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# Youth Crime briefing

## The dangerousness provisions for children and young people following implementation of the Criminal Justice and Immigration Act 2008

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### Introduction

The *Criminal Justice Act 2003* (CJA) introduced new custodial sentences intended to enhance public protection from defendants considered 'dangerous'. The sentences are available where the defendant is convicted of a sexual or violent offence specified in schedule 15 to the Act (known as a 'specified' offence) and he or she is assessed by the court to be 'dangerous'. While the provisions apply to all offenders, there are important differences where the defendant is below the age of 18 years. In determining whether the adult or youth provisions apply, the relevant age is that at the point of conviction.<sup>1</sup>

The *Criminal Justice and Immigration Act 2008* (CJIA) introduces a number of important amendments to the dangerousness provisions. These were implemented on 14 July 2008 and apply to cases sentenced after that date. The changes are likely to reduce the number of children and young people sentenced as 'dangerous' and might reasonably be interpreted as an acknowledgement by the government that the criteria established by the CJA were not sufficiently restrictive. Certainly, the number of young people sentenced under the dangerousness provisions has far exceeded the government's projections, as the figures given later make clear.

The current briefing paper details the statutory provisions as they apply to children and young people following the implementation of the

CJIA. It outlines, too, some implications for practice, taking into account the revised criteria. The paper accordingly provides readers with a 'single source' of reference and thus **replaces, rather than supplements**, earlier briefings on the same subject.<sup>2</sup>

The sentences introduced by the CJA are those available under:

- a) Section 228 – an *extended sentence* comprising a custodial term followed by extended supervision in the community
- b) Section 226(3) – *detention for public protection* (DPP), an indeterminate sentence
- c) Section 226(2) – a life sentence under s91 of the *Powers of the Criminal Court (Sentencing) Act 2000* (PCC(S)A).

The custodial powers of the youth court are restricted to imposing a detention and training order (DTO) with a maximum length of two years. As with other disposals that involve a longer term of detention,<sup>3</sup> sentences for dangerousness are only available to the crown court. Nonetheless, all cases involving children and young people commence in the youth court (or in the adult magistrates' court where there is a co-accused adult). The lower court will accordingly be required to take a view as to whether the young person should be tried or sentenced in the crown court in cases involving 'specified' offences that come before it, in accordance with the criteria outlined in the relevant section of the briefing.

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## Criteria for determining whether the dangerousness provisions apply

### Offences for which the sentences are available

Sentencing for dangerousness is only available for offences 'specified' in schedule 15 to the CJA,<sup>4</sup> which contains 153 violent or sexual offences that carry a maximum custodial sentence of two years or more in the case of an adult. While there is an overlap between specified offences and 'grave crimes' which can lead to a sentence of long term detention under s91 of the PCC(S) A), the two lists of offences are not identical.<sup>5</sup> In particular there are a significant number of specified offences, such as affray and actual bodily harm, which could not qualify as a grave crime.<sup>6</sup>

'Serious specified' offences are a sub-set of specified offences that carry a maximum sentence of 10 years or more in the case of an adult. Whether a specified offence is 'a serious specified offence' or not, is relevant to determining which sentences are available to the court.

### Young people to whom the provisions may apply

A sentence for dangerousness can only be imposed on a young person if the court is of the opinion that he or she is 'dangerous', defined as representing a '*significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences*'. Serious harm is, in turn, defined as meaning '*...death or serious personal injury, whether physical or psychological*'.<sup>7</sup>

There is no comparable statutory definition for 'significant risk'. However case law has determined that the court must find both that:

- there is a significant risk of the young person committing a further specified offence/s and
- there is a significant risk that the commission of that offence/s will cause serious harm to members of the public.<sup>8</sup>

In coming to a view, the court does not simply consider the risk of a repetition of the behaviour similar to that involved in the current case. It must also take into account the likelihood of *any* future specified offence. For example, when dealing with a 'serious specified' offence, the court has to consider the likelihood of serious harm that may be caused by a future non-serious specified offence, and vice versa.

