

Sentencing young adults – getting it right first time 22 July 2020

**Dr Laura Janes
David Emanuel QC
Claire Mawer**

Chair: Farrhat Arshad, Barrister, Doughty Street Chambers



**Howard League
for Penal Reform**



Howard League for Penal Reform

Dr Laura Janes
Legal Director
Howard League for Penal Reform

[@LauraJanes_UK](#)
[@TheHowardLeague](#)



Howard League for Penal Reform

- England and Wales, since 1866
- Less crime, safer communities, fewer people in prison
- Policy, research, direct legal work for young people aged 21 and under (confidential helpline)
- Membership organisation: no government funding



Children in residential care



Commission on Crime and Problem Gambling



Legal advice



Howard League Community Awards

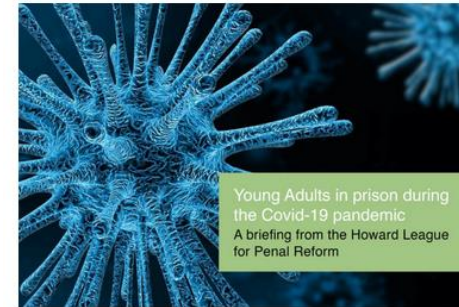
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Sentencing young adults: some numbers

- In 2019, 177,000 sentences were passed on young adults aged 18 to 24
- Young adults aged 18 to 24 are
 - nine per cent of the general population
 - 16 per cent of the prison population (ONS, 2020) www.nomisweb.co.uk; Ministry of Justice, 2020a)
- In the last decade the number of young adults in prison has reduced by 40 per cent but the **rate of immediate custodial sentences** in this age range is:
 - twice as high as for those over 24,
 - more than 10 times higher than for those who are under 18(Hughes and Hartman, forthcoming)

Impact of prison on young adults

- In prison:
 - Around a third of young adults are Black or ethnic minority (Ministry of Justice, 2019a)
 - Almost half of under 21s have been in care (National Audit Office, 2015)
- Between 2006 and 2016, 164 young adults aged 18 to 24 died in custody (Harris, 2015)
- Chief Inspector of Prisons – 40 per cent young adults routinely spending 22 hours or more in their cells (since Covid-19, all people in prison in such conditions – see *R v Manning*)
- In the last decade incidents of self-harm among this age group have increased to over 14,000 in 2018 (from around 10,500 in 2008) (Ministry of Justice, 2019b)
- Around 30 per cent of young adults aged 18 to 20 reoffend within 12 months of leaving prison (Ministry of Justice, 2018; Hiller and Mews, 2018)



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Key points

- Too many young adults are sent to prison
- Many young adults are still teenagers
- Some of them committed their crimes as children but were convicted or sentenced as adults
- Many of them are particularly vulnerable
- Many of them are Black and from ethnic minorities
- Young adults suffer from some of the worst conditions in the prison estate
- The Howard League's legal work and contact with young adults during the Covid-19 pandemic shows that this is a particularly difficult time for young adults in custody
- In response to Covid-19 the regime in prisons has been severely restricted. Young adults are in prolonged solitary confinement. There are no face-to-face visits, no face-to-face education and most support services have withdrawn
- Young adults are experiencing mental health problems as a direct result of the restrictions
- Young adults in the criminal justice system require a specific approach
- Young adults are still maturing, their brains are still developing and they have distinct characteristics and needs
- The terrible conditions in prison should be factored in when making decisions about sending young adults to custody
- Young adults in prison must have access to a decent regime that meets their needs

Transition to Adulthood Alliance since 2008

**Criminal
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Transition to
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CLiNKs
supporting voluntary organisations that
work with offenders and their families

