The Youth Court in England and Wales: Learnings from European contexts and local developments

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The Youth Court in England and Wales is currently attracting a lot of discussion among practitioners, academics and policymakers as to how courts should deal with young defendants. The practices of other countries and the recent experience of the system in England and Wales may offer lessons as to how to adapt youth courts to the challenges of today.

In the first part of this article, we consider what we mean by 'youth courts' in Europe by comparing the scope and jurisdiction of specialist criminal courts in certain selected jurisdictions. We will point to the ways in which England and Wales bring younger children before the courts than elsewhere and adopts a cliff-edge approach to the upper limits of jurisdiction. This is despite the evidence that cognitive and emotional maturity is reached by young people at different ages. This is often at an age well beyond the jurisdictional cut-off point of 18 years of age operated in England and Wales. In the second part of this article, we consider the challenges and developments within the youth courts in England and Wales, which seek to recognise more fully the distinctive needs and capacities of young people by introducing a 'Child First' approach.

Throughout Europe there have been sweeping changes when it comes to youth justice.[1] First and foremost, youth crime has been falling for some years now in Europe and more cases are being dealt with by various measures of 'diversion'. Consequently, fewer young people are appearing in front of a youth court. The remaining cases in the youth court tend to be more serious or present more challenges.

The jurisdiction and structure of youth courts varies across Europe, as can be expected given that the countries have different legal systems and that youth courts operate in their national political environment. Some countries focus on retribution as the main objective of juvenile justice, whereas others focus mainly on the educational aspect of youth justice and the related goal of rehabilitation. The welfare of the individual who offended is often at the centre of the effort. In the following, we will first look at the age when children are considered criminally responsible and at its corollary, the age at which the jurisdiction of the youth court ends. In discussing the latter, we introduce key elements of the youth justice systems of selected countries. Only then does it become clear the extent to which opportunities are lost for young people who are turned over to the adult court on the day they become 18 years old. We will then reflect on where the youth court in England and Wales sits in comparison to some countries that extend the realm of their youth justice system to young adults.

In England and Wales, 10 years is the age of criminal responsibility. This is very early in comparison to most other European countries. The age of criminal responsibility was extremely low in Scotland, at 8 years, but has now been raised to 12 years. The Scottish Government provides the following reason: 'It is important that children under 12 are protected from the harmful effects of early criminalisation, while ensuring they receive the right support.'[2] The age of criminal responsibility is typically set at 14 to 16 years in European countries.[3] In Belgium it is 18 years for most cases.[4] England and Wales might do better to adjust its age of criminal responsibility to the higher age defined in most European countries, at least if one puts the needs of children truly first.

1. See, in this same PSJ edition: Dunkel, F. (2025). New horizons in youth justice – European and international developments.
2. Children and Families Directorate (n.d.). *Youth Justice.* Scottish Government, Children and Families Directorate.
3. Dünkel, F. (2022). Youth Justice: European and International Developments and (Good) Practices. In D. Nelken, & C. Hamilton (Eds.), *Research Handbook of Comparative Criminal Justice* (pp. 30-48). Edward Elgar Publishing; Comparing 39 jurisdictions: only Northern Ireland and Switzerland also have 10 years as the age of criminal responsibility. Ireland has 12 as age of criminal responsibility but with special rules for those 10- to 11-year-olds who commit murder, rape and similar severe crimes. Changes to raise the lower age limit are contemplated. See Irish Legal News (2023). Ireland Urged by UN Committee to Raise Age of Criminal Responsibility to 14. https://www.irishlegal.com/articles/ireland-urged-by-un-committee-to-raise-age-of-criminal-responsibility-to-14.
4. Dumortier, E., Christiaens, J., & Nuytiens, A. (2017). Belgium. In S. H. Decker, & N. Marteache (Eds.), I*nternational Handbook of Juvenile Justice* (pp. 239–265). Springer.

