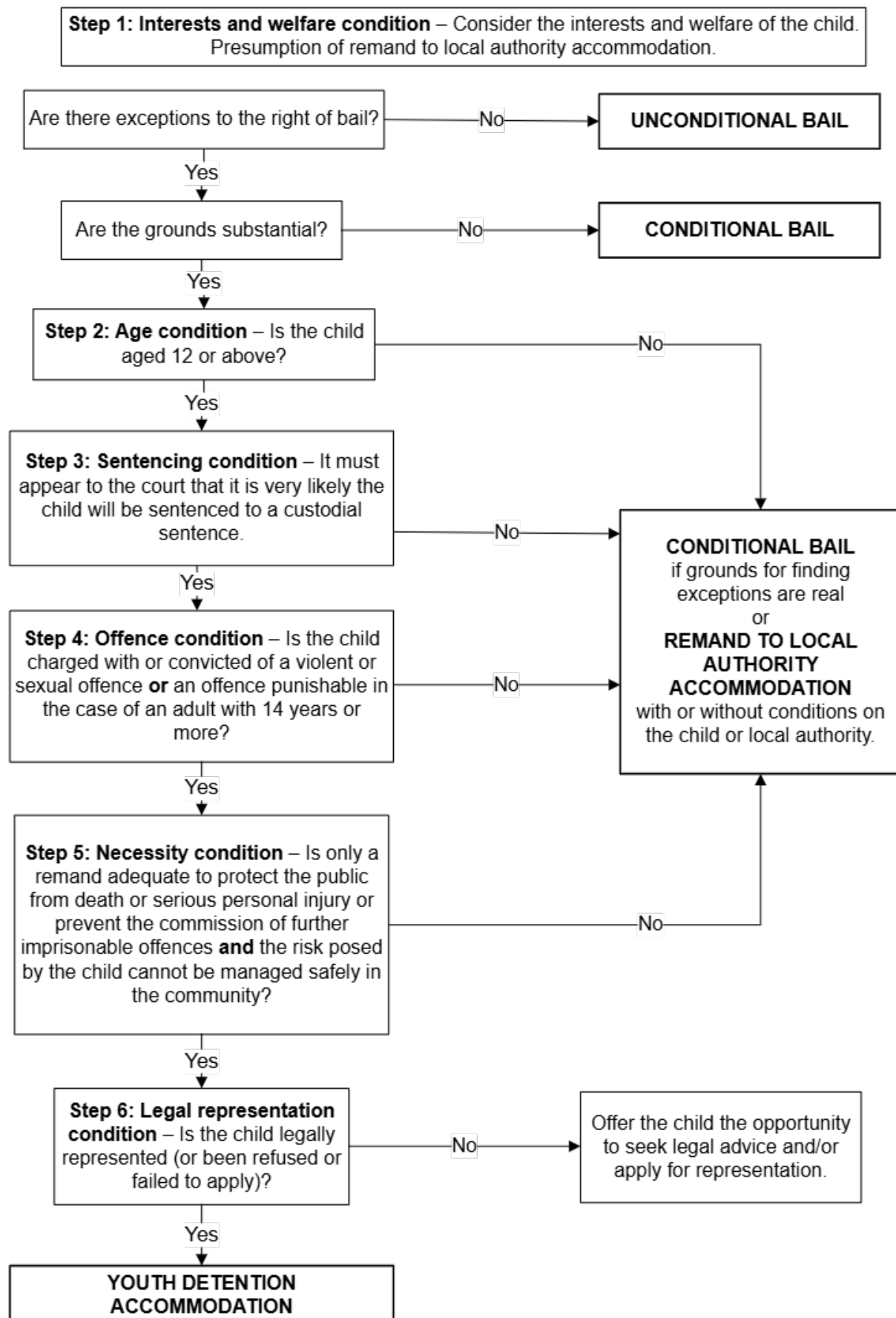
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| informed of the right to apply for representation)<br>refused or failed to apply?                                                                                                                                                                                                        |  |
| Designated local authority to be specified.                                                                                                                                                                                                                                              |  |
| Duty to state in open court and in ordinary language to the child (and in writing to the child's lawyer and YJS) the reasons for the custodial remand and that the court has considered remanding the child to local authority accommodation and the interests and welfare of the child. |  |

## Second set of conditions – form

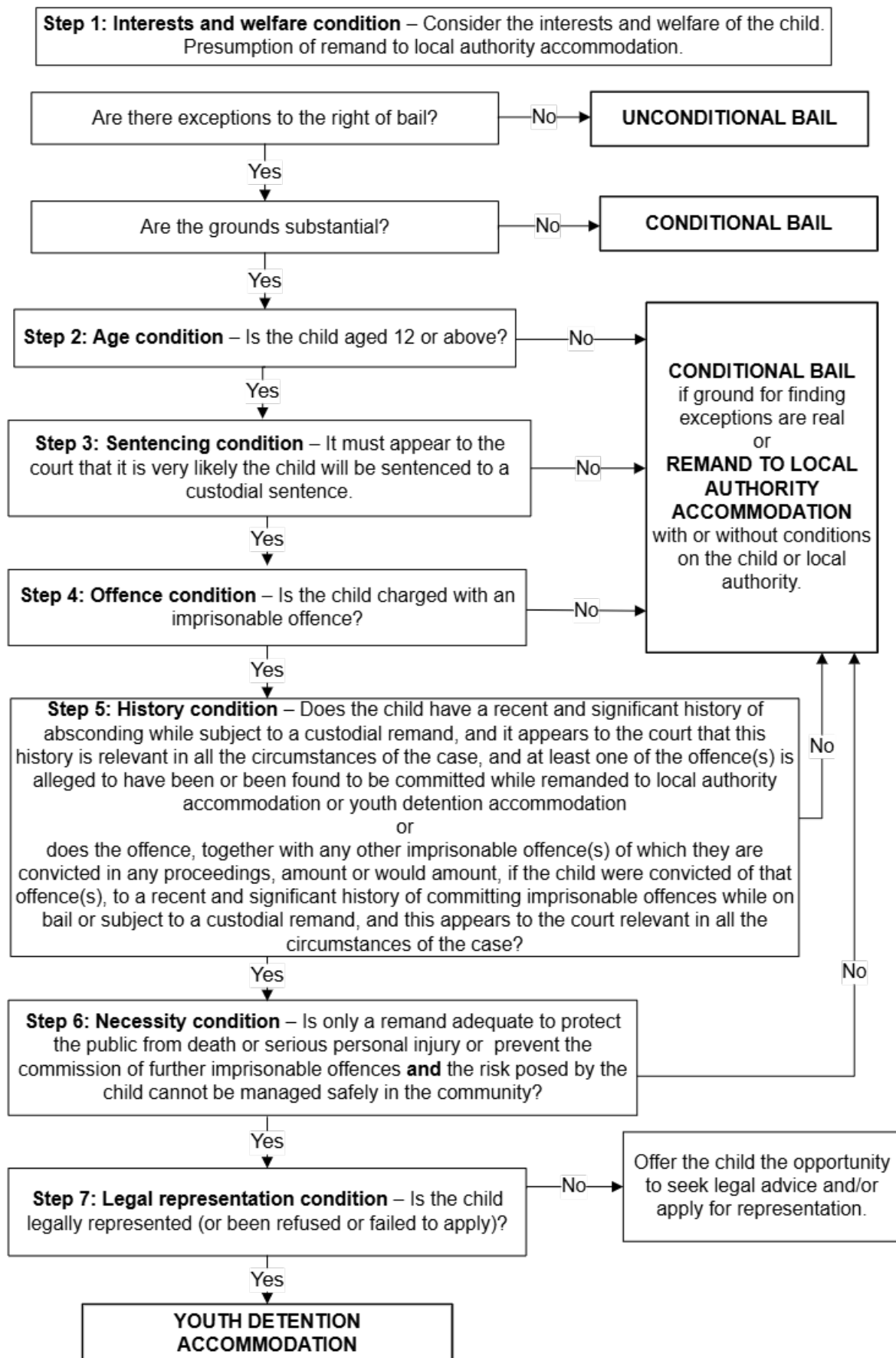
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| What substantial grounds are there to refuse bail under the Bail Act 1976?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |
| Where a child is refused bail, there is a presumption that they must be remanded to local authority accommodation, with or without conditions. Does this provide sufficient protection? If not, please give your reasons.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |
| <b>If the court is considering a remand to youth detention accommodation, the following questions need to be addressed:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |
| Has the court considered the interests and welfare of the child?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |
| Is the child over 12 years old?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
| Is it very likely the child will receive a custodial sentence? Please give your reasons and refer to the adult court guidelines, with any appropriate reduction due to the age of the child.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |
| Is the offence imprisonable?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |
| <p>Does the child have 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? OR</p> <p>Has the child been charged with or convicted of an offence which, when taken with previous imprisonable offences (convicted), amounts to (or would amount to if convicted) a recent and significant history of committing imprisonable offences while on bail or remand to local authority accommodation or youth detention accommodation?</p> <p>Is there a recent history of committing imprisonable offences while on bail (when considering the offence before you, and any other imprisonable offences of which the child</p> |  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| has been convicted)? And is the history relevant in all the circumstances of the case?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
| <p>Is the court of the opinion, <b>after considering all the options for the remand of the child</b>, that only remanding the child to youth detention accommodation would be adequate to:</p> <p>a) protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or</p> <p>b) prevent the commission of imprisonable offences; <b>and</b> the risks posed by the child cannot be managed safely in the community?</p> <p>If the court is of this opinion, please give your reasons and, in particular, address why other types of remand (eg conditional bail, remand to local authority with conditions) do not provide adequate protection or cannot be managed safely in the community.</p> |  |
| Is the child legally represented? Or, failing this, was the child represented but the representation was withdrawn (due to the child's conduct or their financial resources), or the child applied for representation but was refused (on the grounds of financial resources), or the child (having been informed of the right to apply for representation) refused or failed to apply?                                                                                                                                                                                                                                                                                                                                                                 |  |
| Designated local authority to be specified.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |
| Duty to state in open court and in ordinary language to the child (and in writing to the child's lawyer and YJS) the reasons for the custodial remand and that the court has considered remanding the child to local authority accommodation and the interests and welfare of the child.                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |

## First set of conditions – flow chart



## Second set of conditions – flow chart



## Section 5: Jurisdiction, allocation and grave crimes – a structured approach

### General rule

1. The youth court has jurisdiction in respect of all criminal proceedings against children under the age of 18 years. There is an irrebuttable presumption that no child under the age of 10 years old has any criminal liability.
2. A child under the age of 18 shall be dealt with summarily in the youth court unless the matter falls within one of the categories below, in which case the child shall be sent forthwith to the Crown Court for trial:
  - a. When charged with homicide.
  - b. When charged with a relevant firearms offence, which if convicted would be subject to a minimum statutory sentence.
  - c. When notice is given to the court that there is evidence of a fraud of such seriousness or complexity that the management of the case should, without delay, be taken over by the Crown Court.
  - d. When notice is given by the Director of Public Prosecutions (DPP) that a child will be called as a witness and for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with, without delay, by the Crown Court.
  - e. When charged with a specified offence and it appears to the court that an extended sentence (minimum four years' detention), under the dangerous offender provisions, is likely to be needed.
3. Homicide is not defined in statute but would ordinarily include murder and manslaughter. [Child Defendants in the Crown Court \(June 2025\)](#), chapter 7-2 subheading "2B. Homicide (sending for trial)", states:

"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."

