

# **The Youth Proceedings Advocacy Review: Final Report**

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**19 November 2015**

# Contents

<b>Acknowledgements</b> .....	<b>iii</b>
<b>Executive summary</b> .....	<b>iv</b>
<b>1. Introduction</b> .....	<b>1</b>
1.1 Background .....	1
1.1.1 The courts .....	2
1.1.2 Characteristics of children in the youth justice system .....	4
1.1.3 Provision for young defendants and witnesses .....	5
1.1.4 Existing research evidence on expertise of advocates in youth proceedings .....	7
1.2 The Youth Proceedings Advocacy Review .....	8
1.2.1 Research methods .....	9
1.2.2 Research limitations .....	10
1.2.3 Structure of the report .....	11
<b>2. Experiences and quality of advocacy in youth proceedings</b> .....	<b>12</b>
2.1 Advocates in youth proceedings .....	12
2.1.1 Experience of training .....	12
2.1.2 Self-reported knowledge and skills .....	14
2.1.3 Views on practice in youth proceedings .....	17
2.2 Views on quality advocacy in youth proceedings .....	18
2.2.1 Advocates' views on the quality of advocacy .....	19
2.2.2 Other practitioners' views on quality of advocacy .....	20
2.2.2 Court users' views on quality of advocacy .....	21
<b>3. Components of effective advocacy in youth proceedings</b> .....	<b>23</b>
3.1 Specialist knowledge .....	25
3.1.1 Knowledge of the law .....	25
3.1.2 Knowledge of young people's needs .....	26
3.1.3 Knowledge and awareness of wider youth justice and children's services .....	27
3.1.3 Good and poor examples of specialist knowledge .....	29
3.2 Communication and wider social skills .....	31
3.2.1 Building relationships .....	31
3.2.2 Facilitating self-expression and understanding .....	33
3.2.3 Good and poor examples of communication and wider social skills .....	34
3.3 Professionalism .....	37
3.3.1 Achieving the "right" outcome .....	37
3.3.2 Commitment .....	37
3.3.3 Preparation .....	38
3.3.4 Examples of professionalism and lack of professionalism .....	39

<b>4. Constraints on advocacy in youth proceedings.....</b>	<b>42</b>
4.1 Limited opportunities for training and learning .....	42
4.1.1 Access to training.....	42
4.1.2 Demand for training.....	43
4.1.3 Shadowing and feedback .....	45
4.2 Systemic constraints.....	46
4.2.1 Inadequate identification of needs .....	46
4.2.2 Formality of interactions and setting .....	47
4.2.3 Limited courtroom provision for young witnesses and defendants.....	50
4.2.4 Poor case management, inefficiencies and delays .....	51
4.2.5 The policy context: swift justice and reductions in legal aid .....	52
4.2.6 The “undervalued” Youth Court.....	54
4.2.7 Lack of expertise among other practitioners .....	55
4.2.8 The adversarial system .....	56
4.3 The social context.....	58
4.3.1 Punitive societal attitudes and responses to youth offending.....	58
4.3.2 Disadvantaged children in the youth justice system .....	59
4.3.3. Changing court caseloads.....	61
<b>5. Recommendations for promoting effective advocacy in youth proceedings .....</b>	<b>63</b>
5.1 Structural changes.....	63
5.2 Court-based measures to facilitate effective advocacy .....	65
5.3 Training and learning opportunities.....	66
<b>Bibliography .....</b>	<b>69</b>
<b>Annex A: Methodology .....</b>	<b>69</b>
<b>Annex B: Selected survey results.....</b>	<b>80</b>
<b>Annex C: Questionnaire and interview schedules.....</b>	<b>81</b>

## **Acknowledgements**

We would like to extend our gratitude to the many individuals and organisations that took part in this review. This review would not have been possible were it not for those who generously contributed their time to completing the survey, participating in interviews, facilitating observations, assisting us with accessing interviewees and attending the roundtables. Our special thanks go to the young defendants and witnesses for the openness with which they shared their experiences and rich insights with us.

We would also like to thank charity Just for Kids Law, which provides youth justice specialist legal representation to young people in trouble with the law, for their expert advice.

We are grateful to the Judicial Office and Her Majesty's Courts and Tribunals Service for supporting the research and facilitating access to the courts.

Finally, we would like to thank the Bar Standards Board and CILEx Regulation for their assistance and enthusiasm throughout the review. In particular, we are grateful to Zoe Pellatt for her tireless efforts in supporting all stages of the research.

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**August 2015**

## Executive summary

This report presents the findings of the Youth Proceedings Advocacy Review, which was commissioned by the Bar Standards Board (BSB) and CILEx Regulation in October 2014, and conducted by the Institute for Criminal Policy Research.

The main aim of the review was to inform the BSB's and CILEx Regulation's consideration of whether, and what kind of, regulatory interventions are needed to improve the quality of advocacy in youth proceedings. For the purposes of the review, the term "advocacy" is used to refer to all aspects of a legal practitioner's work, on the defence or prosecution side, in relation to a criminal case that has reached court. The term "youth proceedings" refers to cases that are heard in the Youth Court and cases involving young defendants (that is, those under the age of 18) that are heard in the Crown Court.

The Youth Proceedings Advocacy Review entailed a series of research activities which, together, addressed the following two questions:

*What knowledge, skills and attributes are required by advocates in youth proceedings to work effectively with defendants and witnesses and, in so doing, to promote justice and the public interest?*

*To what extent do advocates in youth proceedings (and, particularly, barristers and chartered legal executive advocates) currently have the requisite knowledge, skills and attributes to work effectively with defendants and witnesses and, in so doing, to promote justice and the public interest?*

The research activities comprised:

- a literature review;
- a survey of advocates (barristers and chartered legal executive advocates), completed by 215 respondents;
- follow-up telephone interviews with a sub-sample of 34 advocates;
- face-to-face interviews with 25 young defendants;
- interviews and discussions with 30 youth justice practitioners, namely, legal advisors, youth court magistrates, district judges, court-based YOT workers, youth specialist prosecutors and intermediaries;
- interviews with three young witnesses and two Witness Service volunteers;
- observations of proceedings in four youth courts and five Crown Courts;
- three roundtable discussions with senior youth justice practitioners and youth justice policy specialists.

The findings of the research point to much variability in the quality of advocacy in youth proceedings. The findings also indicate that effective advocacy is dependent on advocates' specialist knowledge of youth justice law and provisions; their capacity to communicate effectively and build relationships with children and young people; and their professionalism. The review has identified a number of factors as barriers to advocates' development and application of these essential attributes and skills. These barriers include advocates' limited opportunities to undertake training and to learn from their own and their peers' practice; and an array of structural, systemic and social constraints.

### **Experiences and quality of advocacy in youth proceedings**

Of the 215 advocates who responded to the survey, 198 were fully qualified barristers, six were barrister pupils and seven Chartered Legal Executive Advocates. (Four described themselves as 'other'.) The vast majority had experience of practice in youth proceedings, with 90 per cent having acted as a defence and/or prosecution advocate in the Youth Court, and 73 per cent having represented a young defendant in the Crown Court. Most had appeared in youth proceedings on five or more occasions. Only a minority of respondents – 29 per cent – could recall having received any specialist training to prepare them for practice in youth proceedings.

Notwithstanding their lack of specialist training, respondents with experience of practice in youth proceedings were largely confident of their abilities in this regard – with almost all stating that they had, or "to some extent" had, the knowledge and skills needed for effective practice in the Youth Court and in Crown Court youth cases. Most survey respondents wanted or "maybe" wanted to continue to practice in the Youth Court; however, for a sizeable minority, this was not desired – largely because Youth Court practice was seen to offer limited opportunities for career progression, and because of the associated low pay and status.

In qualitative interviews, most of the 34 advocate respondents were critical of aspects of their peers' practice in youth proceedings. A range of shortcomings in advocacy were noted, some of which were said potentially to have far-reaching consequences for young defendants' and witnesses' engagement with proceedings, and for the outcomes of proceedings; albeit many respondents stressed that poor practice co-exists with good. The following were the themes that most frequently emerged in advocates' comments about manifestations and causes of shortcomings in advocacy in youth proceedings:

- Many advocates lack knowledge of youth justice law, procedures and provisions.
- Many advocates struggle to communicate well with young defendants and witnesses and, particularly, to cross-examine in an appropriate and effective manner.
- Barristers who practise in the Youth Court tend to do so at the outset of their careers, as part of the basic learning process.

- Advocates in youth proceedings, and especially solicitors in the Youth Court, are working for ever lower legal aid fees while juggling large caseloads.
- Advocates and their professional colleagues often fail to recognise the significance of Youth Court work – in terms of the level of offending dealt with and the seriousness of the repercussions for the parties involved.
- Some advocates treat individual cases as matters to be processed as quickly as possible and thus fail to prepare, research and review their cases adequately.
- Reflecting the low status of and low pay for work in the Youth Court, the more able, ambitious lawyers tend to favour other kinds of criminal work.

Like the advocate respondents, the large majority of the 30 “other” youth justice practitioners who were interviewed for this study voiced concerns about the quality of some advocacy in youth proceedings. Practitioners’ specific concerns strongly reinforced many of the issues raised by the advocates themselves. Hence, several argued that a substantial number of advocates lack the knowledge they need to do a good job. Several talked about advocates who lack the skills to engage effectively with children and young people in court. Practitioners also painted a picture of many advocates who are inexperienced, poorly paid, and whose work is often rushed or undertaken “on the hoof”.

Most of the 25 young defendants who were interviewed had had multiple experiences of appearing in court. The dominant theme in what these respondents said about the defence lawyers who had represented them was that some were good and some were poor; and the characteristic that was generally said to distinguish the good from the poor was the extent to which they cared about and applied themselves diligently to the case at hand. The inexperience of many advocates in youth proceedings also did not go unnoticed by some young defendants. Another theme to emerge in the young defendant interviews was that advocates could be difficult to understand – in the context of a court process that, more generally, was often regarded as highly confusing.

### **Components of effective advocacy in youth proceedings**

Three fundamental components of effective advocacy were identified by this review: first, specialist knowledge; secondly, communication and wider social skills; and, thirdly, professionalism.

There were said to be several different aspects to the **specialist knowledge** on which an advocate may need to draw over the course of defending or prosecuting any given case. Such knowledge pertained to youth justice matters rather than to knowledge of criminal law. Knowledge of youth justice law was regarded as critically important – reflecting the complexity of this area of law, the fast pace at which it changes, and distinct nature of the sentencing and bail frameworks for children. Many respondents stressed that advocates should possess knowledge and awareness of the backgrounds of children who appear in court, and particularly the developmental, communication and mental health needs that are

prevalent within this group. Such knowledge was said to be essential if advocates are to communicate effectively with young defendants and witnesses, and to facilitate their engagement with court proceedings, for example by accessing relevant courtroom provision. The requisite knowledge for effective advocacy was also said to encompass awareness and understanding of the role of the Youth Offending Team and other services within the youth justice system.

For the most of the respondents in this research, effective **communication** with children was regarded as the basis of good advocacy in youth proceedings. This was perceived to be essential for children to be able to open up to their advocate, give instructions, understand what is happening in court and respond to questioning. Good communication skills were highlighted as the starting point for facilitating children's understanding – both when questioning children (including witnesses) during court hearings and during consultations outside the courtroom. Good communication was said to entail the use of “basic language” rather than “legal jargon” and “simple and clear questions”, without being patronising. In addition, good communication underpins the development of **positive relationships** between advocates and their clients, premised upon empathy and trust. Some advocate interviewees emphasised that building rapport is a vital part of working with clients of all ages. However, it was commonly noted that young defendants are often wary of adults due to long-held mistrust of figures of authority. Building trust was therefore said to take more time and patience with young defendants. These various factors combine to mean that, in the eyes of some of our respondents, only advocates who have a genuine interest in working with children are likely to perform well in the context of youth proceedings.

Young defendants, advocates and other practitioners described various aspects of effective advocacy – particularly, demonstrable commitment, engagement, thorough case preparation and attention to detail – which can be grouped together under the broad heading of “**professionalism**”. Unsurprisingly, the principal determinant of many young defendants' assessments of their advocate was often whether or not he or she had received the “right result” in their eyes. In a more general sense, it was important to young defendants that their advocates appeared confident and committed to the case. In this respect, some young people differentiated good and bad advocacy on the basis of whether the advocate demonstrated passion for the work and did not appear to be doing it simply “for the money”. Some advocate and practitioner respondents also perceived commitment to be an essential component of effective advocacy in youth proceedings – arguing that particular effort and patience is required to engage with young people appearing in court.

Both good and poor practice was evident in what respondents said about the quality of advocacy, within each of the three themes identified by this review as “core components of effective advocacy”. Many advocates were praised for the relationships they built with their clients and for their profound commitment to their work; while others were criticised for lack of engagement and lack of knowledge and relevant skills – shortcomings which were said to have serious implications both for court processes and outcomes.

## Constraints on advocacy in youth proceedings

Participants in this review identified a wide range of factors that impede or limit the effectiveness of advocacy in youth proceedings. Among these factors, **lack of opportunities for advocates to engage in training and learning** was frequently cited. The interviews with advocates reinforced the survey finding that specialist training on youth justice was not routinely available, either as part of legal and professional qualifications or continuing professional development (CPD). The costs of attending specialist training, both in terms of time and money, appear to be another factor that limits participation in it. Opportunities for learning through shadowing more experienced peers in youth proceedings, and from feedback on one's own performance, were also perceived to be limited.

Perhaps one of the strongest themes emerging from all the elements of research undertaken for this review is that an array of **structural or systemic constraints** impact on the effectiveness of advocacy in youth proceedings. The following are the key issues here:

- Inadequate and inconsistent and often ad hoc approaches to assessing young defendants' needs and vulnerabilities result in many instances where specific needs have not been identified by the time of the court appearance.
- The highly formal nature of court proceedings and language is a significant barrier to young defendants', and also young witnesses', understanding of and engagement with the process.
- A range of adaptations can be made to the court process to support vulnerable (including young) defendants and witnesses; but this provision is not necessarily adequate and nor is it always properly implemented.
- Delays in the court process are commonplace in the court process, which can result in long waiting times for children and young people before and at court. Problems are sometimes exacerbated by poor case management.
- Government efforts to increase the speed and efficiency of the court process carry risks of neglect of support provisions for vulnerable court users and pressure imposed on defendants to plead guilty, while legal aid reforms have impacted representation of young defendants, including in terms of time available for case preparation.
- The work of the Youth Court is generally under-valued, as evident in its treatment as a "training ground" for junior advocates, its equivalence in status with adult magistrates' courts and the continuing financial squeeze on work undertaken in this jurisdiction. These factors conspire to produce a situation in which the most senior, able and ambitious advocates tend to move to other areas of criminal work.
- A lack of training or expertise on the part of some (non-advocate) youth justice practitioners – including, for example, judges and magistrates – acts as a potential barrier to effective advocacy.

- The adversarial nature of the youth proceedings is tempered by the statutory obligation of courts to “have regard to” children’s welfare and the youth justice system’s statutory principal aim of preventing offending; however, proceedings remain essentially adversarial, and there are therefore inherent tensions within the advocate’s role in court.

A final set of constraints on advocacy in youth proceedings relate to the social context in which the proceedings take place. Part of this social context is the relatively punitive societal response to offending committed by children and young people. This is reflected, for example, in the fact that, at ten, the age of criminal responsibility in England and Wales is lower than in almost all other European jurisdictions. Another important consideration is that, for many children and young people, involvement in the criminal justice system is a symptom of broader and often intersecting problems of family breakdown, poor emotional and mental health, and speech, language and communication needs. As a consequence, advocates may feel that they are grappling with problems – many of which may be manifest in the offending and alleged offending behaviour itself – that are so profound that they demand responses far beyond anything that can be offered as part of the court process.

### **Recommendations for promoting effective advocacy in youth proceedings**

The work of advocates in youth proceedings – and the strengths and shortcomings of this work – cannot be viewed in isolation from its wider legal, institutional and cultural context. The recommendations for promoting effective advocacy, presented below, are therefore focused on different levels: first, the systems and structures of youth proceedings which could support better advocacy; secondly, the court-based facilitators of improved advocacy; and, thirdly, training and learning opportunities for advocates.

#### *Structural changes*

- To achieve a graduated shift away from the highly adversarial nature of the existing youth justice system, government and the senior judiciary should give consideration to the establishment of problem-solving approaches in the Youth Court.
- Legal professional and representative bodies should develop a joint strategy for raising the visibility and awareness of youth court proceedings amongst lawyers, the judiciary and other criminal justice stakeholders, including by disseminating good practice.
- Legal practice in the Youth Court and Crown Court youth cases should be recognised as a specialism, through the introduction of mandatory training and a licensing system for youth justice advocates.
- The Legal Aid Agency should have the capacity to pay an additional fee to permit meetings between advocates and young clients prior to court appearances.
- The Legal Aid Agency should ensure parity in funding for legal representation for serious youth court cases and for Crown Court cases of equivalent seriousness.
- There should be promotion of use of “plain English” in the criminal courts.

- The CPS, in conjunction with HMCTS, should monitor decision-making by prosecutors in youth cases and introduce refresher training for these prosecutors; and the Ministry of Justice should consider introducing a Youth Court power to review charging decisions.

#### *Court-based measures to facilitate effective advocacy*

- There should be systematic screening of young defendants prior to their appearance at court, and clear procedures for sharing screening outcomes with relevant professionals.
- The existing system of “ticketing” judges should be reviewed to ensure that the most serious youth cases are heard by judges with the necessary youth justice expertise.
- Gaps in current training provision on youth justice for magistrates, legal advisors and other court staff should be identified and addressed, with shared training materials introduced across practitioner groups where possible.
- The judiciary, prosecutors and advocates should be more responsive to young court users’ needs through appropriate implementation of court-based adaptations.
- There should be a formal expectation that the YOT representative in court and the advocate consult with each other prior to each court hearing.
- The Home Office and Ministry of Justice should give consideration to extending mandatory Appropriate Adult support for young suspects from the police station to court.

#### *Training and learning opportunities*

- Legal training bodies should introduce mandatory training for all advocates who practise in youth proceedings. Key considerations in developing this will include the scope for:
  - Shared training resources across the legal profession and other practitioner groups;
  - Inclusion of modules on youth justice and vulnerability within academic training and within the vocational training courses
  - Development of a practical post-qualification, pre-practice course;
  - Development of a mandatory youth justice module as part of CPD.
- Key components of training are likely to include youth justice law and the components of the youth justice system, child development and vulnerabilities, communication and engagement skills, provision for vulnerable court users;
- A youth justice licensing or accreditation system should be developed;
- Legal professional and training bodies should encourage a culture of shadowing and feedback among advocates working in youth proceedings;
- The Advocacy Training Council should develop and implement a strategy for promoting awareness of and engagement with The Advocacy Gateway toolkits.

# 1. Introduction

This report presents the findings of a review of advocacy in youth proceedings in England and Wales. The review was commissioned by the Bar Standards Board (BSB) and CILEx Regulation in October 2014, and was conducted by the Institute for Criminal Policy Research (ICPR) which is based in Birkbeck, University of London.

For the purposes of the report, the term “advocacy” is used to refer to all aspects of a legal practitioner’s work, on the defence or prosecution side, in relation to a criminal case that has reached court. The term “youth proceedings” refers to cases that are heard in the Youth Court and cases involving young defendants (that is, those under the age of 18) that are heard in the Crown Court.<sup>1</sup> Many Youth Court cases and youth cases heard in the Crown Court involve young witnesses as well as young defendants.

The main focus of this review – given that it was commissioned by the BSB and Cilex Regulation – has been the work of barristers and chartered legal executive advocates (CLEAs). The Solicitors’ Regulation Authority opted not to be involved in the review, although it has been kept informed of progress. For the most part, however, the review has not sought to look at advocacy by barristers and CLEAs in isolation from advocacy by solicitors. This reflects the fact that a great many of the same issues impact the work of barristers, CLEAs and solicitors alike; and, moreover, the bulk of legal practice in the Youth Court is undertaken by solicitors.

## 1.1 Background

The principal aim of the youth justice system in England and Wales, as set out in section 37 of the Crime and Disorder Act 1998, is to prevent offending by children aged from ten to seventeen. The youth justice system is overseen by the Youth Justice Board (YJB), which is an executive non-departmental public body based in the Ministry of Justice.

When children commit an offence, they can be dealt with in a variety of ways. If their offence is low level, they may be diverted from the formal justice system or they can be given an out-of-court disposal. However, if the Crown Prosecution Service decides that prosecution is the only proper and proportionate response, the case will proceed to court. (For further information about the youth justice system, see Youth Justice Board/Ministry of Justice, 2015.)

Over the last 15 years, the numbers of children entering the youth justice system and coming to court have declined dramatically. Between 2002/03 and 2013/14 there has been a

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<sup>1</sup> This review was originally called the Youth Court Advocacy Review (YCAR), but this title was amended to Youth Proceedings Advocacy Review (YPAR) to reflect the inclusion of the Crown Court alongside the Youth Court within its scope.

75 per cent drop in first time entrants to the system (ibid: 23). The number of children proceeded against at court has fallen by 21 per cent since 2012/13 alone (ibid: 33). A variety of factors appear to have produced this notable trend, including a reduction in offending by children, a fall in detected youth crime, and renewed emphasis on and provision for diverting children away from the youth justice system and court (especially those who are involved in low-level misbehaviour) (Bateman, 2014: 5-20).

There is some evidence that the Youth Court is now seeing a greater concentration of children with complex needs (Deloitte, 2015; Carlile, 2014: 4) by virtue of the fact that most low-level matters – which are likely to involve children with fewer needs – are being dealt with outside the formal youth justice system. Similarly, the Ministry of Justice describe the youth justice cohort as “more challenging to work with”, which is reflected by the increase in the average number of proven previous offences by children in the system since 2006/07 (MoJ/YJB, 2015: 27).

### 1.1.1 The courts

All youth proceedings are required to operate in line with the statutory “principal aim” of preventing offending by children. In addition, under section 44 of the Children and Young Persons Act 1933, proceedings must “have regard to the welfare of the child or young person”.

In 2013/14 there were 45,893 young defendants (aged 10-17) proceeded against in the courts (ibid: 16).<sup>2</sup> The large majority of young defendants appear in the Youth Court, which is a specialist form of magistrates’ court. Youth Court hearings are presided over by a district judge trained in youth justice or a panel of three youth magistrates. The Youth Court is designed to be less formal and hence less intimidating than adult magistrates’ courts and the Crown Court. Hence, for example, it is a closed court, meaning that members of the public cannot attend without permission; defendants are called by their first names; and they sit with their advocate and/or supporters rather than in the dock. The Youth Court has the power to pass a range of sentences on convicted offenders, including custodial sentences of up to two years in length.

The most serious cases involving young defendants, or those in which a young defendant has an adult co-defendant, are heard in the Crown Court (for further details of the criteria for remitting youth cases to the Crown Court see Sentencing Council, 2009: 26-29). However, it is expected that the proportion of serious youth cases which are heard in the Crown Court will decline under Section 53 of the Criminal Justice and Courts Act 2015 (which commenced in April 2015). Under this provision, children charged with serious offences for which Youth Court sentencing powers are likely to be inadequate can be tried at the Youth Court and subsequently, if convicted, committed for sentence to the Crown Court. Previously, committal to the Crown Court for sentence could only take place if the defendant had pleaded guilty at the Youth Court (Criminal Law and Policy Unit, 2015).

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<sup>2</sup> These are not unique individuals: any single young person may receive several disposals in a year.

Bail and remand provisions and available sentences for young defendants are detailed in Boxes 1.1 and 1.2 below (see also Sentencing Council, 2015).

### **Box 1.1: Bail and remand provisions**

At a child's first appearance in court, the judge or magistrates decide whether they should be bailed or remanded during the case. Available options are:

- **Unconditional bail** – the child is released with an obligation to return to court for their next hearing.
- **Conditional bail** – the child is released but specific conditions are imposed.
- **Conditional bail with Intensive Support and Surveillance (ISS)** – this is same as above but the child is required to have 25 hours per week of contact time with the YOT (i.e. ISS).
- **Conditional bail with tagging** – the child is released but is given a curfew with electronic monitoring; applies to those aged 12-17 and where certain other criteria are met.
- **Remand to local authority accommodation** – the child is remanded to accommodation provided by the Local Authority, which may be a foster home, children's home or a family member.
- **Remand to youth detention accommodation** – the child is remanded to secure accommodation in a secure children's home, secure training centre or young offender institution; applies to those aged 12-17 and only if certain other criteria are met.

### **Box 1.2: Sentences**

#### ***First tier penalties***

- **Absolute Discharge** – no further action beyond receipt of conviction
- **Conditional Discharge** – discharge conditional on no further offences being committed in a specified time period.
- **Reparation Order** – requires the child to make reparation to the victim or wider community.
- **Fine**
- **Referral Order (RO)** – the child is required to attend a community panel which agrees a contract of interventions and reparation activities over a three to twelve-month period.

#### ***Community orders***

- **Youth Rehabilitation Order (YRO)** – the order, of up to three years' duration, must include one or more requirements, such as a curfew, supervision, or attendance at activities.
- **YRO with Intensive Supervision and Surveillance or Intensive Fostering** – may be given to children as an alternative to custody.

