

It's a lottery: Legal representation of children in the criminal justice system



“A lot of the process is self-taught therefore you have as much or as little knowledge as each individual advocate chooses to obtain.” [Criminal Solicitor]

Children need and must be entitled to specialist legal representation. This has long been obvious. This new [research](#) adds to a growing body of evidence but for the first time highlights the extent to which solicitors are themselves seeking to address this training need. However, without clear guidance they are falling short, and children are being failed.

There is no requirement for solicitors representing children in the criminal justice system to have any specialist training before entering a youth court or representing children at a police station. It therefore falls to individual solicitors to identify their training needs. Children end up with worse outcomes than they should as a direct result of lawyers being unaware of guidance and special protections available to children. This is confirmed by the research findings. The situation would be significantly improved if solicitors who represent children undertook regular training on key youth justice topics. More children would be diverted away from formal criminal justice processes, they would be better supported through legal processes and the risk of reoffending reduced. Put simply, children must have better.

As part of this research, lawyers who completed an online survey self-assessed themselves, unsurprisingly, as having the requisite attributes knowledge and skills to represent children. However, when posed specific questions around this, they recognised gaps in knowledge. This was even more evident when YJLC staff observed court proceedings. **This research demonstrates a willingness by solicitors to undertake training and the desire to represent children to a high standard – but in the absence of clear guidance on what training to undertake to enhance knowledge and skills, they are falling far short.**

The research found:

- The legal framework for children in the criminal justice system (CJS) is very different compared to adults;
- A ‘good’ defence solicitor requires specialist communication, information-gathering, and empathy skills;

- Representing children effectively is particularly time consuming and requires important contextual knowledge about the welfare needs of children;
- Solicitors require an understanding of child development, the agencies working with children, available local diversionary schemes and the wider youth justice policy framework;
- Solicitors are required to identify their own training needs and the absence of guidance results in gaps in knowledge and understanding;
- There are a small number of criminal solicitors who specialise in representing children.

As part of the project, YJLC conducted observations of practice at two different youth courts. This highlighted the following:

- Whether a child gets a solicitor with the requisite specialist knowledge and skills to represent them well is a case of 'potluck';
- Solicitors don't know what they don't know. Many think they are doing a perfectly competent job, but they would be fighting for different outcomes if they had a better understanding of the issues.

What next?

- The Solicitors Regulation Authority must provide guidance to the profession on the knowledge and skills required to represent children. This must be regularly reviewed to ensure new and emerging trends are reflected in this good practice guidance.
- The Law Society must 'quality mark' the training of appropriate training providers. This would have the dual purpose of encouraging solicitors to undertake specialist youth justice training and, importantly, provide the public with the opportunity to confidently select legal representation from those with the highest standards of expertise in youth justice.
- The Solicitors Regulation Authority must ensure, through its regulatory function, that in the criminal practice of every law firm, at least one solicitor has undergone annual training in youth justice law and practice. This will mean every practice maintains a level of competence in this specialist area and every child is represented by a firm where there is a source of specialist expertise.
- The Law Society must make 'youth justice' appear as an area of practice on the 'Find a Solicitor' database webpage. Solicitors who have undertaken annual specialist training with a Law Society quality mark approved training provider must be listed under 'youth justice' and have a quality mark symbol on their profile.
- A working group must be formed to ensure the above recommendations are put into action over the next 12 months.

The vast majority of stakeholders in the youth justice sector accept that children need to be represented by lawyers with specialist knowledge and skills. The measures currently in place do not ensure this happens. The recommendations outlined above will provide the safeguards to ensure children are adequately represented, without being un-necessarily onerous for practitioners working in a challenging sector.

Research summary

The research - funded by the Dawes Trust - was led by the **Youth Justice Legal Centre**, at **Just for Kids Law** in partnership with the **Institute for Crime and Justice Policy Research, Birkbeck**. An online survey of criminal solicitors (45), higher court advocates (35) and youth justice practitioners (71) and interviews (19) with judiciary, staff from youth offending services and appropriate adults investigated:

- The **Knowledge, skills and attributes** needed by criminal defence solicitors to work effectively with child suspects and defendants;
- The extent to which solicitors have these qualities;
- Factors that support or undermine solicitors' effective practice in the YJS;
- Interventions and training that could enhance the quality of solicitors' work in the YJS.

