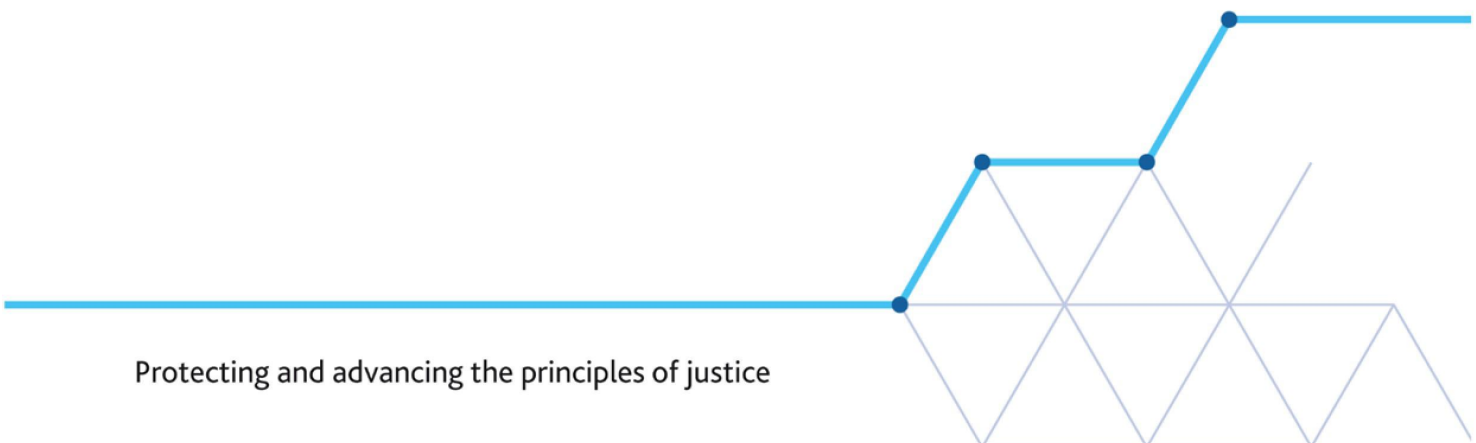
Ministry of Justice

Youth Justice Board
Bwrdd Cyfiawnder Ieuenctid

Referral Order Guidance

October 2018



Protecting and advancing the principles of justice

Ministry of Justice

Youth Justice Board
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Glossary

Asset Plus – Youth Justice Board (YJB) approved framework for youth justice practitioners to assess children who have offended and to plan interventions.

Breach – action or non-action by the child contrary to the requirements of a criminal court order above an agreed threshold. The consequence of such action will result in the child being referred back to the court for possible "breach action" by the court.

Court – the place where legal proceedings occur.

Co-production – a way of working whereby service users, family or carers and service providers work together to create a decision or service which works for them all. The approach is value driven and built on the principle that those who use a service are best placed to help design it. The Social Care Institute for Excellence (SCIE) note that the following principles of equality, diversity, accessibility and reciprocity are critical values for putting co-production into action.

Custody threshold – cases where the court has indicated that custody is being considered for the offence. For first-time guilty plea cases a Referral Order is the only available non-custodial alternative.

Initial youth offender panel meeting (panel meeting) – the first meeting between the child and the two volunteer panel members to consider and agree the content of the Referral Order. Panel meetings are intended to be less formal than court, to encourage the child to engage more fully in discussion around their offending and take an active part in negotiating a contract.

Interventions, "programme interventions" – activities set, negotiated and agreed as part of a Referral Order to support a child towards living a safe and crime-free life and making a positive contribution to society.

Panel adviser – representative from the youth offending team (YOT) responsible for supporting the youth offender panel to formulate Referral Orders. Advisers provide information to panel members and ensure that effective partnerships exist between the panel and the YOT. Often Referral Order co-ordinators or YOT case managers perform the role of a panel adviser.

Pre-sentence report (PSR) – a report requested by the court and prepared by the YOT to inform the most suitable sentencing option for dealing with a child. The PSR should include an assessment of the nature and seriousness of the offence, and its impact on the victim.[1]

Progress meeting – subsequent meetings between the youth offender panel and the child to assess and discuss compliance with the order. The frequency of progress meetings will vary between case.

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[1] S58 Criminal Justice Act 2003

Referral Order – a statutory community-based order in which the court 'refers' the child to a youth offender panel, which is convened by volunteer members of the community and held at an informal venue. The panel along with the child will agree a contract of work with which the child is expected to comply. There is a distinct focus on restorative justice. Compliance is regularly reviewed by the panel. Referral Orders were introduced in the Youth Justice and Criminal Evidence Act 1999 (and are now provided for in the Powers of Criminal Courts (Sentencing) Act 2000), and is the community-based order most often used by the courts when dealing with 10 to 17-year olds, particularly for first time offenders who plead guilty.

Referral Order contract, "contract" – the terms negotiated and agreed by the youth offender panel which act as the sentence to which the child must adhere.

Referral Order Coordinator – representative from the YOT responsible for supporting the youth offender panel to formulate Referral Orders. Roles differ between YOTs but advisers provide information to panel members and ensure effective partnerships exist between the panel and the YOT.

Volunteer panel member – volunteers responsible for determining Referral Orders.

Restorative process – the bringing together of those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by an incident to play a part in repairing the harm and finding a positive way forward.[2] Programmes which involve 'proxy' victims, i.e. a victim of a similar offence, or introduce 'offenders' to restorative justice (RJ) principles do not fall within the Ministry of Justice (MoJ) definition. Such programmes may, however, be useful preparation for an 'offender's' participation in RJ.

Reparation – making practical amends to those harmed by an offence or to the wider community. Reparation may include an explanation, an apology, verbal or written, direct repair of damage to property, a gift, and practical recompense, including financial compensation, for the harm that has been caused.

Restoration – making amends to those harmed by an offence.

Revocation – advice from the panel to the YOT to recommend they apply to the court for the Referral Order to end earlier than the date set when the order was made.

Sentencing bench – a court that imposes a sentencing decision.

Victim – a person affected by an offence.

Victim support services – the MoJ provides grants to Police and Crime Commissioners (PCCs) to commission victims' services for their local area. This includes provision for restorative justice services. The terms of their grant require them to provide an initial referral process for victims so that they can access support services according to their emotional and practical needs.

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[2] https://restorativejustice.org.uk/what-restorative-justice

Youth offender panel, "Referral Order panel", "panel" – two volunteers from the local area who will meet with the child who has offended (and parents or carers where relevant), and facilitate a restorative process. The purpose of this process is to enable a contract to be negotiated and agreed which will define the activity during the Referral Order. One panel member will act as the panel lead. The panel also includes a representative from the YOT in an advisory capacity.

Youth Offending Team (YOT) – multi-agency team established by a local authority in cooperation with statutory partners to work with children at risk of offending, have offended or alleged to have offended. Under the terms of the Crime and Disorder Act 1998, YOTs must include representatives from police, probation, social services, health, education and they may also include other professionals.

1. Introduction

1.1 This Guidance is primarily for youth offending teams (YOTs) and youth offender panel members and has been revised to reflect the recommendations arising from HMI Probation's thematic inspection, **Referral Orders – Do they achieve their potential?**[3] and Charlie Taylor's **Review of the Youth Justice System**[4] as well as the findings of the Lammy review into the treatment of, and outcomes for BAME individuals in the Criminal Justice System[5] which highlighted the disproportionate numbers of BAME children in the youth justice system, which we are committed to addressing.

1.2 The Referral Order was introduced by the Youth Justice and Criminal Evidence Act 1999, and is now provided for in the Powers of Criminal Courts Sentencing Act (2000). It is a unique sentence underpinned by the principles of **restoration**, **reparation** and **reintegration**.

1.3 Referral Orders directly involve the local community, by means of volunteer youth offender panel members and as beneficiaries of reparation. Youth offender panels conduct meetings in accordance with restorative principles and practice. These meetings enable children to recognise the consequences of their offending and to be accountable for their actions. A 'contract' is agreed between the child and the youth offender panel. The contract will include a range of goals and activities, with the aim of supporting the child towards living a safe and crime-free life and making a positive contribution to society. Restorative interventions will play a vital role involving those harmed by the child's offence(s). The child's progress against the contract will be monitored by the youth offender panel through review meetings.

1.4 Enabling the voice of the victim to be heard is central to the Referral Order. Victims have the opportunity, if they wish, to say how they have been affected by the offence. They may also ask questions, and seek reassurance that they won't be targeted again by the child and receive an explanation and/or an apology.

1.5 How the child can make practical reparation for the harm caused may also be discussed. If agreed, this activity can be included in the contract.

1.6 As with other court orders, the Referral Order requires professionals to provide support to the child to facilitate their journey towards a positive and offence free future. Examples of support might be reintegrating a child in to education, training or employment or working to resolve conflict within their family or community. This work will also be included in the contract agreed by the panel.

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[3] https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2016/07/Referral-orders-do-they-achieve-their-potential.pdf

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf. (Recommendation 18 &19)

1.7 In reviewing the guidance, our aim has been to focus where possible upon the underpinning principles of restoration, reparation and reintegration rather than purely upon process. We have removed unnecessary prescription to encourage practitioners to respond to the needs of each child and victim on a case by case basis. In doing so we hope to encourage use of professional discretion and to ensure that the child is placed at the very heart of practice. We believe that through doing so we can improve the delivery of Referral Orders, reduce recidivism and promote better overall outcomes for children, and individuals and communities harmed by crime.

2. Making Referral Orders in court

This chapter contains the following sections:

- The availability of Referral Orders
- Pre-sentence considerations
- The compulsory Referral Order conditions
- The discretionary Referral Order conditions
- Pre-sentence reports (PSRs)
- PSRs where the custody threshold is met
- Effect of making a Referral Order on courts' other sentencing powers
- Setting the length of orders
- Ordering parental attendance
- The format of the Referral Order
- Spent convictions under Rehabilitation of Offenders Act 1974

3. Overview of the Referral Order process

3.1 Where a child is before a court charged with a criminal offence for the first time and pleads guilty, in most cases, the court must impose a Referral Order (see **3.8**). A Referral Order can also be imposed in other cases on a discretionary basis (see **3.9**).

3.2 Post-sentence, if an assessment is not already available, the YOT will assess the child. This will inform drafting of a report to a youth offender panel, provide key information about the child and analysis of their offending behaviour.

3.3 A youth offender panel (panel) will then be convened, comprised of two suitably trained volunteers from the local community and a member of the YOT who acts as an adviser. The child and their parent/carer (if child is under 16 years of age) will be required to attend this panel. The report completed by the YOT will inform the panel's discussion.

3.4 The victims of the child's offence(s) will be contacted. The victim should be offered information about the Referral Order, consulted as to their wishes and invited to be involved in a restorative process. Subject to their wishes and informed consent, this could include attending panel meetings, engaging in victim offender mediation outside the panel process, having their views represented to the panel, or receiving reparation or shuttle mediation. Victims will also be consulted upon their views on how the harm caused by the offence might be repaired. These views will be reflected in any subsequent intervention. Victims should also be consulted as to what information or updates that they would like to receive during the order. This can then be discussed with the child and an agreement reached.

3.5 The volunteer panel members and member of the YOT have distinct roles. The volunteer panel members should take the lead in the panel meeting which one will chair; the YOT panel adviser will provide background information and advice to the volunteer youth offender panel members.

3.6 The panel will review the offence and its consequences and all parties will agree a contract with which the child must comply. This should include two core elements:

- reparation/restoration to the victim and/or wider community; and
- a programme of interventions/activities towards goals which support the child to move forwards towards a positive and productive life.

3.7 Under the terms of the Referral Order the child's progress and compliance with the contract is monitored by the panel which holds regular review meetings attended by the child (and parent/carer where appropriate). At the end of the Referral Order period, the conviction will be spent (see **3.42**–**3.47** for more detailed explanation of spent convictions). In the event of non-compliance or where the child refuses to agree a contract, the Panel can refer the child back to the court which has the power to then revoke the Referral Order and re-sentence for the original offence.

