

TURNING 18 IN THE YOUTH JURISDICTION

MAY 2024



SUMMARY

Youth courts are specialist courts for children—people under the age of 18—and magistrates who sit in the youth jurisdiction undergo dedicated training in the needs of child defendants.

In 2020, the Magistrates' Association Annual General Meeting passed the motion that:

'if an offence is committed before a young person's eighteenth birthday, their case should be dealt with in youth court, even if they turn 18 before it gets to court.'

Each year, hundreds of children are charged with an offence that does not progress to court before the child turns 18. This means that offences committed during childhood are heard in an adult court, which delivers a very different type of justice.

RECOMMENDATIONS

1. Detailed data about the number of cases heard in adult court for offences commissioned when the defendant was a child should be collated and published. This should include information about the type of offence and the child's ethnicity, gender, age and geographical area at the date of offending.
2. Reform is necessary so that everyone alleged to have committed an offence while they were a child receives age-appropriate justice, regardless of when their case reaches court.
3. In the interim, the Ministry of Justice, CPS and HMCTS should work together to ensure that charges brought against children are prioritised in youth justice system processes.
4. All practitioners in the criminal justice system including probation staff and adult court magistrates should receive mandatory training on maturity in young adulthood.

BACKGROUND

Data about people sentenced as adults despite being under 18 when they offended is lacking. Figures sourced by Just For Kids Law from the Youth Justice Board in 2018, indicate that between two and three per cent of proven offences are committed by children who turn 18 prior to conviction.¹ Even with an ongoing reduction in youth court cases, this still amounts to hundreds of people who offend as a child but do not have the opportunity to benefit from the expertise of the youth justice system.

System delay is the main reason children turn 18 between their offence being commissioned and prosecuted. Delays have increased since the Covid-19 pandemic and backlogs remain high. Moreover, since 2017, the number of children 'released under investigation' (RIU) has grown. RIU has no time limit for charging decisions, and no mechanism to expediate cases when a child is approaching 18.

Offences committed during childhood should be tried in the appropriate jurisdiction. The youth jurisdiction is better equipped to meet the needs of child defendants than the adult court. Processes are more informal, and the bench directly attends to each child's welfare and ability to engage in judicial procedures. Youth court magistrates are trained to deal with youth matters and have access to broader youth court forums like youth court panel meetings.

Youth court magistrates speak directly to the child and their parents or guardians and have training and appraisals to ensure that they are competent to. In court, they receive guidance from specialist youth justice services. This is a qualitatively different type of engagement and support than provided in the adult court, and something that all children charged with an offence should be entitled to.

Sentencing also differs between the youth and adult jurisdictions. The principle aim of the youth court is to prevent reoffending. Sentences uphold this principle and sentencers are guided by specialist guidelines and pronouncements for the youth court published by the Sentencing Council. Youth court magistrates can sentence to youth diversion services and youth custody, while sentences given in the adult court are to adult services and custody. Child offenders who are tried in the adult court also lose the protections of restricted reporting and anonymity.

The Court of Appeal (CA) provides guidance that courts should use the age the person was when they committed the offence to determine the starting point in sentencing decisions.² The CA provides the same guidance about what age to use when determining culpability.³

Research shows that people are still maturing during their late teens and early 20s. Young adult defendants have more in common with older children than older adults and most, given opportunity and support to change their behaviour will do just that. Youth offending is often brief, peaking at age 17, and it is unjust that young people who experience delays in justice do not have their cases heard in a jurisdiction that recognises this.⁴

OUR POSITION

The Magistrates' Association believes that children should be dealt with in the jurisdiction appropriate to their age at the time their offence is commissioned. This facilitates their access to court processes, disposals and protections appropriate to them at the time of their charged offence. It is unjust that system delays in investigating and decision-making result in more punitive and severe outcomes for children who turn 18 during this period.

Endnotes

1. Just For Kids Law, 'Timely Justice: Turning 18', 2020
2. *R v Ghafoor (Imran Hussain) (2002) EWCA Crim 1857*
3. *R v Obasi (2014) EWCA Crim 581*
4. Magistrates' Association, 'Maturity in the magistrates' court', February 2021