

Maturity in the magistrates' court

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



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 **Magistrates Association**

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T2A
Transition to
Adulthood

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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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About the Barrow Cadbury Trust

The Barrow Cadbury Trust is an independent charitable foundation committed to bringing about socially just change.

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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.¹

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.²

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.

¹ Home – T2A

² 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.

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.

Introduction

The concept of maturity was introduced to the sentencing process for adults in England and Wales for the first time in the 2011 sentencing guidelines on assault. Since then 'Age and/or lack of maturity where it affects the responsibility of the offender' has been included as a mitigating factor in an increasing number of sentencing guidelines, and is now found in the Sentencing Council's new *General Sentencing Guideline* for use where there is no offence specific guideline (which came into effect on 1 October 2019).

Produced contemporaneously with the assault guideline, a comprehensive literature review of the evidence from neurological, psychological and criminological research on young adult maturity and criminal justice, produced by the University of Birmingham's Institute of Applied Social Studies,³ found that:

the level of maturity exhibited by an offender is a valid factor to be considered within the legal process. There are, moreover, indications that this conclusion is becoming accepted in a growing number of national jurisdictions, albeit to varying degrees.⁴

However, this review also found that the 'complexity and, at times, ambiguity of the concept of maturity' posed a real 'practical difficulty for criminal justice practitioners who will need to be able to produce robust assessments of an offender's level of maturity if this is to be a factor in the judicial process'.⁵ It suggested, therefore, that central to the successful introduction of the concept of maturity into the criminal justice system will be the 'quality of training and guidance available to those charged with making such assessments'.⁶

More recently, scrutiny from the House of Commons Justice Committee inquiry into the treatment of young adults in the criminal justice system found that:

Neither CPS investigating prosecutors nor sentencers have a sufficiently sophisticated understanding of maturity to weigh up how it may affect young adults' culpability. In addition they do not routinely have the necessary information on which to make robust assessments about an individual's maturity and hence take account of this in their reasoned prosecution and sentencing decisions.⁷

Nonetheless, as far as magistrates' courts are concerned, the evidence to make any more specific claim is lacking, with no research available on magistrates' understanding of maturity, the frequency with which it is raised as an issue in the courts, or the information available to magistrates on defendants' and offenders' level of maturity. There is also currently no specific training for magistrates on this issue.⁸

This report forms part of a project, funded by the Barrow Cadbury Trust, which aims to fill both of these gaps. Phase one explored magistrates' current levels of understanding of maturity, the frequency with which it was raised in court, and the information on it that was provided to them during the court process. This report presents the findings from this research. Phase two was to use these findings to develop appropriate training on young adult maturity for magistrates.

The report begins with a literature review giving an overview of recent academic research on brain development and psychosocial maturity before considering how this relates to the criminal justice system. It then looks at the broader European context of how young adults are dealt with in different jurisdictions, before looking in detail at the jurisdiction of England and Wales. This covers the inclusion of the concept of maturity in sentencing guidelines, domestic case law relating to sentencing young adults, and parliamentary scrutiny of young adults in the criminal justice system.

³ This review was published in March 2011, having been commissioned by the Barrow Cadbury Trust for the Transition to Adulthood Alliance.

⁴ Prior, D. *et al.*, 2011. *Maturity, young adults and criminal justice: A literature review*. University of Birmingham, p. 35.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Justice Committee, 2018. *Young adults in the criminal justice system*, para. 77.

⁸ Oral evidence from Malcolm Richardson JP, then Chair of the Magistrates Association, to the Justice Committee, Tuesday 2 February 2016, Q.292-294. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/young-adult-offenders/oral/28364.html>

The second half of the report then presents the findings of research carried out by the Magistrates Association (MA) between July and November 2019. This research comprised of a survey of magistrates, three focus groups with magistrates held in London, Cardiff and York, and a roundtable held with representatives from the National Probation Service, community rehabilitation companies, youth offending teams, and defence solicitors with extensive experience representing young adults. The report concludes by summarising the research findings and presenting the main recommendations drawn from this research.

The magistrates involved in this research were all, above all, concerned about getting their decisions right and to make sure they are dealing with young adults appropriately. They were alive to how an individual's vulnerabilities, such as a lack of maturity, can have an impact both on responsibility for offences, and on what might be the most effective sentence. The will is there to make court processes and outcomes fair and effective for young adults, in line with our changing knowledge of their developmental maturity.

Solving the problem of how to make this happen was neatly encapsulated by two of our participants. On the one hand, as a magistrate in one of our focus groups put it, magistrates can only work from the information before them. On the other, as a participant from the probation service noted, magistrates don't know what they don't know. The solution, as this report sets out, involves getting information on maturity into the system and training magistrates to ask for and understand the information on maturity presented to them.

This research offers a first look into magistrates' understanding of maturity and how it is currently handled within magistrates' courts. The vast majority of criminal offences that come to court are dealt with entirely in magistrates' courts, so this report should be of interest to all those concerned with young adults' experience of the criminal justice system. It also makes a series of recommendations for consideration by the magistracy and other key stakeholders. It is not, in and of itself, a guide for magistrates on the issue of maturity – it is instead intended to inform the development of further materials for magistrates in due course.

Literature review

This section sets out a summary of the relevant existing information on maturity and the criminal justice system, providing context for the subsequent sections on the MA research. It first considers the current understanding about developing maturity and then looks at how this is currently applied in justice systems in Europe and specifically in England and Wales.

Neuroscientific research: The maturity gap and the dual systems model

The brain does not usually complete its development until a person's mid-20s. Different areas of the brain develop at different rates and different times. Young adults' brains are still maturing and differ from a fully developed brain in several different ways:

- Certain areas are structurally still developing;
- Connections between different parts of the brain are still being made;
- There is a greater density of receptors for certain hormones or neurotransmitters.

Brain development occurs at different paces for different individuals, and injury and trauma can also slow or arrest aspects of brain development. It is important, therefore, that young adult brain development is understood by those in the criminal justice system, both in its usual developmental process and in respect of the impact that injury and trauma can have on this development.

The dual systems model

Increased understanding about brain development and about processes that govern different types of decision-making has helped understand why young adults' behaviour may differ from older adults.

For many years adolescent risk taking and impulsivity was seen as a result of cognitive development not yet being complete, meaning it was believed that this age group tended to behave irrationally, and were weaker at comprehending information and risk. However, more recent research shows that by the mid-teenage years, adolescents perform just as well as adults in relation to 'logical reasoning, information processing, and risk perception'.⁹ The evidence now shows that young adults are more likely to be impulsive and take risks not due to lack of cognitive capacity but due to the fact that socio-emotional processing develops inconsistently. This means that young adults develop an increased sensitivity to reward before developing the impulse control needed to manage it. This development differential is known as the dual systems model.

The dual systems model has developed from work led separately by Laurence Steinberg and BJ Casey, with both publishing seminal articles in 2008. Their work found that patterns of brain development, with different systems developing at different rates, could explain aspects of adolescent decision-making. Broadly, the incentive/reward systems become mature earlier, in the mid-teens, while systems for impulse control develop more slowly, reaching maturity much later. This leads to a drive for increased sensation-seeking behaviour at a time when the brain's control system is not yet strong enough to restrain antisocial or dangerous impulses.

The work led by BJ Casey uses human brain imaging and animal studies to show that during adolescence the brain has 'a heightened responsiveness to incentives' but at the same time impulse control is still underdeveloped.¹⁰ This means that increased risk-taking and greater emotional reactivity in adolescence are associated with differential development of different parts of the brain. In summary, this means that young adults will be more capable of making some decisions

⁹ Shulman, E., Smith, A., Silva, K., Icenogle, G., Duell, N., Chein, J., and Steinberg, L. 2016 'The dual systems model: Review, reappraisal, and reaffirmation', *Developmental Cognitive Neuroscience*.

¹⁰ Casey, B., Jones, R., and Hare, T. 2008. 'The Adolescent Brain', *Annals of the New York Academy of Sciences*.

compared to others, especially when decisions involve emotionally charged situations. The authors argue that this meant there should be different policies governing how much autonomy young adults should be given, and when they should be treated as distinct from adults.

The work led by Laurence Steinberg puts a similar finding slightly differently. His work shows that risk-taking increases between childhood and adolescence due to structural changes in the brain changing how it responds to certain hormones.¹¹ Risk-taking then declines between adolescence and adulthood partly due to the changes in the brain that 'improve individuals' capacity for self-regulation'.

Although the scientific research indicates that increased risk-taking is mostly in response to biological changes in adolescence, there is also evidence that contextual factors from the external environment will 'influence the development of self-regulation'.¹²

A recent 2016 review of the evidence from both the psychological and neuroimaging literature since 2008 found that the dual systems model has been broadly re-affirmed. While studies show that better cognitive control gradually increases throughout adolescence, into the early 20s, an individual's sensitivity to reward increases from childhood, peaking in their late teens, before gradually declining.¹³

A useful way to think about what the developmental differential explained by the dual systems model might mean is to consider a situation that involves high levels of emotional stimulus. However, in highly charged situations, when impulse control is required, young adults are more likely to struggle to think clearly and will therefore perform poorly compared to adults.¹⁴ In situations which are not emotionally charged, then a young person's cognitive capacity is likely to be similar to an adult as impulse control is less likely to be relevant. The differential in brain development also explains why young adults may be reckless and impulsive not just in comparison with adults but also why their behaviour may be considered objectively 'worse' than that of children. This is due to the sensitivity to reward being at a peak for young adults while control of impulsivity is still developing, so the differential will be greater than for children, who will have less impulse control but also less sensitivity to reward.

It is also important to note that brain development also occurs at different paces for different individuals, and injury and trauma can also slow or arrest aspects of brain development. Traumatic brain injuries (TBIs) – from, for example, falls, sporting injuries, fights or assaults, or road accidents – can 'compromise important neurological functions for self-regulation and social behaviour and increases risk of behavioural disorder'.¹⁵ It is notable that adults involved in the criminal justice system have 'a significantly higher prevalence of traumatic brain injury in the incarcerated groups compared to the general population'.¹⁶ For example, the rate of TBIs among the general population is estimated to be around 8.5%, while studies of offenders have found rates of between 25% and 87%.¹⁷

Psychosocial maturity

As mentioned above, maturity is more complex than brain development alone as changes during adolescence happen within a social context, meaning young adult development has both a biological and social aspect. Development of maturity takes place in a social context (and as a normative concept it is constituted by social expectations of behaviour

¹¹ Steinberg, L. 2008. 'A Social Neuroscience Perspective on Adolescent Risk-Taking', *Developmental Review*, 28(1).

¹² Succinctly: 'Some things just take time to develop, and mature judgment is probably one of them.'

¹³ Shulman et. al. 2016 *op.cit.* <https://www.ncbi.nlm.nih.gov/pubmed/26774291>

¹⁴ Icenogle, G., Steinberg L., Duell, N., Chein, J, Chang, L., Chaudhary, N., Di Giunta, L., Dodge, K., Fanti, K., Lansford, J., Oburu, P., Pastorelli, C., Skinner, A., Sorbring, E., Tapanya, S., Tirado, L., Alampay, L., Al-Hassan, S., Takash, H., and Bacchini, D. 2019. 'Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample', *Law and Human Behaviour*.

¹⁵ Williams, H., Chitsabesan, P., Fazel, S., McMillan, T., Hughes, N., Parsonage, M., and Tonks, J. 2018. 'Traumatic brain injury: a potential cause of violent crime?', *Lancet Psychiatry*, 5(10). As the authors note, a direct causal link to offending is difficult to assert as 'those who offend could be risk takers with a low threshold for harm avoidance' which leads to a higher likelihood of such brain injuries. Nonetheless this study concludes that 'TBI is a risk factor for earlier, more violent, offending' and 'TBI is linked to poor engagement in treatment, in-custody infractions, and reconviction.'

