

T2A response to the Sentencing Council Consultation on draft guideline for Imposition of Community & Custodial sentences

About the Transition 2 Adulthood (T2A) Alliance

The Transition 2 Adulthood (T2A) Alliance produces and promotes evidence for effective ways of working with young adults who commit crime. Young adults (aged 18-24) constitute less than 10% of the population, but account for more than a third the probation service's caseload and a third of those sentenced to prison each year. With the right intervention, one that takes account of the developmental maturity and particular needs of this group, young adults are far more likely to 'grow out of crime'. The wrong intervention at this time can slow desistance and extend the period of involvement in the criminal justice system.

T2A's principal aim is that the young adults are subject to a distinct approach at all stages of the criminal justice system. T2A's evidence base is founded on three main bodies of research: Criminology, Neurology and Psychology. All three fields strongly support the T2A 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 unique developmental maturation process that takes place in this age group.

T2A's strategy and work is steered by the T2A Alliance, a coalition of 13 leading justice youth and health organisations, chaired by Joyce Moseley OBE and convened by the Barrow Cadbury Trust.¹ Since its establishment in 2008, T2A has contributed to significant change in policy and practice locally, nationally and internationally. T2A has produced more than 40 reports and undertaken 12 projects across England demonstrating effective interventions for young adults. The framework for T2A's work is the "T2A Pathway", which identifies 10 points in the criminal justice system where a distinct approach to young adults can be delivered, from point of arrest and including prosecution, sentencing, probation and custody.

Introduction

¹ See <http://www.t2a.org.uk/t2a-alliance/> T2A Alliance members are: Addaction, BTEG, Catch 22, Centre for Crime and Justice Studies, CLINKS, Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, the Prince's Trust, Prison Reform Trust, Revolving Doors Agency, the Young Foundation and Young Minds. N.B. This T2A response does not necessarily reflect all policy positions of individual Alliance members and some members will additionally submit their own responses.

T2A welcomes the opportunity to respond to the Sentencing Council's consultation on a draft guideline for Imposition of Community & Custodial sentences. Sentencing guidelines have a crucial role to play in ensuring effective sentencing for young adults. Since 2011, guidelines have included lack of maturity as mitigating factor. In 2014 and 2015, this was the most cited mitigating factor in sentencing.² Other aspects of justice system practice in England and Wales have moved to recognize the importance of maturity in policy and practice. From 2013, the Crown Prosecution Service began taking maturity into account as part of its public interest test. Since 2012, young adult specific strategies and services have been commissioned by a third of Police and Crime Commissioners. Several Community Rehabilitation Companies have designed young adult specific services as part of their delivery plan. More recently, the government has announced that, from early 2016, all 18-24 year olds will be subject to mandatory maturity assessments prior to sentencing and that "Pre-Sentence Reports (PSRs) completed on 18-24 year old offenders must include considerations of maturity".³ Our response to the consultation questions below outlines in detail how guidelines for the Imposition of Community & Custodial sentences can build on these positive developments to ensure proper account is taken of maturity in sentencing decisions.

Question 1: Do you agree with the general principles for community orders? Please highlight any additional principles you believe should be included.

T2A notes the principle that "the requirements imposed are the most suitable for the offender". Further clarification is needed on how sentencers identify suitable requirements for individual offenders. In relation to young adults, consideration of maturity should be integral to how assessments of suitability are made when deciding on appropriate requirements. It should also be central to how sentencers strike "the right balance between proportionality and suitability" in cases involving young adults. This would build on the welcome inclusion of a lack of maturity as a mitigating factor in sentencing guidelines.

Varying levels of developmental and neurological maturity are now recognised as a contributing factor to how young adults behave.⁴ An awareness of a young adult's

² Sentencing Council (2015), Crown Court Sentencing Survey Annual Publication, January to December 2014, England and Wales, London: Office of the Sentencing Council

³ Ministry of Justice (2015) Written evidence to the Justice Committee inquiry on young adults, available at

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/young-adult-offenders/written/22021.html>

⁴ Prior, D., Farrow, K., Hughes, N., Kelly, G., Manders, G., White, S. and Wilkinson, B. (2011)

maturity level makes it more likely that appropriate programmes of intervention and treatment are selected, which makes it less likely that they will re-offend. Pre-sentence reports including effective and informed maturity assessments have an important role to play. We welcome the government's commitment that, from early 2016, all 18-24 year olds will be subject to mandatory maturity assessments prior to sentencing and that "Pre-Sentence Reports (PSRs) completed on 18-24 year old offenders must include considerations of maturity".⁵ Our response to question 5 outlines ways in which the Sentencing Council's guidance on PSRs should be amended to reflect improved provision for maturity assessment in PSRs. Our response to question 6 outlines ways in which provision for, and sentencers' knowledge of, appropriate requirements for young adults could be improved.