 **Restorative
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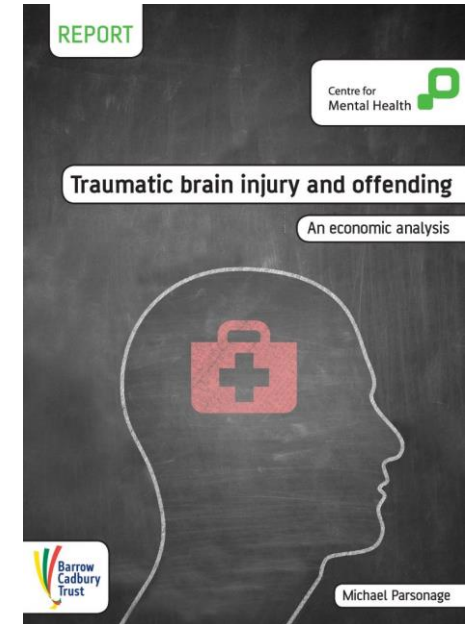
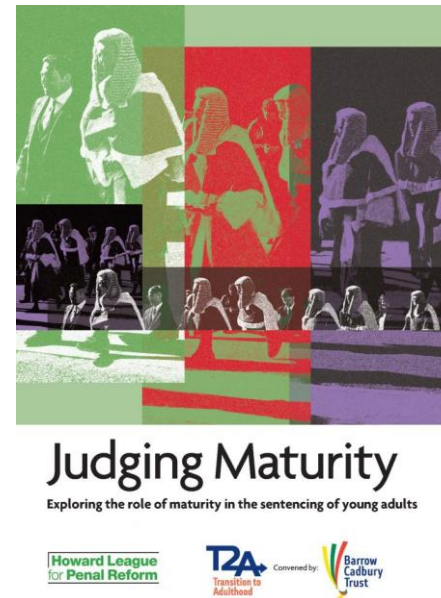
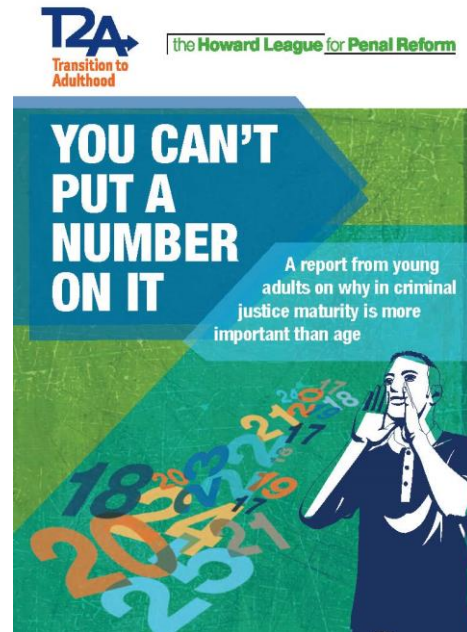
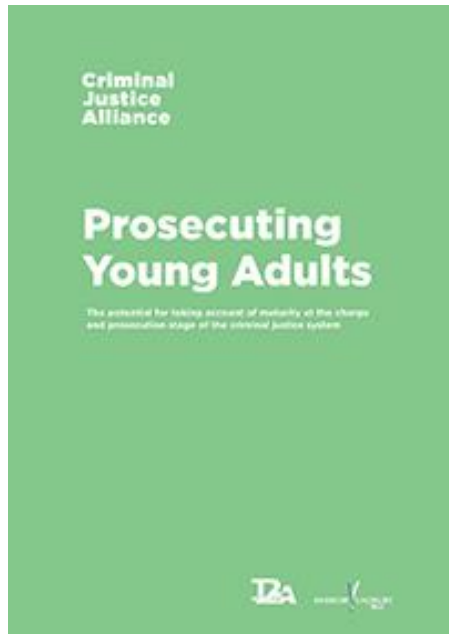
changing lives
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Howard League for Penal Reform

 **CALA**

T2A - research



Young adults - a distinct group?– Prof Hughes

- Physiologically different from older adults – brain still developing until mid-twenties (including the bit that is associated with impulse control, regulation of emotion, long-term planning, and weighing up consequences)
- Adolescence is an exceptionally dynamic phase of functional brain development towards the '*adult form*', particularly regarding the maturation of emotional and functioning.
- Young adults in the criminal justice system have a high prevalence of atypical brain development.

Young adults – peak desistance?

