

Justice Committee inquiry on Coronavirus (COVID-19): The impact on prison, probation and court systems from the Children’s Rights Alliance for England and the Youth Justice Legal Centre, part of Just for Kids Law

1. Just for Kids Law is a charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted, and their voices heard and valued. The Children’s Rights Alliance for England (CRAE) and the Youth Justice Legal Centre (YJLC) are part of the Just for Kids Law family.
2. The Youth Justice Legal Centre has continued to run its free national advice line providing legal knowledge and expertise about children’s rights in the criminal justice system to lawyers, families, children and other professionals throughout the Covid-19 pandemic. We have also written to the Home Office, the National Police Chiefs Council and MET detention about our concerns for the arrest and detention of children at this time. Just for Kids Law has continued to represent children at the police station and court through its own specialist crime team.
3. Below we have set out our two key concerns around the impact of Covid-19 on the courts for children in the criminal justice system as follows:
 - **Increased use of video link hearings involving child defendants**
 - **Increased delays as a result of Covid-19**

Increased use of video link hearings involving child defendants

4. We are extremely concerned that the increase in video link hearings for child defendants, both during the coronavirus and subsequently, severely compromises a child’s rights to a fair trial and their ability to effectively participate.
5. As is well known, children in the criminal justice system are some of the most vulnerable in society and often have high rates of learning and communication disability, more than half are from deprived households, many with absent parents, have spent time in care, have high levels of special educational needs etc, all which make it more difficult for children to effectively participate in court proceedings. The findings of reviews of the youth justice system have identified the same.¹ The use of video link adds a significant extra layer of difficulty.

¹ Charlie Taylor/Ministry of Justice (2016) *Youth Justice Review: final report*; Lord Carlile of Berriew/National Children's Bureau (2014) *Independent parliamentarians' inquiry into the operation and effectiveness of the youth court*; [In Care, Out of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system, an independent review chaired by Lord Laming \(2016\)](#).

6. Whilst we accept that these are unprecedented times and that there will be occasions where the use of virtual court is necessary, these occasions should be limited and every decision to undertake a virtual hearing undertaken with extreme caution. It is difficult to say what types of hearings could be held over video link (in these limited circumstances) but on every occasion consideration should be given to whether it is likely to result in the child being released more quickly, what decisions will be made about the child or the case at the hearing and whether holding the hearing via video link is in the best interests and welfare of the child.²
7. As a minimum we consider that lawyers should be either physically present with the child or, at the very least, able to have a video conference with the child during this time. The importance of building rapport and trust with a child, recognising non-verbal cues and identifying communication, social or learning difficulties are all impeded by the use of video link. The default position should be that children should never appear via video link for non-administrative hearings.
8. In the recent case of *T1 v Bromley Youth Court [2020] EWHC 1204 (Admin)*, taken by Just for Kids Law, a District Judge's decision not to grant an intermediary to a 14 year old boy with learning difficulties facing trial in the youth court, was quashed by the High Court where they highlighted that the youth court is '*designed to deal with trials of young offenders, particularly those under 15: see DPP v South Tyneside Youth Court [2015] EWHC 1455 (Admin)*. It is accustomed to dealing with vulnerable young people with complex needs since sadly very many of those who appear in the Youth Court fit that description. However, that does not mean that the judge in the Youth Court cannot be assisted by another professional such as an intermediary if the needs of the individual require such assistance. As was emphasised in *Thomas*, the circumstances of the individual must be assessed.'³ Protections such as these for vulnerable children with communication issues risk being greatly obstructed by the increased use of remote hearings.

9. The Criminal Practice Directions states as follows:

Youth defendants

3N.13 In the youth court or when a youth is appearing in the magistrates' court or the Crown Court, it will usually be appropriate for the youth to be produced in person at court. This is to ensure that the court can engage properly with the youth and that the necessary level of engagement can be facilitated with the youth offending team worker, defence representative and/or appropriate adult. The court should deal with any application for use of a live-link on a case-by- case basis, after consultation with the parties and the youth offending team. Such hearings that may be appropriate,

² All courts have a duty to consider the welfare of any child before them, whether as a witness, victim or defendant: "Every court in dealing with a child... shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training." See s44(1) Children and Young Person's Act 1933 and Article 3(1) United Nation Convention on the Rights of the Child which states that the best interests of the child are a primary consideration for all public bodies, including courts.

