



**Ministry of Justice Murder Sentencing Consultation Response:**

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**Representative of a group:**

This response is submitted on behalf of the Transition to Adulthood Alliance (T2A). The Transition to Adulthood Alliance 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 members

are leading criminal and social justice organisations which have collaborate on many on T2A's reports and resources. A full list can be found on the website: [www.T2A.org.uk](http://www.T2A.org.uk).

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

We have every sympathy for the families of people who have lost a loved one because of the terrible crime of murder. Nothing can take away the sense of loss and the overwhelming feelings of grief. The sentencing regime will not make right that terrible wrong.

We make the case that sentencing should deliver a safer society for all. We are concerned that ever longer tariffs and sentences will mean that conditions in prisons make them less able to develop services that reduce offending and protect the public. We are aware that young adults who have committed murder are capable, with the right support during their process of maturation, of contributing positively to society after release, if they have the opportunities and motivation that comes from working towards a tariff date which offers some sense of hope for the future.

### **Summary of recommendations:**

- A coherent sentencing framework should be developed through a comprehensive, evidence-based review of Schedule 21. The review should also explore the need for specific guidance for sentencing young adults, as is the case for sentencing children.
- New minimum term starting points should not be introduced as they will increase complexity; cause anomalies; increase overcrowding pressures; and disproportionately impact young adults.
- New minimum term starting points will also have unintended consequences of making it harder to manage young adults subject to these sentences while in custody, due to loss of hope and motivation which are critical to positive engagement and rehabilitation.
- If new starting points were introduced, they should be disapplied to young adults on account of their developing maturity and the need for a distinct approach for this age group.
- If increased minimum starting points were adopted for all adults, we would want to see this disapplied for young adults who committed offences as children, but who turned 18 during the trial or sentencing process.

### **Introduction**

T2A welcomes the opportunity to contribute to the Ministry of Justice's consultation. We address the questions below; however, we would also like to make the following points:

## Need for a comprehensive review

We echo T2A member The Sentencing Academy who, in their response to this consultation, have called for a comprehensive review of Schedule 21. We agree with them that piecemeal amendments, such as those proposed in this consultation, can result in short-term ‘fixes that fail’, causing harmful unintended consequences and anomalous situations. This impacts on fairness and proportionality, in particular for young adults who by virtue of their ongoing maturation require a distinct approach for maximum efficacy.

As the Sentencing Academy highlight, Schedule 21 was implemented before comprehensive sentencing guidelines were introduced and now judges have less guidance when sentencing murder than most other offences. This consultation, along with the Domestic Homicide Review undertaken by Clare Wade KC, show how complex these issues are and the need for a coherent sentencing framework to be developed through a comprehensive, evidence-based review of Schedule 21 including looking at international sentencing practice for murder. The review should also explore the need for specific guidance for sentencing young adults, as is the case for sentencing children.

## Resource impact

We are concerned to note that there are no specific questions in the consultation relating to the impact assessment. We have the following comments:

**Overcrowding:** The Ministry of Justice will be aware of the overwhelming evidence of the current cumulative crises in our prisons caused by a toxic mix of overcrowding; lack of staff recruitment and retention; aging infrastructure; budgets not keeping up with the need for purposeful and rehabilitative activities and significant pressure on the probation service. This consultation comes at a time when various emergency measures are in place and HM Inspectorate of Prisons is repeatedly launching urgent notifications and warning of the dangers of persistent and significant overcrowding<sup>i</sup>. The pressure on the prison system is preventing rehabilitation and, instead, the conditions are increasing criminogenic risks due to increased mental health problems; lack of access to purposeful activity; isolation in cells for up to 23 hours a day; and increased levels of self-harm, suicide, and violence. The measures proposed will add to overcrowding by keeping more people in prison for longer before they are eligible for parole. As the impact assessment itself states *‘there is a risk that offenders spending longer in prison may compound prison capacity and overcrowding pressures, which may also reduce access to rehabilitative resources and potentially increase prison instability, self-harm and violence.’*

