

SENTENCING IN THE YOUTH COURT

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The Children Act 1908 established that children were to have separate courts and detention facilities and the death penalty abolished for those aged 8 to 15. This was the start of children being seen for what they were rather than just little adults. Unfortunately for most of the intervening Century no clear underlying philosophy has been established for the juvenile court and its successor the youth court. Whatever direction may have been set from time to time, and the Children and Young Persons Act 1969 is an example, was subject to the expediency of pendulum like swings of hard and soft political policies.

The 1970's saw the juvenile court struggling with the tensions between the welfare and best interests of the child established by section 44 of the Children and Young Persons Act 1933 and its responsibilities to the wider community to be seen to be punishing and deterring wrong doers. Many children and both civil care and criminal proceedings were removed from unsatisfactory parents and homes and placed into the care of local authorities which proved to be in many cases and equally if not more unsuitable environment. A them and us very partisan relationship existed between the social workers who supervised young offenders and the courts that made the orders. Supervision itself was low intensity and unstructured with the priority being the relationship with the young offender. Young people were seen as being excused of responsibility and accountability because of their problems and disadvantages. The seeming inability of either care or supervision to

prevent further offending fostered a sense of powerlessness in the judiciary to effect any change in behaviour.

The 1980's saw a significant development with greater use of diversion from the formal criminal justice system by police cautioning and from custody by supervision with "intermediate treatment" conditions. The effect was a significant reduction in the number of young people sentenced to custody over that decade. The juvenile court remained a frustrating place with little sanction on repeated offending.

Moving to the 1990's we had the Children Act 1989 moving care proceedings into the new Family Proceedings Court and the Criminal Justice Act 1991 re-naming the juvenile court the "Youth Court" and extending the age range to 18. The CJA 91 left the welfare consideration intact by not mentioning it and made it clear that all sentencing both adult and youth was to be based on a just desserts model with the sentence proportionate to the seriousness of the offence. The new framework gave a graduated approach to sentencing starting at discharges and fines at one end and rising through thresholds to community sentences for those offences serious enough and custody for those so serious. A decade later these provisions were incorporated into the Powers of Criminal Courts (Sentencing) Act 2000.

The 1990's saw an increase in social and political concerns and media interest in youth crime with much interest in joy riding, persistent offenders and the Bulger murder and subsequent trial. Police cautioning

had become used both repeatedly and differentially used across the country and was criticised for being ineffective at diverting young people from criminal behaviour. There appeared to be a pressing political need to be seen as tough on crime and the Criminal Justice and Public Order Act 1994 introduced secure training orders for 12 – 14 year olds as an attempt to contain those who despite supervision in the community continued to commit serious offences. Interestingly, some of the first girls I sent to an STC trashed the place in a riot. The 90's did see a substantial increase in the use of custodial sentences largely due to the removal of statutory restrictions but also to the just desserts model and the emphasis upon thresholds and the seriousness and persistence of offending.

1996 saw the publication of the seminal report from the Audit Commission "Misspent Youth" which drew attention to the problems faced by the youth justice system as being:

- Lacking credibility and clear aims
- Repeat unstructured cautioning
- Re-offending on bail
- Courts cumbersome and slow
- Lack of supervised community based interventions
- Disjointed system of custodial orders
- Little emphasis on changing behaviour
- Lack of strategic national direction

The resulting Crime and Disorder Act 1998, an early move by new labour, left intact both the welfare provisions of the 1933 Act and the just desserts model of the 1991 Act but introduced a principal aim of preventing offending by children and young people. New provisions designed to achieve the principle aim were introduced with six key objectives:

- Pledge to halve the time taken to deal with persistent offenders
- Confronting them with the consequences of their actions
- Targeted intervention
- Punishment proportionate to the seriousness and persistence of offending
- Encouraging reparation to victims
- Reinforcing parental responsibility

This was the start of the Youth Justice Board to provide the necessary leadership in the reform process and the key to success was seen to be the new multi-disciplinary Youth Offending Teams set up in each local authority area. The informal police cautioning system was replaced by a statutory reprimand and final warning system and a range of new orders introduced including under the Youth Justice and Criminal Evidence Act 1999 the referral order.