¹⁶ Farrer, T., Hedges, D. 2011. 'Prevalence of traumatic brain injury in incarcerated groups compared to the general population: a meta-analysis', *Progress in neuro-psychopharmacology & biological psychiatry*, 35(2)

¹⁷ Ray, B. and Richardson, N. 2017. 'Traumatic Brain Injury And Recidivism Among Returning Inmates' *Criminal Justice and Behavior*, 44(3).

from mature adults so it should be understood in a social context), so differences in social context can impact on the development of maturity. Adolescent behaviours then are 'the psychosocial response to the profound biological changes of puberty within a social context'.¹⁸

For example, the evidence is clear that adverse childhood experiences (ACEs) have a significant impact on developing maturity and consequent behaviour.¹⁹ A Welsh study found that people who had ACE were exposed to a stress response for lengthy periods of time, and the impact of this on the developing brain can be impairment of multiple brain structures and functions.²⁰ This impairment can be associated with offending behaviour. Offenders report very high rates of ACEs with experience of 'childhood physical abuse and other forms of maltreatment lead[ing] to higher rates of self-reported total offending, violent offending, and property offending, even after controlling for prior delinquent behavior'.²¹ The same study found that 'individuals who had suffered four or more ACEs were 20 times more likely to have been incarcerated at some point in their lives'.²²

Another way in which the social context is known to affect a young adults' developing maturity is the impact of changes in social norms. One of the most significant of the social changes identified as relevant to young adult offending is the delayed uptake of independent roles – roles that mark a transition to adulthood such as stable employment, a stable romantic relationship and establishing a family, becoming financially independent, and developing the capacity to participate in social affairs. The transitions to independence these roles infer are important as they play a significant part in the development of an individual adult identity, and are part of the explanation for young adult desistance from offending.²³

As lengthier education processes, changes to the labour market and later marriage and parenthood have been seen across the West, these transition to adult roles are being delayed, and particularly in the areas of stable employment and financial independence, becoming harder to achieve.²⁴ This has made 'the entry into adulthood a more ambiguous, gradual, complex and less uniform process than it once was'.²⁵

The meaning of these roles may also have shifted, with research finding that while young adults 'generally still aspire to a successful career and a lasting romantic relationship in the long run', they do not want to make these kinds of long-term commitments 'just yet' in their lives, seeing 'these roles as temporary statuses to be explored and experimented with as they discover 'who they are''.²⁶

It is important that young adult brain development is understood by those in the criminal justice system, both in its usual developmental process and in the impact that injury and trauma can have upon this development. It is also important for those working in the justice system to understand the social context, including how the take up of adult roles can support rehabilitation. A 2016 study testing the continued validity of the relationship between adult roles and desistance in the context of 'the changed nature of these early adult years' stated clearly that their 'findings support Moffitt's theory that adolescence-limited offenders desist from crime in response to assuming adult social roles'.²⁷ It seems clear that while the availability and relative permanence of these adult roles may have changed, their role in developing maturity and promoting desistance from crime has not.

¹⁸ Shepard, R. 1999. 'Developmental Psychology and the Juvenile Justice Process', *Criminal Justice* 4: 1 American Bar Association

¹⁹ Childhood experiences of: emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, violent treatment towards mother, household substance abuse, household mental illness, parental separation or divorce, and having an incarcerated household member.

²⁰ Ford, K., Barton, E., Newbury, A., Hughes, K., Bezczyk, Z., Roderick, J. and Bellis, M. 2019. 'Understanding the prevalence of adverse childhood experiences (ACEs) in a male offender population in Wales: The Prisoner ACE Survey', Public Health Wales NHS Trust and Bangor University.

²¹ Baglivio, M., Wolff, K., Piquero, A., and Epps, N. 2015. 'The Relationship between Adverse Childhood Experiences (ACE) and Juvenile Offending Trajectories in a Juvenile Offender Sample', *Journal of Criminal Justice* 43(3)

²² Ford *et. al.* 2019 *op. cit.*

²³ As discussed below in 'Age-crime curve'.

²⁴ Schwartz, S., Tanner, J. and Syed, M. 2016. 'Emerging Adulthood' in *The Encyclopedia of Adulthood and Aging*, Ed. Susan Krauss

²⁵ Coyle, B. 2019. 'What The F**K Is Maturity?': Young Adulthood, Subjective Maturity and Desistance from Crime', *British Journal of Criminology*, 59. p. 1184.

²⁶ Hill, J., Blokland, A., and van der Geest, V. 2016. 'Desisting from Crime in Emerging Adulthood: Adult Roles and the Maturity Gap', *Journal of Research in Crime and Delinquency*. Vol. 53(4). Pp 507-8.

²⁷ *Ibid.*

Applying psychosocial maturity in the criminal justice system

Laurence Steinberg notes that, even though the study of adolescent brain development had only started to mature over the previous decade, by 2011 there was surprising consensus with evidence demonstrating 'conclusively that the adolescent's brain is different from both the child's brain and the adult's brain'.²⁸ For Steinberg what was still needed was a fuller integration of this work 'with psychological and contextual studies of this period of the life cycle' to inform debate about how society should treat its young adults. This is particularly important in relation to the criminal justice system, as evidence illustrates maturity has a significant impact on offending behaviour and on responsiveness to rehabilitative approaches.

This section provides an overview of the evidence base on how maturity interacts with the criminal justice system, and how the developing focus is on applying psychosocial maturity as the dominant conceptual approach.

A developing area of research

Research by the University of Birmingham Institute of Applied Social Studies, commissioned by the Barrow Cadbury Trust for the Transition to Adulthood (T2A) Alliance, looked at the issue of young adult maturity and the criminal justice system.²⁹ The report involved an extensive review of the literature on the maturity of young adult offenders.³⁰ Although the review found this area of study was still developing, it did identify consistent findings around some themes.

The report summarised findings from the three principal areas of academic research reviewed:

- Criminological research shows that many young adults will 'grow out of crime' during young adulthood if the right support structures are in place.
- Neurological research identifies that brain development continues into early adulthood and that the human brain is not 'mature' until the mid-20s.
- Psychological research identifies 'temperance' (the ability to evaluate consequences and control impulsivity) as the significant maturity factor and concludes that a lack of temperance continues to influence antisocial behaviour throughout young adulthood.³¹

The authors did find that maturity as a concept 'in many ways remain[ed] elusive', explaining that maturity could not necessarily be considered as objective but included a normative dimension.³² Relying on a normative understanding of maturity, with no clear concept that is easily translated into a set of objective criteria, presents a particular challenge for those wanting to develop an approach that will work in practice. Specifically, it is challenging for professionals to assess maturity objectively.

The report considered the method of assessing convicted offenders, the OASys (Offender Assessment System). It noted that although this assessment tool relied on the judgement of the person carrying out the assessment, it had the potential to 'provide an instrument to assist professional assessors in reaching reliable judgements about the maturity of young adult offenders'. This development of OASys as a tool for fuller assessment of maturity has since been taken up by HMPPS (see below).

The study concluded that the research clearly illustrates that it was inappropriate to use an arbitrary age limit in responding to young adults, and that assessment of the level of maturity for a particular offender was necessary to ensuring an appropriate response by the justice system.

²⁸ Adolescence as studied includes young or emerging adulthood, being the period between childhood and independent adulthood. Steinberg concurs with the general definition of adolescence beginning with puberty and extending through to young adulthood and age 24, or even beyond.

²⁹ David Prior, *et al.*, 2011. 'Maturity, young adults and criminal justice: A literature review', University of Birmingham Institute of Applied Social Studies, March 2011, p. 3. <https://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf>

³⁰ The project reviewed 1,000 items of research, from across the disciplines of psychology, neuroscience, and criminology, with the strongest 90 of these considered in more depth. Prior *et al.* 2011, *op cit.* p. 36.

³¹ *ibid.* p.35.

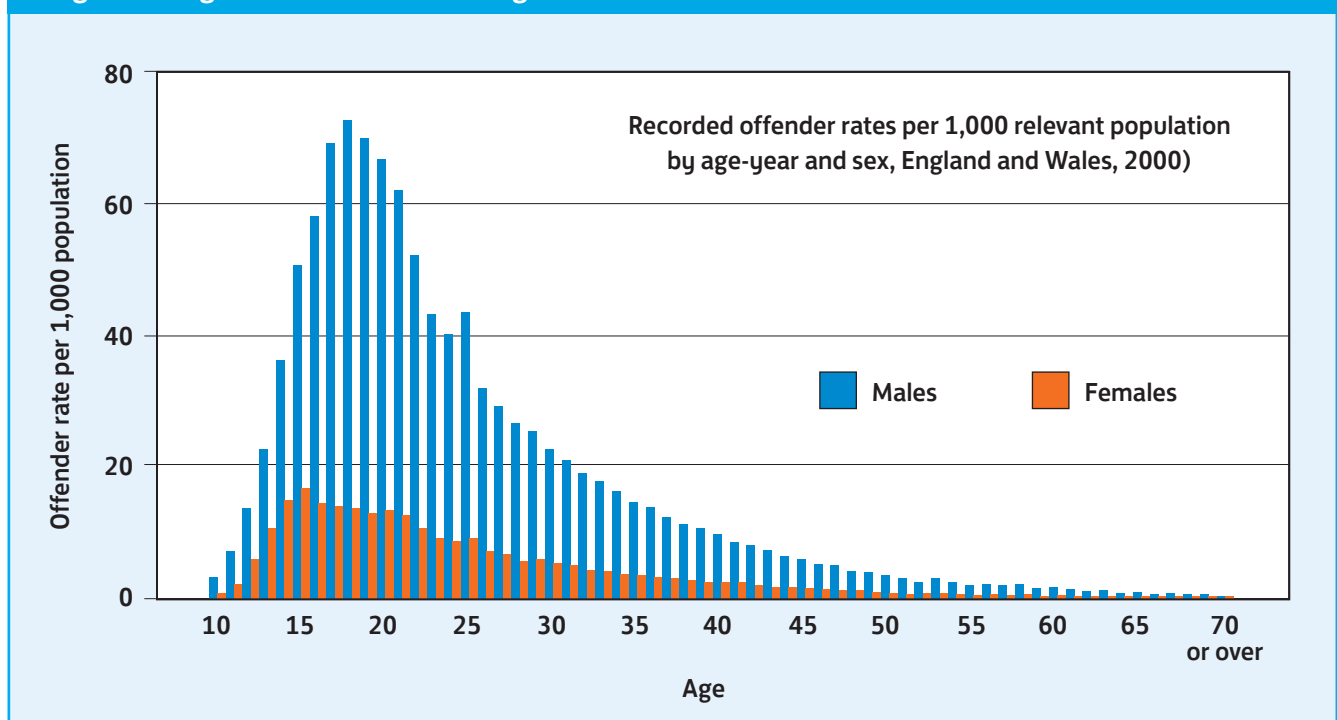
³² *ibid.* p. 4.

Criminology's 'Brute Fact': The age-crime curve

Another important area of research on maturity explores how age and maturity can affect offending. Within this, the age-crime curve visualises the relationship between age and the prevalence of offending. As can be seen in the example for England and Wales in 2000 in figure 1 below, the curve follows an 'asymmetrical bell shape' and shows that the percentage of offenders in a population increases from late childhood, peaking in the late teenage years before declining quite rapidly, with a persistent long tail.³³

The existence of the age-crime curve is long established in criminology, and the enduring consistency of its observation in research makes it 'one of the brute facts of criminology'.³⁴ The curve and the sharp decrease in prevalence of offending occurring up to age 30 is found in studies of offending worldwide, meaning it can be regarded as a universal phenomenon.³⁵

Figure 1: Age-Crime Curve for England and Wales in 2000³⁶



The age-crime curve shows that criminal behaviour undergoes significant changes in adolescence – the period between childhood and full adulthood. Studies of offending behaviour indicate that the curve is as a result of the majority of offenders both beginning and ending their offending behaviour in this period. It reflects two main factors. Firstly there are fewer people taking up offending behaviour at older ages. Secondly, the overwhelming majority of offenders desist from offending as young adults, with the long tail principally made up of those who persist in offending.