It is unusual to see very young children in the youth court and the older juveniles dominate in the dock. More young people are affected by the upper age limit of the youth court's jurisdiction. In England and Wales, it comes suddenly with the 18th birthday of a defendant. This is an early abrupt ending of the protections, and of the chance to cater the criminal justice response to the individual, which is provided by a specialist court with expertise in developmental and educational problems. As Frieder Dünkel argues: 'the youth court with its specialised and (in developmental questions) more experienced judges seems to be the better solution' (p. 40).[5]

In contrast to England and Wales, some European countries extend the jurisdiction of the juvenile court to young adults, and in others, the adult court dealing with them 'can impose some of the measures otherwise reserved for juveniles…' (p. 25).[6] The following introduces the gist of the institutional arrangements for young adults in Austria, Croatia, Germany, and the Netherlands.

Young adults between 18 and 21 years of age in Germany appear in front of a youth court when their maturity as an adult is in question, which is predominantly the case. Only minor offences are dealt with in the adult justice system by penalty order, such as simple traffic offences.[7] In the youth court, professional judges and prosecutors are expected to be experienced in the education of young people.[8] When a conviction may result in imprisonment of a young adult, as is the case for juveniles who are 14 to 17 years old, the youth court of lay assessors is employed in all but the most severe cases. This mixed court is presided over by a professional judge and the two lay judges are required to have pedagogical experience.[9] One of the lay members needs to be female, one male. Very severe crimes are brought before the grand youth chamber of the regional high court with three professional judges and two pedagogically experienced lay judges. Specialised youth social workers and youth pedagogues support prosecution and courts with reports on the juvenile or young adult's developmental and social situation. This Juvenile Court Assistance is part of the local authority's youth department which gives it a degree of independence from the courts. It also supervises if a young person engages with educational and other measures imposed by the judges.[10] The regulations in Germany demonstrate an emphasis on addressing the developmental needs of a juvenile or young adult defendant.

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Reflecting the 'more … protective rather than punitive' approach to youth justice, young adults in Austria aged 18 to 20 years have their cases dealt with by pedagogically skilled judges and prosecutors.[11] In courts of lay assessors and juries involved in those cases, 'at least half of the laypersons must be experienced in dealing with juveniles as teachers or social workers in youth welfare', while 'at least one lay judge or two jury members, respectively, must be of the same gender as the accused' (p. 229).[12] The court or the prosecution can task the psychologists, social workers and pedagogues of the Juvenile Court Assistance, in Austria part of the justice administration, to report on the juvenile or young adult, similar to the German situation.[13]

Croatia follows a welfare and educational approach to youth justice.[14] It has no separate youth courts but young adults between 18 and 20 years of

5. See footnote 3: Dünkel, F. (2022).
6. Dünkel, F. (2017). Juvenile Justice and Crime Policy in Europe. In F. E. Zimring, M. Langer, & D. S. Tanenhaus (Eds.), *Juvenile Justice in Global Perspective* (pp. 9-62). New York University Press.
7. Matthews, M., Schiraldi, V., & Chester, L. (2018). Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System. *Justice Evaluation Journal, 1*(1), 59–81.
8. Lennartz, O. (2016). *Erziehung durch Jugendschöffen?* Nomos.
9. Lieber, H. (2017). *Die Verantwortung der Gemeinden und Kreise bei der Schöffenwahl 2018.* Kommunal- und Schulverlag.
10. Gensing, A. (2014). J*ugendgerichtsbarkeit und Jugendstrafverfahren im europäischen Vergleich.* Forum Verlag.
11. Bruckmöller, K. (2017). Austria. In S. H. Decker, & N. Marteache (Eds.), *International Handbook of Juvenile Justice* (pp. 219-238). Springer; Pruin, I., & Dünkel, F. (2015). *Better in Europe? European Responses to Young Adult Offending*. Ernst Moritz Arndt Universität Greifswald.
12. See footnote 11: Bruckmöller, K. (2017).
13. Die österreichische Justiz (2023). Jugendgerichtshilfe. Bundesministerium der Justiz. https://www.justiz.gv.at/justiz/familien-und-jugendgerichtshilfe/jugendgerichtshilfe. 2c94848b51c98d610152cffee7e93500.de.html
14. See footnote 7: Matthews et al. (2018).

