

**Adapting mitigating factors for young adults**

Table A compares mitigating factors contained in the Sentencing Council’s Definitive Guideline for children and young people aged under 18 (2017) with suggestions as to how these factors might be adapted for young adults.

Table B compares generic mitigating factors that apply to everyone, based on the Sentencing Council’s summary of factors in its consultation on a generic guideline (2018), with suggestions as to how these factors might be adapted for young adults.

| <b>Table A</b>   |  |
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| <b>How current factors for children might be adapted for young adults</b>  |  |
| <b>Children (existing factors)</b>   | <b>Young adults (suggested adaptations)</b>  |
| <b>Welfare</b>   |  |
| Paragraph 1.1: “When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to [...] the welfare of the child or young person”   | Section 142(1)(c) of the Criminal Justice Act 2003 states that “any court dealing with an offender in respect of his offence must have regard to [...] the reform and rehabilitation of offenders”<br>This should be applied with the particular characteristics and needs of young adults in mind (Justice Committee, 2016).  |
| <b>Preventing offending</b>  |  |
| Paragraph 1.1: “When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to the principal aim of the youth justice system (to prevent offending by children and young people)”  | Section 142(1)(b) of the Criminal Justice Act 2003 states that “any court dealing with an offender in respect of his offence must have regard to ...the reduction of crime (including its reduction by deterrence)”<br><br>Young adulthood is a time of peak desistance and short sentences for young adults with histories of offending tend to increase the risk of further offending (Hillier, 2018). |
| <b>Age and/or lack of maturity</b>   |  |
| Paragraph 4.10: “Although chronological age dictates in some instances what sentence can be imposed [...] the developmental and emotional age of the child or young person should always be considered and it is of at least equal importance as their chronological age. It is important to | There is now extensive evidence that young adults are still maturing until their mid-twenties (Justice Committee, 2016; Blakemore and Choudhury, 2006; Royal College of Psychiatrists, 2015; R v Clarke).  |

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| <p>consider whether the child or young person has the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the child or young person has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences.”</p>  |   |
| <b>Particular immaturity affecting responsibility and understanding</b>   |   |
| <p>Paragraph 4.8: “With a child or young person, the consideration of age requires a different approach to that which would be adopted in relation to the age of an adult. Even within the category of child or young person the response of a court to an offence is likely to be very different depending on whether the child or young person is at the lower end of the age bracket, in the middle or towards the top end.”</p> <p>Paragraph 4.9: “It is important to consider whether the child or young person has the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the child or young person has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences.” (page 18)</p> <p>Paragraph 4.7: Limited understanding of effect on victim is listed as a possible mitigating factor</p> | <p>There is evidence that young adults mature at different rates (Royal College of Psychiatrists, 2015).</p> <p>There are high levels of mental illness and neuro-disability among young adults involved in the criminal justice system that mean that they may struggle more than their peers with behaviour typically linked to offending (Justice Committee, 2016; Hughes et al 2012, Centre for Mental Health, 2014). Mental health issues, including diagnoses of Autism Spectrum Disorder and Aspergers’ syndrome, may affect a young adult’s ability to articulate empathy for the victim.</p> |
| <b>Unstable upbringing</b>  |   |
| <p>Paragraph 4.7: “Unstable upbringing including but not limited to:</p> <ul style="list-style-type: none"> <li>• time spent looked after</li> <li>• lack of familial presence or support</li> <li>• disrupted experiences in accommodation or education</li> <li>• exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse</li> <li>• victim of neglect or abuse, or</li> </ul>  | <p>These factors are equally likely to be present in the backgrounds of young adults who come into contact with the criminal justice system as for children.</p> <p>Young adults who come into contact with the criminal justice system have disproportionately disadvantaged backgrounds including experience of the care system, disrupted accommodation or education, exposure to abuse, neglect, trauma and loss</p>  |

