



# Sentencing Young Adults

**Making the case for sentencing principles for young adults**

**Howard League  
for Penal Reform**

**T2A**  
Transition to  
Adulthood

Convened by:

**Barrow  
Cadbury  
Trust**

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## Making the case for sentencing principles for young adults

This report was funded by the Barrow Cadbury Trust as part of the work of the Transition to Adulthood (T2A) Alliance – a broad coalition of 16 leading criminal justice, health and youth charities – working to evidence and promote the need for a distinct and effective approach to young adults (18-25 year olds) in the transition to adulthood, throughout the criminal justice process. T2A is convened and funded by the Barrow Cadbury Trust. The Trust is an independent, charitable foundation, committed to bringing about socially just change.

T2A Alliance's 16 membership organisations include: Addaction, BTEG, The Care Leavers' Association, Catch 22, Centre for Crime and Justice Studies (CCJS), CLINKS, Criminal Justice Alliance (CJA), Howard League for Penal Reform, Nacro, the Prince's Trust, Prison Reform Trust, Restorative Justice Council, Revolving Doors Agency, Together for Mental Wellbeing, the Young Foundation, and Young Minds.



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The Howard League for Penal Reform is the oldest penal reform charity in the world. Its legal team specialises in working with children and young adults in and on the edge of custody, providing expert legal support and empowering young people through its valuable participation work. It campaigns, lobbies and publishes research and works towards less crime, safer communities and fewer people in prison.

**Howard League  
for Penal Reform**

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## Key Points



Over 140,000 young adults aged 18 to 24 were sentenced in criminal courts in 2017.



The Howard League's legal and participation work with young adults shows that sentencing is a significant criminal justice event that can have an enormous impact on the development and life chances of young adults.



The sentencing process, as it stands, does not sufficiently factor in the lessons from neuroscience, psychology and criminology concerning the development of young adults.



The Howard League report, "Judging Maturity", demonstrated that courts are more than capable of factoring issues such as maturity into decision-making but are less likely to do so in the absence of clear and firm guidance.



Building on the work of the Sentencing Council's overarching principles for sentencing children, sentencing principles for young adults should be developed.



Sentencing principles for young adults should explore the relationship between immaturity and blameworthiness, capacity to change, the impact of race and histories of care, and how the principle that best interests of a child is a primary consideration might be extended to apply to young adults.



Such principles would help judges and magistrates understand young adults better and improve sentencing outcomes.

## Introduction

A substantial and growing evidence base has found that young adults aged 18 to 25 are a distinct group, largely because they are still maturing. Young adults face an increased risk of exposure to the criminal justice system compared to older adults and are not afforded the protections given to children, despite their distinctive needs. Contact with the criminal justice system raises the risk of adverse outcomes for young people and increases their risk of reoffending. However, current sentencing practice provides very limited scope for treating young adults differently from older adults. Sentencing is a pivotal criminal justice event that is

currently failing to adequately recognise the particular needs of this age group. As a result, young adults are being sent deeper into the penal system than necessary, often increasing their risk of reoffending and harming them in the process. Building on the progress that has been made by the Sentencing Council's guideline outlining overarching principles for children, the Howard League considers there should be a similar guideline for young adults. Such a guideline could provide a legal framework to enable courts to achieve better outcomes when sentencing young adults, and make a real difference to young adults' lives

## Some numbers – young adult sentences



### Young adults aged 18 to 25 are disproportionately represented in the criminal justice system.

According to the Justice Committee, citing evidence from T2A, “adults under the age of 25 represent ten per cent of the general population but account for 30 to 40 per cent of cases, including policing time, of those supervised by probation, and prison entrants”

(Justice Committee, 2016, p.6).<sup>1</sup>

## 23% of Cases

### In 2017, 23 per cent of magistrates and crown court cases in England and Wales related to young adults, aged between 18 and 24 years old

In 2017, 23 per cent of magistrates and crown court cases in England and Wales related to young adults, aged between 18 and 24 years old (Ministry of Justice, 2018c)<sup>2</sup>, despite only constituting around 11 per cent of the adult population (Office for National Statistics, 2018)<sup>3</sup>. Of young adults sentenced, 69,783 were sentenced to immediate custody, 35,494 were given community sentences and 37,767 received a suspended sentence (Ministry of Justice, 2018c).<sup>4</sup>