Defining a 'good defence solicitor' in the YJS

There is consensus about *the need* for specialist knowledge, skills and attributes for effective practice as a defence solicitor in the YJS – beyond what is required for working with adults. It means having a thorough knowledge of the law as it pertains to children, including its application when additional vulnerabilities are identified, such as being a looked after child (LAC), or where there is evidence of criminal exploitation. Solicitors should also understand the welfare needs of their client, including the impact of neurodisability, mental health, trauma, neglect, abuse and other adverse childhood experiences regularly present among children in the justice system. Additionally, **communication skills, proactive information-gathering, and empathy** were highlighted.

Capacity to adapt **communication** for children, including those with additional needs, to ensure that they understand court processes and their legal rights and options, was considered key to effective practice and crucial to establishing trust:

“To communicate, and the ability to explain things to the young person and to gain their confidence and their family’s confidence as well. Because you know there isn’t an awful lot of trust in the judicial system and a lot of these children come from complex families that also don’t have any trust in the justice system.”

[Magistrate]

“A lot of it is skills about dealing with young people who may have all sorts of problems..., an awful lot of children in the youth court have got mental health problems, [are] on the autistic spectrum. A lot of them have ADHD and you know in sort of finding ways to communicate with them and to get the best out of them. It’s quite a skill for the lawyer.”

[District Judge]

“More patience is required in dealing with child suspects and defendants and an ability to speak to them in a way that gains their trust and facilitates communication generally rather than simply speaking law to them.”

[Solicitor]

The defence solicitor has a central role in making the court fully aware of the background and welfare needs of the child. This means spending time with the child prior to the hearing to build trust and rapport in order to ascertain this background but also **being proactive in seeking out relevant information** from other agencies and, where appropriate, instructing experts to undertake assessments of children:

“It’s not like in adult court where you’re given the information, you use the information you’re given and you present your case, that’s not enough. You need to do more than that. You need to challenge your social workers... what stage are care proceedings at [or], housing, where is it in the process because social services are quite variable.” **[Magistrate]**

“The best ones have done their homework outside with the youth offending service already.” **[Magistrate]**

In keeping with the less adversarial approach recommended in youth court hearings, there is emphasis on inter-agency communication to establish the relevant evidence, background information and appropriate action, and the defence solicitor is seen as a key driver of that:

“It needs to be collegiate. It’s teamworking, although it’s a formal environment... The solicitors will interact with the YOS and with social workers and that varies. Some are more proactive than others but it’s the solicitors’ job to put the best foot forward for the client.” **[Magistrate]**

“We generally had quite good relationships. The solicitor will come into the court. They might try and find me. I’ll have a discussion with [solicitor] about the case, what we might be proposing, what the evidence is around that, or I will share with them a copy of the [pre-convictions]... And that’s a good solicitor [who] knows the case and is, generally on the same page.” **[YOS]**

‘Empathy’ referred to having an understanding and sensitivity to the background circumstances and lives of children in the YJS:

“You’ve got to have a feel for the sort of backgrounds that these children come from as well, and an open mind, really.... You do have to have a bit of understanding that their world’s not necessarily the same as the one that you occupy.” **[District Judge]**

“... You know that these are young people who have been formed by their experiences, by the environment that they live in.” **[Magistrate]**

‘Dedication’ and **‘commitment’** were qualities that tended to be associated with the solicitors who were ‘regulars’ in local youth courts. Mostly, although not exclusively, poorer quality legal representation was attributed to those solicitors who were less well known to the court or perceived to be ‘passing through’ rather than having made an active choice to specialise in representing children:

“Most of them in my experience, are very dedicated and are absolutely doing the best for their clients.” **[Magistrate]**