**Prison building:** Increasing the length of the minimum term (tariff) for relevant murder cases to a 25-year starting point for murders proceeded by coercive behaviour, it is estimated will need an additional 68 to 282 prison places. For a 25-year starting point for all murders committed with a knife or other weapon, it is estimated that an additional 492 prison places would be required. Prison building plans are not keeping

up with current predicted need, and a government document recently showed that even if all the government's planned capacity projects are delivered on time there will still be a short fall of 2,300 prison places by March 2025 when prison numbers are estimated to be 94,400- let alone the projected maximum of 106,300 by March 2027<sup>ii</sup>. The impact assessment for this consultation sets out in stark terms how these various proposals will only make the situation even worse through the need to build additional prisons and the significant economic costs of doing this (for example the 40-year net present cost of £204.5m for introducing a 25-year starting point for all murders using a weapon due to the need for 492 additional steady state prison places). Rather than divert public money into prison building, we would rather see adequate rehabilitative and resettlement support and tackling the root causes of violent crime for young adults, including interventions<sup>iii</sup> working with people convicted of abuse and coercive behaviour at the early stages<sup>iv</sup>.

**Impact on young adults:** Overcrowding pressures negatively impact young adults in custody causing delays to their maturation and failing to give them opportunities to develop pro-social identities at this critical time for brain development. There are 1,413 people in prison sentenced to life aged 25 or younger, with a tariff of 15 years or more. Since 2013, this population has grown more than half (53%). Young adults accounted for almost a quarter (24%) of all self-harm incidents in prison in 2022. Safety is increasingly compromised: the number of assaults has risen by nearly two-thirds (64%) in the last decade, despite the declining young adult population. Young adults are more likely to be on the lowest level of the Incentives and Earned Privileges (IEP) scheme. On average, nearly one in ten (9%) were on the 'basic' level compared with 3% of the adult population, despite Inspectors finding that the IEP scheme was least effective in young adult prisons<sup>v</sup>. Population and staffing pressures have already significantly hindered progress in implementing projects that seek to improve effectiveness and outcomes for young adults, and young adults are also currently being held longer in Young Offender Institutions because of overcrowding in the adult male estate. Despite the government's stated commitment to treating young adults as a distinct group, we are already seeing young adults in custody for longer because of changes made in the Police, Crime, Sentencing and Courts Act 2022. These proposals would make the situation worse for young adults and further disadvantage them in the system.

**Recalibration:** During the past 30 years the severity of sentencing for serious offending has increased significantly and has acted as a dragnet to draw up sentence lengths across the board. The Sentencing Council suggested that *'[w]hen the tariff for the most serious of offences increased so significantly, inevitably over time there has been some recalibration of the sentencing of those offences closest to it in gravity, including manslaughter, for example.'* We are concerned that there will be a 'trickle down' effect of increasing sentences for a range of other offences if these proposed changes are enacted, adding even further pressure and cost to the system.

**Public protection:** The impact assessment states that the proposals being consulted on *'may improve public protection'*, however no evidence has been presented as to how the public will be better protected. Our parole system exists to ensure that all those convicted of murder have their risk to public protection assessed prior to release. It is

not clear therefore how moving the minimum term will have any impact. No assessment has been made of the negative impact on public protection of prisons that are severely overcrowded and a prison and probation service that is unable to deliver a safe, decent, and rehabilitative regime which these proposals will exacerbate.

**Impact on people serving life sentences:** The impact assessment states: *‘A longer time in custody may strain familial and community links, limit offender motivation for reengagement in rehabilitation’*. Research on life imprisonment for young adults by Dr Susie Hulley, Professor Ben Crewe and Dr. Serena Wright at the Institute of Criminology, University of Cambridge<sup>vi</sup> found that:

