



Submission to the Law Commission consultation on Homicide Offences

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About the National Association for Youth Justice (NAYJ)¹

The NAYJ is the only individual member organisation within England and Wales which campaigns exclusively for the rights of and justice for children in trouble with the law. It seeks to promote the welfare of children in the youth justice system in England and to advocate for child friendly responses where children are suspected of infringing the law.

About the Youth Practitioners Association (YPA)²

The YPA aims to encourage and maintain the highest standards of advocacy and practice from the police station to the High Court and to support, assist and educate those who represent young people in the criminal justice system. The YPA is committed to promoting the importance of specialist youth representation and encouraging and maintaining the highest standards of advocacy and practice.

Key Points

This short submission by the NAYJ and YPA focuses on the issues that affect children charged with homicide offences.

It argues that the Commission should take steps to ensure that this opportunity to reform the law of homicide as it applies to children should not be overlooked. Unless specific steps are taken to consider the special position of children, who are currently subject to mandatory life sentences for murder, the review risks entrenching England and Wales as outliers in Europe and Commonwealth jurisdiction for years to come.

The Commission should therefore:

- Adopt a distinct, child-specific approach to homicide offences in recognition of their developmental stage
- Exclude children from the proposed Tier 1 offence of murder;
- Avoid the label “murder” for children in Tier 2 offences

A distinct approach for children charged with homicide offences is necessary to avoid compounding the discrimination that children with protected characteristics already face.

A distinct approach for children

Homicide offences must recognise the special position of children in the criminal justice system in accordance with well-established domestic and international law (see Annex). There is already some recognition in English law and policy of the distinct approach that is required in respect of children sentenced to life sentences.³ However,

¹ <https://thenayj.org.uk/>

² <https://youthpractitionersassociation.co.uk/>

³ Hulley and Janes (2024), Child lifers: Developments in law and policy and the need for a distinct approach by criminal justice professionals, Prison Service Journal 275, Available at: <https://www.crimeandjustice.org.uk/child-lifers-developments-law-and-policy-and-need-distinct-approach-criminal-justice-professionals>

the legal framework that permits the imposition of such sentences on children in the first place does not adhere to a child first or children's rights approach.

Children's best interest and welfare should be a primary consideration in all actions by the courts, and additional steps and adaptations should be taken to ensure that the structure of homicide offences facilitates and enables this.

Children in the criminal justice system are particularly vulnerable and, as the Lammy report highlighted, often face racial discrimination.⁴

The particular risks faced by children with protected characteristics and other vulnerabilities charged with homicide offences

The risk of racial discrimination is particularly acute for children charged with homicide offences: in her submission to the Commission's call to evidence for this review Dr Hulley has analysed the published data for 2023, and notes that children from Black backgrounds were significantly overrepresented (by five times) in the number of children convicted of murder, compared to their proportion in the general population of children of that age.⁵ There is no data available on the number of children convicted of murder with mental disorders or neurodiverse conditions but this is also likely to be high based on what is known about the characteristics of children in who have been sentenced generally.⁶ All children convicted of murder are sentenced to detention: the latest report by His Majesty's Inspection of Prisons shows the high levels of intersecting needs children in detention self-report:

*"Our survey data consistently shows children in YOIs and STCs differ dramatically from the population in the community. Of children surveyed in 2025–26, 64% told us they had previously been in local authority care, compared with less than 1% of children in the general population. Forty-eight per cent said they had health problems and 38% reported having a disability, highlighting the challenges they may have had before encountering the criminal justice system."*⁷

⁴ While this paper focuses on the special position of those convicted and/or sentenced as children, the authors acknowledge the developing recognition in recent years of the special position of young adults. The Commission may wish to explore this further in the course of its considerations and is referred to the extensive work on this by T2A (<https://t2a.org.uk>)

⁵ Hulley (unpublished) cites the following original sources for this data: Ministry of Justice (2025), Criminal Justice System Statistics Quarterly – December 2024. Outcomes by offence tool, Available at <https://assets.publishing.service.gov.uk/media/68878445be2291b14d11affa/Outcomes-by-offence-tool-2017-2024.xlsx>; Office for National Statistics (2023), UK population by ethnicity – age groups, Available at <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/age-groups/latest/downloads/age-profile-by-ethnicity.csv>; The NAYJ and YPA are grateful to Dr Hulley for sharing her paper and her comments on an early draft of this paper.