The following table from *Child Defendants in the Crown Court* summarises 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                                                  | s.1(1) Infanticide Act 1938                               | Life             | Yes                  |                                                                                                                                                                                                                |
| Child destruction                                            | s.1 Infant Life (Preservation) Act 1929                   | Life             | Probably             | Could also be a grave crime or attract an extended sentence under the dangerousness provisions.                                                                                                                |
| Procuring an abortion                                        | s.58 Offences Against the Persons Act (OAPA) 1861         | Life             | Probably             | Could also be a grave crime.                                                                                                                                                                                   |
| Causing or allowing the death of a child or vulnerable adult | s.5 Domestic Violence, Crime and Victims Act (DVCVA) 2004 | 14 years         | Yes                  | s.6(5) DVCVA 2004 provides that this offence is “an offence of homicide” for the purposes of s.51A CDA 1998, s.24 MCA 1980 and s.8 PCCSA 2000. It is the only offence which is explicitly defined in this way. |
| Encouraging or assisting suicide (death occurs)              | s.2 Suicide Act (SA) 1961                                 | 14 years         | Yes                  | Could also be a grave crime.                                                                                                                                                                                   |
| Encouraging or assisting suicide (no death)                  | s.2 SA 1961                                               | 14 years         | No                   | Could also be a grave crime.                                                                                                                                                                                   |
| Causing death by dangerous driving                           | s.1 Road Traffic Act (RTA) 1988                           | 14 years         | No                   | Could also be a grave crime or attract an extended sentence under the dangerousness provisions.                                                                                                                |
| Causing death by careless driving                            | s.2B RTA 1988                                             | 5 years          | No                   |                                                                                                                                                                                                                |

| Offence                                                                      | Statute                         | Maximum sentence | Offence of homicide? | Comment                                                                                                                                              |
|------------------------------------------------------------------------------|---------------------------------|------------------|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Causing death by driving unlicensed                                          | s.3ZB(a) RTA 1988               | 2 years          | No                   |                                                                                                                                                      |
| Causing death by driving uninsured                                           | s.3ZB(c) RTA 1988               | 2 years          | No                   |                                                                                                                                                      |
| Causing death by driving whilst disqualified                                 | s.3ZC RTA 1988                  | 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 | s.3A RTA 1988                   | 14 years         | No                   | Could also be a grave crime or attract an extended sentence under the dangerousness provisions.                                                      |
| Aggravated vehicle-taking (where death occurs)                               | s.12A Theft Act 1968            | 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)                 | s.3 Dangerous Dogs Act 1991     | 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)          | s.35 OAPA 1861                  | 2 years          | No                   |                                                                                                                                                      |
| Criminal damage with intent to endanger life                                 | s.1(2) Criminal Damage Act 1971 | Life             | No                   | Could be grave crime or attract an extended sentence under the                                                                                       |

| Offence                                                          | Statute                              | Maximum sentence                             | Offence of homicide?                                        | Comment                                                                                                                                                                                                    |
|------------------------------------------------------------------|--------------------------------------|----------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                  |                                      |                                              |                                                             | dangerousness provisions.                                                                                                                                                                                  |
| Arson with intent to endanger life                               | s.1(2), (3) Criminal Damage Act 1971 | Life                                         | No                                                          | Could be grave crime or attract an extended sentence under the dangerousness provisions.                                                                                                                   |
| Attempt to commit “an offence of homicide”                       | s.1 Criminal Attempts Act 1981       | Dependent on offence                         | No, but may be treated in similar way, dependent on offence | Note that ss.2(1) and (2)(c) 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)                                  | s.4 OAPA 1861                        | 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” | s.4(1) Criminal Law Act 1967         | 10 or 7 or 5 or 3 years depending on offence | No                                                          |                                                                                                                                                                                                            |
| Encouraging or assisting “an offence of homicide”                | s.44 or 45 Serious Crime Act 2007    | Dependent on offence                         | No, but may be treated in similar way, dependent on offence | Note that s.55 Serious Crime Act 2007 provides that an offence under ss.44 or 45 is triable in the same way as the anticipated offence.                                                                    |
| Conspiracy to commit “an offence of homicide”                    | s.1 Criminal Law Act 1977            | 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.                                     |

4. In certain other cases, the court must follow the plea before venue procedure, namely where:
  - a. the child is charged jointly with an indictable offence (and appears on the same or subsequent occasion) with an adult who is sent to the Crown Court for trial for that offence (see the Adult Court Bench Book for details on this)
  - b. the child is charged with an indictable or summary offence (punishable with imprisonment or disqualification from driving) where they have been sent for trial for a related offence on the same or previous occasion
  - c. the child is charged with an offence capable of being a grave crime
  - d. the child is charged with a terrorism offence and the court considers that it ought to be possible to sentence the child to more than two years' detention.
5. Where a child reaches the age of 18 during the proceedings, the youth court may, if it thinks fit, proceed with the hearing and conclude the case or transfer the case to the adult court. It cannot deal with a further charge once it is known that a child has reached the age of 18.

## **What is a grave crime?**

6. For a child aged between 10 to 17 years old, offences capable of constituting a grave crime are:
  - a. any offence that in the case of an adult carries 14 years or more imprisonment
  - b. an offence of sexual assault
  - c. child sex offences committed by a child
  - d. sexual activity with a child family member
  - e. inciting a child family member to engage in sexual activity.
7. If a child is convicted of a grave crime in the Crown Court, they may be sentenced to long-term detention.
8. The court can only commit the offence to the Crown Court for trial or sentence if it is satisfied the offence is a grave crime, namely, if convicted, the child should be sentenced to long-term detention. The Crown Court can impose a period of detention on any child aged 10 to 17 years old.
9. The grave crime decision is effectively a prediction of sentence exercise and is important because:
  - a. the maximum term of detention in the youth court is 24 months
  - b. there is no power to impose a sentence of detention on a child aged 10 to 11 years old in the youth court
  - c. there is no power to impose a sentence of detention in the youth court on a child aged 12 to 14 years old, unless they are categorised as persistent offenders.

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

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

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

11. Is the offence of such gravity that a sentence substantially exceeding the two-year maximum for a detention and training order (DTO) is a realistic possibility?
12. The word “substantially” has not been defined in law. When considering representations on grave crimes, the court must find that there is a real, and not merely theoretical, possibility of the above tests being satisfied. The Sentencing Council’s Sentencing Children and Young People guideline (the Children guideline) paragraph 2.10 now indicates that there is no requirement to take the prosecution case at its highest and that in most cases it is likely to be impossible to decide if there is a real prospect of a sentence in excess of two years until after a conviction.
13. **Trials in the Crown Court should be reserved for the most serious cases**, which recognises the greater formality of the proceedings and the greatly increased number of people involved.
14. Children aged between 12 to 14 years old can only receive a DTO in the youth court, if they are deemed to be a **persistent** offender. They will also only rarely attract a period of detention under the grave crime provisions.
15. Those aged 10 to 11 years old cannot be the subject of a DTO. They will attract detention under the grave crime provisions even more rarely.
16. Courts must not commit children for trial because they do not have the power to sentence them to detention in the youth court.

## Plea before venue procedure

17. The plea before venue procedure to be followed is:
  - a. The legal adviser should read the charge to the child and explain to the child that they may indicate whether they would plead guilty or not guilty.
  - b. The legal adviser should explain to the child that, if they indicate a guilty plea, they may be committed to the Crown Court for sentence if the offence is:
    - i. one which the court determines should be punished with long-term detention for grave crimes; or
    - ii. a specified offence and the court considers they meet the criteria for the imposition of an extended sentence under the dangerous offender provisions.
  - c. If the child indicates a guilty plea, they are treated as having been tried summarily and convicted. The court may proceed to deal with them or commit for sentence as a grave crime or dangerous offender.
  - d. If the child fails to indicate a plea or indicates a plea of not guilty, the court must determine whether to proceed to summary trial or to send the child to the Crown Court for trial. The child may be sent to the Crown Court for trial where they are charged with a grave crime and the court considers that if they are found guilty of the offence, it ought to be possible to impose long-term detention.
  - e. The prosecutor should outline the facts of the case and make any representations, including the likely sentence, and outline any previous findings of guilt.
  - f. The defence should make representations, including any personal mitigation.

- g. The legal adviser should give any relevant advice on sentencing, including any Court of Appeal or Sentencing Council guidance (this may be specific guidelines for the youth court, eg the Robbery guideline, Sexual Offences guidelines, Bladed Articles and Offensive Weapons guidelines, or based on adult court guidelines).
- h. If there is no specific offence guideline for the child, and the custody threshold has been passed, the court will need to consider the custodial sentence that would have been appropriate for an adult offender charged with the same offence.
- i. Bearing in mind the approach set out in the Children guideline, the court will then need to reduce this equivalent adult sentence according to the child's age and maturity. When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 to 17 years and allow a greater reduction for those aged under 15 years. In most cases, when considering the appropriate reduction from the adult sentence, the emotional and developmental age and maturity of the child is of at least equal importance as their chronological age.
- j. The court should determine whether, if convicted, a sentence beyond its powers should be available (a sentence substantially exceeding two years in the case of 10 to 11 year olds and 12- to 14-year-old non-persistent offenders, and substantially exceeding two years in the case of 12- to 14-year-old persistent offenders and 15 to 17 year olds).
- k. The court will announce its decision. It must make clear the basis for its decision.
- l. If the court decides at this stage that it should proceed to summary trial, as a sentence beyond its powers is not necessary, the court retains a power to commit to the Crown Court on conviction after summary trial. The child should be warned that the court retains this power when jurisdiction is accepted. The effect of this is to make the power to commit to the Crown Court for sentence available to the youth court if the child is convicted on summary trial of an offence capable of being a grave crime and the court is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, is such that the Crown Court should have the power to sentence the child to long-term detention.

## Linked offences

- 18. If a child is sent to the Crown Court for one or more offences, the court may, at the same time or on a subsequent occasion, send them to the Crown Court for trial for any related indictable offence or summary offence punishable with imprisonment or disqualification from driving.
- 19. Where a child is sent to the Crown Court for trial in relation to a grave crime and indicates an intention to plead guilty to related offences, the court may commit them to the Crown Court for sentence on those other matters.
- 20. Where the court commits a child for sentence, the court may also commit for sentence any other indictable offence or summary offence (provided it is punishable with imprisonment or disqualification under the Road Traffic Offenders Act 1988) to which the child pleads guilty.

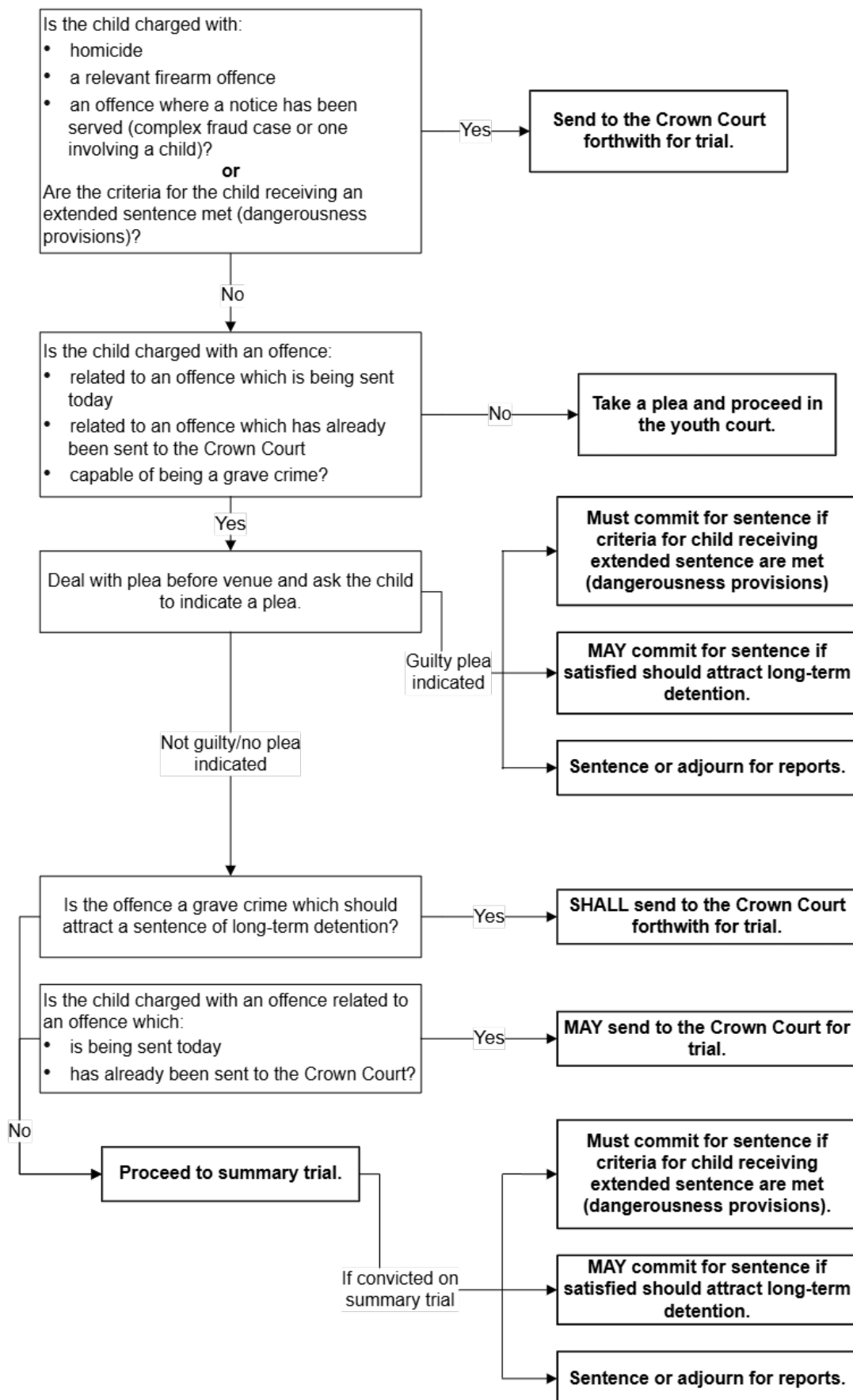
## Child charged jointly with an adult

- 21. See the [Adult Court Bench Book](#) for details on the procedure to be applied and refer to your legal adviser (in this situation the child should appear before the adult court and not the youth court).

