

## **Written evidence from Transition to Adulthood (PCS0330)**

The Transition to Adulthood (T2A) Alliance evidences and promotes effective approaches for young adults (18-25) throughout the criminal justice system (CJS) and is convened and funded by the Barrow Cadbury Trust.<sup>i</sup>

### **Do the changes to custodial sentences in Chapter 1 of Part 7 of the Bill represent proportionate interferences with the right to liberty?**

The age thresholds in sentencing legislation do not adequately recognise that maturational development is not complete until the mid- to late-20s. See Annex for summary of neuro-scientific evidence. The sentencing provisions in this Bill overlook government obligations towards young adults under both the age characteristic of the Equality Act 2010 and international conventions which recommend extending human rights principles for children to young adults in recognition of this (uncontested) evidence.

#### ***The government's international obligations***

The UN Committee on the Rights of the Child (UNCRC) has recently made important observations about the extension of children's rights to young adults in the CJS (see Annex). The Beijing Rules adopts a similar approach. For example, Rule 3.3 states that "Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders." Rules 17 and 19 are most relevant (see Annex).

#### ***T2A's concerns about the government's approach***

The government has not provided any evidence as to why the existing response to young adults warrants change. The effect of the Bill is to significantly increase the punitiveness of a sentence where it relates to sexual or violent conduct. The benefits of this approach are questionable:

- most young adults, including those who have committed serious and violent offences stop committing crime in their early 20s; the Serious Violence Strategy shows that even for individuals classed as 'high offending', the peak age of violent offending is 19 and this declines significantly from age 21 to 24.<sup>ii</sup>
- no account has been taken of the impact of maturational status on the culpability of this group or the impact of the proposed changes on their brain development and desistance: long sentences will inhibit natural maturation and the development of pro-social behaviours.
- sentences for such crimes have already lengthened considerably over the last two decades, further lengthening is unlikely to have a deterrent effect or have an impact on public safety through incapacitation or rehabilitation<sup>iii</sup>.
- the assumption that harsher sentencing increases public confidence is unevidenced; relevant research in this area has found that the public is poorly informed about the actual severity of existing sentencing.

#### ***The government's understanding of the nature of young adults who commit serious and violent offences and the impact of its existing approach***

The government's existing approach for maturity to be considered during sentencing through pre-sentence report assessments and sentencing guidelines is not sufficient. For example, there is no systematic training of probation professionals or sentencers on the impact of maturational development in young adulthood on criminal behaviour and culpability and there is no way of demonstrating that this approach is improving outcomes because the Sentencing Council does not receive sufficient research funding to do so.

A series of PQs were recently tabled about young adults involved in the criminal justice system and how they are currently treated.<sup>iv</sup> The responses illustrate the limitations in government's understanding of the nature of this cohort on which to base its policy decisions and the lack of evidence on the efficacy of its current approaches towards considering maturity during court processes. See Annex.

## **1. The Committee's specific questions**

### **Should the application of whole life orders be extended, including to 18–20-year-olds?**

T2A does not believe such orders should be extended to 18–20-year-olds. This erodes what limited legislative provision there is currently which enables a distinct approach to some young adults. Since this legislation was enacted, understanding about the nature of maturational development in young adulthood and the implications for behaviour and culpability has improved significantly. Indeed, the evidence points in the opposite direction i.e. to the need to extend the statutory protections currently afforded to 18-20 year olds to an older cohort for a wider range of sentencing measures. We already know about the life-long damage a criminal record, even a minor one, does to an individual's chances<sup>v</sup>; whole life orders will remove any opportunity for young adults to mature, change and become contributing members of society.

Similarly, legal opinion has begun to converge on this matter. For example, the Lord Chief Justice, Lord Burnett has identified the need for young adult defendants to be given specific recognition and pointed to a lack of understanding as to how immaturity may affect a young person's culpability.<sup>vi</sup> In a recent article in *Criminal Law Review*, David Emanuel QC, Claire Mawer and Dr Laura Janes examined the Court of Appeal's "emerging appreciation of the impact of immaturity on culpability and the promotion of these factors in sentencing policy" and noted "widespread recognition of there being a discrete category of "young adult" defendant".<sup>vii</sup> They provided details of several cases in which this has been acknowledged by the senior judiciary in appeal decisions.

This demonstrates the need for a proper dialogue on sentencing provisions for young adults which fully considers the implication of the neuro-scientific evidence for existing and new sentencing legislation. In the absence of any consultation on the preceding White Paper, such a dialogue has not taken place. Instead, the government's proposals in the Bill serve to limit judicial discretion to take maturity into account which T2A regards as a retrograde step.

