

## **Response to the Sentencing Council's consultation paper on sentencing for drug offences**

### **Summary**

The Transition to Adulthood (T2A) Alliance welcomes the opportunity to respond to this consultation. The T2A Alliance has previously called for an approach to the sentencing of young adults that is proportionate to their maturity and we therefore welcome the Sentencing Council's proposal that a lack of maturity should be considered as a potential mitigating factor in sentencing for drug offences, as it was in the recently-published guideline on sentencing for assault offences. However, this response argues that lack of maturity is also a relevant characteristic in determining the offender's role. It also states that this draft guideline is a missed opportunity to reduce sentence lengths for some minor drug offences, which would both be proportionate and would protect scarce resources in the prison and probation services.

### **About the Transition to Adulthood Alliance<sup>1</sup>**

The T2A Alliance is a broad coalition of organisations and individuals which identifies and promotes more effective ways of working with young adults, aged 18-24, in the criminal justice system. Convened by the Barrow Cadbury Trust, its membership encompasses leading criminal justice, health and youth organisations Addaction, Catch22, the Centre for Crime and Justice Studies, Clinks, the Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, the Prince's Trust, the Prison Reform Trust, the Revolving Doors Agency, the Young Foundation, Young People in Focus and YoungMinds.<sup>2</sup>

Building on the work of the Barrow Cadbury Commission on Young Adults and the Criminal Justice System,<sup>3</sup> the T2A Alliance has developed a series of policy proposals that would create a more effective criminal justice system for the young adult age-group. In order to make our recommendations robust and achievable, our initial programme of work culminated in the publication of a consultation document that contained a thorough analysis of the problems caused by and faced by young adult offenders and a series of draft recommendations. During a three month consultation period on this document, views were sought from politicians, policy-makers and practitioners. Over 300 individuals and organisations - including statutory and voluntary sector groups, young adults, and ex-offenders themselves - contributed to this process, helping us to refine our thinking and develop our recommendations. As a result of this work, in November 2009 the T2A Alliance published a 'Young Adult Manifesto',

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<sup>1</sup> For more information on the T2A Alliance, see <http://www.t2a.org.uk/alliance>

<sup>2</sup> Although the work of the T2A Alliance reflects the views of its membership, this submission should not be seen to represent the policy positions of each individual member organisation.

<sup>3</sup> For the final report of this Commission, see: Barrow Cadbury Commission on Young Adults and the Criminal Justice System (2005) *Lost in Transition*, London: Barrow Cadbury Trust.

containing ten recommendations that would make the way in which we deal with young adult offenders more effective, fairer and less costly.<sup>4</sup>

In addition, the Barrow Cadbury Trust has established three pilot projects, running from 2009-2012, which are testing different approaches to improving services for young adults in the criminal justice system. The T2A pilots enable community interventions to be tailored to the needs of the individual, with the aim of reducing both the risk of reoffending and social exclusion. The three pilots are in Birmingham, Worcester and London, and are delivered by Staffordshire and West Midlands Probation Trust, YSS and the St Giles Trust respectively.<sup>5</sup> The pilots are subject to a formative evaluation by the University of Oxford's Centre for Criminology, an outcome-based evaluation by Catch22, and a cost-benefit analysis by Matrix Evidence. The University of Oxford's evaluation already points to promising early results and highlights the pilots' success in engaging young adults in actions which will help them towards better lives.

This programme of work, encompassing research, policy development and practical experience, forms the basis of the analysis contained in this consultation response.

### **Statistical information on young adults and sentencing**

This information is drawn from Ministry of Justice publications, and highlights the need for a targeted, effective approach to the sentencing of young adults.

