



The Transition to Adulthood Alliance (T2A)

Written evidence

Imposition of community and custodial sentences guideline – revised: consultation

Q1. What is your name?

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Q2. What is your email address?

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Q3. Are you answering as an individual?

No, this response is being submitted on behalf of the Transition to Adulthood Alliance (T2A).

Q4. Are you answering on behalf of an organisation?

This response is submitted on behalf of the Transition to Adulthood Alliance (www.T2A.org.uk). The Transition to Adulthood Alliance (www.T2A.org.uk) evidences and promotes effective approaches to working with young adults throughout the criminal justice system, it is convened and funded by the Barrow Cadbury Trust. Since it was established in 2008, it has contributed to positive change in policy and practice at both national and local levels.

T2A's principal aim is that young adults (who are defined as those aged 18-25 inclusive), are subject to a distinct approach throughout all stages of the criminal justice system due to their complex and unique characteristics as a cohort which in turn would improve their outcomes and support their needs.

It is important that the Council continues to monitor the impact of guidelines on young adults to ensure that as much weight is given in sentencing to the protected characteristic of age, as it is for race and gender, under the Equality Act 2010. Whilst we welcome the increased focus on young adults in this guideline, we repeat our previous recommendation¹ that we would like to see the creation of overarching sentencing principles for young adults, like those for children, giving greater weight to the detrimental impact of involvement in the criminal justice system for this cohort, and hope the Sentencing Council take this forward in the near future.

T2A welcomes the opportunity to contribute to the Sentencing Council's consultation. We address below selected questions on which we have evidence to respond.

Q5. Do you agree with the proposed chronological order of the guideline? Would you make any changes?

We agree with the proposed chronological order of the guideline and concur with the Council's justification for putting thresholds before Pre-Sentence Reports (PSR), although we see PSRs as being of critical importance (see Q 7-9). However it is vital that multiple times throughout the guidance and in the accompanying flow chart, it is made very clear to sentencers that even once the threshold for custody has been crossed, they must, by law, still consider a community order. There is strong evidence that short custodial sentences are ineffective and, for young adults in particular, can be criminogenic, therefore going against the sentencing principle of reducing crime.

We are pleased to see a focus on equality issues throughout the guidance, in particular references to young adults, and have provided more detailed feedback on the proposed wording below. However, we would like this to be strengthened even further, given the persistent disparities we know exist in sentencing and the distinct needs of young adults. We suggest introducing a final step in the sentencing process whereby the sentencers are encouraged to look at the proportionality of the proposed sentence considering all the relevant equality issues, including age and maturity and the important intersections of this with race and gender. A final step would emphasise the importance of taking this into account, as would making the equalities information in this guidance more convenient for sentencers to access and consider. Information on young adults should be cross-referenced with the overarching principles on age and maturity.

Q6. Do you have any comments on the unified thresholds section?

Relevant previous convictions: The consultation document explains that the proposed addition is aimed at ensuring that the influence of previous convictions is '*only in very rare cases*' the reason for crossing a community or custodial threshold. We are concerned that the proposed wording ('*great caution must be exercised*') is not as strong as saying '*in very rare cases.*' We would therefore suggest that, or other stronger alternative wording, such as '*in wholly exceptional cases*', be used instead.

We welcome the section which highlights that '*numerous and frequent previous convictions might indicate an underlying problem*'. However, the proposed wording that previous convictions '*will not necessarily indicate that a custodial sentence is necessary*', could be strengthened as follows:

'Numerous and frequent previous convictions might indicate an underlying problem (for example an addiction) that could be addressed more effectively through a community order with relevant requirements. A custodial sentence could make the underlying

problem worse, in particular when sentencing young adults (18-25 inclusive), thereby increasing the likelihood of reoffending in the future.'

We are very concerned that the rate of immediate custodial sentences for young adults remains twice as high as for those over 24, and the use of community sentences for young adults is in declineⁱⁱ. We would therefore like to see additional wording relating to young adults added as additional bullet points:

- *'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.'*
- *'Periods in custody for young adults (aged 18-25 inclusive) during the crucial period of brain maturation, are likely to increase the likelihood of re-offending as prison environments are not conducive to developing positive identifies or enabling a brain previously exposed to trauma to develop and generate positive neural connections. During this period of brain maturation young adults are in a strong position to benefit from rehabilitative and reparative community sentences.'*

Q7. Do you have any comments on the pre-sentence reports section, other than the list of cohorts?

We welcome the focus on Pre-Sentence Reports and efforts in the guidance to urge sentencers to use them, in particular for young adults. The decline in the use of Pre-Sentence Reports has exacerbated inequalities and had a detrimental impact on perceptions of procedural fairness and therefore trust and confidence in sentencers and the wider criminal justice system amongst young adults. We would therefore like to see the wording strengthened further, and suggest the following adaptations:

'When considering a community or custodial sentence, the court should request and consider a pre-sentence report (PSR) before forming an opinion of the sentence, unless it considers that it is wholly unnecessary, for example if a fine or discharge is the most likely outcome.'