#### ***Custodial sentences***

- **Detention and Training Order** – a custodial sentence for 12 to 18-year-olds of between four months and two years in duration; half is spent in custody and half in the community.

#### ***Crown Court only custodial sentences for children***

- Longer term **detention** under section 91, Powers of Criminal Courts (Sentencing) Act 2000.
- **Detention for life or extended sentence of detention** – where the child is deemed to pose a significant risk of serious harm to members of the public.
- **Detention during Her Majesty's Pleasure** – mandatory life sentence for murder.

Youth Offending Teams (YOTs) play an important part in informing decision-making by the courts and overseeing court orders. YOTs were created by the Crime and Disorder Act 1998 (s.39). They sit in local authorities and are responsible for coordinating services and support to children who are in or at risk of entering the youth justice system. In practice this means that YOTs conduct prevention work; assist children who are arrested at the police station; provide reports on and assistance to children at court; supervise young offenders serving community sentences; and maintain oversight of children's sentences in custody. YOTs are multi-agency teams – usually comprising at least one seconded police officer, probation officer, social worker, health worker and education worker, as well as generic YOT officers; however, there is some evidence that the multi-agency nature of YOTs has been eroded in recent years (see, for example, Carlile, 2014: 18).

### 1.1.2 Characteristics of children in the youth justice system

The youth justice population – defined as those children aged ten to seventeen who have received a pre-court or court disposal – is largely male (81%), aged 15-17 (78%) and of white ethnic origin (75%) (YJB/MoJ, 2015: 26).<sup>3</sup> It is widely recognised that a high proportion of children in the youth justice system have extensive needs and vulnerabilities; however, most of the available statistics relate to children in custody. Some relevant research findings include:

- Six in ten children in the youth justice system have a communication disability (Bryan et al, 2007, cited in RCSLT, 2009);
- More than half of children in custody<sup>4</sup> come from deprived households; (Jacobson et al, 2010: 52);
- 76% of children in custody have an absent father and 33% have an absent mother (ibid);
- A third of young men and just over 60% of young women in custody (aged 15-18) have spent time in local authority care (Kennedy, 2013: 10);
- One-third of children in custody have identified special educational needs (Gyateng et al, 2013: 39).
- Approximately 30% children who have 'persistent offending histories' in custody have IQs of less than 70, signifying a learning disability (Rayner et al, 2008, cited in Hughes et al, 2012: 26);

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<sup>3</sup> There are no publicly available data on the general population of young defendants who appear before the courts.

<sup>4</sup> Based on a sample of 200 randomly selected children in custody in the latter half of 2008.

- Between 65% and 75% of children in custody have suffered a traumatic brain injury (various authors, cited in Hughes et al, 2012: 35-37); and
- 31% of a sample of 13 to 18-year-old offenders in custody and the community were found to have mental health problems, compared to 10% of the wider population (Jacobson et al, 2010: 68).

More generally, research indicates that rapid neurodevelopment is ongoing during adolescence, which hinders the ability of those aged under 18 to take part fully in some of the core tasks associated with criminal proceedings - including understanding interview questions and the significance of their answers; understanding charges and court processes; deciding how to plead; and instructing lawyers (various authors, cited by Farmer, 2011). Jacobson and Talbot have argued that child defendants are ‘doubly vulnerable’ because of their developmental immaturity coupled with their experience of other needs, including learning disabilities, mental health problems and communication difficulties (2009: 37).

Despite calls for the collection and publication of statistics on the characteristics of young witnesses appearing before the courts (Plotnikoff and Woolfson, 2011: 6), no such data are available.

### 1.1.3 Provision for young defendants and witnesses

Within criminal justice policy in England and Wales, there has been an increasing focus on making the court process less intimidating and more accessible for those who are vulnerable – including children. Many of the relevant policy developments have been aimed at vulnerable victims and witnesses; most notably, these include the introduction of “special measures” under Section 16 of the Youth Justice and Criminal Evidence Act 1999, for which all witnesses aged under 18 are automatically eligible. Special measures include the screening the witness from the defendant; giving evidence by live-link and in private; the removal of wigs and gowns; video-recorded cross examination or re-examination; and the appointment of a “registered intermediary” in court to facilitate communication.<sup>5</sup> The Ministry of Justice published successive versions of guidance for practitioners on the use of special measures and interviewing vulnerable victims and witnesses – *Achieving Best Evidence in Criminal Proceedings* (Ministry of Justice, 2011). Despite the introduction of special measures, however, Plotnikoff and Woolfson have argued that further work is needed to ensure that young witnesses feel supported and are appropriately questioned at court. For example, they note that cuts to local funding risk limiting access to registered intermediaries (2011: 5-7).

The Youth Justice and Criminal Evidence Act explicitly excludes defendants from its “special measures” provisions, and the relative neglect of vulnerable defendants’ needs at court has been the focus of some strong criticism (Jacobson and Talbot, 2009; Bradley, 2009; Tonry,

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<sup>5</sup> Registered intermediaries are communication specialists who have been recruited, trained and accredited by the Ministry of Justice.

2010; Talbot, 2012). However, various steps have been taken towards developing greater support for vulnerable defendants, including children. Section 47 of the Police and Justice Act 2006 provides for defendants under 18 to give evidence by live video-link if certain conditions are satisfied. Section 104 of the Coroners and Justice Act 2009 provides for young defendants to access registered intermediaries for the purposes of giving evidence, although this has not been implemented; moreover, commentators have argued that the provision is in any case inadequate since the presence of an intermediary only during the giving of evidence cannot genuinely facilitate understanding of the court process (Carlile, 2014: 27). Courts have the discretion to order the attendance of a “non-registered” intermediary for a vulnerable defendant, for the giving of evidence or the whole trial (The Advocate’s Gateway, 2013).

The current *Criminal Practice Directions* (Division I: General Matters – Sections 3D-3G), issued by the Lord Chief Justice in 2013, addresses the issue of vulnerability of both victims and witnesses, including children:

*many ... people giving evidence in a criminal case, whether as a witnesses or defendant, may require assistance: the court is required to take “every reasonable step” to encourage and facilitate the attendance of witnesses and to facilitate the participation of any person, including the defendant ... This includes enabling a witness or defendant to give their best evidence, and enabling a defendant to comprehend the proceedings and engage fully with his or her defence. The pre-trial and trial process should, so far as necessary, be adapted to meet those ends.*

A variety of potential methods for supporting vulnerable people in court are outlined in the Practice Direction, such as the appointment of intermediaries and the use of ground rules hearings to plan the questioning of a vulnerable witness or defendant. Suggested courtroom adaptations for vulnerable defendants include having participants in the courtroom at the same levels, permitting breaks in proceedings, and removal of gowns and wigs. However, there is some evidence that the Practice Direction is often not applied to youth proceedings (Carlile, 2014: 42).

The implementation of measures to meet the needs of young witnesses and defendants can only follow from the identification of those needs. Under Section 3.2(2) of the Criminal Procedure Rules 2013, the court has a duty to undertake “early identification of the needs of witnesses” – in practice, this depends on assessment by the police, Witness Care Unit or prosecution lawyers. No systematic process is in place to ensure screening of young defendants’ needs, such as speech, language and communication problems, prior to their attendance at court (HMI Probation et al, 2011: 39), although assessments by YOTs or police-based liaison and diversion schemes may be carried out. There is currently no specific procedure for assessing “fitness to plead” in the Youth Court (and the test applied in the Crown Court is outdated); but the Law Commission is developing proposals for a new,

wider-ranging test which will be extended to the Youth and magistrates' courts (Ormerod, 2015).

#### 1.1.4 Existing research evidence on expertise of advocates in youth proceedings

To date, there has been no in-depth study of the competence of advocates in youth proceedings in England and Wales. However there is some empirical evidence of poor legal practice in youth proceedings. Inadequacies that have been highlighted include defence advocates' lack of knowledge about sentencing options and failures to identify learning difficulties (see, for example, Carlile, 2014; Westminster Forum, 2014; Centre for Social Justice, 2012). A number of studies have reported that the Youth Court is liable to be treated as a "training ground" for junior barristers (Carlile, 2014; Centre for Social Justice, 2012). Commentators have pointed out that this approach to advocacy in the youth proceedings contrasts sharply with the mandatory training required of youth specialist crown prosecution advocates, and magistrates and district judges who sit in the Youth Court (ibid).

The lack of training and lack of knowledge among advocates in youth proceedings are said to have various repercussions. Young defendants are said to receive poor advice and representation from defence practitioners (Carlile, 2014: 31-32); young defendants and witnesses may fail to understand the court process (Audit Commission, 2004; Carlile, 2014: 22; Plotnikoff and Woolfson, 2002: 27-33) and experience confusion and distress as a result (Hazel et al, 2002: 12-13); and court outcomes, including sentencing, may be inappropriate (Audit Commission, 2004: 30). The Royal College of Psychiatrists has observed that "ethical issues" are raised where untrained advocates interview vulnerable and disturbed children (2006: 68).

Research and policy papers in the field of youth justice have argued that specialist training and expertise should be required to practise in youth proceedings for a variety of reasons: the sentencing framework is distinct to that in adult courts (Carlile, 2014: 30); youth court law is complex (ibid); children have particular needs by virtue of their young age, which should be addressed through a 'developmentally appropriate child-centred approach' (Royal College of Psychiatrists, 2006: 10); and, among child defendants there is a high prevalence of vulnerabilities and problems, such as speech and language difficulties and acquired brain injury, which may impede their understanding and affect their presentation in court (Carlile, 2014; Royal College of Psychiatrists, 2006; Jacobson and Talbot, 2009). Arguably, youth specialist knowledge is necessary to ensure adherence to the 2013 *Criminal Practice Directions* relating to vulnerable defendants and witnesses which— as noted above — require that proceedings are modified to ensure that these individuals are able to participate effectively.

A range of studies have been critical of the fact that there are no competency or training requirements for advocates in youth proceedings. These studies have accordingly recommended that legal practitioners should be certified to practise in youth proceedings (Carlile, 2014: 30; Centre for Social Justice, 2012: 84; Advocacy Training Council, 2011: 41;

Police Foundation, 2010: 64; Jacobson and Talbot, 2009; Royal College of Psychiatrists, 2006: 67-9). While the existing research highlights a wide range of concerns, there remains a need for further research to provide a fuller picture of the current state of experience and knowledge among advocates in youth proceedings and the training and expertise required for practice. Concerns about current advocacy practice in youth proceedings coupled with the knowledge gap in this field are key motivations for this review.

*[T]he handling and questioning of vulnerable witnesses, victims and defendants is a specialist skill, and should be recognised as such by practitioners, judges, training providers and regulators... Advocates must have sufficient knowledge and training to identify where a commonly experienced vulnerability exists, and do more preparation with regard to vulnerable witnesses pre-trial (sections 1.3, 1.4, Advocacy Training Council, 2011).*

Also part of the context for this review is the development of The Advocate's Gateway (TAG) by the Advocacy Training Council. TAG was launched in 2013 for the purpose of giving advocates and other practitioners access to practical, evidence-based guidance on the treatment of vulnerable witnesses and defendants. TAG's central feature is a series of toolkits which cover a range of issues including the questioning of a child or young person, and effective participation of young defendants. It is noted in the *Criminal Practice Directions* that these toolkits "represent best practice". Another current development is the creation, by HHJ Peter Rook QC, of a pan-profession training course for all advocates undertaking cases involving the vulnerable. The course will have both online and interactive elements, and is "designed as a compulsory basic course so as to ensure that all advocates have a common grounding in the principles underpinning best practice" (Rook, 2015); at the time of writing, it is very shortly due to be piloted.

## **1.2 The Youth Proceedings Advocacy Review**

This review was commissioned by the BSB and CILEx Regulation in order to inform consideration of whether regulatory interventions are needed to improve the quality of advocacy in youth proceedings, and what form any such interventions might take. To this end, a series of research activities were undertaken, which addressed the following two questions:

1. What knowledge, skills and attributes are required by advocates in youth proceedings to work effectively with defendants and witnesses and, in so doing, to promote justice and the public interest?
2. To what extent do advocates in youth proceedings (and, particularly, barristers and chartered legal executive advocates) currently have the requisite knowledge, skills and attributes to work effectively with defendants and witnesses and, in so doing, to promote justice and the public interest?

In addressing these questions, the research encompassed the interlinking cultural, structural and procedural factors which shape and inform the work of advocates, as well as looking at the details of the advocates' day-to-day practice.

### 1.2.1 Research methods

A multi-methods approach was adopted, which included desk research and quantitative and qualitative empirical research. The research activities were the following:

- A review of existing research literature that has a bearing on advocacy (including the identification of good and poor practice in advocacy) in youth proceedings.
- A survey of advocates (barristers and chartered legal executive advocates) exploring their experience, training and knowledge in relation to youth proceedings. The survey, in both online and hard copy formats, was extensively publicised and circulated by the Bar Standards Board and CILEx Regulation. It was completed by 215 respondents.
- Follow-up telephone interviews with a sub-sample of 34 advocates who had completed the survey, exploring their experiences of youth proceedings and their views on the factors which support and inhibit effective advocacy (four chartered legal executive advocates; four “third-six” barrister pupils<sup>6</sup>; and 26 barristers). A detailed overview of the length and type of experience of the 34 advocate interviewees is provided in Table A4 in Annex A.
- Face-to-face interviews with 25 young defendants, recruited through youth offending teams and secure establishments, about their own experiences of attending court and the quality of the advocates in court. (Seven of these interviewees were aged between 18 and 30, but all had attended court when aged under 18, and reflected on their earlier experiences in the interview.) Additionally, two parents of young defendants were interviewed.
- Interviews and discussions (face-to-face and telephone) with 30 youth justice practitioners based in and around 18 contrasting youth courts, covering respondents' perceptions of the quality of advocacy in cases involving young defendants and witnesses, and the factors contributing to good and poor advocacy. The sample comprised:
  - Five legal advisors
  - Eight youth court magistrates
  - Five district judges

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<sup>6</sup> That is, barristers who have already completed 12 months as a pupil, and are undertaking an additional six months.

- Eight YOT workers (court officers)
  - Two specialist prosecutors
  - Two intermediaries
- Telephone interviews with three young witnesses recruited through the Witness Service at two Crown Courts, and with two Witness Service volunteers.
  - Observations of court proceedings in four youth courts and five Crown Courts across the country.
  - Two two-hour roundtables with senior youth justice practitioners at which the preliminary findings were presented and discussed. The purpose of the meetings was to validate the research findings.
  - One two-hour roundtable with youth justice policy specialists and leaders to discuss the implications of the emerging research findings and to inform the development of recommendations for this report.

The Annex to this report provides further details on the methodology, including sampling, access and analysis.

### 1.2.2 Research limitations

The research conducted for this review had some limitations – relating, in particular, to the self-selected nature of both the survey and interview samples. While the survey was widely distributed, those who chose to complete it were likely to have the greatest interest in youth proceedings work. This was also a limitation of the advocate interviews as we primarily recruited these respondents through the survey. Similarly, the majority of the “other practitioner” interviewees put themselves forward for interview following our invitation to participate in the research which was issued in each fieldwork court area. Young defendants were invited for interview by the respective gatekeeper in each site (e.g. the YOT) which also imposed some limitations. First, those who agreed to speak with us may have been motivated to do so because they had particularly positive or negative experiences of their advocate and court. Second, defendants may have been selected for interview on the basis of their ability to understand and engage in an interview, meaning that they may have been better placed than many of their peers to participate in and understand the court process.

Notwithstanding these constraints on access to research participants, diverse views and experiences were reported within each group of respondents. This is a strong indication that we successfully recruited a wide cross-section of participants.

Other limitations of the research arose from the parameters of the review itself. As noted above, the review’s stated focus was on the work of barristers and chartered legal executive advocates; and, for this reason, the survey and advocate interviews were restricted to these

groups – while most of the issues addressed throughout the research also had application to the work of solicitors. Additionally, while advocates’ approaches to dealing with young witnesses was a theme which was included in the research from the outset, advocacy as it related to young defendants was the primary focus of most of the interviews, and we carried out only a very small number of interviews with young witnesses.

It should be noted that throughout the report the interview data is referenced in broad terms (e.g. ‘a *minority* of advocates stated that’ or ‘*many* young defendants said’). This is common practice in qualitative research studies for several reasons, including the fact that interview schedules tend to be open and semi-structured and thus do not generate easily quantifiable responses.

### 1.2.3 Structure of the report

The remainder of this report presents the findings of the empirical research, and considers their implications, over four chapters. Following this introduction, Chapter Two provides an overview of advocates’ backgrounds and experiences, based on the survey results, and considers views on the quality of advocacy as expressed in interviews with the advocates themselves, other practitioners and young court users. Chapter Three then discusses what we have identified from the research findings as the key components of effective advocacy in youth proceedings: in broad terms, these components are described as specialist knowledge; communication and wider social skills; and professionalism. Chapter Four looks at the factors which inhibit the effectiveness of advocacy in youth proceedings – with a particular focus on limited opportunities for training and learning; systemic constraints; and the social context of the youth justice system. Chapter Five concludes the report by presenting a series of recommendations aimed at promoting effective advocacy in youth proceedings. These recommendations are focused on structural changes, court based measures, and training and learning opportunities.

## 2. Experiences and quality of advocacy in youth proceedings

Drawing on the data collected by the advocates' survey conducted for YPAR, this chapter discusses the backgrounds and experiences of advocates in youth proceedings. We also consider, below, views on the quality of that advocacy among advocates themselves, other youth justice practitioners and court users – as expressed in the research interviews. Many of the issues introduced in this chapter will be addressed in greater depth in the chapters that follow.

### 2.1 Advocates in youth proceedings

Of the 215 survey respondents, 198 were fully qualified barristers, while six were barrister pupils and seven were Chartered Legal Executive Advocates (see Table 2.1). Just over 40 per cent of the barristers had qualified from 2000 onwards; the longest serving barrister qualified in 1962.

**Table 2.1: Professional roles of survey respondents**

Role	Number	Percentage
Fully qualified barrister	198	92%
Barrister pupil	6	3%
Chartered legal executive advocate	7	3%
Other	4	2%
<b>Total</b>	<b>215</b>	<b>100%</b>

Experience of practising in youth proceedings was widespread among the survey respondents. Of the 215 respondents, 209 had at least some such experience.

Overall, 94 per cent of respondents had experience of defending and/or prosecuting in the Youth Court. Nine-tenths (90%) of the respondents had acted as a defence representative in the Youth Court on at least one occasion. The large majority (81%) of respondents who had defended in the Youth Court had done so on more than five occasions,

Almost two-thirds (64%) had been a prosecution advocate in the Youth Court; and 70 per cent of those had done so on more than five occasions.

Around three-quarters of respondents (73%) had represented a young defendant in the Crown Court on at least one occasion. Of these, 65 per cent had represented a young defendant in the Crown Court more than five times.

#### 2.1.1 Experience of training

While the vast majority of survey respondents had experience of advocacy in youth proceedings, only a minority reported that they had received specialist training to prepare them for this aspect of their role as criminal advocates. Table 2.2 reveals that only

approximately three in ten respondents (29%) stated that they had received such training, while twice this proportion (60%) had not, and 11 per cent could not remember receiving specialist training. If we look only at those 155 respondents who have appeared more than five times in the Youth Court (as defence representatives), we see that the same large proportion (i.e. 71%) have not received training or cannot recall having done so.

**Table 2.2: Receipt of specialist training on youth proceedings**

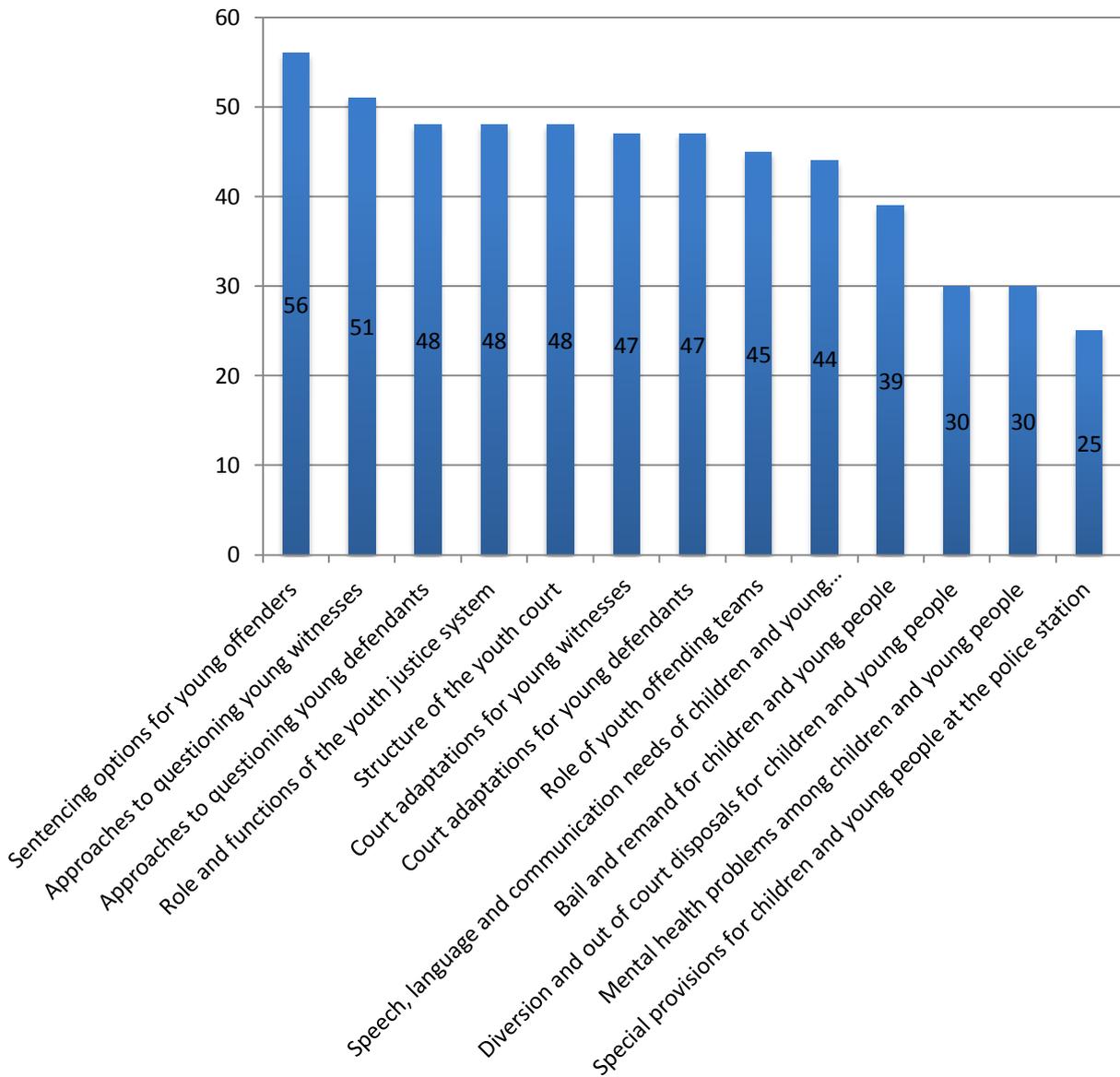
Role	Number	Percentage
Have received training	63	29%
Have not received training	129	60%
Don't recall/can't remember	23	11%
<b>Total</b>	<b>215</b>	<b>100%</b>

Among the 63 respondents who had received specialist training, 45 stated that this had taken place as part of continuing professional development. Just 12 respondents stated that they had received specialist training as a mandatory part of legal training; while 20 said it had been an optional part of legal training; and 18 said they had received it as part of their studies for a professional legal qualification. Ten respondents said they had received the training at some 'other' stage. (Respondents could select multiple responses to the question about when they had received specialist training.)

Figure 2.1 illustrates the types and prevalence of topics that were reported to have been covered by the specialist training received by 63 respondents. As it shows, sentencing options for young offenders was the topic most commonly covered by training. This was closely followed by: approaches to questioning young witnesses, approaches to questioning young defendants; the role and function of the youth justice system; and the structure of the youth court. The topics least frequently covered included: diversion and out of court disposals for children; mental health problems among children; and special provisions for children at the police station.

The vast majority of respondents who had received training on each of the above topics reported it to be either "very useful" or "quite useful" – ranging from 25 out of the 30 respondents whose training had covered diversion and out of court disposals, to 55 out of the 56 whose training had included sentencing options.