The availability of Referral Orders

3.8 The Referral Order is available as a sentencing option in the youth court, the adult magistrates' court and in some circumstances, the Crown Court.

3.9 Referral Orders are available where a Crown Court judge sits at a magistrates' court under section 66 of the Courts Act 2003. A Referral Order is also available as a sentencing option when the Crown Court is dealing with an appeal since in that capacity the Court has all the same sentencing powers as the lower court, through Section 48(4) of the Senior Courts Act 1981.[6]

3.10 Sections 18(1)(a) and 2) of the Powers of Criminal Courts (Sentencing) Act 2000 requires the court to specify the YOT in the child's home area as responsible for implementing the order. Where a child has been convicted by a court outside of their home area, this avoids the unnecessary delay and expense caused by the convicting court having to remit the case to another area for a further hearing. In these circumstances, it is desirable that the court should also liaise with the YOT in the home area to enable the child to be given reporting instructions prior to leaving court.

3.11 If a child is being sentenced with adults in an adult magistrates' court and a Referral Order is potentially under consideration it is recommended that a youth court magistrate is included on the bench.

Pre-sentence considerations

3.12 A Referral Order is the main sentencing disposal in cases where the child pleads guilty and is convicted for the first time of an imprisonable criminal offence. However, it will not be appropriate in all cases (see compulsory and discretionary conditions set out in **3.14–3.16** below).

3.13 Its availability has been restricted to exclude offences for which the sentence is fixed by law. An example would be sentence of Detention at Her Majesty's Pleasure under section 90 Powers of Criminal Courts (Sentencing) Act 2000 where a child is convicted of murder and mandatory life sentences. The making of a Referral Order is precluded if the court is proposing to impose a custodial sentence, a hospital order or an absolute or conditional discharge.

The compulsory Referral Order conditions

3.14 The court **will be required** to make a Referral Order in the following circumstances:

a) where the child has not previously been convicted; and

b) where the child pleads guilty to an imprisonable offence (and any associated offences),

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[6] https://www.legislation.gov.uk/ukpga/1981/54/section/48

unless the sentence is one that is fixed by law or the court proposes to give the child a custodial sentence, an absolute or conditional discharge or make a hospital order.

The discretionary Referral Order conditions

3.15 The court may make a Referral Order under section 17 of the Powers of Criminal Courts (Sentencing) Act 2000, where compulsory referral conditions are not met but the child pleads guilty to an offence **or** at least one of any connected offence being dealt with.[7] The Sentencing Council's guidelines note that a second or subsequent Referral Orders should be considered in those cases where:

a) the offence is not serious enough for a Youth Rehabilitation Order (YRO) but the child does appear to require some intervention; OR

b) the offence is serious enough for a YRO but it is felt that a Referral Order would be the best way to prevent further offending (as an example, this may be because the child has responded well in the past to such an order and the offence now before the court is dissimilar to that for which a Referral Order was previously imposed).[8]

3.16 A Referral Order is **not** available in the event of a not guilty plea (without an associated guilty plea to at least one of any connected offences).

Pre-sentence reports (PSRs)

3.17 To inform sentencing a child the court may request a PSR. This is a report prepared by the YOT which provides analysis of the offence; information about the child and their circumstances, a risk assessment and considers the available sentencing options and make a recommendation. The PSR may also include information about the wishes of the victim(s) to engage in a restorative process.

3.18 A PSR is required for all cases that meet the 'custody threshold'. The custody threshold refers to those cases where the court has indicated that custody is being considered as a sentencing option. (Note, in practical terms where a child enters a guilty plea and is before the court for sentence for the first time the only available sentencing options will be a Referral Order or custody.)

3.19 In other circumstances, where the compulsory Referral Order conditions are ***not met***, a PSR may be also be requested to inform sentencing. In such cases, a wider range of sentencing options will be available, potentially including custody. If custody is available and it is a realistic option the case is also viewed as having met the custody threshold and a PSR should be requested.

3.20 In cases, where the compulsory Referral Order conditions ***are met*** and custody is **not** being considered, it is unlikely that a PSR will be requested. The YOT however should be prepared to provide verbal information to the court if required.

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[7] For the purposes of this provision connected offences are defined as any other offence for which the child or young person is being dealt with at the same time, whether he is convicted of the offences at the same time or by or before the same court.

[8] Para 6.20 of the Sentencing Children and Young People Definitive Guideline.

3.21 It is important that the panel has the full facts of the offence. The Crown Prosecution Service (CSP) has agreed to supply YOTs with an offence information package/previous convictions, whenever a Referral Order is made. This information will be used by the YOT to inform both the assessment of the child and the report to the initial youth offender panel.

PSRs where the custody threshold is met

3.22 In cases where custody is a viable option, the YOT should ensure that the PSR presents a Referral Order as a robust and credible sentencing option. This should involve an **intensive Referral Order contract**.

3.23 To present the court with such a contract the YOT should consider convening an informal 'pre-sentence panel' involving the child, their parent/carer, YOT and volunteer panel members. This meeting should be used to consider the likely content of a Referral Order intensive contract and used to inform the PSR proposal. A provisional date for the formal initial panel meeting should then be set for as soon after sentencing as is practicable.

3.24 An intensive Referral Order contract should involve a timetable of structured activity each week, reflective of the serious nature of the offence. (See the Scaled Approach.)[9] These activities **may** include:

- education, training or employment
- victim awareness
- community reparation
- restorative processes (this could include, writing a letter of explanation or apology, shuttle mediation (messages passed between the child and victim(s), direct restorative interventions including a face to face meeting with the victim and/ or repair to damage caused during the offence[10])
- work to address thinking and behaviour related to the child's offending
- family support, where appropriate
- interpersonal skills (work to support the factors which increase resilience and desistance)
- there should also be a curfew included, although under legislation this cannot be electronically monitored for a Referral Order

3.25 When the court makes an intensive Referral Order, the YOT's report to the initial panel post-sentence should draw attention to the draft contract included in the PSR. The panel report should fully reflect any comments made by the court when making the Referral Order, including any references to what might be included in the panel

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[9] https://www.gov.uk/government/publications/youth-justice-the-scaled-approach

[10] A victim's involvement in restorative process is always voluntary and they may change their mind at any stage. Consequently, the wording in the contract needs to be open, for example; "The child may have the opportunity to hear about the impact of their actions and consider what they could do to address the harm they have caused through communication with their victim, depending on their victim's wishes.

contract. The youth offender panel however retains the right to determine the content of the contract with the child and their parent/carer post sentence. In theory, this may vary from the contract included in the PSR to the court.

3.26 The initial panel should be convened at the earliest opportunity following sentence and the contract should subsequently start with minimum delay.

3.27 In such cases, the child and parents/carers will need to understand fully that a pre-sentence panel does not create a presumption as to likely sentence. However, such a panel provides the opportunity to present a robust sentencing option to the court as an alternative to custody. The sentencing decision rests with the court alone and custody **may** still be given. Where a pre-sentence panel is not able to be convened, the YOT should consider including within the report proposal an outline of the areas (based on the Asset Plus assessment) that the YOT will be presenting to the youth offender panel for consideration in determining a Referral Order intensive contract. YOTs should consider commissioning similar resources to those available for other community sentences in custody threshold cases; the full range of intensive community intervention options, including non-electronic curfews and restrictions, should be considered to match the requirements of the case.

Effect of making a Referral Order on courts' other sentencing powers

3.28 A Referral Order should **not** be combined with any other disposal (including a fine) other than an absolute discharge in respect of an associated offence. The court **may not** make an Ancillary Order binding over the child to keep the peace or be of good behaviour. The court may **not** make a parental bindover in respect of the child's parents when making a Referral Order or a Parenting Order. However, the court **may** make other Ancillary Orders and these can include costs, Compensation Order; and orders restricting behaviour such as Restraining Orders, Sexual Harm Prevention Orders and Sexual Offence Prevention Orders.

Setting the length of orders

3.29 The length of the order between 3–12 months is determined by the court, and is based on the seriousness of the offence. It will be for the youth offender panel to assess the level of intensity of intervention necessary to prevent the child from re-offending.

3.30 The YOT will assess the child's likelihood of reoffending using the **Asset Plus** assessment and planning interventions framework. Asset Plus will also provide an indicative Scaled Approach Intervention level. This will determine the recommended level of intervention and is based on the assessment of the child's risk and need. This information will be presented in a report to the youth offender panel. The Scaled Approach Intervention level will inform the intensity of interventions and restorative processes in the agreed contract.

3.31 Courts may make Referral Orders for more than one offence. However, the child will be referred to only one youth offender panel, and there will be only one contract. Different orders may be of different lengths, and may run concurrently or consecutively, but the total time period for any order may not exceed twelve months.

3.32 The period of the order will run for the length of time set by the court starting from the date when the contract with the youth offender panel is agreed and signed, not the court date. If the child demonstrates exceptional progress towards meeting the agreed contract, the youth offender panel may recommend to the YOT to apply to the court for early revocation of the order.

Ordering parental attendance

3.33 Constructive engagement with the child's parents or carers is an important aspect of the youth offender panel process.

3.34 When making a Referral Order **Section 20 of the Powers of Criminal Courts (Sentencing) Act 2000** allows the court (and requires the court to do so if the child is under 16) to make an order requiring a parent or carer to attend the meetings of the youth offender panel. If a parent or carer of the child fails to comply with the order and the child is aged under 18 at the time of such failure, the panel may refer the matter to a youth court in the 'home' area where the child resides or will reside. In this instance the court may issue a summons or a warrant for the arrest of the parent or guardian, to secure attendance at court.

3.35 Parents, like other participants, may need appropriate support to attend panel meetings which the YOT must be mindful of. For example, parents may have vulnerabilities such as a physical or learning disability, or mental health problems. In such cases the YOT should consider what support needs to be put in place to facilitate their attendance, meaningful participation and contribution to the panel. The YOT may also need to consider arrangements where there is only one parent in the household and there are other young children to be looked after.

3.36 Where it is shown that the parent or carer failed without reasonable excuse to comply with an order made under section 20 and the court is satisfied that a Parenting Order would be desirable in the interests of preventing the child committing further offences, the court may make a Parenting Order.[11] Failing to comply with the order without reasonable excuse is an offence punishable with a fine of up to level 3 on the standard scale (currently £1,000).[12]

3.37 Only in **exceptional** circumstances of parental non-attendance, for example where the parent is the victim and may not want to attend, may the YOT proceed with or re-convene the panel and agree a contract. In such circumstances, it is important to safeguard the child's rights, particularly if they are under 16 years. To do so, the child should be fully supported by a suitable adult, acceptable to both the child and the panel.

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[11] Paragraph 9D (2-7) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000).
[12] 9(7) of the Crime and Disorder Act 1998 applied by paragraph 9D(7) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000.

The format of the Referral Order

3.38 A suggested pro forma for Referral Orders includes:

- the name and address of the child
- details of the offence
- the length of the order
- the name of the YOT responsible for the Referral Order (this will be the YOT for the area in which the child is living, or is expected to live in the future)
- details of those parent(s)/carer(s)/local authority representative(s) required to attend panel meetings
- details of any Ancillary Orders

3.39 The court must explain to the child in language understandable to the child what will happen because of the Referral Order being made, and what the consequences of not agreeing or complying with the contract will be.

3.40 A copy of the order must be given to the child, and sent on the same day to anyone required by the court to attend panel meetings, but not in court when the order was made.

3.41 A copy of the Referral Order must also be sent on the same day to the YOT named in the order.

Spent convictions under Rehabilitation of Offenders Act 1974

3.42 The conviction will be spent as soon as the order is discharged (the conviction is spent from the date the contract "ceases to have effect"). This is in recognition of the fact that Referral Orders are made on children convicted for the first time and pleading guilty. The Referral Order gives the child the chance to make amends for the offence and to look to an offence free future.

3.43 The rehabilitation period of a Referral Order is only as long as the Referral Order or contract. This means that the conviction will normally become spent at the end of the order or (contract). However, where the court makes a Compensation Order in conjunction with a Referral Order, the conviction will be spent only when both the Compensation Order has been paid and the Referral Order (or contract) has been concluded (s5(8), s6(2) Rehabilitation of Offenders Act 1974).[13] If the compensation is paid before completion of the Referral Order then both will become spent on the date on which the Referral Order (or contract) ends. However, if when the Referral Order is completed the compensation has not yet been paid, then the rehabilitation period for the Referral Order will not end until payment is completed.