⁶ Ministry of Justice / Youth Justice Board (2020) Assessing the needs of sentenced children in the youth justice system 2018/19. London: Youth Justice Board, Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887644/assessing-needs-of-sentenced-children-youth-justice-system.pdf

⁷ HMIP (2026) An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions, Available at, https://hmiprison.justiceinspectorates.gov.uk/hmipris_reports/children-in-custody-2025-26/ §2.3

Therefore, it is particularly important that law reform in respect of homicide offences for children takes fully into account the need to avoid further entrenching discrimination against children with protected characteristics.

The disentangling of “intent to kill” from “intent to cause grievous bodily harm” is welcome and it is hoped that this will go some way to reducing the disproportionate number of children from minority backgrounds who are sentenced for the most serious homicide offences. However, under the proposed new structure, children who fall short of intention to kill but who are prosecuted on the basis that they intend to cause grievous bodily harm will still be convicted of a “murder” offence, albeit that the mandatory life sentence will not be attached to it. Children convicted as secondary parties are disproportionately from ethnic minority backgrounds: CPS data for 2025-26 shows that, among the 104 defendants aged 10-17 in the CPS manual joint-enterprise homicide and attempted-homicide dataset, 34 were recorded as White.⁸ It is therefore likely that children with a wide range of protected characteristics are particularly likely to be convicted as secondary parties.

Fair labelling for children and the risk of increasing the number of children convicted of murder

As the Summary Paper notes, the Commission has concluded that the term “murder” should be retained for the second tier offences:

“We argue that it is important for fair labelling that an offence of killing with the intention to cause serious injury is still labelled “murder” in some form, since the harm intended (serious injury) is significantly similar to the harm that resulted (death).”

It is hard to reconcile this approach with the need to satisfy the principle of fair labelling as it appears to defeat the obvious benefit of making the description of the crime match the level of capability in reality. This is especially so in the case of children where their lack of understanding, impulsivity, susceptibility to peer pressure and developmental stage may genuinely mean that the serious harm intended was **not** significantly similar to the harm that resulted.⁹

The statutory aim of the youth justice system is to prevent offending and there is evidence that unnecessary or damaging contact with the criminal justice system can undermine desistance.¹⁰ The additional stigma associated with being labelled a murderer is particularly important in the case of children, whose identified and life trajectories are still developing.

⁸ CPS (2026) CPS Joint Enterprise National Monitoring Scheme 2025-2026, Available at, <https://www.cps.gov.uk/publications/performance-management-and-case-outcomes/joint-enterprise-data>, para 2.8a

⁹ See further below for the evidence about the developmental stage of children and the implications of this for children in conflict with the law.

¹⁰ For a comprehensive discussion on desistance and children generally, see Desistance and Children Critical Reflections from Theory, Research and Practice Edited by Alexandra Wigzell, Claire Paterson-Young and Tim Bateman (2024), <https://policy.bristoluniversitypress.co.uk/desistance-and-children>

Children who engage in spontaneous violence, either alone or in groups, and who do not intend to kill but do intend to cause serious injury, could therefore fall within the second tier and be labelled “murderers”.

Overall, the number of children ultimately labelled as “murderers” would likely increase as some children who may currently be convicted of manslaughter following a successful partial defence would, under the current proposals, receive a verdict of “murder with partial defence”.

This in turn could increase the overall proportion of children with protected characteristics convicted of murder.

As such, the second tier should not be labelled “murder” – a term that imports the highest level of intent and culpability - but should carry a description, such as “killing”¹¹ or “culpable homicide”¹², which enables the offence label to distinguish behaviour that falls short of the gravest homicide offences.