An additional third bullet point should also be added:

'Pre-Sentence Reports are particularly important where an individual has distinct needs, for example young adults (aged 18-25 inclusive), which a pre-sentence report can identify and address. There has been a significant decline in the use of pre-sentence reports which has been linked to increased inequalities and disparities in sentencing, as well as reduced levels of trust and confidence in the criminal justice system due to perceptions of procedural unfairness. PSRs must include consideration of maturity for young adults and a mandatory maturity assessment must be carried out when there is a drug or alcohol problem.'

Q8. Do you agree with the general inclusion of, and specific cohorts included, in the list of cohorts in the pre-sentence report section?

We welcome the inclusion of a list of relevant needs and protected characteristics, including young adults. We would ask that the word inclusive is added to ensure all those up to the age of 26 are considered:

- *A young adult (18-25 years inclusive)*

We would also suggest the following change of wording to strengthen the introduction to the list:

‘In order for the court to fully consider all relevant information for sentencing, and to ensure an individual’s distinct needs have been explored, a pre-sentence report is particularly important when the person being sentenced is:’

The list should end by saying:

‘This list is not exhaustive. Pre-sentence reports should be requested, unless deemed wholly unnecessary due to a discharge or fine being the most likely disposal.’

Research, including by T2A, has highlighted that in addition to the list provided, there are other factors which exacerbate the needs of young adults. We would therefore like the list to be expanded to include:

- *has experience of the care systemⁱⁱⁱ (now considered a protected characteristic in many local authorities^{iv})*
- *or may have diagnosed or undiagnosed neurodivergence^v*
- *has any gambling addiction issues^{vi}*
- *recently bereaved^{vii}*
- *experiencing high levels of poverty and / or housing vulnerability^{viii}*

In section 3 of the guidance, drop downs are used to provide additional information about young adults and women. We would like to see similar drop down used in this section for race, in particular to highlight the intersections of race and age, given that HM Inspectorate of Prisons (2021) found that *‘Black and minority ethnic prisoners are significantly over-represented in the young adult prison population, and the perceptions of treatment among this group are particularly poor’^{ix}*, the cumulative disadvantage they experience and the increased likelihood that Black young adults risk being *‘adultified’^x*.

We would also like to see greater recognition that these factors often do not occur in isolation, and that it is vital that sentencers look at multiple and intersectional needs and the cumulative impact these have on individuals and the impact this has on culpability and / or mitigation. Suggested wording maybe as follows:

‘Sentencers should be alert to the reality that the people they are sentencing may have more than one of these distinct needs or protected characteristics. Where multiple

needs and intersections apply, this will increase the complexity of the individuals' circumstances that need to be considered. The cumulative nature of disadvantage and discrimination means that needs and circumstances are often not identified unless addressed holistically, which a pre-sentence report aims to do, thereby giving the court the information it requires to make an informed sentencing decision.'

Q9. Do you have any comments on the information in the PSR section on the court giving an indication to Probation, adjournments and on committal?

We would suggest that the wording in this section is strengthened to ensure sentencers are fully aware of the importance of high-quality PSRs:

'Sentencers should consider that poor quality reports that fail to consider all relevant factors run the risk of people being sentenced receiving more punitive sentences and can exacerbate inequalities. Adjourning to give time for high quality pre-sentence reports to be written provides crucial time and space for the person being sentenced to discuss personal information, which may include histories of trauma and abuse, relevant to sentencing. This is particularly the case for young adults who are likely to have more recent trauma (such as adverse childhood experiences) to disclose.'

Q10. Do you agree with the inclusion of, and information proposed on deferring sentencing?

A valuable tool: We welcome the addition of a sentence highlighting that deferred sentencing may be particularly appropriate for young adults or those in transitional life circumstances. However, the first sentence of the guidance states that deferred sentences will *'only be appropriate in very limited circumstances.'* We are concerned that this will lead to a lack of clarity and may deter sentencers from giving a deferred sentence due consideration, in particular for young adults^{xi} and other people with transitional life circumstances which the Sentencing Council acknowledge can be a *'valuable tool'*. Therefore, we would suggest the sentence be removed.

Young adults and transitions: We would also like to see strengthened language and greater information provided to sentencers as to why young adults and people with transitional life circumstances, including young adults transitioning from the care system or other welfare focused child services to adult services, such as mental health^{xii}, may be appropriate for a deferred sentence (which also provides reason to remove the direction that it only be used in *'very limited circumstances'*), for example:

'Sentencers should always consider deferring sentencing for young adults (18-25 inclusive) whose lives are changing rapidly and are in a crucial period of brain maturation, and other people in transitional life circumstances, for example pregnant and post-natal women; care leavers; people commencing or about to undergo treatment and primary / sole carers who may have dependants whose lives are in transition.'

