



**My Lawyer, My Rights**

*Enhancing children's rights in criminal proceedings in the EU*

## **The role of the youth lawyer in the juvenile justice system in England and Wales**

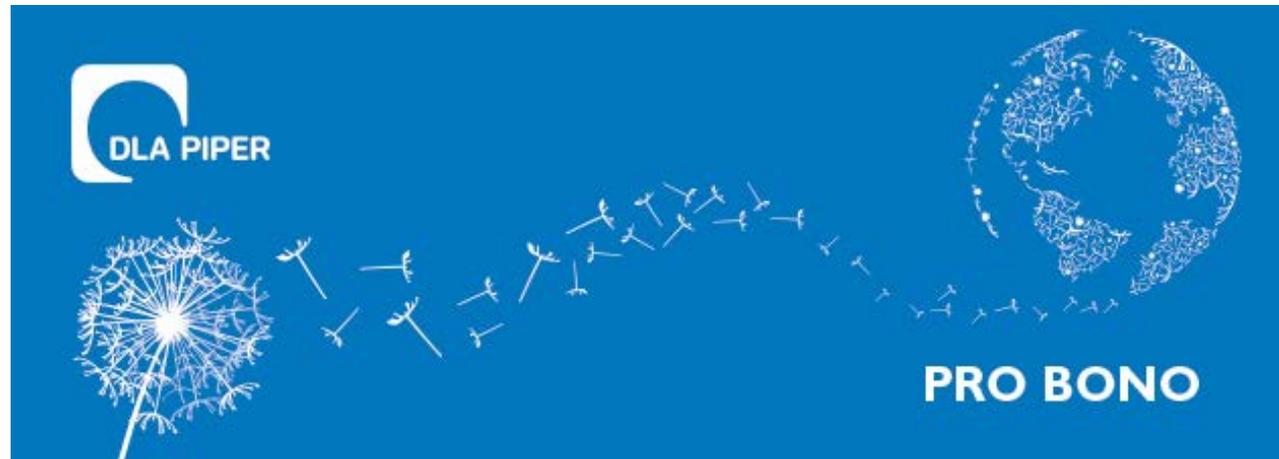
**National report - Desk research  
September 2016 - February 2017**

**DLA Piper**



This research report has been written in the context of the project « My Lawyer, My Rights - Enhancing children's rights in criminal proceedings in the EU », co-financed by the justice program of the European Commission. The content of this report does not necessarily reflect the position of the European Commission and thus does not imply in any way its endorsement of the views expressed in this report. If inaccuracies or mistakes are to be found in this document, they can only be attributed to the authors of this report.

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## **MY LAWYER, MY RIGHTS**

### **NATIONAL RESEARCH QUESTIONNAIRE**

The right to access (free) legal counsel and representation throughout criminal judicial proceedings is essential to enable children to effectively enjoy and exercise their rights. A good defence plays a major role in the measures taken by the judge and the child's ability to reintegrate and rehabilitate after the criminal justice proceedings. All the way through a proceeding, the child needs to know how and when to contact the lawyer, what to expect, what to do if this service is not satisfactory, etc.

Even though the right to legal representation for child suspects is recognized, it is unevenly applied across Europe. Measures taken at the national level are insufficient and the access to a lawyer for children remains a challenge in most European countries.

The "My Lawyer, My Rights" project is seeking to change this by conducting desk-based research, field research and a public campaign to advocate for child-friendly justice in Europe. This project involves the [European Criminal Bar Association](#) and a number of European NGOs, primarily lead by [Defence for Children International](#). The target group is mainly policy makers at national level and youth lawyers, as well as other key actors who may help in the implementation of this goal (bar associations, training institutes, universities, legal clinics, etc.).

DLA Piper Lawyers have been asked to participate in the desk-based National Research component of this project. The main objective of the national research study is to acquire an overview of the right to access to/assistance by a lawyer for children in European Union (EU) countries.

Following the questions set out in this questionnaire, DLA Piper lawyers are asked research and analyse how international and EU procedural safeguards and legal principles relating to the rights of children to a lawyer are applied in their national framework. You are asked to undertake the research and analysis with reference to the country you have signed up for.

Please ensure you read this whole document carefully before starting work on this project.

### **RESEARCH GUIDELINES:**

1. The Pro Bono team will provide you with the matter number to record all your time spent on the project, including planning, pre-reading, research, writing and discussing.
2. Please save the questionnaire template as a new document, within the relevant matter number folder on Worksite, and populate it with the relevant information.
3. Any information should include a reference to its source. Please include footnotes for all references / sources. This includes references to legislation, case law, websites and secondary sources. Please keep the footnotes simple. You should use the basic structure: NAME OF AUTHOR OR ORGANISATION, "TITLE", [DATE IF NECESSARY], [PAGE NUMBER IF RELEVANT], available at HYPERLINK or NAME OF LEGISLATION OR CASE, REFERENCE, available at HYPERLINK.
4. Where certain information is unavailable this should be stated, along with a statement as to whether there is an obligation on the State, relevant regulator or any other body to collect it.
5. If you use acronyms, please provide a full list of acronyms used in your report.

## **KEY DEFINITIONS:**

- **Best interest of the child** =

Article 3, Paragraph 1 of the [Convention on the Rights of the Child](#) states that:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child** shall be a primary consideration.*

The concept of the child's best interests is complex and its content must be determined on a case-by-case basis. To read more on this concept, please refer to [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#).

- **Child** = individual under the age of 18.
- **Criminal proceedings** = Proceedings in court in regards to the prosecution of a person charged or to be charged with the commission of an offence or crime, contemplating the conviction and punishment of the person charged or to be charged. In the framework of this project, we would like you to interpret the term "criminal proceedings" in a broader way that also includes other types of proceedings, (e.g. proceedings which are especially designed for children and which could lead to protective, corrective or educative measures) in cases where a child is alleged to have committed a fact which would be qualified as offence or crime in the criminal system (for adults).
- **Lawyer of the child** = Lawyer appointed to represent the child (suspected or accused) during criminal proceedings.
- **Socio-Legal Defence Centres (SLDC)** = a centre which offers children direct access to justice and social-legal support (including information provision, referrals to other service providers, legal advice and representation).

## ***PART 1: YOUR CONTRIBUTION***

### **PART 1: YOUR CONTRIBUTION**

- i. Please list all the names of the lawyers who worked on this report.**
  - Shaun Moloney
  - Christina Donos
- ii. Please name the country which this report applies to.**
  - England and Wales
- iii. Please provide a full list of acronyms used in your report, if any.**
  - PACE - Police and Criminal Evidence Act 1984
  - SRA - Solicitor's Regulation Authority
  - CDP - Continuing Professional Development
- iv. Please explain the methodology used to complete this report (such as internet research, legal database research, case law research) and any limitations that were experienced when undertaking this research (such as lack of enough data, resources, directives, etc.)**

The methodology used to complete this report consisted of a mixture of internet research, published journals, case law, legislation, as well as interviews.

a. Interviews

- i. Barrister, Just for Kids Law, Kate Aubrey-Johnson [KA]
- ii. Solicitor, Just for Kids Law, Laura Cooper [LC]

**Please keep a list of the most useful materials that you find during your research that are applicable to your country. (we are mainly looking for research studies, analyses, reports, tools, etc. relevant to the rights of access to a lawyer and assistance by a lawyer for children suspected or accused in criminal proceedings at the local/national level (see Part 5)).**

Please see footnotes for comprehensive information.

**PART 2: LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL**

**1. Please research the status of the following treaties / conventions / protocols in your country and complete the table below.**

	Date of signature	Date of ratification	Date of accession	Any reservations or declarations ? If so please state them.
ICCPR	16 September 1968	May 1976	20 August 1976	None
CRC	19 April 1990	16 December 1991	15 January 1992	The United Kingdom ratified the Convention on 16 December 1991, with several declarations and reservations, <sup>[44]</sup> and made its first report to the Committee on the Rights of the Child in January 1995.

			<p>Concerns raised by the Committee included the growth in child poverty and inequality, the extent of violence towards children, the use of custody for young offenders, the low age of criminal responsibility, and the lack of opportunities for children and young people to express views.<sup>[45]</sup> The 2002 report of the Committee expressed similar concerns, including the welfare of children in custody, unequal treatment of asylum seekers, and the negative impact of poverty on children's rights. In September 2008, the UK government decided to withdraw its reservations and agree to the Convention in these respects.<sup>[46][47]</sup></p> <p>The 2002 report's criticism of the legal defence of "reasonable chastisement" of children by parents, which the Committee described as "a serious violation of the dignity of the child",<sup>[48]</sup> was rejected by the UK Government. The Minister for Children, Young People and Families commented that while fewer parents are using smacking as a form of discipline, the majority said they would not support a ban.<sup>[49]</sup></p> <p>In evidence to the Parliamentary <u>Joint Committee on Human Rights</u>, the Committee was criticised by the Family Education Trust for "adopting radical interpretations of the UN Convention on the Rights of the Child in its pursuit of an</p>
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				<p>agenda".<sup>[50]</sup> The Joint Committee's report recommended that "the time has come for the Government to act upon the recommendations of the UN Committee on the Rights of the Child concerning the corporal punishment of children and the incompatibility of the defence of reasonable chastisement with its obligations under the Convention."<sup>[51]</sup> The UK Government responded that "the use of physical punishment is a matter for individual parents to decide".<sup>[52]</sup></p> <p>Although child slavery is difficult to gauge within the UK, child slaves are imported into the UK and sold</p>
The Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)	7 June 2013	<p>At the UK's examination at the Human Rights Council under the Universal Periodic Review in 2012, the UK Government was urged to ratify the new Optional Protocol. Alongside other children's rights alliances and the four Children's Commissioners across the UK, Together is also encouraging the UK and devolved governments to sign up to the Optional Protocol.</p> <p>The Scottish Government has welcomed the Optional Protocol in principle and <i>"would be minded to offer measured support for its signature and ratification in the future."</i> However, the Scottish Government states that before doing so,</p>	N/A	N/A

