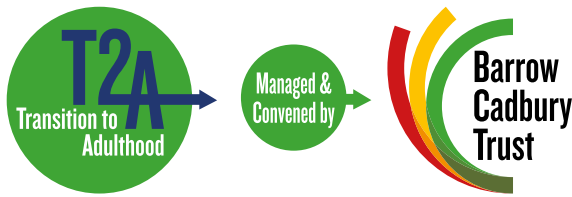


YOUNG ADULTS AND THE PAROLE SYSTEM

A Scoping Study for T2A

Rob Allen & Dr Laura Janes



ABOUT TRANSITION TO ADULthood (T2A)

T2A is a broad coalition of organisations, which evidences and promotes the need for a distinct approach to young adults (18-25 year olds) throughout the criminal justice process. Building on the work of the 2005 Commission on Young Adults and the Criminal Justice System, the T2A Alliance was convened by the Barrow Cadbury Trust in 2008. T2A has produced more than 40 research and policy reports, and has worked with researchers, experts, professional bodies, policymakers and service users to make its case for change.

www.t2a.org.uk

www.barrowcadbury.org.uk

ABOUT THE AUTHORS

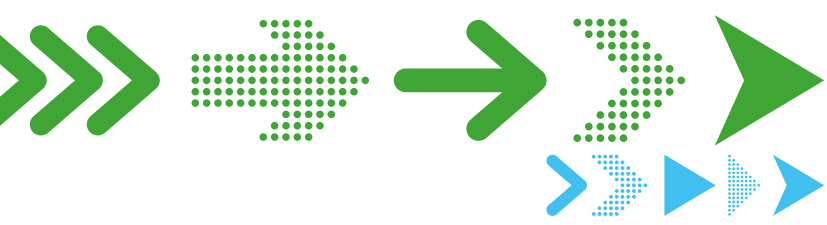
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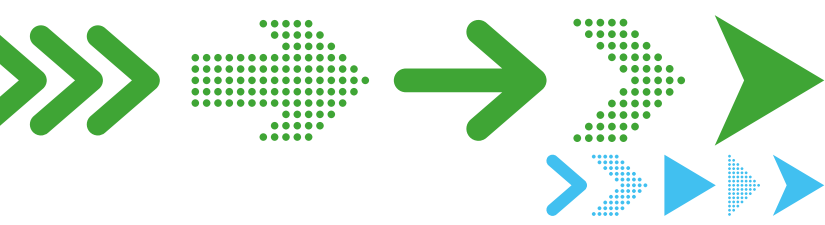
1. EXECUTIVE SUMMARY AND RECOMMENDATIONS

There has been a growing recognition of the distinct needs of young adults in the criminal justice process, largely due to the work of the Transition to Adulthood Alliance. However, the extent to which the criminal justice system meets the needs of young adults aged 18-25 who go through the parole process has received very little attention.

The vast majority of young adults considered by the Parole Board (the Board) have not been designated as “dangerous” by a sentencing court and have been recalled to prison for failing to comply with the terms of their licence after their automatic release. A small minority have been designated as “dangerous” at the point of sentence which means the court has formed the view that they are at risk of committing further offences that will cause serious harm. In these cases, the Board is required to consider whether they can be safely released from prison without putting the public at risk of serious harm.

Young adults, currently defined by the Board as 18 to 21 year olds, only make up around 2% of the Board’s overall case load. Young adults are much less likely to have been deemed dangerous by the courts compared to the other cases the Board reviews. They are also much more likely to be released when the Board considers their cases at an oral hearing: in 2021/22, 59% of all young adults were released following an oral hearing whereas the overall release rate for all reviews was one in four. The young adult cohort is clearly quite distinct from the usual run of cases reviewed by the Board and a distinct approach is clearly justified for this group in line with adaptations across the criminal justice system for young adults.

The introduction in 2017 of a policy that 18-21 year olds who are not released following a paper review should be presumed suitable for an oral hearing was a welcome development. In 2021, the Board



published much-needed guidance for members on how best to deal with this age group. These developments should improve how much the needs of young adults are taken into account.

This exploratory study has involved a broad review of the parole system in the context of the wider criminal justice system by considering the relevant legal and policy frameworks and talking to practitioners who work with young adults going through parole. Based on the information gathered in the course of this review, T2A makes ten recommendations, five for consideration by the Parole Board and five for consideration by HMPPS.

RECOMMENDATIONS FOR THE PAROLE BOARD

The Board's policy and guidance is welcome but should be strengthened and extended to young adults aged 25 and under

T2A welcomes the policy of a presumption of oral hearings for young adults aged 18-21 and the accompanying guidance. Oral hearings that follow the guidance should provide for better outcomes, increased engagement and participation by young adults, greater procedural fairness including an increase in legal representation and an increased involvement of organisations that can assist young adults on release.

The Board's policy and guidance should be extended to include young adults up to and including the age of 25 and should be strengthened to ensure that a distinct approach is taken for young adults throughout the entire process.

There is no logical reason why the policy of a presumption of oral hearings should not apply to those up to and including the age of 25, in line with the scientific evidence on developing maturity and other statutory regimes, such as the Children Act 1989 which requires local authorities to offer support to care leavers until the age of 25.

Given the distinct nature of the young adult cohort which consists mainly of individuals who have never been deemed dangerous by a court but have been recalled for non-compliance, a distinct approach is justified. The Parole Board's guidance should be strengthened to ensure a distinct approach in all cases involving young adults aged 25 and under, ensuring that age and stage of maturity of young adults is fully taken into account in both the procedures and decision making processes (see findings and recommendations 2 to 4 below). Greater emphasis should be placed on the distinct needs of young adults with other protected characteristics, such as gender and race.



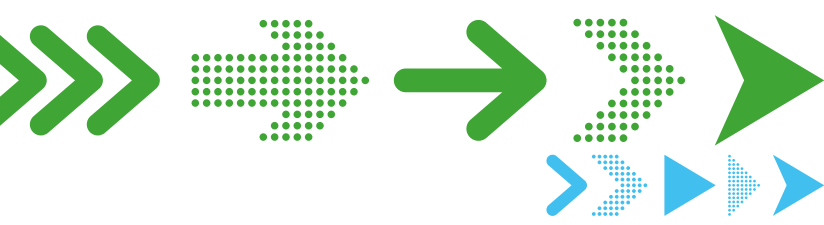
More should be done to enable young adults to be released without the need for an oral hearing: where this is not possible oral hearings for young adults should be prioritised

There is scope for more young adults to be released “on the papers”, that is without the need for an oral hearing. Provisional data provided by the Board for the year ending March 2022 shows that only 6% of young adults aged 21 or under were released on the papers but around 57% were released at an oral hearing. More should be done to enable the release of young adults without the need for an oral hearing, through a more urgent and prioritised approach to Executive Release by the Ministry of Justice and enhanced paper reviews of relevant documentation by the Board. An in-depth study of some of the cases where release was directed at an oral hearing but refused on the papers should be undertaken in order to identify what is preventing release at the earlier stage. Experience suggests that in many instances this will relate to the availability of a release plan at the paper stage. The amended Parole Board Rules provide for the use of case management conferences and better use of these could be made to ensure that the Board has all the relevant information it needs at the paper stage.

Where release on the papers is not possible, the presumption of an oral hearing should be accompanied by automatic prioritisation for this cohort so that the hearing is arranged at the earliest opportunity. At present the Board’s listing prioritisation framework states that where an applicant is “aged 18-21 at the time of referral”, that will be a reason for the case to be prioritised. It also states that “we will always look to prioritise the reviews for offenders who are under the age of 21 years at the commencement of their review irrespective of their review/sentence type”. Yet experience suggests that this may not always happen. In the future it is recommended that priority should be afforded to all those aged 25 and under. The listings system should identify and prioritise the cases of all young adults. It is well established that young adulthood is a time of great change, during which young people typically desist from crime. It is also a period during which they may be entitled to time limited support from local authorities. Enhancing and prioritising opportunities for young adults to be released would help to bring the parole system into line with the approach to sentencing recommended by the Sentencing Council in its expanded explanation on age and/or lack of maturity. Young adults on short determinate sentences who have been recalled to prison should be further prioritised within this group so they have the chance to be considered for release in sufficient time before their sentence ends.

More should be done to ensure effective participation by, and legal representation for, young adults

T2A welcomes the practical guidance to encourage young adults’ effective participation although this could be more forcefully expressed. There are shortcomings in the system of legal representation for young adults referred to the Board - practitioners have told T2A that there have been a number of instances where a young adult has not been represented at the paper stage.



The guidance currently refers to the importance of legal representation but data is not collected on the number of young adults who are represented. A more systematic process must be introduced so that young adults referred to the Board do not fall through the net of having vital legal representation, ideally from a lawyer with expertise in working with young adults.

The Board should factor in additional time for oral hearings involving young adults, with only one young adult case listed per day as the baseline. Young adults should automatically be considered for an in-person, rather than remote, hearing provided this will not cause undue delay. In any event, the Parole Board ought to consider suggesting that a young adult's legal representative be physically present with them in the prison during a remote hearing.

The Board should tailor the information it directs and its interpretation of the test for release in light of the evidence about the distinct needs and risks of young adults

The Board should ensure that assessments of young adults are as up to date as possible and should routinely direct reports, where they exist, from their time in the youth justice system so as to understand fully what has happened in their lives. National Standards for Probation services should be revised to include reference to the need for both maturity assessments and more regularly updated reports for young adults compared to older adults.

In reaching a decision on a young adult, the Board should always consider whether additional directions are required to ensure effective participation and that it has full information about the support the young adult is entitled to. This should include directing the prison offender managers to support the young adult to secure legal representation and to obtain information about any support from the local authority that may be available to the young adult as a care leaver. It is appreciated that it is not always clear whether a young adult is entitled to leaving care services. However, given the high number of care leavers among young adults in prison, there is no reason why the guidance cannot set out a set of suggested directions to community offender managers requiring them to identify care leavers and ensure those responsible for supporting them provide information to the Board. These might include directions from the Board to the community offender manager to provide a short report identifying whether the young adult has a personal advisor from a local authority children's services department or children's trust, if not, whether or not the young adult has ever been in care, looked after or had a social worker and if so, when this was and for how long.

The Board should actively consider whether young adults can be safely managed in the community with additional support if they are still maturing and unable to demonstrate the level of change in their thinking and skills that would be expected of an older adult.

The Board should monitor the application and impact of its young adult guidance and policy



The Board should monitor its application and impact on 18 to 25 year olds over the next two years and publish a short report with any recommendations as necessary.

RECOMMENDATIONS FOR HMPPS

HMPPS policies on sentence planning, parole and recall should be tailored to the needs of young adults

His Majesty's Prison and Probation Service (HMPPS) policies that deal with sentence planning, parole reviews and recalls do not have any specific requirements to meet the distinct needs of young adults. HMPPS should develop specific guidance for prison and probation staff about their roles and responsibilities towards young adults in the parole process. A specific sentence planning policy should be developed for young adults. The probation young adult policy should be revised to make reference to parole

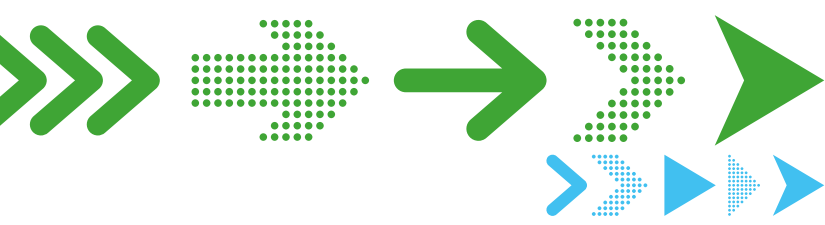
These policies should emphasise the need for timely and relevant reports in the case of young adults with a focus on what interventions, adjustments and support they should receive.

Assessment tools should be developed to factor in the needs of young adults

Assessment tools and processes are not sufficiently adapted to enable risk assessments to take full account of young adults' developing maturity. Specific risk assessment tools should be developed for young adults that factor in their age and stage of development to ensure that a more accurate picture of their risks and needs are presented to the Board. Until such tools are developed the Board will need to adapt its approach to interpreting adult risk assessments to factor in age and maturity. Where the risk assessments on young adults are prepared for parole board reviews, every effort should be made to ensure that the assessor can use their clinical judgement to take proper account of maturity, developing protective factors and what additional support should be put in place to assist the young adult in being released and managed safely in the community.

Tailored interventions for young adults to help them demonstrate risk reduction should be available consistently throughout the prison estate

Some work is underway to assist young adults to develop their maturity and reduce young adults' risk but this has been delayed by the restrictions introduced to manage the Covid pandemic. The development of more age-appropriate interventions and opportunities in prison is needed to provide chances for young adults to develop greater maturity and to enable them to show the Board that their risk of re-offending has been reduced.



Tailored support for young adults on release must be available consistently throughout England and Wales

Post-release support is often not sufficiently distinctive to meet the needs of young adults or identified sufficiently in advance of parole reviews to truly benefit young adults. Additional age-appropriate support, (including from local authority children's services in the case of care leavers) should routinely be in place for young people released from prison and identified before the parole review and automatic release, alongside realistic licence conditions that do not impose unrealistic conditions that young adults may find very difficult to comply with.

The recall of young adults needs to be urgently reviewed and safeguards put in place to prevent unnecessary recalls

There are conflicting views about how well the recall process is operating for young adults but there is agreement that it is inconsistent and needs more structure and oversight. Greater oversight in respect of young adults could include a requirement for the Board or another court to authorise recalls to prison before they are initiated. Alternatively, a specialist young adult group within the Public Protection Casework Suite (PPCS) - the department in the Ministry of Justice that oversees decisions about recall - could be set up to review all requests for recalls of young adults before the recall is authorised by the Secretary of State, and to question whether appropriate alternatives to recall have been considered.

The use, accessibility, and effectiveness of alternatives to recall for young adults should be reviewed, including the role of Approved Premises. Recall rates should be routinely analysed for indications of disproportionality and recall cases sampled for evidence of bias.





2. INTRODUCTION AND CASE STUDIES

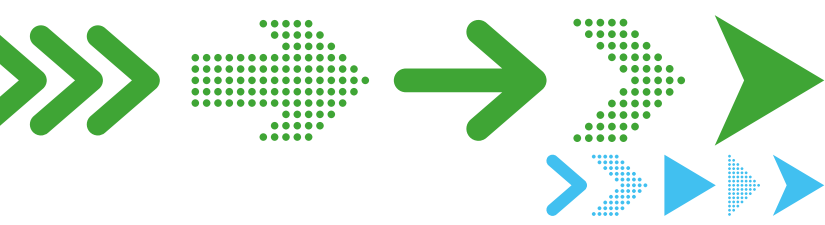
For more than a decade, T2A (Transition to Adulthood) has undertaken a range of work designed to bring about responses to young adults in conflict with the law which properly reflect their developing maturity. Young adulthood is a distinctive period of development. T2A has amassed an irrefutable body of evidence about advances in behavioural neuro-science that have found that the typical adult male brain is not fully formed until at least the mid-20s, meaning that young adult males typically have more psychosocial similarities to children than to older adults. The Justice Committee concluded in 2018 that “there is a strong case for a distinct approach to the treatment of young adults in the criminal justice system” and that “dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood.”

This research evidence is particularly relevant to the parole process: the legal system for deciding whether the continued detention of certain people in prison is necessary to protect the public from serious harm through a process of individualised risk assessment.