In addition, there is a need for better training for sentencers on lack of maturity and its impact on offending behavior, as well as on how to assess maturity and how to respond effectively. Effective training would ensure that sentencers are able to use their discretion and retain control over the decision as to the offender's level of maturity and its impact on the sentence given, rather than relying on introducing formulaic tests or expert witnesses. All sentencers should be given training and information on maturity, including through the Judicial College's initial training for new judicial office-holders and their continuing professional education for existing sentencers.

Question 2: Is the guidance on how to identify the level of community order clear? Please highlight any additional information you believe should be included.

T2A welcomes the discretion built into the guidance for sentencers to impose an intensive community order when offences "only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances" (see question 8 for a fuller description of the importance of discretion for sentencers in cusp of custody cases involving young adults). In addition, T2A recommends that the draft guidelines should be amended to introduce discretion for sentencers to impose two or more requirements where the offence is less serious,

Maturity, young adults and criminal justice: A literature review, Birmingham: University of Birmingham.

⁵ Ministry of Justice (2015) Written evidence to the Justice Committee inquiry on young adults, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/young-adult-offenders/written/22021.html>

but, due to the needs of the individual, they may benefit. Young adults often have a combination of health or treatment needs; but which are often sub-threshold for adult services.⁶ Therefore it may be appropriate for them to receive a tailored response which includes a range of requirements. In these circumstances, requirements could be less onerous than if they were given as a standalone order.

Question 3: Is the list of requirements clear and comprehensive? Please highlight any additional information you believe should be included.

The list of requirements is clear and comprehensive; but more needs to be done to ensure effective provision for young adults and that sentencers have sufficient knowledge of services available in their local area. Research conducted by the Centre for Crime and Justice Studies on the use of the Community Order and Suspended Sentence Order for young adults found that “the overall pattern of use of the Community Order and the Suspended Sentence Order tends to work against what is known about young adults’ needs and the factors associated with their offending”.⁷ It found a heavy reliance on unpaid work and, to a lesser degree, supervision, with little done to address young adults’ rehabilitative needs.

In order to make community sentencing more effective in reducing reoffending by young adults, community provision should therefore be made available that addresses the specific needs of young adults and the causes of their offending. In particular, this would require the expansion of services tailored specifically to this age group, addressing issues related to drugs and, in particular, alcohol. Young adult offenders are particularly likely to have a problem with alcohol and have more problematic drinking behaviour than their older counterparts, with a higher proportion of young adult offenders exhibiting a criminogenic need relating to alcohol than of other age groups.⁸

Furthermore, research has suggested that there is a general lack of knowledge amongst sentencers about the availability of community order requirements in their local areas, which may be contributing to the infrequent use of requirements such as the attendance centre requirement, the mental health treatment requirement and the

⁶ Stanley, S. (2007) The use of the community order and the suspended sentence order for young adult offenders, London: Centre for Crime and Justice Studies.

⁷ Ibid.

⁸ Young People in Focus (2011) Substance misuse and young adults in the criminal justice system, Brighton: Young People in Focus.

alcohol treatment requirement.⁹ A detailed knowledge of the available services, and who they can most appropriately be used for, would help to ensure that community sentences are effectively tailored to best prevent reoffending by young adults.

T2A welcomes the inclusion of additional guidance on Rehabilitation Activity Requirements (RARs) to ensure that “sentencers understand that these should not be imposed instead of other requirements which are available to support rehabilitation of offenders.” We are concerned that the increased use of generic orders has led to an underuse of requirements which may be more suited to the rehabilitative needs of young adults. In the case of RARs, the court has no knowledge of the type or level of activity decided upon by the offender’s responsible officer. It cannot be assumed that the responsible officer will be either qualified to determine activity appropriate to the needs of the offender or appreciate what support is necessary.

Question 4: Are the specific considerations to be made when determining requirements of a community order clear and comprehensive? Please highlight any additional information you believe should be included.

The specific considerations are clear but not comprehensive – see our answer to question 1 on the need for further clarification on how sentencers identify suitable requirements for young adults.