		<p><i>"it is important to better understand exactly how the UN Committee on the Rights of the Child intends to apply the Protocol."</i></p> <p>In the UNCRC UK draft 5th periodic report to the UN Committee on the Rights of the Child, the UK stated that it is <i>"still considering how this Optional Protocol might add practical value for people in the UK."</i> The UK Government has committed to <i>"keep the matter under review in light of emerging information about its application in practice."</i></p> <p>The UK Government has still not signed OP3 CRC, stating that the UK has effective laws under which individuals may seek enforceable remedies in the courts if their rights have been breached.</p> <p>However, the failure to incorporate the UNCRC into a domestic law means that it cannot be relied on directly in the courts. The importance of giving children the right of individual petition to the UN Committee through the ratification of the Optional Protocol has been highlighted by the UK Joint Committee on Human Rights.</p>		
European Convention on Human and Fundamental Rights	On 4 November 1950 the members of the Council of Europe signed the	The UK was one of the first members of the Council of Europe to ratify the Convention when it passed through Parliament in 1951.	The Convention came into force in 3 September 1953 and three subsequent	However, it was not until 1966 that the UK granted what is known as "individual petition" - the right to take a case to

(ECHR)	European Convention on Human Rights (ECHR).		institutions were entrusted with safeguarding its workings:	<p>Strasbourg.</p> <p>In practical terms, this means that for 36 years the British people have been able to challenge the laws of the state at a European level - albeit a costly and lengthy process.</p> <p>The Human Rights Act 1998 was designed to deal with this situation and allow the British people to seek redress within their own courts.</p> <p><b>Complaints to Strasbourg</b></p> <p>At the European level, the Court can only deal with cases if the defending state has accepted its jurisdiction.</p> <p>The human rights commission was originally set up to receive a complaint from any individual group of individuals or non-governmental organisation which claimed that it had been the victim in a breach of a particular element or elements of the convention.</p> <p>But in November 1998, a reorganised court came into being which took on the role of the commission.</p> <p>Once a complaint has been made, the court's lower bodies investigate the circumstances. If a case is deemed</p>
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				<p>admissible, it can seek to find a settlement between the alleged victim and the defending public authority.</p> <p>If the parties fail to reach a settlement, the case may then progress further to a final judgement by the court.</p> <p>The responsibility for making sure that judgements against states are properly followed lies with the Committee of Ministers of the Council of Europe.</p> <p>The same committee of ministers can ask the court to advise on interpretation of the convention or its protocols.</p>
European Social Charter	18/10/1961	11/07/1962	26/02/1965	<p>The United Kingdom denounced acceptance of Article 8 para. 4 a) as from 26 February 1988. Period covered: 26/02/1988 - Articles concerned : 37</p> <p>The United Kingdom has denounced acceptance of Article 7 para. 8 and Article 8 para. 4 b) as from 26 February 1990.</p>
European Union Charter of Fundamental Rights		<p>In the negotiations leading up to the signing to the <u>Lisbon Treaty</u>, <u>Poland</u> and the <u>United Kingdom</u> secured a protocol to the treaty relating to the application of the Charter of the Fundamental Rights in their respective countries.</p> <p>The protocol, in article 1(1) states that the "Charter does not extend the ability of the Court of Justice of the European</p>		<p>The UK fears that if it becomes legally binding the judgements of the European Court of Justice could force changes to British labour law.</p> <p>It has therefore negotiated a protocol, to be annexed to the EU treaties, which says that:</p>

		<p>Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or actions of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms". Article 1(2) then says that the Title IV of the Charter, which contains economic and social rights, does not create <u>justiciable</u> rights, unless Poland and the UK have provided for such rights in their national laws.</p> <p>Both countries to which the protocol currently applies had different reasons for negotiating the protocol. The United Kingdom originally opposed a legally binding charter over concerns that it would result in a stream of British citizens going to the European Court of Justice in attempts to enforce their Charter rights in the UK,<sup>[13]</sup> and in increased costs for business.</p> <p><sup>[14]</sup>While the British accepted a legally binding rights charter during the negotiations of the failed <u>European Constitution</u>, they negotiated a protocol during the Lisbon negotiations which, according to the then British Minister for Europe, would ensure that the Charter would not extend the powers of the European Court of Justice over United Kingdom law.<sup>[15]</sup></p>		<ul style="list-style-type: none"> <li>• The charter does not extend the ability of the court to find that UK laws are inconsistent with fundamental rights</li> <li>• The charter does not create "justiciable rights applicable to the United Kingdom"</li> </ul> <p>Other governments see the charter as a useful EU addition to the European Convention on Human Rights.</p>
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		<p>Although their problems with the Charter related to its perceived liberal stance on social issues, in September 2007 the Polish government indicated that they wished to be included in the British protocol.<sup>[16]</sup></p> <p>There is considerable debate concerning the legal effect of the protocol. One view, shared by Jan Jirásek,<sup>[17]</sup> is that the protocol is an opt-out that excludes the application of the Charter to Poland and the United Kingdom. Another, shared by Ingolf Pernice, is that the protocol is only an interpretative protocol which will either have limited or no legal consequence.<sup>[18]</sup> Craig and de Burca argue that the protocol is merely declaratory. It says that the "Charter does not extend the ability" of the ECJ or other court to overturn UK or Polish law, but the ECJ already had the power to do this in any case. Accordingly, the Protocol is "unlikely that it will have any significant effect in practice".<sup>[19]</sup></p> <p>In <i>NS v Home Secretary</i>, the <u>European Court of Justice</u> ruled that Article 1(1) of Protocol "explains Article 51 of the Charter with regard to the scope thereof and does not intend to exempt the Republic of Poland or the United Kingdom from the obligation to comply with the provisions of the Charter or to</p>		
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		prevent a court of one of those Member States from ensuring compliance with those provisions". <sup>1201</sup>		
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**2. Are the following instruments of soft law visible/present in your legislation? Are measures taken by your State to promote these instruments (e.g. are they referred to in the Ministries' websites, are there conferences/roundtable discussions organised to promote them, etc.)?**

It has been seen that the UK applies and interprets internationally advocated (yet non-binding) youth justice rights to varying degrees of compliance in relation to the international obligations of the UN and Council of Europe.

**a) Riyadh Guidelines**

The UK outlook on the Riyadh Guidelines is that although this instrument is purely recommendatory and non-binding, it does serve to identify current international thinking on human rights for young people and they represent the minimum recommended standards on youth justice issues. The UK has committed itself to aspire towards fulfilling all the obligations outlined in these instruments.

The age of criminal responsibility in England and Wales was considered 'not acceptable' by the Committee on the Rights of the Child. In order to bring England in line with the rest of Europe, calls were made in 2015 for the UK Government to implement the 2013 recommendations of the Riyadh Guidelines.<sup>1</sup>

**b) UN Basic Principles on the role of the lawyers**

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<sup>1</sup> Arthur, R. (2005) 'The youth justice system in England and Wales: complying with international human rights law', International Family Law, 157-160. <http://hdl.handle.net/10149/112196>

Jonathan Smithers, President of the UK law society, told the Times in 2015 : "Sir, on International Human Rights Day, we reiterate the protections signed up to in the UN basic principles on the role of lawyers. Legal professionals play a vital role upholding human rights. Governments must ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference."<sup>2</sup>

The Basic Principles provide for a right to counsel in criminal cases, and require governments to take steps to ensure equal access to legal services regardless of race, gender, religion or other classification. To achieve this aim, the Basic Principles also call for funding and resources for legal services for the poor. This obligation rests not just on governments, but on the legal profession itself through the work of professional associations and civil society organizations. The Basic Principles also understand that providing services for the poor are insufficient without significant public outreach and education, and thus demand the establishment of such programs, especially directed towards the poor and disadvantaged members of society.<sup>3</sup>

### c) **Havana Rules**

The Havana rules (UN Rules for the Protection of Juveniles Deprived of their Liberty) give minimum standards of reference to professionals involved in the management of the juvenile justice system, but they are non-binding. They seek to uphold the safety and well-being of children in conflict with the law, highlighting that deprivation of liberty should be a last resort in extraordinary cases for the minimum necessary time. The conditions and circumstances of detention should ensure respect for children's rights, and each child must be individually assessed and cared for in line with their needs, status and special requirements. The Rules further address children's rights to education, recreation, religion, health care, and to contact with the wider community, and would require States to provide effective remedies where these rights are breached. Past precedent, however, shows that these standards have not always been met in the UK. For instance, 2009 figures have suggested that the mental state of young offenders is consistently poor. By not caring more carefully for the mental state of young offenders, the UK is has allowed breaches of Havana Rule 31, which states that young offenders have the right to facilities and services that meet their health requirements (which includes their mental health), and CRC Articles 19(1), 24(1),and 27(1), which collectively impose a duty of care upon the UK for the physical and mental health of children in detention. This conduct is also potentially a breach of Article 37(a) and ECHR Article 3 which prohibits degrading and inhuman treatment, as such treatment is a likely cause for such high levels of

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<sup>2</sup> Jonathan Smithers - <http://www.lawsociety.org.uk/news/letters/lawyers-play-a-vital-role-upholding-human-rights/>

<sup>3</sup> Carolyn A Dubay (2013) 'The UN Basic Principles on the Role of Lawyers,' The International Judiciary Academy

depression in child detainees. Although not a binding measure, this low level of care contravenes the European Rules that children in detention should be treated in a manner that does not aggravate the suffering inherent to it, and have their mental integrity protected.<sup>4</sup>

**d) UN Guidelines for Action on Children in the Criminal Justice System**

These Guidelines for Action are aimed not only at States, but also UN entities, NGOs, professional groups, the media, and children. They address children who become involved in the criminal justice system in any capacity, and encourage the full implementation of children's rights in the administration of justice. On a national level, governments are urged to develop separate, child-oriented juvenile justice systems that take the special needs of individual children into account.<sup>5</sup>

**e) General Comments of the Committee on the Right of the Child**

The UN Committee on the Right of the Child is a body of 18 independent experts that monitors the implementation of the Convention on the Rights of the Child (CRC) by its State Parties. The CRC is an international treaty setting out the civil, political, economic, social and cultural rights of all children. By ratifying this Convention in 1991, the UK agreed that public bodies should consider the best interests of the child when doing anything that affects children.<sup>6</sup> More recently and following concluding observations in June 2016, the Commission is implementing a programme of work to make sure that the UK and devolved Governments take concrete action to make the changes recommended by the UN, and improve the implementation of the CRC in the UK. Every five years, the Committee issues a report (known as "Concluding Observations"), complete with recommendations for action. States must publish these recommendations, act on them, and report their progress in their next State Report. The work of the *Equality and Human Rights Commission* will involve engagement with Government, Parliament, Civil Society and other stakeholders. The next State report under CRC is due from the UK Government by January 2022.