CASE STUDY: Ali¹

Ali is a 24 year old young man who shared his experiences of the parole process with the authors of this report. Ali spent much of his childhood in care or in custody, having accrued a string of convictions for petty theft and criminal damage. He was not born in England but was sent to live with a relative in his early teens: it did not go well, and he ended up in care, largely left to his own devices, hanging out with older children and using drugs. When he was just 18, he committed a serious violent offence and got an extended sentence for public protection over ten years. He became eligible

¹ Not his real name



for parole after around six years. For the first four years of his sentence, he was disturbed and distressed, often breaking prison rules and getting into fights. By the time he reached his parole review he had been in over a dozen secure establishments. His paper review was held before his parole eligibility date but there were lots of delays and adjournments before he was directed to an oral hearing due to the lack of a prison psychological report in his case. Although he had not been violent at all for several years, he was only offered the opportunity to do risk reduction work in the six months leading up to his oral parole hearing. He had a good relationship with his personal advisor from his home local authority but had never met his community probation officer, who he saw for the first time on a video link at his parole hearing. It was only in a report prepared for his parole hearing by an independent psychiatrist that it emerged that he had ADHD and that this had been a very significant factor in his behaviour and presentation, especially when he was younger. His parole hearing was listed for a day to start with. Every witness at his parole hearing said he had matured but he needed more time to prove he had really changed after completing the course. Ali was worried about coming out of prison without the support of his personal advisor: if he missed his chance for release at this review, he would not be entitled to another review until he was 26 years old. At the first hearing Ali had not quite finished his course and the Board was concerned that his risk management plan was not sufficiently clear. The hearing was adjourned for six months for an up to date psychological risk assessment following completion of the course and an updated risk management plan to include whether or not he could get support beyond the age of 25 from his personal advisor.

CASE STUDY: Simon

Simon was given a fixed term sentence for a violent offence committed when he was 18 years old. He did no risk reduction work in prison and was released automatically after nine months under licence conditions that required him to live initially at an Approved Premises (probation hostel) with a strict night-time curfew. He was recalled to custody when he left his Approved Premises in the early hours of the morning, appearing concerned about something, and returned a short while later and was seen to be smoking and self-harming. Simon has Foetal Alcohol Syndrome and also



takes anti-psychotic medication. He didn't realise he could be legally represented for his parole hearing. His probation officer is very caring and visited him regularly in custody. She supported his release with a package of support, but the Ministry of Justice would not direct his release because there was an ongoing criminal matter under investigation. The Parole Board agreed to hold an oral hearing but said it might not be able to schedule the hearing before his total 18 month sentence expired.

This report is an exploratory study about the extent to which a distinct approach is being taken towards young adults like Ali and Simon coming up for parole and to better understand what is known about how young adults who go through the parole process are treated and how they experience it. The aims of the study have been to identify ways in which the prison, probation and parole system might better respond to the developing needs of young adults and where further research may be needed. It draws on analysis of relevant research and documentation and exploratory interviews with a small number of people involved in the parole process in various ways. These include lawyers, members of the parole board, psychologists and representatives from HMPPS.

The two key questions this report aims to address are

i) The extent to which the Parole Board's policy and practice is distinct for young adults and how that could be improved

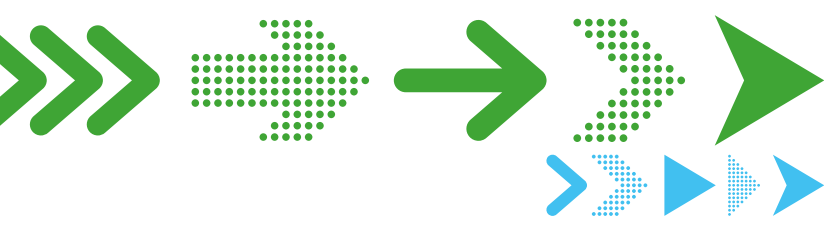
ii) The extent to which the wider criminal justice system is geared up to supporting young adults going through the parole process and how this could be improved

The study is timely for three reasons:

First, the Board has issued policy and guidance to its members about parole reviews for young adults, which strictly applies where the person is aged between 18 and 21 at the point of referral.² The policy requires Board members to apply a different test from children and older adults when deciding whether or not a young adult should have an oral hearing.³ For children under the age of 18, there is a right to an oral hearing if they cannot be released on the papers. For older adults, an evaluative decision must be made as to whether the requirements of fairness make an oral hearing necessary. For young adults, there is a presumption that they should have an oral hearing if

² The policy is set out in the Guidance which is available at: <https://www.gov.uk/government/publications/guidance-for-parole-board-members-on-young-adult-prisoners>. The Guidance states that the policy is suspended due to Covid but this suspension was removed in July 2022.

³ See Member Case Assessment (MCA) guidance, October 2022, page 66: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122381/Member_Case_Assessment_MCA_Guidance_v2.0_external.pdf



they cannot be released on the papers. An oral hearing enables greater involvement by agencies and professionals with the young adult producing better risk management and release plans; and greater engagement and participation on the part of the young adult providing a sense of fairness and the ability to make their case in person.

The Young Adult Guidance recognises that young adults as a “distinct group of prisoners, who are still in the process of maturing and who are often vulnerable, {which} deserves particular attention during the parole process”. While acknowledging that much of the advice within the guidance “can be applied to older prisoners in an age group up to 24/25 or beyond because they can still be maturing in neurological and psychosocial modes”, there is only a strict requirement for it to be applied to 18–21-year-olds despite recent evidence indicating that maturation often continues up to 25 and sometimes beyond. The wider age range is recognised by the prison and probation service.

Second, the “root and branch” review of the parole system published in March 2022, proposed to “re-focus the system to put public protection at the forefront of all parole decisions”.⁴ The review announced plans to make the test applied by the Parole Board clearer, introducing a more precautionary approach and ministerial oversight of decisions about offenders who have committed the most serious crimes; increasing the number of Parole Board members with law enforcement experience such as ex-police officers; and increasing victim participation in parole hearings. Some of these changes have already been implemented and are discussed below. The review responded to an alleged loss of confidence in the parole system following the decision to release serial sex offender John Radford (formerly known as Worboys) in 2018.

Third, new arrangements for the organisation of the probation service were introduced during 2021 and a new policy for the management of young adults came into force in March 2022.⁵ The probation service management of young adults policy acknowledges that young adults are more likely to be recalled to custody than their older counterparts. However, the policy does not expressly address the role of probation in managing young adults going through the parole process. The Offender Management in Custody (OMiC) model which aims to improve support and case management of prisoners through their sentences by prison based probation officers means that some young adults in prison do not have an assigned probation officer in the community.⁶ A joint thematic inspection of OMiC published in November 2022 raised concerns about the effectiveness of the system for those coming up for release.⁷ Even where a community probation officer is assigned, it is not unusual for young adults in custody to have very little contact with them prior to the parole review.

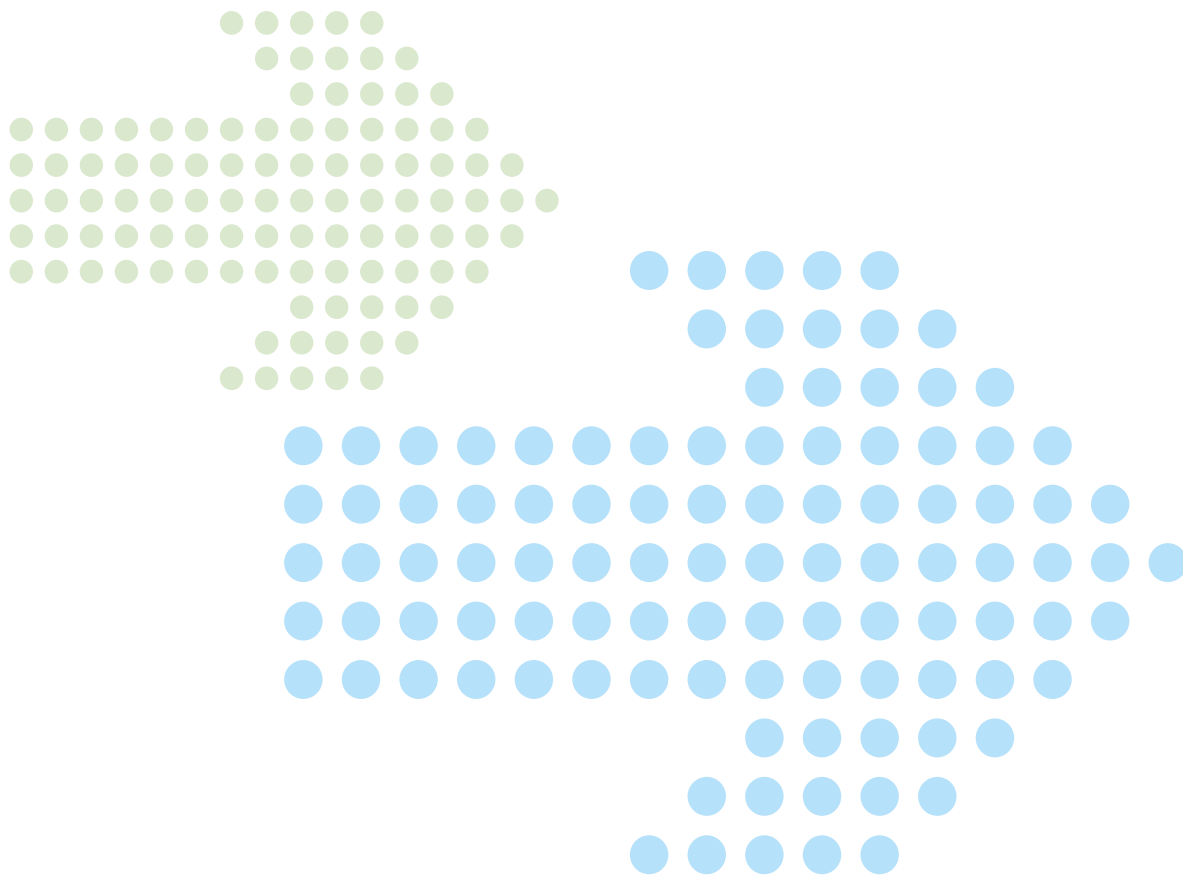
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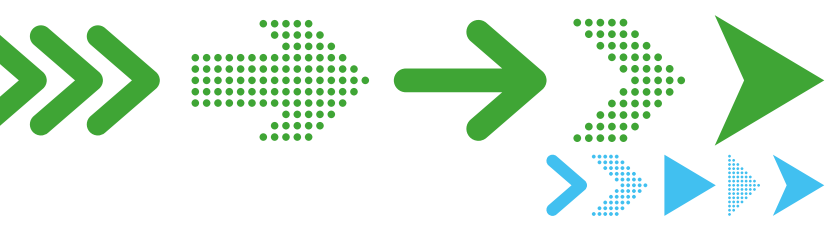
As probation plays an important role in the parole process, the reunification of the service following the unsuccessful Transforming Rehabilitation reforms, provides an important opportunity to improve practice, particularly in the light of the recommendations made by the Chief Inspector of Probation in the thematic review of probation recall culture and practice⁸. This called for a consistent framework to allow professional decision-making that is not susceptible to “knee-jerk reactions” and is “central to developing a professional rather than a fear-based culture”.

While the 2022 young adult probation policy does not specifically mention parole, it requires a distinct approach to work with people aged 18-25 at all stages of the process. For example it says that “Pre-release, careful thought should be given to the types and numbers of conditions applied to licences to ensure that they are proportionate, appropriate, and sequenced optimally to manage risk and reduce re-offending. Care should be taken to explain what licence conditions mean in language that is accessible to the young adult and their understanding verified”.

Given the general shift towards recognising the distinct needs of young adults across the criminal justice system, policies and practice are still not yet sufficiently developed or aligned to sufficiently support young adults going through parole.



⁸ <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/11/Recall-thematic.pdf>



3. AN OVERVIEW OF THE PAROLE SYSTEM

At the centre of the system is the Parole Board for England and Wales, a body that sits as a court and makes decisions and recommendations about those referred to it by the Ministry of Justice. There are two broad categories of cases that the Ministry of Justice refers to the Parole Board:

- Cases like Ali's where a person has been assessed as "dangerous", either at the point of sentencing or by the Secretary of State during a person's sentence.⁹ Most of these cases are where either a young adult is eligible for early release (in the case of Extended Determinate Sentences) or ultimate release (in the case of all indeterminate "IPP" or "life" sentences) and need to be directed by the Parole Board. If people in this category are released by the Parole Board but recalled to prison for breach of their licence conditions (including committing a further offence), their further release will also need to be considered by the Parole Board: the only exception to this is when the full term of an Extended Determinate Sentence has expired.
- Cases like Simon's where there is no assessment of dangerousness and the person was given an ordinary fixed term sentence and released automatically but has since been recalled for breach of licence conditions.

Every person released by the Board will be subject to licence conditions. These always include a set of standard conditions which require a person not to commit any offences and to be of good behaviour. The Board can also impose additional and bespoke conditions tailored to managing the risk the person is deemed to pose. Licence conditions are suggested by community probation officers but are set by the Board. Probation officers can initiate recall to prison if a person they are supervising breaches or fails to comply with any of these conditions.¹⁰ The recall process is administrative and does not require the oversight of a court. Where a person has been recalled on a determinate sentence, they can be re-released under licence by either the Secretary of State for Justice (this is called "executive release") or by the Parole Board.

The options available to the Parole Board will depend on the terms of the referral and the sentence the person is serving. At the time of writing, these can include directing that the person stays in closed conditions, directing their release or recommending to the Secretary of State for Justice that the person be transferred from closed conditions to an open prison where there is less intense security and opportunities for release on a temporary licence into the community. Decisions by the Parole Board about open conditions are only made in respect of people serving indeterminate sentences and are recommendations only. Decisions about release are currently binding on the Ministry of Justice although the Police, Crime, Sentencing and Courts Act 2022 introduced a new power to enable the Board's decisions to be set aside in certain circumstances.

⁹ See below for an explanation of power to detain cases introduced by the Police, Crime, Sentencing and Courts Act 2022
¹⁰ <https://www.gov.uk/government/publications/licence-conditions-policy-framework>



Parole Board members can make their decisions in two ways. All cases are considered initially “on the papers” by reviewing a dossier of documents compiled by the Ministry of Justice and, where available, representations and additional supporting evidence from the person or their lawyer. At this stage applications can either be refused, accepted, or sent to an oral hearing which is the second method by which decisions can be made. The paper stage is known as the Member Case Assessment (MCA). Oral hearings involve either a single member or a “panel” of up to three or four members who will convene a hearing, either remotely by video link or phone or in person where the person is detained and ask questions of professionals and, if they consent, the person being considered for Parole. Modest legal aid is available for prisoners who have very little savings and income to be represented at every stage of this process.

In the year ending March 2022, the Parole Board ordered the release of 4,139 people in prison and made 568 recommendations for people to open conditions.¹¹ The overall release rate at the paper stage was at around 7% for all applicants including those aged 21 and under. At the paper stage, there were only 25 releases of young people aged 21 and under. The overall release rate at the oral hearing stage was 54% for all applicants but 57% for those aged 21 and under.¹²

The release rate for women of all ages following an oral hearing was substantially higher (74%) than for men (54%), although it should be noted that very few women go through the parole process compared to men. In terms of outcomes for people according to their ethnicity, release rates following oral hearings across all ages were 55% for white and mixed applicants, compared with 52% for Asian and Black Applicants and 46% for Chinese and other applicants. The Parole Board does not publish data on release rates for all ages at the paper stage broken down by gender or ethnicity.¹³ However, at the paper stage, the release rate for women aged 21 and under was 0% (11 women were considered and none were released) and the release rate young adults from minoritised backgrounds was 5.2%, compared to 7.1% for white young adults. By contrast at the oral hearing stage 50% of women applicants were released (one of just two oral hearings) and 65.6% of applicants aged 21 and under from minority backgrounds were released at an oral hearing compared to 54.6% of white applicants.¹⁴

While provisional, this data suggests that member case assessment may not always secure fair outcomes for women and racially minoritized young adults and adaptations to the paper hearing process or expedited oral hearings may be particularly important in order to achieve fairer outcomes for these groups.

