

## **NOTE FROM THE JUDICIAL LEAD FOR YOUTH JUSTICE FOR ENGLAND AND WALES**

This note has been prepared after consultation with the Lord Chief Justice, the President of the Queen's Bench Division, the Chairman of the Sentencing Council and the Senior and Deputy Presiding Judge. It has their support and approval.

This note has also been considered by the Chief Magistrate, Duncan Webster (National Leadership Magistrate) and John Bache (Chairman of the Magistrates' Association).

All those concerned with dealing with defendants under the age of 18 who appear before the court charged with an offence which can be tried on indictment and who are charged jointly with one or more adults will be well versed in the allocation exercise then required, *i.e.* application of the interests of justice test. For ease of reference, I set out the guidance provided by the Sentencing Council both in the allocation guideline within the Magistrates' Courts Guideline and in the Guideline for Sentencing Children and Young People.

*The proper venue for the trial of any youth is normally the youth court. Subject to statutory restrictions, that remains the case where a youth is charged jointly with an adult.*

*This guideline does not provide information on the complex statutory framework for dealing with a youth jointly charged with an adult: consult your legal adviser for advice.*

*The following guidance must be applied in those cases where the interests of justice test falls to be considered:*

- 1. If the adult is sent for trial to the Crown Court, the court should conclude that the youth must be tried separately in the youth court unless it is in the interests of justice for the youth and the adult to be tried jointly.*
- 2. Examples of factors that should be considered when deciding whether it is in the interests of justice to send the youth to the Crown Court (rather than having a trial in the youth court) include:*
  - whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999);*

- *the age of the youth: the younger the youth, the greater the desirability that the youth be tried in the youth court;*
  - *the age gap between the youth and the adult: a substantial gap in age militates in favour of the youth being tried in the youth court;*
  - *the lack of maturity of the youth;*
  - *the relative culpability of the youth compared with the adult and whether the alleged role played by the youth was minor;*
  - *the lack of previous convictions on the part of the youth.*
3. *The court should bear in mind that the youth court now has a general power to commit for sentence following conviction pursuant to Section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended). In appropriate cases this will permit the same court to sentence adults and youths who have been tried separately.*

The factors set out in paragraph 2 as relevant for consideration in deciding whether it would be in the interests of justice to send the youth to the Crown Court are not said to be exhaustive. Equally, they are intended to cover all factors which are likely to arise.

The guidelines were not written in anticipation of a public health emergency which would lead to trials in the Crown Court being put on hold followed by a resumption of such trials on a substantially reduced basis. The consequence of the current emergency is that the backlog of trials in the Crown Court has grown significantly and it continues to grow as more cases are sent to the Crown Court. The capacity of Crown Courts to try cases involving two defendants is limited. Thus far, it has proved very difficult to try cases involving multiple defendants.

Cases where a youth is jointly charged with an adult by definition involve at least two defendants. Very many of those cases will involve three, four and more defendants. For the reasons set out above, any such case sent to the Crown Court is highly likely to be subject to significant delay. Every possible step is being taken to ameliorate the position. However, it has to be recognised that delays will continue at least for the time being.

There is also still a backlog of bail cases in the youth court in a few courts. It is nothing like as significant as that in relation to jury trials in the Crown Court and progress is being made in bringing youth cases on for trial.

Whilst that remains the position, there is an obvious additional factor to be considered when applying the interests of justice test, and which is already being considered by many of those applying that test, namely the likely delay in trying the youth in the Crown Court as compared to the Youth Court. This will not be determinative any more than any of the other factors are. But it must be an important factor whilst the position as it currently is in the Crown Court continues. It may lead to youths being tried separately in the Youth Court, whereas previously they would have been sent for trial to the Crown Court jointly with the adult defendant(s). This is because the disadvantages of delay in trying the youth or youths may outweigh any injustice of separate trials.

Mr Justice William Davis

29 July 2020