
APPENDIX A – MAGISTRATES’ ASSOCIATION PROTOCOL

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

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

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

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

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

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

The youth court will:

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

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

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

This protocol has been adopted by the
Youth Court Panel

and will be effective from until further review.

1. Statutory Duties

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

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

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

2. Court Building and Layout

Ideally, courthouses should provide:

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

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

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

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

3. Secure Dock

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

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

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

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

4. Engagement

Youth court chairs have the opportunity to:

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

Magistrates should understand when and how engagement should take place.

The following issues should be considered:

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

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

- Emphasising the importance and seriousness of the occasion

- Avoiding significant engagement at this stage

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

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

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

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

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

5. Defendants

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

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

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

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

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

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

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

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

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

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

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

6. Parents and Guardians

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

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

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

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

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

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

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

7. Witnesses

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

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

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

8. Victims

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

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

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

9. Looked After Children

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

10. Attendance of Others

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

11. Advocates

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

12. Media

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

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

13. Working with Youth Offending Teams

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

14. Monitoring

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

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