**f) UN Principles and Guidelines on access to legal aid in criminal justice systems**

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<sup>4</sup> Caitlin Lisle 'Is the United Kingdom failing its Children? Applying International Youth Justice Standards in a Devolved Legal System,' Westminster Law Review, Volume 3, Issue 2.

<sup>5</sup> Child Rights International Network, <http://www.crin.org/en/guides/legal/child-friendly-justice-and-childrens-rights/other-international-standards>

<sup>6</sup> Equality and Human Rights Commission, <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/convention-rights-child>

The UN Principles and Guidelines on access to legal aid in criminal justice systems were first adopted on 20 December 2012. *Penal Reform International* is an independent non-governmental organisation that advocates for legal representation and adequate legal aid systems. The organisation engages both nationally and internationally to help develop strategies for the successful implementation of UN Guidelines and Principles, via meetings, roundtables, and offering expertise. The organisation also promotes paralegal schemes as an effective and low cost means of providing legal advice and support for defendants where access to lawyers is limited.

**g) Guidelines on a Child Friendly Justice of the CoE**

The Council of Europe has adopted guidelines<sup>7</sup> on child-friendly justice with the aim to direct European governments in their efforts to enhance children's access to justice. The right of any person to have access to justice and to a fair trial, as guaranteed under the ECHR, is necessary in a democratic society and should apply equally to children (taking into account, albeit, their capacity to form their own views). Whilst these guidelines are a non-binding instrument, they build on existing international, European and national standards. As a practical tool, they also present good practices and propose practical solutions to remedy legal inconsistencies. The guidelines are not only a declaration of principles, but aspire to be a guide to the implementation and advancement of internationally agreed and binding standards.

### **PART 3: LEGAL CONTEXT AT THE NATIONAL LEVEL**

#### **Legal and regulatory framework on the right of access to a lawyer/assistance by a lawyer for children suspected or accused in criminal proceedings at the national level.**

The purpose of this section is to explore the legal context at the national level to better understand how the child right to access to a lawyer fits within the national system. You can keep your answers short and high level. Please note that there will be more detailed questions on the content of the law later on.

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<sup>7</sup> Council of Europe (2010) 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice' <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9>

**5.1 Could you briefly give an overview of the juvenile justice system in your country? In your answer, please list the relevant laws which apply in regards to the juvenile justice system in your country. Please state the names and dates of promulgation of the relevant laws. Please provide a very short summary of the preamble of this law.**

The Crime and Disorder Act 1998 lies at the heart of the current youth justice system in the United Kingdom. The Act brought about radical changes following the publishing of a report by the Audit Commission in 1996 entitled 'Misspent Youth',<sup>8</sup> which presented a fairly critical review of the incumbent youth justice system. One of the main criticisms was that the system was too costly, inefficient and ineffective.

In May 1997, there was a change of government. The New Labour administration immediately published a white paper, No More Excuses: a New Approach to Tackling Crime. The title gives away the tone of the changes that the government wanted to make - no more excuses from young 'offenders', and no more excuses for practitioners.

Only a year into the new government, the Crime and Disorder Act 1998 was passed as law. The Act marked the start of a new youth justice system in England and Wales. Certainly, a number of major changes took place then and, indeed, many more have followed.

The principal aim of the youth justice system, is unequivocally stated as reducing offending. In the White Paper that preceded the 1998 Act, it was argued that preventing offending and 'having regard for the welfare of the child' are themselves part of the same process. However, this is clearly a departure from the assumptions informing earlier legislation (for instance, the 1969 Act), and many commentators maintain that one of the major themes in the history of youth justice has been the continuing tension between the idea of punishment and the imperative to safeguard the welfare of the child.<sup>9</sup>

The original statutory partners involved in the establishment of the new Youth Offending Teams (YOTs) were:

- the probation service

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<sup>8</sup>Misspent Youth [http://webarchive.nationalarchives.gov.uk/20091009065536/audit-commission.gov.uk/products/national-report/7c38f5a0-c744-4362-a6c6-90a12d52258d/archive\\_misyth98.pdf](http://webarchive.nationalarchives.gov.uk/20091009065536/audit-commission.gov.uk/products/national-report/7c38f5a0-c744-4362-a6c6-90a12d52258d/archive_misyth98.pdf)

<sup>9</sup> A brief history of the Youth Justice System – Youth Justice Board, 2008

- social services
- education and health
- the police

Benefiting from relatively generous funding and the use of multi-agency partnerships, these teams have grown considerably since 2000 in both their size and the scope of their work.

**5.2 What is the minimum age of criminal responsibility in your country? Are there any exceptions to the minimum age of criminal responsibility? In your answer, please list the relevant law which establishes the minimum age of criminal responsibility. Please state the name and date of promulgation of the relevant law.**

'The rebuttable presumption of criminal law that a child aged 10 or under is incapable of committing an offence is hereby abolished.'

Significantly, the age of criminal responsibility is still the same as it was in 1969, but there is no longer any need for a prosecution to prove that a ten-year-old knows the difference between right and wrong.<sup>10</sup>

### **Age of Criminal Responsibility**

Section 50 of the Children & Young Persons Act 1933 states: "It shall be conclusively presumed that no child under the age of ten years can be guilty of any offence."<sup>11</sup>

### **Definition of 'Children' and 'Young People'**

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<sup>10</sup> The Criminal Responsibility of Children and Young Persons in Germany and England – Thomas Crofts - 2002

<sup>11</sup> Unlocking Criminal Law – Jacqueline Martin

In the criminal justice system a ‘child’ means a person under the age of 14; and ‘young person’ means a person who has attained the age of 14 and is under the age of 18 (see, for example, section 117 of the Crime and Disorder Act 1998). However, for the purposes of the Children Acts 1989 and 2004, a ‘child’ is anyone who has not reached their eighteenth birthday. Although the phrase ‘juvenile’ is still widely used to describe young people under 18, in English, it carries connotations of childish and of immature behaviour which can be seen as labelling and so we are increasingly seeking to use the term ‘young people’.

**5.3 1.2. Directive 2013/48/EU enshrines the right of access to a lawyer. Is this right stated clearly in your legislation? In your domestic legislation, are there any derogations to the Directive and/or any other exceptions to the general right of access to a lawyer ? In your answer, please list the relevant law which enshrines the right of access to a lawyer. Please state the name and date of promulgation of the relevant law.**

**Key Derogation - Ibrahim and Others v the United Kingdom**<sup>12</sup>

There has only been one case to date in which the ECtHR has found ‘compelling reasons’ for restricting the right to exist, and it considered that with the presence of attendant safeguards it was permissible for incriminating statements made by suspects in the absence of a lawyer to be used for a conviction without infringing Article 6 ECHR. 30

It concerned the application of a statutory scheme in the UK which grants police officers powers to conduct a ‘safety interview’, that is, questioning in the absence of a lawyer which is justified by urgent risks to the public. In the aftermath of attempted bombings in London, police used these powers to question several suspects to establish whether there were other unexploded bombs hidden in the underground metro system. The suspects told lies to mislead the police. When the suspects later asserted that their bombs had never been intended to explode, it was pointed out that had this been true, they would have mentioned the fact at the time they were questioned. It was alleged that the use of their statements given in the absence of lawyers infringed Article 6.

The Chamber found that ‘compelling reasons’ had indeed existed for restricting the right. It further found that the admission of the evidence did not lead to a breach of Article 6, as the system was carefully regulated; the evidence was obtained in fair circumstances; there were sufficient procedural safeguards

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<sup>12</sup> CASE OF IBRAHIM AND OTHERS v. THE UNITED KINGDOM. (Applications nos. 50541/08, 50571/08, 50573/08 and 40351/09

including directions given to the jury; and there was other evidence to support the finding of guilt.

**5.4 Is there a difference in your country between the right of access to a lawyer and the right of assistance by a lawyer? If yes, are these rights enacted in the same legislation and please explain how these rights are distinguished.**

According to LC, there does not seem to be a difference in the UK between the right of access to a lawyer and the right of assistance by a lawyer.