The 2000's have seen a major sea-change in the youth court and the Youth Offending teams have been a significant success and particularly in terms of the quality of the information made available to the court and

the interventions provided both in bail support and sentencing. Sadly some members of the bar still refer to the juvenile court, call the Yot probation and not yet aware of the mandatory referral order provisions.

Well it's now 2010 and for offences committed after 30 November 2009 things have changed again and this time it is essential that those representing children and young people are on board at the earliest opportunity. Three major sentencing developments came along together and I shall try to explain each and their relationship with each other. Although each is an independent initiative they interact with each other and their introduction has, unusually for criminal justice initiatives, been seamless.

THE SCALED APPROACH

Evidence suggests that interventions with young people are more effective when their level and intensity is matched to an assessed likelihood of reoffending and when they are focussed on the risk factors most closely associated with the offending. The scaled approach is a new set of requirements for contact between the Yot and young people subject to referral orders, community orders and on licence from Detention and Training Orders. In contrast to the former system where contact requirements depended upon the order made the new requirements vary depending on an individual's assessed risk of re-offending and harm to the public. The new approach has been

developed by the Youth Justice Board and has its origins in another report from the Audit Commission – A Review of the Reformed Youth Justice System (2004) - which indicated that Yots should make better use of their assessment data to determine the amount as well as the nature of interventions using a scaled approach.

There are three levels of intervention, standard, enhanced and intensive dependent upon the assessment of the risk of reoffending and the risk of causing serious harm. The scaled approach will inform the Yot's proposals to the court and their management of the young person's order post sentence but it does not determine the sentence.

Early signs are that the new system is bedding in well but there have been examples of over-prescribing in the not so serious offence case. Judicial training has re-emphasised the threshold approach to sentencing and magistrates are picking up cases that they feel are not serious enough to engage a community penalty or one of the intensity proposed.

THE YOUTH REHABILITATION ORDER

The Criminal Justice and Immigration Act 2008 received Royal assent in May 2008 and the youth justice provisions were implemented for offences committed after 30 November 2009. It is the biggest legislative change for the youth justice system since the Crime and Disorder Act 1998. The most significant change is the introduction of the Youth

Rehabilitation Order (YRO) a generic community sentence for young people under 18 which to an extent mirrors the adult generic community sentence introduced by the Criminal Justice Act 2003. It was introduced alongside the scaled approach and the “Overarching Principles – Sentencing Youths “ issued by the Sentencing Guidelines Council which we will move on to discuss shortly.

The key changes in the 2008 Act are as follows:

YRO [Ss 1-8 and Sch. 1-4] offences after 30 November 2009

Referral Orders [Ss 35-37] April 2009 - extension of discretionary powers to make and provision to extend and revoke.

Youth Conditional Caution [S 48 and Sch. 9] to be piloted from 2010

Automatic 28 day release after recall [S 29] July 2008

Custody credit for tag [S 21] November 2008

Spent reprimands, warnings and conditional cautions [S49] December 2008

ASBO amendments [S123-124] February 2009

Sexual Offences Prevention Orders [S 141] July 2008

Custody Threshold PSR to be written [S 12] July 2008

Briefly the changes to the Referral Order are that the court will be able to make an order where the young person:

- has one previous conviction but did not receive a referral order
- has previously been bound over to keep the peace
- has previously received a conditional discharge

In addition the court has power to make a second Referral Order in exceptional circumstances where recommended by the Yot, revoke an order within 3 months of its end for good behaviour and extend the term for up to three months [but not exceeding the 12 month limit] on the recommendation of the Yot for e.g. non-compliance or where time lost for ill-health

Today I will concentrate on the YRO which is now the standard generic community penalty for young people whose offences are serious enough and the provision in the CJA 2003 extending the adult generic order to 16 and 17 year olds will not now be implemented. In contrast to the provisions relating to adult offenders the court may impose a YRO [other than one with Intensive Supervision and Surveillance or Fostering requirements] for an offence which is not imprisonable. It provides a menu of interventions for tackling offending behaviour and replaces the existing community orders:

- Action Plan
- Curfew
- Supervision
- Community Rehabilitation
- Community Punishment

- Community Punishment and Rehabilitation
- Attendance Centre
- Drug Treatment and Testing
- Exclusion

It is available in cases serious enough for a community sentence although courts are not obliged to make a community sentence in such cases [S148 CJA 2003 as amended by S10 CJ&IA 2008] and the requirements must be commensurate with the seriousness of the offence and suitable for the offender. The range of requirements coupled with the scaled approach should enable the court to take a more individualised and targeted approach to community sentencing.

