

Youth Court Update Webinar

Presentation by Lisa Wilson, Counsel, 25 Bedford Row

Thursday 27th May 2021
5.30pm - 6.30pm



Resources

- ▶ 'Youth Defendants in the Crown Court', March 2021 - 158 page Judicial Guidance
- ▶ <https://www.judiciary.uk/announcements/youth-defendants-in-the-crown-court/>
- ▶ Part 3G (3G.1 to 3G.14) of the Criminal Practice Direction 2020 deals with vulnerable defendants, especially those who are young.
- ▶ 3D - Vulnerable people in court, including Ds
- ▶ 3E - Ground Rules Hearings for young & vulnerable Ds
- ▶ 3F - Intermediaries for witness & Ds
- ▶ 'Sentencing Children and Young People – Overarching Principles' ('the Youth Guideline', which came into effect on 1 June 2017.
- ▶ Crown Court Compendium
- ▶ Advocate's Gateway Toolkits
- ▶ <https://www.theadvocatesgateway.org>
- ▶ Inns of Court College of Advocacy '20 Principles of Questioning'
- ▶ <https://www.icca.ac.uk/revised-20-principles/>

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Overarching Principles: Fundamental Principles

Any Crown Court dealing with a defendant under the age of 18 must have regard to two parallel and fundamental principles:

1. The principal aim of the youth justice system – to prevent offending by children and young persons; and
2. The welfare of the child or young person: see *SC*, s.58.

See also *CYPA 1933*, s.44 - The court is required to have regard to the welfare of the young defendant.

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Overarching Principles: Youth Guideline

- ▶ Lists factors court should have regard to when considering the welfare of the child (mental health, trauma, exposure to drug & alcohol abuse, etc.) [*Para 1.12, 1.13*].
- ▶ Reminds the court act that there may be reasons for inappropriate behaviour by a young D in court, e.g.: nervousness, lack of understanding of the system, belief they will be discriminated against, peer pressure to behave in a certain way because of others present, lack of maturity [*Para 1.15*].
- ▶ Black and minority ethnic children and young people are over-represented in the youth justice system and they may have suffered discrimination and negative experiences of authority. The court must take the particular factors which arise in the case of black and minority ethnic children and young people into account [*Para 1.18*].

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Practical Considerations (1)

- ▶ Majority of youth trials are conducted in the Youth Court.
- ▶ Reserved for the most serious offences - homicide, serious firearms offences, multi-handed conspiracies with adult co defendants.

Bail

- ▶ Speak to YOT, social services.
- ▶ *Article 37(1), UN Convention on the Rights of the Child: The decision to deprive a child of his liberty should be a measure of last resort.*
- ▶ Remand - Local Authority or Youth Detention.

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Practical Considerations (2)

Attendance of Parent or Guardian

- ▶ *Section 34A(1) of the CYPA 1933 provides the court with the duty (in relation to defendants under the age of 16) and the power (in relation to those aged 16 or 17) to require a parent or guardian to attend court during all stages of the proceedings unless and to the extent that the court is satisfied that it would be unreasonable to require such attendance, having regard to all the circumstances of the case.*
- ▶ *Where a local authority has parental responsibility for a child or young person who is brought before a court, the reference in section 34A(1) to parent or guardian is construed as reference to that local authority: s.34A(2).*
- ▶ Parent/ guardian (cousin, sibling, YOT, etc.).
- ▶ Speak to them - Remind them they are under scrutiny too!
- ▶ Apply for them to sit in the well of court.

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Practical Considerations (3)

Reporting Restrictions

- ▶ Not automatic [s.45 YJCEA 1999].
- ▶ Discretion.
- ▶ Balance exercise: Open Justice v Welfare of the Child.
- ▶ Press can have a say.
- ▶ Apply early - pre-PTPH. Procedure: *CrimPR 2020, Part 6*.