3.44 YOTs and panel members should explain to the child the consequences of a Referral Order in terms of resulting criminal record and impact of this, particularly around future career choices and employment and potential implications for travel

[13] The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

overseas. The term 'spent conviction' should also be explained in terms understandable to the child.

3.45 Official record of the conviction will still be kept and the conviction may be cited in court in future criminal proceedings. The benefit for the child is that, with certain exceptions, he/she does not have to disclose the conviction to others such as employers or insurers and that an employer cannot refuse to employ (or dismiss) someone because he or she has a spent conviction unless an exception applies.

3.46 Spent convictions may be made available to potential education/training providers or employers in certain circumstances as set out in the Exceptions Order to the 1974 Act. The main exceptions relate broadly to work with children, the sick, the vulnerable, the administration of justice and where issues of financial probity are in question. In such cases a check through the Disclosure and Barring Service is usually required and the Referral Order will be disclosed as part of this process. Passport control requirements may also need to be investigated. This should be explained to the child and where appropriate their parent/carer.

3.47 Part 2 of the Sexual Offences Act 2003, which replaces Part 1 of the Sex Offenders Act 1997, requires those convicted or warned for relevant sexual offences listed in Schedule 3 to the Act to notify the police of certain personal details (including their name and address) within three days of their conviction or caution. The child must then notify the police whenever these details change and then reconfirm their notified details at least once every twelve months. The general principle is that the notification requirement will apply to children who have been reprimanded, warned or convicted for an offence listed in Schedule 3 to the Act. That Schedule lists all the relevant offences with the thresholds.

4. Roles and responsibilities

This chapter contains the following sections:

- Role of panel members and YOTs in the Referral Order process
- The role of the YOT
- The role of the youth offender panel advisor/Referral Order coordinator
- The role of the YOT case manager
- The role of volunteer panel members
- Communication with the courts

Role of panel members and YOTs in the Referral Order process

4.1 The YOT is responsible in statute for the commissioning and overall operation of Referral Orders.[14] However, for the benefit of the Referral Order to by truly realised a genuinely collaborative approach is required between the YOT and community volunteers along with the child and their parents/carers. Each have their own distinct and vital role to play in ensuring a restorative approach and a positive outcome for all those affected by the offence.

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[14] Power of the Criminal Court (Sentencing) Act 2000 Sec 29 states that:
Functions of youth offending teams.
(1) The functions of a youth offending team responsible for implementing a Referral Order include, in particular, arranging for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel established in pursuance of the order.
(2) During the period for which a youth offender contract between a youth offender panel and an offender has effect—
(a) the specified team shall make arrangements for supervising the offender's compliance with the terms of the contract; and
(b) the person who is the member of the panel referred to in section 21(3)(a) above shall ensure that records are kept of the offender's compliance (or non-compliance) with those terms.
(3) In implementing Referral Orders a youth offending team shall have regard to any guidance given from time to time by the Secretary of State.

Before the initial panel meeting

Panel members

YOTs

Establish before the initial panel meeting what involvement and/or reparation, if any, the victim would welcome, particularly when the victim has chosen not to attend the initial panel meeting.

The YOT worker should also produce a report for the youth offender panel. This report

- should not make specific recommendations regarding the content of the contract;
- should include in full any advisory observations made by the sentencing court regarding areas of concern which the panel was asked to consider; and
- may indicate the type of reparation the victim considers most appropriate.





Initial panel meetings

Panel members

Youth offender panels must comprise at least two volunteers who are representative of the local community,

The community panel members should take the lead in the panel meeting and one of them will chair.

YOTs

Panels must also include a member of the YOT, who should act as an adviser, ***not*** a decision maker.

The YOT panel adviser should provide background information and advice to the community panel members.





Post initial meeting

Panel Members

The youth offender panel must hold progress meetings with the child or young person at least once every three months.

Failure to attend initial meeting

It is the panel and not the YOT that makes the decision to refer a case back to court. Following enquiry the YOT panel member should report to the panel on the circumstances regarding the child or young person's failure to attend the initial panel.

YOTs

YOT caseworker must keep a record of the child or young person's compliance, or non-compliance, with the contract.

They should also provide a progress report for discussion at the progress meeting.

Failure to attend initial meeting

The YOT panel member should report to the panel on the child or young person's failure to attend the initial panel meeting with an explanation of the attempts made to secure attendance and any explanations for non-attendance the child may offer subsequently. This should be contextualised by any success.

Content of contracts

Panel Members

The contents of contracts must be agreed by the youth offender panel and the child or young person, and should reflect the capabilities of the child or young person and the nature of the offending behaviour, as well as the views of the victim.

Community panel members and victims, with their local knowledge, may also be able to identify activities and should be encouraged to suggest forms of reparation and interventions for inclusion in contracts that draw on community rather than just YOT resources.

YOTs

The YOT panel adviser provides information and, where necessary, advice. The contract is agreed, between the child or young person and the community panel members.

The panel members must be provided up to date information on the range of reparation and intervention opportunities which are currently available and can be included in the contract.

Feedback Process

Whilst cooperation is required on both sides, the youth offender panel advisor must ensure effective coordination between the Panel Meeting and the YOT.

To ensure effective communication and practice it is essential that the **YOT manager** agrees with local sentencers effective arrangements for liaison concerning Referral Orders and youth offender panels. This should include regular dialogue, information and feedback on the contents of contracts, case outcomes and the effective management of custody threshold cases. Youth offender panel volunteers should be encouraged to attend liaison meetings with sentencers and to be part of the feedback process.

The role of the YOT

4.2 The main YOT tasks in the Referral Order process are:

a) recruiting, training, appraising and supporting Referral Order coordinators and/or youth offender panel advisers,[15] Restorative Justice or Victim Liaison Workers and volunteer panel members. Panel members should be representative of the community which they serve. In recruiting panel members YOTs should make all efforts to engage effectively with local communities to ensure that this is the case;

b) assessing children and producing reports for youth offender panels;

c) engaging with victims, offering them the opportunity to participate considering informed consent and risk assessment;

d) attending and advising at youth offender panels; ensuring that Referral Orders are conducted restoratively and in accord with the principles and ethos of restorative practice;

e) case supervision, monitoring the compliance of children with contracts, including arranging referral back to court following the panel decision;

f) providing feedback to victims of offences where agreed and appropriate;

g) collecting statistical and other information required centrally, for example outcome data, which may be used for service improvement;

h) collecting feedback from service users including victims, and ensuring that this is used to improve services; and

i) regular liaison with sentencers, including regular dialogue and information and feedback concerning panel contracts and case outcomes.

The role of the youth offender panel advisor/Referral Order coordinator

4.3 The youth offender panel advisor/Referral Order coordinator fulfils an essential role by:

a) supporting the panel process and the volunteer panel members;

b) providing information and advice on services, processes, the legal framework, proportionality, the Scaled Approach and potential interventions;

c) assessing and monitoring risk to the safety and wellbeing of all participants;

d) ensuring effective coordination between the panel Meeting and the YOT;

e) advising the panel of any comments made by the sentencing court to be taken into consideration in setting the contract;

f) providing a checkpoint to ensure the contract is effective and fair, includes appropriate reparation and contains activities to reduce reoffending risk in accordance with the scaled approach;

[15] YOT structures will vary as will the job/role titles.

g) facilitating reflection at the end of each panel on how the panel was conducted, how well the restorative process was followed, examples of good practice and any learning for the future; and

h) training YOT panel advisers and panel members in restorative justice and other relevant areas e.g. trauma informed theory. Panel members should have a clear understanding of the role of the panel and restorative process in addition to the underpinning principles. The changes to training support the commitment to widen the use of restorative justice whilst ensuring that its use meets the minimum National Occupational Standards (2010), the requirements of the Code of Practice for Trainers and Training Organisations of Restorative Practice, (which stipulates a minimum of 20 hours face to face training delivery) and Best Practice Guidance set by the Restorative Justice Council and Skills for Justice.

The role of the YOT case manager

4.4 The case manager is responsible for ensuring that the contract is monitored and the case is supervised to the required standard. The case manager must regularly assess the child's likelihood of reoffending and progress using the Asset Plus framework and that case and statistical information is appropriately recorded.

4.5 The case manager must ensure that any reparation undertaken by the child is risk assessed, that there are appropriate health and safety provisions and that it is within the terms of the agreement contained in the contract.

4.6 The case manager must ensure that all parts of the contract are delivered within the period of the order and that any failure to comply by the child is notified to the panel within the appropriate timescales. Any decision made by the panel about a referral back to court must be acted upon appropriately and in a timely fashion, including applications for revocation of the order on the basis of exceptional progress.

4.7 Case records detailing all activity should be maintained.

4.8 The YOT must act in accordance with the legislation and follow relevant guidance, which includes National Standards for Youth Justice Services (National Standards), the Code of Practice for Victims of Crime (Victims Code), Restorative Justice Council's Good Practice Guidance, Restorative Services Standards, Practitioner Handbook (2016) and Service Provider Handbook (2016).

The role of volunteer panel members

4.9 The volunteer panel members will facilitate the panel meeting. One will assume the role of chair.

4.10 At panel meetings, the volunteer panel members initiate a discussion with the child and, if appropriate, parents/carers and victim(s) to explore what happened during the offence and hear about its impact.

4.11 Panel members will consider any needs leading up to or arising from the offence with the end purpose of agreeing a contract.[16] The volunteer panel members will work with others present to contribute to the development of the contract through a process of 'co-production' with the child. As previously mentioned, the role of the YOT panel adviser within the process is an advisory rather than a decision-making role.

4.12 Volunteer panel members should facilitate the meaningful engagement and involvement of the child. The child should be helped to identify what they consider they can do to repair the harm that they have caused and what help they need to live a positive and productive life. Ideally these ideas will come primarily from the child, but volunteer panel members are also encouraged to suggest ideas for inclusion in contracts. Such ideas should draw upon the child's strengths and be mindful of any barriers to success, including physical barriers such as transport links. The contract should meaningfully draw on community rather than just YOT resources.

Communication with the courts

4.13 Close liaison between YOTs and the courts is essential to ensure that sentencers are well informed and have confidence in Referral Orders and youth offender panels. To facilitate this, YOTs should establish service agreements with the courts that are reviewed and updated on a regular basis. Agreements should include procedures for the effective management of cases where the custody threshold is met.

4.14 YOTs should provide regular reports to Judges, magistrates and their legal advisers on the operation of Referral Orders and youth offender panels. The content of these reports should be agreed between parties and may include case level information and individual case studies and aggregate data on Referral Orders passed during a specific period. This will be particularly important in cases which meet the custody threshold to ensure that courts are able to identify successes where a child has been allowed to remain in the community rather than be sentenced to custody.

[16] The contract is defined in legislation "as a programme of behaviour with the aim (or principal aim) of which is the prevention of re-offending by the offender". Section 23(1) Powers of the Criminal Court (Sentencing) Act 2000

4.15 YOTs should have regular liaison meetings with magistrates. Panel members' attendance at these meetings should also be considered at least periodically. Regular joint training and networking events should be arranged including judges, magistrates and their legal advisers, the YOT and volunteer panel members.

5. Recruiting, training and supporting volunteer panel members

This chapter contains the following sections:

- Selection criteria
- Ineligibility criteria
- The volunteer panel member application form
- The interview
- The introductory volunteer panel member training
- Withdrawals
- Volunteer panel member agreement
- Expenses
- Ongoing support, supervision and training
- Termination procedures
- Complaints procedure

Selection criteria

5.1 The Secretary of State has a power under section 21(2) of the Powers of Criminal Courts (Sentencing) Act 2000 to issue guidance to YOTs on the criteria to be applied in appointing members of youth offender panels. To ensure that youth offender panels are diverse and representative of the local community there should be no unnecessary restrictions on recruitment. The selection criteria are based on personal qualities rather than professional qualifications. Training will form an integral and compulsory part of the recruitment process to ensure that volunteer panel members are equipped with the appropriate skills.

