

Transition to Adulthood (T2A) response to the Sentencing Council Guideline on Mental Health Conditions or Disorders, July 2019

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.

Question 1: Do you agree with the proposal that the draft guideline only applies to offenders aged over 18? If not, please tell us why.

T2A agrees with this proposal. T2A is also of the view that there should be a separate guideline for sentencing young adults up to age of 25 as advocated by the Howard League in its report, funded by Barrow Cadbury Trust, [*Sentencing Young Adults: Making the case for sentencing principles for young adults.*](#)

Question 2: Do you agree with the proposed title of the guideline? If not, please tell us why and suggest any alternatives.

T2A shares the view cited in the responses of the Disabilities Trust and Headway to this consultation that the title excludes important conditions which may affect culpability. T2A supports Headway's proposed amendment.

Question 3: Do you have any comments on the proposed contents of paragraphs one to six? Do you think the information will be helpful to courts? If not, please tell us why.

T2A welcomes the Council's proposition in paragraph four that relevant reports obtained are forwarded to prisons and that Criminal Procedure Rules are updated accordingly. Furthermore, we believe that any such reports should also follow the offender to probation, where they receive a

community order and are not part of probation's pre-sentence report. We refer later in our submission to the absence of routine screening and proper assessment and the need for this to be addressed if the guidelines are to operate effectively.

Question 5: Do you think the guidance within paragraphs eight and nine is helpful? Is there any of the guidance that you disagree with? If so, please tell us why you disagree with it.

Paragraph eight discusses the fact that if an offender has any of the conditions listed within Annex A, it may affect their level of responsibility for the offence, but that the relevance of any condition will depend on the nature, extent and effect of the condition on an individual, and whether there is a causal connection between the condition and the offence. The fact alone that an offender has a condition or disorder does not necessarily mean it will have an impact on sentencing, it is for the sentencer to decide how much responsibility an offender retains for the offence, in each individual case.

T2A agrees with the submissions from the Disabilities Trust and Headway that current guidance is limited with respect to neuro-disabilities and supports their proposals for addressing this. It is important that guidelines recognise that young adults not only have a heightened risk of sustaining a TBI, but the neuro- cognitive consequences could have a marked effect on their development.

More generally, there is a need for clearer guidance in Annex A, presented in plain English, with a standard format for each condition and how it may affect culpability in general terms. We note that the Council has engaged a psychiatrist to draft this section, which is a beneficial approach for mental disorders. The Annex would benefit from review by other experts including forensic psychologists and neuro-psychologists, for example. Professor Huw Williams, a neuropsychologist, produced T2A's report [Repairing Shattered Lives](#) which considers the implications of brain injury for criminal justice.

Paragraph nine notes that as there are differences in the nature and severity of conditions, and that some conditions fluctuate, it is not possible for guidance to be prescriptive in the assessment of culpability; assessments of culpability will necessarily vary between cases. T2A endorses the views of the Prison Reform Trust and Magistrates Association who say in their response to this consultation that this section should clearly state in a separate bullet point that mental health conditions can fluctuate, and although someone may appear to be well and / or have insight into their condition

during the trial, this may not reflect their mental state and its impact on their behaviour at the time the offence was committed – and vice versa.

Question 6: Please tell us your views on the contents of paragraph ten - do you think this will be helpful to courts? If not, please tell us why and suggest any alternative approaches to assessing culpability that you think may be more appropriate.

Young adults who have persisted in criminal behaviour which commenced in childhood are more likely to have neuro-psychological deficits, including cognitive difficulties with thinking, acting, and solving problems, emotional literacy and regulation, learning difficulties and language problems associated with Attention Deficit Hyperactivity Disorder (ADHD), autism, learning and language disorders and head injuries. These deficits, particularly ADHD and traumatic brain injury (TBI, an impairment to the brain from an external mechanical force) are associated with more violent offending.

The Sentencing Council has recently consulted on expanded explanations in guidelines which provides guidance about the impact of lack of maturity on decision-making by young adults, both in terms of their developmental stage and where they have atypical maturity. This is important in respect of questions in paragraph ten related to culpability, making rational choices, exercising appropriate judgement and understanding the nature and consequences of their action. T2A believes that a useful addition to this section would be for the Council to make reference to that guideline, noting that where a disorder or condition might impact on maturational development and someone is also still maturing by virtue of their age, this is likely to exacerbate the impact of that disorder or condition and its impact on their offending behaviour.

