

**Ongoing Competences: Call for Evidence – submission from the Youth Justice Legal Centre, part of Just for Kids Law to the Legal Services Board**

In this submission we have focused our response on two of the four themes of the call from evidence namely:

defining competence and competence assurance; and  
competence in the legal services sector.

**Defining competence and competence assurance**

1. There is an urgent need for those representing children in the police station, youth court and crown court to have specific competences to do so. This is difficult to achieve without specialist skills and knowledge gained through training and accreditation.
2. Below we will set out the following:
  - evidence of need
  - the characteristics or skills that should be part of a competency framework

*Evidence of need*

3. The Youth Justice Legal Centre (YJLC), part of Just for Kids Law, was set up to provide legal knowledge and expertise in youth justice law. The lawyers who founded Just for Kids Law recognised the huge difference a youth justice specialist can make for a child defendant.
4. At YJLC we have a national advice line for lawyers, families and children, youth offending services and other professionals. We are able to see first-hand that better outcomes can be achieved for children when legal practitioners have specialist skills and knowledge to represent them. This includes increased likelihood that a child will be diverted from the formal criminal justice system to ensuring a child receives a fair sentence that fully takes into account the child's welfare, age, maturity and other factors relevant specifically to children in the criminal justice system.
5. We believe that lawyers working with children and young people in the criminal justice system should be given specialist training so they can do the best possible job for their young clients, and so young people themselves and their families can be confident that their rights and interests are properly protected.

6. Anyone who practices regularly in the youth courts knows how different the law, practice and procedure are from the magistrates and crown courts.
7. The need for lawyers who act for children to have specialist training and expertise has long been recognised in other areas of law. The Law Society's Children Law Accreditation Scheme<sup>1</sup> is widely respected and is acknowledged as having led to significant improvements in the quality of representation of children facing care and other proceedings. Under this scheme, practitioners have to abide by a code of conduct and demonstrate their competence and expertise.
8. By contrast, children in the criminal justice system who are at risk of losing their liberty are often represented by the least experienced lawyers despite being every bit as vulnerable and have just as much at stake as those in the family courts. The Youth Court is still widely regarded as a training ground, where trainee barristers cut their teeth, before moving on to other work. Many will have had minimal or zero training in Youth Court work and, as novices in their profession, be ill-equipped to deal with the demands put on them when dealing with acutely vulnerable children. Although children facing the most serious charges, who appear in the crown court, may be represented by barristers of longer standing, their special communication problems and vulnerabilities may still be poorly understood because of the lack of training in this area.
9. The legal profession is virtually alone in failing to treat this area as a distinct specialism: youth court judges, youth offending teams and social workers, are all expected to undergo specialist training to equip them with the knowledge and skills that are essential to protecting the interests of young people.
10. There is a clear body of evidence that children coming into contact with the criminal justice system have a range of complex needs and vulnerabilities: The Inquiry by Parliamentarians into the operation and effectiveness of the youth justice system, chaired by Lord Carlile in 2014, the Youth Courts Advocacy Proceedings review, published in 2015 by the Bar Standards Board (BSB) and the Chartered Institute of Legal Executives (CILEX) and the Taylor Review of the youth courts system, published in 2016, clearly stated that they are some of the most vulnerable in our society. They have often suffered neglect and abuse, have care experience, have been excluded from school and high levels of mental health issues or learning disabilities or difficulties. Our annual State of Children's Rights Report on Policing and Criminal Justice 2017 highlighted some of the particular characteristics of children entering custody including that 61% of admissions were not engaging in education and 45% had substance misuse concerns; around one third of admissions were assessed as a high risk to others (33%) or were a looked-after child prior to admission to custody (33%); there were concerns relating to suicide or self-harm (31%), physical health (30%), mental health (33%), learning disabilities or difficulties (32%) for around one third of admissions; there were concerns around sexual exploitation for 9% of the cohort, gang involvement for 13% of admissions and 18% were assessed as not engaging with carers; and a small proportion were recorded as being asylum seekers or immigrants (3%), parents or parents-to-be (5%) or having a current child protection plan prior to entering custody (5%).<sup>2</sup>