Giving the person being sentenced limited time to start addressing the underlying problems which gave rise to the offence, can serve as a powerful incentive for compliance enabling them to take positive steps towards desistance (for example engagement in positive activities, referral to a drug or alcohol treatment programme, restorative justice service or Women’s Centre) and away from offending.

There is evidence that young adults benefit from deferred sentences and that this can be an effective tool to incentivise engagement with services and activities in the community to develop pro-social identities and reduce the use of custodial sentences which evidence shows can slow down the process of maturation.’

Restorative Justice: The government’s White Paper ‘A Smarter Approach to Sentencing’ (2020)^{xiii} expressed an intention to encourage the use of deferred sentences to divert more ‘vulnerable’ groups away from further involvement in the criminal justice system and provide ‘opportunities for restorative justice to be deployed’. Restorative Justice (and other restorative approaches) allows victims voices to be heard and is one of the most powerful methods of helping people who have committed crime appreciate the consequences of their actions. Restorative Justice has also been shown to reduce repeat offending by 14% (Shapland et al., 2011). It is particularly effective with young adults and can assist developing maturity^{xiv}. We therefore suggest the following wording:

‘Sentencers should consider whether deferring sentencing would provide an opportunity for restorative justice (or other restorative approaches) to be deployed, which research has shown can hold the person being sentenced to account, assist the coping and recovery of the victim, and reduce reoffending. A restorative justice process also gives the victim an opportunity to have an input into what they would like to see as the next steps, for example conditions which might reduce the likelihood of the person offending again.’

Q11. Do you have any comments on the Purposes and Effectiveness of Sentencing section?

Rehabilitation: We welcome the guidance clarifying that restrictions on liberty can be achieved by a community or custodial sentence, and that any restriction on liberty should be commensurate with the seriousness of the offence. However, there is a greater need for the Council to set out the importance of rehabilitation as a critical priority for sentencers to consider as a means of reducing crime. Although the list is not intended to set out priority order, having punishment at the top of the list may indicate to sentencers that this should be the considered the most important factor.

Reparation: We are also concerned that throughout the guidance little mention is made of the importance of reparation, which is an important factor in people who have caused harm to understand the impact of their crimes on victims and local communities and repairing harm to those directly or indirectly impacted.

We would therefore like to see the following order and wording used instead:

- The reform and rehabilitation of those sentenced
- The making of reparation to persons affected by the offences of those sentenced
- The reduction of crime (including its reduction by deterrence)
- The protection of the public
- The punishment of those sentenced

Deterrence: The Sentencing Council has itself found that *‘the evidence does not support using more severe sentences as being effective for the purposes of deterrence’*. We would therefore like to see reference to the Council’s own report^{xv} in the guidance which highlights that the research *‘strongly suggests that using more severe deterrent sentences (in particular, custodial rather than non-custodial disposals) does not reduce reoffending.’*

We would also like to see reference to the evidence noted in the Sentencing Council’s report on effectiveness that sentencing for the purpose of deterrence for young adults may not only be ineffective, but in fact criminogenic. Reminding sentencers that the youth justice system has a principal aim of preventing offending (or reoffending) by those under 18, should, given our knowledge of neurological development, lead the Sentencing Council to be clear that it should also be the priority for young adults too who are in a *‘formative phase of their life.’*

Length of community orders: With regard to the section on the length of community orders which states *‘In general, courts should impose the shortest term commensurate with the seriousness of the offence’*, we are unclear as to why there is a need to start the sentence with ‘in general’. In line with the principle of parsimony, we would like to see these two words removed to strengthen the message about the importance of proportionality.

Costs, overcrowding and reoffending rates: When considering effectiveness, we consider that additional information and statistics should be provided on the costs of custody, overcrowding and the rates of reoffending. This is particularly important given the current crisis in prisons which is important context for sentencers to consider, in particular when sentencing young adults.

The latest HMI Prisons Inspectorate Annual Report (2022-23)^{xvi} found that *‘Little had been done at some prisons to understand young adults’ needs and make specific provision for them and there was often slow progress to address disproportionate outcomes for this group.’* In 2022-23 HMIP only considered one establishment holding adult and young adult men to be ‘good’ for purposeful activity and only 5% of prisons inspected were ‘good’ for rehabilitation and release planning. Our suggested wording is as follows:

‘Sentencers should take into consideration the current very high levels of overcrowding in the prison estate due to exceptional pressure on capacity and staffing levels. It is well evidenced, including from HM Inspectorate of Prisons, that overcrowding has detrimental impacts on time out of cell; access to key work, purposeful activities and

offending behaviour courses; family contact; access to health care and resettlement services to prepare for release. This has knock on impacts on safety, mental health, suicide and self-harm, as well as making it significantly more challenging to meet the needs of distinct groups such as young adults.