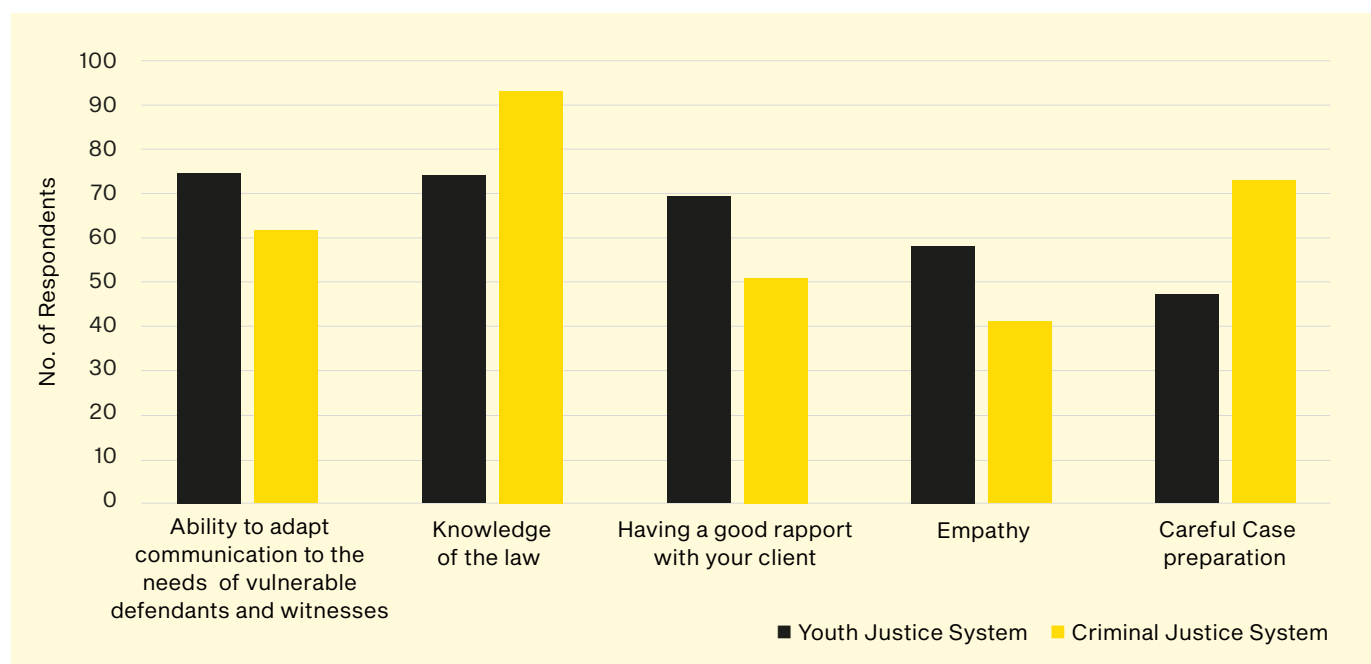
“[Solicitors] where I work, who are really good at the job, these are ones who seem very committed in this role because there has been a track record of them often dealing with youths successfully. But you can tell that there’s a passion behind it. They enjoy what they do. They’re very, very skilled, so it becomes quite natural to them. I think sometimes in any job some people are not there for the long haul.” **[YOS]**

Continuity in legal representation was deemed best practice, and essential to fulfilling the competencies related to **communication, trust-building and information gathering**:

“I think one of the difficulties you may have is a child [who] doesn’t have a consistent solicitor and they may not have representation. There might be a legal aid issue and they may get to court and suddenly you’ve got the duty solicitor representing them, [who] doesn’t know them previously and has spent 15 minutes in a room with them about their case.” [YOS]

The graph below shows **the top five components of effective advocacy in youth and adult proceedings** from a suggested list of advocacy skills. Whilst there are key skills common to both systems, there is greater emphasis given in the YJS to the ability to adapt communication style for vulnerable defendants and witnesses, building rapport and having empathy for a client.

Figure 1. Top five components of effective advocacy: All survey respondents



Experience and training for working in the YJS

Few solicitor or HCA survey respondents were working primarily in the YJS. Whether providing advice at the police station or defending children in court, most reported that youth justice work represented a small proportion of their overall workload.

Most believed they had the necessary knowledge, skills and attributes to advise children effectively at the police station and to represent children in court, however, further open-ended questions revealed a desire to have a more thorough understanding of some key aspects of the YJS, such as sentencing, diversion initiatives, bail and remand procedures, and attaining skills to engage and communicate more effectively with children with a range of communication needs. When prompted, most also recognised the need for regular refresher training to keep abreast of legal or policy changes in the YJS.

Three-quarters of solicitor/HCA respondents **had** undertaken some specialist training for working in the YJS – but this was largely self-directed and attained through optional legal training or completed as part of continuous professional development.

“Like others, the first time I represented a youth in youth court was the first time I had been there. I have made myself skilled by attending courses and reading.”
[Higher Court Advocate]

