

Chapter 10: Youth Justice

Consider the statutory responsibilities of a social worker and appropriate actions you might take in each of the following situations:

- 1 Jennifer, who is 14, is currently in local authority accommodation because her mother cannot cope. You feel you have established quite a good relationship with her and, having begun to gain her trust, you have been able to talk to her about her life, which has included recent shoplifting and drug use. The police inform you that they have arrested her for supplying cannabis and wish to question her.**

In order for the police to question Jennifer, they will require an appropriate adult to be present. Assuming Jennifer's mother is unable to exercise this role, you could do so. Your responsibilities as an appropriate adult are set out in Section 1.7A of Code C of the Police and Criminal Evidence Act 1984, as

- support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;
- observe whether the police are acting properly and fairly to respect their rights and entitlements, and inform an officer of the rank of inspector or above if they consider that they are not;
- assist them to communicate with the police whilst respecting their right to say nothing unless they want to as set out in the terms of the caution;
- help them to understand their rights and ensure that those rights are protected and respected.

Jennifer is entitled to consult with you privately at any time.

- 2 You have arrived at Sunderfield police station following a request to be present as appropriate adult for the questioning of Abdul, who is 16 and is suspected of arson at a local school. The police sergeant tells you that Abdul has refused legal advice and therefore they are ready to interview him. He has been in the police station for 20 hours, and when you see him you can see he is tired. The police have not told you what evidence they have to connect Abdul with the offence, but Abdul tells you that he was with a group of friends and someone, perhaps himself, did accidentally drop a lighted match onto some paper. Abdul tells you the police have told him he will not be allowed to leave until he admits it.**

It is important to speak to Abdul privately in the first instance. You need to check whether he has actively waived his right to legal advice rather than told to simply 'sign here'. The police should not detain Abdul for

any longer than necessary. He has already been detained for 20 hours. Further detention beyond, 24 hours unless the offence is serious. Arson would be considered serious but detention beyond 24 hours would require consideration of:

- (a) special vulnerability;
- (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention;
- (c) the need to consult and consider the views of any appropriate adult; and
- (d) any alternatives to police custody.

You will also want to inspect the custody record for Abdul to see if he has been afforded appropriate treatment whilst detained, such as adequate heating, light, toilet facilities, breaks and food. If he is right that he was told that he would not be able to leave until he has admitted the offence, then you will want to raise this matter with the custody sergeant and potentially complain. Your complaint should be noted in the custody record.

3 Assume Abdul has been charged. You know he has no past history of offending and comes from what you believe to be a stable family. Consider his right to bail and what will happen if bail is refused.

Juveniles should normally be granted bail once they have been charged. The police normally consult the local authority in these circumstances but they are not legal obliged to do so.

The police can refuse bail only on grounds set out in s. 38 of PACE:

- (a) the custody officer is not satisfied of the identity or address of the person charged;
- (b) the custody officer believes that the person will not answer bail, will interfere with evidence or witnesses, cause injury to themselves or others, or damage to property;
- (c) the custody officer believes that it is necessary for the person's own protection; or
- (d) granting bail would not be in a juvenile's own interests.

If Abdul is charged and bail is refused, he or she must be brought before a court at the earliest practicable time. Until that point, s. 38(6) of PACE requires the custody officer to make arrangements for the juvenile to be taken into local authority accommodation. The subsection makes it lawful for the local authority to detain the juvenile in secure accommodation (but there is no obligation to do so). It will be up to the authority to transport the juvenile to court.

Under s. 38(6), following a refusal of bail, the custody officer can refuse to transfer the detained juvenile to local authority accommodation on one of two grounds.

- (a) If the juvenile is 15 or older, the custody officer considers that the juvenile is a danger to the public and that the local authority lacks adequate secure accommodation.
- (b) It is not practical to make the arrangements for a transfer. This should be exceptional, for example social services are on strike or the roads are blocked by snow.

The custody officer must give a certificate to this effect and may then detain the juvenile in the same way as an adult until the first court appearance; that is, in the police station (but not in a cell if this can be avoided).

4 If Abdul is found guilty, what opportunity would a social worker have to influence the court, and what approach might a court or courts take when deciding the appropriate sentence?

You will be asked to provide a pre-sentence report on Abdul. The principles of sentencing are set out by the Sentencing Council in *Definitive Guidelines of Sentencing Young People* (March 2017). The principles are:

- The principal aim of the youth justice system (to prevent offending by children and young people), and the welfare of the child or young person
- Sentencing should be focused on the individual child not the seriousness of the offence
- Custody should always be a last resort
- Criminalising children should be avoided, better to encourage them to take responsibility for their own actions
- Account should be taken of the child not fully appreciating the effect of their actions on other people
- Children should have the opportunity to change their conduct
- Offending is often a passing phase in childhood
- The impact of punishment is likely to be felt more by a child than an adult
- Any restrictions on liberty must be proportionate to the offence.

The Guidelines go on to state how the courts should regard the welfare of the child when sentencing.

When sentencing juveniles, the courts must take account of s. 44 of the CYPA 1933:

Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person, and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

In having regard to the welfare of the child or young person, a court should ensure that it is alert to:

- any mental health problems or learning difficulties/disabilities;
 - any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
 - any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of children and young people to self-harm, particularly within a custodial environment; and
- the effect on children and young people of experiences of loss and neglect and/or abuse.

Your pre-sentence report must take account of relevant guidelines. This does not mean that the Abdul's welfare is paramount, for the court has a statutory duty—as do social workers as part of the youth justice system—'to prevent offending by children and young persons' (CDA, s. 37). But welfare must be a factor in deciding on the appropriateness of a sentence and gives you some leverage if you wish to suggest outcomes which will benefit the Abdul as well as punish. The Court of Appeal frequently notes that juveniles should receive shorter custodial sentences than adults, and that reform of the young offender is the best way of protecting society. A community sentence must not only be appropriate to the seriousness of the offence, but also to reforming Abdul.

When sentencing Abdul, the court must not impose a greater penalty than it could have imposed on an adult.