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| <p>exposure to neglect or abuse of others</p> <ul style="list-style-type: none"> <li>• experiences of trauma or loss”</li> </ul> | <p>(Hughes et al, 2012; <i>Centre for Mental Health, 2014</i>, Justice Committee, 2016, paragraphs 18 – 19 and 21 – 22).</p> <p>Where such difficulties occurred during a young adult’s childhood, sentencers will be aware that the problems which arise as a result do not automatically disappear on the young adult’s 18<sup>th</sup> birthday. The Lord Chief Justice has suggested that sentencing principles should reflect this (<i>R v Clarke</i> [2018] EWCA Crim 185).</p> <p>Many young adults who have contact with the criminal justice system may also have spent time as “looked after” children and many will still be formally recognised as care leavers. The care leaving duties that apply to young adults have been specifically designed to counter the difficulties that young adults without parental support may experience in making the transition to adulthood. It is important that sentences do not frustrate this rationale behind the care leaving provisions of the Children Act and prevent young adults from accessing this time limited support.</p> <p>Young adults have told the Howard League that young adults may also be struggling with the responsibilities of independent living and being a carer.</p> |
| <p><b>Bullying, peer pressure, coercion and manipulation</b></p>   |   |
| <p>Paragraph 4.7: “Participated in offence due to bullying, peer pressure, coercion or manipulation”</p>                         | <p>Young adults are also vulnerable to these influences, as they are still in the process of developing (Blakemore and Choudhury, 2006; Royal College of Psychiatrists, 2015).</p> <p>Neurodisability is particularly prevalent among young adults who offend, which increases their vulnerability to bullying, peer pressure, coercion or manipulation (Hughes et al, 2012).</p> <p>Particular care should be taken to</p>   |

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|   | ensure that peer pressure in the case of young adults in recognised as such and BAME young adults subject to peer pressure are not assumed to be in gangs.  |
| <b>Mental health/learning disabilities</b>  |   |
| <p>Paragraph 4.7: “Communication or learning disabilities or mental health concerns”</p> <p>Paragraph 1.12: “In accordance with the welfare principle, “a court should ensure that it is alert to:</p> <ul style="list-style-type: none"> <li>• any mental health problems or learning difficulties/disabilities;</li> <li>• any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;</li> <li>• any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction”</li> </ul> | <p>Evidence from the Royal College of Psychiatrists has highlighted that young adults have a much higher incidence of mental health problems compared to the general population (The Royal College of Psychiatrists, 2015).</p> <p>There is evidence of disproportionate levels of neuro-disability 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).</p> <p>Although young adults are more likely to have mental disorders, they are less likely to be detected for a number of reasons.</p> |
| <b>Education, work or training</b>  |   |
| <p>Paragraph 4.7: “In education, work or training”</p>  | <p>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.</p> <p>Education, work or training may be critical to a young adult’s career development, a key factor in the prevention of re-offending. With this in mind, sentencers should seek to minimise disruption to education, work or training of young adults.</p>  |
| <b>Discrimination based on ethnicity</b>  |   |
| <p>Paragraph 1.18: “There is also evidence to suggest that black and minority ethnic</p>  | <p>BAME young adults are over-represented in the criminal justice</p>   |

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| <p>children and young people are over-represented in the youth justice system. The factors contributing to this are complex. One factor is that a significant proportion of looked after children and young people are from a black and minority ethnic background. A further factor may be the experience of such children and young people in terms of discrimination and negative experiences of authority. When having regard to the welfare of the child or young person to be sentenced, the particular factors which arise in the case of black and minority ethnic children and young people need to be taken into account.”</p> | <p>system (Lammy, 2017): non-white young adults constitute 18.5% of the general population but more than 33% of 18 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). Special care should be taken to ensure BAME young adults do not receive disproportionately harsh sentences. Young adults consulted by the Howard League pointed out that care should be taken to ensure that factors that are relevant to sentencing are not handled differently in the case of young adults from minority backgrounds. For example, “peer pressure” may be wrongly characterised as “gang membership”.</p> |
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| <p align="center"><b>Table B</b><br/><b>How generic mitigating factors might be adapted for young adults</b></p>   |  |
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| <p><b>Generic mitigating factors for adults</b></p>  | <p><b>Potential mitigating factors for young adults</b></p>  |
| <p align="center"><b>No previous convictions</b></p>   |  |
| <p>“No previous convictions or no relevant/recent convictions”</p> <p>“First time offenders generally represent a lower risk of reoffending. Re-offending rates for first offenders are significantly lower than rates for repeat offenders. In addition, first offenders are normally regarded as less blameworthy than offenders who have committed the same crime several times already. For these reasons first offenders attract a mitigated sentence (unless the crime is particularly serious).</p> | <p>Young adulthood is a time of desistance and change. Therefore the presence of previous convictions should not frustrate the process of desistance. Research suggests that giving young adults with significant offending histories short sentences will increase their risk of reoffending (Hillier, 2018).</p> |
| <p align="center"><b>Remorse</b></p>   |  |
| <p>“Remorse, particularly where evidenced by voluntary reparation to the victim”</p> <p>“The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to</p>   | <p>Young adults may seem less remorseful than they are and may mask or be unable to fully express their emotions because they are still maturing and developing emotional awareness skills. This is particularly relevant given the</p>  |