REQUIREMENTS

The following requirements may be attached to a YRO and they have been designed to provide for punishment, public protection, reducing reoffending and reparation:

- Activity
- Unpaid Work
- Attendance Centre
- Curfew
- Residence
- Mental Health treatment
- Drug Testing
- Drug Treatment

- Education
- Supervision
- Programme
- Prohibited Activity
- Exclusion
- Local Authority Residence
- Intoxicating Substance
- Electronic Monitoring

There is a newly defined threshold before a custodial sentence can be ordered and before doing so the court must consider two post threshold requirements and give reasons if not used:

- Intensive Supervision and Surveillance
- [Intensive] Fostering

The court will attach one or more of these requirements whilst ensuring the totality is commensurate with the seriousness of the offence or offences being sentenced. Some requirements may not be available locally in which case the Yot will need to satisfy the court that they can access similar facilities by another route. Some requirements require a willingness on the part of the offender to comply and others require consultation with 3rd parties. Two or more requirements must be compatible with each other and avoid conflict with religious belief, education or employment or any other YRO he is subject to.

MULTIPLE ORDERS

As a general rule a young person can only be subject to one YRO at any one time and if the young person reoffends during the order [or for that matter during a reparation order or referral order] he cannot be sentenced to a new YRO unless the existing order has been revoked. However, if he is being sentenced for two or more associated offences on the same occasion the court may impose YROs for each offence. The order must be of the same type and ISS or Fostering requirements may not be combined with an order with other requirements [Sch.1 para.31]. Two or more orders may be consecutive or concurrent and if consecutive the cumulative number of days must not exceed the maximum for that requirement e.g. consecutive unpaid work requirements must not exceed 240 hours.

YRO's and DTO's

If the young person is sentenced for other offences during a Detention and Training Order the court may impose a YRO either to run concurrently with their licence period or to commence at the end of that supervision. If concurrent it does not revoke the DTO but the requirements must be complementary [Sch.1 para.30(2)].

LENGTH

Otherwise the YRO starts on the day it is made and can run for up to three years. The individual requirements have their own timescales which may be less than the overall length. The order will run for the length of its longest or latest finishing requirement and any supervision requirement will run the length of the order. The court may specify in the order the date or dates by which particular requirements must be completed.

WHO DOES WHAT [S.4 and 5]

A member of the Yot will generally be responsible for managing compliance with and enforcement of the order except where the only requirement is a tagged curfew in which case it will be SERCO or G4S or an Attendance centre in which case it will be the officer in charge of the centre.

BREACH [Sch.2]

In addition to the requirements the young person must also keep in touch with the responsible officer and notify any change of address and these together with the requirements are enforceable obligations. The Yot practitioner will aim to promote engagement and compliance with the order but a young person will be in breach of their YRO if they have failed without reasonable excuse to comply with any requirement on three separate occasions within a 12 month warned period beginning on the date of the first warning. There is a presumption in favour of

referring the matter back to court after a third failure to comply with discretion to do so after the second.

In determining a reasonable excuse the responsible officer should take into account a young person's welfare and the provision of support to meet their welfare needs, their circumstances, overall compliance and whether they seem committed to completing the order.

The Yot may also instigate breach proceedings at any point of the order outside the warned period if the failure is of a nature that requires such action. This should be rare and exceptional as the ultimate aim should be to support and enable the young person to comply and successfully complete the order. The first warning should be written detailing the failure, that it is unacceptable and the liability for return to court. The second warning must be formalised into a letter and then at the third failure to comply the Yot should consider whether there are any exceptional circumstances leading to the failure to comply and assess whether breach action is necessary at this stage. Yots determining whether to stay the breach should take into consideration the young person's welfare and whether staying the breach would be in the interests of the objectives of the order.

