

SALLY –O’NEILL - SHOULD WE RETAIN THE PRESENT COURT SYSTEM FOR YOUNG DEFENDANTS?

Background

I have been practising at the Criminal Bar for over 30 years, both prosecuting and defending. When I first started, a lot of my practice was in the youth court or as it was called then, Juvenile court. Many a happy memory have I of entire days waiting to get on at Camberwell Green or Balham Juvenile. A real effort appeared to me to be being made to make the proceedings more user friendly but I still did not feel that it engaged with the disenchanted youngsters who slouched in the chair at the front sitting next to the adult who was supposed to be responsible for them. When I moved onto what I thought were more important cases, it did not occur to me that 30 years down the road I would find myself dealing with youngsters of the same age but this time in very different surroundings such as the Old Bailey where I practice a great deal of the time.

The number of cases involving young defendants being tried for such serious offences that they are committed for trial to the Crown Court even if no adults are tried with them has increased greatly over the last few years and it is proving to be a profoundly depressing experience for those involved. Not only is the same level of disengagement from the whole process still there but they are being tried in an environment which is in my opinion entirely unsuited for the trial of young defendants however serious the charge.

I have been asked if I would be able to consider with you today the pros and cons of the present system and whether there are better attainable alternatives. I have inserted the word attainable because I fear that the sort of dramatic root and branch reform of the youth justice system which many of us feel is essential is extremely unlikely to happen because of the everpresent “F” word. I refer of course to funding.

The Present System

As most of you will no doubt know, we have one of the youngest ages of criminal responsibility in Europe. 10 is very young indeed and the repealing of the doli incapax provisions enabling it to be suggested that some youngsters do not have an appreciation of the difference between right and wrong despite their actual age has not helped. I suppose in theory you could still run the argument but success seems unlikely. It is easy to say in theory

that of course a yd knows the difference between right and wrong but in practice it is not always so clear. I once represented a young boy who was 5 days past his 10th birthday when he and a 12 year old friend pushed some paper through the letter box of a neighbour's house and tried to set light to it. Matches didn't work so they went back with a lighter helpfully supplied by an adult neighbour who had fallen out with the occupants of the house. They were charged, she wasn't so we had the unedifying spectacle of a 10 year old and a 12 year old standing trial together in the Crown Court. The 10 year old was not surprisingly the youngest defendant I had represented in the Crown Court and it may be that most people would consider that the Crown Court was not the right place for such a trial. The only concessions made for the boys during the trial was to allow them to sit with their mothers behind us in the well of the court instead of the dock. Mine sat there sucking his thumb. If they had given evidence, they would have had to have done so in court from the witness box.

That was quite a few years ago. We have moved on from there. Since the case of Thompson and Venables, the James Bulger case, there is a recognition that yd cannot be treated in the same way as adult defendants. There is a practice direction which deals expressly with how trials involving yd should be adapted to take into account eg their more limited attention span, their tiring more easily, limited comprehension etc. although some of those criticisms can be made of adult defs too. There are specific requirements relating to sitting hours, breaks, where the yd should sit in the court, what should happen to them during breaks and so on. All very laudable if they could be made to work. Unfortunately, the sort of trials which are these days at the Old Bailey often have between say 7 and 12 defs commonly with a range of ages from 12 or 13 to 17, 18, 19. A young defendant is one described as under 17.

There are a mass of complications with such trials. However much effort is put into attempting to comply with the Practice Direction, it is practically impossible to comply with it on the most basic levels. There is simply not room to have even 7 or 8 yds sitting in the well of the court with a parent or social worker next to them or even just next to their solicitor. There is good reason for trying to achieve it because it is about the only way you can try to ensure they will at least have to try and pay attention to what is going on and also that you can see for yourself whether they are getting tired and need a break. Pure numbers of yds often make this impossible so you will have youngsters who have never been in trouble before sitting in the dock of the Old Bailey behind a glass screen. Not only are they distant from what is going on and disengaged from the process but it is almost inevitable that they will start to mess around doing themselves no favours in the process with the judge even if

