

## **T2A response to Sentencing Council consultation on Expanded Explanations in Sentencing Guidelines**

### **Question 1: What is your name?**

Gemma Buckland

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### **Question 3: What is your organisation?**

The Transition to Adulthood (T2A) Alliance evidences and promotes effective approaches for young adults (18-25) throughout the criminal justice process. It is an alliance of 16 leading criminal justice, health and youth organisations: Addaction, Care Leavers' Association, Black Training and Enterprise Group, Catch22, Centre for Crime and Justice Studies, Clinks, Criminal Justice Alliance, the Howard League for Penal Reform, Nacro, The Prince's Trust, Prison Reform Trust, The Restorative Justice Council, Revolving Doors, Together for Mental Wellbeing, The Young Foundation, and Young Minds. T2A is convened and funded by the Barrow Cadbury Trust. T2A has contributed to positive change in policy and practice and at central and local levels, and its evidence has informed service redesign and delivery nationally and internationally.

### **Question 5: Do you agree that the Imposition guideline should be amended to include a link to forthcoming guidance on when to order a PSR?**

Yes. In relation to the forthcoming guidance, we draw attention to the Justice Committee's recommendation that all young adults should receive a PSR. We have previously advocated that guidance on PSRs should be strengthened to state: "When considering a custodial or community sentence for a young adult the National Probation Service *must* address these issues in a PSR". This would bring the guideline into line with existing probation policy. A probation instruction issued in January 2016<sup>i</sup> requires pre-sentence reports to include consideration of lack of maturity of young adults, citing T2A's *Taking account of maturity*<sup>ii</sup> practice guide.

Question 7: What are your views on the inclusion of the proposed expanded explanations for aggravating factors A1, A2 and A3? Do your views relate to any particular offence(s)?

T2A welcomes the opportunity to respond to the Sentencing Council's consultation on expanded explanations in sentencing guidelines. We welcome the expanded explanation of age and/or lack of maturity as a mitigating factor and the Council's cross-reference to this mitigating factor within the explanations of the aggravating factor A2 at step two. Explaining that young adults are likely to be more susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers reflects well the research evidence we have amassed. We consider the wording of the expanded explanation for mitigating factor M13 below. We note that the Council highlights that the aggravating factor

A2 is only present in four guidelines and that for other offences group offending is considered as a culpability factor at step one.

**Question 11: What are your views on the inclusion of the proposed expanded explanations for aggravating factors A13, A14 and A15? Do your views relate to any particular offence(s)?**

In relation to A14, see above. Nevertheless, it is not clear to us the criteria by which those aggravating factors which include the expanded explanation about young adults were chosen. In our view, maturity and age are just as relevant for other factors e.g. planning, committed in presence of others, commission of further offences etc.

**Question 18: What are your views on the inclusion of the proposed expanded explanations for mitigating factors M13 and M14? Do your views relate to any particular offence(s)?**

In relation to M13, the mitigating factor on age and/or lack of maturity, the Council notes that this explanation has been expanded and revised since the consultation on the text to be included in the General guideline. The Council states that it is seeking to provide comprehensive but concise guidance of practical use to sentencers. In several places, in its wording, the Council has clearly taken on board some of the principles outlined by the Howard League in its recent report with T2A, [Sentencing Young Adults](#), which we welcome. We are especially pleased to see that the Council has sought to explain the implications of the research evidence on maturity for sentencing practice.

Nevertheless, we consider that there is further opportunity to tighten up the wording to ensure utmost clarity. In response to the General guideline, the Justice Select Committee proposed that in its explanation the Council make clearer the distinction between young adults who are immature by virtue of their age (i.e. stage of maturational development) and other forms of immaturity due to impaired development, such as a learning disability. We are not convinced that the new wording makes this distinction sufficiently clear. In particular, the sentence “The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater)” is followed by a statement referring to typical characteristics of young adults aged 18-25 i.e. in which chronological age is of importance. Given the importance of ensuring that the guidance is comprehensive, concise and practical and the Council’s expectation that the guidance will have a positive impact on sentencing practice, we suggest that different iterations of the wording are tested empirically, with outcomes compared, prior to finalising the text for the guideline.

