

# #01 Turning 18

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This guide deals with the impact of turning 18 on young people in the criminal justice system:

- where they are dealt with for offences committed as a child, and
- where they offend during young adulthood (18 to 25).

The law considers those who turn 18 between the commission of an offence and the start of criminal proceedings to be adults. Even if they were technically adults at the time of the offence, it is increasingly recognised that young people do not gain full maturity on their 18th birthdays.<sup>1</sup> The challenge practitioners face is to ensure that there is as much recognition as possible of the young person's age at the time they offended, and their age and maturity at each significant stage of a case.

In this guide you will find help in navigating through the different regimes, rules and principles.

# The charging decision

## A decision to divert

### For offences committed as a child

For a child suspect, there is what is commonly regarded as a 'presumption' in favour of diverting from prosecution by offering an Out of Court Disposal (OCD).

The emphasis on diversion is the product of recognition that diverting children from prosecution is more likely to prevent offending. Criminalising children should be avoided due to the likely detrimental impact.<sup>2</sup>

As a result, a number of informal and formal OCDs are routinely made available for children as an alternative to prosecution. Informal OCDs, such as Triage, can involve informal engagement with the Youth Offending Team (YOT). Formal diversion refers to youth cautions and youth con-

ditional cautions. When a person engages with an informal OCD the police record the outcome as No Further Action (NFA). This is not automatically disclosed on a standard or enhanced Criminal Record Certificate.

For a suspect who has offended as a child, having turned 18 when the decision to divert is made has particular consequences:

- the suspect will no longer be eligible for any of the youth informal or formal OCDs.
- Ministry of Justice and Youth Justice Board guidance stipulates that an adult simple caution should be offered, if the suspect is eligible for one.<sup>3</sup>

### Practical advice

- If a suspect is approaching their 18th birthday, and is likely to be eligible for a youth OCD, solicitors should take instructions on whether the suspect wants the police pursued for a charging decision. Many suspects will be hesitant to contact the police. This is especially so for summary only offences where a charge must be laid within 6 months.<sup>4</sup> However, this must be balanced against the criminal records implications of missing out on an OCD.
- If a suspect has turned 18, and would have been eligible for a youth caution, argue that they should be dealt with by way of an adult caution. Argue that the MOJ/YJB guidance referred to above supports this position.

### For offences committed as an adult

For a suspect who is a young adult when they offend, having turned 18 has the following consequences.

- The circumstances in which an adult may be offered a caution (simple<sup>5</sup> or conditional<sup>6</sup>) are limited.
- For serious offending, that otherwise may have been addressed by a formal youth OCD, the exceptional circumstances provisions must apply for a caution to be offered.<sup>7</sup>

The exceptional circumstances provisions make it possible for an adult suspect to be offered a caution when, due to the seriousness of the offence, this disposal ordinarily would not be available.

Under these provisions, the police are entitled to consider mitigating factors such as:

- a defendant's age at time of their offending;
- their level of maturity; and
- the impact of these issues on culpability and likely sentence (see "Sentencing for offences committed as a young adult" on page 10).<sup>8</sup>

2. CPS Legal Guidance on Youth Offenders, Public Interest and Sensitive Issues: The Decision to Prosecute'

National Strategy for the Policing of Children & Young People' NPCC 2015

Code for Crown Prosecutors 2018

Youth out-of-court-disposals: guide for police and youth offending services MOJ & YJB 2013

3. Youth cautions: guidance for police and youth offending teams', MOJ & YJB, 2013 Effective from 8 April 2013

4. S.127 Magistrates' Courts Act 1980

5. 'Cautioning & Diversion' CPS Guidance, updated September 2019

6. DPP Guidance, Conditional Cautioning—Adults', updated 1st November 2019

7. pp32, 37–38 & 40–41, Ministry of Justice Guidance, 'Simple Cautioning for Adults', effective from 13th April 2015

pp4.1 & 14.1DPP Guidance, Conditional Cautioning—Adults', updated 1st November 2019

8. pp14.1DPP Guidance, Conditional Cautioning—Adults', updated 1st November 2019

p6 'Code of Practice for Adult Conditional Cautioning', published 9th January 2013

## Practical advice

- In the period before a diversion decision is made, gather evidence relating to maturity (e.g. psychological report) and the impact of this on culpability.
- Ensure the police are aware of the exceptional circumstances provisions.
- Consider making representations addressing maturity, culpability and likely sentence.
- Ensure any representations make reference to the sentencing principles applicable to young adults (18 to 25) as these offer favourable guidance in relation to the likely sentence.