**Figure 2.1**  
**Receipt of specialist training in youth proceedings by topic**

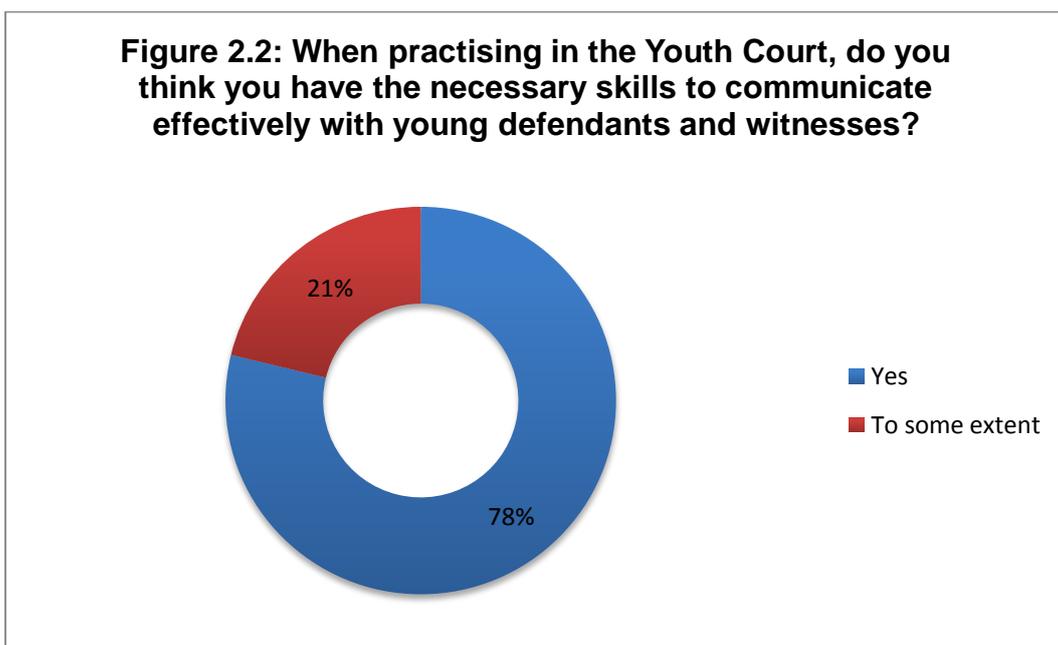
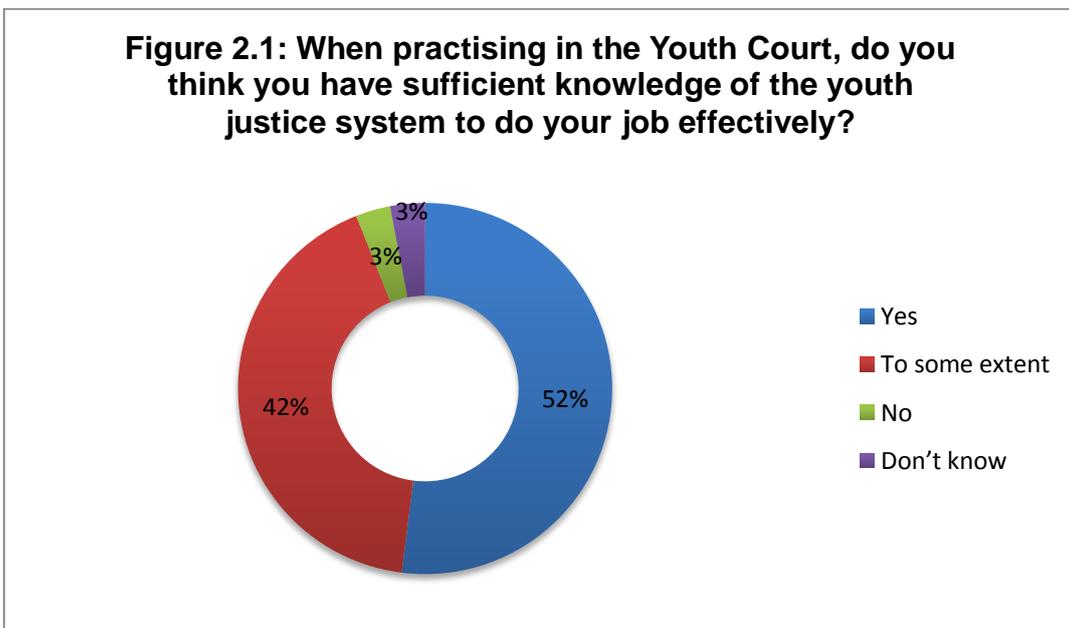


### 2.1.2 Self-reported knowledge and skills

Notwithstanding the fact that most of the survey respondents had not received, or did not recall receiving, specialist youth justice training, the respondents were, for the most part, confident that they personally had the knowledge and skills required to practise effectively in youth proceedings. As shown in Figures 2.1-2.4, 78 per cent and 83 per cent of respondents stated that they had the necessary *skills* for effective practice in the Youth court and Crown Court respectively, with almost all other respondents stating that they had the requisite skills “to some extent”. When asked if they had the *knowledge* required to represent young defendants in the Crown Court, 74 per cent said that they did, with almost all others stating that they had this knowledge “to some extent”. Less confidence was expressed with respect

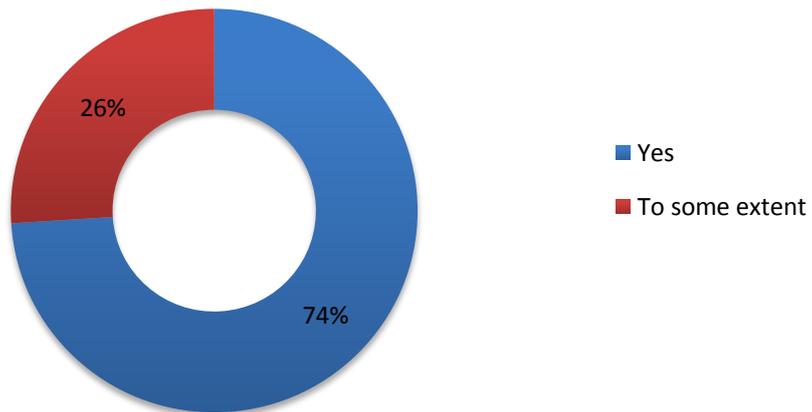
to the knowledge relevant to practice in the Youth Court: 52 per cent stated that they had this knowledge, while 42 per cent said that they did so “to some extent”; the remaining six per cent stated that they lacked knowledge or did not know if they had the requisite knowledge. The greater confidence expressed overall regarding the knowledge and skills required for practice in the Crown Court may reflect the fact that advocates tend to have more experience of this setting and therefore feel more comfortable (See also Table B1 in Annex B.)

**Figures 2.1-2.2: Advocates’ confidence in their knowledge and skills:  
Youth Court**

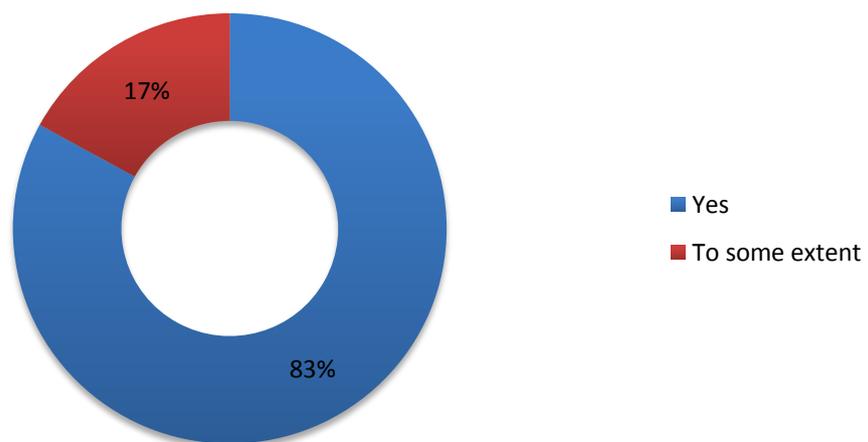


**Figures 2.3-2.4: Advocates' confidence in their knowledge and skills:  
Crown Court youth proceedings**

**Figure 2.3: When representing defendants aged under 18 in the Crown Court, do you think you have the necessary knowledge to do so effectively?**



**Figure 2.4: When representing defendants aged under 18 in the Crown Court, do you think you have the necessary skills to do so effectively?**



### 2.1.3 Views on practice in youth proceedings

As noted above, the vast majority of the respondents – 94 per cent of the 215 – had experience of working in the Youth Court. They were asked about their “motivations” for undertaking this work; their selected responses from a pre-defined list were as follows (multiple responses were permitted):

- It’s important and valuable work – selected by 52 per cent of respondents;
- I find the work interesting – 38 per cent;
- I like developing my knowledge and skills in this area – 27 per cent;
- I find the work rewarding – 27 per cent;
- It gives me opportunities to develop my professional career – 24 per cent

Additionally, around one-third of the respondents (32%) stated in free text that they currently practise or have previously practised in the Youth Court because they have been instructed/paid or expected to do so. Some typical comments here included:

*Appearing in Youth Court is part and parcel of life as a criminal advocate. Cab rank rule applies.*

*I had no option! I was instructed to act.*

*I was at a stage in my career when I did whatever was available.*

Advocates were also asked about whether they wished to continue to practise in the Youth Court. Just over a third (35%) reported that they did wish to do so, while a further 28 per cent stated that they would “maybe” wish to continue, and one-third (33%) stated that they “probably” or “definitely” did not wish to continue to practise in youth proceedings (see Table 2.4).

**Table 2.3: Interest in continued practice in the Youth Court**

Would you like to continue practising in the Youth Court?	Number	Percentage
Yes, definitely	68	35%
Yes, maybe	53	28%
No, probably not	41	21%
No, definitely not	23	12%
Don't know	7	4%
<b>Total</b>	<b>192</b>	<b>100%</b>

Those respondents who stated that they probably or definitely did not wish to continue to practise in Youth Court – who numbered 64 in total – were asked to give reasons for their lack of interest in pursuing this work. Thirty-nine of the 64 respondents selected (from among pre-defined options) the reason: “This work does not offer opportunities to develop my

professional career.” Further, 19 respondents, in free-text responses, referred to low pay and/or the relatively low or junior status of Youth Court advocacy – for example:

*I did a lot of this sort of work during pupillage and the early years of my practice. I've now moved on.*

*My practice is now entirely in the Crown Court and going back to the Youth (and Magistrates) Court would be effectively a demotion.*

*It is very poorly paid, stressful and there is not justice for the young people involved.*

*It is grossly underpaid in comparison to similar adult work - sex cases, etc.*

*It is not economic to do though I believe it to be important work*

From among the pre-defined options, fifteen respondents selected “There are unlikely to be opportunities to do more work of this kind” as the reason for not continuing to practise in the Youth Court; and nine respondents selected “I don’t find the work interesting”; five selected “I find the work distressing or disturbing” (multiple responses were permitted). Reflecting the generally high level of confidence in their own abilities that was expressed in response to previous questions (as noted above), no respondents selected “I feel I lack the knowledge and skills to do a good job” as a reason for not wishing to continue with Youth Court practice.

## **2.2 Views on quality advocacy in youth proceedings**

The overall picture that emerges from the survey findings presented above is of advocates who had extensive experience of practice in youth proceedings – including experience of both defence and prosecution in the Youth Court, and representation of children and young people in the Crown Court – but limited specialist training for this role.<sup>7</sup> Notable also are the advocates’ generally high levels of confidence in their own knowledge and skills with respect to youth proceedings, although there appeared to be some doubts about the knowledge required for effective practice in the Youth Court. Most advocates wanted or “maybe” wanted to continue to work in the Youth Court, but, for a sizeable minority, this was not desired – largely because Youth Court practice was seen to offer limited opportunities for career progression, and because of the associated low pay and status.

While the survey findings provide a broad overview of advocates’ experiences and perceptions of advocacy in youth proceedings, we sought to gain a more in-depth understanding of strengths and shortcomings in current practice through our interviews with a sub-sample of advocates and interviews with other youth justice practitioners and with court users. It was not the intention of this review to provide a comprehensive and systematic assessment of the quality of advocacy in youth proceedings; however, the accounts from respondents which will be briefly discussed below provide a clear picture of advocacy which is, at best, of highly variable quality.

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<sup>7</sup> As noted above, 71% of survey respondents (defence representatives) who had appeared more than five times in the Youth Court, had not received training or could not recall having done so.

### 2.2.1 Advocates' views on the quality of advocacy

Among the advocates interviewed for this study – who numbered 26 barristers, four barrister pupils and four chartered legal executive advocates – the large majority were critical of aspects of the work undertaken by their fellow-advocates in youth proceedings. A range of shortcomings in advocacy were noted, some of which were said potentially to have far-reaching consequences for young defendants' and witnesses' engagement with proceedings, and for the outcomes of proceedings; albeit many respondents stressed that poor practice co-exists with good. A small number of respondents spoke only positively about the practice of their peers.

For the most part, respondents' concerns about quality of advocacy largely focused on practice in the Youth Court; and those respondents who explicitly distinguished between advocacy in the Youth Court and in Crown Court youth cases tended to say that the latter was better because more senior advocates tended to be involved. Another point of comparison discussed in some interviews was between the work of solicitors (including solicitor-advocates in the Crown Court) and the work of barristers. Some respondents - who were themselves barristers - strongly asserted that solicitors perform more poorly than barristers, reflecting solicitors' lesser training or expertise in "advocacy" in a narrow sense. Others, however, argued that solicitors working in the Youth Court tend to have greater experience of this jurisdiction and hence have more opportunities to develop specialist knowledge and skills. Respondents did not have sufficient experience of chartered legal executive advocates to be able to comment on the quality of their work.

The following were the recurring – closely interlinked – themes in what advocates had to say about manifestations and causes of shortcomings in advocacy in youth proceedings:

- Many advocates lack knowledge of youth justice law (including, critically, sentencing law), procedures and provisions:

*Some advocates haven't got a clue what goes on in the Youth Court* [advocate interviewee 25 – chartered legal executive advocate].

- Many advocates struggle to communicate well with young defendants and witnesses (inside and outside the courtroom) and, particularly, to cross-examine in a manner that is appropriate and effective:

*In my second youth court trial, which ... was a far more serious case, neither of my opponents had any idea of how to question children* [advocate interviewee 9 - barrister].

- Barristers who practise in the Youth Court tend to do so at the outset of their careers, as part of the basic learning process:

*You tend only to be in the Youth Court when you're learning your trade* [advocate interviewee 30 - barrister].

- Advocates in youth proceedings, and especially solicitors in the Youth Court, are working for ever lower legal aid fees while juggling large caseloads

*You pay peanuts and you get monkeys in some respects* [advocate interviewee 32 - barrister].

- Advocates and their professional colleagues often fail to recognise the significance of Youth Court work – in terms of the level of offending dealt with and the seriousness of repercussions for those involved:

*[The Youth Court] is not taken as seriously [as other courts] ... [meaning that] young people get a poorer standard of representation than everybody else does* [advocate interviewee 10 - barrister].

- Some advocates treat individual cases as matters to be processed as quickly as possible and thus fail to prepare, research and review their cases adequately:

*They see the Youth Court as a sort of production line, factory, depersonalised system ... everybody muddles through* [advocate interviewee 5 - barrister].

- Reflecting the low status of and low pay for work in the Youth Court, the more able, ambitious lawyers tend to favour other kinds of criminal work.

*One of the major problems is that this kind of legal work is poorly paid and this affects who is willing to do it* [advocate interviewee 23 - barrister].

### 2.2.2 Other practitioners' views on quality of advocacy

Like the advocate respondents, the large majority of the 30 “other” youth justice practitioners who were interviewed for the study – who included magistrates, district judges, legal advisors, YOT officers, specialist prosecutors and intermediaries – voiced concerns about the quality of some advocacy in youth proceedings. Again, many stressed that they had encountered, in the course of their work, very good as well as poor advocacy; and a few were of the view that most practice is of a satisfactory or high standard. But most of the practitioners did refer to at least some serious shortcomings in practice among both barristers and solicitors.

Practitioners' specific concerns about the quality of advocacy in youth proceedings strongly reinforced many of the issues raised by the advocates themselves. Hence, several argued that a substantial number of advocates lack the knowledge they need to do a good job –

whether this is knowledge about the law, the procedures of the Youth Court, or the wider youth justice system. Several talked about advocates who lack the skills to engage effectively with children and young people in court and therefore, for example, they speak in a manner that young defendants and witnesses cannot understand. (Indeed, one intermediary [practitioner interview 11] commented that, for some advocates, it is as if they have to “lose their skills” in order to start speaking in a simple, comprehensible way – since the acquisition of the “complicated language” of the law is so central to their legal training.) The practitioners also painted a picture of advocates who are inexperienced, poorly paid, and whose work is often rushed or undertaken “on the hoof”. The lack of status of the Youth Court was another point that was alluded to.

Some of the practitioners made it clear that for advocates who are inexperienced and unsure of their own abilities, the courtroom can be an intimidating environment: a YOT worker described advocates who are new to the job “quaking in their boots ... and they’re going, ‘Oh my God, what am I going to do?’” [practitioner interview 19]. A district judge spoke of advocates in the Youth Court who lack experience of children and wider life experience: “You can make them look at The Advocate’s Gateway till they’re blue in the face but they still don’t get it ... They’re frightened themselves” [practitioner interview 15]. And a legal adviser described lawyers coming into court with very little knowledge: they will just “pick up a book” beforehand, and find that “they’re a bit out of their depth” [practitioner interview 28].

### 2.2.2 Court users’ views on quality of advocacy

While the witnesses and defendants who were interviewed for this study could not be asked, in the same way as the advocates (34 interviewees) and other practitioners (30 interviewees), to give their views on the general quality of advocacy in youth proceedings, they were invited to comment on how well they felt the lawyers in their respective cases had done their jobs. The three young witnesses, in interview (all of whom had given evidence in the Crown Court), were broadly positive about both the prosecution and defence counsel they had encountered, although two of these respondents used the word “intimidating” in describing the lawyers, and one spoke of having some difficulty understanding the questions that were posed to him in the courtroom.

Most of the 25 young defendant respondents had had multiple court appearances, and therefore had extensive experience of advocates on recent and prior occasions. The very dominant theme in what the defendants said about the defence lawyers who had represented them was that some were good and some were poor; and the characteristic that was generally said to distinguish the good from the poor was the extent to which they cared about and applied themselves diligently to the case at hand. Hence, for example:

*My friend had a really good one – a woman, she had emotion and passion. She seemed like she was actually real, like she actually believed in her job and she used to proper help him. My one was rubbish [Aasif<sup>8</sup> – aged 30].*

*Frankly he looked too old and too miserable – I think he didn't even give a s\*\*t whereas all my other lawyers actually tried [Peter, aged 16].*

*I had one solicitor one time and she couldn't give me any advice... [compared to one who] showed that she wasn't just in it for the money. It showed that she actually did care [Dexter – aged 18].*

Interestingly, the inexperience of many advocates in youth proceedings – which was so frequently commented upon by both advocate and other practitioner respondents – also did not go unnoticed by young defendants:

*I've had some proper good solicitors ...[but] I think J- was a beginner – he was only about nine years older than me. I don't think he actually cared about it [Talib, aged 16].*

*The second one was s\*\*t, he just didn't say much and seemed really young ... in his twenties and like it was his first time [Harrison, aged 18].*

*I liked D- because he got up there and was proper confident and argued my case, but C-, I thought she'd be OK but when she got in there she was proper shy and nervous [Casper, aged 17].*

Another theme that emerged in the young defendants' comments about advocates was that they could be difficult to understand – in the context of a court process that, more generally, was often regarded as highly confusing. This criticism was levelled at prosecution as well as defence advocates: "[The prosecution] should talk in more sense so that we understand: talking all this rubbish to teenagers isn't working because we don't understand" [Peter, aged 16]. Unsurprisingly, prosecution advocates came in for wide criticism on other grounds as well – and particularly for talking "as if he was trying to make [the offence] sound worse" [Noah, aged 16]; and for trying "to make you out to be the biggest, baddest person they can" [Austin, aged 17].

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<sup>8</sup> All young defendant and young witness interviewees have been given pseudonyms to preserve their anonymity

### 3. Components of effective advocacy in youth proceedings

On the basis of the research findings, we have identified three main components of effective advocacy in youth proceedings. These components are:

- Specialist knowledge
- Communication and wider social skills
- Professionalism

These three components – each of which is itself multi-dimensional – will be discussed in turn below.

We will begin by briefly defining each of the components, in Box 3.1. It ought to be noted that respondents tended not to explicitly use these labels; rather, they are terms that we have applied to three sets of overlapping issues that repeatedly emerged in the data.

#### **Box 3.1: Definition of terms**

**Specialist knowledge:** of youth justice, encompassing the role and functions of the youth justice system; sentencing guidance and options for children and young people at court; out of court and diversion provision; bail and remand provisions for children and young people; the role of youth offending teams; court adaptations for children at court; approaches to questioning young defendants and witnesses; and the needs and difficulties of young defendants (e.g. speech, language and communication needs).

**Communication and wider social skills:** use of straightforward language that children can understand, premised upon an awareness of the prevalence of attention and comprehension difficulties amongst children at court. An ability to build and sustain rapport with children and their carers.

**Professionalism:** Demonstrable commitment, engagement, attention to detail and expertise.

Before we continue, it is important to consider the extent to which the meaning of effective advocacy may differ between youth and adult proceedings. The survey findings are particularly instructive here.

The survey respondents were asked to select from a list of 12 “components of effective advocacy” the three that they considered the most important in regard to, first, proceedings in the criminal courts generally and, secondly, proceedings involving defendants under the age of 18. The results, displayed in Table 3.1 below, reveal that there was much consistency in what were perceived to be the attributes needed for effective advocacy whether in cases

involving young defendants or in criminal cases generally. The three components most commonly selected for both youth and general criminal proceedings were: knowledge of the law, careful case preparation and effective communication.

However, within this generally consistent pattern that is also some significant divergence. “Effective communication” scored more highly for youth proceedings than for general criminal proceedings (selected 58% for youth proceedings, and 51% for proceedings generally), while “careful case preparation” (58% to 69%) and “knowledge of the law” (39% to 54%) scored more highly for general than for youth proceedings. The finding with respect to knowledge is perhaps surprising, given the distinct and complex nature of youth justice law.

In terms of the other components on the list presented in the survey, it is notable that all those which – along with “effective communication” – are concerned with the relationship aspect of advocacy scored more highly for youth than for general proceedings: that is, “having a rapport with your client”, “empathy” and “continuity in legal representation”. On the other hand, greater emphasis tended to be placed on the more technical matters of law, preparation and presentation with respect to advocacy in criminal proceedings. In general terms, it is notable that some of the traditional core skills of the advocate (oratory, focus and clarity, and cross-examination) seem to be regarded as less important than might be expected, even in general criminal advocacy, with rather more importance placed on softer generic skills (e.g. empathy and rapport).

Overall, then, these survey data reinforce the more general finding – to be discussed over the rest of this chapter – that specialist knowledge, communication and wider social skills, and professionalism are the core components of effective advocacy in youth proceedings. But the data also suggest that, as far as advocates themselves are concerned, the communication/social skills attribute has, of the three, the greatest specific relevance to youth proceedings.

**Table 3.1: Components of effective advocacy: advocate survey responses**

Component	% selecting as among three most important components for:	
	advocacy in criminal courts generally	advocacy in youth proceedings
Careful case preparation	69	58
Knowledge of the law	54	39
Effective communication with depts & witnesses	51	58
Persuasiveness	42	21
Focus and clarity of thought	33	20
Good oratory	16	5
Empathy	15	22
Having a rapport with your client	8	32

Ability to conduct rigorous cross-examination	7	5
Continuity in legal representation	6	21
Awareness of agencies and services outside the justice system	4	18
Other	2	2

### 3.1 Specialist knowledge

It clearly emerged from the range of interviews conducted for this review - as it also does from the existing policy and research literature - that advocates need specialist knowledge in order to work effectively in youth proceedings. Specialist knowledge was understood to pertain to youth justice matters only, rather than knowledge of criminal law. There are several different aspects to the knowledge on which an advocate may need to draw over the course of defending or prosecuting any given youth case: particularly, knowledge of youth justice law; knowledge and understanding of the needs of young people in the justice system; and knowledge of youth justice and children’s services.

#### 3.1.1 Knowledge of the law

The majority of advocate and practitioner interviewees said that it was “crucial” for advocates in youth proceedings to have knowledge of youth justice law, including knowledge of bail and sentencing options, and sentencing aims and guidelines. For example, one barrister told us that: “You definitely need to be in command of the statutory framework for dealing with young people and young offenders” [Advocate interviewee 1]. This was the most commonly discussed area of specialist knowledge, suggesting it is seen as the most important. As one young defendant interviewee noted, a defendant’s advocate must know the law, “otherwise they’re a bit pointless” [Blake, aged 15].

Interviewees highlighted several reasons as to why such specialist knowledge is essential. These included the complexity of youth justice law (particularly in relation to bail and remand provisions); the distinct sentencing framework compared to the adult system; and the fast pace of change in youth justice law. In the words of one advocate: “Youth court proceedings are massively complicated, especially sentencing – and they change quite frequently” [advocate interviewee 16 – barrister]. Another advocate noted: “The sentencing and the remand procedures for youths are absolutely labyrinthine and they have got more complicated rather than better since LASPO [the Legal Aid, Sentencing and Punishment of Offenders Act 2012] came in” [advocate interviewee 2 – barrister].

However, a minority of advocates took the view that “it is not too much of a problem” if they do not possess such knowledge as it is something that other youth court practitioners can advise upon:

*... in the Youth Court there will always be a qualified legal adviser who will be well aware of what can be done, the bench is a specialised bench, the judges have a*

*special ticket and there will always be youth offending team on hand. So although that [knowledge of youth justice law] is desirable it's not necessary [advocate interviewee 13 - barrister].*

Yet as some advocate interviewees noted: "You cannot be assured that the clerk or bench will have the knowledge" [advocate interviewee 14 - barrister]. This was said to be a particular risk in the Crown Court given that judges are not required to undertake youth justice training.

