

The Transition to Adulthood (T2A) Alliance submission to Sentencing Council consultation on the draft general guideline

About T2A

The Transition to Adulthood (T2A) Alliance evidences and promotes effective approaches for young adults (18-25) throughout the criminal justice process. It is an alliance of 16 leading criminal justice, health and youth organisations: Addaction, Care Leavers' Association, Black Training and Enterprise Group, Catch22, Centre for Crime and Justice Studies, Clinks, Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, The Prince's Trust, Prison Reform Trust, The Restorative Justice Council, Revolving Doors, Together for Mental Wellbeing, The Young Foundation, and Young Minds. T2A is convened and funded by the Barrow Cadbury Trust. T2A has contributed to positive change in policy and practice and at central and local levels, and its evidence has informed service redesign and delivery nationally and internationally. These include welcome changes to recognise maturity in sentencing and CPS guidance, the development of a transitions framework for adult and youth justice services by the Youth Justice Board and HM Prisons and Probation Service, and consultation on the development of a young adults operating model by HM Prison and Probation Service. T2A's work has helped to promote the development of young adult-specific projects and approaches in a growing number of devolved police and crime commissioner and probation areas. T2A and its members have helped to initiate and provide substantive evidence for Parliamentary inquiries into the treatment and conditions of young adults in custody, including the Young Review, the Harris Review and the Justice Committee's inquiry on young adults.

Introduction

T2A welcomes the opportunity to respond to the Sentencing Council's consultation on the draft general sentencing guideline dealing with all offences where there is no offence specific guideline. We welcome the inclusion of age and/or lack of maturity as a mitigating factor at step two in line with the Sentencing Council's other guidelines. Our response focusses on opportunities to further improve the consideration of this factor in respect of young adults within the guideline. It also highlights some of the difficulties in achieving appropriate sentencing outcomes for young adults through general guidance and reinforces the need for the creation of separate sentencing principles for young adults.

A substantial and growing evidence base has found that young adults aged 18-25 are a distinct group, largely because they are still maturing.¹ Reaching adulthood is a process, not an event, and the key markers of adulthood, such as independent living, employment and establishing relationships, happen at different times for different young people. Young adults face an increased risk of exposure to the criminal justice system compared to older adults. Contact with the criminal justice system also raises the risk of adverse outcomes for young people and increases their risk of reoffending. Although hundreds of thousands of young adults are sentenced each year, in contrast to the wealth of guidance and case law concerning the sentencing of children, there is no set of principles to guide sentencers through this process or ensure that they take a tailored approach to young adults. The sentencing process presents an opportunity to apply the wealth of expertise concerning the development of young adults to achieve better outcomes. Senior court judgments and guidance concerning children, which acknowledge the reduced culpability of a person who is

¹ <https://www.t2a.org.uk/t2a-evidence/research-reports/>

not yet fully mature, set a blueprint for an approach that could be consolidated and applied to young adults.

Consultation question: The principal factors that make offences more or less serious

Step one - Reaching a provisional sentence

It is well established that age and/or lack of maturity are factors that are highly relevant to culpability. It is also established that this should be reflected in the sentencing process by “the humane principle that an offender deemed by statute to be not fully mature when committing his crime should not be punished as if he were” (R v Secretary of State, Ex parte Maria Smith [2005] UKHL 51, Lord Bingham at para 12). At present, there is nothing in the proposed guideline to encourage a sentencer to factor in the reduced culpability of a young adult at step one, albeit that many of the factors that a young adult’s “role, level of intention and/or premeditation and the extent and sophistication of planning” may be squarely linked to the fact that he or she is a young adult.

Pointing to the role of age and/or maturity as part of the evaluation of culpability at step one would also be consistent with the approach in the newly issued guideline on child cruelty offences where lack of maturity is expressly listed as a relevant factor suggesting lower culpability.

At step two, the current draft guideline acknowledges that “age and/ or lack of maturity can affect the offender’s responsibility for the offence”, but does not expressly highlight this as a relevant factor in determining “culpability” at step one. This approach is contradictory, and fails to take proper account of the evidence highlighted above. ***Within the current structure of the guideline, we recommend that ‘Age/lack of maturity where linked to the commission of the offence’ as a factor indicating lower culpability, is taken into account at Step 1 of the process, and (to prevent double counting) ‘Age/lack of maturity where not linked to the commission of the offence’ included as a factor reflecting personal mitigation, is taken into account at Step 2 of the process.***

For the same reasons highlighted above, in the case of young adults, the extent to which recklessness is seen as a factor towards increased culpability, should be reduced or tailored to make allowances for age and/or lack of maturity. This would make it consistent with the approach taken to the consideration of age and/or lack of maturity at step two, which recognises that:

... young adults may still be developing neurologically and consequently be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Therefore, in addition to a clear recognition of age and/or lack of maturity as a factor indicating lower culpability at step one, the guideline should make clear that reckless behaviour may be linked to the age and/or immaturity of the individual; and that, when this is the case, the individual should be deemed to have lesser culpability.