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| reduce the sentence. Lack of remorse should never be treated as an aggravating factor.”   | prevalence of neuro-disability among young adults compared to the general population.  |
| <b>Medical treatment required</b>   |  |
| <p>“Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment”</p> <p>“Such conditions as may affect the impact of a sentence on the offender may justify a reduction in sentence.”</p>  | Disabilities are likely to be masked and not detected until later. Furthermore, prison may be more likely to make such conditions worse, which should be avoided during a person’s critical final stage of development, young adulthood.   |
| <b>Self-reporting</b>   |  |
| “Where an offender has self-reported to the authorities, particularly in circumstances where the offence may otherwise have gone undetected, this should reduce the sentence (separate from any guilty plea reduction at step four).”   | Young adults may not report offences to the authorities because they are paralysed by fear. There is evidence that many BAME young adults lack confidence in public authorities.   |
| <b>Good character/conduct</b>   |  |
| <p>“Good character and/or exemplary conduct”</p> <p>“This factor may apply whether or not the offender has previous convictions. Evidence that an offender has demonstrated positive good character through, for example, charitable works may reduce the sentence.”</p>  | As young adults are still developing and often going through transitions, considerations of exemplary conduct should be seen in the context of the reality of the young adult’s life such that achievements that may seem small may in fact be of increased significance.  |
| <b>Lack of planning</b>   |  |
| “Where an offender has committed the offence with little or no prior thought, this is likely to indicate a lower level of culpability and therefore justify a reduction in sentence.  | This factor is particularly pertinent in the case of young adults as the frontal lobe of their brains, responsible for impulsivity, is still developing.   |
| <b>Subordinate role</b>   |  |
| <p>“The offender was in a lesser or subordinate role if acting with others/performed limited role under direction”</p> <p>“Whereas acting as part of a group or gang may make an offence more serious, if the offender’s role was minor this may indicate lower culpability and justify a reduction in sentence.”</p> | Sentencers should be sensitive to this for young adults, especially where a young adult has been subject to bullying, peer pressure, coercion or intimidation. Young adults may lack the maturity to know better than to participate in group offences and are more likely to get carried along in group activities without realising their consequences than mature adults. |

| <b>Limited understanding of the offence</b>  |   |
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| <p>“Limited awareness or understanding of the offence”</p> <p>“The factor may apply to reduce the culpability of an offender acting alone who has not appreciated the significance of the offence or where an offender is acting with others and does not appreciate the extent of the overall offending.</p> <p>In such cases the sentence may be reduced from that which would have applied if the offender had understood the full extent of the offence and the likely harm that would be caused.”</p> | <p>Young adults have difficulty understanding the criminal justice process. A disproportionate number of young adults come from disadvantaged backgrounds with little education. Young adults may have particular difficulty in understanding the offence given the varying levels of maturity between individuals and the disproportionate prevalence of learning disability among young adults.</p> |
| <b>Delay since apprehension</b>  |   |
| <p>“Where there has been an unreasonable delay in proceedings since apprehension that is not the fault of the offender, the court may take this into account by reducing the sentence.” (page 23)</p>  | <p>Delay is likely to be more detrimental to the lives, and chances of rehabilitation, of young adults due to their capacity to change. Sentencers should be particularly sensitive to this and take care to ensure that, if possible, upcoming events which contribute to a young adult’s rehabilitation are not impacted as a result of the delay.</p>  |
| <b>Caring role for dependents</b>  |   |
| <p>“Sole or primary carer for dependent relatives”</p> <p>“This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.”</p>  | <p>If a young adult is in this situation, great care should be taken by sentencers to minimise the impact of any sentence on the young adult’s ability to perform their caring role. It is likely that the young adult’s performance of such role began relatively recently and, as a result, it may be more difficult for them to make alternative care arrangements for their dependent(s).</p>     |

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## Cases

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