This assessment of 'dangerousness' is a '*judgement of the court*'. In this respect it is akin to the decisions made when a court decides that a 12–14-year-old is a persistent offender or that a 15 or 16-year-old boy should be deemed vulnerable for remand purposes. As a consequence, there is considerable scope for the court to exercise discretion, although case law provides a framework within which such discretion is to be used.

## The seriousness of the young person's offending

Prior to implementation of the CJIA, the dangerousness provisions applied automatically where a young person deemed by the court to be dangerous was convicted of a specified offence. However that Act introduces a third criterion related to the seriousness of the offending and the minimum custodial term that would be appropriate.

Following implementation of the revised provisions, sentencing for dangerousness is only available where the court considers it appropriate that the young person should spend at least two years within a custodial establishment; if the offending is not sufficiently serious to warrant a minimum of two years detention, the court must impose a sentence other than one for dangerousness. As described in the following section of the briefing, this consistent principle is manifested in different ways in practice because arrangements for release vary according to the disposal under consideration.<sup>9</sup>

## Sentences for dangerousness

Where the criteria described in the previous section apply, the range of sentences available depends upon whether the matter before the court is a 'serious specified offence' (that is a specified offence that carries ten year or more custody in the case of an adult).

### 'Serious specified offences' with a maximum penalty of life imprisonment

Where the specified offence carries life imprisonment in the case of an adult, and the court considers that:

*'the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life'*

then it *must* impose a sentence of *life sentence under section 91* of the PCS(S)A.

The court is required to specify a minimum period, or 'tariff', that must be spent in custody. Once the tariff is served, the young person can apply to the Parole Board for release on licence. He or she will remain subject to that licence indefinitely.<sup>10</sup>

The majority of cases involving offences that carry a potential life sentence will not however justify the imposition of such a penalty and the court can impose a range of other disposals as indicated below.

### Other 'serious specified offences'

Where the court is sentencing a 'serious specified' offence that does not carry a life sentence, or where custody for life is not warranted, the court *may* impose detention for public protection under section 226 of the CJA, but only if other available forms of sentencing would not be adequate to protect the public.<sup>11</sup> Amendments in the CJIA preclude the making of such an order, however, unless the appropriate tariff would be a minimum of two years. (Prior to implementation of the

Act, there was no requirement for a minimum custodial term.) DPP is an indeterminate penalty that for most practical purposes is similar to a life sentence. The court sets a tariff that has to be served in custody, after which application can be made to the Parole Board for release on licence. Unlike an individual subject to a life sentence, someone sentenced to DPP can make application for revocation of the licence 10 years after his or her return to the community, with the decision being at the discretion of the Parole Board.

If the matter before the court is a ‘serious specified’ offence, and the minimum appropriate custodial term would be four years or more, the court *may* also impose an extended sentence. (Prior to implementation of the CJIA, the minimum custodial period was 12 months.) The maximum permitted sentence is that available in the case of an adult for the particular offence. Post release, the young person will be subject to a period of extended supervision, set by court, of up to five years for a violent offence and eight years for a sexual offence.

The CJIA amends the arrangements for early release in respect of extended sentences and provides that the young person is automatically released at the mid point of the custodial period.<sup>12</sup> (It is this provision for automatic release that explains why the minimum tariff for DPP is half the minimum custodial term under an extended sentence.) There is no provision for early release prior to the half way point; in particular, home detention curfew is not available for those serving an extended sentence.<sup>13</sup>

It is important to note that, when originally introduced, sentences for dangerousness were mandatory: if the relevant criteria applied, the court was obliged to impose a sentence for public protection. Following implementation of the CJIA, providing the offence is not one that warrants detention for life as described above, that is no longer so. Even if the court considers that a young person, convicted of a specified offence, poses a significant risk of serious harm to the public, and that the offence is sufficiently serious to warrant a minimum period of two years to be served in custody, it is not bound to impose DPP or an extended sentence. The use of the powers is discretionary and other custodial orders, and non-custodial penalties, remain available.

### Non-serious specified offences

Where the matter before the court is a specified offence, but is not a serious specified offence, DPP is not available. The court *may* impose an extended sentence provided that the relevant criteria are satisfied. The power is a discretionary one and other disposals are available notwithstanding that the young person has been assessed as ‘dangerous’.

