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REGULATING BARRISTERS

# Youth Proceedings competences

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## Foreword

It is important that all those involved with our Youth Courts have access to a comprehensive resource explaining the standards expected of barristers in those Courts. This Youth Proceedings Competences document provides that resource.

I welcome the Youth Proceedings Competences and endorse it for all barristers currently practising in Youth Courts, and those contemplating doing so. This has been published by the Bar Standards Board to improve the standards of advocacy in Youth Court proceedings. They demonstrate a common-sense and workable way to tackle this very important problem within our justice system.

I commend the move towards more proportionate regulation in the Youth Courts, of which the publication of the Youth Proceedings Competences is the first step. The vulnerability of the young people involved and the opportunity to lessen the likelihood of reoffending into adulthood makes this work essential. Youth Court work is a specialism that requires knowledge, skills and attributes particular to this type of advocacy.

Having led the Parliamentary Inquiry into the Operation and Effectiveness of the Youth Court in 2014, I am pleased the Bar Standards Board is making improving standards of advocacy in the Youth Courts a priority and I commend this publication.

Lord Carlile of Berriew CBE QC  
24 February 2017

## Introduction

“Competency” is defined as the ability to do something efficiently and/or successfully. This document outlines what competences (skills, attributes and knowledge) barristers need to be able to be effective in Youth Proceedings.

For the purposes of this documents and all others related to it, the term “youth proceedings” refers to cases that are heard in the Youth Court and cases involving young defendants (those under the age of 18) that are heard in the adult magistrates’ court, Crown Court or higher courts. The competences are applicable at all stages of a case, including any engagement the barrister has with young people outside of the courtroom.

This document outlines the key competences that barristers who work with young defendants must meet. Barristers need to be aware of these competences before accepting instructions and during legal proceedings. The competences build upon the Professional Statement produced by the Bar Standards Board which sets out the core competences expected of a barrister at the point of entry to the profession.

The competences in this document apply to all barristers undertaking work involving young people; whether they are defending or prosecuting.

## Who is this for?

- **Practising barristers:** This document builds upon the BSB's Professional Statement and emphasises the most crucial competences needed by barristers for youth proceedings. The [Professional Statement](#) describes the knowledge, skills and attributes that all barristers will have on 'day one' of practice. The two documents should be used together by barristers to ensure competence.
- Barristers undertaking or wishing to undertake Youth Court work must ensure they have taken steps to meet these competences. There are a variety of ways in which the competences can be met (see annexed guidance). It is the responsibility of the individual barrister to decide the most appropriate way for them to meet the competences.
- **Those involved in the delivery of education and training for the Bar:** These competences can be used by providers of training to help inform their programmes. Barristers will be encouraged to take advantage of training in order to demonstrate that they satisfy the competences.
- **Professionals working in the youth justice sector:** This document can be used to form an understanding of what the BSB expects of a barrister undertaking Youth Court work. Professionals such as court staff, community workers, youth offending teams and other agencies, may wish to use this document as a reference point.
- **The judiciary:** This statement will provide a useful reference point for judges to ensure that barristers appearing before them are competent to do so.
- **Young people and their parents or carers:** This document may be used by young people and those who support them through the criminal justice process. The document makes clear the standard of competence they can expect from a barrister before and during the course of proceedings.

## Regulatory status

This document will not replace the requirements of the [BSB Handbook](#). All barristers must continue to comply with the regulations set out in the BSB Handbook, which remain the sole reference for all disciplinary matters.

# Competences

## 1 Law and procedure

Barristers should:

- 1.1 Have knowledge and understanding of the key concepts of criminal and youth justice law and procedure.
- 1.2 Be able to apply their knowledge and understanding effectively.

## 2 Dealing with vulnerability

Barristers should:

- 2.1 Have knowledge and understanding of the additional vulnerabilities faced by young people in the criminal justice system.
- 2.2 Be able to recognise and identify where a young person might be vulnerable and ensure effective safeguarding measures are in place.
- 2.3 Be able to adapt the delivery of their service to meet the needs of vulnerable young people.
- 2.4 Ensure that the young person understands the circumstances of what is happening before, during and after the proceedings, including the consequences of a criminal conviction and any sentence and/or order imposed.

