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Enhancing the quality of legal representation in the Youth Justice System

Gillian Hunter and Nicola Campbell

This project was funded by the **Dawes Trust** and led by the [Youth Justice Legal Centre](#), at [Just for Kids Law](#) in partnership with the [Institute for Crime and Justice Policy Research](#) at [Birkbeck](#). Its overarching aim was to identify what further intervention or training is needed to enhance the quality of legal representation, provided by criminal solicitors **who advise child suspects at the police station and represent child defendants in court**. The work builds on research conducted by ICPR in 2015 for the Bar Standards Board (BSB) and CILEx¹, which explored the quality of advocacy in the youth justice system (YJS). Following ICPR's research, the BSB introduced the Youth Proceedings Competences² and a requirement that pupils and barristers appearing in the Youth Court register they are competent to do so.³ There is currently no equivalent for solicitors.

The project addresses **four questions** - outlined below - to explore the quality of legal advice and representation currently provided by solicitors, to investigate perspectives on the 'competences' required for working effectively in the YJS and any barriers to achieving these, and to identify what is needed to enhance practice.

- What **knowledge, skills and attributes** do criminal defence solicitors need to work effectively with child suspects and defendants?
- To what extent **do criminal solicitors have the requisite knowledge, skills, and attributes?**
- What **factors support or undermine** solicitors' acquisition of the knowledge, skills and attributes for effective practice in the YJS?
- What **specific interventions and additional training** could enhance the quality of solicitors' work with child suspects and defendants?

¹ Wigzell, Kirby and Jacobson, (2015)

² Bar Standards Board, (2017)

³ Youth Justice Legal Centre Updates (2017); BSB publishes Youth Proceedings Competences

Some background

The main aim of the youth justice system in England and Wales is to prevent offending and re-offending by children and young people aged from 10 to 17⁴. The court has a statutory duty to focus on the welfare and rehabilitation of the child.⁵ Guidance on the sentencing of children⁶ promotes an approach that is child rather than offence-focused, endorses taking account of background factors which may contribute to offending, stipulates the need to avoid the ‘unnecessary criminalisation’ of young people and to provide an opportunity for young people to learn from their mistakes.

There has been a significant decline in the size of the youth justice workload in England and Wales over the past 10 or so years, linked to the increased use of pre-court disposals that divert young people from prosecution, as well as falling crime levels. The most recent data⁷, **covering the 12-month period to March 2021**, while affected by the extraordinary conditions caused by the Covid-19 pandemic⁸, indicate that this downward trend is continuing:

- First time entrants to the YJS (8,800) showed a decrease of 20% compared to the previous year (12 months to March 2020) and a fall of 81% compared to March 2011;
- The number of children who received a caution or sentence (15,800) decreased by 17% since March 2020, and fell by 82% compared to March 2011;
- There were around 18,600 children proceeded against at youth courts, representing a 24% decrease since March 2020 and a fall of 80% compared to March 2011;
- The overall number of proven offences committed by children has fallen by 78% compared to 2011. Data on offence profile for more recent years show violence against the person offences are the most common – (30% in 2019; 31% in 2020 and 32% in 2021), followed by motoring offences (9% in 2019; 10% in 2020 and 11% in 2021) and drug offences (9% in 2019 and 10% in 2020 and 2021).⁹

Profile of children in the YJS

The young people who remain in the youth justice system, and especially those appearing at court, tend to be disadvantaged and vulnerable. Looked after children (LAC) are over-represented in the YJS. A review of the links between local authority care and youth custody¹⁰, for example, reported that LAC aged 10 to 17 were five times more likely to be convicted or subject to a final warning or reprimand than other children. Factors including economic disadvantage, low educational attainment - significant

⁴ Crime and Disorder Act 1998 s.37 (1)

⁵ Children and Young Persons Act 1933 s.44 (1)

⁶ Sentencing Council (2017) Sentencing Children and Young People, Definitive Guidance.

⁷ Youth Justice Statistics 2020/21

⁸ Periods of restrictions including court closures, pauses to jury trials, court backlogs, home schooling and reduced social contact are all likely to have contributed to changes in rates and numbers in several key areas.

⁹ Youth Justice Statistics 2020/21, Supplementary Table 4.1.

¹⁰ Prison Reform Trust (2016) In Care, Out of Trouble: How the life chances of children in care can be transformed by protecting them from unnecessary involvement in the criminal justice system. Report of an Independent review chaired by Lord Lamming. London: Prison Reform Trust.

numbers in the YJS are defined as being persistently absent or excluded from mainstream education¹¹ - familial offending, and experience of abuse and neglect, are commonly reported in the background of young people who come before the courts¹². Data also show a high incidence of mental health problems and learning difficulties or disabilities, including speech, language and communication needs.¹³ This underlines the complexities and challenges of advising or representing children in the YJS.

Additionally, there are various well-documented pressures on the wider criminal justice system, including the closure of more than half of all magistrates' courts since 2010, where youth courts are based. This is reported to have disrupted long-established local relationships between youth offending services and the court¹⁴. There are increasing delays between offences and the commencement of court proceedings¹⁵, compounded by the Covid-19 lockdown, which has created a significant backlog, and fee levels for lawyers do not reflect the specialist nature of youth court work; more generally, fees for legal aid funded work are considered to be too low¹⁶. There are also concerns about children's services' limited engagement with the YJS and the reduced funding for youth services in the community¹⁷.

Yet the YJS offers a crucial opportunity for targeted intervention and support to reduce reoffending and future harm in young people's lives. Independent reviews of the YJS¹⁸ have stressed the 'child first' as a guiding principle in youth justice, including during encounters with the police and when in court. It is also recommended that youth court takes a more problem-solving rather than adversarial approach, and research has highlighted the importance of preparing children for court, and of making sure they understand the process and have access to relevant services in the community to support their rehabilitation. Fulfilment of these ambitions requires strong interagency communication and collaboration, and defence solicitors are flagged as key to achieving such change¹⁹.

¹¹ Ministry of Justice and Department for Education (2016) Understanding the Educational Background of Young Offenders. Joint experimental statistical report from the MoJ and DfE.

¹² See for example, Bateman, T (2017) The State of Youth Justice 2017: An overview of trends and developments. London: National Association for Youth Justice. (Chapter 5).