### Despite a sharp decrease in the number of young adults entering prison in recent years, a significant number of young adults remain in prison

(Justice Committee, 2016, p.6).<sup>5</sup>

According to the Ministry of Justice as of 31 December 2017, the total prison population was 84,373. There were 4,350 young adults aged 18 to 20 in prison and 10,022 young adults aged 21 to 24 in prison as of 31 December 2017 (Ministry of Justice, 2018a).<sup>6</sup>

## The Sentencing Council

The role of the Sentencing Council for England and Wales (“the Sentencing Council”) is to promote greater consistency in sentencing while maintaining the independence of the judiciary.<sup>7</sup> The Sentencing Council produces guidelines on sentencing and aims to increase public understanding of sentencing.

Legislation often gives judges and magistrates considerable discretion in sentencing matters. Sentencing guidelines help sentencers decide the type and length of the sentence and set out the factors they should consider.<sup>8</sup> They set out different levels of sentence based on the harm caused to the victim and the role the person being sentenced played in causing such harm. They aim to promote consistency in sentencing by setting out a standard approach for all judges and magistrates to follow.

According to the Coroners and Justice Act 2009, a court “must follow” any relevant sentencing guidelines when sentencing a person for an offence committed on or after 6 April 2010, unless it would be contrary to the interests of justice to do so.<sup>9</sup> When sentencing a person for an offence committed before 6 April 2010, the courts “must have regard” to any relevant sentencing guidelines.





## Young adults: needs and characteristics

There is a growing consensus that young adults in the criminal justice system have distinct characteristics and needs (Justice Committee, 2016).<sup>10</sup> 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 underpin criminal behaviour (Blakemore et al 2006, T2A, 2012).<sup>11</sup> In terms of brain physiology, susceptibility to peer pressure appears to continue until at least the mid-twenties, and the brain continues to mature in this period (The Royal College of Psychiatrists, 2015, paragraphs 1.1–1.3).<sup>13</sup> Such evidence has led to calls from senior paediatricians to redefine ‘adolescence’ as the period between ages 10 and 24, and to reframe laws, social policies and service systems accordingly (Sawyer et al, 2018).

There is also evidence that one of the prevailing characteristics of this age range is the differing rates of development within the group: maturation occurs at different rates between individuals (The Royal College of Psychiatrists, 2015, paragraph 6.2).<sup>14</sup> Determining factors are not yet well understood, but there is growing recognition that social contexts have a strong influence, including those likely to also be influencing offending behaviour (Crone and Dahl, 2012).

Almost half of young men under the age of 21 who come into contact with the criminal justice system have experience of the care system (National Audit Office, 2015).<sup>15</sup>

There is evidence of disproportionate levels of neurodisability among young adults in custody when compared to the general population, including higher rates of learning disability, traumatic brain injury and communication impairment (Hughes et al, 2012).<sup>16</sup>

Young adults from Black, Asian and Minority Ethnic (“BAME”) backgrounds are more likely to become involved in the criminal justice system in part due to the fact that they face higher levels of deprivation and disadvantage (Lammy, 2017).<sup>17</sup> Although non-white young adults only constitute 18.5% of the general

population aged 18 to 24 in England and Wales, 39 per cent of 18 to 20 year-olds and 34 per cent of 21 to 24 year-olds in prison self-report as “Black”, “Asian”, “Mixed”, or “Chinese or Other” (Office for National Statistics, 2011; Ministry of Justice, 2016).<sup>18</sup> Young adults from BAME backgrounds are also more likely to distrust the criminal justice system due to experiences of stereotyping and harassment (T2A, 2017).<sup>19</sup> The sense of being targeted is corroborated by data: for example, the use of “stop and search” by police is eight times more likely for a black person than a white person (Ministry of Justice, 2017d).<sup>20</sup>

These distinct characteristics and experiences are often highly relevant to decision-making that leads to offending. The distinct phases of maturation occurring during young adulthood also give rise to different needs. Consequently, research suggests criminal justice interventions should adopt a developmental perspective, so as to support and enable maturation, including work on emotional regulation, impulse control and peer influence, as well as social processes of maturation, such as developing future aspirations, forming adult relationships, and reducing recreational drug use (SYF, 2015).<sup>21</sup>

Yet, at present, neither the distinct characteristics nor needs of young adults are adequately factored into the sentencing exercise, increasing the likelihood of a custodial sentence.



