

THE JUSTICE PAPERS

The Bar Council

Youth Justice



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“Oliver tried to reply, but his tongue failed him. He was deadly pale, and the whole place seemed turning round and round.” (Charles Dickens, *Oliver Twist*).

In a large number of magistrates’ courts, sometimes in a far corner, perhaps in a basement, or often at the top of a flight of stairs away from the other courts, you will find the youth court. The youth court bears some resemblance to the courtroom of a magistrates’ court, although, where possible, the setting is deliberately less formal. The parties are usually seated at the same height as the judge tribunal hearing the case, and participants are encouraged to sit throughout the proceedings.

The reason for this physical distance is to mark a clear distinction between the youth court and the magistrates’ court. However, it is also a powerful metaphor for the way in which youth justice often seems to be forgotten, both in the justice system overall and in discussions about legal aid.

Most people will look at their children and assume that they will never find themselves holding their hand in the youth court. Most assume that the youth court is a place for children without proper role models. That is not the case. The youth court processes children in care and children who are in the care of their parents and guardians. Teenagers can find them-

selves in the youth court for a number of reasons, including fights with peers or, in an increasingly digitised age, due to downloaded content on their phones. In the year ending March 2017, there were approximately 16,500 first time entrants to our Youth Justice System.

The youth court deals with criminal proceedings against those between the ages of 10 and 17. Those under 14 years of age are referred to as ‘children,’ while those aged between 14 and 17 are ‘young people’. The impact of youth court proceedings cannot be understated. The youth court will be an individual’s first experience of the justice system and, the system hopes, their last. However, statistics suggest that 73% of those against whom a finding of guilt has been made in the youth court will go on to reoffend.

The system is overseen by the Youth Justice Board, which has six key objectives. The first of these is the swift administration of justice (the others are confronting young offenders with their offending behaviour, intervention that tackles particular factors that lead youths to offend, punishment proportionate to the offending, encouraging reparation, and reinforcing the responsibility of parents and guardians). However, for many practitioners in youth courts across the country, the fact that the swift administration of justice is the first listed objective will seem somewhat ironic.

In the youth court, you rarely meet highly experienced barristers. You will, however, encounter pupil barristers (barristers who have not yet completed all aspects of their professional training) and junior practitioners, who deal with serious cases which would be tried in the Crown Court if the defendants were adults. Generally, more experienced counsel do not work in the youth court because the fees often do not reflect the necessary preparation and hard work required.

It is not uncommon for a barrister to prepare a youth court trial and arrive at court, only to find that the case has been discontinued at the last minute. It is not unusual for a young person's legal team to draft submissions to the prosecution which explain why the case should not be prosecuted (in some cases because it can be managed away from the court) but often no one has read the submissions until the eve of the hearing, when it is too late for the points to be addressed. Bringing a young person to court when they have no reason to be there is inexcusable. As well as a barrister's wasted preparation, a parent often loses a day of work, and the impact on the young person (from both an educational and welfare perspective) is unacceptable. This could be avoided if cases were properly considered before the last minute, but the current lack of resources prevents this from happening. These injustices could be avoided in a properly funded system.

In the meantime, barristers are left to explain these issues to a thirteen-year-old. The young person often wants the matter to be finalised, one way or another, on the day that they appear at court, while their barrister is often left to explain to them why it is in their best interests for the matter to be considered for an out of court disposal, even if that may result in another journey back to court.

Most barristers can tell you a cautionary tale about the youth court. Perhaps it was an application in court to add dozens of incorrect and duplicated charges to a charge sheet. Perhaps it was the effort required to prevent a court proceeding in a young person's absence when the child was unable to attend for reasons beyond their control. Perhaps they turned up at court to find their client terrified in a waiting room filled with members of opposing gangs. The challenges can be innumerable: Is a person who introduced themselves as a parent or guardian in fact a senior gang member? Is a young person reluctant to speak to you because they have been told to take responsibility for someone else's crime? Are they a victim?

As in the adult system, disclosure is often late and is frequently presented on the morning of the trial. This often results in delays, and witnesses attending court unnecessarily. It is unfair to expect a vulnerable young person to digest lengthy CCTV

footage, for example, on the morning of the trial, when early disclosure would have permitted this to be done with more time and in a less stressful environment.

In addition, the increased use of video link in the youth court is a further, underestimated threat to justice. For young people, custody should be a last resort, but this principle is undermined when a youth appears via video link for their sentencing hearing. It contradicts the safeguards usually put in place to ensure the effective participation of a young defendant, such as seating them next to their advocate so that matters can be explained to them. It is hard to believe that increasing the use of video link is motivated by anything other than a desire to save costs. It seems that in

a crippled system, costs come first, and the principles of justice must play a secondary role. We cannot allow this to continue.

Of course the treatment of young people at court is better than the portrayal by Charles Dickens in "Oliver Twist". However, that is a low bar. The impact of court proceedings on vulnerable young people cannot be underestimated. The lack of regard for young people when allocating legal aid rates undermines the system's noble objectives and encourages further disastrous cost cutting initiatives. The system is still turning 'round and round', but without proper fees, and attention, it will spiral downward, and the youngest members of our society will suffer.