## Offence capable of being a dangerous offence and a grave crime

22. Some violent and sexual offences are capable of being both dangerous offences and also grave crimes. Neither provision should be ignored.
23. If this is the case, the court will first need to determine if the offence should be sent forthwith to the Crown Court for trial under the dangerous offender provisions. The court would need to be satisfied of the criteria, namely that if they are found guilty, the criteria for the imposition of an extended sentence (minimum four years' detention) would be met (see the [Dangerous offenders](#) section later in this Bench Book). **Bearing in mind the restrictions, this is a power that is likely to be used only rarely.**
24. If the court decides that the dangerous offender provisions are not met, or there is insufficient information to make a determination at this stage, the court should proceed to the plea before venue procedure.
25. If a guilty plea is indicated, the court will need to decide if the child should be committed to the Crown Court for sentence for long-term detention for grave crimes or for the imposition of an extended sentence under the dangerous offender provisions.
26. If no plea is indicated or a not guilty plea is indicated, the court will consider whether the case is a grave crime. If the court determines the offence is a grave crime and the child ought to be sentenced to long-term detention, they will be sent to the Crown Court. If not a grave crime, the court will proceed to summary trial.
27. Where a child is convicted of a specified offence on summary trial and it appears to the court that the criteria for the imposition of an extended sentence would be met, the court must commit them to the Crown Court for sentence. Due to the strict criteria, it is a power which is likely to be used very sparingly.
28. Where a child is convicted of an offence capable of being a grave crime on summary trial and it appears to the court that the offence is such that the Crown Court should have the power to sentence the child to long-term detention, the court must commit them to the Crown Court for sentence.
29. In most cases, if jurisdiction is accepted, the case will be concluded in the youth court.

## Allocation procedure for a child – flow chart



## Section 6: Dangerous offenders

### What is a dangerous offender?

1. Children are dangerous offenders if:
  - a. they are found guilty of certain specified violent or sexual offences committed after 4 April 2005; **and**
  - b. the court is of the opinion that there is a significant risk to the public of serious harm caused by the child committing further specified offences; **and**
  - c. the Crown Court would impose an extended sentence of at least four years.

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

### Assessing dangerousness

2. It is for the court to decide whether there is a significant risk to members of the public of serious harm caused by the child committing further specified offences.
3. It **must** take into account all such information as is available about the nature and circumstances of the offence.
4. It **may** take into account any information before it about any pattern of behaviour of which the offence forms part and any information about the child.
5. The Sentencing Council's Sentencing Children and Young People guideline (the Children guideline) reminds the court that criteria relating to future offending and the risk of serious harm must be assessed in the light of the maturity of the child, the possibility of change in a much shorter time than would apply for an adult and the wider circumstances of the child.
6. In anything but the most serious cases it may be impossible to form a view on dangerousness until post conviction when, if dangerousness criteria are met, the court should commit for sentence.

### The powers of the youth court

#### Sending for trial

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

#### Committing for sentence

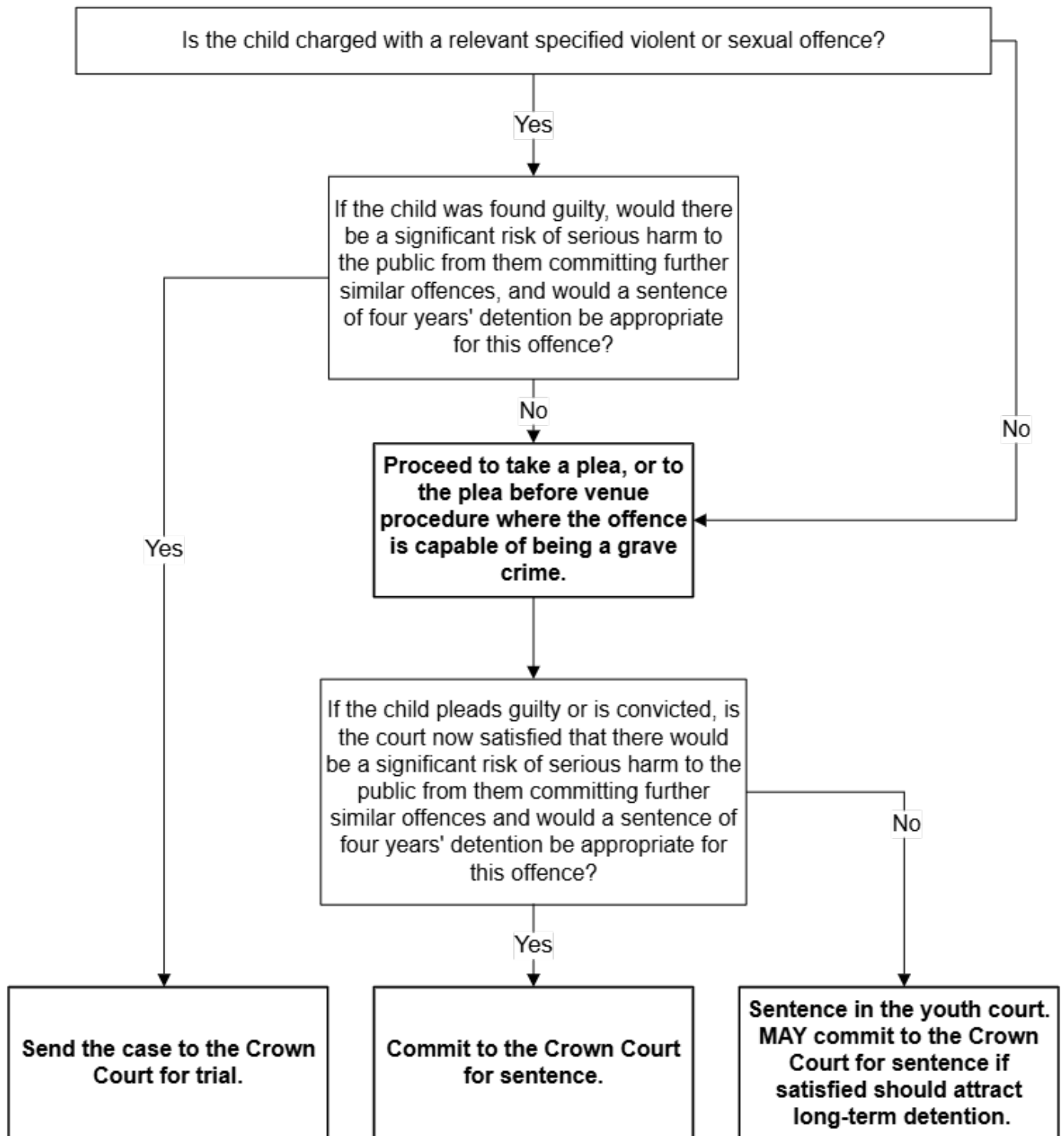
9. Where a court is satisfied that a child is found guilty of a specified offence and is of the opinion that they are dangerous, and the offence merits an equivalent determinate sentence of at least four years, it shall commit the matter to the Crown Court for sentence. Again, this is a matter that will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

sentence, the Crown Court will consider whether to impose an extended sentence of detention.

### **What is an extended sentence?**

10. An extended sentence is made up of an appropriate custodial sentence plus an extension period, which is the period the court considers necessary to protect members of the public from serious harm from the child by the commission of further specified dangerous offences.
11. The appropriate custodial term is the punitive element of the sentence and must be at least four years. The extension period is the period of licence the court considers necessary to protect members of the public from serious harm. This cannot be more than five years for violent offences or eight years for sexual offences. The total period cannot exceed the maximum term of detention allowed for that offence.

## Dangerous offenders – flow chart



## Section 7: Youth court maximum penalties chart

| Assault/violent offences                                                    | Maximum penalty in law | Maximum penalty in the youth court          | Grave crime?   | Dangerousness provisions met? |
|-----------------------------------------------------------------------------|------------------------|---------------------------------------------|----------------|-------------------------------|
| Assault occasioning actual bodily harm (racially or religiously aggravated) | 7 years' custody       | 2 years' detention and training order (DTO) | No             | Yes                           |
| Assault occasioning actual bodily harm                                      | 5 years' custody       | 2 years' DTO                                | No             | Yes                           |
| Assault on a police constable                                               | 6 months' custody      | 6 months' DTO                               | No             | No                            |
| Assault with intent to resist arrest                                        | 2 years' custody       | 2 years' DTO                                | No             | No                            |
| Common assault (racially or religiously aggravated)                         | 2 years' custody       | 2 years' DTO                                | No             | No                            |
| Grievous bodily harm with intent                                            | Life                   | 2 years' DTO                                | Yes            | Yes                           |
| Unlawful wounding/grievous bodily harm                                      | 5 years' custody       | 2 years' DTO                                | No             | Yes                           |
| Threats to kill                                                             | 10 years' custody      | 2 years' DTO                                | No             | Yes                           |
| Rape/attempted rape                                                         | Life                   | 2 years' DTO                                | Yes            | Yes                           |
| Robbery                                                                     | Life                   | 2 years' DTO                                | Yes            | Yes                           |
| Manslaughter                                                                | Life                   | Not applicable                              | Not applicable | Not applicable                |
| Murder                                                                      | Life                   | Not applicable                              | Not applicable | Not applicable                |

| <b>Criminal damage offences</b>     | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|-------------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Criminal damage (over £5,000)       | 10 years' custody             | 2 years' DTO                              | No                  | No                                   |
| Racially aggravated criminal damage | 14 years' custody             | 2 years' DTO                              | Yes                 | No                                   |
| Criminal damage (under £5,000)      | 3 months' custody             | Youth rehabilitation order (YRO)          | No                  | No                                   |
| Threats to commit criminal damage   | 10 years' custody             | 2 years' DTO                              | No                  | No                                   |

| <b>Road traffic/vehicle offences</b>                                    | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|-------------------------------------------------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Allowing self to be carried in a vehicle taken without consent          | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |
| Causing death by careless or inconsiderate driving                      | 5 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Causing death by dangerous driving                                      | 14 years' custody             | 2 years' DTO                              | Yes                 | Yes                                  |
| Causing death by driving when under the influence of drink or drugs     | 14 years' custody             | 2 years' DTO                              | Yes                 | Yes                                  |
| Causing death by driving: unlicensed, disqualified or uninsured drivers | 2 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Dangerous driving                                                       | 2 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Driving while disqualified                                              | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |

| <b>Road traffic/vehicle offences</b>                           | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|----------------------------------------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Excess alcohol – driving/attempting to drive                   | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |
| Excess alcohol – in charge                                     | 3 months' custody             | YRO                                       | No                  | No                                   |
| Fail to provide specimen for analysis (drive/attempt to drive) | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |
| Taking vehicle without consent (TWOC)                          | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |
| Vehicle interference                                           | 3 months' custody             | YRO                                       | No                  | No                                   |

| <b>Dishonesty offences</b>     | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|--------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Burglary (dwelling)            | 14 years' custody             | 2 years' DTO                              | Yes                 | No                                   |
| Burglary (non-dwelling)        | 10 years' custody             | 2 years' DTO                              | No                  | No                                   |
| Handling stolen goods          | 14 years' custody             | 2 years' DTO                              | Yes                 | No                                   |
| Making off without payment     | 2 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Theft                          | 7 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Going equipped to steal        | 3 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Obtaining services dishonestly | 5 years' custody              | 2 years' DTO                              | No                  | No                                   |

| <b>Drug offences</b>                              | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|---------------------------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Possession of a Class A drug                      | 7 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Possession of a Class B drug                      | 5 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Possession of a Class C drug                      | 2 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Possession of Class A drugs with intent to supply | Life                          | 2 years' DTO                              | Yes                 | No                                   |
| Possession of Class B drugs with intent to supply | 14 years' custody             | 2 years' DTO                              | Yes                 | No                                   |
| Possession of Class C drugs with intent to supply | 14 years' custody             | 2 years' DTO                              | Yes                 | No                                   |
| Cultivation of cannabis                           | 14 years' custody             | 2 years' DTO                              | Yes                 | No                                   |

| <b>Public Order Act offences</b>               | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|------------------------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Section 5 disorderly behaviour                 | Level 3 fine                  | Fine or YRO                               | No                  | No                                   |
| Racially aggravated Section 5                  | Level 4 fine                  | Fine or YRO                               | No                  | No                                   |
| Section 4                                      | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |
| Racially aggravated Section 4                  | 2 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Section 4A disorderly behaviour with intent to | 6 months' custody             | 6 months' DTO                             | No                  | No                                   |

| <b>Public Order Act offences</b>    | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|-------------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| cause harassment, alarm or distress |                               |                                           |                     |                                      |
| Racially aggravated Section 4A      | 2 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Section 3 affray                    | 3 years' custody              | 2 years' DTO                              | No                  | No                                   |
| Section 2 violent disorder          | 5 years' custody              | 2 years' DTO                              | No                  | Yes                                  |

| <b>Sex offences</b>                            | <b>Maximum penalty in law</b>  | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|------------------------------------------------|--------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Exposure                                       | 2 years' custody               | 2 years' DTO                              | No                  | No                                   |
| Failure to comply with sex offenders register  | 5 years' custody               | 2 years' DTO                              | No                  | No                                   |
| Possession of indecent photographs of children | 5 years' custody               | 2 years' DTO                              | No                  | Yes                                  |
| Sexual assaults                                | Between 7 to 14 years' custody | 2 years' DTO                              | Yes                 | Yes                                  |
| Voyeurism                                      | 2 years' custody               | 2 years' DTO                              | No                  | No                                   |

| <b>Miscellaneous offences</b>     | <b>Maximum penalty in law</b> | <b>Maximum penalty in the youth court</b> | <b>Grave crime?</b> | <b>Dangerousness provisions met?</b> |
|-----------------------------------|-------------------------------|-------------------------------------------|---------------------|--------------------------------------|
| Possession of an offensive weapon | 5 years' custody              | 2 years' DTO                              | No                  | No                                   |