### The ‘dangerousness’ determination

The CJA identifies the nature of the information that the court should consider in determining whether the young person should be assessed as dangerous. It:

- *must* take account of all information available about the nature and circumstances of the offence

- *may* take account of any information about any pattern of behaviour of which the current offence forms part
- *may* take into account any information about the child or young person before the court.

The CJIA adds a further consideration. The court:

- *may* also take into account all such information as is available about the nature and circumstances of any other offences of which the child or young person has been convicted by a court anywhere in the world.

Under the original provisions, there was a presumption, applying to adults alone, that the defendant would be assessed as dangerous if he or she had a previous conviction for a specified offence unless the court considered that it would be unreasonable to do so. While this did not impact directly on children below the age of 18 years, a conviction for a specified offence acquired as a child would lead to a presumption of dangerousness where he or she was subsequently convicted as an adult for a further specified offence. Following implementation of the CJIA, the presumption of dangerousness is abolished. For all defendants, the court starts from a ‘neutral’ position and must undertake an independent assessment each time an individual is to be sentenced for a ‘specified’ offence.

### Principles for determining ‘dangerousness’

A number of cases have given guidance on the application of the ‘dangerousness’ provisions. Key among these is *R v Lang* and others, in which the Court of Appeal reviewed 13 cases.<sup>14</sup> For children below the age of 18 years, the principles established in that case can be summarised as follows:

1. The risk identified must be ‘significant’, meaning ‘*noteworthy, of considerable amount or importance*’
2. The court should take into account characteristics of current and previous offences, any pattern of behaviour, responses to previous disposals, and social factors such as: accommodation; employability; education; associates; substance misuse; and the young person’s attitudes and emotional state
3. The fact that the court assesses that a further ‘serious specified’ offence is likely does not *automatically* mean that the young person should be considered dangerous. The court might, for instance, find that there is a considerable risk that further specified offences will be committed, but that there is nonetheless not a ‘significant risk of serious harm’. The risk of serious harm might not be *significant*, or there may be a significant risk but not of *serious harm*<sup>15</sup>
4. A pre-sentence report (PSR) should usually be obtained before passing sentence. Where mental health issues are indicated, a medical report may be necessary before risk can be properly assessed
5. If the court considers that there is a significant risk that a child or young person will commit further specified offences, but these are unlikely to be

‘serious specified offences’, it would not usually be appropriate to conclude that he or she is ‘dangerous’. Repetitive violent or sexual offending, at a relatively low level, does not give rise to future significant risk of serious harm

6. There is no assumption of ‘dangerousness’, even when there the young person has previously been assessed as dangerous. In other words, the court’s assessment is based on the risk posed at the time of the current case
7. It is necessary to bear in mind the young person’s current level of maturity and the potential for change and development when assessing likely future conduct
8. In the case of a particularly young child, an indeterminate sentence may be inappropriate even when a serious specified offence has been committed and there is a significant risk of serious harm from further specified offences
9. The risk assessed is to ‘members of the public’ and can include any particular group, for example prison officers or staff in mental hospitals, as well as specific individuals or individuals in general
10. Parliament’s intention could not have been to require the imposition of an indeterminate sentence for minor offences.

In summary, as the *Sentencing Guidelines Council* notes in its guidance, updated to take account of the CJIA amendments, courts should be ‘particularly rigorous before concluding that a youth is a dangerous offender’.<sup>16</sup>

### Circumstances where a determination of dangerousness is inappropriate

A history of previous violent or sexual offending should not necessarily predispose the court towards determining that ‘dangerousness’ exists in subsequent cases. The age of such behaviour plays a role in the weight that courts should place on it for the purposes of the current assessment. In *R v Atkinson*, a defendant with previous convictions for affray, some involving the use of weapons, was charged again with affray and possession of an offensive weapon.<sup>17</sup> The defendant went to the victim’s house, carrying a claw hammer, threatened to shoot him and to burn down the premises. The most recent previous offence was five years old, no earlier incidents had resulted in death or serious injury, and there was a favourable PSR. The Court of Appeal overturned the decision to impose an extended sentence with a custodial term of 18 months on the basis that the defendant could not be said to represent a significant risk of serious harm to the public. The court substituted an ordinary custodial penalty of 18 months.

