



Children in the Justice System Seminar Series

April - May 2020



GARDEN COURT CHAMBERS



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Ending Indefinite Pre-Trial Detention of Children

Kate Aubrey-Johnson, Barrister, Garden Court Chambers (Chair)

Michael Goold, Barrister, Garden Court Chambers

Audrey Cherryl Mogan, Barrister, Garden Court Chambers

Dr Laura Janes, Legal Director, Howard League for Penal Reform



GARDEN COURT CHAMBERS



TOP TIER SET
2020



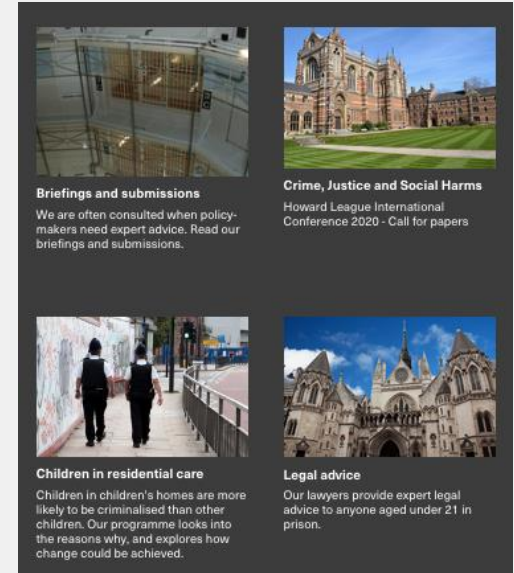
28 April 2020




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Some context from the Howard League for Penal Reform

- The Howard League
 - England and Wales, since 1866
 - Less crime, safer communities, fewer people in prison
 - Policy, research, direct legal work for young people
 - Membership organisation - no government funding
- Children and young people (21 & under) in custody, since 2002
 - Confidential advice line on prison PINS every week day morning:
0808 801 0308
 - Access to justice service for professionals
 - Legal representation, participation work and safeguarding
- See howardleague.org for more information



 @thehowardleague

 @@LauraJanes_UK

Who are the children in prison? 2002

“[11].. Over half of the children in YOIs have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature. A very large percentage have run away from home at some time or another. Very significant percentages were not living with either parent prior to coming into custody and were either homeless or living in insecure accommodation. Over half were not attending school, either because they had been permanently excluded or because of long-term non-attendance. Over three-quarters had no educational qualifications. Two-thirds of those who could be employed were in fact unemployed. Many reported problems relating to drug or alcohol use. Many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide.”

- *The Queen (On the Application of the Howard League for Penal Reform) v The Secretary of State for the Home Department v Department of Health [2002] EWHC 2497 (Admin)*



Who are the children in prison today?

- There were concerns relating to suicide or self-harm (31%), physical health (30%), mental health (33%), learning disabilities or difficulties (32%) for around one third of admissions to custody between April 2014 and March 2016.

Source: Ministry of Justice (2017) Key Characteristics of Admissions to Youth Custody April 2014 to March 2016. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf

- Around half the children in custody are Black, Asian and Minority Ethnic (BAME) (the proportion has doubled since 2007/08 when 26% of the child custody population was BAME, compared with 49% in 2018/19).