**5.5 Is there a legal aid system in your country? If yes, please state the name and date of promulgation of the relevant laws which establish and govern the legal aid system. Please provide a very short summary of the preamble of the law.<sup>13</sup>**

The legal aid system in the UK dates from 1949. The scheme was administered by the Law Society, the professional body which regulates and represents solicitors, until the Legal Aid Act 1988, which established the Legal Aid Board.<sup>14</sup> Following the doubling of the legal aid budget in the early 1990's a review of the system was carried out in 1997, leading to the Access to Justice Act 1999 and the creation of the Legal Services Commission (LSC). The LSC was a Non Departmental Public Body (NDPB) with statutory duties in relation to the Community Legal Service Fund (CLSF) and Criminal Defence Service (CDS), funding legal advice and representation in civil and criminal law.

A subsequent review recommended that the LSC be aligned more closely with the Ministry of Justice (MoJ) and therefore on 1 April 2013 the LSC was abolished as a NDPB as a result of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. An executive agency of the MoJ was created to administer legal aid from 1 April 2013, called the Legal Aid Agency (LAA).

### **LASPO Act 2012**

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<sup>13</sup> User Guide to Legal Aid – gov.uk

As well as creating the LAA, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act also made changes to the scope and eligibility of legal aid and to exceptional case funding. These changes came into effect from 1 April 2013 and so will be reflected in this report.

### **Workload**

For many areas of civil law, the implementation of the LASPO Act led to a reduction of workload. Areas affected include:

- Family – legal aid is now only available for private family law cases (such as contact or divorce) if there is evidence of domestic violence or child abuse and child abduction cases. Legal aid remains available for public family law cases (such as adoption).
- Social Welfare – legal aid has been removed (with some exceptions) for debt, employment, housing and welfare benefits.
- Other non-family – legal aid has been removed (with some exceptions) or reduced for clinical negligence, education and personal injury.
- Tribunals – legal aid has been reduced for immigration work.

### **Exceptional Case Funding (ECF)**

If a case falls outside the scope of legal aid, funding may still be provided if the case is deemed ‘exceptional’. A case will be deemed as such if failure to provide legal aid would be, or would result in, a breach of the individual’s rights under the European Convention of Human Rights. There is a section in this report on ECF applications and determination.

Telephone Gateway

The LASPO Act created a mandatory gateway through the ‘Community Legal Advice’ helpline for those seeking legal advice in relation to debt, special education needs and discrimination claims relating to a breach of the Equality Act 2010. This means that the only way clients can obtain legal aid for these types of cases is by initially calling the helpline. Gateway call operators and specialist advisers will assess the specific needs of callers on a case by case basis and may refer them to a face to face advice service if they consider it necessary.

### **Legal Aid Transformation**

The LASPO Act also required the LAA to implement a number of changes to the way legal aid is administered, through the Legal Aid Reform programme. The Legal Aid Transformation programme has since been put in place to examine the possibilities of further legal aid savings, including the concept of tendering to be a criminal legal aid provider.

As a result the following reforms were effective from 2 December 2013:

- Reform of fees in criminal Very High Cost Cases (VHCCs). On 7 July 2014 temporary arrangements were put in place, under which self-employed barristers were instructed to represent defendants in a number of VHCCs. For more information: [www.justice.gov.uk/legal-aid/news/latest-updates/crime-news/joint-statement-by-the-bar-council,-the-criminal-bar-association,-the-circuit-leaders-and-the-ministry-of-justice-on-vhcc-advocacy](http://www.justice.gov.uk/legal-aid/news/latest-updates/crime-news/joint-statement-by-the-bar-council,-the-criminal-bar-association,-the-circuit-leaders-and-the-ministry-of-justice-on-vhcc-advocacy)
- Changes to the scope of prison law for legal aid
- Changes to the rules for use of multiple advocates for criminal legal aid
- Changes to experts' fees for both civil and criminal law
- Removal of the uplift for permission and appeal work for immigration and asylum law
- Harmonising barrister fees – for civil (non-family) law

The following reforms were effective from 27 January 2014:

- Changes to the Crown Court means test for criminal legal aid
- Removing legal aid for cases judged to have borderline prospects of success

The following reform was effective from 20 March 2014:

- Interim fee cut for criminal legal aid work of 8.75% (excluding VHCCs)

The following reforms were effective from 22 April 2014:

- Changes to the remuneration of Judicial Review cases
- Changes to remuneration schemes to reflect the introduction of a Family Court

- Reduction of the fixed fee paid to providers in family cases covered by the Care Proceedings Graduated Fee Scheme (and the underlying hourly rates) by 10%
- Amendments to private family law children and finance evidence requirements
- A new legal requirement for applicants to attend a mediation information and assessment meeting (MIAM) before making an application to court

More recent changes:

- Changes have been made to mediation funding so that the first mediation session is paid for by the LAA for non-financially eligible parties where the other party is financially eligible for legal aid and the first mediation session after the MIAM takes place on or after 3 November 2014.
- A further fee cut for criminal legal aid work was introduced in July 2015 but subsequently suspended from April 2016.

**5.6 Is there a national monitoring mechanism(s)/body(ies) for the legal aid system that control whether the rights of access and assistance are respected?**

**i.e. Do complaint mechanism(s)/body(ies) exist that would permit a person to make a complaint about his/her lawyer? And do complaint mechanism(s)/body (ies) exist that would permit a person to make a complaint if they cannot get a lawyer through the legal aid system (and are entitled to) ?**

The *Legal Services Act* 2007 established a new framework for the regulation of legal services in England and Wales, and established the Office for Legal Complaints (OLC) to administer an Ombudsman scheme to deal with consumer complaints about legal services. The OLC is an independent body sponsored by the Ministry of Justice. The Legal Ombudsman is responsible for dealing with complaints against lawyers registered in England and Wales. The *Law Society* recommends that in the first instance, you should complain directly to your solicitor (using the complaints handling procedure) prior to contacting the Legal Ombudsman. Alternatively, if the lawyer in question breached the Solicitors Regulation Authority (SRA) Principles, the Ombudsman will direct the claim to the SRA.

Access to Legal Aid is becoming increasingly difficult to obtain and many areas of law have been removed from the scope of legal aid due to the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In order to qualify for Legal Aid<sup>15</sup> in the UK, will need to show that: your case is eligible for legal aid; the problem is serious; and you can't afford to pay for legal costs. If you do not qualify, there are numerous sources of help such as Citizens Advice Bureau, charities which assist specific groups, government-funded advice sites and trade unions. One may also enter into a conditional-fee ('no-win, no-fee') agreement with one of many qualifying legal advice providers found throughout the UK, or use legal-expenses insurance to pay for legal costs. There are no mechanisms that permit a person to make a complaint if they cannot get a lawyer through the legal aid system (and are entitled to). Should an individual not qualify for Legal Aid, since they are not financially eligible or do not pass the 'merits test' for instance, they will need to look for alternative means for bringing their claim forward.

#### **PART 4 – JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL**

Lawyers specialised to represent children -

In certain countries, lawyers who interact with children in the criminal justice system can be required or encouraged to specialise in juvenile justice. This means that lawyers will undertake training to represent children during criminal proceedings.

12 EU Member States have mandatory training requirements on the rights and needs of children for judges.<sup>16</sup> 11 Member States have mandatory training for prosecutors,<sup>17</sup> and 7 Member States mandatory training for defence lawyers.<sup>18</sup> In the Flanders region of Belgium, lawyers can only represent children in criminal proceedings when they receive specialised training on this subject matter delivered by the Flemish Bar Association (these lawyers are referred to as "Youth Lawyers").

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<sup>15</sup> <https://www.gov.uk/legal-aid/overview>

As shown above, there are differences between European countries in the level of specialised training and support (if any) which is provided to lawyers who represent children in criminal proceedings. We would like to know what specialised training and support (mandatory and voluntary) is available to lawyers on this topic and what official measures are taken to ensure that lawyers represent children in a properly adapted way suitable to their specific needs. If your research shows that there are no particular measures are taken to support lawyers who represent children in criminal proceedings, please state this in your report. The focus is on official training and support by the government and/or the local bar association. If you find any training offered by universities and/or by NGOs/Associations you are welcome to include this in your answer.

### **State of play**

- a) **Are lawyers who are specialised to represent children in criminal proceedings recognised in any official manner or do they have a special status? For example, does the local bar association recognise their speciality? In the Flanders region of Belgium, for example, these lawyers are recognised as "Youth Lawyers".**

No, lawyers who are specialised to represent children in criminal proceedings are not recognised in an official manner. However, the Bar Standards Board (BSB) announced their Youth Advocacy Competencies in February 2017, where it agreed new measures to improve standards of advocacy within Youth Courts.<sup>19</sup> The regulator published new guidance for barristers working in youth proceedings based on a set of essential competences that are expected of all advocates working with young people. The Solicitor's Regulation Authority (SRA) have also recognised the specialist nature of youth court proceedings.

Solicitors who deal with matters involving children do not have a unique title per se. The Law Society of England, however, does have a special Children Law Accreditation which covers all types of children law work. Accredited members will have shown, to the satisfaction of the Law Society that they have and will maintain a high level of knowledge, skills, experience and practice in the area of children law and the representation of children.<sup>20</sup>

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<sup>19</sup> Bar Standards Board, <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bsb-announces-new-regulatory-approach-to-improve-advocacy-standards-within-youth-courts/>

<sup>20</sup> Children Law Accreditation – The Law Society - <http://www.lawsociety.org.uk>

All accredited Children Law practitioners also agree to follow the a Law Society Code of Practice. The code outlines the standards of practice and conduct expected of accredited members throughout their accreditation. However, this does not necessarily guarantee expertise in Criminal Proceedings.

A report commissioned by Michael Gove from MPs and peers in 2005 stressed mandatory specialist training for criminal lawyers working with children should be introduced 'without delay', a damning report from MPs and peers on the failings of the youth justice system says today.