T2A proposes that this clause be struck from the Bill or be amended to ensure that the application of whole life orders should not be possible until the maturation process is largely complete i.e. the age of 26 rather than 21 as it is currently or 18 as the government proposes.

### **Is the restriction on reviews of the minimum term for sentences of detention during Her Majesty's pleasure justified?**

T2A can see no justification for eroding provision which allows for young people to demonstrate through reviews that as they mature their propensity to commit violence reduces and for this to be reflected in their period of detention. There is no evidence-based justification for applying the research on maturity only up to 18. Indeed, young adulthood is the period in which people are most likely to change behaviour and 'grow out of crime'. The provisions will result in longer periods of detention when the likelihood is that their risk levels no longer warrant it.

Clauses 105, 106 and 107 will also unnecessarily increase periods of detention. Doing so during the crucial period of brain maturation and formation of identity is likely to have a detrimental effect on public safety. At this age the brain still 'prunes' unnecessary synaptic connections and is still able to rewire itself and young adults can achieve better outcomes if adverse neurological effects are addressed while brain is still plastic, and maturity is developing.<sup>viii</sup> There is a risk that criminal justice engagement will compound their pro-criminal identity. Elongating periods of imprisonment during this time is therefore likely to increase rather than reduce the risk of future criminality. It is known that many young adults have experienced extensive trauma and adverse early lives, both of which delay maturation.<sup>ix</sup> Prison environments are not conducive to enabling the impact of trauma on an immature brain to repair and generate the positive neural connections required to form a healthy, mature adult identity. Lord Harris's review of self-inflicted deaths in prison provides a stark illustration of the complexities of young adults' lives as well as their potential vulnerability to self-inflicted death while their brain structures and coping strategies are still evolving and the damaging effect of custodial environments.<sup>x</sup>

Increasing the custodial portion of the sentence has a corresponding impact on shortening post-sentence probation supervision which will impact on young adults particularly detrimentally. This makes no sense for rehabilitation because:

- there will be less time to build stability in employment, accommodation and relationships which are known to have the greatest impact on subsequent offending
- it will effectively render redundant any right to support from local authorities that those with care experience and Education, Health and Care plans for special education needs would have been entitled to after leaving custody up to the age of 26.

T2A also has significant concerns about clause 103 which would increase minimum sentencing for children to make it more in line with over 18s. This represents a worrying trend in reversing distinctions between the youth and adult justice systems and undermines international obligations. A better alternative would be to graduate sentences for young adults.

### **Would the referral of high-risk offenders to the Parole Board rather than automatic release raise concerns under Article 5 and/or Article 7 ECHR?**

T2A is producing a report examining how maturity is considered during the Parole process which highlights a need for more research. We have been consulted by the Parole Board on guidance on maturity for its members. T2A is concerned that many of the facets of behaviour which are commonplace in young adulthood by virtue of developmental status are typically viewed by criminal justice practitioners through a risk lens rather than as part of a normal maturation process.

**Does the Bill overall correctly balance the rights of victims and the rights of the accused and convicted?**

T2A is of the view that the distinction between the rights of victims and the rights of the accused and convicted is somewhat of a false dichotomy. In its Serious Violence Strategy, the government includes factors identified as predictors of at least one form of serious violence (homicide, knife crime, gang membership) in research.<sup>xi</sup> See Annex for details. The responses to recent PQs on young adults illustrate the limited understanding of the MOJ about effect of adverse childhood experiences on levels of criminality in young adults who are either charged or sentenced, including for serious offences (see Annex).

**Does the Bill give rise to any other human rights concerns?**

T2A has been involved in joint work with the Criminal Justice Alliance, Clinks, EQUAL and other voluntary and community sector organisations to coordinate activity on the Bill related to the racial and ethnic equalities implications of the sentencing provisions. We endorse the submission to this inquiry from EQUAL.