- During 2008, 29% of offenders found guilty or cautioned for an indictable offence were aged 18-24.
- During 2009, 141,884 young adults (aged 18-20<sup>6</sup>) were sentenced by the courts.
- During 2009, 14,015 young adults (aged 18-20) were sentenced to immediate custody, 5,174 to a Suspended Sentence Order and 26,031 to a Community Order. 742 received an absolute discharge, 12,170 a conditional discharge, 80,029 a fine and 3,723 were otherwise dealt with.
- During 2009, 44,836 young adults (aged 18-24) started a community order, 36% of the total number of people to receive a community order, and 16,233 young adults (aged 18-24) started a suspended sentence order, 35% of the total.
- As of 31 December 2009, 33,728 young adults (aged 18-24) were serving a community order, 34% of the total, and 14,656 were serving a suspended sentence order, 34% of the total.
- During 2009, 30,880 young adults (aged 18-24) entered prison establishments under an immediate custodial sentence, 33% of the total.
- As of 30 June 2009, the population of young adults (aged 18-24) in prison under sentence was 18,133, making up 26% of the total sentenced prison population.
- Of the 18,133 young adults (aged 18-24) in prison under sentence on 30 June 2009, 2,231 were sentenced for a drugs offence (12%). Of these, 788 had been sentenced for supply offences (35%), 1,103 for possession with intent to supply (49%), 108 for possession (5%), 154 for importation offences (7%), and 79 for other drug offences (4%).
- As of 30 June 2009, young adults (aged 18-24) made up 21% of the people in prison under sentence for drug offences (2,231 out of 10,696).
- As of 30 June 2009, the majority of young adults (aged 18-20) in prison were serving a custodial sentence of between one and four years (4,484 out of 7,574). 783 were serving a

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<sup>4</sup> The 'Young Adult Manifesto' is available at <http://www.t2a.org.uk/publication-download.php?id=27>

<sup>5</sup> For more information on the pilot projects, see <http://www.t2a.org.uk/pilots>

<sup>6</sup> National sentencing statistics are not broken down for the 18-24 year old age group.

sentence of six months or less and 395 a sentence longer than six months but less than 12 months.

- 47.2% of 18-20 year olds and 43% of 21-24 year olds released from custody or commencing a court order under probation supervision in 2008 were convicted of committing a further offence within one year. For all adults the reconviction rate was 40.1%.

As this information makes clear, young adults aged 18-24, who constitute less than 10% of the population, are disproportionately involved in the criminal justice system, making up more than one-third of those commencing a community order or suspended sentence order, one-third of the probation service's caseload and almost one-third of those sentenced to prison each year. This demonstrates the importance of recognising the distinct needs and circumstance of young adults in developing effective sentencing.

### **The Transition to Adulthood Alliance and sentencing**

In its 'Young Adult Manifesto', the T2A Alliance made three recommendations that relate to sentencing. They are:

1. We recommend that all of the agencies that comprise the criminal justice system recognise young adults (aged 18–24) as a distinct group on account of their developmental stage, as well as the social, economic and structural factors that specifically impact on them.
2. We recommend that the government should consider how maturity and developmental stage could be taken into consideration in the sentencing of young adults.
3. We recommend the abolition of the use of short sentences of less than six months for young adults convicted of non-violent offences.

With regards to implementing the second of these recommendations, the T2A Alliance believes that the principles of proportionate sentencing for juveniles should be adapted for the young adult age group, and in examining how this could best be implemented the T2A Alliance was most convinced by the model of sentencing of young adults in Germany that allows sentencers a level of discretion in trying young adults aged 18-20 under juvenile law, depending on the seriousness and circumstances of the crime and the maturity of the offender.

In the German system, all young adults aged 18-20 are transferred to the jurisdiction of juvenile courts, with courts having the option of sentencing according to the juvenile law or the adult law. Juvenile law is applied if "a global examination of the offender's personality and of his social environment indicates that at the time of committing the crime the young adult in his moral and psychological development was like a juvenile". Juvenile law is also applied if it appears that the motives behind and the circumstances surrounding the offence are those of a typical juvenile crime. About two-thirds of young adults are sentenced as juveniles and on the whole it is more serious cases that are dealt with in the juvenile jurisdiction and minor, particularly traffic, offences that are dealt with in the adult system. For those offences that are dealt with in the adult system, immaturity is still seen as a mitigating factor.

This approach, which has been used in Germany since 1953, has been endorsed by the Council of Europe's Committee of Ministers, which has recommended that "reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when

the judge is of the opinion that they are not as mature and responsible for their actions as full adults.”<sup>7</sup>

Economic analysis carried out for the T2A Alliance by Matrix Evidence has also shown that introducing measures that would allow young adults to be tried under juvenile law following a maturity assessment is likely to produce a lifetime cost saving to society of almost £5 million (£420 per offender). During the course of two parliaments, the implementation of such a scheme would be likely to lead to a total net benefit to society of almost £473,000.<sup>8</sup>

The T2A Alliance therefore recommends that a UK pilot should be set up based on maturity assessments and drawing on practice in Germany for sentencing young adults under juvenile law, depending on the nature of the crime and the offender’s level of maturity. In line with the German system, this could be applied (at least initially) to 18-20 year olds, which would be consistent with the existence of provisions for those aged 18-20 in Young Offender Institutions, with immaturity used as a mitigating factor within the adult system for young adults aged 21 or over.