### Young adults in prison

The negative effects of prison custody on young adults and the community are demonstrated by the high number of self-inflicted deaths by young adults in custody, increasing incidents of violence and self-injury among young adults due to poor prison conditions, and high reoffending rates (Lord Harris, 2015).<sup>22</sup>

Between 2006 and 2016, 164 young adults aged 18 to 24 died in custody; 136 of whom took their own lives (Ministry of Justice, 2017b, Table 1.3).<sup>23</sup>

The Chief Inspector of Prisons raised concerns about the state of prisons holding young adults in his annual report published in 2017 (HMIP, 2017):<sup>24</sup>

- At the end of March 2017, the number of young adult men aged 18 to 20 in prison was 4,333 and the majority of male establishments inspected held some of these young adults. Most prisons made little distinction in the treatment of this age group (p.34).
- 30 per cent of young adults (aged 18 to 21) held in adult establishments told HM Inspectorate of Prisons that they spent less than two hours a day out of their cells (p.8).
- Young adults had the least access to physical education of any age group, with only 13 per cent held in young adult prisons reporting they could go to the gym three or more times a week (p.41).

Incarceration is the form of punishment most likely to result in reoffending: the rate of reoffending within 12 months for the 18 to 20 age group for all types of sentences is around 30 per cent (Ministry of Justice, 2018b).<sup>25</sup>



### Lessons from the Howard League's legal and participation work with young adults

The Howard League conducted participation work involving almost 80 children and young adults who attended workshops and completed questionnaires. Analysis of 30 questionnaires completed by young adults illustrates the extent to which they find the sentencing process overwhelming, unfair and inadequate. When asked what comes into their head when they think of being sentenced in court, young adults referred to feeling stressed, sad, anxious about the prospect of going to prison, worried about their family, and not understanding what is happening.

Young adults have told the Howard League that it can feel as though the court is too focused on the crime to see the impact the sentence will have on the young adult's life: *"They are playing with someone's life and don't know enough about you. They need to treat people as individuals, some just see the crime."*

Young adults had little confidence in sentencers. Two thirds of the young adults who responded to the Howard League survey felt that judges did not listen to the views of the young people they were sentencing. One young adult told the Howard League that he felt young people *"get drowned out due to everything negative said, so people's views get overlooked like 'who cares?'"*

A number of young adults felt that judges disliked them and had negative attitudes, and pre-conceived ideas about them as people, as well as being removed from the realities of young adults' lives. One young adult told the Howard League that *"Judges don't care. They do their job, get paid and go home. I don't see Judges actually spending time in the community where I am from. They are secluded from real life. There should be more Judges from the communities of the people they sentence. They don't outreach. I don't see any Judges in KFC – they probably own KFC!"*

Young adults told the Howard League that they felt courts needed to have more information and take their backgrounds and wider situations into account. For example, one young adult suggested that judges *"need to give more consideration to the circumstances of the social upbringings that were out of the control of the defendant."*

## What young adults associate with being sentenced at court

The Howard League analysed 30 questionnaire responses from young adults aged 18 to 25 on what they associated with being sentenced.

**“Jail • Apprehensive  
Taken away from family  
Trapped • Shocked”**

**“Sadness”**

**“It depends on the charge. Like, if I’m looking at a long sentence then you get stressed you know, sometimes you feel like your life is done (finished). You feel like a dead man.”**

**“Not seeing family  
Bars • Darkness”**

**“Does my solicitor know what to do? Did I explain to the solicitor what happened?”**

**“Long, what the outcome is, slow down, worried, scared, family, the sentence itself, sign of relief when you find out.”**

**“I still remember thinking about not really understanding what they were saying.”**

**“In my head, I’m just begging for the Judge not to give me a sentence of more than 3 years. And whatever you get sentenced for, if you know yourself that you did the crime, just tell yourself, I’ll do the time.”**

