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Dear Mr Harris,

**The Sentencing Code (Disposals relating to children and young persons): consultation response by the Howard League for Penal Reform and Just for Kids Law/Youth Justice Legal Centre**

**1. About the respondents**

This is a joint response by the Howard League for Penal Reform and Just for Kids Law/Youth Justice Legal Centre.

***The Howard League for Penal Reform***

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. We have some 12,000 members, including lawyers, politicians, business leaders, practitioners, prisoners and their families and top academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We aim to achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's work.

- 1.3 Since 2002 the Howard League has provided the only legal service dedicated to representing children and young people in custody. As well as our legal work, we have conducted public legal education and participation sessions with children and young people and consulted them on the issue of sentencing. In 2017, the Howard League published its research on sentencing young adults, *Judging Maturity*.
- 1.4 The Howard League has also published research on sentencing women and we support the parliamentary group on women and girls in the penal system.

### ***Just for Kids Law/Youth Justice Legal Centre***

- 1.5 Just For Kids Law (JfKL) is an award-winning charity, providing children and young people with advocacy and legal support, as well as campaigning to influence policy through strategic litigation in the higher courts and influencing decision makers in local and central government.
- 1.6 JfKL was founded in 2006 by Aika Stephenson and Shauneen Lambe, after their experience as legal aid lawyers in the youth justice courts exposed them to the urgent need of children and young people to access free specialist legal support. Since then, our services have developed to provide a wide range of support to vulnerable young people. We are the UK's only youth organisation offering holistic advocacy support directly linked to specialist legal advice.
- 1.7 In 2015, JfKL established the Youth Justice Legal Centre (YJLC) to address the need for specialist knowledge and skills for those working within youth justice. YJLC provides expert youth justice online resources, training for legal professionals and brings together a community of youth justice specialists for an annual Youth Justice Summit.
- 1.8 Both organisations have drawn upon our lawyers' experience in practice, our direct work with children and young adults, and our policy expertise in this response.

## **2. Summary**

- 2.1 We are grateful for the opportunity to respond to the specific provisions in respect of children. This response has been prepared jointly by the Howard League and Just for Kids Law/Youth Justice Legal Centre given our expertise in children in the criminal justice system. It follows on from the Howard League's response to the main consultation submitted in January and matters set out within that submission are not repeated here.
- 2.2 Children, their parents and the adults supporting them, consistently tell us that they find the sentencing process frightening, inconsistent and confusing. This was the overwhelming response by around 80 children and young adults who informed the Howard League's recent sentencing toolkit (2018).<sup>1</sup> We therefore consider that the codification of sentencing disposals for children will have huge potential benefits for children. Creating a more structured, transparent and accessible sentencing framework can only help to ensure lawful sentences are passed. This is especially important in the context of the concerns about the disproportionate rates of prison sentences for of Black and Minority Ethnic children recognised by David Lammy. The Code will enhance a sense of procedural fairness which is widely recognised as particularly important to

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<sup>1</sup> <https://howardleague.org/legal-work/sentencing-toolkit/>

children.<sup>2</sup> Furthermore, children's perceptions of the legitimacy are a key determinant of future adherence to the law.<sup>3</sup>

- 2.3 We especially welcome the fact that the Sentencing Code will be available on [www.legislation.gov.uk](http://www.legislation.gov.uk) and therefore accessible to all. This will have far reaching benefits. It will ensure all parties to the sentencing process have access to the relevant sentencing law. In particular, the sentencing of children can involve a number of non-legal professionals and the improved accessibility to the law on sentencing will enable their participation in the sentencing process.
- 2.4 The process of consolidation provides the opportunity to make the language of sentencing legislation far more accessible and straight forward. In our view, the provisions affecting children should use child-friendly language. The term child and children should be used wherever the provision refers to a person under 18 in line with current legislation and international standards. The term "offender" should be avoided where possible.
- 2.5 Greater consideration ought to be given to the special needs of young adults in the criminal justice system in line with developing knowledge and practice (Justice Committee, 2016; Howard League, 2017 and T2A, 2018).<sup>4</sup>
- 2.6 We have not dealt with the set questions due to time constraints but would be happy to meet with you to discuss specific provisions further should that be of assistance. We further note that there are a number of anomalies in the current law affecting the sentencing of children that are outside the scope of this consultation. We would be very happy to discuss these with you in the future.