## 3 Awareness of background and needs

Barristers should:

- 3.1 Take all reasonable steps to be alert to any developmental, communication and/or mental health needs of a young person.
- 3.2 Take all reasonable steps to be alert to any cultural, educational and/or social issues which may affect a young person.
- 3.3 Take all reasonable steps to be aware of the background (personal circumstances) of a young person, including the involvement of other agencies in the case. (See annexed guidance for examples of some of the agencies involved).
- 3.4 Be ready to amend their approach based on those issues.

## 4 Communication and engagement

Barristers should:

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- 4.1 Speak in a clear and concise manner, using plain English when communicating with young people or in proceedings where young people are present.
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- 4.2 Recognise that young people might find it difficult to engage with them and/or other professionals within the youth justice system.
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- 4.3 Demonstrate emotional intelligence to communicate effectively with those who may not share their own style of spoken language or background – such as racial, gender, religious or any other background. In particular:
- 4.3.1 Exercise good communication skills. Have the ability to understand and build trust with young people and help them to understand procedure(s).
- 4.3.2 Be able to recognise and communicate effectively with young people with additional vulnerabilities. Where direct communication proves difficult for young people, to be able to give advice about the services available to make communication easier.
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## 5 Awareness of key organisations

Barristers should:

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- 5.1 Have knowledge of key organisations and agencies relevant to the youth justice sector locally and nationally.
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- 5.2 Be prepared to engage with any organisations and agencies where it will benefit young people and assist them in the course of the proceedings.
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## ANNEX: YOUTH PROCEEDINGS COMPETENCES GUIDANCE

### How to use this document

This document is produced as an annex to the Youth Proceedings competences. It provides information on what is meant by the competences and how barristers might achieve them.

At the end of this guidance, we have also provided a list of useful resources and training providers.

### How to meet the competences

The competences have been drafted using information gathered from research and consultations with professionals working across the youth justice sector, including barristers. The baseline for the competences is the Youth Proceedings Advocacy Review: Final Report (YPAR report)<sup>1</sup>, which highlighted concerns about advocacy standards. The YPAR report can be used as a further point of reference when engaging with the competences.

Where possible, we have suggested the different types of training and resources available which might be of use. It will be up to individual barristers to decide the most appropriate way for them to meet the competences.

#### 1. Law and Procedure

The YPAR highlights that one of the fundamental components of effective advocacy within youth proceedings is having specialist knowledge relating to youth justice matters. This includes knowledge of youth justice law (the procedures and provisions in criminal law that relate specifically to young people).

Youth justice is a complex and fast paced area, with distinct bail and remand, allocation and sentencing frameworks in place for young people. In addition to this, youth courts are also now retaining jurisdiction of an increasing number of serious cases where young people are involved.

Taking into account these factors and the vulnerable young people involved, barristers undertaking this type of work should ensure they have the relevant skills and experience as well as the necessary up-to-date knowledge in order to undertake youth proceedings. For example, barristers should be familiar with the operation of ground rules hearings and the range of adjustments available to the court to ensure that young people can effectively participate.

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<sup>1</sup> Bar Standards Board (2015) The Youth Proceedings Advocacy Review: Final Report (<https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>)

## 2. Vulnerability

The YPAR report shows, and those involved in the youth justice system widely accept, that many young people may have extensive needs and vulnerabilities. The competences expect barristers not only to be aware of vulnerabilities but also be able to recognise them in young people and be able to adapt their advocacy and conduct of the proceedings accordingly. This applies to barristers undertaking defence and prosecution work.

As a public interest regulator, the BSB has a role in looking at the interests of vulnerable clients. We are of the view that all young people in the youth justice system are vulnerable to some extent due to their age alone. However, some young people may have additional vulnerabilities, due to their particular characteristics or circumstances, which require specific consideration.