*15/05/2021*

## Annex

### **The neuro-scientific evidence on young adults and implications for behaviour**

In summary, the neuro-scientific evidence<sup>xii</sup> is as follows:

- The brain remains in an active state of development until between approximately 25 and 30 years of age when people are typically considered adult rather than adolescent; this indicates that policy should consider biological, rather than chronological age.
- The control centre of the brain (prefrontal cortex) which governs prosocial behaviour, successful goal planning and achievement only reaches full biological maturity at 25 years or older.
- The last region of the brain to develop is that responsible for executive functions which are most likely to be relevant in a judicial context as young adults may not have fully developed the cognitive abilities which are necessary for prosocial behaviour, successful goal planning and achievement. They are also likely to have immature and compromised core cognitive abilities including poor impulse control (i.e. not thinking before acting) and challenges in evaluating risks, including dealing with unanticipated challenges and adapting to changed circumstances. This, coupled with an increased motivation to achieve rewards which develops in adolescence and young adulthood is thought to be the most likely underlying mechanism contributing to poor problem solving, poor information processing, poor decision making and risk-taking behaviours. This is important due to the impact on them understanding of complex social situations and the impact on behaviour.
- This typical maturation may be hindered or compromised by several factors including traumatic brain injury, alcohol and substance use, psychiatric and neurodevelopmental disorders and adverse childhood experiences.

### **International obligations**

#### UN Committee on the Rights of the Child

In January 2019, the UNCRC consulted on revising its General Comment No. 10 (2007) on children's rights in juvenile justice and included a focus on the upper age limit of the juvenile justice system.

In paragraph 46, the Committee stated that,

*“...reaching 18 years does not mean the end of the juvenile justice specialised measures. The Committee recommends to States parties to ensure that these young persons can continue the completion of the programme or sentence in conditions suited to their age, maturity and needs and are not sent to centres for adults”.*

#### Relevant parts of the Beijing Rules

Rule 17.1 states that

The disposition of the competent authority shall be guided by the following principles:

- ( a ) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- ( b ) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- ( c ) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of

persistence in committing other serious offences and unless there is no other appropriate response;  
( d ) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

Within the Commentary, the Rules state that

“Rule 17.1 ( b ) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.”

Rule 19.1 states that

The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

### **Parliamentary questions on young adults**

The Secretary of State for Justice has recently been asked:

- 1) how many and what proportion of young adults aged 18 to 25 years received (a) a pre-sentence report, (b) a maturity assessment alongside a pre-sentence report and (c) an assessment for neuro-disabilities alongside a pre-sentence report in the most recent period for which that information is available
- 2) how many and what proportion of trials for young adult defendants aged 18 to 25 years have taken place in (a) Magistrates courts and (b) Crown courts in each of the last five years
- 3) what recent assessment he has made of the effect of adverse childhood experiences on levels of criminality among young adults aged 18-25 who are (a) charged and (b) sentenced
- 4) what proportion of young adults aged 18-25 who are sentenced for serious and violent offences have been a victim of (a) crime (b) violent crime and (c) sexual offending as a child
- 5) how many and what proportion of *young adults aged 18 to 25 years sentenced to life imprisonment* received (a) a pre-sentence report, (b) a maturity assessment alongside a pre-sentence report and (c) an assessment for neuro-disabilities alongside a pre-sentence report in the most recent period for which that information can be collated at proportionate cost
- 6) how many and what proportion of young adults who become involved in the criminal justice system as defendants have their maturity assessed by Liaison and Diversion services.
- 7) what assessment he has made of the level of (a) awareness and (b) understanding among magistrates of the effect of maturity on offending behaviour.

Alex Chalk MP and Chris Philps MP made the following points in their responses:

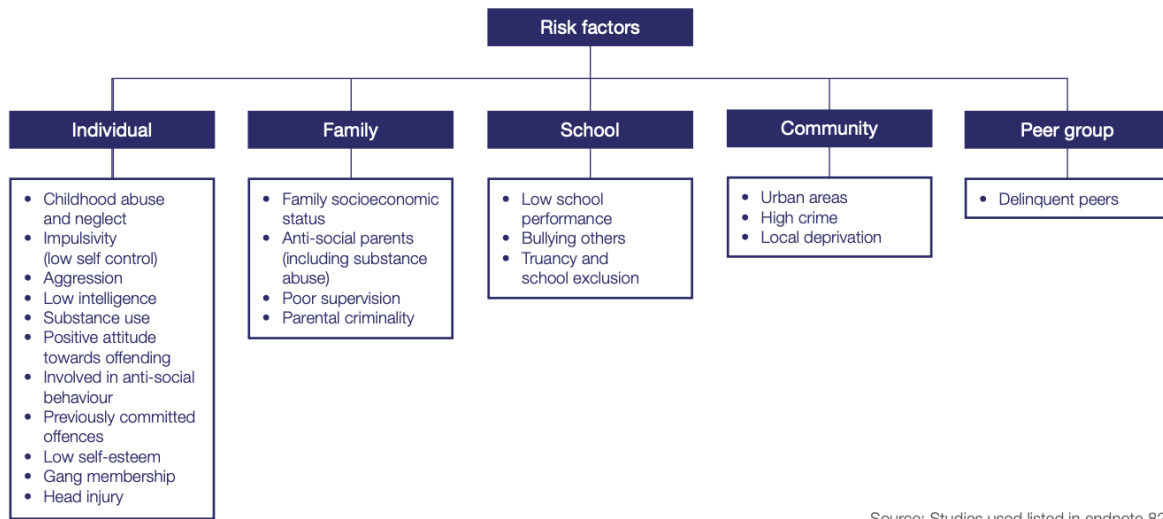
- Between July and September 2020, the number of young adults aged 18-25 who received a pre-sentence report was 4,234. There were two cases of young adults aged