*R v Hudson* involved serious domestic violence with the victim being kicked and stamped on in front of the couple’s young son.<sup>18</sup> A repeat incident followed while the defendant was on bail for the first. On appeal, the extended sentence imposed for the latter matter was reduced to a standard custodial penalty, notwithstanding what was described as a substantial

record of offending that included wounding and causing grievous bodily harm.

Both the above cases involved adults. *R v Forsythe* concerned an 18-year-old young woman, and is thus possibly more relevant to children below the age of 18 years.<sup>19</sup> The defendant was charged with robbery, false imprisonment and actual bodily harm as one of a group who punched and spat at a 12-year-old girl, forced her onto a bus where there was a further assault, and took her to a bridge where the assaults continued. Granted bail, she attempted robbery of a mobile phone from an adult woman. The defendant had used alcohol prior to each incident and was assessed in the PSR as presenting a high risk of harm to the public. She received a sentence of imprisonment for public protection for the attempted robbery.<sup>20</sup> Notwithstanding the PSR assessment that she posed a high risk of re-offending, the Court of Appeal did not accept that the circumstances required an indeterminate sentence. It allowed the appeal and substituted a sentence of three years detention in a young offender institution.

*R v Robson* also saw an extended sentence overturned on appeal.<sup>21</sup> The case involved a 17 year old defendant convicted, following trial, of two offences of sexual assault of a girl of the same age. The first incident consisted in the defendant touching the victim on the leg as she waited at a bus stop and moving his hand in a manner that led her to believe that he was masturbating. She left the scene but her assailant followed. The second offence involved him pinning her to a wall, and putting his hand up her skirt. The young person had four previous findings for indecent exposure, the most recent of which had led to a supervision order imposed just two weeks before the matters before the court. Nonetheless the Court of Appeal concluded that while there was a high risk of further specified sexual offences, there was not a significant risk that such offences would lead to serious physical or psychological harm. The court accordingly quashed an extended sentence of three years custody with five years extended supervision, and given that the appellant had already served the equivalent of a 22 month custodial penalty, substituted a supervision order.

### Procedure in the youth court

Although the youth court cannot impose sentences for dangerousness, it is responsible for deciding whether cases involving specified offences should be heard in the crown court. The CJA allows the youth court to form a view at any time during the proceedings, either prior to trial or after conviction. In *Crown Prosecution Service v South East Surrey Youth Court & Ghanbari*, the High Court expressed dissatisfaction with:

‘... the deeply confusing provisions of the Criminal Justice Act 2003 and the satellite statutory instruments to which it is giving stuttering birth’,

and established a number of principles that the youth court should take into account when deciding upon jurisdiction.<sup>22</sup>

1. It is Parliament's policy that defendants below the age of 18 years should, wherever possible, be tried in a youth court, which is best designed to meet their specific needs
2. The court should have regard to the finding in *R v Lang* that a significant risk of non-serious specified offences is unlikely to warrant the imposition of a sentence for dangerousness<sup>23</sup>
3. The court should be particularly rigorous before concluding that a child or young person poses a significant risk of serious harm by the commission of further offences. It would rarely be appropriate to reach this conclusion in the absence of a PSR
4. A decision to commit a young person to crown court on the basis that he or she might be assessed as 'dangerousness' in cases involving non-serious specified offences is only appropriate after conviction, when the court will have access to a PSR
5. Where a youth is jointly charged with an adult, the magistrates' court will have to make a judgement between the competing presumptions of joint trial of co-accused and that the young person should be tried in the youth court, taking account of factors such as age and maturity, comparative culpability, previous convictions and whether severance would involve injustice or undue inconvenience to witnesses.

