



Transition to Adulthood Alliance Response to the Code for Crown Prosecutors consultation document

The Transition to Adulthood (T2A) Alliance is pleased to submit a response to the public consultation on a revision of the Code for Crown Prosecutors. This response is largely apropos of the reference to 'maturity' on page 12 as a factor for consideration in determining culpability.

The T2A Alliance would be pleased to discuss our response in more detail. Please email Max Rutherford, Criminal Justice Programme Manager at the Barrow Cadbury Trust on m.rutherford@barrowcadbury.org.uk, or write to the T2A Alliance, c/o Barrow Cadbury Trust, 6 Kean Street, London, WC2B 4AS.

About the Transition to Adulthood Alliance

The T2A Alliance is a coalition of the leading voluntary organisations in the criminal justice, health and youth sectors. T2A identifies and promotes more effective ways of working with young adults throughout the criminal justice process.¹

Young adults (aged 18-24) constitute less than 10% of the population, but make up more than a third of those commencing a community order or suspended sentence order, a third of the probation service's caseload and almost a third of those sentenced to prison each year.

Yet young adults are the most likely age group to desist and 'grow out of crime', and the wrong intervention at this time can slow desistance and extend the period that a young adult is involved in the criminal justice system. These facts demonstrate the importance of recognising the distinct needs and circumstance of young adults in developing effective sentencing.

Three T2A pilot projects, running since 2009, have been testing different approaches to improving services for young adults in the criminal justice system. They are delivering different community interventions all tailored to the needs of individual young adults, and have been shown to reduce offending and social exclusion. As a whole, the T2A programme of work (which encompasses research, policy development and practical experience) makes a strong case for significant reform.

¹ Convened by the Barrow Cadbury Trust (BCT) since 2008, its membership encompasses Addaction, Catch22, the Centre for Crime and Justice Studies, Clinks, the Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, the Prince's Trust, the Prison Reform Trust, the Revolving Doors Agency, the Young Foundation, and YoungMinds. Although the work of the T2A Alliance reflects the views of its membership, this submission should not be seen to represent the policy positions of each individual member organisation.

Summary of our response

- The T2A Alliance welcomes the inclusion of ‘maturity’ as a factor for consideration in determining culpability.
- Including ‘maturity’ in this way will align the CPS Code of Conduct with the Sentencing Council’s inclusion of ‘lack of maturity’ as a mitigating factor, included since June 2011 in all sentencing guidelines for offences by adults.
- The evidence base for taking account of maturity throughout the criminal justice process is already robust, and is continuing to grow, as detailed in the 2012 T2A publication ‘Pathways from Crime’.
- T2A believes that taking account of maturity should not simply mean a lesser sentence or a discount, but rather that a wider range of options should be considered and that an effective, holistic, wrap around support service tailored to the level of maturity should run alongside any statutory order to enable compliance and to address rehabilitation. This is particularly important for young people serving statutory orders who are in the transition to adulthood and who move from management by the Youth Offending Service to adult probation.
- In early 2013, T2A will be trialling a practice guide with London Probation Trust and Staffordshire and West Midlands Probation Trust for probation pre-sentence report writers on how to identify and assess maturity when conducting OASys assessments with young adults, and what recommendations to make to sentencers.
- T2A would be keen to work with the CPS to develop a similar practice guide for prosecutors in how to identify and consider maturity of an alleged offender when considering factors relating to culpability in prosecution decisions.

T2A’s previous comments relating to prosecution

The T2A Alliance, in its 2012 publication ‘Pathways from Crime: Ten Steps to a more Effective Approach for Young Adults throughout the Criminal Justice Process’ recommended that:

“As part of the decision-making process on arrest, charge and prosecution, the police and the Crown Prosecution Service should consider the ‘lack of maturity’ of a young adult offender, alongside current considerations of ‘youthfulness’, among the factors tending against prosecution, in line with similar considerations by probation and sentencers later in the process” (p. 20, <http://www.t2a.org.uk/pathway/>).

To increase the T2A evidence base, the Barrow Cadbury Trust has funded the Criminal Justice Alliance (a member of T2A) to conduct new research into the views of Crown Prosecutors on the issue of maturity in a criminal justice context. The findings of this research will be available at the end of 2012.

We are grateful to the CPS for agreeing to help facilitate this research, and T2A would welcome the opportunity to present these to the CPS in advance of publication.

Maturity and criminal justice: The evidence to date

In 2011, T2A began a specific work stream to look at the concept of maturity in a criminal justice context. At a meeting hosted by Lord Bradley of Withington (author of the 2009 Bradley Report on mental health and criminal justice), experts from neurology, psychology and criminology all confirmed that research supports the T2A position that developmental maturity should be taken into account throughout the criminal justice process, and that developmental maturity can be a better gauge of someone's stage in life than their chronological age.