- Men and women sentenced to long life sentences from a young age struggle with acute emotional responses to their incarceration. Feelings of anger, fear, distress and despair generate vulnerability and emotional volatility in this population, which makes providing safe and purposive regimes challenging, particularly in a system with limited resources and thin, inexperienced staffing.
- Serving a life sentence is a key risk factor for suicide. As well as the significant emotional and psychological costs of poor mental health among life sentence prisoners, to people working and living in prison and their families, suicides in prison generate a substantial financial cost to the prison system. For example, the 95 suicides in prison in the 12 months to September 2015 were estimated to cost between £160m and £300m.
- Longer sentences lead to feelings of illegitimacy among many people serving life sentences, who tend not to dispute that they deserve punishment but feel that the number of years they are required to serve is excessive, purely vengeful, and – after a period of around 10-15 years – erodes any rehabilitative objective.
- Men and women convicted of murder as secondary parties, using ‘joint enterprise’, feel particularly embittered about their conviction and sentence.
- People facing more than 20 years in prison is extremely difficult, and some long-term prisoners are likely to be drawn to forms of conduct, narratives and sources of meaning that are dangerous in terms of prison stability and order.

**Public confidence:** The impact assessment states that the proposals being consulted on *‘may improve public confidence in the justice system to respond proportionally and effectively’* to cases of murder. No evidence is presented to support the premise that harsher sentencing increases public confidence, and the assessment does not reflect the fact that sentences for murder have already increased significantly, and evidence shows significant misunderstanding by the public about life sentences:

- Both the average tariff (minimum term) given to life sentenced prisoners and the number of years served in custody have increased over the last 20 years. This has mainly been driven by changes in legislation rather than the number or gravity of murders. Since 2000, Parliament has significantly increased minimum terms for those found guilty of murder through the Criminal Justice Act 2003 and the Police, Crime, Sentencing and Courts Act 2022.

- The average tariff given to people serving life sentences has increased from 12.5 years in 2003 to 21.3 years in 2016. The number of people serving life sentences with long minimum terms has grown significantly. Since 2011, the number of people in prison serving life sentences with a tariff greater than 20 years has almost tripled – from 888 in December 2011 to 2,537 in June 2023.<sup>vi</sup>
- A survey carried out by The Sentencing Academy (2021)<sup>viii</sup> indicated that the majority of public respondents were unaware of the increase in average sentence lengths over this period. Over half (56%) of respondents were unaware that the average minimum term for murder had increased since 1996.

**Q1.1: Should a minimum term starting point, above the baseline starting point of 15- years, apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim or not?**

- No, we would prefer to see judges continuing to have discretion to decide punishments that reflect the severity of the crime.

We support the recommendation of the Wade Review and the proposed amendment set out in The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2024 (which came into force on 29 February 2024) to introduce a history of controlling or coercive behaviour against the victim as a specific aggravating factor. However, creation of another starting point would add additional complexity and undermine the ability of a court to determine a proportionate minimum term. We therefore do not support a higher starting point for murders committed with this factor present and the aggravating factor should be left to be applied along with other factors. The Wade Review did not recommend this change and we see no need for it to be introduced, especially as the impact of introducing the statutory aggravating factor has not had time to be assessed and evaluated.

**Q1.2: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, what should the starting point be?**

- N/A - disagree with a minimum term above the baseline starting point of 15-years for cases with a history of controlling or coercive behaviour

**Q1.3: If a minimum term starting point were to apply to cases of murder preceded by a history of controlling or coercive behaviour against the murder victim, should this apply to all cases where there was controlling or coercive behaviour or only to those cases where the controlling or coercive behaviour was of a high level of seriousness?**

- Other – please specify below

We are opposed to the proposed new starting point. This question shows the unintended consequences of introducing a separate starting point. Leaving it as a specific aggravating factor, a judge will be able to weigh the gravity of the aggravation

present in each case and increase the minimum term accordingly. We concur with the Sentencing Academy that *'This is a superior way to achieve the correct outcome rather than having to apply a binary assessment of whether or not the aggravating factor meets a 'high level' of seriousness, however that is to be defined in practice, and then having a step change in starting point for some cases and dissatisfaction in others where it is deemed that the behaviour was not of a sufficiently 'high level' to be taken into account when selecting the starting point.'*

We are also concerned that due to the nature of controlling or coercive behaviour, which can be hard to evidence, this would make it challenging for sentencers to come to a binary decision as to whether that behaviour was a 'high level of seriousness' or not. Also racially minoritised and migrant women, in particular young adults, may be less likely to report controlling or coercive behaviour to the police due to well-evidenced lack of trust<sup>ix</sup> or due to the lack of firewall between the police and the Home Office<sup>x</sup> – an issue not recognised in the equalities statement.