The preferred option of the higher court is accordingly for the decision as to jurisdiction to be taken after trial in the youth court, and with the benefit of a PSR. However, if the youth court refuses jurisdiction prior to trial on the basis of the grave crime provisions, rather than those relating to dangerousness, the lower court might, at that time, also express a view on whether the young person represents a significant risk of serious harm if the matter is a specified offence.<sup>24</sup>

Although the issue has yet to be considered by the courts, it seems reasonable to assume that since – following implementation of the CJIA – a sentence for dangerousness is only available in cases where a minimum of two years in custody is warranted, the youth court should accept jurisdiction in cases involving specified offences, even if it considers that the young person might be legitimately be assessed as dangerous, unless such a custodial sentence is likely to be appropriate

### Availability of programmes in custody

Young people subject to DPP will only be released at the expiry of their tariff if the Parole Board is satisfied that *'the risk that they pose to the public is sufficiently low to allow a safe return to the community'*. In *Secretary of State for Justice v Walker*, a case where an indeterminate sentence had been imposed for offences of a sexual nature, the Court of Appeal noted that the prisoner had had no access to *'any meaningful programme, course or work of that kind, such as might enable him to demonstrate'* the necessary reduction in risk to the Parole Board.<sup>25</sup> The Court decided that it was a *'premise*

*of the legislation'* that appropriate programmes were available within the custodial estate to allow those subject to indeterminate sentences to demonstrate that they were no longer dangerous. The Secretary of State had failed to ensure that such programmes were available, although that failure did not make continued detention after expiry of the tariff unlawful.

## Some implications for practice

### Relevant Youth Justice Board guidance

The Youth Justice Board's (YJB) guidance on the dangerousness provisions was published in 2006 and will need substantial revision to accommodate the changes in CJIA.<sup>26</sup> It is understood from the YJB this is *'in hand'*. The Board's guidance dealing with early release arrangements for sentences of dangerousness was published in 2007 and will also require revision in due course.<sup>27</sup>

Current national standards predate the introduction of sentencing for public protection and accordingly do not specifically take account of DPP or extended sentences. It is however reasonable to assume that standard 12, which deals with orders imposed under sections 90/91 of PCC(S)A is also applicable to disposals under sections 226 and 228 of the CJA.

Revised national standards are to be introduced during 2009 in line with the anticipated 'roll out' of the youth rehabilitation order.<sup>28</sup> The revision will provide an opportunity for standards to deal specifically with sentences imposed on young people deemed to be dangerous.

### The relationship of Asset assessment to the determination of dangerousness

Asset guidance defines 'serious harm' as:

*death or injury (either physical or psychological) which is life threatening and / or traumatic and from which recovery is expected to be difficult, incomplete or impossible.*

The definition bears an obvious similarity to the statutory definition – *death or serious injury, whether physical or psychological* – of serious harm for the purposes of assessing 'dangerousness'. There is however a distinction in the level of injury required to satisfy the latter since any injury must be *serious*. Perhaps more importantly, whereas *Asset* uses the classification *'high'* or *'very high'* risk, the court must be satisfied that the risk is *'significant'* in order to deem the defendant to be dangerous.

It does not therefore follow that an *Asset* assessment of very high risk will automatically lead to an assessment of dangerousness, particularly if an appropriate risk management plan is in place. The YJB's guidance confirms that:

- it would be very rare for a young person to be considered dangerous if he or she had not been assessed (through *Asset*) as being a very high risk of serious harm to others;

- even where the young person is assessed as posing a very high risk, an assessment of dangerousness should be the exception rather than the rule.

This position has subsequently been endorsed by the *Sentencing Guidelines Council*.<sup>29</sup>

## Pre-sentence reports

The YJB guidance proposes that PSRs written in cases involving specified offences should indicate that:

*The offence is a specified offence under schedule 15 of the Criminal Justice Act 2003 [if also a serious offence add 'the offence is also considered to be a serious offence as defined by section 224 of the Act']. In making an assessment of dangerous, the court may wish to consider the following information...*

This confirms that the ownership of the assessment of 'dangerousness' lies with the court, and that the author's role is to provide relevant information to assist that decision. The guidance also quite properly draws practitioners' attention to the need to deal with protective factors as well as identifying indicators of risk.