Sentencers should also be alert to the economic costs of custody, with the average cost of a prison place increasing to £46,696 in 2021-22^{xvii}, as well the data which shows reoffending is about four percentage points higher when a sentence of less than 12 months' custody is used, compared to community orders or suspended sentence orders (Eaton and Mews, 2019).^{xviii} Latest data shows adults released from custodial sentences of less than 12 months had a proven reoffending rate of 53.9%^{xix}. The government has commented that 'all too often the circumstances that lead to an initial offence are exacerbated by a short stint in prison' for example 'losing their homes, breaking contact with key support networks, and meeting others inside prison who steer them in the wrong direction.'^{xx}

Q12. Do you have any comments on the new section on young adult offenders?

Pre-sentence reports: We welcome the inclusion of a specific drop down on young adults, however, would suggest the following wording at the start of the section to re-emphasise the importance of pre-sentence reports for this cohort:

'When considering a custodial or community sentence for a young adult, the court should always ask Probation for a pre-sentence report.'

Inclusive: We propose that the wording is also strengthened by adding 'inclusive' after the 25 to ensure that it extend up to the age of 26 in practice:

'When sentencing young adults (18-25 years inclusive), courts should be aware that age and/or lack of maturity can affect both the person responsibility for the offence and the effect of the sentence on the individual.'

Maturity and brain development: We also suggest adding a sentence to provide more information to sentencers about maturity and brain development as follows:

'Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development. It can also be affected by neuro-developmental disorders and acquired brain injury.'

We also suggest that a note be added to cross-refer to the relevant guideline:

'The Sentencing offenders with mental disorders, developmental disorders, or neurological impairments guideline may also be of relevance.'

Language: We would prefer the following wording in the subsequent paragraph to remove stigmatising language:

‘When considering sentencing options for young adults, courts should be aware that due to immaturity and ongoing neurological development they may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody. They may also find it particularly difficult to cope with the requirements of a community order without appropriate support. However, there is a greater capacity for change in young adults whose brains are developing and capable of re-wiring and they may be more receptive to opportunities to address their offending behaviour and change their conduct. Courts should be aware that the emotional and developmental age of the young adult is of at least equal importance to their chronological age (if not greater).’

Additional information: The Howard League have produced suggested sentencing principles for young adults (2019)^{xxi} based on published evidence and research with young adults. We would like to see more detailed information provided to sentencers on young adults in this section (like the list of bullet points in the female offender section) including:

- Young adults who come into contact with the criminal justice system have disproportionately disadvantaged backgrounds including experience of the care system, disrupted accommodation or education, exposure to abuse, neglect, trauma and loss.
- Where such difficulties occurred during a young adult’s childhood, sentencers will be aware that the impact of unresolved recent trauma and adverse childhood experiences will continue after their 18th birthday, however access to welfare - oriented services decline at this age irrespective of need.
- Many young adults who have contact with the criminal justice system may also have spent time as ‘looked after’ children and many will still be formally recognised as care leavers. The care leaving duties that apply to young adults have been specifically designed to counter the difficulties that young adults without parental support may experience in making the transition to adulthood. It is important that sentences do not frustrate this rationale behind the care leaving provisions of the Children Act and prevent young adults from accessing this time limited support. Young adults may also be struggling with the responsibilities of independent living and being a carer.
- There are high levels of mental illness and neuro-disability among young adults involved in the criminal justice system that means that they may struggle more than their peers with behaviour typically linked to offending and can increase their vulnerability to bullying, peer pressure, coercion or manipulation.
- Many young adults are still learning and criminal justice events could interfere with further education and consequent life prospects, as well as opportunities for social care support under s23 of the Children Act 1989 which applies to those wishing to pursue education below the age of 25. Education, work or training may be critical to a young adult’s career development, a key factor in the prevention of re-offending. With this in mind, sentencers should seek to minimise disruption to education, work or training of young adults.

- Young adults may seem less remorseful than they are and may mask or be unable to fully express their emotions because they are still maturing and developing emotional awareness skills. This is particularly relevant given the prevalence of neuro-disability among young adults in the criminal justice system compared to the general population.

Adultification: The consultation references issues around ‘adultification’ of children which ‘*can affect young adults, for example, who have recently turned 18 (particularly acute for males, looked-after children and those leaving care).*’ However, this is not specifically mentioned in the drop-down which is a missed opportunity which we would like to see remedied, especially given the increasing evidence and recognition that this issue has on racially minoritised children and young adults. Suggested wording is as follows:

‘Sentencers should be aware of the process of adultification whereby children and young adults are treated as more mature than they actually are by a reasonable social standard of development. This can affect young adults who have recently turned 18 and is particularly acute for males, looked after children and those leaving care. It can also take the form of racial prejudice where children or young adults from racially minoritised groups are treated as being more mature. In particular, Black girls and young adult women are viewed as less innocent and more adult-like than their white peers (Epstein et al., 2017)^{xxii} Pregnant or post-natal girls or young adult women may also be subject to adultification which may not reflect the reality of their situation and their care needs.’

Q13. Do you have any comments on the new section on female offenders?