## **Q2.1 Should a minimum term starting point, above the baseline starting point of 15 years, apply to all murders committed with a weapon or not?**

- No

We are opposed to the proposed new starting point. Excessive emphasis on the mode of killing creates great anomalies. As the consultation document notes, one of these is the 10-year difference in starting points between a murder in which a knife is taken to the scene, and where a knife found at the scene is used. The higher starting point was introduced to serve as a deterrent, a purpose which it has failed to achieve. As the Sentencing Council's research<sup>xi</sup> highlighted: *'The weight of evidence suggests that increased sentence severity does not inherently result in greater general deterrent effects.'*

We agree with The Sentencing Academy that the difference in culpability of someone who took a knife to the scene compared to someone who used a knife at the scene murder *'cannot possibly justify a 10-year difference in starting points'* or *'that all murders committed with a weapon, whether taken to or found at the scene, are reasonably deemed to be sufficiently more serious than murders committed, say by bare hands.'* We believe that a Schedule which links starting points directly to mode of killing leads to anomalies in minimum terms.

If the 25-year starting point was extended to all murders committed with a weapon, the consultation document states: *'It may be possible that this could have the unintended consequence of reducing the relative seriousness with which other methods of killing, such as strangulation or beating, are viewed for the purposes of sentencing'* (pp. 27-28). We echo The Sentencing Academy who raise serious concerns that *'It is difficult to see how this genuinely is an 'unintended' consequence. If the starting point for a murder committed with a weapon is 10 years higher than an identical murder committed by strangulation, then Schedule 21 expressly is stating that the relative seriousness of a*

*murder committed with a weapon is significantly greater than a murder committed by strangulation. The statute is creating the very hierarchy that would not be intended.'*

We would like to see a comprehensive review commissioned to look at the option of removing the 25-year starting point for committing murder having taken a weapon to the scene with intent and revert to treating it as a significant aggravating factor, thereby removing the anomaly rather than complicate it further by extending the minimum starting point causing anomalies with murders by other methods, such as strangulation or beating. The comprehensive review should also look at age and maturity as a factor in sentencing and explore the need for specific guidance on sentencing young adults, as is the case for children.

**If a minimum term starting point were to apply to all murders committed with a knife or other weapon.**

**Q2.2: What should the starting point be?**

N/A – disagree with a minimum term above the baseline starting point of 15-years for all murders committed with a knife or weapon.

**Q2.3 Should this be disapplied in cases where a victim of abuse has killed their abuser or not?**

- Yes

We disagree with a minimum term above the baseline starting point for all murders committed with a knife or weapon.

If a higher starting point was introduced, it should be disapplied in cases where a victim of abuse has killed their abuser as it would be unjust for these women to have their minimum term significantly increased for using a weapon to do so, which is invariably the case due to the imbalance in physical strength. However, there is an important wider point here that if a woman is being sentenced for murder rather than manslaughter in these circumstances, then the adequacy of the statutory partial defences (such as loss of control – formally provocation- and diminished responsibility) are called into question.

The Law Commission<sup>xiii</sup> are currently reviewing use of defences in domestic homicide cases, so it does not make sense to introduce any changes to murder sentencing before this review has been completed.

