

## **Persistent offenders**

5.4 Some sentences can only be imposed on young offenders if they are deemed a “persistent offender.” A youth **must** be classed as such for one of the following to be imposed:

- a YRO with intensive supervision and surveillance when aged under 15;
- a youth rehabilitation order with fostering when aged under 15; and
- a detention and training order when aged 12 – 14.

5.5 The term “persistent offender” is not defined in statute but has been considered by the Court of Appeal. In general it is expected that the young offender would have had previous contact with authority as a result of criminal behaviour. This includes previous findings of guilt as well as admissions of guilt such as reprimands, final warnings and conditional cautions.

5.6 A young offender who has committed one previous offence cannot reasonably be classed as a “persistent offender”, and a young offender who has committed two or more previous offences should not necessarily be assumed to be one. To determine if the behaviour is persistent the nature of the previous offences and the lapse of time between the offences would need to be considered.

5.7 Courts may also wish to consider any evidence of a reduction in the level of offending when taking into account previous offending behaviour. Young offenders may be unlikely to desist from committing crime in a clear cut manner but there may be changes in patterns of criminal behaviour (e.g. less frequent offending or longer lengths of time between offences) that indicate the offender is attempting to desist from crime.

5.8 If there have been three findings of guilt in the past 12 months for imprisonable offences of a comparable nature (or the youth has been made the subject of orders as detailed above in relation to an imprisonable offence) then the court could certainly justify classing the youth as a “persistent offender.”

5.9 When a young offender is being sentenced in a single appearance for a series of separate, comparable offences committed over a short space of time then the court could justifiably consider the offender to be a “persistent offender,” despite the fact that there may be no previous findings of guilt.

5.10 Even where a young person is found to be a persistent offender, a court is not obliged to impose one of the optional sentences. The approach should still be individualistic and all other considerations still apply. Custodial sentences must be a last resort for all young offenders and there is an expectation that they will be particularly rare for offenders aged 14 or less.