



# Sentencing explanations provided via judicial remarks made within the English magistrates' youth court: Towards a better global understanding

Youth Justice

1–17

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## Abstract

This article qualitatively explores the English judicial approach towards sentencing explanations via remarks made within the magistrates' youth court. First, the extent of their correlation with the three known purposes behind sentencing explanations is considered within a wider introductory discussion. Second, judicial interviews provide new insights regarding the extent of their alignment with the introductory discussion by indicating degrees of correlation. Third, the English judicial approach towards sentencing explanations and the degrees of correlation are concluded upon. Finally, recommendations are made to assist in a better understanding of sentencing explanations globally, particularly in jurisdictions where their publication has increased.

## Keywords

Youth, sentencing, explanation, remarks, criminal, judiciary, England, global

## Introduction

Hailed for promoting young adults' (18–25-year-olds') sentencing transparency (Howard League for Penal Reform, 2017), English young adult sentencing explanations have expanded, from their increasing written publication online since 2014 and their increasing video publication since 2020 under the Crown Court (Recording and Broadcasting) Order 2020.<sup>1</sup> Under Section 51(4), the Coronavirus Act 2020 encourages live courtroom links to assist English young adult sentencing processes and judicial role play, which have been disrupted by COVID-19 – but not for children (10–17-year-olds). Meanwhile,

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English youth sentencing explanations provided to children are not published and remain limited to the private arena of the magistrates' youth court, where judicial remarks are delivered face-to-face to children, their parents and youth workers, bucking the increasing publication trend of sentencing explanations for young adults. To better understand this, this article attempts to answer the following focal question: What is the English judicial approach towards youth sentencing explanations made within the magistrates' youth court? To answer this question, the three theoretically defined purposes behind them (Weijers, 2004: 30) – related to the relevant legal obligations, ideological perspectives, and understandings of childhood and moral judgements – are drawn on to provide a wider introductory discussion. Second, building on this, the English judicial approach towards youth sentencing explanations made within the magistrates' youth court is explored further through normative interview data findings. Third, the introductory discussion and findings are concluded upon and the next steps towards a better global understanding are considered.

## Legal obligations

International and domestic children's standards place *some* legal obligations on English judges as they try to understand the human behaviours exhibited by children when sentencing in the magistrates' youth court (Weijers, 2004: 30). The international standards, despite being 'incomplete', '*are* the common language of youth justice' (Kilkelly, 2008: 191). English judges should ensure that their sentencing communications provide: '(1) child-friendly information, (2) child participation in proceedings and (3) child-friendly remedies' (Liefwaard, 2019: 216). The effective implementation of sentencing communications at sentencing depends on nuanced interpretations between the child and the adult judge, testing judicial communication skills. While understanding the former matters, unlike the latter, children do not create and are not obligated to improve their sentencing communications, justifying the judicial focus here. Globally, judicial interpretations of these standards and their effective implementation face 'many challenges' (Kilkelly and Liefwaard, 2019: 617). In England, out of court, youth offending service managers have 'asserted their own priorities and objectives in seeking to deliver effective services' (Smith and Gray, 2019: 567), while, in court, child-friendly justice and enhanced child participation at sentencing require improvement in relation to 'what children want' (Daly and Rap, 2019: 15) and recognition of their 'gendered, cultural and material inequalities' (Phoenix, 2018: 18).

The relevant international legal obligations outlined in the United Nations Convention on the Rights of the Child are legally binding, albeit not on the courts. Under Article 37(b), English judges are obligated to protect a child's liberty following their 'arrest, detention or imprisonment', ensuring custodial sentences remain as a 'last resort and for the shortest appropriate period of time'. Furthermore, under Article 40(1), English judges are obligated to treat children 'in a manner consistent' with promoting their 'dignity and worth', recognising their positive 'reintegration' and 'constructive role' within society, while, under Article 40(4), English judges are obligated to apply a variety of youth sentencing options that are 'appropriate to [the child's] well-being and proportionate both to their

circumstances and the offence' (United Nations, 1989). Child-friendly justice under Rule 14 of the Beijing Rules guides English judges to manage courtroom procedures in a way that promotes a child's 'free expression' and 'participation' (United Nations, 1985), while a 'child-centred orientation' under Rule 3 of the Riyadh Guidelines (United Nations, 1990) recommends a child's 'constructive reintegration' into society, reaffirming the global commitments of the Convention on the Rights of the Child (Goldson, 2019: 210–211).