The Scottish Law Commission has expressly recommended retaining culpable homicide as distinct from murder, arguing that “fair-labelling” requires that the label of “murderer” is reserved for those who cause death “by the most grave and objectionable conduct” given that a murder conviction carries “a mandatory life sentence and a permanent social stigma.”¹³

As well as a great deal of stigma. There is also an issue of legitimacy as young people do not understand why they have been convicted of murder and labelled a murderer if they did not intend to kill.¹⁴

Life sentences for children: towards ending the position of England and Wales as outliers

England and Wales are outliers in Western Europe and most commonwealth jurisdictions in retaining the mandatory life sentence for people who are convicted of committing murder as a child.¹⁵

European jurisdictions generally prohibit, or otherwise place substantial limits on, the use of life sentences (either mandatory or discretionary) for individuals under the age

¹¹ Used in Canada to denote homicide offences that are not culpable.

¹² Used in Scotland where the accused has caused loss of life through wrongful conduct but where there was no intention to kill or “wicked recklessness”: for a comprehensive summary of the law of homicide on murder, see Scottish Law Commission (2025) Report 269: Mental Element in Homicide, available at <https://www.scotlawcom.gov.uk/publications/report-269-mental-element-homicide>.

¹³ Ibid, see para 5.53 – it is noted that the Law Scottish Law Commission has suggested retaining the label of murder where “the accused acted with intent to kill, or where the circumstances amounted to assault behaving with an utter disregard for whether a human being lived or died” and does not appear to have considered the specific issues affecting children, although the age of criminal responsibility in Scotland is now 12.

¹⁴ Hulley, S., Crewe, B., and Wright, S. (2019), ‘Making sense of joint enterprise for murder: Legal legitimacy or instrumental acquiescence?’, *British Journal of Criminology*. 59(6):1328–1346.

¹⁵ Brink, Yannick & Lynch, Nessa. (2021). Beyond the Life Sentence – A Children’s Rights Lens on Sentencing for Murder. *The International Journal of Children’s Rights*. 29. 972-1005. 10.1163/15718182-29040001.

of 18. A report by a children’s rights organisation in 2015 found that of the 28 European countries considered (including the UK), 22 had explicitly prohibited life imprisonment for children, or placed a clear limit on the period of detention which falls short of life imprisonment.¹⁶ Only the UK, Ireland, Luxemburg, Malta, France and Cyprus were identified as expressly or possibly permitting it. Since that report was prepared, there has been further progress: for example, France abolished the use of life sentences for children in 2016, but prior to that there had only been two life sentences imposed on children in the preceding 25 years.¹⁷ In Cyprus, life sentences appear to have been prohibited for children following an amendment to the Law of Children in Conflict with the Law (N.55(I)/2021) in early April 2024.¹⁸

The table below illustrates the extent to which the position in England and Wales which provides for mandatory life sentences for children as young as ten is truly exceptional.

Life sentences for children in Europe: comparative position¹⁹

Country	Life sentence of any type available at all for children	Mandatory Life sentence for children	Notes	Minimum age of criminal responsibility
Albania	No	No	Life imprisonment is explicitly prohibited for crimes committed by persons while they were under the age of 18.	14
Andorra	No	No	Life imprisonment is not a lawful sentence under Andorran law, regardless of age.	12
Armenia	No	No	Life imprisonment is explicitly prohibited under Armenian law for persons under the age of 18.	16*
Austria	No	No	Limits on sentences applicable to children rule out the possibility of	14

¹⁶ Child Rights International Network (2015), “Life Imprisonment of Children in the European Union” (2015b). Available at: https://archive.crin.org/sites/default/files/life_in_the_eu3.pdf.