The T2A Alliance has just begun an extensive programme of work examining maturity, including looking at the concept of assessing maturity based on the circumstances of the offence as well as on the individual offender’s characteristics. The work will examine in more detail how this system of sentencing could work in practice. While we recognise that this change is outside the direct remit of the Sentencing Council, we hope that providing this information will be useful in putting our consultation response in context, particularly in relation to our response to Question 9 and Question 12 of the consultation.

## **Response to the consultation questions**

Our responses to the consultation questions on which we have a view are set out below.

### **Question 1**

*Do you agree with the proposed groupings of offences into five guidelines?*

Yes. This appears to be the most straightforward approach to ensuring that the guidelines promote a consistent approach to sentencing for drugs offences.

### **Question 3**

*Do you agree with the Council’s approach of separating Classes B and C?*

Yes. This approach should help to ensure that sentencing for offences relating to Class C drugs is proportionate to the seriousness of offence and to the relevant statutory maximums.

### **Question 6**

*Do you agree that possession of a drug in a prison should put an offender into the most serious offence category for possession offences?*

No. While the T2A Alliance recognises the very harmful effects of drugs in prisons, we are not convinced that this approach is appropriate or useful. Many young adults who receive a custodial sentence have addictions to drugs, and for these offenders there is very limited

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<sup>7</sup> p.3: Council of Europe Committee of Ministers (2003) *Recommendation Rec (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.*

<sup>8</sup> Matrix Evidence (2009) *Economic analysis of interventions for young adults offenders* – available at <http://www.t2a.org.uk/publication-download.php?id=29>

availability of appropriate treatment in prisons to help them to address these addictions. As stated elsewhere in this response (see Question 10, below), in general prison is a poor setting in which to deliver drug treatment programmes – services have insufficient capacity and the UK Drug Policy Commission has argued that prison drug services frequently fall short of even minimum standards<sup>9</sup> - and as a result it is hardly surprising that many young adults in prison continue (or even start) to use illegal drugs. Simply giving them a further custodial sentence (the starting point for possession of a Class A drug in prison is 1 year's custody and the top of the range is 3 years' custody. Even for a Class C drug the starting point is 12 weeks' custody) is unlikely to have any beneficial effect. Nor is there any evidence that these would act as a deterrent. The T2A Alliance therefore recommends that this special category should be removed, and the same factors should be used in establishing the offender's culpability as are considered for non-prisoners.

### **Question 7**

*Should "medical evidence that a drug is used to help with a medical condition" be included as a mitigating factor for possession offences?*

The T2A Alliance believes that 'medical evidence that a drug is used to help with a medical condition' should be included as a mitigating factor for possession offences. While the evidence in support of cannabis' efficacy for medicinal purpose is not unequivocal, it is sufficiently robust to be recognised in many other countries and by many healthcare professionals. In our view, this is sufficient for it to be introduced as a potential mitigating factor, allowing sentencers to apply it where they think it appropriate. We also believe that it should be included as a potential mitigating factor in production offences and offences of 'permitting premises to be used'. With regards to the former, it would be nonsensical to have medicinal use as a mitigating factor for possession but not for production, if production is for personal use. Similarly, if an individual allows a relative or friend to use their premises for drug-use that is related to a medical condition, this should act as a mitigating factor.

### **Question 9**

*Do you agree with the roles as proposed for each of the offences covered by the draft guideline?*

The T2A Alliance broadly supports the approach taken to identifying offenders' roles. However, we would urge the Sentencing Council to consider the following issues.

#### Lack of maturity

In addition to acting as a factor reflecting personal mitigation (see below), the T2A Alliance believes that 'Lack of maturity' should be considered as a factor in determining the offender's role. We believe that this is necessary because developmentally many young adults exhibit immaturity that may be related to their offending, with research into brain development identifying a range of changes that continue through the young adult age range.