Domestic legal obligations when sentencing children are placed on English judges externally via legislation and sentencing guidelines, and internally via judicial precedent in case law and judicial training publications. Externally, the principal legislative basis comes from both Section 44 of the Children and Young Persons Act 1933, which requires judges to 'preserve the welfare of young offenders', and Section 37(1) of the Crime and Disorder Act 1998, which requires judges to 'prevent re-offending'. The Sentencing Council for England and Wales issues offence-specific sentencing guidelines, which English judges 'must' follow, unless it is contrary to 'the interests of justice' under Section 125(1) of the Coroners and Justice Act 2009. The sentencing steps include, first, the offence category, which ranges from high to low seriousness based on the young offender's culpability and offence harm (Sentencing Guidelines Council, 2004: 3). Second, the starting points and category range provide a non-exhaustive list of typical aggravating and mitigating factors (Sentencing Council, 2017: 15–16). The final step is the sentencing explanation, where the judge 'must' give clear reasons for their sentence 'in ordinary language and in general terms' under Section 52 of the Sentencing Act 2020.

Internally, English judges are guided by case-law precedents set in higher courts and judicial training publications issued by the Judicial College, Magistrates Association and Ministry of Justice. Most youth offending is of low to medium seriousness and is sentenced by a panel of three lay magistrates, with one as chairperson, in the youth courts (Ministry of Justice, 2020: 14). These magistrates receive specific youth court training to be 'active listeners' who adopt 'age-appropriate language' and promote 'individual responsibilities in preventing further offending behaviour' (Judicial College, 2017: 106, 104). The magistrates' court sentencing guidelines, issued online by the Sentencing Council, are child-centred (Judicial College, 2020: 46) and welfare-focused (Sentencing Council, 2017: 5–6), and ensure that parental responsibilities are supported (Ministry of Justice, 2007: 4–5). To summarise, the legal obligations of child-friendly justice, participation, constructive societal reintegration and welfare appear to be important.

### **Ideological perspectives**

Adopting simplified language within English youth sentencing explanations (Weijers, 2004: 30) can be related to the ideological perspectives of judicial legitimacy and experience. Judicial legitimacy at sentencing has attracted metaphorical, reformatory and socio-legal control critiques (Carlen, 1976: 48). With regard to the latter, primarily sociological understandings of the law (Weber, 1978: 311–312) have in recent times increasingly tried to connect various perspectives of social theory with legal practice (Wandall, 2008: 10–13). For Luhmann (1993), judicial legitimacy requires judges to justify the law

appropriately, which judges attempt to do in their sentencing explanations, the impact of which can be a measure of 'functional success' (Cotterrell, 2006: 24), while Weber (1968: 874–875) views judicial legitimacy in sentencing processes that culminate in sentencing explanations as being 'the product or the technical means of a compromise of interests'.

Judicial attempts to demystify their sentencing requirements in Habermas's 'lifeworld', where Luhmann's (1993) functional systems involve everyday social experiences, result in the development of 'background knowledge' (Habermas, 1996: 23). Judges, in creating and then providing their sentencing explanations to young offenders, self-legitimise and objectively rationalise their efforts based on their own subjective sentencing experiences. Habermas (1996) further argues that the legal regulation of contemporary society requires the 'lifeworld' to be legitimate. He appears to suggest that judicial consensus and conformity-building contribute to the everyday social experience of judges, which he labels communicative rationality. Communicative rationality defines law and morality as distinct and is itself justified by judicially controlled legal processes (Cotterrell, 2006: 26). To summarise, the ideological perspectives that consider judicial legitimacy and judges' sentencing experience appear to be important.

## **Understandings of childhood and moral judgements**

Judicial difficulties in understanding children in England can be exacerbated by 'marginal participation' with other courtroom actors (Weijers, 2004: 23). Procedural delays can disrupt trial proceedings and lead to frustrated children at sentencing; some have reported that their lives have been 'unnecessarily disrupted' (Taylor, 2016: 30). Children's 'active involvement in the trial process' can be inherently limited (Bevan, 2016: 5) and they may report confusion as to 'who to trust, what to do, how to do it, when and why?' (Howard League for Penal Reform, 2018: 62). Judicial engagement with children, their parents and youth services can determine 'how young people's experiences and views are heard, and what is heard' (Drake et al., 2014: 38). It is important to overcome these judicial difficulties when setting moral goals at sentencing to help children reform (Weijers, 2004: 30).