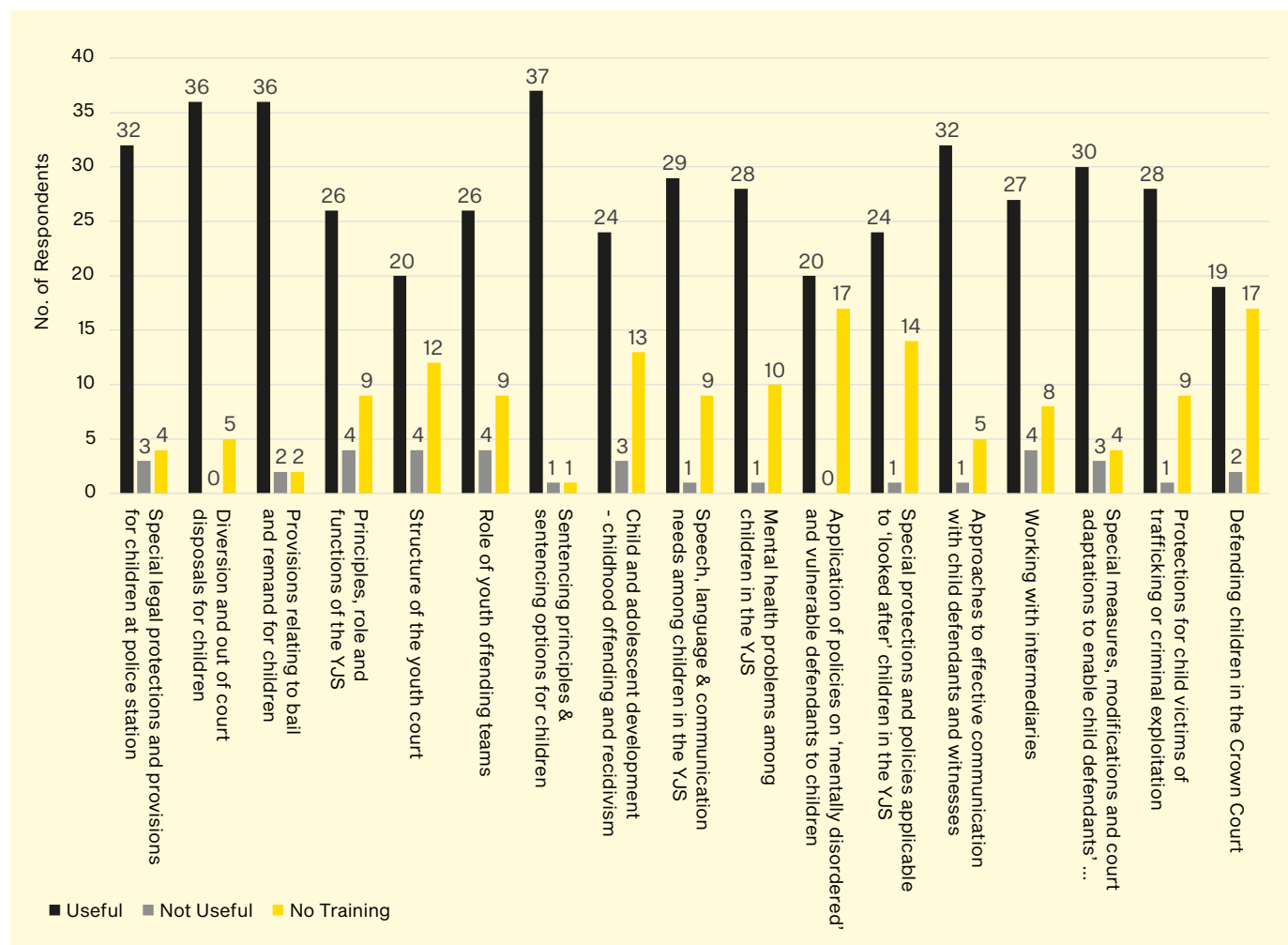
“I have had no formal training. I have had to learn everything myself using resources such as the Advocates Gateway toolkit and gaining invaluable experience in youth courts.” **[Higher Court Advocate]**

The graph below presents views on the usefulness of training completed in areas relevant to youth justice, and notes where no training had been received. In general, solicitors and HCAs value what training they have undertaken and there is some appetite for more training on working in the YJS.

One area of additional training that regularly emerged – largely unprompted - in interviews and in open survey questions, was the application of the Modern Slavery Act (2015) and the national referral mechanism process, in cases where criminal exploitation was suspected. Issues included: long delays to NRM decision-making which can hold up cases and keep children in a state of limbo; a perception that referrals to the NRM were not always appropriate; and the need for solicitors to provide better evidence to support the referral.

Several solicitor/HCA survey respondents highlighted a lack of awareness or understanding of the risk of criminal exploitation among other CJS professionals, including police and prosecutors:

Figure 2. Areas covered by training and views on usefulness: Solicitor/HCA



“I find that often, guidance is not followed and that in particular, children and young people are not referred to the NRM until they are charged, and defence lawyers request it. This is despite the circumstances of offences quite clearly bring indicative, or at least raising concerns, of child criminal exploitation.”