RETURN TO COURT [Sch.2 paras.6 & 8]

If the Yot manager has determined breach action necessary the young person is returned to court. If the order was made in the Crown Court it

will be returned to the Crown Court unless at the time of sentencing the Crown Court directed any further proceedings take place in a youth or magistrates court [Sch1 para.36]. If the order was made in a youth court the breach will be heard in a youth court unless the offender has attained the age of 18 when the breach will be heard on a magistrates' court.

The court may deal with a failure to comply in one of the following ways:

No action and order to continue

Fine up to £250 [under 14] or £1000 [over 14] and order to continue

Amend the terms of the YRO to add a requirement or substitute one with another but:

- Any additional/substituted requirement must be capable of being completed within the time originally specified for the completion of the YRO.
- Any new requirement must have been available to the original court and therefore if not then eligible for ISS or Fostering not eligible now unless the young person has wilfully and persistently failed to comply.
- If unpaid work requirement added to an order following breach which did not contain it, the minimum number of hours is 20 rather than 40.

Revoke the YRO and resentence to any sentence available to the original court including a YRO with different requirements or if the order contained ISS or Fostering requirements a custodial sentence.

If the young person has wilfully and persistently failed to comply the court can impose a YRO with ISS or Fostering even if the offence did not reach the threshold including non-imprisonable offences

In the above case following a further wilful and persistent non-compliance the court may impose a custodial sentence not exceeding 4 months – presumably a Detention and Training Order.

The court must take account the extent to which the young person has complied with the requirements of the YRO and where a YRO is amended as a result of breach proceedings the court must replace any requirements taken away.

AMENDMENT [Sch. 2 part 4]

The young person or the responsible officer may apply to the court to amend an order by:

- Specifying a new local justice area where the young person lives or is proposing to live
- Removing a requirement if becomes unworkable
- Replacing a requirement with another of the same kind available at the time of sentence and capable of being complied with before the date for completion of the YRO

REVOCACTION [Sch.2 part 3 & 5]

The young person or the responsible officer may apply to revoke the order for good progress or responding well to treatment. If the application is dismissed then, unless directed otherwise by the court, no further application can be made for three months.

COURT ORDERED REVIEW

The court has power to include a review of the YRO by the court which is to be piloted. This is likely to be a very useful aid to compliance in cases where the court has made an order instead of a custodial sentence.

SUBSEQUENT CONVICTION [Sch.2 part 5]

If a young person is convicted of an offence during a YRO the court may revoke the YRO and sentence for the new offence and resentence for the original offence taking into account the extent of any compliance. If the original order was imposed by the Crown Court and jurisdiction over further proceedings retained the Crown Court has power to resentence and to sentence for the new offence using the powers of the convicting court.

SPENT CONVICTION

The YRO is spent one year from the date of conviction or when the order ceases to have effect whichever is the longer.

THE REQUIREMENTS

1. **Activity** – participation in activities or residential exercises for up to 90 days. May include reparation and restorative justice and consent by parent or guardian required for residential activities.
2. **Unpaid Work** – Available for those aged 16 and 17 at time of conviction if suitable and work is available 40 – 240 hours within 12 months. Reasonable level of maturity required. Viewed as punishment and for repairing harm currently managed by probation although if together with a supervision requirement the Yot will breach.
3. **Attendance Centre** – age 16 and over 12 – 36 hours, age 14 – 15, 12 – 24 hours, under 14 up to 12 hours. Seen as appropriate for preventing offending but for those assessed as enhanced or intensive under the scaled approach are likely have additional requirements to address the risk of serious harm and offending behaviour.
4. **Curfew** – Not less than 2 nor more than 12 hours a day for up to 6 months from the day on which it is to commence. The restriction of 3 months for under 16's has been removed.

5. **Residence** – where current living arrangements contributing to offending a requirement to reside with a specified person e.g. a relative or at a specified place but if out of family need to be over 16.

6. **Mental Health Treatment** – to submit during a specified period to residential or out-patient treatment by or under direction of Mental Health Act approved registered medical practitioner or chartered psychologist with a view to improving mental condition. Various conditions and defendant must express willingness to comply.