In addition, interviewees asserted that it was a matter of professionalism that advocates had specialist knowledge of the law. In this regard, although YOT court staff interviewees welcomed close liaison with advocates, some were critical of those who were overly reliant on their advice:

*If they don't have that [knowledge of youth justice law and sentencing] and are completely reliant on us, there is a chance that what we're saying won't be the best outcome, so they should always know what the options are, so that they can argue with us; we shouldn't be the same as them [practitioner interviewee 20 – YOT court officer].*

### 3.1.2 Knowledge of young people's needs

A substantial minority of advocate and other practitioner interviewees highlighted the importance of possessing knowledge and awareness of the needs and backgrounds of children who appear in court. Many said that advocates ought to have an understanding of the developmental, communication and mental health needs commonly experienced by children in the youth justice system. This was said to be necessary to communicate effectively with the child, aid their effective participation in court proceedings and identify whether additional support is needed, such as an intermediary. This is well-illustrated by the following quote:

*Issues about natural development, developmental delay, and commonly experienced and undiagnosed mental disorders, learning disabilities, learning difficulties, the prevalence of them within the young defendant population is obviously quite substantial and I think in order to effectively represent their interests... advocates should have a base understanding of what these issues are and how they might present. Not so that they can run around diagnosing but so that they are in a position to appreciate that there may be an issue that goes beyond general disinterest and is linked to a substantive communication problem, so that they can act on that or respond to that... You might want to consider whether an intermediary is appropriate [advocate interviewee 17 – barrister].*

As has been mentioned in Chapter One, above, child defendants are not routinely assessed for such needs prior to their appearance at court. This arguably underlines the importance of advocates having an awareness of their prevalence, presentation and implications. Some advocates made the point that such knowledge is not specific to youth justice proceedings since wider criminal justice proceedings also frequently involve vulnerable adult defendants and witnesses, and young witnesses. As one advocate noted:

*Adults can have learning difficulties, which means that they can have age development way below a 15 year old. It's very much [about] being aware and aligned to the difficulties of the individual that you're either representing or questioning [advocate interviewee 34 - barrister].*

Some interviewees spoke about the need for knowledge of the available court adaptations and support for children (including both defendants and witnesses) at court. However, for the most part, advocates' mentions of the need for this knowledge were implicit – that is, reference was made to what advocates should do if they are aware of a child's needs – rather than highlighted as a particular area of knowledge required.

In addition to referring to the need for awareness of children's needs, a small number of interviewees emphasised that advocates ought to have an understanding of the realities of children's lives. This was perceived to assist with mitigation and to help ensure that the sentences passed are appropriate, achievable and genuinely rehabilitative:

*You have to have an understanding of the impact on wider family life on a young person. If they go home to a household that is very difficult and a curfew is imposed, it is going to be very difficult for them to comply [advocate interviewee 12 - barrister].*

*I think they [prosecution advocates] need to have some understanding of young people and what their lives are like, and why they might behave in ways that they behave. For example if they're considering whether they are going to object to bail or not, knowing some of those things can help them to decide whether, actually, would this be appropriate for conditional bail? Does the person really need to be remanded? [practitioner interviewee 6 – youth specialist prosecutor]*

### 3.1.3 Knowledge and awareness of wider youth justice and children's services

Many advocates highlighted the value of the YOT as a source of information about young defendants. Across advocate interviewees, there was a prevailing view that the YOT was a vital enabler of effective advocacy in youth proceedings. For example, one barrister noted that “a fantastic YOT makes all the difference”, explaining that their input was vital to putting together a good bail package [advocate interviewee 16]. Another barrister commented: “What really assists me, when defending young people, is somebody from the Youth Offending Team who knows the defendant” [advocate interviewee 18]. Practitioners too pointed out that advocates “know they have everything to gain from working with YOT”

[practitioner interviewee 16 – youth magistrate]. YOT input was highly valued for a range of reasons, including their knowledge of young people’s particular needs (facilitating the provision of court modifications); the context of the offence (which could assist with mitigation); education and offending history; and available disposals and support provisions.

The YOT court officers with whom we spoke also commonly distinguished “good” and “bad” advocates on the basis of whether they were aware of the YOT and consulted with them beforehand:

*[A good advocate is] someone who knows that the YOT is there, that can give them some advice and information. Some of them are really good and they’ll come and they’ll ask us; others aren’t and they think, “Oh, what do they know?”... Maybe ones that don’t come to court as often as others, they don’t necessarily think that we have as important a role to play - [they see us] like probation, only not as important*  
[practitioner interviewee 5 – YOT court officer].

There were, however, occasional suggestions of advocates’ over-reliance on information provided by YOTs, or of a lack of consistency in the extent or nature of that information.

Aside from the YOT, some advocate and practitioner interviewees spoke about the importance of understanding what services were available to or potentially involved with young defendants. This included possessing awareness of diversion options to avoid unnecessary criminalisation and of the scope for engagement with education and children’s social care services, which could provide support for young defendants during and after criminal proceedings and also be a source of important information about them.

Several interviewees emphasised that advocates ought to have an understanding of the quality and appropriateness of services to which children may be remanded or sentenced. This was seen as key to achieving the best court outcomes for defendants and protecting their best interests, as the following quotations illustrate:

*If you have a teenager who is homeless, which is a situation I had a couple of weeks ago, obviously the proposal I’m making depends on finding some kind of accommodation for the individual...I can’t exactly say, “Oh no, don’t send him inside. He can go to counselling, he can go to school.” If he doesn’t have accommodation, of course a judge isn’t going to agree with that* [advocate interviewee 24 – barrister pupil].

*I think some sort of safeguarding or basic looked after children training of some description would be quite good...You do come across people who are a bit like, “Oh well we’ll just get remanded into the care of the local authority then”, and you’re like, “You have no understanding, clearly, of how that’s going to work. Is that going to put*

*in place more risk factors rather than less?” [practitioner interviewee 12 – YOT court officer].*

### 3.1.3 Good and poor examples of specialist knowledge

We heard about very few positive examples of specialist knowledge. This may be because such know-how was widely seen as such a basic component of effective practice and that it was not considered something to be celebrated when in evidence.

However, two areas of specialist knowledge were singled out for praise. First, two of the district judge interviewees commented on the high quality of advocates working on serious sex cases. Both commented on their skills and knowledge, and particularly the use they made of The Advocacy Gateway toolkits and the available guidance on “Achieving Best Evidence” (Ministry of Justice, 2013a) in cases involving vulnerable witnesses. Second, in one area, two YOT practitioners spoke highly of advocates’ awareness of children’s needs and difficulties:

*I’ve seen pretty much all the lawyers we work with go hammer and tongs into explaining to magistrates the difficulties that certain kids are dealing with, whether it be issues of neglect, loss, bereavement, illness, condition, Asperger’s, somewhere on the spectrum, and they’ve done it in an insightful and appropriate way [practitioner interviewee 19 – YOT court officer].*

There was widely perceived to be a “knowledge deficit” amongst advocates in youth proceedings with regards to youth justice law, including sentencing guidelines and available disposals. It has been noted in Chapter Two, above, that advocates’ confidence in their own “knowledge” relating to practice in the Youth Court was much lower than their confidence in their knowledge relating to Crown Court youth proceedings. Overall, 52% of respondents said that they had sufficient knowledge of the justice system to do their job effectively in the Youth Court (with 42% stating they had this knowledge “to some extent”), compared to 74% who thought they had the requisite knowledge for effective practice in Crown Court youth cases.

Turning now to practice examples, we heard of instances at the pre-court stage where advocates’ lack of awareness of diversion options had resulted in children being inappropriately advised to give “no comment” interviews at the police station and subsequently prosecuted (as diversion is only available for children who admit guilt):

*...I’ve dealt with this a lot - if someone is arrested for an offence and they’re at the police station and they give a ‘no comment’ interview, and there is sufficient evidence, they are charged with that offence. Now, often there are people that...would be eligible for diversion for a caution, or restorative justice, or a community resolution without the need of putting that person through court. But,*

*often, they do not get that advice. They just get, 'Just say, "No comment"'*  
[practitioner interviewee 6 – youth specialist prosecutor].

Some interviewees described specific experiences with advocates at court who were lacking in essential knowledge; such as one barrister who was highly critical of the defence advocates in two Youth Court cases in which she appeared for the prosecution:

*One case I did I was against someone else of the same seniority as me, she came in right at the end, just before the trial, because the solicitor advocate realised that she was out of her depth... In my second youth court trial, which was far more difficult because there were so many more witnesses and it was a far more serious case, neither of my opponents had any idea of how to question children or what types of questions they could and couldn't ask and what areas they could and couldn't touch on – generally, legally – let alone at a trial involving very young children* [advocate interviewee 9 – barrister].

With regard to remand and sentencing decisions, interviewees informed us that advocates sometimes argued for disposals that were inappropriate in the circumstances or, in some cases, not even available to the court. This could result in poor and sometimes unlawful decision-making by the court – which was said to be a particular risk in the Crown Court due to the lack of youth specialist expertise in such proceedings. In a related vein, interviewees reported that advocates who lacked the requisite knowledge were more likely to provide incorrect advice to their clients, which could potentially affect the young defendant's plea and the case outcome. We also heard of several examples where young defendants were unnecessarily distressed by an advocate's ill-founded suggestion that they might be sentenced to custody. One District Judge noted that advocates often "don't really understand jurisdiction... When the prosecution suggest that a case should be remitted to the Crown Court the advocate tends to say nothing because they just don't know" [practitioner interviewee 7].

A YOT interviewee said that advocates who appeared unfamiliar with youth justice legal provisions risked undermining the confidence of judges and magistrates, which could have a detrimental effect on outcomes:

*If they [the judge or magistrates] believe in the services that you deliver and think that you'll do what you say you will do, they are much more likely to give what you recommend...It's the same thing for defence solicitors making a bail application: if they think you actually understand what this bail application means, what the risks are and you've actually properly considered what conditions could be put in place to manage that person's risk, then that's fine - they'll release on bail. If you come across someone that can't string a sentence together, they... [may as well] just go and sit down.* [practitioner interviewee 12 – YOT court officer].

As will be further considered in Chapter Four, below, there were said to be a number of reasons for the knowledge deficit among advocates, including lack of training, lack of experience and the frequency of changes to the legal framework:

*I think, when I first went to the youth court I probably recommended things that weren't workable, because I didn't have that experience or that academic knowledge perhaps to know why they might not be workable... I think there is a general lack of knowledge in relation to youth court work and how youths can be dealt with; one, because it changes quite a lot... And also because, I think a lot of the time these days there are so many alternative solutions to dealing with youths at the police station, that many cases don't come to court. You are going to the youth court a lot less than you would be going to the adult court. So it is like with anything: if you don't do it as often, you would get rusty and then you do forget. [advocate interviewee 27 – chartered legal executive advocate].*

A small number of interviewees reported that advocates were unaware of support provisions for young witnesses and defendants. These included one advocate who described being in the position where – in the course of a sexual assault trial involving some very young witnesses, which she had found very difficult to deal with because of lack of relevant experience – she became aware of the role of an intermediary ‘only ... because it was dumped on me’ [advocate interviewee 25 – chartered legal executive advocate]. A lack of awareness that young defendants – as well as young witnesses – can be provided with support in the courtroom was noted by some interviewees, such as one barrister who commented that ‘It’s only very recently that a lot of advocates even appreciated that you could get special measures for defendants, so I think people don’t ask for them’ [advocate interviewee 29]. The implication of such lack of awareness is that young defendants’ effective participation in court proceedings can be impeded and, ultimately, case outcomes can be affected.

## **3.2 Communication and wider social skills**

All three groups of research participants – advocates, other practitioners and court users – placed a particular weight on communication and relationship-building as an aspect of the advocate’s work in youth proceedings.

### **3.2.1 Building relationships**

Both advocate and young defendant interviewees spoke about the importance of a positive advocate-client relationship, premised upon empathy and trust. Several practitioner interviewees also highlighted this. For young defendants, the advocates with whom they had a good relationship were those who were friendly, supportive, non-judgemental, respectful, good at listening and cared about their case. These were seen as pre-requisites for openness and honesty on the part of the defendants, and also helped to put them at ease in court – as is evident from the following quotations:

*[A good advocate is one who is] friendly definitely, because friendly – obviously, we get along then, you tend to act easier, talk easier, explain things a lot better if you're friendly with each other, it just makes more sense having those vibes. I reckon rather than so much to do with court, the solicitor has to be more personality than anything else because the more comfortable you are with them, the more comfortable you're going to feel in the court room, the more comfortable you're going to feel whatever sentence you get [Reuben, aged 17].*

*It's important that they're friendly as otherwise you're not going to be able to interact with them and actually trust them enough because you're obviously supposed to tell your solicitor everything and if they're not friendly enough, people won't be able to open up to them [Talib, aged 16].*

*[A good advocate should] just listen, and to obviously understand what they're talking about – like what your client or whatever are talking about. And to take into account what you think is best for us [Rochelle, aged 14].*

These good relations in turn facilitated the provision of well-informed advice by the advocate and the receipt of instructions from the young defendant. Interviewees also said that advocates are better able to mitigate successfully on a child's behalf when they have a full understanding of the circumstances of the offence and realities of the child's life. The quotation below from a youth magistrate illustrates this point:

*An advocate is only good if you feel that they have taken time to get to know that person and if they haven't, they may as well just write down what they want to say on a piece of paper and hand it in, it's really important that the advocate can talk from the inside so to speak [practitioner interviewee 4 – youth magistrate].*

Some advocate interviewees emphasised that building rapport is a vital part of working with clients of all ages. However, it was commonly noted that young defendants are often wary of adults due to long-held mistrust of figures of authority and thus have to be “convinced” to engage. Building trust was therefore said to take more time and patience with young defendants. Advocates also said that young defendants often lack any sources of support in their lives or the family members accompanying them to court may be “distressed” or “volatile”. This means that part of the advocate's role might be to provide emotional support to the defendant and to work in a sensitive way with family members. These various factors combine to mean that, in the eyes of some of our interviewees, only advocates who have a genuine interest in working with children are likely to perform well in the context of youth proceedings:

*[You need] a genuine interest in doing youth work; going the extra mile that is often necessary for a young person who is monosyllabic, difficult or uninterested [advocate interviewee 17 - barrister].*

The skill to engage with children and young people (and, perhaps, their families) was seen as something that came naturally to certain individuals or could be developed through experience, but not necessarily as something that can be taught (as will be discussed further in Chapter 4).

Although empathy and trust were predominantly viewed as a requirement for defence advocacy, some interviewees highlighted the importance of such attributes for prosecution work in youth proceedings. As one advocate commented: “You get much more out of them if you are their friend, even if you’re prosecuting” [advocate interviewee 13 - barrister].

### 3.2.2 Facilitating self-expression and understanding

Many advocate interviewees noted that while communicating with young defendants’ family members and other supporters is often important, they are also aware that defendants may be more open when their parents are not in the legal consultation. This suggests there is a tension between allowing for client confidentiality and ensuring that a child is appropriately supported by family, wherever possible, through the legal process.

*Children will rarely say what’s going on in front of their parents... It’s an art getting them to talk to you. I’ve got a variety of tricks ... One of them is like a lion with the wildebeest – separating them out. That’s what it feels like! You may get a fraction of a second in which you can [speak] to a kid, without the parent hearing [advocate interviewee 3 – barrister].*

Seventeen-year-old Casper told us that he had been unable to be open with his advocate about the offence because his father had always been present during their discussions: “It was awkward as my dad was in the room with me so on some stuff I didn’t tell the truth, so it wasn’t easy...It would be better if they talked to the kids without their parents there”.

For the majority of interviewees, effective communication with children was the basis of good advocacy in youth proceedings:

*I think to have some kind of understanding of speech and language therapy and communication is really important when you’re actually dealing with young people as an advocate because, obviously, it’s a bit of a non-starter if you’re using language that they don’t understand. Then, you’re not getting anywhere, are you? [advocate interviewee 29 - barrister]*

This was perceived to be essential for children to be able to open up to their advocate, give instructions, understand what is happening in court and respond to questioning. In addition,

good communication underpins the development of rapport and trust: “They need to trust them if they are to open up to their lawyer...but if their solicitor is using words they don’t understand, this makes it less likely” [practitioner interviewee 5 - YOT court officer].

Good communication skills were highlighted as the starting point for facilitating children’s understanding – both when questioning children (including witnesses) during court hearings and during consultations outside the courtroom. Good communication was said to entail the use of “basic language” rather than “legal jargon” and “simple and clear questions”, without being patronising. Explaining the implications of answers to questions and avoiding the use of leading questions were also said to be of critical importance.

*You have to have the skill to ask children uncomplicated questions, using simple language. And you have to be able to understand or have some understanding of how a child is going to process the information you’re dealing with... And what I mean is the type of language you use, the grammar you use, using the language that they would use themselves* [advocate interviewee 9 - barrister].

Implicit in interviewees’ discussion of the importance of communication skills was a basic awareness of the difficulties that young defendants and witnesses frequently face in understanding court proceedings – albeit respondents did not generally display a comprehensive understanding of the range of needs and vulnerabilities displayed by many young court users.

*[You need] personal skills and communication skills. You are dealing with young people, many of them with very challenging needs. There is a huge disparity in levels of maturity and levels of understanding* [advocate interviewee 2 – barrister].

Some interviewees noted that it is common for children to mask their difficulties or to present with hidden needs – perhaps claiming to understand when they do not. This suggests that it is vital that advocates’ communication skills are premised on an awareness of young defendants’ and witnesses’ (and, indeed, adult court users’) needs and vulnerabilities.

### 3.2.3 Good and poor examples of communication and wider social skills

We heard of a number of examples of positive relationships between advocates and their young clients. Several young defendants emphasised how significant it had been that their respective lawyers had shown that they cared about them:

*Well, I’ve still got the barrister, he still talks to me carer about how I’m doing, really good guy, class, saved my life* [Riley, aged 16].

*I liked her – she was supportive, and she put so much effort in, she even came to my last hearing even though she didn’t need to be there* [Habib, aged 17].

As is indicated, this often involved the advocate “going the extra mile”, such as through visiting the young person in custody, picking them up for appointments or paying for their taxi home from court. Many interviewees noted that solicitors often had stronger relationships with young defendants than barristers, because they tended to have known them for longer – sometimes for several years, if they represented them in successive cases.

Several examples were highlighted where advocates had aided young people’s comprehension of court proceedings – for example, by ensuring that there were frequent breaks during hearings to check understanding and clarifying any points of confusion; talking slowly, clearly and without using “big words” or “long and involved” questions; and simply explaining what had happened at court afterwards. Advocacy was said to have improved in this regard in recent years, thanks in part to the development of The Advocate’s Gateway resources and the provision of guidance on “Achieving Best Evidence”.<sup>9</sup>

In contrast, however, many interviewees related examples of youth cases in which advocates had used complex language and leading or confusing questions. Some advocates and practitioners with whom we spoke perceived this to be “the most problematic aspect of advocacy in the youth court” [practitioner interviewee 9 – district judge]. The quotation below from a Witness Service volunteer illustrates some of the problems:

*I think ... some of the barristers – they don’t get that they are talking to children and it’s most important to be able to communicate at a child’s level...Something like putting two sentences together instead of one [practitioner interviewee 26].*

There was a sense that this was symptomatic of a wider legal culture in which there is entrenched use of technical and complex language:

*I think the problem is that in order to be good at law, you have to be good at complicated law, complicated language, and you get so good at it that that’s almost your skill, is how complicated can you make it, and how detailed can you make it. And that gets in the way [practitioner interviewee 11 - intermediary].*

As will be further explored in Chapter Four, this criticism was made not only of advocates but also generally of the court process more generally and other practitioners, such as judges, magistrates and legal advisors. Lack of training and experience of communicating with young defendants and witnesses were also perceived to be a contributing factor to poor advocacy in this respect.

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<sup>9</sup> The Advocate’s Gateway (2013) [available at: <http://www.theadvocatesgateway.org/>]; The Ministry of Justice (2011) *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures* [available at: [http://www.cps.gov.uk/publications/docs/best\\_evidence\\_in\\_criminal\\_proceedings.pdf](http://www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf)]

Most young defendant interviewees talked about the difficulties they had personally experienced in terms of understanding of court processes. Seventeen-year-old Casper suggested that “when you’re in there and they’re asking you questions that you don’t know, the solicitor should like say it to you so you understand”, while 17-year-old Jabir commented: “And they [the prosecutor] kept saying things that I didn’t understand so I asked them to explain more, but they didn’t like that.” Jabir also said that the guards in the secure dock explained more to him about what was going on in court than his barrister did.

Several advocates spoke at length about the detrimental effects of poor communication and related lack of rapport between them and their young clients. These included the inability on the part of the young defendants to open up to their advocates; lack of trust in advocates; and ultimately unfavourable outcomes resulting from misadvised plea decisions or inappropriate suggestions for sentence. As one advocate explained:

*If you do not understand your client and have not made the points necessary for their defence, then things can get missed. Inferences could be drawn about them telling lies. If the advocate has not built a rapport with the client, then when it comes to sentence, they will not tell their advocate what they need help with and what they might struggle with. This means they are more likely to end up in court again as they fail to comply with their order [advocate interviewee 1 – barrister pupil].*

The above comments support the argument made by some other advocates, that poor practice in terms of communication and relationship building can have wider consequences a child’s rehabilitation. It was suggested that a young defendant’s lack of understanding of and participation in the court process could result in their feeling unfairly treated and regarding the criminal justice system as lacking in legitimacy. This, in turn, could potentially lead to disengagement from court orders, making breach more likely and adversely affecting rehabilitation.

*...if then their representation is somebody that they feel doesn’t understand them, or they feel lacks empathy or they feel lacks understanding of their particular background or other difficulties that they may have faced, I just think that they are less likely to engage, certainly in the court process, and in terms of the implications of any breaches, and the orders for example, they are not going to take that seriously [advocate interviewee 19 - barrister].*

As is discussed in Chapter Four, inconsistencies in legal representation were said by advocate and practitioner interviewees to discourage the development of rapport and good communication between advocates and their young clients.

### **3.3 Professionalism**

Young defendants, advocates and other practitioners described various aspects of effective advocacy which can be grouped together under the broad heading of 'professionalism'. Key concerns here included achieving the "right" outcome, commitment, and preparation.

#### 3.3.1 Achieving the "right" outcome

Unsurprisingly, the principal determinant of young defendants' assessment of their advocate was often whether or not the advocate had managed to get the "right result" – that is, whether the advocate had "got me off" the charge or had managed to persuade the court to pass a lesser sentence than might have been expected. For example, 16-year-old Peter said that his advocate had "done well because I was on a £500 charge and he got me off". Likewise, Talib, a 16-year-old defendant said of his advocate: "She was all right because she got me down from a 6 month custodial to 9 month YOT." While this may not strictly be termed "professionalism", our analysis was that young defendants understood the ability to achieve such outcomes as a reflection of their advocate's experience and commitment to the case.

In a more general sense, it was important to young defendants that their advocates evidently knew what they were doing in court. It was clear that many young defendants highly valued an advocate who was "proper confident". Talib commented that "I've had some proper good solicitors - I'm looking at a lot of time sometimes and they've read s\*\*t out of four different books, that's how I know they've done a good job." Some spoke about the importance of their advocate being "straight" with them about the likely case outcome, which allowed them to prepare for whatever was to come.

Young defendants did not think it important for their lawyers to be from the same or similar ethnicity or gender. Several expressed the view that having an advocate from a similar background would be "good", but saw little chance of this happening: "That would be great but that would just never happen because if we had a similar background, he wouldn't be a solicitor" [Dexter, aged 18]. Defendants' views varied on whether older or younger advocates were likely to do a better job; while a few felt that older advocates are less interested or engaged than those who are younger, others felt that "the older they are the better because they've got more knowledge" or were concerned about the apparent lack of experience of those who are very young.

#### 3.3.2 Commitment

Many of the young defendants particularly valued advocates who demonstrated commitment to their case – by taking time to understand it as well as the young person's point of view and circumstances. As 16-year-old Riley explained:

*He listened to us, he knew how it was affecting me, I could see it when I was telling him...he was like god, because he listened to me. Some of them are just like, it's just another day, another kid to put in prison... He made me go through all of it, wrote everything down...he wanted to talk to us about it, he went through saying 'how did that make you feel, how would that happen' and this and that: it was good.*

Similarly, 16-year-old Noah told us that “you want someone who will fight for you, and try to understand what it is like to be in your shoes and knows your case so they can do the best job possible.” Implicit in these statements is the wish of the young people to feel that their advocates have some degree of personal investment in their cases:

*What I would have liked is to.... deal with me, just a bit like you would have dealt with a celebrity case. You know, like, deal with me like as if I'm the Queen. Not that I'm a Queen, right. I'm thinking: who the most important person in this country is? The Queen. Deal with me as if I'm an important person to you because I never felt important [Jackson, aged 27].*

In this respect, some young people differentiated good and bad advocacy on the basis of whether the advocate demonstrated passion for the work and “wasn't just in it for the money”. As 27-year-old Rafiq said: “You've got to believe in your job and not look at it as a pay cheque”. Overall, there was a sense that advocates who were committed helped to put young people at ease and to feel safe: “You trust them and you kind of know you're going to be all right” [Dexter, aged 18]. However, not all young people felt that a level of personal commitment on the part of their advocate is important: 15-year-old Blake noted that “they are there to do what they do; they're not there to be your friend”. And 16-year-old Talib explained that: “When I speak to solicitors, I keep my distance, it's strictly business isn't it, it's professional, I don't speak to them like I speak to my mates.”