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<sup>1</sup> <http://www.lawsociety.org.uk/accreditation/specialist-schemes/children-law/>

<sup>2</sup> Children's Rights Alliance for England *State of Children's Rights in England: 2017 Policing and Criminal Justice (original source: Ministry of Justice/Youth Justice Board (January 2017) Key Characteristics of Admissions to Youth Custody April 2014 to March 2016 England and Wales*

11. It is challenging, even for practitioners with considerable expertise, to engage with these children. It is even more challenging for lawyers who have no training in adolescent development, speech and language problems and complex social issues.
  12. The Bar Standards Board (BSB) has recognised this as a problem and in October 2017 approved a rule change that requires barristers to register their competence to undertake work in the youth court. It sets out that barristers working in the youth court, and those who intend to do so in the next 12 months, must register with the BSB and declare that they have the specialist skills, knowledge and attributes necessary to work effectively with vulnerable children and young people, which are set out in the BSB's Youth Proceedings competences and guidance. Although the Solicitors Regulation Authority encourage it, there is no equivalent requirement for solicitors who represent children at police stations and in the youth or crown courts
  13. Youth justice law is very different to adult criminal law. It is a discrete legal system, with a different practical framework, sentences, sentencing guidelines, out of court disposals and criteria for remand. The principles of sentencing for children are distinct and all court proceedings should comply with the UN Convention on the Rights of the Child, which the UK ratified in 1991, and other UN guidelines concerning children in trouble with the law. Lawyers learn very little, if any, youth justice law at undergraduate level or through professional qualifications and are never taught how to interact with vulnerable children. Often none of the relevant professionals - the prosecution, judiciary, legal advisers and the defence - have a specialism in youth justice, leaving a whole process bereft of expertise where life changing decisions are made concerning children.
  14. As a result of having insufficiently trained lawyers, children often do not understand the criminal justice process before, during and after their case. Ineffective communication leads to children going through the system without really participating in it. The youth court is regularly referred to as 'a guilty plea factory' and children are often left frightened and traumatised by the experience. Over 60,000 children were arrested last year and over 38 percent of those convicted went on to re-offend. Children receive overly punitive sentences, are burdened with criminal records which follow them into adulthood and their rights are seldom acknowledged. Above all, the best interests of the child, the legal principle which should be of paramount importance in all court proceedings concerning children, is glossed over or ignored. These issues are so entrenched in the culture of the criminal justice system that many lawyers are not actually aware of how much better they could do at representing children.
  15. The UN Convention on the Rights of the Child (UNCRC) states that wherever possible children should be dealt with outside the criminal justice system. However, despite some progress in reducing the number of children criminalised, statistics show that particular groups of children, including those who are BAME and in care, are overrepresented in the criminal justice system. A key skill for a lawyer representing children will be to get them diverted out of the criminal justice system wherever possible. This is very difficult to achieve without youth justice expertise gained through training. In its General Comment no. 24 the UN Committee on the Rights of the Child emphasises that the '*systematic training of*
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*professionals in the child justice system is crucial to uphold those guarantees. Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.’<sup>3</sup>*