**Q3.1: Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 1 of these proposals set out in this consultation? Please give reasons and supply evidence of further equalities impacts if you believe otherwise.**

- Disagree



(see below)

**Question 3.2: Do you agree or disagree that we have correctly identified the range and extent of the equalities impacts under Section 2 of these proposals set out in this consultation?**

- Disagree

**Age:** The equalities statement states that in 2022, 70% of those sentenced for murder were aged between 18 and 39, however there is no disaggregated data on young adults (18-25 inclusive), which means the assessment does not address the distinct needs of young adults. We find this concerning given the Ministry of Justice’s strategic commitment towards young adults, and the recognition that they require a distinct approach due to the neuroscientific evidence about their developing maturity. However, we can estimate that young adults will be disproportionately impacted by these changes amounting to indirect discrimination. From T2A’s perspective it is vital that sentencing policy reduces demand on prisons for the young adult cohort and reduces the time they spend in custody, which delays maturation and reduces the possibilities for forming pro-social identities. HMPPS data from its Young Adult Strategy<sup>xiii</sup> shows that 45% have learning difficulties or challenges, over 70% are estimated to have suffered a traumatic brain injury and are likely to have had 4 or more recent adverse childhood experiences (such as abuse, neglect and witnessing domestic violence)<sup>xiv</sup>.

Further increasing the minimum term starting point for young adults convicted of murder is therefore disproportionate. Sentences have already increased over the last 20 years and murders preceded by controlling behaviour has recently come into force as an aggravating factor (from 29 February 2024). There is no evidence that further increases are necessary or proportionate, and the Wade Review did not recommend this. The impact of the statutory aggravating factor has not yet been assessed or evaluated, including its impact on young adults. If proposals to increase the minimum starting point were implemented, we recommend that they should be disapplied for young adults aged 18-25 inclusive.

Evidence by Hulley et al. (2023)<sup>xv</sup> shows, waiting a very long time to become eligible for parole can impact on young adults’ hopes and motivations, with negative impacts on their maturation; engagement with the regime and rehabilitative opportunities; and their mental health. In *R(Smith) v Secretary of State for the Home Department* [2005] UKHL 51; [2006] 1 AC 159, Baroness Hale outlined that ‘*an important aim, some would think the most important aim, of any sentence imposed should be to promote the process of maturation, the development of a sense of responsibility, and the growth of a healthy adult personality and identity.*’ (Smith, paragraph 25).

This is particularly important as most young adults, including those who have committed serious and violent offences, stop committing crime in their early 20s; this is demonstrated in the government’s own evidence - in the Serious Violence Strategy<sup>xvi</sup> (p.36) - which shows that even for individuals classed as ‘high offending’, the peak age

of violent offending is 19 and this declines significantly from age 21 to 24. Increasing minimum starting points for young adults will therefore result in them being locked up for longer periods when their risk levels no longer warrant it.

We are particularly concerned that persistent prison regime restrictions are highly damaging to young adults during this key life transition as it results in them living in unsafe conditions, and limiting access to meaningful activity. HM Inspectorate of Prisons has drawn attention to the extent to which outcomes are worse for young adults when compared with those for older prisoners (aged over 25) in a 2021 thematic report.

If increased minimum starting points were adopted for all adults, we would want to see this disapplied for young adults who committed offences as children, but who turned 18 during the trial or sentencing process. As *Just for Kids Law*<sup>xvii</sup> have highlighted, the United Nations Committee on the Rights of the Child has made it clear that “*child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.*” System delay is the main reason children turn 18 between the commission of an offence and prosecution, resulting in real injustice.

**Race and age:** We are concerned that the impact on people sentenced under the doctrine of Joint Enterprise has not been explored as part of the equalities statement. Research suggests that over 2,000 people were convicted of homicide in cases involving secondary liability between 2005 and 2020, and a survey of prisoners suggests that up to half of those convicted under Joint Enterprise identify as being from a Black, Asian or minority ethnic background. In 2023, the CPS monitoring pilot, which tracked homicide and attempted homicide in six CPS areas, found Black young men aged 18-25 were the largest demographic prosecuted. This indicates they are 16 times more likely than white people to be prosecuted for homicide or attempted homicide under joint enterprise rules<sup>xviii</sup>.

Increasing the minimum starting points, would lead to people with secondary liability being held in custody for longer before being eligible for parole, and this would disproportionately impact people from a Black, Asian or minority ethnic background leading to indirect discrimination. If new starting points were introduced, disappling them for young adults would help to reduce this disparity and ensure that those with secondary liability were eligible for parole earlier, fostering a sense of hope and motivation to engage with the regime and rehabilitative opportunities during the crucial period of brain development.