A recent review of research and other literature relating to the issue of the maturity of young adult offenders, commissioned by the Barrow Cadbury Trust and conducted by the University of Birmingham, found that: "Development of those areas of the brain concerned with higher order 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-twenties". The report concludes that: "There is strong

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<sup>9</sup> p.64-66: UK Drug Policy Commission (2008) *Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?*, London: UK Drug Policy Commission.

evidence that, from a neurological perspective, the human brain is not fully developed in its capacity for cognitive functioning and emotional regulation until well into the period of young adulthood. From a psychological perspective, evidence shows that psychosocial capacities and moral reasoning abilities vary considerably between individuals in the young adult age group, so that some remain immature longer than others, including after the legal age of adulthood.”<sup>10</sup>

This supports the conclusions of a report by the T2A Alliance, *Universities of Crime: Young Adults, the Criminal Justice System and Social Policy*<sup>11</sup>, which demonstrated that it is widely recognised that brain development continues into young adulthood and that young adults potentially face greater difficulties in controlling behaviour, are more prone to risky behaviour and are less able to plan for the future. These conclusions were also supported by discussions at a T2A Alliance expert roundtable hosted by Lord Bradley in the House of Lords in February 2011 (which brought together key experts from the world of neurology, psychology and criminology to discuss the concept of maturity).

This suggests that young adults’ levels of maturity may affect their culpability, and this should therefore be considered in determining their role. We therefore believe that ‘Involvement through lack of maturity where it relates to the offender’s role’ should be a factor that indicates a subordinate role in relevant offences. To prevent ‘double counting’ (where the same factor is considered twice), if this change is made then the factor reflecting personal mitigation would need to become ‘Age/lack of maturity where it does not relate to the offender’s role’. With offences of ‘permitting premises to be used’, where role is not taken into account, ‘Age/lack of maturity where linked to the commission of the offence’ should be a factor indicating lower culpability, taken into account at Step 1, and ‘Age/lack of maturity where *not* linked to the commission of the offence’ should be a factor reflecting personal mitigation, taken into account at Step 2. For offences of possession, the approach currently set out in the draft guideline is the most appropriate one.

#### Mental disorder or learning disability

Similarly, the T2A Alliance believes that ‘Mental disorder or learning disability’ should be considered in establishing the offender’s role (as well as in personal mitigation), as it relates to culpability. This would be in line with the recently-published final guideline on assault, where ‘Mental disorder or learning disability, where linked to the commission of the offence’ is identified as a factor indicating lower culpability and ‘Mental disorder or learning disability, where not linked to the commission of the offence’ is identified as a factor reflecting personal mitigation. For the sake of consistency, the same approach should be taken here, with ‘Mental disorder or learning disability’ appearing as a factor in both Step 1 and Step 2 of the sentencing process.

As with ‘Lack of maturity’ (see above), we therefore believe that ‘Mental disorder or learning disability where it relates to the offender’s role’ should be a factor that indicates a subordinate role in relevant offences. To prevent ‘double counting’ (where the same factor is considered twice), if this change is made then the factor reflecting personal mitigation would need to become ‘Mental disorder or learning disability, where it does not relate to the offender’s role’.

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<sup>10</sup> This review will be published soon by the Barrow Cadbury Trust. For more details contact Max Rutherford, Criminal Justice Programme Officer at the Barrow Cadbury Trust, at [m.rutherford@barrowcadbury.org.uk](mailto:m.rutherford@barrowcadbury.org.uk) or on 020 7632 9066.

<sup>11</sup> Available at <http://www.t2a.org.uk/publication-download.php?id=15>

With offences of ‘permitting premises to be used’, where role is not taken into account, ‘Mental disorder or learning disability, where linked to the commission of the offence’ should be a factor indicating lower culpability, taken into account at Step 1, and ‘Mental disorder or learning disability, where not linked to the commission of the offence’ should be a factor reflecting personal mitigation, taken into account at Step 2. For offences of possession, the approach currently set out in the draft guideline is the most appropriate one.