Step two – Aggravating and mitigating factors

Age and/or lack of maturity

We welcome the inclusion of age and / or lack of maturity at step two and the detailed information about this factor. The detail as to what age and/or lack of maturity may mean for young adults in particular is especially welcome. In addition, we recommend the following revisions to the information included about this mitigating factor:

1. A presumption that young adults aged 18-25 are typically still maturing. The draft guideline currently states that “the emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).” While it is important to take account of the differing rates of maturation within the young adult age group, it is also vital that sentencers understand that young adults aged 18-25 typically exhibit immature traits which are likely to impact both on their responsibility for the offence and the effect of the sentence imposed. With the current wording, and in the absence of an agreed and widely available method for measuring maturity and proper training and guidance for sentencers, there is a danger that sentencers will require an inappropriate level of proof of an offender’s immaturity, even when an offender is a young adult and therefore likely to be immature in at least some respects. Therefore, in line with the recommendations of the Justice Committee, we recommend that the guideline includes a presumption that “up to the age of 25 young adults are typically still maturing”.²
2. In relation to PSRs, the guidance should be strengthened to state: “When considering a custodial or community sentence for a young adult the National Probation Service *must* address these issues in a PSR”. This would bring the guideline into line with existing probation policy. A probation instruction issued in January 2016³ now requires pre-sentence reports to include consideration of lack of maturity of young adults. The instruction cites T2A’s ‘Taking account of maturity’⁴ practice guide: “PSRs completed on 18-24 year old offenders must include consideration of maturity. Guidance for PSR writers is available, Taking account of Maturity, which can inform a maturity assessment. Where the offender has previously been known to the youth offending team, information should be obtained on previous response to supervision and also any relevant information on the offender which could include details of any previous assessments completed. The ASSET would provide background information that could inform suitability for sentencing options and a risk assessment.”⁵

² Justice Committee (2016a) The treatment of young adults in the criminal justice system [online], p. 58. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/the-treatment-of-young-adults-in-the-criminal-justice-system/oral/27782.html>

³ PSI 04 2016

⁴ T2A (2013) Taking Account of Maturity: A Guide for Probation Practitioners [online]. Available at: http://www.t2a.org.uk/wpcontent/uploads/2013/07/T2A-MaturityGuide_online.pdf

⁵ PI 04 2016, paragraph 8.1

Consultation question: the applicability of the guideline to a wide range of offences

Subject to the recommendations above, we welcome the recognition of age and/or lack of maturity as a mitigating factor. Evidence suggest that the factor is applicable across all offence types and therefore maturity should be included as a consideration in all sentencing guidelines.

The concerns outlined in this response highlight the difficulties in teasing out the specific issues pertaining to young adults in general guidelines. In light of this, T2A believes that there is a strong case for the Sentencing Council to consider overarching sentencing principles for young adults, similar to the principles it has developed, and recently enhanced, for children as outlined in the Howard League report Judging Maturity (2017) which is summarised later in this submission. This would be a natural progression from the children's guidance that recognises emotional and developmental age as of at least equal importance to chronological age (if not greater). It would also convert the best practice that is already being carried out in courts into standard practice. While senior court judgments are influential, sentencing decisions do not always reach the attention of magistrates' courts where the vast majority of young adults are sentenced. Senior court judgments generally deal with the more serious end of the spectrum where detention is almost always an issue. Sentencing principles for young adults would guide the courts in respect of how custodial sentences can be avoided altogether to achieve better outcomes for young adults and for communities.

We note in relation to the current consultation that "there are other overarching issues about which the Council has been asked to provide guidance, such as youth and immaturity." Therefore, in the draft general guideline, the Sentencing Council has chosen to "embed in that guideline, overarching guidance on sentencing issues." While we welcome the additional information that the Council has provided on the application of age and/or lack of maturity as a mitigating factor at step two, as we highlight in this response, age and/or lack of maturity is not included in the consideration of culpability at step one. Therefore, the consideration of maturity within the guideline is incomplete.