¹⁷ <https://archive.crin.org/en/library/news-archive/france-life-imprisonment-sentences-children-abolished.html>

¹⁸ See, for example, https://www.vrikislegal.com/legal-update-for-children/?utm_source=Mondag&utm_medium=syndication&utm_campaign=LinkedIn-integration; see also https://www.cylaw.org/nomoi/enop/ind/2021_1_55/section-sc172176aa-9ac9-4cfb-8afd-55f756c5757e.html?

¹⁹ Data on the use of life sentences is taken primarily from information provided by Child Rights International Network, available at <https://archive.crin.org/index.html> although efforts have been made to update it by the authors where possible.

Data on the minimum age of criminal responsibility is taken from “Ten is too young”, a joint briefing by children’s rights organisations in Northern Ireland, published in January 2026 and available at:

Available at <https://includeyouth.org/wp-content/uploads/2026/02/2601-Joint-Briefing-Ten-is-too-Young-Jan-2026-1.pdf>

An asterisk (*) indicates that the comparative source notes possible exceptions to the standard minimum age in certain circumstances.

			life imprisonment for persons under 18.	
Azerbaijan	No	No	Life imprisonment is explicitly prohibited for persons aged under 18 at the time they committed the relevant offence.	16*
Belarus	No	No	Life imprisonment is explicitly prohibited for offences committed while under the age of 18.	16*
Belgium	No	No	Life imprisonment is explicitly prohibited for persons who were under the age of 18 at the time they committed a crime.	18
Bosnia and Herzegovina	No	No	Life imprisonment is not a lawful sentence under national law, regardless of age.	14
Bulgaria	No	No	Life imprisonment is explicitly prohibited for any person who was under the age of 20 at the time they committed the relevant offence.	14
Croatia	No	No	Life imprisonment is not a lawful sentence for persons of any age in Croatia, though a maximum cumulative sentence of 50 years' imprisonment is possible for adults.	14
Cyprus	No	No	Until recently life sentences were available to children. However, under the Children in Conflict with the Law Act 2021, the detention sentence of a child may not exceed half of the sentence prescribed for the offense for which the child was convicted and, in the event that the sentence prescribed is life imprisonment, it shall not exceed ten (10) years (see below).	14
Denmark	No	No	There is no express prohibition on life imprisonment for children, but the maximum sentences for persons under 18 are set at less than life imprisonment.	15
Estonia	No	No	Life imprisonment is expressly prohibited for any person who was under the age of 18 at the time they committed an offence.	14
Finland	No	No	No provisions exist in national law to allow for life imprisonment of persons under 18.	15
France	No	No	France abolished life imprisonment for offences committed by children in October 2016; prior to that there had only been two known instances of it in 25 years.	13
Georgia	No	No	Life imprisonment is expressly prohibited for any person who had not reached 18 at the time an alleged offence was committed.	14

Germany	No	No	The maximum period of detention to which anyone under 18 may be sentenced rules out the possibility of life imprisonment of children.	14
Greece	No	No	The maximum limit set on detention for persons under 18 rules out the possibility of life imprisonment for children.	15
Hungary	No	No	Life imprisonment is explicitly prohibited for persons who were under the age of 20 at the time they committed the relevant offence.	14*
Iceland	No	No	The maximum term to which a person under 18 can be sentenced excludes the possibility of life imprisonment.	15
Ireland	Yes	No	It is unclear whether life imprisonment remains possible for persons under the age of 18 under Irish law, though it is not included within the sentencing provisions applicable to children under the Children Act 2001.	12*
Italy	No	No	The Constitutional Court abolished the life imprisonment of minors in a decision in 1994.	14
Latvia	No	No	The maximum penalties for persons under the age of 18 exclude the possibility of life imprisonment for children.	14
Liechtenstein	No	No	Maximum sentences for persons aged under 18 exclude the possibility of life imprisonment for children.	14
Lithuania	No	No	The maximum sentences for persons under 18 excludes the possibility of life imprisonment for children.	14*
Luxembourg	Yes	No	Life imprisonment is possible for adults, and since 16 and 17-year-olds can be tried as adults, it may be possible for children to be so sentenced under the current law. However, in 2025, CRIN found no evidence of a person being sentenced to life imprisonment for an offence committed while under the age of 18.	18*
Macedonia, the Former Yugoslav Republic of	No	No	No person may be sentenced to life imprisonment for a crime committed while under the age of 21 years.	14
Malta	Unclear	No	It is not clear whether life imprisonment can be applied to children. CRIN found no evidence of a person being sentenced to life imprisonment for an offence	14

