

#06 Criminal Practice Directions

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This legal guide is intended to assist lawyers representing children in the criminal courts and explains how the Criminal Practice Directions¹ can support in this context.

The Criminal Practice Directions supplement the Criminal Procedure Rules by guiding judicial discretion, detailing a range of adjustments that should be considered in all criminal cases that involve children. Throughout this guide, we refer to both the Rules, the CrimPR, and the Practice Directions, the CrimPD.

Introduction

It is well known that many children appearing in criminal courts have communication or learning difficulties.² They are disproportionately likely to have a neurodisability, mental health problem or to have suffered a traumatic brain injury.³ These factors, as well as age and normal adolescent development, can make it difficult for children to participate in criminal proceedings, particularly in the Crown Court.

Defendants have a right to effective participation when they appear in criminal proceedings. This right has been articulated by the European Court of Human Rights (ECtHR)⁴ through Article 6 of the European Convention on Human Rights (ECHR), 'right to a fair trial'. The CrimPD is the key domestic provision that sets out in detail ways to implement that effective participation right – it details a range of adjustments to proceedings that should be considered when children appear in the criminal courts.

² K Bryan, G Garvani, J Gregory and K Kilner, 'Language difficulties and criminal justice: the need for earlier identification', *International Journal of Language and Communication Disorders*, Nov–Dec 2015, 50(6), pp763–775. See also G Branston and H Norton, 'Youth defendants in the Crown Court', *Judicial College*, March 2021 (bit.ly/3uK5hy8), 2G, para19: 'It is common for most, if not all, young defendants to have communication needs, whether due to their age alone or in combination with other vulnerabilities'

³ N Hughes, H Williams, P Chitsabesan, R Davies, and L Mounce, 'Nobody made the connection: the prevalence of neurodisability in young people who offend', *Office of the Children's Commissioner*, 2012 (bit.ly/3uPqgzl). See also CrimPD 3F.24: 'Communication needs (such as short attention span, suggestibility and reticence in relation to authority figures) are common to many witnesses and defendants under 18'

⁴ *Stanford v UK* [1994] ECHR 6

Overview

Status of the Criminal Practice Directions

The CrimPR are the 'rules' governing the practice and procedure to be followed in the criminal courts.⁵ They are secondary legislation.

The CrimPD, on the other hand, are not secondary legislation. They:

- supplement the rules acting as a guide for the exercise of judicial discretion

- are binding on the criminal courts⁶
- detail a range of adjustments (special measures and procedural modifications) that should be considered in all cases that involve a child defendant.⁷

Overview of modifications for child defendants

The CrimPD permits the use of modifications to the trial process, including:⁸

- the support of intermediaries
- removal of wigs and gowns
- allowing the child to sit not in the dock but rather with family members or others in a like relationship, and with another suitable supporting adult (e.g. social worker), and in a place which permits easy and informal communication with lawyers

- giving evidence via live link
- a 'ground rules hearing' (GRH) to plan the questioning of a child defendant
- regular breaks and appropriate timetabling, and
- appropriate use of language.

5 s69 Courts Act 2003

6 CrimPD 1A.3: 'The Criminal Procedure Rules and the Criminal Practice Directions are the law. Together they provide a code of current practice that is binding on the courts to which they are directed, and which promotes the consistent administration of justice. Participants must comply with the Rules and Practice Directions, and directions made by the court, and so it is the responsibility of the courts and those who participate in cases to be familiar with, and to ensure that these provisions are complied with'

Applying the Criminal Practice Directions

- Legal representatives must be familiar with the detailed provisions in the CrimPD and ensure that they are complied with.⁹
- Time for raising the CrimPD:
 - In the Crown Court, at the plea and trial preparation hearing (PTPH), where the PTPH form requires identification of any modifications sought or likely to be sought.*
 - In the youth court, at the first appearance.¹⁰
- Where an application for special measures is granted or refused, the court must give its reasons.¹¹