In its landmark inquiry on the treatment of young adults in the criminal justice system, the Justice Committee highlighted the limitations of the existing approach to the consideration of maturity as a mitigating factor in sentencing guidelines:

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.⁶

The Committee contrasted the treatment of young adults in the adult criminal courts with that of children in the youth courts, where "Consideration of maturity and understanding of the

⁶ Justice Committee (2016), The treatment of young adults in the criminal justice system, paragraph 77.

need for developmentally appropriate treatment is intrinsic in youth court processes, including training for magistrates.”⁷ It argued that “Extending these approaches to young adults without changing the legislative framework would capitalise on trained youth magistrates whose expertise is underused due to falling caseloads in youth justice.”⁸

Furthermore, as the Lammy Review has highlighted, a disproportionate number of young adults in the criminal justice system are from BAME backgrounds. Therefore, a distinct approach to the sentencing of young adults could contribute to addressing wider racial disproportionality in the justice system. The Review recommended that the Ministry of Justice and Department of Health should jointly develop a method to assess the maturity of young adult offenders and that “assessment should inform the interventions applied to any offender in this cohort, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity.”⁹ In addition, research by the Centre for Justice Innovation highlights ways in which courts could improve the treatment of BAME individuals by the courts, and increase the trust of young black men in particular in the criminal justice process.¹⁰ At present, there is nothing in the proposed guideline that would encourage sentencers to take these important points into account.

Recent reports by members and partners of the T2A Alliance support the case for a distinct approach to young adults, including the creation separate overarching sentencing principles. The Howard League report *Judging Maturity*¹¹, published in July 2017, explores current themes and trends in the way the courts currently deal with young adults through an analysis of 174 senior court judgments in respect of young adults. In line with the conclusions of the Justice Committee inquiry on young adults, the analysis shows that better information makes for better decision making and that, at present, maturity as a factor affecting the culpability of the individual is considered infrequently and, when it is considered, the depth of understanding is variable and the impact on decision-making inconsistent. The research considers examples of judicial decision-making tailored to the needs and experiences of young adults and the extent to which the law and guidance may be insufficient in its present form to encourage this approach. The current judicial treatment of maturity in sentencing young adults suggests that there is every reason to be optimistic that, provided with the right information and equipped with a set of sentencing principles for young adults, the courts will be able to make sentencing decisions about young adults that effectively take account of their distinct developmental stage and should lead to better outcomes for everyone. A further forthcoming report by the Howard League will develop the case for a separate set of sentencing principles for young adults. We will send the Sentencing Council a copy of the report when it is published at the end of September 2018.

The joint report by the Centre for Justice Innovation and the Transition to Adulthood Alliance, *A fairer way: procedural fairness for young adults at court*¹², published in April 2018, suggests that a fairer and distinct approach to how the courts deal with young adults would lead to better outcomes for victims and offenders. It sets out a blueprint for a new approach to 18-25 year olds in court, developed over the last two years by criminal justice practitioners in five areas of England and Wales (West Midlands, Northamptonshire,

⁷ Justice Committee (2016), The treatment of young adults in the criminal justice system, paragraph 113.

⁸ Ibid.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

¹⁰ <http://justiceinnovation.org/wp-content/uploads/2017/03/Building-Trust.pdf>

¹¹ <https://www.t2a.org.uk/wp-content/uploads/2017/07/JudgingMaturity.HowardLeague.pdf>

¹² <https://www.t2a.org.uk/wp-content/uploads/2018/04/Young-adult-courts-CJI.pdf>



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Leicestershire, Suffolk and South Wales) as well as victims of crime and young adults themselves. These areas have worked with the Centre for Justice Innovation to develop a model that could be delivered within current law.

Consultation question: The clarity and accessibility of the guideline

The draft guideline states it applies to all those aged 18 or over at the point of sentence once the guideline is in force. However, this fails to recognise the particular considerations that apply to young adults who committed offences as children. ***In such cases, paragraph 6.2 of the overarching principles for children¹³ applies, and sentencers should be reminded of this to ensure consistency.*** Para 6.2 deals with Crossing a significant age threshold between commission of offence and sentence provides that "In such situations the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes young people who attain the age of 18 between the *commission* and the *finding of guilt* of the offence."

T2A would be pleased to meet with the Sentencing Council to discuss the findings and recommendations of these reports, and the prospects for the development of a distinct approach to young adults in sentencing guidelines. Please contact Mark Day, T2A public affairs lead, mark.day@prisonreformtrust.org.uk.

¹³ https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide_FINAL_WEB.pdf