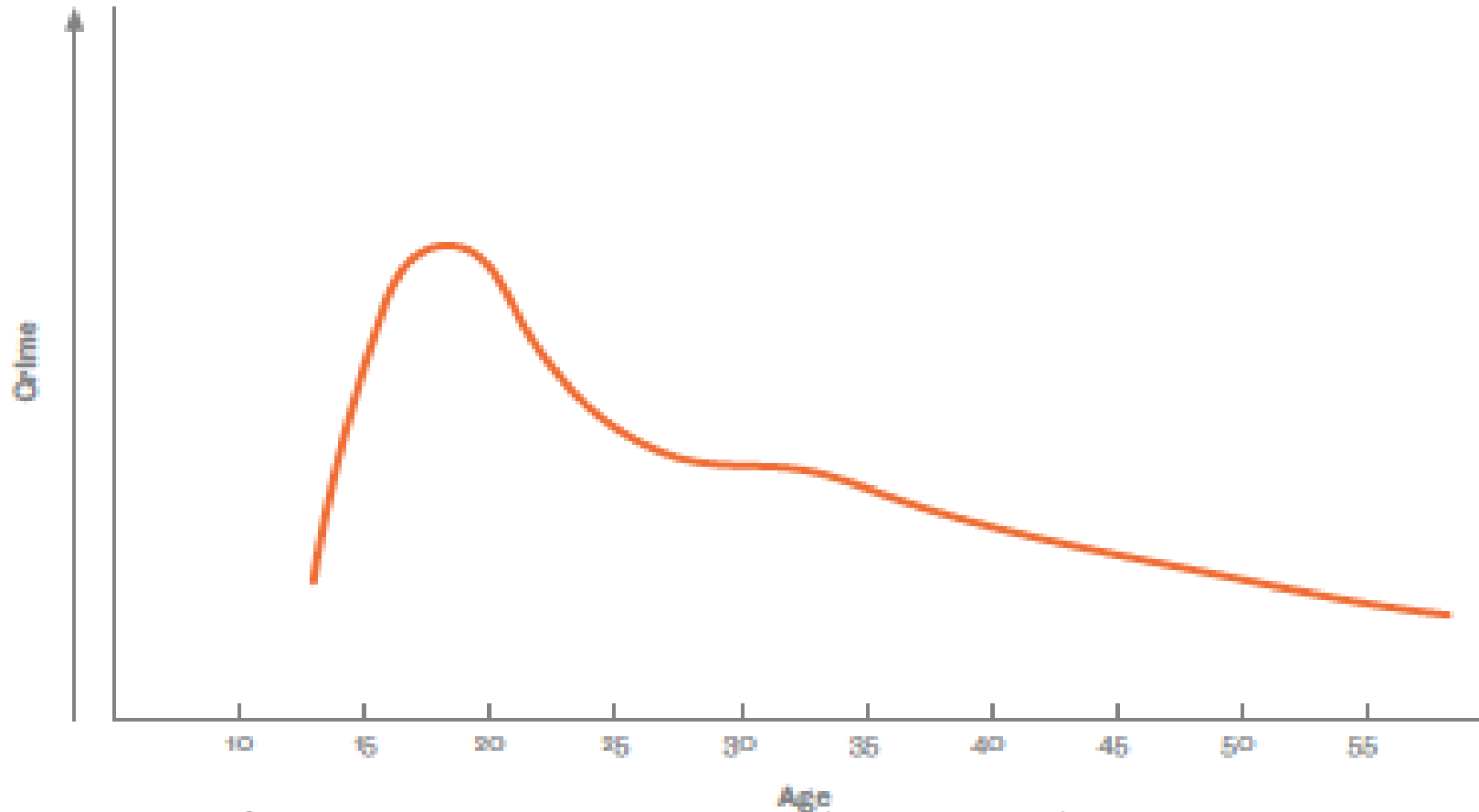
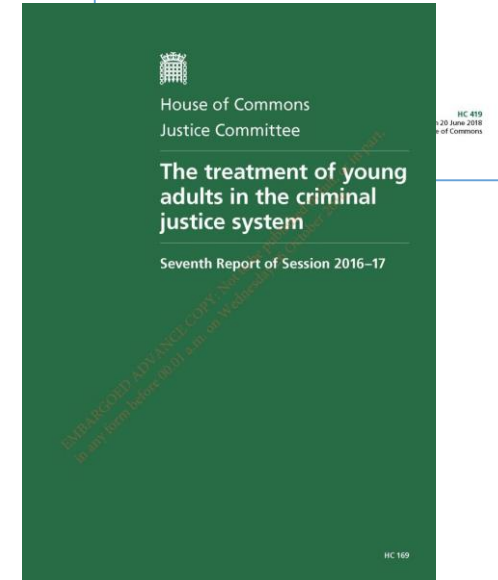
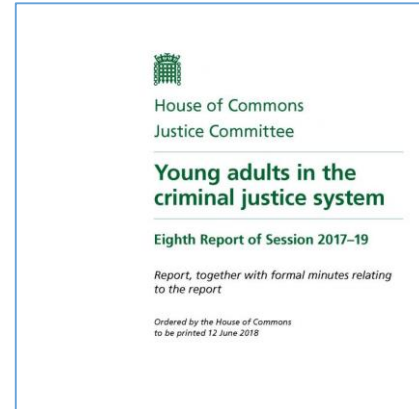


Figure 1. An illustrative example of the typical 'age-crime curve'

Source: Nathan and Hartman (forthcoming)


Justice Committee (2016 and 2018)

- Growing consensus- young adults in the criminal justice system have distinct characteristics and needs
- Impact on criminal behaviour/ implications for the appropriate treatment of young adults by the criminal justice system
- Strong case for a distinct approach to the treatment of young adults in the criminal justice system.



