

Principles Paper: Court Solutions for video enabled remand hearings: **Working Group for Children**

Context

The principal aim of the youth justice system is to reduce re-offending by children and to consider the welfare of the child. Because of the COVID-19 pandemic there is a need for the youth justice system to consider how it can best safeguard children, keep professionals safe and administer swift and fair justice. The operational principles below should be used to help professionals to achieve this. The use of the video link in relation to proceedings involving children in police detention is a matter for the judiciary having regard to the interest of justice with these principles and procedures being used to aid with that decision-making process.

Operational principles

The Court shall have regard for the welfare of the child and as such, wherever possible, child-first guiding principles should be applied (see fig.1 below). Decisions made must be in the best interests of each child. Therefore, there is a need for each child and their circumstances to be considered on a case by case basis and there should be no default position that video is the starting position.

The YJB implements and promotes these principles across the entirety of the YJ system, including in supporting children involved in legal proceedings. For these to be applied in practice;

Children must be:

- fairly assessed and represented;
- sufficiently supported;
- able to understand what is happening to them;
- able to fully engage and participate,
- kept safe

In addition to the above there is a need to ensure that children are fully engaged and able to participate in the court process.

CHILD FIRST PRINCIPLE	OBJECTIVE	SIMPLIFIED VERSION
<p>Prioritise the best interests of children, recognising their particular needs, capacities, rights and potential. All work is child-focused and developmentally informed</p>	<p>Contact with the YJS supports and benefits the child and responds to their individual needs</p>	<p>We want to create a system where children...</p> <ul style="list-style-type: none"> - Are treated as children and have their rights upheld
<p>Promote children’s individual strengths and capacities as a means of developing their pro-social identity for sustainable desistance, leading to safer communities and fewer victims. All work is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.</p>	<p>Developing a pro-social identity, creating empowerment and helping children fulfil their potential</p>	<ul style="list-style-type: none"> - Reach their potential
<p>Encourage children’s active participation, engagement and wider social inclusion. All work promotes desistance through co-creation with children</p>	<p>YJB will actively champion CFOS principle</p>	<ul style="list-style-type: none"> - Are fully included and engaged
<p>Promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention. All work minimises criminogenic stigma from contact with the system</p>	<p>Keeping children out of the justice system</p>	<ul style="list-style-type: none"> - Are kept safe and out of the justice system

Procedural Considerations

The table below outlines the options open in relation to the attendance of the Child, YOT and Parent/Guardian when the child is detained in Police Custody for a Court hearing. It does not include reference to defence representative or prosecutor. This will largely follow the adult processes and they will have the ability to attend in person at Court or remotely via CVP, defence representatives may have the ability to conduct the hearing from the Police custody unit.

A child appearing by video link is always at the discretion of the Court having regard to the interest of justice and having considered representations from all the parties to the proceedings including the YOT.

Location	Advantages/Disadvantages
Child – Police Custody (Video) Parent/Guardian - Police Custody (Video) YOT – Police Custody (Video)	<ul style="list-style-type: none"> ● Social Distancing concerns at police station (If parent or guardian is a member of the same household as young person they will not need to be separated in the same way) ● Police ability to accommodate YOT and/or Parent in video Court Room and consultation room ● Requirement for YOT to travel to Police Station/increased risk to health ● Availability of PPE for all parties including Parent/Guardian and solicitor ● Child remains in custody suite for longer than necessary with increased exposure to ‘the life of custody.’ Increased risk factors including potential impact on Mental health ● Risks re lack of understanding and reduced communication, especially for children who have special educational needs ● Potential blurring of line between police and court processes ● No need to transport young person to Court/reduced physical health risk ● Face to face assessment can be conducted by YOT if they are able to attend and it is safe for them to do so ● Young Person has supervision/support if released from Police Custody by parent / guardian
Child – Police Custody (Video) Parent/Guardian - Police Custody (Video) YOT – Court Room or remote (Video)	<ul style="list-style-type: none"> ● Social Distancing concerns at police station ((If parent or guardian is a member of the same household as young person they will not need to be separated in the same way) ● Police ability to accommodate YOT and/or Parent in video Court Room and consultation room ● Risks re lack of understanding and reduced communication, exacerbated for children with special educational needs ● Failure to recognise the emotional needs of the child

	<ul style="list-style-type: none"> ● Potential blurring of line between police and court processes ● Minimises travel for both young person and parent ● Allows young person to be taken home directly from police station without waiting period
<p>Child – Police Custody (Video) Parent/Guardian – Court Room YOT – Police Custody (Video)</p>	<ul style="list-style-type: none"> ● Social Distancing concerns at police station ● Police ability to accommodate YOT in video court room and interview room ● Restriction of parents’ ability to offer support when in remote location ● Parents need to travel from Court to Police station if young person released ● Requirement for YOT to travel to Police Station/increased risk to health ● Risks re lack of understanding and reduced communication ● Potential blurring of line between police and court processes ● No need to transport young person to Court/reduced physical health risk ● Face to face assessment can be conducted by YOT ● Young Person has supervision if released from Police Custody subject to YOT’s other commitments
<p>Child – Police Custody (Video) Parent/Guardian – Court Room YOT – Remote (Video)</p>	<ul style="list-style-type: none"> ● Restriction of parents’ ability to offer support when in remote location ● Parent may need to travel from Court to Police station if young person released which would be additional travel if the parent or guardian has been at the police station as appropriate adult previously ● YOT assessment can only be conducted by phone ● Risks re lack of understanding and reduced communication ● Potential blurring of line between police and court processes ● No need to transport young person to Court/reduced physical health risk ● Reduced risk to members of the YOT
<p>Child – Court Room Parent/Guardian – Court Room YOT – Remote (Video)</p>	<ul style="list-style-type: none"> ● Child required to be transported potential for increased risk to physical health ● Assessment can only be conducted by phone ● Reduced risk to members of the YOT ● Greater opportunity to better support for child through physical presence of Parent / Guardian increases understanding and communication ● Clear demarcation between police / court process

