

## YP Criminal Law/ YOIs - Legal update on what support YP should get when arrested and detained from all the authorities / legal update

- Age of criminal responsibility in the UK is 10 years old. Treated as a young person between 10 and 17 years old. 18 years old you are deemed an adult.
- Anyone who appears to be under 18 shall, in the absence of clear evidence to the contrary, be treated as a "juvenile". Includes anyone who *appears* to be under the age of 18<sup>1</sup>
- Purposes of today, assume crime has been committed as opposed to any of the other powers police have to detain (e.g. mental health/ risk of significant harm)

### ARREST/ AT THE POLICE STATION

- Why important distinction between YP and adult? Legal rights of young people differ to adults in the police station - legal requirement to have an appropriate adult. Alternative disposals available to YPs even at the police station stage.
- Parties are to be conscious of the best interests of the child

#### *The Appropriate Adult*

- The important role of the AA is often overlooked. This person is there to ensure a YP's welfare, that police are not acting inappropriately etc.
- Home Office Guidance for AAs<sup>2</sup> lists the key roles and responsibilities which are to include to support, advice and assist, to observe that the police are acting fairly, properly and with respect to the YP's rights, assist with communication, that the YP understands the process.
- AA attending should be (hierarchy)<sup>3</sup> :
  - 1) Parent or guardian, or care authority if they are in care
  - 2) Local authority social worker
  - 3) Alternative responsible adult aged 18 or over
- Should always be parent or guardian unless that person is unavailable or inappropriate<sup>4</sup> – estranged parent, interested parties, the solicitor (cannot be dual role and act as AA also<sup>5</sup>)
- AA must be present for rights to be read. AA should be proactive in protecting these. If the YP has declined legal advice, the AA can trump this and make the request for legal advice (phone or in person) on their behalf<sup>6</sup>.
- \*AA should however be minded that they are not subject to professional legal privilege i.e. what is said to a solicitor remains private, what is said to an AA may not. AA should not be offended if asked to leave consultation and the YP should be warned about this also<sup>7</sup>.

---

<sup>1</sup> Section 37(15) PACE 1984, amended by Section 42 Criminal Justice and Courts Act 2015, with effect from 26/10/2015

<sup>2</sup> <https://www.gov.uk/government/publications/guidance-for-appropriate-adults>

<sup>3</sup> PACE Code C 1.7

<sup>4</sup> Code C NfG 1B

<sup>5</sup> Code C NfG 1F

<sup>6</sup> Code C 6.5A

<sup>7</sup> Code C NfG 1E

### Getting a Solicitor

- A right on arrest and detention; right to free and independent legal advice<sup>8</sup> any time during detention. On phone or in person.
- May ask for **own solicitor** if you know one or have used one before
- Or ask for the **Duty Solicitor** – as much as the police may phone them, they are not connected with the police
- Solicitor 'instructed' for the whole of a YP's police station case, and further
- Find a solicitor the YP likes. The more times they have contact, the more background knowledge is known about the YP (background, family, court orders etc), the better the representation.
- The legal aspects of detention must always be dealt with by a lawyer. An AA and a solicitor *are not* substitutes for the other. Lawyers advise on the strength of the evidence, legality of the detention, the legality of the interview questioning, the legality of the charge etc. – can advise on 'out of court disposals'

*The caution: why this is so important to have legal advice at this stage?*

*"You do not have to say anything //  
but it may harm your defence if you do not mention when questioned  
something that you later rely on in court //  
Anything you do say may be given in evidence"*

- the most misunderstood part of the police station process. Police stations can be stressful, take time. People say things simply to get out. It is important that a YP has advice *to them* about how to conduct *their best* interview.
- It is essential that a YP gets legal advice, and does not rely on advice from the AA who may not be legally trained or may have an interest in the YP 'owning up', or having the process dealt with quickly.
- Solicitors can ensure the whole police station process is done lawfully, advise on all aspects, protect rights, make representations when something is not correct.

### REMAND AT THE POLICE STATION

- If bail is refused to a YP, they should be transferred from the police station to local authority accommodation. Duty on the custody officer, unless:
  - a) Impracticable to do so
  - b) Aged 12-17, no secure accommodation is available and other LAA would not be adequate for public protection
- Juvenile Detention Certificate – given to the court in accordance with PACE 1987, s38(7) – must show why the juvenile was kept in the police station.
- Their care must be monitored and supervised by an officer of inspector rank or above<sup>9</sup>.
- Police must provide the certificate to enable the lawfulness of the detention to be challenged<sup>10</sup>. Civil solicitors can

---

<sup>8</sup> Code C 6

<sup>9</sup> Code C 16.7

<sup>10</sup> Code C 16.7A

## ATTENDING COURT

- If a YP is charged with an offence they will be given a sheet telling them the charge and which Youth Court to attend. The Youth Court is private, so the public are not allowed to sit in court to listen.
- Should have a solicitor; should speak with one early in the process and make sure they can attend court to represent the YP. Why beneficial? Able to get details of the case early, review it and in some cases for example make representations to the Prosecution that the case has no merit and should be dropped, or referred back for an out of court disposal.