## Section 7: Youth court maximum penalties chart

| Miscellaneous offences                           | Maximum penalty in law                              | Maximum penalty in the youth court              | Grave crime? | Dangerousness provisions met? |
|--------------------------------------------------|-----------------------------------------------------|-------------------------------------------------|--------------|-------------------------------|
| Possession of a bladed article                   | 4 years' custody                                    | 2 years' DTO                                    | No           | No                            |
| Harassment – putting people in fear of violence  | 5 years' custody                                    | 2 years' DTO                                    | No           | Yes                           |
| Harassment (without violence)                    | 6 months' custody                                   | 6 months' DTO                                   | No           | No                            |
| Breach of criminal behaviour order               | 5 years' custody                                    | 2 years' DTO                                    | No           | No                            |
| Breach of restraining order                      | 5 years' custody                                    | 2 years' DTO                                    | No           | No                            |
| Witness intimidation                             | 5 years' custody                                    | 2 years' DTO                                    | No           | No                            |
| Blackmail                                        | 14 years' custody                                   | 2 years' DTO                                    | Yes          | No                            |
| Bomb hoax                                        | 7 years' custody                                    | 2 years' DTO                                    | No           | No                            |
| Perverting the course of justice (common law)    | Life                                                | 2 years' DTO                                    | Yes          | No                            |
| Fail to surrender to bail                        | 3 months' custody when tried summarily              | YRO                                             | No           | No                            |
| False imprisonment (common law)                  | Life                                                | 2 years' DTO                                    | Yes          | Yes                           |
| Firearm, carrying in a public place              | 7 years' custody (12 months for imitation firearms) | 2 years' DTO (12 months for imitation firearms) | No           | No                            |
| Firearm, carrying in a public place – air weapon | 6 months' custody                                   | 6 months' DTO                                   | No           | No                            |

## Section 8: Sentencing – a structured approach

### Sentencing principles

1. When sentencing a child, the court must have regard to the principal aim of the youth justice system (to prevent offending by those under 18) and the welfare of the child.
2. The sentencing of a child is widely recognised as requiring a different approach to that used for sentencing an adult. The sentence will differ depending on the age and maturity of the child concerned. However, the sentence must remain proportionate to the seriousness of the offence. Paragraphs 4.1 to 4.10 of the Sentencing Council's Sentencing Children and Young People guideline (the Children guideline) provide additional details regarding sentencing principles.
3. There is also an expectation that a child will be dealt with less severely than an adult offender.
4. In determining the sentence, the key elements are detailed in paragraph 4.1 of the Children guideline and include the:
  - a. age of the child (chronological and emotional)
  - b. seriousness of the offence
  - c. likelihood of further offences being committed
  - d. extent of harm likely to result from those further offences.
5. Far more than with adults, the approach to sentence will be individualistic.
6. Proper regard should be given to the mental health and capability of the child, and to any learning disability, learning difficulty, speech and language difficulty or other disorder.

### What sentencing guidance is available?

7. The Sentencing Council is responsible for issuing sentencing guidelines that all courts must consider when sentencing children. Any court departing from Sentencing Council guidelines has to give its reasons for doing so.
8. In addition to the existing guidelines on offence seriousness and credit for guilty plea, the Children guideline came into effect on 1 June 2017. Although directed primarily at sentencing, the Children guideline contains other important information concerning the relevant law, procedure and proper approach to be applied when dealing with any case involving a child defendant.
9. Alongside the Children guideline, there are offence-specific guidelines for sexual offences and robbery offences involving children. Furthermore, there are now child-specific guidelines for offences involving blades and offensive weapons.
10. The court also needs to have regard to any Court of Appeal sentencing guidance – the legal adviser will have access to up-to-date case law.

### Assessing the seriousness of the offence

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

## The approach to determining sentence

12. When determining sentence, the court will:
  - a. assess the culpability of the child and the harm caused or intended, taking into account aggravating and mitigating factors relating to the offence (note the statutory factors and other aggravating factors highlighted in the Children guideline)
  - b. consider any mitigating factors that apply to the child and then apply any reduction for a guilty plea, where appropriate
  - c. having taken account of all these factors, determine sentence, including any relevant ancillary orders.

## Additional factors

13. There is an expectation that a child will be dealt with less severely than an adult offender. In most cases, a child is likely to benefit from being given a greater opportunity to learn from their mistakes.
14. Offending by a child is frequently a phase that passes rapidly.
15. A criminal conviction at this stage of a person's life may have a disproportionate impact on the ability of the child to gain meaningful employment and play a worthwhile role in society.
16. The impact of punishment is felt more heavily by children in the sense that any sentence will seem to be far longer in comparison with their relative age compared with adult offenders.
17. Children may be more receptive to changing the way they conduct themselves and be able to respond more quickly to interventions.
18. Children will be no less vulnerable than adults to the contaminating influences that can be expected within a custodial context, and probably more so.

## Which sentencing threshold has been passed?

### Referral orders

19. If a child appears before a court for the first time and pleads guilty to an imprisonable offence, the court **must** impose a referral order, unless it is considering an absolute discharge, a conditional discharge, a hospital order or custody.
20. The court **may** impose a referral order where a child appears before the court and pleads guilty to at least one offence.
21. The length of any referral order should be determined in accordance with the guidance given in the Children guideline, paragraph 6.22.

### Absolute or conditional discharge

22. This will be appropriate where the offence does not merit the imposition of immediate punishment.
23. The court cannot impose a conditional discharge when a child is convicted of an offence if they have:
  - a. had two or more cautions; or
  - b. received a conditional caution followed by a caution;

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

### Financial penalty

- 24. A financial penalty may be considered where the offence merits an immediate punishment but is not serious enough to warrant the restriction of liberty involved in a community sentence.
- 25. The level of fine will relate to the seriousness of the offence and to the offender's financial circumstances. If the child is aged 10 to 15 the court has a duty to order the parent or guardian to pay any fine. Where the child is aged 16 or over, this duty becomes discretionary.
- 26. It can be a compensation order, a fine, or both, and can be imposed even if the offence passes the community sentence threshold, eg it may be appropriate if the child is a low-risk offender. The level of any costs awarded must not exceed the amount of fine imposed. The maximum fine for 10 to 13 year olds is £250 and for 14 to 17 year olds it is £1,000.

### Community order (the youth rehabilitation order (YRO))

- 27. A community order may be given when the offence is serious enough to warrant a restriction of liberty, but not so serious as to justify a custodial sentence. A court may impose a community order for an offence that is not imprisonable, although the court should be careful that the sentence is proportionate to the seriousness of the offence.
- 28. When considering the decision as to the length of any YRO and the nature and extent of the requirements to be included, the key factors are the:
  - a. assessment of offence seriousness (low, medium or high)
  - b. purpose(s) of sentencing the court wishes to achieve
  - c. risk of reoffending
  - d. ability of the child to comply
  - e. availability of requirements in the local area.
- 29. Before making an order, the court considers a report by the Youth Justice Service (YJS). This will identify an appropriate balance between the seriousness of the offence, the risk of harm in the future from any further offences committed and the needs of the offender.

### Determining the frequency of contact

- 30. The court determines the length of time for the order and, where relevant, sets its requirements. The YJS then agrees how this is delivered in practice with the child, their parents or carers and key professionals (and in the case of referral orders, with community panel members). This includes using their professional discretion to decide on the nature and frequency of contact needed at each stage of the court order.
- 31. The YJS will start by considering how best to engage the child, with the aim of supporting them in their journey to their future self and avoiding reoffending. The content of the order should therefore be framed around the outcome, rather than setting the amount of work that the child needs to do.
- 32. The amount of contact required should be proportionate to the child's needs. It should also be balanced with the requirement to ensure the safety and wellbeing of the child and ensure

public protection. The proposal to the court should be credible whilst ensuring that the response to the child remains commensurate and proportionate to the offence(s) they have committed.

33. The following areas are considered by the YJS when determining the frequency of contact:
- a. What is the duration and nature of the order? For example, the supervisory requirements of a short referral order are likely to be very different to that of intensive supervision and surveillance (ISS), an alternative to custody.
  - b. Has the level of intervention required been assessed on an individual basis? It will need to work best for the given child instead of being a standard approach.
  - c. What are the minimum and maximum levels of supervision required to be able to effectively engage and work with the child?
  - d. Has it been explained what statutory contact is and why an intervention is voluntary? For example, mental health or substance appointments are therapeutic in nature and likely to be impeded by being made mandatory.
  - e. How can flexibility of approach be retained? For example, levels of supervision and support can be increased (on a voluntary basis if the child is in crisis and needs more support) or statutory contacts, ie the appointments set as part of an order or condition can be decreased where good progress is being made and the need for more frequent contact with the YJS is diminishing. Management oversight will be necessary where there are significant public protection concerns, eg where the child is under review through multi-agency public protection arrangements (MAPPA) or other similar processes, to ensure defensible decision-making.
  - f. What are the requirements attached to the order (or activities included in a referral order contract) in terms of the cumulative expectations placed on the child and what is likely to be effective in supporting and engaging them to minimise the likelihood of harm occurring? The plan needs to be realistic for the child to manage.
  - g. What is the sequencing and nature of interventions and how that might influence contact frequency? For example, some activities may be carried out more frequently at the start of an order and then tail off.
34. The plan should be developed with the child so they can clearly see what their engagement with the YJS will look like, the benefits they can hope to achieve, that it is time-limited and that the potential for early revocation is there if they make good progress.
35. The YJS has a professional discretion at any stage to vary the frequency of statutory appointments, for example if the child is overwhelmed by expectations and struggling.
36. It is important that the criminal justice system is not used to address safeguarding, welfare or support needs. The YJS is likely to identify and address those needs during the course of intervention with a child, but they should not form part of the mandatory intervention on the court order. Making these interventions mandatory would penalise children for having support needs. It is always preferable for the child to engage with universal or specifically targeted support for these needs, which will be available beyond the conclusion of their involvement with youth justice agencies. This is so that support can be provided which responds to them as a child with welfare needs, but is not contingent on the justice system.

## Custodial sentence

37. A custodial sentence is given when the offence is so serious that neither a fine alone nor a YRO can be justified. The minimum custodial sentence in the youth court is four months' detention and training order (DTO). Custody should be seen as a last resort. The court must give reasons for imposing a custodial sentence, including why a YRO with ISS or fostering cannot be justified.

## Committal to the Crown Court for sentence

38. This is only available if:
- the child is convicted of an offence capable of being a grave crime on summary trial and it appears to the court that the offence is such that the Crown Court should have the power to sentence the child to long-term detention; or
  - the child is categorised as dangerous and the public needs protecting from future serious harm from a violent or sexual offender. In this instance, a committal to the Crown Court for an extended sentence may be considered. This would need to be a sentence of at least four years' imprisonment.

## Should the child be given credit for an early guilty plea?

39. In all cases where the child has pleaded guilty, the court must take into account the stage at which the early plea was indicated and in what circumstances.
40. The Sentencing Council's revised Reduction in Sentence for a Guilty Plea guideline provides that the level of reduction should reflect the stage at which the child indicated a willingness to admit the offence for which they are being sentenced.
41. The following sliding scale of reduction should be applied, depending on when the guilty plea was entered.
- A maximum of one third where the guilty plea was entered at the first reasonable opportunity.
  - A maximum of one quarter where a trial date has been set.
  - A maximum of one tenth for a plea entered at the door of the trial court or after the trial has begun.
42. Where the court is satisfied that there were particular circumstances which significantly reduced the child's ability to understand what was alleged, or otherwise made it unreasonable to expect the child to indicate a guilty plea **sooner than was done**, a reduction of one third should still be made.
43. As part of the pronouncement of the sentence, the court should state:
- whether a reduced sentence has been imposed as a result of the plea
  - how much discount has been given
  - why that amount of discount has been applied
  - what the sentence would have been had a guilty plea not been entered.
44. The court should apply the appropriate discount to the punitive element of the provisional sentence. (**Note:** Discount does not apply to ancillary orders.)