Child – Court Room Parent/Guardian – Court Room YOT – Court Room	<ul style="list-style-type: none"> ● Child required to be transported/increased risk to physical health ● Requirement for YOT to travel to Court Station/increased risk to health ● Social distancing in the Court cells is difficult/No PPE ● Face to Face assessment can be conducted by YOT ● Greater opportunity to better support for child through physical presence of Parent/Guardian and YOT worker maximises understanding and communication ● Clear demarcation between police / court process
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Considerations for local implementation

Police Station

- Can the YOT attend to conduct assessment face to face and appear with child for the hearing?
 - YOT to appear for the hearing may include the ability to connect from their own device from a separate room to the child or young person
 - Availability of own PPE or supplied by the Police
- Can the parent/guardian attend the police station to attend the hearing?
 - This would also provide the ability to be able to escort their child home on release
 - Availability at custody unit of PPE for Parent/Guardian
 - Availability of waiting area until hearing starts
- The ability for YOT make representations to the custody sergeant in relation to appropriateness of video link hearing at all times?
- In comparison to the Court custody suit is the Police station custody environment conducive to the child being detained there for their Court hearing?

Court

- Social distancing practicalities in the Cells and Court Room
 - PPE availability (information from PECS is that PPE cannot be provided to parties attending the cells)
 - Safety provisions at Court in relation to hand sanitizers and the Courts cleaning regime
 - PECS and HMCTS have social distancing provisions in place
- How urgent observations are made known to the Court in good time for child to be taken to Court if necessary
- Ability for PECS to provide phone contact with child in the Court cells if defence and YOT attending from remote location

Procedure

Preparation Checklist <i>(To be prepared by local discussion with Police, defence and YOT before potentially implementing video link hearings for children)</i>	
1. Having regard to local arrangements are video links practical for a child	1. YOT's technical ability to connect to video hearings
2. If video links are practical what are the local limitations?	3. YOT's ability to attend the police station to conduct face to face assessment when necessary 4. Parents ability to attend the police station when necessary or ability to remain if they have attended as an appropriate adult <ul style="list-style-type: none"> ○ Particularly young child requiring escorting home if released

On the day considerations when assessing suitability for a video link hearing	
1. When the police triage a Child for a video hearing the police will have regard to the local limitations highlighted in the Preparation Checklist	<p>Police must notify YOT at earliest opportunity of a child detained for Court including the reason why they haven't been moved to local authority accommodation under Section 38(6) PACE and the proposed method of hearing (Video/Personal Appearance at Court) and obtain their views.</p> <ul style="list-style-type: none"> ● The custody officer must have regard to the principles listed above and any representations made by the YOT and other parties to the proceedings
2. If the YOT recommendation is not followed by the Police they must record their reasons and send them to Court	<ul style="list-style-type: none"> ● Email reasons to Court CVP email address and the Section 38(6) certification for them to be copied to Court Store for the judiciary to consideration ● Inform YOT immediately of their decision ● YOT to email observations to Court CVP email address to be copied to store for judiciary to consideration
3. Court will have regard to any local limitations highlighted in the preparation checklist, all observations received and the principles listed above when making a final decision.	
4. All parties to be notified immediately of Courts decision	<ul style="list-style-type: none"> ● Police ● YOT ● Parent/Guardian ● Prosecution ● Defence Representative ● This is not an exhaustive list

APPENDIX

Supporting references for the Operational Principles

Sentencing Council guidelines June 2017

1.1 When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to the welfare of the child or young person.

YJB COVID guidance

We are supporting HMCTS to consider the implications of changes for children, provide communications to the sector and coordinating court lead contact details to support the roll out of virtual court

UN Convention on the Rights of the Child 1992: all actions concerning children...the best interest of the child shall be a primary consideration.

There are three overarching principles that we should always try and promote: article 2 – children should not be discriminated against, article 3 – actions taken are in the best interests of the child and article 12 – participation – children should be able to participate in decisions which affect them, specifically including legal proceedings. These apply irrespective of the situation and circumstances.

Children Act 2004: LAs have duty to safeguard & promote the welfare of children.

Children Act 1989: LA responsible for welfare & protection of children...when a child is in secure accommodation. Updated through **LASPO 2012** to include (sec.104.1) a Child who is remanded to youth detention accommodation is to be treated as a child who is looked after by the designated authority.