7 The term 'child defendant' is used here to align with the definition of a 'child' under United Nations Convention on the Rights of the Child, Article 1: 'a child means every human being below the age of 18 years'. Note that the CrimPD, however, uses the terms 'young defendant' or 'youth defendant'

8 A full list of the modifications provided for by the CrimPD can be found at Annex 1 of this guide

9 CrimPD 1A.3

10 If the need for modifications only becomes apparent at a later stage of proceedings, however, a case management hearing should be sought for these to be considered

11 CrimPR (as amended on 5 April 2021 by SI 2021/40) 18.5(3)

* The online PTPH form that practitioners are required to complete for the purposes of Crown Court proceedings was amended in 2019 to ensure greater adherence to the CrimPD as it applies to child and vulnerable defendants. The new form (known as 'PTPH2') applies from 22 July 2019 (bit.ly/3uQtrHp). The introduction to the guidance to PTPH2 provides that 'the court has an obligation actively to manage the case with the assistance of the parties and the form is a tool to do that. For the parties it is a convenient place to record key information that might otherwise have to be sent in other ways' ('PTPH2: The revised PTPH form – a guide for practitioners', issued by the office of the Senior Presiding Judge, July 2019, bit.ly/3ipyV9t). The guidance goes on to state that: 'Where a defendant is under 18, or vulnerable in other ways, the defence should consider what orders should be made at PTPH to address this using the section for young/vulnerable/intimidated defendants' (a dropdown section that acts as a prompt for legal representatives and the court) (p4)

Background

In 1999, in the case of *V v UK*¹² the ECtHR was asked to consider whether there had been a violation of Article 6 of the ECHR where two very young children had been tried in the adult Crown Court. The defendants were 11 years old at the time of their trials, and both had learning difficulties. The court had to decide whether the children had been able to 'effectively participate' in their trial.¹³ The ECtHR was critical of the way England and Wales treated young children in the criminal justice system, stating that:

... it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings.¹⁴

The ECtHR further noted that proceedings involving children in the adult Crown Court should be conducted in such a way as 'to reduce as far as possible [the child defendant's] feelings of intimidation and inhibition'.¹⁵

The decision led to domestic reforms for children in the criminal justice system in England and Wales in the form of a Criminal Practice Direction – 'Practice Direction (Crown Court: Young Defendants)' – issued in 2000 by the then Lord Chief Justice (Lord Bingham), which set out the steps that should be taken in the trials of 'young defendants'.¹⁶

In 2000, the CrimPD applied specifically and exclusively to young defendants, which it defined as 'children and young persons', aligning with the language of other legislation concerning children. Since 2000, there have been various amendments and overhauls that have extended the protective elements of the CrimPD to include all vulnerable people in court, whether children or adults. This legal guide explains the CrimPD as it can be applied specifically to children in the criminal courts.

¹² *V v UK* [1999] ECHR 171

¹³ *V v UK* para82

¹⁴ *V v UK* para86

¹⁵ *V v UK* para87

¹⁶ [2000] 1 WLR 659 para1

The applicable legal framework

The duty of the parties

The CrimPR state that the parties are under a duty to alert the court to any potential impediment to the defendant's effective participation in the trial.¹⁷

The court's duty

The court is under a duty to:

- take 'every reasonable step' to encourage and facilitate the participation of any person, including the defendant¹⁸
- have regard to the welfare of a child defendant, as required by s44 Children and Young Persons Act 1933¹⁹ and
- enable a witness or defendant to give their best evidence.²⁰

Discharging the court's duty

The court discharges the duty by (a) identifying the needs of witnesses at an early stage and (b) making provision for arrangements (whether statutory special measures or other modifications to the trial process) to meet those needs.