age at the time of the crime, and below 23 years at the time of the trial, can be treated according to youth justice procedures and the sanctions can be taken from those available for juveniles.[15] Municipal courts at larger towns have departments for juveniles and young adults, and the judges and prosecutors should be knowledgeable in matters concerning youth welfare and have knowledge of criminology and pedagogy.[16] Advice is available from social workers and psychologists based within the court system.[17] It is reported, though, that courts are sentencing young adults much more often according to adult law than juvenile law 'because the former is less intrusive than the 'educational sanctions' and more rehabilitative responses for juveniles' (p. 78).[18]

The Netherlands has also raised the point for when juvenile law no longer applies. 'As of 1 April 2014, young offenders aged 16 to 22 can be tried either as a juvenile or as an adult, under adolescent criminal law.'[19] 16 to 22-year olds at the time of the offence are processed in the regular adult court but with the option to sentence according to juvenile law.[20] The public prosecutor assesses if youth law can be applied and judges often follow their suggestion.[21] Again, the rationale includes that this age group needs interventions geared to their personal development which is in flux.[22] Courts in the Netherlands rarely sanction young adults based on juvenile law. Dünkel describes that it is because they are not specialised youth courts, and the prosecutors are not specialised in youth cases either.[23]

As these examples show, a country's juvenile justice provision can be extended beyond 18 years. Young adults may not only be treated according to juvenile criminal law, but the prosecutors, lay and professional judges involved may have youth-specific knowledge and expertise. Moreover, instead of appearing at an adult court, defendants beyond the age of 18 can have their cases heard by the youth court. Countries following this policy are recognising that personality and cognitive development does not reach full maturity with the 18th birthday. Rather, the educational and rehabilitative needs of this age group are similar to juveniles. Criminal behaviour peaks in adolescence and early adulthood and typically starts to decline thereafter.[24] Problems are stored up for society and young people if they are not addressed by the courts most qualified to deal with them.

Juvenile justice in England and Wales shares some characteristics with the countries introduced above.

- ❏ Like Austria, Croatia and Germany, there is a body of social workers, educational specialists and others who can inform judges about the personality and current situation of a young defendant. The Youth Offending Teams (YOT) are fulfilling this function in England and Wales. Their duties expand beyond the point of sentencing as they supervise the youth's engagement with any training and educational requirements imposed. YOT representatives can bring those who do not engage back to the youth court for re-sentencing.
- ❏ Prosecutors working in youth justice in England and Wales, as in the abovementioned three countries, should have a level of expertise and specialisation. At least, the requirement is established if not always met.[25] Some prosecutors in England and Wales exclusively work in the youth court.
- ❏ Like Austria and Germany, England and Wales draw on the expertise of lay judges with social work and pedagogical knowledge. This is a very practical way to include in the decision-making professionals like teachers and youth social workers as well as people engaged in the voluntary sector. They have a broader experience with young people, their developmental trajectories, the challenges they face and pedagogical opportunities than can be gained within the confines of the courts. For this reason, German youth court lay assessors are held in high esteem by professional judges.[26] Observations of youth courts in north Wales and London suggest that youth magistrates are fulfilling their more pedagogical role.[27]

15. See footnote 7: Matthews et al. (2018).
16. See footnote 7: Matthews et al. (2018).
17. See footnote 7: Matthews et al. (2018).
18. See footnote 7: Matthews et al. (2018).
19. Government of the Netherlands (n.d.). Penalties for Juvenile Offenders. https://www.government.nl/topics/sentences-and-non-punitive-orders/penalties-juvenile offenders#:~:text=The%20maximum%20sentence%20for%20juveniles, social%20skills%20and%20anger%20management.
20. Schmidt, E. P., et al. (2021). Young Adults in the Justice System: The Interplay between Scientific Insights, Legal Reform and Implementation in Practice in The Netherlands. *Youth Justice, 21*(2), 172-191.
21. See footnote 20: Schmidt et al. (2021).
22. See footnote 7: Matthews et al. (2018).
23. See footnote 3: Dünkel (2022).
24. E.g., see footnote 3: Dünkel (2022).
25. We will discuss the reality in the second part of the article.
26. Lennartz, O. (2017). Erziehung durch Jugendschöffen? *Richter ohne Robe, 17*(1), 3-5.
27. Machura, S. (2021). "… and My Right" – The Magistrates' Courts in England and Wales. In S. Kutnjak Ivkovich, S. S. Diamond, V. Hans, & N. Marder (Eds.), *Juries, Lay Judges, and Mixed Courts: A Global Perspective* (pp. 131-151). Cambridge University Press.