It is nonetheless unclear when PSRs should address the issue of dangerousness. The amendments to the provisions make that question a more complex one still.

In general terms, where the case is being sentenced in the crown court, the report author should assume that the issue of dangerousness will arise, whether or not the court has indicated that to be the case. In the youth court, good practice is arguably served by addressing dangerousness only where:

- the court has requested it, or
- the author of the report considers that there are specific factors associated with the case that make it desirable to do so.

It appears that some youth courts anticipate that there should be an assessment relevant to dangerousness in *all* reports for specified offences. Given that the amendments considered in this briefing further restrict the circumstances in which sentencing for dangerousness is appropriate, YOTs may wish to seek an accommodation with local youth courts that a conviction for a specified offence should not, automatically require a consideration of factors relevant to dangerousness in the PSR.

As noted above, the CJIA permits the use of disposals other than sentences for public protection in cases involving specified offences, even where the young person is assessed as representing a significant risk of serious harm to the public. As a consequence, PSR authors are no longer required to accept that an assessment of dangerousness will inevitably lead to a sentence for public protection. Reports prepared for the crown court should address other potential custodial options, including a DTO where that is a realistic outcome. In principle, there is also nothing to preclude a non-custodial sentence. However, given that a DPP or an extended sentence is only available if the court considers that a period in custody of more than two

years is warranted, there would need to be exceptional circumstances to justify a community penalty. Nonetheless, where a good case can be made for an outcome, it will be important that the PSR argues for such a course.

Any such proposal in a PSR will naturally have to be underpinned by a well constructed rationale for the recommended disposal. The report will need to provide a comprehensive account of plans to manage assessed risk in the community, indicating how risk would be reduced and protective factors promoted. Frequency of contact, the nature of intervention, review procedures, and contingency plans – in the event that risk increases – should be detailed as a matter of course.

## Sentence planning

Given the requirement that young people subject to DPP should be given the opportunity to demonstrate to the Parole Board that they are no longer dangerous, it is important that sentence planning meetings make provision to provide that opportunity. In the event that relevant programmes are not available within the particular establishment, YOT staff should record the lack of appropriate provision and to bring it to the attention of the YJB's *Placement and Casework Service team* so that consideration might be given to effecting transfer to an establishment with the appropriate resources.

## Release and recall provisions

As noted above, the CJIA amends the early release provisions for extended sentences, so that release at the halfway stage on licence is automatic, rather than at the discretion of the Parole Board. However, the Board retains a role: where the young person is recalled to custody, that decision is subject to confirmation by the Parole Board. Following recall, the young person is liable to remain in detention until the end of the sentence, and can only be re-released with the approval of the Parole Board.

Case law has established that for extended sentences, the extended supervision period starts after the end of the full custodial term imposed by the court, not at the half way point of the custodial term when the young person is released into the community.<sup>30</sup>

For DPP, and life sentences under section 91, the Parole Board determines whether the young person should be released once the tariff has expired. YJB guidance on release and recall contains a detailed timetable for applications to the Parole Board applications, derived from *Prison Service Order 6000*, and shown in the table overleaf.<sup>31</sup>

Report templates and guidance for parole applications are available on the YJB website.<sup>32</sup>

By default, an individual given DPP is subject to licence conditions indefinitely following release. However he or she can apply to the Parole Board to have the licence reviewed after ten years in the community, and if the application is not successful, yearly from that point on.

**Timetable of action required by the YOT in relation to young people sentenced to DDP or life sentence under section 91**

<b>Continual action</b>	<b>Time before earliest potential release date</b>	<b>Action</b>
Contact with young person (as required by <i>National Standards</i> ); Updating of <i>Asset</i> at required intervals	Six – three months	If the young person is MAPPA level 3: YOT worker to consult MAPPA re licence conditions and release arrangements
	By 23 weeks	YOT worker contacts probation victim liaison officer
	By 20 weeks	YOT worker interviews young person
	By 17 weeks	YOT sends parole report to secure establishment
	Three months – six weeks	If young person MAPPA level 2: YOT worker consults interagency risk management panel re. licence conditions and release arrangements
	By 12 weeks	Secure establishment sends parole dossier to Parole Board
	Twelve – zero weeks	Parole Board assesses whether the young person should be released
<b>Young person’s earliest release date</b>		

This distinguishes DPP from a life sentence under section 91, where there is no equivalent right to apply for revocation of the licence.