45. Other ancillary orders can include:
  - a. costs
  - b. endorsement of driving licence
  - c. disqualification
  - d. Criminal behaviour orders (CBOs)
  - e. forfeiture or confiscation
  - f. parenting orders.
46. The court will check the final decision in respect of the:
  - a. overall seriousness of the offence(s)
  - b. movement from the initial level of sentence for the type of offence
  - c. appropriate restrictions on liberty
  - d. child's circumstances
  - e. totality of sentence – where the court is dealing with a child in respect of several offences and has calculated the sentence in respect of each, the court should review the aggregate sentence and decide whether the total sentence is just and appropriate.
47. As a referral order is a sentence that is only available upon pleading guilty, there should be **no** further reduction of the sentence to reflect the guilty plea.
48. The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example, by reducing a custodial sentence to a community sentence or by reducing a community sentence to a different means of disposal. Alternatively, the court could reduce the length or severity of any punitive requirements attached to a community sentence. See the Children guideline, paragraph 5.10.

## Surcharge

49. The court **must** impose a surcharge on under 18s. The amount payable is dependent on when the offence(s) were committed and the sentence imposed. The amounts payable increased for offences committed on or after 16 June 2022. Where there are several disposals of the same type, the correct method of calculating the total surcharge payable is to base the sum on the total of all impositions, not the highest single imposition. Where there is more than one type of disposal, the total surcharge payable is based on the higher amount of the disposals.
50. Revenue raised from the surcharge is used to fund victim services through the Victim and Witness General Fund.

| Sentence imposed                               | Surcharge applicable for offences committed on or after 16 June 2022 |
|------------------------------------------------|----------------------------------------------------------------------|
| Conditional discharge                          | £20                                                                  |
| Fine, referral order or YRO or community order | £26                                                                  |
| DTO                                            | £41                                                                  |

51. There is no surcharge to be imposed if the only order the court makes is an absolute discharge.

## Reasons and pronouncements

52. It is good practice to check the decision with the legal adviser. They will be able to provide guidance on any restrictions as to availability of sentence, the need for consents, the need for reasons, etc.
53. The following matters must always be included in the pronouncement:
- The effect of the sentence.
  - The effect of non-compliance with the order.
  - Any power of the court to vary or review the order.
  - The effects of failure to pay any fine imposed.
  - Why the court has decided that the offence is serious enough for a community sentence or so serious that a custodial sentence must be imposed.
  - Whether the court has applied a reduction in sentence for a guilty plea; if so, why, by how much, and what would the sentence have been if there had been no reduction?
  - Any aggravating or mitigating factors the court has regarded as being of particular importance.
  - Reasons for sentence, and any departing from the Sentencing Council guidelines.
54. The court should use the pronouncements which can be found on the [Judicial College Pronouncement Builder](#), hosted on the Sentencing Council website, as the basis for the pronouncement. However, the court should be satisfied that the child has understood the sentence imposed and the presiding justice may wish to adapt the language used so that it is appropriate to the child the court is dealing with.
55. A written record of the reasons for the sentence should be kept by the legal adviser. The legal adviser can assist with the preparation of reasons.

## Parenting orders

56. As part of the sentencing exercise, the court should consider whether a parenting order is appropriate.
57. A parenting order is a programme of activities agreed between the parent/guardian and the YJS worker:
- to help the parent/guardian develop their parenting skills in order to prevent the child offending or becoming involved in criminal activity; and
  - which requires the parent/guardian to exercise control over their child's behaviour.
58. The order requires the parent/guardian to attend counselling or guidance sessions and will contain requirements that are considered desirable in the interests of preventing the commission of further offences or antisocial behaviour.
59. An order may be made when a child is convicted of an offence, or made the subject of a sex offender order or a child safety order (a civil order usually made in the Family Proceedings Court). The court should consider making a parenting order if it believes that the parents of

the child would benefit from the help and support offered by such an order. Many parents enter into agreements with a YJS on a voluntary basis.

60. The duration of any order should be determined by what is reasonable and effective in the individual case, but the maximum period is 12 months.
61. If a child is under the age of 16 and the court does not make a parenting order, the court must give reasons for this.
62. Breaches of a parenting order are dealt with in the adult court and are punishable by a fine of up to £1,000.
63. Before making a parenting order, the court must explain clearly the effects of the order and the consequences of failing to comply with it.

## Sentencing options

| Sentencing option                                                                                                                                                                                                                                                                                                                          | 10 to 13 years old                                                | 14 years old                       | 15 years old           | 16 to 17 years old     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------------------------|------------------------|------------------------|
| <b>Absolute discharge</b>                                                                                                                                                                                                                                                                                                                  | ✓                                                                 | ✓                                  | ✓                      | ✓                      |
| <b>Conditional discharge</b><br><b>Note:</b> Cannot be imposed if the child has received a final warning or two or more cautions, or a conditional caution followed by a caution, in the previous 24 months, unless exceptional circumstances are found.                                                                                   | ✓                                                                 | ✓                                  | ✓                      | ✓                      |
| <b>Referral order</b><br><b>Note:</b> <b>Must</b> be imposed if first imprisonable offence <b>and</b> the child pleads guilty and court is not considering a discharge or custody. <b>May</b> be imposed in any other case where the child has entered a plea of guilty to the offence (or at least one of the offences before the court). | ✓                                                                 | ✓                                  | ✓                      | ✓                      |
| <b>Fine</b><br><b>Note:</b> For children aged 10 to 15, the order must be made against a parent/guardian unless unreasonable in circumstances.                                                                                                                                                                                             | ✓<br>Maximum<br>£250                                              | ✓<br>Maximum<br>£1,000             | ✓<br>Maximum<br>£1,000 | ✓<br>Maximum<br>£1,000 |
| <b>Compensation and costs</b><br><b>Note:</b> Compensation takes priority over any costs or fine. Costs cannot exceed any fine imposed.                                                                                                                                                                                                    | ✓                                                                 | ✓                                  | ✓                      | ✓                      |
| <b>YRO</b>                                                                                                                                                                                                                                                                                                                                 | ✓                                                                 | ✓                                  | ✓                      | ✓                      |
| <b>DTO</b>                                                                                                                                                                                                                                                                                                                                 | × Aged 10 to 11<br>✓ Aged 12 to 13, if deemed persistent offender | ✓<br>If deemed persistent offender | ✓                      | ✓                      |

## Section 9: Referral orders

### What is a referral order?

1. The child will be referred to a referral order panel, which investigates the causes of the offending and its consequences on the child and their family. The panel is made up of a panel adviser from the local Youth Justice Service (YJS) and trained community volunteers (who serve three-year periods, up to a maximum of six years).
2. A contract is agreed between the panel and the child, which includes reparation and a programme of activities that are aimed at preventing reoffending. If the child fails to agree a contract or does not comply with a contract (which includes not signing the contract), the panel has the power to refer the case back to court. Where a child completes the contract, the conviction will become spent. However, only the referral order will become spent at the end of the contract period. This does not apply to any ancillary orders imposed.

### The work of the panel

3. The terms of the contract are agreed with the child and are guided by the principles of restorative justice. It should include a programme of interventions to address the factors underlying the offending behaviour and allow the child to:
  - a. take responsibility for the consequences of their actions
  - b. make reparation to any victim(s)
  - c. carry out unpaid work in the community.
4. All terms should work towards achieving the child's reintegration to the community. Regular panel meetings are held to review the progress of the order. They are usually held in the area where the child lives, as the child must attend all meetings. If the child is under 16, the court must order at least one appropriate adult to attend the meetings. Where the child is aged 16 to 17, the court has discretion as to whether to order an appropriate adult to attend the meeting. No order should be made where the court is satisfied it would be unreasonable to do so. An appropriate adult is the parent or guardian of the child. Where a child is a looked-after child by the local authority, the local authority or the person who is a parent or guardian with whom the child is allowed to live, is the appropriate adult. Victims may also be invited to attend or to have their views represented at the meetings.

### Custody threshold referral orders

5. "Custody threshold" cases are those where the court has indicated that custody is being considered but, as a first-time guilty plea case, a referral order is the only available non-custodial alternative, and also cases where the court has a discretion to make a referral order instead of a detention and training order (DTO).
6. In these cases, the YJS will present a referral order option with an **intensive contract**. During the period of adjournment for the pre-sentence report (PSR), an informal "pre-sentence panel" may be convened. The panel will consider the likely content of the intensive contract and use it to inform the court. If made, the first formal panel meeting should be set within five working days of the court hearing (rather than 20 working days for a non-intensive referral order).

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

## Duration of the order

8. Any referral order must be between three to 12 months. The contract compliance period starts on the day the contract is signed, not from the date the order was made by the court.
9. On making a referral order, the court must explain to the child:
  - a. the effect of the order
  - b. the consequences if no contract takes place between the child and the panel
  - c. the consequences if the child fails to comply with any of the terms of the contract
  - d. that the parent or guardian can be fined and/or imprisoned for failure to attend the meeting if so ordered.

## Additional powers

10. When imposing a referral order, the court must impose the surcharge and may also make certain ancillary orders such as costs, compensation, endorsement and disqualification. Some orders cannot be combined with a referral order:
  - a. Conditional discharge.
  - b. Fine.
  - c. Any community sentence.

## Compulsory orders

11. A referral order **must** be imposed where:
  - a. a child pleads guilty to an **imprisonable offence**; and
  - b. a child has never been convicted by a court in the United Kingdom of any offence other than the offence and any connected offences (defined as offences that are being dealt with at the same time); and
  - c. the offence is not one for which the sentence is fixed in law; and
  - d. the court is not proposing to impose an absolute discharge, a conditional discharge, a hospital order or a custodial sentence.

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

## Discretionary orders

12. The use of referral orders has been extended since their introduction. A referral order may be made if the discretionary referral order conditions are met. They may be imposed in the following circumstances:
  - a. Whenever a child appears before the court for sentence, provided that there is a guilty plea to at least one of the offences for which the child falls to be sentenced. The offence does not have to be imprisonable.

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

## Referrals back to court

- 13. The panel has power to vary the terms of an order, provided the child agrees. It may also review any non-compliance with the contract. If accepted by the child, the panel may allow the order to continue, either in its original terms or with an agreed variation.
- 14. However, a child will be referred back to court if they:
  - a. fail to agree the terms of a contract (or any amendment)
  - b. refuse to sign a contract (or any variation)
  - c. fail to comply with the terms of a contract
  - d. fail to attend a panel meeting.
- 15. The panel will prepare a report for the court explaining the reasons why the case has been referred back to court. If the court is satisfied that it was reasonable for the panel to make the findings they have made, as outlined in that report, and that it was reasonable in the circumstances to have referred the child back to court, the court may:
  - a. revoke the referral order and re-sentence for the original offence(s); or
  - b. take no action and allow the order to continue.
- 16. There are additional powers available where a child is referred back to court for failure to attend a panel meeting, to comply with the terms of the contract or to satisfactorily complete the contract, namely:
  - a. the court can impose a fine (up to £2,500); or
  - b. the contract can be extended up to a maximum period of 12 months. (The power to extend is not available if the contract has already expired when the child appears before the court.)

However, these additional powers can only be used if:

- a. the contract has been signed
  - b. the child has failed without reasonable excuse to comply with a term of that contract
  - c. the child is before the court.
- 17. The panel may also refer a case back to court with a request that the court extends the period of the referral order contract, provided the original contract period was less than 12 months. If it appears to the court to be in the interests of justice, having regard to the circumstances that have arisen since the contract took effect, the court may extend the contract period by up to three months. The child must be present in court if this order is made. Such an application is likely to be made in circumstances where the child has been unable to comply with the order (such as illness, being out of the jurisdiction with permission, or where non-compliance with the order does not warrant revocation of the order and re-sentencing, but rather an extension would be sufficient to punish the non-compliance).
- 18. The panel may also refer an order back to court for it to be revoked. It may request that the court revoke the order or revoke and re-sentence. The circumstances in which the panel may do this include where the child has made good progress under the contract. If the court

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

## Further offending

19. Where a child, who is already subject to a referral order, appears before the court to be dealt with for an offence, irrespective of when the offence(s) were committed, the court has a number of options available:
- a. Extend the compliance period: where the existing referral order is less than 12 months, the court can extend the compliance period up to a maximum of 12 months. (This is irrespective of whether the offence was committed before or after the referral order was imposed or whether or not the contract has been signed. There is no requirement to find exceptional circumstances to extend the compliance period.)
  - b. Impose an absolute or conditional discharge: the court may impose an absolute or conditional discharge. This would not revoke the existing referral order.
  - c. Revoke and re-sentence: if the court decides to sentence the child in another way, it may (but need not) revoke the existing referral order and re-sentence for the original offence(s) along with the new offence(s), except the court cannot make another referral order.
  - d. Impose a further referral order: since no order made by way of sentence for a new offence will have the effect of revoking the existing referral order, it follows that the court may impose a new referral order for the new offence, provided the discretionary referral order conditions are satisfied. In these circumstances, the court can order that the new contract will only take effect upon the existing referral order being discharged or revoked.