¹³ See for example Campbell and Abbott (2012) Same Old: the experiences of young offenders with mental health needs. Young Minds; Bryan et al (2015) Language difficulties and criminal justice: the need for earlier identification, International Journal of Language and Communication Disorders, 50 (6), 763-775; Speech, Language and Communication Needs identified in YJB survey of practitioners (2012) as a key area for developing and prioritising effective practice.

¹⁴ Time to get it Right (2020) Centre for Justice Innovation and Institute for Crime and Justice Police Research

¹⁵ Youth Justice Statistics 2020/21

¹⁶ Criminal Legal Aid Review (2021)

¹⁷ House of Commons, 'Written Question: Youth offending services: Grants', 5 June 2019, 252658. Local Government Association, 'Councils Warn Against Further Youth Offending Cuts', 9 March 2019.

¹⁸ Carlile (2014); Taylor, (2016); Lammy (2017)

¹⁹ Time to get it Right (2020) Centre for Justice Innovation and Institute for Crime and Justice Police Research

The research

Our research included an **online survey** targeting criminal solicitors and higher court advocates (HCAs). This was disseminated through JfKL and other relevant networks, and with assistance from the Solicitors Regulation Authority (SRA)²⁰.

Whilst the survey was widely promoted and was live for four months between March and July 2022, completion rates were lower than we had hoped. Respondents were trainee and qualified solicitors, HCAs and a range of other professionals who worked in the YJS. 212 people answered the initial survey questions, but the analysis is based on 151 respondents who completed all relevant sections.

1. Survey respondents

Qualified solicitor	40
Trainee solicitor	5
Higher court advocate	35
Other ²¹	71
Total	151

We conducted 19 **key informant interviews** with other professionals who work in the YJS: youth magistrates, including presiding justices (10), a district judge (1), youth offending team court workers (5) and appropriate adults who support children held in police custody (3). These interviews were used to gather wider views on the knowledge, skills and attributes required of criminal solicitors in the YJS, and the extent to which – in these various professionals’ experience – solicitors display these qualities.

We also undertook some limited court observations with youth justice specialist solicitors who were able to advise on the quality of advocacy.

Our analysis draws together the survey and interview findings to highlight common themes and concerns. These served as the basis for a roundtable discussion with key practitioners and the development of a series of recommendations aimed at enhancing the competencies of solicitors working in the YJS.

All the quotations below from solicitors or higher court advocates have been extracted from open-response questions in the online survey. Extracts from other youth justice professionals – unless otherwise stated – are drawn from the key informant interviews.

²⁰ See Appendix 1 for summary of the methods used to target criminal solicitors and encourage participation.

²¹ The ‘other’ category included Youth Offending Team staff (17); Barristers (12), Pupil Barristers (2), CILEx (2); Social Workers (8); Magistrates (3); District Judges (2); an appropriate adult, a registered intermediary, a paralegal and a parent.

Key findings

1. Knowledge, skills and attributes for working in the YJS

The complex needs of many of the children in the YJS, and the system's emphasis on the child rather than the offence, require a defence solicitor to have additional and specialist knowledge, skills and attributes when representing children (as compared to adults). Defence solicitors require a detailed knowledge of the specific criminal law and procedure applicable to children. This includes an understanding of the 'nuances' of youth justice law (such as the specifics of bail and sentencing frameworks) and operational matters (such as the reduced formality of youth court, the role of the youth offending team and children's services). Alongside this legal knowledge, solicitors are required to have an understanding of the welfare needs of their client. This includes understanding the impact of neurodisability, mental health, trauma, neglect, abuse and other adverse childhood experiences regularly present among children in the justice system; the high prevalence of communication needs; and the impact of other factors such as gender, ethnicity, care experience and child criminal exploitation.²²

Three issues were regularly highlighted in definitions of 'a good defence solicitor': communication, information-gathering, and empathy. An overarching concern, which follows from the others, is that effective representation of children in the youth court tends to be more time-consuming and requires a greater understanding of the relevance of background welfare information than is necessary for equivalent work with adult defendants.

Communication

The capacity to adapt communication for children, including those with additional language or communication needs, to ensure that they understand court processes and their legal rights and options, was considered a key skill and crucial to establishing trust:

"To communicate, and the ability to explain things to the young person and to gain their confidence and their family's confidence as well. Because you know there isn't an awful lot of trust in the judicial system and a lot of these children come from complex families that also don't have any trust in the justice system." **[Magistrate]**

"A lot of it is skills about dealing with young people who may have all sorts of problems, you know, an awful lot of children in the youth court have got mental health problems, [are] on the autistic spectrum. A lot of them have ADHD and you know in sort of finding ways to communicate with them and to get the best out of them . It's quite a skill for the lawyer." **[District Judge]**

"Different explanation techniques and manner are required. It's also necessary to involve and explain things to the family." **[Higher Court Advocate]**

²²Sentencing Council, *Sentencing Children and young People Definitive Guideline* (published 2017, revised periodically), paras 1.11 -21

“More patience is required in dealing with child suspects and defendants and an ability to speak to them in a way that gains their trust and facilitates communication generally, rather than simply speaking law to them.” **[Solicitor]**

Information gathering

Magistrates stressed the defence solicitor’s central role in making the court fully aware of the background and welfare needs of the child, in order to assist sentence or bail decision-making. This demands spending time with the child prior to the hearing to build rapport and trust in order to ascertain this background but also being proactive in seeking out relevant information from other agencies, and where appropriate instructing experts to undertake assessments of children. However, several solicitor/HCA survey respondents reported that magistrates can try to ‘hurry things along’ to get through court lists, thus reducing the time a solicitor can spend with the young person before a hearing. Further, it has been noted that the current legal aid fixed fee system can significantly limit the time a solicitor can spend with a young person at any stage in the YJS.²³

“It’s not like in adult court where you’re given the information, you use the information you’re given and you present your case, that’s not enough. You need to do more than that. You need to challenge your social workers... what stage are care proceedings at [or], housing, where is it in the process because social services are quite variable.” **[Magistrate]**

“The best ones have done their homework outside with the youth offending service already.” **[Magistrate]**