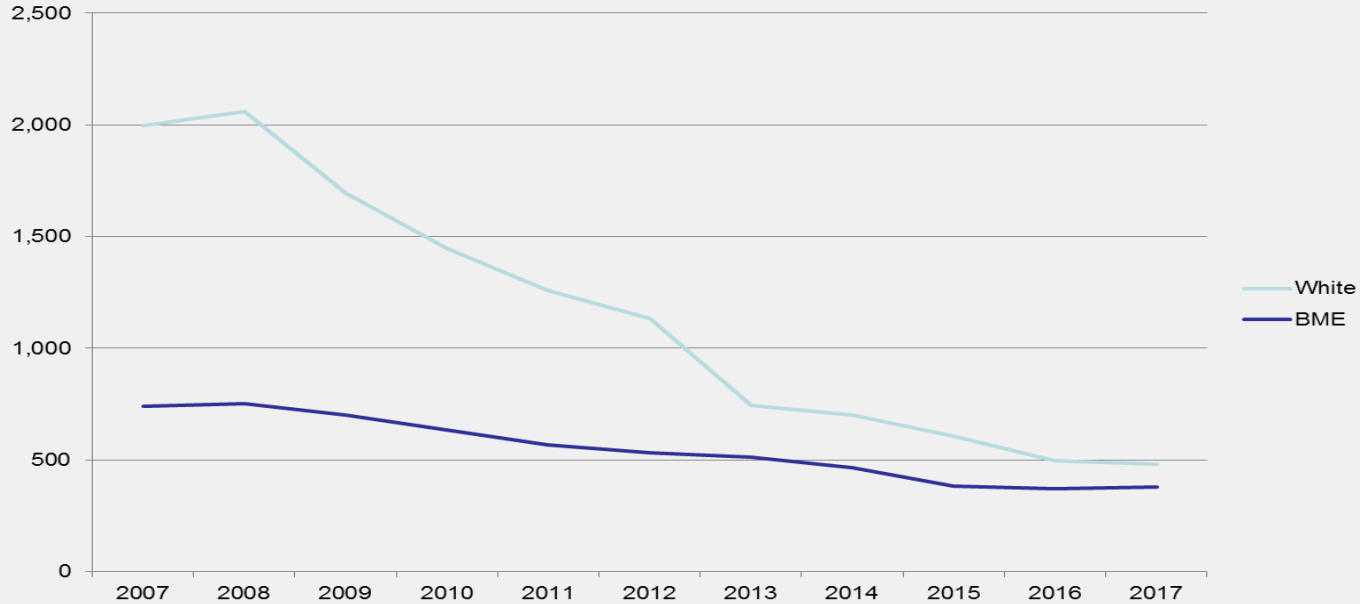
Source: House of Commons Library Briefing: Youth Custody, 31 January 2020, p9 , <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8557>

- Between a third and half of children in custody report having been in the care of their local authority for their own welfare prior to custody.

Source: HMIP, Children in Custody 2017–18, 2019, pages 19, 29, https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/01/6.5164_HMI_Children-in-Custody-2017-18_A4_v10_web.pdf



Reduction in numbers of white & BME children in prison



Remands

- Two thirds(66%) of children given a remand to youth detention accommodation did not subsequently receive a custodial sentence in the year ending March 2019.

Source: Youth Justice Board / Ministry of Justice, Youth Justice Statistics 2018/19, published 30 January 2020
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf

- The proportion of unsentenced children in custody is at an all time high: in February 2020, 293 (34%) of 856 young people in the Youth Secure Estate were remanded. This is the highest number of remands in any month since April 2015 when remanded children represented just 22 per cent of the Youth Secure Estate.

Source: HMPPS, Youth custody report: February 2020,
<https://www.gov.uk/government/statistics/youth-custody-data>

- Around half the children in custody are Black, Asian and Minority Ethnic (BAME) (49% in 2018/19).

Source: House of Commons Library Briefing: Youth Custody, 31 January 2020, p9,
<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8557>

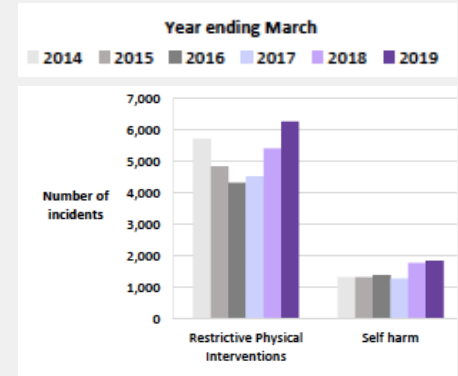
- In Feltham and Cookham Wood prisons, around one third of children who remanded are White.