The report highlights a lack of specialist professionals with many practitioners, including lawyers and judges, insufficiently trained to recognise young offenders' needs, and lacking knowledge specific to young defendants and youth court law. They conducted a survey of 215 advocates and only a minority of respondents – 29% - could recall receiving any specialist training to prepare them in practice for youth proceedings.

While magistrates and district judges are required to be specially trained, legal practitioners are not. The Bar Standards Board (BSB) has recently announced proposals to ensure that advocates appearing in the youth court or proceedings involving youths are specialists. This means being able to demonstrate knowledge of youth justice law, as well as the ability to engage and communicate with children. This follows research commissioned by the BSB and CILEx Regulation last year, which found evidence of poor advocacy in the youth courts, with very grave consequences for children and young people. It found that many advocates lacked knowledge of youth justice law, procedures and provisions, and struggled to communicate well with young defendants and witnesses.<sup>21</sup>

Training related to child-friendly justice is a mandatory requirement for judges, however, who receive training focused on the rights and needs of children. In addition, public prosecutors who are likely to have contact with children are required to receive training on child-friendly justice.<sup>22</sup>

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<sup>21</sup> The Youth Proceedings Advocacy Review: Final Report 2015– Wigzell, Kirby, Jackson

<sup>22</sup> European Commission (2014) ' Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union <http://www.childreninjudicialproceedings.eu/docs/EU%20Summary.pdf>

**b) If yes to the above question, what is the role of these lawyers at the different stages of the criminal proceeding? Where is it defined? How does it differ from the role of a lawyer who is not specialised to represent children in criminal proceedings ?**

N/A

**c) Does role of a lawyer who is specialised to represent children in criminal proceedings differ according to the age and capacity of the child?**

In the UK, there is no formal recognition that lawyers should be specialised to represent children in criminal proceedings and there is no formal recognition for lawyers that have acquired that specialisation. Broadly speaking, although there are different approaches in dealing with children according to their age and capacity, the underpinning principle is that the children's best interests and rights apply to all ages (the age group 10-18 as a whole). [KA]

**d) In your country, are there any associations/organisations/groups for lawyers who specialise in representing children in criminal proceedings ? (e.g in Belgium, there is the Union of Youth Lawyers (an association organised by the Flemish Bar Association ).<sup>23</sup> If yes, can you please provide some information on the association's activities.**

**Just for Kids Law** provides advocacy, support and assistance to young people in difficulty; particularly those in trouble with the law, looked after children and those at risk of exclusion from school. They combine specialist legal representation (often pro bono) with individualized packages of support to address the multiple and complex issues that our young people face and that prevents them fully engaging within society. Once their lives are stabilized they work with our opportunities program to get into positive activities including work, education or training.

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<sup>23</sup> vzw Unie van Jeugdadvocaten, website at <http://jeugdadvocaat.be/index.php/2015-03-22-14-19-58>

They set up the YJLC (Youth Justice Legal Centre), a website providing information about youth justice law for lawyers, professionals and young people, their families and carers.

British Foundation **Barnardo's** developed the **Children's Advocacy Service** for young people in several institutions for young offenders throughout the UK, providing them with independent advocacy, assisting them with issues relating to welfare, care, treatment and planning for resettlement while they are detained. Besides face-to-face meetings within one week of incarceration, young people can contact the service or rely on a free helpline. The advocacy service helps young people to understand the system and get in contact with the relevant professionals to help them solve their problems.

- e) Is there any official information on how many lawyers are specialised in representing children (particularly in criminal proceedings)?

There are no official figures at this time.

While such figures are not easily attained, figures have shown that 43% of children who go on to be charged do not ask to see a solicitor, and that 10-13-year-olds are the least likely to do so.

Around 40,000 children were dealt with in the criminal courts in 2015, down 69% since 2007.

It should also be noted that the Bar Standards Board has recently announced its intention to introduce a list of youth advocates regarding standards they expect of barristers who represent children. There will be a staged approach and will expect lawyers to register in future. [KA]

- f) Is there any official information on the proportion of lawyers specialised to represent children in criminal proceedings (compared to lawyers who are not specialised in representing children in criminal proceedings)

There are no official figures at this time.

## **2.1. Training**

**a) In your country, is there any training provided for lawyers who (or who wish to) represent children in criminal proceedings?**

According to the survey conducted by The Institute of Criminal Policy Research (ICPR) in 2015, the vast majority of their survey respondents had experience of advocacy in youth proceedings, but only a minority reported that they had received specialist training to prepare them for this aspect of their role as criminal advocates.

Should a lawyer seek to apply for Children Law Accreditation<sup>24</sup> with the Law Society voluntarily, in order to benefit from the specialist accreditation, they will need to undertake and successfully complete a mandatory initial training course.<sup>25</sup> There are approximately 2000 accredited legal professionals at present in the UK.<sup>26</sup>

Holding this accreditation will afford a lawyer the following benefits:

- ensures that clients can confidently select a qualified professional with proven competency in children law proceedings
- confirms your expertise in representing children, allowing you to be instructed by CAFCASS/guardians
- assessment against an accreditation recognised by the Legal Aid Agency, enables you to undertake publicly funded representation of children
- shows that you maintain relevant standards of competency and expertise in the field through re-accreditation
- demonstrates your conformity to a best-practice quality mark that prospective clients can trust

There is also a new national training program that has recently been endorsed. The "Youth Justice Advocacy Training" is a one-day training course provided by the Youth Justice Legal Centre, in association with Just for Kids Law. This is an essential course for all barristers who will be appearing in the youth court and representing children in the adult criminal courts. The Inns of Court College of Advocacy (ICCA) encourages anyone

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<sup>24</sup> <http://www.lawsociety.org.uk/support-services/accreditation/children-law/>

<sup>25</sup> <http://www.lawsociety.org.uk/Support-services/Accreditation/Children-Law/training-and-publications/>

<sup>26</sup> <http://www.lawsociety.org.uk/Support-services/Accreditation/documents/children-law-accredited-members/>

practising in youth justice to undertake this training.<sup>27</sup> The Youth Justice Legal Centre also provides a similar course targeted at solicitors. The course was developed in partnership with the Law Society and is an essential course for all solicitors who will be appearing in the youth court.<sup>28</sup>

**b) Is the training mandatory?**

The training is not mandatory. According to the survey conducted by The Institute of Criminal Policy Research (ICPR) in 2015, among the 63 (of 215) respondents who had received specialist training, 45 stated that this had taken place as part of continuing professional development (CPD). 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.)

**c) Is the training accessible, affordable and/or free?**

According to the survey conducted by The Institute of Criminal Policy Research (ICPR) in 2015, 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.”

For instance, BPP offer the Children Law Accreditation training for a cost of : £630 + VAT for BPP members, and £1260.00 + VAT for BPP non-members. Most believe that this is affordable.

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<sup>27</sup> Youth Justice Legal Centre, <http://www.yjlc.uk/winter-2017-barristers-london>

<sup>28</sup> Youth Justice Legal Centre, <http://www.yjlc.uk/training-for-barristers-spring-2017-london>

**d) Is the training homogeneous and organized at a national level?**

The mandatory initial training course for lawyers wishing to apply for the Children Law Accreditation is organised at a national level and is provided by approved training organisations.<sup>29</sup>

**e) Is there a continuous training in juvenile justice offered/mandated throughout a lawyers' career? What are the requirements?**

There is no continuous training in juvenile justice offered or mandated throughout a lawyers' career.

For judges, however, a continuous training program has been put in place. In most cases, participation in this training is voluntary and the training is often provided in a one-off manner rather than as part of a structured and on-going process of professional development.

Where this training is provided, the training covers child psychology and child welfare in addition to legal aspects. This multi-disciplinary approach to training is recognised as an important pre-condition for the judges and prosecutors concerned to develop an appropriate understanding of the way children experience judicial proceedings.<sup>30</sup>

**Form & content of the training**

**f) Who offers the training? (e.g. the University, bar association, legal aid system, by an NGO or other association, etc.)?**

Training is provided by legal training providers and charities such as YJLC/Just for Kids Law.

The Children Law Accreditation is offered by the Law Society and the training course is provided by one of the following approved training organisations:

- BPP Professional Education (Leeds, London and Manchester)
- Central Law Training Ltd (Birmingham, Leeds, London and Manchester)

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<sup>29</sup> <http://www.lawsociety.org.uk/Support-services/Accreditation/Children-Law/training-and-publications/>

<sup>30</sup> European Commission (2014) 'Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union.'

- MBL Seminars Ltd (Birmingham, Bristol, Cardiff, London, Manchester and Newcastle)
- Datalaw
- SM Lecturing

**g) What is the form of the training? (e.g. day sessions, evening classes, online, self-training, etc.)**

The training session for the Children Law Accreditation at BPP,<sup>31</sup> for instance, involves a three-day training session (9:30am-5pm). The training is face-to-face. Meanwhile, the "Youth Justice Advocacy Training" is a one-day 6-hour training course.

**h) What is the content of the training?**

According to the survey conducted by The Institute of Criminal Policy Research (ICPR) in 2015, the 63 respondents who had received relevant training suggested that 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 outline of the course provided by the Youth Justice Legal Centre is as follows:

- How to communicate and engage effectively with children
- Key youth justice principles and an overview of the youth justice system
- Youth-specific criminal law including out of court disposals, bail and remand, jurisdiction issues, adaptations to the trial process
- The importance of the background and needs of the child
- Specific protections for looked after children and victims of trafficking
- How to identify and address effective participation and fitness to plead issues
- The role of Youth Offending Teams and the Youth Justice Board

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<sup>31</sup><http://www.bppprofessionaldevelopment.com/productdetails.aspx?product=27128&sitting=DEFAULT&location=UK>

- The sentencing framework relating to children
- Legal duties owed to children and other local organisations

**i) What is the length of the training offered?**

The standardised training for the Children Law Accreditation is 18 hours CPD (3 days) at all approved training organisations.

