

The Welfare Principle

Every court dealing with a child or young person who is brought before it either as a young 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.44 Children & Young Persons Act 1933**

It shall be the principal aim of the youth justice system to prevent offending (including re-offending) by children and young people” **S.37 Criminal Justice Act 1991**

For European Convention of Human Rights perspective see also:
Thompson & Venables v UK

Examples of appropriate informality

- First Names
- Not in dock, accompanied by appropriate adult(s)
- Disuse of certain words:
“conviction” (replaced by ‘finding of guilt’) and
“sentence” (replaced by ‘order following finding of guilt’)
- Juvenile Oath
“I promise before Almighty God to tell the truth ...”
- Engagement
- Not open to public / Juveniles not to be identified in press or broadcasts.

Jurisdiction

0 -10 No criminal responsibility

10-14 Child

15-17 Young person

18+ Adult

All matters against defendants who are children and young people at the time the court considers jurisdiction, are tried at youth court except:

- Homicide (Must go to Crown Court)
- Cases jointly charged with adults (Adult court to consider whether to sever in interests of justice).
- Grave crimes (carrying 14 years +)
- Indecent / Sexual assault
- “Dangerous” offenders (scheduled violent and sexual offences, where if convicted, D would a significant risk of serious harm to members of the public).

Dangerous offenders

Where a juvenile charged with either a “specified violent offence” (most indictable violent offences) or a “specified sexual offence” (most sexual offences) the court must initially assess whether if convicted he would pose a significant risk of serious harm to members of the public. If so, the youth court must decline jurisdiction (even if 2 years custody would, in its opinion, be sufficient sentencing power) and send the case to the Crown Court.

However power is now severely limited by caselaw.

Grave crimes and sexual assaults

For grave crimes and indecent assault proceed to determine jurisdiction

- Prior to plea (informal indication may be given)
- Court may see previous findings of guilt
- Must decline jurisdiction for ‘Dangerousness’ (although now severely limited by caselaw). For grave crimes must decline jurisdiction if 2 years sentencing power insufficient (even where power not in fact available e.g. 14 year old non-persistent offender).

If Magistrates Court declines jurisdiction under grave crimes provisions defendant is committed to Crown Court for trial

Reprimand and Warnings

Children and young people are not cautioned. May receive:

- Reprimand (only if not previously reprimanded or warned)
- Warned (whether or not previously reprimanded. May receive maximum of two warnings and then only if more than 2 years apart)

Remand

For all ages the same criteria for imposing / refusing bail apply as for adults save:

- May refuse bail for defendant’s own welfare

Over 17s

Where bail is refused, 17 year olds go to young offenders institute in the same way as 18-21 yr olds

Under 17s, generally

For defendants aged 10-16 where bail is refused they would normally be remanded to local authority accommodation rather than custody

However...

Where section **23(5) Children and Young Persons Act 1969** applies,

offence charged is violent, sexual or a grave crime, or defendant has a history of repeatedly committing imprisonable offences on bail or in local authority accommodation

AND

it is necessary to protect public from serious harm from him or to prevent the commission by him of imprisonable offences

a security requirement may be added for girls 12-16 or boys 12-14.

Boys aged 15,16 meeting these criteria would normally be remanded into custody,

Unless...

Section **23(5A) CYPA 1969** applies

Under this, boys 15,16 may be remanded to local authority accommodation with a security requirement, instead of custody if desirable due to defendant's physical or emotional immaturity or propensity to harm himself.

Sentencing:

Least serious

Absolute and conditional discharges and fines as per adult, except:

- see Referral Orders, Orders that parents pay child's fines below
- Conditional discharges not available where warned in previous 2 years (Except for exceptional circumstances)
- Fines

More serious (all offenders)

Supervision Order

May include requirement(s) of:

- reparation
- curfew (untagged)
- activities
- residence
- treatment for mental condition
- intensive supervision (I.S.S.P.)
- Action Plan Orders
- Curfew Orders
- Reparation Orders
- Attendance Centre

More serious (16+)

Defendants aged 16 may receive any community sentences that an adult could have received for offences committed prior to April 2005: i.e

- Community Rehabilitation Order,
- Community Punishment Order
- Community Punishment and Rehabilitation Order
- Drug Treatment and Testing Order

Most serious

- Detention and Training Order (DTO)
- The only custodial sentence available to the youth court
- For offenders aged 13-17
- Fixed periods: 4, 6, 8, 10, 12, 18 or 24 months
- For offenders aged 13 or 14, only available where the defendant is, in the court's opinion, a "persistent offender".
- Time spent in custody or in secure accommodation whilst on remand is not automatically deducted. Sentencing court ought to consider reducing the length of the sentence to take this time into account – but "not a mathematical exercise".