Judicial attempts at moral goal-setting for reform assume individual child autonomy, and it 'benefits the person who will experience it, as a way of helping him to gain moral knowledge, if he chooses to listen' (Hampton, 1984: 214). Judicial moral messages can involve 'a concrete moral goal, which punishment should be designed to accomplish, and that goal includes the benefiting of the criminal himself' (Hampton, 1984: 215). If they regularly appear in the form of judicially led sentencing explanations, they may legitimately be dismissed as a 'moral limit to the law' (Edmundson, 1990: 505). However, for moral education theorists, judges would then risk appearing 'indifferent to the people they punish' (Hampton 1984: 219).

According to Haidt's (2003) theoretical exposition of universal moral foundations, judicial moral goal-setting (a) can be related to characteristic emotions (b) and punishment outcomes (c). Applying Haidt's exposition of universal moral foundations to judges setting moral goals for reform includes discussions with the child regarding the harm(s) caused (a), which is related to characteristic emotions (b) and, if associated with genuine remorse, includes 'intentions and often actions' (Maslen, 2015: 5–6; for a list of remorse

emotions, Maslen specifically refers to Smith, 2002: 98–99). Moral foundations (a) and characteristic emotions (b) then relate to the punishment given (c), which may be a Parenting Order that has been judicially drafted (c) (Canton, 2015: 67). To summarise, the understandings of childhood and moral judgements which appear to be important are the judicial difficulties in understanding children and moral goal-setting to help children reform.

## Sample and design

The research started in 2013 with a literature review and informal discussions with magistrates already known to the researcher, which informed a qualitative interview guide. The proposed interview guide, qualitative methodology and safeguarding of the sample's data were then ethically reviewed and approved at the institutional level. Funding to cover travel and institutional transcription costs was acquired in 2014. Judicial access, which required a formal interview at the Royal Courts of Justice, London, received approval from the then Senior Presiding Judge, Lord Justice Gross, in 2014. Informal telephone and/or email discussions with magistrate court managers, as well as individual magistrates, assisted the researcher's dissemination of the interview guide. These discussions facilitated the magistrates' understanding of the scope of the research and helped promote the informed consent of the sample before agreeing to be interviewed. The researcher flexibly engaged with the busy judicial sample over four years from September 2014 to March 2018. As an experienced qualitative interviewer of the English judiciary, there was an acute awareness of the potential time, cost and judicial access difficulties (Lowenstein, 2013: 33).

Furthermore, this reliance on the engagement of the sample over time meant that the researcher could not ensure that the sample was representative of the wider population. To boost the sample size, it was necessary to take time to arrange and complete all 24 interviews at the participants' convenience. However, while this increased the risk of delays to data gathering, it increased the opportunity for judicial engagement with the researcher. The researcher also spent time in developing greater familiarity with all of the interviewees via phone calls or emails before the interviews took place. This helped the researcher's attempts to explain the interview guide and gain the trust and respect of the sample (Steinke, 2004: 185). The researcher reassured the sample that all of the face-to-face interviews would, first and foremost, be focused on and always led by the sample (Harding, 2019: 75). By giving the sample the space and time to lead and be in control of their own interviews, the breadth and depth of the interviews was maximised (King et al., 2010/2019: 66). Each interview lasted 45 minutes on average, which appeared to reflect a high degree of judicial interest in engaging with the interview guide.

Respecting the anonymity and confidentiality of the judicial sample, the qualitative interview guide only recorded their gender, age and length of bench time served. This was gathered from each judicial interviewee in order merely to define the overall sample characteristics. A quantitative analysis of these characteristics could not be expected to yield any detailed information regarding youth sentencing explanation practices. This significant limitation further justified why a qualitative method and analysis were considered necessary and adopted as the primary mode of analysis (Kleining and Witt, 2001: 6).

Overall, in terms of gender, there were 14 males and 10 females, 13 of whom were regular chairpersons. This meant that a relatively equal gender balance was present. Overall, in terms of age, perhaps unsurprisingly all of the 24 judges interviewed were between 41 and 70. By age bracket, 5 were aged 41–50, 9 were aged 51–60 and 10 were aged 61–70, suggesting that they were predominantly at a senior stage in their sentencing careers. The seniority of the English judicial volunteers was also reflected in their overall length of bench experience, where 11 had served for 7–12 years, 9 had served for 13–18 years and 4 had served for 19–24 years.