## Section 10: Youth rehabilitation order (YRO)

### What is a YRO?

1. This is the only community order available in the youth court. The Youth Justice Service (YJS) is the responsible officer for all YRO cases. It must include one or more of the 15 requirements set out on the following pages.

### Criteria

2. The offence must be deemed “serious enough” to warrant a community order but need not be imprisonable.
3. Before making a YRO, the court must obtain and consider information about the child’s family circumstances and the likely effect of such an order on those circumstances. In addition, the court must ensure that any requirements are compatible with each other and do not conflict with the child’s religious beliefs or interfere with their education.
4. A court cannot impose a further YRO at a time when a YRO is already in force, unless it revokes the earlier order.

### Duration of an order

5. There is no minimum term, but it must not exceed three years. The court must specify the end date of the YRO.
6. Different requirements attached to an order may be made for different periods as specified in the order. However, where an order is made comprising two or more requirements, the order should specify a date by which each requirement must be complied with. The date of the last requirement to be completed must be the same as the end date of the order.

### The requirements

#### 1. Activity

- The child must participate in activities on such number of days and at such a place as may be specified in the order. This includes presenting themselves at a place specified and to comply with the instructions given by the person in charge of the said place or activity.
- The number of days must not be more than 90 days. If the activity requires the child to participate in a residential exercise, the period may not be more than seven days.
- The court may not impose an activity requirement unless it has consulted a member of the YJS and is satisfied it is feasible to secure compliance with the order and that appropriate provision can be made for the child to participate in the activity.
- Where such an order requires the consent of a third party, it cannot be included unless that person has given their consent.

#### 2. Attendance centre

- This requires a child to attend at an attendance centre for the number of hours specified and during that period to engage in occupation or receive instructions under the supervision of the officer in charge of the centre.

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

### **3. Curfew**

- This requires the child to remain indoors at a specified place for specified periods.
- The maximum period is 12 months. This may not include periods that amount to less than two hours or more than 20 hours in any day (weekly maximum 112 hours).
- The court must obtain and consider information about the place proposed, including the effect and attitude of persons likely to be affected by the child's presence.
- The order must include an electronic compliance monitoring requirement, unless the court considers in the particular circumstances of the case that it is inappropriate to do so. Where such an order requires the consent of a third party, it cannot be included unless that person has given their consent. The court must be satisfied that arrangements for electronic monitoring are available in the local justice area proposed. Where electronic monitoring is imposed, the responsible officer must notify the following of the time when the period is to begin:
  - the child
  - the person responsible for the monitoring
  - any other person without whose co-operation it would not be possible to secure that the monitoring takes place.
- Electronic whereabouts monitoring can be imposed as a requirement of a YRO to secure the child's compliance with another requirement.
- The child is fitted with an electronic tag and monitored by GPS which, provided it is as part of a requirement, can be used for:
  - monitoring attendance at a particular activity, eg attending an education programme or attending an appointment
  - monitoring the child's location, provided it is as part of a requirement, eg exclusion zones can be tailored to a place, building or area and can also be active for specific days and times
  - a combination of the above.

- A curfew and location restriction can be monitored together. Cases that only involve curfew monitoring will continue to be monitored through the existing radio frequency (RF) tags, and a child will never be required to wear two tags at any one time.
- The court must be satisfied that the child resides in an area where location monitoring is available.
- The child must have a fixed address with an electricity supply and a parent or guardian present for tag fitting.
- The exclusion requirement may provide for the prohibition only to apply for certain periods and may specify different places for different periods of days.
- The recommendation of the YJS should be obtained (although it is not legally required).
- The YJS will produce a map defining the exclusion/inclusion zone, usually as part of the recommendation within a pre-sentence report (PSR).
- The order must include an electronic monitoring requirement unless the court considers in the particular circumstances of the case that it is inappropriate to do so. Where there is a person (other than the child) without whose co-operation it will not be practicable to secure that the monitoring takes place, the requirement may not be included in the order without that person's consent.

#### **4. Drug testing**

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

#### **5. Drug treatment**

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

## **6. Education**

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

## **7. Exclusion**

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

## **8. Intoxicating substance treatment**

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

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

## **9. Local authority residence**

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

## **10. Mental health treatment**

- This requires a child to submit to treatment for a specified period under the direction of a registered medical practitioner with a view to improving their mental condition. The treatment may be as a resident or non-resident, but the order must not specify the nature of the treatment.
- The court may not impose a mental health treatment requirement unless it is satisfied that the mental condition may be susceptible to treatment, but not such that a hospital or guardianship order is necessary, and arrangements can be made for the treatment and the child has agreed.
- During the order, if the medical practitioner is of the opinion that the treatment can be better or more conveniently given at a place not specified in the order, they may make those arrangements accordingly.

## **11. Programme**

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

## **12. Prohibited activity**

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

## **13. Residence**

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

## **14. Supervision**

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

## **15. Unpaid work**

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

## Available requirements within a YRO

| Type of YRO requirement                             | 10 to 13 years old                                        | 14 years old                                         | 15 years old                                                           | 16 to 17 years old                                                     |
|-----------------------------------------------------|-----------------------------------------------------------|------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|
| <b>Activity requirement</b>                         | ✓<br>Max. 90 days                                         | ✓<br>Max. 90 days                                    | ✓<br>Max. 90 days                                                      | ✓<br>Max. 90 days                                                      |
| <b>Attendance centre requirement</b>                | ✓<br>Aged 10 to 13 at date of conviction<br>Max. 12 hours | ✓<br>Aged 14 at date of conviction<br>12 to 24 hours | ✓<br>Aged 15 at date of conviction<br>12 to 24 hours                   | ✓<br>Aged 16+ at date of conviction<br>12 to 36 hours                  |
| <b>Curfew requirement</b>                           | ✓<br>Max. 12 months                                       | ✓<br>Max. 12 months                                  | ✓<br>Max. 12 months                                                    | ✓<br>Max. 12 months                                                    |
| <b>Drug testing requirement</b>                     | ✓<br>Child must consent                                   | ✓<br>Child must consent                              | ✓<br>Child must consent                                                | ✓<br>Child must consent                                                |
| <b>Drug treatment requirement</b>                   | ✓<br>Must be recommended and the child must consent       | ✓<br>Must be recommended and the child must consent  | ✓<br>Must be recommended and the child must consent                    | ✓<br>Must be recommended and the child must consent                    |
| <b>Education requirement</b>                        | ✓                                                         | ✓                                                    | ✓<br>Not any period after child has ceased to be compulsory school age | ✓<br>Not any period after child has ceased to be compulsory school age |
| <b>Exclusion requirement</b>                        | ✓<br>Max. 3 months                                        | ✓<br>Max. 3 months                                   | ✓<br>Max. 3 months                                                     | ✓<br>Max. 3 months                                                     |
| <b>Intoxicating substance treatment requirement</b> | ✓<br>Must be recommended and the child must consent       | ✓<br>Must be recommended and the child must consent  | ✓<br>Must be recommended and the child must consent                    | ✓<br>Must be recommended and the child must consent                    |
| <b>Local authority residence requirement</b>        | ✓<br>Max. 6 months                                        | ✓<br>Max. 6 months                                   | ✓<br>Max. 6 months                                                     | ✓<br>Max. 6 months. Not any period after child has reached age 18      |

| Type of YRO requirement                    | 10 to 13 years old                                                                                    | 14 years old                                                                                          | 15 years old                                                                                          | 16 to 17 years old                                                                                    |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Mental health treatment requirement</b> | ✓<br>Court must be satisfied the condition may be susceptible to treatment and the child must consent | ✓<br>Court must be satisfied the condition may be susceptible to treatment and the child must consent | ✓<br>Court must be satisfied the condition may be susceptible to treatment and the child must consent | ✓<br>Court must be satisfied the condition may be susceptible to treatment and the child must consent |
| <b>Programme requirement</b>               | ✓<br>Must be recommended                                                                              | ✓<br>Must be recommended                                                                              | ✓<br>Must be recommended                                                                              | ✓<br>Must be recommended                                                                              |
| <b>Prohibited activity requirement</b>     | ✓                                                                                                     | ✓                                                                                                     | ✓                                                                                                     | ✓                                                                                                     |
| <b>Residence requirement</b>               | ✗                                                                                                     | ✗                                                                                                     | ✗                                                                                                     | ✓<br>Aged 16+ at date of conviction                                                                   |
| <b>Supervision requirement</b>             | ✓                                                                                                     | ✓                                                                                                     | ✓                                                                                                     | ✓                                                                                                     |
| <b>Unpaid work requirement</b>             | ✗                                                                                                     | ✗                                                                                                     | ✗                                                                                                     | ✓<br>40 to 240 hours                                                                                  |

## Section 11: Youth rehabilitation order with intensive supervision and surveillance (YRO with ISS)

### What is a YRO with ISS?

1. This is a community order which **must** include the following requirements:
  - a. Supervision.
  - b. Curfew.
  - c. Electronic monitoring.
  - d. Activity of more than 90 days but not more than 180 days (known as an “extended activity” requirement).

### Criteria

2. The offence must be imprisonable and the court of the opinion that the offence is “so serious” that a custodial sentence would be appropriate. In addition, where the child is under the age of 15 at the time of conviction, the court must be satisfied that they are a persistent offender.
3. The order must not impose a fostering requirement.

### Duration of an order

4. A YRO with ISS cannot be imposed for less than six months and may extend up to a maximum of three years. However, different requirements attached to the order may be made for different periods, as specified in the order.
5. Where an order is made comprising of two or more requirements, the order should specify a date by which each requirement must be complied with. The date of the last requirement to be completed must be the same as the end date of the order.

## Section 12: Youth rehabilitation order with fostering (YRO with fostering)

### What is a YRO with fostering?

1. This is a community order with a “fostering requirement”, which means that for a period specified in the order the child must reside with a local authority foster parent.
2. It **must** include a supervision requirement.
3. The order must specify the local authority that will be responsible for placing the child with a local authority foster parent.

### Criteria

4. The offence must be imprisonable and the court of the opinion that the offence is “so serious” that a custodial sentence would be appropriate. In addition, where the child is under the age of 15 at the time of conviction, the court must be satisfied that they are a persistent offender.
5. The court must be satisfied that the behaviour which constituted the offence(s) was due to a significant extent to the circumstances in which the child was living and the imposition of a “fostering requirement” would assist in their rehabilitation.
6. The court must consult the child’s parent/guardian and the local authority that will place them with a local authority foster parent.
7. The court may not impose a fostering requirement, unless it is satisfied that the child was legally represented at the time the court is considering imposing the requirement or had been granted representation that was withdrawn due to their conduct or was told of their right to apply but refused and/or failed to apply.
8. The court must be satisfied that it has been notified by the Secretary of State that arrangements have been made for implementing such a requirement.

### Duration of an order

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

## Section 13: Detention and training order (DTO)

### What is a DTO?

1. A DTO is a custodial sentence for a child made up of a period of detention and training followed by a period of supervision once released from custody back into the community. The custodial element is normally half of the term imposed. The child is subject to supervision on their release from custody until the end of the order. A supervising officer will be appointed when the order is imposed.
2. The minimum DTO is four months and the maximum is 24 months. Consecutive DTOs may be imposed, provided the total does not exceed the maximum period.

### Criteria

3. The offence must be so serious that only a custodial sentence is justified; or, where the offence is a violent or sexual one, the court must be satisfied that only such a sentence is adequate to protect the public from serious harm from the child.
4. The court may further impose a DTO if the child has breached a youth rehabilitation order with intensive supervision and surveillance (YRO with ISS), which itself was imposed for wilfully and persistently failing to comply with a YRO. This is notwithstanding that the original offence was not imprisonable or did not cross the custody threshold. If the original offence was not imprisonable, the court would be restricted to passing a DTO of four months.
5. Before passing a DTO, the court must consider whether a YRO with ISS or a YRO with fostering could be justified instead. If not, the court must explain this in its reasons.