Some of the advocate and practitioner interviewees, like many of the young defendants, perceived commitment to be an essential component of effective advocacy in youth proceedings. They argued that engaging and representing young defendants requires more time, patience and understanding than working with adult clients:

*Perhaps having a particular interest in young people would be useful as their behaviour is probably going to be a bit worse, a bit of patience around that and understanding their particular needs as a young person [is needed]... If you're not interested in the work then you're not going to give it extra time and effort, and be flexible, which you need to be [practitioner interviewee 20 – YOT court officer].*

### 3.3.3 Preparation

Advocate respondents perceived thorough case preparation to be an essential component of effective advocacy in all criminal justice proceedings – not just those involving children and young people. Case preparation was said to encompass reading the case documents,

researching any salient legal points, speaking to one's client and making oneself familiar with all of the facts of the case. Some advocates noted that more preparation time is required where a defendant is young, since it takes time to build rapport and trust. As one barrister noted: "My experience has certainly been with young defendants that they need more time in conference pre-trial than adult defendants, but the system doesn't acknowledge that" [Advocate interviewee 15]; and another said: "You need more time to get the best from them and build rapport" [advocate interviewee 32 – barrister].

In youth proceedings, good preparation was also understood to require consultation with other agencies, such as the YOT and CPS. In this regard, some advocate and practitioner interviewees said that "horse-trading" between agencies before a case hearing is an integral part of preparation. This can facilitate the diversion of the case from court or result in a more appropriate charge. Other important aspects of case preparation were said to include obtaining information about any specific needs of young defendants or witnesses, and identifying and planning for any court modifications or special measures that can be used to address these needs.

#### 3.3.4 Examples of professionalism and lack of professionalism

Most of the defendant interviewees had had multiple experiences of court and, over the course of these experiences, had been represented by a number of different advocates. In describing those who had represented them at court, most spoke of there being a mix of individuals who had been highly committed and professional, and some who had appeared to lack commitment and ability. Among many positive comments about the professionalism of individual advocates were those made by the parents of two young defendants about the lawyer who had represented both their sons at a number of hearings:

*She's very clear with them, very efficient. She's very much on top of the situation – she clearly has done the necessary research and reading beforehand, so she knows the details. She's a very warm, very pleasant individual who has represented them very confidently ... So they have great confidence in her.*

Bailey, aged 17, compared the confidence and engagement of one lawyer who had represented him with others who had shown little interest in his particular case:

*She actually knew what she was doing.... She knew what she wanted. I felt like she knew what I wanted – before I met her. She had it all planned out and everything. The other ones didn't. ... [They] just wanted me to try and get through it ... - they wanted me to plead guilty when I wasn't guilty – 'cause they think it's the best outcome. Whereas she used to say – if you're not guilty, you're not guilty – you shouldn't plead guilty. ... Some of them just say – yeah – do this, do that.*

The advocate and practitioner interviewees did not, in the main, discuss positive examples of professionalism. This probably did not reflect an absence of such examples, but rather an

assumption that most aspects of professionalism, such as thorough case preparation, are so fundamental to good practice that they do not merit special comment. However, YOT staff from two different areas emphasised that most of the advocates who attend the Youth Court locally demonstrate strong commitment and care for the young people involved, often working above and beyond what their legal aid fees cover.

Some advocates and practitioners – along with some young defendants – commented on instances of poor case preparation by advocates. Reference was made to advocates lacking familiarity with the details of the cases on which they are working, and with the young people’s needs, circumstances and views. This, we heard, often reflects the fact that an advocate may receive case documents only very shortly before a court hearing, or because of lack of opportunities for consultation with a client prior to court:

*Cases are not often well prepared because the young person does not attend the appointment with their solicitor. Or sometimes, due to the nature of summary procedures, the papers are not given in good time which means there is a lack of preparation. As a consequence, you have to be able to quickly take in lots of new information [advocate interviewee 17 – barrister].*

This problem can be aggravated by a lack of continuity of representation throughout cases, such that a young defendant may have a different advocate at each hearing. One young defendant told us that during a case conference on the morning of one hearing, he realised his new advocate had the wrong case file as the advocate was discussing another defendant’s offences. Another advocate related an example where her client had been “effectively unrepresented” because she had only been instructed that morning and had not had sufficient time to go through the paperwork [advocate interviewee 17 – barrister]. Interviewees said that poor preparation adversely affected the quality of representation and case outcomes, as well as young people’s confidence in their advocate.

From practitioners we heard of instances in which advocates had not demonstrated the expected commitment to their clients. This sometimes manifested itself in over-reliance on the YOT’s pre-sentence report, as one youth magistrate explained:

*We often hear: “If you’ve read the youth offending team’s report, my lord, there is not a lot more I can add.” Well, yes, there is a lot more that they can add if they take the time and effort to do so [practitioner interviewee 8].*

An apparent lack of commitment and professionalism can arise also where advocates are under pressure because of heavy caseloads:

*A sloppy lawyer who’s juggling six cases might be: oh, you know what, let’s just crack on with it... We continually fail our children – from the police station; from charging decisions ... And we criminalise them [advocate interviewee 16 – barrister].*

Some interviewees were of the view that case outcomes are unlikely to be much affected by a lack of professionalism on the part of advocates, as judges, magistrates and legal advisers can intervene if problems arise. Others, however, argued that poor outcomes can easily arise from poor performance by lawyers; also that these shortcomings in advocacy risk damaging the legitimacy of the court process – and the wider criminal justice system – in young people’s eyes:

*Worst-case scenario it can make a difference between that person going home or going either on to remand or being sent into custody....We’ve had a few where the person has got a detention and training order, we think, based on our observation and experience, that is because the defence has done such a god-awful job, and eventually these people have been given a community sentence on appeal* [practitioner interviewee 12 – YOT court officer].

*If a young person doesn’t feel that their lawyer has advocated well on their behalf, the young person loses confidence in their solicitor, potentially the whole system, and results in them developing an attitude* [practitioner interviewee 5 – YOT court officer]

## 4. Constraints on advocacy in youth proceedings

As is evident from the preceding chapter of this report, there appears to be broad agreement about what it means to be an effective advocate in youth proceedings; and, at the same time, a widespread view that the work of many – but by no means all – advocates falls short of this standard. Our discussion thus far has presented a picture of variable expertise amongst advocates in youth proceedings. Both good and bad practice is evident in what respondents said about the quality of advocacy, and within each of the three themes which we have described in terms of “core components of effective advocacy”. Many advocates were praised for the relationships they build with their clients and for their profound commitment to their work; while others were criticised for lack of engagement and lack of knowledge and relevant skills. In this chapter, we consider the main reasons for the shortcomings in advocacy: namely, the limited opportunities available to advocates for training and learning; an array of systemic constraints on their work; and, thirdly, the wider social context of the work of the criminal courts.

### 4.1 Limited opportunities for training and learning

As outlined in Chapter Two, findings from the advocate survey reveal that less than one-third of respondents (29%) recalled having received training on youth justice or representing children in the criminal justice system. This likely reflects, at least in part, the absence of any formal requirement for training to be undertaken by advocates representing young people in youth proceedings. Among the 63 survey respondents who had undertaken youth justice training, it was most commonly stated that this training had taken place as part of continuing professional development (CPD).

#### 4.1.1 Access to training

Findings from the interviews with advocates point to the limited availability of specialist training on youth justice both as part of initial legal training and within CPD. Few of the advocate interviewees recalled receiving youth justice training as part of their legal qualifications or during pupillage. For example, one advocate reflected:

*In relation to how much academic training you do before you qualify, about youths - I seem to remember ... it as being a sort of an extra. You learn about the core subjects; criminal law and then, “Oh there is a bit at the end”: a chapter about youth. Whereas I think, actually, it should be in equal parts or even more so on youth because it is a lot more complicated [advocate interviewee 16 – chartered legal executive advocate].*

Advocate interviewees perceived opportunities for CPD youth justice training to be limited and, in particular, were not aware of training provision on the theme of young and vulnerable

defendants. On the other hand, several interviewees spoke of having received – or being aware of – training in relation to vulnerable witnesses:

*I can't think, really, that there are that many courses or that much availability where you're actually focusing on vulnerable defendants. For example, I think, with a lot of people, it doesn't occur to them to look at whether a defendant needs an intermediary as much as it would be considered for a vulnerable witness. ... The Crown Prosecution Service have, in recent months particularly, put quite a lot of courses on and have funded a lot of courses in relation to vulnerable witnesses [advocate interviewee 29 – barrister].*

Advocates' limited training in youth justice may reflect not simply lack of provision but also lack of awareness of what is available. A small number of interviewees were able to identify several available training options, such as training on the use of intermediaries and training delivered by specific chambers; while another advocate interviewee felt that available training is poorly advertised.

The cost of training, both in terms of time and money, was identified as a factor deterring participation in it. Several advocate interviewees argued that in the current economic climate, neither chambers nor individual advocates can afford to pay for specialist youth justice training. There were concerns that any pressures to self-fund training may fall most heavily on junior members of the Bar who are likely to find it unaffordable, especially if they are required to take leave to attend such training. A small number of advocate interviewees subsequently recommended that such training be provided for free or at a reasonable cost "of, say, £30 a day" (advocate interviewee 16 – barrister).

Several advocates who participated in the survey and/or an interview described finding online tools, such as those provided by the Advocate's Gateway, an up-to-date and accessible means of enhancing their knowledge and skills in relation to youth advocacy. However, initiative on the part of advocates is required to access and use these tools. "There's no excuse" for not knowing about these tools, remarked one district judge in interview [practitioner interviewee 2].

#### 4.1.2 Demand for training

Around two thirds (66%) of survey respondents who had not received (or could not recall receiving) training expressed an interest in doing so; in terms of the types of training desired, approaches to questioning young witnesses, sentencing options for young offenders and approaches to questioning young defendants were the most sought after.

There was a general consensus among the advocate and practitioner interviewees that advocates in youth proceedings ought to complete specialist youth justice training.<sup>10</sup> For

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<sup>10</sup> As is evident from the interview schedules (provided in Annex C) neither advocates nor practitioners were directly asked whether there ought to be specialist youth justice training. Advocates

example, one advocate argued that “there should be specialist training for all advocates who are going to undertake trials in the Youth Court” [advocate interviewee 9 - barrister]. Another said, “If an advocate is not trained in the knowledge and proceeding of youth courts then they are not going to be aware of when they are doing things wrong” [advocate interviewee 10 - barrister]. Underlying such views was a perception that youth proceedings are distinct, with a different and often complex legal framework compared to adult criminal justice proceedings:

*My training made the distinction of young people and adults quite apparent, it's quite clear I think that there should be some separate training, so that if you were going to go away and deal with a young person, you would be competent to do that [advocate interviewee 31 – chartered legal executive advocate].*

Others emphasised that specialist training is required because of the “higher and slightly different range of interpersonal skills” [advocate interview 8 - barrister] required for effective advocacy in youth proceedings, as discussed in the preceding chapter. “I think requiring them [advocates] to do a basic course in speech, language and communication difficulties will be a must, really,” commented a YOT court officer [practitioner interviewee 12].

Across advocate and practitioner interviewees, the dominant view was that youth justice training should be mandatory and completed prior to practice in youth proceedings. Amongst advocates, responses included “it should be a compulsory part of the pupillage” [Advocate interviewee 16 - Barrister] and “I think it should be the case that until you can show that you have done the relevant five hours CPD, you should not practice in cases in relation to young people. It's not a big ask” [Advocate interviewee 22 - Barrister]. There was a sense that without making such training mandatory – and particularly taking into account the financial and time constraints mentioned above – “people won't do it” [practitioner interviewee 1 – youth specialist prosecutor]. A barrister commented that only by introducing mandatory provision would training become “a hot topic” that advocates other than those with a direct personal interest would care about [advocate interviewee 29].

A small number of advocates expressed the view that people should want to attend training rather than be obligated to do so. Enhancing the status of the Youth Court within the criminal justice system was perceived to be central to achieving this: “If you improve the prestige of Youth Court then it will follow that people will want to go to training” [advocate interviewee 4 - barrister]. The significance of the “low status” of the Youth Court is discussed in more detail later in this chapter.

With regard to the format of training, the majority of advocate interviewees said that they had a preference for interactive methods, such as role-play, that enabled them to practise the requisite skills, receive feedback and ask questions. One barrister remarked: “The most

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were questioned generally about the adequacy of youth justice training and practitioners were asked to suggest measures that could improve the quality of advocacy.

useful training is that which includes training exercises in small groups. You are observed cross-examining and you receive feedback and constructive criticism” [advocate interviewee 14].

While there was a general demand for specialist youth justice training, some advocates and practitioners were of the contrary opinion that it was not required. They argued that many of the skills required for youth advocacy – especially the social skills – simply are or are not part of an individual’s make-up. One advocate, for instance, remarked that one cannot “train empathy” [advocate interviewee 12 – barrister]; while a recently retired specialist youth prosecutor said, “You develop [the skills], you learn to deal with young people differently; if it’s not in your temperament, it’s a waste of time really” [practitioner interviewee 1]. A certain scepticism about the value of training may also be reflected in the survey finding (reported in Chapter Two) that, notwithstanding the fact that most had not been trained in youth justice, advocates were largely very confident that they had the knowledge and skills needed to work effectively both in the Youth Court and when representing children in the Crown Court.

#### 4.1.3 Shadowing and feedback

Reflecting these various constraints on training, advocates tended to express the view that “learning on the job” and shadowing are the best methods for gaining the expertise and knowledge required for advocacy in youth proceedings. By watching others and then doing it yourself, one advocate explained, “You feel your way through it and see what happens” [advocate interviewee 11 – barrister]. Learning from shadowing experienced advocates during pupillage was felt to be particularly valuable:

*[It is] a culmination of learning by seeing other people doing it, by going along and watching more senior people when you’re a pupil and seeing how they do it and then by practising it yourself on low-level cases [advocate interviewee 4 – barrister].*

Some pointed out that advocates can also learn from watching other practitioners in youth proceedings – such as YOT officers and intermediaries.

There was a view among a small number of advocate interviewees that opportunities for shadowing in the Youth Court are limited due to the closed nature of proceedings; however, this would appear to be a perceived rather than real barrier, since it is unlikely that permission for a junior advocate to observe proceedings for learning purposes would be refused. Another, perhaps more genuine, limitation to shadowing is that appearances in the Youth Court by senior and highly experienced advocates – who would have most to offer those who are junior – are relatively rare.

Despite many advocates’ focus on the importance of learning while “on the job”, the mechanisms for feedback on one’s own practice appear limited: “You don’t really get any formalised feedback, one barrister pupil told us [advocate interviewee 33], while a barrister commented, “Nobody assesses you in court” [advocate interviewee 28]. It was said that what

feedback is received tends to be in the form of informal “ad hoc” comments from other practitioners in court such as circuit judges, district judges, legal advisers or solicitors:

*Sometimes the magistrates or the judge will thank you at the end and make a comment; I have had that before - ‘Thank you for being so understanding’. Or, ‘Thank you for taking your time on this.’ Or ... the legal adviser might at the end say, ‘Oh, you know you did really well on that.’ [advocate interviewee 27 – chartered legal executive advocate].*

Advocate interviewees had mixed views about whether more formal and substantive feedback procedures would bring benefits. Concerns were raised about a monitoring process that would be distracting to advocates as they work, or which would focus on assessment as an end in itself rather than real outcomes and practice.

## **4.2 Systemic constraints**

Perhaps one of the strongest themes emerging from all the elements of research undertaken for this review is that an array of structural or systemic constraints impact on the effectiveness of advocacy in youth proceedings. The issues discussed, in turn, below are:

- Inadequate identification of needs
- Formality of interactions and setting
- Limited courtroom provision for young witnesses and defendants
- Poor case management, inefficiencies and delays
- The policy context: swift justice and reductions in legal aid
- The ‘undervalued’ Youth Court
- Lack of expertise among other practitioners
- The adversarial system

### 4.2.1 Inadequate identification of needs

The majority of the issues discussed in this section are on constraints within the court system; however, we begin this section by considering a barrier to good practice that cross-cuts the youth justice system. This is the problem of inadequate and inconsistent approaches to assessing young defendants’ needs (referred to also in Chapter One, above), which results in many instances where defendants’ specific needs are not identified by the time that they appear in court. As also exemplified in the court observations, identification of need was described as a somewhat ad hoc process.

When advocate interviewees were asked how they would know if a young defendant had particular needs or was especially vulnerable, responses included: “Well, you wouldn’t” [advocate interviewee 30 – barrister]; “You could quite easily get to trial without knowing at all” [advocate interviewee 1 – barrister pupil] and “[Advocates] don’t know” [advocate interviewee 22 – barrister]. Interviewee 30 expanded on his statement, explaining that:

*Unless you had a particularly diligent solicitor that had met the client and met with the client's caregivers or whoever they may be, and you were told, [you wouldn't know about the child's needs]. But that would be hugely unusual. The way it normally works is you get a brief the night before, probably without any proof of evidence or anything, really ... so [that is] your port of call when you go and meet them in the morning and you very much work it out for yourself. Which is probably pretty unsatisfactory, but that's the way it is.*

Some advocates stressed the importance of treating all young defendants as vulnerable:

*You are generally fire-fighting in the Youth Court ... You work from a general assumption that they are all vulnerable. To know whether they're so vulnerable that you need to take some type of safeguarding action or notify some sort of social worker or the relevant local authority is hard [advocate interviewee 19 – barrister].*

*I would approach any case with a young person with the assumption that there is some need there [advocate interviewee 18 – barrister].*

Advocates described a variety of means by which they seek to identify defendants' specific needs at court. YOT workers were referred to as a useful source of information in this regard; it was also said that it can be useful to talk to the defendants' parents (if they are in attendance). Several advocates described ways of trying to ascertain levels of need by communicating directly with the child – for example, by asking about the kind of school they attend, looking for non-verbal signs of anxiety or other vulnerability, and asking questions to assess comprehension. You need to be “extra-alert” to identify need, concluded one advocate [advocate interviewee 14 – barrister].

Identification of needs among witnesses was said by advocates to be the primary responsibility of the Crown or police; and defence advocates would be made aware of such needs by applications for special measures or through information in the case file, such as the police statement or educational records.

#### 4.2.2 Formality of interactions and setting

The highly formal nature of court proceedings and language – evident throughout all the court observations conducted for this study – is a significant barrier to young defendants' and witnesses' understanding of and engagement with the process. Many of the advocate and other practitioner interviewees had concerns about the limits on understanding imposed by the technical and complex language of the courtroom:

*I don't think [child defendants] understand what's going on at all. At 14 – how could [they] understand all this legal argument? [practitioner interviewee 15 – district judge].*

*We tend to just go into lawyer-speak... And adults sometimes, first time in the courtroom, can just about follow it. But all of that jargon is just totally lost on kids [advocate interviewee 16 – barrister].*

*I don't think [child defendants] really understand the language and the terminology used. The magistrates are always going: "We always ask them if they understand" and they say, "Yeah, yeah"; but you go and speak to them outside and say, "Did you really understand?" and they say, "No" [practitioner interviewee 6 – YOT worker].*

The latter comment about compliance masking understanding difficulties among children has been identified by previous research (for example, Farmer, 2011) and was referred to by a number of other respondents. However, the barrier to engagement presented by the formality and complexity of language used at court is perhaps best illustrated by quotations from young defendants and one of the young witnesses themselves, presented in Box 4.1 below.

#### **Box 4.1: Understanding difficulties among young defendants and a young witness**

*Some of the words were too posh, adults might get the words but to teenagers like me it was all like long posh words and that [Peter, aged 16].*

*I didn't really understand what they were saying...they used big words and stuff [Casper, aged 17].*

*You don't really understand what they're saying but they're saying something about you and then say they've made a decision [Jabir, aged 17].*

*Some of the words being used it was like way over my head. They were talking proper, like. [My lawyer] was reading out of a book; he kept going into the book and then talking like: 'In section 21 we see... like we found this out and this is not real, this cannot be happening and lalala, you've got these rights and stuff.' Proper ridiculous. I had no clue, me, I just stood there and stayed white and nearly cried [Riley, aged 16].*

*All the people that were talking, I couldn't understand ... They asked me if I understood – I just said yeah. ... I just wanted to get it over with, and that. I didn't want them to think I was being rude or something [Tyler, aged 17].*

*The judge ... uses all these big fancy words and it's hard to understand [Austin, aged 17]*

*The barrister for me, he was speaking fluently and I couldn't understand what he was saying, what questions he was asking... At first I found it a bit intimidating because the first two or three questions – he wasn't making sense. He was wording it right but I didn't understand the wording that he was coming out with so it annoyed me at the beginning ... but then after that he started speaking how I would speak so I could fully understand him [Zak, young witness, aged 17].*

Exchange from group interview with several young defendants (now aged 18 and over, but with experiences of court when younger):

*Jackson: My last one – my last case was the most difficult because it was the most serious one and basically the prosecution wanted me to get imprisonment for public protection and so there was the language that they were using and things like that, it was just all foreign. It was loads of words like 'ying' and 'yang'.*

Asif: *They said 'ying yang'?*

Jackson: *That's the actual words that I heard in the courtroom. I mean I don't know what that means.*

Felicity: *Probably Latin...*

Asif: *They must've been speaking English but you perceived it like that.*

Understanding difficulties are not limited to child defendants and witnesses; a recent study of the public's experiences of the Crown Court highlighted a number of similar difficulties experienced by adult defendants, expressed in references to "posh" language and the use of "very long, powerful words" (Jacobson et al. 2015: pp. 101 and 154). This suggests that lack of understanding is entrenched in the court system and may act as a general barrier to effective participation by defendants. Several of the young defendants interviewed for this review said that they had asked their advocate outside court what some of the "big words" meant; however, the impact of difficulties in understanding cannot be overstated, as the following quotations demonstrate:

*You feel pushed out, you feel like you don't know what's going on and you feel like your life's in their hands and you don't even know what's going on, you don't understand and it does mess me head ... I was just standing there and they were talking back and forth, back and forth for like 20 minutes and I couldn't understand and it was like: this is my life they're talking about. It proper knocks your mind [Riley, aged 16].*

*It feels very unequal and unjust. It's horrible. You feel weak. Even now as a 27 year old looking back, I feel like they robbed my freedom. My freedom was taken from me without a fair fight due to fact I didn't understand the language they were using [Rafiq, aged 27].*

The formality of language used is not the only difficulty experienced by child defendants. The formality of the physical environment of the courtroom was also said to inhibit young defendants' engagement, as one advocate reflected with respect to the Crown Court:

*I don't personally, although it still is super common, like the idea of appearing in front of young defendants robed up as if I've just walked in from the 1600s; with a judge that is sitting 20 foot higher than the rest of the court and my defendant miles behind me in a dock. I don't think that's helpful. And I don't think it's the best way for [children] to sit through hearings which might have a very serious impact on their future life [advocate interviewee 22 – barrister].*

The Crown Court environment is much more formal than of the Youth Court. For this reason, the latter was generally perceived by respondents to be more conducive to the engagement of young defendants; however, concerns remained about the Youth Court's formality:

*Imagine yourself at age 11, coming from a relatively poor background, maybe struggling at school, been excluded once or twice, maybe a bit anti-authority. And then you find yourself in this building miles and miles away, appearing before three middle-aged people... It's a totally alien atmosphere. You will nod your head and say 'yes' when you think you should. But actually being properly included or brought in to understand what is going on, being able to play an effective part - it takes a lot of breaking down. I don't think that that is still fully appreciated. It is not enough to simply change your language or use their first name or to be more informal than you might normally be. It takes much more than that, often [advocate interviewee 23 – barrister].*

#### 4.2.3 Limited courtroom provision for young witnesses and defendants

As discussed in Chapter One, a range of adaptations can be made to the court process at both the Youth and Crown Court, in order to enhance the engagement of vulnerable defendants, while a variety of statutory “special measures” provisions are in place to support vulnerable witnesses. Evidence collected for this review suggests that questions remain about whether the available provision is adequate, and whether it is properly implemented.