To summarise, a consideration of the parameters of youth justice in other jurisdictions in Europe, suggests that changes are needed to the jurisdiction of the youth court in England and Wales in relation to both upper and lower age limits. However, the courts' institutional arrangements have some elements that work effectively to address the issues raised by youth crime. In the second part of this article, we will discuss contemporary developments in England and Wales aimed at further recognising the distinctive needs of young people charged with criminal offences.

The Youth Court and the Rise of Children First Approaches in England and Wales

In recent years, the most striking development in official discourse in England and Wales around youth justice has been the rise of the 'Child First' or 'Children First' approach. This has now been officially endorsed by the Youth Justice Board of England and Wales (YJB) as the 'strategic approach and central guiding principle' that should underpin youth justice practice.[28] The original phrase was 'children first, offenders second'. This signposts a commitment to children's distinctive needs and capacities and to promoting positive outcomes, rather than concentrating more narrowly on children's offending and how to prevent, reduce or manage it. Indeed, the first of the four key tenets underpinning Child First approaches is exactly to treat children 'as children.' This signals not just an emphasis on the welfare principle (the need to act in the 'best interests' of the child) but also a recognition that the distinctive needs of young people mean that they have particular rights and entitlements under international and national law that need to be taken into account.[29] The second tenet develops the accent on actively promoting positive outcomes, seeing the building of pro-social identity as critical to both sustainable desistance and enabling children to fulfil their potential. The third tenet stresses the need to encourage the active participation of children and their carers through meaningful collaboration. The fourth and final tenet advocates the use of diversion and minimal intervention to avoid the stigma of criminal conviction.[30]

The adoption of such an approach clearly has implications for the operation of the Youth Court. But its application has proved more challenging in the court context than elsewhere in the youth justice system.[31] Children's dominant status before the criminal courts remains that of a party (defendant) to proceedings that are still primarily shaped by the English adversarial procedural tradition. Youth Courts in England and Wales are a part of the local Magistrates' Courts. The Youth Courts only deal with the criminal offences committed by young people (aged 10 to 17) (with separate Family Courts dealing with questions of care and protection). Some distinctive procedural variations have been made to standard practice in the adult Magistrates' Court to adapt it to children's needs.[32] But there remain fundamental challenges to a thorough application of the tenets of 'Child First'. These are even more substantial in relation to the minority of youth cases which are heard by the Crown Court (which typically deals with adults).[33] Here the young person is heard within a court where the architecture and procedure have been designed for adult cases and which is more formal and intimidating than the Youth Court.[34] While the starting point is that its jurisdiction is confined to certain 'grave' crimes, young people may also end up in the Crown Court because they are being tried with an adult or they turn 18 before first appearance and the resolution of the case. This last possibility is increasingly relevant because the average delay between these points is now over 200 days.[35]

> Fewer young people are appearing in front of a youth court.