**“This Judge. He/she don’t like me. He just look at me with hate.”**

**“I think about my family because it ain’t just me going through the hard times, it is my family as well.”**

**“Worried. Upset. Angry.  
Will I be going to prison today?  
Is this the last time I see my family and have my freedom for a long time?  
Will my partner cope without me? I’m going to miss my child, my partner and family. I’ve let a lot of people down.”**

**“It’s going to be in the local paper and online. I have caused so much embarrassment to my family”**

**“Can be confusing  
It’s not explained well  
• I do not understand the terminology used  
• It’s intimidating standing in front of the Judge • After being sentenced I feel forgotten.”**

The Howard League’s legal work paints a similar picture and further illustrates some specific issues that arise for young adults facing sentence. For example, young adults in prison told the Howard League that they were sentenced to significant custodial terms without a psychological report, even when they have pre-existing conditions such as ADHD and autism. The Howard League has also spoken with parents and carers, who often have important information to hand or their own experiences that may be relevant to the sentencing

exercise, but feel excluded and powerless to support young adults through the sentencing process. The Howard League has worked with a number of young adults who have struggled to understand and come to terms with their sentence, many of whom have received a significant custodial sentence without ever receiving written advice on how or whether to appeal. Young adults often feel a lingering sense of injustice that can inhibit their ability to engage meaningfully in therapeutic work in prison.



## Current sentencing practice is out of kilter with developing knowledge about young adults

At present, sentencing practice in respect of young adults barely differs from the process for older adults. Young adults aged between 18 and 20 cannot be “imprisoned” (s89 Powers of Criminal Courts (Sentencing) Act 2000). Instead, young adults receive sentences that use the term “detention” such as the sentence of detention in a young offender institution (s96, Powers of Criminal Courts (Sentencing) Act 2000). Yet, these differences in terminology do not affect the sentencing process itself in any material way. The only way in which current sentencing practice facilitates a different approach for young adults is by including “age and/or lack of maturity” as a mitigating factor in sentencing. At present, there is no guidance to require sentencers to apply the vast body of knowledge and evidence about young adults to the sentencing process. This is out of step with the recommendations of the Justice Committee (2016), which has advocated strongly for 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. In the context of the criminal justice system this is important as young people who commit crime typically stop doing so by their mid-20s. Those who decide no longer to commit crime can have their efforts to achieve this frustrated both by their previous involvement in the criminal justice system due to the consequences of having criminal records, and limitations in achieving financial independence due to lack of access to affordable accommodation or well-paid employment as wages and benefits are typically lower for this age group.”* (Justice Committee, 2016, paragraph 14, p.9)<sup>26</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 as they are more challenging to manage, harder to engage, and tend to have poorer outcomes. For young adults with neuro-disabilities maturity may be significantly hindered or delayed. Dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood. They typically commit a high volume of crimes and have high rates of re-offending and breach, yet they are the most likely age group to stop offending as they ‘grow out of crime’. Flawed interventions that do not recognise young adults’ maturity can slow desistance and extend the period of involvement in the system.”* (Justice Committee, 2016, p.13)<sup>27</sup>



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, 2017c).<sup>28</sup>

The Lord Chief Justice Burnett highlighted the role of maturity in sentencing in the context of a criminal appeal:

“Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101 is an example of its application: See paras [10]-[12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. *The Age of Adolescence: thelancet.com/child-adolescent*; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday. The ages of these offenders illustrate the point. The youth and immaturity of *Clarke* and *Thompson* were appropriate factors for the judge to take into account in these cases even though both were over 18 when they offended. It is apparent that the Judge did so, not only in the case of *Andrews*.”<sup>29</sup>

The Lord Chief Justice has reinforced this message in the media, telling the *Times* that: “[w]e all know from experience that those between the ages of 18 and say 21, 22, are still in many ways youths. We know they tend to be reckless sometimes and there’s growing medical and scientific evidence that the brains of young people simply don’t fully develop until some time after 18.”<sup>30</sup>

In an open letter, Dr Phillip Lee MP, the former Parliamentary Under-Secretary of State for Justice accepted that there are “particular needs” for this age group, and resolved to “take these into account when and where it is possible for us to do so” (Lee, 2017).<sup>31</sup>