A subsequent poll for T2A conducted by ComRes found public and political support for this position, with 7 in 10 members of the public agreeing that the maturity of a young adult should be taken into account in sentencing. 8 out of 10 MPs thought the same. Both MPs and the public said that it was more important to take account of a young adult's maturity than their age in sentencing. (see <http://www.t2a.org.uk/wp-content/uploads/2011/09/ComResT2APoll.pdf>).

A literature review by Birmingham University for T2A published in March 2011 found that the adult brain is not fully mature until at least the mid-20s, and that temperance and impulse control are among the last areas of the brain to develop fully. The review noted:

"The main conclusions of the review are supportive of the T2A position. There is strong evidence that, from a neurological perspective, the human brain is not fully developed in its capacity for cognitive functioning and emotional regulation until well into the period of young adulthood.

"From a psychological perspective, evidence shows that psychosocial capacities and moral reasoning abilities vary considerably between individuals in the young adult age group, so that some remain immature longer than others, including after the legal age of adulthood.

"From a criminological perspective, research reveals that how an individual demonstrates maturity, for instance in decisions about whether to engage in particular courses of action, is heavily dependent on the social, economic and cultural context in which the decision is made, and in particular on the 'moral rules' that operate in the particular context. In other words, the same individual may act with varying degrees of maturity from one social context to another.

"Overall, the research reviewed in this report points emphatically to the inappropriateness of an arbitrary age limit as the key factor determining the kind of judicial response an offender should receive, and that in the young adult group, the level of maturity exhibited by an offender is a valid factor to be considered within the legal process. There are, moreover, indications that this conclusion is becoming accepted in a growing number of national jurisdictions, albeit to varying degrees."

(University of Birmingham, 2011, Maturity, young adults and criminal justice: A literature review, p. 35 <http://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf>)

In June 2011, the Sentencing Council for England and Wales included, for the first time, 'lack of maturity' as a mitigating factor in sentencing guidelines for adults (for the offence of assault). It has since been included in all subsequent guidelines (drugs, burglary and dangerous dogs).

In May 2012, the Sentencing Council for England and Wales has published their annual survey on sentencing decisions in the Crown Court during 2011. Only a year after its introduction, 'Age/lack of maturity where it affects the responsibility of the offender' was the most commonly used mitigating

factor for many offences, used in up to 43% of cases (see <http://sentencingcouncil.judiciary.gov.uk/facts/crown-survey-results-2011.htm>).

Lessons from neurology

Following on from the work by Birmingham University, the Barrow Cadbury Trust commissioned the Centre for Clinical Neuropsychology Research at Exeter University to undertake a literature review on neurology, brain injury and maturity in a criminal justice context, which will be published in late October 2012.

This and other research has shown that that the young adult brain is still in development, is greatly subject to influence by its environment, and is especially responsive to positive interventions. Development of those areas of the brain concerned with control of impulses and regulation and interpretation of emotions, continues into early adulthood, and that human brain is not fully 'mature' until the early to mid-twenties.

Lessons from other jurisdictions

This evidence on maturity suggests that in order to improve the efficiency and fairness of criminal justice prosecutors should as far as reasonably possible take into consideration the maturity of the offender before them before deciding on whether or not to charge them or use an out of court disposal.

There is much that could be learned about prosecuting young adults from our European neighbours. It is Germany that provides us with perhaps the best example of how to treat this group.

Flexibility in sentencing

The German system has, since 1953 (then the Federal Republic of Germany), allowed sentencers a level of discretion in trying young adults aged 18-20 under juvenile law, depending on the seriousness and circumstances of the crime and the maturity of the offender. All young adults aged 18-20 are transferred to the jurisdiction of juvenile courts, with courts having the option of sentencing according to the juvenile law or the adult law.

Juvenile law is applied if "a global examination of the offender's personality and of his social environment indicates that at the time of committing the crime the young adult in his moral and psychological development was like a juvenile". Juvenile law is also applied if it appears that the motives behind and the circumstances surrounding the offence are those of a typical juvenile crime.

About two-thirds of young adults are sentenced as juveniles and it tends to be the more serious cases that are dealt with in the juvenile jurisdiction and minor, and procedural, offences that are dealt with in the adult system. For those offences that are dealt with in the adult system, immaturity is still seen as a mitigating factor. The German approach has been endorsed by the Council of Europe's Committee of Ministers, which recommended that 'reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults' (Council of Europe Committee of Ministers 2003, p.3).

The approach works. Germany has a lower crime, reoffending and custody rate than the UK. There is potential for the government to introduce a pilot project along the same lines for 18-20 year olds. This would be consistent with the existence of provisions for those aged 18-20 in Young Offender Institutions. The CPS has the opportunity to lead the way by making maturity for young adults a substantial factor in their decision making process when determining the public interest test.

