

Sentencing Young Adults: Getting it Right

Paul Maynard MP: Chair

As an MP one of my greatest frustrations and embarrassments is that I am morally responsible for the care of thousands of young people in our criminal justice system, who are often not having their dignity respected or their needs catered for.

As a new MP, one of the first things I did was go to see what happened to young offenders in my constituency - many get sent to SCH in Redbank or Hindley YOI. On visits to both I was struck that we were trying to solve all of society's problems in the justice system. I was horrified by case at a secure children's home where a young man asked to be readmitted because it was the only place he had felt cared for.

Issues of maturity interest me particularly. Too many YP have underlying communication difficulties which are not diagnosed. There are young people who are not emotionally mature or articulate and cannot put their case in court, and others who may be very mature who can do this well. We have a system without enough flexibility to account for someone's emotional age as well as physical maturity.

Sara Llewellyn: CEO, Barrow Cadbury Trust

The Barrow Cadbury Trust is the largest of surviving philanthropic foundations of the Cadbury family. The Trust has a Quaker history, and a long-standing interest in criminal justice. This is for two reasons: a belief in possibility for redemption of people, and the fact that many Quakers were 'conscientious objectors' so had seen prison from the inside.

Geraldine Southall and Barrow Cadbury were very concerned for young adults. Geraldine Southall set up the first juvenile court, and she proved through its success that young offenders should have separate provision. This principle became enshrined in statute in 1908 in Children's Act.

In 2003-4 the Trust set up Commission on young adults and published recommendations. This had cross-party support and cross-justice sector support but very little changed. This led to the establishment of the T2A Alliance – which the Barrow Cadbury Trust both drive and serve. T2A is a partnership of 13 organisations including practice, policy and academics. The Alliance purpose is to build an evidence base in support of idea that young adults are distinct and should have separate provision, and that not wholly mature when they wake up on their 18th birthday.

We have been doing work on interventions with this age group. The trust set up 3 pilot schemes: statutory, voluntary and a mature partnership of both. These are being evaluated by the Oxford Centre for Criminology in a formative evaluation, a cost-benefit analysis and an outcomes evaluation by Catch22. All are showing very credible results. We also

commissioned University of Birmingham to conduct a literature review on maturity across disciplines of criminology, sociology, neurology and psychology. This shows that, for a variety of reasons including neural, young adults not fully mature.

In particular the things that are most effective for that age group, which is very important for policy-making, are the regulation of impulse, anger management and understanding the relationship between cause and effect. T2A has produced around 30 publications – all are available on website: www.t2a.org.uk if you would like to access them. We hope the recent inclusion of maturity as a factor that can be considered in sentencing will spark a wider debate on this issue

Vicki Helyar-Cardwell

The current picture is that young adults aged 18-24 represent less than 10% of population but are almost third of all offenders found guilty or cautioned for indictable offence; more than a third of those starting community order or suspended sentence order and almost third of those sentenced to prison each year. The young adult reconviction rates higher than for adult population

Most recently on Thursday in Committee stage of LASPO Bill Minister Crispin Blunt acknowledged that “18 to 20-year-olds present a particular challenge, and we need to be imaginative about how we deal with that.” According to MoJ figures from 15 Sept two thirds were under 25 years old. Should not surprise us given the already higher rates of crime committed by this age group

Our report argues that maturity should be taken into account across the justice system, including in sentencing process. This is because there is substantial body of evidence showing that emotional development continues to mid 20s. Summary of the key evidence by University of Birmingham found that “development on those areas of the brain concerned with higher cognitive processes and executive functions, including control of impulses and regulation and interpretation of emotions, continues into early adulthood; the human brain is not mature until the early to mid 20s”. This is backed up by expert roundtable hosted by Lord Bradley, brought together experts from world of neurology, psychology and criminology.

Other work on principles of sentencing find youth a reason for differential treatment due to reduced ability to restrain action, resist peer pressure.

Young adults are the age group most likely age group to desist from crime. Vast majority will ‘grow out of crime’. The wrong intervention at this stage of development can enhance criminogenic behaviour and slow down the desistance process. We know about desistance – employment, housing, family and relational ties.