The eight youth court areas were chosen, first, as they were all geographically proximate, saving time and costs, as well as being reasonably accessible and familiar to the researcher. Second, the court areas provided a helpful snapshot of youth court magistrates serving in the south of England. Third, they could each be distinguished by using a quantitative approach in terms of rural and urban development by gathering the publicly available population statistics. The eight magistrates' courts selected served the areas around Folkestone (Kent), Brighton (East Sussex), Worthing (West Sussex), Portsmouth and Southampton (Hampshire), Bournemouth (Dorset), Exeter (Devon) and Truro (Cornwall). However, beyond these eight selected areas, magistrates serving Guildford (Surrey) also volunteered to become involved. Overall, the researcher noted that the 24 youth court magistrates who sentenced youth offenders were largely based in urban areas, which were surrounded by rural areas that they also served (Pateman, 2011: 7).

## Method and analysis

As other qualitative researchers will know, there is no standard method for analysing the complex responses captured during interviews. Each magistrate received the interview guide and consent form via post or email, which required their formal agreement before an interview could take place. The interview guide contained the questions and methodology. Although the opportunity was there before the interviews for the magistrates to debate the meaning of the interview guide, no detailed explanation from the researcher was requested before the interviews. Prior to the interviews, all 24 magistrates confirmed that they fully understood the interview guide and the methodology applied, and welcomed that they were open to their interpretation. This meant that, at interview, they were free to, and did, spontaneously lead their interview. This approach allowed the judicial interviewees to debate their own perceptions freely and to control their own interview (Foddy, 1993: 22).

The qualitative analysis of the judicial perceptions gathered at interview encompassed three stages. First, the researcher, in reading the full interview transcripts, identified similar and repeated meanings in the judicial responses. This helped to condense the volume of the qualitative data. Identifying common experiences, feelings and values helped to reveal shared thematic understandings (King et al., 2010/2019: 299). The similar shared perceptions of the sample formed the basis of the researcher's understanding, which was supported by the selection of explanatory direct quotations from the sample.

Second, the level of analysis turned to ad hoc meaning-generation, which by its own flexible nature allowed the researcher to understand the deeper data semantics. This

approach recognised that an interpretation of meaning and language required recognition of the academic perspective adopted. In this case, it was socio-legal, which incorporated the interviewer's subjective interpretations of what could be positive or negative, similar or different. The researcher's perspective could then be interpreted for, and later validated by, a readership of judges, academics, legal professionals, politicians and the public. The ad hoc meaning-generation approach involved an attempt by the researcher to work out metaphors that captured the meaning of the full transcripts (Kvale, 1996: 203–204).

Third, the researcher recognised and embraced their own subjective bias when explaining the interview questions to the interviewees. This also included their subjective interpretations during the qualitative analysis of the data gathered. This significantly reduced the objective validity of the data examined. However, this could be justified as an alternative and innovative way to develop an in-depth understanding of the judicial perceptions gathered, by treating them as narrative interview data (Kvale, 1996: 236).

## Findings

### *Legal obligations*

The findings have been structured thematically, as in the preceding wider introductory discussion, to discuss the relevant legal obligations, ideological perspectives, and understandings of childhood and moral judgements. First, judicial alignment to the legal obligations of child-friendly justice, participation, constructive societal reintegration and welfare was discussed with the judicial sample. Each of these legal obligations was spontaneously recognised as relevant – particularly welfare – by the whole sample. When asked to identify which legal sources referred to them most, the whole sample similarly agreed that it was domestic sources, and that they had the most influence, with sentencing guidelines having the highest relevance, followed by judicial training publications and, lastly, legislation. As one of the magistrates summarised:

We must safeguard the well-being of young people first and foremost. We want them to feel included during proceedings and at sentencing, by discussing the ways in which they need to reform. This is written into our sentencing guidelines, which guide us and which we are mandated to follow.

For the three magistrates who referred to judicial training publications as most relevant for their legal obligations, this was based on the detailed guidance provided by the 'Youth court bench book' (Judicial College, 2017) and 'Equal treatment bench book' (Judicial College, 2020). Child-friendly justice and participation with children were encouraged within their specialist youth court training when understanding behaviour. As one of the three magistrates explained:

Our youth court training is extensive. We receive many case examples that contain youth health and well-being issues, which we discuss together in training. Their life experiences, from mental health, limited communication abilities, drug and alcohol abuse to suffering from bullying or poor and neglectful parenting, are very relevant to us.

The importance of constructive societal reintegration and safeguarding child welfare was discussed. When protecting a child's health and well-being, 22 magistrates spontaneously shared the view that the young offender, their parents or primary caregiver, as close supporters, mattered most, followed by youth services interventions as detailed in their pre-sentence reports. This was based on who the magistrates most perceived young offenders had regular involvement with and their expected greater influence on the young offenders' day-to-day life. As one of these 22 magistrates concluded:

Establishing those who are closest and thereby have influence is crucial to protecting their welfare and providing them with the encouragement required to improve their life. Parents will nearly always be closest as they have raised them and have known them the longest.

