

# Maturity in the magistrates' court

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Magistrates, young adults and maturity considerations  
in decision-making and sentencing

## Executive Summary



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## Executive summary

Research has demonstrated that the biological and psychological processes of developing maturity continue into a person's mid-20s. Countries across Europe are responding to this research by reconsidering how they treat 18-25 year olds in their criminal justice systems. In the United Kingdom, the T2A (Transition to Adulthood) programme has led much of the work.<sup>1</sup>

In England and Wales, this has so far primarily taken the form of a requirement to consider a potential defendant's level of maturity in Crown Prosecution Service (CPS) decisions on whether to prosecute and the introduction of 'lack of maturity' as a mitigating factor in sentencing decisions. Recent case law has indicated that the introduction of a lack of maturity as a mitigating factor, and the research underlying this, is informing decisions made in courts in England and Wales.<sup>2</sup>

However, despite the majority of criminal offences that come to court being dealt with entirely in magistrates' courts, research on the consideration of maturity as a factor in court decisions has so far been restricted to crown courts and there has been no substantive research on the situation in magistrates' courts. This report addresses this gap in our knowledge and offers an analysis of the current situation, based on a research project carried out by the Magistrates Association (MA) from July to December 2019.

### Research findings

The research included a survey of magistrates, a series of focus groups with magistrates, and a roundtable with other court participants. It offers a first look at magistrates' understanding of maturity and how it is currently handled within magistrates' courts.

The overarching finding of this research was that the issue of maturity is not raised often in magistrates' courts. With some geographical variability, the survey, focus groups and roundtable all found that for very many magistrates this issue was rarely introduced as a relevant issue at all. This is surprising given the fact that the current understanding around maturity shows that brain development continues into young adulthood, and impacts directly on behaviour linked to offending such as impulse control, empathy and understanding of the implications of actions.

When maturity was raised in court, it was rarely raised as a factor early in the process. Our research indicated, however, that magistrates felt information on a defendant's maturity needs to be available to the court by the first hearing, if possible, and definitely before any trial, so that the bench can ensure that the defendant is able to participate fairly and effectively. Magistrates told us that in the rare occasions that concerns around maturity were raised at this early stage, it was most often being introduced by defence lawyers. Our research indicated, however, that magistrates would prefer evidence of a lack of maturity to be not based on representations from lawyers but on robust, independent assessments, carried out by Liaison and Diversion teams.

It was more common for magistrates to see the issue of maturity being raised post-conviction but before sentencing, in which case it was most likely to be mentioned by the probation service in a pre-sentence report (PSR). Even where the subject was raised as an issue post-conviction, however, magistrates often felt they were not receiving enough information for it to be effectively considered in their decision-making. PSRs did not, the research found, always contain sufficient detail of the type of assessment carried out, how lack of maturity might relate to the offence, and whether it had affected sentencing recommendations. It was agreed that information must be specific to the case before a bench – with assessments carried out on the individual – and any lack of maturity should be linked to offending behaviour, as well as to whether specific sentencing options might be more appropriate or effective due to maturity assessments.

<sup>1</sup> Home – T2A

<sup>2</sup> See: R v Clarke [2018] EWCA Crim 1852, 24th January 2018, <http://www.bailii.org/ew/cases/EWCA/Crim/2018/185.html>; R v Eniola Balogun [2018] EWCA Crim 2933, 28th November 2018, <http://www.bailii.org/ew/cases/EWCA/Crim/2018/2933.html>

Our research indicated magistrates do have some understanding of maturity and its relevance for criminal justice from their experience in court; although for obvious reasons youth magistrates were deemed to have more expertise on the issue. However, our survey indicated that there was still work to be done to ensure all magistrates could be very confident in their ability to respond appropriately on the issue of maturity.

In order to increase confidence, magistrates said they needed to better understand the issue, as well as have more detailed, specific information provided by independent experts on individual cases. Although magistrates appreciated that they did not need to become experts themselves, they noted that they did need sufficient understanding of the issue in order to use assessments when making fair decisions. It was therefore concluded that it would be useful for magistrates to have a more informed and sophisticated understanding of maturity in respect of how it affects behaviour, both in court and in relation to offending or compliance with court orders.