Question 5: Is the guidance on pre-sentence reports and electronic monitoring clear and comprehensive? Please highlight any additional information you believe should be included.

Given the high concordance rate between Pre-Sentence Reports (PSRs) and sentences, T2A believes that the most important factor in sentencing decisions for young adults is a well-constructed, detailed analysis of maturity in the PSR, which takes account of the distinct needs of young adults, with clear recommendations for sentencing and how the sentence should be delivered. Section 156 Criminal Justice Act 2003 states that the court is required to obtain a PSR before imposing a custodial or community sentence.

⁹ Mair, G., Cross, N. and Taylor, S. (2008) The community order and the suspended sentence order: The views and attitudes of sentencers, London: Centre for Crime and Justice Studies; Khanom, H., Samele, C. and Rutherford, M. (2009) A missed opportunity? Community sentences and the mental health treatment requirement, London: Centre for Mental Health.

T2A notes that the existing guidance on pre-sentence reports is being updated “to make it clear that the pre-sentence report should be completed on the same day where possible to ensure adjournments are avoided”. While speed and efficiency in processing cases are important considerations, we are concerned that the new guidance could lead to a reduction in the number and quality of pre-sentence reports being ordered for young adults. Pressure on court time and resources could lead to sentencers receiving inadequate PSRs or foregoing a PSR entirely. This would reduce the knowledge sentencers have available to them, including relating to the maturity of an offender, in deciding on an appropriate sentence. In his evidence to the Justice Committee inquiry on young adults, Michael Caplin QC noted “a tension between saying, on the one hand, that maturity should be considered and, on the other, that we must get cases through more quickly and make the best use of time, funds and all those things.”

Pre-sentence reports have an important role to play in ensuring effective sentencing for young adults. Pre-sentence reports (PSRs) for young adults should include an assessment of maturity and recommend an effective response when a lower level of maturity is identified. PSRs should also include information gathered from liaison and diversion services about any specific needs or issues such as a learning disability or brain injury. For young adults with particular support needs, a PSR completed on the same day is rarely appropriate and is unlikely to result in the most effective or efficient outcome. In particular, the inclusion in the draft guidance of the text, ‘where possible to ensure adjournments are avoided’ is unhelpful in that it puts pressure on sentencers to proceed with less information than might be necessary or helpful. Section 10 of the Magistrates’ Court Act enables a Magistrates’ Court to adjourn a case after conviction so that enquiries can be made and/or to determine the most suitable method of dealing with the offender.

The government has recently issued a new Probation Instruction on determining pre-sentence reports (PSI 04 2016) which strengthens provision for maturity assessment in cases involving young adults. The new instruction requires that “PSRs completed on 18 – 24 year old offenders must include consideration of maturity”.¹⁰ Under the previous guidance, maturity assessment were only mandatory in PSRs in cases where the young adult has drug or alcohol problems which are directly linked to the offence. Furthermore, the new instruction highlights T2A’s guidance for probation

¹⁰ PSI 04 2016

practitioners, Taking account of Maturity,¹¹ which it says “can inform a maturity assessment.”¹² More than 11,000 copies of T2A’s guidance have been requested to date by probation areas, and are being used across England and Wales to inform pre-sentence reports and young adult appropriate sentence plans.

At a time where provision for maturity assessment in PSRs for young adults has been significantly improved, it would be counterproductive if the Sentencing Council’s new guidance led to a reduction in the quality and number of PSRs being ordered for this age group. Therefore, we recommend that the guidance is updated in line with the new probation instruction, by inserting the following requirement:

For offenders aged 18 – 24, the court should request a PSR including an assessment of maturity

Question 6: Do you agree with the structure and content of the flowchart for imposition of community orders? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

T2A recommends the following is inserted in the final box to ensure consistency with the general principles for community orders and to ensure that requirements are matched to the specific needs of individual offenders, including young adults:

Are the requirements imposed the most suitable for the offender?

Question 7: Do you agree with the overall proposed guidance on imposition of community orders? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

No – see points made in response to questions 1-6.

Question 8: Do you agree with the approach to imposing custodial sentences? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included in this section of the guidance.