5.2 The required personal qualities are as follows:

Motivation

- a commitment to working with children and parents to prevent further offending and with victims to deal with the consequences of crime

Good character

- personal integrity
- discretion and a firm commitment to confidentiality
- understanding and good judgement, a level-headed approach to children and crime
- an ability and strong commitment to work without prejudice towards people of different ages, ethnic, cultural and social backgrounds

Communication skills	• effective listening and communication skills • an ability to engage with young people • an ability to understand documents, to identify and comprehend relevant facts, and to follow arguments • an ability to think logically, to weigh arguments and to reach logical conclusions • objectivity • common-sense and realistic expectations
Sound temperament	• an ability to relate to, and work with, others as a member of the panel team • a willingness to listen to advice and to the views of others • maturity, patience and the ability to remain calm
Commitment and reliability	• a willingness to undertake all the required initial training, further training and ongoing assessment and appraisal • a commitment to serve as a panel member as required each year and to undertake the relevant preparatory work in each case • a commitment to serve for at least one year following completion of the initial training • a commitment to restorative values and principles and a willingness to learn and use restorative skills in order to ensure that panels clearly follow the restorative process, empower everyone involved in panels to have a voice and take an active part in restoration and rehabilitation.

5.3 The recruitment and selection process should provide information on applicants' suitability based on these criteria. Selectors should be looking at applicants' potential, bearing in mind that some will have more experience than others of participating in selection procedures, interviews and group situations.

Equal opportunities & tackling racial disparity

5.4 All YOTs must demonstrate a commitment to be an equal opportunities employer and care should be taken to ensure that opportunities for participation in youth offender panels are open to all, regardless of age, ethnic or racial origin, gender, sexual orientation, social background, religion, disability or any other irrelevant factor. Recruitment will need to consider relevant local authority procedures for volunteers.

5.5 We are also aware that some areas have a high proportion of BAME children and each YOT should have a clear recruitment strategy which actively seeks to recruit panel members who reflect the demographic profile of the local population. In addition, YOTs should make every effort to ensure that BAME children meet with a representative panel.

Length of term

5.6 Volunteers are encouraged to serve on youth offender panels for terms of up to three years to develop and put in practice good skills. Towards the end of any period of three years' service, there will be a full performance review by the YOT and subject to satisfactory performance, the period of panel service may be extended at the discretion of the YOT manager and dependent on the needs of the panel and the availability of the volunteer. The YOT manager has the discretion to end a panel member's period of service at any time where training and practice competencies have not been maintained.

Ineligibility criteria

Age

5.7 The minimum age requirement is 18 years old.

5.8 Beyond this stipulation, age should not be an automatic barrier to recruitment. The aim of the recruitment strategy should be to recruit a diverse pool of volunteer panel members encompassing a range of ages and experience.

Previous offending history

5.9 Sexual offences, offences against children or a criminal conviction within the last two years will render a person unsuitable. Otherwise, where the applicant can demonstrate that he or she does not present a reoffending risk, previous offending need not necessarily be a bar to recruitment and is a matter for the YOT manager's discretion following a risk assessment process. In making decisions attention should be paid to previous convictions for drugs-related offences, violent offences, other offences of a serious nature and evidence of recent persistent offending.

5.10 Where there is any doubt as to how the individual's previous offending may affect his or her suitability as a youth offender panel member, they should not be accepted as a volunteer; the YOT manager should decline, giving the applicant an explanation of the reasons and the steps the applicant might take to enable a successful future application

5.11 Full Data Barring Service checks will be carried out, and anyone applying to be a volunteer panel member must declare any convictions (whether 'spent' or 'unspent' under the Rehabilitation of Offenders Act 1974), cautions, reprimands or final warnings.

Youth justice professionals

5.12 There should be a balance on youth offender panels between those who bring an entirely fresh perspective to the panel process and those with experience of the youth justice system. However, volunteer panel members must be recruited on the strength of their personal qualities as volunteers, not as representatives of any group or profession.

5.13 Currently serving magistrates are not eligible to be youth offender panel members in their own area, but, subject to **5.18** below, are not prohibited from applying for panels outside their court area or from seeking appointment in their own area after resignation or retirement.

Personal involvement

5.14 It will be inappropriate for panel members to be involved in any case concerning a child who is a family member or close acquaintance or with whom they have previously been involved in a different capacity. Panel administrators need to develop procedures to ensure checks are made in advance and where volunteer panel members discover that there is any potential conflict of interest they must immediately advise the panel administrator.

The volunteer panel member application form

5.15 An application form for volunteers applying to be youth offender panel members should be made available to applicants as well as general information about being a panel volunteer.

5.16 Applicants may be rejected based on relevant facts revealed by their forms (for example, if they do not meet the age criterion) and all other applicants should be invited to interview and a selection process.

5.17 Data Barring Service checks must be carried out including spent convictions and cautions, and written references must also be taken up. Referees should be asked to assess whether the applicant is suitable for youth offender panel work with children who offend offenders and their victims.

The interview

5.18 All eligible applicants should be invited to attend an interview. There should be at least two interviewers, with sound knowledge and understanding of Referral Orders and trained in interviewing. One should be either a manager from the YOT or the Referral Order (project) co-ordinator. When arranging the times and locations of interviews, YOTs should be flexible and aim to meet all reasonable needs of applicants. Some applicants may be rejected on interview but all those eligible applicants who appear to possess the necessary personal qualities for panel membership should be invited to attend the training days.

The introductory volunteer panel member training

5.19 All volunteer panel members must undergo training as part of the recruitment process. YOTs need to satisfy themselves that volunteer panel members are sufficiently skilled to fulfil the role that they are intended to do and should provide volunteer panel member training based on the needs of the service. We encourage YOTs to offer training provided by a trainer who has achieved the Restorative Justice Council's Training Provider Quality Mark (TPQM).

5.20 The YJB and MoJ recommends, at a minimum, training content should consist of:

- introduction to the youth justice system;
- engaging children who offend;
- issues affecting children who offend such as trauma and abuse/safeguarding, mental health, experience of the care system, exploitation and extremism,

discrimination and diversity, desistance and positive youth justice, child and adolescent development, risk and protective factors;

- restorative justice facilitation skills – including fostering restorative communication within panels, and empowering participants to reach agreements on ways forward (to comply with the Restorative Justice Council minimum standards for restorative justice facilitation training);
- panel administration (including pre-court panels, pre- and post-panel meeting, initial, review, emergency and final panels, role of each of those present, aims of the panels;
- practical skills such as role play (communication skills, panel meetings); and
- understanding victims and impact of crime on victim(s).

5.21 In conjunction with the sector, the YJB has devised training which can be used by YOTs to train volunteer panel members which can be accessed through the Youth Justice Interactive Learning Space.[17]

This training is not mandatory but is available for use if YOTs wish to use it. If a YOT does not wish to use this training the above principles apply in that the YOT must be satisfied that the training is fit for purpose and enables volunteer panel members to fulfil their role. YOTs may wish to consult the Restorative Justice Council in making decisions around training to ensure that any training meets their required standards.

5.22 Any issues arising during the training which might affect a trainee's suitability to serve as a panel member should be dealt with as soon as possible. It is recommended that following the training, a final interview should take place where any support or training needs can be identified and the panel member supported. This can also be an opportunity to discuss suitability of the panel member.

Withdrawals

5.23 On finding out more about youth offender panels, an applicant may wish to withdraw from the selection process. Indeed, it is an important objective of the training for applicants to assess their suitability in the light of their increased understanding of panel membership. But, equally, applicants who are suitable should be given the confidence to proceed to panel membership.

Volunteer panel member agreement

5.24 Following the training, prospective volunteer panel members should be invited to a final interview to agree their recruitment. A volunteer panel member agreement should be signed by the volunteer panel member and by a suitable manager within the YOT.

[17] https://yjresourcehub.uk/login.html

Expenses

5.25 No volunteer should incur costs because of applying to be a volunteer panel member. Basic travel costs to attend interviews and training days should be reimbursed by the YOT. Rates will depend on local factors, but should cover standard class public transport or the cost of petrol. Where childcare is an issue YOTs and prospective volunteers should work together to identify practical solutions.

Ongoing support, supervision and training

5.26 Upon recruitment, volunteer panel members should be allocated a supervising member of the YOT.

5.27 It is the responsibility of the supervising member of the YOT to ensure that the necessary support and training are available and to monitor the performance of the volunteer panel members allocated to him or her. This will involve observation at panel meetings, engagement with post panel debrief and reflection and receiving feedback from other panel members and YOT staff. Feedback can also be sought from children, their parent/carer and victim if in attendance.

YOTs should keep up to date with changes in practice as set out by the Restorative Justice Council.

5.28 Where specific training needs are identified, these should be discussed with the volunteer panel member and the necessary arrangements made. All volunteer panel members should receive additional and/ or refresher training. Various subjects may be appropriate for this (for example, working with children who have committed sexual offences or children with serious mental health problems). Volunteer panel volunteers should also have the opportunity to meet local youth court magistrates periodically and, if possible, to observe the youth court.

5.29 De-briefing after panel meetings will be an important part of training and development for panel members. These reflections may be facilitated by the panel advisor or led by the panel members themselves with the panel advisor present. Appraisal and review meetings may be supplemented by peer supervision groups facilitated by the YOT, at which volunteer panel members can discuss cases and their own performance. Networking with youth offender panels in neighbouring areas provides opportunities to exchange information and practice experience can also be useful for training and development purposes.

5.30 YOTs should convene structured meetings with volunteer panel members on a regular basis to encourage reflection and learning from their experience of facilitating panels, and deliver information, training and support.

5.31 Formal one-on-one appraisal and review meetings should be held in accordance with local practice. These will provide the opportunity for the supervising members of YOTs to discuss volunteer panel members' overall performance and development, and to receive feedback to help them understand the needs of volunteer panel members. There should be full and open discussion, where necessary identifying problem areas and agreeing suggestions for improvement. These meetings should

also be used for the renewal of volunteer panel member agreements, where both the volunteer panel member and the YOT agree to this.

Termination procedures

5.32 Terminating the service of volunteer panel members is the responsibility of YOT managers. The decision to terminate should be based on measurable standards of serious misconduct or poor performance. YOT managers should be sure to collect all facts before acting, ensure that options for addressing misconduct or raising standards through training and support have been exhausted and that termination is the only option, and examine all motives to ensure that termination is not retaliatory or discriminatory.

5.33 Any decision by a YOT manager to terminate the service of a volunteer panel member is confidential, and the volunteer's privacy and dignity must be protected. Discussion should be limited to the parties directly involved. Any volunteer panel member whose service is terminated has the right to appeal through the agreed local procedures (see **5.36**).

5.34 If a supervising YOT member finds that a volunteer panel member has committed serious misconduct – failure to notify of arrest for a criminal offence, conviction of a serious criminal offence, discriminatory behaviour or a breach of confidentiality – then the supervising YOT member has the right to suspend the volunteer panel member in accordance with local policies while the case is investigated by the YOT manager. The volunteer panel member will be informed of the YOT manager's decision as soon as possible after the suspension, and has the right to appeal against this decision through the agreed local complaints procedure.

Complaints procedure

5.35 Volunteer panel members should feel free to raise any concerns that they may have with supervising members of YOTs at any time, and especially at one-on-one appraisal and review meetings.

5.36 Volunteer panel members should have clear, written information about procedures for dealing with concerns and grievances and this should include an opportunity to meet the YOT manager if the matter cannot be resolved in other ways. The YOT management board will determine arrangements for any appeal against a decision by the YOT manager. The complainant must be informed of this right to appeal.

6. Engaging victims

This chapter contains the following sections:

- A restorative approach
- Involving victims
- Contacting victims
- Supporting victims
- Corporate victims
- Financial reparation
- Young victims
- Victim support services

A restorative approach

6.1 Youth offender panels operate on restorative justice principles, enabling young people, by taking responsibility and making reparation, to reintegrate and lead a safe, crime free life and make a positive contribution to society. Victims must be given the opportunity to participate actively in the resolution of the offence and its consequences, subject to their wishes and informed consent. The youth offender panel process is an opportunity to:

- address the victim's needs for information;
- provide answers to questions;
- reassure of future safety; and
- ensure reparation for harm done.