One concern raised in interviews – as has also been the source of comment elsewhere, as noted in Chapter One – was the lack of parity between provision for young witnesses and young defendants, within a system that is “not really geared up these days to be looking at fairness to defendants” [advocate interview 29 – barrister]. This lack of parity was considered most evident with respect to access to intermediaries, which is considerably more difficult to obtain for defendants than for witnesses:

*I've been involved in a couple of cases [in which an intermediary has been provided for a defendant]. It's incredibly difficult to get the funding. There is or there has been a resistance from the judiciary to accept that someone may need that level of support [advocate interviewee 34 – barrister].*

*I know I instructed intermediaries on a few occasions and when others in the firm had other cases where they had to get an intermediary, they would come to me and say, 'How did you do it?' Because it is not something you do on a daily basis and it is quite a difficult, it is quite a lengthy process [advocate interviewee 22 – chartered legal executive advocate].*

But while provision for young witnesses was generally regarded as better than that for young defendants, it was also subject to criticism: for example, with reference to inadequate resourcing of the Witness Service; the potential for witness intermediaries to “confuse” a young witness (practitioner interviewee 15 – district judge); and a perception that special measures can hamper a witness’s giving of evidence. With regard to the last point, a barrister commented that, “The power of a victim actually sitting in court and giving their

evidence has a much stronger influence on a jury than listening to evidence over a TV, over the live link” [advocate interviewee 29].

There were concerns among some advocate and practitioner interviews about inadequate implementation of what measures are available to support young defendants in the courtroom. In particular, there was a view that adaptations to the Crown Court environment and process – such as the removal of wigs and gowns, provision of regular breaks and the seating of child defendants outside the dock – are inconsistently or poorly applied. This view is supported by the fact that among the young defendants interviewed for the review, several had sat in the dock, and referred to the wigs and gowns – or “capes” – worn by professionals during proceedings.<sup>11</sup> As part of the advocates’ survey, respondents were asked if they thought that young defendants appearing in the Crown Court receive adequate support. Less than one-fifth of the sample (18%) responded “yes”, while 47 per cent responded “to some extent” and 29 per cent “no”. (“Don’t knows” made up the remaining 6 %.) In a free text response, one survey respondent commented:

*Often the judiciary fail to adhere to ground rules such as breaks and removal of wigs [and] gowns. They regularly see the young defendant charged with murder as a young thug quite capable of dealing with the more intimidating aspects of Crown Court trial.*

It was felt by some advocate and practitioner interviewees that court adaptations are not always implemented due to a lack of awareness among magistrates, judges and advocates themselves of what these provisions are and when they should be used. Some advocates felt that this is a particular problem in relation to older children, or those appearing alongside adult co-defendants. Another important consideration is that, as has been discussed above, young defendants’ specific needs are not always identified prior to a court appearance, making it difficult for appropriate adaptations to be put in place.

#### 4.2.4 Poor case management, inefficiencies and delays

Existing court-based research has demonstrated that delay is an inherent feature of court proceedings (Rock, 1993; Darbyshire, 2011; Jacobson et al. 2015); delays can occur both before and during court proceedings. Findings from the present review show that the poor scheduling of court hearings can mean that children are required to wait for (sometimes lengthy) periods of time at court before their case begins. Our observations, particularly those which took place in the Crown Court, highlighted a number of examples of child defendants having to wait for periods of time ranging from a few minutes to a few hours to be brought before the court. Several of the young defendants interviewed reported finding delays both before and at court as “horrible”, “annoying” or a cause of “stress”. A parent of

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<sup>11</sup> All three of the young witness interviewees stated that wigs and gowns had been worn when they gave evidence in the Crown Court, although this may be at least partially explained by the fact that two of them chose not to take special measures when these were offered. The third witness chose to give evidence from behind a screen.

two child defendants described the scheduling of cases as “incredibly inefficient”. All three of the witnesses interviewed described experiencing delays before they were able to give evidence.

Many of the advocate interviewees highlighted the difficulties that delays can cause in cases involving child defendants and witnesses. Scheduling was felt to be particularly difficult in the Youth Court. Delays and “hitches” during proceedings took place for a number of reasons including the absence of witnesses or defendants and missing – or late arriving - paperwork; however it is perhaps worth noting that a number of respondents referred to delays occurring due to technical difficulties such as the adequacy of video-link equipment. Appearing in court via video-link was described by one young defendant as “quite s\*\*t because nothing worked – the camera didn’t work” [Riley, aged 16].

Poor case management was an issue highlighted by various advocates and practitioners and was in part attributed to inconsistencies in legal representation. Advocates and practitioners recognised the importance of being able to offer consistent legal representation to child defendants; this, however, appeared difficult to achieve in practice. Frequent changes of advocate were said to be “daunting” for children and were cited as militating against the development of a rapport between the advocate and their young client. As one chartered legal executive advocate explained: “the client finds it more difficult to meet someone new” (advocate interviewee 27). Riley, a 16-year-old young defendant, described to us his experience of being represented by “more than seven” advocates in one case:

*‘It’s] horrible cos you feel you have to explain yourself every time, you have to tell them what happened every time and it just fucked me up cos... it is horrible having to tell people you don’t even know something like that.*

In the previous chapter, we noted that thorough case preparation was widely regarded as an important aspect of professionalism in advocacy. It was clear, however, that many advocates lacked the time to prepare cases and meet clients in advance of court hearings – with the small and declining legal aid fees payable for Youth Court work being a significant contributor to this problem. One advocate noted the importance of offering pre-trial visits to some young defendants, but that no funding was in place to support this. Not only time but also physical constraints on case management and preparation were highlighted by some advocates, who complained of the very limited space and facilities for client conferences in court buildings - especially magistrates’ court buildings which house the Youth Court.

#### 4.2.5 The policy context: swift justice and reductions in legal aid

Commitments by government to address the problems of inefficiency and delay in court proceedings, while also steadily and substantially reducing costs, have led to a focus on establishing “swift and sure justice” (see, for example, Ministry of Justice 2012, 2013). The emphasis on delivering “speedy justice” was said by some advocate interviewees to carry its own risks, even while some of the goals are valid:

*What you find in the Youth Court, if you're not careful is that you get sausage-factory justice, where they don't permit any sort of delay, even if there's a proper investigation that needs to be conducted. ... There is an increasing awareness that delay is a bad thing in the justice system, but it needs to be applied with a balanced hand [advocate interviewee 6 – barrister].*

The risks of an over-emphasis on speed and efficiency were said to include neglect of support provisions for the most vulnerable court users, pressure imposed on defendants to plead guilty and, ultimately, the undermining of essential principles of justice:

*In practical terms, courts don't want special measures for defendants to be in place because they just slow things down, they cost money and it takes time to put them in place. ... Our whole system is geared up to getting people through the criminal justice system as quickly as possible [advocate interviewee 29 – barrister].*

*[The courts] have no interest whatsoever in what the defence say; they have no interest whatsoever in what the evidence is; they have no interest in the law. They have no interest in a fair trial ... Their only interest is processing it as quickly as possible ... People keep saying to me: justice delayed is justice denied. And I keep saying to them: justice denied is justice denied [advocate interviewee 3 – barrister].*

The focus on speed and efficiency is intrinsically linked to the funding constraints of the wider economic environment. Legal aid reforms have led to reduced rates payable for work in the Youth Court (and across the criminal courts) which, according to various advocates and practitioners interviewed for this study, have had a considerable impact on the representation of young defendants. As has already been noted, part of this impact is felt in the limited time that lawyers have available to spend on case preparation; more broadly, it was argued that:

*Everyone involved in the system was keen to get it right [20 years ago] but nowadays there is so much emphasis on number-crunching, time, the cost of time. Resources are thin everywhere that there is no longer that desire to get it right all the time. ... Standards are falling rapidly and no one seems to care [advocate interviewee 5 – barrister].*

*Realistically, if you want to have a really good system of legal representation, publicly funded, it has to be properly funded. I think the quality of representation is absolutely falling [advocate interviewee 22 – barrister]*

*Legal aid lawyers are so over worked now in court that often the basics, which a youth needs explaining to them, get forgotten [survey respondent].*

A few advocates also questioned the legal aid fee structure which provides for the same payments for representation of adults and children – despite the fact that work with young defendants may demand more time because of their particular needs and vulnerabilities. It was also noted that the broader political context and prevailing social attitudes (as well as the economic environment) make it unlikely that there will be any major shift towards better funding for criminal legal aid:

*There is not any public sympathy for the interests of vulnerable defendants... With the court system cuts and more cuts, you can't see how things are going to get better in terms of providing a fair and just system for vulnerable people [advocate interviewee 29 – barrister].*

*It's very easy to cut legal aid, because who wants to give money to criminals? [advocate interviewee 33 – barrister pupil].*

#### 4.2.6 The “undervalued” Youth Court

A theme that frequently emerged during the research activities for this review was the general undervaluing – by lawyers themselves but also by the judiciary, wider criminal justice system and government – of the Youth Court. The low status of the Youth Court is manifest, in its location within the same tier of the courts structure as adult magistrates' courts, despite the fact that the Youth Court has greater sentencing powers and deals with offences to a greater level of seriousness (and will do so increasingly, under Section 53 of the Criminal Justice and Courts Act 2015) than adult magistrates' courts. This paradoxical position of the Youth Court was described as a “structural flaw” by one advocate [advocate interviewee 24 – barrister pupil].

As noted by various respondents throughout our research, one of the most significant repercussions of the Youth Court's low status is the practice of treating it as a “training ground” for advocates, including “baby barristers”:

*It is a kindergarten for professionals to gain skills (advocate interviewee 15 – barrister)*

*I think what concerns me is, when people are newly qualified... they are sent to the Youth Courts just because they can and for some experience. But I think that's not always in the best interests of the youths [practitioner interviewee 6 – youth specialist prosecutor].*

*[The] Youth Court is sidelined by the profession...it's seen as a place where young barristers and solicitors cut their teeth [practitioner interviewee 7 – district judge].*

The treatment of the Youth Court as a training ground, its equivalence in status with adult magistrates' courts and the continuing financial squeeze on work undertaken in this jurisdiction all conspire to produce a situation in which more senior, able and ambitious lawyers – other than those who have a particularly strong, personal commitment to working with children and young people – tend to move to other areas of criminal work. This fact is amply illustrated by the replies of advocate survey respondents to a question about why they would not wish to continue practising in the Youth Court. As reported in Chapter Two, above, for the third of survey respondents who stated that they were not interested in continuing to pursue Youth Court advocacy, lack of career prospects and/or low pay were significant factors.

A number of interviewees were of the view that there is a profound mismatch between, on the one hand, the low status associated with legal practice in the Youth Court. And, on the other hand, the particular skills and knowledge required for effective Youth Court advocacy; the seriousness of cases dealt with at the Youth Court; and the challenges and social import of working with some of the most vulnerable offenders at what might be the early stages of long criminal careers. Some of the serious concerns voiced were that:

*It's not the right way to do things ... you should have more experienced people [in the Youth Court] who would then take time to know that jurisdiction [advocate interviewee 32 – barrister].*

*Youth Court rates of pay should be the same as Crown Court to allow the best quality of advocacy. This work is important and advocates should not be penalised financially for holding that view. I have done many Youth Court sex cases over the last ten years [survey respondent].*

*People think the Youth Court is not important, so it's the first place they're willing to cut [advocate interviewee 33 – barrister pupil].*

*People forget that it is not that the trials in the Youth Court are any less serious it's just that the people involved are much, much younger [advocate interviewee 9 – barrister].*

#### 4.2.7 Lack of expertise among other practitioners

Throughout the research, positive comments were made about the skills of other practitioners involved in youth proceedings, such as judges, magistrates, legal advisers and YOT workers. Some advocates and practitioner interviewees noted that judges and benches who were “well-trained” and “had proper control” were “quick” to correct or criticise advocates who had “over-stepped the mark”, for example, with inappropriate questioning. This judicial oversight was perceived to be an important means of mitigating the effects of poor advocacy. Nevertheless, some concerns were raised about a perceived lack of training or expertise on the part of some practitioners, and that this could act as a barrier to effective

advocacy. For example, respondents sometimes questioned the extent to which judges and magistrates had the ability adequately to understand the needs of young defendants and to engage meaningfully with them:

*I have come across magistrates and district judges that speak to [children] in a way I would not speak to a youth. For example, I had a district judge shout at a youth in court, who had been before the court many, many times and probably did need a bit of telling off. But he called him 'boy': 'Boy, what I'm telling you, boy?' It was inappropriate and I think that is probably a generation thing and perhaps difference in backgrounds ... But you do find some magistrates as well go on and on and on and on at them ... [advocate interviewee 27 – chartered legal executive advocate].*

*[When] the judge is speaking to you, you've got to reply to him. You can't over-speak him, if you over-speak him you're told to shut up straight away [Dexter, defendant, aged 18].*

Some advocates, and some sentencers themselves, referred to a need for more or improved training for judges and magistrates. This was deemed particularly important for Crown Court judges dealing with youth cases who – unlike magistrates and district judges sitting in the Youth Court – would not necessarily have received any specific youth justice training. One barrister referred to the “confusion” that frequently arises when a child is sentenced at the Crown Court, due to lack of knowledge of the youth sentencing framework on the part of the judge [advocate interviewee 15].

A few advocate and practitioner interviewees also referred to a need for greater expertise in youth justice among other practitioners such as legal advisers and the police. The potential impact of the decline (noted in Chapter One) in youth caseloads is worth noting here. This was highlighted as an issue by one magistrate interviewee who said that the Youth Court in his area was now sitting only for half a day per week; while a legal adviser stated that some of her peers felt out of touch with the Youth Court due to its declining level of work. The impact of the reducing caseload on the feasibility of a dedicated YOT court team was also referred to by one YOT worker [practitioner interviewee 19] (the YOT had consequently adopted a court rota, whereby staff attended court approximately once a month).

#### 4.2.8 The adversarial system

One more systemic constraint on the effectiveness of advocacy in youth proceedings is the nature of the adversarial system itself.

As noted in Chapter One, the statutory principal aim of the youth justice system, under the Crime and Disorder Act 1998, is the prevention of offending by children and young people, while court proceedings are also required by statute (the Children and Young Persons Act 1933) to “have regard to the welfare of the child or young person”. This broad statutory framework arguably promotes a less adversarial approach to justice than is seen in adult

proceedings – and the relatively informal environment of the Youth Court, and the available modifications that can be deployed in Crown Court youth cases, may also support a shift in this general direction. Likewise, special measures provisions for young witnesses may serve to temper the adversariality of the court process.

Some of the responses provided to our advocates' survey accord with this view. When asked to outline the differences between advocacy in the Youth Court and other criminal advocacy, respondents noted that the former is "less adversarial", "less combative" and that it is about the "determination of truth, rather than a fight between the sides".

Nevertheless, the court process in youth proceedings remains essentially adversarial in nature – meaning that the prosecution (on behalf of the Crown) and the defence are required to present their respective cases, in turn, to the court, with decision-making lying in the hands of a neutral third party. Advocates in youth proceedings therefore face competing demands: do they act solely in accordance with instructions they receive from the child or, with a view to protecting the child's welfare and preventing any future offending, do they seek to identify and represent the child's best interests, in the context of the alleged offending? The tension between these demands was noted by some of the advocate and practitioner interviewees in this study. For example, although YOT officers and defence advocates were often said to work collaboratively, one YOT worker pointed out the essential difference between their respective roles, noting that the lawyer must do his or her best to ensure a young defendant who pleads not guilty is found not guilty, regardless of the "facts" of the case, whereas the YOT must focus on the child's needs, especially in relation to any likelihood of subsequent offending. Others observed the potential mismatch between a child's instructions and a child's best interests:

*[In youth proceedings] I think that the responsibility on you as an advocate is to make sure that most of the consequential thinking is done for them, to kind of have a check on them for their own best interests, because children and young people will do things just to spite the process, because they're angry... they don't have the critical thinking skills that to a certain extent a client is expected to have [advocate interviewee 32 – barrister].*

*I don't know if advocates advise enough... I think advocates, especially dealing with young people, need to appreciate it's not just about taking instructions ... They should be advising them; it's so important [to] how their future's going to end up [practitioner interviewee 6 – youth specialist prosecutor].*

Moreover, in an adversarial system, notwithstanding the growing emphasis on helping witnesses to "achieve best evidence" through a range of support mechanisms, an advocate is still constrained by the need to act in accordance with the client's instructions:

*It's very difficult in an adversarial system, where you'd have young witnesses ... I think if you had an inquisitorial system ... then that would be much easier, but a defence advocate won't see it as part of their job to get the 'best evidence' from a witness; a defence advocate will seek to get the evidence they want from a witness [advocate interviewee 30 – barrister].*

For their part, some of the young defendants appeared to take entirely for granted that their court appearances entailed a battle between two sides in which one could only “win” at the expense of the other. Reflecting on the role of the prosecution, two defendants commented:

*[The prosecution] have got no choice but do that [make the offence sound as bad as possible] because that's their jobs, otherwise they won't win [Talib, aged 16].*

*[Prosecutors] are there to try and make you guilty, that's their job; being fair goes against what they do [Blake, aged 15].*

### **4.3 The social context**

The final set of constraints to be examined in this chapter relate to the wider social context in which youth offending occurs and the youth justice system is situated.

#### **4.3.1 Punitive societal attitudes and responses to youth offending**

Part of this social context is a relatively punitive societal response to offending committed by children and young people. This is manifest, for example, in the fact that, at ten, the age of criminal responsibility in England and Wales is lower than in almost all other European jurisdictions; a situation which was entrenched with the abolition of the principle of *doli incapax* in 1998 which had given 10-13 year olds partial exemption from criminal liability. Punitive attitudes have long been reflected, also, in political and media rhetoric about the threats posed by children and young people who offend and the need for ever “tougher” responses to youth crime and disorder.<sup>12</sup> Although the recent dramatic decline in numbers of children coming before the courts and in numbers of children held in custody<sup>13</sup> point to important countervailing pressures and trends, there remains a sense that the youth justice system operates in a context of punitivity – of which cuts to criminal legal aid, as discussed above, are another, more recent manifestation. Some respondents also spoke of a general tendency to over-criminalise children and young people:

*Looking forward, it would be great to see a very different youth justice system. I think this country, for whatever reason, is all too keen to criminalise young people; there's*

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<sup>12</sup> See, for example, Jacobson et al. (2010); Morgan and Newburn (2012) and Muncie (2015) for further discussion of these issues.

<sup>13</sup> As of May 2015, the under-18 custodial population stood at 989 (<https://www.gov.uk/government/statistics/youth-custody-data>), compared to a high of over 3,000 in 2002.

*not enough involvement from care-givers and social services in – not assisting young people at court, necessarily, but before you [the child] even get there. ... And I know that some places do have first warning and triage type systems in place but it could be far more integrated and work better than it does [advocate interviewee 30 – barrister].*

*I wish we could ... raise the age of criminalisation; that would be a good place to start. We're criminalising 12, 13 year olds when we don't need to... [practitioner interviewee 11 – intermediary].*

Correspondingly, there was a sense among some advocates and other practitioners that judges and magistrates may struggle to view young defendants in a sympathetic light. This view was shared by some of the young defendants interviewed as part of the study, for whom class and ethnic differences enhanced the sense of distance between themselves and those hearing their cases:

*[Judges are] not in the same situation as the defendant... I feel like they've never been in trouble with police, otherwise they wouldn't have their job, so they wouldn't know [what it's like]... They haven't lived it so they can't understand it [Reuben, aged 17].*

*And that's how the justice system feels. I went to the court: white jury, the judge is white, the barrister is white, the prosecution is white. My solicitor is white. Everyone is white. Now, I'm going in there with my coloured skin and I'm the odd one out. I feel really...everything is against me. As a young person, I didn't feel part of the country, I felt like some immigrant, some alien [Rafiq, aged 27].*

#### 4.3.2 Disadvantaged children in the youth justice system

As outlined in Chapter One, and commented upon throughout this report, involvement in the criminal justice system for many children and young people is a symptom of broader and often intersecting problems of family breakdown, poor emotional and mental health, and speech, language and communication needs. These needs and vulnerabilities make the advocate's task more challenging not only because – as has already been discussed, above – they are not necessarily identified in time (or at all) for the court process to be adapted appropriately, but because they can also make meaningful communication and engagement between advocate and client difficult. More generally, advocates may feel that they are grappling with problems so profound that they demand responses far beyond anything that can be offered as part of the court process:

*It's obviously inherent, to some extent, in young people that find themselves before the criminal justice system, from the age of 12 to 17, that they've got a variety of hugely complex needs and difficulties – ones [that] as a lawyer...it's beyond your remit to even think about going into [advocate interviewee 30 – barrister].*

*There [are] a lot of problems with communication with youths at court because they don't have an adult there who knows them; and they have only met me for the first time. They might not want to tell me all about their background and that they are in a children's home and mum and dad don't want to know them... So I think I find a lot of the time [the problems] are just so kind of systemic; it is like people have just given up on them ... [advocate interviewee 27 – chartered legal executive advocate].*

A parent of two young defendants also noted the “embedded” nature of the problems which children and young people often bring with them into the court process – problems which youth justice practitioners are relatively powerless to deal with on their own: “You can't hold the youth justice system responsible for what happens before children get into the system”.

An illustration of the vulnerability of some children and young people at court – and a factor which, at the same time, enhances that vulnerability – is the absence of parents or carers from court hearings. A number of interviewees commented that many young defendants attend court unaccompanied; which was also evident during some of our observations. Previous reviews have also reported the frequent absence of social workers (Carlile, 2014: 16-17) and parents (HMI Probation et al, 2011: 32; Allen et al, 2000: 94) at court. This is despite the fact that the *Youth Court Bench Book* states that children and young people aged under 16 appearing at the Youth Court “must have a parent guardian with them in court, unless the court thinks it is unreasonable ... to encourage parents/guardians to take responsibility” (Judicial College, 2013: 1) Department for Education guidance also states that it is best practice for social workers to attend court with children who are in care (2010: 121).

The importance of children at court having an adult supporter (sometimes referred to as an “appropriate adult”, although the remit of those formally designated as appropriate adults only includes the police station and does not extend to the courts<sup>14</sup>) was a key theme in our advocate and practitioner interviews, and in free-text responses to the advocates' survey. For example, when asked about the most important forms of support at court for young defendants, survey respondents variously answered:

*Ensuring that the defendant has an appropriate adult / parent to accompany them.*

*I think appropriate adults are essential to assist the young person in feeling assured and comfortable in what should be an alien environment.*

*The presence of a trusted adult is certainly the best support.*

*Presence of an adult they can trust.*

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<sup>14</sup> For information on the appropriate adult role, see <http://www.appropriateadult.org.uk/index.php/about-us/our-work>.

*A proper suitable and knowledgeable appropriate adult who helps them understand the basics and the principles in their case.*

Such support was seen to be necessary for a variety of reasons – including to help alleviate anxiety and stress and ensure that a defendant “feels that there is someone there for them” [advocate interviewee 19 – barrister]; and to assist children with understanding what is going on at court and with instructing their advocate. It was sometimes suggested that family members such as parents are not necessarily best placed to offer such support – if there are particular problems in the child-parent relations; if the parents have a hostile attitude towards the court or themselves struggle to understand the court process; or if (as described in Chapter Three, above) children are reluctant to disclose details of the offence in the presence of parents.

#### 4.3.3. Changing court caseloads

Finally, it should also be noted that social and familial problems are directly reflected in some of the offending behaviour (and alleged offending behaviour) with which youth proceedings deal. With the growing proportion of cases being diverted at the pre-court stage (as noted in Chapter One), the profile of youth cases is becoming more *serious* overall; and, notably, there appears to be some change in the *types* of offences as well as the seriousness of offences which are coming before the courts. Specifically, it was reported anecdotally over the course of the research that growing numbers of youth cases concern sexual offences and offences of domestic violence (often involving alleged violence between children and parents); this also accorded with our court observations.<sup>15</sup>

If it is indeed the case that increasing numbers of domestic violence and sexual offence cases are being dealt with in the Youth Court and in Crown Court youth cases, the reasons for this are likely to be complex. It is possible that greater social atomisation and increasing breakdown of traditional family and community bonds are contributory factors; trends that are reflected in the perception that “The [children] we see now have complex lives, nearly every one of them is open to social services, there are child sexual exploitation concerns, come from broken homes and have experienced the deaths of parents” [practitioner interview 29 – YOT court officer]. Another set of contributory factors may relate to changing social attitudes in terms of what behaviour is and is not acceptable: with, particularly, a heightened awareness of the incidence and damage associated with sexual abuse of children (including where the perpetrators are themselves children), and more intolerance of violence within families and other domestic settings.

Few advocates, in interview, spoke explicitly about the challenges of dealing with the most complex cases that come to court. However, one chartered legal executive advocate talked about a “horrendous” Youth Court trial in which she represented a 12-year-old accused of sexual offences against a much younger child. While she had found the judge who heard the

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<sup>15</sup> Data are not currently available that would permit the anecdotal evidence on offence types to be validated.

case (and was “ticketed” for sex cases) very helpful, the cross-examination of the complainant had nevertheless posed severe difficulty:

*You have got to be so careful; I could have easily made that young boy cry... I found it difficult and I certainly hadn't had any training or experience of that and I think you don't really appreciate it until you do it [advocate interviewee 25].*

Such cases can also pose serious challenges for judges and magistrates; as was made clear by an experienced district judge who likewise described a case in which a young defendant faced charges of sexual assault against an even younger child. The judge voiced her severe concerns about the likely “damage” caused by the court process to the defendant and complainant alike; described a defence advocate who, at the outset of the case, had appeared “utterly at sea”; and said that she herself had found it difficult to deliver the guilty verdict to “a troubled and confused young defendant” [practitioner interviewee 15].