16. In July 2017, the Lord Chief Justice observed in *R v Grant Murray & Anor [2017] EWCA Crim 1228* that ‘it would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training’. We believe that all children deserve to interact with criminal lawyers who have specialist skills and knowledge and this would have far better outcomes.
17. The Law Society and the Magistrates’ Association<sup>4</sup> have recognised that criminal solicitors representing children require a greater level of knowledge and skills. In the Law Society report *Justice on Trial* it states: ‘Solicitors who specialise in working with young people can retain a clear focus on the key legal elements in a case, even when there are a lot of social and other factors at work’ and recommends that ‘expert lawyers be suitably remunerated to ensure that those with knowledge and experience of working with young people are retained in the system and new practitioners are attracted to work in this important area of law’.<sup>5</sup>
18. Through our YJLC advice line we are able to see, on a regular basis, the difference that can be made through specialist youth justice knowledge and expertise. We are regularly contacted by families and other professionals where solicitors have failed to advance potential, highly relevant, defences specific to children or have failed to instruct an expert to assess fitness to plead or effective participation in cases where a youth justice specialist would have immediately recognised the need to do so.
19. For example, we have been contacted by a number of youth offending officers concerned that a child has significant social, learning or communication difficulties such that they can’t effectively communicate, yet they have already pleaded guilty. In these cases we are able to provide advice to the youth offending service on the best approach to take including, in some cases, the suggestion that they liaise with the instructed solicitor and try to get the plea of guilty vacated in order for the child’s fitness to plead to be assessed. This is less than ideal and could have been avoided if the solicitor had a good understanding of the relevance of these issues in a child’s case.
20. In other cases, we are contacted by parents and guardians who are concerned that their instructed solicitor has advised their child to accept a formal out of court disposal such as a youth caution or youth conditional caution without correct advice on the long-term implications of doing so. We are often able to advise the parent or guardian about the criminal records implications and the importance of diversion and informal disposals. We often assist by preparing detailed written representations to police and/CPS for the matter to be informally diverted.
21. In others, we are contacted by families of children whose solicitors, it transpires, are unaware of the significant weight age and maturity have in the sentencing process. In one particular case we were contacted by the family of an 18-year-old about to be sentenced for

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<sup>3</sup> UN Committee on the Rights of the Child (2019) *General Comment number 24 Children’s rights in juvenile justice*

<sup>4</sup> Add reference

<sup>5</sup> The Law Society (2019) *Justice on Trial*

possession with intent to supply drugs that occurred when he was 16 years. The solicitors representing the young person were unaware of the relevant guidance and case law on the significance of turning 18 in the criminal justice system. No mitigation had been prepared in advance of the sentencing hearing on this issue. We were able to prepare a sentencing note outlining the law and guidance to ensure he was not sentenced more harshly due to crossing this significant age threshold.

*the characteristics or skills that should be part of a competency framework*

22. A competency framework for those legal representatives representing children in the criminal should include the following skills and characteristics:

- Understanding the principles aims of the youth justice system including the international and domestic framework
- An understanding of the particular needs of this group of vulnerable children, including an awareness of adolescent brain development;
- An understanding of the range of social, learning and communication difficulties many of these children will have including how to identify them and what to do when you suspect they may have one or more of these difficulties;
- An understanding of the range of adverse childhood experiences of this cohort including the over-representation of certain groups in the criminal justice system including BAME children and looked after children;
- Specific communication skills, gained through interactive training, so that legal representatives can communicate with a child in a way they can understand and which promotes their engagement and participation in the process; and
- Detailed knowledge of the different legal framework, laws, defences and guidance relating to children from the police station stage right through to appeal against sentence.

**Competence in the legal services sector**

23. Whilst we wholeheartedly support the recognition by the SRA that those representing children in the youth court require specialist knowledge, expertise and skills. We are very concerned that the current proposed solution, requiring solicitors practising in the youth courts to hold the criminal HRA qualification where they are acting as an advocate in any case which would go to the Crown Court if it involved an adult, does not remedy the inherent problem of the inadequate representation of children in the youth court. There is nothing in the HRA qualification which provides the knowledge and skills necessary to be an effective youth justice lawyer in the criminal courts.

24. There has been no empirical evidence or specific research directly looking at solicitors practicing in the youth court in order to inform regulatory reform and we would support this.

25. We propose specialist youth justice training which would cover a range of skills, topics and knowledge including those areas covered on our YJLC advocacy course:

- Overview of the youth justice system

- Principles of the youth justice system (incl. UNCRC and international law)
- Children at the police station and out of court disposals
- Law and practice: children in the youth court
- Law and practice: children in adult courts
- Sentencing
- Modern slavery and child criminal exploitation
- Criminal behaviour orders and civil injunctions
- Effective communication: importance of background
- Capacity in criminal proceedings: effective participation & fitness to plead
- Strategic litigation and children's rights
- Role plays with youth justice trainers
- Q&A with former clients