**j) Is it theoretical and/or practical?**

Research suggests that the course combines a mixture of theoretical and practical training. The course is designed to enhance legal knowledge, and look at the broader issues that need to be considered in acquiring good practice in this sensitive practice areas. Case studies will enable participants to apply their knowledge and exchange ideas.

**k) Is it exclusively juridical? Or is it a multidisciplinary training (psycho-socio aspects, how to communicate with children, does the training include a dimension of child support/assistance, etc.)? Are other professionals involved in the training?**

The training is not exclusively juridical. The following elements are discussed in the training provided by Central Law Training for the Children Law Accreditation, for instance:<sup>32</sup>

- Child development - assessing competence of children
- Attachment - good enough parenting
- Indicators of significant harm
- Communicating with children
- Issues of confidentiality and privilege

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<sup>32</sup> Central Law Training, <http://www.clt.co.uk/course/children-law-accreditation-approved-3-day-course/>

- The role and duties of the children's guardian
- The role of the child's solicitor
- Working with the children's guardian
- Advocacy in children's cases

This Law Society approved course is for qualified solicitors and FILEX wishing to represent any party in public law proceedings whether children, adults or local authorities and who wish to apply for membership of the Law Society's Children Law Accreditation Scheme (formerly the Children Panel).

**l) Do children participate in the lawyers' training (e.g. to share their experiences with the lawyers)? How?**

Yes, children participate in the lawyers' training by delivering interactive exercises. [KA]

**m) Are there practical exercises on how to interview children?**

Research suggests that there are practical exercises regarding how to communicate with children.

In the UK (England and Wales), the Ministry of Justice has also developed some guidelines for interviewing children. The 2011 guidelines, "*Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses and guidance on using special measures (ABE)*", are directed at all those involved in the relevant investigations, including the police, adults' and children's social care workers, and members of the legal profession. Children's ABE interviews may also be video recorded and shown later instead of the child's primary testimony.<sup>33</sup>

## **2.2. Materials**

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<sup>33</sup> European Union Agency for Fundamental Rights (2015) 'Child-friendly justice - Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States.'

- a) **Are there any materials (e.g. manuals, self-training tools, reports) that exist at the national level on the role and mission of lawyers who represent children in criminal proceedings?**

The Law Society has posted a list of relevant publications available for purchase at their bookshop that provide practical guidance on current law and procedure for all professionals working on children and/or family law.

- [Family Law Protocol](#)
- [Family Procedure Rules 2010](#)
- [Children and Families Act 2014](#)
- [Good Practice in Child Care Cases](#)
- [Resolution Family Law Handbook](#)
- [Unbundling Family Legal Services Toolkit](#)
- [Related Family and Criminal Proceedings A Good Practice Guide](#)

- b) **Are there any materials (e.g. studies, reports, interviews) that capture the views of lawyers who represent children in criminal proceedings or the views children who have been involved in the criminal justice system (and who were represented by a lawyer)?**

A study summarising the views of children involved with the justice system was published by Dr. Daly et al in 2015.<sup>34</sup> Other materials include the YPAR Report, Taylor Report, and the Carlile Enquiry.

## **PART 5: CHILD'S ACCESS TO A LAWYER**

**Please note that some of the questions in Part 5 are more practical and may not be contained in the legislation or case law. You may be able to find the answers by looking at studies or reports which touch on these issues or doing a Google search. You are welcome to contact any relevant bodies (e.g. ministry of justice, ministry of education, local bar association, legal aid system .etc) to ask these questions. Please undertake the level**

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<sup>34</sup> Council of Europe (2015) 'Challenges to children's rights today: What do children think? - A desktop study on children's views and priorities to inform the next Council of Europe Strategy for the the Rights of the Child.' [https://www.liverpool.ac.uk/media/livacuk/law/european-childrens-rights-unit/Committee.of.Experts.on.the.Council.of.Europe.Strategy.for.the.Rights.of.the.Child.\(DECS.-.ENF\).pdf](https://www.liverpool.ac.uk/media/livacuk/law/european-childrens-rights-unit/Committee.of.Experts.on.the.Council.of.Europe.Strategy.for.the.Rights.of.the.Child.(DECS.-.ENF).pdf)

of research as you believe is necessary and appropriate to the time you can invest in this project. Please state in your answer which method you used to collect the information.

**3. Access to a lawyer for children (suspected or accused) and at all stages of the criminal proceeding (at the police station, at the prosecutor's office and in court)**

**3.1. Information & facilitation**

**3.1.1. Does the State play a role in giving information to the child regarding their right to access a lawyer? (e.g. public campaigns, training in schools, information given to school directors)**

None that are known.

**3.1.2. Are there any organisations or associations that give information and facilitate a child's right to access a lawyer? If there are, what do they do to give information/facilitate the process?**

YJLC / Just for Kids Law

**3.1.3. If the child is deprived of liberty<sup>35</sup> in the context of a criminal proceeding (e.g. held on remand at a prison, held at the police station or a hospital .etc) how does he/she receive information on his/her right to access a lawyer?**

The right of a child to legal assistance is enshrined in the international standards including the CRC. Once arrested or detained, a child is to be advised immediately by the arresting officer or the officers in charge of his or her right to counsel. The child should have a reasonable opportunity to exercise that right. The child must be informed of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice and legal aid in the country and how to obtain it.<sup>36</sup>

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<sup>35</sup> Deprived of liberty = the child is not permitted to leave at will.

<sup>36</sup> Penal Reform International (2013) ' Protecting children's rights in criminal justice systems' <https://www.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%C2%ADHR.pdf>

### **3.1.4. Is there an obligation to provide the information in "child-friendly language"?<sup>37</sup>**

No, there is no direct obligation to provide the information in a "child-friendly language." [KA]

Police officers should be specially instructed and trained in child rights. This is made clear in the Beijing Rules which state that: 'as police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.'

A child's first need is information about the charges against him or her, his or her rights and the process of arrest. In this regard, the police have a duty to inform the child or his or her rights in a manner that the child can understand.

If a child is arrested, police officers must explain to children why they have been apprehended, in a way that they can understand. This means in practice that all information and advice given to a child should be provided in a manner adapted to their age and maturity.<sup>38</sup>

### **3.1.5. If the child cannot speak the official language of the country, is there an obligation to provide the information in the child's mother tongue or in a language spoken/understood by the child?**

PACE Code of Practice C, clause 13.1 states that 'Chief officers are responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who do not understand English.' Clause 13.2 states that 'a person must not be interviewed in the absence of a person capable of interpreting if they have difficulty understanding English, the interviewer cannot speak the person's own language, and/or the person wants the interpreter present.

If the child has difficulty understanding English and the interviewing officer cannot speak their language, an interpreter is provided. The police must not interview the child until the interpreter is present unless a delay would mean an immediate risk of harm to someone or serious loss of or damage to property.<sup>39</sup>

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<sup>37</sup> Please see the definition of "child-friendly language" in the [Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice](#) (pg. 29 & 84).

<sup>38</sup> Penal Reform International (2013) 'Protecting children's rights in criminal justice systems' <https://www.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%20ADHR.pdf>

<sup>39</sup> <https://www.citizensadvice.org.uk/law-and-courts/legal-system/police/police-powers/>

It is also not sufficient to assume that the Appropriate Adult (as defined by NAAN<sup>40</sup>) will understand technical police terms or will be able to translate for the child.<sup>41</sup>

**3.1.6. If the information needs to be translated or a translator needs to be provided, who covers the costs for the interpretation/translation?**

The police should provide the interpretation/translation services free of charge. The state covers the costs. [KA]

**3.2. Child's access to a lawyer**

Please answer the below questions in the context of a child involved in a criminal proceeding in your country.

**3.2.1. Child's choice of a lawyer (outside the legal aid system)**

**a) Can a child choose his/her own lawyer ?**

The child can choose their own lawyer but they are offered "free legal advice." If they say "yes," they are asked if they want their own lawyer or duty. They may not understand that they can ask for their own lawyer. [KA]

According to CAFFCAS, the choice of solicitor is at the guardian's discretion, and the guardian should appoint someone who is most suitable for the case.<sup>42</sup> The child's solicitor takes instructions from the guardian about what to do in the child's best interests, unless the child can show that he/she has enough understanding to give their own instructions.<sup>43</sup>

If the child has a good enough understanding of what the proceedings are all about, s/he can chose to be represented by their own solicitor.

The guardian should be alert to the possibility that an older child may not agree with the guardian's recommendations, and that the child may want to give instructions directly to the solicitor. A child can also write a letter to the judge or ask to speak to the judge directly.

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<sup>40</sup> NAAN <http://www.appropriateadult.org.uk/index.php/about-us/our-work>

<sup>41</sup> All Party Parliamentary Group for Children (2013) 'Children and the Police inquiry: Oral evidence session 2: The detention of young people in police custody.' [https://www.ncb.org.uk/sites/default/files/uploads/documents/Policy\\_docs/evidence\\_2\\_appgc\\_inquiry\\_meeting\\_minutes\\_final.pdf](https://www.ncb.org.uk/sites/default/files/uploads/documents/Policy_docs/evidence_2_appgc_inquiry_meeting_minutes_final.pdf)

<sup>42</sup> [https://www.cafcass.gov.uk/media/284905/guidance\\_to\\_children\\_s\\_guardians\\_on\\_appointing\\_a\\_solicitor.pdf](https://www.cafcass.gov.uk/media/284905/guidance_to_children_s_guardians_on_appointing_a_solicitor.pdf)

<sup>43</sup> <http://childprotectionresource.online/tag/cafcass/>

In *W (A Child)* [2016] EWCA Civ 1051, the Court of Appeal discusses the relevant test to see if a child is capable of instructing their own solicitors. It was decided that if the solicitor thinks that the child's instructions conflict with those received from the guardian, and that the child is mature enough and is capable of understanding his/her own instructions, then the solicitor must conduct proceedings in accordance with the child's instructions (rule 16.28 (2) Family Procedure Rules (FPR)).