“If they [solicitors] haven’t engaged well with them [children], there might be some big piece of information in the background which they haven’t established, and you just wonder...will they have been able to properly represent them because they’ve missed that bit of info.” **[Magistrate]**

In keeping with the less adversarial approach recommended in youth court hearings, there is an emphasis on inter-agency communication to establish the relevant evidence, background information and appropriate action, and the defence solicitor is seen as a key driver of that:

“It needs to be collegiate. It’s teamworking, although it’s a formal environment...The solicitors will interact with the YOS and with social workers and that varies. Some are more proactive than others but it’s the solicitors’ job to put the best foot forward for the client.” **[Magistrate]**

“We generally had quite good relationships. The solicitor will come into the court. They might try and find me. I’ll have a discussion with [solicitor] about the case, what we might be proposing, what the evidence is around that, or I will share with them a copy of the [pre-convictions]... And that’s a good solicitor that knows the case and is, generally, on the same page.” **[YOS]**

“I think once we share information openly and that way it makes the court hearing run a lot smoother ... because we’re not there to build bridges [necessarily], but we’re there to progress cases in the fairest way.” **[YOS]**

²³ Kemp (2020) ‘Digital Legal Rights: Exploring Detainees’ Understanding of the Right to a Lawyer and Potential Barriers to Accessing Legal.

The extract below – concerning the application of curfew conditions – provides an example of how tensions can arise when there is a lack of consensus about a child’s needs. It raises questions about the role of the solicitor in youth court – is it to collaborate with other professionals in devising a response to problems that all parties agree upon or is it to seek the least onerous sentence for the child for whom s/he is advocating? Here a magistrate describes what he perceives as a mis-conceived objection by a defence solicitor to ‘safe-guarding measures’ proposed by the court:

“We might be recommending some welfare measures as well, because sometimes the child goes missing. They may be exploited. We might be putting some curfew conditions in around electronic monitoring or exclusions specifically, to prevent reoffending and also to keep their child safe and some solicitors are in agreement, you know, but we do have the odd solicitors that are strongly opposed... And yes, they're defending their client. You could argue that makes a good solicitor, but sometimes they become part of the problem.” **[Magistrate]**

Another example of possible ‘tension’ was the ‘no comment interview’. This can be advised by a lawyer when a young person is being questioned by police if the charge is not supported or the police lack evidence. This strategy, however, was noted by several magistrates and an AA as potentially disrupting the opportunity for early intervention and the likely diversion from the formal justice system:

“One of the biggest issues amongst magistrates is where defence lawyers advise ‘no comment. Interviews’. When the child and probably the adult with them may never have come into the legal system, where the whole point of the youth justice system is prevention, keeping them out of the justice system. Where you get a no comment interview, they are already creating a dilemma for the bench because of course, as you know from the adult court, you're advised to take adverse inference from a no comment, interview and a lot of these young people would just do better with a bit of straight advice.” **[Magistrate]**

I understand why they would tell someone to go ‘no comment’. I get that if it's not supported and it's usually, you know, common assault against mum or whatever... If the juvenile does say something, he could incriminate himself. I understand that. But sometimes when they have done something and the evidence is there, they'll still advise them to go ‘no comment’. And the problem with that is that had they owned up to it and given a reason why that happened, they probably would have just been sent to [youth offending team]. Now [police] have got to bail them while [they] get more information. **[Appropriate Adult]**

‘Empathy’

The word ‘empathy’ often came up in interviews when respondents discussed the qualities of a ‘good’ defence solicitor. The term was used to refer to having an understanding and some sensitivity to the background circumstances and lives of children in the YJS:

“You've got to have a feel for the sort of backgrounds that these children come from as well, and an open mind, really.... You do have to have a bit of understanding that their world's not necessarily the same as the one that you occupy.” **[District Judge]**

“Our duty solicitor who operates a lot in the Youth Court, brings the same humanity to dealing with his adult clients as he does to dealing with his youth clients.... You know, whether it's youth or adult. You

don't come in [to court] with the view that these are bad people. You know that these are young people who have been formed by their experiences, by the environment that they live in." [Magistrate]

Youth Justice Specialist solicitors

'Dedication' and 'commitment' were also mentioned, and these qualities tended to be associated with the solicitors who were 'regulars' in the local youth courts. One interviewee described an advocate who regularly covered youth court work as a 'specialist solicitor'. Mostly, although not exclusively, poorer quality legal representation was attributed to those solicitors who were less well known to the court or perceived to be 'passing through' rather than having made an active choice to specialise in representing children:

"Most of them in my experience, are very dedicated and are absolutely doing the best for their clients." [Magistrate]

[Solicitors] where I work, who are really good at the job, these are ones who seem very committed in this role because there has been a track record of them often dealing with youths successfully. But you can tell that there's a passion behind it. They enjoy what they do. They're very, very skilled, so it becomes quite natural to them. I think sometimes in any job some people are not there for the long haul." [YOS]