			committed while under the age of 18.	
Republic of Moldova	No	No	Life imprisonment is explicitly prohibited for juveniles.	16
Monaco	No	No	The maximum sentence for persons under the age of 18 is set at less than life imprisonment.	13
Montenegro	No	No	Life imprisonment is not a lawful sentence for any offence, regardless of age.	14
Netherlands	No	No	Persons between the ages of 16 and 18 can be tried as adults in exceptional circumstances, but in mainland Netherlands cannot be sentenced to life imprisonment. It is possible that persons under 18 may be sentenced to life imprisonment in Aruba and the Netherlands Antilles.	12
Norway	No	No	Life imprisonment is not a lawful penalty for any offence in Norway, regardless of age.	15
Poland	No	No	Life imprisonment is expressly prohibited for any offence committed while the perpetrator was under the age of 18.	17*
Portugal	No	No	Article 30(1) of the Constitution of Portugal provides that '[n]o sentence or security measure that deprives or restricts freedom shall be perpetual in nature or possess an unlimited or undefined duration' and article 33(4) prohibits extradition in relation to crimes for which a person may be sentenced to restriction of freedom in perpetuity or for an undefined duration, unless a guarantee is secured that such a penalty will not be applied.	16
Romania	No	No	Limits on the sentencing of children exclude the possibility of life imprisonment for persons under the age of 18.	14
Russian Federation	No	No	Life imprisonment is expressly prohibited as a penalty for any offence committed while under the age of 18.	16*
San Marino	No	No	Life imprisonment is not a lawful sentence for any person in San Marino, regardless of age.	12
Serbia	No	No	Life imprisonment is not a lawful sentence under Serbian law, regardless of age.	14
Slovakia	No	No	The maximum sentences permitted for persons under the age of 18	14

			prevent the possibility of life imprisonment for children.	
Slovenia	No	No	The maximum penalties for persons under 18 exclude the possibility of life imprisonment for children.	14
Spain	No	No	Life imprisonment is not lawful under Spanish law for any offence committed by any person of any age.	14
Sweden	No	No	Life imprisonment is explicitly prohibited as a sentence for an offence committed while under the age of 21.	15
Switzerland	No	No	Limits on the detention of children prevent the imposition of life imprisonment on anyone under the age of 18.	10
Turkey	No	No	The maximum sentences applicable to children make it unlawful to sentence a child to life imprisonment.	12
Ukraine	No	No	Life imprisonment is explicitly prohibited in relation to any offence committed while the offender was under the age of 18.	16*
United Kingdom				
England and Wales	Yes	Yes	The mandatory life sentence applies to children convicted of murder.	10
Northern Ireland	Yes	Yes	The mandatory life sentence applies to children convicted of murder.	10
Scotland	Yes	Yes	The mandatory life sentence applies to children convicted of murder.	12

The table above illustrates that England and Wales and Northern Ireland are the ONLY countries in Europe that combine the lowest age of criminal responsibility, the use of a mandatory life sentence for children and the regular imposition of it. Notably, the only other countries in Europe that retain some form of life sentence for children do not combine all these features. In Ireland, for example, the life sentence is not mandatory and is only rarely imposed with just one known instance of it in recent years. In Luxembourg, while the table shows that it remains available in principle, it should be noted, according to CRIN, that there are no known instances of its use.