### *Likely people to meet*

Solicitor(own or Duty) --

Legal advice, representation in court, talks to the court on the YP's behalf

Appropriate Adult --

Parent, guardian or care authority

Youth Offending Team (YOT) --

Multi-agency team that is coordinated by a local authority, which is overseen by the Youth Justice Board<sup>11</sup>

Engages with the YP within the criminal justice system, recommends to the court the sort of sentence that may be received, oversees orders given by the court. Aim, to divert from crime.

Mental Health staff --

Services to improve the health and justice outcomes for adults and children who come into contact with the youth and criminal justice systems where a range of complex needs are identified as factors in their offending behaviour<sup>12</sup>

Mental health reports, 'in the community' engagement

## REMAND AT COURT - LASPO 2012

<p>Remand to Local Authority Accommodation (RLAA) – Section 92/93</p> <ul style="list-style-type: none"> <li>• YP ages 12-17</li> <li>• Typically must be legally represented</li> <li>• “a looked after child”</li> </ul>	<p>The local authority is responsible for providing the most suitable accommodation for a child- this can be living at home, with a relative, in foster care or in a children's home.</p> <p>All YPs not granted bail are RLAA'd unless the conditions are met to justify remanding the child to youth detention accommodation (custody) as below.</p> <p>When a child is RLAA'd a court can impose conditions</p>
<p>1<sup>st</sup> set of conditions for youth</p>	<p>“Necessity” – to protect public from death serious personal injury by</p>

<sup>11</sup> [https://en.wikipedia.org/wiki/Youth\\_Offending\\_Team](https://en.wikipedia.org/wiki/Youth_Offending_Team)

<sup>12</sup> <http://www.together-uk.org/our-mental-health-services/criminal-justice-mental-health/liason-and-diversion/>

<p>detention – Section 98</p> <ul style="list-style-type: none"> <li>• YP ages 12-17</li> <li>• Typically must be legally represented</li> <li>• “a looked after child”</li> </ul>	<p>further offending, or to prevent commission of further imprisonable offences</p> <p>And “Offence” - a violent or sexual offence (as defined in <i>Parts 1 and 2 of Schedule 15 Criminal Justice Act 2003</i>) or imprisonable with a sentence of 14 years or more in the case of an adult<sup>13</sup></p>
<p>2<sup>nd</sup> set of conditions for youth detention- Section 99</p> <ul style="list-style-type: none"> <li>• YP ages 12-17</li> <li>• Typically must be legally represented“</li> <li>• a looked after child”</li> </ul>	<p>“Necessity” – to protect public from death serious personal injury by further offending, or to prevent commission of further imprisonable offences</p> <p>And “Offence” - one of the offences for which the YP is currently remanded is imprisonable<sup>14</sup></p> <p>And “Sentence” – It appears to the court that there is a real prospect that the YP will be sentenced to a custodial sentence for one or more of the offences for which he or she is currently remanded<sup>15</sup></p> <p>And “History” – court is satisfied either there is a recent history of absconding, or a recent history of committing imprisonable offences while on bail or remand to local authority accommodation or youth detention accommodation<sup>16</sup>.</p>

- YOT assesses the child and then the Youth Justice Board (YJB) decides whether a child is sent to a secure children’s home, secure training centre or a Young Offenders Institution (YOI)<sup>17</sup>

### TYPES OF INTERVENTION/ SENTENCE

- Clearly, case dependent, and YP dependent.
- Out of court disposals<sup>18</sup> - available at the police station
  - ‘Triage’ – YP, for low level offences, is diverted away from formal court or out-of-court processes, and dealt with through informal measures- typically engaging with YOT. Police take ‘no further action’. Early intervention but can be arbitrary.
  - *Youth caution/conditional caution* – available at the police station if certain criteria met which include an admission of the offence<sup>19</sup> - even at court can sometimes

<sup>13</sup> LASPO 2012, s98(3)

<sup>14</sup> LASPO 2012, section 99(4)

<sup>15</sup> LASPO 2012, section 99(3)

<sup>16</sup> LASPO 2012, Section 99(6)

<sup>17</sup> <https://www.gov.uk/guidance/placing-young-people-in-custody-guide-for-youth-justice-practitioners>

<sup>18</sup> <https://www.gov.uk/government/publications/use-out-of-court-disposals/use-out-of-court-disposals-section-1-case-management-guidance>

<sup>19</sup> <https://yjlc.uk/youth-caution/>

“divert” from court back to the police station for this to be done provided the criteria are met. YP is notified to YOT, youth caution appears on a criminal record.