### **3. Language: everyone under 18 years of age should be referred to as children**

- 3.1 The Glossary section of the Consultation distinguishes between children and young people, rather than treating every person under the age of 18 as a 'child':

#### **“Child**

The term “child” is used in the Children and Young Person Act 1933 to refer to someone under the age of 14 and is used in this Consultation Paper to the same effect. The term “children” should be read accordingly.

#### **Young person**

The term “young person” is used in the Children and Young Persons Act 1933 to refer to a person aged 14 or over but under 18 and is used in this Consultation Paper to the same effect.”

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<sup>2</sup> See for example Murphy K. (2015). Does procedural justice matter to youth? Comparing adults' and youths' willingness to collaborate with police. *Policing and Society*, 25(1), 53-76.

<sup>3</sup> See for example, Tyler, T. and Huo, Y. (2002). *Trust in the Law*. New York, NY: Russell Sage Foundation. The Centre for Justice Innovation has published extensively on this topic, see for example <http://justiceinnovation.org/wp-content/uploads/2014/09/To-Be-Fair-Procedural-Fairness-in-Courts.pdf> and <http://justiceinnovation.org/wp-content/uploads/2017/03/Building-Trust.pdf>

<sup>4</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/young-adult-offenders/>  
<https://howardleague.org/publications/judging-maturity/>  
<https://www.t2a.org.uk/wp-content/uploads/2018/04/Young-adult-courts-CJI.pdf>

3.2 We strongly urge you to adopt the definition of children as all people under the age of 18, in line with the definition of a child in the following provisions:

- United Nations Convention on the Rights of the Child (UNCRC) 1989, Article 1
- Children Act 1989, s105(1)
- Family Law Reform Act 1969 s1

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 s91(6) explicitly states that “child” means a person under the age of 18. The amendments to the Police and Criminal Evidence Act 1984 by Criminal Justice and Courts Act 2015 resulted in s.37(15) enabling the provisions to apply all children under the age of 18.

3.3 We strongly urge you to adopt this approach rather than reinforcing the outdated distinction between children and young people as defined by the Children and Young Persons Act 1933. Since the abolition of *doli incapax* the age of 14 is no longer a significant age threshold.

3.4 This approach is also in line with government policy to ensure all new legislation and policy gives due consideration to the UNCRC. On 6 December 2010, in a Written Ministerial Statement in connection with the publication of the Independent Review of the Children's Commissioner, the then Children's Minister, Sarah Teather MP, gave a commitment on behalf of the Government that it would always give due consideration to the UNCRC in the making of new policy and legislation. Subsequently, Cabinet Office issued guidelines that before any legislation starts on its journey through Parliament, it has to have gone through the various articles of the UNCRC to review whether it is compliant with them. The guidance states –

‘The Government has made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and legislation.’ (Guide to Making Legislation, Cabinet Office, July 2017, para 12.29)<sup>5</sup>

#### **4. Language – the welfare principle – children not offenders**

4.1 The welfare principle requires us to see children who commit offences as children first and offenders second. The language in the draft Code does not facilitate this. Labelling children as “offenders” entrenches their identity as offenders, which in turn undermines the aim of preventing reoffending, which is the principle aim of the justice system for children (s37, Crime and Disorder Act 1998).