### Age of the child

6. There is no power to impose a DTO on children:
  - a. aged 10 to 11, unless only custody is sufficient to protect the public from further offending (DTOs for this age group are at the discretion of the Home Secretary – these provisions are not yet in force)
  - b. aged 12 to 14, unless the court is of the opinion that they are **persistent offenders**.
7. “**Persistent offenders**” has not been defined. However, in most circumstances the normal expectation is that the child will have previously had some contact with authority in which the offending conduct has been challenged. A finding of persistence may be derived from previous findings of guilt, or reprimands and warnings (penalty notices of disorder may not be sufficiently reliable as they do not require any admission of guilt).
8. Whilst not setting a minimum standard, the Sentencing Council advises that a child is certainly likely to be found to be persistent where they have been convicted of, or reprimanded or warned, in respect of an imprisonable offence of a comparable nature on at least three occasions in the last 12 months.
9. The Sentencing Council also highlights that, where a child is being sentenced in a single appearance for a series of separate, comparable offences committed over a short space of time, then the court could justifiably consider the child to be a persistent offender, despite the fact that there may be no previous findings of guilt.

## Duty of the court

10. Any time spent on remand in custody to youth detention accommodation will automatically be taken into account by the relevant authority in the same way as an adult offender and does not need to be deducted from the length of the order. The court must credit time spent on a qualifying bail condition with a curfew and electronic monitoring. An adult would usually have their custodial sentence reduced by half a day for each day they were on an electronic tag for nine hours or more (if necessary, round up to the nearest whole day).
11. A DTO is a sentence of last resort. Prior to the imposition of a DTO, the court must ensure that the child cannot be dealt with by a lesser sentence, such as a fine or a YRO. **It must also justify why a YRO with ISS, or a YRO with fostering, could not be imposed.**

## Setting the length of a DTO

12. If the court has decided that a DTO must be imposed, it needs to determine the appropriate length. The length must be the shortest term commensurate with the seriousness of the offence.
13. If there are offence-specific guidelines (eg the Robbery or Sexual Offences guideline, effective from 1 June 2017), the court must have regard to these.
14. Where there are no offence-specific guidelines, the court must look to the sentence that may have been appropriate for an adult offender convicted of the same matter.
15. Where the child is 15 to 17 years old, the court needs to consider the maturity of the child as well as chronological age. It may be appropriate to consider a starting point from half to two thirds of that which would have been identified for an adult offender.
16. If the child is aged 14 or less, the length of the custodial sentence will normally be shorter than for a child aged 15 to 17 convicted of the same offence.
17. The court needs to be flexible when coming to the appropriate starting point, bearing in mind the age of the child, their maturity, and the sophistication of the offence.
18. The closer a child is to age 18 when the offence is committed and the greater the maturity of the child or the sophistication of the offence, the closer the starting point is likely to be to that appropriate for an adult.

## Example 1

The court is dealing with a 15 year old who pleads guilty to assault occasioning actual bodily harm. The court has not deemed the offence to fall within the dangerousness provisions and so has accepted jurisdiction. However, it is a serious matter, being a premeditated assault resulting in injury, falling within Harm Category 2 of the Sentencing Council guidelines. In accordance with the guidelines for this offence, the court has determined that the appropriate starting point for an equivalent adult offender would be 18 months' custody.

Bearing in mind age and maturity, the court has decided to reduce this by half to nine months' custody.

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

(If this child had been remanded on bail with a qualifying condition of a curfew with electronic monitoring, the court must take this into account and announce the number of days to be deducted from the period of six months' custody. If this child had been remanded into custody, the

appropriate authority/young offender institution (YOI) will calculate how this affects the date of release. After taking this into account, the court may determine that it is no longer appropriate to impose a DTO.)

## **Example 2**

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

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

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

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

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

## Section 14: Breaches and further offending during the currency of court orders

### Commission of further offences during the period of a conditional discharge

1. If it is proved to the satisfaction of the youth court that the child committed an offence during the period of conditional discharge, the court may re-sentence the original offence in any way in which it could have dealt with the case had the child just been convicted of it. If the conditional discharge was made by a different youth court, the consent of that court is required.
2. If the order was made by the Crown Court, the youth court may commit the child to custody or release them on bail until they can be brought or appear before the Crown Court.

### Breaches of a youth rehabilitation order (YRO)

3. If it is proved that the child has failed to comply with a YRO without reasonable excuse, the court **may** deal with them in any one of the following ways, by:
  - a. ordering the child to pay a fine not exceeding £2,500
  - b. amending the terms of the YRO so as to impose any requirement that could have been included in the order when it was made
  - c. dealing with the child for the offence in respect of which the order was made in any way in which the court could have dealt with the child for that offence.
4. Unlike adult community orders, the court is not obliged to deal with the child in one of these three ways. The court may decide to take no action and allow the order to continue.
5. If the court orders a fine, it will need to bear in mind that the parents/guardian may have to pay the fine, depending on the age of the child.
6. If the court amends the terms of the order, it can add requirements or it can substitute new requirements for those already contained in the order. If these requirements are not capable of being completed before the expiry term of the order, the court can extend the order by up to six months to allow the additional requirements to be completed, even if this will take the order beyond the three-year maximum. The order may only be extended once.
7. If the court decides to re-sentence the child, it must take into account the extent to which they have complied with the YRO. When re-sentencing, the court is restricted by the seriousness threshold that the original offence crossed.
8. If the original offence passed the custodial threshold but the court instead imposed a YRO, and the court is now considering a custodial sentence as a result of re-sentencing following a breach, the court should be satisfied that all necessary steps have been taken by the Youth Justice Service (YJS) to ensure the child has been given appropriate opportunity and support necessary for compliance.
9. The primary objective when sentencing for breach of a YRO is to ensure that the child completes the requirements imposed by the court.

## Further offences during the currency of a YRO

10. If the child is convicted of an offence whilst a YRO is in force, the court **may** revoke the order, or revoke and re-sentence the child if this is in the interests of justice. If re-sentencing, the court must take into account the extent to which they have complied with the order.
11. The court **must not** make a new YRO when another YRO is already in force. However, more than one YRO **can** exist if they are imposed on the same occasion. Therefore, if the court wishes to impose a further YRO for the new offence, it will need to revoke the old order, or revoke it and re-sentence to a YRO to run alongside the new one.

## Wilful and persistent breach of a YRO

12. If the court has decided to re-sentence the child after a breach of the order, and the child has **wilfully** and **persistently** failed to comply with the YRO, the court may impose a YRO with intensive supervision and surveillance (ISS) (notwithstanding any of the restrictions that would usually apply to imposition of such an order).
13. The term “**persistently**” has not been defined. The Sentencing Council does not set a minimum bar before which a child can be deemed to have wilfully and persistently failed to comply with an order. However, they give the following example:

“Almost certainly a child will have ‘persistently’ breached a YRO where there have been three breaches (each resulting in an appearance before a court) demonstrating a lack of willingness to comply with the order.”

## Breach of a YRO with ISS

14. If a YRO with ISS is breached, the court may impose a custodial sentence (this is notwithstanding that the original offence was not so serious as to warrant a custodial sentence in the case of a YRO with ISS being imposed for wilful and persistent breach of a YRO). The court should be satisfied that all necessary steps have been taken by the YJS to ensure the child has been given appropriate opportunity and support necessary for compliance.
15. If the original offence being dealt with did not pass the custody threshold or did not carry a term of custody in the youth court, the court may make a detention and training order (DTO) for a term not exceeding four months.

## Breach of a DTO

16. If a child breaches a supervision requirement after release from custody, they will be brought back before the court. If the breach is proved, the court may:
  - a. impose a further period of custody of up to three months or a period equivalent to the date from when the breach was committed until the end of the order, whichever is the shortest period
  - b. impose a further period of supervision of up to three months or a period equivalent to the date from when the breach was committed until the end of the order, whichever is the shortest period
  - c. impose a fine of up to £1,000; or
  - d. take no action.

## **Commission of further offences during a DTO**

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

## Section 15: Criminal behaviour order (CBO) and anti-social behaviour injunction (ASBI)

### What is a CBO?

1. A CBO is an order which is available on conviction for any criminal offence by any criminal court. It is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. A CBO prohibits a child from doing anything specified in the order or requires them to do anything described.
2. Prohibitions and requirements in a CBO must, so far as practicable, be such as to avoid:
  - a. any interference with the times, if any, at which the child normally works or attends school or any other educational establishment
  - b. any conflict with the requirements of any other court order or injunction to which the child may be subject.

### Grounds for an order

3. The court must consider that two conditions are met:
  - a. That the court is satisfied, beyond reasonable doubt, that the child has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person.
  - b. That the court considers that making the order will help in preventing the child from engaging in such behaviour.

### When can an order be made?

4. The youth court is the only venue for CBOs made in respect of children under 18. The youth court has the power to make a CBO where a child is convicted of an offence. The court may only make a CBO against a child on application by the prosecution. The court cannot make a CBO of its own volition. The prosecution must consult the Youth Justice Service (YJS) for its views before making an application for a CBO.
5. The court may make a CBO against the child only if it is made in addition to:
  - a. a sentence imposed in respect of the offence; or
  - b. an order discharging the child conditionally.
6. The CBO can relate to wider relevant behaviour than that proved in the criminal conviction. Hearsay evidence is allowed in CBO proceedings.

### Duration of an order

7. The minimum period for a CBO is one year. The maximum is three years, but the order should only be made for as long as the court considers necessary for the protection of the community from the individual in question. The order must be reviewed annually. In certain circumstances, it may be varied or discharged.
8. A CBO takes effect on the day it is made, save where the child is subject to another CBO, in which case the new order may be made so that it takes effect on the day on which the previous order ceases to have effect.

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

## **Interim CBO**

10. Where a court adjourns the hearing of an application for a CBO, the court may make an interim order that lasts until the final hearing of the application or until further order, if the court thinks it just to do so.
11. The court has the same powers for breach of an interim CBO as it does for breach of the full CBO.

## **Breaches of a CBO**

12. Breach proceedings for children will be dealt with in the youth court.
13. Breach of an order is a criminal offence. The Crown Prosecution Service (CPS) conduct any prosecutions. The standard of proof is the criminal standard “beyond reasonable doubt”.
14. The maximum penalty on conviction in the youth court is 24 months’ detention and training order (DTO) or a fine not exceeding £1,000 (£250 if under the age of 14) or both. All youth court disposals are available, except a conditional discharge.
15. The sentence for any breach of a CBO will depend on:
  - a. the nature of the breach
  - b. the seriousness of the breach
  - c. why the order was imposed in the first place
  - d. whether it is the first or continued breach of the order.

## **What is an ASBI?**

16. An ASBI is a civil power that can be applied for in respect of any child aged 10 and above. It is an order designed to offer protection to victims and communities by preventing anti-social behaviour committed by individuals from continuing and/or escalating. Despite being a civil sanction, before making an application to court, all other approaches should have been considered, as a court injunction should be a last resort.
17. Anti-social behaviour is defined within the legislation. It is conduct:
  - a. that has caused, or is likely to cause, harassment, alarm or distress to any person (non-housing related)
  - b. capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises (housing-related)
  - c. capable of causing housing-related nuisance or annoyance to any person (non-housing related).

## **Which court?**

18. For those under the age of 18, applications must be made to the youth court.
19. Where the application involves more than one respondent (some of whom are aged 18 or over) but at least one of those is a child (aged under 18), the applicant may apply to the

youth court to hear the cases together as a “joint hearing”. The youth court must be satisfied that it is in the interest of justice to hear the “mixed aged” case together.

## Who can apply?

20. A number of agencies are entitled to make the application. They include:
  - a local authority
  - a housing provider
  - a chief officer of police for a police area
  - the chief constable of the British Transport Police Force
  - Transport for London
  - the Environment Agency.
21. The court can only grant an ASBI on application; it cannot do so of its own volition.

## The test

22. The court may only grant an ASBI if it is satisfied that two conditions are met:
  - a. The court must be satisfied, on the balance of probabilities, that the respondent has engaged, or threatens to engage, in anti-social behaviour.
  - b. The court considers it just and convenient to grant the ASBI for the purpose of preventing the respondent from engaging in anti-social behaviour.

## The application

23. Applications for ASBIs against respondents under the age of 18 are made to the youth court.
24. An application may be made with or without notice to the respondent (ie ex parte). Before making an application, the applicant **must** consult the YJS about the application and inform any other body or individual appropriate to the application. The duty to consult the YJS does not apply to an ex parte application.