### Supply to a prisoner

In addition, for supply offences, ‘Supply to a prisoner (other than by a prison officer)’ should not be automatically seen as a ‘significant’ role. While we recognise the very harmful effects of drugs in prisons, we are concerned that this could be used to penalise the families of prisoners who bring drugs into prison. This would be inappropriate given the huge pressures that prisoners’ families are under and the levels of coercion that they may face. Families may be pressured into providing drugs to family members in custody,<sup>12</sup> a fact that was recognised by David Blakey in his Ministry of Justice-sponsored review of measures to disrupt the supply of drugs into prison, which stated that: “Some prisoners put pressure on families and friends to bring drugs in”.<sup>13</sup> In this context, circumstances might not merit family members being seen as conducting a ‘significant’ role, and a ‘subordinate’ role might be more appropriate.

### Social supply

While we recognise that the term ‘social supply’ is problematic, the T2A Alliance also thinks that more should be done to ensure that young adults who purchase drugs for friends, sometimes making a small profit to cover costs or compensate them for time spent, do not receive sentences that would be more appropriate for a genuinely commercial supplier. For this purpose the relevant part of the definition of somebody in a ‘subordinate’ role for a supply offence - “absence of *any* financial gain” (emphasis added) - should be changed to allow an individual whose *primary* motivation was not financial gain, and where the financial gain was minimal, to be determined as playing a ‘subordinate’ role. Alternatively, a specific mitigating factor could be created to address this issue.

### Possession offences

The T2A Alliance is concerned that the culpability of the offender and the harm caused in possession offences appears to be determined under these proposals solely by the quantity of the relevant substance in their possession. However, it is not clear why possession of a large quantity of a drug necessarily implies greater culpability or harm. An individual might, for example, buy in ‘bulk’ to limit their contact with the criminal markets, might have an addiction and therefore higher tolerance and therefore require higher quantities, or might simply want to save money by buying (less frequently) in a higher quantity. In these circumstances it is not clear that they are causing additional harm by comparison with buying (and therefore possessing) smaller amounts more frequently. More flexibility is therefore needed in establishing the harm caused and the culpability of offenders in possession offences, to ensure that possession of a large quantity of a substance does not automatically lead to a long sentence.

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<sup>12</sup> p.20: Smith, R., Grimshaw, R., Romeo, R. and Knapp, M. (May 2007) *Poverty and disadvantage among prisoners’ families* York: Joseph Rowntree Foundation.

<sup>13</sup> p.9: Blakey, D. (2008) *Blakey Review: Disrupting the supply of illegal drugs into prisons* – available at <http://www.justice.gov.uk/publications/docs/blakey-report-disrupting.pdf>

## **Question 10**

*Do you agree with the aggravating and mitigating factors outlined for each of the offences covered by the draft guideline?*

### Age/lack of maturity where it affects the responsibility of the defendant

The T2A Alliance, which has been studying the issue of young adult offenders for the last two years, strongly endorses the proposal to include 'Age/lack of maturity' as a mitigating factor.

The T2A Alliance supports this proposed mitigating factor because it believes that the maturity of young adults should be recognised within the criminal justice system, including in sentencing, due to the extensive evidence, both developmental and demographic, that 'young adulthood' is a particular stage in life and that young adults require distinct treatment because of their levels of maturity and the economic, social and structural factors that specifically impact upon them.

Developmentally, many young adults exhibit immaturity that may be related to their offending, with research into brain development identifying a range of changes that continue through the young adult age range, as discussed in response to Question 9 (above).

In demographic terms, young adults face a range of transitions as they move towards adulthood. These include: the move from education to employment; the move into a long-term relationship, perhaps becoming a parent; and the move from the parental home to their own 'household'. In recent decades, there has been a significant shift in the age at which these milestones are reached. For example:

- In 1971 the average age of first marriage was 25.6 years for males and 23.1 years for females, whereas in 2004 this average had increased substantially to 31.4 and 29.1 respectively.
- The average age of the mother at the birth of her first child rose from 23.6 to 27.6 between 1971 and 2006.
- The age at which young adults first live alone has also increased. In 2006, 58% of males and 39% of females aged 20-24 were still living in the family home, compared to just 50% and 32% in 1991.
- The 'staying on rate' for post-16 education in England has more than doubled from 38% in 1970 to 78% today, with some 40% of young people currently going on to university.

The criminal justice system's arbitrary determination that those over the age of 18 are 'adults' is thus out of step with cultural and social norms of transitions to adulthood, and fails to recognise changes in broader society in recent decades.