28. YJB England and Wales (2021). *Strategic Plan for 2021-2024*. Youth Justice Board; See, generally, Case, S., & Hazel, N. (Eds.) (2023). *Child First.* Palgrave Macmillan.
29. For example, UN Standard Minimum Rules on the Administration of Juvenile Justice (1985, the 'Beijing Rules'), UN Convention on the Rights of the Child (1989) and European Court of Human Rights decisions on the interpretation of Article 6 (right to fair trial) in the context of children and young people.
30. Youth Justice Board. (2022). *A Guide to Child First.* Youth Justice Board.
31. Hollingsworth K. (2023). Child First in the Criminal Courts. In S. Case & N. Hazel (Eds.), *Child First.* Palgrave Macmillan.
32. See Judicial College (2024). Y*outh Court Bench Book*. Judicial College. Examples (in Appendix A) are simplified language, proceedings closed to the general public with reporting restrictions and specified ways of making the court less intimidating.
33. Around 95% of cases leading to sentencing of children are heard before the Youth Courts: Youth Justice Board (2024). Y*outh Justice Statistics 2022-23*. Youth Justice Board.
34. Despite adaptations introduced by *Practice Direction Crown Court: Youth Defendants* [2001] WLR 659 and subsequently. For discussion, see footnote 31: Hollingsworth. (2023).
35. For 22/23, the average time between first appearance and resolution of a case was 207 days which was 104% higher than 10 years before: Youth Justice Board (2024). *Youth Justice Statistics 2022-23.* Youth Justice Board; For definition of 'grave crimes' see Sentencing Act 2020 s.249(1).

What follows is organised around some key issues in implementing Child First principles. First, we consider the extent to which the system successfully limits court involvement, promotes diversion and avoids the stigma of criminalisation. Secondly, we examine the extent to which the Youth Court has been able to recognise the distinctive rights and needs of young people by developing a specialist legal expertise. Thirdly, we consider how far young people and their carers are able to participate actively in court proceedings. Finally, we consider whether Youth Courts could become more effective in promoting personal change, positive outcomes and sustainable desistance if they become 'problem-solving' courts.

Rise of Diversion and The Fall in Youth Court Caseloads

Since 2007/8 there has been a striking reduction in the number of cases coming before the Youth Court.[36] This is a development compatible with the fourth and final Child First tenet which advocates the use of diversion and minimal intervention to avoid the stigma of a criminal conviction. It may be that the adoption of Child First principles will help to maintain and embed this reduction in cases going to the Youth Court. Yet, the decline significantly pre-dates the adoption of Child First principles by the YJB in 2018 and is more likely to be explained by other factors.[37] Victim surveys have suggested a decline in interpersonal offence rates from the mid-1990s onwards.[38] Given that some of these involve volume offence categories with a high proportion of youth perpetrators (for example burglary, criminal damage, robbery, inter-personal theft, theft of and from cars), that might suggest some decline in actual levels of offending by young people. But there are more direct and obvious explanations for the dramatic reduction in cases before the Youth Court rooted in shifts in British political economy.

High rates of formal intervention had developed from the 1990s and were a key element of the 'new' youth justice culture that emerged from the 'new' Labour Government of 1997. Central to this approach was the view that formal criminal justice procedures were essential to reinforce a sense of personal responsibility and address the defects in family, school and community relationships thought to underpin offending.[39] New legislation and administrative guidance limited the use of diversionary cautions and encouraged a process whereby young people could come before the courts even after a few relatively minor offences.[40] From 1994 to 2004, there was a significant shift to prosecuting children who would previously have been cautioned.[41] But this emphasis on the use of formal court process was dramatically reversed over the years between 2004-2007. Three factors seem to have provoked this: the remodelling of central government key performance indicators in relation to youth justice, a reduction in the political visibility of youth crime, and a financial crisis in the means of state intervention.[42] Together these elements changed the relationship between the politics of youth justice and the use of formal criminal proceedings. Youth crime and youth justice became less salient to central government policy. Greater independence of the YJB, the agency overseeing youth justice, from direct political pressures enabled local diversionary initiatives to be encouraged. A degree of independence was returned to youth justice workers, many of whom had retained doubts about the stigmatising effects of progressive intervention through the criminal justice process based on early and systematic conviction and sentence.[43] The combined effect was to promote the rise of diversion, informal voluntary interventions