Language: Again, we would like to see stigmatising language remove from this section. There is significant evidence showing the critical value of pre-sentence reports for women, so the wording should reflect that:

‘As such, when considering a community or custodial sentence for a woman, the court should always ask Probation for a pre-sentence report. Courts should be aware of the following considerations when sentencing a woman:’

Additional information: We welcome the list of considerations and would make the following observations about issues that we think should be strengthened, in particular to highlight the distinct needs of young adult and racially minoritised women:

- Reference should be made to the fact that young adult women are a minority in the probation and prison services, which can often lead to their needs being marginalised and overlooked. In 2019 2,709 young adult women aged 18-14 were supervised by probation compared to 21,004 young adult men. Girls and young adult women in prison (16-21) are more likely than boys and young adult men to have been in statutory care (nearly two thirds, compared to just under half)^{xxiii}.
- Greater detail should be given as to the nature of abuse that a woman is likely to have been a victim of and may also be directly or indirectly linked to her offence.

For example, there is growing recognition in legislation of coercive control, economic abuse and wider familial abuse. These may not be recognised by the woman herself until asked relevant questions, again highlighting why a pre-sentence report is vital. Young adult women in particular are likely to have suffered from recent extensive abuse (63% of girls and young women aged 16-21 in contact with the criminal justice system have experienced rape or domestic abuse in an intimate partner relationship, and between three quarters and 90% have experienced abuse from a family member or someone they trusted.)^{xxiv}

- Further detail could also be given regarding the exploitation of girls and young adult women, and research which shows that too often referrals to the national referral mechanism^{xxv} for victims of exploitation and modern slavery are not being made^{xxvi}, leaving them without access to specialist services and protections they need.
- The section on women from an ethnic minority background does not mention the well evidenced ‘double disadvantage^{xxvii}’ that they face. For example, Black women make up three per cent of the general population, but eight per cent of women in prison (Ministry of Justice, 2021). Black women are 29 per cent more likely to be remanded to custody, and 25 per cent more likely to get a custodial sentence in the Crown Court (Ministry of Justice, 2016). Black, Asian and minority ethnic women are more likely to receive immediate custodial sentences than white defendants for the same offences. In 2019, Black women had the highest custody rate and Asian women were more likely to receive the longest custodial sentence on average.
- Racially minoritised young adult women are more likely to be subject to adultification and treated as more mature than they actually are.
- The current wording recognises that women from an ethnic minority background have distinct needs, but does not explain what these distinct needs are or how these needs result in poorer outcomes and experiences of discrimination.
- Research by Independent Monitoring Boards and Criminal Justice Alliance (2023)^{xxviii}, found that racially minoritised women (including migrant women and Gypsy, Roma Traveller women) often experienced discrimination from staff and other prisoners, as well as indirect discrimination and unfair treatment such as adjudications and reduced access to employment within prison or Release on Temporary Licence. The research found the experience of Black women particularly bad with almost half rating their treatment in prison as poor or very poor. This also included lack of access to products required for Black women, access to single cells and lack of cultural understanding. Women who did not speak English as a first language also struggled to access relevant services in prison due to the lack of interpreting services.

Q14. Do you have any comments on the imposition of community orders section?

We welcome the reminder that community orders can fulfil all the purposes of sentencing. We would like to see a further reminder of the importance to consider protected characteristics such as age when considering suitable requirements:

‘The court must ensure that the restriction on the persons liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the individual, including taking into account their distinct needs and protected characteristics such as age and maturity.’

Q15. Is the new guidance on determining the length of a community order and how courts should consider time remanded in custody or on qualifying curfew clear?

We welcome the clarification that time spent in custody or on a curfew may reduce the punitive element of a community order or make it unjust to impose a requirement for the purposes of punishment. However, it could be made stronger:

‘Serious consideration should be given before imposing a requirement for the purposes of punishment as to whether time spent in custody or on a curfew would make it unjust to do so, given the punitive restrictions on liberty which have already been experienced by the person being sentenced.’

We would also like additional information added here about the disproportionate impact remand in custody has on young adults:

‘Sentencers should be mindful that young adults (18-25 inclusive) are overrepresented in the remand population where they make up 20 per cent of the population compared to around eight per cent in the general prison population of England and Wales. Remand is also used disproportionately against Black, Brown and racially minoritised young adults. There is evidence^{xxix} that young adults held on remand not only experience the pain of deprivation of liberty, but also other disadvantages including lack of support from a probation officer or any other lead professional such as a leaving care worker; lack of access to family, mental health support and legal advice; as well as lack of access to educational and rehabilitative opportunities which are not available to people on remand and therefore young adults often spend up to 23 hours a day isolated in their cells throughout their time on remand, which is growing due to court backlogs.’

Q16. Do you have any comments on the new information against each of the requirements in the requirements section?

Setting up for success: Research indicates that adding on too many requirements or having orders last an extended period of time, is particularly detrimental for young adults in setting them up to fail rather than succeed. After mention of the three-year maximum, we would therefore like to see an additional reminder to sentencers here of the principle of parsimony:

‘The court must ensure that the requirements imposed are proportionate and the minimum length of community sentence possible is imposed.’