In addition, young adults in trouble with the law often have particularly high levels of complex need and are from backgrounds of great disadvantage, and young adults with the most troubled or traumatic childhoods often take a lot longer than average to mature. Vulnerable young adults often lack positive adult role models and also suffer from high levels of mental ill-health and alcohol and drug misuse problems. As a member of staff, describing the young adults using their specialist service, put it: *"They're very needy. They're very vulnerable. They haven't had good role models. They often have chaotic lives, and lead very hard to mouth existences. And some of them, despite their age, are amazingly unskilled at coping with adult responsibilities."*<sup>14</sup>

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<sup>14</sup> p.34: Devitt, K. and Lowe, K. (2010) *Made to Measure: Bespoke services for young adults: Examples of promising practice*, Brighton: Young People in Focus.

Young adults are also the most likely age group to desist and ‘grow out of crime’, and an inappropriate sentence at this time can slow desistance and therefore extend the period during which a young adult might commit crime. The wrong interventions with young adults within the criminal justice system can also hamper their ability to maintain relationships and family contact, both of which can play a central role in supporting desistance from offending. Between the ages of 18 and 24, the focus should be on encouraging desistance from crime and supporting the factors which reduce criminal behaviour, for example employment, housing and good health.

These issues demonstrate the need to recognise maturity in the sentencing process, and by including this mitigating factor in the proposed guideline, the Council is playing a part in ensuring that young adults are given effective sentences which take account of their maturity, thereby reducing reoffending rates and cutting crime.

However, for the reasons set out above (in this question and in answer to Question 9), the T2A Alliance thinks that the role of maturity in sentencing should be extended to cover both Step 1 and Step 2 of the sentencing process for drugs offences. Firstly, as stated above in answer to Question 9, ‘lack of maturity’ should be considered as a factor in determining the offender’s role, due to its impact on the level of the offender’s culpability. Secondly, we think that ‘Lack of maturity’ should be a factor reflecting personal mitigation even where it is not causally related to the commission of the offence, due to the greater ‘punitive bite’ of sentences on young adults and the greater impact on their future life chances.

These issues were summarised by the Sentencing Advisory Panel, one of the predecessors of the current Sentencing Council, which set out the ‘factors that are most commonly regarded as having the potential to influence the penalty imposed’ with regards to age. They included: offending by a young person is frequently a phase which passes fairly rapidly and therefore reaction needs to be kept well balanced in order to avoid alienating the young person from society; a criminal conviction at this stage of a person’s life may have a disproportionate impact on the ability of the young person to gain meaningful employment and play a worthwhile role in society; the impact of punishment is felt more heavily by young people in the sense that any sentence will seem to be far longer in comparison with their relative age than for adult offenders; young people may be more receptive to changing the way they conduct themselves and be able to respond more quickly to interventions; young people should be given greater opportunity to learn from their mistakes; and young people will be no less vulnerable than adults to the contaminating influences that can be expected within a custodial context and probably more so.<sup>15</sup> While, this was related to under-18s, these factors could equally be applied to those aged 18-24. This further demonstrates the arbitrary nature of the sharp differentiation between the youth and adult systems, and further makes the case for including ‘Age/lack of maturity’ as a factor reflecting personal mitigation.

As stated above, ‘Involvement through lack of maturity where it relates to the offender’s role’ should therefore be a factor that indicates a subordinate role in relevant offences, while ‘Age/lack of maturity where it does not relate to the offender’s role’ would be a factor reflecting personal mitigation at Step 2 of the process. With offences of ‘permitting premises to be used’, where role is not taken into account, ‘Age/lack of maturity where linked to the commission of the offence’ should be a factor indicating lower culpability, taken into account

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<sup>15</sup> p.21: Sentencing Advisory Panel (2008) *Consultation paper on principles of sentencing for youths*.

at Step 1, and 'Age/lack of maturity where *not* linked to the commission of the offence' should be a factor reflecting personal mitigation, taken into account at Step 2. For offences of possession, the approach currently set out in the draft guideline is the correct one.

To maximise their positive impact, we also encourage the Sentencing Council to make it as clear as possible that factors relating to maturity do apply to those aged over 18, to avoid any potential confusion.