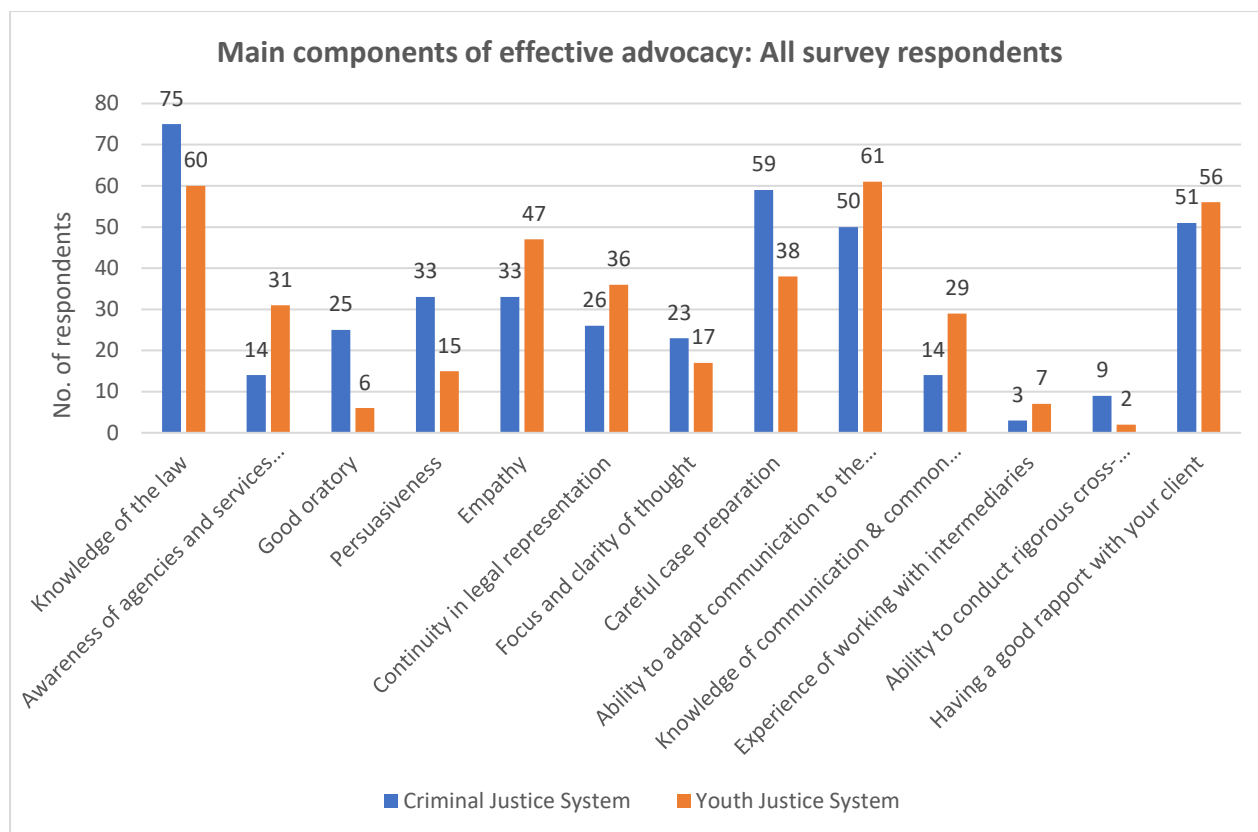
The interview extracts below illustrate the descriptions of being a 'good' defence solicitor in youth court:

"Somebody who talks with conviction, who's confident about mitigation for their client, for their case. ... somebody who's able to demonstrate those really strong ... advocacy skills but equally when they are with their client, they're able to switch off and be a people's person. Just be an ordinary person and really breakdown what's just been said and what their expectations are." [YOS]

"Empathy and understanding about the background that may have led to [offending], because that's an element we have to take into account." [Magistrate]

Components of effective advocacy in youth proceedings (survey sample)

The graph below is based on **all survey respondents (N=151)** and compares views on the key components of effective advocacy in adult and youth proceedings. Respondents were asked to select their top five from a suggested list of advocacy skills. There are some skills that are deemed important for working in either system, such as having a thorough knowledge of the law and a good rapport with one's client. Greater emphasis is given in the YJS to the ability to adapt communication style for vulnerable defendants and witnesses, building rapport and having empathy for a client.



Continuity in legal representation

Having the same solicitor represent a young person throughout the court process was deemed best practice, and essential if solicitors are to fulfil the competencies related to communication, trust-building and information gathering, discussed above:

“I think one of the difficulties you may have is a child [who] doesn't have a consistent solicitor and they may not have representation. There might be a legal aid issue and they may get to court and suddenly you've got the duty solicitor representing them, [who] doesn't know them previously and has spent 15 minutes in a room with them about their case.” [YOS]

“Quite often, actually a bit too often probably...sometimes we're in a meeting [and] a young person has a solicitor who they're familiar with, you know. For whatever reason on the day [of hearing], the solicitor hasn't been able to come down to the court. There's been travel issues or other cases to attend to, which can leave the young person feeling quite a bit abandoned.” [YOS]

2. Experience and training

Few solicitor or HCA survey respondents were working primarily in the YJS. Whether providing advice at the police station (68/80) or defending children in court (61/80), most reported that youth justice work represented less than 25% of their overall workload²⁴.

Whilst we recognise the short-comings of self-assessment of competence or training needs, the majority of solicitor and HCA respondents believed they had the necessary knowledge, skills and attributes to advise children effectively at the police station (56/68) and to represent children in court (49/61).

Open-ended responses to a survey question posed about gaps in knowledge or skills (see below) revealed there may be a disconnect between the self declared level of competence and actual knowledge. Most recognised the desire to have a more thorough understanding of some key aspects of the YJS, such as sentencing, diversion initiatives, bail and remand procedures, and attaining skills to engage and communicate more effectively with children with a range of communication needs. When prompted, most recognised the need for regular refresher training to keep abreast of any legal or policy changes in the YJS.

Reported gaps in knowledge and skills

Advising children at police station:

“I need to understand the available disposals more.” [Solicitor]

“Engaging with young people can be incredibly difficult, especially in the context of different mental health and social and behavioural disorders.” [Solicitor]

“The power to challenge police custody remand when the child is kept at the police station rather than being placed in local authority care.” [Solicitor]

“Diversion initiatives” [Solicitor]

Representing children in court

“Any gaps in knowledge or procedure come about due to a significant reduction in Youth Court sittings, leading to less frequent attendance in the youth court itself.” [Higher Court Advocate]

“More training on bail and sentencing at youth court.” [Higher Court Advocate]

“Specific training on dealing with youth clients would be helpful. Especially in terms of trying to establish whether they fully understand court proceedings. This is most pressing for children who have Special Educational Needs.” [Solicitor]

“I probably need an update as the gaps in my knowledge are more about confidence in light of the ever- changing landscape.” [Solicitor]

²⁴ 49/68 Solicitor/HCA respondents who advised children at the police station said this activity made up less than 25% of their overall workload and this was the case for 47/61 who represented children in youth proceedings. Most respondents reported working in the YJS over the past year (50/68 for advising children at the police station and 51/61 representing children in youth court).