³³ Loeber, R. and Farrington, D. 2014. 'Age-Crime Curve' in *Encyclopaedia of Criminology and Criminal Justice* Eds. Bruinsma, G. and Weisburd, D. Pg. 12.

³⁴ Described as a 'brute fact' in Hirschi, T. and Gottfredson, M. 1993. 'Age and the explanation of crime', *American Journal of Sociology* 99(3). First described in the 1830's, observation of the curve is enduring, with more recent research seeking to establish whether the curve has changed 'shape' over the course of the decline rates of crime in the USA and Western Europe since the early 1990s, and to examine 'period effects' on different cohorts as they progress through the curve: for example whether 'exogenous' changes in demographics and immigration, or changes in social norms and changing patterns of routine activities for young people affect the curve. See Matthews, B. and Minton, J. 2018. 'Rethinking one of criminology's 'brute facts': The age-crime curve and the crime drop in Scotland', *European Journal of Criminology*, Vol. 15(3), for an overview of this research and application to the Scottish case.

³⁵ Loeber and Farrington, 'Age Crime Curve' *op. cit.*, Pruin and Dunkel Better in Europe, *op. cit.*

³⁶ Bottoms, A. 2006. 'Crime Prevention for Youth at Risk: Some Theoretical Considerations' Resource Material Series No. 68, p.21. https://www.unafei.or.jp/publications/pdf/RS_No68/No68_06VE_Bottoms2.pdf

One theory explaining the age-curve was put forward by Terrie Moffitt, who states that the take up of adult roles leads to desistance from crime and antisocial behaviour during the early years of adulthood.³⁷ Subsequent research has identified other factors influencing the age-crime curve, helping to highlight the significance of social networks in desistance.³⁸ Overall, more recent work confirmed that 'the highest concentration of desistance takes place during early adulthood', making this a particularly importance period in criminal trajectories.³⁹

It is this universal criminological finding that is captured within the Sentencing Council's recent Expanded Explanation on lack of maturity as a mitigating factor:

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.

Aspects of psychosocial maturity linked to offending behaviour

The development of psychosocial maturity involves increases in the ability to control impulses, to consider the effect of one's actions on others, to delay gratification in the service of long-term goals, and to resist the influences of peers. This maturation is generally considered as presenting three distinct aspects:

- **Temperance** is the ability to manage emotions and to control impulses, aggression and risk-taking behaviour.
- **Responsibility** is the ability to take responsibility for one's behaviour, and derives from a developed sense of self that also allows resistance to peer pressure.
- **Perspective** is the ability to consider the wider context to decisions, including both others' views and longer-term consequences.

While all three are important to non-offending and desistance, research consistently finds 'temperance' as the most influential of the three components, followed by 'perspective' (e.g. future orientation) and then 'responsibility'.⁴⁰

Psychosocial maturity develops into the mid-20s, with significant differences in the level and pace of development across individuals, especially in the young adult age range.⁴¹ These different developmental patterns of maturation map onto desistance from and persistence in offending behaviour. Psychosocial immaturity is related to persistence in criminality, while psychosocial maturity is related to desistance from crime, with 'earlier desistance compared to later desistance [...] linked to greater psychosocial maturity'.⁴² Levels of psychosocial maturity have also been found to predict offending behaviour 'beyond the effects of age, gender, education, socioeconomic status, race, and antisocial attitudes'.⁴³

Psychosocial maturity, then, seems an excellent target for interventions aimed at rehabilitation. The HMPPS maturity screening tool is based on this model of psychosocial maturity, focusing on the components of responsibility, temperance and perspective.⁴⁴ The tool builds on the existing OASys to create a ten-item maturity tool screening for 'low maturity' among young adult men convicted of crime, to identify those who 'are likely to require services or interventions to promote maturation' within the prison estate.⁴⁵

³⁷ Moffitt, T. 1993. 'Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy' *Psychological Review* 1993, Vol. 100, No. 4

³⁸ Leaw, J., Ang, R., Huan, V., Chan, W., and Cheong, S. 2015 'Re-Examining of Moffitt's Theory of Delinquency through Agent Based Modeling', *PLoS One*. 10(6)

³⁹ Farrington, D., Loeber, R., Howell, J. 2012. 'Young Adult Offenders. The Need for More Effective Legislative Options and Justice Processing', *Criminology and Public Policy* 11, p. 734.

⁴⁰ Romaine, C. 2019. 'Psychosocial Maturity and Risk-Taking in Emerging Adults: Extending Our Understanding Beyond Delinquency', *Emerging Adulthood*, Vol. 7(4). P 244. For a study assessing the relation between the psychosocial maturity factors and both reoffending and its timing, see Ozkan, T. 2016. Reoffending among serious juvenile offenders: A developmental perspective. *Journal of Criminal Justice*, 46.

⁴¹ Romaine, C. 2019. *op. cit.*

⁴² Monahan, K., Steinberg, L., Cauffman, E., Mulvey, E. 2013. 'Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescent-limited and persisting antisocial behavior', *Developmental Psychopathology*, 25, p.1095

⁴³ Romaine 2019, *op. cit.*

⁴⁴ Wakeling and Barnett 2017, *op.cit.*

⁴⁵ Justice Committee 2018 *op. cit.* p. 16.

The interventions prioritised are outlined in the National Offender Management Service's (NOMS) document 'Achieving Better Outcomes for Young Adult Men'. From a 'synthesis of the relevant evidence on maturity, 'what works' in reducing reoffending among young adults and desistance from crime and examination of the data on the young adults sentenced in England and Wales' the priorities developed are to: Develop a stable, pro-social identity, build resistance to peer influence, develop self-sufficiency and independence, build skills to manage emotions and impulses, increase future orientation, and strengthen bonds with family and other close relationships.⁴⁶ This aims to put the understanding of psychosocial maturity into rehabilitative practice.

European context: Justice systems for young adults

One of the key issues identified above is the difficulty of translating a solid evidence base, and the enthusiasm within the system to adapt to this evidence on maturity, into practice.

In identifying best practice, both the Justice Committee and work of the T2A Alliance have drawn on European examples, notably the systems in Germany and the Netherlands. Where states in the United States of America (USA) are developing reforms targeted at what they tend to term 'emerging adults' (18-25 year olds) it is also to these European states that the focus often falls.⁴⁷

This section seeks to put the discussion in a European context, offering an overview on how the principle that young adults' developmental characteristics warrant particular consideration is handled in different criminal justice systems. After setting the context generally the focus then moves to the much cited cases of Germany and the Netherlands.

Overview

The principle that young adults are a distinct cohort and the criminal justice system should distinguish them from the rest of the adult population and, where there is lack of maturity, treat them more in line with the rehabilitative approach taken to juveniles, is acknowledged by significant international bodies, including the United Nations (UN), the Council of Europe and the International Association of Penal Law (IAPL).

The UN Standard Minimum Rules for the Administration of Juvenile Justice (known as the *Beijing Rules*), adopted by the UN's General Assembly in November 1985, first recommends that juvenile sentences should have a predominantly rehabilitative, rather than punitive, character, before rule 3.3 then extends this so that 'efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.'⁴⁸

The final Resolution of the 17th International Congress of Penal Law⁴⁹ takes a similar line, first pointing to the need for rehabilitation for juvenile offenders before noting that as 'the state of adolescence can be prolonged into young adulthood (25 years)' then 'legislation needs to be adapted for young adults in a similar way as it is done for minors', so that 'the applicability of the special provisions for minors may be extended up to the age of 25'.⁵⁰

Similarly, the Council of Europe's 2008 Recommendation on 'European Rules for Juvenile Offenders Subject to Sanctions or Measures' also suggests that 'young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly'.⁵¹ The reasoning behind introducing this recommendation was to encourage states to legislate to extend juvenile justice systems to include young adults. The Council of Europe noted this would be an evidence-based

⁴⁶ NOMS, 2015 'Achieving Better Outcomes for Young Adult Men', National Offender Management Service. P. 12.

⁴⁷ Subramanian, R., and Shames, A. 2013. Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States. Vera Institute of Justice. <https://www.prisonstudies.org/sites/default/files/resources/downloads/european-american-prison-report.pdf>

Matthews, S, Schiraldi, V. and Chester, L. 2018, 'Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System', *Justice Evaluation Journal*

⁴⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules') Adopted by General Assembly resolution 40/33 of 29 November 1985. <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

⁴⁹ The global conference for the IAPL, held in Beijing in 2004.

⁵⁰ The International Association of Penal Law, 2009. *Resolutions of the Congresses of the International Association of Penal Law (1926-2004)*, AIDP/IAPL. P. 192 <https://www.ehu.eus/documents/1736829/2062034/Resolutions+of+the+congresses+of+the+international+association+of+penal+law.pdf>

⁵¹ Though young adult here refers to 'any person between the ages of 18 and 21', European Rules for juvenile offenders subject to sanctions or measures, CM/Rec(2008)11, the Council of Europe, 5 November 2008, para. 21.2. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2716

approach, relying on scientific research as well as social changes that had resulted in the transition of young people into adulthood being prolonged.⁵²

These recommendations by the UN and the Council of Europe are not legally binding for member states unless they are incorporated into national law. However, along with the resolutions of the IAPL,⁵³ they play a strong role in establishing standards and norms, with senior courts in Germany and Switzerland explicitly referencing this.⁵⁴

To differing degrees, these principles have been embedded in the criminal justice systems of most European countries, with a recent USA study stating that it had become an established norm in Europe for the rehabilitative approach taken in youth justice to cover young adults.⁵⁵ Similarly, a survey of European responses to young adult offending, carried out by the University of Greifswald's Department of Criminology for the T2A Alliance found that all but eight European states have special provisions for prosecuting and/or sentencing young adults.⁵⁶

This study differentiated three models for dealing with this cohort in European criminal justice systems:⁵⁷

- countries with special regulations within the (juvenile) law which extend the applicability of educational, procedural or correctional measures provided for in the juvenile law to include young adults (e.g. Germany);
- countries with special regulations in the general criminal law that mitigate the sentences imposed on young adults (e.g. the Scandinavian countries along with England and Wales);
- countries with no special rules for young adults (e.g. Spain).

Germany

Germany is often singled out as the country whose criminal justice system takes the most constructive approach to young adults. The 2016 Justice Committee report noted the system allowed for young adults up to the age of 21 to be 'sentenced in accordance with their maturity'.⁵⁸

Their system has gone through progressive reform, with reforms in 1953, 1990, and 2008⁵⁹ emphasising diversion and rehabilitation. Since 1953, all young adults aged 18-21 have been transferred to the jurisdiction of juvenile courts, meaning a specialised youth court deals with all offenders between 14 and 21 years old. These youth courts consider the young adult's maturity, developmental stage, and circumstances and are accordingly allowed to apply juvenile sanctions or a (mitigated) adult sentence to 18, 19 and 20-year-olds.

In making sentencing decisions, the courts rely on examinations of both the offender and their social environment to assess whether their 'moral and psychological development was like a juvenile'.⁶⁰ Courts have referenced an understanding that, if an individual's maturity is still developing, then this will affect their behaviour; stating that typical juvenile crimes are 'spontaneous acts resulting from the developmental forces of juvenile age'.