Other jurisdictions have taken similar approaches. For more examples, please see the 2011 publication by the [Criminal Justice Alliance 'Sentencing Young Adults: Getting it right'](#) and the 2010 publication by ICPR ['Young Adults and Criminal Justice: International Norms and Practices'](#).

The impact of the T2A approach on offending

T2A believes that taking account of maturity does not assume a more lenient sentence or a discount, but rather that a wider range of options should be considered and made available and, where a lack of maturity is identified, that an effective, holistic, wrap around support service should run alongside any statutory order to enable compliance and to address rehabilitation.

This approach has been demonstrated in three T2A pilot projects, running since 2009 in Birmingham, London and West Mercia, which have had dramatic effects on reducing offending and breach of statutory orders. Each project takes account of maturity and provides a bespoke service alongside statutory agencies.

A summative evaluation published in 2012 found that:

- Fewer than 10% were reconvicted of a new offence (all non-violent)
- Fewer than 10% breached the terms of their community order or licence;
- The number in employment trebled; and
- The number classified NEET halved.

In a comparison with young adults who only received probation support, those from the T2A cohort had more positive outcomes. The reconviction rate for the T2A cohort was significantly lower than the national average (see <http://www.t2a.org.uk/wp-content/uploads/2012/05/T2A-Summative-Evaluation-Catch22-2012.pdf>).

The youth to adult transition process

A T2A-style approach has been shown to be particularly important for young people serving statutory orders who are in the transition to adulthood and who move from management by the Youth Offending Service to adult probation.

In September 2012, the Ministry of Justice and the Youth Justice Board launched a new 'Youth to Adult Transitions Framework', which aims to help practitioners manage transitions effectively in the community (see <http://www.justice.gov.uk/youth-justice/youth-to-adult-transitions/youth-to-adult-transitions-framework>).

The framework was closely informed by national best practice, including the work of the Birmingham T2A pilot, which is featured as a case study.

T2A will be working with the YJB and NOMS to ensure that more areas adopt this approach locally, and that it leads to more effective approaches for young people in the transition to adulthood.

Applying the evidence on maturity in practice

T2A, in partnership with the University of Birmingham, is developing a practical resource for probation pre-sentence report (PRS) writers. It is likely take the form of a step by step guide to best practice in:

- Conducting an OASys interview with a young adults who may have variable maturity;
- Interpreting and probing young adults' answers to OASys questions;
- Forming a judgement about a young adult's maturity in the PSR;
- Constructing appropriate recommendations for sentencers around effective interventions;
- Advocating for these recommendations in court; and
- Delivering appropriate interventions post-sentence.

London Probation Trust and Staffordshire and West Midlands Probation Trust have each agreed to take part in trialling the draft guide with a sample of PSR writers, to inform the content and design of the final version prior to wider dissemination. The trial of the draft guide is likely to begin in January 2013, and run for around a month.

Given the proposal to include maturity in the Code of Conduct, there is likely to be a need for further guidance for Crown Prosecutors on the issue of maturity. Additional information is required about the multitude of different factors that combine to constitute maturity, which would enable a greater level of consistency to be applied in cases and give prosecutors greater confidence in identifying maturity issues.

T2A would be keen to work with the CPS to develop a similar practice guide for prosecutors in how to identify and consider maturity of an alleged offender when considering factors relating to culpability in prosecution decisions.

Multi-agency working

The ability of the CPS to take maturity into account in cases will remain dependent on the co-operation of other agencies and their ability to provide sufficient detailed information on the individual in question. It is important that the CPS work with a range of agencies, including the police, social services, and health services, to deliver a complementary and consistent approach to the assessment of maturity.

The relationship between the police and the CPS is vital in the process of determining maturity. It is important the CPS encourages police officer to proactively 'flag up' cases to them that they believe potentially have maturity issues as they have direct contact with the suspect from an early stage. The CPS should actively co-ordinate with the police to engage with and collect all relevant information from all the appropriate agencies and individuals. The police should look to utilise conditional cautions more for immature adults and restorative justice options, which the CPS could endorse, and which could perhaps be initiated as part of a 'discontinuance' process.

Final remarks

T2A strongly supports the inclusion of 'maturity' as a factor for consideration in culpability, particularly as this is consistent with the Sentencing Council's inclusion of 'lack of maturity' as a mitigating factor in sentencing. Through evidence-based training and practice guides, Prosecutors should be in a position to use their discretion to determine the maturity of an individual, achieving a level of consistency without the need for the introduction of new assessment tools.

To support these changes, criminal justice professionals (particularly the police, prosecutors, probation and sentencers) will require more options than just a discount. Rather agencies should be able to access a holistic, personalised 'T2A approach' alongside (or, where appropriate, instead of) statutory interventions.