

Briefing for Oral Questions, House of Lords, Tuesday 23rd March 2021

'To ask Her Majesty's Government what steps they are taking to enable children who commit offences to be tried and sentenced according to the youth justice system, and in particular, those who turn 18 before their first court appearance' (Baroness Sater)

About Just for Kids Law

Just for Kids Law (JfKL) was founded in 2007. Through a unique model of holistic representation, we provide client-led support, advice and legal services to children and young people in London and push for nationwide systemic change through strategic litigation and policy and public affairs work. The Children's Rights Alliance for England (CRAE) merged into JfKL in 2015. CRAE was established in 1991 when the UK ratified the UN Convention on the Rights of the Child (CRC) and pushes for full implementation of the CRC in England. The Youth Justice Legal Centre (YJLC) was set up by Just for Kids Law in 2015 to provide legally accurate information, guidance and training on youth justice law and practice. This briefing is informed by our work monitoring implementation of the CRC in England, consultation with children, as well as our direct advocacy and legal case work with children and young people who are in contact with the criminal justice system.

Key messages

- 1. Young adults who have committed offences as children must have the opportunity to build meaningful futures and be treated fairly.**
- 2. Long delays before a decision to charge has huge detrimental impact on the well-being of children.**
- 3. Each year approximately 2,500 children offend as children but turn 18 prior to conviction.¹**
- 4. Turning 18 prior to plea or conviction is likely to impact around 1-in-10 children who are cautioned or sentenced.**
- 5. Turning 18 during this time has a significant impact on the outcome of children cases, meaning they are prosecuted in adult courts and lose the opportunity to benefit from the youth justice system.**
- 6. The same sentencing framework afforded to children should be available to those who have turned 18 between offence and conviction.**

The Impact of delays on decisions to charge on the welfare of children and young people

Data from the Ministry of Justice and the Youth Justice Board for England and Wales shows that the average youth criminal case took 160 days from the offence being committed to the final decision at court in the year ending December 2019.² This was a 6.7% increase from 150 days in the previous year and a 57% increase from 102 days in the year ending December 2011, the earliest year with available data.

New statistics showing longer delays in the justice system reflect our experience of working with children and young people. System delay is the main reason children turn 18 between the commission of an offence and prosecution, resulting in real injustice. Such delays have a huge detrimental impact on the well-being of children and young people, particularly because children coming into contact with the criminal justice system are some of the most vulnerable in our society. They have often suffered abuse

or neglect, have care experience and high levels of mental health issues or learning disabilities. In some cases, delays mean they have turned 18 prior to proceedings commencing and they lose the protections that would have been available had they been dealt with as children. The coronavirus crisis has exacerbated delays throughout the criminal justice system and the impact on children approaching their 18th birthdays will be grave.

The impact of Turning 18

The United Nations Committee on the Rights of the Child (the UN Committee), has made it clear that “child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.”³

The *List of issues prior to submission of the combined sixth and seventh reports of United Kingdom of Great Britain and Northern Ireland*, published by the UN Committee on 9 February 2021 specifically asks the State party to explain the measures taken or envisaged to “ensure the application of the child justice system to all children, in particular that children are not detained with adults and that it extends protection to children who were below the age of 18 at the time of the offence but who turned 18 during the trial or sentencing process.”⁴

The youth justice system gives children some special protections, for example, they are more likely to be diverted away from the formal criminal justice system through diversion schemes and their welfare must be considered by the various agencies involved. However, those who have committed offences as children, but are not dealt with until they have turned 18, are not able to benefit from those legal protections. This is contrary to what is stipulated by the UN Committee.

There is currently no principle to fast-track charging decisions in the cases of children, including those approaching their 18th birthday, a majority of whom are ‘Released Under Investigation’ for an unspecified period. This is despite the inequity which will follow if they are prosecuted once they have become adults. For their peers who committed an offence at the same age but who were dealt with before their 18th birthday, the outcomes will be vastly different. The damaging consequences of turning 18 between the date of the offence and prosecution include loss of anonymity, reduced likelihood of diversion, only being eligible for adult sentences, longer supervision periods (heightening the risk of breach) and much longer rehabilitation periods which reduce employment prospects and prevent people moving on with their lives.

Loss of presumption of diversion

If someone is under 18 at date of disposal there is a strong presumption in favour of diversion.⁵ Youth cautions are only available to children aged 10-17 inclusive and cannot be given to an 18-year-old regardless of date of offence.⁶ A young person who is 18 at the time of the disposal can only access adult cautions, and this has implications for the type of support they receive and how it is administered.

Availability of Youth Offending Team (YOT) support

Children given a youth caution are referred to a YOT who can offer interventions and support to reduce the likelihood of reoffending. Once 18, a young person is no longer eligible to be supported and supervised by a YOT, cutting them off from support designed to prevent re-offending. The support of a YOT can make a crucial difference in supporting those who committed offences as children to successfully complete any interventions and to move away from offending.

Adult Courts

A child who turns 18 during a criminal case can continue to have their case heard in a youth court. However, if a child turns 18 before their case gets to court, their case must be dealt with by the adult courts. Despite their age at the date of the offence, defendants in the adult courts do not have access to the modified procedures and physical layout of the youth court, which were designed to help children and young people to understand and participate in the proceedings.