Three-quarters (51) of solicitor/HCA respondents had undertaken some specialist training for working in the YJS. This was mainly attained through optional legal training – there is no mandatory requirement to undertake specialist training - or completed as part of continuous professional development. Learning about youth justice law and systems, and skills for engaging with children and young people, was described as ‘self-directed’ or ‘self-motivated’ in the survey feedback we received:

“Like others, the first time I represented a youth in youth court was the first time I had been there. I have made myself skilled by attending courses and reading.” **[Higher Court Advocate]**

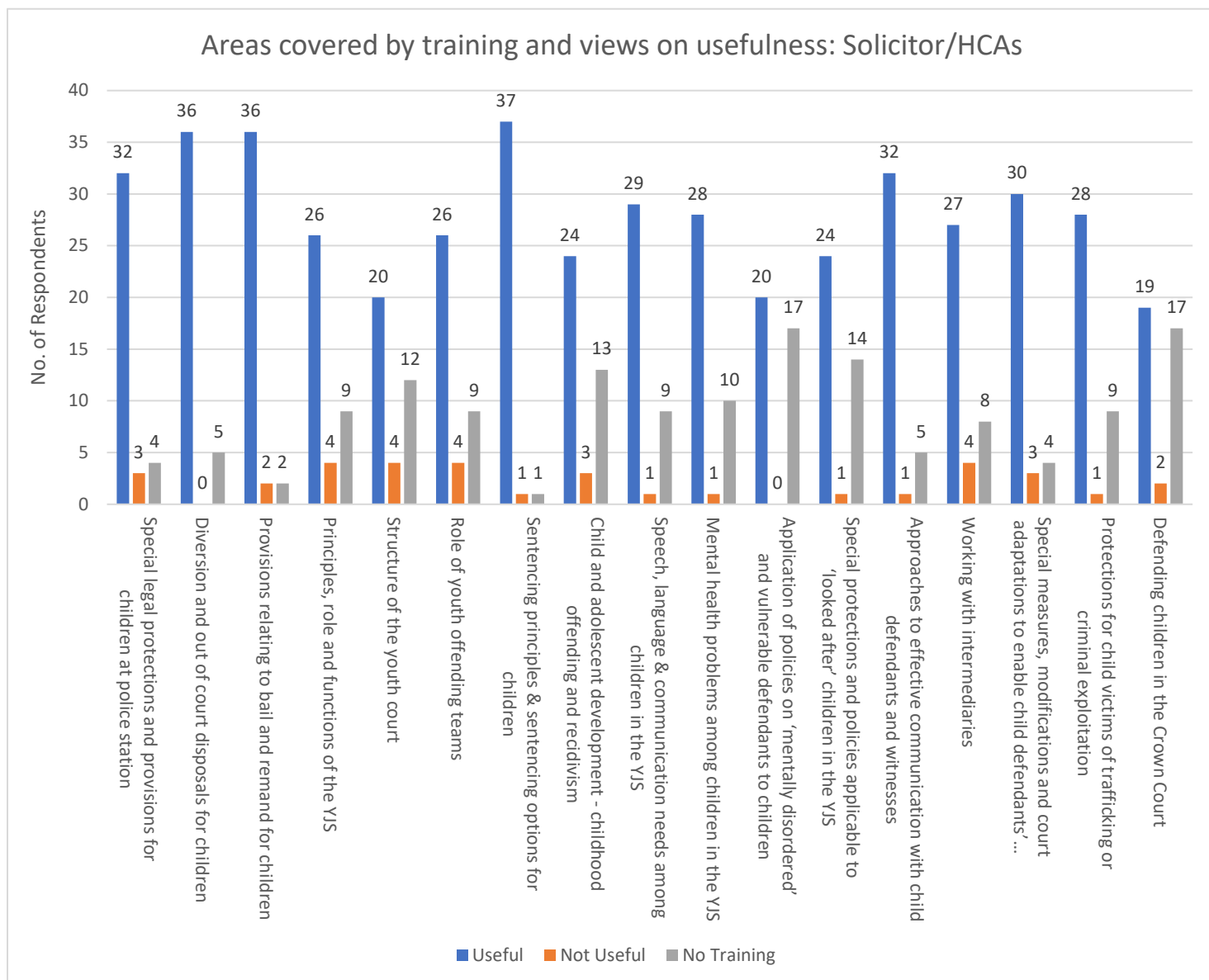
“A lot of the process is self-taught therefore you have as much or as little knowledge as each individual advocate chooses to obtain.” **[Solicitor]**

“I have had no formal training. I have had to learn everything myself using resources such as the Advocates Gateway toolkit and gaining invaluable experience in youth courts.” **[Higher Court Advocate]**

The graph below presents views on the usefulness of training completed in areas relevant to youth justice, and notes where no training had been received. In general terms, solicitors and HCAs appear to value what training they have undertaken. Topics in relation to which fewer respondents had received any training included defending children in the Crown Court, special protections for LAC and how policies on mentally disordered and vulnerable defendants apply to children. There is some appetite for more training in these areas, and in general for training on working in the YJS, although some challenges associated with specialisation – including the costs – were noted, as also discussed in Section 3:

“Further training is paramount and this training ought to be regulated by the SRA. [We need] training that is accessible and affordable for legal aid criminal law firms.” **[Solicitor]**

“There is a lack of support for all defendants, youth or otherwise, on how proceedings work. Too much works on the basis that the lawyers will explain it afterwards.” **[Higher Court Advocate]**



Training on child criminal exploitation

One theme that regularly emerged – largely unprompted - in our interviews with YOS and judiciary and was raised in some of the open survey questions, was the application of the Modern Slavery Act (2015) and the national referral mechanism process²⁵, in cases where criminal exploitation was suspected. The main issues included: long delays to NRM decision-making which can hold up cases and keep children in a state of limbo; a perception that referrals to the NRM were not always appropriate; and the need for solicitors to provide better evidence to support the referral. It was also

²⁵ The national referral mechanism is the process for identifying victims of human trafficking and modern-day slavery and notifying relevant authorities to ensure support and to prevent prosecution for criminal behaviour resulting from a child being trafficked or criminally exploited. The NRM is the process by which a division of the Home Office, the Single Competent Authority (SCA), receives and investigates referrals. The SCA is then empowered to determine whether a child is a victim of modern slavery. (See [National Referral Mechanism \(NRM\) | Youth Justice Legal Centre \(yjlc.uk\)](#)).

noted that the Modern Slavery Act and NRM - as originally conceived – were not designed to address ‘home-grown’ child criminal exploitation in relation to ‘county lines drug dealing’:

“Some of those referrals I think are somewhat spurious. I think defence lawyers do jump on the bandwagon a bit.” **[Magistrate]**

“I do find that the solicitors could ... give a bit more kind of context and details as to the whole NRM referral. It's very basic information that the solicitors often convey to the court... There's an NRM referral, the dates...then waiting for a a positive, conclusive decision and that's kind of it. But there's a lot of information that goes into it.” **[Magistrate]**

A referral for them to then consider and determine whether they are victim of modern slavery, and I think that is something that the solicitors definitely lack in information-sharing to the court. **[YOS]**

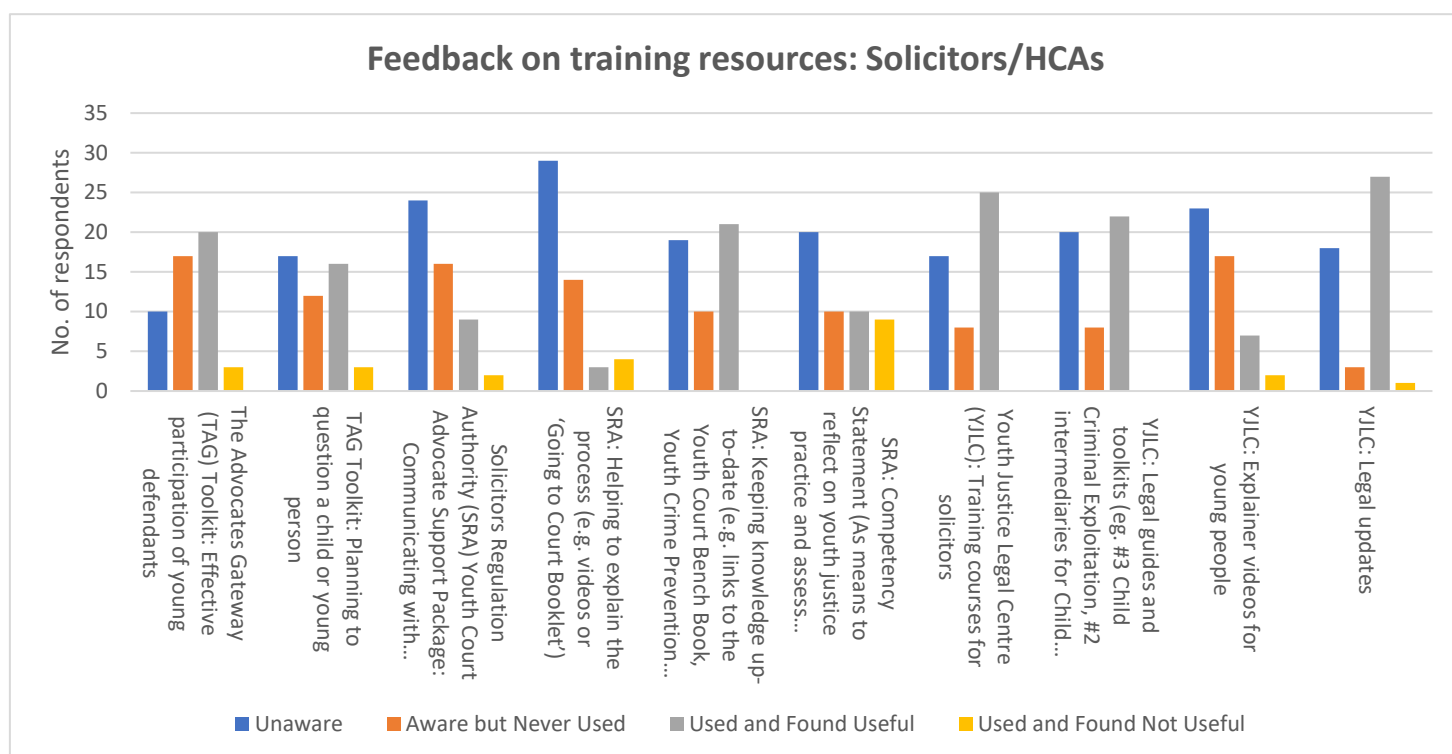
“In fairness, we have to accept that the national referral mechanism was set-up under modern day slavery, and it was really for things like exploited sex workers or gangmasters and it then sort of out of nowhere came it's use [for] homegrown exploited children who, you know, [were involved in] county lines drug dealing and...It was never set-up as a resource to deal with the young people.” **[Magistrate]**

Several solicitor/HCA survey respondents highlighted a lack of awareness or understanding of the risk of criminal exploitation among other CJS professionals, including police and prosecutors (see also Section 3):

“I find that often, guidance is not followed and that in particular, children and young people are not referred to the NRM until they are charged, and defence lawyers request it. This is despite the circumstances of offences quite clearly bring indicative, or at least raising concerns, of child criminal exploitation.” **[Higher Court Advocate]**

Resources

The graph below details feedback about various sources of guidance and training that are currently available to improve knowledge, skills, and competencies for practising in the YJS. This graph compiled from survey responses demonstrates that solicitor and HCA respondents are often unaware or report never having used many of these resources.



3. Challenges

We have established in **Section 1**, that solicitors and HCAs recognise there are specialist knowledge and skills required for effectively advising and representing young people in the YJS, and that these differ from the competencies required when representing adults. Solicitor/HCA survey respondents reported mainly positive reasons for working in the YJS. Based on 50 respondents who answered a question that proposed various reasons or motivations for working in the YJS, three-quarters (36) highlighted the importance and value of the work, two-thirds (32) said it was interesting and rewarding but 19 said they did it because it was allocated to them.