Sentencing Principles

1. Young adults are a distinct category for the purposes of sentencing.
2. Custody should be a last resort for young adults.
3. Where a custodial sentence is imposed, the term should take into account the impact of prolonged custody on the young adult's well-being and life chances.
4. The period of any custodial term should be less than that imposed on an older adult.
5. When considering mitigating factors, attention should be paid to how they particularly affect young adults.



Sentencing principles for young adults

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This document sets out the principles that ought to be applied to young adults, typically aged 18 to 25, sentenced for any offence, in line with developments in case law, science and social studies. They have been devised in consultation with an advisory group, details of which can be found at www.howardleague.org

1. Young adults, typically aged 18 to 25, should be treated as a distinct category for the purposes of sentencing.

Young adults are still developing physically and psychologically until their mid-twenties (Royal College of Psychiatrists, 2015). In *R v Clarke* [2018] EWCA Crim 185 the Lord Chief Justice observed:

"Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear... Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. The Age of Adolescence: thelancet.com/child-adolescent; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."

Young adults have a greater capacity for change in a shorter period of time than older adults (*R v Lang* [2005] EWCA Crim 2864, paragraph 17(vi)). They often retain the vulnerabilities of childhood (Centre for Mental Health 2014: 3). Where a young adult is sentenced for an offence committed before turning 18, section 6.2 of the sentencing principles for children requires the Court to "take as its starting point the sentence likely to have been imposed on the date at which the offence was committed" (Sentencing Council 2017). The principles for children may still be relevant where the offence was committed after that age. In *R v Balogun* [2018] EWCA Crim 2933, the Court of Appeal stated: "the fact that the appellant had attained the age of 18 before he committed the offences does not of itself mean that the factors relevant to the sentencing of a young offender had necessarily ceased to have any relevance. He had not been invested overnight with all the understanding and self control of a fully mature adult."

Young adults should be unambiguously singled out as a distinct category within the criminal justice system (Justice Committee 2010).

Age and the law

“The wisdom of protecting young children against the full rigour of the criminal law is beyond argument.

*The difficulty lies in determining **when and under what circumstances that protection should be removed.**”*

Lord Bingham, Justice and the Young, 1997

Young people – shifting attitudes

- The age of criminal responsibility: seven until 1933, when increased to 8, until 1963 when increased to ten.
- Late 1960s and early 1970s - legislation to bring the age of voting, being able to enter into contracts etc and marriage without parental consent down to 18.
- HMP detention cases (*R v Secretary of State, Ex parte Maria Smith* [2005] UKHL 51; [2006] AC 1, Hale, §25)
- Chief Magistrates' guidelines for additional days – 20% discount for 18 to 20s, 40% for children

SENTENCING YOUNG ADULTS



David Emanuel QC
Garden Court Chambers
davide@gclaw.co.uk

- **A short update of Court of Appeal decisions on sentencing young adult offenders**
- **And it's good news for defence practitioners!**

Lord Chief Justice Burnett



Clarke – the turning point

Attorney General's Reference (R. v. Clarke) [2018] 1 Cr. App. R. (S.) 52

- Reaching the age of 18 has many legal consequences, but it does not present **a cliff edge** for the purposes of sentencing. So much has long been clear.
- Full maturity and all the attributes of adulthood are **not magically conferred** on young people on their 18th birthdays.
- The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday.
- Experience of life reflected in **scientific research** (e.g. The Age of Adolescence: thelancet.com/child-adolescent; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays.

Reiteration

***R v Hobbs* [2018] 2 Cr App R(S) 36 Lord Chief Justice**

Lord Burnett emphasised that the **‘modern approach to sentencing’**:

- required the court to **‘look carefully at the age, maturity and progress of the young offender in each case.’**
- Emphasised that the principles that applied to young offenders also applied to **‘young people who offend in early adulthood but are far from the maturity of adults.’**

Relevance of children's sentencing guidelines

- *R v Balogun* [2018] EWCA Crim 2933, Holroyde LJ
- He had not been invested overnight with all the understanding and self-control of a fully mature adult.
- Extensive reference to the **Sentencing Council's Definitive Guideline in relation to the Sentencing of Children and Young People** (under 18's):
 - Statute requires the court to have regard to the principal aim of the youth justice system, namely to prevent offending by children and young people and to the welfare of the child or young person
 - The Overarching Principles state that the court may feel it appropriate to apply a sentence broadly in the region of half to two-thirds of the adult sentence.