As the root and branch review of the Parole Board, published in 2022, found, the Board is “dependent on the effectiveness and efficiency of other parts of the parole system to deliver its objectives”.¹⁵ As well as prisons, these parts include the probation service who supervise people on parole, and the other agencies such as social services, psychology services and third sector organisations that may contribute to the management of an individual’s risk in the community and provide information relevant to the Board’s considerations.

11 Parole Board annual report 2021-22

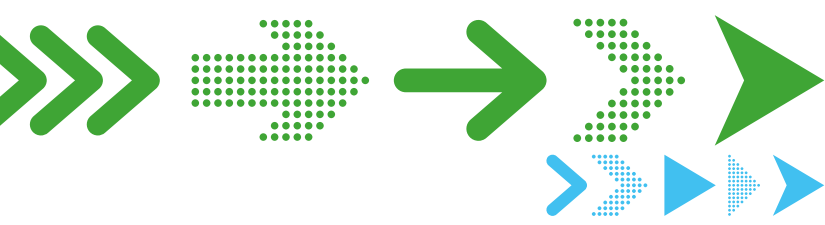
12 Ibid plus data from Parole Board

13 Ibid

14 Parole Board data

15 MoJ 2020 The Parole Board for England and Wales: Tailored Review

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927385/parole-board-tailored-review.pdf



4. A CHANGING LANDSCAPE – CHANGES IN LAW, POLICY AND PRACTICE AFFECTING PAROLE

Following the root and branch review (2022), there have been a number of significant changes to law, policy and practice in the parole process that have affected the powers of the Parole Board, the information it receives, the legal tests it must apply and what happens following its decisions.

First, a new “power to detain” introduced by section 132 of the Police, Crime, Sentencing and Courts Act 2022 means that some people on fixed sentences with an automatic release date may be referred to the Board by the Secretary of State for Justice before their automatic release date on grounds of an increased risk of serious harm. This means the person will only be released before their full sentence end date if the Board directs release. At the time of writing, this power is relatively new and it is not clear how frequently it will be used or whether it will particularly affect young adults.

Second, when it comes to consideration of whether a person serving an indeterminate sentence is suitable for a move from closed conditions to conditions of lesser security in an “open prison”, the test has changed.¹⁶ Prior to June 2022, the Board was required to consider the benefit to the prisoner of such move, among other things. Since June 2022, the Board is required to consider whether or not a move to open conditions “essential to inform future decisions about release and to prepare for possible release on licence into the community.” This is likely to have a significant impact on young adults as in some ways it will be much harder to argue that they will require a period in open conditions as they are more adaptable and less likely to have been institutionalised for many years. In the most serious cases where a period of time in open condition has been considered the traditional pathway towards release, it may result in a prolonged stay in prison, especially if there is not a sufficiently robust package of support in the community. Even where the Board recommends a move to open conditions, the Secretary of State has the final say in whether or not the move should take place. In addition to the test applied by the Board, the Secretary of State will now consider whether a move to open conditions would “undermine public confidence in the Criminal Justice System.” Since this new test has been introduced, the acceptance of recommendations made by the Board for moves to open conditions has fallen dramatically. In the year ending March 2022, 94% of the Board’s recommendations for open conditions were accepted by the Secretary of State. However, from April to August 2022, just 13% of the Board’s recommendations for open conditions were accepted.¹⁷

¹⁶ Secretary of States’ Directions 28 June 2022, <https://www.gov.uk/government/publications/secretary-of-states-directions-to-the-parole-board-june-2022>

¹⁷ <https://prisonreformtrust.org.uk/wp-content/uploads/2022/10/MJ-to-Peter-Dawson-PRT-10-October-2022.pdf>



Third, since July 2022, the Secretary of State has required all prison and probation staff to refrain from including recommendations in their reports and oral evidence to the Board in respect of a person’s suitability for release or progression to open conditions. Previously, report writers were required to do this and recommendations were considered to be highly influential in the ultimate decision. The prohibition on recommendations in reports is contained in an amendment to the Parole Board Rules 2019. However, the requirement not to make recommendations in oral evidence is contained in policy and is subject to a legal challenge. The Board has issued guidance to say that its members are not prohibited from asking questions in respect of recommendations.¹⁸ Lawyers representing young adults in the parole process have told us that many young adults find this policy difficult to understand. When they have developed a positive relationship with their probation officer in and out of custody, a young adult can they feel let down when the probation officer does not appear to support them in the parole hearing by recommending release.

Fourth, the period that the Board must consider when thinking about risk in determinate cases has changed following a judicial review in 2022.¹⁹ Previously in fixed term cases, the Board would consider the period between the review and when the person would otherwise be automatically released. Following this case, the Board has issued guidance which states that, in all determinate cases, risk should be considered without any temporal limit, i.e. “whether release would cause a more than minimal risk of serious harm to the public at any time”.²⁰ This interpretation of the Board’s guidance is subject to legal challenge as it means that those whom the courts have considered only require a fixed term sentence face a tougher test for release than those who have been deemed sufficiently dangerous to attract an indeterminate sentence. This is because the former will always cease to be subject to supervision whereas the latter will have supervision forever or until they have had their licence terminated by the Board. There is a real risk that young adults will be significantly affected by this change in approach as their on-going development and/or immaturity may mean that the Board may struggle to conclude that they are currently at a stage where they would cause no more than a minimal risk of serious harm at any time. On the other hand, it may be possible to argue that young adults have made long term and permanent shifts in their thinking which indicates a permanent reduction in risk.

Fifth, following the Worboys case and the root and branch review there are now two mechanisms by which the Board’s decisions can be reconsidered or set aside.²¹ Taken together, these mechanisms introduce a considerable amount of uncertainty and potential delay into the process. Given that young adults are in a period of change, any additional delay is likely to cause a greater detriment to them than older adults.

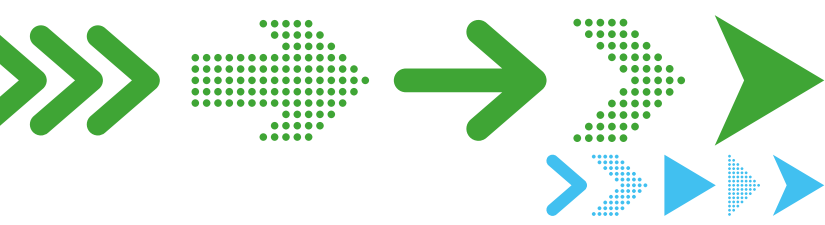
Sixth, following the Worboys case, a greater degree of transparency has been introduced into the parole process. Decision summaries can now be requested and there is the possibility of public

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¹⁸ See <https://laurakjanes.co.uk/blog/finally-the-full-suite-of-guidance-issued-to-hmpps-staff-on-not-making-recommendations-at-parole-reviews> for guidance obtained under Freedom of Information Act requests

¹⁹ R (on the application of the SSJ) v the Parole Board, ex parte Johnson [2022] EWHC 1282 (Admin).

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1114905/Types_of_Cases_Guidance_August_2022_v2.0_external.pdf

²¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122349/Reconsideration_Mechanism_v2.0_EXTERNAL.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1114273/Setting_Aside_Guidance_.pdf



parole hearings. While the Board's policy on publishing summaries indicates that information can be redacted or withheld if it pertains to somebody under 18²², there is no specific mention of young adults despite the fact that publicity around their parole decision may have the same adverse impact on their rehabilitation.²³

Seventh, since the Covid-19 pandemic, according to the Parole Board's 2021/22 annual report, almost all hearings have been held remotely. There is a real question as to whether or not young adults are disadvantaged by this compared with older adults who may be more confident in a remote hearing.

Almost all of the policies, law and guidance that apply to those going through parole make no distinction in respect of young adults. Recent changes to the parole system focus on the need to take a more precautionary approach towards releasing people into the community or recommending them for open conditions. This shift in focus, which is arguably unwarranted given the very low serious further offence rate by people released on parole²⁴, may prove unhelpful in developing a more nuanced approach towards young adults in the parole process.



22 https://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746541/Parole_Explained_-_A_short_guide_on_how_the_Parole_Board_works.pdf

23 <https://www.gov.uk/government/publications/applying-for-a-parole-review-to-be-public>

24 In the Parole Board's annual report for 2021/22, it was noted that "The Parole Board's serious further offence rate is consistently around 0.5% and only 1 in 4 of the prisoners reviewed by the Board meet the legal test for release. The vast majority are ordered to remain behind bars for the protection of the public.



5. RESEARCH EVIDENCE ON YOUNG ADULTS

Psychosocial maturity refers to the ability to manage oneself and relationships with other people. It has three aspects:

- temperance, which refers to the ability to hold back, to temper one's impulses and emotions
- responsibility, which refers to the ability to take responsibility for one's actions and future, and the ability to resist peer influence; and
- perspective, which refers to the ability to take into account the bigger picture when making decisions; for example the long term consequences which may flow from coming into conflict with the law.

Levels of maturity can be indicated by a range of factors relating, for example, to a young adult's thinking and behaviour, attitudes, and emotions; relationships, lifestyle and associates; involvement in education and employment and how they manage their finances. While there is an HMPPS screening tool for low maturity, assessing these factors in the highly abnormal environment of a prison is by no means straightforward. Young people under the age of 25 are more likely to engage in high-risk activities than older adults.²⁵ This is true whether in the community or in prison.

T2A advocates a distinct approach towards young adults that factors in their maturity in a way that does not disadvantage them and can support them to achieve better outcomes. Such approaches have been adopted in some parts of the criminal justice system. For example, when sentencing young adults, "age/lack of maturity" is a mitigating factor justifying a reduced sentence from the court. This is for two reasons; first because it may reduce the culpability of the young adult and second because it may lead to a sentence having a more severe and negative effect.^{26 27}

Reduced culpability stems from the fact that young adults "are still developing neurologically and consequently may be less able to evaluate the consequences of their actions, limit impulsivity and limit risk taking".²⁸ Young adults are also "likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers."²⁹ The implications of these types of behaviour for the parole process are considered below.

As for the effect of sentencing, young adults may find that a period in prison confirms a delinquent identity, particularly if the regime in custody is not appropriately geared to their developmental status. Recent reports by the Chief Inspector of Prisons have confirmed that conditions for young

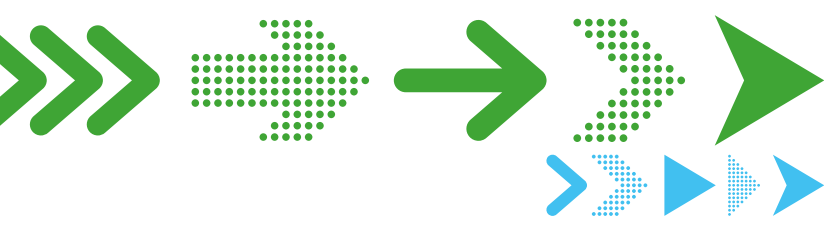
25 Howard League <https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf>

26 <https://howardleague.org/legal-work/sentencing-young-adults/>

27 https://howardleague.org/wp-content/uploads/2021/03/CLR_Sentencing_young_adults.pdf

28 Sentencing Council, <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>

29 Ibid



adults are particularly difficult, with a lack of appropriate resources and time out of cell.³⁰ As the Royal College of Psychiatrists told MPs “young adults are at a stage of developing their self-identity, settling into the adult world, finding their place, gaining independence and finding partners”.³¹ It is known that becoming settled in relationships, employment and stable accommodation and developing a sense of agency (being in control of one’s behaviour and thoughts) are known to support desistance from crime. These are all processes which are heavily delayed and distorted by a period of imprisonment so that a shift towards a pro-social identity can become more difficult to achieve.

On the other hand, young adulthood is a particularly good time to provide opportunities for learning, personal growth, and the development of pro-social identity, thereby encouraging desistance from crime.³² The Sentencing Council guidance recognises that “many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties.” But by virtue of their developmental status young adults can quickly become disillusioned and disengaged from professionals if support is not sufficient, relevant, or timely and there is a risk that unproductive or negative engagement with justice practitioners can compound their pro-criminal identity.³³ Other issues, including a history of trauma and neuro-developmental conditions or brain injury, which are known to be disproportionately prevalent in young adults, can compound these negative experiences and further hinder positive engagement.³⁴

Young adults may be particularly affected by whether they feel they are treated fairly and with respect. Evidence about procedural fairness suggests that more understandable and fairer criminal justice processes are likely to increase young adults’ compliance with their sentences and reduce young adults’ likelihood of committing further offences.³⁵ This has implications for:

- sentencing - for example in respect of Joint Enterprise offences³⁶ and increasing sentence lengths for serious violent offences and narrowing opportunities for young adults who have committed such offences as young people to demonstrate change and have sentences reduced
- treatment in prison both on a day to day basis by officers and psychologists and in terms of case management , sentence planning, and categorisation,
- licence supervision by probation officers, licence conditions e.g. to reside at Approved Premises and decisions to recall to prison and
- the parole process

30 <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/outcomes-for-young-adults-in-custody/>; see also successive annual reports

31 <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>

32 https://www.researchgate.net/publication/303867439_Desistance_from_Crime_and_Identity_An_Empirical_Test_With_Survival_Time

33 The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts <https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>

34 Williams et al Self-reported traumatic brain injury in male young offenders: A risk factor for re-offending, poor mental health and violence? *Neuropsychological Rehabilitation* Volume 20, 2010 - Issue 6

35 <https://justiceinnovation.org/areas-of-focus/improving-fairness>; <https://justiceinnovation.org/publications/fairer-way-procedural-fairness-young-adults-court>

36 Joint Enterprise is a principle which allows that an individual can be jointly convicted of the crime of another, if the court decides they foresaw that the other party was likely to commit that crime.

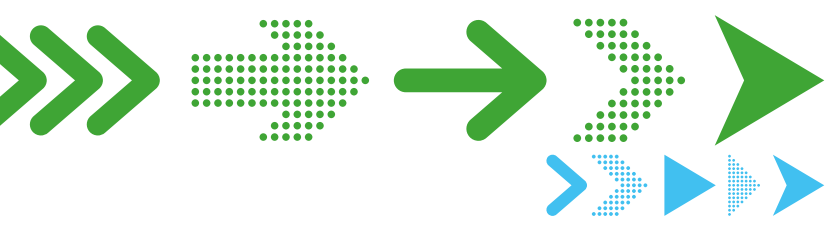


The young adult guidance for Parole Board members emphasises “fair treatment and use of procedures which can help counter potential bias. Support for improving procedures, taking into account the particular needs of young adults, comes from research into how criminal courts could adapt formal processes to factor in the specific needs of such prisoners. The evidence is that improving the perception of procedural fairness in the courts is likely to reduce reoffending for this cohort”.³⁷

The probation young adult policy advises practitioners to use ‘procedurally just’ forms of communication and emphasises the need to consider the impact on the maturation process of a return to custody. The Probation Service has also launched Next Steps, a programme which grew out of efforts in London to assist young people transitioning from the youth justice to adult system but is now available for practitioners to use with 18-25s, regardless of sentence type, who would benefit from building engagement at the start of the period of supervision.³⁸



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³⁷ Para 3.3
³⁸ <https://t2a.org.uk/2022/02/07/transitioning-young-adults-in-the-criminal-justice-system/>



6. THE IMPACT OF CUSTODY ON YOUNG ADULTS

As for the effects of custody on a young adult, the Sentencing Guidelines say that an immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody. These issues are not directly relevant to the Parole Board's considerations. What should be relevant is the fact that imprisonment can damage the development of maturity, at least temporarily.³⁹ This is likely to do with the absence of pro-social influences from family and non-criminal peers, the absence of practising the skills associated with maturity, and the potential for interactions that are not developmentally appropriate, to hinder the maturation process and the embedding of positive identities.