T2A welcomes the discretion built into the guidance that “passing the custody threshold does not mean that a custodial sentence should be deemed inevitable”. A lack of maturity is already recognized as a mitigating factor in sentencing guidelines; and should similarly be recognized in cusp of custody cases involving young adults

¹¹ T2A (2013) Taking Account of Maturity: A guide for probation practitioners, London: T2A

¹² PSI 04 2016

as a reason for imposing a community sentence even when the custodial threshold has been passed. The Harris review found “all young adults in custody to be vulnerable and that prison or YOI custody should be a last resort.”¹³

Recent years have seen a small welcome decline in the numbers of young adults received into prison. From July – September 2015, there were 1,533 young adults aged 18-20 received into custody, compared to 2,100 in Oct-Dec 2013.¹⁴ Despite this reduction, a significant proportion of young adults in prison are serving short sentences. In July – September 2015, 597 young adults aged 18-21 were serving a sentence of less than or equal to 6 months.¹⁵ A further 186 were serving a sentence of greater than 6 months to less than 12 months.¹⁶

Many young adults who currently receive short prison sentences could be managed safely in the community through robust, targeted orders. Intensive community approaches and police and probation-led IOM schemes have shown promising results for this age group. Provision can build on promising schemes in a dozen probation areas, including the four biggest (Greater Manchester, Wales, London and Staffordshire and West Midlands), which have commissioned services that are specific to young adults. Clinks has recently produced a guide for probation services on effective approaches with young adults, which includes examples of good practice from across England and Wales.¹⁷

Pre-sentence reports

T2A believes that a PSR should always be ordered by the court in cases where a young adult is being considered for a custodial sentence. Recommendation 46 of the Harris review states: “When a court is considering passing any form of custodial sentence upon a young adult (18 to 24) then a full written pre-sentence report must be commissioned.”¹⁸ See our response to Q5 for a fuller description of the importance of PSRs for young adults the circumstances when it is inappropriate to

¹³ Harris, T (2015) Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds, London: HM Stationary Office

¹⁴ Table 2.1, Ministry of Justice (2015) Offender management statistics quarterly: July to September 2015

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Clinks (2015) Effective Approaches with Young Adults: A guide for probation services, London: Clinks

¹⁸ Harris, T (2015) Changing Prisons, Saving Lives: Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds, London: HM Stationary Office

complete a PSR on the same day as sentencing.

Question 9: Do you agree with the approach to suspending custodial sentences? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included in this section of the guidance.

Yes. T2A shares the Sentencing Council's concerns regarding "a trend for decreasing volumes of community orders (COs) and increasing volumes of suspended sentence orders (SSOs), rather than a decrease in volumes of immediate custodial sentences, which was the expected consequence of introducing the suspended sentence provisions in 2005." In the community, 18 to 24 year olds accounted for 38,806 (28%) of Community Orders and Suspended Sentence Orders starting in 2014. In line with the general trend, the use of community orders for young adults has declined markedly over the past decade. 42,848 young adults aged 18-24 were given a community order in 2006, compared to 26,449 in 2014. Over the same period, the use of suspended sentence orders for this age group has increased, although to a more limited extent than for the adult population overall. 11,280 young adults aged 18-24 were given a suspended sentence order in 2006, compared to 12,357 in 2014.

T2A supports the clarification in the guidance that a suspended sentence "must not be imposed as if it was a more severe form of community sentence." Young adults have the highest breach rates of adults serving community sentences and could be more likely to breach suspended sentence orders. This could result in a disproportionate number of young adults being sent to prison as a result of breaching a suspended sentence, for cases where it was never intended that a custodial sentence be served.

Question 10: Do you agree with the overall proposed guidance on imposition of community and custodial sentences? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

No – see points made in response to questions 1-9.

Question 11: Please provide any additional comments or suggestions that you have about the proposals.

T2A would like to use this opportunity to inform the Sentencing Council of a pilot project it is developing in partnership with the Centre for Justice Innovation, designed to test the impact of a tailored process in court for young adults. This would include (i) specialist court listings for young adults; (ii) specialist judges and magistrates presiding over the hearings; (iii) encouraged family involvement at court; (iv) adapting existing youth court procedurally fair courtroom language and communication; (v) an adapted courtroom environment more conducive to engagement. Our research has shown that this approach is possible within current legislation and with some feasible amendments to existing practice. There is reason to believe that this has real potential to improve young adults' perceptions of the justice system and consequently to increase compliance with the law and rehabilitation.¹⁹

¹⁹ See T2A and CJI (2016) *Young Adults in Court: Developing a Tailored Approach*, London: T2A CJI. Available at <http://www.t2a.org.uk/wp-content/uploads/2015/12/Young-Adults-in-Court.pdf>