Referral orders

Compulsory referral conditions

Where Defendant has no previous convictions and:

- Defendant pleads guilty to all matters,
- He is charged with an imprisonable offence

Court's sentencing options are limited to

- Absolute discharge
- Referral order (3-12 months)
- DTO

Discretionary referral conditions

Where D has no previous convictions and:

- pleads guilty to one or more matter and is convicted of one or more matter

Or

- pleads guilty to non-imprisonable matters only

The court has a discretion to make a referral order but all its other sentencing powers are open.

Further offences

Any offence sentence passed during the referral period will bring the referral order to an end and the court must resentence for the offence for which it was passed.

Alternatively court has a discretion to extend the referral order once, but where the further offence was committed post-referral, it may only do so where there are exceptional circumstances.

Committal for sentence

Crown court has the same powers in respect of children as it does for adults.

Youth court has no general power to commit for sentence

However

The youth court now has power to commit for sentence (and must commit for sentence) in respect of specified violent offences or specified sexual offences where the defendant poses a significant threat of substantial harm to members of the public. Its duty to do so is not limited in any way by an earlier court having accepted jurisdiction. (see Dangerous offenders).

Orders against parents

Court may make an order that a parent or guardian

- be responsible for paying child's fines etc,
- be bound over to take proper care and exercise proper control over his child
- be made subject to a parenting order

There are statutory presumptions in favour of making these orders in respect of offenders aged under 16.

- **Ordering parents to pay their children's fines**
- **Binding over of parent / guardian**
- **Parenting orders.**

Making any of the above orders is discretionary in the case of offenders aged 16 or over, but compulsory, subject to restricted exceptions, for younger offenders.

Nevertheless actual use of any of these powers tends to be rare; the third almost unknown locally.

Possible reasons :

- Unfairness of punishing parents for offences committed by their children?
- Belief that children should be encouraged to take responsibility for own action?
- Delay, inconvenience and awkwardness of embarking on a subsidiary question of extent to which parent should share blame for children's misbehaviour.
- Reluctance to undermine parent in front of child?

However:

All three powers have been enacted or re-enacted in last 5 years

Parenting Orders introduced in the Crime and Disorder Act 1998; the other two, of much older vintage, consolidated into the Power of Criminal Courts (Sentencing) Act 2000

- By these statutory provisions Parliament has decreed that parents should bear a responsibility for their offspring's offences (and that they could have a positive influence over their children's future behaviour if faced with sanctions)
- It is submitted that there is widespread public concern over "feral children" and indifferent (or worse) parents.

Order that parent / guardian pay their children's fines etc.

Sections 136-8 Powers of Criminal Courts Sentencing Act 2000

When may such an order be made?

Whenever any child or young person is sentenced to pay a fine, costs or compensation.

When must it be made?

Whenever an under-16 year old is sentenced to a fine, costs or compensation unless either

- I. their parent / guardian cannot be found; or
- II. it would be unreasonable to do so in the circumstances of the case.

When fixing the amount of fines etc where such an order is to be made the financial circumstances of the offender should be taken to mean the financial circumstances of the parent/guardian

Procedure

Court has power to order parents or guardians to complete a Financial Circumstances Order (an order requiring parent / guardian to give statement of means: or pay fine on refusal (level 3, £1000))

Court must give parent / guardian an opportunity of being heard before making the order.

Person against whom such an order is made has right of appeal.

Notes

Wherever local authority has parental responsibility for, and is looking after, a young offender references to his parent / guardian "shall be construed as references to that authority" , (although not for fixing the amount of fines obviously).

(R-v- DPP [’95] The court should not make order if authority "has done everything it reasonably could")

Comment

Not merely a 'bolt-on' enforcement order to a child's fine: if court proposes to use power it must fix level of fine in relation to parent's, not child's, means.

For <16s this is a duty not a power subject to the two exceptions given above.

'Unreasonable' a higher test than 'unfair'. No caselaw but word suggests an objective test, i.e. that no court could properly make such an order.

In addition to the general reluctance to impose orders on parents, may be a reluctance to impose 'adult' sums on children. (Underlying assumption of 'pocket money' to be docked)

Fines imposed on children without order for parent to pay are virtually unenforceable.