The public support these measures. 69% of the public think a person’s emotional and psychological maturity should be taken into account when they are accused of breaking the law, rated higher than age, which only 57% of the public thought should be taken into account. Less than a third (28%) of the public think that emotional and psychological maturity is not important. There is cross party support – 81% of all MPs – for maturity being taken into account by the criminal courts

The CJA is very pleased this has been included as a mitigating factor in the Sentencing Council guideline on assault and on burglary. This states that “age and/or lack of maturity where it affects the responsibility of the offender”. We would like to see:

- A version of the German Sentencing model for young adults piloted in England and Wales. Young people aged 18-20 can be tried according to adult or juvenile law depending on their maturity, according to the discretion of the sentencer.
- We would also like to see further recognition of lack of maturity where linked to the commission of an offence, as a factor indicating lower culpability.
- Training for sentencers on understanding maturity to better inform decisions. We do not want this to lie in the hands of expert witnesses or formulaic tests.

John Thornhill, Chair of the Magistrates' Association

Sentencers always welcome reports on how we can achieve the right intervention at the right time. Sentencers are often concerned we don't have the right interventions when we need them. I found the report interesting and, in principle, support many of the recommendations here.

I am wary of statistics. There is an argument that we send more people to prison per head of population than other countries in Europe. If you look at that statistic and ask how many people we send to prison per head of *offender* population, the outcome is quite different.

Yes, young people are prolific in the criminal fraternity, and we do need to pick that up. I was delighted that you referred to desistance theory because we need to take this into account.

Those of us in the criminal justice system know that until the offender themselves wishes to change, in some way it doesn't matter what sentence is handed out in the court. We therefore need sentences that tackle that particular issue - to get the young person to see why it is they need to turn around from offending behaviour that impinges on society as a whole.

I did go through the report in detail. There are issues about the availability of appropriate sentences. If you are going to follow German model, then you will need to have available to the court disposals in the community, or in prison if necessary, programmes that will tackle the very issue, the very *raison d'être* for following the German model and I don't think we have that at the moment. Although there is a problem with financing of new ideas, that is not a reason for not going down that road. Because I believe if we are going to have a rehabilitation revolution, and I think that's the right approach, we need to have available to the courts the variety of sentences to deal with variety of different offenders that we've got. I understand the pressures of the current financial climate, but that's not a reason why we shouldn't set out to achieve it.

There was reference in the report to the Intensive Alternatives to Custody. I'm not sure that I like to term 'alternative to custody' because I think they have a role to play in their own right as sentences. And I am concerned because what it says at the moment is the offence has to pass the custody threshold, and then we can stand back from custody if the circumstances of the offender or offence are appropriate, and use intensive alternatives to custody. The one you referred to in the report in Manchester tackles this particular age group. If any of you have not yet visited it, the IAC in Manchester is very much worth a visit. They are not an easy option. I have been visiting a number of these strong, challenging community sentences across the country and what they say to me is that they are challenging. Those who say there needs to be a punishment element, there is one within these sentences in my view. In one of them young females have to attend five days a week at 10am. That, in itself,

to insert some regularity into their lives is in fact a very important discipline, and for some is a punishment. The other element that is vitally important is that we must ensure, alongside desistance approach, we give those who offend the opportunity to gain self respect. I have the pleasure this evening of going to the Koestler exhibition (the magistrates curated it this year). That for me is a tremendous example of, while they are serving the sentence, recognising that we need to support the offenders. And if we have a particular problem with 18-24 year olds in relation to maturity, then it is right we have sentences that do that.

If we had a pilot along lines of German sentencing model then, I think, as magistrates we would support that. But what we *are* responsible for, as members of the judiciary, is to apply the law. If you think the law should be changed, then you have the opportunity to do that and persuade MPs to change the law. We also work within Sentencing Guidelines. This is right, and ensures there is a measure of consistency in the way we approach the sentence. That doesn't mean we have a uniformity of sentence; some degree of inconsistency in sentencing is appropriate because the needs of different individuals are different. That is the strength of having sentencing guidelines. Whether this factor should apply in every guideline, I will leave Roz to discuss. But can I say that magistrates have always taken maturity into account. Magistrates have always been observant in the court, and if we feel there are particular difficulties with an offender, we will always ask for further information. But very often we are not given information and we would like to see more general and wider information about the offender so we can assess the maturity of the decision-making process of that offence. That doesn't apply only to age group we're talking about, because some older people may behave in a way that shows lack of maturity.