Age: In line with the other references in the guidance to young adults, we would like to see additional mention here of the relevance of age:

‘The needs and rehabilitation of the individual, including their age and any mental health or addiction issues.’

Education and training: Young adults may be more likely to be in education or training, which can also impact on their financial circumstances to pay for travel to and from appointments/programmes. Young adults also receive a lower-level national minimum wage^{xxx}. Therefore, we suggest including this in the list of considerations:

‘the ability of the individual to comply taking into account their accommodation, education, training or employment, financial and family situation.’

Safety: Young adult women who have experienced domestic abuse or exploitation may be particularly vulnerable to requirements such as curfews or attendance at programmes with men, so we would like to see this reflected as an additional bullet point:

‘the availability of requirements in the local area, including access to gender specific, developmentally appropriate and/or culturally competent services’

‘the risks posed to the person being sentenced of being victimised, abused or exploited – in particular when considering curfews or mixed-gender programmes.’

Multiple purposes: We would like to see greater clarity in this section that a separate, additional punitive requirement is not always required, as one requirement can have dual purpose, for example to punish and rehabilitate, or punish and make reparation:

‘It is a matter for the court to decide which requirement/s amount to a punishment in each case, and the court should consider that one requirement can fulfil multiple purposes.’

We welcome the reminder that multiple requirements should not be excessive. This is a particular concern for young adults, as so we would like to see additional information of this added:

‘When sentencing young adults who may not have reached maturity, the court should consider whether multiple requirements are necessary and whether one requirement that meets both purposes of punishment and rehabilitation, would increase the likelihood of successful completion, assisting the development of a pro-social identity and increased maturity, and decreasing the risk of breach and a subsequent custodial sentence which would delay maturation further.’

Conflicts: We would suggest adding to the list of things that requirements should not conflict or interfere with four further concerns:

- *caring responsibilities*
- *their safety from victimisation, abuse and exploitation*
- *any treatment they are undergoing or due to undergo*

- *their ability to financially cover their basic needs, and those of any dependants after paying for travel to any appointments or placements*

Unpaid work: Unpaid work is a primary way in which people can make amends to their communities and to victims of crime, and so meet the purpose of reparation. Young adults in particular can benefit from reparative programmes, however research has shown that speeding up the rate at which orders are started and completed helps young adults move on with their lives, and subsequently access fulltime work or education. We would therefore suggest the wording is changed:

‘An unpaid work requirement requires people on probation to undertake work projects in their local community helping to make reparation for the harm caused by their offending.’

We would also suggest adding:

‘When sentencing young adults the court should consider the advantages of enabling them to complete unpaid work and make reparation in a timely manner, allowing them to then move forward positively with their lives for example through accessing fulltime education or employment, rather than further delaying these important maturity milestones.’

Q17. Do you agree with the new approach to rehabilitative requirements in the Community Order Levels section?

To support sentencers to consider the distinct needs of young adults, we suggest the following amended wording:

‘Any requirement(s) imposed for the purpose of rehabilitation should be determined by, and align with, the persons needs, age and maturity.’

‘Courts should tailor community orders for each person according to their specific circumstances including age and maturity.’

‘Courts should consider any relevant circumstances, including their needs, risks, age and maturity, in determining the final requirement or package of requirements.’

Q18. Do you have any other comments on the Community Order levels section?

We would like to see additional emphasis being placed on consideration of age and maturity when assessing suitable length of community order, given that research has shown that young adults in particular benefit from sentences they can complete over a shorter time frame, enabling them to move forward with their lives and reach maturity milestones such as engaging in full time work^{xxxi}. We therefore suggest the following:

‘In determining the requirement or combination of requirements, consideration should be given to the broad variety of sentences a community order can offer to be most

effective for a particular individual, including different lengths of an order. Sentencers should consider the age and maturity of the individual when deciding on the length of a community order, to increase the likelihood of successful completion.'

Q19. Do you have any comments on the Imposition of custodial sentences section? We welcome comments both on content and format/structure.

To emphasise the disruptive impact custodial sentences can have on young adults, we would suggest the following wording:

'Any custodial sentence can disrupt employment, education or accommodation and affect support networks by interfering with relationships with friends and family. Factors supporting desistance also can be adversely impacted by custody. For young adults a period in custody can delay the process of maturation and can be criminogenic, increasingly the likelihood of future offending.'

Q21. Do you have any comments on the suspended sentence order section, including the guidance on requirements of a suspended sentence order?

For young adults, whilst a suspended sentence is preferable to an immediate custodial sentence, their developing maturity and rapidly changing life circumstances may mean that a suspended sentence is not appropriate, as they have the threat of breach and custody hanging over them as they move forwards with their lives. We therefore suggest additional wording to ensure sentencers have considered whether a community order would be more appropriate:

'When sentencing young adults, whose lives are changing rapidly as they mature, a community order or deferred sentence with rehabilitative requirements or conditions may be more effective than a suspended sentence at addressing the root causes of offending and enabling them to mature and move forward with their lives.'