Relevance of children's sentencing guidelines cont.

R v Balogun cont.

In accordance with the principles which we have summarised, the fact that the appellant had attained the age of 18 before he committed the offences **does not of itself mean that the factors relevant to the sentencing of a young offender had necessarily ceased to have any relevance.**

R v Daniels [2019] 4 W.L.R. 52, Lord Chief Justice

- “**The guideline** to which we have just referred [the Definitive Guideline for the Sentencing of Children and Young People] does not apply in such cases, but the factors quoted from paragraph 1.5 [of said guideline] **can weigh in considering the appropriate sentence in cases involving young adults who are not fully mature.**
- No doubt science will in time tell us more about the development of the young adult brain and its impact on behaviour. But there will be cases and this, in our view, is one of them where there is material available to the sentencing court which speaks about the maturity and developmental reality of the offender in question.”

Judging immaturity

Pre-Sentence Report

Psychological report

BUT NOTE:

***R v Quartey* [2019] EWCA Crim 374, Lord Chief Justice**

- Lord Burnett drew specific attention to the Appellant's '**not uncommon backstory**' of falling out of mainstream education and into gang-based behaviour.
- He interpreted this as '**indicative of immaturity and a lack of strength to resist peer pressure**'.
- In his opinion, this '[represented] a difference between the fully mature adult and the developing, but still immature, late adolescent moving into adulthood.'
- It was this that caused him to '[fall] under the malign influence of individuals...[and] into a world of drugs and violence'.

Seriousness does not outweigh immaturity

The principles apply despite serious facts.

Sentences reduced or AG references failed in all of the following:

- **Quartey** – “despicable” gang murder, inhumane, savage and animalistic attack
- **R v Gordon** [2020] 4 WLR 49– Manslaughter. Kicked and stamped on victim who had been stabbed
- **Clarke** - teenage boy kidnapped, falsely imprisoned, threatened with weapons
- **Daniels** – Death by Dangerous Driving, Joyriding, 80 mph in a 30mph limit
- **R v Ake** [2018] EWCA Crim 392 - stabbing causing life threatening injuries
- **Balogun** – Campaign of rape against teenage girls
- **Hobbs** - manslaughter of a man who had burned to death after the defendants had ignited a flare in the car in which he was sleeping
- **R v Ford (AJ)** [2019] EWCA Crim 1757 - gang related domestic burglaries
- **R v Zakaria Mohammed** [2019] EWCA Crim 1881 – trafficking of children to deal drugs – very grave offending, requiring condign punishment

But...

R v Raja Mohammed [2019] EWCA Crim 2095 – Holyroyde LJ

- Prisoner serving extended determinate sentence for section 18 – attacked inmate with homemade knife
- “The LCJ in Clarke did not have in mind violent men of 24 when he observed that reaching the age of 18 was not a “cliff edge” for the purposes of sentencing. The Sentencing Council’s guideline on sentencing children and young persons had no relevance to M.”

R v Assaf [2020] 1 Cr. App. R (S) 3 – Sir Brian Leveson

- 19 year old defendants class A drug dealing conspiracy
- “sophistication of the drug dealing enterprise, its duration and the Appellants’ intelligence and educated background spoke to their maturational development, such that no substantial discount from a sentence appropriate for an adult offender was justified.”

Sentencing Council's mitigating factors – expanded explanation on age and/or lack of maturity



Claire Mawer

15 New Bridge Street

claire.mawer@15nbs.com

‘Turning 18 Guide’: <https://yjlc.uk/resources/yjlc-guide-to-turning-18/>

Sentencing Council's mitigating factors – expanded explanation on age and/or lack of maturity

- In force from October 2019
- Focuses on young adults aged 18-25
- Draws heavily on Definitive Guideline for Sentencing of Children and Young People
- Difficult to access!
- It is contained within the list of mitigating features identified by the 'General Guideline: Overarching Principles'

HOW TO ACCESS THE GUIDELINE!