In respect of commonwealth jurisdictions, out of the 12 jurisdictions considered by Brink and Lynch, only England and Wales and Scotland retain the mandatory life sentence for children convicted for murder. Scotland has recently increased the minimum age of criminal responsibility to 12 while in England, Wales and Northern Ireland it remains at ten. Canada and ACT, prohibit discretionary life sentences for children.²⁰

²⁰ See Brink and Lynch (2021). Table 2

It is therefore clear that England and Wales and Northern Ireland are outliers in their approach to sentencing children for homicide offences.

Ideally, the Government should amend its terms of reference to enable the Commission to make proposals in respect of children that bring England and Wales into line with international and regional norms.²¹

The case for excluding children from Tier 1

Serious consideration should be given to excluding children from the new proposed Tier 1 of homicide offences given what is known about their developmental trajectories.²²

It is now well established that childhood (and young adulthood) is a period of heightened neuroplasticity that endows adolescents with an increased capacity for learning, adaptation and positive change, but also confers vulnerability, if the environment is negative or stressful. Adolescence is also a period where peer influence on decision-making is particularly pronounced. Critically, the parts of the brain that support higher-order executive functions such as planning, self-control and decision-making tend to mature later in adolescence. As Professor Blakemore concludes: “Accounting for these developmental factors, alongside structural inequalities and legal socialisation, requires a shift toward a legal framework of mitigated culpability, where legal policies align with empirical evidence to foster environments that mitigate risk while supporting adolescents’ capacity to adapt, reform and thrive.”²³

The current consultation is focused on the structure of homicide offences but it is hard to see how that might work for children in a way that is consistent with international developments in law and science, without also understanding what the potential changes there may be to partial defences and sentencing options. However, for the purposes of the current consultation, it should be noted that the current law on partial defences is uniquely ill suited to factoring the transitional status of children as highlighted by Professor Blakemore.

In particular, the current law of diminished responsibility does not adequately capture developmental immaturity where this does not arise from a recognised medical condition. As such, a 30 year old man with a mental age of a ten year old might be considered to be suffering from a recognised medical condition that would reach the threshold for diminished responsibility but a ten year old with the mental age of a ten year would not – even though both individuals would be functioning objectively at the

²¹ It is appreciated that this is not possible at present and that the Commission has stated “We have agreed with the Government that the mandatory life sentence will continue to be imposed for the most serious types of murder” (Summary paper, page 7)

²² What follows is a summary of key points emerging from Professor Blakemore’s recent paper, the developing adolescent brain: Implications for youth justice and children in criminal proceedings, which provides a short and comprehensive overview of the evidence.

²³ Sarah-Jayne Blakemore (2026), The developing adolescent brain: Implications for youth justice and children in criminal proceedings, *Developmental Cognitive Neuroscience*, Volume 81, Available at <https://doi.org/10.1016/j.dcn.2026.101807>

same level.. Further, mental disorder that may be diagnosed in later life is often not diagnosed or even apparent at the time even where it was in fact present. There are many cases where this has happened: see for example, the appeals of Fuller,²⁴ Cleland²⁵ and Surrey²⁶ - all cases concerning children who received life sentences, albeit not for homicide offences,²⁷ where mental disorder was not diagnosed at the point of sentence but later emerged and was considered to have been present at the point of the offence.

Therefore, if the Commission is to consider ensuring that children who are charged with homicide offences are excluded from the first tier, it will also be necessary to ensure that the law is capable of reflecting their diminished culpability by virtue of their stage of development.

Conclusion

Reform of homicide offences is a once in a generation opportunity. There is a real risk that if the pressing need to bring the law of homicide for children into line with international norms and our own domestic law is left out of the Commission's proposals, it will further entrench this anomaly for decades to come.

It is well known that the reoffending rate for those convicted of murder is much lower than general reoffending rates.²⁸ Given that children are in a phase of development and neurological plasticity, they retain significant capacity for change when provided with the right opportunities and support, as well as hope for the chance to lead a safer life ahead specific reform of the law on homicide offences for children should not be overlooked. A fair structure which avoids the unnecessary use of the murder label could reduce the risk of permanent stigmatisation and support children's prospects of a safer future.