Funding issues

We also asked in both the survey and in interviews about the challenges and barriers that might prevent solicitors from choosing to work in the YJS or attaining the appropriate knowledge and skills. Pay rates were mentioned. Recommendations in the recent independent review of criminal legal aid²⁶ noted that pay levels should reflect the level of specialisation required for working in the YJS, and this sentiment was shared with survey respondents and some of the interviewees:

²⁶ Criminal Legal Aid Review (2021)

“If you want better youth court staff, [then] bring our pay up to date.” **[Higher Court Advocate]**

“In dealing with all clients in criminal justice – there is insufficient funding for legal representation – this prevents us from keeping up with legal updates, training, competence requirements, because of the busy caseloads to manage.” **[Solicitor]**

“The cases we're dealing with are extremely serious. You know, obviously the barristers are striking about pay rates, but you know solicitors are in the same boat really, their rates haven't gone up for many years ...I mean, there are some extremely good lawyers in the youth justice system that do it because they care about the kids and they're really good at it. But also, there's a problem in either attracting or retaining the sort of younger talent, really.” **[District Judge]**

“I do have a huge amount of sympathy because, you know, they are very hard pushed lot. You know, they could be down at the blinking police station at 3:00 o'clock in the morning, and then they've, you know, they've got things in their diary for the next day or whatever.” **[Magistrate]**

Volume of cases

The reduction in youth court cases means there are fewer opportunities for solicitors to gain experience - and that was also sometimes the case for magistrates who can struggle to achieve their minimum sittings. However, as one magistrate interviewee noted:

“That doesn't reflect on the time that we are spending in court. We are spending almost as much time because the nature of the case that is coming in, is infinitely more complex and more serious.”

It does mean, however, that the quality of legal representation and any training needs are likely to differ by geographic area. Busier youth courts in urban centres potentially offer greater opportunities to build expertise:

“The motivation in terms of ability to progress in your career. And as we said before, the limited amount of work, I mean, if you're in a big city, then you will probably encounter better youth lawyers because ...in [City] there's a youth court every day you know.” **[District Judge]**

The extract below from a survey respondent presents a perspective on how the combination of limited experience and pay can negatively impact the quality of legal representation in the youth justice system:

“The YJS is so different from the adult CJS in that you need to be conducting cases regularly to keep on top of the specialist nature of the work. Unfortunately, there are too many very small firms doing criminal legal aid work who don't have the case throughput or resources to allow their practitioners to gain experience and training. This is a result of a criminal legal aid system that doesn't pay enough for any work, but especially this important work.” **[Higher Court Advocate]**

System issues

We categorised answers from solicitors and HCAs to the open-response survey questions about the challenges of advising children at the police station or representing children in court. These highlight wider system issues, including training needs of other CJS professionals who work with children and young people.

- *Concerns about children being held at the police station without representation* and the potential impact of this. The appropriate adults we interviewed also reported that children can refuse legal representation as they think it will speed up their release, when in fact the opposite is often the case. Further, parents or carers who act as appropriate adults can be under the misapprehension that they need to pay for legal advice.

“Police station rights and entitlements are often not explained with the amount of care required for a youth. Clients are often kept in cells away from custody and often overnight if charged, without the local authority being consulted about accommodation.” **[Solicitor]**

“The lack of decent legal education means few in society understand even basics about the justice system.” **[Higher Court Advocate]**

- *Knowledge about the YJS among other professionals* was sometimes considered to be deficient, especially in relation to children’s vulnerability:

“Lack of experienced police officers who have limited concept of children's vulnerability and risk to criminal exploitation or worse still sexual exploitation.” **[Solicitor]**

“Police ignoring or not understanding youth vulnerabilities and arresting where a voluntary interview would arguably suffice and not interfere with investigation.” **[Solicitor]**

“Dealing with difficult, ill-informed magistrates.” **[Higher Court Advocate]**

“Police forces and crown prosecutors often forget that young defendants must be treated as children first and disregard the presumption in favour of diversion (where it is possible). This often results in children and young people having to go through the traumatic experience of attending court for very minor offences only for the matter to be adjourned for defence representations to be made”. **[Higher Court Advocate]**

- *Inadequate input from social services to support children and young people in the YJS* and the continuing criminalisation of vulnerable LAC:

“I have grave concerns about the impact of the inconsistency and failings of social services in relation to children in care [and impact] on criminalisation of vulnerable children.” **[Solicitor]**

“I am losing count of the number of what appear to be identical cases where social services have moved children around to their 30th placement in 5 months telling the child to simply pack their stuff, they are off (with no notice) and then when the child acts out in frustration, they are prosecuting them for assault i.e spitting pushing.” **[Solicitor]**

“Seeking to persuade the CPS that it is not in the public interest to charge - generally - and particularly when care staff are assaulted, or where there is clearly a Modern Slavery dimension.” **[Solicitor]**

“Trying to secure an outcome that prevents further offending, as the services to support children in this context are not there.” **[Solicitor]**

- *Time constraints and delays and how that can impact understanding and the quality of representation:*

“On at least one occasion I have been hurried by the court when advising a youth defendant on detailed and voluminous initial evidence and on her decision regarding plea, while trying to ensure that they understood all issues before a plea had to be entered.” **[Higher Court Advocate]**

“Levels of delay in progress because of the criminal justice system crisis.” **[Higher Court Advocate]**

4. Intervention

In this section we review the implications of our findings for interventions to enhance the quality of solicitors' work with child suspects and defendants and note where suggestions were made to modify or augment current training and practice. The survey data, in combination with the interview findings, highlight various measures – potentially including regulatory action.

There is strong consensus about *the need for specialist knowledge, skills and attributes* for effective practice as a defence solicitor in the YJS – beyond what might be required for working with adults. Being a skilled communicator, including understanding the impact of different speech, language and communication difficulties, and being able to adapt communication accordingly when advising or representing children, was judged to be important. So too was specialist knowledge of the law as it pertains to children, including its application when additional vulnerabilities are identified, such as being a looked after child, or where there is evidence of criminal exploitation.