- b) Does anyone help the child to choose their lawyer (the child's parents/guardian, an association, school, a special programme or other informal system)?

A parent or guardian may help the child choose their lawyer if they are present, but this is not a general rule. Appropriate Adults are allowed to request free legal advice even if the child declines. [KA]

Please also see 3.2.1. (a).

### **3.2.2. Legal aid system<sup>44</sup>**

- a) **How is the legal aid system organised nationally, regionally or locally? Who is in charge of the management and oversight?**

Legal Aid is administered by the Legal Aid Agency (an executive branch of the Ministry of Justice), and controls the government's legal aid budget.

- b) **How is the system financed?**

In 2009, the government allocated £2bn of taxpayers' money on publicly funded legal advice.<sup>45</sup> The legal aid itself comes in the form of fees paid to legal firms who represent members of the public. However, budgetary cuts have since reduced the amount allocated to legal aid, as well as the areas of law that apply.

- c) **How are lawyers paid?**

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<sup>44</sup> This question builds upon question 0.

<sup>45</sup> Jon Robins (2009) 'Legal aid in 21st-century Britain' <https://www.theguardian.com/money/2009/mar/11/legal-aid-justice-gap>

Legal aid lawyers are paid in accordance with legislation, either following set hourly rates or fees for particular matters. The legislation can be found in the The Civil Legal Aid (Remuneration) Regulations 2013<sup>46</sup> or The Criminal Legal Aid (Remuneration) Regulations 2013.<sup>47</sup>

**d) In which circumstances are children entitled to legal aid?**

People under 18 can receive legal aid, but someone 18 or over must apply on their behalf. For a child under 16, a parent or guardian should apply on their behalf. If someone under 18 needs legal representation in court, their application is assessed considering their own income and capital. For all other levels of legal aid, their parents' or guardian's income and capital is taken into account, except in certain circumstances, for example if there is a conflict of interest between the young person and their parents.<sup>48</sup>

**e) Are there any initiatives (media or educational campaigns .etc) to inform children about the legal aid system?**

There do not seem to be any initiatives informing children about the legal aid system.

**f) In the legal aid system, do lawyers receive a specific training in order to represent children in criminal proceedings?**

No, there is no mandatory specific training for lawyers to represent children in criminal proceedings.

However, should a lawyer seek to apply for Children Law Accreditation<sup>49</sup> with the Law Society at their own accord, in order to benefit from the specialist accreditation, they will need to undertake and successfully complete a mandatory initial training course.<sup>50</sup> There are approximately 2000 accredited legal professionals at present in the UK.<sup>51</sup>

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<sup>46</sup> <http://www.legislation.gov.uk/uksi/2013/422/schedule/1/made>

<sup>47</sup> [http://www.legislation.gov.uk/uksi/2013/435/pdfs/uksi\\_20130435\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/435/pdfs/uksi_20130435_en.pdf)

<sup>48</sup> [www.thlc.co.uk/resources/A\\_Step-by-Step\\_Guide\\_to\\_Legal\\_Aid.pdf](http://www.thlc.co.uk/resources/A_Step-by-Step_Guide_to_Legal_Aid.pdf)

<sup>49</sup> <http://www.lawsociety.org.uk/support-services/accreditation/children-law/>

<sup>50</sup> <http://www.lawsociety.org.uk/Support-services/Accreditation/Children-Law/training-and-publications/>

<sup>51</sup> <http://www.lawsociety.org.uk/Support-services/Accreditation/documents/children-law-accredited-members/>

- g) In the legal aid system, is there any type of registration requirement for lawyers who want to represent children in criminal proceedings (bar association or another body)?**

In the UK, there is no type of registration requirement. However, lawyers could seek Children Law Accreditation offered by the Law Society.

- h) If the child benefits from legal aid, can he/she choose his/her lawyer?**

Yes, once the child is arrested and taken to the police station, the custody sergeant is required to offer the child free legal advice. The child can choose its own lawyer or a duty solicitor that is available on rotation. However, the child may not realise that they can choose their own lawyer, such a lawyer his or her family has used in the past. [KA]

- i) If the child benefits from legal aid, can he/she change lawyer during the same proceeding? In which circumstances?**

It would be difficult for the child to change lawyers during the same proceeding, since a Legal Aid Order and a Certificate relating to the court would have already been issued. Often, the child is tied into the same lawyer, since once the court proceedings have started, it would be hard to change lawyers. [KA]

- j) In reference to question i), can a child make a complaint about his/her lawyer? How?**

The child can make a complaint about his/her lawyer, but there is very little information available with regards to how to go about doing that. It is also very difficult to have the complaints upheld and change solicitors, since there is a high threshold and the courts are unlikely to support this change. [KA]

- k) Is there a mechanism or a rule to avoid conflict of interests between the child and his parents and/or the child and his lawyer?**

People under 18 can receive legal aid, but someone 18 or over must apply on their behalf. For a child under 16, a parent or guardian should apply on their behalf. If someone under 18 needs legal representation in court, their application is assessed considering their own income and capital. For all other levels of legal aid, their parents' or guardian's income and capital is taken into account, except in certain circumstances,

for example if there is a conflict of interest between the young person and their parents.<sup>52</sup>

- l) Is there any official information on how many children use the legal aid system for criminal proceedings? And how many lawyers in the legal aid system represent children in criminal proceedings?**

There are no official statistics regarding these figures.

**3.2.3. Interpretation and translation when meeting with their lawyer**

- a) Does the child have the right to access free interpreter if he/she needs one when meeting with their lawyer?**

Yes, the child has the right of to access a free interpreter if he/she needs one when meeting with their lawyer. [KA/PACE]

- b) Does the child have the right to access free translation of certain documents when meeting with their lawyer? If yes, which documents?**

Yes, the child has the right to access free translation of certain documents when meeting with their lawyer. There will not be an official translation, but an interpreter will be provided to translate the documents so that the lawyer could understand their meaning. [LC]

**3.3. Is the child able to waive his/her right of access to a lawyer?**

Yes, the child is able to waive his/her right of access to a lawyer [KA/PACE]

**4. Assistance by a lawyer to a child**

**4.1. General**

- a) Is there an obligation for the State to provide a lawyer to child in criminal proceedings?**

Yes, but the child is offered legal advice that they can decline. [KA]

- b) If the child does not have a lawyer, will one be assigned to him/her automatically? How is the lawyer assigned?**

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<sup>52</sup> [www.thlc.co.uk/resources/A\\_Step-by-Step\\_Guide\\_to\\_Legal\\_Aid.pdf](http://www.thlc.co.uk/resources/A_Step-by-Step_Guide_to_Legal_Aid.pdf)

Yes and no. The child is offered free legal advice and they can either request a named lawyer or will be offered one through the duty scheme. [KA]

**c) At what stage is the lawyer provided to the client?**

The lawyer is provided to the client at the police station prior to the interview. [KA]

**d) How do children enter into contact with lawyers? Do they receive any help to do so? By whom?**

Children are facilitated by the custody sergeant to enter into contact with lawyers. Therefore, children believe that lawyers work for the police and either don't trust them or don't request them. [KA]

**e) Is the lawyer's presence recorded at investigative or evidence-gathering acts (e.g. questioning, identity parades, fingerprinting, reconstructions of the crime scene .etc) involving the child?**

Yes, everything will be recorded on the custody record. [KA]

**f) Are any other professionals such as social workers or psychologists involved in any parts of investigative or evidence-gathering acts involving the child ?**

All children (aged under 18 years old) are entitled to an Appropriate Adult at the police station. [KA]

**g) If yes to the above, what is their role? How do they engage with lawyers and the competent authorities?**

Once the child is in the police station, a parent, carer or other Appropriate Adult will be provided if they are between 10-17 years of age. Child services have a duty to provide the child with an Appropriate Adult.

The Appropriate Adult can request a lawyer on behalf of the child, and the Legal Aid Agency will pay even if the child refuses this legal advice. This is a mechanism made to ensure that children understand their right to free legal advice.

The child can choose to either be represented by their own (known) lawyer, or a duty solicitor. Children are less likely to ask for a lawyer, since they think that this may prove to be an indication of their guilt, or rather, they believe that the lawyer works for the police. [KA]

- h) What happens if there is no lawyer present and the child has to be assisted? (Will the competent authorities postpone the hearing, the questioning, investigative/ evidence-gathering acts, etc., during which the child must be assisted by a lawyer?)**

The Duty Solicitor Scheme requires a police station accredited representative to arrive within two hours of being notified that the police wish to interview a suspect (double check this!!). However, children often decline free legal advice on the basis that they would have to wait.

It should be noted that the Duty Solicitor Scheme is poorly remunerated and many 'lawyers' are not qualified solicitors, but instead 'police station accredited representatives.' [KA]

#### **4.2. Interpretation and translation at all stages of the proceedings**

- a) At all stages of the criminal proceeding (not just during their meetings with the lawyer), does the child have the right to access free interpreter if she/he needs one? If not all, at which stages?**

Yes, there should be an interpreter or intermediary at the police station if needed. [KA]

- b) At all stages of the criminal proceeding (not just during their meetings with the lawyer), does the child have the right to access free document translations? If not all, at which stages? Of which documents?**

Research suggests that this is not routinely done. [KA]

#### **4.3. At the different stages of the proceeding**

Some of the below questions in 8.3. touch upon obligations on Member States as articulated in *Directive 2016/800* and *Directive 2013/48/EU*. You are being asked to research whether these principles exist in your national legal system. We have provided pinpoint references to the provisions of the Directives which oblige Member States to implement these principles to facilitate your research..