The Prison Inspectorate reported in 2021 that most prisons did not do enough to recognise and meet the differing needs of, and challenges posed by, young prisoners who were still maturing into adulthood while in custody.⁴⁰ The report found that young adults had more negative views than older adults of the support available to help them make progress through their sentence than older prisoners:

- a lower proportion than older prisoners said that staff encouraged them to attend education, training, or work (51% compared with 58%)
- a lower proportion understood what they needed to do to achieve their custody plan objectives or targets (80% compared with 86%)
- a lower proportion reported receiving help from staff to achieve objectives or targets in their custody plan (39% compared with 57%) or taking part in an offending behaviour programme in their current prison (43% compared with 50%)
- a lower proportions of prisoners aged 25 and under compared with older prisoners had found taking part in offending behaviour or other programmes, living on a specialist unit, or release on temporary licence, useful in achieving objectives and targets.

³⁹ Dmitrieva, Monahan, Cauffman & Steinberg, 2012. Arrested development: The effects of incarceration on the development of psychosocial maturity *Development and Psychopathology* 24(3):1073-90

⁴⁰ <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2021/01/Young-adults-thematic-final-web-2021.pdf>



7. MATURITY AND RISK

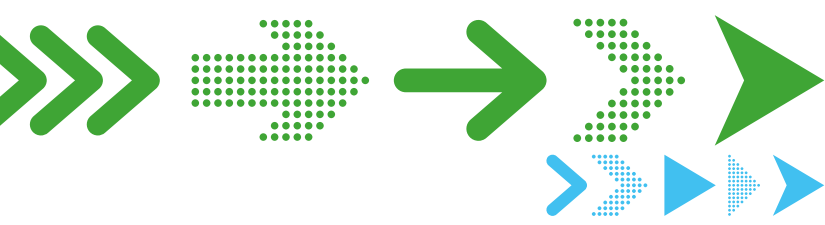
For the Parole Board, which is solely concerned with risk and public protection, the developmental characteristics of young adults may make it seem more likely that a young adult is not safe to release, making lack of maturity an aggravating rather than a mitigating factor, unless additional measures are taken to address the issue. A study by the Howard League of how courts take account of maturity in different settings found that when reviewing the sentences of murder committed by children, judges scrutinise “the extent to which the young person can be rewarded for his or her maturity with a view to reducing the punishment term”. Courts tend to give particular weight to the completion of relevant courses in prison aimed at reducing risk and to acquiring skills, remaining adjudication free and the detainee having accepted their offence and expressed remorse.⁴¹

Maturity is not something that is routinely factored into structured risk assessments, and often comes down to clinical judgement. One school of thought is that certain behaviours are down to immaturity and therefore should not be overly emphasised when assessing risk which could count against a young person. Another school of thought is that on-going immaturity makes a person inherently riskier precisely because they do not think through the consequences of their actions and serious harm may follow, even if it is not intended. On the one hand a young adult who has managed to mature in custody, despite the odds, will want to argue that he or she is less risky as a result. On the other hand, a young adult who continues to display some signs of immaturity will want to argue that this is not indicative of a risk of serious harm.

In some instances, the lack of worldly experience that young adults like Ali have had will be seen as problematic by the Parole Board on the basis that they will not have the life skills and experience to manage life’s problems. A crucial part of risk assessment is how risk will be managed in the community: it is vital that, when it comes to young adults who are still maturing and may lack life experience and skills, the risk management plan contains sufficient support to mitigate the risk arising from their immaturity.



⁴¹ <https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf>



8. DATA ON YOUNG ADULTS AND PAROLE

Almost all (over 90%) young adults considered by the Parole Board have been recalled to prison during the licence period of their sentence, as was the case for Simon.

In the year ending March 2022, the Board conducted the following number of reviews for people aged 21 and under at the point of the referral, a very small number of whom will have been under the age of 18:⁴²

- 388 paper reviews - 376 of which (97%) were recall cases: by comparison in the same period just 73% of all paper reviews across all ages concerned recall cases
- 183 oral hearings – 165 of which (90%) were recall cases: by comparison in the same period just 55% of all oral hearings across all ages concerned recall cases

The high proportion of recall cases among this cohort may be accounted for by the fact that this group is still changing and developing and therefore may struggle to comply with licence conditions without sufficient support.

Many of the young adults who are recalled to prison have been recalled for failing to comply with their licence conditions rather than because they have committed a new offence. Like Simon, they often struggle to cope with life in the community and break their licence conditions without fully comprehending the consequences of their actions.

The remainder of the Parole Board's young adult case load will mainly involve people like Ali who have been given a sentence by the court that is based on an assessment that they are "dangerous" and either their early release or ultimate release will need to be governed by the Parole Board. While these cases are comparatively small in number, they will almost always require careful consideration of the young adult's experiences to date and their maturation.

Considerations of maturity also come into question in respect of people who committed their offences as children or young adults but become eligible for parole when much older, although this is outside the scope of this report.⁴³

⁴² The specific data for young adults has been provided by the Parole Board to the authors of this report; the data in respect of all those going through parole is available here <https://www.gov.uk/government/publications/parole-board-annual-performance-data-for-202122>

⁴³ As the European Court of Human Rights ruled in *Hussain v United Kingdom* (1996) 22 EHRR 1, an indeterminate term of detention for a young person, which might be as long as that person's life, could only be justified by considerations based on the need to protect the public. Those considerations, centred on an assessment of the young person's character and mental state and of his or her resulting dangerousness to society, "must of necessity take into account any developments in the young offender's personality and attitude as he or she grew older."



9. PAROLE BOARD POLICY AND PRACTICE FOR YOUNG ADULTS

This section considers the extent to which the Parole Board’s policy and practice for young adults is distinct and identifies areas for development and improvement.

Since 2010 and following representations by the Howard League for Penal Reform, the small number of children under 18 at the point of referral to the Parole Board have been automatically granted an oral hearing, if they cannot be released through consideration of a dossier by a panel of Parole Board members “on the papers”.⁴⁴ More recently, following further representations by the Howard League for Penal Reform, the Parole Board has developed a distinctive approach to young adults aged 21 and under in two respects: policy which creates a presumption of an oral hearing for young adults and accompanying guidance (see Annex A).

AGE RANGE AND STRENGTH OF THE PAROLE BOARD’S POLICY AND GUIDANCE

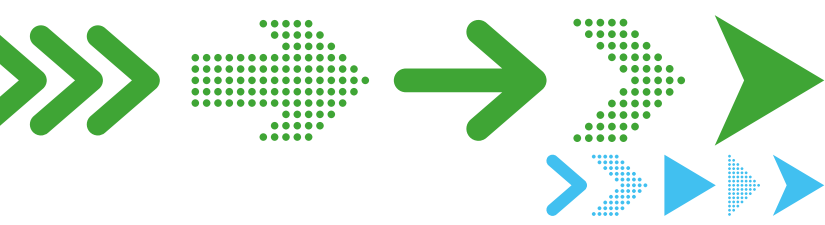
The evidence that young adults are still maturing well into their mid-twenties is now well established as shown in the section on research evidence above. In line with the evidence, there is a growing recognition by statutory bodies and organisations that this requires a distinct approach. For example the Sentencing Council explicitly recognises that young adults continue to develop and mature well into their mid-twenties and beyond and requires that this should be taken into account during the sentencing. The HMPPS definition of young adults includes individuals up to the age of 25. Increased support is now available to care leavers in the community until the age of 25 under the Children Act 1989.

However, the Parole Board’s policy on oral hearings applies strictly to young adults aged 18-21, although the accompanying guidance acknowledges that the same principles may apply to those aged 22 to 25.

There are good reasons for the Board’s policy to apply formally to all cases of young people up to the age of 25 referred to the Parole Board. This would bring the policy into line with other statutory bodies and organisations.

Further, practitioners told this review that the young adult policy is not yet fully embedded into the parole process, and there are many cases where it appears that the policy and guidance is not followed or a distinct approach is not taken. Steps should be taken to ensure that all cases where the applicant is aged 18 to 25 at the point of the referral are flagged within the Parole Board’s own

⁴⁴ Member Case Assessment Guidance 2022, page 66
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122381/Member_Case_Assessment__MCA__Guidance_v2.0_external.pdf



systems. The guidance should also be strengthened to encourage a different and more proactive approach to the way these cases are managed and to ensure that the test for release is interpreted in light of the needs of young adults. At present the guidance does not mention the needs of young adult women other than to highlight the absence of any prisons or approved premises in Wales. While the number of young adult women going through parole is very small, the particular and well-documented needs of this cohort should be highlighted in the guidance and members should be cautioned against bias towards this group.⁴⁵ While the guidance contains a section on the need to avoid bias against young adults from minoritised groups and highlights the importance of oral hearings for this group, it does not advise what proactive steps should be taken. Given the distinct needs of young adult women and minoritised young adults, the presumption for an oral hearing should be even harder to rebut for these groups.

Recommendation 1: The Board’s policy and guidance is welcome but should be strengthened and extended to young adults aged 25 and under

ROUTES TO RELEASE: PAPER REVIEWS, ORAL HEARINGS AND PRIORITISATION

Oral hearings for young adults

There are a number of significant advantages to oral hearings as opposed to paper reviews. First, many young adults are not aware of the paper review process taking place. While they are invited to name a representative and/or make representations, many don’t know how to go about doing this and end up with the process continuing in their absence. Although an oral hearing can proceed in the absence of the applicant, it cannot take place without the young adult’s involvement or at least an active decision not to participate. The hearing provides an opportunity for young adults to meet the decision makers and provide their point of view about their risk and plans for the future. Professionals are more likely to make an effort to help a young adult find legal representation where an oral hearing is due to be scheduled. An oral hearing is not only perceived to be a fairer approach than a paper exercise, but also provides the opportunity for a young adult to obtain more in the way of legal advice and representation and other support to participate effectively in the process, and to feel a greater sense of control over their life.

Hearings can provide important opportunities to point out discrimination. For example, during the research for this report, T2A heard of a hearing where a Black young adult was facing criticism for “failing” to complete the requisite period in a Psychologically Informed Planned Environment (PIPE). He revealed that he had been the only Black person on the unit which made it a very difficult environment in which to open up and engage in constant therapeutic processes. Even though he explained this at the parole hearing and the panel members appeared to take it on board at the time, a decision was made without acknowledging it.

⁴⁵ See, for example, https://t2a.org.uk/wp-content/uploads/2016/03/Young-Adult-Women-in-Custody_LR2.pdf



Independent expert reports can be commissioned at any stage but the paper review process is often too fast for this to happen. Independent experts can be invited to attend an oral hearing for their evidence to be tested. In Ali's case the independent psychiatric report transformed his case because once the ADHD diagnosis was in place, the other professionals found it much easier to understand his behaviour, both in the past and the present. They became more sympathetic to him and thought more about how they could adapt the way they worked with him and how the risk management plan could involve a higher level of support to meet his needs in the community. The expert was also able to provide guidance as to how Ali could be best supported at his hearing, including having his legal representative with him at the hearing even though the Panel and most of the witnesses were online. This really helped Ali during the hearing as he was able to ask his legal representative questions about comments he did not understand and she could sense when he was getting tired and needed a break.

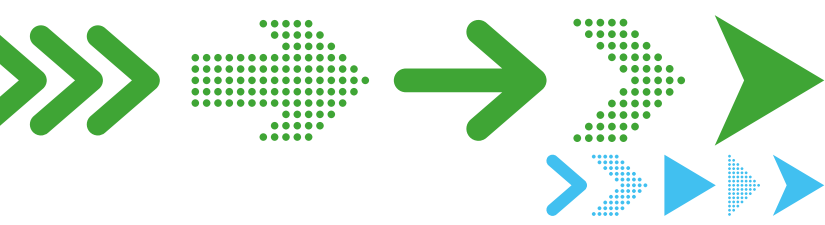
Procedural factors are particularly important for young adults. Importantly, an oral hearing concentrates the minds of professionals involved with the young adult and requires them to be accountable for their views and proposals: as the Guidance notes, in many cases it is only once an oral hearing is directed that serious thought and effort is put into formulating a robust risk management plan or even the provision of risk reduction work.

In Ali's case, it was only after his case was directed to an oral hearing and a prison was directed to provide a "programme needs assessment" that he was then offered the chance to do a risk reduction course that he had been waiting to do for years. By the time of his first oral hearing, he had nearly completed the course and professionals were all able to comment on the immense progress he had made. In Ali's case, he would not have had the opportunity to complete the course or get the independent psychiatric assessment if an oral hearing had not been directed. But for those serving short sentences, like Simon, oral hearings are of little benefit if they cannot be arranged quickly. In Simon's case, the decision directing an oral hearing acknowledged that there may not be time for it to be listed before his sentence ended and this is exactly what happened – he was released at his sentence end date before the hearing was listed.

Release "on the papers"

Notwithstanding the potential benefits of more oral hearings for young adults, the Tailored Review of the Parole Board published in 2019 recommended consideration of "whether and how more decisions could be made more proportionately without resorting to full face-to-face hearings, whilst respecting all prisoners' rights including the need for procedural fairness and ensuring the protection of the public."⁴⁶ During the research for this report, T2A heard the view expressed that more could be done to enable young adults to be released at the paper stage, without the need for an oral hearing. As discussed already, the vast majority of the cases at the paper stage concerning young adults are recalls on standard determinate sentences which is very different from the overall caseload of the Board across all ages. These are cases where the court did not deem the young person to be dangerous in the first place and the young adult was automatically released from the

⁴⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927385/parole-board-tailored-review.pdf



first part of their sentence on licence. Yet the release rate at the paper stage is just 6% compared to 57% at the oral hearing stage. The release rate for young adults following an oral hearing is much higher than the overall release rate for the Board which, according to the Board's 2021/22 annual report, tends to only release one in four prisoners that it reviews. Research needs to be conducted into what changed between the paper and oral hearing stages where release was directed following an oral hearing. However, lawyers that represent young adults told this review that many young adults are recalled for failing to comply with the conditions of their licence, which raises issues of manageability rather than an increase in the risk of harm to the public. The biggest problem in these situations is getting probation and social services to come up with a revised risk management plan that is more tailored to a young adult's needs on release.

An enhanced and more urgent focus on risk management plans from prisons, probation, social care, and legal professionals would in many cases enable the Parole Board to reach a decision on the papers. Where the risk management plan is not sufficient and there is no legal representation, a 14 day adjournment could become the norm with directions that the plan should be put in place, including where appropriate, what social care and third sector support is available and the young adult supported to get legal representation.