Most magistrates who participated in the research felt the level of maturity of young adults should be taken into consideration more often than is currently the case. However, almost all magistrates were against the idea of a default assumption about the maturity of all young adults. They felt their approach must be to consider each person before them as an individual. They were generally confident in their ability to assess cases on this basis, if given adequate time and information. This suggests the priority is to focus on ensuring magistrates receive the information they need at the right time and can be confident in their ability to make decisions based on that information.

## Recommendations

Two overarching recommendations arose from this research:

1. More independent assessments on maturity need to be carried out before the first hearing.
2. Training needs to be provided to magistrates to give them a general understanding of maturity and how it affects both participation of young adults in court and sentencing decisions.

### More independent assessments

- Liaison and Diversion services should assess the maturity of all young adults, along with any other vulnerabilities. Early identification of any maturity issues can help magistrates ensure young adult defendants are able to fairly and effectively participate in the court process: this is especially important before any trials.
- Probation should carry out assessments of all young adults to determine whether lack of maturity has impacted on their offending behaviour, as well as whether it might affect how the individual responds to specific sentencing options. The results of these assessments should then be included in all PSRs for young adults. It is important that even where assessments are carried out and it was decided maturity was not relevant, this should be noted in the information provided to magistrates.
- Magistrates should be encouraged at all stages of the criminal justice process to ask for more assessments to be carried out to see whether a lack of maturity is an issue for a young adult before them. It would be useful for magistrates to be provided with a prompt to remind them to consider whether maturity is an issue, if it has not been raised by anyone else. This has proved effective in other areas, for example with the MA's prompt card for 'Vulnerable Persons in Court'. In particular, if a sentencing bench feel they do not have sufficient information on an individual's maturity, they should ask for this to be considered as part of the PSR.

However, current pressures on the system, including defence lawyers having less time with clients before hearings, was identified as a challenge to ensuring more assessments were carried out. As courts are being pushed to deal with cases with fewer hearings and adjournments, and probation are being encouraged to carry out more on the day PSRs, it might make it more difficult to carry out full assessments. This research underlines the importance of magistrates ensuring the fairness of a process or outcome, even if it involves disregarding external pressures on the system.

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## Training

Magistrates suggested it was important for them to have a basic understanding about maturity and how it might impact on criminal justice processes, with training being focused on their specific role as magistrates. This research found that magistrates already have a good intuitive understanding of the issues surrounding young adults' developing maturity and offending. However, training focused on their role as magistrates could help deepen and sharpen this understanding and equip them to make full use of assessments presented by independent experts such as Liaison and Diversion teams or probation.

Training should also look at the specific instances where lack of maturity might impact on the criminal justice process, including:

- **Fair participation in a hearing:** Levels of maturity might affect a defendant's ability to understand and therefore engage with a process, and, in addition, their behaviour, might affect the way they present to the court.
- **Sentencing decisions:** Lack of maturity can affect how responsible an offender is for their behaviour and therefore must be considered as a possible mitigating factor. Levels of maturity can also influence what sentencing options might be appropriate. Our research showed that certain programmes might be particularly useful for young adults whose maturity is still developing, but other court orders might be more challenging for them to engage with positively. Pressures on probation services may mean, however, that tailored options for young adults are not available in all areas.

Overall, the research shows that magistrates feel there is wider learning to be gained from the youth justice system, and the experience of youth magistrates could be utilised in training and development to ensure those presiding in adult court know how to engage appropriately with young adults.

There was also some discussion at the focus groups about whether there should be wider systemic change which addresses the current stark cut-off between youth and adult court for those over the age of 18 years. The possibility of a transitional approach for young adults would have the support of the MA.

Finally, the report recommends that there should continue to be dialogue on the issue of maturity between professionals working in the criminal justice system. Magistrates have a unique perspective to contribute to the ongoing development of the criminal justice system's response to the issue of maturity.

### About the Magistrates Association

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

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