



Date **21 September 2018**

Position statement **Response to Howard League report: Sentencing Young Adults**

On 20 September 2018, The Howard League published a report in conjunction with the Transition to Adulthood (T2A) Alliance called [Sentencing Young Adults Making the case for sentencing principles for young adults](#). The press release can be read [here](#).

Summary of report:

- Young adults of 18 to 24 years old are a distinct cohort due to ongoing development of the brain and behaviour;
- The current sentencing process does not sufficiently take into account neuroscience, psychology and criminology relating to this cohort;
- Courts are capable of taking these factors into account when making decisions but they will not do so without clear and firm guidance;
- A new Sentencing Council guideline for sentencers should be developed, building on the overarching principles for sentencing children;
- The new guidelines should include reference to:
 - a) The relationship between immaturity and blameworthiness;
 - b) The capacity of young adults to change;
 - c) The impact of race and histories of care;
 - d) How the “bests interests” principle for those under 18 years old could be extended to apply to young adults.

Magistrates Association response:

The Magistrates Association (MA) supports many of the issues raised in the report in relation to the fact that young adults are a distinct cohort due to the fact that brain development can be continuing until the age of 24 years old. It is therefore important for the maturity of an individual to be taken into account both during the court process and in sentencing decisions. Current sentencing guidelines do require sentencers to consider lack of maturity as a mitigating factor, as noted in the report.

The main recommendation of the report is that a new overarching sentencing guideline should be developed for 18 to 24 year olds. It is not clear whether this guideline would be similar to the *Sentencing children and young people: Definitive guideline* used to sentence children and young people under the age of 18 years old, in that one guideline would be used for the majority of offences. Or whether the guideline would be more similar to the *Overarching Principles: Domestic Abuse*, which sits alongside all existing guidelines for adults, but provides additional guidance in relation to offences in the domestic setting. It should be noted that while there is a different legal framework for sentencing those under 18 years old, with distinct principles but without legislative change the sentencing of 18 to 24 year olds would have to remain within the existing five sentencing principles. For example, any sentence for those over the age of 18 years old must include a punitive element. It should also be noted that another sentencing principle that a sentencer must consider is public protection, whereas the report only references the possibility of long-term protection offered by reducing reoffending rather than the need to consider it as a distinct factor.

This means that without fundamental legislative changes, it would not be possible to sentence with a focus on the best interests of the young adult, as proposed. It is also worth noting that the best

interests test relates to the rights set out in the Convention on the Rights of the Child, which are generally considered to cover those under the age of 18 years old.

The report indicates a number of factors present in the current guideline for children and young people, and suggests how they can be applied to young adults. However, we would point out that many of the factors should actually be considered for all sentencing decisions, including:

- Taking an individualistic approach to the needs of the offender;
- Ensuring all offenders understand the sentencing decision, taking into account any communication difficulties that may be present;
- Any vulnerabilities such as mental health, learning disabilities, and substance abuse problems;
- Impact of a sentence: including any risk of harm if custody is ordered and the fact a community sentence should not conflict with existing education or employment.
- Any restriction on liberty must be commensurate with the seriousness of the offence.

The report specifically raises the issue of defendants not understanding the court process. This is concerning for any defendants, as it is likely to impact negatively on procedural fairness. The lack of confidence identified in the report is also worrying. The MA would welcome a more comprehensive public education programme, especially in relation to the work of magistrates, as volunteers who reflect the community in which they serve. Our Magistrates in the Community programme is one way in which public understanding can be improved, which has a direct impact on confidence in the system.

The report does indicate a number of ways that immaturity and lack of brain development may impact on an individual between the age of 18 and 24 years, which are less likely to be relevant for older individuals. Some of these factors that should always be considered both during the process and when sentencing are:

- Immaturity affecting behaviour in court as well as understanding of process;
- Immaturity may affect culpability;
- Offenders in this cohort are likely to still be developing as adults;
- Likelihood that desistance will be achieved through approaches different to those used for older offenders;
- Likelihood that young adults may be more vulnerable than older offenders;
- Disproportionate outcomes from those of a BAME background is an overall problem, but particularly for those in this cohort.

In order to ensure magistrates can respond appropriately to the distinct cohort of 18 to 24 year olds, the MA propose the following are key factors:

- Increased awareness amongst sentencers about the impact of maturity and brain development on the actions and behaviour of young adults;
- Sentencers receiving appropriate information from defence lawyers, Liaison and Diversion reports and Pre sentence reports on the maturity of an individual;
- Guidance on how to incorporate information on maturity into a sentencing decision. We suggest, if a new Sentencing Guideline were developed, it should be similar to the Overarching Principles on Domestic Abuse;
- Community sentencing options that are specifically targeted for this cohort, taking into account the available evidence on how to support desistance.