

Circumstances under which a juvenile offender be tried together with an adult offender in the same court

Under s. 3C(1) of the Juvenile Offenders Ordinance, Chapter 226, a child or young person cannot be tried in a magistrates' court which is not a juvenile court. However, s. 3C(2) provides that such person can be tried in an adult magistrates' court if he is charged jointly with an adult. Since s. 3C(1) does not apply to the Court of First Instance and the District Court, a juvenile offender can be tried in the Court of First Instance or the District Court either alone or jointly with an adult.

Special measures to protect the interests of the juvenile offender tried in such circumstances

The special measures are as the following:

- (a) If he is tried in the adult magistrates' court, a duty lawyer is provided to the juvenile offender and his guardian is requested to be present throughout the proceedings;
- (b) The court will give particular care of the juvenile offender ensuring that he understands the proceedings and the evidence;
- (c) The court may direct that no person shall publish the name, address or school of a juvenile offender. (S. 20A);
- (d) If the juvenile offender is found guilty of an offence by a court other than a juvenile court, the judge or magistrate may remit the case to a juvenile court for sentence. (S. 3F); and
- (e) If he is tried by any court and the court is satisfied of his guilt, the court may deal with the case in any of the manners laid down in s. 15 of the Juvenile Offenders Ordinance, Chapter 226.

Review the current practice

(a) Joint trial:

It is desirable that there should be a joint trial, to avoid prosecution witnesses having to give their evidence twice, to avoid the risk of inconsistent verdicts, and to avoid the risk of disparity in the sentences which are passed in the event of conviction.

In R. v. Hayter [2005]1 W. L.R. 605, Lord Steyn said at 608:

‘ 6. The practice favouring joint criminal trials is clear. While considerations of the avoidance of delay, costs and convenience, can be cited in favour of joint trials this is not the prime basis of the practice. Instead it is founded principally on the perception that a just outcome is more likely to be established in a joint trial than in separate trials. The topic is intimately connected with public confidence in jury trials. Subject to a judge’s discretion to order otherwise, joint trials of those involved in a joint criminal case are in the public interest and are the norm.’

It is therefore in the public interest that a juvenile committing an offence with an adult should be tried together.

(b) Consistency with international conventions:

Trial of a child or young person in the adult magistrates’ court, the Court of First Instance and the District Court is not inconsistent with international conventions.

In R. v. Devizes Youth Court and Others ex parte A 164 J. P. 330, a boy, aged 12, appeared before a youth court charged with an offence of arson. He was committed to the Crown Court for trial as the youth court considered that a custodial sentence ought to have been an option available to the sentencing court. The defendant appealed on various grounds against the decision to commit for trial. It was held that relevant provisions of

international conventions¹ affected the way in which the trial was conducted and not the decision as to whether the case was dealt with in the Crown Court or the youth court.

Since the current practice is not inconsistent with international conventions, the benefit of a joint trial discussed above should be considered. The measures undertaken should afford adequate protection to the juvenile. It should be noted that only a charge made jointly against a juvenile and an adult must be tried in the adult magistrates' court. (S. 3C(2)(a) of the Juvenile Offenders Ordinance, Chapter 226). If the juvenile is charged with aiding, etc., or with an offence arising out of circumstances which are the same as or connected with those giving rise to an offence with which an adult is charged at the same time, the magistrates' court has a discretion. (S. 3C(2)(aa)).

The present law strikes a balance between the benefit of a joint trial and the interest of the juvenile. If the law relating to the magistrates' court is amended, the jurisdiction of the Court of First Instance and the District Court to try a juvenile has to be abrogated also. Taking the benefit of a joint trial and the protection of the juvenile in the adult courts into consideration, we do not consider that the existing law should be changed.

Prosecutions Division
Department of Justice

¹ Such as Article 3(1) of the United Nations Convention on the Rights of the Child states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."