A large number of young adults in custody are care experienced. Yet not all young adults in prison get the support they are entitled to from their local authority. The Board should set directions to require care leavers to be identified by the community offender manager and ensure those responsible for supporting them provide information to the Board. Directions to the community offender manager can include a requirement to make inquiries as to whether the young adult has a personal advisor from a local authority children's services department or children's trust, if not, whether or not the young adult has ever been in care, looked after or had a social worker and if so, when this was and for how long. Such directions will enable young adults who are or should be care leavers to be identified which in turn may open up important avenues of support in the community to assist in developing protective factors and managing risk. The Parole Board's young adult guidance suggests that representatives from the local authority should be directed to provide information (and even attend hearings where appropriate). The guidance also says that hearings may be adjourned and if necessary, senior representatives from agencies such as Social Services can be directed to provide key assessments or attend a reconvened hearing. However, engagement with local authorities for care leavers should not be left to the oral hearing stage.

New case management powers could be better utilised at the paper stage to convene short directions hearings to make sure all relevant agencies are working together and focused on the urgency and need for a fully fledged risk management plan to enable the Board to make a decision. Lawyers told this review that all too often senior representatives from social services departments are not familiar with the parole process and do not understand the need to come up with a suitable plan approved by probation in order for the Board to make a decision about release. All too often they think they only need to get a plan in place if release is directed, rather than understanding that release will only be directed if the plan is good enough. A directions hearing during the paper stage could help to clarify this position with relevant agencies and set a clear deadline for the provision of information.



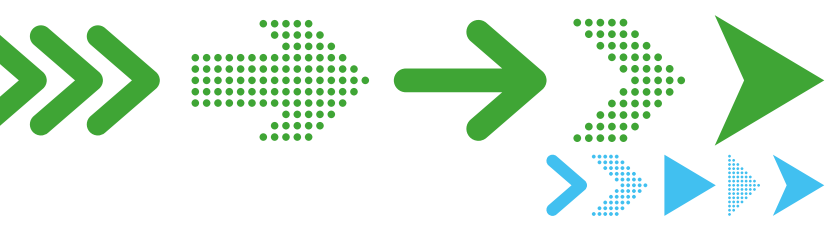
Some young adults may not obtain specialist legal advice at the paper stage, but for those who do, the fixed fee rate (currently £200) often means that they rely on the goodwill of lawyers to undertake the work necessary to liaise with professionals to produce an appropriate release plan - a task which is often more complex and time consuming in relation to young adults than older prisoners. The complexity can result from the need to identify what services the young person is entitled to, agree the most suitable arrangements first with young adults and ensure that the plans are approved by probation. Often young adult parole cases require a community care case to be conducted alongside them but there are very few legal practitioners who are trained in both areas of law.

Mechanisms for minimising delay

The complexities of young adult cases often risk them being greatly delayed. The recent report on parole by law reform and human rights charity JUSTICE found the “chronic delays that beset the system.... of deep concern”. At present the Board’s listing prioritisation framework states that where an applicant is “aged 18-21 at the time of referral”, that will be a reason for the case to be prioritised and that “We will always look to prioritise the reviews for offender’s who are under the age of 21 years at the commencement of their review irrespective of their review/sentence type.”⁴⁷ Yet, lawyers told this review that this does not always happen. Action should be taken to ensure that the listings process automatically prioritises everyone aged 25 and under. Delays are particularly concerning in cases like Simon’s where he was considered suitable for an oral hearing but this did not happen due to his sentence expiring within a few months of the decision to send his case to an oral hearing. Determinate recalls for young adults should especially be prioritised so this group is not faced with leaving custody without any supervision or support from probation.

Recommendation 2: More should be done to enable young adults to be released without the need for an oral hearing: where this is not possible oral hearings for young adults should be prioritised

⁴⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879799/Listing_prioritisation_framework_COV-ID_19_Final.pdf



EFFECTIVE PARTICIPATION IN YOUNG ADULT PAROLE REVIEWS

This review heard that young adults routinely struggle to participate in the parole process. Problems may involve:

- a) obtaining legal representation,
- b) getting copies of their own dossiers
- c) having somewhere safe to keep dossiers if they do get them
- d) making representations
- e) preparing for hearings even with their lawyers
- f) understanding the complexities of the system.

Research on parole has found that “in the processes that lead towards release, luck plays a significant role, for example, in whether prisoners find staff who have the time and commitment to ‘champion’ their progress. This undermines perceptions of legitimacy and can generate disaffection as well as dissatisfaction”.⁴⁸ This review heard that even something as fundamental as effective preparation for hearings with a legal representative relies on favours and relationships.

Adapting the process for young adults

Many of the complex processes around parole can be confusing for young adults, particularly those with learning disabilities or other neurodiverse needs. Training for the Parole Board members in addressing these complexities has been limited although the Guidance lists very useful ways effective participation can be encouraged in oral hearings through appropriate communication by the panel with the young adult: by using their first names, avoiding jargon, and checking on understanding.

A particular challenge arises in relation to people who are recalled to prison for alleged offending while on licence but are not then charged. The Parole Board published guidance on dealing with unproven allegations. The guidance been subject to a legal challenge and the issue was considered by the Supreme Court in November 2022.⁴⁹ Young adults in particular may find it hard to understand the legitimacy of being sent back to custody in such circumstances and why the risk assessment exercise does not correspond or relate to their experiences of “stricter” justice in the rest of the system.

In terms of preparation for hearings, the Guidance says panels should consider “suggesting that officials show the young adult and representative (if attending the prison) the room in advance of the hearing and that they explain who will be there and their roles, and who will be there in person or joining via remote means”. Such good practices arguably need to be more forcefully encouraged. This review also heard that involvement in a directions hearing held in advance of an oral hearing, sometimes remotely, can familiarise a young adult with who is involved and what is likely to happen.

⁴⁸ Padfield N Parole Board oral hearings 2016-2017 – exploring the barriers to release Stage Two of an Exploratory Study

⁴⁹ <https://www.supremecourt.uk/cases/uksc-2022-0052.html>



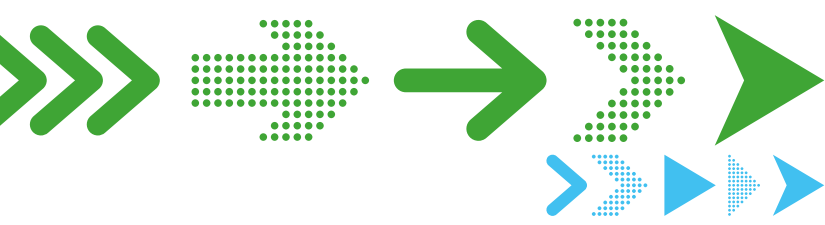
This review heard that it may be that young adult cases typically take a longer period of time to complete due to the complexity of the issues that are likely to arise (if, that is, they are properly considered).

In a recent reconsideration case involving a 25-year-old, it was argued that the oral hearing should have been listed for two days due to the number of witnesses giving evidence, particularly as “the prison needed us to leave the prison by 5.00 pm. This resulted in the Community Offender Manager having to give rushed evidence as her evidence was last”. The application for the case to be reconsidered was rejected, in part because the Judge ruled that “panels of the Parole Board are well used to gathering the information they need within restrictive time limits.”⁵⁰ In the case of young adults, such restrictive time limits should be relaxed wherever possible. Lawyers told this review that young adult cases are often listed for too short a period, resulting in lengthy adjournments. Young adult cases should be a single listing so no other case is heard that day. They represent a small enough section of the Board’s overall caseload to make this feasible and will reduce overall delays and adjournments.

The effectiveness of participation is also affected by the use of remote hearings. The Parole Board does not consider remote hearings via videolink to be suitable for young people under the age of 18, although these often are conducted by video link. Face-to-face meetings with the panel should therefore be arranged for young adults wherever possible without causing undue delay, given that many young adults retain the characteristics of childhood. As for young adults, this review heard that while some young adults like remote hearings because it may feel less intense, others find it traumatic and distressing to discuss personal and sensitive matters in a rushed manner, with frequent technical problems meaning that the priority becomes getting the key message across without nuance or context. Lawyers experienced in representing young adults told the review that being with the young adult in person, even if the Panel and witnesses are online, is almost always more effective.

The JUSTICE Report recommended that where an oral hearing is directed, an individual should have the right to an in-person hearing on request, and the right to have their legal representative physically present with them during a remote hearing. T2A notes there is no prohibition on lawyers being with their clients in person but considers that the Parole Board should actively encourage it in young adult cases.

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⁵⁰ <https://www.baillii.org/ew/cases/PBRA/2021/114.html>



Encouraging legal representation

This review heard that the outcomes of Parole Board hearings can depend a great deal on the quality of legal representation. The Parole Board does not have power to order a young adult to secure legal representation. We were told by one member that all they can do is to flag their concerns and hope that something is done. However, the Board can and should direct the prison and probation service to take steps to do all they can to support a young adult to find one.

The Young Adult Guidance says every opportunity must be given for submission of representations. If the young adult appears to be unrepresented, the Parole Board panel should ask the Secretariat to seek clarification from HMPPS on the position. If necessary, the Secretariat can contact the Association of Prison Lawyers so that arrangements can be made for a prison law firm to contact the young adult.⁵¹

If nothing is done, hearings will fail to meet minimum standards of procedural fairness. This review heard that, despite the possibility of a direction from the Board and the provision in the Guidance for the Secretariat to take steps, too often young adults are not represented, especially at the paper stage of the process. Simon did not have a lawyer until an oral hearing was directed and his prison offender manager contacted the Howard League to see if they could help him find representation. There used to be prison officers who were designated to help people in prison secure legal representation. This role is now defunct and it is often left to prison offender managers to try to help young adults find legal representation. Some young adults may be under the impression that they have representation from the criminal practitioner who defended them but unless the lawyer works for a firm that has a prison law legal aid contract, they will need a separate lawyer, unless they can pay privately.

The legal aid rates of pay for prison law work are very low. The number of prison law providers doing prison law legal aid work has reduced by 70% in the last 10 years.⁵² The Howard League for Penal Reform, which has a free telephone advice line which is automatically added to the pin numbers of young people in prison, play a leading role in representing children and young adults, but cases fall through the net leaving young adults at risk of unnecessary and prolonged periods of imprisonment.

Young adults going through parole may have multiple unmet legal needs which will impact on the parole review, including ongoing criminal matters, community care or immigration matters. Unlike the children's secure state where there are advocates, there is nobody with responsibility to help young adults identify avenues for legal support.

Young adults who are care leavers may require legal support to get the local authority to accept their entitlement to help with education, accommodation, and finances (especially if the right only accrued due to time spent on remand in local authority accommodation).

⁵¹ Parole Board Guidance 11.25

⁵² Legal aid statistics England and Wales tables Oct to Dec 2021, 2022, Table 9.1



Recommendation 3: More should be done to ensure effective participation and legal representation for young adults

PAROLE BOARD DECISION-MAKING FOR YOUNG ADULTS

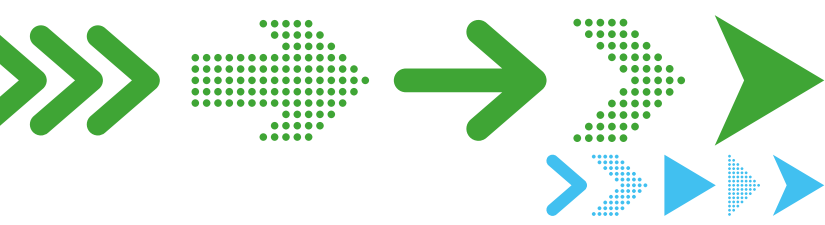
The Board's statutory test for release is set by Parliament and applies equally to young adults as it does for children and adult prisoners. The test is that release can only be directed if a panel is satisfied that it is no longer necessary for the protection of the public from serious harm that the person be confined in custody. Moreover, "directions should not be made in relation to the management of the prisoner's sentence."⁵³ Recommendations in respect of sentence planning for young adults are dealt with below.

However, the Parole Board can and arguably should adapt its decision making in the way it applies the test for young adults. At present, the Guidance does not deal with this.

When assessing whether the statutory test for releasing a young adult is met, the Parole Board needs to adopt a distinct approach which recognises that young adults are different from older adults. Young adults cannot be expected to suddenly be the finished product and may still show signs of impulsivity or poor consequential thinking because the maturation process is not yet complete. However, where this is the case, the Board needs to go on to consider whether, given that they are likely to be in a period of developing desistance, whether their risk can be effectively managed with additional support while their internal controls continue to develop. Many young adults are owed statutory duties for the necessary support and supervision to be provided under the Children Act 1989 and these duties can last until the age of 25. As already discussed, the Parole Board can direct this information to inform its review. It should also take care to ensure that unnecessary adjournments and delays do not deprive young adults of time-limited assistance in the community and where appropriate expedite reports and deadlines to avoid this.

In Ali's case his adjournment meant that he would likely be released just before his 25th birthday and his home children's services agreed to an additional six months of support in recognition of his ongoing needs. Panels should be particularly mindful of the impact of adjournments or deferrals on arrangements for support. Panels should also be alive to the fact that evidence of positive change in young adults during a relatively short period of time may be permanent and genuine in a way that is less likely in the case of older adults whose maturation process is complete. In Ali's case, he demonstrated a massive shift in his attitude and presentation during the adjournment period that was consistent with his maturation, which was confirmed by the psychological and psychiatric evidence.

⁵³ See oral hearings guidance 2022, p 23 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122367/Oral_Hearing_Guidance_v2.0_external.pdf



It is well established that there are particularly high levels of need among the young adult population in prison, including high levels of neurodevelopmental disorders. The management of risk for people with such difficulties needs to be considered within the context of the support they will receive to manage their difficulties. In such cases, the Board should set directions for health, social care and probation to outline how the young adult's needs will be met. In Simon's case, agreement with the local authority was secured to provide him with a discretionary leaving care service given his vulnerabilities arising from his FASD but unfortunately the Parole Board was unable to meaningfully consider the impact of this on his suitability for release due to the lack of time before his sentence end date.

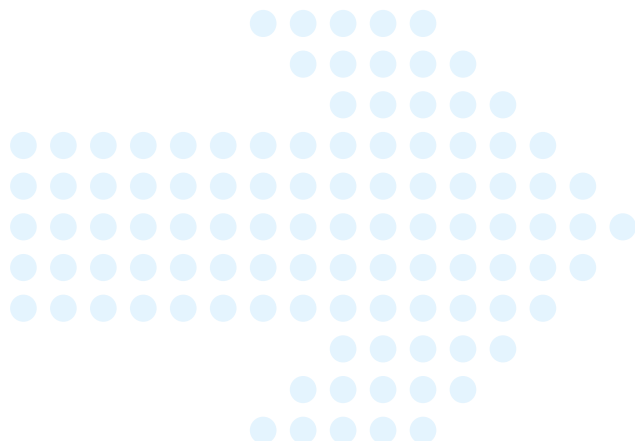
Recommendation 4: The Board should tailor the information it directs and its interpretation of the test for release in light of the evidence about the distinct needs and risks of young adults

MONITORING THE IMPACT OF THE YOUNG ADULT POLICY AND GUIDANCE

T2A welcomes the work by the Parole Board to acknowledge the distinct needs of young adults. Given the much higher rates of release of young adults following oral hearings, the presumption that all young adults should have an oral hearing if they cannot be released after a paper review is a huge step forward.

However, as illustrated by the sections above, there is still much that can be done to ensure that current guidance and policy is followed and to monitor its impact.

Recommendation 5: The Board should monitor the application and impact of its young adult guidance and policy





10. PRISON AND PROBATION POLICY AND PRACTICE FOR YOUNG ADULTS IN THE PAROLE PROCESS

HMPPS SENTENCING PLANNING, RECALL AND PAROLE POLICIES FOR YOUNG ADULTS

The information provided to the Board, with the exception of independently commissioned assessments, is all subject to the requirements of HMPPS policies, including those on sentence planning, recall and parole. Therefore the assessments, interventions and reports provided to the Board are within the control of HMPPS. However, most of these policies do not contain any specific requirements for young adults.