Q23. Do you think that the flowchart aligns with the proposed new structure in the guideline, and do you have any comments on the sentencing flow chart?

There is a further opportunity with the flow chart to remind sentencers to consider equality issues, such as the age of the person they are sentencing.

If the custodial threshold is met, the box encouraging sentencers to pause and consider if a community order would achieve the purposes of sentencing should include reference to the following question:

'If sentencing a young adult, would a custodial sentence have a negative impact on the development and process of maturation of the individual, that would make it disproportionate?' If they answer yes, then the arrow would lead to a community order.

Also missing from the flow chart is mention of pre-sentence reports and deferred sentences. Including these would provide further opportunity to emphasise the importance of considering these when sentencing young adults.

As suggested in answer to Q5, we would also like to see a final step added to the process to encourage sentencers to consider the proportionality of the sentence in light of all the equalities information. We would like to see this not only added as a separate section in the guidance, but also reflected in the flow chart.

Q24. Do you have any comments on the resource assessment and/or on the likely impact of the proposals on sentencing practice?

We welcome the guideline and agree that the proposed changes including: highlighting the value the pre-sentence reports; clarifying evidence around the ineffectiveness of short custodial sentences (in particular the criminogenic impacts caused by the imprisonment of young adults and re-emphasising the importance of looking at whether community orders can meet the purposes of sentencing even when the custody threshold has been reached, we hopefully encourage sentencers reduce the use of imprisonment. However as stated above, if sentencers layer on too many requirements for young adults, or over too long a period, this will have the impact of increasing already stretched probation resource and increasing the likelihood of breach with those additional costs attached, due to them being set up to fail with excessive requirements.

We would like to see this reflected in the resource assessment. This is why we consider it important that the Council emphasise in the guidance (discussed above) that requirements can serve multiple purposes, including punishment, without the need to add a requirement that is purely punitive in nature.

We would also like the resource assessment to consider the Justice Select Committee's (2016)^{xxxii} call for greater resources to be apportioned to young adults both in prison and probation budgets (including for developmentally appropriate community order requirements) in recognition of:

- the likelihood that they will have more intensive needs
- the importance of developing healthy adult identities to support long-term desistance from crime
- the long-term costs to the justice system of not providing developmentally appropriate approaches that aid desistance.

The committee said: *“Young adults offend the most but have the most potential to stop offending. They are resource intensive as they are challenging to manage. A strong case could be made for recognising that expenditure to make the system more developmentally responsive would pay dividends in reduced costs to the system in reducing incidents of violence and to society in reducing offending and the creation of further victims.”*

Q25. Are there any equalities issues relating to the proposed revised guideline that should be addressed?

Getting sentencing right for young adults is of utmost importance in determining their capacity to build a crime free future, develop their potential, and contribute to society in longer-term adulthood. The government’s own evidence on young adult males specifies that approaches known not to work with this cohort are “*punitive or deterrence-based approaches*” and “*interventions that reinforce a criminal identity*”.

The amended wording suggested in this consultation seeks to improve sentencers consideration of how they could best to meet the distinct needs of young adults and support the development of a positive identity and maturity. However, as we have recommended previously, we would like to see the creation of overarching sentencing principles for young adults, like those set out for children, giving greater weight to the detrimental impact of involvement in the justice system for this cohort. We would also like to see the development of young adult courts and developmentally appropriate community sentences made routinely available to courts.

T2A is not aware of what activities currently exist to support young adults on community sentences. The government recently abolished attendance centre orders (dedicated sentences which provided activities for young adults) in the Police, Courts, Sentencing and Crime Act 2021, reportedly because they were underused by courts. T2A is not aware of any research having been done to explore why this dedicated sentence for young adults was underused or what might usefully replace it.

It is important that sentencers understand that young adults who are drawn into the system are often facing multiple challenges and severe, cumulative, and often very complex problems. These are all too often not properly understood or addressed. And often the criminal justice system creates and worsens severe and multiple disadvantages, making it more likely that young adults will stay in the criminal justice system for longer. The Sentencing Council could do more in the guidance to remind sentencers that individual needs and protected characteristics will often be intersecting, resulting in multiple needs and layers of disadvantage and discrimination which will need to be taken into consideration.

As noted in the Sentencing Council’s recent Equality and Diversity Report, Chen et al. (2023)^{xxxiii} found no use of the term ‘intersectionality’ in the guidelines. They define the term as highlighting the ‘multidimensionality’ of marginalised subjects’ lived experiences (Crenshaw, 1989; Nash, 2008). Multidimensionality can be understood as the co-existence of two or more protected characteristics in the Equality Act 2010, and/or other factors of marginalisation, such as economic deprivation. We would therefore like to see this guideline include such a definition to raise awareness of this issue with sentencers.

Q26. Are there any other comments you wish to make on the proposed revised guideline?