There is evidence of disproportionate levels of neurodisabilities among young adults in custody when compared to the general population, including higher rates of learning disability, traumatic brain injury and communication impairment. We propose that M13 is cross-referenced with M16 to further reinforce this distinction.

**Question 23: What are your views on treating the General guideline as an overarching guideline?**

The Council notes some advantages and disadvantages of the explanations having wider application, including the advantages of greater consistency and greater transparency in how factors are taken into account and the disadvantage of an increasing complication of the sentencing process. We consider that the factor age and/or lack of maturity could apply in mitigation to a range of aggravating factors in addition to those identified by the Council in this draft guidance.

In relation to the relevance of the explanations to step one factors, the Council states that it is of the view that it would not be helpful to include the expanded explanations at step one of offence specific guidelines, as step one factors are tailored to the individual guideline and the placement of a factor within a particular level of harm or culpability makes a difference to the effect that it has. Nevertheless, they suggest that if the General guideline were to be treated as an overarching guideline then it would be open to sentencers to refer to that guidance when considering step one factors if there was any uncertainty as to how a factor should be interpreted.

We have previously highlighted that age and/or lack of maturity are factors that are highly relevant to culpability, considered at step one. For example, a young adult's "role, level of intention and/or premeditation and the extent and sophistication of planning" may be squarely linked to the fact that their maturity is developing. It is established that this should be reflected in the sentencing process by "the humane principle that an offender deemed by statute to be not fully mature when committing his crime should not be punished as if he were" (R v Secretary of State, Ex parte Maria Smith [2005] UKHL 51, Lord Bingham at para 12). At present, there are inconsistencies across the guidelines concerning the stage at which sentencers are encouraged to consider this factor which ought to be addressed. For example, in the guideline on child cruelty offences lack of maturity is expressly listed as a relevant factor suggesting lower culpability. While making the expanded explanations more widely applicable would go some way to address this, it is not clear to us why these disparities exist, and we believe that the Council should consult explicitly about this rather than maintaining a dual approach which may result in inconsistency.

This issue also highlights some of the difficulties in achieving appropriate sentencing outcomes for young adults through general guidance and reinforces the need for the creation of separate sentencing principles for young adults. Recent reports by members and partners of the T2A Alliance support the case for a distinct approach to young adults, including the creation of separate overarching sentencing principles. The Howard League report *Judging Maturity*, published in July 2017, explored themes and trends in the way the courts deal with young adults through an analysis of 174 senior court judgments in respect of young adults. In line with the conclusions of the Justice Committee inquiry on young adults, the analysis showed that better information makes for better decision making and that, at present, maturity as a factor affecting the culpability of the individual is considered infrequently and, when it is considered, the depth of understanding is variable and the impact on decision-making inconsistent. The Council's resource assessment includes some research on the use of age/lack of maturity as a factor in sentencing decisions. The Sentencing Council found that where age/lack of maturity is taken into account by sentencers, there is a statistically significant decrease in sentence severity for most offences, with the exception of sexual offences.

The Howard League research considers examples of judicial decision-making tailored to the needs and experiences of young adults and the extent to which the law and guidance may be insufficient in its present form to encourage this approach. The current judicial treatment of maturity in sentencing young adults suggests that there is every reason to be optimistic that, provided with the right information and equipped with a set of sentencing principles for young adults, the courts will be better able to make sentencing decisions about young adults that effectively take account of their distinct developmental stage and should lead to better outcomes for everyone. As we note above the Howard League has developed the case for a separate set of sentencing principles for young adults. The Sentencing Council should conduct research on the impact of the expanded explanation on age/lack of maturity to ensure that the factor is being more consistently applied in mitigation as a result of this approach. In the meantime, we remain of the view that distinct sentencing principles for young adults is the best approach.

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<sup>i</sup> PSI 04 2016

<sup>ii</sup> T2A (2013) [Taking Account of Maturity: A Guide for Probation Practitioners](#).