- The CrimPD note that 'communication needs ... are common to many witnesses and defendants under 18. Consideration should therefore be given to the communication needs of all children and young people appearing in the criminal courts and adapting the trial process to address any such needs'.²¹
- The modifications provided for by the CrimPD are not exhaustive. The court retains its inherent power at common law to make directions to ensure the effective participation of vulnerable defendants.²²
- Special measures are also available under the Youth Justice and Criminal Evidence Act (YJCEA) 1999. CrimPR Part 18 sets out the procedure to be followed. CrimPD 3D.3 draws attention to the 'primary rule' which requires the court to give a direction for a special measure to assist a child witness or qualifying witness (an application to the court in such cases not being required).²³ Child defendants were originally specifically excluded from these special measures, but a 'defendant's live link direction', according to which a child defendant may be allowed to give evidence by live link, is now available.²⁴
- The CrimPD makes explicit provision for intermediaries to be used for the benefit of child defendants.
- The following sections of the CrimPD detail the relevant modifications available to vulnerable and child defendants:
 - CrimPD 3D: 'Vulnerable people in the courts'
 - CrimPD 3E: 'Ground rules hearings to plan the questioning of a vulnerable witness or defendant'
 - CrimPD 3F: 'Intermediaries'
 - CrimPD 3G: 'Vulnerable defendants'
 - CrimPD 3N: 'Use of live links and telephone hearings'
 - CrimPD 3P: 'Commissioning medical reports'.
- Certain parts of the CrimPD apply solely to children – ie witnesses and defendants who are under 18:
 - CrimPD 3F.24–3F.26 (intermediaries and communication needs)
 - CrimPD 3N.13–3N.15 (producing child defendants in court rather than over live link).

¹⁷ CrimPR 3.3(2)(f)

¹⁸ CrimPD 3D.2; CrimPR 3.8(3)(a), (b)

¹⁹ CrimPD 3D.2

²⁰ CrimPD 3D.2

²¹ CrimPD 3F.24

²² C v Sevenoaks Youth Court [2009] EWHC 3088 (Admin)

²³ CrimPR 18.9

²⁴ s33A YJCEA 1999

Practical advice

- Use the welfare duty²⁵ and 'best interests'²⁶ arguments to support applications for any modifications (whether those modifications are explicitly set out in the CrimPD or not) that are necessary to ensure the child's effective participation and to prevent the child from experiencing intimidation or distress.
- The types of modifications that might be needed are wide-ranging and must be tailored to the particular needs and circumstances of the child in question.
- Conversations with key workers, youth offending team (YOT) workers, social workers, mental health professionals, family members and intermediaries could help to elicit steps that could be taken to promote effective participation.

25 Derived from s44 Children and Young Persons Act 1933

26 United Nations Convention on the Rights of the Child, Article 3: 'In all actions concerning children ... by courts of law ... the best interests of the child shall be a primary consideration'

The key parts of the Criminal Practice Directions

CrimPD 3D: 'Vulnerable people in the courts'

3D.1	<p>Eligibility for special measures</p> <ul style="list-style-type: none"> • 'Vulnerable' and 'intimidated' witnesses.²⁷ • Vulnerable witness: includes those under 18; those with a mental disorder or learning disability and/or a physical disorder or disability; those who are likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case. • Intimidated witness: where the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings.²⁸
3D.2	<p>Other assistance</p> <ul style="list-style-type: none"> • 'Every reasonable step' must be taken to facilitate the participation of any witness (whether 'vulnerable' or 'intimidated'), including the defendant.²⁹ • Facilitating participation includes: <ul style="list-style-type: none"> - enabling a witness or defendant to give their best evidence and - enabling a defendant to comprehend proceedings and engage fully with their defence. • The pre-trial and trial process should, so far as is necessary, be adapted to meet those ends.
3D.3	<p>Identification of special measures and modifications</p> <p>The court must identify the needs of witnesses at an early stage.³⁰</p> <ul style="list-style-type: none"> • The court may require the parties to identify arrangements to facilitate the giving of evidence and participation in the trial.³¹ • Under the 'primary rule', an application is not necessary for the court to give a direction as to special measures / modifications.³²
3D.5 -3D.8	<p>Endorsement of the use of other resources</p> <p>Advocates should consult and follow the relevant guidance whenever they prepare to question a young or otherwise vulnerable witness or defendant. Examples given are:</p> <ul style="list-style-type: none"> • Advocacy Training Council (ATC), 'Raising the Bar: the Handling of Vulnerable Witnesses, Victims and Defendants in Court' (2011)³³ • Advocate's Gateway toolkits³⁴ • 'Achieving Best Evidence in Criminal Proceedings' (Ministry of Justice, 2011).³⁵