6.2 Victims who attend restorative justice processes such as a youth offender panel, can often derive considerable benefit and generally report high levels of satisfaction with the process. The presence of victims also can substantially enhance the beneficial impact of the panel on both children and parent/carer.

6.3 The MoJ defines Restorative Justice (RJ) as "the process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward". This requires direct or indirect communication between the victim and the person who committed the offence. It should meet both of their wishes, not just one or the other. The most appropriate approach for an individual victim, once they know the options and potential benefits, is the one they want. In addition to a face-to-face meeting this may, for example, include direct or indirect reparation that satisfies the victim's specific request, shuttle mediation between the parties, which may include answers to questions, or receipt of a written explanation or apology.

Involving victims

6.4 It is **essential** that victims are invited and welcomed to be part of the Referral Order process. However, the involvement of victims must be entirely voluntary and based on informed consent. The YOT needs to be mindful that many victims will already have been contacted by victim support services and will need to consider how they subsequently approach the victim. It will be helpful if YOTs are able to make links with victim support services in their area to share information. The aim should be to make the victim's experience seamless and as user friendly as possible. Engagement with the victim throughout the Referral Order process should not be restricted to attendance at the initial panel meeting. Victims may choose to attend an initial panel meeting or any subsequent review to have their views represented or to submit a written or recorded statement to the panel. Alternatively, the victim may choose to attend a formal restorative justice conference or informal victim offender process rather than a panel meeting, to be kept informed of the child's progress, or not to participate in the Referral Order process in any way. The role of the YOT is to listen carefully to victims and encourage them to reflect on what they need to feel better and move on. In setting the scene the YOT should also clearly explain the nature of Referral Orders and the kind of work the child may be required to complete to assist them in their journey towards desistance from offending. Through this process victims will often come up with the idea of communicating with the child themselves. This avoids the risk that victims feel that they are being invited to engage in the child's process for the benefit of the child or the YOT, rather than making their own choice based on their needs. They need clear information about the options they have and be given time to make up their mind, without pressure.

Contacting victims

6.5 All contact with victims should conform fully with the Victim's Code and be handled with sensitivity and in accordance with anti-discriminatory practice. YOTs will have agreed processes to ensure that any individual involved in contact with victims has appropriate specialised training, including in victim awareness, anti-discriminatory practice and restorative approaches. Consideration need also be given to any contact that victims will have already received from victim support services to avoid duplication and causing unnecessary distress.

6.6 Unless the victim has indicated otherwise, the YOT should contact the victim as soon as practicable after sentencing. It is usually helpful to send an initial letter enclosing an information leaflet and to follow up with a personal contact by telephone, offering a visit or meeting as appropriate. Victims should have an opportunity, as a matter of course, for a face to face meeting with the YOT Restorative Justice or Victim Liaison Worker (YOT worker). The YOT worker will explain their role, update the victim on the outcome from court and then invite them to talk about the offence and its consequences, if they wish. Through careful listening and exploring the needs arising from the offence (for example for reassurance, recognition, an explanation or apology) the victim may realise that those needs can only be met through communication with the child who harmed them. The YOT worker can then explain the process and the choices available. Explanations about Referral Orders and the options for victim participation should be clear, unbiased and timely. The victim can be invited to consider the potential benefits of restorative processes for them including the opportunity to communicate with the child the effect the offence has had and to ask questions and seek

reassurance. If the victim chooses not to take part in the youth offender panel but opts to explore another direct/indirect restorative approach then this process must be facilitated in line with Restorative Justice Council (RJC) guidance.

Supporting victims

6.7 The nature and extent of harm caused by offence and the victim's vulnerability needs to be carefully considered in conjunction with what support services may already be in place. Any relevant information about support services for victims, should be made available as appropriate, in accordance with the Victims Code. Victims deciding to attend a panel should be invited to bring someone to support them if they wish. Young victims should normally have a parent/carer and/or supporter with them and, if under 16, their parent's or carer's consent must be obtained. The YOT member, while preparing the panel report, will make a general risk assessment. When arranging a panel where a victim will be attending a specific risk assessment of participants must be undertaken. In exceptional circumstances, where there is an assessed risk to the safety of the victim, child or other participant, the decision may be made not to offer the victim the option of attending the panel. In these circumstances, an explanation should be given to the victim and other options for participation in the panel process should still be made available.

6.8 When victims choose to attend the panel, they should be fully consulted as to time and venue of the panel, which should be arranged at the convenience of victims. The structure of the panel meeting should be outlined to the victim and their contribution discussed along with any possible suitable reparation. If the YOT anticipates at a given panel, sensitive personal issues will be discussed with the child and family it might not be appropriate for the victim to stay for the entire meeting. This should be fully discussed and agreed with the victim beforehand.

6.9 Detail of the contents of the contract and the child's progress can be shared with the victim, if all parties agree for this to take place and provide written consent. Personal details should be removed including address, phone number, date of birth, health and mental health issues, details of treatment or counselling they may be receiving and personal details about people other than the child, e.g. about the child's family members. If the child does not consent, then disclosure of information about the contract, or proposed contract terms, must be limited to that sufficient for the victim to give informed consent to participate in the Referral Order process. Any other information contained in the contract which not does fall within this category must not be disclosed to the victim. For example, the victim will need to know about a contract term that involves communication between them and the child but is unlikely to need to know about a contract requirement which relates to unpaid work arrangements. If the victim is interested in meeting the child, but does not want or is not able to attend the initial panel meeting, there are other options, for example by attending a panel progress meeting or taking part in another restorative process, for example a restorative justice conference or informal mediation.

6.10 Victims wishing to attend panel meetings should be asked how best they can be supported. They may, subject to the panel's agreement, choose to be accompanied by a friend, relative or anyone else of their choosing, including support through local victim support services. Victim supporters should also be consulted when arranging meeting times and have the opportunity to discuss the structure of the panel meeting and their contribution. The YOT will want to assess the impact of any

supporter upon the dynamics of the panel meeting and make any corresponding preparations.

6.11 If a victim chooses not to attend a panel but wishes their views to be represented then every effort should be made to ensure this happens. This may be done by the YOT Restorative Justice or Victim Liaison Workers, or the victim can provide a statement to be presented at the panel meeting, describing, for example, the effect of the offence and outlining their views on reparation. Alternatively, a victim may wish to have another family member or friend represent them at the panel where they feel unable to attend themselves. In the case of a substitute, a risk assessment should also be undertaken.

6.12 All contracts should contain an element of reparation. This should be to the victim, or, if there is no identifiable victim or the victim does not wish to participate, then reparation should be to the local community. If the victim is not attending the panel, it will be important to clarify what reparation, if any, the victim would welcome. It will, however, be essential not to raise expectations that may not be fulfilled. Any direct reparation, including letters of apology, must proceed only in accordance with the victim's wishes. Reparation activity must always be supervised[18] and a report on the child's engagement in this provided to the youth offender panel.

6.13 No victim or victim supporter should incur costs because of attending a panel meeting. Basic travel should be reimbursed by the YOT and consideration given to practical solutions to any childcare needs. Reimbursement of travel costs will depend on local factors, but should cover standard class public transport, the cost of petrol and the standard local cost of childcare. Where someone has a disability, appropriate transport and support should be provided to enable them to attend each panel.

Corporate victims

6.14 When businesses or other organisations, such as schools or local authority departments are involved as victims of offences, someone from the business or organisation who has been directly affected by the offence should be invited to attend the panel. In absence of representation the report to the panel should detail any reasons for non-participation, related to the child. Where corporate victims are identified as repeat victims e.g. supermarkets or local shops, YOTs should liaise to identify agreed reparations e.g. bag packing. Sensitivity and care must be taken when contacting corporate victims, as even seemingly minor offences such as shop theft or graffiti can have a significant impact on individuals within the organisation, for example leaving them feeling upset and vulnerable.

[18] In instances where the offence was committed within the home and the agreed reparation is the child or young person helping with household chores then supervision can meaningfully be that of a primary carer, provided that they are willing to report back to the YOT and panel on the child or young person's progress.

Financial reparation

6.15 Financial reparation by the child may be included in the contract if appropriate and is agreed by all parties.

Young victims

6.16 Care should be taken by suitably trained workers in contacting children who are victims and their parents or carers. The consent of their parents or carers should be obtained and young victims should be offered additional support to enable them to participate if they wish to. Support may include other family members or supporters present at panel or other options such as video links, phone conferencing or one-way mirror facilities where available. It may be that the offender is or has been a victim themselves which may or may not have influenced their own offending behaviour. This should be addressed in the panel report with details of support measures.

Victim support services

6.17 YOTs should regularly review and update protocols with local victim services. With victims' consent YOTs can refer victims to these organisations for support before, after and, in some cases, during panel meetings, and in some cases, there may be ongoing liaison to coordinate support for victims. In other cases, the victim will already be being supported by services.

6.18 There should be regular monitoring by the YOT of victims' views, experience and satisfaction with Referral Orders, youth offender panels and other restorative justice interventions. Service user feedback should be regularly discussed at YOT management level and used to inform improvements to the service offered to victims.

7. Assessing children

7.1 The YOT should expedite the allocation of a worker to each child placed on a Referral Order who should meet the child and their parent(s)/carer(s) as soon as is practicable after the court hearing. At this meeting the YOT worker should clearly explain the Referral Order and panel procedures, including the child's rights and choices, and commence an assessment of the child using Asset Plus. Continued engagement of the child should take place during the period between the court hearing and the initial panel to maintain impetus and motivation. This time can be used constructively to prepare the child for the initial panel meeting and to introduce and explore restorative processes.

7.2 The YOT worker should produce a report for the youth offender panel informed by:

- the Asset Plus assessment including analysis of the offence and the consequences;
- any Crown Prosecution Service (CPS) advance disclosure;
- an assessment of the victim's present wishes regarding reparation and restorative justice interventions; and
- information from other relevant sources such as YOT case records, specialist assessments and information from other agencies.

7.3 The report should include in full any advisory observations made by the sentencing court regarding areas of concern which the panel was asked to consider. The panel should be made aware of the child's strengths and any key desistence factors. In turn, these should be reflected in the contract agreed between the chid or child and the panel. It may outline the work undertaken to engage the victim in the process and indicate the type of reparation which may be most appropriate in accordance with the victim's wishes. The panel report also should indicate clearly the level of interventions recommended for the rehabilitative elements in the contract in accordance with the Scaled Approach.

7.4 The report should be balanced, impartial, focused and analytical, free from discriminatory language or stereotypes, verified and factually accurate and understandable to the child and their parent/carer. The report should not make specific recommendations regarding the content of the contract. This is for the panel members along with the child and if appropriate their parent/carer to agree. The panel members should have updated information on the range of reparation and intervention opportunities to inform decision making. This information can be included in the contract for any case.

7.5 The panel report should be made available to all panel members prior to the day of the panel meeting to allow panel members sufficient time to read and reflect upon the content in advance of the panel. The report should be distributed in accordance with local protocols to ensure that confidentiality is safeguarded and correct data protection procedures are followed.

8. Initial panel meetings

This chapter contains the following sections:

- Overview
- Deciding attendance
- Arranging panel meetings
- The Panel Meeting
- Role of the child
- Role of the parent(s)/carer(s)
- Content of Contract
- Reparation
- Interventions
- Voluntary activities
- Agreeing the contract
- Duration of the contract
- Failure to agree a contract
- Conduct of panel meetings
- Dealing with non-attendance
- Health and safety

Overview

8.1 The initial panel meeting must take place in a timely fashion balancing the needs and risks presented by the child. The period of the order does not begin until the contract has been agreed and signed, underlining the importance of a timely first panel meeting. Meanwhile, it is important that opportunities to engage and motivate the child are not neglected, resulting in loss of impetus increasing the risk of re-offending. The time before the initial panel also enables initial contact with the victim with the purpose of providing information about the Referral Order process and if appropriate begin to explore the concept of restorative processes (unless the victim has specifically asked not to be contacted).