However, while 22 magistrates provided similarly positive accounts of how proactively questioning and listening to the young offender and their close supporters assisted their understanding of the offender's health and well-being needs, for two magistrates, the limited assistance of close supporters could hinder their constructive societal reintegration and welfare. For them, negative accounts were spontaneously shared of persistent serious offending and strained family relationships, which harmed the young offender's welfare and hindered their reform, despite the best efforts of their youth worker to support them. As one of these magistrates reflected:

We make a point of asking young offenders if they need anything to better support them, which improves our understanding. We closely work with their youth worker and parents. However, where there is persistent offending and few close family bonds, perhaps due to local authority care, from experience we know it will be much harder for us to help them and, more importantly, for them to help themselves.

The judicially perceived extent of expected child reform from their youth sentencing explanations further revealed the importance of child-friendly justice, participation, constructive societal reintegration and welfare. To initially help the magistrates frame their discussion of the extent of the expected reform, the whole sample completed a Likert attitudinal scale before the interviews, ranging from a very high to a very low expected reform impact from their sentencing explanations. Of the 24 magistrates, 5 responded with very high, 12 with high, 7 with moderate and none with low or very low reform impact. For the 17 magistrates who felt they had a very high to high reform impact, they spontaneously related child-friendly discussions more with first-time offenders. They described first-time offenders similarly, who they felt were more likely to engage with them through receptive body language. This was attributed to maintaining eye contact and listening, which suggested there was genuine remorse and engagement with their sentencing explanations. They similarly described how they facilitated reform through positive and individually tailored child-friendly discussions, ensuring the offender's participation and mapping their path to constructive societal reintegration while safeguarding their welfare needs. As one of these 17 magistrates described:

To achieve meaningful engagement and promote their future reform, we tend to ask personal questions, such as 'What do you need to reform?' and 'Who is around most to help you to

improve your life?’ To help them to think more about their reform, we can make suggestions, such as getting psychological support, developing their confidence by going to school or college, and trying to remove themselves from bad influences such as peer pressure, often exerted in criminal gangs.

The remaining seven magistrates, who felt that they had a moderate reform impact, spontaneously related child-friendly discussions more with persistent young offenders, who had frequent previous convictions that had increased in seriousness. They similarly described that this was evident from the facts of the case, with escalating seriousness featuring high levels of offender culpability and harm. Such persistent young offenders were negatively perceived as less likely to participate with them, through unreceptive body language, which was commonly attributed to limited eye contact and poor listening skills. These magistrates agreed that they were more likely to encounter failure in their attempts to map a path for the constructive societal reintegration of persistent young offenders with complex welfare needs. As one explained:

As I encourage reform, I have found that they have less and less impact as the custody cusp is reached. With such offenders, there is little eye contact and little care for those around them or the victims they have harmed. I will include their youth worker and their pre-sentence reports revealing the reasons for their reoffending, current health and well-being. I will try to include their parents, family and friends who support them.

### *Ideological perspectives*

Second, the relevant ideological perspectives, which consider judicial legitimacy and their sentencing experience, were discussed. In these discussions, the whole sample spontaneously agreed that they, first, ensured young offenders had a clear understanding regarding their sentence requirements, as a matter of judicial legitimacy, and, second, recognised the limited ability of children to fully understand them, in their sentencing experience. As one of the magistrates remarked:

I don't think you will get much disagreement on their primary function. We are duty-bound to adopt simplified language that they are familiar with. We check their understanding by asking questions like ‘Do you fully understand this?’ ‘Would you like me to explain that more?’

To successfully enhance their judicial legitimacy, 21 magistrates spontaneously referred most to their frequently positive, inclusive and successful sentencing explanations. The magistrates directed them mostly towards the young offender and, to a lesser extent, their close supporters – that is, their parents and youth worker in the courtroom. They similarly described, from their sentencing experience, the importance of protecting each young offender's welfare with the assistance of youth services and their parents. As one of the magistrates concluded:

It is crucial that every young person fully engages and understands their sentence. We constructively engage with them, so they are crystal clear, and involve their family and youth worker in our discussions about their well-being. Their parents and youth worker can help

support them beyond the courtroom, but it is the young person themselves who is most responsible for adhering to the requirements of our order.