The NAYJ and YPA would be happy to discuss this issue further with the Commission as the project progresses.

30 September 2026

²⁴ R v Fuller [2016] EWCA Crim 1867

²⁵ R v Cleland [2020] EWCA Crim 906

²⁶ R v Surrey [2022] EWCA Crim 1379

²⁷ Due to the existence of the mandatory life sentence, appeals against sentence for child lifers are usually not in respect of homicide offences unless it is the length of the. Minimum term that is disputed.

²⁸ According to PQ 23616 & PQ 23617 - Proven reoffending data, by index offence of murder and rape (England and Wales), the reoffending rate for people convicted of murder was as low as 1% in the year ending March 2022 compared with the overall proven reoffending of 25.2% for the same period, Available at <https://questions-statements.parliament.uk/written-questions/detail/2024-04-24/23616/>;

ANNEX ON THE PARTICULAR POSITION OF CHILDREN IN THE CRIMINAL JUSTICE SYSTEM

The different and special position of children in the CJS

It is well established that, as a matter of law and policy, all courts dealing with children must have regard to their welfare. The welfare principle is enshrined in the Children and Young Persons Act 1933. Section 44 (1) states:

“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.”

This clause remains good law and has been affirmed and emphasised by s58 of the Sentencing Act 2020 and the Sentencing Council’s guidelines on children (2017)²⁹.

In recent years, the Youth Justice Board has developed and promoted the “child first” principle which has been endorsed by Ministers through the National Standards (Youth Justice Board, 2019).³⁰ The Board explains the principle in its paper, *A Guide to Child First* (Youth Justice Board, 2022).³¹ It describes how a “Child First approach” requires that the “youth justice system should treat children as children, see the whole child, including any structural barriers they face and focus on better outcomes for children”.

This approach is entirely consistent with the United Nations Convention on the Rights of the Child (UNCRC). Article 3 of the UNCRC states:

“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 UNCRC also recognises the particular position of children in conflict with the law. UNCRC Article 37(c) states:

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...”

²⁹ Sentencing Council (2017) Sentencing Children and Young People Overarching Principles; Definitive Guideline. London, available at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-Young-People-definitive-guideline-Web.pdf>

³⁰ YJB (2019) Standards for children in the youth justice system. London, available at: <https://www.gov.uk/government/publications/national-standards-for-youth-justice-services>

³¹ Youth Justice Board (2022) A Guide to Child First, London, available at: <https://yjresourcehub.uk/legislation-and-guidance-documents/item/1043-a-guide-to-child-first-youth-justice-board-for-england-and-wales-october-2022.html>

UNCRC Article 40 (1) states:

“State Parties recognize the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

UNCRC Article 40 (3) states:

“State parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law...”

In the case of *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, Lord Kerr emphasised that consideration of the best interests of a child is a factor that “must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them” (§46). In the same judgment, Lady Hale described Article 3 of the UNCRC as “a binding obligation in international law” and noted that “the spirit, if not the precise language, has also been translated into our national law” through section 11 of the Children Act 2004 which places a duty upon a wide range of public bodies to carry out their functions having regard to the need to safeguard and promote the welfare of children” (*ZH*, §23).

While *ZH* was a civil case, the courts have also repeatedly acknowledged that children in the criminal justice system should be treated differently from adults (see for example, *R v. Lang* [2006] 2 All ER 410 and *R (Smith) v Secretary of State for the Home Department* [2005] UKHL 51 [para 23]. In *R (F and Thompson) v Secretary of State for the Home Department* [2008] EWHC 3170 [paragraph 19], it was noted that:

“[t]he courts have consistently approached consideration of measures which are to be applied to children on the basis that the immaturity of a child offender must be taken into consideration as being of prime importance.”