8.2 The key purposes of the initial panel meeting are to enable the child to acknowledge responsibility, understand the impact of their offending behaviour on the victim and others, explore how they might wish to repair the harm that they have caused (agree to repair harm) and to formally agree the contract with the panel. To achieve these aims good preparation is needed prior to the panel. During the meeting, panel members will also need to exercise strong engagement skills. They will need to

utilise their restorative skills in engaging the child, ensuring that those present in the meeting feel heard, and involving everyone in agreeing on the way forward.

8.3 The effective conduct of initial panel meetings will be crucial in providing a restorative process which address the needs and wishes of victims as well as the child. It is desirable for the victim to be involved in the initial meeting and to have their voice heard by any means they consider best. However, if they choose not to be involved this should not preclude later involvement. The YOT should ensure that the victim is meaningfully afforded to engage if they wish throughout the life of the order unless they have specifically asked not to be contacted. More detailed information on the conduct of panel meetings, and on the roles of participants, is given in the training material for youth offender panel members, restorative justice facilitation training.

8.4 Finally, the panel meeting must not be used as an opportunity for a 'retrial.' The facts of the case, as found by the court, must be accepted. The panel meeting must concentrate on the consequences of the offence for the victim and wider community, how and why the offence came to be committed, how the harm is to be repaired and how best to support the child lead a positive and productive life.

Deciding attendance

Those ordered by the court to attend

8.5 The Referral Order from the court should include the details of the child and any parent/carer ordered to attend.

Voluntary attendees

8.6 The YOT should ensure that identifiable victims, and representatives of all corporate victims, are encouraged to attend panel meetings as appropriate, unless the YOT panel adviser assesses that attendance would represent a risk to the safety or welfare of the victim or other participants.

8.7 Victims and the child may be accompanied by an adult supporter of their choosing. YOTs should facilitate the attendance of supporters unless there are exceptional circumstances that would make this inappropriate. Other people who are assessed as having a positive influence in the child's life may also be invited to attend, for example a key worker. Decisions on who may attend are subject to the agreement of the panel.

Legal representatives

8.8 The child will not be legally represented at panel meetings and supporters **must not** act as legal representatives. This could hinder the process of directly involving the child and enabling them to take responsibility for their offending and future behaviour. Lawyers may be present as parents, carers or supporters, but, the child should be facilitated to speak for themselves throughout the youth offender panel process.

Arranging panel meetings

8.9 Panel meetings will often need to be conducted in the evenings or weekends and in accessible locations, so that the child, families, youth offender panel members and victims with daytime work/study/other commitments are not precluded from attending. However, YOTs should also bear in mind that some prospective participants will have evening commitments but be available during the daytime. Victims and their supporters should be consulted about dates and times at the same time as the child, families and the youth offender panel members, to give the greatest chance of finding a time suitable for all participants. Panel meetings should be arranged to meet the convenience of victims wishing to attend but should not be held during any education, training or work provision which the child is required to attend.

8.10 YOTs should similarly consider the needs and preferences of victims when selecting the venue for the meeting. In general, venues should be community-based, informal and non-institutional, for example, community sports and leisure centres, adult education centres, family centres, youth clubs and schools, rather than YOT premises or police stations. However, in some cases, especially where one of the participants is likely to be volatile, there should be a risk assessment and, if there are safety concerns, appropriate premises should be identified.

8.11 Ideally, there should be separate waiting areas for use by the child, their families, victims and their supporters. All venues should be secure and easily accessible for youth offender panel members, the child, the family and victims. Panel meetings must **not** be held in people's homes as this will create an imbalance and bias.

8.12 Environmental factors are important in the delivery of effective panels. Factors such as room layout can be instrumental in creating a safe and conducive environment for all parties to speak freely and engage with the panel. Use of tables can present barriers to engagement whereas sitting in a circle in a relaxed environment can be enabling. Panel members should also consider barriers that might be created through mode of dress. Smart casual attire is suggested for optimal engagement.

8.13 Participants who have special needs, such as disability or who do not speak English as a first language, should be consulted to ensure that arrangements enable them to participate fully on an equal basis.

The Panel Meeting

8.14 Whether a victim attends a panel meeting or not, all panel meetings are restorative meetings, and the volunteer panel members facilitating the panel should embrace the restorative ethos, values and principles and follow restorative process as outlined, for example, in the YJB Restorative Justice Facilitator training and Panel Administration training. If the victim doesn't attend, the child's parent or carer is likely to be a secondary victim of the offence, and even if the child attends alone, the panel volunteers represent the community and can aid reflection on the wider ripples of harm caused by crime.

8.15 For panels to be restorative, panel volunteers and YOT advisors need to embed the principles and values of the restorative approach, which include:

- **Voluntariness:** for victims, engagement in a panel or other restorative process is fully voluntary. For the child, the choices have been removed from them because of their actions and their engagement in their Referral Order is not voluntary. However, they should be given choice on how they wish to repair the harm that they have caused. Compelling the child to apologise, undertake direct reparation or communicate with their victim against their will is unlikely to be helpful for either party.
- **Impartiality:** panel volunteers should avoid taking any one side in the panel meeting. They are there to facilitate a process, with a focus on the harm that has been caused and how it may be addressed and repaired.
- **Neutrality:** panel volunteers shouldn't have a vested interest in a given outcome from the panel, and try as far as possible to allow the process to be owned by the participants.
- **Inclusion:** panel volunteers need to remain flexible and responsive to meet the individual needs of those attending the panel, adjusting the restorative process to accommodate the individual communication and learning styles and any special needs of participants.
- **Respect:** the panel volunteers will model respect, and uphold the intrinsic dignity and worth of everyone involved in the panel, irrespective of their past actions or current attitude.
- **Listening:** hearing and acknowledging each person's unique perspective is the key that underpins the entire process. The restorative process allows everyone to feel heard, by creating a safe environment where participants can speak free of interruption. Panel volunteers maintain a respectful curiosity and need to avoid tipping over into investigative or worse still interrogative mode.
- **Non-judgement:** the panel volunteers need to avoid making participants feel judged, either through praise or blame. By sitting back and suspending their judgement, the panel volunteers allow participants to make their own.
- **Honesty:** panel volunteers and YOT staff must remain honest in all aspects of their role, modelling this value for participants. It helps build trust if everyone is kept well informed about the process, and if the panel volunteers and YOT staff ensure that all their actions are transparent.
- **Safety:** the restorative process must do no further harm. The physical and emotional safety of participants is the over-riding concern of those involved in panels.
- **Self-determination:** it is important that panel volunteers have faith in the ability of participants in panels to find their own solutions to the issues that concern them. The role of panel volunteers and YOT advisors is to ensure that everyone has a chance to contribute towards the outcomes of the panel, and avoid the panel becoming an exercise in 'rubber stamping' a predetermined contract.

8.16 The Transforming Conflict model of restorative practice follows 5 themes:[19]

- **Theme 1: Hearing the narrative:** starting with the question 'What happened?', the panel volunteers will encourage each participant to share their experience of the offence and its aftermath, in their own words.
- **Theme 2: Thoughts and feelings:** thoughts and feelings influence behaviour, and encouraging the child to recall what they were thinking and feeling at key moments before, during and after the offence helps them understand their own behaviour, and generates empathy when they hear the thoughts and feelings of those who have been affected by their actions.
- **Theme 3: Ripples of harm:** to encourage them to take responsibility, it is important for the child to understand the consequences of their actions, and the panel can explore with participants who has been affected by the offence and how.
- **Theme 4: Needs:** all offending is an expression of unmet needs, and by clearly identifying what everyone needs to feel better, the harm caused by the offence can be addressed, and the risk of reoffending reduced.
- **Theme 5: Ways forward:** if the needs that led to and arise from the offence are clearly identified, the contract is more likely to meet those needs. Where possible the child is encouraged to suggest actions that would enable them to repair the harm that they have caused and avoid future offending.

These themes should underpin every panel meeting.

Role of the child

8.17 The child plays a central role in the youth offender panel. The child should enter into the co-production of the contract and be fully engaged in this process. Children are the 'experts' in their own life and should be supported to contribute meaningfully to panel meetings and fulfil their role.

8.18 Preparing a child for a panel meeting will require effort and skill on the part of the YOT case worker. The child should be helped to consider not only the impact of their offending behaviour on others but conversely what they are good and their vision for a positive future. This support will be vital in enabling a child to participate fully in the panel process.

Role of the parent(s)/carer(s)

8.19 Where appropriate parents/carers have a responsibility to take what action they can to prevent their child from offending. Their support is critical to the success of the order and the rehabilitation of the child. Panel members should therefore keep in mind the need to engage parents/carers during the panel hearing and encourage them to provide active support for their child to help ensure that the contract is fulfilled. It may be appropriate to raise the possibility of additional assistance through YOT parenting interventions and support. Note that in some cases the parent/carer

[19] Hopkins, B. (2014). *Restorative approaches in youth settings: practitioners manual*. Mortimer: Transforming Conflict.

may also be the victim of the offence and this will call for special understanding and acknowledgement; it is important to ensure they are offered the same support as other victims and that their needs as victims are met. However, even if they aren't the direct victim, parents/carers are very likely to have been affected by the child's offending.

Content of Contract

8.20 The two core elements of every Referral Order contract are:

a) **reparation** to the victim and/or the wider community and

b) a **programme of interventions**, delivered or organised by the YOT, which addresses the factors likely to be associated with any reoffending.

In custody threshold cases the Referral Order **intensive contract** should include more intensive support and supervision and may include non-electronic curfew and restrictions.

In all cases the contents of the contract must be presented in plain, language, understandable to the child and their parents/carers. The use of jargon and acronyms should always be avoided in favour of ordinary language.

8.21 Contracts must consider the child's education, training or work attendance or religious observance. YOT advisers should ensure that the panel has clear and up-to-date information on these commitments, so that they may be considered as appropriate in agreeing contracts.

Reparation

8.22 Reparation is a fundamental part of the Referral Order and a key element in every panel contract. Where possible reparation should be based on the victims' wishes; otherwise reparation can be to the wider community (with the panel members representing the community), as appropriate.

8.23 Reparation to individual victims should, as far as possible, be determined by the wishes of the victim, whilst having regard to proportionality. Reparation may include an explanation, an apology, verbal or written, direct repair of damage to property, a gift, and practical recompense, including financial compensation, for the harm that has been caused. A sizable proportion of offences by young people are committed in the home. Where appropriate and if agreed by the primary carer, reparation can also be in the home, and may involve activities such as helping with housework, or commitments, such as undertaking to complete homework.

8.24 It will be important for YOTs to try to establish before the initial panel meeting what reparation, if any, the victim would welcome – particularly when the victim has chosen not to attend the initial, or subsequent panel meeting. However, in working with victims, YOTs should avoid raising unrealistic expectations. The contents of contracts must be agreed by the youth offender panel and the child, and should reflect the capabilities of the child and the nature of the offending behaviour, as well as the views of the victim.

8.25 No direct reparation or letter of apology should be given to a victim without his or her express prior consent. For contracts which include financial reparation it is essential that the YOT has financially sound and robust procedures in place to ensure the reparation is carried out in a secure and efficient manner.

8.26 Even if there is no victim participation at the initial panel meeting, provision can be made in the contract for subsequent victim participation at either progress meetings or other restorative justice (conference) meetings such as a restorative justice conference, victim offender mediation or a family group conference, subject to the victim's consent. Where appropriate the contract can be amended to enable and reflect such a change in circumstance.

8.27 Reparation to the wider community should aim to make children aware of the impact that their offending behaviour has on their community and importantly enable them to make amends and start afresh. YOTs should have a range of local community reparation programmes, consisting of activities that young people may carry out for the benefit of the community. The YOT will consult with local communities to develop reparation activities of benefit to the locality. This work should be in partnership with other criminal justice agencies, including community neighbourhood policing teams, to ensure coordinated and meaningful community engagement. Panel members themselves may also be well placed to suggest relevant activities both in a general context and in respect of individual cases of children.

