



T2A Alliance response to the Sentencing Guidelines consultation on the draft revised guidelines for summary offences in the Magistrates' Court

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About you

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The Transition to Adulthood (T2A) Alliance, a coalition of criminal justice, health and youth organisations, produces and promotes evidence for effective ways of working with young adults (aged 18-25) who commit crime.¹ It has helped to establish a growing consensus that criminal justice system responses to the behaviour of young adults should reflect their variable developmental maturity and provide an approach that is distinct from those for both children and older adults. The evidence gathered over the last decade is underpinned by research on brain development in young adulthood suggesting that impulse control, reasoning, and decision-making capacities are in formation through the mid-20s. Aspects of justice system practice in England and Wales have adjusted in recognition of this evidence. Adult sentencing decisions have, since 2011, included maturity as a mitigating factor. From 2013, the Crown Prosecution Service began taking maturity into account as part of its public interest test.

Question 1

Do you agree that offences generally should be presented in one consistent format?

Yes

Please give reasons for your answer.

A consistent format is easier for sentencers, defendants, victims and the public to understand and helps to ensure that different offences are dealt with in a fair and proportionate manner. Clear and consistent guidelines are an important factor underpinning procedural fairness. A number of studies have demonstrated that defendants reporting a high level of procedural fairness are more likely to comply with court orders, to perceive laws and legal institutions as legitimate, and to obey the law in the future. Recent research suggests that

¹ <http://www.t2a.org.uk/>



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procedural fairness may be significantly more important to young people than to adults.²

We welcome the recognition of age and/or lack of maturity as a mitigating factor at step two (starting point and category range) in the draft magistrate's guidelines. However, we note that age and/or lack of maturity is not included as a mitigating factor for the following offences:

- draft no insurance;
- draft speeding; and
- draft taxi touting/soliciting for hire.

It is unclear why age and / or lack of maturity is not included as a mitigating factor for these offences when it is for all other offence guidelines under consultation. Speeding in particular is an offence where lack of maturity is likely to be a significant factor reflecting personal mitigation. Research on brain development in young adulthood has shown that the functions linked to 'temperance' (impulse control, rational thinking, empathy) are not normally fully developed in the adult male brain until the mid-20s. The recently introduced requirement for a mandatory maturity assessment in cases involving young adults underlines the need for sentencers to take account of maturity in sentencing decisions.³ Therefore, we recommend that age and/or lack of maturity is included as a mitigating factor in all offence guidelines.

T2A, in partnership with the Centre for Justice Innovation, is in the process of piloting a network of young adult courts designed to test the impact of a tailored process in court for young adults aged 18-25.⁴ These would likely include (i) specialist court listings for young adults; (ii) youth-specialist magistrates presiding over the hearings; (iii) family involvement at court; (iv) adapting existing youth court procedurally fair courtroom language and communication; (v) an adapted courtroom environment more conducive to engagement. The feasibility study has shown that this approach is possible within current legislation and feasible with only a few amendments to existing practice. There is reason to believe that this has real potential to improve young adults' experience and perception of the justice system and consequently may increase compliance with the law and rehabilitation

T2A would be keen to explore with the Sentencing Council ways in which sentencing guidelines and practice could be improved for young adults, building on the welcome recognition of age and/or lack of maturity as a mitigating factor in adult sentencing guidelines. More generally, T2A supports the following recommendations⁵ for improving guidance and provision for the

² See T2A and CJI (2016) Young Adults in Court: Developing a Tailored Approach, London: T2A CJI. Available at <http://www.t2a.org.uk/wp-content/uploads/2015/12/Young-Adults-in-Court.pdf>

³ PSI 04 2016 requires that "PSRs completed on 18 – 24 year old offenders must include consideration of maturity".