This approach is common in other countries. For example, in Germany 18 to 20 year-olds can be sentenced under either juvenile law or adult law, if an examination of their personality and environment indicates that their psychological development is like a juvenile (T2A, 2015).<sup>32</sup> Even when sentenced under adult law, a young adult’s maturity is taken into account and seen as a mitigating factor (Howard League, 2017).<sup>33</sup> In Austria, the juvenile custodial facilities have been extended to cater for young adults up to the age of 27 (T2A, 2015).<sup>34</sup>

The Howard League report, “Judging Maturity” (2017), scrutinised 174 senior court judgments with a view to capturing current judicial treatment of young adults, with a particular focus on how judges view the concept of maturity. Key findings from the research showed that in almost half of all sentence appeal cases involving young adults, neither age nor maturity was considered.<sup>35</sup>

The report, combined with the perceptions of young adults and the information gleaned from the Howard League’s legal work, suggested that the current sentencing process fails to factor in the needs and stage of development of young adults.



### Courts are capable of factoring young adults' needs into decision-making

The courts are more than capable of factoring in the distinct needs of 18 to 25 year-olds. “Judging Maturity” found that while the inclusion of age and/or lack of maturity in the Sentencing Council’s mitigation guidance has not made a significant difference as to whether or not maturity is considered, where the relevant sentencing guideline included age and/or lack of maturity and the court considered that factor, it was more likely to result in a reduction in the sentence on appeal (Howard League, 2017). In other words, once the issue was under scrutiny, the availability of the guidance enabled the appellate court to factor in issues concerning age and/or maturity.

The same research also explored a number of references by the Attorney General in respect of sentences deemed to be unduly lenient, and judgments reviewing the positive maturation of young adults who committed the offence of murder as a child. These cases illustrate that the courts are capable of taking a highly nuanced and thoughtful approach based on the development of the individual.

Research on how criminal courts could adapt court processes to factor in the specific needs of young adults indicates that improving the perception of procedural fairness in the courts is likely to reduce reoffending (Centre for Justice Innovation and T2A, 2018).<sup>36</sup> If young adults are able to understand how the courts works, and feel they are being treated with fairness and respect, they are more likely to submit to the authority of that court. Improving procedural fairness in the courts has been endorsed by a number of Police and Crime Commissioners as well as the House of Commons Justice Select Committee (T2A, 2018).<sup>37</sup>



### The case for young adult sentencing principles

At present the only sentencing principles issued by the Sentencing Council that exist for a specific group of people are the overarching principles for children (Sentencing Council, 2017).<sup>38</sup> This guideline was first introduced in 2009 and revised in 2017. The guideline only applies to children aged under 18. The moment a child turns 18, the guideline no longer applies.

The divide between children and adults in the sentencing process, presently drawn at the age of 18, does not accord with the realities of young adults’ development. The case of *R v Oghene* [2016] EWCA Crim 262 outlines that a person technically becoming an adult at 18 years old does not mean they dramatically change overnight:<sup>39</sup>



*You were just 18 at the time of the commission of this offence. Under 18 a very different sentencing regime might apply but, as I have said to your counsel, I do not regard the age of the 18th birthday as being a cliff-edge. One has to grade one’s approach to sentence.”*

(Irwin LJ, quoting judge at first instance, paragraph 14)

T2A, the Criminal Justice Alliance and the Howard League have all called for a separate sentencing regime for young adults (The Howard League for Penal Reform, 2015, Criminal Justice Alliance, 2013, T2A, 2015).<sup>40</sup> In their evidence to the Justice Committee (2016), the Royal College of Psychiatrists also supported the development of separate sentencing arrangements for young adults on the basis that it would allow for “the creation of specific services for this population and it will also align itself with how some mental health services are already arranging its provision of services according to age needs” (Royal College of Psychiatrists, 2015, paragraph 3.1.1).<sup>41</sup>

T2A has questioned whether the current system is able to cater for young adults appropriately through the use of generic adult sentencing guidelines during a phase at which they are still maturing and developing and thus facing many of the issues common to those under 18 (T2A, 2009).<sup>42</sup>