STEP 1:

Access the Overarching Guideline online:

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>

Age and/or lack of maturity

STEP 2:

- Scroll down to the list of mitigating factors

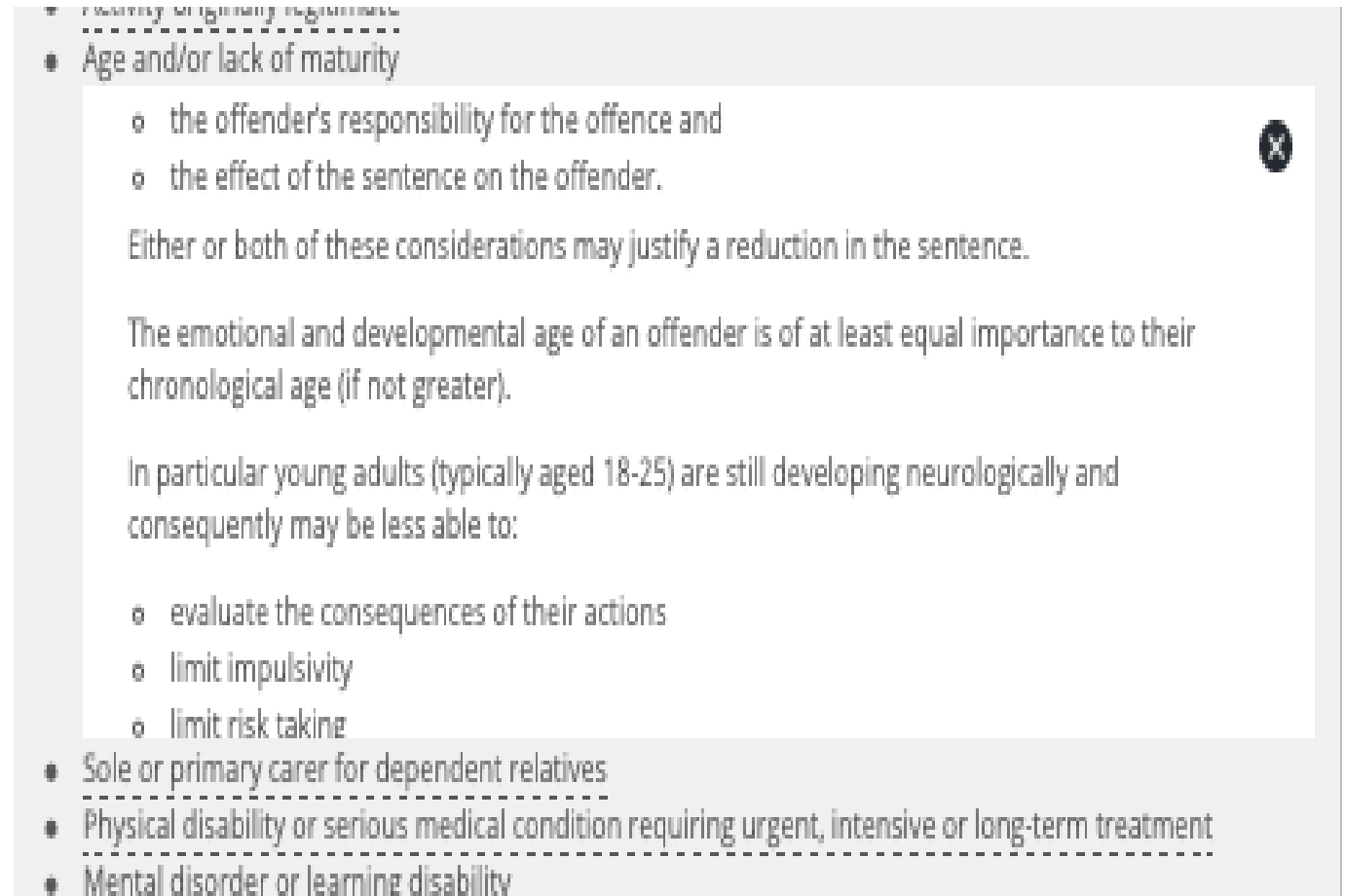
Factors reducing seriousness or reflecting personal mitigation
(Factors are not listed in any particular order and are not exhaustive)

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Remorse
- Self-reporting
- Cooperation with the investigation/ early admissions
- Little or no planning
- The offender was in a lesser or subordinate role if acting with others / performed limited role under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence
- Little or no financial gain
- Delay since apprehension
- Activity originally legitimate
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Age and/or lack of maturity

STEP 3:

- Click on '*age and/or lack of maturity*'.
- This will open a drop-down box containing all the guidance, which can be scrolled through.