#### Mental disorder or learning disability

In addition, the T2A Alliance supports the inclusion of "Mental disorder or learning disability" as a mitigating factor. A high proportion of young adult offenders have mental health problems, and mental health issues are often particularly acute during someone's transition to adulthood as child-focused support services - and in particular child and adolescent mental health services - fall away when they reach the age of 18 and it is often difficult to access mainstream adult mental health services.

A study found that 18-21 year-olds in prison experienced higher levels of mental health problems and were more likely to attempt suicide than either younger or older ages<sup>16</sup>, while an analysis of 18-21 year-old young men in custody by the Howard League for Penal Reform found that 43% experienced mental ill health.<sup>17</sup> Young adult offenders are also three times more likely to have a mental health problem than someone of the same age who is not an offender, with young adults in custody 8-10 times more likely to commit suicide than their counterparts in the general population.<sup>18</sup>

Young adults in the criminal justice system are also very likely to have learning disabilities and difficulties, as well as high levels of speech, language and communication difficulties that affect their level of understanding, and those with learning disabilities may also have lower levels of developmental maturity. While many young adults with mental health problems or learning disabilities should not be dealt with through the criminal justice system, where they have not been diverted before sentencing it is therefore important that mental ill health and learning disabilities are seen as mitigating factors.

However, as stated in answer to Question 9 (above), the T2A Alliance believes that 'Mental disorder or learning disability' should be considered in both Step 1 and Step 2 of the sentencing process. This would be in line with the recently-published final guideline on assault, where 'Mental disorder or learning disability, where linked to the commission of the offence' is identified as a factor indicating lower culpability and 'Mental disorder or learning disability, where not linked to the commission of the offence' is identified as a factor reflecting personal mitigation. For the sake of consistency, the same approach should be taken here.

We therefore believe that 'Mental disorder or learning disability where it relates to the offender's role' should be a factor that indicates a subordinate role in relevant offences and 'Mental disorder or learning disability, where it does not relate to the offender's role' would

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<sup>16</sup> Lader, D., Singleton, N. and Meltzer, H. (2000) *Psychiatric Morbidity among young offenders in England and Wales*, London: Office for National Statistics.

<sup>17</sup> Howard League for Penal Reform (2006) *Out for Good, Meeting the resettlement needs of young men*, London: Howard League for Penal Reform.

<sup>18</sup> p.42: Devitt, K., Knighton, L. and Lowe, K. (2009) *Young Adults Today*, Young People in Focus: Brighton.

be a factor reflecting personal mitigation. With offences of 'permitting premises to be used', where role is not taken into account, 'Mental disorder or learning disability, where linked to the commission of the offence' should be a factor indicating lower culpability, taken into account at Step 1, and 'Mental disorder or learning disability, where not linked to the commission of the offence' should be a factor reflecting person mitigation, taken into account at Step 2. For offences of possession, the approach currently set out in the draft guideline is the most appropriate one.

#### Sole or primary carer for dependent relatives

The T2A Alliance also supports the inclusion of "Sole or primary carer for dependent relatives" as a mitigating factor. The work of the T2A Alliance has identified that many young adult offenders are parents. A quarter of men in Young Offender Institutions are, or are shortly to become, fathers and some 60% of women in custody are mothers, with 45% of those having parental responsibility at the time of the imprisonment. This has an inter-generational impact on the life chances of their children, with 65% of children who have a parent in custody going on to offend. The benefits of reducing the use of custody and keeping families together where appropriate are therefore significant, and the introduction of this mitigating factor could help to facilitate this.

#### Determination and/or demonstration of steps taken to address addiction or offending behaviour

The T2A Alliance also supports the introduction of 'Determination and/or demonstration of steps taken to address addiction or offending behaviour' as a mitigating factor. Many young adults use multiple substances – primarily alcohol, cannabis, cocaine and ecstasy (the so-called 'ACCE' user profile) – and young adult offenders are more likely to be engaged in problematic drinking behaviour than their older counterparts, with a higher proportion of young adult offenders exhibiting a criminogenic need relating to alcohol than in other age groups.<sup>19</sup>

This mitigating factor may be particularly beneficial if it enables a community sentence or suspended sentence to be passed, rather than a custodial sentence. In general prison is a poor setting in which to deliver drug and alcohol treatment programmes. Prisoners are frequently moved from prison to prison which disrupts the delivery of programmes, short sentences may not allow enough time for programmes to be completed, and there is currently insufficient capacity for the number of prisoners that need access to programmes. While work to provide equivalence of care in prisons with that provided in the community is welcome, the UK Drug Policy Commission has argued that prison drug services frequently fall short of even minimum standards<sup>20</sup>, while the Centre for Mental Health has reported that "prisoners with current and recent histories of addiction stated that there was very little help available in the prison beyond physical detoxification and that they had largely had no one with whom to discuss the underlying reasons for their addiction or what support would be available when they left prison"<sup>21</sup>.