There is evidence to show the positive impact of the reforms; in 2012, two-thirds of young adults were sentenced as juveniles, in comparison with only 38% in 1964. Interestingly, the research indicated more serious offences involving young adults were retained in the juvenile system, with minor offences being dealt with in the adult system, as they required 'less justice system involvement'. Their approach was summed up by a youth court judge in Berlin who said, 'the German courts generally view it to be a benefit for society as a whole to treat young people up to age 21 in the youth system'.⁶¹

⁵² Draft commentary to the European Rules for juvenile offenders subject to sanctions or measures, European Committee on Crime Problems, 8 October 2008, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d3307

⁵³ José Luis de la Cuesta. 'Criminal Justice System in a Global World'. *Annales*. XLV, 62, 3-28, 2013. Available at: <http://dergipark.gov.tr/download/article-file/7069>

⁵⁴ Pruin, I., & Dunkel, F., 2015. Better in Europe? European responses to young adult offending. Universitat Greifswald: Transition to Adulthood. P.38. https://www.barrowcadbury.org.uk/wp-content/uploads/2015/02/T2A_Better-in-Europe_Report-online.pdf

⁵⁵ Matthews, S, Schiraldi, V. and Chester, L. 2018. *op. cit.*

⁵⁶ These 8 exceptions being: Belgium, Bulgaria, Estonia, Ireland, Latvia, Spain, Turkey and Ukraine

⁵⁷ Pruin, I., & Dunkel, F., 2015. *op. cit.* p. 52

⁵⁸ Justice Committee, 2016, para. 107

⁵⁹ This latest 2008 reform affirms the aim of juvenile justice in Germany as rehabilitation.

⁶⁰ International Centre for Prison Studies, 2010. Young adults and criminal justice: International norms and practices. King's College London. p. 3 <https://www.t2a.org.uk/wp-content/uploads/2016/02/T2A-International-Norms-and-Practices.pdf>

⁶¹ *Ibid.* pg x

The Netherlands

The Netherlands has recently taken a pioneering role in this area, as since April 2014 youth justice provisions have been applicable to young adults up to the age of 23. The situation before 2014 had some similarity to Germany, in that juvenile sanctions could be applied to young adults aged 18-20. The 2014 changes in effect extended this up to 23, giving a 'flexible sanction system for juveniles and young adults aged between 16 and 23 years, known as 'adolescentenstrafrecht' (adolescent criminal law)'.⁶²

As in Germany, there has been an increase over time in the application of this 'adolescentenstrafrecht', again suggesting increasing confidence in the effectiveness of the system. However, in contrast to Germany, it remains the case that those aged 18 and over are still dealt with by the adult criminal courts, and application of the adult criminal law is the default option.⁶³

The system means all young adults aged 18-23 are assessed at an early stage of the process to determine their social, emotional, and cognitive development, with the public prosecutor using a report from the Dutch probation service to decide whether adult or youth sanctions should be sought, though the final decision on the application of the law lies with the (adult) court judge.⁶⁴

The change introduced in 2014 came about following a Government stated intention to reform this area in June 2011. There followed a couple of years of discussion about the research on young adult brain development, and how it showed that impulse control, emotion management, plan-making and empathy may not be fully developed until the age of around 24 years old.⁶⁵ The aim was to develop an evidence-based approach to ensure 'individualized youth sanctions, depending on the developmental phase of the offender'.⁶⁶

The research drawn on in as the basis for this Dutch policy shift was international, however the House of Commons Justice Committee noted in its report into this area in 2016 that another driver was a 'shrinking youth justice cohort similar to that which has been seen in England and Wales'.⁶⁷

England and Wales

In contrast to the European examples above, in England and Wales there is no distinct jurisdiction for young adults: once an individual turns 18, they are dealt with as an adult. The adult legal framework makes little dispensation for age, although the Crown Prosecution Service should take the maturity of a suspect into account when making charging decisions. In addition, the courts are given wide discretion to respond to the individual in front of them – both in respect to making any reasonable adjustments necessary to ensure fair participation as well as taking an offender's personal circumstances into account when sentencing.

In respect of the court process, there is a clear difference in approach taken in youth court and the adult jurisdiction. For those under the age of 18, the court process is more informal, and focused primarily on the welfare of the child or young person (CYP). This means the bench directly engage with the CYP to make sure they understand the process and use simpler language throughout the hearing.

⁶² S Matthews *et al. op. cit.* p.12

⁶³ At the time of the reforms, consideration was given to greater use of youth courts for this cohort, however this was not pursued, in part because of the difficulties shifting such a large group of offenders would cause for the financial situation of the adult courts. S. Matthews *et al. op. cit.* p. 13

⁶⁴ In the context of HMPPS's use of a psychosocial maturity screening tool to screen for risk among young adult men convicted of crime, it is interesting to note that '[i]n preparing the report the probation service uses a special assessment tool to assess the level of maturity and the social, emotional and cognitive development of the young adult', Pruin and Dunkel, 2015 *op.cit.*

⁶⁵ uit Beijerse, J. 2016. The new Dutch law and policy on young adult offenders. *EuroVista: Probation and Community Justice*, 4(2), 1-8, <https://repub.eur.nl/pub/107654>

⁶⁶ S. Matthews *et al. op. cit.* p. 12

⁶⁷ Justice Committee, 2016, The treatment of young adults *op. cit.* para. 90.

Sentencing Council guidelines

In March 2011, the Sentencing Council for England and Wales included 'Age and/or lack of maturity where it affects the responsibility of the offender' as one of the 'factors reducing seriousness or reflecting personal mitigation' in its 'Final Guidelines on Assault', which came into force in June that year. This was the first time that the concept of maturity had featured in sentencing guidance in England and Wales for adults.

'Age and/or Lack of maturity' as a mitigating factor was subsequently included in the 2012 sentencing guidelines for adults on burglary and on drugs, and by the time the 2014 consultation on the new theft guidelines was published, it was described as 'a standard factor included in Sentencing Council guidelines'.⁶⁸

In July 2019, the Sentencing Council published a new General Sentencing Guideline for use where there is no offence specific guideline, to come into force in October that year. This new guideline again gave 'age and/or lack of maturity' as a mitigating factor, with the consultation for this new guidance noting that this factor already appeared in 116 offence specific guidelines. In addition, the new guidance cross-references a lack of maturity to several aggravating factors 'to ensure that sentencers are taking a rounded view of sentencing young adults'.⁶⁹

For example, in the explanation for the aggravating factor of '[o]ffence was committed as part of a group' the guidance notes that: 'When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when considering the significance of group offending.' Within the mitigating factor, the guidance on age and/or lack of maturity comments that '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'.⁷⁰

Expanded explanations

Developed alongside the new guideline were expanded explanations for aggravating and mitigating factors which are common across all guidelines. In its consultation on the new guideline, the Sentencing Council noted that youth and lack of maturity (of adults) was one of 'overarching issues about which the Council has been asked to provide guidance'.⁷¹

The guidance on young adult maturity (reproduced in Appendix I):

takes account of the growing body of research into the emotional and neurological development of young adults and aims to summarise the ways in which the immaturity of an offender can be significant in justifying a reduced sentence.⁷²

In doing so the Sentencing Council was seeking to provide 'comprehensive but concise guidance of practical use to sentencers' and to embed best practice from recent case law relating to the issue (explicitly *R v Clarke* [2018] EWCA Crim 185, see domestic case law below).

In their response to the consultation on the new guidance, the Sentencing Council noted that the 'explanation for this factor was largely welcomed by respondents to both consultations who recognised that understanding of developmental change in maturing adults had changed in recent years'. The response to the expanded explanation on maturity was similarly positive when considered in our focus groups, with participants feeling that it supported and clarified their thinking on this issue.

⁶⁸ *Theft Offences Guideline: Consultation*, Sentencing Council, April 2014, p.25. https://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Sentencing_Council_Theft_Consultation_web.pdf

⁶⁹ *General Guideline and Expanded Explanations: Response to consultation*, Sentencing Council, 2019. p. 20. <https://www.sentencingcouncil.org.uk/wp-content/uploads/General-Guideline-and-Expanded-Explanations-consultation-response.pdf>

⁷⁰ General guideline for sentencing offences that are not covered by a specific sentencing guideline, Sentencing Council, online only: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/>

⁷¹ *General Sentencing Guideline for use where there is no offence specific guideline: Consultation*, Sentencing Council, June 2018. p.3. <https://www.sentencingcouncil.org.uk/wp-content/uploads/2018-06-18-General-Guideline-Consultation.pdf>

⁷² Expanded Explanations in Sentencing Guidelines: Consultation, Sentencing Council, 2019, p.18.

Next steps in sentencing practice

Now that the mitigating factor is established in relation to sentencing practice, there are a few unanswered questions as to whether it is being effectively used to take account of developing maturity.

The first question is how often the mitigating factor is being considered as relevant when courts come to a final decision about sentence. The Sentencing Council recently published statistical analysis of the impact of different mitigating factors in crown court, which showed that the 'age and/or lack of maturity' factor was one of the least referenced by sentencers when making decisions. The analysis had already taken account of the impact of the age group of the offender, so it illustrated 'this factor did not on average have an effect over and above the age group of the offender'.⁷³ On one level, it is important that the age of the offender is having a significant impact on the final sentence, but it appears that developing maturity that is distinct from age is not being considered.

A second question that arose during the consultation carried out by the Sentencing Council into the expanded explanations was whether 'age and/or lack of maturity' should be used as a mitigating factor, or whether it should impact on the seriousness of the offence by affecting the culpability of the offender. The seriousness of the offence is the first step in the sentencing process, and it decides the range of sentence that sentencers should consider. Step two is to then look at aggravating and mitigating factors to move a sentence up or down within that range. Therefore, to consider 'age and/or lack of maturity' in relation to culpability, rather than as a mitigating factor, would have a larger impact on the final sentence.

This point was raised when 'age and/or lack of maturity' was first introduced in 2011, with some arguing in response to the Sentencing Council consultation that the factor should be 'a factor for consideration at step 1 of the decision making process'.⁷⁴ Some have continued to argue the point in response to further Sentencing Council consultations, but it has remained as a mitigating factor in all guidelines. The Sentencing Council has affirmed that 'the offender's circumstances' should be taken into account by a court when assessing culpability.⁷⁵ This suggests that there is some flexibility for courts to consider age or lack of maturity in relation to culpability. However, further research would be needed to assess whether this happens in practice.

Domestic case law

In developing the expanded explanation on the mitigating factor of 'age and /or lack of maturity', the Sentencing Council noted that it 'reflects current best practice as set out in recent case law', explicitly mentioning *R v Clarke* [2018] EWCA Crim 185.⁷⁶ The Youth Justice Legal Centre notes that this was a 'ground-breaking judgment' for the position of young adults in the criminal justice system in acknowledging the need for them to be treated differently owing to their lack of maturity and culpability.⁷⁷ In making this judgement, the Lord Chief Justice made the following observation:

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. The discussion in *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101 is an example of its application.⁷⁸

In this section, three of the most relevant pieces of case law are outlined in chronological order, starting with *R v Peters*, then considering *R v Clarke*, before the most recent *R v Balogun*. These three cases illustrate how the principle that young adults' lack of maturity should be considered in sentencing has developed in sentencing practice in England and Wales.

⁷³ Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences, Sentencing Council, 2020, p. 18. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Sex-and-ethnicity-analysis-final-1.pdf>

⁷⁴ *Assault Guideline: Response to Consultation*, Sentencing Council, 2011, p. 15. https://www.sentencingcouncil.org.uk/wp-content/uploads/Assault_guideline_-_Response_to_the_consultation.pdf

⁷⁵ *General Guideline and Expanded Explanations Response to consultation, op.cit.* p. 8. <https://www.sentencingcouncil.org.uk/wp-content/uploads/General-Guideline-and-Expanded-Explanations-consultation-response.pdf>

⁷⁶ *Expanded Explanations in Sentencing Guidelines: Consultation*, Sentencing Council, 2019, p.18. <https://www.sentencingcouncil.org.uk/wp-content/uploads/Expanded-Explanations-consultation-FINAL.pdf>

⁷⁷ 'R v Clarke – 18 is not a cliff edge for sentencing', Youth Justice Legal Centre, 24 January 2018, <https://yjlc.uk/18-is-not-a-cliff-edge-for-sentencing/>

⁷⁸ *R v Clarke* [2018] EWCA Crim 18578, 24th January 2018 <http://www.bailii.org/ew/cases/EWCA/Crim/2018/185.html>

*R v Peters, 2005*⁷⁹

Background

In March 2005, the Court of Appeal heard three appeals on unrelated cases together. All three concerned convictions for murder with the offenders given mandatory life sentences. The appeals were against the minimum term set before early release provisions would apply.