7. **Drug Treatment** – must submit to treatment for a specified period with a view to reduction or elimination of dependency or propensity to misuse. Again a willingness to comply necessary but will later withdrawal constitute a breach?

8. **Drug Testing** – can only be attached with a Treatment Requirement

9. **Education** – requires a young person of compulsory school age to comply with education arrangements made by their parent or guardian and approved by the Education Authority. Must be necessary for securing the good conduct of the young person or for preventing reoffending and can include mainstream or specialist school, pupil referral unit, college or further education,

alternative education and approved home based education or work based training.

10. **Supervision**– Appropriate for the majority of young people to prevent further offending and address risks or needs and must be equal in length to the term of the order.
11. **Programme** – designed to allow young people to engage in a systematic set of activities at a specified place on specified days and may include a residential programme.
12. **Prohibited Activity** – the young person may not participate in specified activities or a day or days or period of time specified. The Yot may involve local partners e.g. police in monitoring compliance.
13. **Exclusion** – the young person is prohibited from entering a specified place(s) for a specified period(s) up to 3 months.
14. **Local Authority Residence** – to reside in accommodation provided by or on behalf of the specified local authority not exceeding 6 months or age 18 in cases where behaviour leading to the offence due to a significant extent to living conditions and it will assist rehabilitation.

15. **Intoxicating Substance** – residential or non-residential treatment for young people dependent upon or propensity to misuse intoxicating substances (other than drugs) and susceptible to treatment and who are willing to comply where a substantive factor in their offending behaviour.

16. **Electronic Monitoring** – must, unless inappropriate, be imposed if it will encourage and enable compliance with other requirements e.g. curfew and from a date to be fixed Exclusion.

17. **Intensive Supervision and Surveillance** – is an extended activity requirement for more than 90 but not more than 180 days where the offence(s) in cases over the custody threshold and if under 15 at time of conviction they are also a persistent offender. Only available for non-imprisonable offences following wilful and persistent non-compliance. May include other requirements apart from fostering but must include Supervision, Curfew and Electronic Monitoring.

18. **Intensive Fostering** – another community alternative to custody in cases over the threshold where the behaviour constituting the offence is due to a significant extent to living circumstances and a fostering requirement would assist rehabilitation. Must end no later than 12 months from when requirement first takes effect and not any period after age 18. YRO

must include a supervision requirement and may include others. Only available in a few pilot areas and a decision for continuance awaited from government.

OVERARCHING PRINCIPLES – SENTENCING YOUTHS

[Definitive Guideline November 2009]

Generally the Sentencing Guidelines Council has not produced specific guidelines for those under the age of 18. The exceptions have been offences under the Sexual Offences Act 2003 and for Robbery and although overarching principles have now been set by the Council the relevant starting points and ranges for those offences are not superseded by the new guideline.

GENERAL APPROACH

Offence serious is the starting point for sentencing including culpability and harm either intentional or foreseeable and in sentencing the restriction on liberty must be commensurate with the seriousness of the offence.

In sentencing an offender under the age of 18 the court must have regard to:

- The principal aim of the youth justice system to prevent offending by children and young people [CDA 1998 S.37(1)]
- The welfare of the offender [CYPA 1933 S.44(1)]

In addition to these statutory provisions the court must also be aware of the range of international conventions which emphasise the importance of avoiding the criminalisation of young people whilst ensuring they are held responsible for their actions and where possible take part in repairing the damage they have caused. The intention is to establish responsibility and promote re-integration rather than impose retribution. The sentencing aims for youths outlined in Section 9 of the Criminal Justice and Immigration Act 2008 have not been implemented and are unlikely to be.

The approach to sentencing youths will be individualistic and the response to an offence is likely to be very different depending on whether the offender is at the lower end of the age bracket, in the middle or towards the top and in many instances the maturity of the offender will be at least as important as the chronological age. When determining sentence the court will assess the culpability of the offender and the harm caused taking into account aggravating and mitigating factors relating to the offence. Consider then any mitigating factors that apply to the offender and any reduction for a guilty plea and make sure the overall impact of the sentence and the restrictions on liberty are commensurate with the seriousness of the offence. A sentence that

follows re-offending does not need to be more severe than the previous sentence solely because there has been a previous conviction.

