

Youths and the Crown Court

Part I – Committal to the Crown Court

The 5 Committal Routes

- I. Homicide offences
- II. Certain firearm offences
- III. Jointly charged with an adult
- IV. Grave Crime, i.e. where a s91 sentence is possible
- V. Dangerousness, i.e. where a dangerous offender sentence is likely

Grave Crime and Dangerousness: The Law in Conflict

- Grave Crime: Magistrates Court Act 1980 s24.

“(1) Where a person under the age of 18 years appears or is brought before a magistrates court on an information charging him with an indictable offence ... he shall be tried summarily unless-

(a) the offence is such as is mentioned in subsection (1) or (2) of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (under which young persons convicted on indictment of certain grave crimes may be sentenced to be detained for long periods) and the court considers that if he is found guilty of the offence it ought to be possible to sentence him in pursuance of subsection (3) of that section¹ ...

and accordingly in a case falling within paragraph (a) ... of this subsection the court shall commit the accused for trial if either it is of opinion that there is sufficient evidence to put him on trial, or it has power under section 6(2) above so to commit without consideration of the evidence.”

- Dangerousness: Crime and Disorder Act 1998 s51A.

“(2) Where a child or young persons appears or is brought before a magistrates court ... charged with an offence and any of the conditions mentioned in subsection (3) below is satisfied, the court shall send him forthwith to the Crown Court for trial of the offence.

(3) Those conditions are-

...

(d) that the offence is a specified offence (within the meaning of section 224 of the Criminal Justice Act 2003) and it appears to the court that if he is found guilty of the offence the criteria for the imposition of a sentence under section 226(3) or 228(2) of that Act would be met².”

¹ In *R (H) v Southampton Youth Court* [2005] 2 Cr App R (S) 171 the High Court stated that “the court should ask itself whether there is a real prospect” that a sentence in excess of two years might be required.

² S226 deals with detention for life or detention for public protection (the indeterminate sentences for serious specified offences) and s228 deals with the determinate extended sentence for non-serious specified offences.

- The conflict:
 - (i) What happens when the court considers that the grave crime provisions do not apply, but does consider that a dangerousness sentence is likely? S24 suggests the matter must be tried summarily, s51A suggests the matter must be sent to the Crown Court.
 - (ii) This problem is particularly acute where the offence charged could be both a grave crime and a dangerousness crime. Which procedure should the court follow, bearing in mind the different criteria that apply?³

A Solution to the Conflict? CPS v South East Surrey Youth Court

- In *CPS v South East Surrey Youth Court* [2006] Cr App R (S) 26 the High Court set down five factors courts should consider:
 - “(i) the policy of the legislature ... is that those who are under 18 should, wherever possible, be tried in a youth court, which is best designed for their specific needs;
 - (ii) the guidance given by the Court of Appeal ... in *Lang & Others*⁴, particularly in relation to non-serious specified offences.
 - (iii) the need, in relation to those under 18 to be particularly rigorous before concluding that there is a significant risk of serious harm by the commission of further offences: such a conclusion is unlikely to be appropriate in the absence of a pre-sentence report ...
 - (iv) in most cases where a non-serious specified offence is charged, an assessment of dangerousness will not be appropriate until after conviction, when, if the dangerousness criteria are met, the defendant can be committed to the Crown Court for sentence ...
 - (v) [deals with factors to be taken into account when a youth is jointly charged with an adult]”
- The position thus appeared to be that the grave crimes test should be applied and dangerousness considerations postponed until after conviction.⁵

Further Complications: B v Barking Youth Court

- In *B v Barking Youth Court* [2006] EWHC 2121 (Admin) the High Court declined to interfere with a decision on first appearance to send a young defendant to the Crown Court, despite the lack of reports of any kind.
- The reasoning appeared to be that the offence charged was a serious specified offence and that there were like offences on the defendant’s antecedents.

³ It should be borne in mind that s226 allows the court to choose between detention for public protection (the indeterminate sentence) and a determinate extended sentence where a serious specified offence has been committed and the dangerousness provisions are satisfied. This is in contrast to the adult provisions where imprisonment for public protection is mandatory. Thus, a court could decide a sentence of over 2 years is unlikely, but a dangerousness sentence of under that length is likely.

⁴ [2006] 2 Cr App R (S) 3

⁵ This seems rather to fly in the face of the language of s51A that a defendant should be sent for *trial*, as opposed to sentence.

- The court suggested that defence advocates should be in a position to assist the court at first appearance with material via which dangerousness can be assessed.

A Practical Approach

The best approach that can be divined from the above law is the following:

- The grave crime test should be considered first.
- If the offence charged is not a grave crime, or the magistrates do not feel it should be sent to the Crown Court then the dangerousness provisions can be looked at.
- The defence submission should be that dangerousness should be looked at the end of the trial, if the defendant is convicted.
- However, defence lawyers should be aware of the risk that magistrates could send a case to the Crown Court on first appearance, particularly where the offence charged is a serious specified offence and there is a record of similar offending in the past.