⁴ See T2A and CJI (2016) Young Adults in Court: Developing a Tailored Approach, London: T2A CJI. Available at <http://www.t2a.org.uk/wp-content/uploads/2015/12/Young-Adults-in-Court.pdf>

⁵ Adapted from CJA (2011) Sentencing young adults: Getting it right. London: CJA. Available at <http://www.t2a.org.uk/wp-content/uploads/2016/02/CJAggettingitright1.pdf>

1. Extend the overarching principles on the sentencing of youths to young adult offenders. As we outline in our submission to the Sentencing Council's separate consultation on sentencing youths, we believe that nearly all of the sentencing principles outlined in the guidance are relevant to young adults and would benefit this age group. Young adults are the most likely age group to be convicted of crime, but also the most likely to desist and "grow out of crime". The focus of criminal justice interaction with young adults should therefore be on encouraging desistance and supporting the factors which reduce criminal behaviour, such as education, training, employment, housing and good health. Young adults are also likely to benefit from being given an opportunity to address their behaviour and changing their conduct. Restorative practices are commonly employed when responding to the offending behaviour of juveniles and should be similarly extended to young adults

The statutory obligation for sentencers to have regard to the welfare of a young person should also apply to young adults. Young adults in trouble with the law often have complex needs and are from backgrounds of great disadvantage. Young adult offenders frequently have few or no educational qualifications, and no experience of work. A large proportion are care leavers; and as such are entitled to receive local authority support up until the age of 24. Many young adults suffer from poor mental health, and alcohol and drug misuse problems. These are often even more acute during someone's transition to adulthood, as child-focused support services - such as care services, child and adolescent mental health services, children's services and youth offending services—fall away when they reach the age of 18.

2. We would like to see lack of maturity, where it is linked to the commission of an offence, as a factor indicating lower culpability recognised at step one (determining the offence category). The work of the T2A Alliance has shown that many young adults exhibit immaturity that may be related to their offending, with research into brain development identifying a range of developmental changes that continue through the young adult age range. The fact that immaturity can affect judgment and impulse control, in particular, suggests that it may be causally related to offending and should be considered as a relevant factor in determining culpability. Within the current structure of the Sentencing Council's guidelines, this would see 'Age/lack of maturity where linked to the commission of the offence' included as a factor indicating lower culpability, taken into account at Step 1 of the process, and (to prevent double counting) 'Age/lack of maturity where not linked to the commission of the offence' included as a factor reflecting personal mitigation, taken into account at Step 2 of the process. This should be the case for all future sentencing guidelines.

3. Sentencers need better training on lack of maturity and its impact on offending behaviour, as well as on how to assess maturity and how to respond effectively. T2A has had contact with a number of criminal justice practitioners who have expressed concern about a lack of training and guidance available to sentencers on how the mitigating factor on age/lack of maturity should be interpreted. The recently introduced National Probation Service requirement for a mandatory consideration of maturity in cases involving all young adults aged 18-24 underlines the need for sentencers to understand the importance of maturity and its relevance to sentencing decisions.⁶ All sentencers should be given training and information on maturity, including through the Judicial College's initial training for new judicial office-holders and their continuing professional education for existing sentencers.

4. Sentencers need greater awareness of what provision suitable for young adults is available in the community in their area. Research has suggested that there is a general lack of knowledge amongst sentencers about the availability of community order requirements in their local areas, which may be contributing to the infrequent use of requirements such as the Attendance Centre Requirement, the Mental Health Treatment Requirement and the Alcohol Treatment Requirement.⁷ A detailed knowledge of the available services, and who they can most appropriately be used for, would help to ensure that community sentences are effectively tailored to best prevent reoffending by young adults. More needs to be done to ensure that all sentencers have this knowledge.

⁶ PSI 04 2016 requires that "PSRs completed on 18 – 24 year old offenders must include consideration of maturity".

⁷ Mair, G., Cross, N. and Taylor, S. (2008) The community order and the suspended sentence order: The views and attitudes of sentencers, London: Centre for Crime and Justice Studies; Khanom, H., Samele, C. and Rutherford, M. (2009) A missed opportunity? Community sentences and the mental health treatment requirement, London: Centre for Mental Health.