- Court disposals
  - iii. *Referral Order* - A sentencing option for YPs who have pleaded guilty to an offence. If given a referral order a YP is referred to a Youth Offender Panel with a parent, guardian etc. The YP agrees a contract with the panel of things they should and should not do. A referral order can be from 3 months-12months. Typically a first time only sentence. Underpinned by Restorative Justice.
  - iv. *Youth Rehabilitation Order (YRO), with or without “ISS”* – a community sentence given which has different requirements attached and can last up to 3 years, overseen by YOT. With ‘Intensive Supervision and Surveillance’, includes also electronic tagging curfew. ISS can be given as a bail package or as a sentence.
  - v. Detention and Training Order (DTO) – aged 12-17 only, if deemed a persistent offender<sup>20</sup>. In youth custody for half the term, released under direction of YOT for other half. Open to be ‘breached’ by YOT for breaching requirements of the DTO. Maximum of 2 years.
  - vi. Section 91 custodial sentence - where 2 year DTO insufficient - grave crime or one of the offences given in Section 91<sup>21</sup>

## LEGAL UPDATES

### 1) *County Lines and Slavery/Child Exploitation*

Home Office: Criminal Exploitation of children and vulnerable adults: County Line guidance : [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/626770/6\\_3505\\_HO\\_Child\\_exploitation\\_FINAL\\_web\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/626770/6_3505_HO_Child_exploitation_FINAL_web_2_.pdf)

“County lines is the police term for urban gangs supplying drugs to suburban areas and market and coastal towns using dedicated mobile phone lines or “deal lines”. It involves child criminal exploitation (CCE) as gangs use children and vulnerable people to move drugs and money. Gangs establish a base in the market location, typically by taking over the homes of local vulnerable adults by force or coercion in a practice referred to as ‘cuckooing’”

Child Criminal Exploitation: county lines gangs, child trafficking & modern slavery defences for children (JYLC, January 2018)

<https://yjlc.uk/wp-content/uploads/2018/02/Modern-Slavery-Guide-2018.pdf>

“This YJLC guide will assist lawyers and professionals to recognise and assist children who may be the victims of child criminal exploitation (CCE), with a focus on the widespread problem of criminal exploitation of children by county lines gangs and the statutory defence under section 45 of the Modern Slavery Act 2015.”

---

<sup>20</sup> *having committed* “imprisonable offences on at least three occasions in the past 12 months.” Paragraph 6.5, Overarching Principles – Sentencing Youths, Sentencing Guidelines Council, November 2009

<sup>21</sup> Powers of Criminal Courts (Sentencing) Act 2000

Includes “advice on the practical steps that should be taken if a defence lawyer suspects that their client is a victim of CCE.”

2) *New Knife Guidelines - Bladed Articles and Offensive Weapons (Possession and Threats)– Children and Young People*<sup>22</sup> **Effective 01/06/2018**

In response to escalating violent offences in urban areas, significant increase in carrying of, and use of, offensive weapons and bladed articles.

- There is a statutory minimum sentence on these offences for YP aged 16 or over on the date of the offence.
- If the offence is of **threatening**, court must impose a sentence of at least 4 months’ Detention and Training Order unless unjust
- If the offence is of **possession**, first time not subject to the statutory minimum but a further offence of this nature is subject. Court must impose a sentence of at least 4 months’ Detention and Training Order unless unjust.

*Examples of items*

Item	Classification	Note
Machete, sword, flick knife, truncheon	Offensive weapon, Section 1 <sup>23</sup>	Offensive <i>per se</i> - no innocent quality
Broken bottle	Offensive weapon	Not offensive per se - Adapted
Hammer	Offensive weapon, potentially	Can have an innocent quality Section 1: "any article made or adapted for use to cause injury to the person, or <b>intended</b> by the person having it with him for such use" See also <i>R v Jura</i> [1954] 1 QB 503
Acid/ammonia/corrosive substances	Offensive weapon	View that unless in the face of a very strong reasonable excuse, the only carrying of such a substance is an intent to cause injury
Screw driver	Not a ‘bladed’ article, Section 139 <sup>24</sup>	May be offensive, potentially
Folding pocket knife	‘Bladed’ article , potentially	Only if the cutting edge is 3 inches or more

Jennifer Hill (Solicitor)

Edward Fail, Bradshaw and Waterson

[jenniferh@efbw.co.uk](mailto:jenniferh@efbw.co.uk)

<sup>22</sup> [https://www.sentencingcouncil.org.uk/wp-content/uploads/Bladed-Article-Definitive-guideline\\_WEB-1.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Bladed-Article-Definitive-guideline_WEB-1.pdf)

<sup>23</sup> Prevention of Crime Act 1953

<sup>24</sup> Criminal Justice Act 1988