

Sentencing Council: 'Sentencing Youths – Overarching Principles and Offence-Specific Guidelines for Sexual Offences and Robbery Consultation'

August 2016

1. The Criminal Justice Alliance (CJA) is a coalition of 110 organisations - including charities, voluntary sector service providers and research institutions – working across the criminal justice pathway. Our members employ more than 12,000 people between them. The Alliance works to establish a fairer and more effective criminal justice system.
2. The CJA welcomes the opportunity to respond to this consultation. This response focuses on questions most pertinent to the CJA's work.

Q. 1) Do you agree with the general principles for sentencing youths? Are there any additional principles that should be included?

Research has shown that coming into contact with the youth justice system in and of itself can be a causal factor in a young person coming into further contact at a later point in their life. Effective diversion away from the justice system has been shown to support young people's desistance prospects. Sentencers, where appropriate, should look to divert youths from court if possible, appreciating that diversion usually takes place prior to court.

Young people tend naturally significantly to reduce their offending in their late teens. Currently, the youth justice system often actually hampers this process by entrenching and reinforcing those behaviours which have brought young people into the CJS; and from which, with growing maturity, they will naturally overcome. Sentencers should focus on giving sentences that will minimally impact on a young person's life if they are to succeed in reducing offending. Minimising contact with the youth justice system avoids criminalising and stigmatising young people and reduces the likelihood that they will go on to offend as adults.

Sentencers should avoid mandating involvement with local services. There is a stigma attached to having been referred by criminal justice agencies. This has been shown to inhibit the normal process of desistance in many incidents. It is not for the youth justice system to try and redress the shortcomings of other local social care agencies. It is not for them to use criminal justice methods to rectify welfare issues. We assume this is acknowledged in the statement 'a court should not impose greater restrictions because of other factors in the young person's life'.

The guidelines state that the primary purpose of the youth justice system is to 'foster a sense of responsibility for others and promote re-integration into society'. It should be qualified by acknowledging that many young people who get caught up in the youth justice system have never actually been 'integrated' in society before.

Q. 2) Do you agree with the factors that should be taken into account when considering the welfare of a young person? Are there any additional factors that should be included?

The factors set out are extensive and extremely welcome, in particular the importance given to the issue of 'looked after' children. Their gross over-representation in the justice system remains a matter of grave concern.

An additional issue that should be taken into consideration is that young people involved in criminal behaviour have a much greater likelihood than others of having been victims of crime themselves. This can make them particularly vulnerable and should be taken into account when sentencing.

Sentencing of YPs should not necessarily be a snapshot moment: leaving it to other agencies to supervise the delivery of the sentence, irrespective of the response of the YP to the sentence. Supervision of outcomes should remain a responsibility of the court

Q. 3) Does the allocation section include all the necessary considerations? Do you have any general observations on this section?

We don't feel that a narrow age gap between a child and adult defendant should automatically militate in favour of a young person and an adult being tried together in the Crown Court. The welfare of the child should remain paramount.

We appreciate that steps are taken to assist a vulnerable young defendant to understand and participate in proceedings in the Crown Court. However, a young defendant will inevitably be more intimidated, less likely to understand and therefore engage with the case than if they were in the youth court. It should only be on the rarest occasions that people under 18 are prosecuted in the Crown Court.

Q. 6) Do you agree with the approach taken to the assessment of seriousness?

We agree that considerable weight should be given to an assessment of maturity and criminal sophistication when judging seriousness. However, an accurate assessment can only be made so long as there is relevant information available upon which to base it and there is sufficient time and resource allocated to collect it.

Q. 8) Do you agree with the Council's approach to 'persistent offenders'?

It is difficult to set out an exact test for 'persistent offender'. Our view is that the draft guideline has adopted an appropriate approach by providing sentencers with adequate room for discretion.

It should be noted that research has shown that young people who are deemed persistent offenders are much more likely to have suffered multiple deprivation, high levels of victimisation and self harm themselves. Arguably, even greater consideration should be taken of their welfare.

Q. 11) Do you agree that the varying long-term effects of different sentences should be taken into consideration when determining the sentence?

Young people's future employment opportunities can be drastically reduced depending on the sentence they receive and the length of time before it becomes spent, if ever. Having

to disclose convictions can decrease employment and educational opportunities at a vital time in their lives. If the welfare of a young person is to be taken into account when sentencing then it is vital that such long-term effects of different sentences are taken into consideration.

It's important to recognise the long-term damage custody can have on young people's social skills, educational attainment and general well-being when deliberating over whether or not to remove them from the community into detention.

Q. 13) Is the additional detail regarding the requirements of a YRO helpful?

The more information sentencers have about what they can include in a YRO generally, and more important what is available within their local areas, the more likely they are to sentence effectively. Providing further local training about, and encouraging magistrates and judges to visit, local services that can be involved in YROs would improve local youth sentencing. It would help ensure that the currently underused education, drug, and mental health requirements are included more frequently in YROs in future along with sentence supervision opportunities, when available.

Q. 14) Do you agree that, in light of current sentencing practice, the provisional starting point for 15-17 year old compared to the appropriate adult sentence should be changed to between one half and two thirds?

There should be room for sentencers to vary from the appropriate adult sentence, using their expert discretion, to a point they believe to be proportionate and in the best interest of the young person.

Determining what percentage of an adult sentence a young person should receive for committing a similar crime remains a difficult task. They are invariably less culpable for their actions due to their immaturity. The proposed change is positive and from the research presented clearly reflective of current sentencing practice and sentencers' views.

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This consultation response does not reflect the individual policy position of any member organisation of the CJA

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