Question 7: Please tell us your views on the contents of section three - do you agree with the guidance in this section? If not, please tell us why.

Paragraph eleven highlights the importance of trying to treat the condition that may have led to the offending, as the effective treatment of their condition should help reduce further offending and so in turn protect the public. The Sentencing Council then provides guidance to sentencers in paragraph twelve which states that where an offender's culpability was high, the sentence may be more weighted towards punishment, and where an offender's culpability was low, the sentence may be more weighted towards rehabilitation.

Notwithstanding the importance of proportionality and the guidance in paragraph eleven, very often the criminal justice system is the main gateway to accessing appropriate treatment or other assistance to enable an individual to manage a disorder or condition and its impact on their offending behaviour. Consequently, it is not clear to T2A why someone with higher culpability should not be equally deserving of receiving the rehabilitation or treatment they may need and may not be accessible to them in another way. This should be reflected more strongly in the guidance where the Council also notes that regardless of the level of culpability the court may wish to consider whether there is any rehabilitation or treatment which could help them manage their condition, and reduce the risk of reoffending.

Sentencing practice is also influenced by the availability of options, particularly in relation to those which can be attached to community orders. In order for this to be addressed effectively the scale of the problem and nature of gaps in provision must be determined. Sentencers, via court administrators, should be required to highlight to the Council where they do not have timely access to the information they need, in terms of assessments or other expert testimony required to assist them in ascertaining an individual's condition or co-morbid conditions. Another issue is that effective community sentences may not always be available to the court, for example, linked to community-based forensic mental health support. There should be a central mechanism for these gaps in services to be collated and identified by HM Courts and Tribunals Service and for the Ministry of Justice to address this with the Department for Health and Social Care.

Question 10: What are your views on the information on reports within Annex B? Is it helpful? Is there information missing that you would like to see included?

The prevalence of mental health conditions or disorders in young adult offenders is not known due to poor screening in the criminal justice system for mental disorders, neuro-disabilities, including acquired brain injury, and developmental disorders, including learning and communication needs. See also our comments on the importance of ensuring that sentencers have access to screening and assessment in response to Q15.

Related to this, it should also be recognised in the guideline that emotional trauma, including that stemming from bereavement, separation from family, abuse and neglect have been experienced by

many young adults in the criminal justice system. This can also have a profound impact on brain development and can delay maturation.

Question 15: What, if any, do you think the impact of the guideline might be on sentencing practice?

The impact should be that sentencers are basing their practices on better quality and more complete assessments of the individual before them. This includes maturity assessments, screening and specialist or expert assessments of the impact on culpability and on mitigating factors of the condition or conditions they are experiencing or have experienced. This is likely to require greater resources for expert assessments, more pre-sentence reports, and may have a wider impact on resources and the time taken for cases to proceed through the criminal courts. These additional resources are justifiable in T2A's view as sentencers should be making their decisions on the best information and thus in turn should result in better informed fairer sentencing practice. Some assessments such as the brain injury screening index developed by the Disabilities Trust are free.

The guideline is part of what is required to ensure that sentencers take appropriate account of mental disorders and other conditions which may impact culpability. The Howard League report *Judging Maturity*, published in July 2017, explored how courts deal with young adults through an analysis of 174 senior court judgments. The analysis showed 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 Justice Select Committee identified in 2017 that there was limited training for magistrates on maturity, communication difficulties or acquired brain injury. T2A shares the view of the Committee [which concluded](#) that:

Current approaches to the treatment of young adults involved in the criminal justice system are not consistently developmentally appropriate. They do not sufficiently recognise the strong evidence on brain development, maturity, and the impact of cognitive impairments on how young adults experience the system. Neither do they seek to lessen the potentially detrimental effects of the system itself on development.

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.

Accompanying the guidance with training would provide sentencers with a more detailed understanding of the complexity of the various conditions described in Annex A. T2A has recently funded the Magistrates' Association to explore magistrates' current understanding of 'maturity' as a concept and their experience of its use in court decisions, and to develop and disseminate training resources.