[Higher Court Advocate]

Challenges for specialist practice in the YJS

The incongruity between the emphasis on *specialism* and **the current pay and operating conditions** in the YJS was highlighted. The Criminal Legal Aid Review supports increased rates of legal aid to reflect skills and specialism required in youth court and this would likely be an important factor in efforts to promote the need for accreditation and the official recognition of youth justice work as a specialist area.

“If you want better youth court staff, [then] bring our pay up to date.”

[Higher Court Advocate]

“In dealing with all clients in criminal justice – there is insufficient funding for legal representation – this prevents us from keeping up with legal updates, training, competence requirements because of the busy caseloads to manage.” [Solicitor]

“The cases we’re dealing with are extremely serious. You know, obviously the barristers are striking about pay rates, but you know solicitors are in the same boat really, their rates haven’t gone up for many years ...I mean, there are some extremely good lawyers in the youth justice system that do it because they care about the kids and they’re really good at it. But also, there’s a problem in either attracting or retaining the sort of younger talent, really.” [District Judge]

The **reduction in youth court cases means fewer opportunities to gain experience**. It also means that the quality of legal representation and any training needs are likely to differ by geographic area. Busier youth courts in urban centres potentially offer greater opportunities to build expertise:

“The motivation in terms of ability to progress in your career. And as we said before, the limited amount of work, I mean, if you’re in a big city, then you will probably encounter better youth lawyers because ...in [City] there’s a youth court every day you know.” [District Judge]

Knowledge about the YJS among other professionals was sometimes considered to be deficient, especially in relation to children’s vulnerability:

“Lack of experienced police officers who have limited concept of children’s vulnerability and risk to criminal exploitation or worse still sexual exploitation.”

[Solicitor]

“Police ignoring or not understanding youth vulnerabilities and arresting where a voluntary interview would arguably suffice and not interfere with investigation.”

[Solicitor]

“Dealing with difficult ill-informed magistrates.” [Higher Court Advocate]

“Police forces and crown prosecutors often forget that young defendants must be treated as children first and disregard the presumption in favour of diversion (where it is possible). This often results in children and young people having to go through the traumatic experience of attending court for very minor offences only for the matter to be adjourned for defence representations to be made.”
[Higher Court Advocate]

Intervention

Currently, there is no clear mandatory training nor is there any well-defined professional knowledge and skills required for defence solicitors working in the YJS. There are dedicated solicitors, who are highly motivated to work with children and who seek out specialist training and resources voluntarily as part of their professional development. **However, some form of accreditation or system of appraisal for working in the youth court is recommended** as a means of a) recognising the importance of the work; b) achieving consistency in the standard and quality of legal representation; c) ensuring that knowledge and skills for working in the YJS are regularly updated and; d) putting defence solicitors on a par with other youth court professionals. The interview extract below, for example, contrasts the perceived specialism of Crown Prosecution practitioners compared to defence solicitors:

“With the Crown Prosecution Service, they have specialist youth practitioners and they therefore have got built-in appraisal systems, built in training... But on the defence advocate side, it’s always a little bit woolly, I mean if I had a complaint for example about the conduct or competency of the CPS I know where I can take that... If there could be some sort of appraisal system [for defence solicitors]. But I don’t know how well that would go down.” [Magistrate]

Interviewees supported the need for specialist youth justice solicitors:

“I feel very strongly that children and young people should be represented by specialists, too many representatives do not see the child or young people, they see a defendant. In my experience there are also many advocates that do not particularly like representing children and make no effort to communicate with them or understand them, let alone understand the nuances of the law relating to children, court options, sentencing diversion etc.” [Higher Court Advocate]

And they reported that these already exist in busier urban courts, where certain firms have built a reputation locally for youth justice expertise. So while any official recognition of proficiency is absent, a solid basis exists for the creation of specialist solicitors in youth justice:

“There [are] quite sort of distinct skills [for working in YJS] and you know a lot of solicitors in the youth court, are just solicitors who do crime and yeah maybe don’t really know a lot about it to be honest. Although on the other side of the coin there are certainly for instance in [City] there are a number of lawyers who specialise in the youth court, and they are extremely good.” [District Judge]

“They [solicitors] do build up specialisms. There they are, mostly local firms..., so you get a lot of the firms will be based in xxx, which obviously a lot of our young people come from. And I think it just gets known in the community that if you’re young person’s in trouble, that’s who you go to.” [Magistrate]