My concern is leaving this entirely to sentencers. I understand the reasons behind your argument that it should not be about formulaic tests or expert witnesses because the cost of that is very serious, and trying to get two psychiatrists to agree is like trying to jump to the moon. Yes, I think there should be training for magistrates. I agree this should be part of judicial discretion but there does need to be guidance, and there does need to be more info provided to the bench or judges about the offender. Just because they're 19 or 20 in itself is not enough. Age does not tell us enough and we need more information.

Service providers working with the courts are something very dear to the hearts of magistrates. We are hoping to put an amendment to the laspo bill when it gets to the Lords proposing a statutory requirement for sentencers and probation to talk and liaise. We used to have that requirement with Probation and Liaison Committees which were very positive groups. So, as concerns recommendation four, we have no problem as sentencers maintaining our judicial independence and working with service providers. It is vital, as you rightly say, that there are young adult-specific interventions and services. They need to be made available if the young offender has to go to custody, and be made available to the courts so we can make wide use of these interventions so we can help young people in turning their own lives around. Because there is no point me sending someone to custody, if that is necessary, if nobody is actually going to support them and help them. So overall we support the principles of this. We are pleased to see in the new sentencing guidelines that age and maturity is included as a factor that we the judiciary would consider in sentencing. The principles we have always espoused is the need to take everything into account, and we support what is in the report in principle but the devil is in the detail. However, it is right that these young people need special consideration when they come before our courts.

Roz Campion, Head of Office of the Sentencing Council

I intend to cover two things, one is to say why 'age and/or lack of maturity' was included in our first guideline on assault and our second on burglary, and then I'll talk about our response to the report.

The Criminal Justice Alliance, Transition to Adulthood Alliance and the Barrow Cadbury Trust had long-argued to our predecessor bodies, the Sentencing Advisory Panel and the Sentencing Guidelines Council, that guidelines should encourage sentencers to look more carefully at the sentences being passed in those cases involving young adults. When the Sentencing Council was established in April 2010 and it started looking at its first guideline on assault it decided to take a fresh look at the whole approach to guidelines, to think about how they should be structured. In particular to focus on, in any given offence, what courts should take into account when sentencing. We had a very wide ranging consultation with hundreds of responses. One of our questions was on whether age and lack of maturity should be a factor of mitigation. Our predecessor body had said 'youth or age'; they had no reference to lack of maturity. We wanted to make sure our guideline had something a little wider than that; something more than physical age. This very much came out of arguments put forward by organisations here today and from talking to others.

I was interested by John's point that magistrates have always taken maturity into account when sentencing. We ran a number of consultation events with magistrates and it was interesting the extent to which there was disagreement amongst magistrates about what they would take into account. Some were very clear they would take maturity into account, others were very clear that they wouldn't. I think with all these things, different people have different perspectives, and that was why the Council wanted to be clear.

One of the things the Council heard from consultees was that the focus purely on age wasn't helpful. One consultee told us he had seen someone recently who was 30 but he felt lacked maturity, and so exercising his own discretion he reduced the sentence. So what the Council heard was that if one can lack maturity at any point between 18 and 32, then something as focused as an age wasn't terribly helpful.

Having included age or lack of maturity in our first guideline on assault, we subsequently included it on burglary which we published last week. It is our intention to include it in all future consultations, but I put the caveat there that this is not something that will be without controversy or challenge. Some consultees, when we consulted on burglary, were less than enthusiastic about using the mitigating factor of maturity. We are currently working on the guideline for sex offences. Many of you might say that is a classic case where age and lack of maturity do need to be included. However, I know that many think something rather different. So it will not fall off the agenda. However, the Council's intention (at the moment) is that it will be included in all future guidelines.

What impact do we think this 'age or lack of maturity' will have? The Coroners and Justice Act changed the law in relation to courts using sentencing guidelines. Under the new legislation courts are obliged to follow the guidelines – the legislation says 'must follow' - unless it is in the interests of justice not to do so. In those cases they need to explain why that would be the case. The Council expects sentencers in the vast majority of cases to follow the guidelines. The Council's view is that by including 'lack of maturity' we will get a

more consistent approach. Magistrates across the country will have to consider whether this is a particular factor in the case in front of them. That will be important in those cases where the young adult is not right on the cusp of 18. You might not necessarily think of it if you have a 23 year old or a 25 year old or whatever age you want to pick.