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36. 16,600 children appeared in court in England and Wales in the year ending March 2023, a decrease of 72% compared with 10 years previously: Youth Justice Board. (2024). *Youth Justice Statistics 2022-23.* Youth Justice Board.
37. The 'children first, offenders second' approach was adopted in Wales, agreed by the Welsh Government and Youth Justice Board as part of the 'All Wales Youth Offending Strategy' in 2004. But in England, the approach was adopted in 2018, having been advocated by the Taylor Report: Taylor, C. (2016). *Review of the Youth Justice System in England and Wales.* Ministry of Justice.
38. Pople, L., & Smith, D.J. (2010). Time Trends in Youth Crime and in Justice System Responses. In D. J. Smith (Ed.), *A New Response to Youth Crime.* Willan.
39. Home Office. (1997). *No More Excuses.* Home Office.
40. Field, S. (2008). Early Intervention and the 'New' Youth Justice: A study of initial decision-making. *Criminal Law Review, 3,* 177-190.
41. Morgan, R., & Newburn, T. (2007). Youth Justice. In M. Maguire, R. Morgan, and R. Reiner (Eds.), T*he Oxford Handbook of Criminology* (pp. 1043-1045). Oxford University Press.
42. Smith, R. (2014). Reinventing Diversion. *Youth Justice, 14,* 109; Bateman, T. (2015). Trends in Detected Youth Crime and Contemporary State Responses. In B. Goldson, & J. Muncie. (Eds), *Youth Crime and Justice* (pp. 67-82). Sage.
43. Field, S. (2007). Practice Cultures and the 'New' Youth Justice in (England and) Wales. *British Journal of Criminology, 47*(2), 311-330.

without conviction and to provoke a dramatic fall in the number of cases coming before the Youth Court.

Enduring Problems of Lack of Access to Specialist Legal Advice

One of the paradoxical consequences of declining numbers of cases coming to the Youth Court is that it has become even more difficult to solve one of the enduring challenges in recognising the distinctive rights and needs of young people: the lack of specialist legal advice. The demands of Youth Court work are very different to that of adult court work: not only is there a very different legal framework but children also have distinctive (and often more challenging) needs in terms of support and child-appropriate communication. Hence the importance of specialist legal expertise. But the variability in the competence of lawyers practising in youth justice (both defence and prosecution) is a theme that has run through reports and the empirical research for many years.[44] Much of the work (for both defence and prosecution) is being done by non-specialists and the Youth Court is still being used as a training ground for young barristers. Lack of experience in the youth court is strongly associated with poor performance. Not surprisingly, those who do a lot of Youth Court work are seen as much more effective than those who have never done so or who are appearing occasionally. Yet many of those appearing before the Youth Court are doing such work as a small percentage of their practice. This is the problem that is aggravated by the very significant reduction in the volume of cases being heard in the youth court. There is simply much less youth court work to enable the development of a specialism. This is not just something that affects defence lawyers: standards amongst those prosecuting for the Crown Prosecution Service (CPS) are variable. The CPS has its own specialist youth justice prosecutors but much of the work is not being done by them.

The underlying issue is the absence of a system of required training and accreditation for lawyers who wish to do youth justice work. All that exists is a system of registration for barristers working in youth proceedings, but this is essentially based on self-accreditation. The Bar Standards Board has set out a list of expected competencies and identified some potential training providers but leaves it to individual barristers to self-certify that they have the specified competencies. There is no required training and no assessment to ensure minimum levels of competence.[45] The Law Society merely provides guidance to solicitors on working in the Youth Court.[46] Recommendations of mandatory accreditation have been made on several occasions, over several years, but the professional bodies have not so far been persuaded.[47]

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A New Focus on Developing Participation

We have seen that one of the tenets of the 'Child First' approach is to encourage the active participation of children and their carers in the process of youth justice by meaningful collaboration with them. The European Court of Human Right's decision in V v UK [2000] clearly established a child's right to 'effective participation' in proceedings, which requires steps to be taken that recognise the distinctive intellectual and emotional characteristics of children.[48] As a result, magistrates in the Youth Court are expected to engage actively with children and to adapt their own tone and language to try to ensure that children understand what is happening.[49] But major challenges exist in going beyond that to enable active participation by children themselves and/or their families. The language of the