Currently, there is no mandatory training nor is there any well-defined professional knowledge and skills required for defence solicitors working in the YJS. There are dedicated solicitors, who are highly motivated to work with children and who seek out specialist training and resources voluntarily as part of their professional development. **However, some form of accreditation or system of appraisal for working in the youth court was suggested by some interviewees and survey respondents** as a potential means of a) recognising the importance of the work; b) achieving consistency in the standard and quality of legal representation; c) ensuring that knowledge and skills for working in the YJS are regularly updated and; d) putting defence solicitors on a par with other youth court professionals. The second extract below, for example, contrasts the perceived specialism of Crown Prosecution practitioners compared to defence solicitors:

“That you don't come into the youth court unless you've had real training, meaty training and maybe ongoing top ups just to keep your skills, because it's a different world.” **[Magistrate]**

“With the Crown Prosecution Service, they have specialist youth practitioners and they therefore have got built-in appraisal systems built in training... But on the defence advocate side, it's always a little bit woolly, I mean if I had a complaint for example about the conduct or competency of the CPS I know where I can take that... If there could be some sort of appraisal system [for defence solicitors]. But I don't know how well that would go down.” **[Magistrate]**

Magistrates also pointed to the experience and specialist training required of them before they are permitted to sit in the youth court:

“You can't train to be a youth magistrate until you've been an adult magistrate for three years and we have annual appraisals and part of that appraisal system is that... we have to show that we're updating, that we've done our own personal and professional development.” **[Magistrate]**

Several interviewees proposed that there should be specialist youth justice solicitors, or reported that these already exist in busier urban courts:

“I feel very strongly that children and young people should be represented by specialists, too many representatives do not see the child or young person, they see a defendant. In my experience there

are also many advocates that do not particularly like representing children and make no effort to communicate with them or understand them, let alone understand the nuances of the law relating to children, court options, sentencing diversion etc.” **[Higher Court Advocate]**

“There [are] quite sort of distinct skills [for working in YJS] and you know a lot of solicitors in the youth court, are just solicitors who do crime and yeah maybe don't really know a lot about it to be honest. Although on the other side of the coin there are certainly for instance in [City] there are a number of lawyers who specialise in the youth court, and they are extremely good.” **[District Judge]**

“They [solicitors] do build up specialisms. They are, mostly local firms..., so you get a lot of the firms will be based in xxx, which obviously a lot of our young people come from. And I think it just gets known in the community that if you're young person's in trouble, that's who you go to”. **[Magistrate]**

The importance of professional communication and cooperation or ‘teamworking’ in youth court was emphasised. This aligns with the promotion of problem-solving approaches that seek to identify intervention and support measures to effect behaviour change and respond to complex and multiple needs and risks. However, we have also emphasised the possible concerns this might raise for a defence solicitor about their role in youth court. Is it to achieve consensus with other professionals in the court about the best way to respond and support the child or to seek the least onerous sentence for the child for whom s/he is advocating? However, opportunities to develop or to increase professional communication and cooperation were highlighted in interviews. This included *youth court user groups* that provide a regular local forum for the different professionals working in a youth court to meet regularly, in order to raise operational issues or to receive relevant information or training.

There is also recognition of the various barriers to achieving relevant competencies, and the incongruity between the emphasis on *specialism* and the current pay and operating conditions in the YJS. CLAR supports increased rates of legal aid to reflect skills and specialism required in youth court and this would likely be an important factor in efforts to promote the need for accreditation or appraisal or the official recognition of youth justice work as a specialist area.

There may be other system issues that could be reviewed to improve the operational environment. One suggestion made by a magistrate, for example, to help solicitors manage their workload – concerned the listing of youth court cases and maintaining a practice used during Covid-19 to reduce social contacts, whereby specific timeslots were given to young people to arrive at court rather than a blanket instruction to be there by 10am.

“There's a few things that might make their life a bit easier...What we do is we tell everyone to come to court at 10:00 o'clock, and then you might not get into court till 12:00 o'clock and that must be so frustrating when you've got a really busy workload and your stuffed outside with a load of disgruntled teenagers who's been told to come at 10 am. And I think one of the upsides of Covid was we started listing [cases] in time slots. So, we would have a 10 to 11 slot and then 11 to a 12 slot and a 12 to one slot.” **[Magistrate]**

The following recommendations for enhancing the quality of legal representation in the YJS are proposed:

- The Solicitors Regulation Authority should provide guidance to the profession on the knowledge and skills required to represent children. This should be regularly reviewed to ensure new and emerging trends are reflected in this good practice guidance.
- The Law Society should 'quality mark' appropriate training providers. This would have the dual purpose of encouraging solicitors to undertake specialist youth justice training and, importantly, provide the public with the opportunity to confidently select legal representation from those with the highest standards of expertise in youth justice.
- The Solicitors Regulation Authority should ensure, through its regulatory function, that in the criminal practice of every law firm, at least one solicitor has undergone annual training in youth justice law and practice. This will ensure that every practice maintains a level of competence in this specialist area and every child is represented by a firm where there is a source of specialist expertise.
- The Law Society and the Solicitors Regulation Authority should ensure that 'youth justice' appears as an area of practice on the 'Find a Solicitor' database webpage. Solicitors who have undertaken annual specialist training²⁷ with a Law Society quality mark-approved training provider should be listed under 'youth justice' and have a quality mark symbol²⁸ on their profile.
- A working group should be formed to ensure the above recommendations are put into action over the next 12 months.

²⁷ YJLC would propose a minimum of 6 hours specialist training

²⁸ This would be similar to the accreditation schemes and enable members of the public to accessibly identify solicitors with specialist knowledge

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Appendix: Methods

The online survey

This was developed using the Survey Monkey Platform and went live on 31st March 2022. It was closed on 30th July, and was promoted in the following ways:

- Explanatory text about the aims of the survey, conditions of participation, data protection, the wider study, and the link to the survey, was posted on the ICPR website, and sent out as part of communications by the Solicitors Regulation Authority and Just for Kids Law.
- It was tweeted by the charities Transform Justice, Justice, The Justice Gap, Criminal Justice Alliance and the solicitors firm Hodges, Jones and Allen.
- It was re-tweeted at least 15 times.
- We contacted 24 criminal solicitors' firms directly, asking them to distribute the survey link amongst their staff;
- We also distributed the survey link through our professional contacts.

We contacted the Law Society, Young Criminal Legal Aid Lawyers, London Criminal Courts Solicitors' Association, and the Criminal Law Solicitors' Association, asking these various organisations to tweet or advertise the survey amongst their members or colleagues, but we received no response to a first or follow-up request.

Interviews

Permission was granted from Judicial Office to conduct interviews with a small number of magistrates and district judges who work regularly in the Youth Court. The National Appropriate Adult Network (NAAN) put us in touch with three members who provide support to young people being held in police custody and JfKL helped us to recruit youth offending team staff who work in the youth court.

A request was sent through the National Police Chief Council Lead for Children and Young People to interview custody officers about solicitors who provide advice to young people at the police station, but we had no volunteers.