## Terms of the order

25. An ASBI may:
  - a. prohibit the respondent from doing anything described in the injunction (“a prohibition”); and/or
  - b. require the respondent to do anything described in the injunction (“a requirement”).
26. Any prohibitions and/or requirements must, so far as practicable, avoid any interference with times a respondent would normally work, attend school or other educational establishment and any conflict with any other court order.
27. If the order includes a requirement, it must specify the individual or organisation that is responsible for supervising compliance with that requirement and must hear from them about both the suitability and enforceability of a requirement before including it in the ASBI. Where there are two or more requirements the court must consider their suitability with each other.
28. Where an ASBI is granted ex parte, the respondent cannot be required to participate in particular activities.

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

## **Power of arrest**

30. The court may attach a power of arrest to any prohibition or requirement, other than one which requires the respondent to participate in particular activities, in the ASBI.
31. Power of arrest may only be attached if the court thinks that:
- a. the anti-social behaviour in which the respondent has engaged, or threatens to engage, consists of, or includes the use of, or threats to use, violence against another person; or
  - b. there is significant risk of harm to other persons from the respondent.
32. Significant risk of harm is defined in the Anti-social Behaviour, Crime and Policing Act 2014 as including serious ill treatment or abuse, whether physical or not.
33. The ASBI may specify a period for which the power of arrest is to have effect. This may be for a shorter period than the prohibition or requirement to which it relates.

## **Duration**

34. The order takes effect on the day it is made and must specify the period for which it has effect. In the youth court, for those under 18, it must be no more than 12 months.
35. An ASBI may specify different periods for which particular prohibitions or requirements have effect within the order.

## **Interim ASBI**

36. The court may adjourn an application for an ASBI and grant an interim ASBI if the court thinks it just to do so. An interim ASBI may last until the final hearing or until further order.
37. Where an ASBI is granted ex parte, the respondent cannot be required to participate in particular activities.
38. Where any application is adjourned, the court has power to remand the respondent. A respondent under the age of 18 may only be remanded on medical grounds.

## **Variation/discharge**

39. An ASBI may be varied or discharged on application by the applicant or the respondent.
40. If an application is dismissed, a further application cannot be made by the same applicant unless the applicant has the consent of the court that made the order or the agreement of the other party.

## **Breaches**

41. Breach of an ASBI is not a criminal offence, but any breach must be proved to the criminal standard of proof, beyond reasonable doubt.
42. If the breach is proved the court may:
- a. take no action

- b. impose a supervision order of up to six months. This may include one or more of the following requirements:
    - i. a supervision requirement (may not exceed six months)
    - ii. an activity requirement (must be for not less than 12 days and not more than 24 days); or
    - iii. a curfew requirement (must be for not less than two hours but not more than eight hours. The court may order that the curfew is electronically monitored); or
  - c. impose a DTO of up to three months.
43. In considering whether and how to exercise its powers, the court must consider any representations from the YJS.
44. Failure to comply with a supervision order may result in the respondent being brought back to court. The court may revoke the order and impose a new one or impose a DTO. The court must consider the representations of the YJS before exercising its powers. These powers cannot be exercised after the respondent turns 18.
45. A DTO is only available for respondents aged 14 to 17. The court must be satisfied that the severity or extent of the breach means that no other power available is appropriate. Any DTO will be served in youth detention accommodation.
46. An application may be made to amend the operative period of the supervision order, the activity requirement or the curfew requirement, or to amend the order on change of residence. An application can also be made to revoke a supervision or DTO. An application can be made to revoke a DTO if it appears it is in the interests of justice to do so, having regard to the circumstances that have arisen since the order was made. If the application is dismissed, then no further application can be made without the consent of the court or the agreement of the other party.
47. Where there is a power of arrest attached to the ASBI, a constable may arrest the respondent if they have reasonable cause to suspect that they are in breach. The respondent must be brought before a magistrate within 24 hours of the time of arrest (excluding Sundays and bank holidays). The magistrate must remand the respondent to the youth court that granted the order. However, if the order was made by a youth court and the respondent is now 18 or over, it will be to the county court.
48. Where there is no power of arrest and the person who applied for the ASBI thinks the respondent is in breach of the ASBI, they may apply to a magistrate for a warrant of arrest. There must be reasonable grounds for believing the respondent is in breach before granting any warrant. Any warrant granted will require the respondent to be brought before the youth court who granted the ASBI or, if the respondent is now aged 18 or above, to the county court. If a constable arrests a respondent for breaching the ASBI, they must inform the applicant.
49. If a child is arrested for breach, the court may deal with the breach or adjourn proceedings for no more than 28 days. If the court does adjourn, civil bail applies.

## Publicity

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

51. The publication of the name, address and even a photograph of a child may be appropriate where a CBO or an ASBI has been granted if such publicity would ensure the enforcement of the order. The success of such orders requires the general public, especially in the local area, to be aware of the order and the identity of the person against whom it has been made.
52. Publicity should not be used as a punishment.

## Appendix A: Magistrates' Association – Youth Court Protocol

This protocol is provided by the Youth Courts Committee of the Magistrates' Association. It provides advice on what is best practice in Youth Courts with the aim of improving the service for the child and all court users. Decisions on Youth Courts locally still rest with HMCTS, the bench and other court users.

The principal aim of the youth justice system is to prevent offending by children, and the court must have regard to this principal aim as well as considering the welfare of the child.<sup>1</sup>

A court sentencing a child must be aware of their obligations under international conventions.<sup>2</sup> These emphasise the importance of avoiding unnecessary 'criminalisation' of children whilst ensuring that they are held responsible for their actions and, where possible, take part in repairing the damage that they have caused.

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

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

The Criminal Justice and Courts Act 2015 allows magistrates to send children to the Crown Court for sentence following conviction if they consider that their sentencing powers are insufficient. Children should be tried and sentenced in the youth court wherever possible. Only very few offences cannot be tried and sentenced in the youth court.<sup>3</sup>

If a child is jointly charged with an adult, the child should be tried summarily unless in interests of justice for both the child and the adult to be committed to the Crown Court for trial.

The youth court will:

- Engage with children and their parents, guardians, or carers.
- Make the court less formal than the adult court.
- Create an atmosphere which encourages dialogue and ensures that parents, guardians, or carers understand their individual responsibilities in preventing further offending behaviour.
- Develop mechanisms for the feedback of information to magistrates to enable sentencing to be as effective as possible in reducing further offending.

Any decision about the procedures to be adopted in each case will rest with the justices (having taken advice from the legal adviser) or the district judge (magistrates' court), considering all

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<sup>1</sup> [Sentencing Council: Sentencing Children and Young People, 1 June 2017.](#)

<sup>2</sup> European Convention on Human Rights (ECHR); UN Convention on the Rights of the Child (CRC).

<sup>3</sup> Children charged with murder, attempted murder or manslaughter, children who could receive an extended sentence, children in serious fraud or child cases where the prosecution apply for a notice, children charged with a grave crime if a substantially longer sentence than the maximum 2 year DTO is a realistic possibility, and 16 and 17 year olds charged with specific firearms offences with three year mandatory minimum sentences must all be sent to the Crown Court. If in doubt, consult with your legal advisor.

circumstances of the particular case including the age, maturity and development – both intellectual and emotional – of the child before the court.

## Statutory duties

The youth court has statutory responsibilities as set out in the Magistrates Courts (Children and Young Persons) Rules 1992. In summary these are:

- To explain the nature of proceedings and substance of the charge in language the child can understand.
- Upon a finding of guilt to inform the child (and their parents/guardians/carers) of how they intend to deal with the case and give opportunities for representations.
- When making an order, to explain to the child the nature and effect of that order.

## Court building and layout

Courthouses should aim to provide, where possible:

- Separate entrances to the court for adult and child defendants.
- Separate waiting areas for children.
- Separate waiting areas for witnesses.

Changes to the layout of the court room will be made after consultation with the bench, legal team manager (or their nominee), the court manager and youth court users.

The layout and furniture in the court should be arranged to promote the participation of children and children and their parents, guardians, or carers in proceedings. Magistrates must communicate directly with children and their parents, guardians, or carers and this can be achieved most effectively in a less formal atmosphere.

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

## Secure dock

A child should not be required to sit in the dock, subject to security and other practical considerations.<sup>4</sup> For courtrooms with a secure dock, subject to the court's discretion to order otherwise, a child will be produced in the secure dock only if:

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

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<sup>4</sup> Youth Court Bench Book (September 2025), p.8, para.14.

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

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

Where it is necessary for a child to be seating in the dock, the supporting adult or family member should ideally be positioned close to and within sight of the child.<sup>5</sup>

## Engagement

Youth Court Presiding Justices (PJs) should:

- Engage with children and their parents, guardians, or carers in focussing upon offending behaviour and encouraging positive outcomes
- Create a youth court which is more open and commands the confidence of victims and the public
- Protect the welfare of children in the court
- Place a strong emphasis on using sentencing to prevent future offending.

Magistrates should understand when and how engagement should take place. The following issues should be considered:

- the difficulties with communication experienced by many children appearing in the youth court, including learning difficulties, neurodiversity, developmental issues, mental health issues, trauma and issues of self-esteem.
- Appropriate involvement of wingers, legal advisers, the press, victims, parents, guardians, and carers.
- Appropriate handling of advocates, ensuring the child speaks for themselves and is questioned appropriately, taking into consideration their understanding and maturity

## Looked after children

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

## Advocates

All advocates practising in the Youth Court should have specialist youth training. Where this is not possible, all parties in the proceedings should, at the very least, use plain language for legal and technical terms where possible and should be familiar with this Youth Court Protocol.

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<sup>5</sup> Youth Court Bench Book (September 2025), p.8, para.14; Criminal Practice Directions 2023, 6.4.2.d.

## **At court**

### **Pre conviction (first hearing or following adjournment)**

The legal adviser will confirm the child's full name, address, date of birth, age and the identity of their parent, guardian, or carer. From here on the child's first name (or preferred name) will be used.

The legal adviser will explain to the child what the charge means using ordinary language. The court will not proceed further until it is satisfied that the child understands why they are in court.

The PJ should explain to the child and to any parent, guardian, or carer with them, the roles of the various people present in court. If it is not their first appearance in court, the PJ should sensitively and appropriately check their understanding and may decide to explain again.

Children must stand in court to be identified when the charges are put to them and when the court is sentencing them. Otherwise, they should stay seated. Other court users should also remain seated unless the magistrates are entering or leaving the court. The child should sit next to their parent or guardian.

### **Trials**

At the start of a trial, the PJ will check that the child and any parent, guardian or carer with them understands the procedure to be followed, including the order of evidence and speeches.

Witnesses should usually stand whilst taking the Oath or Affirmation and then sit to give their evidence. When making the oath, 'I promise' is used for all witnesses irrespective of age in the youth court, rather than 'I swear'.<sup>6</sup> Witnesses under the age of 18 qualify automatically for Special Measures.

Witnesses may remain in court after they have finished giving their evidence at the court's discretion. If this request is refused, the PJ will give an explanation.

In every case, the court should consider the length of court sittings and how often breaks may be needed, particularly where neurodiversity has been identified.

### **Post-conviction (sentencing)**

The PJ should make it clear to children who have been convicted that they will be asked questions during the proceedings. The purpose of questioning is to:

- Ensure the bench has all the relevant information before disposing of the case; and
- Encourage the child to recognise their wrongdoing and to accept responsibility for it.
- Engage with the child and their parent, guardian, or carer, for example to understand the motivation behind the offence, encourage the child to accept responsibility for their part in the offence and to understand the consequences for themselves, their family and the victim(s).
- Ensure orders made are capable of being completed successfully/effectively.

Before finalising the case, the PJ may, where appropriate, outline in open court what the bench propose to do about the case and may invite representations on this.

The court will explain to the child, and to his or her parent, guardian, or carer, exactly what its decision means and will check the child understands the court's decision.

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<sup>6</sup> Evidence from those under 14 is given unsworn, as in adult court.

If relevant, a Victim Personal Statement will normally be presented by the prosecution. This should be considered during the sentencing exercise.

## **Attendance of others including media**

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

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

The alleged victims of a crime will usually be entitled to attend youth court proceedings as people directly concerned with the proceedings.

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

The court may lift reporting restrictions where there has been a finding of guilt and it is in the public interest to do so, but this is exceptionally rare. The court may make such an order on application, or of its own volition.

## **Working with Youth Justice Services**

It is essential that there is a relationship of open communication and trust between the youth court magistrates and the local YJS. The HMCTS/YJB booklet 'Making it Count in Court' is available as a download or a hard copy and can be ordered free of charge from [www.yjresourcehub.uk](http://www.yjresourcehub.uk). This booklet contains ideas for liaison with YJSs, such as holding regular meetings between youth court panel PJs and YJS managers.

## **Other useful documents**

Chapter 2 of the [Equal Treatment Bench Book](#) is focussed on children and vulnerable adults. It is an invaluable accompaniment to this document and should also be read.

## **Revised August 2024**

This Protocol will be reviewed by the MA Youth Court Committee on a regular basis.



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