44. Lord Carlile, (2014). *Independent Parliamentarians' Inquiry into the Operation and Effectiveness of the Youth Court* (chapter 5). https://www.michaelsieff-foundation.org.uk/carlile-parliamentary-inquiry-youth-justice-system/; Wigzell, A., et al. (2015). *Youth Proceedings Advocacy Review: Final Report.* Bar Standards Board; See also footnote 37: Taylor, C. (2016) paras 92 and 104. Wigzell, A. & Stanley, C. (2015). The Youth Court: Time for Reform. In M. Wasik & S. Santatzoglou (Eds.), *Who Knows Best? The Management of Change in Criminal Justice* (pp. 241-258). Palgrave Macmillan; Youth Justice Legal Centre (2023). *It's a Lottery: Legal Representation of Children in the Criminal Justice System.* Youth Justice Legal Centre.
45. Bar Standards Board. (2017). *Youth Proceedings Competencies.* Bar Standards Board.
46. https://www.lawsociety.org.uk/topics/advocacy/advocacy-in-the-youth-court
47. Wigzell, A., et al. (2015) *Youth Proceedings Advocacy Review: Final Report.* Bar Standards Board; See footnote 44: Carlile Report (2014).
48. V v UK [2000] 30 EHRR 121. The UNCRC entrenches the child's right to participate in the form of Article 12's 'right to be heard'. Generally see Rap. S., (2016). A Children's Rights Perspective on the Participation of Juvenile Defendants in the Youth Court, I*nternational Journal of Children's Rights. 24,* 3.
49. Standards remain variable: Robin-D'Cruz, C. (2020). *Young People's Voices on Youth Court.* Centre for Justice Innovation/Institute for Crime and Justice Policy Research.

law is inherently difficult for them particularly given that many have speech, language and learning difficulties. The prospect of punishment brings fear, and the ritual of the court is intimidating. But defendants are specifically excluded in both the Crown and Youth Courts from the extensive range of statutory 'special measures' available to support the participation of vulnerable or intimidated witnesses.[50] Opportunities for child (and other vulnerable) defendants to use some special measures have been developed by statute and by the courts using their inherent jurisdiction to control proceedings. But they remain relatively limited in law and in practice because of resource constraints.[51] Tim Bateman concluded, in a preface to a 2019 report based on empirical observations and interviews of the Youth Court, that in most cases participation by young people was 'an aspiration rather than a reality' (p. 4).[52] Most can only manage 'yes or no' answers.

There are several ways to improve the potential for more active participation. The most important legal reform would be to give child defendants statutory access to all the relevant available special measures. But changes to institutional practices are also needed: the architecture and organisation of space in Youth Courts in England and Wales varies depending on local provision and some courts are far from ideal. In some areas, Youth Court magistrates are still looking down on children from a great height rather than having discussion organised on a single level around a table or tables. Frequently, listing practices mean that young people must wait at the courtroom for hours for their case to be heard. These waits are often experienced as long and traumatic. This is a particular issue for those who suffer from ADHD. If they are kept waiting for hours, they are not in a fit state to interact constructively with magistrates at the end of it. But more generally stress and intimidation around court appearance can affect participation: in some courts, children are waiting in the same space as others from whom they should be kept separate (adults and other young people with whom there are hostile relations). In rural areas, with the recent closure of satellite (temporary local) courts, travel times and lack of transportation are an issue for young defendants. The upshot is that many young people — when their case is finally heard — are not in a psychological state conducive to active participation.

There are examples of good local practices designed to diffuse anxiety and prepare children and their families to participate in proceedings in court. In some places, magistrates will meet with Youth Justice Service (YJS) team members who know the individual child, and their particular language and learning difficulties, to get advice as to how to help them participate. YJS team and defence lawyers may prepare carefully young people and their parents before the hearing, providing information and explaining to them the process and their part in it. For example, some YJS teams have created animated videos describing the process in child accessible terms. Pre-sentence reports (PSRs) are shared and discussed in advance with the young person and their parents. But local practice is variable across England and Wales: there is potential to improve by drawing all Youth Courts up to the standard of the best.