However, for the remaining three magistrates, they spontaneously referred most to infrequent neutral, limited or unsuccessful sentencing explanations that hampered their judicial legitimacy. The magistrates had similarly directed them mostly towards the young offender's youth worker and parents, or, to a lesser extent, the child in their sentencing experience. Further researcher prompting was required to ascertain why. They also referred to challenging circumstances where the young offender had a very limited understanding of their sentence requirements. Due to this, further intervention and guidance from their close supporters within the courtroom were required to ensure their full understanding of the sentencing requirements and protect their future welfare. As one of these magistrates revealed:

Parents and youth workers can greatly assist us with some children who are really struggling to understand their sentence and their own health issues over time. These children need significant therapeutic intervention. Sadly, if they don't interact well with it, when appointments with their youth offending team become sporadic and parental supervision is poor, they are much less likely to complete their sentence.

How each judge predominantly expressed their sentencing explanations was discussed. The whole sample responded with ambiguity regarding what their principal mode of expression could mean. Interviewer prompting was therefore necessary to further define it as either positive or negative words and actions. A Likert attitudinal scale was presented, which ranged from a predominantly positive to negative expression of their sentencing explanations. Fifteen magistrates responded with a predominantly positive, nine with a moderately positive, and none with a neutral, moderately negative or negative mode of expression. The whole sample shared a similar consensus that their mode of expression in words and actions was overwhelmingly positive in their sentencing experience. As one of the magistrates explained:

It really has to be positive, doesn't it? We try to softly encourage by our tone of voice and by looking at the young person to better understand the consequences of their actions in order to begin changing themselves. To achieve this, they must be honest with us about themselves and thoughtfully process the hurt their offending has caused to their life and those closest to them.

The reasons why the whole sample similarly described their mode of expression in words as either positive or moderately positive were focused on. For 21 magistrates, their positively expressed words mostly coalesced around providing simplified phrases which succinctly explained their sentencing requirements, thereby enhancing their judicial legitimacy. As one remarked:

To be clear, you must get to the point quickly with no legal jargon to successfully connect with them. We largely focus on what we feel they will need to know, such as what they will do and when.

The other three magistrates similarly felt that their words mostly coalesced around uttering reassuring phrases that explained their sentencing requirements thoroughly, thereby enhancing their judicial legitimacy. As one of them commented:

When I speak, I choose my words very carefully, as each word can be understood differently. Taking my time does slow me down, but sometimes they say they understand when they don't out of embarrassment. That is why encouraging them and anyone else with them to ask questions helps give them greater ownership of their sentence.

The reasons why the whole sample described their mode of expression in actions as either positive or moderately positive were focused on. The whole sample similarly related positive actions in their past sentencing experience, where their pace and tone of voice, as well as body language, had assisted them. For 22 magistrates, their positive actions were mostly static with them commonly adopting a slow pace, a calm and measured tone of voice, and open body language, while maintaining eye contact to engage with a receptive young offender. As one of them explained:

Over many years, I have learnt that, as a panel, we should avoid showing any agitation or lack of patience with them in both our voice and body language. To remain positive and inclusive, I take my time, do not raise my voice and look at who I am talking with to ensure we are developing a meaningful connection with them, their parents and youth worker.

For the other two magistrates, their positive actions remained mostly fluid and commonly involved adopting a moderate pace, an assertive tone of voice and closed body language, while limiting their eye contact to adapt to an unreceptive young offender. As one of these magistrates described:

Looking back, I have noticed that repeat youth offenders at sentencing are more likely to look down with crossed arms or legs. We ask them to uncross them and look up, but sometimes they just won't listen and don't want to be there. In those circumstances, we are left with no alternative than to simply reel off the requirements of our order, leaving the details for their parents and youth worker to go through with them later when they are in a better frame of mind to receive them.

### *Understandings of childhood and moral judgements*

Third, the relevant understandings of childhood and moral judgements, from judicial difficulties in understanding children to moral goal-setting for reform, were discussed. The whole sample spontaneously agreed that, with regard to the former, what mattered most was asking questions that explored each child's vulnerabilities, utilising their sentencing experience. The child vulnerabilities that were most often recognised by the magistrates included physical and mental health disabilities, developmental maturity and communication difficulties, as well as past child abuse or trauma. As one of the magistrates explained:

We ask questions to facilitate open discussions about the difficulties they are facing in life. They may not be attending school and have learning difficulties affecting that. They may have increasingly common mental health issues such as anxiety and depression. They may have

suffered past trauma and abuse that can lead to self-harm and periods of isolation. Being aware of these complex difficulties is crucial for us and we are reliant upon their legal counsel, parents and youth worker for that important information.