The linked feature of these cases which is relevant here is the age of the offenders: two were 19 years old when they committed murder, and 20 when sentenced, while the third was 18 both when she committed murder and was sentenced.

Judgment

The judgment paid considerable attention to the significance of the age and maturity of the offenders to the appropriate sentence and raised three important points.

Firstly, the court noted the importance of considering the age and maturity when coming to a decision about sentencing, stating that '[i]t has long been understood that considerations of age and maturity are usually relevant to the culpability of an offender and the seriousness of the offence'.⁸⁰

Secondly, in referencing the third case, where the offender was 18 years and two months at the time of the offence, the court noted that if the event had occurred three months earlier, the difference in sentencing guidelines to be followed could have made a difference of three years in relation to the final sentence. It therefore found that courts should not take a rigid approach in applying very different starting points where the offender was close to their eighteenth birthday, saying that '[s]entencing decisions cannot be prescribed by such accidents of time'.⁸¹

Thirdly, the court made the point that sentencers should be cautious in relying on age alone to make judgements about maturity, stating that while 'the passage of an eighteenth or twenty-first birthday represents a significant moment in the life of each individual, it does not necessarily tell us very much about the individual's true level of maturity, insight and understanding'. It is therefore important for sentencers to consider making allowances for the level of an offender's maturity, as distinct from their age.

*R v Clarke, Andrews and Thompson, 2018*⁸²

Background

This case, in January 2018, involved the sentencing of three offenders (Morgan Clarke, Declan Andrews and Anton Thompson) who committed serious offences, including kidnap, threats with knives and a violent robbery. When the offending took place Thompson was 19, Clarke was 18, and Andrews was 17 years old. Clarke and Thomson received sentences of seven years detention in a young offender institution. Andrews was sentenced to five years and six months detention. It is clear that their sentences would have been significantly longer had the defendants been mature adults.⁸³

The Attorney General referred the sentences given to the older two offenders as unduly lenient, suggesting that only Declan Andrews, the youngest of the three offenders who was still 17 at the time of offending, should have received a discount on sentence by virtue of his 'youth'. In a second application to the court, Andrews appealed against his sentence on the grounds it was excessive.

Judgment

The judgment repeated some of the points from *R v Peters*, including the fact that scientific evidence showed young people continued to mature beyond their eighteenth birthdays, and therefore the age and maturity of young adults

⁷⁹ *R v Peters* [2005] EWCA Crim 605, 10th March 2005 <http://www.bailii.org/ew/cases/EWCA/Crim/2005/605.html>

⁸⁰ *Ibid*, para. 10.

⁸¹ *Ibid*, para. 11

⁸² *R v Clarke*, *op. cit.*

⁸³ *Reaching Maturity has many legal consequences*, The Inns of Court College of Advocacy, n.d. <https://www.icca.ac.uk/reaching-maturity-has-many-legal-consequences/>

needed to be considered in sentencing. Paragraph 5 of the judgment from the Lord Chief Justice is most salient to the issue of maturity and sentencing:

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.⁸⁴

The judgment is seen as highly significant in stressing the importance of taking into consideration maturity when sentencing young adults and the acknowledgement that they should be treated differently within the criminal justice system as a result of their state of developing maturity.

*R v Balogun, 2018*⁸⁵

Background

In this subsequent Court of Appeal decision, delivered in November 2018, the sentence of an 18 year old man was reduced on grounds that insufficient consideration had been given to his lack of maturity: particularly his lack of understanding of the seriousness of his offences and the harm caused.

Eniola Balogun was convicted of three offences of rape and pleaded guilty to four further offences of rape and one offence of distributing offensive photographs of a child in what was described as a 'campaign of rape' by the initial sentencing judge.⁸⁶ Balogun was sentenced to a custodial term of 21 years' detention with an extension period of eight years, with concurrent sentences totalling 10 years' detention imposed for the other offences.

Primarily at issue in the appeal was the length of the custodial term, with Balogun's legal representative arguing that the sentence was excessive for someone who was 18 years old at the time of the offences and claiming 'the appellant's age and lack of maturity were not properly reflected in the sentence passed'.⁸⁷

Judgment

The judgment of the Court of Appeal made extensive reference to consideration of young adult maturity in sentencing and the issue of the 'cliff edge' at age 18, drawing out issues of maturity raised in the offender's PSR, as well as referring to both *R v Peters* and *R v Clarke*. The judgment noted that it was 'well established by case law that the young age and/or lack of maturity of an offender do not cease to have any relevance on his or her 18th birthday'.⁸⁸

In considering the maturity of the offender, the different aspects of maturity were also considered, with the judgment linking the level of maturity with the capacity of the offender to understand the seriousness of what they had done. The court stated that 'the appellant's young age, level of immaturity and apparent inability at the time of the offences to appreciate their seriousness or their consequences were important matters to be taken into account in determining the appropriate custodial term'.⁸⁹

In making a final judgment to reduce the sentence imposed, the court referred to the fact that the probation officer did note that the offender came across as being immature in the PSR. In conclusion, the judgment stated that greater weight should have been given to the 'comparative immaturity and lack of appreciation of the seriousness of the offending or of the harm which the appellant was causing'.⁹⁰

This judgment confirmed that young adults as a cohort required a distinct approach in relation to sentencing, particularly those who had only recently turned 18. It also suggested that in assessing an offender's maturity, it should be considered how it contributed to the offending, so that relevant mitigation could be made.⁹¹

⁸⁴ *R v Clarke, op. cit.*

⁸⁵ *R v Eniola Balogun* [2018] EWCA Crim 2933, 28th November 2018 <http://www.bailii.org/ew/cases/EWCA/Crim/2018/2933.html>

⁸⁶ *Ibid.*, para 25.

⁸⁷ *Ibid.*, para 27, para 30

⁸⁸ *Ibid.*, para 38

⁸⁹ *Ibid.*, para. 44

⁹⁰ *Ibid.*, para 47

⁹¹ 'Court of Appeal ruling on sentencing 18-year olds', Youth Justice Legal Centre, 28 November 2018. <https://yjlc.uk/court-of-appeal-ruling-on-sentencing-18-year-olds/>

Parliamentary scrutiny

The issue of how the justice system responds to young adults is one that has been subject to scrutiny by the UK parliament. Specifically, the Justice Select Committee has carried out two enquiries into young adults in the criminal justice system. The first published its report in October 2016, the second in June 2018 – taking the form of a separate inquiry due to the intervening snap general election and formation of a new parliament.

Young adults' developing maturity was a central issue to these inquiries and together the two inquiries give a solid overview of the issue. They also reflected the enthusiasm in the criminal justice sector to account for maturity, as well as the slow progress overcoming the difficulties to turn this understanding and enthusiasm into practical action. The inquiries covered a variety of issues relating to young adults in the criminal justice system. The summaries below focus on the issues of assessing and presenting maturity in court, and lack of maturity and sentencing.

Justice Committee report, October 2016: 'The treatment of young adults in the criminal justice system'

In October 2016, the House of Commons Justice Committee published its report on 'The treatment of young adults in the criminal justice system'.⁹² The inquiry built on the 'substantial largely uncontroversial evidence amassed by the T2A Alliance and its partners' on young adults' characteristics and resulting needs within the system, and on the recommendations for reform found in the Harris Review (2015).⁹³ The consideration and impact of maturity on decision-making in court was a significant part of this inquiry, and the inquiry took both written and oral evidence from the MA.⁹⁴

The report provided a summary of the existing evidence on the needs and characteristics of young adults and drew conclusions about the current approach to the treatment of young adults by the system, including by sentencers.

Evidence base on young adult maturity

The committee noted the central role of T2A Alliance in providing a significant body of evidence about young adults' characteristics and needs in the criminal justice system. In addition to considering this evidence, and hearing from representatives from the T2A Alliance, the committee also received evidence and heard from experts in the three main related bodies of research: criminology, neuroscience and psychology.

From their assessment of the evidence, the committee found that research 'strongly supports' the case that the 'developmental maturation process' that takes place in young adults (18-25 years) makes them a 'distinct group with needs that are different both from children under 18 and adults older than 25'.⁹⁵ It noted that the neurological development process affected behaviour in a way that could be relevant to offending behaviour, including reduced ability to evaluate the consequences of actions as well as increased impulsiveness and risk-taking. The committee also noted that as developmental processes progress, criminal behaviour 'typically decelerates rapidly'. In summation, the committee found a distinct approach to the treatment of young adults in the criminal justice system was necessary because '[d]ealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood'.⁹⁶

In relation to sentencing practice, the committee welcomed the fact 'age and/or lack of maturity' could be considered as a mitigating factor where it affected the responsibility of the offender. However, it noted the importance of courts being provided with relevant information about the offender, in order to apply this factor. Evidence provided by National Probation Service showed that guidance for probation staff now stated that PSRs for any offenders aged between 18 and 24 years should include a consideration of maturity. In his evidence, Malcolm Richardson, then National Chair of the MA, pointed out that in order to fully consider the personal circumstances of an offender, including their maturity, magistrates relied on sufficiently detailed information from probation. In conclusion, the committee noted that the 'evidence illustrates [...] the level of information that is made available to sentencers will vary'.

⁹² Justice Committee, 2016, *The treatment of young adults in the criminal justice system*, House of Commons, 18 October 2016.

⁹³ *Ibid.* p. 5.

⁹⁴ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22029.pdf>; <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/oral/28364.pdf>

⁹⁵ Justice Committee 2016, *op. cit.*, p. 61.

⁹⁶ *Ibid.* para. 24.

Conclusions and recommendations

The committee found that:

- There was an emerging interest in criminal justice agencies in treating young adults more appropriately but 'for the most part this has not been Government driven'.
- Neither the Crown Prosecution Service nor sentencers had a sufficiently sophisticated understanding of maturity to weigh up how it may affect young adults' culpability.
- In addition they do not routinely have the necessary information on which to make robust assessments about an individual's maturity and hence take account of this in their reasoned prosecution and sentencing decisions.
- They did not appear to be considering these matters for young adults as a matter of course. Practices therefore did not reflect adequately the evidence on typical brain development.
- There was sufficient flexibility within the community sentencing framework to enable developmentally appropriate practices to be adopted by probation services, underpinned by better assessment and incentives to develop and expand existing initiatives.
- However '[t]his is dependent on CRCs [Community Rehabilitation Companies] recognising the benefits of developmentally appropriate responses, either collectively or on an individual basis following assessments of maturity, and on sentencers choosing to use them'.

The committee recommended:

- Both age and maturity should be taken into significantly greater account within the criminal justice system. The system should presume that up to the age of 25 young adults are typically still maturing.
- There should be 'further work to evaluate the impact of maturity as a mitigating factor in sentencing and the inclusion of age and maturity in the Code for Crown Prosecutors, and the testing of young adult courts'.⁹⁷
- Extending the consideration of maturity and understanding of the need for developmentally appropriate treatment found in youth court processes to the treatment of young adults, even without changing the legislative framework, would capitalise on the experience of trained youth magistrates.
- A common understanding of maturity should be devised by the government which recognises typical and atypical maturation among young adults and is applied across the criminal justice system, with a policy of 'universal screening' for this.

Justice Committee report, June 2018 – 'Young adults in the criminal justice system'

The government response to the initial Justice Committee report had stated that it was important for the criminal justice system to respond to an individual's maturity, rather than just their chronological age. Generally they felt the system allowed sufficient discretion for this to happen, although they did commit to developing a screening tool for psychosocial maturity. The committee had expressed disappointment in the government's response to initial report. Following the general election in 2017, the newly formed Justice Committee carried out a second inquiry, which audited government progress and raised many of the same issues that had been set out in the first report.

Overall, the committee was frustrated by the lack of progress that had been made since the first inquiry. Evidence given to the second inquiry illustrated there was generally a positive intention by those working in the criminal justice system to ensure effective practice in relation to young adults. However, the committee found little evidence in terms of outcome or impact. For example, the committee found there was no data collected on whether the maturity of young adults was always considered in a PSR.