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<sup>19</sup> Young People in Focus (2011) *Substance Misuse and Young Adults in the Criminal Justice System*, Brighton: Young People in Focus.

<sup>20</sup> p.64-66: UK Drug Policy Commission (2008) *Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?*, London: UK Drug Policy Commission.

<sup>21</sup> p.33: Durcan, G. (2008) *From the Inside: Experiences of prison mental health care*, London: Centre for Mental Health.

Overall, as the UK Drug Policy Commission concluded, “custodial sentences may frequently do more harm than good”<sup>22</sup>. As a result, community sentences linked to appropriate, and where possible young adult-specific, treatment should be used wherever possible for young adult offenders with addictions, and the introduction of this mitigating factor could help to achieve this.

**Question 11**

*Do you think that there are any other factors that should be taken into account at these two steps?*

No. In our view the Sentencing Council has identified the appropriate aggravating and mitigating factors that relate to young adults, taking into account our comments set out in response to Question 10.

**Question 12**

*Do you agree with the proposed offence ranges, category ranges and starting points for all of the offences in the draft guideline?*

In the T2A Alliance’s view, the Sentencing Council should have proposed reducing sentence lengths for some minor drug offences. The T2A Alliance does not believe it is necessary or appropriate to deal with the many low-level drug offences through the criminal justice system. Where low-level drug offences do come before the courts, the sentences given should therefore minimise the impact on criminal justice resources and on the individual. In this context, shorter sentences for some possession and supply offences would, in our view, be proportionate and fair and would also have the effect of protecting scarce resources in the prison and probation services. The starting points for possession offences should therefore be reduced (it is difficult to think of circumstances where a prison sentence would an appropriate response to a possession offence but as of 30 June 2009 there were 421 people, including 108 young adults aged 18-24, in custody for possession), while the starting points for lower-level production and supply offences should also be reconsidered.

**Question 14**

*Is there any other way in which equality and diversity should be considered as part of this draft guideline?*

It is well established that people from ethnic minority communities are overrepresented in the criminal justice system. Some of the worst failings of the justice system relate to race issues and there are particular concerns relating to drugs offences, with research consistently suggesting that there is disparity in arrest and imprisonment rates for drug offences between white and black people in England and Wales.<sup>23</sup> This is particularly highlighted by the young adult age group and it is therefore vital that steps are taken to properly address the disproportionate involvement in the criminal justice system of young adults from black and minority ethnic groups. Action must be taken across the criminal justice system to make the system fairer for young adults from ethnic minority backgrounds, and by ensuring consistency and transparency in sentencing this guideline can help to achieve this. To ensure

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<sup>22</sup> p.14: UK Drug Policy Commission (2008) *Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence?*, London: UK Drug Policy Commission.

<sup>23</sup> Townsend, M. (2010) ‘Black people six times more likely to face drug arrest’, *Observer*, 31 October – available at <http://www.guardian.co.uk/society/2010/oct/31/race-bias-drug-arrests-claim>

that it is having this effect, the Sentencing Council, in measuring the impact of this guideline, should ensure that it measures the experiences of black and minority ethnic young adults.

**If you would like to discuss the contents of this consultation response further, please contact Max Rutherford, Criminal Justice Programme Officer at the Barrow Cadbury Trust, at [m.rutherford@barrowcadbury.org.uk](mailto:m.rutherford@barrowcadbury.org.uk) or on 020 7632 9066.**

*The members of the T2A Alliance are: Addaction, Catch22, the Centre for Crime and Justice Studies, Clinks, the Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, the Prince's Trust, the Prison Reform Trust, the Revolving Doors Agency, the Young Foundation, Young People in Focus and YoungMinds, and the T2A Alliance is supported by the Barrow Cadbury Trust.*