the jury aren't aware of it. If there are also security issues, the situation is even more fraught. In a case I did recently, 7 or 8 defendants were charged with murder and attempted murder. They were aged between 13 and 19 at trial and were either in custody or in secure accommodation. Some of those had little or no previous but two other youngsters had been stabbed, one fatally and local feeling was running high. Those in secure accommodation, that is, the youngest, were all held in establishments in different parts of the country. This was an obvious problem during the trial but the difficulties whilst they are on remand in being visited by their parents cannot be ignored. No matter what they are alleged to have done, the importance of maintaining family relationships, however superficially inadequate, cannot be overemphasised. In our case, the yds were being got up at around 5.15, 5.30 so that they could be brought to court for a start which we eventually managed to persuade the judge should not be before 10.30am. Their journeys at either end of the day were up to 3 hours. They were often sleeping in the car during the journey and breakfast was a sandwich or a Macdonalds when they arrived at court. During adjournments including lunchtime, they were taken back down to the cells where they would sit on the wooden bench which was the only furniture in the room. The door remained open with their escorts outside and when we went down to see them, we had to have the conference in the cell. There were no other available facilities. Their clothes and their lunch which would be sandwiches and crisps were in carrier bags on the floor. These arrangements were worse than for adults. At least there are conference facilities. They were usually back too late to their secure accommodation to allow any sort of physical exercise in the gym and were being shut in their rooms within an hour or so of returning each night, sometimes too late to have a shower.

That is not an unusual scenario. The judge can do little about the basic problems. If the practice direction is adhered to re sitting hours and breaks, the whole trial process takes even longer which makes it worse for them and you end up feeling that the best way through is to get it over with as quickly as possible.

This cannot be right but it is happening more and more and the more it happens, the more inevitable and therefore acceptable it appears.

Basic Issues

1. Is it right to try yds of any age whatever their alleged crime in the Crown Court if they are not charged with an adult? One of the obvious advantages of doing so is that at the moment it is only in that forum that they can be tried by a jury and nothing that I

say today is intended to deprive anyone of a right I consider to be fundamental to anyone charged with serious crime regardless of age.

2. Does a right to be tried by jury mean that it has to be in a dedicated Crown Court or is there potential for a middle tier dealing with serious youth crime?
3. If so, do there have to be dedicated centres involving a different physical set out to ensure that we are doing justice to all or can existing centres be utilised to minimise costs?
4. If it is essential that the time to travel to court for yds be minimised, how is that to be achieved whilst maintaining a yds right to be tried by jury if that is to be maintained?
5. These problems largely arise as a result of yds being kept in custody. Can the problems be better dealt with by allowing more yds conditional bail in homes/hostels etc which are close to the trial court?
6. Are there some problems which can be dealt with by better liaison with the family courts where there are concurrent proceedings? This would normally only be relevant where there are only a small number of yds and there is some sort of domestic background. It is unlikely to be relevant where there are many yds who are part of an alleged "gang" whatever the basis of it, cultural. Postcode, estate etc.
7. Can liaison with the local authority help where the major problem is where the yd is being held by trying to move him/her to a closer place at least during the trial but preferably throughout the remand period if that is essential? There are a very limited number of places which provide secure placements for girls. At best this seems to me to be a short term solution.
8. What then is the solution if we are to deal with the rising number of young defendants being tried for serious offences? Do we need a complete relook at the whole youth justice system? I think we do because if you compare the way yds are treated cf the way young complainants are treated, the injustices are obvious. Eg when a yd is arrested, they are interviewed by a PO with a significant adult who is sometimes the parent who has let the whole situation spin out of control in the first place. Compare that with the kid glove treatment that a comp gets. The ABE interview, the rapport building stage, it being video'd with others watching. Even though it is obvious that

one is a potential prosecution witness and one is a potential defendant, why should there be the difference in the way they are questioned? YDs are just as vulnerable to leading questions. It's not good enough to say well get the interview excluded. The damage may be done. The yd may now think they are in some way to blame as a result of what they have agreed perhaps in answer to leading questions and it may well affect their position in the future. These are extreme situations and no doubt most people have little sympathy for the youngsters involved who may well have been charged with very serious and no doubt reprehensible crimes. That is irrelevant. They need us to stand up for them probably more than many other groups. We are not undermining the evidence against them merely by ensuring that they are treated in a way which preserves their rights as well as enables the investigation to be pursued.

9. Do we need a complete overhaul of the youth justice system? In my opinion, we do and it needs to be how we deal with yds from the very first moment they come into the criminal justice system. To do otherwise is really to perpetuate a system within which yds are disengaged from the system which is not only judging them and where appropriate punishing them but is also hoping to prevent them from re-offending which is in everybody's interests.
10. These are some of the problems. The solutions are not so easily identified but the exercise needs to be carried out if we are to maintain a system of justice which we hope is still looked up to and emulated.
11. And all this is without even mentioning the current sentencing of yds!