27 Defined in ss16 and 17 YJCEA 1999 (as amended by the Coroners and Justice Act 2009)

28 s17 YJCEA 1999

29 CrimPR 3.8(3)(b)

30 CrimPR 3.2(2)(b)

31 CrimPR 3.3(1)(a), 3.3(2)(c)(iv); 3.5(1), 3.5(2)(c); 3.8(7)(a); 18.10(c)

32 CrimPR 18.9(2)

33 Available at: bit.ly/3gevbF8. The approach taken by the report was specifically endorsed by the Court of Appeal in R v Wills [2011] EWCA Crim 1938. The report includes and recommends the use of 'toolkits' to assist advocates as they prepare to question vulnerable witnesses

34 These toolkits are available at: bit.ly/2T0SVEM

35 Available at: bit.ly/3uTcxYq

CrimPD 3E: ‘Ground rules hearings to plan the questioning of a vulnerable witness or defendant’

3E.1	<p>The judiciary is responsible for controlling questioning.</p> <ul style="list-style-type: none"> • Over-rigorous or repetitive cross-examination of a child or vulnerable witness should be stopped. • The need for intervention will be minimised if the communication needs of vulnerable witnesses are discussed in advance and ground rules are agreed and adhered to.
3E.2–3E.3	<p>Ground rules hearings (GRHs):³⁶</p> <ul style="list-style-type: none"> - are required in all trials where an intermediary is used, with the intermediary present, and - are good practice ‘in all young witness cases and in other cases where a witness or defendant has communication needs’. • The timing of a GRH should be before the first day of trial, so that advocate’s questions can be adapted. • Recommended approach: the creation of a ‘trial practice note’ of boundaries for questioning to ensure that the agreed ground rules are complied with.
3E.4	<p>Limitations on questioning</p> <p>Limitations will arise where there is a risk of a child ‘failing to understand, becoming distressed or acquiescing to leading questions’. Where limitations on questioning are prescribed, these limitations:</p> <ul style="list-style-type: none"> • must meet the specific needs of the witness in a particular case • must be clearly defined and • may include ‘departing radically from traditional cross-examination’, including restrictions on the advocate ‘putting his case’.

CrimPD 3F: ‘Intermediaries’

3F.1	<p>Intermediary role and function</p> <ul style="list-style-type: none"> • Role: to ‘facilitate communication with witnesses and defendants who have communication needs’.³⁷ • Function: to ‘improve the quality of evidence and aid understanding between the court, the advocates and the witness or defendant’. • For example, intermediaries: <ul style="list-style-type: none"> - commonly advise on the formulation of questions and - on occasion actively assist and intervene during questioning.
3F.2	<p>Duty to court</p> <ul style="list-style-type: none"> • Intermediaries are ‘independent of parties and owe their duty to the court’.³⁸
3F.4	<p>Assessment</p> <ul style="list-style-type: none"> • The process ‘should begin with assessment by an intermediary and a report’.³⁹
3F.5	<ul style="list-style-type: none"> • The decision as to whether an intermediary is required should be made on ‘an individual basis, in the context of the circumstances of the particular case’.