In having regard to the welfare of the offender the court must be alert to:

- the high incidence of mental health problems amongst young people in the criminal justice system
- the high incidence of learning difficulties
- the effect that speech and language difficulties might have on the ability to communicate or understand the sanctions or fulfil their requirements
- the extent to which young people anticipate discrimination by those in authority
- their vulnerability to self harm particularly when in custody
- the extent to which adolescence can lead to experimentation
- the effects of loss or abuse

Offending by young people is frequently a phase which passes fairly rapidly and our reaction to it needs to be kept well balanced in order to avoid alienating the young person from society. We need to remember:

- a criminal conviction may have a disproportionate effect on a young person's ability to gain employment and play a worthwhile role in society
- the impact of punishment is felt more heavily and will seem far longer than an adult

- young people may be more receptive to change and respond more quickly to interventions
- they should be given greater opportunity to learn from their mistakes
- they will be no less vulnerable than adults to contaminating influences within a custodial setting and probably more so.

In determining the sentence the key elements are:

- the age of the offender (chronological and emotional)
- the seriousness of the offence
- the likelihood of further offences
- the harm likely to result

The approach will then be individualistic with proper regard to the mental health and capability of the young person, and to any learning disability, speech or language difficulty or any other disorder. The proper approach is for the court within a sentence that is no more restrictive of liberty than is proportionate to the seriousness of the offences to seek to impose a sentence that takes proper account of all these issues by:

- confronting the young offender with the consequences of offending and helping him develop a sense of personal responsibility
- tackling the particular factors [personal, family, social, educational or health] that put the young person at risk of offending
- strengthening those factors that reduce the risk
- encouraging reparation to victims

- defining, agreeing and reinforcing the responsibilities of parents

CROSSING AGE THRESHOLD

Where a young offender crosses a relevant age threshold between the commission of the offence and the date of conviction or sentence the starting point for the sentence is that likely to be imposed on the date of commission. It would be rare for a court to pass a sentence more severe than the maximum it would have had jurisdiction to pass at the date the offence was committed. Under this principle a young person convicted at age 15 of an offence committed when he was 14 would not generally be eligible for a custodial sentence unless he was a persistent offender. In the youth court if the plea is entered before the age of 18 then that court retains jurisdiction for any subsequent trial and sentence.

PERSISTENT OFFENDERS

Certain sentences are only available where the young person is a persistent offender e.g.

- A YRO with ISS or IF for an offender under 15
- A DTO in relation to an offender under 15

Similarly additional powers are available to the court where a YRO has been wilfully and persistently breached.

Persistent offender is not defined in legislation and Court of Appeal judgements relate to the previous sentencing framework whereas now

there is an even greater emphasis on the requirement to use custody as a measure of last resort. There is now a new test:

- In most circumstances the normal expectation is that the offender will have had some contact with authority in which his offending behaviour was challenged before being classed as persistent. The finding may be derived from previous convictions and those orders which require an admission of guilt such as reprimand, final warning, restorative justice disposals and conditional cautions on at least three occasions in the past 12 months.

Being persistent merely opens up the possibility of a custodial sentence and all the other tests and considerations continue to apply.

YOUTH REHABILITATION ORDERS

In determining the content and length of an order the guiding principles are proportionality and suitability and in contrast to adult offenders to offence does not have to be imprisonable other than for the inclusion of ISS or IF requirements.

Where a young person is assessed as presenting a high risk of reoffending or serious harm despite having committed a relatively less serious offence the emphasis is likely to be on requirements that are primarily rehabilitative or for the protection of the public. Where a young person is assessed as presenting a low risk despite having committed a relatively high seriousness offence the emphasis is likely to be on requirements that are primarily punitive. The primary purpose of punitive

sanctions is to achieve acknowledgement of responsibility for his actions and, where possible, to take a proper part in repairing the damage caused.

EFFECT OF A GUILTY PLEA

Where the court is considering sentence for an offence for which a custodial sentence is justified, a guilty plea may be one of the factors that persuades the court that it can properly impose a Youth Rehabilitation Order instead and no further reduction needs to be made.