8.28 It is important that community reparation activities for individual children who have been given Referral Orders should be meaningful to them. To this end the child might be involved in deciding the kind of reparation that they will do. Reparation activities will also be influenced by the impact of their offence on the community. This may include, physical work (such as clearing up litter, graffiti or vandalism, or helping with other environmental improvements and conservation) and/or helping people (such as working with elderly or disabled people, or helping to get messages across to other children at risk of offending). Community reparation should not interfere with attendance at school or work and should include reparation activity in the evenings or at weekends.

8.29 These activities will normally be most successful when the value of the work being carried out by children is apparent to both them and their communities. Children who offend are often recipients of a range of services aimed at improving their lives; reparation gives them the opportunity to be the one giving. Staff or volunteers supervising practical reparation can become mentors and role models for the child.

8.30 The amount of community reparation to be included in a contract should consider the wishes of the victim but should primarily be proportionate to the seriousness of the offence. The length of the order set by the court will have been determined primarily by the seriousness of the offence. The following is a guide to the hours of reparation that youth offender panels might normally expect to include in contracts for orders of different lengths as set by the court. Local areas may use this guide to steer decisions made by youth offender panels, however the decision ultimately rests with them and will consider a range of factors.

Length of order	Amount of Reparation
3–4 months	3–9 hours
5–7 months	10–19 hours
8–9 months	20–29 hours

For orders of 10–12 months, youth offender panels should normally include a minimum of 30 hours of reparation in contracts; and, in certain custody threshold cases, a considerably higher number of hours may be appropriate.

8.31 In certain circumstances, it may make sense for reparation to be a task, such as writing a letter of explanation or apology or creating a gift for the victim, in which case a set number of hours need not be specified.

Interventions

8.32 There should be regular contact between the child and a YOT practitioner in line with national and locally agreed standards. The purpose of this contact will be to deliver the interventions agreed in the contract. The aim of these interventions should be to prevent reoffending, reflecting the principal aim of the youth justice system. Contact levels may decrease or increase dependent upon assessed need and risk.

8.33 Youth offender panels should be able to draw on a wide range of interventions to draw up a package of interventions, including positive activities, tailored to the individual case, considering the level and type of offending. The interventions may include:

- offending behaviour programmes
- family counselling
- sports or youth work
- mentoring
- psychiatric or psychological assessment and interventions
- anger management
- constructive leisure programmes
- road or fire safety
- cognitive behaviour programmes
- employment or careers advice
- risky behaviour/life skills interventions
- victim awareness
- a facilitated restorative process including the victim (with consent from both parties)
- substance misuse programmes (including alcohol and solvents)
- weapon awareness programmes
- requirement to attend school
- requirement to stay away from specified places or people
- curfew (not electronically monitored)
- attendance at an attendance centre

8.34 Youth offender panel members and victims, with their local knowledge, may also be able to identify activities and should be encouraged to suggest forms of reparation and interventions for inclusion in contracts that draw on community rather than just YOT resources – subject to appropriate risk assessments.

8.35 The interventions should address the issues contributing to the child's offending behaviour and additionally support any desistance factors and the child's transition to a safe and crime free life where they make a positive contribution to society. Both will have been identified by the YOT during the assessment process. The level of intervention should be determined by the Scaled Approach.

8.36 In custody threshold cases where the court had been considering custody it is **essential** that the elements of the Referral Order intensive contract provide a fully adequate and robust response to the offence and offending risk factors. The most intensive level of contact with the YOT, including 25 hours a week of reparation and intervention/activity comparable with other community sentence intensive options may well be appropriate, but electronic monitoring cannot be included. Such cases must be readily referred back to court by the panel in the event of failure to agree a satisfactory contract or non-compliance.

8.37 In the case of children convicted under the Terrorism Act 2000 it is desirable that they are assessed using the Extremism Risk Guidance (ERG+22). There may also be occasions where children not convicted under the Terrorism Act may also require an ERG+22, where there are clear links to extremism or where there are significant concerns of them being drawn into terrorism. The ERG+22 is a comprehensive and structured assessment tool (the +22 denotes 22 domains of assessment plus any others relevant to the individual) and should be completed by a trained professional. The youth offender panel will need to discuss this process with the child consider if the completion of this assessment should be included in the child's contract. The critical factor here is compliance with an ERG +22 assessment should only be included in the contract if the child agrees. Given the potential risk both to the child and from them the panel may wish to encourage the child to actively consider inclusion. The YJB in conjunction with the youth justice sector has issued *"Community practice advice – managing extremism for under 18s"*, which will be helpful for volunteer panel members to be sighted upon and to be included in training. Such cases are likely to occur very infrequently and it may be prudent for the YOT to specifically brief volunteer panel members prior to any such case and adequately debriefed after the panel has met.

Voluntary activities

8.38 The panel may agree voluntary rather than enforceable activities with the child. For example, welfare needs may be identified which are beyond the scope of the Referral Order, either because the period of the Referral Order is too short to address all those needs or to do so would be disproportionate in relation to the offence. Voluntary activities might also extend beyond the duration of the Referral Order to support the child's longer term journey towards a positive future and desistance from offending. The YOT may be asked to access services provided by social services and other agencies. Any voluntary activities should be recorded but clearly distinguished from the programme comprising the contract. The panel should make clear to the child and their parents/carers that voluntary aspects are not part of the enforceable elements of the contract.

Agreeing the contract

8.39 The role of the YOT panel adviser is to provide information and, where necessary, advice. However, agreeing the contract with the child is the responsibility of the volunteer panel members. Panels should also consider information that has been provided by the sentencing bench for example the requirement to pay a Compensation Order.

8.40 Contracts should be negotiated with the child, not imposed on them. The principles of co-production should apply. The child's ownership of the contract will be critical to the success of the Referral Order in repairing harm and preventing re-offending. To facilitate this the child and their parents/carers to should be provided with the report to panel as far in advance of the hearing as possible (at the same time as the panel members themselves). This will enable the child and their primary carer can appraise themselves of the content of the report, check for accuracy and prepare for discussion around the report. In sharing the report, the YOT will need to consider any literacy or speech, language or communication needs.

8.41 It may be helpful for the panel to discuss the report on the child before the meeting, however the panel should not agree the elements of the contract prior to the meeting. These should be discussed and agreed with the child at the meeting itself, and arise out of an exploration of the unmet needs that led to the offence. Contracts should reflect understanding of desistance theory and a focus on the child's interests and aspirations, including developing positive activities.

8.42 Contracts should be written in plain, jargon free language fully understandable by the child. The contract must be read aloud to the child. The panel must ensure that the child and their primary carer understand its contents and what is required. The consequences for the child of not complying with the contract should also be clearly explained and, the understanding of the child should be confirmed at all stages. The child should be encouraged to ask questions to confirm their understanding of the requirements. The agreed contract must be signed by the child and the chair of the panel. It is good practice for the primary carer to sign the contract as well.

8.43 A copy of the signed contract must be given to the child. Copies must also be given to the parent/carer and to anyone else who will be assisting the child in complying. In addition to the information which victims are entitled to receive (see para. **6.7**), copies of the contract can be made available to victims who wish to receive one, if the child has consented. Written consent from the child must be obtained. The child's personal details such as their address, phone number, date of birth, health and mental health issues, details of treatment or counselling they may be receiving and personal details about people other than the child, for example, about the child's family members, must be removed from the contract before disclosure in every case. Copies should be supplied for information purposes to the sentencing court.

Duration of the contract

8.44 The Referral Order compliance period will start on the date the contract is signed at the panel meeting and will last for the time period stated on the court order. At the expiry of the defined time period, subject to satisfactory completion, the Referral Order is terminated (see **9.23**–**9.25** for more information on early revocation).

8.45 It is important for child or young people to start carrying out the activities agreed in Referral Order contracts **as soon as possible** after signing the contract. This is to maintain motivation and a sense of action and achievement.

Failure to agree a contract

8.46 If a contract is not agreed at the initial panel meeting, a further meeting may be held if the panel believes this would enable a contract to be agreed. It is important that this second meeting be held as soon as is practicable. However, if it seems that there is no prospect of a contract being agreed, the panel should advise the YOT that the child should be referred back to the court promptly to consider re-sentencing. This should be clearly explained to the child at the start of the meeting and their understanding checked. Similarly, if a child denies their culpability for the offence at the panel meeting and refuses to participate in the referral process, the panel must not engage in a discussion on the matter of conviction and the case must be referred back to court.

Conduct of panel meetings

8.47 The child, parents and victims should feel that they have been treated with respect and fairness. Panel members should always be sensitive to and address the diverse needs of victims, the child and their parents/carers (for example identifying any communication difficulties and how to overcome them at the start of the meeting). It may be helpful for panel members for mechanisms to be put in place to seek feedback from participants after the panel meeting. A debriefing should be held after each panel where panel members along with the youth offender panel advisor reflect upon what went well during the panel and what might have been improved.

Dealing with non-attendance

8.48 The child should have appropriate preparation and support from the YOT before attending the first panel meeting. Where the child fails to attend the initial panel meeting the YOT member should attempt to establish the reason. Where there appear to be reasonable grounds for the absence (for example, ill health) and a reasonable prospect of attendance in the future, the meeting should be rearranged. Every effort should be made to ensure that this occurs promptly.

8.49 It is the panel and not the YOT that makes the decision to refer a case back to court. The YOT panel adviser should report to the panel on the child's failure to attend the initial panel meeting with an explanation of the attempts made to secure attendance and any reasons supplied by the child or their parents/carers for non-attendance. The YOT must ensure that a record is kept of all attempts to contact the child and their parents/carers. The panel should then decide whether the case should be referred back to court or whether to adjourn to another meeting date. Where the panel considers that the reason is unacceptable, or no reason is provided, the panel should refer the child back to the court to consider resentencing, stating the reasons in writing. The YOT case worker must report to the court on the referral back as their earliest convenience.

8.50 Where the primary carer is ordered to attend the youth offender panel and fails to do so, the reason should be investigated by the YOT. Where there appear to be reasonable grounds, the meeting may be rearranged, however, where there appears to be no good reason, and no prospect of attendance in the future, the panel should refer the case back to court. The court has powers to make a Parenting Order or act in accordance with section 63 of the Magistrates' Courts Act

1980. If the child is under 16 years, the panel must not proceed without the attendance of a parent/guardian or other appropriate adult to support the child.

Health and safety

8.51 YOTs are responsible for ensuring the health and safety of children carrying out activities agreed in Referral Order contracts, of victims receiving direct reparation, and of anyone else involved.

8.52 Insurance against otherwise uninsured losses because of Referral Order activities should be considered by the YOT with its partner agencies. Referral Order activities should be included in the insurance arrangements that YOTs have in place for other court orders.

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9. Monitoring compliance, variation and revocation of orders

This chapter contains the following sections:

- Monitoring compliance with the order
- Non-compliance and referral back to court
- Extension of the order in interests of justice
- Varying the contract
- Revocation of the order in the interests of justice
- Revocation of the order due to change of circumstances
- Further offending while on a Referral Order
- Transfer of Order to Probation when child attains 18 years of age

Monitoring compliance with the order

9.1 The YOT caseworker must keep a record of the child's compliance, with the contract. This information will be essential if the child is referred to court in the event of non-compliance with the contract. The record should be fair and balanced and take account of positive behaviour displayed as well as any examples where there have been difficulties.

9.2 The youth offender panel must hold progress meetings with the child at regular and agreed intervals. The number of progress meetings required will depend on the length of the contract and the level of supervision considered necessary in each case. At each meeting, the panel should set the date of the next meeting.

9.3 It may not be necessary for all the original participants (except those ordered by the court to attend all panel meetings) to attend progress meetings. Wherever possible, it is desirable that at least one volunteer panel member from the initial panel meeting is present at all panel meetings to provide continuity. However, it is **essential** that the legal requirement is met and that the youth offender panel consists of at least two youth offender panel members and one member from the YOT.

9.4 The YOT caseworker must provide a progress report for discussion at the meeting. Discussion should focus on the child's success in complying with the contract, and the effect that this has had. Any difficulties with the contract should also be highlighted any difficulties, to ensure that the child is receiving adequate support from those who have agreed to supervise activities. Where the child's compliance has been exceptional, the progress meeting will be an opportunity to acknowledge and reinforce the progress and will be also be an opportunity in suitable cases to assess whether the panel should consider at the relevant time an application to court for early revocation of the order (see section 9.23–9.25).