## **5. Recommendations for promoting effective advocacy in youth proceedings**

The preceding three chapters of this report have set out many of the empirical findings of the Youth Proceedings Advocacy Review. On the basis of these findings, we have concluded that the quality of advocacy in youth proceedings is highly variable. We have argued above that high quality advocacy in youth proceedings is dependent on advocates' specialist knowledge of youth justice law and provisions; their capacity to communicate effectively and build relationships with children and young people; and their professionalism. A number of factors have been identified as barriers to advocates' development and application of these essential attributes and skills. These barriers include advocates' limited opportunities to undertake training and to learn from their own and their peers' practice; and an array of structural, systemic and social constraints.

In this concluding chapter, and drawing on the full evidence base produced by this review, we present a series of recommendations for improving the effectiveness of advocacy in youth proceedings.

The work of advocates in youth proceedings – and the strengths and shortcomings of this work – cannot be viewed in isolation from its wider legal, institutional and cultural context. Reflecting the fact that both the barriers to and enablers of more effective advocacy operate at a number of levels, the recommendations that we present below encompass many different facets of the youth justice system. These recommendations focus on, first, the systems and structures of youth proceedings which could support better advocacy; secondly, the court-based facilitators of improved advocacy; and, thirdly, training and learning opportunities for advocates.

### **5.1 Structural changes**

- The courts are required, by statute, to have regard to the welfare of young people who appear before them (section 44(1) of the Children and Young Persons Act 1933), while the principal aim of the youth justice system is defined as the prevention of offending by children and young people (section 37 of the Crime and Disorder Act 1988). A graduated shift away from the highly adversarial nature of the existing youth justice system would permit the reinvigoration of the welfare principle and a renewed focus on the aim of reducing re-offending. The Ministry of Justice, Her Majesty's Courts and Tribunals Service (HMCTS) and senior judiciary should give consideration to the establishment of problem-solving approaches in the Youth Court – involving, for example, co-location of relevant children's and youth services in court buildings and provision for review of sentences by the sentencing judge/magistrates – for the purpose of achieving such a shift.

- To counter the current low status of the youth court, legal professional and representative bodies - including the Bar Council, Criminal Bar Association, Law Society, Criminal Law Solicitors' Association and CILEx - should develop a joint strategy for raising the visibility and awareness of youth court proceedings amongst lawyers, the judiciary and other criminal justice stakeholders. This strategy could include a campaign aimed at developing and disseminating good practice in youth proceedings advocacy; and the establishment of a Youth Justice Bar Association and similar bodies for criminal solicitors and legal executives.
- Reflecting the particular demands of effective advocacy in youth proceedings, legal practice in the youth court and in Crown Court youth cases should be recognised as a specialism. To achieve this, there should be:
  - The introduction of mandatory training and a licensing system for youth justice advocates (see section on training and learning below);
  - A requirement on the Legal Aid Agency only to contract licensed solicitors' firms and licensed barristers for work in youth proceedings, and on solicitors' firms only to instruct licensed barristers.
- Because of the challenges associated with communication and building rapport with young defendants, and potential problems of suggestibility and compliance, the Legal Aid Agency should have the capacity to pay an additional fee to permit the advocate to meet the child or young person between the point of charge and the first appearance at court and, when necessary, before their trial or sentencing date. Where appropriate, this would also permit the advocate to take the young defendant on a court familiarisation visit, as recommended in the *Criminal Practice Directions* (2014) 3G.2.<sup>16</sup>
- In light of the fact that, under section 53 of the Criminal Justice and Courts Act 2015, a growing number of very serious cases will be heard in the youth court, the Legal Aid Agency should take steps to ensure that there is parity in the funding provided for legal representation for serious youth court cases and for Crown Court cases of equivalent seriousness. In practical terms, this means that a certificate for assigned advocate (formerly "certificate for counsel") should be provided for the most serious youth court cases – such that both a litigator and advocate are provided for these cases, rather than a litigator alone, thereby ensuring that case preparation is to a level that adequately reflects their seriousness.

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<sup>16</sup> In broad accordance with this recommendation, we note that the Rt. Hon Lord Justice Leveson has proposed in his review of efficiency in criminal proceedings that the Legal Aid Agency look into redistributing the money available to them for fees, to support the efforts required for early engagement with clients so as to resolve the case or identify the true issues. (See, Leveson, 2015:30)

- Much of the language used in court is highly formal and laden with jargon. As a result it is inaccessible to lay court users, and particularly children who appear in court as defendants or witnesses. Current non-governmental and governmental efforts to promote ‘plain English’ in government communications should be extended to the legal profession and the criminal courts. Also relevant here is the government’s current Good Law initiative, which aims to ensure that legislation is necessary, clear, coherent, effective and accessible;<sup>17</sup> and the ‘Sentence Trouble’ project of the Communication Trust.<sup>18</sup>
- The CPS, in conjunction with HMCTS, should monitor decision-making by prosecutors in cases involving young defendants, and introduce refresher training for these prosecutors. The aim of this will be to achieve greater consistency in prosecution practice and to ensure compliance with the CPS obligation, under the Code for Crown Prosecutors, to consider the interests of children and young people, among other public interest factors, when deciding whether a prosecution is necessary. Further, the Ministry of Justice should consider the introduction of a power for the youth court to review charging decisions through a due process hearing.

## 5.2 Court-based measures to facilitate effective advocacy

- There is a need for systematic screening of young defendants – involving the administration of standardised tools to identify the likely presence of a mental health problem, learning disability or other need – prior to their appearance at court. Current screening and assessment arrangements are often ad hoc, and information on defendants’ needs, even where it is available, is not always accessed by advocates and others involved in court proceedings. Responsibility for screening should ideally lie with police-based diversion and liaison schemes;<sup>19</sup> and clear procedures for the sharing of screening outcomes with relevant professionals at court need to be devised and implemented. The development of a system of screening should be tied in with the forthcoming Law Commission proposals for replacing the existing “fitness to plead” test with a test focused on “effective participation” which would also be extended to the youth and magistrates’ courts.
- The Ministry of Justice and senior judiciary should undertake a review of the existing system of “ticketing” members of the judiciary to hear particular kinds of criminal cases. As necessary, this system should thereafter be revised to ensure that judges (and, potentially, magistrates) with sufficient levels of expertise are hearing the most serious youth cases, including serious sex cases. This review should pay special consideration

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<sup>17</sup> <https://www.gov.uk/good-law>

<sup>18</sup> [https://www.thecommunicationtrust.org.uk/media/13571/sentence\\_trouble\\_-\\_march\\_2010.pdf](https://www.thecommunicationtrust.org.uk/media/13571/sentence_trouble_-_march_2010.pdf)

<sup>19</sup> We understand that there are plans afoot to achieve 100% coverage of police and diversion schemes across England by 2017/ 2018 (See <https://www.england.nhs.uk/2014/12/02/liaison-and-diversion/>)

to the implications of section 53 of the Criminal Justice and Courts Act 2015 for the level of seriousness of cases being heard in the youth court.

- Current training provision on youth justice for magistrates, legal advisors and other court staff should be subject to a joint review by the HMCTS, the Judicial College and Magistrates' Association. Any identified gaps or shortcomings in provision should be addressed through the development of new resources and materials which, where possible, should build on and feed into training of other youth justice practitioners (including advocates).<sup>20</sup> Shared training modules and exercises should be introduced across practitioner groups, for the purposes both of achieving consistency in quality and practice and of promoting inter-agency engagement and communication.
- There is a need for greater responsiveness on the part of the judiciary, prosecutors and advocates to young court users' needs through implementation, wherever appropriate, of the available court-based adaptations. These include the use of intermediaries, ground rules hearings and the giving of evidence via video-link, in line with the *Criminal Practice Directions* (2014) 3D to 3G. Essential to achieving this will be improved screening for needs and training of practitioners (as above).
- There should be a formal expectation that the YOT representative in court and the advocate consult with each other prior to each court hearing (this should also apply when children and young people appear in the Crown Court, where there is unlikely to be a YOT representative present on the day – in which case YOT contact details should be available at court). This will help to ensure that advocates have greater understanding of young defendants' circumstances, needs and intentions.
- The Home Office and Ministry of Justice should give consideration to extension of mandatory Appropriate Adult support for young suspects from the police station to court hearings, in order that every young defendant has a clearly identified supporter while in court. The functions of the supporter – whether this role is played by a professional, volunteer or family member – should be defined, and should include liaison with the advocate.

### **5.3 Training and learning opportunities**

- To support the development of a youth justice specialism among advocates (see above), legal training bodies should introduce mandatory training for all advocates who practise in youth proceedings. Key considerations for the development of the specifics of the training model and approach will include the following:

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<sup>20</sup> It should be noted that the Judicial College has recently agreed to fund additional youth justice training for Youth Court magistrates and legal advisers, which will focus on communication skills (*Magistrate*, August 2015)

- The importance of utilising training resources across the legal profession, wherever possible, which can also – wherever appropriate – be utilised in training for other youth justice practitioners;
  - The scope for inclusion of limited modules on youth justice, and vulnerability of court users more broadly, within academic training and as part of the Bar Professional Training Course (BPTC) and Legal Practice Course (LPC);
  - The scope for development of a practical post-qualification, pre-practice course to be completed during the first six months of pupillage/during the solicitors' training contract/for the Criminal Proceedings Certificate for Chartered Legal Executive Advocates.
  - The scope for development of a mandatory youth justice module as part of CPD, potentially linked to the vulnerable witness advocacy training currently being developed by HHJ Peter Rook QC.
- The content and mechanics of training are likely to vary, according to the stage at which it is delivered. However, key components of training are likely to include:
    - Youth justice law;
    - The legal framework of effective participation and fitness to plead;
    - Components of the youth justice system;
    - Child development;
    - The nature and manifestations of behavioural, emotional and social difficulties and speech, language and communication needs among children and young people;
    - Communication skills and dealing with vulnerability;
    - Available adaptations to the court process to meet the needs of young court users, including working with intermediaries;
    - Methods of engaging children and young people (including through role play-based training).
  - Building on the new training requirements, a youth justice licensing or accreditation system should be developed, whereby advocates would be required to supply case reports (based on shadowing) and references in order to become licensed or accredited. This would follow a model similar to the existing Children Law Accreditation Scheme or the Mental Health Accreditation Scheme.<sup>21</sup>
  - Legal professional and training bodies should encourage a culture of shadowing and feedback among advocates working in youth proceedings – to include self-appraisal and

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<sup>21</sup> The Children Law Accreditation Scheme is run by the Law Society and covers representation of children in family proceedings and adult parties in public law proceedings under the Children Act 1989 (<http://www.lawsociety.org.uk/support-services/accreditation/children-law/>). The Mental Health Accreditation Scheme is another Law Society scheme (<https://www.lawsociety.org.uk/support-services/accreditation/mental-health/>); this covers representation of patients in mental health tribunals. Neither scheme is currently open to self-employed counsel.

peer assessment of practice, which would feed into the accreditation process. HMCTS should provide clear guidance on access to the youth court for shadowing purposes, while maintaining an awareness of the importance of keeping numbers of observers in the courtroom to a minimum.

- The Advocacy Training Council should develop and implement a strategy for raising awareness of The Advocacy Gateway toolkits, and should give consideration to methods of enhancing advocates' active engagement with and learning from these materials. The toolkits should also be used as a core resource in the development of youth justice training for advocates (and other practitioners).

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## Annex A: Methodology

### Access, recruitment and samples

In order to conduct court observations and interviews with members of the judiciary and wider court staff, we were required to obtain formal approval from Her Majesty's Courts and Tribunals Service (HMCTS) and the Judicial Office. The BSB applied to the HMCTS Data Access Panel for a Privileged Access Agreement (PAA) and the Judicial Office for this purpose. Having obtained general approval for access, the BSB then negotiated access with each individual court on ICPR's behalf, introducing the research team and who then made contact over email to schedule the observation and facilitate interviews.

### Survey

The link to the online advocates' survey was mailed by the BSB and CILEx Regulation to their respective mailing lists of criminal barristers and chartered legal executive advocates. Those with experience of the Youth Court were *not* specifically targeted, in order to access as wide a range of views and professional backgrounds as possible. The survey routed those with different levels of experience of youth proceedings to differing sets of questions. Potential respondents were encouraged to complete the survey through reminder emails and tweets from the BSB, which set out the background to and importance of the study. The Communications Department of the BSB further promoted the survey through the trade press and by including the link on the BSB website. Additionally, hard copies of the survey were sent to a number of barristers' chambers.

A total of 215 advocates completed the survey; demographic data on the respondents are presented in Tables A1 to A3 (with missing data excluded).

**Table A1: Gender of survey respondents**

	Number	Percentage
Female	79	41%
Male	111	57%
Prefer not to say	4	2%
<b>Total</b>	<b>194</b>	<b>100%</b>

**Table A2: Age of survey respondents**

	Number	Percent
18-24	1	1%
25-34	70	36%
35-44	49	25%
45-54	38	20%
55-64	22	11%
65+	11	6%
Prefer not to say	4	2%
<b>Total</b>	<b>195</b>	<b>101%*</b>

\*Percentages are subject to rounding.

**Table A3: Ethnicity of survey respondents**

	<b>Number</b>	<b>Percentage</b>
Asian	7	4%
Black	3	2%
Mixed ethnicity	3	2%
White	164	85%
Other	4	2%
Prefer not to say	13	7%
<b>Total</b>	<b>194</b>	<b>102%*</b>

\*Percentages are subject to rounding.

#### Advocate interviewees

Respondents for telephone interview were recruited primarily through the survey: survey respondents were invited to supply their name and contact details if they were willing to participate in a follow-up interview. In total, 52 of the 215 advocates who completed the survey gave their consent to be interviewed.

Five of the 52 were immediately excluded from interviews since they had only appeared once in youth proceedings or had not done so for ten or more years and we decided that they would not have sufficient relevant experience. Of the 47 advocates who were contacted for interview, nine subsequently declined to take part or did not respond to our communications; and in a further four cases, interviews were not completed because of time constraints.

Of the 34 advocates who were interviewed:

- 17 were male and 17 female.
- The majority were of white ethnicity (26), while the remainder were black (1), mixed (1), "other" (2); and four did not state their ethnicity.
- There was a broadly even mix between those who had appeared for the defence only (16) and those who worked for both defence and prosecution (18).
- Most (23) had appeared in Crown Court youth proceedings as well as the Youth Court.
- The majority (21) practised in London and the South-East.

Details of the length and type of experience of advocate interviewees are provided on Table A4, overleaf.

**Table A4: Length and type of experience of advocate interviewees**

Interview number	Role	Year called to Bar	Type of Youth Court experience	No. occasions in Youth Court as defence	Last occasion in Youth Court as defence	No. occasions in Youth Court as a prosecutor	Last occasion in Youth Court as a prosecutor	Crown Court youth case experience	No. occasions in Crown Court youth cases	Last occasion in Crown Court youth case
1	Third six pupil	N/A	Defence	5+	Within past year	Defence only	Defence only	N	N/A	N/A
2	Fully qualified barrister	2013	Both	5+	Within past year	5+	Within past year	Y	5+	1-5 years ago
3	Fully qualified barrister	1996	Defence	5+	No data	Defence only	Defence only	Y	No data	No data
4	Fully qualified barrister	No data	Defence	5+	1-5 years ago	Defence only	Defence only	Y	5+	1-5 years ago
5	Fully qualified barrister	No data	Both	5+	5-10 years ago	5+	Within past year	Y	5+	5-10 years ago
6	Fully qualified barrister	1987	Both	5+	10-20 years ago	2-5 times	10-20 years ago	Y	5+	Within past year
7	Fully qualified barrister	1996	Both	5+	5-10 years ago	2-5 times	10-20 years ago	Y	5+	5-10 years ago
8	Fully qualified barrister	2007	Both	2-5 times	5-10 years ago	5+	Within past year	N	N/A	N/A
9	Fully qualified barrister	1994	Both	2-5 times	10-20 years ago	2-5 times	Within past year	Y	2-5 times	10-20 years ago
10	Fully qualified barrister	2007	Defence	5+	1-5 years ago	Defence only	Defence only	Y	5+	1-5 years ago
11	Fully qualified barrister	2012	Both	2-5 times	5-10 years ago	Only once	Within past year	Y	2-5 times	Within past year
12	Fully qualified barrister	1999	Defence	5+	5-10 years ago	Defence only	Defence only	Y	5+	Within past year
13	Fully qualified barrister	1993	Both	5+	Within past year	5+	Within past year	Y	2-5 times	5-10 years ago
14	Fully qualified barrister	2000	Both	5+	Within past year	5+	10-20 years ago	Y	5+	Within past year
15	Fully qualified barrister	1995	Both	5+	Within past year	5+	10-20 years ago	Y	5+	Within past year
16	Fully qualified barrister	2007	Defence	5+	1-5 years ago	2-5 times	1-5 years ago	Y	2-5 times	1-5 years ago

17	Fully qualified barrister	2000	Defence	5+	5-10 years ago	Defence only	Defence only	Y	5+	1-5 years ago
18	Fully qualified barrister	No data	Both	5+	5-10 years ago	5+	10-20 years ago	Y	5+	Within past year
19	Fully qualified barrister	2008	Defence	5+	1-5 years ago	Defence only	Defence only	Y	2-5 times	1-5 years ago
20	Third six pupil	No data	Both	5+	Within past year	5+	Within past year	N	N/A	N/A
21	Fully qualified barrister	2008	Defence	5+	Within past year	Defence only	Defence only	Y	2-5 times	Within past year
22	Fully qualified barrister	No data	Defence	5+	1-5 years ago	Defence only	Defence only	Y	5+	1-5 years ago
23	Fully qualified barrister	No data	Both	5+	5-10 years ago	5+	5-10 years ago	N	N/A	N/A
24	Third six pupil	N/A	Defence	2-5 times	Within past year	Defence only	Defence only	N	N/A	N/A
25	Chartered Legal Executive Advocate	N/A	Defence	5 +	Within past year	Defence only	Defence only	N	N/A	N/A
26	Chartered Legal Executive Advocate	N/A	Defence	5+	Within past year	N/A	N/A	N	N/A	N/A
27	Chartered Legal Executive Advocate	N/A	Defence	5+	Within past year	N/A	N/A	N	N/A	N/A
28	Barrister	2009	Defence	5+	1-5 years ago	Defence only	Defence only	Y	2-5 times	Within the past year
29	Barrister	2000	Both	5+	1-5 years ago	5+	5-10 years ago	Y	5+	Within the past year
30	Barrister	No data	Both	5+	1-5 years ago	2-5 times	1-5 years ago	Y	2-5 times	1-5 years ago
31	Chartered Legal Executive Advocate	N/A	Prosecution	N/A	N/A	Only once	Within past year	N	N/A	N/A
32	Barrister	2009	Defence	5+	Within past year	Defence only	Defence only	N	N/A	N/A
33	Third-six pupil	N/A	Both	2-5 times	Within past year	2-5times	Within past year	N	N/A	N/A
34	Fully qualified barrister	1995	Both	5+	Within past year	5+	Within past year	Y	5+	1-5 years ago

### Other practitioner interviewees

Other practitioner interviewees were recruited by a variety of means. The majority were recruited from the youth courts in which the observations were conducted. Prior to our observations, we contacted the legal adviser or justices' clerk office in each area with information about the study for practitioners. The legal adviser or justices' clerk then circulated the information to practitioners with an invitation to participate. Interviews subsequently either took place on the day of the observation or were arranged separately with those who consented to interview.

In addition, we issued an appeal for YOT practitioner interviewees in the regular Youth Justice Board (YJB) bulletin, which produced five respondents. One youth specialist CPS prosecutor, one district judge and several magistrates, were recruited through ICPR's existing network of contacts and subsequent snowballing. The intermediary interviewees were recruited through the Royal College of Speech and Language Therapists.

### Young defendant interviewees

Defendant interviewees were recruited from four YOTs, one secure children's home and one young people's charity in differing geographic regions. Access to the recruitment sites was gained through a mix of ICPR's existing network of contacts and an appeal through the YJB bulletin for assistance with facilitating interviews. Approximately four young defendants were recruited in each of the six locations.

As far as possible, we sought to achieve a diverse sample in terms of age, gender, ethnicity, offending profile and length of involvement in the youth justice system. Of the young defendant interviewees:

- Thirteen had experience of the Youth Court only; 12 had appeared in both the Youth and Crown Court.
- Three were female and 22 were male.
- Most were aged 15 to 17 years.
- The majority of interviewees were white (12), and the remainder were of a mixed ethnic background (6), Asian (5), and black (2).

For the purpose of ensuring that informed consent was obtained for all defendant interviews, each respondent was given, prior to interview, an information sheet outlining – in clear language – the aims of the research, the interview process and the way in which the interview data would be used. At the interview, the researcher also verbally explained the aims of the project and what participation involved. Each respondent was asked to sign a form confirming consent to participation in the study and (if applicable) audio recording of the interview. It was emphasised to respondents that participation in the interview was entirely voluntary; that they could withdraw at any time; and that no names or other information that could identify them would be included in any report on the study (as has been noted in the

body of the report, we used pseudonyms to preserve their anonymity). Where a defendant was aged under 16, the researcher also obtained consent from the gatekeeper.

### Young witness interviewees

As an exploratory part of the study, we sought to interview a small number of young witnesses (those aged 16 to 17) who had given evidence in cases involving young or adult defendants. Respondents were recruited for interview via the Witness Service at two of the Crown Courts at which we conducted observations. The Witness Service at each of these courts distributed to young witnesses, on behalf of ICPR, a written description of the research and invitation to take part. Within the fieldwork period we received three replies to these invitations from young witnesses and subsequently interviewed them by telephone. The witness interviewees were offered an incentive payment in the form of a £20 gift voucher.

Informed consent for the witness interviews was obtained through distribution of an information sheet explaining the research and what participation would involve. Additionally, we liaised with the Witness Service about the details of the case and any particular sensitivities or vulnerabilities of the respondents. Prior to each telephone interview, the researcher provided a verbal explanation of the research and the aim of the interview, and asked the respondent to confirm consent. As with the defendant interviews, the voluntary and confidential nature of the interview was reiterated to the witness interviewees.

All the interview schedules are provided in Annex C.

### Observations

The Youth and Crown Courts in which the observations took place were selected with a view to ensuring diversity in terms of geographic region and socio-economic and demographic profiles of the local populations. The four Youth and five Crown Courts were thus located in five different regions of England and Wales, and in a mix of large and smaller cities and towns. Observations of a variety of hearings were carried out, including trials, sentencing hearings and plea hearings.

The original intention was that the Youth Court observations would be limited to hearings at which at least one barrister was appearing, to reflect the focus of this review. However, because of the relative infrequency with which barristers appear in the Youth Court and because it was difficult to identify cases involving barristers in advance, the observations proceeded regardless of the professional role of the advocates. In the event, several of the Youth Court observations did include cases in which both barristers and solicitors appeared.

## **Analysis**

The advocates' online survey was administered with the use of Unipark survey software. Responses to the survey were exported from Unipark into the quantitative analysis software package SPSS. Hard-copy survey responses were entered directly into SPSS.

Descriptive statistics (e.g. the proportions of advocates who had and had not received training in youth justice) were used to assess and illustrate the nature and extent of advocates' training, experiences, and knowledge of youth proceedings. Free text responses which were provided to certain survey questions were analysed along with the other qualitative data through use of the qualitative software package NVivo, as outlined below.

The large majority of interviews with advocates, other practitioners and court users were audio-recorded, subject to respondents' consent. The recordings were then either fully transcribed or written up in detail. Hand-written notes on observations were taken and were subsequently written up. The interviews and observations produced a large amount of rich qualitative data, the analysis of which was undertaken with use of the qualitative data software package NVivo. The process of analysis entailed the development and continued elaboration of a coding framework based on the themes that emerged from close readings and re-readings of the interview and observation write-ups and survey findings, and from discussion among the research team. In total the coding framework comprised 72 "nodes" or themes.

## Annex B: Selected survey results

In Chapter One, four charts were used to illustrate the survey results on advocates' confidence in their skills and knowledge. We are including the detailed results here since the charts only showed percentages and not the numbers on which these were based.

**Table B1: Advocates' confidence in their own skills and knowledge**

<b>When practising in the Youth Court, do you think you have sufficient <u>knowledge</u> of the youth justice system to do your job effectively?</b>		
	<b>Number</b>	<b>Percentage</b>
Yes	100	52%
To some extent	80	42%
No	6	3%
Don't know	6	3%
<b>Total</b>	<b>192*</b>	<b>100%</b>
<b>When practising in the Youth Court, do you think you have the necessary <u>skills</u> to communicate effectively with young defendants and witnesses?</b>		
	<b>Number</b>	<b>Percentage</b>
Yes	150	78%
To some extent	41	21%
No	1	-
Don't know	0	-
<b>Total</b>	<b>192*</b>	<b>99%**</b>
<b>When representing defendants aged under 18 in the Crown Court, do you think you have the necessary <u>knowledge</u> to do so effectively?</b>		
	<b>Number</b>	<b>Percentage</b>
Yes	110	74%
To some extent	38	26%
No	1	-
Don't know	0	-
<b>Total</b>	<b>149*</b>	<b>100%</b>
<b>When representing defendants aged under 18 in the Crown Court, do you think you have the necessary <u>skills</u> to do so effectively?</b>		
	<b>Number</b>	<b>Percentage</b>
Yes	121	83%
To some extent	25	17%
No	0	-
Don't know	0	-
<b>Total</b>	<b>146*</b>	<b>100%</b>

\*Totals vary, as missing data and respondents without relevant experience are excluded.