> One of the tenets of the 'Child First' approach is to encourage the active participation of children and their carers in the process of youth justice by meaningful collaboration...

The Youth Court: A Problem-Solving Future?

The second tenet of the Child First approach sets an ambitious goal: not just to prevent offending but actively to promote positive outcomes by building the pro-social identity critical to both sustainable desistance and enabling children to fulfil their potential. This goal is particularly ambitious given that those children who come to Youth Court are more likely to be severely disadvantaged and vulnerable.[53] How far does the Youth Court have the capacity to do this? In recent years, several reports (both public and third sector) have advocated for the development of 'problem-solving' approaches.[54] The concept is broad but envisages a

50. Youth Justice and Criminal Evidence Act 1999.
51. Fairclough, S. (2018). Speaking up for Injustice: Reconsidering the Provision of Special Measures through the Lens of Equality. *Criminal Law Review, 1,* 4-19.
52. Hunter, G., et al. (2019). *Time to Get it Right: Enhancing Problem-Solving in the Youth Court.* Institute for Crime and Justice Policy Research and Centre for Justice Innovation.
53. See footnote 52: Hunter, et al. (2019).
54. See footnote 44: Carlile Report (2014); Hunter, G., & Jacobson, J. (2021) *Exploring Procedural Justice and Problem-solving Practice in the Youth Court.* HMI Probation; See footnote 52: Hunter et al. (2019); See footnote 37: Taylor Review (2016).

process that shifts sentencing from a single event to an ongoing process in which the same child and the same specialist magistrate(s) meet periodically after the initial sentencing hearing to review progress and calibrate the state response. One argument for such an approach is that it provides an opportunity to improve the quality of dialogue. Despite some improvement in engagement and communication in the Youth Court, there remains a need to develop richer relationships and interactions between magistrates and young defendants. The same magistrates seeing the same young person several times over a period may bring benefits, particularly if magistrates with empathy, skill, commitment and charisma are involved. A richer dialogue could encompass broader aspects of what is going on in the child's life, dealing not just with their criminal offending but broader welfare issues and indeed engaging children themselves in the definition of their problems and how to solve them. Returning to meet the same magistrates might lead those children to feel that they were involved with a supportive justice community, that they mattered, and they were valued.[55] It is also envisaged by advocates that problem-solving approaches would enable magistrates to scrutinise the broader support provided to children by other agencies (health, education, housing, social services etc). Periodic reviews, they argue, might give magistrates the opportunity to call YJS management boards, other partner agencies and even parents to account for the support they were or were not giving to young people.

Two major reports on youth justice (the Carlile Inquiry in 2014 and the Taylor Review in 2016) have, in different ways, supported the introduction of problem-solving courts. They provide some potential to respond to the Child First principle that the primary goal should be to promote positive outcomes generally, rather than just aiming to reduce offending and thereby all too often failing to make a difference. Better communication with children, enabling them to participate more fully and providing a forum for monitoring the quality of interagency cooperation and support, could promote this. But if progress is made to develop problem-solving Youth Courts, it will be important to make sure that this does not undermine the current emphasis on out of court settlement and diversion, and move the balance of the system and its allocation of resources back towards post-conviction intervention.

55. See footnote 54: Hunter, G., & Jacobson, J. (2021) for links between problem-solving and procedural justice approaches. The latter sees providing the opportunity to express their side of the case, respect for their rights as well as perceived benevolence and neutrality of decision-makers as key factors in defendants' view of whether they have been treated fairly (which, in turn, is seen as affecting likelihood of reoffending). See e.g., Tyler, T. R. (1994). *The Psychology of Legitimacy.* American Bar Foundation Working Paper Series, 9425; Haller, V., & Machura, S. (1995). Procedural Justice at German Courts as Seen by Defendants and Juvenile Prisoners. *Social Justice Research, 8,* 197–215.