Source: Response to Freedom of Information Act (FOIA) Request – 200209004, 23 April 2020



Conditions in prison for children generally

- The number of children entering the criminal justice system is decreasing but self harm rates and restraints of children in prison are increasing
- In 2019, HMIP reported that between 1 April 2017 and 31 March 2018, 40 per cent of the boys in YOIs and over a third (34 per cent) of the children in secure training centres (STCs) did not feel safe at some point.
- Concerns about solitary confinement and restraint
 - April 2018: BMA and others condemned the ‘solitary confinement’ of children, warning that for children the risk of long-term psychiatric and developmental harm is increased.
 - April 2019: JCHR children’s rights were being breached in respect of the widespread use of solitary confinement and restraint .
 - January 2020: HMIP found that “many children separated from their peers in ...YOIs... are effectively held in harmful solitary confinement, with little human contact and in conditions which risk damaging their mental health.”
- Sources available at <https://howardleague.org/wp-content/uploads/2020/04/Children-in-prison-during-the-Covid-19-pandemic.pdf>



Source: Youth Justice Board / Ministry of Justice, Youth Justice Statistics 2018/19, published 30 January 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862078/youth-justice-statistics-bulletin-march-2019.pdf



Conditions in prison for children during Covid-19

- The regime in prisons has been severely restricted, in line with government policy: “The usual regime in prisons has been paused temporarily to apply social distancing. ...This means prisoners can no longer take part in recreational activities such as the gym, worship or visiting the library.”
- Children in YOIs are spending 23 or more hours a day alone in their cells. Most children being placed in prolonged solitary confinement (15 days of confinement to cell for 22 – 24 hours a day). The Supreme Court has noted can cause irreversible psychological harm (*Bourgass*).
- There are no face to face visits.
- In prisons:
 - Virtually no face to face education – work sheets under the door in some prisons – no support and not tailored to age and stage
 - No therapy or offending behaviour courses – either group or individual
- Children are experiencing particular difficulties in accessing the support they need to plan for release as professionals struggle to complete assessments and referrals.
- See the Howard League 2 page briefing
- <https://howardleague.org/wp-content/uploads/2020/04/Children-in-prison-during-the-Covid-19-pandemic.pdf>



Legislative Framework for Youth Detention

1. OVERARCHING PRINCIPLES

UN Convention on Rights of the Child

Art 3(1) – *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*

Art 37(b) – *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*



S.44 Children and Young Person's Act 1933

Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, 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.

S.11 Children Act 2004

Requires police host of other bodies to make arrangements to ensure that “their functions are discharged having regard to the need to safeguard and promote the welfare of children”.



Youth Sentencing Guidelines

Not strictly applicable to bail, but useful analogous principles

Important to avoid criminalising children and young people unnecessarily (para 1.4)

Custodial sentences are a matter of last resort (para 6.42)



2. POLICE BAIL

Same test for granting bail as courts

S.38(6) PACE 1984: if police remand in custody, child must be transferred to local authority accommodation or secure accommodation, unless:

- i. Custody sergeant certifies it is impracticable to do so, or
- ii. Child is 12 or over, no secure accommodation is available and local authority accommodation wouldn't protect public from serious harm from kid.

S.21 Children Act 1989 creates a parallel obligation on local authorities to accommodate children when a s.38 PACE request is made.

This duty is routinely breached. Police often do not make such requests of local authorities. Even when police do make a request it is frequently not met by the local authority, particularly where secure accommodation is required.

R (M) v Gateshead MBC [2006] EWCA Civ 221 – s.21 only creates a duty for local authorities to put in place a reasonable system to deal with requests under s.38(6).

R (AR) v Waltham Forest LBC [2020] EWHC 622 (Admin) – claim dismissed, despite LA having accommodated none of previous 17 requests for secure accommodation. The LA had no secure accommodation themselves and so the system they had, which involved signing up to a pool of secure beds across different LAs, was reasonable (even if in practice it never resulted in beds being available).

Lack of resources is a key issue here.



3. COURT BAIL

Granting Bail

Starting point for bail, as with adult defendants, is the Bail Act 1976.

Presumption in favour of bail (s.4 BA 1976), save for murder and certain serious sex offences if have previous conviction for same (s.25 CJPOA 1994).

Largely the same objections to bail apply, as set out in Sc1, para 2 Bail Act:

- i. commission of further offences
- ii. interference with witnesses or the course of justice
- iii. failure to surrender to custody
- iv. allegation is indictable and defendant was on bail at time of alleged offence
- v. for own welfare (different from adult, where it's only for own protection)



Wide range of conditions can be imposed, as with an adult.