⁹⁷ The Youth Justice Legal Centre notes that the updated eighth edition of *The Code for Crown Prosecutors*, published in 2018, is a 'welcome update on the previous edition of the code' for its 'recognition of the fact that young adults will continue to mature into their mid-twenties' (Youth Justice Legal Centre, *Code for Crown Prosecutors – Eighth Edition*, October 26, 2018. <https://yjlcc.uk/code-for-crown-prosecutors-eighth-edition/>).

On sentencing, the committee welcomed the intention of the Sentencing Council to consult on a general guideline that would contain a fuller explanation of the 'age and/or lack of maturity' factor (as referenced above). In general, however, the committee felt that more research was necessary, including looking at sentencers' understanding of maturity as well as the impact of assessments of maturity carried out on young adults.⁹⁸ In carrying out this research project, the MA hopes to fill some of the gaps identified by the committee.

Conclusion

The evidence conclusively shows that biological development of the brain continues until young adults are in their mid-twenties, which affects their behaviour in a number of ways which are relevant to offending behaviour. The psychosocial model of maturity assesses behaviour in the social context, and therefore is the most appropriate basis for an approach that responds to young adults in different situations.

The criminal justice system in England and Wales does allow young adults to be treated as distinct from adults, primarily in relation to assessing their responsibility for any offending behaviour. For example, in relation to sentencing, it is now understood that young adults will be continuing to mature, and therefore both their age and maturity should be assessed in the context of their offence. Probation have an assessment tool available to them, although there is little robust evidence about how often this tool is used in practice.

The evidence also shows that young adults may be particularly sensitive to interventions to reduce offending, as the age-curve illustrates. Again, it is not clear from current research how widespread specific interventions for this age group are, and whether more could be done in relation to age-specific service provision.

The two reports by the Justice Select Committee identified a gap in the research around both the understanding sentencers have about the issue of maturity and how the court system deals with young adults in practice. This research project tries to answer some of these questions by speaking directly to magistrates, as well as other professionals working in the criminal justice system.

A further challenge identified by the literature is how professionals can make independent, robust assessments of maturity as a normative concept. Reports suggest that the OASys tool is likely to be a solution and this research will also look at how widely this tool is being used, and whether it is giving sentencers the detailed information that they need to make informed decisions.

⁹⁸ Government Response to the Justice Committee's Eighth Report, Young adults in the criminal justice system, 15th August 2018, p. 4. <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1530/1530.pdf>

Magistrates Association research

The Magistrates Association (MA) undertook research to understand the current situation in respect of how often maturity is being raised in magistrates' courts, what impacts on it being raised, and magistrates' views of how they do and should respond to a lack of maturity. The research was carried out between July and November 2019. It took a multi-method approach comprising a survey of MA members who are sitting magistrates, three focus groups with magistrates held in London, Cardiff and York, and a roundtable held with representatives from the National Probation Service, community rehabilitation companies, youth offending teams, and defence solicitors with extensive experience representing young adults. The results of this research are presented below.

Survey: Maturity in magistrates' courts

Introduction

An online survey titled the 'immaturity of 18-24 year olds in criminal court'⁹⁹ was drafted to explore magistrates' experience of the maturity of a defendant/offender, in terms of:

- maturity being raised as a factor in relation to how it affects defendants' opportunities to effectively and fairly participate in proceedings;
- how often maturity is raised as a relevant issue in magistrates' courts, and by whom;
- lack of maturity being raised as a mitigating factor in sentencing 18-24 year olds;
- how confident magistrates are in dealing with maturity as an issue, and what could increase their confidence in this area.

The survey consisted of 13 questions, which looked into magistrates' experiences of immaturity being raised in court, their understanding of it as an important factor in court decisions, and their confidence in responding appropriately when it was raised in court. The questions included both closed and open questions, so the analysis provides data as well as more detailed comments by magistrates. The survey questions are reproduced in Appendix II, along with percentage data underlying the graphs used.

The survey was open for just over two months from 6 June 2019 to the 12 August 2019, and was available for all MA members who currently sit in criminal court. The survey was advertised via the MA ENEWS bulletin as well as being sent directly to those members who have not unsubscribed from being involved in the MA's online research projects. The survey generated 660 responses, with good coverage across England and Wales.

Raising maturity as a factor in magistrates' courts

Key findings

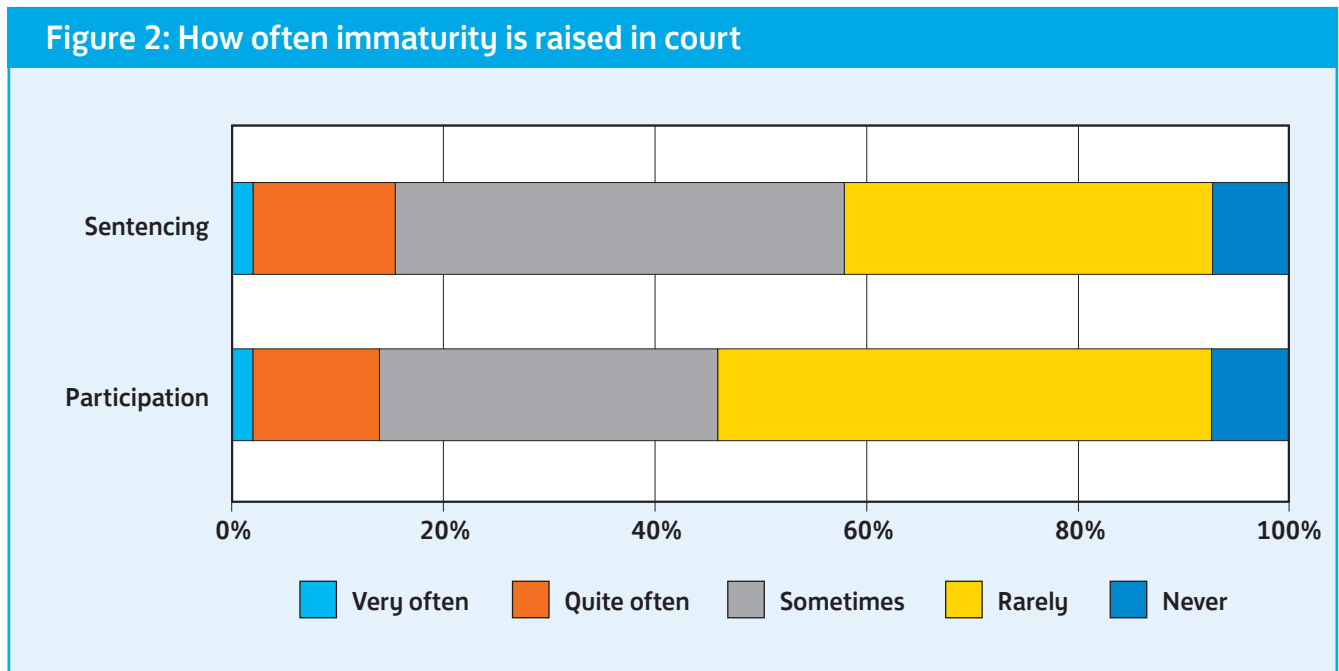
- Maturity was not regularly raised as an issue for decisions relating either to defendants' participation in the court process or to sentencing.
- Where maturity was raised, this was most often by the defence, followed by the probation service.
- Magistrates and legal advisers did sometimes raise any lack of maturity as an issue, but this was not identified as common practice.

The first survey question asked how often did magistrates see maturity raised in court, in relation to both decisions on ensuring the fair and effective participation of a defendant and in relation to sentencing decisions, where lack of maturity can be raised as a mitigating factor. The survey results supported the existing anecdotal evidence that suggests defendant/offender maturity is not routinely or regularly raised in magistrates' courts when dealing with young adults.

54% of respondents said maturity was never or rarely raised in relation to participation and 42% of respondents said maturity was never or rarely raised in relation to sentencing. Meanwhile only 2% of magistrates responded that maturity was very often raised in relation to decisions on either ensuring the fair and effective participation of a defendant in the court process or as a mitigating factor in sentencing decisions.

⁹⁹ The term 'immaturity' was used for the survey as this was agreed to be a term all respondents could understand. It does not reflect the complex conceptual understanding of developing maturity, which would have been difficult to explain in a short survey and may therefore have led to confusion among respondents.

Figure 2, below, shows that while a lack of maturity is more likely to be raised in relation to sentencing, it is still not often raised as an issue for the court to consider. It also shows that it is even more unlikely for maturity to be raised in relation to how it might affect participation.



The survey then asked magistrates to rank court parties in order of who was most likely to raise maturity as an issue. The results were then converted to a score out of five, so the highest figure represents the party most likely to raise immaturity. As set out in Figure 3 and Figure 4, this showed that where maturity is raised as an issue, both in relation to participation and sentencing decisions, it is most often raised by the defence, followed by the probation service.