**‘Dangerousness’ and Multi-Agency Public Protection Arrangements**

Multi-agency public protection arrangements (MAPPA) were introduced by the *Criminal Justice and Court Services Act 2000* to improve public protection from offenders assessed as presenting a risk of serious harm. Responsibility for the arrangements lies primarily with the Police, Probation Service, and Prison Service, but the CJA placed a duty on range of agencies, including YOTs, to co-operate with these ‘responsible authorities’.

Young people should be referred to MAPPA if they fall within one of the categories shown in the table below.

<b>Criteria for MAPPA referral</b>	
Category 1	Young people subject to the notification requirements of the Sexual Offences Act 2003 <sup>33</sup>
Category 2	Young people convicted of a violent or sexual offence and sentenced to 12 months custody or more
Category 3	Any other child / young person about whom there exist concerns over the safety of others

The management arrangements for person referred to MAPPA in relation to any of the referral categories, depend upon the level of assessed risk, outlined in the table below.

<b>Assessed level of risk</b>	<b>Arrangements for managing risk posed by the young person</b>
Level 1	Managed by the YOT through normal supervision procedures per <i>National Standards</i> although there may be additional information exchange as appropriate
Level 2	Managed by an interagency risk approach, where the active involvement of more than one agency is required to produce a co-ordinated risk management plan
Level 3	Managed through the full Multi-Agency Public Protection Panel – reserved for the ‘critical few’

Prior to implementation of the CJIA, almost every case in which a court had assessed a young person as dangerous would have resulted in MAPPA referral since DPP or an extended sentence would generally have required a *Category 2* referral.<sup>34</sup> However, the CJIA introduces the possibility that a young person deemed dangerous by the court, might receive a DTO of less than 12 months, or, in exceptional circumstances, a community penalty. In that event, he or she would not qualify for referral either under category 1 or 2. In such cases, consideration should be given to whether a referral under category 3 would be appropriate. While the finding of the court that the young person constitutes a significant risk of serious harm will often be sufficient to satisfy the criterion for such a referral, this should not be an automatic, ‘default’, response. Rather there should be an active decision as to the appropriateness of referral, involving an independent assessment by the YOT of the potential risk to the public.

## Conclusion

The CJIA makes substantial changes to the provisions for sentencing young people convicted of specified offences and YOTs will be required to amend their practice accordingly. The revisions are likely to result in a reduction in the number of sentences for public protection imposed. That is to be welcomed since the use of such sentences to date has exceeded, by some way, government projections prior to their introduction. In March 2003, Hilary Benn, then responsible Home Office Minister, predicted that twelve young people per annum would be sentenced under the dangerousness provisions.<sup>35</sup> However, in the year 2006/07, 102 young people were subject to sentences for dangerousness.<sup>36</sup> The use of DPP and s91 life sentences more than doubled over the previous twelve month period.<sup>37</sup>

The anticipated reduction in the use of such sentences will serve to reduce some of the pressure on the juvenile secure estate. Nonetheless, the lengthy licence periods associated with DPP and extended sentences inevitably carry a potential for increasing the proportion of young people detained in the secure estate by reason of breach of licence conditions. Ensuring the engagement of young people subject to supervision in the community to reduce the risk of recall will present practitioners with fresh challenges.