4.2 The Howard League and Just for Kids Law have advocated for years that referring to children as “offenders” serves only to encourage the stigmatisation and criminalisation of children. For instance, the average parent collecting their child from school would not refer to collecting their “youth”. Labelling children as “offenders” reinforces a feeling of exclusion and discourages positive re-integration into society (McAra L and McVie S, 2007). The majority of children in conflict with the law will grow away from the criminal justice system (Smith D et al, 2001).<sup>6</sup> Defining a child whose main objective is to refrain

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/645652/Guide\\_to\\_Making\\_Legislation\\_Jul\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645652/Guide_to_Making_Legislation_Jul_2017.pdf)

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[https://www.researchgate.net/profile/Jon\\_Shute/publication/247851138\\_The\\_Edinburgh\\_Study\\_of\\_Youth\\_Transitio](https://www.researchgate.net/profile/Jon_Shute/publication/247851138_The_Edinburgh_Study_of_Youth_Transitio)

from offending as an ‘offender’ is unnecessary and unhelpful. Negative labelling neither promotes the welfare of the child nor discourages re-offending. We propose children be referred to as children throughout the code.

- 4.3 This approach is in line with Article 40 of the UN Convention on the Rights of the Child which recognises “the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.” The General Comment No. 10 of the Committee on the Rights of the Child: Children’s Rights in Juvenile Justice reinforces this point at paragraph 29 which states that “reintegration requires that no action may be taken that can hamper the child’s full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child.”<sup>7</sup>

## 5. Young adults

- 5.1 While this part of the Consultation specifically relates to those provisions affecting children under the age of 18, it also acknowledges the potential disparity that may arise when resentencing persons convicted as young adults (§2.20).
- 5.2 For the purposes of informing sentencing practice, the neurological and psychological evidence that development of the frontal lobes of the brain does not cease until around 25 years old is particularly compelling. It is this area of the brain which helps to regulate decision-making and the control of impulses that underpins criminal behaviour (Blakemore et al 2006, T2A, 2012).<sup>8</sup> In terms of brain physiology, the development of traits such as maturity and susceptibility to peer pressure appear to continue until at least the mid-twenties (The Royal College of Psychiatrists, 2015, paragraphs 1.1–1.3).<sup>9</sup> In its concluding report the Justice Committee accepted this evidence and strongly advocated a distinct approach for young adults:

“Research from a range of disciplines strongly supports the view that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25, underpinned by the developmental maturation process that takes place in this age group.” (Justice Committee, 2016, paragraph 14, p.9)<sup>10</sup>

“In our view there is a strong case for a distinct approach to the treatment of young adults in the criminal justice system. Young adults are still developing neurologically up to the age of 25 and have a high prevalence of atypical brain development. These both impact on criminal behaviour and have implications for the appropriate treatment of young adults by the criminal justice system...” (Justice Committee, 2016, p.13)<sup>11</sup>

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[ns and Crime Key Findings at Ages 12 and 13/links/00b7d525ba933276ce000000/The-Edinburgh-Study-of-Youth-Transitions-and-Crime-Key-Findings-at-Ages-12-and-13.pdf](https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf)

<sup>7</sup> <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

<sup>8</sup> [https://www.barrowcadbury.org.uk/wp-content/uploads/2012/11/Repairing-Shattered-Lives\\_Report.pdf](https://www.barrowcadbury.org.uk/wp-content/uploads/2012/11/Repairing-Shattered-Lives_Report.pdf)

<sup>9</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html>

<sup>10</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/young-adult-offenders/>

<sup>11</sup> *Ibid.*


- 5.3 The Ministry of Justice has accepted that young adults have distinct needs and recent policy developments suggest that the government is open to a distinct approach to reflect that (Ministry of Justice, 2017).<sup>12</sup>
- 5.4 In light of these developments, and in order to facilitate a change in the approach to sentencing young adults in the future, we urge you to reconsider these provisions with the distinct needs of young adults in mind.

We would be happy to discuss any of these points with you in further detail.

Yours sincerely,



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The Howard League for Penal Reform



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Just for Kids Law

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<sup>12</sup> <https://www.parliament.uk/documents/commonscommittees/Justice/treatment-of-young-adults-govtresponse.pdf>

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## **Statutes**

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Children and Young Persons Act 1933

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Family Law Reform Act 1969

Legal Aid, Sentencing and Punishment of Offenders Act 2012

United Nations Convention on the Rights of the Child (UNCRC) 1989