The competences require barristers to be aware that young people have some level of vulnerability already. Barristers must also be alert to any specific and direct risks that young people may face. Barristers should be able to recognise other characteristics and circumstances which could make a young person more vulnerable. These characteristics and circumstances could be long term or short term and can be cumulative. This could include, for example, the behaviour of the young person, or the behaviour of others around them.

The Legal Services Consumer Panel has identified a list of individual risk factors<sup>2</sup> for consumer vulnerability. Risk factors are “circumstances that could contribute towards making a consumer more vulnerable.” The individual risk factors they highlight are:

Age	Low income
Inexperience	Low literacy
Learning disabilities	Cultural barriers
Physical disabilities	Mental health issues
English as a second language	Health problems
Location	Being a carer
Lack of internet access	Leaving care
Lone parent	Bereavement
Loss of income	Relationship breakdown
Living alone	Release from prison

<sup>2</sup> Legal Services Consumer Panel (2014) *Recognising and Responding to Consumer Vulnerability*



This list provides a good starting point for barristers looking to consider how vulnerable a young person is. In addition, barristers should be aware of special protections for looked after children and specifically looked after children who offend in children's homes, child victims of sexual exploitation and child victims of trafficking.

The YPAR report cites the following research findings around the level of vulnerability of young people in the youth justice system:

- Six in ten children in the youth justice system have a communication disability (Bryan et al, 2007, cited in RCSLT, 2009);
- More than half of children in custody come from deprived households (Jacobson et al, 2010: 52);
- 76% of children in custody have an absent father and 33% have an absent mother (ibid);
- A third of young men and just over 60% of young women in custody (aged 15 - 18) have spent time in local authority care (Kennedy, 2013: 10);
- One-third of children in custody have identified special educational needs (Gyateng et al, 2013: 39);
- Approximately 30% children who have 'persistent offending histories' in custody have IQs of less than 70, signifying a learning disability (Rayner et al, 2008, cited in Hughes et al, 2012: 26);
- Between 65% and 75% of children in custody have suffered a traumatic brain injury (various authors, cited in Hughes et al, 2012: 35-37); and
- 31% of a sample of 13 to 18-year-old offenders in custody and the community were found to have mental health problems, compared to 10% of the wider population (Jacobson et al, 2010: 68).

There is training available about how to identify and deal with vulnerability. In addition to this, we would also recommend looking at the resources provided by charities and consumer organisations who work with young people and people with disabilities. At the end of this document, there is a list of some of these organisations.

The competences require barristers to be aware of the vulnerabilities young people can have. This knowledge ensures that barristers can then take appropriate action to support them. This could be, for example, raising a matter with the Youth Offending Team or, ensuring any special circumstances are accounted for. The focus should be on safeguarding the young person.

In addition to assessing vulnerability, barristers will be expected to ensure that young people are aware of the circumstances they face. This may include making their legal position clear, outlining the potential for sentence or disposal, and/or the strength and weight of the evidence.

### **3. Awareness of background and needs**

It is important to have knowledge of the needs and backgrounds of young people appearing in court. This not only includes developmental and communication needs but also the young person's cultural, educational or social background. These factors added to the young person's vulnerability can have a detrimental impact on their experience of the youth justice system. Conversely, good communication and understanding can aid in effective participation and have a positive impact on a young person.

The competences require barristers to take all reasonable steps to be alert to any developmental, communication, cultural, educational and / or social issues. The requirement is to be aware of the young person's circumstances such as their social or cultural heritage and their values.

Within youth proceedings, there needs to be an understanding that young people should not be treated in the same way as adult clients. A barrister should have an awareness of the range of adjustments available to the court to facilitate the young person's participation.

The competences do not require barristers to know everything about their client but to have a basic awareness of the client's personal circumstances. For example, an understanding of the ways in which a history of engagement with social care may have impacted on the young person's ability to engage with professionals or that the young person's maturation rate may not match their chronological age.