³ *T1 v Bromley Youth Court [2020] EWHC 1204 (Admin)*, para 38

*include, onward remand hearings at which there is no bail application or case management hearings, particularly if the youth is already serving a custodial sentence.*⁴

10. In April 2018, The Standing Committee for Youth Justice produced a report on child defendants and video links⁵ which found that the use of video link has a negative impact on children's ability to participate and outlined a number of specific concerns including a detrimental impact on child's ability to understand and participate, how a child's behaviour may be misinterpreted by the court and increased likelihood that a child is remanded into custody or found guilty.
 11. Similar concerns have been highlighted in a recent report on the evaluation of a tool which enables first appearance remand hearings in the magistrates' court with the defendant appearing by video link.⁶ Whilst the Report does not specifically assess the use of video courts in the context of youth proceedings, a number of findings for adult proceedings could well apply or be exacerbated in the context of youth proceedings. The data is complex but highlights some overarching issues with the use of video courts. The findings relating specifically to decreased legal representation, loss of face-to-face contact and potential barriers to building of trust with defendants in the virtual court context should be noted as key concerns in the context of video hearings involving child defendants.
 12. It is important that data on the use of video links with children during covid-19 is collected and monitored as well as independent research on children's ability to participate and the types of justice outcomes they receive.
- **Increased delays as a result of Covid-19**
13. It is vital that criminal cases involving child defendants are heard as close to the date of offence as possible. The Covid-19 pandemic has exacerbated a system that was already struggling with long delays between offence and trial date. The CPS Young Offenders guidance states as follows:

*All cases involving youth offenders must be dealt with expeditiously and avoid delay, which has at its core the principle that there is little point in conducting a trial for a young offender long after the alleged commission of an offence when the offender will have difficulty in relating the sentence to the offence. To maximise the impact on the youth offender, the case must be dealt with as soon as possible.*⁷

⁴ Criminal Practice Directions - October 2015 as amended April 2016, November 2016, January 2017, April 2018, October 2018, April 2019, October 2019 & May 2020

⁵ The Standing Committee for Youth Justice; *'They just don't understand what's happening or why: A report on child defendants and video links'* April 2018

⁶ The University of Surrey; *Video Enabled Justice Programme: University of Surrey Independent Evaluation* (March 2020)

⁷ CPS Guidance *'Young Offenders'*

14. We welcome the CPS interim case review guidance which also applies to children when considering the Code for Crown Prosecutors particularly whether **prosecution is a proportionate response**, but we are concerned that the outstanding backlog of cases involving children will drastically impact children's rights. It is vital that more is done to ensure cases are heard expeditiously and a formal criminal justice response is taken only where absolutely necessary given the inevitable delays. These are unprecedented times that call for a review of the approach taken to child defendants. The UNCRC stresses that wherever possible children should be dealt with outside the criminal justice system.⁸
15. We have been alarmed to hear of many cases, for those children both on remand and bail, being adjourned to dates in late 2021. This will obviously have significant and long-term implications for a child's well-being.

Conclusion

16. It is imperative that, during the coronavirus pandemic, assurances are given that video link hearings will only take place for child defendants in the most limited of circumstances and where appropriate, recognising the severe implications for their ability to effectively participate and to receive a fair trial/sentence that reflects their emotional and chronological age as well as inherent vulnerabilities. The default position should remain that children should never appear via video link for non-administrative hearings.
17. Lastly, we encourage a progressive approach to all CPS reviews and decisions to charge children, based on existing evidence around the already damaging effects of their entry to the formal criminal justice system and in full awareness that existing delays in the system are now likely to be greatly intensified by the covid-19 pandemic for the foreseeable future. We would support greater focus on diversionary work and the use of out of court disposals and other welfare support for children who commit offences.

⁸ United Nations Convention on the Rights of the Child Art 40 3(b) *'Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.'*