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Case Management (1)

Expedition

- ▶ Be mindful of crossing age thresholds (particularly important when it comes to sentence)

Effective Participation

- ▶ In preparation for trial, CrimPR 2020, rule 3.9(3)(b) requires the court to *take every reasonable step ...to facilitate the participation of any person, including the defendant.*
- ▶ Facilitating participation requires the judge to be proactive in cases which involve a young defendant.
- ▶ As was observed by the European Court of Human Rights in *T v UK, V v UK* (Thompson and Venables) [2000] 30 EHRR 121, *if the full rigours of an adult public trial are applied in the trial of a child, the defendant may thereby be deprived of the opportunity to participate effectively in his trial; a young defendant must be dealt with in a manner which takes account of their age, level of maturity and intellectual and emotional capacity.*

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Case Management (2): 'Special Measures'

- ▶ Some are statutory, but the number of statutory SM's available to assist a D are limited.
- ▶ Remind the court of its **Inherent Jurisdiction**.
- ▶ The court has an inherent power – indeed, a responsibility – to take whatever measures are appropriate and necessary to facilitate the defendant's effective participation in the trial and to ensure that the trial is fair: *CrimPR 2020, rule 3.2(2)(b); ECHR, Article 6*.

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Case Management (3): 'Special Measures'

- ▶ Pre-Trial visits
- ▶ Witness Box familiarisation
- ▶ Sitting in the well of the court with p/g and advocate (if on bail)
- ▶ Use D's name
- ▶ Court dress - removal of wigs & gowns
- ▶ Live Link directions
- ▶ Exclusion
- ▶ Reporting Restrictions
- ▶ Screens
- ▶ Listing sensibly - avoid clashes with school / exams
- ▶ Competent advocates - This is a requirement emphasised by the Court of Appeal in *R v Grant-Murray* [2017] EWCA Crim 1228 and *R v Rashid* [2017] 1 WLR 2449. The court should remind the advocates of the need to follow the relevant Advocates Gateway Toolkits and the Inns of Court College of Advocacy '20 Principles of Questioning'.
- ▶ Intermediaries (Statutory provision not yet in force, so reliant on inherent power - see *R (AS) v Great Yarmouth Youth Court and CPD 1 3F24-26*)
- ▶ Psychologists - especially re suggestibility
- ▶ Breaks
- ▶ Ground Rules Hearing: Should be held in all cases involving youth Ds: *CPD 1, 3E.3 & R v Pringle* [2019] EWCA Crim 1722

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Sentence (1)

Youth Guidelines

- ▶ Overarching Principles Youth Guideline;
- ▶ Youth-specific Sentencing Council guidelines:
- ▶ Sexual offences;
- ▶ Robbery;
- ▶ Bladed articles and offensive weapons.

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Sentence (2)

Youth Sentencing Principles

- ▶ When sentencing a child or young person, the focus shifts from the offence to the offender.
- ▶ Sentences should be tailored to the individual offender having regard to:
 1. The statutory obligation to have regard to the **welfare** of the child or young person: *CYPA 1933, s.44*; and
 2. The principal aim of the youth justice system, namely to **prevent offending** by children and young persons: *CDA 1998, s.37.134*.
- ▶ Sentences should be **rehabilitative rather than punitive**.
- ▶ Custody will always be the sentence of **last resort** and should only be imposed when the offence is so serious, and the child's level of culpability is such, that no other outcome is appropriate.
- ▶ A custodial sentence of any length, is likely to have a far greater impact on a child or young person than on an adult and may have an adverse effect on their education and future reintegration into society.

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Sentence (3)

Remit to Youth Court

- ▶ The Youth Guideline reminds the court of the duty, where a child or young person is found guilty before the Crown Court of an offence other than homicide, to **remit** the case to the youth court unless it would be undesirable to do so: *SC, s.25 (PCC(S)A 2000, s.8)*.

Referral Orders - Youth Court

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