The whole sample was asked whether morality featured in their youth sentencing explanations, and there was agreement by all of the judges that it did. Further researcher prompting was required to help the judges explore the morality within their youth sentencing explanations. The relevant morality depended, first, on relating to the case facts and setting moral goals for reform, which the magistrates commonly felt improved each young offender's understanding of their own culpability. Second, it depended on relating to those perspectives that each young offender was closest to, amplifying discussions around offence harm and developing genuine remorse for the harm caused. When setting moral goals for reform through their offence-harm discussions, the magistrates similarly discussed both morally right and wrong values, behaviours and associated emotions with the young offenders, their parents and youth worker. As one of the magistrates identified:

Of course, there is morality in what we do. In reshaping their morals, we discuss wrongs and rights. If they have assaulted someone, for example, in that moment of aggression they have hurt someone else, which is wrong. We want them to develop a sense of regret about being aggressive and better manage their anger by avoiding situations that make them anxious or upset leading to violence, which is right.

How best to address judicial difficulties in understanding children and set moral goals for reform attracted two different schools of thought amongst the sample as to which courtroom perspective(s) mattered most. For 18 magistrates, their focus mostly centred on recognising each young offender's unique perspective when setting moral goals for reform. They commonly described how they, first, attempted to ascertain the young offender's existing moral values; second, attempted to correct any immorality detected; and, third, guided them towards setting their own moral goals for reform. As one of these magistrates discussed:

I mainly seek to explore what actions the young person can do to make amends for what they have done and change their moral code. So, for example, where they have been antisocial, perhaps causing damage to other people's property, they can agree to be more considerate and thoughtful in future and voluntarily fix or compensate them. If they are involved in knife or drugs crime, they can agree that carrying a knife or taking drugs is very dangerous for them and those around them.

For the remaining six magistrates, their focus mostly centred on recognising the perspectives of the young offender's close supporters when setting moral goals for reform. They commonly described how they, first, gathered the moral perspectives of the parents and youth worker; second, used these perspectives to help correct any immorality they detected in the young offender; and, third, included them in setting moral goals for reform. The magistrates similarly felt that this inclusive approach assisted them most in developing within the young offender a greater awareness and recognition of the harm their offending had caused. As one of these magistrates explained:

We try to keep their parents and youth worker fully involved by asking them what they think about the offending. They help us as we suggest ways in which the young person can improve their behaviour. If they are stealing, their parents and youth worker can encourage them to stop being dishonest and become trustworthy. Coming from someone close to them, that can be really effective in recalibrating their moral compass.

Exploring how the judges amplified offence-harm discussions and developed genuine remorse for harm caused when setting moral goals required further prompting from the interviewer because offence harm itself relates to varying levels of offence seriousness in England. The interviewer therefore suggested, and the whole sample agreed to, a common sentencing context of both an early guilty plea and a low to medium seriousness offence focus for their offence-harm discussions. There were two different schools of thought within the sample as to which courtroom perspective attracted their principal focus.

For 18 magistrates, their offence-harm discussions when moral goal-setting were mostly directed at the individual young offender, utilising their sentencing experience. Within the courtroom, they similarly discussed how they, first and foremost, encouraged genuine remorse for the harm caused from the young offender. For these magistrates, genuine remorse was commonly expressed through the young offender's words and changes in their body language as they expressed feelings of regret for the harm caused. As one of the magistrates remarked:

When we first discuss the harm that they have caused and their regret for it, our focus is on them. Their body language can be poor, looking down a lot and keeping their hands in their pockets. We ask them: 'How do you feel about your offending?' 'Why are you doing it?' 'What do you regret most about it?' By engaging with them directly, their body language often improves, they look and sit up, and their shame for what they have done seems to be expressed with more sincerity.

For the other six magistrates, their offence-harm discussions when setting moral goals were mostly directed at the young offender's close supporters – typically their parents and youth worker – utilising their sentencing experience. Their most successful moral goal-setting attempts commonly involved thoughts and feelings about the harm caused to their close supporters in order to help encourage genuine remorse in the young offender. For these magistrates, too, genuine remorse was commonly expressed through words, changes in body language and feelings of regret for the harm caused. As one of these magistrates discussed:

What is genuine remorse? Looking back, I have found that discussing the hurt caused to their nearest and dearest family members can really help young people empathise with others and feel sorry for their offending, if they don't already do so. In one case, only after his mother had spoken about the hardship his offending had caused her as a single parent did his demeanour improve. His eye contact increased, he sat up with his arms uncrossed and his apology really appeared to be much more heartfelt.