The particular vulnerability of children in the CJS

The particular difficulties that children face as defendants has been recognised by the courts. In *R(D) v Camberwell Green Youth Court* [2005] 1 WLR 393 (the “Camberwell Green case”) Lady Hale acknowledged the significant problems facing child defendants:

“56 Mr Carter-Stephenson was concerned that we should understand the realities of life in the youth court. The child defendants appearing there are often amongst the most disadvantaged and the least able

to give a good account of themselves. They lack the support and guidance of responsible parents. They lack the support of the local social services authority. They lack basic educational and literacy skills. They lack emotional and social maturity. They often have the experience of violence or other abuse within the home. Increasing numbers are being committed for trial in the Crown Court where these disadvantages will be even more disabling.

57 These are very real problems. . . the question is what, if anything, the court needs to do to ensure that the defendant is not at a substantial disadvantage compared with the prosecution and any other defendants: see *Delcourt v Belgium (1970) 1 EHRR 355*, para 28.”

Assessments of children who were sentenced during 2018/2019 indicates that such children ‘exhibit a range of important, interdependent and interrelated needs’ (Ministry of Justice/ Youth Justice Board, 2020).³² The analysis explored the prevalence of 19 ‘concern types’ among a cohort of convicted children. The most common concern identified was in relation to ‘safety and wellbeing’ which was present for 88% of children. Five of the concern types were exhibited by 70% or more of children, as set out in the table below produced by the NAYJ in its 2020 State of Youth Justice report (Bateman, 2020):³³

Prevalence of assessed concerns exhibited by sentenced children 2018/2019

Derived from Ministry of Justice/ Youth Justice Board, 2020b

Concern type	Proportion of children exhibiting concern
Safety and wellbeing	88%
Risk to others	85%
Substance misuse	75%
Speech, language and communication	71%
Mental health	71%

It is also significant that, in his 2017 report on race and the criminal justice system, David Lammy’s ‘biggest concern’ lay with the youth justice system.³⁴ Yet nothing has been done to address these problems. If anything, the rates of incarceration of Black children have increased. The latest available data, published in 2026, notes that in the year ending March 2025, despite decreases in the number of Black and Mixed children

³² Ministry of Justice / Youth Justice Board (2020) Assessing the needs of sentenced children in the youth justice system 2018/19. London: Youth Justice Board, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887644/assessing-needs-of-sentenced-children-youth-justice-system.pdf

³³ Bateman (2020) The state of youth justice 2020An overview of trends and developments. Available at <https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>

For a detailed review of the wider disadvantages, including socio-economic disadvantages, faced by children in the criminal justice system, see Chapter 5

³⁴ Lammy, D (2017) An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. London: Ministry of Justice, Available at: <https://www.gov.uk/government/publications/lammy-review-final-report>

in custody compared to the previous year, Black and Mixed children remained overrepresented (accounting for 22% and 18% respectively).³⁵

While the overall number of children in custody has reduced by 73% over the last decade, the proportion who are from ethnic minority backgrounds has increased from 32% to 53% (Public Accounts Committee, 2023).³⁶

The vulnerability of children in detention has been recognised by the courts. In *R (Howard League) v Secretary of State for the Home Department and the Department of Health* [2003] 1 FLR 484:

“[Children in custody are]...on any view, vulnerable and needy children. Disproportionately they come from chaotic backgrounds. Many have suffered abuse or neglect” [para 10].

In *R (Children's Rights Alliance for England) v SSJ* [2013] EWCA Civ 34, Lord Justice Laws endorsed the reference by Foskett J in the court below to children in custody as:

“...amongst some of the most vulnerable and socially disadvantaged and that they have specific needs which may not be common to the wider population of young people” [paragraph 9].

³⁵ Ministry of Justice (2023a) Youth custody data, Available at: <https://www.gov.uk/government/statistics/youth-justice-statistics-2024-to-2025/youth-justice-statistics-2024-to-2025#children-in-youth-custody>

³⁶ Public Accounts Committee (2023) Support for vulnerable adolescents, Available at: <https://publications.parliament.uk/pa/cm5803/cmselect/cmpubacc/730/report.html>