**a) Does the child have the right to meet with his/her lawyer before he/she is questioned by the police or by other law enforcement or judicial authority?<sup>53</sup>**

Yes, the child would get to consult with his/her lawyer prior to being questioned by the police. The lawyer would have access to 'disclosure' from the police, ie the details behind why the child was arrested and what questions the police will be asking in the interview. [LC]

PACE Code of Practice C, clause 6.6 states that 'a detainee who wants legal advice may not be interviewed or continue to be interviewed until they have received such advice,' unless certain exceptions apply. These include, amongst many, reasonable grounds for believing that a delay may lead to interference with evidence, physical harm to other people, or that the delay in awaiting the arrival of their solicitor would cause unreasonable delay to the process of investigation.

**b) Does the lawyer of the child have the right to be present and to provide effective assistance to his/her client when the child is questioned?<sup>54</sup>**

Yes, the lawyer of the child has the right to be present and provide effective assistance to the child whilst the child is being questioned. The lawyer is entitled to participate, since they must protect the child's rights, and guard them from being forced to answer potential questions under undue pressure. [LC]

PACE Code of Practice C, clause 6.8 states that 'a detainee who has been permitted to consult a solicitor shall be entitled on request to have the solicitor present when they are interviewed.' PACE Code of Practice C, clause 6.9-6.11 however, also suggests that a solicitor may be required to leave an interview if their conduct is not considered to be proper, and they may be reported to the SRA. Should a solicitor be asked to leave the interview, the suspect will be given the opportunity to consult another solicitor before the interview continues and that solicitor given an opportunity to be present at the interview.

**c) Is the lawyer allowed to intervene when the child is questioned? How? Where does he/she sit? Can he/she talk to his/her client when he/she is questioned? Is he/she allowed to comment the police report?<sup>55</sup>**

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<sup>53</sup> See: Article 6.3 of *Directive 2016/800*

<sup>54</sup> Effective assistance = in an active way. For example, in Belgium, lawyers were only allowed to sit behind their client and could not intervene and interrupt the questioning. Article 6 (subsections 6.2 and 6.4) of *Directive 2016/800* state that a lawyer is able to participate effectively during questioning. This element of the directive has been transposed into Belgian legislation and now lawyers can now play a more active role in the questioning of their client.

<sup>55</sup> See: *Article 3.3 b) of the Directive 2013/48/EU*

Yes, the lawyer is allowed to intervene when the child is questioned. This is done verbally during the police interview or alternatively, the lawyer can request that the interview be suspended.

The lawyer sits next to the child, and can ask for a consultation with their client.

With regards to the police report, the lawyer is allowed to make representations on what actions the police will take e.g. formal or informal diversion. [KA]

**d) Is the lawyer required to be present upon the carrying out of an investigative or other evidence-gathering act such as identity parades, confrontations or reconstructions of the scene of crime?<sup>56</sup>**

The lawyer is not required to be present upon the carrying out of any investigative or other evidence-gathering acts, but is entitled to be present. [LC]

**e) Does the child have the right to meet in private with his/her lawyer without undue delay after deprivation of liberty?<sup>57</sup>**

Yes, the child has the right to meet in private with his/her lawyer without any undue delay after deprivation of liberty. [KA]

**f) When the child has been summoned to appear before a court having jurisdiction in criminal matters, does he/she have the right to meet in private with his/her lawyer in due time before they appear in court?<sup>58</sup>**

The child has the right to meet in private with his/her lawyer typically on the day of the hearing. [KA]

**4.4. What is the relationship between the lawyer and his/her client (where the client is a child)?**

Please read all references to client below as referring to a client who is a child.

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<sup>56</sup> See: Article 3.3 c) of the Directive 2013/48 and article 6.3 b) of the Directive 2016/800

<sup>57</sup> See: Article 3.2 c) of the Directive 2013/48 and article 6.3 c) of the Directive 2016/800

<sup>58</sup> See: article 3.2 d) of the Directive 2013/48 and article 6.3 d) of the Directive 2016/800)

**Please answer the questions below by summarising your readings from NGO reports or google search. You are welcome to contact any relevant bodies (e.g. department of police, local bar association, legal aid system .etc) to ask these questions. Please state in your answer which method you used to collect the information.**

**a) How does the lawyer and his client communicate? (face-to-face, by phone, by correspondence, other)?**

The lawyer and his/her client can communicate face-to-face, by phone, and/or by correspondence. [KA]

**b) If the child is deprived of liberty in the context of a criminal proceeding (e.g. held on remand at a prison, held at the police station or a hospital .etc), does this affect how the lawyer can communicate with their client?**

No, at the police station, for instance, the lawyer should be allowed to consult with the child for as long as they deem necessary. [KA]

**c) Is the communication between lawyer and client private and confidential?**

Yes, it is subject to legal professional privilege, though there are some exceptions. [KA]

**d) Where can a lawyer and his/her client meet?**

The lawyer and his/her client can meet in the consultation room at the police station. [KA]

**e) When (i.e. at what stage of the proceeding) and how frequently do they enter in contact?**

There are many factors that dictate as to how frequently the lawyer and the child may enter into contact. If the child is charged, for instance, the next time they will have contact will be at court. In some cases, the lawyer would wish to see the child 2-3 times prior to the trial. Therefore, the frequency of contact is different on a case-by-case basis. [LC]

**f) When (i.e. at what stage of the proceeding) and how frequently do they meet face-to-face?**

The lawyer and his/her client can meet face-to-face at the police station, at court, can have a consultation/conference at the solicitor's office or at the prison, and may meet with a barrister at the court or at a conference. [KA]

#### **4.5. Derogation**

These questions refer to the derogations mentioned in article 6.8 of the *Directive 2016/800/EU*.

**a) Do derogations exist to the right to be assisted by a lawyer? In which circumstances?**

Yes, if the child declines free legal advice. [KA]

**b) Have you come across any information claiming that the derogations were used in your country? If yes, please give more information.**

None known. [KA]

#### **5. The best interest of the child<sup>59</sup>**

**a) In a criminal justice proceeding involving a child, who is charged to look for the best interest of the child?**

The police, the court, and the Youth Offending Team. [KA]

**b) Is the child's best interest taken into account in the legislation on the right of access to a lawyer? How?**

No, the legislation does not take into account the child's best interests with regards to the right of access to a lawyer. There is, however, a recommendation in the Taylor report that the child should be automatically given a lawyer. [KA]

Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country. Legal aid provided to children should be prioritised, in the best interests of the child, and be accessible, age-appropriate,

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<sup>59</sup> For more information on the principle of "the best interest of the child" please see the definition section at the beginning of this questionnaire.

multidisciplinary, effective and responsive to the specific legal and social needs of children. (*Beijing Rules, Rule 15*; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Principle 11)

**c) Is the child's best interest taken into account in the legislation on the right of to be assisted by a lawyer? How?**

The child's best interests on the right of to be assisted by a lawyer are not taken into account in the legislation. [KA]

Children should automatically be able get a lawyer to represent them. Given the choice, they are less likely to accept free legal advice. Therefore, to act in the best interests of the child, given their lack of maturity, children should be given access automatically to a specialist lawyer. If a child was to be represented by a non-specialist lawyer, this lawyer may inhibit the best outcome for the child. [KA]

**d) Is the child's best interest taken into account to assess the use of derogations in regards to article 6.8 of the *Directive 2016/800/EU*? How?**

*Directive 2016/800/EU states the following:*

**8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:**

- (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;**
- (b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.**

**Member States shall ensure that the competent authorities, when applying this paragraph, shall take the *child's best interests into account*.**

**A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.**

**3. Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons. In any event, children shall be assisted by a lawyer from whichever of the following points in time is the earliest:**

- (a) before they are questioned by the police or by another law enforcement or judicial authority;**

- (b) upon the carrying out by investigating or other competent authorities of an **investigative** or other evidence-gathering act in accordance with point (c) of paragraph 4;*
- (c) **without undue delay** after deprivation of liberty;*
- (d) where they have been **summoned to appear before a court** having jurisdiction in criminal matters, in due time before they appear before that court.*

There are very specific circumstances in which derogations would take place, and they rarely happen. The best interests of the child should be taken into consideration, but that is not always necessarily the case. There will always be a balance to be considered between the extent of the crime and the child's Best Interests. [LC]

There was a recent cabinet office announcement proclaiming that the EU should always be taken into account. Therefore, the derogation with regards to a child's best interests should have been considered. [KA]

## **PART 6: SOCIO-LEGAL DEFENCE CENTRES**

### **6. Socio-Legal Defence Centres (SLDCs)**

**SLDCs are centres which offer children direct access to justice and corresponding quality social-legal support (including information provision, referrals to other service providers, legal advice and representation). A SLDC is a place where children, as well as adults, who are confronted with children's rights violations can walk in the door to a welcoming environment to report child rights violations (or threats thereto) and be assured of professional and child-focused assistance.<sup>60</sup>**

#### **6.1. Do socio-legal defence centres (or similar structures) exist at a regional or national level?**

Research suggests that SLDCs do not exist in the UK.

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<sup>60</sup> Source: Defence for Children International, "Socio-Legal Defence Centres: A model to realize children's rights"

**6.2. If yes, are there any regional or national laws that establish SLDCs? In your answer, please state the name and date of promulgation of the relevant laws. Please provide a very short summary of the preamble of these relevant laws.**

N/A

**6.3. How do the SLDCs work? How are they organised?**

N/A

**6.4. Who works there?**

N/A

**6.5. How do people know how to reach them?**

N/A

**6.6. How are they financed?**

N/A



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