The joint T2A and Criminal Justice Alliance paper “Sentencing Young Adults: Getting it right” drew upon issues of maturity amongst young adults to propose a comprehensive overhaul of the sentencing system which would include training on and considerations of lack of maturity when sentencing (Criminal Justice Alliance, 2011).<sup>43</sup>

Lord Harris, in his landmark review of deaths in custody of people aged between 18 and 24, recommended that there be a legal recognition of the concept of maturity in sentencing:

“*There must be a legal recognition of the concept of ‘maturity’. As well as chronological age, maturity should be a primary consideration in making decisions relating to diversion, sentencing and, where a custodial sentence must be given, how and where a young adult (18-24) should be accommodated.*”  
(Lord Harris, 2015, p.106)<sup>44</sup>

The Justice Committee (2016) did not explicitly call for a separate sentencing regime for young adults but raised concerns about the ability of judges to assess lack of maturity given the information available to them:

“*We welcome the inclusion of considerations of maturity in the Crown Prosecutors’ Code and Sentencing Council guidelines. However, it is not clear what impact these efforts to reflect the maturational development of young adults have had in practice. Neither CPS investigating prosecutors nor sentencers have a sufficiently sophisticated understanding of maturity to weigh up how it may affect young adults’ culpability. In addition they do not routinely have the necessary information on which to make robust assessments about an individual’s maturity and hence take account of this in their reasoned prosecution and sentencing decisions. It is likely therefore that maturity is only considered primarily in cases where there is extreme immaturity.*”  
(Justice Committee, 2016, p.33)<sup>45</sup>

The Government responded in January 2017 to the Justice Select Committee Inquiry on young adults. Its response focused on early intervention to prevent young adults entering the criminal justice system and the need for the development of targeted and high quality community sentences. It argued that developmental status does not need to be recognised in legislation because of the increasing role maturity plays in policy and practice (Ministry of Justice, 2017c, p.7).<sup>46</sup> The Government reached the view that legislative change was not required on the basis that “age and/or lack of maturity” is listed as a mitigating factor in sentencing guidelines (Ministry of Justice, 2017c, p.17).<sup>47</sup>

However, the Sentencing Council’s own research found that the inclusion of “age and/or lack of maturity”, which is listed as a mitigating factor in sentencing guidelines, was only taken into account for 28 per cent of young adults aged 18 to 21 and that figure dropped to just six per cent for young adults aged 22 and over (Sentencing Council, 2016).<sup>48</sup> In its 2016 inquiry on young adults in the criminal justice system, the Justice Committee concluded that “it is not clear what impact these efforts to reflect the maturational development of young adults have had in practice” (Justice Committee, 2016, p. 33).<sup>49</sup> It also found that sentencers do not have “a sufficiently sophisticated understanding of maturity to weigh up how it may affect young adults’ culpability”, and that they routinely do not have “the necessary information on which to make robust assessments about an individual’s maturity and hence take account of this in ... sentencing decisions”. The Justice Committee considered it “likely therefore that maturity is only considered primarily in cases where there is extreme immaturity” (Justice Committee, 2016, paragraph 77).<sup>50</sup>

The Justice Committee published a further report on young adults in the criminal justice system in June 2018. This report concluded that there has been inadequate progress regarding research on sentencers’ understanding of maturity, as well as on the impact on young adults of assessments of maturity during sentencing processes (Justice Committee, 2018, p. 25).<sup>51</sup> In response to the Justice Committee’s recommendation made in 2016 for further research to

be conducted to assess the impact of the consideration of maturity in sentencing mitigation guidance, the Committee reported that the Sentencing Council considered conducting further research but did not have the resources to do so (Justice Committee, 2018, p. 24).<sup>52</sup> Given this limitation, the Justice Committee welcomed Sentencing Council plans to consult on a general guideline containing a fuller explanation of the “age and/or lack of maturity” factor. The report also welcomed Ministry of Justice’s commitment to including consideration of maturity in all pre-sentence reports for young adults.

This analysis, combined with the Howard League’s research, legal and participation work, suggests that if the Government is serious about the need for a distinct approach for young adults facing sentence in the criminal courts, the inclusion of “age and/or lack of maturity” as a mitigating factor in the Sentencing Council’s guidance is not sufficient. Sentencing principles for young adults are required to ensure that courts fully factor in the needs of young adults.