## References

- 1 *R v Robson* [2006] EWCA Crim 1414
- 2 The earlier briefings were: Nacro (2005) *Dangerousness and the Criminal Justice Act 2003*, Youth crime briefing, June 2005 and Nacro (2006) *The dangerousness provisions of the Criminal Justice Act 2003 and subsequent case law*, Youth crime briefing, December 2006
- 3 A detailed overview of other long term sentences for children below the age of 18 years can be found in Nacro (2007) *Grave crimes, mode of trial and long term detention*, Youth crime briefing, December 2007
- 4 Schedule 15 contains specified offences in England and Wales. Schedules 16 & 17 enabled the court to take into account equivalent offences resulting in conviction in the Scottish and Northern Irish jurisdictions respectively. The latter two schedules were deleted by the CJIA since it allows courts to consider offences committed anywhere in the world in determining whether a defendant should be assessed as dangerous
- 5 See Nacro (2007) *op cit*
- 6 While there is again considerable overlap, specified offences are also not identical to 'violent' and 'sexual' offences as defined in section 161 of the PCC(S)A for the purposes of extended post custody supervision under that earlier legislation
- 7 Section s224(3) of the CJA
- 8 Notably *R v Lang* [2005] EWCA Crim 2864. The case is discussed in greater detail below
- 9 It should be noted that the situation for adults following implementation of the CJIA is slightly different. A sentence for dangerousness may be available – even in circumstances where a custodial term of less than two years is warranted – if the defendant has a previous conviction for an offence listed in schedule 15A to the CJA. The schedule – inserted into Act by the CJIA – contains a smaller subset of 'serious specified offences'
- 10 Further details of sentencing under section 91, for specified and other 'grave' offences, are given in Nacro (2007) *op cit*
- 11 *R v B* [2008] EWCA Crim 832
- 12 Prior to implementation of the CJIA, the young person was *eligible* for release at the half way point, but only at the discretion of the Parole Board
- 13 Youth Justice Board (2006) *Criminal Justice Act 2003, 'dangerousness' and the new sentences for public protection*, YJB
- 14 *R v Lang* [2005] EWCA Crim 2864
- 15 The judgement gives the example, at para 17(iii), of robbery as an offence which, although serious, could be committed '... in a wide variety of ways, many of which did not give rise to a significant risk of serious harm...'
- 16 Sentencing Guidelines Council (2008) *Dangerous offenders: guidance for sentencers and practitioners*, Sentencing Guidelines Council
- 17 *R v Atkinson* [2006] EWCA Crim 212
- 18 *R v Hudson* [2006] EWCA Crim 740
- 19 *R v Forsythe* [2006] EWCA Crim 898
- 20 Imprisonment for public protection is the adult equivalent of DPP
- 21 *R v Robson* [2006] EWCA Crim 1414
- 22 *Crown Prosecution Service v South East Surrey Youth Court & Ghanbari (Interested party)* [2005] EWHC 2929 (Admin)
- 23 See discussion of *R v Lang* [2005] above
- 24 For an overview of offences to which the grave crime procedures apply and a discussion of the interaction of those procedures and the dangerousness provisions at the point where jurisdiction is determined, see Nacro (2007) *op cit*
- 25 *Secretary of State for Justice v Walker* [2008] EWCA Civ 30. The case involved an adult sentenced to imprisonment for public protection but the principles apply equally to DPP
- 26 Youth Justice Board (2006) *Criminal Justice Act 2003, 'dangerousness' and the new sentences for public protection*, YJB
- 27 Youth Justice Board (2007) *Release and recall: guidance for youth offending teams*, YJB
- 28 The youth rehabilitation order, introduced by the CJIA, will replace all existing community sentences with a single order
- 29 Sentencing Guidelines Council (2008) *op cit*
- 30 *R v S* [2005] EWCA Crim 3616
- 31 Youth Justice Board (2007) *op cit*
- 32 Available at [www.yjb.gov.uk/en-gb/practitioners/courtsandorders/releaseandrecall](http://www.yjb.gov.uk/en-gb/practitioners/courtsandorders/releaseandrecall)
- 33 The registration requirements for children below the age of 18 years differ significantly to those pertaining to adults. For details, see Nacro (2004) *Sexual Offences Act 2003: young people and the notification requirements*, Youth crime briefing, September 2004
- 34 There may have been a small number of cases of DPP with a tariff of less than a 12 months so that a category 2 referral was not required, but such cases would have been exceptional
- 35 *Hansard*, House of Commons 18th March 2003: Column 705W
- 36 Youth Justice Board (2008) *Youth justice work load data 2006/7*, YJB
- 37 *Ibid*