

Youth Court Update Webinar

Presentation by Tobias Smith, Counsel, 25 Bedford Row

Thursday 27th May 2021
5.30pm - 6.30pm



“Please Sir...I want some more”

Youth Court Funding And Applying For Certificate
For Assigned Advocate

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Funding in the Youth Court (1)

- ▶ The starting point is that funding is exactly as it is in the adult magistrate's court. Funding is only available for a litigator.
- ▶ The solicitor has a responsibility to ensure counsel is of "appropriate seniority and expertise" (Criminal Legal Aid Manual May 2021 p46).
- ▶ "The professional relationship between the solicitor and unassigned counsel will be the same as that which exists in a privately funded case and the solicitor will be responsible for paying them".
- ▶ Rates are typically £150 for a 1 day trial, or £75 for a half a day.

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Funding in the Youth Court (2)

- ▶ All but the most junior counsel are unlikely to accept instructions on this basis.
- ▶ The Youth Court routinely hears cases of a greater complexity and seriousness than in the adult magistrates' court.
- ▶ Cases are more likely to involve young or vulnerable witnesses (including the defendant).
- ▶ The maximum sentence that can be imposed in the Youth Court is a 2 year DTO (compared with 6 months' imprisonment in the magistrates' court).
- ▶ There can be serious other consequences including local authority residence requirement or a fostering order if convicted.

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Taylor Review of the Youth Justice System (2016)

“During the review I have frequently been told that the quality of representation is often very poor. The youth court tries more serious cases than the adult magistrates’ court because it has greater sentencing powers, yet appearance fees for lawyers in the Youth Court are similar to those in the adult magistrates’ court [...]. This is not fair because it means that children often receive poorer legal representation, in the hands of inexperienced junior barristers or solicitors, than the equivalent case in the Crown Court.” (Para 92)

“[...] Defence Lawyers are not required to have any specialist training before they appear in the Youth Court . This problem is compounded by the lower fees paid to lawyers in the youth court than they would receive for a serious case involving an adult in the Crown Court.”

“I am also extremely concerned that children, in what are often complex and challenging cases, should be any less well represented in the Youth Court than an adult would be in the Crown Court in a case of equivalent seriousness.”

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Regulation 16 The Criminal Legal Aid (Determination by a Court and Choice of Representative) Regulations 2013

(1) Subject to paragraph 2, in relation to any proceedings before a magistrates’ court, the right conferred by Section 27(4) of the Act [the right to choose a representative] does not include the right to select an advocate.

(2) The relevant court may determine that the individual can select an advocate if –

- a) The proceedings relate to [...] an indictable offence; and
- b) The relevant court determines that because there are circumstances which make the proceedings unusually grave or difficult, representation by an advocate would be desirable.

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Procedure

- ▶ An application must be made by the defendant **in writing and** specify what the court is being asked to determine and the grounds for making the application (Regulation 11(2) Criminal Legal Aid (Determination by a Court and Choice of Representative) Regulations 2013).
- ▶ An application can be renewed.
- ▶ Appeal is by way of judicial review – generally on *Wednesbury* grounds.

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General Points and Procedure

- ▶ There is an inconsistency of approach across courts.
- ▶ There is **no** judicial guidance as to how the courts are to approach the grant of certificate for assigned advocate.
- ▶ Often applications are refused in cases which would obviously be too serious or complex for the magistrates' court.

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It's not about the money, it's about fairness

- ▶ Two-tier justice.
- ▶ Ensures relative equality of arms - The Crown are free to instruct counsel if they so wish.
- ▶ Ensure the defendant can effectively participate in proceedings and that they are able to advance their best defence.

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It's good for the Client!

- ▶ Conferences with the client at an early stage to build trust with the defendant.
- ▶ Two heads are better than one.
- ▶ As the rate is hourly, more work can be done on preparation at an early stage.
- ▶ Can give advice on funding for any expert evidence that may be required to answer the prosecution case.
- ▶ May be more experienced in dealing in relation to technical or expert evidence (e.g. CDR, RF surveys, financial records).

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It's good for the Court!

- ▶ The Courts have recognised that advocates acting cases involving young defendants require special training (R v Grant-Murray & Henry [2017] EWCA Crim 1228).
- ▶ Experienced advocates can assist the court in making appropriate adjustments to the trial process to ensure the trial is fair.
- ▶ Experienced advocates with experience in handling complex evidence at trial are best placed to advise the defendant on such evidence.
- ▶ Advocates with experienced in questioning vulnerable witnesses are better able to tailor their questioning to young and vulnerable witnesses.
- ▶ Additional preparation can avoid valuable court time being wasted.

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Reg. 16(2)(a) - “...proceedings relate to [...] an indictable offence.”

The test is not “*the defendant is charged with*” an indictable offence.

The provision covers the proceedings as a whole, not just the trial process. This may be of particular relevance when considering complex sentencing exercises.

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...there are circumstances which make the proceedings unusually grave or difficult...

- ▶ It is submitted that this provision ought to be interpreted in the context of *the magistrates' court as a whole – and not just the Youth Court.*
- ▶ Considering the Youth Court in isolation, the Youth Court routinely deals with serious and complex cases such as knife-point robbery or class-A drug supply.
- ▶ But regulation 16 is applicable across adult magistrates' court and the youth court and ought to be applied in that context.

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Unusually Grave

- ▶ Is the offence indictable only, or an either-way offence where the magistrates' court is unlikely to have retained jurisdiction if the defendant was an adult?
- ▶ What is the likely sentence that will result from a conviction? (DTO or YRO with ISSP, fostering, or local authority residence requirement)
- ▶ What sentence would the alleged attract if the defendant were an adult?
- ▶ What is the impact the alleged offence is likely to have had on others?
- ▶ Does the allegation relate to a sexual offence?
- ▶ Is the complainant vulnerable, or a sibling/family member?
- ▶ Are there possible long-term consequences for the defendant (notification requirements, impact on education or future employment etc.)

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Unusually Difficult

- ▶ Is the trial likely to be longer than a day?
- ▶ How many witnesses are likely to be called to give evidence?
- ▶ Are the Crown relying on the evidence of an expert or other "technical" evidence?
- ▶ Are any of the witnesses (including the defendant) vulnerable such that additional preparation is required?
- ▶ Refer the court to the advocates' gateway toolkits
- ▶ Is an intermediary required for any witness? Does the case require questions to be prepared in advance for judicial approval?
- ▶ Are there factors relating to the client which make the case more difficult (learning disability, developmental disorder, mental health, looked after child)?
- ▶ **The test is that representation by an advocate would be desirable and not that it would be essential.**

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Some Takeaways

- ▶ Always apply if arguable.
- ▶ Apply early – apply often.
- ▶ Have a pro forma ready to at first appearances where there is a clear case for the grant of a certificate for assigned advocate.
- ▶ Be prepared to argue creatively.
- ▶ Be alert to possible opportunities for strategic litigation.

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