18 to 25 sentenced to life imprisonment who received a pre-sentence report in England and Wales during this period.

- The information on maturity assessments and assessments of neurodisabilities is not collated centrally by the MoJ.
- For trials in the Crown Court, where the main defendant is in the age group 18-25, the number of effective trials has consistently fallen over the time period from 4,804 trials between October 2015 and September 2016 down 71% to 1,380 trials in the year ending September 2020. This is in line with national figures for all age groups in the same time period where the number of effective trials fell 70% from 18,967 to 5,726.
- The information requested in relation to magistrates' courts trials for young adult defendants could only be obtained at disproportionate cost. HMCTS does not collect data for the specific banding of those aged between 18-25.
- It not possible to provide the proportion of Crown Court trials as a proportion of all effective trials for 18-25 year olds.
- The MoJ does not collect data on the effect of adverse childhood experiences on levels on criminality in young adults who are either charged or sentenced.
- The MoJ does not hold any data that would allow it to say what proportion of young adults convicted for serious offences were themselves past victims of the specified offence types.
- It is not possible to give *figures for the proportions of young adults* as this would involve a process of matching court record data with probation data and the cost of doing so would be disproportionate.
- Due to the disclosure risk regarding the identification of certain attributes about a data subject that may not otherwise have been known, *figures cannot be provided on the number of cases where an assessment for neuro-disabilities or maturity* has been conducted.
- Maturity is not assessed by Liaison and Diversion services
- There was no direct response to the question about assessment of the level of awareness of the magistracy but various efforts to improve their understanding were listed

## Risk factors for serious violence from Serious Violence Strategy

Figure 14: Identified risk factors for serious violence



Source: Studies used listed in endnote 82

They cited a UK study entitled Murder in Britain which showed that out of 786 men convicted of homicide, 73% were persistent offenders before they committed homicide, and many had a cluster of risk factors such as those in the figure above. A fifth began offending before the age of 13, and this group had the most troubled backgrounds: 30% had been physically abused, 17% sexually abused and 45% had been taken into care before the age 16. Simply increasing sentence length will not address the underlying, preventable and in many cases curable, causes of offending.

<sup>i</sup> <https://t2a.org.uk/>

<sup>ii</sup> Home Office (2018) [Serious Violence Strategy](#), p.36

<sup>iii</sup> Ministry of Justice (2021) [Police, Crime, Sentencing and Courts Bill: Sentencing, Release, Probation and Youth Justice Measures: Impact Assessment](#), HM Government: London

<sup>iv</sup> HC Deb, 10 March 2021, cW; (UIN [163689](#); UIN [163688](#)); HC Deb, 15 March 2021, cW (UIN [166404](#); UIN [166405](#); UIN [166406](#); UIN [166407](#)); and HC Deb, 25 March 2021, cW (UIN [173003](#))

<sup>v</sup> Stacey, C (2018) [A life sentence for young people](#), Barrow Cadbury Trust: London

<sup>vi</sup> The Times, 3 May 2018.

<sup>vii</sup> David Emanuel QC, Claire Mawer and Dr Laura Janes, [The Sentencing of Young Adults: A Distinct Group Requiring a Distinct Approach](#). Criminal Law Review, 2021, vol.3

<sup>viii</sup> Williams, HW (2012) [Repairing Shattered Lives](#), Barrow Cadbury Trust: London

<sup>ix</sup> U.S. Department of Health and Human Services (2015) [Understanding the effects of maltreatment on brain development](#), p.9

<sup>x</sup> Lord Harris of Haringey (2015) [The Harris Review: Changing Prisons, Saving Lives](#)



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<sup>xi</sup> Home Office (2018) [Serious Violence Strategy](#), p.37

<sup>xii</sup> Suzanne O'Rourke, Heather Whalley; Sarah Janes; Niamh MacSweeney; Asaly Skrenes; Suzy Crowson; Laura MacLean; Matthias Schwannauer (2020) [The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts](#), Scottish Sentencing Council.