Where the provisional sentence is already a YRO the necessary reduction for a plea of guilty should apply to those requirements within the order that are primarily punitive rather than those which are primarily rehabilitative.

BREACHES

The primary objective when sentencing for breach of a youth rehabilitation order is to ensure that the young person completes the requirements imposed by the court. Where the failure arises primarily from non-compliance with reporting or a similar obligation, ***where a sanction is necessary***, the most appropriate is likely to be the inclusion of or increase in a primarily punitive sanction.

A court must ensure that it has sufficient information to enable it to understand why the order has been breached and that all steps have

been taken by the Yot *and other local authority services* to give the young person appropriate opportunity and support. [And particularly so if a custodial sentence is being considered.]

When determining whether the young person has wilfully and persistently breached an order the court should apply the same approach as when determining whether an offender is a persistent offender. Almost certainly a young person will have persistently breached a YRO where there have been three breaches, *each resulting in an appearance in court*, demonstrating a lack of willingness to comply.

CUSTODIAL SENTENCES

Under both domestic law and international convention, a custodial sentence must be imposed only as a measure of last resort where an offence is so serious that neither a community sentence nor a fine alone can be justified. For the first time offender who has pleaded guilty to an imprisonable offence, in most circumstances a referral order will be the most appropriate sentence. Since the minimum length of a custodial sentence is 4 months and the term must be the shortest commensurate with the seriousness of the offence it is inevitable that the custody threshold is higher for a youth than an adult. **Where the offence(s) has crossed the custody threshold the statutory tests are likely to be satisfied only where a custodial sentence will be more effective in preventing offending. The obligation to have regard to the welfare of the offender**

will require a court to take account of a wide range of issues including those relating to mental health, capability and maturity.

LENGTH OF SENTENCE

Where the offender is 15 – 17 the court will need to consider his maturity as well as chronological age. Where there is no offence specific guideline it may be appropriate depending on these considerations to consider a starting point from $\frac{1}{2}$ to $\frac{3}{4}$ of that which would have been identified for an adult offender. The closer the offender is to 18 when the offence was committed and the greater his maturity or the sophistication of the offence the closer the starting point is likely to be to that appropriate to an adult. When sentencing more than one offender of different ages the court will also need to have regard to parity of sentence. For younger offenders greater flexibility will be required to reflect the potentially wide range of culpability. Where the offence shows considerable planning and sophistication the court may need to adjust the approach upwards. Conversely where the offender is particularly immature the court may need to adjust the approach downwards. Where the offender is aged 14 or less a the Youth Court may only impose a custodial sentence if he is judged to be a persistent offender and the length of sentence will normally be shorter than for those aged 15 – 17.

In determining the term of a Detention and Training Order the court must take account of any period for which he was remanded in custody or

Local Authority Accommodation or on bail subject to a qualifying electronically monitored curfew. The appropriate fraction of an adult sentence may also bring the sentence for a youth below the statutory minimum for a DTO. Where a short custodial sentence is being considered the court might in these circumstances conclude that a non-custodial sentence was appropriate, particularly as the requirements of a YRO may be more onerous.

GRAVE CRIMES

There is a strong presumption against sending young offenders to the Crown Court for trial unless clearly required *[R(W) v Southampton Youth Court [2002] EWHC 1640]*.

A young person aged 10 or 11, or aged 12 – 14 but not persistent, should only be committed or sent to the Crown Court for trial where charged with an offence of such gravity that despite the normal prohibition on a custodial sentence for a person of that age a sentence **exceeding** two years is a realistic possibility *[R(D) v Manchester City Youth Court [2001] EWHC 860]*.

A young person aged 12 – 17 for which a DTO could be imposed should be committed or sent to the Crown Court for trial only where charged with an offence of such gravity that a sentence **substantially beyond** the 2 year maximum is a realistic possibility *[C & D v Sheffield Youth Court [2003] EWCH Admin 35]*.

DANGEROUS OFFENDERS

As a young person should normally be dealt with in a youth court, where he is charged with a specified offence which would not otherwise be committed or sent to the Crown Court for trial, generally it is preferable for the decision whether to commit under the dangerous offender provisions to be made after conviction.