### **4. Communication and Engagement**

A key skill for barristers undertaking work in Youth Courts is the ability to engage with young people going through the youth justice system. Barristers should be familiar with services available to aid communication. This stems directly from the requirement in Section 1 of the competences to "apply" knowledge and understanding effectively. A large part of being able to apply knowledge effectively within the context of a particular case comes from being able to understand, speak and engage appropriately with young people.

The competences highlight that an understanding that youth proceedings are different from adult courts is imperative to anyone wishing to undertake this type of work. It is important to understand the impact of common barriers to communication and be able to adapt language and approach accordingly.

The YPAR found that young defendants had good relationships with advocates who were “friendly, supportive, non-judgemental, respectful, good at listening and cared about their case”. It identified good communication is essential. It highlighted the following as good practice tips:

- The use of ‘basic language’ and ‘simple and clear questions’;
- Explaining the implications of answers to questions; and
- Avoiding using leading questions.

A barrister would also be expected to use plain English at all times when speaking to young people. This applies to barristers in all situations where young people are present during the course of youth proceedings, regardless of whether the young person is their client or not.

Where communication is difficult for a young person, barristers will need to be aware of the availability of specialist services to aid communication and to employ those services where appropriate. This could include, for example, the use of intermediaries.

There is a large amount of training available on effective communication and identifying and dealing with vulnerability. Barristers should actively consider how to build their competence in this area.

## 5. Awareness of key organisations

There are many agencies working within and alongside the youth justice sector. The competences require barristers to be aware of these organisations, their roles within youth proceedings and the role they can play in a young person's case. This knowledge ensures that the barrister can effectively engage with young people.

The following is a list of some of the agencies working within this sector. Please note this is not an exhaustive list.

- Youth Offending Teams
- Intermediaries
- The responsible local authority's education department, housing department and children's services
- Children and Adolescent Mental Health Services (CAMHS)
- Connexions
- Drug and Alcohol action teams
- Local youth groups
- Charities and support groups
- Special Educational Needs (SEN) and Disability Information, Advice and Support Service

### **Training providers and other resources**

There are several organisations providing useful resource and training materials on the areas covered by the competences. The following is not a list of recommended providers, simply suggestions.

Please be advised this is not an exhaustive list and will be updated from time to time.

#### *Training providers:*

Central Law Training:

<http://www.clt.co.uk/training/bsb-listing/crime.aspx>

Just for Kids Law / Youth Justice Legal Centre:

<http://www.yjlc.uk/training-courses>

MBL Seminars:

<http://www.mblseminars.com/>

*Useful resources*

The Advocates Gateway (Mental Health, Autism & Learning in the Criminal Courts):  
<http://www.theadvocatesgateway.org/toolkits>

The Communication Trust's Sentence Trouble guide and Resources:  
<https://www.thecommunicationtrust.org.uk/resources/resources/resources-for-practitioners/sentence-trouble/>

CPS Legal Guidance on Young Offenders :  
[http://www.cps.gov.uk/legal/v\\_to\\_z/youth\\_offenders/](http://www.cps.gov.uk/legal/v_to_z/youth_offenders/)

The Inns of Court College of Advocacy's The Advocates Gateway toolkits:  
<http://www.theadvocatesgateway.org>

The Law Society's Practice Note on Criminal Prosecutions of Victims of Trafficking:  
<http://www.lawsociety.org.uk/support-services/advice/practice-notes/criminal-prosecutions-of-victims-of-trafficking/>


The National Autistic Society: resources for criminal justice professionals:  
<http://www.autism.org.uk/cjp>

Prison Reform Trust:  
<http://www.mhldcc.org.uk/>

Review of the Youth Justice System in England and Wales:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/577103/youth-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf)

Youth Justice Legal Centre:  
<http://www.yjlc.uk/>

Youth Justice Resource Hub (provided by the Youth Justice Board):  
<https://yjresourcehub.uk/>



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