## A decision to charge

### For offences committed as a child

A suspect who has turned 18 at the time a decision to charge is made will be regarded as an adult in the eyes of the law.

However, the public interest considerations of the Full Code Test require the reviewing lawyer to consider the suspect's age and maturity at the time of the offence in any decision to prosecute.<sup>9</sup>

Guidance exists for various disposals such as OOCs and sentence, and is referred to throughout this guide. The guidance suggests that young adults being dealt with after turning 18 should be dealt with similarly to how they would have been if still a child.

## Practical advice

If there are concerns that the defendant's age and maturity has not been properly considered by the Crown, practitioners should invite the court to adjourn the allocation hearing, for a sufficient period of time to allow such representations to be made. If evidence relevant to age and maturity comes to light after the allocation hearing this should be provided to the Crown so that the prosecution may be reviewed in the light of it.

### For offences committed as an adult

The public interest considerations of the Full Code Test require prosecutors to consider:

'...the suspect's maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties. As a starting point, the younger the suspect, the less likely it is that a prosecution is required.'<sup>10</sup>

Prosecutors are:

- under a continuing duty to review the public interest in a prosecution,<sup>11</sup> and
- have the power to refer the case to the police for a caution/conditional caution, even after a defendant has been charged.<sup>12</sup>

9. pp4.17 Full Code Test for Prosecutors, 2018

10. pp14(d) 'Code for Crown Prosecutors' updated 26th October 2018

11. pp3.6 'Code for Crown Prosecutors' published 26th October 2018

12. pp3.1 'Code for Crown Prosecutors' published 26th October 2018

**Table 1**  
**Youth and adult diversionary schemes**

	Youth OOOD	Adult OOOD
Informal local	Triage, Youth Restorative Disposal	Not available
Informal national	Youth Community Resolution, Outcome 21*, Outcome 22*	Adult Community Resolution
Formal	Youth Caution (Simple and Conditional)	Adult Caution (Simple and Conditional)
Offence type	<p>In principle any offence.</p> <ul style="list-style-type: none"> <li>Police will consider offending history and offence seriousness.</li> <li>ACPO<sup>13</sup> Level 2 or 3: will usually result in a child being given a caution.</li> <li>Indictable only and ACPO Level 4 offence: exceptional circumstances must apply + CPS authorisation to caution required<sup>14</sup></li> </ul>	<p>In principle any offence.</p> <p>Simple Caution:</p> <ul style="list-style-type: none"> <li>Low-level offences mainly.<sup>15</sup></li> <li>Statutory restriction on availability for indictable only offences:<sup>16</sup> superintendent (or higher ranking officer) must make decisions in line with MOJ guidance + certify exceptional circumstances exist + CPS authorisation<sup>17</sup></li> </ul> <p>Conditional caution:</p> <ul style="list-style-type: none"> <li>Not for offences where immediate custody/ high level community order appropriate, unless exceptional circumstances apply<sup>18</sup> + CPS authorisation.<sup>19</sup></li> </ul>
Repeat offending	<p>No statutory restriction</p> <p>Simple Caution: Child may receive a youth caution even if he or she has previous convictions, reprimands, warnings, youth cautions and youth conditional cautions.</p> <p>Conditional Caution: 'Where a youth has been given two youth conditional cautions and continues to offend, a further youth Conditional Caution is unlikely to be effective in preventing offending and should not be offered as an alternative to prosecution'.<sup>20</sup></p>	<p>No statutory restriction</p> <p>Simple Caution: 'A repeat simple caution should not be given if a defendant has been cautioned for a similar offence in the last two years, unless an officer of the rank of inspector or above deems that exceptional circumstances apply.'</p> <p>Conditional Caution: 'A record of previous offending should not rule out the possibility of a Conditional Caution especially where there have been no similar offences during the last two years or where it appears that the Conditional Caution is likely to change the pattern of offending behaviour.'<sup>21</sup></p>
Supervision	YOT	Police
Eligibility	Determined by application of statutory criteria, guidance and policy: sufficient evidence to charge + admission of guilt + victim's views canvassed + (if conditional, willingness to complete conditions). <sup>22</sup>	
Rehabilitation provisions	<p>Informal: recorded as No Further Action (NFA) and not considered spent or unspent.<sup>23</sup></p> <p>Formal: simple caution spent immediately. Conditional caution: spent within 3 months.<sup>24</sup></p>	

\* Outcome 21 and Outcome 22 are available for both adults and children but are mainly used for children