Parental Bind overs

Section 150 Powers of Criminal Courts Act 2000

Terms

"To take proper care of (the offending child) and exercise proper control over him"

Bind-over may be in a sum of up to £1000 (taking into account means of parent) for a period of up to three years, or until the relevant child attains 18 if sooner.

Where the court passes a community sentence on the offending child it may include in the parent's recognisance a duty to ensure the child's compliance with the requirements of that sentence.

When may a parental bind over be ordered?

Wherever a child or young person is convicted of an offence.

One exception: Court shall not order parental bind-over on occasion where it makes a referral order

When must a parental bind over be ordered?

“(W)here the offender is aged under 16 when sentenced it shall be the duty of the court” (to order a parental bind over) if it is satisfied having regard to the circumstances of the case that (to do so) would be “desirable in the interests of preventing the commission by him of further offences”

Procedure

Where in the case of an offender aged under-16 the court is not satisfied that a parental bind over would be desirable to prevent further offending it should state so and its reasons for not being so satisfied.

Notes

Parent/guardian may be fined up to £1000 if he refuses to enter recognizance.

Comment

In recent years bind overs generally have become less fashionable. By their nature they are somewhat anomalous within the post-1991 ‘just desserts’-orientated sentencing framework, and with European Convention on Human Rights. (Bind overs to keep the peace have survived challenges under Human Rights Act, but their use has been restricted)

However, youth justice system generally more prevention-focussed than adult courts.

Cases in which a bind-over on a parent to secure their child’s compliance with a community-sentence could not be said to be desirable in interests of preventing further offending must be rare indeed.

Note use of the phrase “**it shall be the duty of the court**” regarding <16s. Court must make order against parent of <16-year wherever to do so would be: “desirable in interests of preventing further offending”. Unlike order to pay fines (above) there is no excuse for not ordering a parental bind-over on grounds of unreasonableness (i.e, even universally recognisable unfairness to parent).

Parenting Orders

Sections 8-10 Crime & Disorder Act 1998

Terms

Twofold: to require the parent/guardian:

1. To comply for a term not exceeding 12 months with any requirements specified in the order; and
2. To attend counselling/guidance sessions up to once a week for up to three months, as specified by an officer of Probation/Youth Offending Service./social services ("the responsible officer")

When may a parenting order be made?

1. Whenever a child/young person is convicted of an offence (Also wherever an Anti Social Behaviour Order, Sex Offender Order or Child Safety Order is made, and where a parent is convicted in respect of a child not attending school regularly); and
2. ("the relevant condition") Whenever such an order would be desirable in the interests of preventing further offences by the child (or a repetition of the behaviour that led to the A.S.B.O. etc, or further truanting.)

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Whenever 'the relevant condition' is satisfied and the child concerned is under-16.

Procedure

Court must obtain information on family circumstances and effects on those circumstances of the making of a parenting order.

Must explain effects of order and consequences of non-compliance (see below)

Where in the case of an offender aged under-16 the court is not satisfied that a parental bind over would be desirable to prevent further offending it should state so and its reasons for not being so satisfied

Notes

Responsible officer will avoid conflict with parent’s religious beliefs; interference with parent’s work/education.

May vary the order or discharge early on application by the responsible officer

Breach of terms may result in level 3 fine (up to £1000)

Comment

Similar formula used as for parental bind overs. Again, where in the case of an under-16 the court does not find a parenting order to be desirable in the interests of preventing (further offending) it must state so and its reasons why not.

One would therefore expect parenting orders and parental bind overs generally to run together. However, even rarer than parental bind overs.

Attendance at Court of parent / guardian

Section 34A Children and Young Persons Act 1933

The court may, and in the case of and under-16 year old must, issue a summons requiring attendance of a parent / guardian at all stages of the proceedings.

No power to issue a warrant to secure parent’s attendance.

No statutory prohibition against making Parenting Order / order requiring parent to pay child’s fines / imposing fine for refusal to enter recognizance in absence so long as parent has been given notice and had opportunity to make representations.

Summary

	Order that parent pay child’s fines etc	Parental bind over	Parenting order
<16	Obligatory unless <ul style="list-style-type: none"> • Parent cannot be found • Unreasonable 	Obligatory wherever court satisfied that making an order would be in the interests of preventing further offences If not so satisfied must give reasons	
16+	Discretionary		
Any age	Cannot be made on same occasion as a referral order		