The screenshot shows a drop-down menu with the following content:

- Age and/or lack of maturity
 - the offender's responsibility for the offence and
 - the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

 - evaluate the consequences of their actions
 - limit impulsivity
 - limit risk taking
- Sole or primary carer for dependent relatives
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability

Sentencing Council's mitigating factors – expanded explanation on age and/or lack of maturity

The Guidance

- Age and/or lack of maturity can affect:
 - i. **responsibility** for the offence and
 - ii. the **effect** of the sentence on the offender.
- Either or both of these considerations may justify a **reduction** in the sentence.
- The emotional and developmental age of an offender is of **at least equal importance to their chronological age (if not greater)**.

Age and/or lack of maturity

i. A young adult's responsibility for their offending

- In particular young adults (**typically aged 18-25**) are still developing neurologically and consequently may be less able to:
 - evaluate the **consequences** of their actions
 - limit **impulsivity**
 - limit **risk** taking
- Young adults are likely to be **susceptible to peer pressure** and are **more likely to take risks or behave impulsively when in company with their peers.**
- Immaturity can also result from **atypical brain development**. Environment plays a role in **neurological development** and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

Age and/or lack of maturity

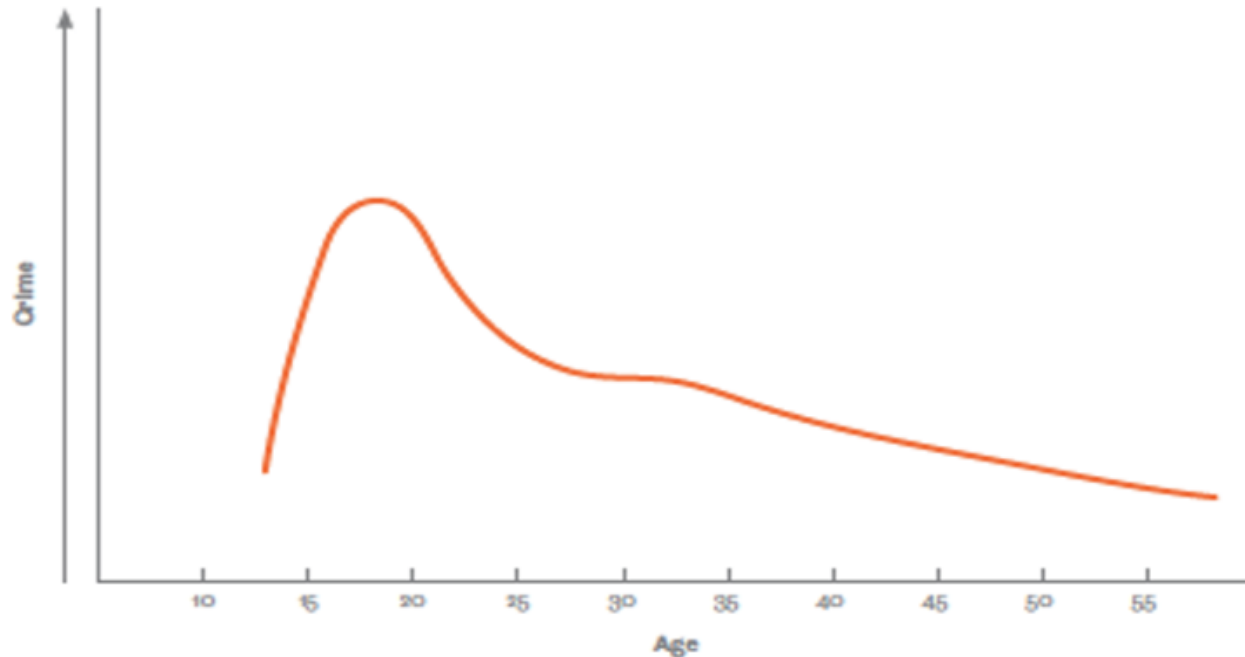
ii. Effect of Sentence

- An immature offender may find it **particularly difficult to cope with custody** and therefore may be more susceptible to self-harm in custody.
- An immature offender may find it **particularly difficult** to cope with the **requirements of a community order without appropriate support**.
- There is a **greater capacity for change** in immature **offenders** and they may be **receptive to opportunities** to address their offending behaviour and change their conduct.

Age and/or lack of maturity

Decline in Reoffending

- Many young people who **offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.**



Source: Hughes and Hartman (forthcoming)

Age and/or lack of maturity

Specific Duties:

- Where the offender is a **care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority.** (Young adult care leavers are entitled to time-limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point).
- When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a **PSR.**

Age and/or lack of maturity

Clear mandate to sentencing judges: age and lack of maturity must be taken into account!

Our duty as practitioners: to hold sentencing judges to account!