9.5 The child may request a progress meeting, either to vary the contract or to seek revocation of the order. Both the YOT and panel should ensure that the child is aware and is reminded of this opportunity.

Non-compliance and referral back to court

9.6 If the child is not complying with the contract, for example by failing to attend a panel or satisfactorily complete contract activities, the YOT caseworker must take appropriate action. This will mean following up either through a visit, telephone call, text, email or letter at the earliest possible occasion to establish whether there is an acceptable reason for non-compliance in line with local compliance procedures.

9.7 Where the explanation is unacceptable, a formal written warning **should** immediately be given. Where two formal warnings are given and there is a further unacceptable failure to comply, the YOT caseworker is advised to refer the child back to the youth offender panel, unless there are extenuating circumstances. This should take place with the agreement of their line manager.

9.8 A panel meeting be convened as soon as is practicable. The purpose of this panel is to use the restorative process to elicit from the child the underlying reasons why they have not complied, and where appropriate explore how they might re-engaged with the YOT. The panel might also consider how the primary carer might support the child in complying. Ultimately, the panel will determine whether to refer the child back to court or put in place additional support that will enable the child to successfully complete the contract. This process can be repeated if necessary to encourage compliance by the child.

9.9 The panel should identify any recent changes in circumstance in a child's life that may affect compliance, assess whether the YOT or other agencies have provided the required support to the child and identify with assistance from the child and their parent/carer what support they may need to enable future compliance.

9.10 In some cases, the panel may agree that the contract was too demanding thereby making it too difficult to comply with, and should consider varying the contract. Any variation or panel discussion about compliance and the outcomes of it, should be communicated to the child, their parent/carer and relevant support services.

9.11 However, where a child is unwilling to address non-compliance and/or work to a new plan following the panel, then consideration should be given to bringing the child back to court to consider resentencing. In such cases, the panel's reasons for referring the case back must be set out in a written report for the court which will be prepared by the YOT. The court should be informed of successful compliance with the contract as well as the areas of non-compliance. The YOT must report to the court on the referral back as soon as practicable. The appropriate court will be the youth court or, where the child has reached the age of 18, the adult magistrates' court. The court will require the child to attend the hearing by issuing a summons or warrant. In the latter case, the police are responsible for executing the warrant.

9.12 At the hearing, the court will consider the circumstances of the referral back, and make a finding of fact in respect of the report submitted by the YOT. The YOT should inform the panel and, where appropriate, the victim of the outcome.

9.13 Where the court is satisfied that the referral back was justified, the Referral Order may be revoked and the child resentenced, with the full range of sentencing options available that would have been available to the court which originally sentenced them. In reaching a decision on resentencing, the court will consider the YOT's report, and consider how far the child may already have complied with the contract. There is a right of appeal to the Crown Court against any sentence imposed.

9.14 Where the court finds that the referral back was not justified, or that there has been non-compliance but it decides not to revoke the order, the youth offender panel and YOT will be required to continue with the existing contract. Where there is no contract, a panel should be convened as if the matter had not been referred back to the court. Any contract agreed before the referral back to court will continue to be in force during the court proceedings.

9.15 Additionally, the court has two further alternatives to revocation for a breach of a contract where the court finds that the terms of the youth offender contract have not been complied with. This includes imposing a fine up to a maximum of £2500 on a child or extending the youth offender contract up to a maximum duration of 12 months. The power for the court to extend the youth offender contract is not available when the Referral Order has already expired, although the court still has the power to fine the child. The child must be present for the court to impose a fine or extend the length of a youth offender contract for a breach of the Referral Order contract.

9.16 The powers of the court to impose a fine or extend the length of the youth offender contract for a breach of a Referral Order contract will apply in the following circumstances where:

a) the child is referred to court for failure to attend any part of a panel meeting (section 22(2) (b) of Powers of Criminal Courts Act 2000);

b) following a progress meeting with the youth offender panel, the child is referred back to the court where it appears to the panel that the child has breached of the terms of the youth offender contract (section 26(5) of Powers of Criminal Courts Act 2000; or

c) the panel determine at the final meeting that the child's compliance with the terms of the contract has not been such as to justify the conclusion that the child has satisfactorily completed the contract (section 27(4) of Powers of Criminal Courts Act 2000.

9.17 Any breach and subsequent revocation should ensure that the victim(s) views are known prior to breach. If a Referral Order is revoked then the victim(s) should have a say in how that impacts on any outstanding direct mediation/reparation in which they are involved, as their consent is required for any involvement in mediation/reparation.

Extension of the order in interests of justice

9.18 Where the child has been unable to comply with the order for circumstances outside of their control, for example, illness or death in the immediate family, the panel may wish to refer the case back to court to seek an extension of the contract in the interests of justice for up to 3 months, subject to the total 12-month limit for an order.

9.19 When an order is extended in the interests of justice, the period of extension must not exceed three months and the total period must not exceed 12 months (paragraph 9ZD of Schedule 1 to the Powers of Criminal Courts Act 2000). It should be noted, however, that where a case is referred to a court for an extension in the interests of justice this is the only option available to the court; it will not have the power to revoke the order and resentence.

Varying the contract

9.20 A variation of the contract may be requested for one or more of the following reasons:

a) a difficulty with a specific element of the contract;

b) a change in circumstances which makes some aspect of the contract difficult to comply with (for example, starting a new course of study or employment, which would clash with programmed meetings or activities);

c) a belief that the contract, if fully complied with, would be unacceptably onerous; and

d) addressing the wishes and needs of the victim, if these weren't available to inform the initial panel.

9.21 The panel should discuss the reason for the request to vary the contract with the child. Where it is agreed that variation would be appropriate, a revised contract should be agreed. However, the programme of activity aimed at preventing reoffending and reparation to the victim or wider community should not be undermined by any variation, so in some cases alternative interventions will have to be considered. The revised contract should be explained in clear language and signed by the child and the panel. A copy should then be provided to the child to keep.

9.22 The YOT may also vary the level of YOT contact, increasing or decreasing following a change in circumstances and subsequent assessment of need and likely risk to others.

Revocation of the order in the interests of justice

9.23 A Referral Order may be revoked early where it is in the interests of justice to do so. It is unlikely that it will be in the interests of justice to do this before the midpoint of the order has been reached. This is because it is unlikely that all elements of the contract would have been successfully completed during this period. The procedure for revocation will begin with a recommendation by the panel at a progress meeting. The panel will compile a written report, agreed by all parties present and this will be given to the YOT, who will then make a formal application to the court.

9.24 It is impossible to list all the circumstances where early revocation might be appropriate. However, the following example might, depending on the other circumstances of a case, provide some clarity:

a) all the elements of the contract have been completed successfully and/ or outstanding progress has been made to completing; and

b) the child has demonstrated sustained and significant progress towards a positive and productive life and is assessed as correspondingly having a low likelihood of re-offending.

9.25 Where, on an application of the type set out in the paragraphs above, the court finds that the revocation is not in the interests of justice, the YOT and panel will be required to continue with the existing order and may not make a further application of this type until three months have passed, except with the consent of the court.

Revocation of the order due to change of circumstances

9.26 In exceptional circumstances an application can be made by the child to the panel for the revocation of the order. For example, this may occur when there has been a change in the child's circumstances such as moving abroad which would make it impossible to comply with the contract. The panel should discuss the request to revoke the order with the child. Where it is agreed that revocation would be appropriate, and that a variation of the contract would not be sufficient, the child should be referred back to court for the court to consider revocation and resentencing.

Further offending while on a Referral Order

9.27 If during the period of the original Referral Order a child is convicted of another offence, the court may sentence by way of an extension to the existing Referral Order. The court may also extend the existing Referral Order when dealing with a further offence committed after the original Referral Order.

9.28 In both instances, the original order must be for less than twelve months and the child must be under 18 years old.

9.29 The court may alternatively choose to impose a different order, for instance, youth rehabilitation order. In doing so there is no requirement that the court discharge the Referral Order. However, there is a discretion for a court to revoke a Referral Order if it considers that it is in the interests of justice to do so. This discretion could be exercised by the court that is imposing the youth rehabilitation order, or could be exercised by another court once the youth rehabilitation order has been imposed (pursuant to the powers in the Powers of Criminal Courts Act 2000).

9.30 If a further offence has been committed and the Referral Order extended but the contract has yet to be signed, this should be expedited and a panel held with minimal delay.

9.31 The court also has the power to extend a second or subsequent Referral Order in respect of additional or further offences in the same way as for the original Referral Order.

9.32 The total Referral Order period may not exceed twelve months.

9.33 YOTs should develop clear and concise guidelines in relation to the potential management of multiple extended Referral Orders. YOTs should ensure that existing victim and reparative work continues and is not affected.

9.34 Any victims of the new offences should be contacted and consulted, and offered an opportunity to become involved in the panel process in the usual way.

9.35 Where the court decides not to order an absolute or a conditional discharge, it has a discretionary power, to be exercised in the interests of justice, to revoke an existing Referral Order for further or additional offences. The court may direct that the new youth offender contract should not take effect until the earlier order has been revoked or completed, as this enables the existing Referral Order contract and any related restorative justice programme to be completed.

9.36 The court still has the power to revoke the original order and any orders. As soon as the original order is revoked, the Referral Order process is at an end. The YOT should ensure that panel members and, where appropriate, the victim are informed within a reasonable timeframe of any revocation, together with a brief explanation of the circumstances.

9.37 In sentencing for the further offence, the court may also resentence for the original Referral Order offence. The court must consider how far the child may already have complied with the contract.

9.38 YOTs should ensure that any restorative justice or victim work under the existing Referral Order continues when a new Referral Order is imposed, even if that existing order is revoked. The court will need to be informed of the current progress of the existing Order by the YOT and whether there is ongoing restorative or reparative work being undertaken.

9.39 Administratively, the panel can hold an initial panel meeting for the new Referral Order before the existing Referral Order is discharged (to seek to avoid a break between the old and new contract). The contract can be signed but can include a section of the new contract where the date it comes into effect is stated.

Transfer of Order to Probation when child attains 18 years of age

9.40 When a child subject to a Referral Order reaches the age of 18 YOTs may agree for elements of this Order to be supervised by the National Probation Service (NPS) and Community Rehabilitation Company (CRC). Regardless of whether Referral Order elements are supervised by NPS/CRC colleagues, the YOT retains a statutory duty to implement the Order and to make arrangements for supervising the child's compliance or non-compliance with the terms of the contract.

9.41 Decisions should be made on a case by case basis and it is recommended that YOTs develop a local protocol with the NPS/CRC which specifically includes Referral Orders.

Further detail regarding the transfer of Referral Orders in England can be found within the Joint National Protocol for Transitions in England.[20] Separate guidance for Wales exists.[21]

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[20] https://www.gov.uk/government/publications/joint-national-protocol-for-transitions-in-england

[21] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434127/Youth_to_Adult_Transition_Principles__Wales_.pdf

10. Final meetings

10.1 A final meeting must be held during the last month of the contract period and should be convened shortly before the expiry of the order. At this meeting, the panel should review the child's compliance and engagement with the elements of the order and offer them feedback.

10.2 As with the progress meetings, it may not be necessary for all the original participants (except those ordered by the court to attend all panel meetings) to attend the final meeting, but it is desirable that at least one of the original panel members is present.

10.3 Where the panel is satisfied that the contract has been fully complied with, the order will be discharged from the end of its period. This decision may be taken by the panel even where the child is unable to attend the meeting, but has otherwise successfully complied with the terms of the contract. Under the terms of the Rehabilitation of Offenders Act 1974, the Referral Order conviction is 'spent' as soon as the order has been completed (see paragraphs **3.42**–**3.47**).

10.4 If the panel is not satisfied that the child has successfully completed the order, the child must be referred back to court to consider resentencing. The court and the child must be provided with the panel's decision in writing.

10.5 The YOT should provide a 'sign off' letter or certificate of completion when the contract has been successfully completed. Where victims have indicated that they wish to be kept informed, they should also be advised of the outcome. Similarly, the sentencing bench may also be informed.

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