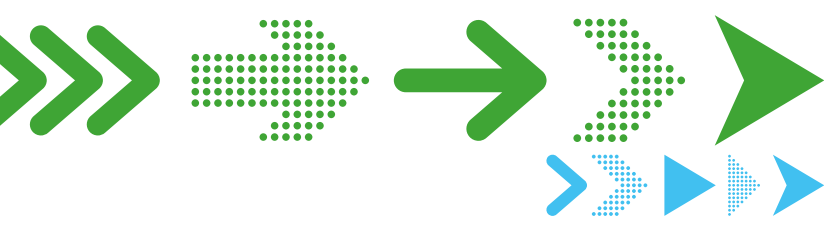
The Board can direct reports but its own guidance is clear that members should resist any requests by a prisoner to advise the Ministry of Justice about the need for specific treatment or offending behaviour courses, suitability for transfer to hospital under the Mental Health Act, or re-categorisation within closed conditions.⁵⁴ In a recent reconsideration case involving a young adult, both the prison and community offender managers had recommended that the applicant not be released until his risk had been reduced by successful completion of a course which the prison had not yet been able to provide. While this was “a matter of regret”, the Board could do nothing but assess the risk of serious harm posed by the Applicant at the time of the hearing and whether it could be safely managed in the community.⁵⁵

There has been a longstanding debate about whether the Parole Board should play a wider role in advising or requiring the Prison Service to manage sentences in a way which promotes the earliest possible release and reintegration. One leading lawyer has argued that “the parole process involves the examination by an independent, expert, court-like body into the ongoing detention of prisoners. There is no logical reason why this should not incorporate sentence planning advice in appropriate cases. Sentence planning is inextricably linked to progression towards release. Poor, inappropriate or rigid sentence planning keeps prisoners in custody longer than they might otherwise be”.⁵⁶

⁵⁴ Ibid

⁵⁵ <https://www.bailii.org/ew/cases/PBRA/2019/61.html>

⁵⁶ <https://www.sl5legal.co.uk/single-post/2017/10/18/submission-to-the-justice-select-committee-evidence-session-the-work-of-the-parole-board>



The recent report by JUSTICE on parole recommended that the Board should be empowered to consider the impact of continued incarceration on an individual's chance of being rehabilitated and "have greater oversight of an individual's progress through prison to ensure that proper sentence planning takes place".⁵⁷

It may be tempting to think that young adults, for whom a problem solving approach is particularly relevant, represent highly appropriate cases in which the Board should play a more proactive role in identifying and promoting measures which prisons should offer individuals in order to increase their maturity and reduce risks of re-offending.⁵⁸ However, there are downsides to the Board assuming a sentence management role in respect of the cases they consider. Such a role can result in a person's detention being extended by months or years in order to undertake the courses, treatment or programmes deemed necessary. For example, in Ali's case, the prison service failed to assess him at an early stage in his sentence to see what courses he needed to do. It was only after the parole review began and such an assessment was directed that it was carried out. Due to this delay, by the time of the oral hearing the course was not complete (although it was almost done) and the Board adjourned while the course was completed and up to date risk assessments and risk management plans were prepared. All of this was appropriate in the particular circumstances of his case and resulted in a robust evidence base for a release direction. However, it resulted in a delay of well over a year which would not have been necessary if the prison and probation service had done this work without prompting from the Board.

What is needed is a system of sentence planning where young adults have a clear sentence plan that will enable them to complete relevant risk reduction work and are prioritised for interventions. Risk management plans need to be developed before their parole review. If they have been recalled, this work should commence at the moment of recall. A specific sentence planning policy should be in place for young adults which requires frequent reviews to reflect the rapid pace of change young adults experience. Such reviews should involve community offender managers. Legally aided advice and assistance should be reinstated to challenge instances where this does not happen.⁵⁹

The role that prison and probation staff should play to ensure the timely and efficient completion of the parole process for all ages is set out in a policy framework introduced in 2020 and regularly updated.⁶⁰ It is intended to achieve a variety of outcomes including a dossier for the Board which provides a robust and current assessment of risk, and which is comprised of good quality reports produced by authors with a good understanding of the case, thereby assisting the Parole Board to make an informed decision.

There is no reference to any special considerations for young adults which might include, for example, emphasising the importance of the most up to date reports possible for young people who may be changing rapidly due to their stage of maturation or the importance of risk

57 A Parole system fit for purpose Justice 2022 JUSTICE-A-Parole-System-fit-for-Purpose-20-Jan-2022.pdf

58 A problem solving approach aims at tackling the root causes of offending behaviour

59 Legal aid for sentence planning ended in 2013 as part of a package of reforms to criminal legal aid.

60 <https://www.gov.uk/government/publications/generic-parole-process-policy-framework>



management plans containing additional support for young adults and drawing on all available support for young adults in the community, for example from mental health and social services.

The same applies to the recall policy framework. The sentence planning framework only makes one reference that could be construed as applicable to young adults: it states at paragraph 4.40 that “the sentence plan must reference any specialist assessments for complex needs completed in custody by other providers including education. Specialist assessments would include those completed on... young offenders.” However, there is no requirement to ensure that courses are appropriate to the needs of young adults or that young adults should be reviewed more regularly or prioritised for interventions.⁶¹ Parole Assessment Reports (PAROM) are, however, subject to a Quality Assessment Framework (QAF) conducted by Senior Probation Officers (SPOs). SPOs consider the extent to which the maturity of the person on probation has been analysed when making a quality rating.

This review heard that parole and recall dossiers sometimes include evidence which can lead to discrimination against minoritised young people. For example, the review heard from one practitioner that references to young Black boys being stopped and searched are made in a manner assumed to indicate risk rather than any possibility of racism, “young black men in groups being referred to as gang-affiliated, allegations of weapons routinely referred to machetes when they concern young Black adults, and visits to get hair done by teenagers looked upon with suspicion of grooming rather than simply getting their hair braided by friends”. The same concerns were raised by JUSTICE in the report ‘A Parole System Fit for Purpose.’

The JUSTICE report recommended a review of the form and content of dossiers. While there may be a case for a more standardised approach, in cases involving young adults, the priority should be to ensure that sufficient and up to date information is available and presented effectively.

The new probation policy on young adults does not specifically mention parole although it does reference pre-release planning and recall, all of which can involve the parole process. The policy, for example, expects probation practitioners to actively consider which members of a young adult’s family/support network needs to be included in pre-release planning and invite them to handover meetings between the offender managers in custody and the community. There is also emphasis on addressing maturity through sentence planning and ensuring licence conditions are suitable. There is no evidence about the extent to which this happens in practice.

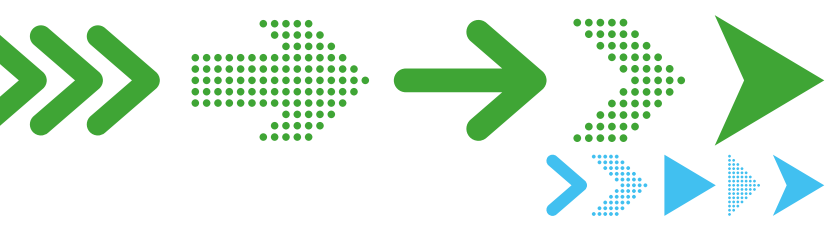
There is no specific mention of young adults in the framework setting out the mandatory actions which the Probation Service must complete for all indeterminate sentenced individuals on licence and parole-eligible determinate sentenced individuals on licence.⁶²

Licence conditions are governed by a framework policy which does not make any specific reference to a distinctive approach to young adults.⁶³

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⁶¹ <https://www.gov.uk/government/publications/recall-review-and-re-release-of-recalled-prisoners> and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789926/manage-custodial-sentence-pf.pdf

⁶² Managing Parole Eligible Offenders on Licence Policy Framework Those who have their licences managed by NPS local arrangements are not covered by this Framework.

⁶³ <https://www.gov.uk/government/publications/licence-conditions-policy-framework>



Recommendation 6: HMPPS policies on sentence planning, parole and recall should be tailored to the needs of young adults

RISK ASSESSING YOUNG ADULTS

Risk assessments for young adults need to be done differently to be meaningful and accurate. It is widely accepted that “effective assessment of risk is dependent not only upon gathering as much information as possible, but also on making the best use of it. It also requires a constant updating of the information and analysis, especially in the case of young offenders who may be changing and developing at a rapid rate.”⁶⁴

In reaching any decision, the Board will consider a number of assessment reports about a young adult and an oral hearing can provide the opportunity to question the authors. Core reports which will always be considered including reports by the Community Offender Manager (from the probation service) and the Prison Offender Manager (the probation officer in the prison); and the OASys assessment.⁶⁵ There may be additional assessments from psychologists or psychiatrists, commissioned either by the Secretary of State for Justice or the young person’s representative. As described above, since July 2022, the Parole Board Rules prohibit reports prepared on behalf of the Secretary of State for Justice from containing a recommendation in respect of a young adult’s suitability for release or progression to an open prison. However, reports commissioned by a young person’s legal representative can include recommendations. Panels are not obliged to adopt the opinions and recommendations of any particular professionals or other witnesses but they should give reasons for departing from them.⁶⁶ Therefore, the risk assessments and reports provided to the Board are very important.

The 2015 National Standards for the Probation Service required that reports prepared for the Parole Board need to cover all the key risk factors, including a proposed risk management plan: “Officers need to provide a coherent, accurate, up-to date and impartial assessment that references victim statements/information (where relevant). In particular, the report needs to include a risk management plan that sets out the assessed Risk of Serious Harm level the offender poses if released now and how the risk of serious harm will be managed. The plan should include any MAPPA⁶⁷ involvement and relevant multi-agency planning undertaken or to be undertaken, plus any additional licence conditions (over and above the standard conditions) being proposed, with a clear explanation of the purpose and necessity of each condition”.⁶⁸ There was no mention of any specific considerations, for example maturity assessments, in respect of reports for young adults.

64 Nash M 2007 Working with Young People in a culture of Public Protection in Blyth et al Young People and Risk

65 Oasys is

66 For a recent reconsideration case where the Board did not follow the recommendations of professionals see <https://www.baillii.org/ew/cases/PBRA/2019/71.html>

67 MAPPA Multi agency Public Protection Arrangements is the process through which the police, probation and prison services work together with other agencies to assess and manage violent and sexual offenders in order to protect the public from harm. It is a system of sharing information and combining resources to maximise the risk management in place for each individual offender.

68 Practice Framework National Standards for the Management of Offenders for England and Wales August 2015



In 2021, new standards were published which make less specific reference to parole reports.⁶⁹

In terms of timeliness of reports, Parole Board guidance on oral hearings reminds Panels to consider any additional directions they need to make in respect of reports.⁷⁰ For young people whose maturity is still developing, there is a strong case that up-to-date assessments should be prepared regularly to reflect up to date changes. It was notable that in Ali's case witnesses remarked on huge changes they had observed within the six month adjournment period.

Having a full picture of a young adult's history may also be important and young adults should be invited by professionals to suggest reports and information for inclusion in the dossier that might help the Board to better understand their past and how they have changed. Where applicable, this might include obtaining assessments from the young adult's time in the youth justice system.

There may be value in the Board receiving reports from people who have relationships with the young adult, and which contain proposals for practical input to support them in the community. For care leavers, this will take the form of a "pathway plan" outlining the support a young person will be able contribute to and access.

Assessments for parole should be based on a risk formulation which aims to integrate various risk factors to explain why a person's offended and provide a basis for management of risk. Current commonly used risk assessment tools involve structured professional judgement combined with structured frameworks with a focus on static and dynamic risks, including a focus on risk management and future planning. However, none of the current risk assessment tools are specifically designated for use with young adults.⁷¹ The review heard that it is a matter of clinical discretion whether to use a tool designed for children or adults. For example, for young adults who have committed violent offences, the two main risk assessment tools are the Structured Assessment of Violence Risk in Youth (SAVRY) for children or the Historical, Clinical and Risk management 20 (HCR20) for adults. The former has been designed for children but can be used up to the age of 19 and includes an assessment of protective factors. The latter has been designed based on an adult sample and does not include an assessment of protective factors but can be combined with a Structured Assessment of Protective Factors for violence risk (SAPROF) – a special youth version of this tool exists for those aged 12 to 23.⁷² The critical thing will be for the person completing the assessment to have experience of young adult needs and to ensure that their assessment uses clinical judgement to factor in the particular characteristics and needs of the young adult. There are no validated measures to address psychosocial maturity, although a clinical assessment may be able to comment on where a young adult is on the three recognised markers of responsibility, temperance and perspective with a view to identifying what additional help a young adult may need to manage these domains.⁷³

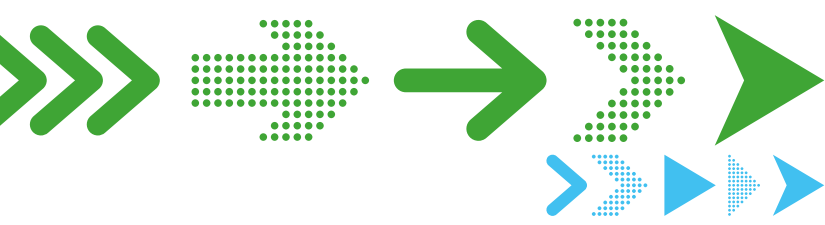
69 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/998799/National_Standards_2021_-_Supporting_transition_to_the_Unified_Model_-_June_2021_in_English_.pdf

70 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122367/Oral_Hearing_Guidance_v.2.0_external.pdf

71 Note that the maturity screening tool is not a risk assessment tool

72 <https://www.saprof.com/saprof--youth-version.html>

73 Steinberg, L., & Cauffman, E. (1996). Maturity of judgment in adolescence: Psychosocial factors in adolescent decision-making. *Law and Human Behavior*, 20, 249-272.



Unless and until specific tools are developed for young adults, experts and the Parole Board will need to make additional efforts to ensure that risk assessments factor in maturation and the impact of the young adult's age and stage of development in a way that does not penalise them. Practitioners preparing reports will need to assist the Board by providing as much relevant information in respect of a young adult's maturity and support needs. During the course of this review there was a repeated question about whether there is an over-reliance on risk algorithms in determining the strength of the case for releasing young adults and an under-reliance on exploring what kind of supportive "scaffolding" can be put in place in the community in order to manage that risk effectively.

This review heard that practitioners focus too much forensic psychological risk assessments compared with psychiatric reports which might assist in better understanding risk and how to manage it. In Ali's case the diagnosis of ADHD was transformative and represented a sea-change in the way professionals spoke about him and planned to support him.

Challenges to Assessment

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Particular issues arise in relation to the assessment of young adults in prison. The first concerns the extent to which behaviour in prison is a guide to likely behaviour outside. The Board "is entitled to take account of adjudications as relating to the compliance (and therefore manageability) of a person, which then goes to the question of risk".⁷⁴ Young adults tend to be over-represented in the disciplinary system and may respond poorly to it due to their stage of maturation. However, there is a need to take account of the context of behaviour in prison, evaluate what that suggests about risky behaviour in the community and identify the support needed to manage it.

As Nicola Padfield has stated: "The challenge of proving from the inside of a violent and dangerous place that you are safe to release is obvious".⁷⁵ The difficulty may be even greater for young adults given the higher levels of violence in Young Offender Institutions.