The Independent Commission on the Experiences of Victims and Long Term Prisoners<sup>xix</sup> found that some respondents from Black, Asian or minority ethnic backgrounds saw delays or difficulties in progressing through long sentences as the result of prejudiced attitudes towards them: *‘I also think some people of ethnic backgrounds have less opportunities or chances, to progress, no matter the charge, it should be based on genuine change and the willingness to engage to genuinely work to act on that good change.’ ‘Inmates from ethnic backgrounds stagnate in the system. Those with learning difficulties are just abandoned and float around unnoticed.’* The HM Inspectorate of

Prisons thematic report (2022)<sup>xx</sup> also identified that Black prisoners felt white staff often associated them with gangs and felt that this had far-reaching implications for their day-to-day treatment and progression through their sentence. A report by the IMB and Criminal Justice Alliance (2022)<sup>xxi</sup> found similar experiences for Black and minority ethnic women in prison. Therefore, increasing the minimum starting point would have a disproportionate impact on Black, Asian and minority ethnic people given their experiences of custody are more negative and they find it harder to progress through long sentences.

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<sup>i</sup> [committees.parliament.uk/writtenevidence/125825/pdf/](https://committees.parliament.uk/writtenevidence/125825/pdf/)

<sup>ii</sup> [Prison Population Projections 2022 to 2027.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>iii</sup> [Our work with perpetrators | Respect](#)

<sup>iv</sup> [6896 Monckton-Smith \(2019\) Intimate Partner Femicide using Foucauldian.....pdf \(glos.ac.uk\)](#)

<sup>v</sup> [Winter-2024-factfile.pdf \(prisonreformtrust.org.uk\)](#)

<sup>vi</sup> [committees.parliament.uk/writtenevidence/125815/pdf/](https://committees.parliament.uk/writtenevidence/125815/pdf/)

<sup>vii</sup> [committees.parliament.uk/writtenevidence/125630/pdf/](https://committees.parliament.uk/writtenevidence/125630/pdf/)

<sup>viii</sup> [Public-Knowledge-of-Sentencing-Practice-and-Trends.pdf \(sentencingacademy.org.uk\)](#)

<sup>ix</sup> [BARONESS CASEY REVIEW Final Report \(met.police.uk\)](#)

<sup>x</sup> [Calls for a firewall as new data finds all police forces share migrant victims' data with Immigration Enforcement | End Violence Against Women](#)

<sup>xi</sup> [The Effectiveness of Sentencing Options on Reoffending \(sentencingcouncil.org.uk\)](#)

<sup>xii</sup> [Defences for victims of domestic abuse who kill their abusers - Law Commission](#)

<sup>xiii</sup> [Outcomes for Young Adults in Custody: Action Plan - GOV.UK \(www.gov.uk\)](#)

<sup>xiv</sup> [Academic Insights 2021/13: Serious youth violence and its relationship with adverse childhood experiences \(justiceinspectorates.gov.uk\)](#)

<sup>xv</sup> [committees.parliament.uk/writtenevidence/125815/pdf/](https://committees.parliament.uk/writtenevidence/125815/pdf/)

<sup>xvi</sup> [Serious Violence Strategy - GOV.UK \(www.gov.uk\)](#)

<sup>xvii</sup> [Turning-18-Briefing.pdf \(t2a.org.uk\)](#)

<sup>xviii</sup> [Controversial joint enterprise laws affecting young adults - Transition to Adulthood \(T2A\)](#)

<sup>xix</sup> [Independent Commission into the Experience of Victims and Long-Term Prisoners – Home \(icevlp.org.uk\)](#)

<sup>xx</sup> [Thematic review: The experiences of adult black male prisoners and black prison staff \(justiceinspectorates.gov.uk\)](#)

<sup>xxi</sup> [Towards Race Equality | Criminal Justice Alliance](#)