- In addition, parent or guardian can stand surety for compliance with conditions, not just attendance at court (s.3(7) Bail Act).
- Limitations on tagging under s.94 LASPO 2012:
 - Aged 12 or over;
 - Imprisonable offence;
 - Offence is violence, sexual or terrorism OR child has a recent history of committing imprisonable offences while on bail or custodial remand;
 - YOT agrees it is suitable;
 - Tagging arrangements are available in the area.

R (B) v Brent Youth Court [2010] EWHC 1893 (Admin) – s.44 CYPA 1933 may require a court to allow additional bail apps.

Remand to Local Authority Accommodation

If remanded, starting point is it's to local authority care (s.91(3) LASPO 2012). That is the only option for 10 and 11 year olds.

Dealt with at ss.92 to 97 LASPO 2012

The court designates the LA which must care for the child. In the case of a looked after child, it must be the LA already looking after child. Otherwise, it must be the LA that appears to the court to cover the area where the child habitually resides, or where the alleged offence was committed (s.92(3) LASPO 2012).

A child remanded to local authority accommodation becomes a looked after child.

Remand to Youth Detention Accommodation

Dealt with at ss.98 to 102 of LASPO 2012.

Remand to YDA means a remand to one of the following (s.102(2) LASPO 2012):

- Secure children's home
- Secure college
- Secure training centre
- Young offenders' institute
- Some other form of accommodation specified by an order under 107(1)(e)

This is the most complicated area of the law around youth bail, as there are a number of different criteria and factors to consider.

A child remanded to youth detention accommodation becomes a looked after child - s.101(1).

There are two separate sets of conditions for remand to youth detention. Satisfying either set is sufficient for remand to YDA.

Criteria

Some criteria are common to both sets conditions. In particular, both sets require that:

- the child to be at least 12 years old,
- the child is legally represented, or previously have had representation which was withdrawn due to the child's behaviour or because they didn't qualify for legal aid,
- remand to YDA is necessary either:
 - to protect the public from death or serious injury occasioned by further offences from the child, OR
 - to prevent the commission by the child of further imprisonable offences

In addition, the **first set of conditions** (the “offence conditions”) require the following:

- the offence is a violent, sexual or terrorism offence OR is punishable for an adult with 14 years’ custody or more

The **second set of conditions** (the “history conditions”) require the following:

- it appears to the court there is a real prospect of a custodial sentence for the child if convicted
- the offence is imprisonable, and
- either:
 - the child has a recent history of absconding whilst remanded in custody and the current offence is alleged to have been committed whilst the child was remanded in custody, OR
 - the alleged offence together with any previous convictions for imprisonable offences amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand



To be eligible for a remand to youth detention accommodation (domestic cases), a child must:

Step 1

Be aged between 12-17*

Step 2

AND

Satisfy the legal representation conditions

AND EITHER

Step 3

1st set of conditions

(a) Have been charged with a violent or sexual offence (OCCN)

OR

(b) Have been charged with an offence (OCCN) where an adult may receive a custodial sentence of 14 years+

OR

2nd set of conditions

(a) The 1st history condition

Have a recent history of absconding while remanded to YDA or LAA and are charged with or convicted of an offence (OCCN) which was committed while remanded to LAA or YDA.

OR

(b) The 2nd history condition

Have been charged with or convicted of an offence (OCCN) which, when taken with previous imprisonable offences (convicted), amounts (or would amount if convicted) to a recent history of committing imprisonable offences while on bail or remand to LAA or YDA

AND

There is a real prospect of them receiving a custodial sentence for the OCCN

AND EITHER

Step 4

(a) It is necessary to protect the public from death or serious personal injury

OR

(b) It is necessary to prevent the commission by the child of further imprisonable offences

Key

OCCN - the offence(s) the court is considering now

LAA - local authority accommodation

YDA - youth detention accommodation



No Safe Place for Children & Young People

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Temporary ban place on new inmates to troubled Feltham youth jail