\*\*All percentages are subject to rounding

## Annex C: Questionnaire and interview schedules

### Questionnaire

#### Role Training

1. Are you a:	
Second six pupil	<input type="checkbox"/>
Third six pupil	<input type="checkbox"/>
Fully qualified barrister	<input type="checkbox"/>
	What year were you called to the Bar? .....
	Are you a QC? Yes/No
Chartered legal executive advocate	<input type="checkbox"/>
	What year did you qualify? .....
	What year did you obtain rights of audience? .....
Other	<input type="checkbox"/>
	Please describe: .....
2. Have you ever received any training on representing children and young people (that is, those under aged 18) in the criminal justice system and/or youth justice more generally?	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Don't know/can't remember	<input type="checkbox"/>
	<i>Please proceed to qu. 2a)</i>
	<i>Please go to question 2f)</i>
	<i>Please go to question 2f)</i>

2a) I received training: (Please tick all that apply)	
As mandatory part of legal training	<input type="checkbox"/>
As optional part of legal training	<input type="checkbox"/>
When studying for professional qualification (such as LPC or BPTC)	<input type="checkbox"/>
As part of continuing professional development	<input type="checkbox"/>
Other (please specify):	

2b) Please indicate the topics covered by the training on youth justice and the usefulness of the training on each topic:						
	Very useful	Quite useful	Not very useful	Not at all useful	Can't recall receiving training on this	Haven't received training on this
Special provisions for children and young people at the police station	<input type="checkbox"/>	<input type="checkbox"/>				
Diversion and out of court disposals for children and young people	<input type="checkbox"/>	<input type="checkbox"/>				
Provisions relating to bail and remand for children and young people	<input type="checkbox"/>	<input type="checkbox"/>				
Role and functions of the youth justice system	<input type="checkbox"/>	<input type="checkbox"/>				
Structure of the youth court	<input type="checkbox"/>	<input type="checkbox"/>				

Role of youth offending teams	<input type="checkbox"/>	<input type="checkbox"/>				
Sentencing options for young offenders	<input type="checkbox"/>	<input type="checkbox"/>				
Speech, language & communication needs among children & young people	<input type="checkbox"/>	<input type="checkbox"/>				
<b>2b) [Continued]</b>	Very useful	Quite useful	Not very useful	Not at all useful	Can't recall receiving training on this	Haven't received training on this
Mental health problems among children and young people	<input type="checkbox"/>	<input type="checkbox"/>				
Approaches to questioning young defendants	<input type="checkbox"/>	<input type="checkbox"/>				
Approaches to questioning young witnesses	<input type="checkbox"/>	<input type="checkbox"/>				
Court adaptations for young defendants	<input type="checkbox"/>	<input type="checkbox"/>				
Court adaptations for young witnesses	<input type="checkbox"/>	<input type="checkbox"/>				
Other (please specify) .....	<input type="checkbox"/>	<input type="checkbox"/>				

**2c) Please briefly describe the length and structure of all training received in relation to youth justice:**

<b>2d) Would you like more training on youth justice?</b>		
Yes – definitely	<input type="checkbox"/>	<i>Please proceed to qu. 2e)</i>
Yes – maybe	<input type="checkbox"/>	<i>Please proceed to qu. 2e)</i>
No – probably not	<input type="checkbox"/>	<i>Please go to question 3</i>
No – definitely not	<input type="checkbox"/>	<i>Please go to question 3</i>
Don't know	<input type="checkbox"/>	<i>Please go to question 3</i>

<b>2e) What would you like this training to cover? (Please tick all that apply)</b>	
Special provisions for children and young people at the police station	<input type="checkbox"/>
Diversion and out of court disposals for children and young people	<input type="checkbox"/>
Provisions relating to bail and remand for children and young people	<input type="checkbox"/>
Role and functions of the youth justice system	<input type="checkbox"/>
Structure of the youth court	<input type="checkbox"/>
Role of youth offending teams	<input type="checkbox"/>
Sentencing options for young offenders	<input type="checkbox"/>
Speech, language and communication needs among children and young people	<input type="checkbox"/>
Mental health problems among children and young people	<input type="checkbox"/>

Approaches to questioning young defendants	<input type="checkbox"/>
Approaches to questioning young witnesses	<input type="checkbox"/>
Court adaptations for young defendants	<input type="checkbox"/>
Court adaptations for young witnesses	<input type="checkbox"/>
Other (please specify):	

**\*\*PLEASE GO TO QUESTION 3\*\***

<b>2f) Would you be interested in receiving training on youth justice?</b>		
Yes – definitely	<input type="checkbox"/>	<b><i>Please proceed to qu. 2g)</i></b>
Yes – maybe	<input type="checkbox"/>	<b><i>Please proceed to qu. 2g)</i></b>
No – probably not	<input type="checkbox"/>	<b><i>Please go to question 3</i></b>
No – definitely not	<input type="checkbox"/>	<b><i>Please go to question 3</i></b>
Don't know	<input type="checkbox"/>	<b><i>Please go to question 3</i></b>

<b>2g) What would you like this training to cover? (Please tick all that apply)</b>	
Special provisions for children and young people at the police station	<input type="checkbox"/>
Diversion and out of court disposals for children and young people	<input type="checkbox"/>
Provisions relating to bail and remand for children and young people	<input type="checkbox"/>
Role and functions of the youth justice system	<input type="checkbox"/>
Structure of the youth court	<input type="checkbox"/>
Role of youth offending teams	<input type="checkbox"/>
Sentencing options for young offenders	<input type="checkbox"/>
Speech, language and communication needs among children and young people	<input type="checkbox"/>
Mental health problems among children and young people	<input type="checkbox"/>
Approaches to questioning young defendants	<input type="checkbox"/>
Approaches to questioning young witnesses	<input type="checkbox"/>
Court adaptations for young defendants	<input type="checkbox"/>
Court adaptations for young witnesses	<input type="checkbox"/>
Other (please specify):	

**Advocacy in the Youth Court**

<b>3. Have you ever acted for the defence in Youth Court proceedings?</b>		
Yes <input type="checkbox"/>	On how many occasions have you acted for the defence in Youth Court proceedings?	Only once <input type="checkbox"/>
		2-5 times <input type="checkbox"/>
		More than 5 times <input type="checkbox"/>
	When was the last occasion on which you acted for the defence in Youth Court proceedings?	Within the past year <input type="checkbox"/>
		Between 1 and 5 years ago <input type="checkbox"/>
		Between 5 and 10 years ago <input type="checkbox"/>
		Between 10 and 20 years ago <input type="checkbox"/>
		More than 20 years ago <input type="checkbox"/>
No <input type="checkbox"/>		

4. Have you ever acted for the <u>prosecution</u> in Youth Court proceedings?		
Yes <input type="checkbox"/>	On how many occasions have you acted for the prosecution in Youth Court proceedings?	Only once <input type="checkbox"/>
		2-5 times <input type="checkbox"/>
		More than 5 times <input type="checkbox"/>
	When was the last occasion on which you acted for the prosecution in Youth Court proceedings?	Within the past year <input type="checkbox"/>
		Between 1 and 5 years ago <input type="checkbox"/>
		Between 5 and 10 years ago <input type="checkbox"/>
		Between 10 and 20 years ago <input type="checkbox"/>
		More than 20 years ago <input type="checkbox"/>
No <input type="checkbox"/>		

**\*\*IF YOU'VE SELECTED 'YES' TO QUESTION 3 OR 4, PLEASE PROCEED TO QUESTION 5\*\***

**\*\*IF YOU'VE SELECTED 'NO' TO BOTH QUESTIONS 3 & 4, PLEASE GO TO QUESTION 10\*\***

5. How would you describe the difference between advocacy in the Youth Court and other advocacy?

6. Please describe what motivated you to practise in the Youth Court? (Please tick all that apply)	
I find the work interesting	<input type="checkbox"/>
I like developing my knowledge and skills in this area	<input type="checkbox"/>
It's important and valuable work	<input type="checkbox"/>
It gives me opportunities to develop my professional career	<input type="checkbox"/>
I find the work rewarding	<input type="checkbox"/>
Other (please specify):	

7. When practising in the Youth Court, do you think you have sufficient <u>knowledge</u> of the youth justice system to do your job effectively? (E.g. knowledge relating to youth justice agencies, the structure of the Youth Court, and provisions relating to bail, remand, out of court disposals and sentencing for children and young people.)	
Yes <input type="checkbox"/>	
	Please give examples of any gaps in your knowledge:

To some extent	<input type="checkbox"/>	
No	<input type="checkbox"/>	<i>Please give examples of any gaps in your knowledge:</i>
Don't know	<input type="checkbox"/>	

<b>8. When practising in the Youth Court, do you think you have the necessary <u>skills</u> to communicate effectively with young defendants and witnesses?</b>		
Yes	<input type="checkbox"/>	
To some extent	<input type="checkbox"/>	<i>Please give examples of any gaps in your skills:</i>
No	<input type="checkbox"/>	<i>Please give examples of any gaps in your skills:</i>
Don't know	<input type="checkbox"/>	

<b>9. Would you like to continue to practise in the Youth Court?</b>		
Yes, definitely	<input type="checkbox"/>	<b><i>Please proceed to question 9a)</i></b>
Yes, maybe	<input type="checkbox"/>	<b><i>Please proceed to question 9a)</i></b>
No, probably not	<input type="checkbox"/>	<b><i>Please go to question 9b)</i></b>
No, definitely not	<input type="checkbox"/>	<b><i>Please go to question 9b)</i></b>
Don't know	<input type="checkbox"/>	<b><i>Please go to question 11</i></b>

<b>9a) Please give reasons for wishing to continue to practise in the Youth Court: (Please tick all that apply)</b>	
I find the work interesting	<input type="checkbox"/>
I would like to develop my knowledge and skills in this area	<input type="checkbox"/>
It's important and valuable work	<input type="checkbox"/>
It gives me opportunities to develop my professional career	<input type="checkbox"/>
I find the work rewarding	<input type="checkbox"/>
Other (please specify):	

<b>9b) Please give reasons for not wishing to continue to practise in the Youth Court: (Please tick all that apply)</b>	
I don't find the work interesting	<input type="checkbox"/>
I feel I lack the knowledge and skills to do a good job	<input type="checkbox"/>

I find the work distressing or disturbing	<input type="checkbox"/>
There are unlikely to be opportunities to do more work of this kind	<input type="checkbox"/>
This work does not offer opportunities to develop my professional career	<input type="checkbox"/>
Other (please specify):	

**\*\*PLEASE GO TO QUESTION 11\*\***

**Interest in advocacy in the Youth Court**

<b>10. Would you welcome the opportunity to practise in the Youth Court?</b>	
Yes, definitely <input type="checkbox"/>	<i>Please proceed to question 10a)</i>
Yes, maybe <input type="checkbox"/>	<i>Please proceed to question 10a)</i>
No, probably not <input type="checkbox"/>	<i>Please go to question 10b)</i>
No, definitely not <input type="checkbox"/>	<i>Please go to question 10b)</i>
Don't know <input type="checkbox"/>	<i>Please go to question 11</i>

<b>10a) I would welcome the opportunity to practise in the Youth Court because: (Please tick all that apply)</b>	
I would find the work interesting	<input type="checkbox"/>
I would like to develop my knowledge and skills in this area	<input type="checkbox"/>
It's important and valuable work	<input type="checkbox"/>
It would give me opportunities to develop my professional career	<input type="checkbox"/>
I find the work rewarding	<input type="checkbox"/>
Other (please specify):	
<b>10b) I would not welcome the opportunity to practise in the Youth Court because: (Please tick all that apply)</b>	
I wouldn't find the work interesting	<input type="checkbox"/>
I feel I lack the knowledge and skills to do a good job	<input type="checkbox"/>
I would find the work distressing or disturbing	<input type="checkbox"/>
There are unlikely to be opportunities for this kind of work	<input type="checkbox"/>
This work would not offer opportunities to develop my professional career	<input type="checkbox"/>
Other (please specify):	

**Advocacy in the youth proceedings in the Crown Court**

<b>11. Have you ever represented a defendant aged under 18 in the Crown Court?</b>		
Yes <input type="checkbox"/>	On how many occasions have you represented a defendant	Only once <input type="checkbox"/>
		2-5 times <input type="checkbox"/>
		More than 5 times <input type="checkbox"/>

	aged under 18 in the Crown Court?	
	When was the last occasion on which represented a defendant aged under 18 in the Crown Court?	Within the past year <input type="checkbox"/>
		Between 1 and 5 years ago <input type="checkbox"/>
		Between 5 and 10 years ago <input type="checkbox"/>
		Between 10 and 20 years ago <input type="checkbox"/>
		More than 20 years ago <input type="checkbox"/>
No <input type="checkbox"/>	<b>Please go to question 12</b>	

**11a) When representing defendants aged under 18 in the Crown Court, do you think you have the necessary knowledge to do so effectively? (E.g. knowledge relating to youth justice agencies, the structure of the Youth Court, and provisions relating to bail, remand, out of court disposals and sentencing for children and young people.)**

Yes <input type="checkbox"/>	
To some extent <input type="checkbox"/>	<i>Please give examples of any gaps in your knowledge:</i>
No <input type="checkbox"/>	<i>Please give examples of any gaps in your knowledge:</i>
Don't know <input type="checkbox"/>	

**11b) When representing defendants aged under 18 in the Crown Court, do you think you have the necessary skills to do so effectively?**

Yes <input type="checkbox"/>	
To some extent <input type="checkbox"/>	<i>Please give examples of any gaps in your skills:</i>
No <input type="checkbox"/>	<i>Please give examples of any gaps in your skills:</i>
Don't know <input type="checkbox"/>	

**11c) Do you think that defendants aged under 18 who appear in the Crown Court receive adequate levels of support, where required?**

Yes <input type="checkbox"/>
To some extent <input type="checkbox"/>
No <input type="checkbox"/>
Don't know <input type="checkbox"/>

**11d) What, if any, do you think are the most important forms of support available to defendants aged under 18 who appear in the Crown Court?**

--

**11e) What, if any, do you think are the main gaps in available support for defendants aged under 18 who appear in the Crown Court?**

--

**Components of effective advocacy**

**12. What do you think are the main components of effective advocacy in the criminal courts generally? (Please select the THREE options which you think are most important)**

Knowledge of the law	<input type="checkbox"/>
Awareness of agencies and services outside the justice system	<input type="checkbox"/>
Good oratory	<input type="checkbox"/>
Persuasiveness	<input type="checkbox"/>
Empathy	<input type="checkbox"/>
Continuity in legal representation	<input type="checkbox"/>
Focus and clarity of thought	<input type="checkbox"/>
Careful case preparation	<input type="checkbox"/>
Effective communication with defendants and witnesses	<input type="checkbox"/>
Ability to conduct rigorous cross-examination	<input type="checkbox"/>
Having a rapport with your client	<input type="checkbox"/>
Other (please specify):	<input type="checkbox"/>

**13. What do you think are the main components of effective advocacy in proceedings involving defendants under the age of 18? (Please select the THREE options which you think are most important)**

Knowledge of the law	<input type="checkbox"/>
Awareness of agencies and services outside the justice system	<input type="checkbox"/>

Good oratory	<input type="checkbox"/>
Persuasiveness	<input type="checkbox"/>
Empathy	<input type="checkbox"/>
Continuity in legal representation	<input type="checkbox"/>
Focus and clarity of thought	<input type="checkbox"/>
Careful case preparation	<input type="checkbox"/>
Effective communication with defendants and witnesses	<input type="checkbox"/>
Ability to conduct rigorous cross-examination	<input type="checkbox"/>
Having a rapport with your client	<input type="checkbox"/>
Other (please specify):	<input type="checkbox"/>

<b>14. Do you have any further comments about the issues raised by this questionnaire?</b>

**Would you like to take part in a follow-up interview?**

Researchers from the Institute for Criminal Policy Research would like to conduct some short telephone interviews with advocates to follow up on some of the items in this questionnaire. If you are willing to be contacted by a researcher for an interview, please provide your details below.

***If you do not wish to take part in a follow-up interview, please leave this section blank.***

<b>Name:</b>
<b>Telephone number:</b>
<b>Email address:</b>
<b>Please specify preferred method of contact:</b>
<b>In what geographic area do you generally work?</b>

## **Schedule A: Advocates**

### Respondent's background

- Description of role (include whether work is primarily for defence/prosecution/both and in which court Crown Court/Youth Court/both)
- Length of time in role
- Frequency and nature of appearance in youth proceedings (i.e. whether work is primarily for defence/prosecution/both and in which court - Crown Court/Youth Court/both)

### Knowledge, Skills and Attributes

- What kind of specialist knowledge, skills and attributes are needed for effective advocacy in youth proceedings?
  - In the Youth Court?
  - In the Crown Court?
- To what extent do you think that advocates have such knowledge, skills and attributes?
  - In the Youth Court?
  - In the Crown Court?
- In your experience, are there any differences in the level of knowledge, skills and attributes between Barristers, Solicitors (including Solicitor Advocates), Chartered Legal Executive Advocates?
- If advocates are lacking in the necessary knowledge, skills or attributes, how can this affect proceedings and outcomes?
- What are the different ways of acquiring knowledge, skills and attributes and which ways are most helpful?

### Differences between advocacy in youth proceedings and other advocacy

- Do the qualities required of an advocate in the youth proceedings differ from the qualities required of an advocate in other criminal justice proceedings?
  - If so, how?

### Needs and provision

- How do advocates know if a young defendant has particular needs or is especially vulnerable (including those who are particularly vulnerable)?
  - What kinds of needs or difficulties do young defendants have?
  - How are these needs/vulnerabilities identified? By whom?
- What do you think are the most important forms of provision for supporting young defendants at court?
  - Do you think that these are adequate? Why/why not?
  - How have these changed over time? Do you think these changes have been for the better or not?
  - How can provisions be accessed?

- How do advocates know if a young witness has particular needs or is especially vulnerable?
  - What kinds of needs or difficulties do young witnesses have?
  - How are these needs/vulnerabilities identified? By whom?
- What do you think are the most important forms of provision for supporting young witnesses at court (including those who are particularly vulnerable)?
  - Do you think that these are adequate? Why/why not?
  - How have these changed over time? Do you think these changes have been for the better or not?
  - How can provisions be accessed?
  - What role do defence and prosecution advocates have in ensuring that young witnesses are able to give their best evidence? And to what extent are advocates able to do this?

### Barriers and enablers

- What factors help advocates to do their work well in youth proceedings?
- What makes it difficult for advocates to do their work well in youth proceedings?
- How, if at all, do advocates receive feedback on their strengths and weaknesses and how effective are such mechanisms?

### Training

- What kinds of training in youth justice is available to advocates?
  - About representing young people in the Youth Court
  - About representing young people in the Crown Court
  - About provisions available to young people in the CJS
- Do you think the training available is adequate?
- Do you think that training could be improved? If so, in what ways?
- What is the most effective way of delivering training?

## **Schedule B: Other practitioners**

### Respondent's background

- Description of role
- Length of time in role
- Extent and nature of experience of Youth Court and/or youth proceedings in Crown Court

### Young people in the court process

- In your experience, how do young defendants respond to being at court (Youth Court and/or Crown Court)?

- In your experience, how do young witnesses respond to being at court (Youth Court and/or Crown Court)?
- In your experience, what, if anything, do young defendants find most difficult about appearing at court (Youth Court and/or Crown Court)? And why are these things difficult?
- In your experience, what, if anything, do young witnesses find most difficult about appearing at court (Youth Court and/or Crown Court)? And why are these things difficult?

#### Advocacy in youth proceedings

- What makes a good advocate in the Youth Court/youth proceedings in the Crown Court?
- In your experience, to what extent do advocates in the Youth Court/youth proceedings in the Crown Court have the knowledge, skills and attributes required?
- Where advocates do not have the necessary knowledge, skills attributes, what is the impact of this?
- What are the main factors which limit advocates' development of the necessary knowledge, skills, attributes?
- What can be done to ensure that advocates have the necessary knowledge, skills attributes to practise effectively in youth proceedings?
- Do the qualities required of an advocate in the youth proceedings differ from the qualities required of an advocate in other criminal justice proceedings?
  - If so, how?

### **Schedule C: Young defendants**

#### About you

- Tell me a bit about yourself

#### Background

- Have you been to court before?
- How many times have you been to court?
  - Youth and/or Crown Court
- Have you ever appeared in court as a witness? If so, for each occasion:
  - Defence witness, prosecution witness, complainant?
  - When?
  - Youth or Crown Court?
- Can you tell me about when you last went to court?

### Understanding of the most recent experience (or another relevant example)

- Can you tell me what it was like being in court?
  - How did you feel on the day?
  - Did anyone come with you? If so, who?
  - What were you expecting?
  - How did you feel in court?
  - Who was in the courtroom?
  - Who were you sitting next to in court (your advocate or someone else)?
  - What happened?
  
- Did you understand what was said in court (by the magistrate/ judge; your defence lawyer; the prosecutor; the YOT staff)?

### Experience (most recent/relevant) of defence representation at the Youth/Crown Court

- What did you think of the person representing you?
  - Had you met him/her before?
  - If yes, how many times? When did you first meet him/her? (Was this before court/at court/in the courtroom?)
  - Did you like him/her?
  - Did you feel able to talk to him/her?
  - Do you think s/he listened to you?
  - Was s/he easy to understand?
  - Was s/he polite and respectful towards you?
  - Did s/he help you to understand what was going on in court (and beforehand/afterwards)?
  - Would you have liked him/her to do anything differently?

### Experience (most recent/memorable) of prosecution at the Youth/ Crown Court

- What did you think of the person prosecuting the case?
  - Did you know who this person was? Where were they stood/sat in the room?
  - Was s/he easy to understand?
  - Was s/he polite and respectful towards you?
  - Do you think s/he was fair?

### Conclusion

- If you could choose a lawyer to be in charge of your case at court, what would they be like? (interviewer lays out the below flashcards and asks the young person to pick out the five most important qualities and then order them by importance)

Helps me to understand; similar background; friendly; polite; clever; easy to talk to; let's me have a say; good at their job; same gender; same ethnicity; not too old; listens to me; shows me respect; doesn't judge me; tries to understand my point of view;

interested in me; uses words I can understand; cares about my case; supportive; knows my case; understands the law.

- If you were telling defence lawyers who represent young people how to be good at their jobs, what would you say are the things they need to know and do?
- If you were telling lawyers who prosecute young people how to be good at their jobs, what would you say are things they need to know and do?
- Is there anything that you would like to say about the things that we have talked about?

## **Schedule D: Young witnesses**

### About you (warm up)

- Tell me a bit about yourself

### Background

- Have you ever been to court as a witness before?
- How many times have you been to court as a witness?
- Have you ever appeared in court as a defendant? If so, for each occasion:
  - What type of hearing was this for? Trial/sentencing hearing/both?
  - When?
  - Youth or Crown Court?

### Most recent experience of being a witness

- Can you tell me what it was like to go to court today/on [specified date]?
  - How were you feeling when you arrived at court?
  - What happened when you arrived at court?
  - Did you speak with anyone else before giving evidence?

### Understanding of the most recent experience

- Where did you give evidence? (In court/live-link room/behind a screen)
- Who was in the courtroom?
- Did you understand the questions asked by the prosecution lawyer (the first person who asked you questions)?
- When the prosecution questioned you, did you say what you wanted to say about had happened? If not, why not?

### Experience (most recent or memorable) of prosecution at the Youth/ Crown Court

- What did you think of the person prosecuting the case?

- Had you met him/her before? If yes, how many times?
  - Where was the prosecution lawyer sat/stood in the room? What were they wearing?
  - Was s/he easy to understand? (Why/why not?)
  - Did you feel able to talk to him/her?
  - Do you think s/he listened to you?
  - Was s/he polite and respectful towards you? (Why/why not?)
  - Did you like him/her?
  - Prompt: tell me a bit more about you liked/ didn't like
  - Do you think s/he was fair? (Why/why not?)
  - Did s/he help you to understand what was going on in court (and beforehand/afterwards)?
  - Would you have liked him/her to do anything differently?
- When you were cross-examined by the defence lawyer (the second person to ask you questions), did you understand the questions?
  - Did you answer the questions that the defence lawyer asked you as you wanted to? If not, why not?
  - [If applicable] Did you find it helpful to give evidence [in the live-link room/behind a screen/with an intermediary] and/or an interpreter? If yes, why? If no, why not?

Experience (most recent) of defence lawyer at the Youth/Crown Court

- What did you think of the defence lawyer?
  - Was s/he easy to understand?
  - Was s/he polite and respectful towards you?
  - What did you think of him/her?
  - Do you think s/he was fair?

Conclusion

- Overall, how did you feel when you gave evidence?
- I'm going to read out some qualities that lawyers involved in cases with young people may have, I want you to rate from 1-5 how important you think these qualities are? (1 = least important; 5 = most important)

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