³⁶ See also CrimPR 3.9

³⁷ See also CrimPR 18.3(a) (iv): an ‘intermediary’ is a person appointed by the court to facilitate a ‘defendant’s effective participation in the trial, when the defendant gives evidence or at any other time, where otherwise that defendant’s communication needs would impede such participation’

³⁸ See also CrimPR 18.30

³⁹ See also CrimPR 18.30(2)(b): if appointed, intermediaries are under a duty to continually assess the ability of the witness or defendant (as the case may be) to participate effectively. See CrimPR 18.32 for the matters that must be addressed in an intermediary’s report

3F.12	<ul style="list-style-type: none"> • The court ‘may direct the appointment of an intermediary to assist a defendant in reliance on its inherent powers (C v Sevenoaks Youth Court [2009] EWHC 3088 (Admin))’ but there is ‘no presumption that a defendant will be so assisted’ and ‘even where an intermediary would improve the trial process, appointment is not mandatory’. • The court should nonetheless: <ul style="list-style-type: none"> - adapt the trial process to address a defendant’s communication needs⁴⁰ and - ‘consider sympathetically’ an application for the defendant to be accompanied by a support worker or other appropriate companion who can assist the defendant to follow the proceedings.
3F.13	<ul style="list-style-type: none"> • The court may exercise its inherent powers to direct appointment of an intermediary to assist a defendant giving evidence or for the entire trial. • Appointing an intermediary to assist a defendant giving evidence will be ‘rare’, and ‘extremely rare’ for the entire trial. <p>* The CrimPR, updated in April 2021, postdates 3F.13 and therefore it is this which should be followed when considering the appointment of an intermediary to facilitate a defendant’s participation. CrimPR 18.27(3) makes clear that the court may exercise its power to appoint an intermediary (a) for the duration of every hearing that the defendant is due to attend; (b) for the duration of any specified such hearing(s), or for the duration of a specified part of such a hearing; or (c) for a specified purpose during a hearing. CrimPR 18.27(4) provides that, unless the court otherwise directs, the appointment of an intermediary extends to facilitating the defendant’s communication with their legal representatives for the duration and for the purpose of the appointment. For more information, see Practical Advice below.</p>
3F.15	<ul style="list-style-type: none"> • The witness intermediary scheme (WIS) is not presently available to identify intermediaries for defendants.
3F.16	<ul style="list-style-type: none"> • Where the defendant is publicly funded, an application should be made to the Legal Aid Agency (LAA) for prior authority to fund the pre-trial assessment by an intermediary. If refused, an application can be made to the court to use its inherent powers to direct a pre-trial assessment. • Where a court appoints an intermediary to assist a defendant at trial, the ‘court staff are responsible for arranging payment from Central Funds’.
3F.24– 3F.26	<p>Intermediaries for witnesses and defendants under 18</p> <ul style="list-style-type: none"> • 3F.24: Communication needs (such as short attention span, suggestibility and reticence in relation to authority figures) are common to many witnesses and defendants under 18. Consideration should therefore be given to the communication needs of all children and young people appearing in the criminal courts and to adapting the trial process to address any such needs. • 3F.25: The appropriateness of an intermediary assessment for witnesses and defendants under 18 must be decided with care. Whilst there is no presumption that they will be assessed by an intermediary or assisted by an intermediary at court, the decision should be made on an individual basis in the context of the circumstances of the particular case. • 3F.26: Assessment by an intermediary should be considered for witnesses and defendants under 18 who seem liable to misunderstand questions or to experience difficulty expressing answers, including those who seem unlikely to be able to recognise a problematic question (such as one that is misleading or not readily understood), and those who may be reluctant to tell a questioner in a position of authority if they do not understand.

⁴⁰ CrimPD 3F.12, citing R v Cox [2012] EWCA Crim 549

Practical advice – the appointment of intermediaries to facilitate a defendant’s participation

The new amendments to the CrimPR state that the court must exercise its power to appoint an intermediary to facilitate a defendant’s effective participation in the trial where the defendant’s ability to participate is likely to be diminished by reason of age, if the defendant is under 18.⁴¹ The CrimPR give special consideration to providing intermediary support to those under the age of 18 and the impact on their ability to ‘give evidence, and understand what is said and done by the court and other participants’⁴² which should be considered alongside 3F.24–3F.26 (above).