## Conclusions

This article has posed and then attempted to answer the following focal question: What is the English judicial approach towards youth sentencing explanations made within the

magistrates' youth court? In the sample and design, the randomness of the opportunity sampling adopted was limited by seeking the most committed and engaged judicial volunteers. Furthermore, in the findings, the judicial interviews could only provide insights into the magistrates' perceptions of their sentencing remarks, rather than the actual practice of sentencing explanations. Overall, the high degree of judicial concordance in the findings indicates the relevance of the wider introductory discussion, where the three theoretically defined purposes behind sentencing explanations have some relevance (Weijers, 2004: 30). However, ascertaining whether most English judges follow a similar predefined script or operate within a narrow, perhaps erroneous framework of understanding children's offending when explaining their sentences requires more data. Should their judicial publication ever occur in England, or expand across offences, as has been the case for young adults, this will become more attainable.

First, the findings indicate that the relevant legal obligations of child-friendly justice, participation, constructive societal reintegration and, particularly, welfare appear to be important, as English judges try to understand the human behaviours exhibited by children in their courtrooms. Judicial understandings of each child's health and well-being needs appear to be important, but thus far academics have been reluctant to provide prescriptive guidance for their youth sentencing remarks in England due to the 'characteristics of the individual child and the complexity and circumstances of each case' (Hollingsworth and Stalford, 2020: 4–5). Determining whether creating and sharing prescriptive sentencing explanation guidance would promote judicial understandings of each child, and protect children's distinct participatory rights to be included and human rights to be treated equally at sentencing (Lam, 2013: 151), would benefit from more empirical data-gathering, but this could be developed.

Second, the findings indicate that the relevant ideological perspectives, which consider judicial legitimacy and their sentencing experience, appear to be important, as English judges use simplified language in their sentencing explanations for children. Accessing magistrates' sentencing experiences of language simplification to develop prescriptive sentencing explanation guidance capturing best practice would require a 'specific judicial investment in tailoring judgments for children, responding to children's uniquely and universally disenfranchised position within the legal process' (Stalford and Hollingsworth, 2020: 1057). The data presented here suggests that this may be enhanced by greater judicial attempts to provide positive sentencing explanations that include parents and youth workers.

Third, the findings indicate that the relevant understandings of childhood and moral judgements that appear to be important are English judges' difficulties with understanding children and their setting of moral goals to assist each child's reform. With regard to the former, each child's vulnerabilities were judicially recognised, including their 'chronic inability to successfully navigate particular sorts of interaction' (Johnson, 1993: 76, referring to Habermas's communicative action concept). With regard to the latter, moral goals to help children reform involved offence-harm discussions with judges, who sought to develop genuine remorse as part of their moral education attempts both within and beyond the youth courtroom. Developing prescriptive sentencing explanation guidance incorporating offence-specific moral goals for children could improve

transparency and be part of ‘the hallmarks of a good judgment more generally’ (Stalford and Hollingsworth, 2020: 1058).

To improve our understanding of youth sentencing explanations globally, particularly in jurisdictions where their publication has been expanding, the next steps involve ‘finer-grained (international and intra-national/sub-national) critical inquiry’ (Goldson, 2019: 209). Such inquiries may be qualitative surveys or interviews from the judicial perspective to better understand the theoretically defined purposes behind them, with courtroom observations and case transcripts acting as alternatives to explore the judicial lens (Bouhours and Daly, 2007). They could consider the impact of youth sentencing explanations in and beyond the courtroom from the perspectives of the child, their parents, legal counsel and youth worker to test whether youth sentencing explanations actually provide ‘clarity, caring, integrity and are being well informed’ (Hollingsworth, 2020: 6). Their impact beyond the courtroom can involve children’s relationships and interactions with their parents and youth workers, and may include their life development via their future ‘careers and trajectories’ (Evans, 2006: 148). Improving our understanding of their purpose and impact globally should prompt comparative inquiries across different criminal justice systems, despite the ‘risks of ethnocentrism and relativism’ (Nelken, 2010: 18–19) and uncritical ‘criminological tourism’ (Smith, 1995/2014: 219). Moving towards a better global understanding of youth sentencing explanations, jurisdictions where the publication of judicial remarks has been increasing are likely to prove most fruitful when enhancing our juvenile justice conversations in this emerging research field.

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## Note

1. See the Courts and Tribunals Judiciary website at <https://www.judiciary.uk>

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