In Young Offender Institutions, young adults often feel they have to respond to 'disrespect' immediately otherwise they run the risk of becoming victims of bullying. A 16-year-old told Charlie Taylor, former Chair of the YJB, that

"On the out, I would just walk away, I wouldn't get involved, but in here you have to. You can't let people get away with it, you have to fight back. I don't like fighting, but in here you can't be pushed around."

This review heard that similar considerations apply for many young adults.

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⁷⁴ <https://www.bailii.org/ew/cases/PBRA/2020/53.html>

⁷⁵ Padfield 2017 Parole Board oral hearings 2016 – exploring the barriers to release. Avoiding or managing risks? Report of a Pilot Study



Recommendation 7: Assessment tools should be developed to factor in the needs of young adults

TAILORED INTERVENTIONS FOR YOUNG ADULTS

While the prison service has made a promising start through its maturity screening tool, and exploration of trauma informed practice, there is a significant gap in addressing the developmental needs of young adults through tailored interventions .

Young adults need to be able to show those working with them and the Parole Board that they are maturing. Research has found that “psychosocial immaturity is strongly related to youth and criminality, while psychosocial maturity is associated with desistance from crime.”⁷⁶ Most young adults, even those convicted of serious/or violent offences, “age out” of crime as they grow older. As the Sentencing Council puts it, “many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore, a young adult’s previous convictions may not be indicative of a tendency for further offending. There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct”.⁷⁷ However, in prison it is difficult for a young adult to demonstrate that they have matured. Interventions that allow a young adult to demonstrate the change they may have made through work or naturally as part of the aging process would benefit all those working with the young adult and the Parole Board.

Such interventions should be trauma informed and take account of the high likelihood of mental health and neurodiversity issues. This is because many young adults may have experienced trauma and this is often heavily linked to their difficulties in complying with conditions. Young adults may have higher incidences of mental health problems—and also emerging mental health issues and neurodiverse needs – that have not been identified, diagnosed, or understood.⁷⁸ This is why the Probation Policy emphasises “a holistic approach ... achieved by working in partnership with other agencies involved in the young adult’s life”.⁷⁹ Furthermore “practitioners should recognise and respond to the young adult’s intersectionality⁸⁰ in delivery of the sentence, in order to work with the young adult in a holistic, effective manner”.

The provision of such support and interventions to young adults in prison (and in the community) has recently been informed by the development of a ten-item maturity screening tool which can be used with young adult males aged 18 to 25 years old. Its aim is to enable issues relating to maturity to be appropriately addressed in prison, although it may also have use in parole decision-making. It uses data already available in the OASys assessment, and a score is automatically

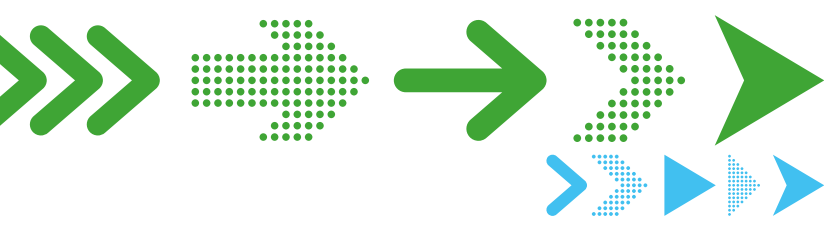
76 Wakeling H and Barnett G 2017 Development and validation of a screening assessment of psychosocial maturity for adult males convicted of crime

77 Sentencing Guidelines

78 See for example Hughes N et al 2012 Nobody made the connection: The prevalence of neurodisability in young people who offend https://dera.ioe.ac.uk/16045/1/Neurodisability_Report_FINAL_UPDATED__01_11_12.pdf

79 Ibid 6.21

80 Intersectionality refers to how more than one dimension of a person’s identity can create discrimination or privilege



generated for males aged 18-25 who have a full or updated “Layer 3” OASys assessment, which is used for higher risk offenders. There is a maturity flag on the summary sheet screen of such assessments. There is limited information available on the extent to which assessments are undertaken to understand atypical maturational development. It is encouraging however that the Probation Young Adult Policy requires that “when low maturity is identified this must be clearly recorded in OASys. The sentence plan must include activity that will be undertaken with the Young Adult to support development of maturity as part of the delivery of the sentence”.⁸¹

In terms of addressing the lack of maturity among young adults in custody, a Choices and Changes toolkit was launched by HMPPS in prisons in July 2019 to ensure appropriate support for young adults. While this has been recently validated as an “Effective Regime Intervention” under Prison Service Order 4350, its roll out has been delayed by Covid. It is not intended to be used for sentence progression purposes but is rather an engagement tool to assist appropriate rehabilitative conversations with young adults. The full implementation of the Offender Management in Custody (OMiC) scheme, which provides a means to deliver the toolkit, has also been delayed due to the pandemic but may prove relevant to assisting young adults to become or to stay engaged with treatment opportunities in prison and to help aid the development of consequential thinking.

Of the 24 treatment programmes currently accredited for use in custody, none are designed specifically for young adults. Some involve groupwork sessions which may not be suitable for young adults. A more thorough and bespoke multi-disciplinary approach – the pathways programme – has been developed at Aylesbury YOI, involving an ex- life sentence prisoner as a consultant. Programmes have been developed too at HMP/YOI Swinfen Hall, but less so at HMP/YOI Deerbolt. Nevertheless, most young adults are not held in these sites that are designated for young adults. Young adults who are recalled to prison are rarely placed in the three young adult YOIs and this group accounts for the vast majority of young adults going through the parole process. There are no dedicated young adult prisons for women.

Practitioners will often propose that young adults can be supported through the Offender Personality Disorder (OPD) Pathway Strategy for young adults. Further research is needed to assess the effectiveness of the OPD Pathway Strategy for young adults.⁸² The evidence as to its effectiveness for adults is not strong.⁸³ Personality disorder cannot be fully diagnosed until 25 although younger people may show traits. The two Young Offenders Institutions which hold long sentenced young adults have OPD services, but there is a risk that young adults drawn into the pathway face delays, stigma and limited help.

There is also evidence of inappropriate interventions for young adults. In a study of recall, a 19 year old woman hugely resented being required to do a year’s worth of group therapy:

81 Para 4.8

82 <https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/02/opd-strategy-nov-15.pdf>

83 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1110465/national-evaluation-of-the-male-opd-pathway.pdf



*“There were 24 of them, I was the only teenager, they were all in their 40s, 50s, 60s.... I said several times, I can’t do it, I’m not ready”.*⁸⁴

The development of a wider range of age-appropriate adjustments and interventions is needed to provide chances for young adults to develop maturity and to enable them to show the Parole Board that their risk of re-offending has been reduced. This might include encouraging efforts to undertake reparative work of one sort or another including restorative justice in appropriate cases. At a more basic level, there is a need to provide opportunities for young adults to demonstrate change by allowing a good amount of time out of cell and involvement in regime activities. Inspection reports indicate these are all too often far too limited.

For young adults who receive very long sentences, there is a case for improved care in the early months and years of the sentence, when feelings of anger, trauma and disorientation are most acute, acknowledging their difficulties of coming to terms with the lengths of the sentence, which can affect individuals’ levels of distress, vulnerabilities, and rehabilitation.⁸⁵

Recommendation 8: Tailored interventions for young adults to help them demonstrate risk reduction should be available consistently throughout the prison estate

TAILORED SUPPORT FOR YOUNG ADULTS ON RELEASE

This review has heard that despite its importance, the availability of age-appropriate support for young adults on parole is limited and that young adults are more likely to be recalled than older adults, and subsequent release may be more difficult to achieve.

Support in the community is also likely to reduce the risk of reoffending. A Rapid Evidence Assessment (REA) of what works in reducing re-offending in young adults found that the strongest, most robust evidence of sizeable reductions in recidivism came from two studies of structured parole re-entry systems.⁸⁶ While these were American programmes, the REA concluded that these could be adapted to UK settings and that “the process of release and re-entry is more likely to be successful if it is planned and structured and contains effective rehabilitative elements.”

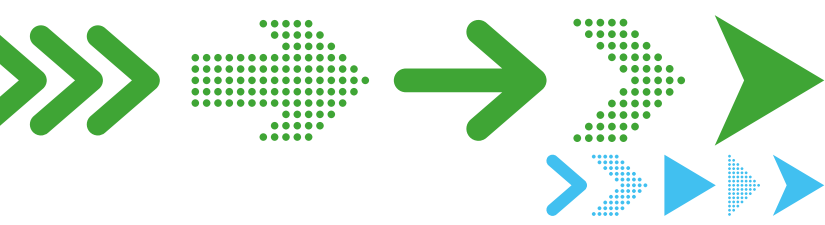
By contrast, in a recent US study people (of all ages) supervised by probation services after release, had a much lower self-reported crime rate than those who were unsupervised who were reincarcerated twice as often.⁸⁷ It is no doubt for these reasons that this study found that whether someone is supervised or not was one of the strongest predictors of whether a young adult would return to custody (second only to relapse into substance misuse.)

⁸⁴ Padfield N 2011 Understanding Recall <http://www.law.cam.ac.uk/ssrn/>

⁸⁵ Crewe, Hulley and Wright 2019 Experiencing long term imprisonment from young adulthood: identity, adaptation and penal legitimacy Ministry of Justice Analytical Series

⁸⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/449347/reducing-reoffending-in-adults.pdf

⁸⁷ Western, B. (2018) *Homeward: Life in the Year After Prison*, New York: Russell Sage.



For young adults, supervision needs to come with support to ensure it is effective. Where young adults are care leavers there is a statutory basis for additional support from their local authority. Almost half of young adults in prison will have been looked after as children in the care system and have entitlements to additional support in custody and on release that may last until their mid-twenties.⁸⁸ For 18–20-year olds these include the provision of accommodation where welfare needs require it. However, the Children & Social Work Act 2017 introduced a duty on local authorities to offer practical and emotional support through a Personal Adviser (PA) for all care leavers up to age 25. The advice, assistance, and support that the local authority will provide to assist with the transition to independence should be set out in a so-called Pathway Plan.

It is welcome that the Parole Board's Young Adult guidance says that it may be appropriate for a social worker who has previously been involved with a care leaver to direct a report and require the attendance of the report writer at the hearing. As noted above, It would be good practice in cases involving care leavers to direct a report and require their attendance at the hearing. It is essential that probation services work with local authorities to coordinate what support a young adult will receive in the community. The Probation Young Adult policy states that “where care leaver status is identified and consent is given, contact must be made with the relevant local authority in order to exchange information and enhance sentence delivery, risk management and to support the local authority objectives”.⁸⁹ A leaving care social worker should be invited to the meeting where responsibility for a young adult is handed over from the prison offender manager to the community offender manager, should such a meeting take place.

Despite these recommendations, this T2A review heard that even those young adults who are recognised as care leavers may sometimes not receive the necessary attention during the parole process. In practice there may be no or little contact with their personal advisors. Some care leavers will have a right to be provided with accommodation and support but may not be aware of this. While the Board set directions to enable care leavers to be identified and for information from children's services to be provided, ideally probation practitioners should be proactive in engaging with local authorities to secure a package of support for young adult care leavers. It is also important that community probation officers keep representatives from local authority children's services up to date with proposed licence conditions and supervision arrangements so these can be factored into support plans. Even where young adults are required to reside initially in Approved Premises for reasons of risk, local authorities can provide wrap-around support and assist with planning move on accommodation.

There are no longer any specific Approved Premises for young adults although there has been an increase in the use of standard Approved Premises for young adults - something which can – this review was told - set young people up to fail. The level of supervision offered can be “a lottery”, with some arrangements very much more supportive than others. The provision of Approved Premises for women is scant due to their relatively lower numbers, which means they are often placed miles away from ‘home’: this was held to be discriminatory by the Supreme Court in 2017 and has still not been rectified.⁹⁰

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⁸⁸ <https://www.nao.org.uk/wp-content/uploads/2015/07/Care-leavers-transition-to-adulthood.pdf>

⁸⁹ Para 4.7

⁹⁰ R (on the application of Coll) (Appellant) v Secretary of State for Justice (Respondent), [2017] UKSC 40



Recommendation 9: Tailored support for young adults on release must be available consistently throughout England and Wales

YOUNG ADULT LICENCE CONDITIONS AND RECALLS

Licence conditions

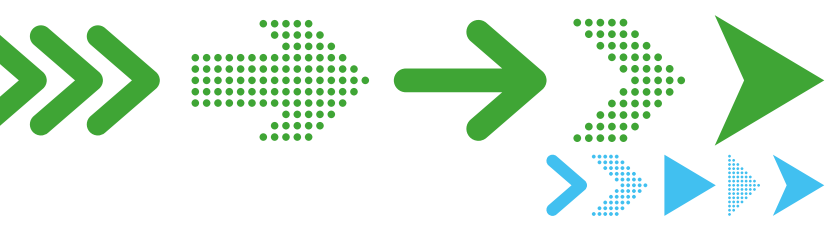
Every release decision contains a standard set of licence conditions. The standard conditions are as follows:

- (a) be of good behaviour
- (b) not commit any offence.
- (c) keep in touch with the supervising officer
- (d) receive visits from the supervising officer
- (e) reside permanently at an address approved by the supervising officer and obtain prior permission for any stay elsewhere
- (f) not undertake work, or a particular type of work, unless it is approved by the supervising officer
- (g) not travel outside the United Kingdom, the Channel Islands or the Isle of Man except with the prior permission of your supervising officer or for the purposes of immigration deportation or removal.
- (h) tell your supervising officer if you use a name which is different to the name or names which appear on your licence.
- (i) tell your supervising officer if you change or add any contact details, including phone number or email

Young adults are often recalled for breach of the requirement to be of good behaviour, without sufficient allowance for the fact that young adults can still be impulsive, or struggle with consequential thinking, without causing an unmanageable risk of serious harm.

Additional licence conditions should be proposed by community probation officers but the Parole Board has the final say in what the conditions are. Additional conditions may include residence at a specified place; restrictions on making or maintaining contact with a person; participation in, or co-operation with, a programme or set of activities; and freedom of movement. Additional bespoke conditions can be imposed by the Board. The Board has issued guidance for its members on licence conditions.⁹¹ As noted above, there is nothing in the Ministry of Justice framework or the Board's guidance to encourage professionals and decision makers to take a different approach to licence conditions for young adults.

⁹¹ <https://www.gov.uk/government/publications/licence-conditions-guidance>



While conditions must be necessary and proportionate, the review heard examples of conditions which appeared very hard for a young adult to comply with, such as not being allowed to go on a bus or to be in a public place with more than two people. The rules and conditions in Approved Premises may also place very high levels of restrictions which young adults may struggle to follow. Evidence about procedural justice suggests that ensuring young adults are at best involved in discussions about restrictions and at least properly informed about them, can lead to improved compliance. While licence conditions are usually scrutinised at oral hearings, the increasingly adverse approach to risk, often results in young adults agreeing to things that will make their lives very difficult as that can often appear to be the only way they are likely to achieve release.

This review heard that young adults do not always read or fully understand their conditions and end up being returned to prison for non-compliance. The threat of recall can also stop many young adults being honest with their community probation officer about their thinking or behaviours, therefore reducing the effectiveness of a rehabilitative relationship. This is more likely for young adults by virtue of their stage of brain development which hinders their capacity for consequential thinking.