In addition to the specific criteria of age, at 18.27(2) the CrimPR set out the matters the court must consider when asked to exercise its power to appoint an intermediary for a defendant:

- (f) the adequacy of arrangements for questioning the defendant in the absence of an intermediary;
- (g) any assistance that the defendant has received in the past–
 - (i) while giving evidence in legal proceedings,
 - (ii) while being questioned during the investigation of an alleged offence, or
 - (iii) as a defendant in a criminal case;
- (h) any assessment of the defendant’s health by a mental health practitioner acting independently of the parties to assist the court;
 - (i) any expert medical opinion that the court may have received; and
 - (j) any other relevant matter.

CrimPD 3G: ‘Vulnerable defendants’

3G.1–
3G.14

- This section is exclusively directed at vulnerable (including child) defendants.
- Includes a series of modifications available to the court to ensure that a vulnerable defendant can participate.⁴³ For a summary of these, see Annex 1 to this guide.
- The Crown Court PTPH2⁴⁴ form sets out all of the modifications provided for in CrimPD 3G, and has at the end a box for ‘other’ modifications that might be required.

CrimPD 3N:⁴⁵ ‘Use of live links and telephone hearings’

General

Hearing attendance via live link or telephone

- Ordinarily a child defendant will attend in person. This is to ensure:
 - the court can engage properly with the child defendant and
 - the necessary level of engagement can be facilitated with the YOT worker, defence representative and/or appropriate adult (3N.13).
- Where it is lawful and in the interests of justice to do so, courts should exercise their statutory and other powers to conduct hearings by live link or telephone (3N.1).
- Any application for use of a live link should be dealt with on a case-by-case basis, after consultation with the parties and the YOT (3N.13).
- Hearings that may be conducted via live link include:
 - plea, where child in custody (3N.9)⁴⁶
 - remand hearing where there is no bail application (3N.13) and
 - case management hearing, particularly if the child is already serving a custodial sentence (3N.13).

⁴¹ CrimPR 18.27(1)(a)(i)

⁴² CrimPR 18.27(2)(d)(i), (ii)

⁴³ Those set out in CrimPD 3G are not exhaustive: the court retains its inherent powers to make any modifications necessary to ensure the child defendant’s effective participation

⁴⁴ See above at page 3

⁴⁵ See also CrimPR 18.23–18.26

⁴⁶ The same considerations set out at CrimPD 3N.14 in relation to sentencing will apply

- It will rarely be appropriate for a child defendant to be sentenced over a live link. However, there may be circumstances when it may be appropriate (and after consultation with the parties and the YOT) (3N.14):⁴⁷
 - if the child is already serving a custodial sentence and the sentence to be imposed by the court is bound to be a further custodial sentence, whether concurrent or consecutive
 - if the child is already serving a custodial sentence and the court is minded to impose a non-custodial sentence which will have no material impact on the sentence being served
 - if the child is being detained in a secure establishment at such a distance from the court that the travelling time from one to the other will be significant so as to materially affect the welfare of the child
 - if the child's condition – whether mental or otherwise – is so disturbed that their production would be a significant detriment to their welfare.

3N.3, 3N.6–3N.7 **Circumstances where live link or telephone not appropriate**

It is the duty of the parties to alert the court as to any reason why live links or telephones should not be used (3N.3).

Reasons for not using a live link include:

- where a defendant's effective participation cannot be achieved by such means (3N.6)⁴⁸
- where defence representatives reasonably need to meet with a defendant, to take their instructions or to explain events to them (3N.7).

3N.10 **Trial attendance – live link**

The court may allow a defendant to observe the trial via live link, but:

- the defendant can only give evidence via live link if a special measures direction is made under s33A YJCEA 1999, and
- a defendant in custody who observes the trial by live link is not present as a matter of law.