One of the important things is the interpretation of this and making sure there is training out there. In conjunction with the Judicial College, when we published the guidelines, we made training materials available to every court in the country. And we produced 'frequently asked questions' and age or lack of maturity was something we flagged there. We are currently in the process of finalising our training materials on burglary and, as a result of discussion with colleagues at the Prison Reform Trust, we've made sure the scenarios we are using include the example of a person who lacks maturity.

In addition to our responsibilities in producing guidelines, the Council has taken steps to fulfil its statutory duty to monitor the use of its guidelines. Last year we started the Crown Court Survey which monitors how the Crown Court actually sentenced individuals. The survey will help the Council understand which factors judges have taken into account in any instance and tomorrow we'll be publishing the first set of data coming out of that survey. We intend to publish this data on an annual basis.

Turning to the report we're here to look at. Generally, the Council was in agreement with the thrust of many of the comments made by the CJA and was cheered that the CJA welcomed the inclusion of age and maturity as a mitigating factor. One of the recommendations Vicki mentioned in her presentation was taking into account age or lack of maturity at an earlier stage of sentencing process as it impacts culpability – in other words it should be more determinative. The Council thought about this but was of the view that age / maturity was a contextual factor but not one of the prime factors. It was not so central to culpability to be taken into account straight off. In consultation responses we received, those who were positive about including this broadly felt it was a personal mitigating factor but that it did not go to the heart of culpability.

On the context of the riots and recent events – we know many of those involved were this age group. In our definitive guideline published last week we did reference public disorder so that will be an aggravating factor and lead to a more severe sentence. But we also have help in the reference to age and or lack of maturity so you will see a balance.

Adam Smith, MoJ Sentencing Directorate

The Directorate I come from in the MoJ is a relatively newly formed one, that puts together sentencing and rehabilitation, and I think that says something about the Ministry's approach to this subject now. Sentencing is now seen as part of the tools for working on rehabilitation.

Picking up on comment Paul made about Redbank and the offender wanting to go back because it was the only place he felt cared for, this goes to the point that the criminal justice system has to pick up some extremely difficult issues. This is a circumstance where the criminal justice system has responded well by providing a supportive environment. This is the criminal justice picking up wider problems and we need to think what successes the

system is having with that young person that they feel a sense of support and a sense of getting their life back on track.

I would like to pause on some numbers. Between a year ago and earlier this summer there has been a fall of young adults in custody, at a time when the overall prison population remained largely flat. Between June 2010 and June 2011 the number of those aged 18-20 went down in remand and sentenced populations – this has been especially noticeable in the sentenced population.

As a response to the report, I start with the first recommendation. What is being proposed is a mixed economy in relation to sentencing of young adults, where young adults can be sentenced according to youth justice sentencing framework or with discretion to use the adult sentencing framework, depending on the individual circumstances of the offender. It is worth pausing because this is a very far-reaching proposal. The intention is very clear – to ensure sentencing is undertaken with a proper assessment of the maturity and development of the offender, with the additional feature that certain additional features might become available. Going along the lines that have been recommended raises an issue for the system about how you would integrate that approach with the youth justice system that has been developed over a number of years. The youth justice system exists with great coherence about working with those under 18. But the youth justice system is more than simply a sentencing framework, and it includes special arrangements at every stage of the process before that point: evidence gathering by the police, appropriate adults, specific diversion and out of court disposals, Youth Offending teams that carry out offender assessments, provide reports to the court and supervise community sentences. Youth courts with specially trained magistrates come in at the end of that process. We need to think what it would mean to take a cohort of 18-20 year olds at the sentencing stage and seek to include them at the back end of that system. It seems to be open to question, if the intention is to ensure maturity is reflected in sentencing, whether the German model is the right one, given that there are more fundamental structural questions that it gives rise to.