Sentencing guidelines also say that “an immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support”. In the context of a parole licence, this may suggest an orthodoxy that young adults will find it more difficult than older adults to comply with licence conditions deemed necessary to manage risk. The JUSTICE report “A Parole system fit for purpose” argues that “unreasonable, disproportionate, and poorly justified licence conditions can set individuals up to fail”, recommending that “the Probation Service must provide an explanation as to why any requested licence condition is reasonable, proportionate, and necessary to enable successful rehabilitation”.⁹² The Probation Service Young Adult Policy goes some way towards meeting this in its requirement that careful thought should be given to the types and numbers of conditions applied to licences to ensure that they are proportionate, appropriate and optimally sequenced.”⁹³

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⁹² <https://files.justice.org.uk/wp-content/uploads/2022/03/22164155/JUSTICE-A-Parole-System-fit-for-Purpose-20-Jan-2022.pdf>

⁹³ Para 6.20 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052213/probation-service-management-young-adults.pdf



Recalls

Determinate and indeterminate sentenced prisoners who are released into the community subject to licence supervision are liable to be recalled to custody by the Secretary of State for Justice (SSJ) at the request of the probation service. This usually occurs where they have breached conditions of their licence. A breach of licence conditions does not automatically result in recall. Where probation assesses that an individual can still be managed safely in the community, they can take a range of alternative measures of increasing severity including issuing oral or written warnings. Additional conditions can be applied for if necessary.

The Probation Service Young Adult Policy notes that recall rates are typically high in the Young Adult cohort and requires that “every effort should be made by practitioners to encourage compliance with the sentence”.⁹⁴ Where compliance deteriorates, practitioners should strive to maintain contact and encourage ongoing engagement. The young adult should be encouraged to explain the reasons for non-compliance and practitioners should apply professional judgement as to whether recall is a necessary and proportionate measure. “When a Young Adult is at risk of recall, practitioners should consider the impact of a return to custody on their maturity and explore alternatives to recall, ensuring that management of risk of serious harm remains the focus”.

It is also encouraging that the Probation Service has developed a so-called “touchpoints model” which builds in management oversight of recall decisions with recall reports countersigned by senior staff in order to mitigate against any possible bias around decision-making.⁹⁵

Most recalls are not for re-offending.⁹⁶ In 2021/2022, around 30% of recalls involved a further charge of offending and 72% involved non-compliance.⁹⁷ The prison and probation policy that applies to recalled prisoners makes no distinction between different age groups.⁹⁸

All young adults recalls must be authorised by the SSJ. If the SSJ decides to recall a person, they are likely to be arrested immediately and returned to the nearest suitable prison or YOI. Some people serving fixed term sentences without a finding of dangerousness may be given a fixed term recall of up to 28 days, but these are not considered by the Parole Board. However, all indeterminate and extended sentence offenders and many determinate sentenced people will be subject to standard recall and referred to the Parole Board.

Those who have been recalled on determinate sentences can be released administratively by the Secretary of State for Justice under a process known as executive release.⁹⁹

94 Paras 6.22-6.25

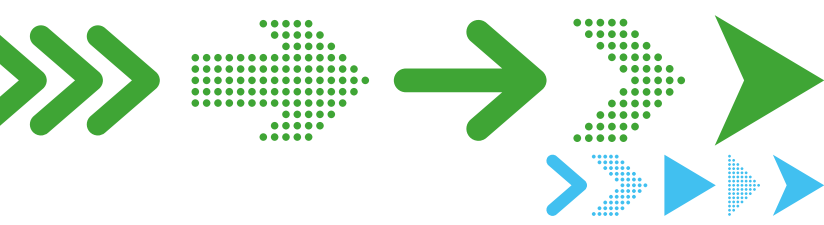
95 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061047/MOJ7350_HMPPS_Probation_Reform_Programme_TOM_Accessible_English_LR.pdf

96 <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2020>

97 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1113582/OMSQ_Q2_2022.pdf

98 MoJ HMPPS Recall, Review and Re-Release of Recalled Prisoners Policy Framework

99 See para 4.14 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1100250/recall-and-re-release-policy-framework.pdf



There is a case for recall and executive release decisions to be dealt with by a specialist team in the Ministry of Justice, given the likelihood that young adults will do better and be safer with support in the community than being released without supervision after prolonged stays in prison.

However, since the change in law preventing community offender managers from making recommendations in their reports for release, the onus is on the community probation officer to contact the Ministry of Justice and ask for executive release to be considered. Previously, on receipt of a positive report for the parole review, with a recommendation for release, a young adult's lawyer could initiate this process. However, recommendations are no longer provided.

If a person is serving an indeterminate sentence or not executively released then the case will be referred to the Parole Board. This should happen within 28 days of the recall. If the Parole Board does not direct the person's re-release, they will remain in prison until their sentence end date or their next review, which should be annually in the case of fixed sentences and no more than every two years for indeterminate sentenced prisoners.

A 2018 inspection of probation recall decisions found almost all recall decisions examined were good decisions, with the National Probation Service particularly good at considering alternatives to recall beforehand.¹⁰⁰ Concerns expressed as part of the inspection by the Parole Board that probation services appeared to react too rigorously to minor breaches were not borne out in the inspection sample.¹⁰¹ Where further offending was involved, "it was often the case that the presenting offences were relatively minor but that the level of disengagement or deterioration in the service user's behaviour were such that the underlying risks could not be safely managed in the community".¹⁰² There was no specific consideration of young adults by the Inspectorate of Probation.

An inspection report carried out as part of the review of the Joseph McCann case (in which a man committed a series of grave crimes after being released on licence) has found that practitioners "take a balanced approach when deciding between recall and alternatives to recall. However, access to and use of alternatives to recall, such as approved premises (APs) and electronic monitoring, are inconsistent".¹⁰³ It made a number of recommendations including reviewing the use, accessibility, and effectiveness of alternatives to recall and the role of approved premises.

The Inspection reported that the probation service in London analysed its recalls of all black, Asian and minority ethnic offenders under the age of 25 undertaken in 2019. The HMPPS Effective Probation Practice team issued a briefing in June 2020 providing guidance on recall decision-making for this cohort. The practice guidance includes advice on countering bias in decision-making and the assessment of maturity. Significantly, it emphasises that recall decisions should be taken in a structured and considered way. The guidance is implemented by probation providers locally but there is so far limited information on whether it has been incorporated into responsible officers' practice or is effective in addressing potential bias in decision-making. As noted above,

100 <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/02/Enforcement-and-Recall-report.pdf>

101 <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/02/Enforcement-and-Recall-report.pdf>

102 <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/02/Enforcement-and-Recall-report.pdf>

103 <https://www.justiceinspectorates.gov.uk/hmiprobation/media/press-releases/2020/11/recallthematic/>



there is now increased management oversight of recall decisions which is intended to mitigate any unconscious bias. There is a case for the probation service to introduce guidance to say when a young adult is at risk of recall, careful consideration should be given to the reasons why and what support can be put in place to prevent it, along with some understanding that young adults are still learning and will make mistakes. When recall is unavoidable, this cohort should be prioritised and a multiagency (where possible) enhanced risk management plan which includes increased support should be put in place as a matter of urgency.

The 2022 Probation Service Young Adult Policy notes that applying Procedural Justice principles to enforcement “is particularly relevant for Young Adults from ethnic minority backgrounds who may have had negative experiences with authority or the criminal justice system in the past”.¹⁰⁴

This review has heard from a practitioner specialising in young adult parole cases that some recalls have been based on failures to comply with conditions without any risk of serious harm, including recalls of young people made homeless or suffering mental health distress. Where the reason for recall is an allegation of further offending, this may be unrelated to any serious previous offending – typically drug possession – and would almost certainly not result in a prison sentence. It was suggested that recalling a person on licence removes the need to reach a decision about prosecution or for a speedy court hearing.

Even when a case is dropped, the recalled young adult remains in the parole process. One lawyer has written that “recalls are sometimes made on spurious grounds, on the basis of factual inaccuracies or insufficient consideration being given to alternatives. Decisions to recall are frequently made by officers who do not have a personal relationship with the person supervised, for example when the supervising officer is on leave, and taken without adequate investigation”.¹⁰⁵

There appears to be considerable variation in the way different probation officers deal with similar situations relating to recall. Some form of internal peer review may be needed before a decision to recall is made, or a more radical reform is needed whereby the decision to recall is approved by an impartial body such as the Parole Board. Some probation areas, such as Birmingham, have developed specific young adult teams which may enable the probation service to take more proportionate and nuanced approach to the behaviour of young adults on licence.

Since 2015, the Parole Board has had the “important and necessary duty to scrutinise decisions to recall prisoners” and express a view about how appropriate the recall is.¹⁰⁶ There is a strong case for going further and requiring that recalls should be authorised in advance by the Parole Board or a court, a procedure which applies in Scotland. “This would entail more care being taken over decisions to recall and allow scrutiny at a much earlier stage”. This could incorporate a statutory requirement for alternatives other than a recall to custody to be considered.¹⁰⁷ JUSTICE has proposed a new recall model which would require the breach of a licence condition to be proven first in a Magistrates Court, with the Parole Board subsequently considering the risk and necessity of re-incarceration.¹⁰⁸

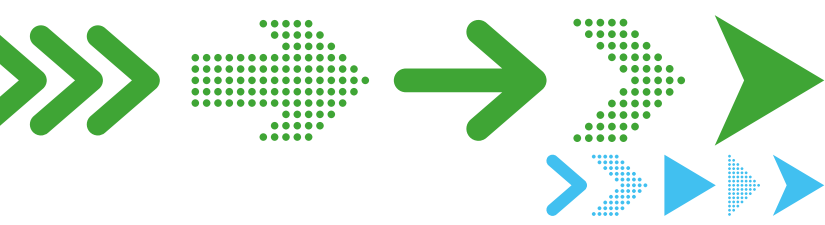
104 Para 6.31

105 <https://www.sl5legal.co.uk/single-post/2017/10/18/submission-to-the-justice-select-committee-evidence-session-the-work-of-the-parole-board>

106 *Calder v Parole Board*

107 <https://www.sl5legal.co.uk/single-post/2017/10/18/submission-to-the-justice-select-committee-evidence-session-the-work-of-the-parole-board>

108 <https://files.justice.org.uk/wp-content/uploads/2022/03/22164155/JUSTICE-A-Parole-System-fit-for-Purpose-20-Jan-2022.pdf>



This review heard that “low risk recalled young adults who are not eligible for Approved Premises” and not care leavers, especially those with immigration issues, are often seen as just too difficult to house and can get stuck in prison for extremely long periods even when they clearly do not pose a risk of serious harm.

Recommendation 10: The recall of young adults needs to be urgently reviewed and safeguards put in place to prevent unnecessary recalls





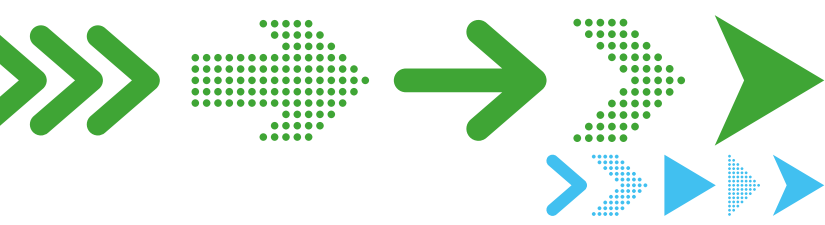
11. CONCLUSION AND RECOMMENDATIONS

This exploratory study has involved a broad review of how parole operates in the context of the wider criminal justice system by considering the relevant legal and policy frameworks and talking to practitioners who work with young adults going through parole. The study has identified a number of areas where reform of the parole system in its widest sense may be needed. The study has not been designed to look in depth at these areas, but further research on such issues would undoubtedly be desirable. The emphasis in this study has been on how the process might be improved for young adults.

The study offers recommendations for both the Board and His Majesty's Prison and Probation Service (HMPPS). Recommendations to the Parole Board include extending the Board's policy to all young adults aged 25 or under, given T2A's evidence that maturation continues well into the mid-twenties, and a number of adaptations to the way decisions are made. Recommendations also include consideration of whether more adults could be released without the need for an oral hearing and, where an oral hearing is required, to ensure it happens as quickly as possible and in such a way as to enhance young adults' effective participation. The Board is urged to acknowledge that as young adults are still maturing, even where they are unable to demonstrate a permanent internal shift in their thoughts and skills, they may be safely managed in the community with additional support. Without this distinct approach, an assessment of low maturity can result in young adults spending long periods in highly abnormal custodial environments, which can be damaging for their development and long-term rehabilitation.

Recommendations for HMPPS include adapting sentence planning, recall and parole policies to acknowledge developing maturity of 18 to 25 year olds, as well as developing risk assessment tools and interventions specifically aimed at young adults and ensuring they are available to all young adults in prison. Many young adults struggle on licence in the community and as a result, young adult recalls are high and often result in prolonged additional spells in prison. Recommendations are made for increased support for young adults on licence in the community and a more nuanced approach to recall.

Given the relatively small number of young adults going through the parole process, it is hoped that these recommendations will be both feasible and welcomed.



ANNEX A: THE PAROLE BOARD'S YOUNG ADULT POLICY AND GUIDANCE

Young adult policy: A presumption of an oral hearing

Since 2017 the Parole Board's policy has been that where people aged 18–21 at the point of their referral cannot be released on consideration of the file by a panel of members “on the papers”, there is a presumption of an oral hearing. This is not the case for older adults. Therefore, although young adults do not have a right to an oral hearing as children do, there is a presumption that an oral hearing should be directed if release cannot be directed from the paper review. Further, in cases where a negative decision is issued at the initial paper stage, the decision must clearly set out that the Board's young adult policy has been carefully considered and provide “compelling reasons why an oral hearing will not benefit the prisoner, help ensure fair treatment, or enhance the processes of risk assessment and decision-making”.¹⁰⁹

The new young adult policy represents an important change. Previously, the Board's policy was that “careful consideration” should be given to progressing to an oral hearing for any offender “who is under 21 or was under 21 when sentenced”.¹¹⁰

The introduction of the new young adult policy followed a pilot scheme in 2017-18 which tested the impact of the presumption in favour of oral hearings. The policy was paused in March 2020 “to provide the Board with greater flexibility to progress cases swiftly and fairly in the light of the Government's Covid-19 advice and the restrictions placed on the prison estate.”¹¹¹ It was reinstated in July 2022.

While the data from the pilot suggests that the difference in outcomes was relatively limited, there are several benefits to oral hearings for young adults which have led to the Board permanently adopting this policy.

109 Para 5.8

110 Member Case Assessment Guidance 2018 Page 12 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723722/MCA_guidance_v19.2_12_June_2018.pdf

111 So too was the policy of automatic oral hearings for under 18s https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925387/Parole_Board_Covid-19_Member_Guidance_October_2020.pdf



Young adult guidance

The Board published detailed guidance for members in August 2021 to accompany the policy. It says that “much of this advice can be applied to older prisoners in an age group up to 24/25 or beyond because they can still be maturing in neurological and psychosocial modes.” It goes even further by suggesting that it “can also be applied in cases where offences were committed by children or young adults up to age 25 who have now reached adulthood”.

The guidance summarises the evidence for treating young adults in a distinct way. It builds on the Parole Board policy, explaining that compared to a paper review, convening an oral hearing can include provision of specialist risk assessments and more detailed testing of individually tailored risk management plans that meet the particular needs of the young adult. “This should take into account their stage of maturity and any vulnerabilities or safeguarding concerns”.

The guidance also stresses the overriding importance of fairness, including the need to avoid any bias in respect of black and minoritised individuals. The guidance notes that “in countering the risk of bias and the perception of discrimination, oral hearing procedures have value in demonstrating fairness and surfacing some of the barriers met by BAME young adults.”

It then provides principles and considerations to be taken into account at both the initial member case assessment stage and the oral hearing. Some of these are discussed in more detail in the next chapter.





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Published March 2023

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