24 July 2019



Prison officers injured in violence at Feltham young offenders centre

Incident comes after inspector found 'extraordinary decline' in safety and care at institution



arah Marsh

@sloumarsh
28 Dec 2019 10:48 GMT

'Urgent action' needed to improve inmate safety in youth offender institutions, warn council leaders

'This situation would not be acceptable for any other public institution charged with the care of children, and it should not be acceptable for prisons,' says Local Government Association

May Bulman social Affairs Correspondent | @maybulman |
Friday 22 September 2017 00:11 |



-
- 293 children on remand
 - Prolonged solitary confinement
 - No face to face visits
 - No education, activities or therapy



Change of Circumstance

- COVID-19 pandemic
- Indefinite delay of all trials
- Restrictions on movement
- Inadequate prison conditions
 - Unsanitary conditions
 - Violence
- Concern for family members



Questions to consider

- Underlying physical health issues
- Mental health issues
- Family members with health issues
- Management in the community
- The Prison and Young Offender Institution (Coronavirus) (Amendment) Rules 2020 – which does not apply to children on remand but recognises need to reduce strain on prison population



Black & Ethnic Minority Youth (BAME)

- 2019 – 51% **more than half** of children in custody BAME
- Disproportionate use of remand – Around one third (34%) of all remand episodes involved BAME children, and this figure rises to 48% for remands to youth detention accommodation
- The Nationality Requirement
- Stop & Search
- The Gang Matrix
- Disproportionate impact of COVID-19
- Suitable alternative accommodation
- Overrepresentation of looked after children



Coronavirus - Bail and custody time limits protocol for protecting the rights and lives of prisoners and their families

TUESDAY 24 MARCH 2020



LUCIE WIBBERLEY



VICTORIA MEADS



PATRICK ROCHE



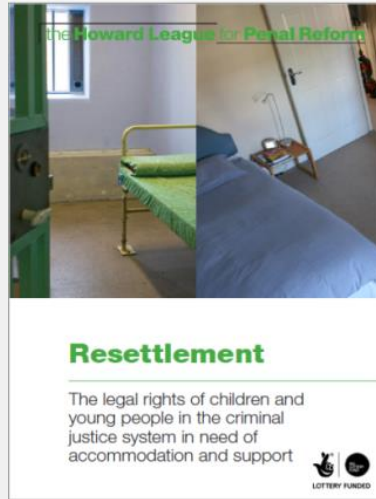
KEIR MONTEITH QC

The time to act is now. We all have a role to play.



An effective bail package – accommodation & support

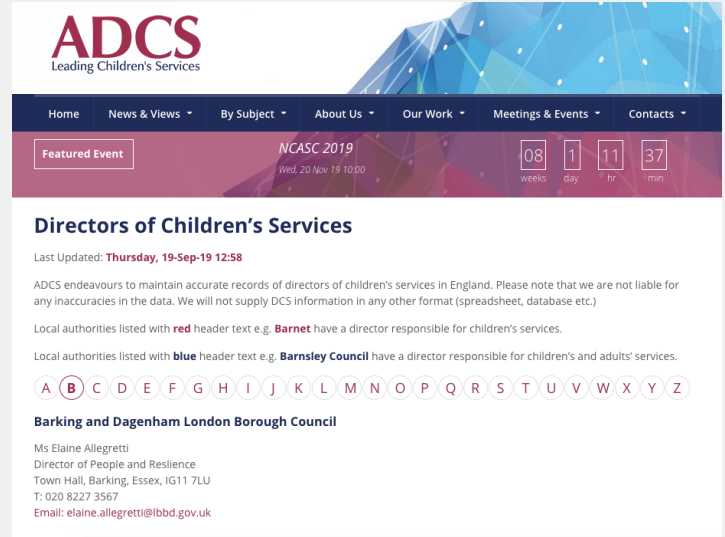
- A package of accommodation and support can be the key – unlock the legal duties owed



- Available <https://howardleague.org/publications/resettlement/> and https://howardleague.org/wp-content/uploads/2020/01/Resettlement-toolkit_2020_01_21-PG.pdf
- NEW – Bail pack – with templates

Contacting children's services

- Write to the director for children's services setting out concerns
- Open a community care case – legal aid EXISTS, representations followed by judicial review... if necessary
- <https://adcs.org.uk/contacts/directors-of-childrens-services#view2>