Grave Crime Committals and s25

- Section 25 of the Magistrates Court Act 1980 states as follows:
“(5) Where a person under the age of 18 years appears or is brought before a magistrates court on an information charging him with an indictable offence ... and the court-
...
 (b) has begun to inquire into the case as examining justices on the footing that the case does so fall [within the grave crime provisions of s24] ... subsection (7) ... shall have effect.
...
 (7) If, in a case falling within subsection (5)(b) above), it appears to the court at any time during the inquiry that the case is after all one which under the said section 24(1) ought to be tried summarily, the court may proceed to try the information summarily.”
- In *R (R) v Manchester City Youth Court* [2006] EWHC 564 Admin the High Court made it clear that the youth court has the power to re-visit its earlier decision even where there has been no material change in circumstances. So why not have a second bite of the cherry at the committal hearing?

Part II – Trial in the Crown Court

The Consolidated Criminal Practice Direction

- Part III.30 deals with how trial procedure should be amended in cases involving young defendants.⁶
- There is one overriding principle: to take all necessary steps to assist a young defendant to understand and participate in the proceedings.

⁶ This replaces Part IV.39, which contained broadly similar provisions.

- Part III.30.9 – III.30.17 contain specific examples of measures that can be taken. Part III.30.5 is clear that these matters should be considered at the plea and case management hearing.
- The general aim of this part seems to be to make Crown Court trial as similar as possible to trial in the Youth Court.
- Examples of this include III.30.10 (defendant sitting with family members), III.30.14 (robes and wigs shouldn't be worn unless there is a good reason to do so) and III.30.15 (restricting the attendance of members of the public).
- Defence lawyers should be alert to raise these issues at the PCMH.
- There is also the possibility of appeal on the basis that the young defendant hasn't been able to take an effective part in proceedings and the conviction is therefore unsafe.

Part III – Sentencing

Available Sentences

- The starting point is that, along with its s91 sentencing powers, the Crown Court has exactly the same sentences available to it as the Youth Court.
- The Crown Court also has the power to remit cases back to the Youth Court for sentence. (Powers of Criminal Courts (Sentencing) Act 2000, s8(2).

The Youth Who Has Turned 18

- The crucial date for sentencing purposes is the date of conviction. It is the defendant's age on that date that determines what sentences are available.
- This principle is qualified somewhat by s29 of the Children and Young Persons Act 1963:

“Where proceedings in respect of a young person are begun for an offence and he attains the age of 18 before the conclusion of the proceedings, the court may deal with the case and make any order which it could have made if he had not attained that age.”

In *Aldis v DPP* [2002] 2 Cr App R (S) 400 the High Court confirmed that this allowed the Youth Court to sentence an 18 year old to a detention and training order where he had turned 18 before conviction and sentence.

- Even where the defendant has turned 18 between the commission of the offence and the beginning of proceedings the Court should consider what the position would have been had the defendant been 17. In *Ghafoor* [2003] 1 Cr App R (S) 84 the Court of Appeal said:

“The starting point is the sentence that the defendant would have been likely to receive if he had been sentenced at the date of the commission of the offence. ... in our judgment there have to be good reasons for departing from the starting point.”

- Given the youth justice systems explicit emphasis on rehabilitation above other sentencing aims this provides good reason for the imposition of community sentences in the Ghafoor situation.

The Referral Order

- Where a young defendant of good character pleads guilty a referral order is compulsory, unless a custodial sentence is appropriate.
- Where a defendant has turned 18 during the course of proceedings it could be argued that through a combination of s29 of the Children and Young Persons Act 1963 and *Ghafoor* the appropriate sentence is a referral order.
- This would avoid a potentially far more onerous community order.
- It should also be borne in mind that a conviction based on a referral order becomes spent on completion of the order whereas for a community order the relevant period is 5 years.

TIM BOSWELL
13 King's Bench Walk,
Temple EC4

Sentencing Table

<u>Sentence</u>	<u>Range of Age Sentence is Available For</u>
Absolute discharge	10+
Conditional discharge	10+
Referral Order	10 – 17
Action Plan Order	10 – 17
Attendance Centre Order	10 – 17
Exclusion Order	10 – 17
Reparation Order	10 – 17
Curfew Order	10 – 17
Supervision Order	10 – 17
Community Punishment Order	16 – 17
Community Rehabilitation Order	16 – 17
Community Punishment & Rehabilitation Order	16 – 17
Drug Treatment & Testing Order	16 – 17
Community Order under CJA 2003	18+
Detention & Training Order	12 – 17
S91 Detention	10 – 17
Detention for Public Protection (s226 CJA 2003)	10 – 17
Extended Sentence of Detention (s228 CJA 2003)	10 – 17
Detention in a Young Offender Institution	18 – 20
Imprisonment	21+

Notes

1. Subject to the s29 of the Children & Young Persons Act 1963 the relevant date for assessing age is the date of conviction.
2. The above table reflects the current law. Pending amendments will make community orders under the CJA 2003 available for all offenders aged 16 or over. With exception of referral orders other youth community orders will cease to be available for over 16's.