## What young adult sentencing principles might look like

The Sentencing Council Guideline for children acknowledges the reduced culpability of a person who is not yet fully mature and sets a blue print for an approach that could be consolidated and applied to young adults. The table on the following pages distils the key aspects of the guideline for children and suggests how those principles might be adapted for young adults.



### Guideline for children

The court must have regard of principle aim of youth justice system to prevent offending by children (s37 Crime and Disorder Act).

In practice this requirement can justify a more lenient approach. This is because research on reoffending suggests that the greater the intensity and duration of contact with the criminal justice system, the more likely children are to reoffend (McAra and McVeigh, 2010).

The court must have regard to the welfare of the child (section 44 of the Children and Young Person's Act 1933).

In practice this requirement can justify a more lenient approach to ensure welfare needs are met.

The approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused.

It is important to avoid "criminalising" children unnecessarily.



### Potential guideline for young adults

Section 142 (1) (d) of the Criminal Justice Act 2003 specifies that the protection of the public is a purpose of sentencing.

In the case of a young adult it is arguable that preventing reoffending is a key way to protect the public. There is a significant body of research that can be drawn on to elucidate the specific factors that are likely to prevent young adults reoffending, as well as research showing that young adulthood is a peak time of desistance.

Section 142 (1) (c) of the Criminal Justice Act 2003 specifies that reform and rehabilitation is a purpose of sentencing.

In practice the rehabilitative needs of young adults are likely to be different from the needs of older adults, justifying an approach that ensures rehabilitative needs are met. Sentences should not reduce opportunities for young adults to benefit from leaving care services.

Given the distinct needs of young adults arising from the differing rates of maturation, as well as factors such as prevalence of neurodisability, an individualistic approach can be justified.

This applies equally to young adults. Research has shown that the 18 to 25 age range is a crucial time for development and young adults of this age range have real capacity to develop desistance with the right support.

### Guideline for children

Children are not fully developed and they have not attained full maturity. This can impact on their decision-making and risk-taking behaviour.

Children are receptive to changing their behaviour.

Offending by a child is often a phase which passes fairly rapidly and so the sentence should not result in the alienation of the child from society if that can be avoided.

The impact of punishment is likely to be felt more heavily by a child in comparison to an adult as any sentence will seem longer due to their young age.

Penal interventions may interfere with a child's education and this should be considered by a court at sentencing.

Any restriction on liberty must be commensurate with the seriousness of the offence.

Sentencers must have regard to any mental health problems or learning difficulties/disabilities

### Potential guideline for young adults

Given the distinct needs of young adults and the evidence that the brain is not fully developed until the age of 25, affecting decision-making and risk-taking behaviour, this could be applied to young adults.

Young adults' brains are still developing and young adults are receptive to changing their behaviour. Having a specific sentencing approach would increase their chances of transitioning to a crime-free adulthood. S 142 (1) (c) of the Criminal Justice Act 2003 provides that a court must have regard of the reform and rehabilitation of offenders.

Young adulthood is also a time of desistance and change. Young adult offending should be recognised as a phase.

Similarly, length of sentence has a disproportionate effect on young adults compared to older adults given their relatively rapid development during this phase of life. Sentences may impact significantly on their progression in starting their career.

Many young adults are still learning and criminal justice events could interfere with further education and consequent life prospects, as well as opportunities for social care support under s23 of the Children Act 1989 which applies to those wishing to pursue education below the age of 25.

Given the distinct needs of young adults, this could be applied to young adults.

This could be applied to young adults. Evidence from the Royal College of Psychiatrists has highlighted that young adult offenders have a much higher incidence of mental health problems compared to the general population (The Royal College of Psychiatrists, 2015, paragraph 1.3).<sup>53</sup> Sentencers should ensure undiagnosed conditions are explored before sentence.

## Guideline for children

Sentencers must have regard to any experience of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had.

Sentencers must have regard to any speech and language difficulties and the effect this may have on the ability of the child (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction.

Sentencers must have regard to the vulnerability of children to self-harm, particularly within a custodial environment.

Sentencers must have regard to the effect on children of experiences of loss and neglect and/or abuse.