What that proposal has raised in my mind is how does the existing system take into account questions of maturity and development at different stages? Before the sentencing stage, part of preparing a pre-sentence report, probation officers will conduct an interview with an offender and they will assess a range of factors including circumstances such as maturity. From the first point of contact with an offender, an offender manager is expected to identify special needs, communication and learning styles, diversity issues and to be responding appropriately and according to that assessment. In some circumstances, a specific offender report - an offender assessment - is undertaken that will cover issues such as lifestyle, offender associates, thinking and behaviour and attitudes which address attitudes towards their offence and to their victim, and ability to understand consequences of their offending behaviour. These issues will be taken into account when making a proposal for sentencing. Even at this early stage questions of maturity are being picked up in existing processes.

This is part of a wider question of identifying the individual needs of all offenders (not just young adults) at an early stage. People may be aware that MoJ is working with the Department of Health and the Home Office to ensure health agencies focus on identifying people with mental health problems, at an early stage in the criminal justice system, and we expect to have some liaison and diversion services in police custody suites in the next couple of years.

Again before sentencing, there is the question of out of court disposals. There are questions about the use and availability of approaches such as restorative justice. The figure I have shows a 14% reduction in reoffending from restorative justice pilots; there is something particularly effective that we have to think about here. There is also a high level of victim satisfaction. The processes for restorative justice are built up in the youth justice system, so we now need to look at how can we build capacity in the *adult* system. One of the things John [Thornhill] was discussing was the use of problem-solving courts. We are keen to take forward proposals on 'neighbourhood resolution panels' which is about bringing local victims, offenders and community volunteers together to agree what action should be taken to deal with certain types of crime. If we are able to deal with low level crime in that informal way, then we may be able to ensure young offenders do not get down further down the wrong track.

Sentencing must be proportionate, and then we can ask if there are specific factors to be taken into account. The whole system is geared round the principle of proportionality. As well as specific factors such as maturity being taken into account in Sentencing Guidelines, there are other ways in which maturity will be taken into account and assessed in individual cases, for example where behaviour is reckless or an offender is acting under coercion.

There are important things in the government's Green Paper, *Breaking the Cycle*, that the government is trying to do in order to put offenders onto a different track. How are those proposals going to apply to young adults? Approaches such as payment-by-results, where government is moving to a position of saying 'we are not going to be saying exactly what the right answer to something is, but want a group of offenders' lives turned round, and if you reduce reoffending we will pay for that'. I know the Barrow Cadbury Trust has been involved with St Giles Trust in the Peterborough Social Impact Bond pilot which is very important. This is working with prisoners serving under 12 months – there's not a lot of time to work with those offenders whilst they're in prison, therefore setting up through the gate services is a really important part of their resettlement. A slightly different approach is being taken at the PBR pilot at Doncaster which will apply to almost all offenders there. The whole cohort will be assessed and the prison will be paid partly according to their reoffending rate. Further pilots are being developed to look at applying PBR to the public sector; how to build it onto the DWP's Work Programme; how to apply PBR into the community and justice reinvestment. I mention the breadth to show that what is on offer is a new approach. If we want to take forward work on young adults, we need to think how to deliver some of those benefits through the new approaches the government wishes to pilot and test.

Conclusion by Paul Maynard MP

Thank you to all the panellists for their contributions. It is somewhat ironic to have an MP chairing an event on the construct of maturity given what my parliamentary colleagues get up to each week at PMQs! I am pleased that everyone has seriously engaged with the idea of maturity. No-one has dismissed it.

You might recall 'Fawlty Towers' famous episode with Basil not understanding the German tourists. One thing I may take away from this is the need to look more at what Germany does as a holistic approach with young offenders. I thought the point about disposals, such as

attendance centres, could be looked at. I think we have an obsession with legislating in this country, passing criminal justice Act after criminal justice Act, and often it is never implemented. We rarely look back at whether it has worked. Occasionally, lets step back and think about what we have done in the past and what actually works.

Perhaps a final thought, I know the Quakers have a fondness for quiet thinking, contemplative prayer, for silence. As a Catholic we have prisoners Sunday once a year which I find one of the most interesting days in the church year because it is a very challenging. And many find their preconceptions challenged by what has come up. And because I'm the local MP I get it in the ear from one half saying you're not tough enough and the other saying why aren't you being nicer! I think sometimes we need a period of quieter reflection. We have had some reflection today. Let us hope the likes of me can take this forward in amendments and so on.