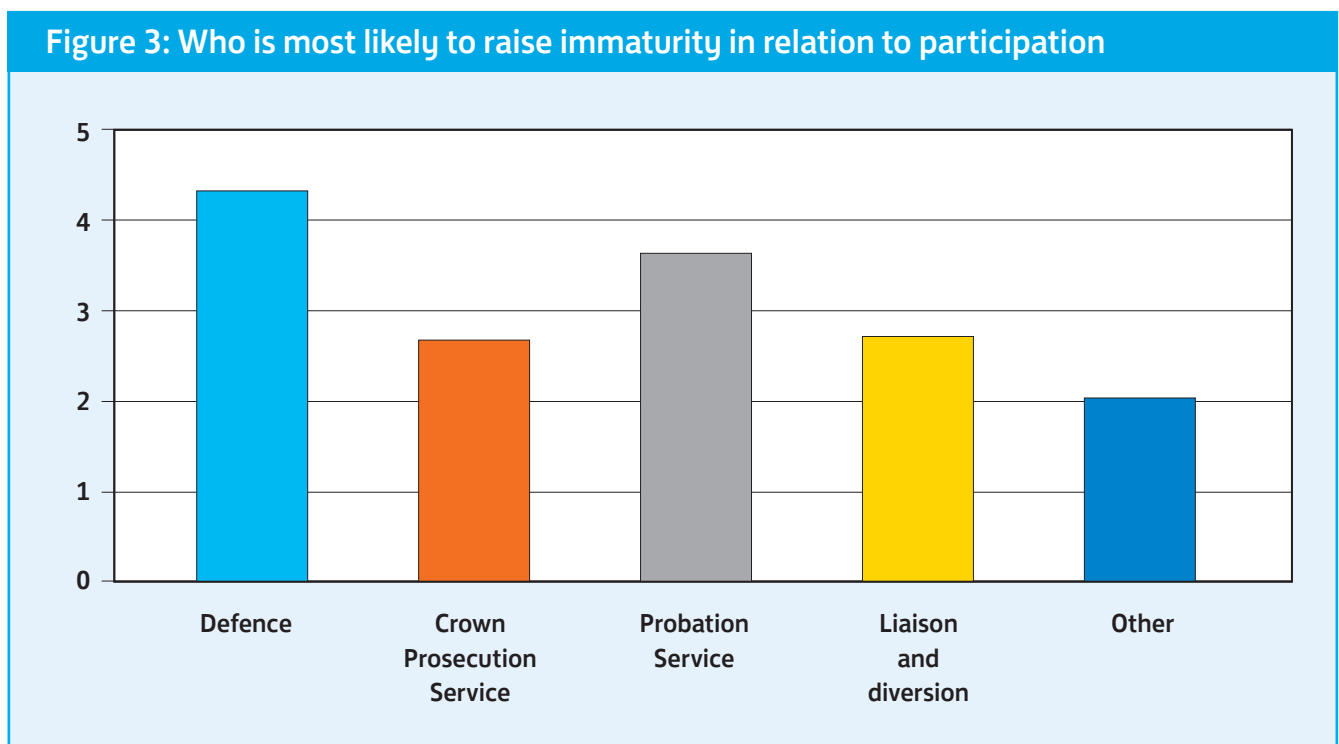
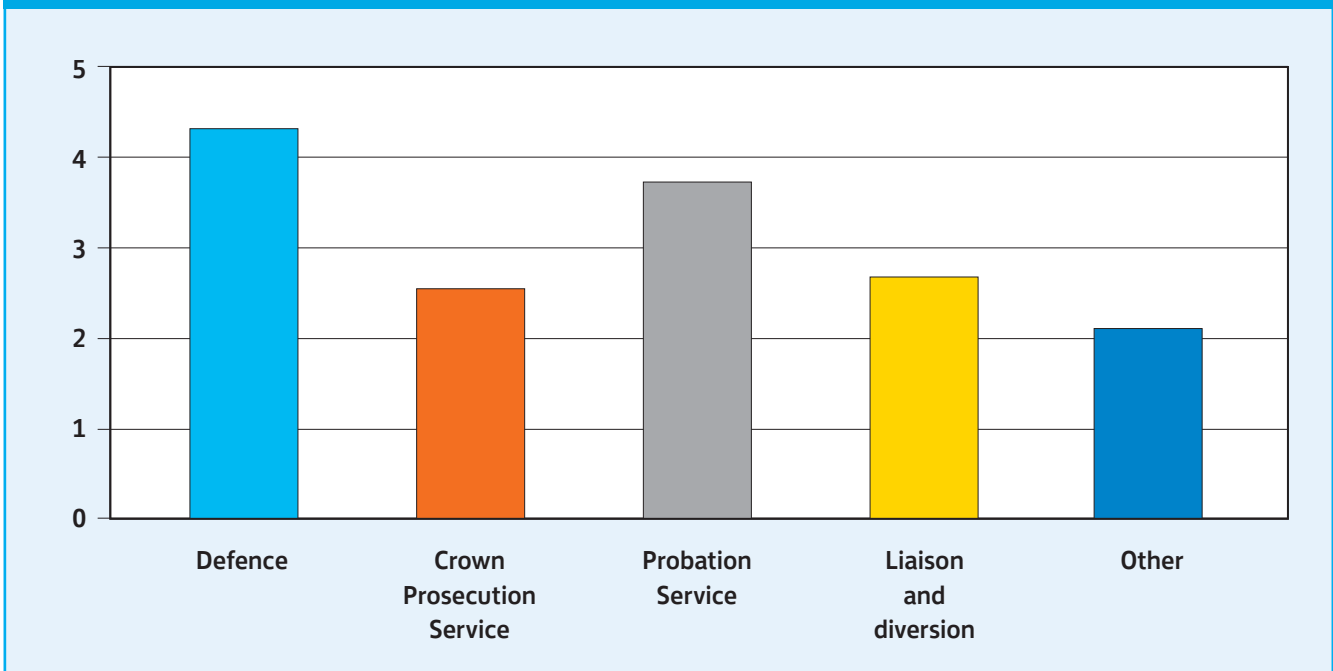


Figure 4: Who is most likely to raise the immaturity in relation to sentencing



In response to both questions, over 70% of respondents said that the defence were most likely to be the party that raised maturity as a relevant issue in court. While 'other' sources were ranked the least likely to raise maturity, 40% of respondents did offer an 'other' source in relation to participation, and 30% in relation to sentencing, giving us a richer picture of how maturity enters proceedings as a relevant factor.

From those offering an alternative source prompting consideration of the defendant/offender's maturity, the most commonly mentioned was magistrates themselves, followed by the court's legal adviser. Other sources mentioned included family or friends of the defendant present in court, contributions from social work or mental health professionals, as well as mention of maturity by witnesses or in character references. A fuller breakdown of sources mentioned under the 'other' category is given in Appendix III.

Magistrates' confidence in handling maturity

Key findings

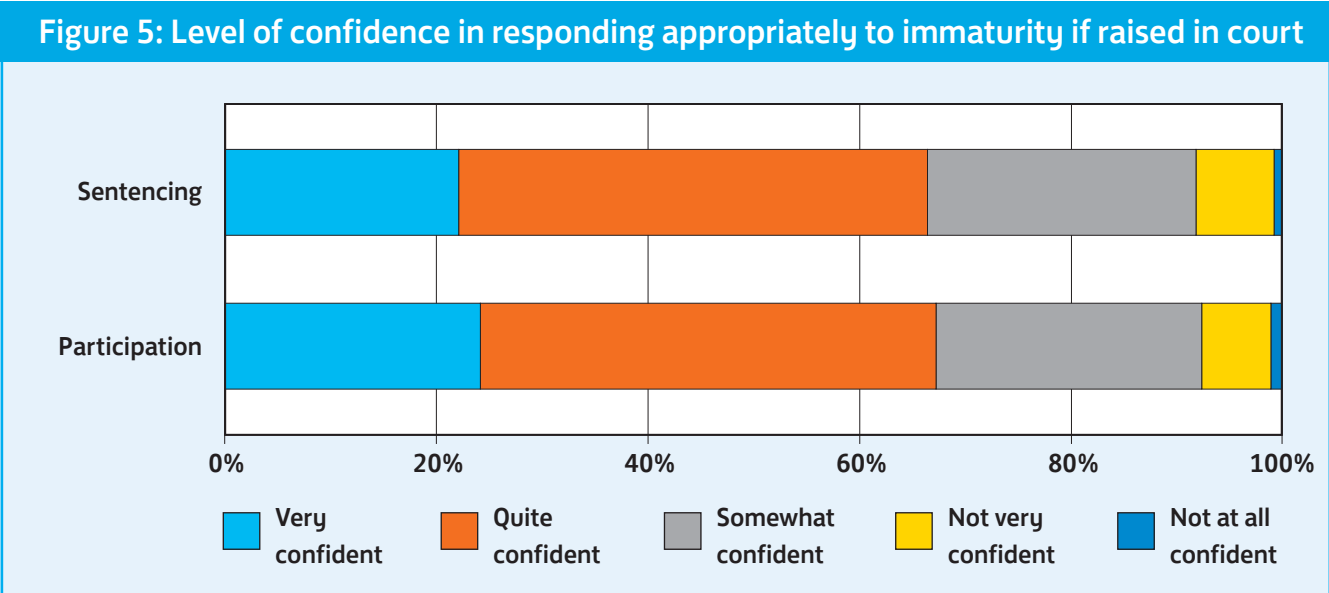
- Most magistrates had some confidence in their ability to handle maturity as an issue. However, less than a quarter were very confident in this ability.
- The two main factors that would improve magistrates' confidence in handling maturity were identified as:
 - a) more information about the offender
 - b) more understanding on the impact of immaturity (particularly in relation to the culpability for an offence)

The survey asked magistrates about their confidence in responding appropriately to immaturity being raised in respect of two issues:

- In relation to how it affects the effective and fair participation of the defendant;
- In relation to how it affects sentencing as a mitigating factor.

Two-thirds of magistrates were at least quite confident in handling maturity as an issue when it was raised, with very little difference in confidence levels relating to whether it was raised as an issue for participation or sentencing (for participation 67% were 'very confident' or 'quite confident', for sentencing this figure was 66%).

However, it was notable that within this, less than a quarter of magistrates were very confident in handling maturity when raised (for participation 24%, for sentencing 22%). This also left a third of magistrates who were at most 'somewhat confident' in responding appropriately to maturity as an issue.



The survey then asked magistrates what they felt would help improve their confidence, with the specific options being:

- more information about an offender;
- more understanding about the impact of immaturity;
- more guidance or more training.

Respondents could select as many options as they felt were relevant.

As shown in Figure 6 and Figure 7, for decisions on both participation and sentencing, magistrates felt that their ability to respond appropriately would be improved by, firstly, more information about the defendant/offender, followed by more understanding on the impact of immaturity. A significant minority of magistrates felt that both guidance and training would increase their confidence in respect of both issues.

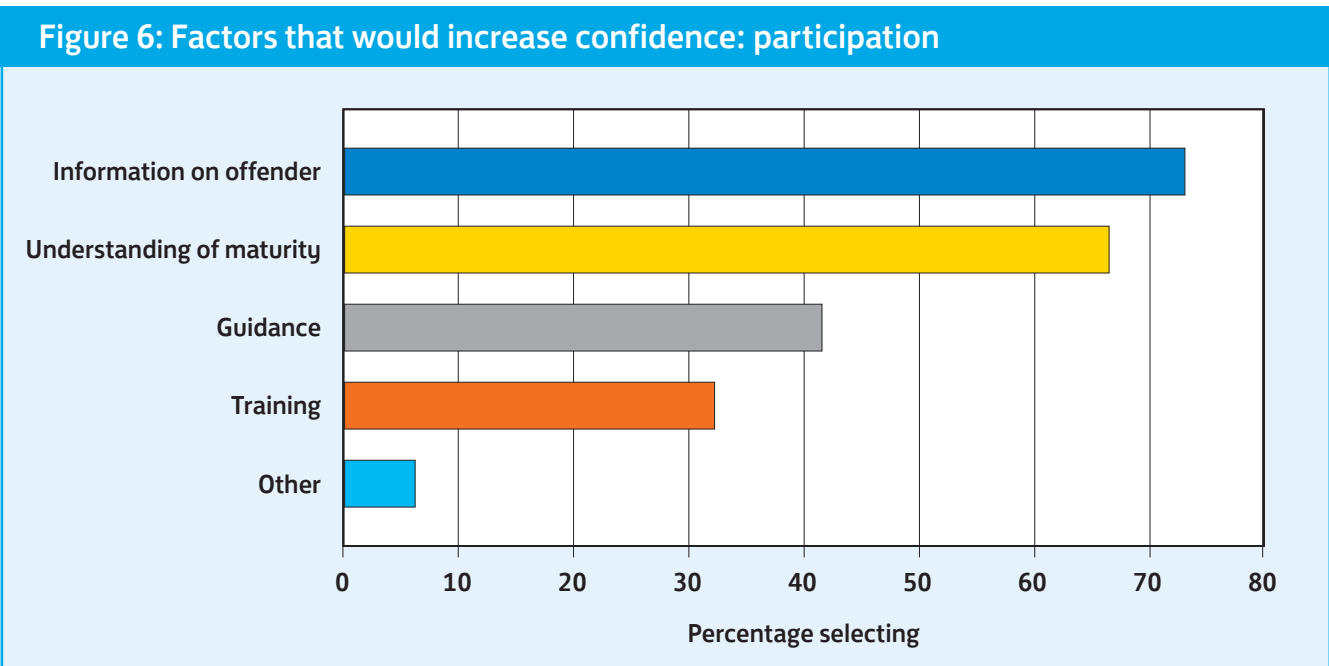
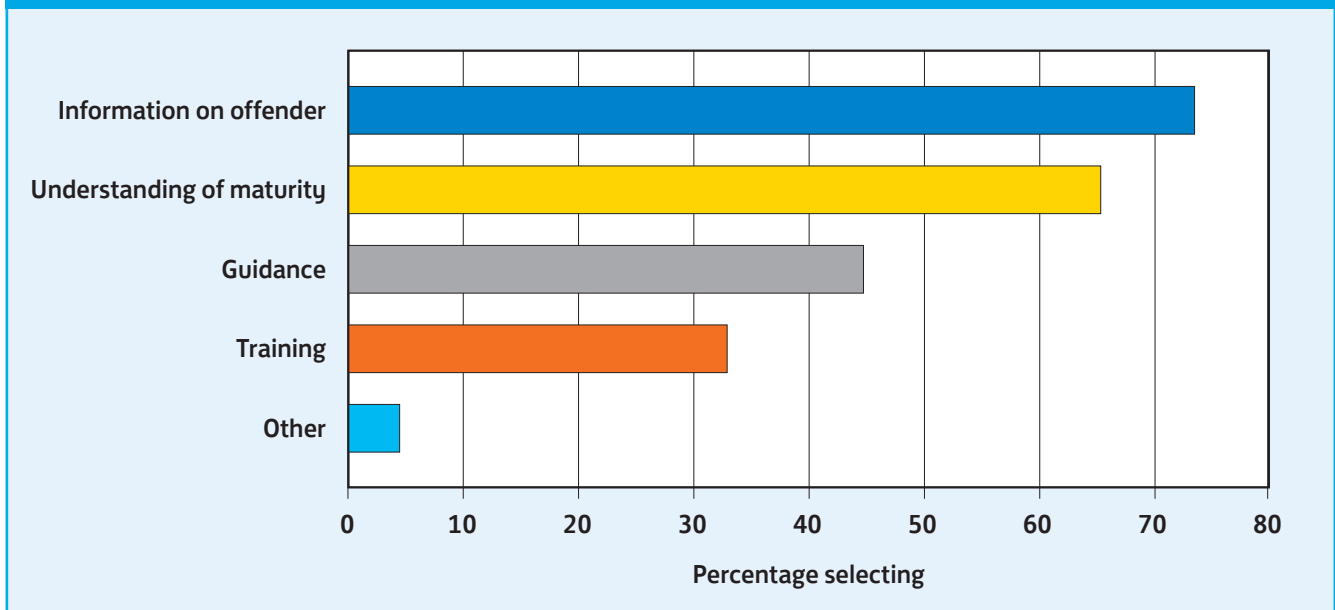


Figure 7: Factors that would increase confidence: sentencing

Only a few respondents gave other potential factors that would increase their confidence in handling immaturity, with similar additional factors mentioned for both participation and sentencing. Of these, most frequently mentioned was the value those who also sat in youth court found in their training and experience due to sitting in that jurisdiction, with its help dealing with communication issues specifically mentioned.