3N.11 **Giving evidence by live link**

- This is available to defence and prosecution witnesses who meet the statutory criteria.
- Where a live link is sought as a special measure for a young or vulnerable witness or defendant, the applicant must identify someone to accompany them while they give evidence and must name the person and explain why that person would be an appropriate companion.⁴⁹

Practical advice – child defendant giving evidence by live link

Defence representatives should remember that special measures under the YJCEA 1999 and CrimPR Part 18, including the use of a live link, are available to defence as well as to prosecution witnesses who meet the statutory criteria.⁵⁰

Defence representatives should always consider whether their witnesses would benefit from giving evidence by live link and should apply for a direction if appropriate, either at the case management hearing or as soon as possible thereafter.⁵¹

⁴⁷ Arrangements must be made in advance of any live link hearing to (a) enable the youth offending worker to be at the secure establishment where the child defendant is in custody or (b) if this is not practicable, the youth offending worker must have sufficient access to the child defendant via the live link booth before and after the hearing: CrimPD 3N.15

⁴⁸ Non-exhaustive examples given by CrimPD 3N.6 are where the defendant 'has a disorder or disability, including a hearing, speech or sight impediment, or has communication needs to which the use of a live link or telephone is inimical'

⁴⁹ See also CrimPR 18.10(f)

⁵⁰ CrimPD 3N.11

⁵¹ CrimPD 3N.11

CrimPD 3P: 'Commissioning medical reports'⁵²

3P.2	<ul style="list-style-type: none">• Reports must be commissioned promptly.• Defence representatives may wish to obtain a medical report wholly independently of the court where the view is taken that expert medical opinion is material to the defence case.
3P.5–3P.10	<p>Timetabling</p> <ul style="list-style-type: none">• A timetable for receiving reports should be set up and reviewed at intervals (3P.5).• The timetable must be realistic but not protracted (3P.6).• The schedule for the convening of a further pre-trial case management hearing to consider the report and its implications for the conduct of the proceedings should be:<ul style="list-style-type: none">- magistrates'/youth court: no more than 6–8 weeks after the court's request and- Crown Court: no more than 10–12 weeks after the court's request (3P.7).
3P.11–3P.17	<ul style="list-style-type: none">• 3P.11: Reference is made to a Ministry of Justice and HM Courts and Tribunals Service publication, 'Good practice guidance: commissioning, administering and producing psychiatric reports for sentencing',⁵³ which 'contains material that will assist court staff and those who are asked to prepare such reports'. The guidance includes standard forms of letters of instruction and other documents.• 3P.15: Where a medical report has been, or is going to be, commissioned by a party, that party is responsible for arranging payment of the fees incurred, even though the report is intended for the court's use. This must be made clear in that party's commission.

A legally aided party can apply to the LAA to cover the costs of the expert report. In order to do this, prior authority will be needed from the LAA. It is often useful to have written advice explaining the need for the report. Where the report has been requested by the court, this should be clearly explained.

⁵² CrimPD 3P.1 refers to CrimPR 24.3 and 25.10 which set out the procedures to be followed in the magistrates' courts and in the Crown Court respectively where there is doubt about a defendant's mental health and, in the Crown Court, a defendant's capacity to participate in a trial

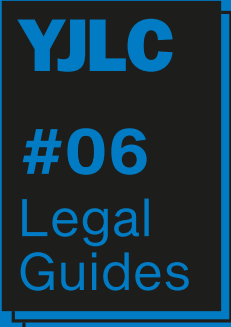
⁵³ Prepared for and published by the Ministry of Justice and HM Courts and Tribunals Service in September 2010 (bit.ly/2Rm1lWB) s22(7) ASBCPA 2014

Annex 1: Special measures and modifications provided for in the Criminal Practice Directions