The screenshot shows the ADCS (Association of Directors of Children's Services) website. The header includes the ADCS logo and navigation links: Home, News & Views, By Subject, About Us, Our Work, Meetings & Events, and Contacts. A featured event banner for 'NCASC 2019' is displayed, showing the date 'Wed, 20 Nov 19 10:00' and a countdown timer for 08 weeks, 1 day, 11 hr, and 37 min. The main content area is titled 'Directors of Children's Services' and includes a 'Last Updated: Thursday, 19-Sep-19 12:58' timestamp. The text states that ADCS endeavours to maintain accurate records of directors of children's services in England and is not liable for inaccuracies. It lists local authorities with red headers (e.g., Barnet) and blue headers (e.g., Barnsley Council). A navigation bar with letters A-Z is present, with 'B' highlighted. The page details for 'Barking and Dagenham London Borough Council' are provided, including the name of the Director of People and Resilience, Ms Elaine Allegretti, and her contact information.



Community care lawyers

- If your firm has a community care contract, use it
- If not, help the child find a solicitor via Law Society or CCCYP

The screenshot shows the Law Society's 'Find a solicitor' search results page. The search criteria are 'Social welfare, health' and 'England'. The results show 'Abbotts Martin Ltd' as the top result. The page includes a search bar, filters for 'Your legal issue', and a list of results with details for the selected firm.

Find a solicitor

Quick search **Pro search**

Your legal issue: Social welfare, health Location of legal adviser: Postcode, town, city or country Search

Found 27, displaying 20

Abbotts Martin Ltd Add to shortlist

Head office
Address: Shakespeare Business Centre, 245a Coldharbour Lane, London, SW9 8RR, England
Tel: 02078460285

This organisation has 1 office | There are 3 solicitors at this organisation

1 total accreditations

The screenshot shows the homepage of the 'COMMUNITY CARE LAW FOR CHILDREN & YOUNG PEOPLE' website. The page features a blue and white color scheme with a central image of a house made of blue grid paper. The text 'ABOUT US' is prominent, along with a 'READ MORE' button. The navigation menu includes 'About us', 'Contact', 'Events', and 'Find Legal Support'.

COMMUNITY CARE LAW FOR CHILDREN & YOUNG PEOPLE

About us Contact Events Find Legal Support

ABOUT US
More about the network we are creating.
READ MORE

- <https://solicitors.lawsociety.org.uk/> and <https://cccyplaw.org.uk/>

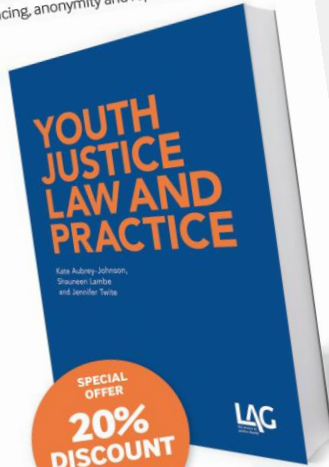
Special Book Offer

Youth Justice Law and Practice

Kate Aubrey-Johnson, Shauneen Lambe and Jennifer Twite

Youth Justice Law and Practice is a highly accessible and easy to navigate guide to the procedure of the youth court, magistrates' court, Crown Court and Court of Appeal. It focuses on the many procedural differences including bail and remand, jury directions, sentencing, anonymity and reporting restrictions.

- duties owed to children at the police station
- charging decisions and out of court disposals
- bail and remand
- age assessments
- the sentencing framework relating to children
- procedures and modifications to trial relating to children anonymity and reporting restrictions
- welfare considerations and duties
- communication skills
- criminal records
- background and adolescent brain development



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Professor David Ormerod QC (Hon), Law Commissioner for England and Wales

"This book has everything you could need while representing children on a daily basis. It is written by people who clearly care passionately about the children they represent. It is a must-have for those of us dealing with general crime."

New Law Journal

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Youth Justice Law and Practice is essential reading for lawyers and professionals working in the youth justice system, appearing in the youth court and representing children in the adult criminal courts.

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Thank you

020 7993 7600

info@gclaw.co.uk

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