Case Study

Defendant

- Kieran - 19 years and 4 months at time of offence

Offence of robbery

- The victim was 18 years of age, lived in a complex offering supported housing for 16 to 21 year olds.
- At around 5.10pm he was walking home from work and was at the entrance to the complex when the defendant approached him, came close up to his face and said "You are a pussy". The Defendant was drunk.
- The victim said, "Well, you don't even know me".
- The defendant then said "I'm going to smash you up. "Give me your bag"
- The victim said it contained nothing of any value, so the defendant said, then noticed the victim's Nike trainers and said, "Your shoes are well nice. Give them to me or I'll cut you up" and he put his hand in his pocket.
- The victim feared that the defendant had a knife and that he would be stabbed so took his trainers – worth £160 off and handed them to him
- As he left, the Defendant shouted "Make any calls and I'll cut you up".
- The defendant was well known locally and was immediately identified by staff at the complex from CCTV.
- He was arrested two days the trainers were recovered from his flat. No comment interview

Case Study

Antecedents

- Previous convictions dating back to age 12
- Low level public order offences, thefts, TWOC's, two common assaults.
- Never been given detention before.
- He was in breach of a conditional discharge for common assault at the time of the offence.

Personal Circumstances

- Difficult childhood – no father on the scene and relations with mother strained – sometimes lived with her but had assaulted his 'step-father', mainly lived with grandmother in his teens, but at the moment was sofa surfing.
- Social services had been involved since childhood and he was placed in a children's home for several months when he was 17, but at time of index offence he had not seen anyone from children's services for some time
- Left school with no qualifications and had been excluded at various times
- Relied heavily on alcohol and had never worked
- Had a young daughter who he saw sporadically
- Scars on his arms

Proceedings

- Pled guilty at first opportunity
- 19 years and 6 months at time of sentence
- Remanded in custody since first appearance
- The victim gave a Victim Impact Statement saying he was suffering from anxiety and constantly looked over his shoulder when he left the complex.

R v Geoghagan [2019] EWCA Crim 787 – 19 February 2019

- Similar circumstances to the example
- PSR:
- Presented as medium risk of future violence
- No formal diagnosis of impairment of mental health, but various indicators that he suffered some form of mental health condition.
- The appellant's own statements and the YOT reports show that he suffered from self-harm and suicidal ideation.
- The author of the report referred to the appellant's immaturity, his thinking skills were low and he had a propensity to impulsive behaviour.
- The offending would inevitably have led to detection and prosecution.
- In summary, his process of maturation had a significant way to go.

Passing sentence:

- Culpability B – threat to stab
- Category of Harm 2 – more than minimal
- Starting Point 4 years – range of 3-6 years
- *Aggravating:*
- Poor criminal record
- Breach of Con Dis
- Under influence of alcohol
- Threat to stab
- *Mitigating:*
- mental health difficulties
- remorse
- the lack of maturity
- little or no planning,
- positive steps in custody
- young daughter

Sentence

- Would have been 42 months after trial - Reduction for guilty plea 27 months detention

Appeal:

- CA said more like a category Harm 3 – as doubtful more than minimal harm (so range of 1-4 years with starting point 2 years)
- “For offenders aged between 15 and 17, the guideline for sentencing children and young people indicates that half to two-thirds of the adult guideline may be appropriate. The robbery guideline for sentencing children and young people draws specific attention to immaturity, learning disabilities or mental health concerns and demonstration of steps taken to address offending behaviour. As for this last factor, there is evidence that the appellant's detention has brought home to him the need to change his attitudes and lifestyle in order to reduce the risk of re-offending and to exhibit maturity that would be consistent with his responsibilities, recently acquired, of being a father to a small infant.”
- Reference to *R v Hobbs* and *R v Clarke*
- Starting Point of 36 months –
- Reduced to 20 months
- Suspended

Sentencing young adults – getting it right first time Q&A

**Dr Laura Janes
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Applying the law and guidance

Is the young adult lacking in maturity?

- PSR
- Maturity screening?
- Psychological or psychiatric report to assess maturity and check for hidden disabilities?
- Is offending reducing?

What's the impact of the sentence on life chances?

- Maths! Work out sentence length, earliest release and term dates.
- If pregnant, consider 18 month rule
- What will the "spent" period be?
- Conditions in custody

Will the sentence interfere with other rights?

- Impact on getting leaving care rights? –if will turn 18 while in prison may not accrue 13 weeks in care
- Will sentence prevent access to time limited support as a care leaver?
- Impact on applying for settled status? (deadline 30/6/21)

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