Factors regularly present in the background of children e.g. deprived homes, poor parental employment records, low educational attainment, early experience of offending by other family members, experience of abuse and/or neglect, negative influences from peer associates and the misuse of drugs and/or alcohol.

## Potential guideline for young adults

This could be applied to young adults. There is evidence of disproportionate levels of neurodisability among young adults in custody when compared to the general population, including higher rates of learning disability, traumatic brain injury and communication impairment (Hughes et al, 2012).<sup>54</sup>

Given the distinct needs of young adults and the evidence that they have difficulty understanding the court and criminal justice process, this could be applied to young adults. Sentencers should make sure the young adult has understood.

Given the distinct needs of young adults and the information available on the difficulties young adults face in prison, this could be applied to young adults.

Given the distinct needs of young adults, this could be applied to young adults. There is evidence that young adults who come into contact with the criminal justice system have disproportionately disadvantaged backgrounds.

Such factors are also regularly in the background of young adults who come into contact with the criminal justice system. Additional factors for young adults include difficulties with independent living, and being a carer.

## Guideline for children

Take into account why a child might act inappropriately in court e.g. nervousness, belief they are being discriminated against.

Looked after children have additional complex vulnerabilities that are likely to be present in their background.

Consider whether custodial sentence for looked after children will have impact on their leaving care rights.

BAME children are over-represented in youth justice system. Some have negative experiences of authority.

When considering a child who may be particularly vulnerable, sentencers should consider which available disposal is best able to support the child and which disposals could potentially exacerbate any underlying issues. This is particularly important when considering custodial sentences as there are concerns about the effect of being in closed conditions on vulnerable children, with significant risks of self-harm, including suicide.

## Potential guideline for young adults

Given the distinct needs of young adults, this could be applied to young adults. Many of the young adults who took part in the Howard League's participation work reported being stressed, nervous and confused in court, in part due to their inability to understand the sentencing process.

Many young adults in the criminal justice system are also care leavers. Research shows that care leavers may have complex vulnerabilities that are relevant to reoffending. Local authorities have duties to assist young adults who are care leavers.

A custodial sentence could significantly impact on the ability of a young adult to benefit from the full duties owed by the local authority responsible for them. If the young adult is released before their 21st birthday and is a care leaver, the responsible local authority has a duty to provide such assistance as their welfare requires. After the age of 21, young adult care leavers are still entitled to some support from the local authority, but the duties are more limited.

BAME young adults are also over-represented in the criminal justice system (Lammy, 2017). Special attention and care should be taken to make sure that BAME young adults do not get disproportionately harsh sentences compared to other young adults. All mitigating factors should be fully explored to ensure that they are not wrongly classed as aggravating factors (eg ensure peer pressure is not wrongly characterised as gang membership).

This should equally be applied to young adults given that their maturation continues into their mid-20s and a disproportionate number of young adults who come into contact with the criminal justice system are vulnerable.





## Next steps: developing draft sentencing principles for young adults

The Howard League has convened an advisory board which includes experts, senior practitioners in the field and young people who have experience of being sentenced as a young adult. Drawing on the expertise of the advisory board, the Howard League will be developing draft sentencing principles for young adults.

The advisory board includes:

Andrew Ashworth QC (Emeritus Professor, University of Oxford),  
 Dr Tim Bateman (University of Bedfordshire),  
 Dr Louise Bowers (Forensic psychologist),  
 Jo Cecil (Barrister, Garden Court Chambers),  
 Dr Alexandra Cox (University of Essex),  
 Dr Enys Delmage (Royal College of Psychiatrists),  
 Janet Denman (Magistrate),  
 Claire Dissington (Solicitor, Edward Fail, Bradshaw & Waterson),  
 Cindy Doyle-MacRae (personal capacity but with significant experience in probation and youth justice),  
 Edward Fitzgerald QC (Doughty Street Chambers),  
 Francis Fitzgibbon QC (23 Essex Street),  
 Dr Andrew Forrester (Royal College of Psychiatrists),  
 Professor Nathan Hughes (University of Sheffield),  
 Dr Shona Minson (University of Oxford),  
 Dr Suzella Palmer (University of Bedfordshire),  
 Professor Huw Williams (University of Exeter).

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