13. ACPO Youth offender case disposal Gravity Factor Matrix, March 2013

14. For detailed commentary on exceptional circumstances, see: DPP Guidance, 'Conditional Cautioning: Youths' updated 5 November 2019

15. CPS Guidance, 'Cautioning & Diversion', updated 23 September 2019

16. s17(2) & 17(6) Criminal Justice & Courts Act 2015

17. s17(6) Criminal Justice & Courts Act 2015 and pp32, 37 – 38 & 40 – 41, Ministry of Justice Guidance, 'Simple Cautioning for Adults', effective from 13th April 2015

18. pp12.1 DPP Guidance, 'Conditional Cautioning: Adults' updated 1 November 2019

19. pp6.1 & 6.2 CPS Guidance, 'Cautioning & Diversion', updated 23 September 2019

20. pp12.1 DPP Guidance, 'Conditional Cautioning: Youths' updated 5 November 2019

21. pp13.1 DPP Guidance, 'Conditional Cautioning: Youths' updated 5 November 2019

22. For youth cautions, see: 'Youth cautions: guidance for police and youth offending teams', MOJ & YJB, 2013 effective from 8 April 2013

For statutory criteria and policy guidance - adult simple cautions, see: Ministry of Justice Guidance, 'Simple Cautioning for Adults', effective from 13 April 2015

For statutory criteria and policy guidance - adult conditional cautions, see: 'Code of Practice for Adult Conditional Cautions', published 9 January 2013

23. para 7.5, Youth cautions: guidance for police and youth offending teams', MOJ & YJB, 2013. Effective from 8 April 2013

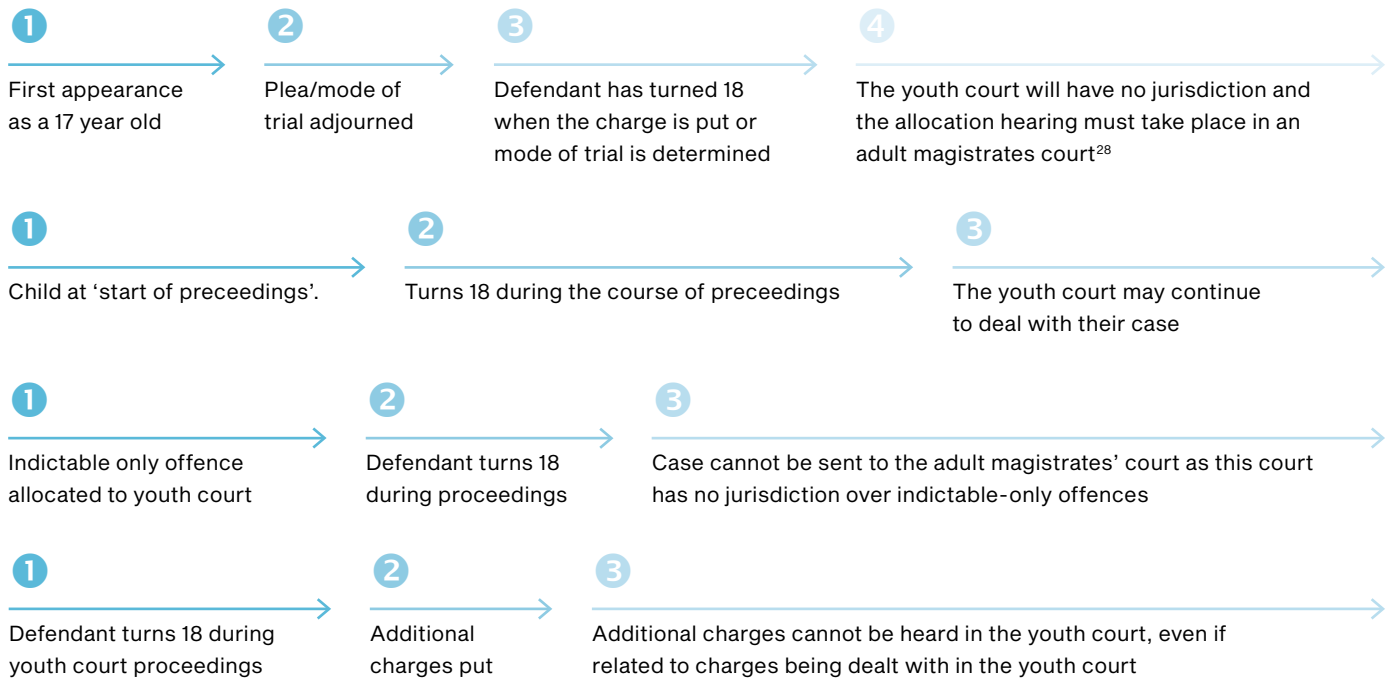
24. Sch2, s8A Rehabilitation of Offenders Act 1974

# Mode of trial

## For offences committed as a child

- If a defendant is 17 when proceedings start but turns 18 before the conclusion of proceedings the youth court can continue to deal with the case or send the case to be heard in the adult magistrates' court.<sup>25</sup>
- The relevant date for 'start of proceedings' is the date of the hearing at which the mode of trial and plea<sup>26</sup> is considered. Or, if no mode of trial hearing takes place, when the charge is put.<sup>27</sup>

## Possible scenarios



**Table 2**  
Impact on format of trial for defendant turning 18

	Child	Adult
Venue of proceedings	Youth court or Crown Court	Adult magistrates' court or Crown Court
Procedural safeguards and special measures	<ul style="list-style-type: none"> <li>• Proceedings held in private</li> <li>• Right to anonymity usually preserved</li> <li>• Youth court special measures apply. The Crown Court must give reasons for departing from the Criminal Practice Direction.</li> </ul>	<ul style="list-style-type: none"> <li>• Proceedings held in public</li> <li>• No right to anonymity</li> <li>• Limited eligibility for special measures</li> </ul>
Tribunal	In the youth court: district judge or specialist lay bench	Lay bench, or jury and circuit judge/recorder

25. s29 Children & Young Persons Act 1963

26. R v Islington North Juvenile Court ex p Daley [1983] 1 AC 347 R v Ford (Lewis) [2018] EWCA Crim 1751

27. R v Vale of Glamorgan Magistrates' Court ex p Beattie [1986] 82 Cr App R 1

28. R v Ford (Lewis) [2018] EWCA Crim 1751

# Bail

## Turning 18 before bail and remand decision

- Turning 18 before any decision is made as to bail and remand will result in a young adult losing the benefit of the careful guidance governing bail for child defendants. The guidance is that all parties should maximise the availability of bail and treat custody as the measure of last resort.
- The court may be less likely to grant bail for serious or repeat offending. This is due to the absence of YOT supervised bail conditions and the impact of this on the court's assessment of the risk of reoffending and risk to the public.

## Turning 18 during proceedings

- The YOT may continue to supervise bail if a defendant is on conditional bail.<sup>29</sup>
- If a defendant turns 18 while on remand in the youth custodial estate they can be transferred to the adult estate. Where possible this should be avoided.<sup>30</sup>
- Transition planning must take place as the child reaches 18 years of age. The type of custodial sentence expected is a factor affecting the decision on whether a transfer to the adult custodial estate is suitable.<sup>31</sup>

## Practical advice

- Prepare a note for the court setting out the likely sentence in view of the defendant's age at the time of the allegations.
- Bring the court's attention to the careful sentencing principles relevant to a defendant who has turned 18. These could tip the balance in favour of a successful bail application.
- Consider what type of bail or RLLA (Remand to Local Authority Accommodation) the young adult would have been granted if they had been prosecuted as a child and what conditions would be equivalent.
- If a transfer to the adult custodial estate is a possibility, consider making an application for bail and ensure the Youth Custody Service is aware of the sentencing principles for defendants who have offended as a child.

29. 'How to manage bail and remands: section 3 case management guidance' YJB May 2019

30. 'How to manage bail and remands: section 3 case management guidance' YJB May 2019

31. 'How to Manage Bail & Remands' Youth Justice Board Guidance, 1 May 2019

# Sentencing for offences committed as a child

## Sentencing powers

The general rule is that sentencing powers are determined by a defendant's age at the date of conviction.<sup>32</sup>

### Turning 18 before proceedings start

- Only adult disposals will be available to the court, despite the defendant being sentenced for offences committed as a child.
- Sentence must be conducted in accordance with the principles established in *R v Ahmed and Ors*.<sup>33</sup>
- The court must have regard to the maximum sentence that would have been available at the time of the defendant's offending and, as its starting point, the court should take the sentence which would have been imposed if the defendant had been sentenced as a child.<sup>34</sup>

### Turning 18 during proceedings and before conviction

Despite the general rule, the youth court may retain the sentence of a child who turns 18 before conviction if crossing the age threshold occurs during the proceedings. Alternatively, the court may exercise a discretionary power to remit sentence to the adult magistrates' court.<sup>35</sup>

Where a sentence is retained, the youth court may give a youth sentence.<sup>36</sup> This means that a defendant may receive a Referral Order, Youth Rehabilitation Order or Detention and Training Order, despite the defendant turning 18 before conviction.<sup>37</sup> However, this will often be met with resistance from the YOT, for whom supervision of the order will be complicated. Practitioners aiming for this outcome will need to liaise closely with the YOT and are likely to need to persuade them that exceptional circumstances apply.

Where a case is remitted to the adult magistrates' court, the following rules apply:

- There is no right of appeal against a decision to remit.<sup>38</sup>
- The youth court may rescind the remittal at any stage before sentence.<sup>39</sup>
- The youth court may not remit sentence for an indictable only offence.<sup>40</sup>
- The adult magistrates court may deal with the defendant in any way they would have dealt with an adult offender,<sup>41</sup> and
- as a result may theoretically commit to the Crown Court for sentence. In *R v Denny*<sup>42</sup> the Court of Appeal held that the court's remittal of an 18 year old who was convicted of robbery in the youth was unlawful, because the adult magistrates' court does not have the jurisdiction to deal with an adult indictable only offence. This may be a factor weighing against the exercise of the power.

- 32. *R v Dennis Obasi* [2014] EWCA 581;  
*R v CB* [2013] EWCA  
*R v Robson* [2007] 1 Cr App (S) 54;  
*R v Ghafoor* [2002] EWCA Crim 1857;  
*R v Danga* [1992] QB 1996;
- 33. *R v Ahmed and Ors* [2023] EWCA Crim 281
- 34. *R v Ahmed and Ors* [2023] EWCA Crim 281
- 35. s27(1), (2) Sentencing Act 2020
- 36. s29(1) Children and Young Persons Act 1963
- 37. *Aldis v DPP* [2002] EWHC 403 (Admin), [2002] 2 Cr App R (S) 88 (400)
- 38. s29(5) Sentencing Act 2020
- 39. s142 Magistrates' Court Act 1980
- 40. *R (Denny) v Acton Youth Court* [2004] 2 All ER 961
- 41. s27(3) Sentencing Act 2020
- 42. *R v Denny v Acton Youth Court* [2004] All ER 901
- 43. *R v Dennis Obasi* [2014] EWCA Crim 581

### Turning 18 between conviction and sentence

A defendant who turns 18 after conviction and before sentence will receive a youth sentence.<sup>43</sup>

# Sentencing principles

The approach to sentence for a young person who has turned 18 between offence and conviction is set out in *R v Imran Ghafoor*.<sup>43</sup>

This approach has been considered in subsequent cases and is supplemented by guidance in the Definitive Guideline for the Sentencing of Children and Young People:

## 1

The starting point is the sentence that would have been passed at the date of the commission of the offence.<sup>44</sup>

- Culpability should be judged considering the young adult defendant's age at the time of the offence.<sup>45</sup>

## 2

It will rarely be appropriate for the court to impose a more severe sentence than the maximum that the court could have imposed at the time the offence was committed.<sup>46</sup>

- A sentence at or close to the maximum may be appropriate.
- A retrospective increase in sentence because of the crossing of the age threshold should be avoided.<sup>47</sup>

## 3

The starting point principle is a powerful factor<sup>48</sup> and there must be a good reason to depart from it, however it is not an inflexible rule.<sup>49</sup>

- Length of the gap between offending and conviction: where there is a short gap it will rarely be appropriate to impose a longer sentence.<sup>50</sup>
- Whether there has been a significant change in circumstances.
- Reason for crossing the age threshold: defendant's fault<sup>51</sup> or delay in prosecution.<sup>52</sup>

44. *R v Ghafoor* [2002] EWCA Crim 1857

45. *R v Ghafoor* [2002] EWCA Crim 1857

46. *R v BW* 2012 EWCA Crim 3178  
pp 4.10 'Definitive Guideline: Sentencing of Children & Young People'

47. *R v Ghafoor* [2002] EWCA Crim 1857

48. *R v Egege* 2017 EWCA Crim 2161

49. *R v Ghafoor* [2002] EWCA Crim 1857, para 32 Dyson L.J

50. *R v Bowker* 2007 EWCA Crim 1608, 2008 1 Cr App R (S) 72

51. *R v Danga* 1992 13 Cr App R (S) 408

52. *R v Shan* 2007 EWCA Crim 1861

53. *R v Cuddington* 1995 16 Cr App R (S) 246



## 4

### The Definitive Guideline for the Sentencing of Children and Young People continues to be relevant to sentence.<sup>53</sup>

- Sentencing should be conducted in accordance with the principal aim of the youth justice system (to prevent offending by children and young people) and considering the child or young person's welfare.
- The sentencing exercise or sentence passed should be individualistic, offender focussed, and place an emphasis on rehabilitation and reintegration.
- Culpability should be carefully considered, as children are not fully developed and they have not attained full maturity.
- Important factors in assessing culpability include the defendant's emotional and developmental age, in addition to the defendant's chronological age.
- In most cases offending is a phase that passes fairly quickly and should be regarded as such.
- The effect of any punishment should be considered carefully, as it may be felt more heavily by a child in comparison with an adult.
- Custody is the measure of last resort.

## 5

### The statutory objectives of adult sentencing are relevant.<sup>54</sup>

#### Practical advice

- An application of Ghafoor could mean simply identifying the sentence that a child would have received and imposing an adult equivalent.<sup>55</sup>
- When sentencing a child to custody and regard is had to the relevant adult guideline, the length of the child's sentence will be determined by establishing the appropriate adult sentence and then reducing it by between one third to one half in line with Sentencing Council Guidance.<sup>56</sup>
- Therefore, when a defendant has turned 18 before conviction and faces a lengthy custodial sentence, the court should be urged to adopt the same approach.

54. R v Hobbs [2018] EWCA Crim 1003, pp6.2

55. R v Bowker 2007 EWCA Crim 1608, 2008 1 Cr App R (S) 72 para 6.2 'Definitive Guideline: Sentencing of Children & Young People'

56. R v Byron Stokes [2020] EWCA Crim 162

57. Para 6.46 Definitive Guideline for the Sentencing of Children and Young People & R v D [2019] 10 WLUK 433

**Table 3**  
**Youth and adult sentencing options**

	Youth sentencing options	Adult sentencing options
Community	Absolute or conditional discharge / Reparation order / Financial penalty  Referral Order  Youth Rehabilitation Order	Absolute or conditional discharge  Financial penalty  Community Order
Custody	Detention and Training Order (DTO)  Long-term detention  Extended detention  Detention for Life  Detention at Her Majesty's Pleasure	Determinate sentence (immediate or suspended)  Extended sentences  Life Sentence
Supervised by	YOT	Probation
Served in	SCH / STC / YOI	YOI for 18 to 21yr olds, most commonly incorporated into adult estate. (No YOIs for women).

## Practical Advice

Ensure that the sentencing court is provided with information relating to

- the defendant's age at the time of their offending
- their personal circumstances
- information on the available sentencing options and likely disposal, had the defendant been sentenced at the time of their offending.

Consider mitigating on the following issues:

- the rehabilitation periods for adults are much longer than for children<sup>57</sup>
- the notification requirements for adults are much more onerous for adults than for children<sup>58</sup>
- unlike pre-sentence reports prepared by the YOT, reports prepared by the probation service will not promote the welfare of the offender.

58. ss5(2)(b) Rehabilitation of Offenders Act 1974

59. ss81 & 82 Sexual Offences Act 2003

# Sentencing for offences committed as a young adult

The mitigation afforded by youth and immaturity may justify a young adult being treated differently at sentence. This would come primarily, even with serious offending, through a reduction in the sentence.<sup>59</sup>

Furthermore, at sentence, the factors relevant to the sentencing of children may also apply.<sup>60</sup> The aim of rehabilitation also continues to be an important factor.<sup>61</sup>

## Principles

Issues of youth, developmental age, and immaturity are now recognised as factors that may:<sup>62</sup>

1. diminish a young adult's culpability; and
2. effect how people young respond to sentence.

In the leading case of *Clarke*,<sup>63</sup> the Court of Appeal recognised that:

'Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R. v Peters*<sup>64</sup> is an example of its application. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birth-

days. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday.'<sup>65</sup>

*Clarke* has been considered in subsequent cases. In *R v Balogun*<sup>66</sup> the court held that the factors relevant to sentencing a child do not cease to have relevance just because the offender was 18 when they offended. In *R v Daniels*<sup>67</sup> the court held that factors in the guideline for sentencing children can have weight when considering the appropriate sentence in cases involving young adults who are not fully mature.

## Sentencing guidelines: age and maturity

In 2019 the Sentencing Council issued new guidance for 'Age and/or Lack of Maturity' as a mitigating factor. This appears online within the Sentencing Council's 'General Guideline: Overarching Principles' guidance and can be found in a drop down box when this mitigating factor is selected by the user. In summary, the guidance

draws on the reasoning of the decision in *Clarke* and sets out the following principles:

- Age and/or lack of maturity can affect the young person's responsibility for the offence and the effect of sentence on the young person. Either or both of these considerations may justify a reduction in the sentence.

60. In addition to *Clarke*, see also: *R v Hobbs* 2 Cr App R(S) 36;

*R v Balogun* [2018] EWCA Crim 2933;

*R v Daniels* [2019] EWCA Crim 296;

*R v Geoghegan* [2019] EWCA Crim 787;

*R v Ake* [2018] 2 WLUK 692;

*R v Hayward* [2019] EWCA Crim 1501;

*R v Ford* (AJ) [2019] EWCA Crim 1757

*R v Mohammed* [2019] EWCA Crim 1881;

61. para 41, *Holroyde L.J., R v Balogun* [2018] EWCA Crim 2933

62. *R v Geoghegan* [2019] EWCA Crim 787

63. *R v Clarke* [2018] EWCA Crim 185

'General Guidance: Overarching Principles', section entitled 'Age and/or lack of maturity', Sentencing Council Guidance

64. *R v Clarke* [2018] EWCA Crim 185

65. [2005] EWCA Crim 605; [2005] 2 Cr. App. R. (S.) 101 (p.627); see [10]–[12]

66. *R v Clarke* [2018] EWCA Crim 185.

67. *R v Balogun* [2018] EWCA Crim 2933

68. *R v Daniels* [2019] EWCA Crim 296

- Emotional and developmental age is of at least equal importance to a defendant's chronological age (if not greater).

Young adults are still developing neurologically and consequently may be less able to: evaluate the consequences of their actions; and limit impulsivity and limit risk-taking, particularly when exposed to peer pressure, to which they are more likely to be susceptible.

A young person's environment, including factors such as adverse childhood experiences, abuse and deprivation, may affect their neurological development.

Immature offenders may find it particularly difficult to cope with custody and the requirements of a community order without appropriate support.

Immature offenders have a greater capacity for change, are more responsive to rehabilitation, and either stop committing crime, or begin a process of stopping, in their late teens and early twenties.

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

## Establishing immaturity

The key principle to have emerged from Court of Appeal decisions following Clarke<sup>69</sup> is that age alone may be insufficient a factor from which to infer immaturity.

Factors which have been treated as illustrative of a young adult's immaturity include:

- short-lived episodes of offending, including repeat offending<sup>69</sup>
- the trajectory of a young adult's decline into criminal behaviour<sup>70</sup>, even where the offending is serious<sup>71</sup>
- environmental factors such as abuse in childhood<sup>72</sup>

Factors which have been treated as illustrative of a young adult's maturity include:

- offending that could be described as sophisticated<sup>73</sup> and/or serious,<sup>74</sup> including serious offending by a defendant who has experienced childhood trauma<sup>75</sup>
- repeat offending over an extended period of time, where it could be described as serious<sup>74</sup>
- a young adult's intelligence and educational background<sup>77</sup>

Evidence that may support a finding of immaturity includes:

- the opinion of a PSR author<sup>78</sup>
- the opinion of an expert such as a psychologist

## Practical advice

- Be aware of the different approaches to age and maturity in the case law and where possible seek an opinion about the young adult's level of maturity from independent sources, such as a PSR, an expert psychological report or the opinion of a professional involved in the young adult's care.
- Be aware that the new Sentencing Council guidance post-dates many of the cases referred to above. The guidance should provide greater consistency in the approach to the sentencing of young adults. For example, it helpfully identifies childhood trauma as being capable of playing a role in a young adult's maturity.
- Give the court a note addressing the sentencing principles above, so that the court's duty to have regard to the mitigation is clear.
- Consider the scientific evidence on child and adolescent brain development and how this can support legal arguments.<sup>79</sup>
- Consider the Howard League for Penal Reform's research on the judicial approach to maturity<sup>80</sup> and
- Consider their comprehensive guidance on the sentencing principles applicable to young adults.<sup>81</sup> The principles identified are broader in scope than the Sentencing Council guidance. These principles are drawn from case law, science and social studies.

69. R v Clarke [2018] EWCA Crim 185

70. para 32, judgment of L. J Leveson, R v Assaf [2019] EWCA Crim 1057

71. R v Quartey [2019] EWCA Crim 374

72. R v Quartey [2019] EWCA Crim 374

73. R v ACF - [2019] EWCA Crim 1677

74. R v Assaf (Basil) [2019] EWCA Crim 1057

75. R v Webster [2019] EWCA Crim 758 & R v Bowen [2019] EWCA Crim 701

76. R v Webster [2019] EWCA Crim 758

77. R v Hamilton [2019] EWCA Crim 625

78. R v Assaf (Basil) [2019] EWCA Crim 1057

79. R v Ake [2018] EWCA Crim 392

80. Scientific developments in child and adolescent brain development, policy and the law by Shaunnen Lambe, International Association of Youth and Family Judges and Magistrates Chronicle ISSN 2414-6153, July 2018

81. [bit.ly/37fILDc](https://bit.ly/37fILDc)

82. [bit.ly/3hfCGv2](https://bit.ly/3hfCGv2)

# Turning 18 while subject to a youth sentence

## Referral Orders and Youth Rehabilitation Orders

### Supervision of the order

The YOT has the power to either retain supervision of a young adult or transfer to adult services, that is, the Probation Service. Transition will be

conducted in accordance with transition guidance, taking into account a young adult's circumstances.<sup>82</sup>

### Breach

If a young adult is 18 by the date of a first appearance for any breach proceedings, the case will be dealt with in the adult magistrates' court. If the Youth Rehabilitation Order (YRO) is revoked and

the young adult resentenced, the court's sentencing powers are limited to those available at the date of conviction for the original offence.<sup>83</sup>

### Detention and Training Order (DTO)

A young adult who turns 18 at the half-way point of a DTO shorter than 24 months will be subject to an extended period of supervision.<sup>84</sup>

Where a defendant breaches a DTO by failing to comply with their supervision requirements, breach proceedings must be dealt with in the youth court<sup>85</sup>. If the breach is proved the court has the following options:

- to impose a further period of custody<sup>86</sup>

- to impose a further period of supervision<sup>87</sup>
- to impose a fine<sup>88</sup>
- no action<sup>89</sup>

If a further period of custody or supervision is imposed, the extended period will be either up to three months or the length of time from the date the breach was committed until the end of the order, whichever is shorter.<sup>90</sup>

### Practical advice

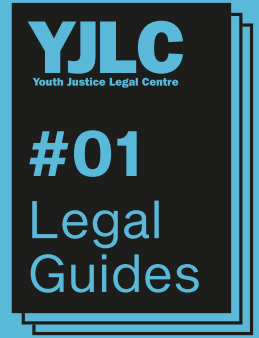
If a child is sentenced to custody and is going to turn 18 while there, they may want to challenge decisions regarding early release or transfer to the adult custodial estate. In closing letters, solicitors can direct these children to the Howard League's advice line for children in custody.<sup>91</sup>

83. 'Joint National Protocol for Transitions in England', NPS, YJB & HM Prison & Probation Service, 2018
84. pp7.19 'Sentencing of Children & Young People: Definitive Guideline'
85. s247(1)-(7) Sentencing Act 2020
86. pp 7.2 'Sentencing of Children & Young People: Definitive Guideline'
87. Sch12 para3(1)-(3), (8) Sentencing Act 2020 and 'Sentencing Children & Young People: Definitive Guideline' para 7.21
88. Sch12 para3(1), (2), (8) Sentencing Act 2020 and 'Sentencing Children & Young People: Definitive Guideline' para 7.21
89. Sch12 para3(1), (2), (8) Sentencing Act 2020 and 'Sentencing Children & Young People: Definitive Guideline' para 7.21
90. 'Sentencing Children & Young People: Definitive Guideline' para 7.21
91. Custody: Sch12 para3(1)-(3), (8) Sentencing Act 2020; supervision: Sch12 para3(1), (2), (8) Sentencing Act 2020 & for both: 'Sentencing Children & Young People: Definitive Guideline' para 7.21
92. <https://bit.ly/3eFON2d>

## #01

Turning 18

Written by Claire Mawer in collaboration with Katya Moran and Laura Cooper at the Youth Justice Legal Centre.



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### Youth Justice Legal Centre

[yjlc.uk](http://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.

### Just for Kids Law

[justforkidslaw.org](http://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.

### Barrow Cadbury Trust / Transition to Adulthood

[bctrust.org.uk](http://bctrust.org.uk)

This report was funded by the Barrow Cadbury Trust as part of its Transition to Adulthood (T2A) Alliance initiative. The Trust is an independent charitable foundation committed to bringing about socially just change. T2A conducts research and practice to identify effective approaches for young adults throughout the criminal justice system.  
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