3G.1	<ul style="list-style-type: none">• Severance from other adult defendant(s).
3G.2	<ul style="list-style-type: none">• Court familiarisation before hearing.
3G.3	<ul style="list-style-type: none">• If an intermediary is being used, intermediary attendance at pre-trial visit.
3G.4	<ul style="list-style-type: none">• If use of live link is being considered, a practice session.
3G.5	<ul style="list-style-type: none">• Police protection from intimidation, vilification or abuse from public or media.• A direction to the media about prohibition of photographing on court premises.• A reporting restriction under s.39 or s.49 Children and Young Persons Act 1933.
3G.7	<ul style="list-style-type: none">• Courtroom set-up so everyone sits at the same or almost the same level (if practicable and subject to appropriate security arrangements).
3G.8	<ul style="list-style-type: none">• Allowing (subject to appropriate security arrangements) a child defendant to sit with members of their family or others in a like relationship and with another suitable supporting adult (such as a social worker) in a place which permits easy, informal communication with their lawyers.• A supporting adult should be available throughout proceedings.
3G.9	<ul style="list-style-type: none">• Court to ensure proceedings are explained in a way that the defendant can understand.• Court to remind lawyers and supporting adult of their responsibility to explain each step of the process.
3G.10	<ul style="list-style-type: none">• Court hearings to be conducted according to a timetable that takes full account of a defendant's ability to concentrate, with frequent and regular breaks often being appropriate.• Court to ensure clear language is used that the defendant can understand, and that questioning is short and clear, 'ground rules' followed, and 'toolkits' referred to.
3G.11	<ul style="list-style-type: none">• Evidence given via live link, if in the interests of justice.
3G.12	<ul style="list-style-type: none">• Removal of robes and wigs, taking into account the wishes of vulnerable defendant and vulnerable witness.• Security staff for young vulnerable defendant in custody should not be in uniform.• No recognisable police presence in the courtroom save for good reason.
3G.13	<ul style="list-style-type: none">• Restriction on the attendance of members of the public to a small number, perhaps limited to those with an immediate and direct interest in the outcome.• Restriction on reporters attending to a number that is practicable and desirable, although the public has a right to be informed about the administration of justice.

#06 Criminal Practice Directions

Written by Professor Kathryn Hollingsworth and Shauneen Lambe in collaboration with Claire Mawer, Katya Moran and Laura Cooper at the Youth Justice Legal Centre. With thanks to Daniella Waddoup (Doughty Street Chambers).



#01
Turning 18

#02
Intermediaries for
child defendants

#03
Child Criminal
Exploitation

#04
Criminal
Behaviour Orders

#05
Trauma Informed
Lawyering

#06
Criminal Practice
Directions

#07
Effective
Participation

#08
S.38 Beds

#09
Diversion

#10
Anonymity

#11
Adolescent Brain
Development

#12
Sexual Offending

Youth Justice Legal Centre yjlc.uk

The Youth Justice Legal Centre (YJLC) has been set up by the charity Just for Kids Law to provide legally accurate information, guidance and training on youth justice law. YJLC is a centre of excellence on youth justice law, providing:

- Guidance and expertise on youth justice law to safeguard children's rights in the youth justice system;
- A dedicated website with comprehensive information, legal resources and best practice guides for lawyers, judges, magistrates, youth offending teams, professionals, children and families;
- Training on youth justice issues for lawyers and non legal professionals working with children;
- Free specialist legal advice for children, their families, youth offending teams, the judiciary and lawyers.

Doughty Street Chambers doughtystreet.co.uk

Doughty Street Chambers offers extensive expertise across numerous child rights-related areas and has wide-ranging experience in bringing ground-breaking litigation for and concerning children in public law, extradition, immigration, mental health, community care, prison law, trafficking, education, criminal justice, clinical negligence and inquests. Many of our members specialise in complex and developing areas concerning the rights of children, including female genital cutting (FGC) and children, abortion rights for vulnerable teenagers, unaccompanied minors' rights, the education rights of children in custody, inclusive education for disabled children, children's effective participation in criminal trials, and the rights of LGBTIQ children.

Just for Kids Law justforkidslaw.org

Just for Kids Law is a UK 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 Dawes Trust

The Dawes Trust is a charity set up from funds of the estate of the late Christopher Dawes. The Trust's object is to fight crime, including organised crime, by the protection of people and property, the preservation of public order and the prevention and detection of crime for the public benefit.

The Trust provides funding to various organisations and projects in furtherance of its object.