Language: We note the use of the word ‘offender’ throughout the guidance. The Sentencing Council will be aware of efforts to move towards less stigmatising language or labels, for example the Probation Service now refer to ‘people on probation’. We would like to see the Sentencing Council follow this lead and use person-centred language. For example, ‘person being sentenced’ could be used as an alternative to describe the individual. This is particularly important for young adults who have strong potential to develop pro-social identities.

We propose that whenever young adults are mentioned the Sentencing Council add '*inclusive*' after the 25 to ensure that it extend up to the age of 26 in practice. We hope that this will be sufficient to improve the extent to which this factor is used in sentencing young adults.

We use the term ‘racially minoritised’ when referring to groups that have been minoritised and marginalised as a result of their race or ethnicity, including Black, Asian, mixed heritage, Gypsy Roma and Traveller, and other groups. The Sentencing Council may wish to consider use of this term.

ⁱ [T2A-response-to-Sentencing-Council-Misc-Admendements-Nov-2023.docx \(live.com\)](#)

ⁱⁱ [Young_Adults_Report_in_Court.pdf \(t2a.org.uk\)](#)

ⁱⁱⁱ [Supporting young adults with experience of care and custody - Handbook - T2A](#)

^{iv} [Care experience now a protected characteristic at 58 councils | BASW](#)

^v [Microsoft Word - Neurodiversity-call-for-evidence_submission-form_T2A Jan 2021 \(1\).docx](#)

^{vi} [Final-report Commission-on-Crime-and-Gambling-Related-Harms Howard-League-for-Penal-Reform_26-April-2023.pdf \(howardleague.org\)](#)

^{vii} [A Literature Review on Loss and Bereavement - Revolving Doors \(revolving-doors.org.uk\)](#)

^{viii} [Broke But Not Broken - Revolving Doors \(revolving-doors.org.uk\)](#)

^{ix} [A short thematic report by HM Inspectorate of Prisons: Outcomes for young adults in custody: A thematic review by HM Inspectorate of Prisons January 2021 \(justiceinspectorates.gov.uk\)](#)

^x [AYJ-Racial-justice-transitions-report-Feb-24.pdf \(t2a.org.uk\)](#)

^{xi} [The-Use-of-Deferred-Sentencing-in-England-and-Wales.pdf \(t2a.org.uk\) / Delivering a Smarter Approach: Deferred Sentencing | Centre for Justice Innovation](#)

^{xii} [FINAL-AYJ-Young-people-in-transition-in-the-criminal-justice-system-Evidence-review-April-2023.pdf \(t2a.org.uk\)](#)

^{xiii} [A Smarter Approach to Sentencing - GOV.UK \(www.gov.uk\)](#)

^{xiv} [Youth Justice Probation Report 2023 \(t2a.org.uk\)](#)

^{xv} [The Effectiveness of Sentencing Options on Reoffending \(sentencingcouncil.org.uk\)](#)

^{xvi} [HMI Chief Inspector of Prisons for England and Wales Annual Report 2022–23 \(publishing.service.gov.uk\)](#)

^{xvii} [costs-per-place-costs-per-prisoner-2020_-2021.pdf \(publishing.service.gov.uk\)](#)

^{xviii} <https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-FINAL.pdf>

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- xix [Proven reoffending statistics: January to March 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- xx [Cutting crime: better community sentences \(parliament.uk\)](https://parliament.uk)
- xxi [The Howard League | Sentencing principles for young adults](#)
- xxii [Girlhood Interrupted: The Erasure of Black Girls' Childhood \(georgetown.edu\)](https://georgetown.edu)
- xxiii [Weve-not-given-up-young-women-surviving-the-CJS-full-report.pdf \(t2a.org.uk\)](https://t2a.org.uk)
- xxiv [Weve-not-given-up-young-women-surviving-the-CJS-full-report.pdf \(t2a.org.uk\)](https://t2a.org.uk)
- xxv [PowerPoint-presentation \(iom.int\)](https://iom.int)
- xxvi [How does exploitation affect young adults? - Transition to Adulthood \(T2A\)](#)
- xxvii [Double Disadvantage Report.pdf \(agendaalliance.org\)](https://agendaalliance.org)
- xxviii [Report shows continuing discrimination for Black, Asian and minority ethnic women in prison - Independent Monitoring Boards \(imb.org.uk\)](https://imb.org.uk)
- xxix [Whats-wrong-with-remanding-young-adults-final-.pdf \(t2a.org.uk\)](https://t2a.org.uk)
- xxx [Why do young people have lower minimum wages? - Low Pay Commission \(blog.gov.uk\)](https://blog.gov.uk)
- xxxi [The future of unpaid work | Centre for Justice Innovation](#)
- xxxii [The treatment of young adults in the criminal justice system \(parliament.uk\)](https://parliament.uk)
- xxxiii <https://www.sentencingcouncil.org.uk/wp-content/uploads/Equality-and-Diversity-Report-FINAL.odt>