Adult sentences

If a child turns 18 before conviction, the youth court *may* retain sentence. If a child turns 18 before proceedings start, they can no longer receive youth sentences, regardless of the date of the offence. As a result, they become subject to the purposes of adult sentences which include deterrence and punishment of the offender. This is a significant shift from the sentencing of children and young people, which has the prevention of offending as its principle aim and the welfare of the child as a central consideration.⁷

Loss of anonymity

Children who turn 18 prior to conviction lose their automatic right to anonymity during the court process, despite being a child at the age of the offence. While reporting restrictions are automatic in the youth court, this is not the case post 18 where it is discretionary.

For more information please contact:

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The Youth Justice Legal Centre have published a [legal guide](#) on turning 18 in the criminal justice system as well as a [briefing](#) on the same issue.

The Youth Justice Legal Centre and the Children's Rights Alliance for England are part of Just for Kids Law

Case studies

- (1)** Just for Kids Law represented two 18 years old (co-defendants), both charged with one count of possession of a drug of class B (cannabis) a few months before their 18th birthday. Their first appearance was listed in the adult magistrates' court. JfKL made representations to the CPS on the basis of the disproportionate impact this would have on the young people in light of them having turned 18. They would be dealt with by an adult magistrates' court and would receive adult sentences for offences committed as children. Further, both young people had no previous formal contact with the criminal justice system. Following our representations, the CPS withdrew the charges.
- (2)** The Youth Justice Legal Centre advice line provided one off advice to 17 years old, who was found in possession of large quantities of class A drugs (MDMA) further to the police attending his property. The young person had been acting strangely and had damaged some property in the house, so his parents decided to call the police. When the family initially contacted us, they were not planning to have legal representation at the police station interview. We advised against this course of action and emphasized the importance of having specialist legal representation at the police station interview, especially for those who are at such an important age threshold. Given that the incident and police interview took place weeks away from the young person's 18th birthday, there was a real risk that the young person first appearance would be after his 18th birthday and that he would be dealt with under the adult system with only adult sentences available to him.

Eventually, following extensive representations to the police, three days before his 18th birthday the police agreed to issue the young person with a Youth Caution. This is because the offence was out of character, it later became clear that the young person had substance misuse issues and had accrued debts because of this, he had no previous contact with the criminal justice system and the disproportionate impact of a prosecution in light of him turning 18. This disposal would not have been available to the police after his 18th birthday.
- (3)** Jack* was 17 when he was stopped and searched outside his mum's address and arrested for being in breach of a bail condition not to enter the local authority's area. This is despite several applications from his defence solicitors requesting that this condition be reviewed for it to be more

specific to the area linked to the offending behaviour rather than a blanket ban, prohibiting him from seeing his mother who he has a very close relationship with.

Upon being taken to police custody and searched, a cat ring was found in Jack's man bag and he was arrested for possession of an offensive weapon. Jack admitted to being in possession of the cat ring, however he was not aware of it being an offensive weapon and did not intend to use it as such. Following his overnight detention in police custody, Jack was taken to the youth court where his matters were adjourned for consideration of an out of court disposal. Following written representations both to the Youth Offending Team and the Crown Prosecution Service, we were informed that he would not be administered with a youth caution as it was in the public interest to prosecute.

Jack did not attend his adjourned first appearance hearing, which was listed days before his 18th birthday and a warrant for his arrest was issued. Jack was arrested four days after his 18th birthday in Bristol, for county lines related offences. He was Released Under Investigation for these offences and held overnight in police custody to be taken back to court the following morning for the possession of an offensive weapon matter. His matter was remitted to his local court where the matter was initially listed, however he was remitted back to the adult magistrates' court and not the youth court.

Jack has now entered guilty pleas in the adult magistrates' court and will be receiving an adult sentence. Jack also has a trial pending at the youth court, which has been stayed pending the outcome of a referral to the Home Office under the National Referral Mechanism as a potential victim of Child Criminal Exploitation/ modern slavery. Although he may be eligible for a youth sentence for the matter awaiting trial in the youth court, as he will now also have an adult sentence, a youth sentence will no longer be preferable and he is likely to be given an adult sentence for all matters.

Jack suffers from anxiety and depression, has experienced significant trauma as a child including through abuse and neglect, and presents with traits that warrant further investigation as to whether he may have a diagnosis of Autism Spectrum Disorder. He was previously looked after by the local authority and has been known to children services since he was about one year old. He is currently homeless and continues to be at risk of further criminal exploitation.

**Name has been changed*

¹ Figures obtained from the Youth Justice Board

² Ministry of Justice and Youth Justice Board (2021) *Youth Justice Annual Statistics: 2019 to 2020 additional annexes* <https://www.gov.uk/government/statistics/youth-justice-statistics-2019-to-2020>

³ United Nations Committee on the Rights of the Child (2019) *General Comment No. 24 on children's rights in the child justice system*, para 31

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2F5F0vEnG3QGKUXFivhToQfjGxYjV05tUAlgpOwHQJSPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>

⁴ United Nations Committee on the Rights of the Child (2021) *List of issues prior to submission of the combined sixth and seventh reports of United Kingdom of Great Britain and Northern Ireland*, para 31(b)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fQPR%2f6-7&Lang=en

⁵ Crown Prosecution Service (2019) *Legal Guidance on Youth Offenders* <https://www.cps.gov.uk/legal-guidance/youth-offenders>

⁶ Ministry of Justice (2013) *Code of Practice for Youth Conditional Cautions*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/243443/9780108512179.pdf

⁷ Sentencing Council (2017) *Sentencing Children and Young People: Definitive guideline*

<https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf>