

#09 Court bail and remand

s1
Overview and
legal framework

s2
Bail

s3
Remand

This guide provides an overview of the law on bail and remand for children in court, and examines the corresponding duties of the local authority.

The guide gives practical tips on what can be done by practitioners to prevent the pre-conviction detention of child clients.

s4
Further bail
applications and
appeals

s5
Murder

s6
Breach

s7
Role of the
local authority

s8
Useful resources

s9
Appendices

In association with

Overview and legal framework

There are small but significant differences when it comes to applying for bail on behalf of a child. It is critical to know these differences to properly represent a child at a bail hearing.

Useful guidance and decision-making criteria on bail and remands can be found in the Youth Court Bench Book.¹ Helpful flowcharts from the Book are included in this guide in Appendices 1 and 2. The Ministry of Justice's (MOJ's) Youth Remand Concordat² also contains useful reminders of the responsibilities of everyone involved in the bail and remand process.

Detention considerations for children are set out in sections 98–102 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). These provisions were amended on 28 June 2022 with the aim of ensuring that custodial remand is always used as a last resort.³

The court must first consider whether to grant bail, with or without conditions. The possible objections to bail are broadly similar to adults, with some important distinctions (see below), but the subsequent remand considerations are different from those for adults.

Practical advice: police custody

If the child arrives at court in police custody, consider:

- making an immediate application for the child to be released on bail from the cells. Consider a bail condition to remain in the court building until the case is called on
- applying for them to be out of the secure dock and next to their lawyer and parent or supporting adult for the duration of the hearing
- asking the court to express its views about the police bail decision. This can help develop change where the police station applies a blanket policy to children charged with certain types of offences without properly considering their obligations under section 38 of the Police and Criminal Evidence Act 1984 (PACE)
- that there is strong anecdotal evidence that a child appearing in police custody is more likely to be remanded by the court.

¹ Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN

² Youth Remand Concordat, MOJ, 28 February 2025, bit.ly/4kOb7tH

³ Pt 8 Police, Crime, Sentencing and Courts Act 2022. The intention behind these changes – including to strengthen the tests the court must apply when deciding to remand a child to custody – is set out in Circular No. 2022/03, MOJ, bit.ly/4hyMhek

Bail

Presumption of bail

For child defendants, there is a presumption of bail⁴ – except where the child is charged with or convicted of murder, attempted murder, manslaughter, certain serious sex offences, or if the

child defendant has certain specified previous convictions.⁵ In such cases, the court can still grant bail, but only if there are exceptional circumstances that justify it.

Objections to bail for imprisonable and indictable offences

As with adult defendants, the court can only remand the child if there are substantial grounds to believe that one of the statutory objections to bail exist in relation to the child defendant. General objections to bail:

- failure to surrender to custody
- committing an offence on bail
- interference with witnesses or otherwise obstructing the course of justice
- for their own protection.

There is an additional reason specific to children on which basis bail can be refused:

- for the child's own welfare – this criterion has been found not to breach a child's rights when refused bail at the police station for their own protection.⁶

Bail in relation to children may also be withheld on the following bases:⁷

- the child is already in custody serving a sentence
- there is insufficient information to make a bail decision
- the child has been on bail in these proceedings and is arrested for breach of bail conditions
- it is impracticable to complete enquiries or make a report unless the child is in custody
- the child was on bail for another matter on the date of the offence.

Objections to bail for summary only, imprisonable offences⁸

The definition of imprisonable offences is defined by whether or not it is imprisonable for an adult.⁹ The possible objections to bail are narrower and the court can withhold bail for these offences only if:

- the child has previously failed to surrender to custody and, in view of that failure, the court believes that they would fail to surrender
- the child was on bail for another matter at the time of the instant offence, and there are substantial grounds to believe that they would commit further offences on bail
- there are substantial grounds to believe that the child would cause mental or physical injury or fear of mental or physical injury to an associated person.

Or further:

- if it is for the child defendant's own protection or welfare
- the child is already in custody serving a sentence
- there is insufficient information to make a bail decision
- the child is arrested for breach of bail in these proceedings and substantial grounds exist for believing they would fail to surrender, commit further offences, interfere with witnesses or obstruct justice.

Or further:

- if it is for the defendant's own protection (or welfare, if a child).
- the child is already in custody serving a sentence
- there is insufficient information to make a bail decision

⁴ s4 Bail Act 1976

⁵ s25(2) Criminal Justice and Public Order Act 1994

⁶ Archer v The Commissioner of Police of the Metropolis [2021] EWCA Civ 1662

⁷ Sch 1 Part I Bail Act 1976

⁸ Sch 1 Pt 1A Bail Act 1976

⁹ Sch 1 Pt III para 1 Bail Act 1976

- the child is arrested for breach of bail in these proceedings and substantial grounds exist for believing they would fail to surrender, commit further offences, interfere with witnesses or obstruct justice.

Objections to bail for non-imprisonable offences

The statutory grounds for withholding bail for children charged with non-imprisonable offences are not substantially different to those for adults. For children, a court need not grant bail in such cases if:¹⁰

- the child has previously failed to surrender and, in view of that failure, the court believes that the child will fail to surrender
- it is for the child's own protection or welfare
- the child is in custody serving a sentence
- the child has been arrested for breach of bail in these proceedings and there are substantial grounds to believe that the child would fail to surrender, commit further offences, or interfere with witnesses or otherwise obstruct the course of justice.

The court's approach to bail

The court must first decide whether to grant bail.

- The first consideration should be unconditional bail.
- The court must consider whether any of the statutory objections to bail can be met by conditions. The court can only impose bail conditions in order to allay those fears, or to ensure the child assists with the writing of reports or attends a meeting with their lawyer (s3(6) Bail Act 1976). Appropriate conditions can be devised by the Youth Justice Service (YJS), who can also offer bail support and supervision to help allay any bail concerns. The YJS will need to assess the child and their circumstances to present a suitable package to the court.
- Where the court does not consider standard bail support and supervision to be sufficient, the court will consider conditional bail with intensive support and supervision (ISS) as an alternative to secure remand.

Conditional bail

The court may impose conditions on a child defendant's bail for the child's own protection or,

additionally, for a child's welfare or in their own interests.¹¹

Curfews

Curfews do not need to have electronic monitoring. Doorstep curfews do still exist, but for a child to receive credit for time spent on curfew, the curfew must be a 'qualifying curfew'. This means it must be for nine hours or more and must be elec-

tronically monitored. Each day the child spends on such a curfew means that a half-day must be deducted from any subsequent custodial sentence. The total will be rounded up if necessary.¹²

¹⁰ Sch 1 Pt II Bail Act 1976

¹¹ Sch 1 Part I para 8(1) (b) Bail Act 1976

¹² s240A Criminal Justice Act 2003

Electronic monitoring

Curfews with electronic monitoring can only be imposed on children where the following conditions, as specified under section 3AA of the Bail Act 1976, are satisfied:

- (a) they have attained the age of 12 years;
- (b) they:
 - i. are charged with or have been convicted of a violent, sexual or terrorism offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or
 - ii. are charged with/convicted of one or more imprisonable offences which, together with any convictions for imprisonable offences, amount to (or would if convicted) to a recent history of repeatedly committing imprisonable offences while remanded on bail or to custodial remand;
- (c) electronic monitoring must be available in the area, and
- (d) the YJS must inform the court that the imposition of the requirement would be suitable.

Location monitoring

Conditional bail with location monitoring may be imposed on a child where the conditions, as specified under section 3AA of the Bail Act 1976, are satisfied (see 'Electronic monitoring' above).

Conditional bail with intensive support and supervision

ISS¹³ is an intensive community-based package, offered where standard bail support and supervision are not considered sufficient, and is an alternative to secure remand. The YJS will assess whether a child is suitable for ISS bail, but the decision rests with the court. Conditions are likely to include tagged curfews and voice verification.

ISS programmes can, in some cases, be under-utilised by local authorities due to resourcing and financial pressures. Early discussions should be had with the YJS to determine whether ISS bail is appropriate where there is a high risk of remand

due to the nature of the offence. However, it is very important to ensure that ISS bail is proposed and used only as a last resort, given how intensive and restrictive it is. The YJS can and should look to propose more bespoke, tailored and child-focused bail support and supervision alternatives that can allow the court to grant conditional bail. It is often about both the YJS and defence advocating to the court the rationale as to why conditional bail would be more suitable than ISS and would still be 'robust'.

Practical advice: the bail application

- Ascertain the bail status of any co-accused to either distinguish or assist with asking for conditions for your child client.
- Regarding objections:
 - Take note of objections to bail that were raised by the police, the Crown and the court.
 - Tailor the bail application to respond to objections.
- Get input from family members, the YJS and (where appropriate) children's social care. Be creative about possible conditions that could be offered to the court, including, for example, contacting any agencies and voluntary organisations that are or could be working with the child. Outlining agencies' willingness to work with the child on a voluntarily basis may help persuade the court to grant bail. Early and collaborative engagement with all agencies is the key to creating a robust bail package.¹⁴
- Utilise the MOJ's Youth Remand Concordat to remind everyone of their responsibilities in bail and remand decisions.
- Always consider positive and supportive conditions that recognise strengths, not simply punitive or restrictive ones that only see risks.
- Try to get supporting evidence of anything relied upon in your application, for example, school records, mental health diagnoses, etc. You may also wish to highlight the number

¹³ 'How to manage bail and remands – What the Bail Intensive Supervision and Support package looks like', YJB case management guidance, 12 October 2022, bit.ly/3tWtxPv

¹⁴ Youth Remand Concordat, MOJ, 28 February 2025, page 16, bit.ly/4kOb7tH

of hours spent in any form of education, as this can help illustrate how the child's time is currently occupied.

- Regarding the proposed address:
 - Anticipate problems. If the address is close to where the incident was alleged to have taken place, or close to where the co-accused, the complainant or other witnesses live, it may prove unworkable. Likewise, if the child is charged with sexual offences, an address where other children reside may prove unworkable.
 - Be aware that proceedings may be delayed by the Crown needing to check the proposed bail address. The address can often be checked by the prosecution or the police on the day of the bail application. However, the more notice the Crown has of the address, the better.
 - If the proposed address is out of the area, you will need to ensure coordination between the YJS to make sure the agencies have spoken to each other and are in agreement. The court will want to know which YJS will have responsibility and how coordination will be handled.¹⁵
- In serious cases, where there is a real risk of custody, discuss whether the YJS can prepare an ISS package. If this is not available, consider whether they can put together an alternative high-risk bail package with stringent conditions if the child is at risk of custody.
- In submissions, highlight the fact that almost two-thirds (62%) of children remanded to custody did not subsequently receive a custodial sentence.¹⁶
- If you are representing a Black, Brown or Racialised child, consider raising the disproportionality in remand decisions. The Youth Justice Board (YJB) has found that children of mixed ethnicity and Black children were significantly more likely to be remanded in custody than White children, even after demographic and offence-related factors were controlled for.¹⁷
 - AssetPlus risk assessment¹⁸ tools used by the YJS to measure risk are also acknowledged to be racially biased.¹⁹ Black children are assessed as riskier than children of any other ethnicity, a trend that cannot be explained by offence-related or demographic factors.²⁰ Consider discussing your concerns about an adverse risk assessment with the YJS in the first instance, if necessary, you could then raise these concerns with their line manager or the head of service. Although you could call the YJS to give evidence in court as to the formula used to assess risk, this should be a last resort because ultimately it is important to work collaboratively with the YJS to benefit the child.
 - Where the child you are representing has been risk assessed adversely on an AssetPlus score in relation to a bail decision, carefully consider those parts of the assessment that contribute to risk, for example, the child's home environment, the stability of the address, the offence itself and any historical offences. Consider highlighting to the YJS the protective factors that could reduce the risk, for example, is a parent willing to engage with the YJS to support the child? Or are there positive activities that the child could undertake to occupy their time that would reduce the risk score?
 - The YJB have committed to a Child First approach, which pledges to see children as children, seeing the whole child, including any structural barriers they face, and focusing on better outcomes for children.²¹ The CPS have endorsed this.²² Consider whether their approach to the bail decision in your case lives up to these principles.

¹⁵ 'Case responsibility', YJB case management guidance, 12 October 2022, bit.ly/3Vmkjia

¹⁶ 'Youth justice statistics: 2023 to 2024', MOJ and YJB, 30 January 2025, bit.ly/4kUuPEO

¹⁷ 'Ethnic disproportionality in remand and sentencing in the youth justice system: Analysis of administrative data', YJB, 2021, bit.ly/4hDUf66

¹⁸ See 'AssetPlus: assessment and planning in the youth justice system', YJB, 15 October 2014, bit.ly/3KVSS2B

¹⁹ See, eg, Tracy Almond, 'Asset: An assessment tool that safeguards or stigmatizes young offenders?', Probation Journal, Vol 59(2), June 2012, page 142

²⁰ 'Youth justice statistics: 2019 to 2020', MOJ and YJB, 28 January 2021, bit.ly/3tn46Hy; 'Ethnic disproportionality in remand and sentencing in the youth justice system: Analysis of administrative data', YJB, 2021, bit.ly/4hDUf66

²¹ 'What is Child First?', YJB, bit.ly/3XW0iYh

²² 'Children as suspects and defendants', CPS, 13 July 2023, bit.ly/4ixXYmH

²³ s102(5) LASPO

²⁴ s91(4A) LASPO

²⁵ R (B) v Brent Youth Court [2010] EWHC 1893 (Admin)

²⁶ Youth Remand Concordat, MOJ, 28 February 2025, page 17, bit.ly/4kOb7tH

Practical advice: if bail is refused

- If bail is refused, make sure you have been provided with a copy of the reasons. The court must explain to the child the reason for their custodial remand in court in child-friendly language and check the child understands these reasons. The court must also record the reasons on Common Platform in ordinary language so that they can be given in writing to the child, the YJS and the child's lawyer.²³
- Consider renewing your application as soon as is appropriate. Keep in mind that the court is under a duty to have regard to a child's welfare specifically in relation to bail and remand decisions.²⁴ This may in itself require a court to allow repeat bail applications.²⁵ Once bail is refused, at every subsequent hearing the court should reconsider if the child can be granted bail.²⁶

Remand

Remand to local authority accommodation

If bail for a child is refused, the court must remand to local authority accommodation (RLAA), unless the 'strict criteria'²⁷ to remand to youth detention accommodation (RYDA) are met²⁸ (see below). The court must consult with the local authority, through the YJS, before imposing conditions on the remand.²⁹ If RLAA conditions are breached, the child can be arrested and brought back to court in the same manner as breach of bail.³⁰

The designated local authority responsible for a child who is to be on RLAA must be stated in open court.³¹ Local authorities must accommodate any children placed on RLAA.³²

RLAA can include the child living at home with their parents or guardian (even though bail has been refused) if the local authority assesses this to be the best accommodation option. However, the court can stipulate that the child must not reside with a named person.³³

The court may impose conditions in the same way as bail conditions.³⁴ This can include a curfew with electronic monitoring,³⁵ but there is no power to impose electronic monitoring for GPS tagging (location monitoring). The court must consult with the designated local authority before imposing any conditions.³⁶ The court may impose requirements on the local authority for securing the child's compliance with any conditions.³⁷

The local authority may apply to the court for conditions to be imposed.³⁸ The designated local authority, or the child, may also apply for any RLAA conditions (or requirements) to be varied or revoked.³⁹

The court must explain to the child in ordinary language why it is imposing (or varying) the conditions.⁴⁰

²⁷ Remand provisions, para 11, Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN

²⁸ s91(3) LASPO

²⁹ s93(4) LASPO

³⁰ s97 LASPO

³¹ s92(2) LASPO

³² s21 Children Act 1989; Pt 6 Social Services and Wellbeing (Wales) Act 2014

³³ s93(3)(b) LASPO

³⁴ s93(1) LASPO

³⁵ s94 LASPO

³⁶ s93(4) LASPO

³⁷ s93(3)(a) LASPO

³⁸ s93(5) LASPO

³⁹ s93(6) LASPO

⁴⁰ s93(7) LASPO

⁴¹ Under s22(11) Prosecution of Offences Act 1985, 'custody' includes local authority accommodation or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

⁴² As defined in s102(2) LASPO, namely remand to a secure children's home, a secure college, a secure training centre or other accommodation specified by regulations under s248(1)(f) of the Sentencing Code

⁴³ As amended by Pt 8 Police, Crime, Sentencing and Courts Act 2022. For children subject to extradition proceedings, see ss100–101 LASPO

⁴⁴ 'How to manage bail and remands – What is a remand to youth detention accommodation?', YJB case management guidance, 12 October 2022, bit.ly/3AGIoS7

Practical advice

- Custody time limits apply to RLAA as they do to RYDA.⁴¹
- Custody time limits are 56 days in the magistrates' court and youth court and 182 days in the Crown Court (from the date of sending).

Remand to youth detention accommodation

RYDA⁴² is only lawful when bail has been refused and when certain conditions are met. The two ways a child can be detained are set out in sections 98 and 99 of LASPO.⁴³ The court does not specify where the child will be detained; the ultimate decision is made by the Youth Custody Service, following a recommendation by the YJS.⁴⁴ The court must designate which local authority is responsible for the child, which includes responsibility for accommodation costs and travel costs. At this point, the child becomes 'looked after'. This imposes additional duties and safeguards on the local authority for that child⁴⁵ (see below for more detail).

Sections 98 and 99 of LASPO (as amended on 28 June 2022) state:

98 First set of conditions for a remand to youth detention accommodation

...

- (2) The age condition is that the child has reached the age of twelve.
- (2A) The sentencing condition is that it appears to the court very likely that the child will be sentenced to a custodial sentence for the offence mentioned in section 91(1) or one or more of those offences.
- (3) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences—

- (a) is a violent, sexual or terrorism offence, or
- (b) is an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.
- (4) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—

[See below: Appendix 1 Flowchart for the route to youth detention accommodation under section 98 of LASPO – necessity criteria.]

99 Second set of conditions for a remand to youth detention accommodation

...

- (2) The age condition is that the child has reached the age of twelve.
- (3) The sentencing condition is that it is very likely that the child will be sentenced to a custodial sentence for the offence mentioned in section 91(1) or one or more of those offences.
- (4) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences, is an imprisonable offence.
- (5) The first history condition is that—
 - (a) the child has a recent and significant history of absconding while subject to a custodial remand, and it appears to the court that the history is relevant in all the circumstances of the case, and
 - (b) the offence mentioned in section 91(1), or one or more of those offences, is alleged to be or has been found to have been committed while the child was remanded to local authority accommodation or youth detention accommodation.

[See Appendix 2 below: Flowchart for the route to youth detention accommodation under section 99 of LASPO – history criteria.]

When considering the sentencing condition and whether it is very likely that the child will be sentenced to custody, the Youth Court Bench Book states that the court ‘must consult the Overarching principles – sentencing children and young people’.⁴⁷ The Bench Book further states: ‘The court must be very mindful that the minimum custodial sentence in the youth court is a DTO [Detention and Training Order] of four months. If there is not a very likely risk of such a sentence, then a RYDA under this section is not permitted.’⁴⁸

Before deciding whether to RYDA, the court must consider the interests and welfare of the child.⁴⁹ This is a substantial obligation that should be go beyond mere words or superficial agreement and demonstrate genuine commitment or action. The criteria of what is involved in considering welfare includes: meeting the needs of children; protecting them from maltreatment; preventing impairment of their mental and physical

- (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
- (b) to prevent the commission by the child of imprisonable offences and that the risks posed by the child cannot be managed safely in the community.

- (6) The second history condition is that the offence or offences mentioned in section 91(1), together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would, if the child were convicted of that offence or those offences, amount to a recent and significant history of committing imprisonable offences while on bail or subject to a custodial remand, and this appears to the court relevant in all the circumstances of the case.
- (7) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
 - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
 - (b) to prevent the commission by the child of imprisonable offences and the risks posed by the child cannot be managed safely in the community.⁴⁶

health; ensuring that children grow up in circumstances consistent with safe and effective care; and promoting the upbringing of children with their birth parents or wider family whenever possible.⁵⁰ These are very relevant to the court’s decision-making on bail and remand. Further detail on safeguarding and welfare can be found in our guide, ‘Safeguarding first’.

Where the court decides to RYDA, it must state in open court its reasons⁵¹ and (a) that it has considered the interests and welfare of the child and (b) explain why it is of the opinion that the necessity condition is met. This is designed to reinforce the existing presumption of non-custodial remand by ensuring courts consider RLAA as a first step.⁵²

If the conditions of sections 98 or 99 of LASPO are not met, the court cannot remand the child to youth detention accommodation.

⁴⁵ Remand provisions, para 32, Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN

⁴⁶ ss98 and 99 LASPO

⁴⁷ Remand provisions, para 33, Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN; ‘Overarching Principles – Sentencing Children and Young People’, Sentencing Council, 1 June 2017, bit.ly/41XCXuO

⁴⁸ Remand provisions, para 33, Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN

⁴⁹ s91(4A) LASPO

⁵⁰ ‘Working together to safeguard children’, Department for Education, December 2023, page 7-8, bit.ly/4ISTUhn

⁵¹ s102(5) LASPO

⁵² Circular No. 2022/03, MOJ, para 10, bit.ly/4hyMhek

Calculating time spent on remand

Where a child is sentenced to a DTO, any time spent on remand (section 240ZA of the Criminal Justice Act 2003) or time spent on a qualifying curfew (section 240A of Criminal Justice Act 2003) will count towards their DTO in the same manner as adults. It only applies to custodial

remands and therefore will not allow for credit to be given for those remanded to local authority accommodation. In such cases, it will be a matter for the judge to take that into account when passing sentence.⁵³

⁵³ R v A [2019] EWCA Crim 106

Further bail applications and appeals

Where a child has been refused bail and has been remanded into youth detention accommodation, they may make a second bail application advancing any argument, including previous arguments.

The court has a duty at every hearing to consider whether a child ought to be granted bail. A second bail application following a refusal can put forward the same arguments as before.⁵⁴ Any further applications should be based on new considerations not previously put before the court

– but note that the ‘passage of time itself may be considered to be a change of circumstance in particular cases’.⁵⁵ The duty of the court to have regard to the child’s welfare may also be a reason to allow repeat bail applications.⁵⁶ Therefore, it may be appropriate for the court to hear a further bail application for a child, even if the defence cannot show that there are new facts or arguments for the court to consider.

Application to the Crown Court

If a child is denied bail by the youth court or adult magistrates’ court, or wishes to apply to vary the conditions, the child can apply to the Crown Court to reconsider an application for bail.⁵⁷ An application to the Crown Court must be made as soon

as practicable and served on the Crown Court, the youth court or adult magistrates’ court; the prosecutor; and any surety.⁵⁸ It must include the copy of the certificate of full argument made in the lower court.⁵⁹

Appeal by the prosecution to the Crown Court

The prosecutor may appeal to the Crown Court against the grant of bail if the child is charged with an offence punishable by imprisonment.⁶⁰ The prosecutor must inform the court and the child’s representative of the intention to appeal at the end of the hearing and before the child is released from court,⁶¹ and then serve a notice to appeal on both the court and the child’s representative

within two hours of having informed them of the intention to appeal.⁶² Failure to serve the notice in time will result in the child being released from custody.⁶³ If notice is served, the child will have to remain in custody until the appeal is heard,⁶⁴ which should be as soon as practicable and no later than the second business day.⁶⁵

⁵⁴ Remand provisions, para 38, Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN

⁵⁵ Remand provisions, para 39, Youth Court Bench Book, Judicial College, January 2024, bit.ly/3BSmzCN

⁵⁶ R (B) v Brent Youth Court [2010] EWHC 1893 (Admin)

⁵⁷ s81 Senior Courts Act 1981

⁵⁸ Criminal Procedure Rules (CrimPR) 14.8(2)

⁵⁹ CrimPR 14.8(3)(e) and 14.4(4)

⁶⁰ CrimPR 14.9(1)(a); s1(1) Bail (Amendment) Act 1993

⁶¹ CrimPR 14.9(2); s1(4) and (5) Bail (Amendment) Act 1993

⁶² CrimPR 14.9(4); s1(5) Bail (Amendment) Act 1993

⁶³ CrimPR 14.9(10)

⁶⁴ CrimPR 14.9(3)

⁶⁵ CrimPR 14.9(8)

Murder

If a child is charged with murder, but not attempted murder, they must be remanded at the youth court or magistrates' court to appear before the Crown Court.⁶⁶ However, the court must still consider whether to RYDA or RLAA using the criteria in LASPO as set out above.⁶⁷ A Crown Court judge can grant bail, RLAA or RYDA, and the same criteria set out above must be considered. The Crown Court judge must consider bail by the second

business day after the first hearing in the youth or magistrates' court (section 14.10 of the Criminal Procedure Rules 2020). There is no right to bail. The Crown Court judge may only grant bail if the court is satisfied that there is no significant risk that, if released on bail, the child would commit an offence that would be likely to cause physical or mental injury to another person.⁶⁸

⁶⁶ s115 Criminal Justice Act 2009

⁶⁷ R (A) v Lewisham Youth Court [2011] EWHC 1193 (Admin)

⁶⁸ Sched 1, Pt 1, para 6ZA Bail Act 1976

Breach

Breach of bail

Breach of bail is not a separate criminal offence, but the police can arrest a child if they have reasonable grounds to believe that the child has breached the conditions of their bail, will breach the conditions of their bail or fail to surrender to court. If a child is arrested for breach of bail, the child must be brought before the court as soon as is practicable within 24 hours of the arrest.⁶⁹ (If the child is charged with murder, they must be brought before a Crown Court judge).

The court must determine whether the breach took place. The court must release the child on the same bail conditions as before unless it is of the opinion either that the child:

- is likely to fail to surrender to custody; or

- has breached or is likely to breach any condition of bail.⁷⁰

If the court finds that the child did breach, or was likely to breach, their bail conditions or likely to fail to surrender, then the court can reconsider bail (the considerations are as set out above). The child can be released on the same conditions or different conditions, or if an objection is made, remanded to LAA or YDA where those criteria are met.

When a child breaches conditions related to their support package with the YJS, it is a matter for the YJS whether to bring the matter back before the court.

Breach of remand to local authority accommodation

A child can be arrested if the police have reasonable grounds for suspecting that the child has broken any of the conditions in respect of a RLAA.⁷¹ As with bail breaches, the child must be brought

before the court within 24 hours of the arrest.⁷² If the court finds that the child has breached one of the conditions of the RLAA, the court can revisit the decision and the conditions.⁷³

Failure to surrender to custody

When a person is granted bail, they are under a duty to surrender to custody.⁷⁴ It is an additional criminal offence not to go to court at the time and place given without reasonable excuse. If a child does not appear, without a reasonable excuse, the court can issue a warrant. That warrant can be backed for bail or not backed for bail.

If the warrant is not backed for bail, the child will be arrested by the police and brought before the court. If there is no court sitting at the time of arrest – for example, if the child is arrested in the evening – the child will be held overnight in police cells to be brought to court the next morning.

⁶⁹ s7(4) Bail Act 1976

⁷⁰ s7(5) Bail Act 1976

⁷¹ s97(1)(c) LASPO

⁷² s97(2) LASPO

⁷³ s97(5) and (6) LASPO

⁷⁴ s3(1) Bail Act 1976

Role of the local authority

The role of the YJS

The YJS has a statutory duty to provide support for children on bail or remand.⁷⁵ Information from the YJS is a statutory requirement before certain decisions concerning bail and remand are made – for example, curfew. It is therefore crucial for a practitioner representing a child defendant to contact the YJS immediately.

The YJS must prepare either a bail supervision and support package, or an ISS bail package, to identify how a child can be managed in the community as an alternative to remand into custody.⁷⁶ Practitioners should be ready to suggest certain conditions – for example, residence at a proposed address; curfew; no contact provisions; and geographic exclusions.

The YJS also has a number of responsibilities once a decision has been made as to bail and remand. They are required to work with the child and their family to understand and follow any conditions of the bail,⁷⁷ case manage bail ISS provisions⁷⁸ and support children who are on RLAA, including putting a plan in place if the child turns 18.⁷⁹ For children on RYDA, they must spend time with the child following their remand decision to support their wellbeing and discuss next steps, visit the child in custody, put together a remand plan and plan for the child's resettlement when they are released.⁸⁰

If the YJS does not support bail

It is a matter for the court whether to grant bail, and the court may grant bail even where the YJS do not support it.

The YJS will carry out a risk assessment that determines whether they support bail for the child. Their central concerns will be around potential reoffending, harm to the public and safeguarding the child.

If the YJS take the position that they cannot support bail, it is important to find out why and to do everything possible to address their concerns or to find alternative arrangements or conditions that might suffice.

This can sometimes be done by offering an address out of the area. In some cases, the concern stems from the seriousness of the offence. This can sometimes be addressed by pointing out that a co-accused charged with the same offence has been given bail, or by highlighting weaknesses in the Crown's case.

However, if the YJS maintain the position that they cannot support bail, it is vital to ask that their report clarifies their reasons, for example, that this is solely due to the seriousness and is not a reflection of concerns about the child's engagement or compliance.

Child First

As stated above, the YJB and the CPS have committed to a Child First approach, which pledges to see children as children first and foremost, prioritising the best interests of children and recognising their particular needs, capacities, rights

and potential.⁸¹ This underlies the actions of these agencies concerning children and is very relevant to the decision of bail and remand.

⁷⁵ s38(4)(c) Crime and Disorder Act 1998

⁷⁶ Youth Remand Concordat page 16

⁷⁷ Youth Remand Concordat, MOJ, 28 February 2025, page 18, bit.ly/4kOb7tH

⁷⁸ Youth Remand Concordat, MOJ, 28 February 2025, page 18, bit.ly/4kOb7tH

⁷⁹ Youth Remand Concordat, MOJ, 28 February 2025, page 22, bit.ly/4kOb7tH

⁸⁰ Youth Remand Concordat, MOJ, 28 February 2025, page 27, bit.ly/4kOb7tH

⁸¹ 'What is Child First?', YJB, bit.ly/3XW0lYh

The role of children's social care

The Youth Remand Concordat states that children's social care must attend bail and remand hearings in respect of looked after children.⁸² Children's social care may also need to be involved at initial bail and remand hearings. They should also assist with information on the child's background, circumstances and welfare to support bail support packages.⁸³

There may also be cases where it is impossible or inappropriate for the bail address to be that of a family member. This should not increase the child's chances of RYDA. The local authority is required to provide accommodation to any child in need (under 18) if they have no one to look after them, they have been lost or abandoned or where

the person who has been caring for them is unable or prevented from providing suitable accommodation or care.⁸⁴

The YJS are required to involve children's social care at the earliest opportunity to request that they look for a suitable placement for the child.⁸⁵ In certain circumstances, it may be appropriate to write to the director of children's social care. The contact details, including email addresses, for all directors of children's social care can be found online.⁸⁶ Even if no address is proposed, the court can still remand the child to local authority accommodation with the expectation that accommodation will be found.

Placements out of area

Children's social care can and does find specialist places out of the area for children. It may be appropriate to see what is available and how far they are willing to mitigate any risk the court deems the child poses. However, children's social care

should try to accommodate children in the most appropriate placement for the child.⁸⁷ This is especially important given government recognition that there is meaningful scope to improve practice in this area to reduce custodial remands.⁸⁸

Practical advice

- Always try to highlight where there might be an accommodation issue and potential need to accommodate the child out of area as early as possible with the YJS court duty officer. It can take time for children's social care to identify and find out of area placements, especially if the child is not already 'looked after'.
- However, it is also important to recognise that it is often not in a child's best interests to be accommodated a long way from their home area and support network. Placements out of area should be a last resort and considered sparingly.
- Consider proposing to the court that the child be bailed with a condition to live and sleep as directed by the local authority.

In addition, section 44(1) of the Children and Young Persons Act 1933 states:

Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the

welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

⁸² Youth Remand Concordat, MOJ, 28 February 2025, page 14, bit.ly/4kOb7tH

⁸³ Youth Remand Concordat, MOJ, 28 February 2025, page 16, bit.ly/4kOb7tH

⁸⁴ ss17 and 20 Children Act 1989; R (G) v Southwark [2009] UKHL 26

⁸⁵ Youth Remand Concordat, MOJ, 28 February 2025, page 20, bit.ly/4kOb7tH

⁸⁶ See bit.ly/3wzWraX

⁸⁷ s22C Children Act 1989

⁸⁸ 'Review of custodial remand for children', MOJ, published 26 January 2022, updated 16 February 2022, bit.ly/3Ji8jBL

Local authority provision of accommodation under RLAA

Local authorities have a legal duty to provide accommodation for all children remanded to local authority accommodation.⁸⁹

Once a child is remanded to the local authority, it is for the local authority to decide where they are placed. This can mean placement in non-secure local authority accommodation; in a foster home; in a children's home; or, where appropriate, in the home of a family member or friend. It can even mean returning to the child's home address. However, if the court is concerned about this, they

can specify that the child is not to reside with a named person or at a named address.⁹⁰

The local authority can apply to the court to place the child in a secure placement (a secure children's home), where the child:

- (i) has a history of absconding and is likely to abscond from any other description of accommodation; and if the child absconds, is likely to suffer significant harm; or
- (ii) if kept in any other description of accommodation, is likely to injure themselves or other persons.⁹¹

⁸⁹ s21 Children Act 1989, and in Wales, the Social Services and Wellbeing Act 2014; also 'How to manage bail and remands – What to do when a child is refused bail by the police and requires transfer to local authority accommodation', YJB case management guidelines, updated 31 January 2024 bit.ly/4kRGle1

⁹⁰ s93(3)(b) LASPO

⁹¹ s25(1) Children Act 1989

⁹² s104 LASPO

⁹³ s22 Children Act 1989

⁹⁴ s22(3)(a) Children Act 1989

⁹⁵ s22(3)(b) Children Act 1989

⁹⁶ Youth Remand Concordat, MOJ, 28 February 2025, page 22, bit.ly/4kOb7tH

⁹⁷ 'The Children Act 1989 guidance and regulations – Volume 2: Care planning, placement and case review', Department for Education, July 2021, bit.ly/4hDkhGB

⁹⁸ 'The Children Act 1989 guidance and regulations – Volume 2: Care planning, placement and case review [Supplement] – Looked after children and youth justice' <https://bit.ly/3FLV6nU>

⁹⁹ Youth Remand Concordat, MOJ, 28 February 2025, page 23

¹⁰⁰ Youth Remand Concordat, MOJ, 28 February 2025, page 27, bit.ly/4kOb7tH

¹⁰¹ The 13 weeks criteria for leaving care would include any time the child has spent looked after between the age of 14 and 17 with at least one day over the age of 16. Sched 2, para 19B Children Act 1989

¹⁰² 'About us', Youth Custody Service, bit.ly/4IGNhP4

¹⁰³ 'How to manage bail and remands – What is a remand to youth detention accommodation?', YJB case management guidance, 12 October 2022, bit.ly/3AGIoS7

¹⁰⁴ Youth Remand Concordat, MOJ, 28 February 2025, page 28, bit.ly/4kOb7tH

'Looked after child' status

Every child remanded to youth detention accommodation or to local authority accommodation is to be treated as a 'looked after child'.⁹² As a result, the designated local authority has certain responsibilities and the child has certain entitlements.⁹³

Once a child is 'looked after', the local authority has a duty to safeguard and promote that child's welfare⁹⁴ and to make services available to the child as a parent would consider reasonable.⁹⁵

This includes plans for the child's health, care and educational needs. A looked after child plan should be agreed and put together within 10 days of the child's RLAA.⁹⁶ There is statutory guidance for local authorities about the care planning and placement.⁹⁷

Additionally, for children remanded to youth detention accommodation, Youth Justice Services are required to prepare a detention placement plan (DPP),⁹⁸ while children's social care is required to prepare a Looked After Child plan.⁹⁹ This should include how the child will be supported after their period on remand comes to an end. They must also advise the Youth Custody Service (YCS) on the most suitable secure accommodation, visit the child in custody and carry out reviews for the child to assess their welfare, support and needs.¹⁰⁰

If the remand lasts for 13 weeks or longer, as with other looked after children, the child or young person becomes eligible for 'leaving care services'.¹⁰¹ This means that the child should get advice and support for particular needs, including accommodation and financial assistance (including for higher education) by the responsible local authority.

The Youth Custody Service

The YCS is the organisation responsible for the operational running of the youth secure estate.¹⁰² It is the ultimate decision maker on the placement of a child who has been remanded to youth detention accommodation, taking into account the views of the YJS and children's social care.¹⁰³ It is

also required to work together with the YJS and children's social care to ensure that a looked after child plan is in place, on planning for the child's resettlement, and to support children by sharing risk and vulnerability assessments.¹⁰⁴

Alternatives to remand accommodation

The Review of Custodial Remand for Children in 2022 recognised that a high proportion of children in custody are there on remand and sought to enhance accommodation and community provision to ensure robust alternatives to custody are available.¹⁰⁵ As a result, they have funded two projects that aim to provide such an alternative.

The London Accommodation Pathfinder (LAP) provides an alternative to youth detention accommodation by operating up to four properties in London with capacity for 20 children aged 16 and 17. Through these placements, they offer targeted intervention and support with the aim of devel-

oping the young person's pro-social identity and independent skills.¹⁰⁶

The Greater Manchester Remand Pilot has involved the pooling of remand funding across 10 different local authorities in the area. The objective is to improve outcomes for children and reduce spend on remand. Alternative remand accommodation opened in late 2024, for which each child, aged 16 and 17, will be RLAA, subject to ISS conditions and robust supervision while accommodated in the property. Remand fostering options are also being explored for those 16 years old and under.

¹⁰⁵ 'Review of custodial remand for children', MOJ, January 2022, page 9, bit.ly/4iK36nZ

¹⁰⁶ For further details see London Accommodation Pathfinder Operations Manual, July 2022, bit.ly/4iD7vcq, and the London Accommodation Pathfinder Evaluation 2023–2024, bit.ly/4intuDC

Useful resources

s44(1) Children and Young Persons Act 1933: Every court dealing with a child or young person must have regard to the welfare of that child or young person.

UN Convention on the Rights of the Child (UNCRC) Article 3 provides that: 'In all actions concerning children ... the best interests of the child shall be a primary consideration.'

UNCRC Article 37(b) provides that the 'detention ... of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time'.

'What's wrong with remanding children to prison?', Howard League for Penal Reform, September 2021.¹⁰⁷ This guide provides statistics and data about the over-use of remand for children.

'Supporting children from custody into the community: A step by step guide', Howard League for Penal Reform, December 2019.¹⁰⁸ This guide provides a detailed overview of support to which children are entitled and helps adults to support children's positive reintegration into the community.

Equal Treatment Bench Book, Judicial College, July 2024¹⁰⁹

Youth Court Bench Book, Judicial College, January 2024¹¹⁰

Youth Defendants in the Crown Court, Judicial College, 22 August 2022¹¹¹

¹⁰⁷ bit.ly/34TUhHv

¹⁰⁸ bit.ly/3N6aSJl

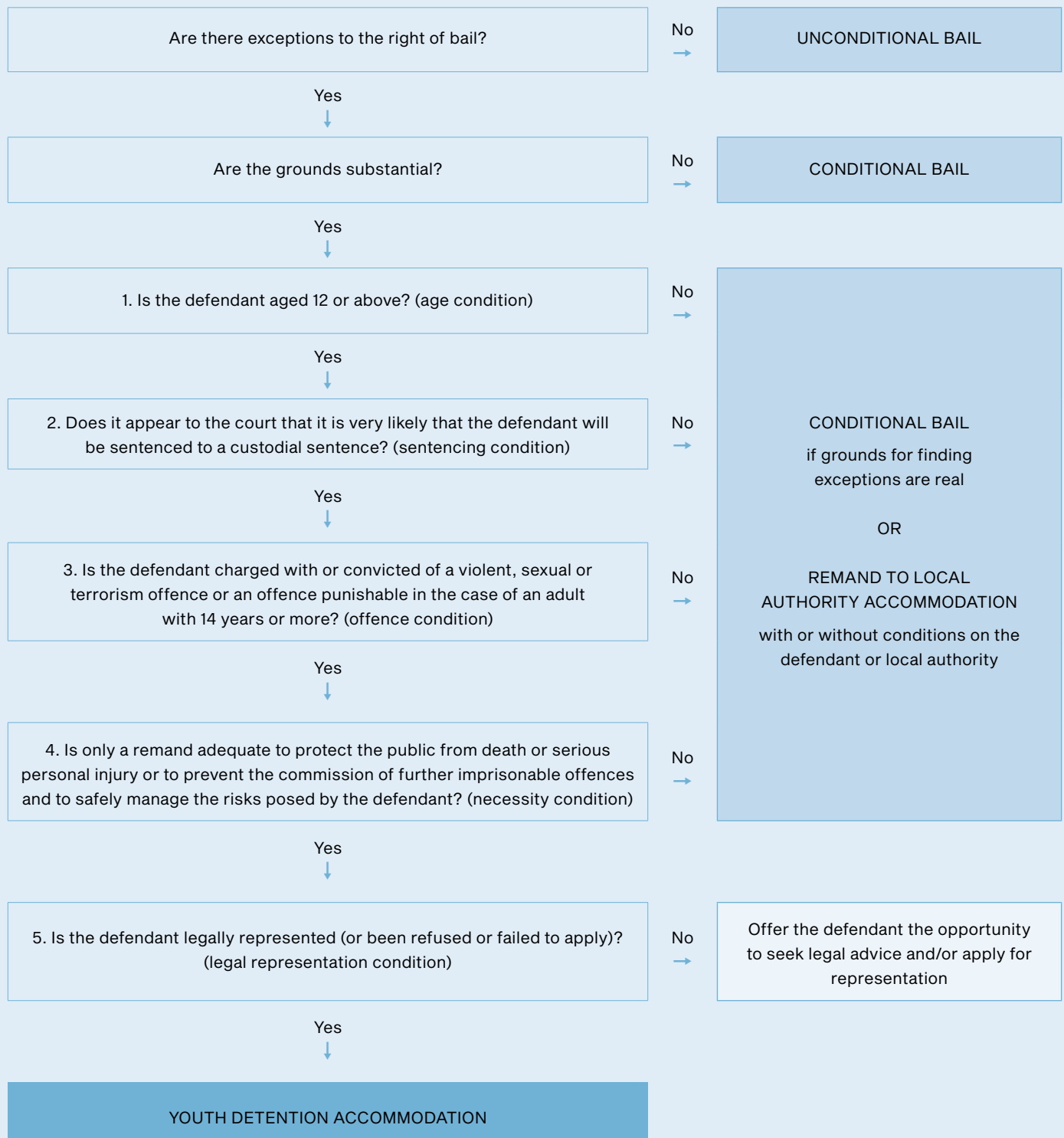
¹⁰⁹ bit.ly/3QLk9Kc

¹¹⁰ bit.ly/3BSmzCN

¹¹¹ bit.ly/4bv9ixy

Appendix 1

Route to youth detention accommodation – necessity criteria



(Source: Youth Court Bench Book, Judicial College, June 2020, p36 (amended to reflect the amendments to LASPO by the PCSCA 2022))

Appendix 2

Route to youth detention accommodation – history criteria



(Source: Youth Court Bench Book, Judicial College, June 2020, p37, (amended to reflect the amendments to LASPO by the PCSCA 2022))

#09

Court bail and remand

Written by Shauneen Lambe and Robbie Eyles in collaboration with Katya Moran and Laura Cooper at Youth Justice Legal Centre. With thanks to Ruth McGregor-Hamann (YJLC)



#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
Police bail
and remand

#09
Court Bail
and remand

#10
Anonymity

#11
Sexual allegations

#12
Sexting

#13
DoLs

#14
Dare to care

#15
Out of court
disposals

#16
Safeguarding
First

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- Expert guidance on youth justice law to protect and uphold children's rights within the legal system;
- A comprehensive website featuring legal resources, best practice guides, and up-to-date information for lawyers, judges, magistrates, youth justice services, professionals, children, and families;
- Specialist training on youth justice issues, designed for both legal professionals and those working with children in across the sector;
- A training and membership offer providing access to exclusive events, expert-led sessions, and a network of peers committed to best practice in youth justice;
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