Experience with young people gained outside of a respondent's role as a magistrate was also seen as valuable, with both contact through professional roles and informal social contact mentioned. A clearer definition of maturity, including how it affects behaviour and how it is separate from other factors such as mental health issues, was also mentioned for both questions.

There were also other factors specifically put forward as being likely to make magistrates more confident in ensuring that a less mature defendant can effectively and fairly participate in court proceedings. These were ensuring the availability of legal representation in court; pre-court and in court support and assistance; a greater understanding of the relevance of maturity among other court actors (for example, legal advisers); and pre-court briefings including any relevant issues of maturity.

Specifically in relation to increasing confidence in dealing with lack of maturity as a mitigating factor in making sentencing decisions, a number of other factors were noted as likely to be beneficial. The need for new Sentencing Council guidelines was raised here.

The survey was, however, started before the new 'General Guideline and Expanded Explanations' was published by the Sentencing Council, on 24 July 2019. The expanded explanation of 'lack of maturity' as a mitigating factor in the new guideline was discussed within the focus groups we held and was found to be very helpful in this regard, as discussed below.

Other additional comments in relation to sentencing expressed a desire for more information about the social and familial support around a young adult, and more understanding and confidence in the options and support available through probation for non-custodial sentences. This shows that in considering appropriate sentencing, magistrates need to take account of how a lack of maturity may be a mitigating factor but also consider what particular sentencing options might be appropriate and support rehabilitation for a less mature offender. This will be discussed further in the chapter on our focus groups.

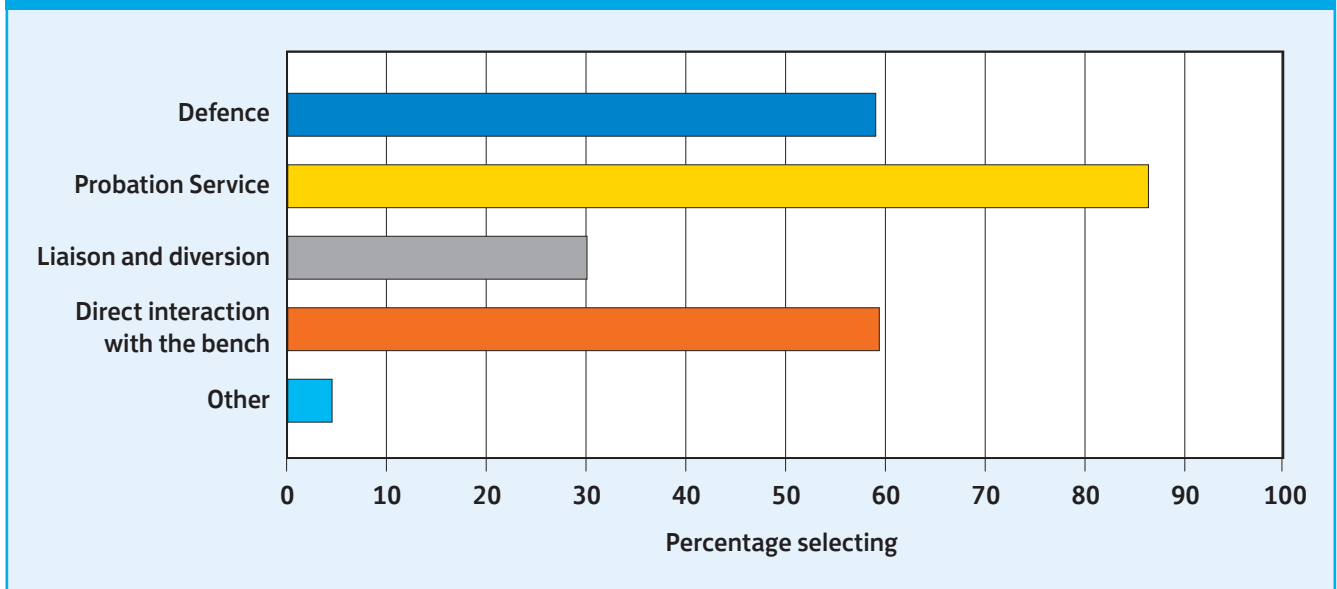
Magistrates' preferred sources for information

Key finding

- Magistrates expressed a clear preference that additional information on the maturity of an offender as a mitigating factor should come from the probation service.

The survey then asked if magistrates thought additional information about an offender would make them more confident about sentencing appropriately by responding to lack of maturity as a mitigating factor and, if so, how should this information be introduced to the court. There was a clear preference for this information to come from the probation service (87%), with the defence and the bench speaking directly to the offender as the second most favoured sources (direct communication from the bench 60%, the defence 59%).

Figure 8: How should additional information on maturity be introduced in court



Again 'other' was a small category but many of those identified earlier as already occasionally raising maturity as a relevant issue were identified here as useful potential sources of information. This included family, friends and carers, employers, support workers and mental health professionals, as well as possible feedback from the youth offending team if the defendant had youth convictions. There were also possible improvements to procedure identified. Firstly, to more regularly involve these sources in proceedings, with family members and carers given the opportunity to address the bench. Secondly, for discussion of any maturity issues to take place at first hearing, with the defence, CPS and legal adviser involved.

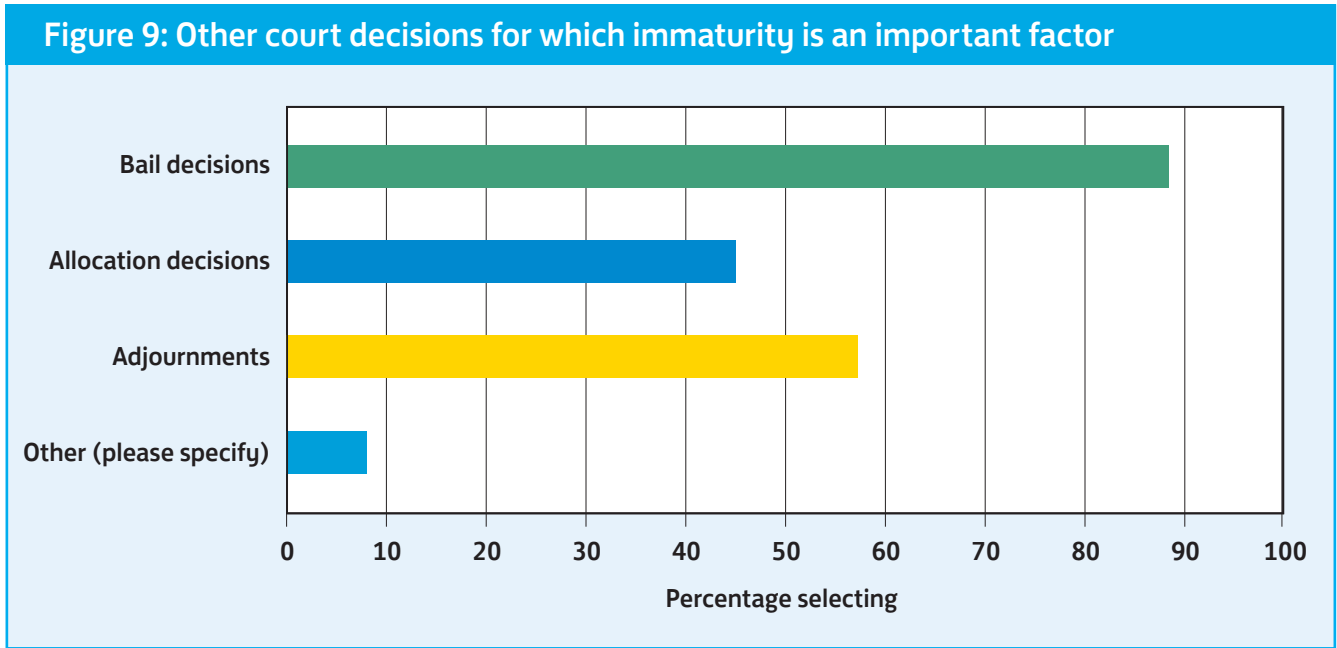
Maturity and other court decisions

Key finding

- Maturity was also seen as an important factor for other court decisions, most notably decisions on bail.

The next question in the survey asked whether magistrates felt maturity would be an important factor for other court decisions: the options given were bail decisions, allocation decisions and adjournment decisions. Respondents were able to select as many options as they felt appropriate, and could also provide other decisions where they thought maturity might be relevant.

Magistrates, the survey found, did consider immaturity an important factor in other court decisions, most notably on decisions relating to bail (89%). Many magistrates also saw it as significant to decisions on adjournments (58%) and allocation decisions for either way offences (45%).



Again 'other' was a small category but the responses did give greater detail on how magistrates viewed maturity affected their decisions and its impact on court proceedings. There were several comments on how maturity affects the ability of a defendant to participate in court, with respondents mentioning the defendant's ability to represent themselves meaning there was a greater need for representation in court; difficulties understanding court procedure and language; and with inappropriate behaviour, including contempt of court, being more likely. There were suggestions that reasonable adjustments to the court process should be made to accommodate less mature individuals, including proposals of things like allowing a defendant to visit the court in advance of their hearing. One magistrate also raised the fact that lack of maturity may also affect witnesses.

In providing details as to where magistrates thought maturity could be a relevant factor, some magistrates referenced sentencing decisions beyond where a lack of maturity might be a mitigating factor. For example, some respondents felt maturity was a relevant factor in relation to ancillary orders (such as restraining orders, exclusion orders, and domestic violence protection orders). Some respondents also noted that maturity could affect the ability of an offender to comply with sentences, especially if a less mature offender was not able to fully understand a court order or if they had poor organisational ability.

Magistrates' further comments

Magistrates were also asked for any further comments they had on the issue of maturity in relation to criminal cases, and a little under a fifth of respondents (18%) provided additional comments.

Some clear themes emerged from these comments, giving insight into the drivers of magistrates' attitudes towards taking maturity into account in the criminal justice system. Magistrates also set out some of the current pressures on magistrates' courts and how this impacted on considering a defendant's or offender's level of maturity.

The open comments generally related to two main topics: the first being how a lack of maturity should be dealt with as a mitigating factor, and the second was how to define and assess maturity in a way that assists magistrates with their decisions.

Quotes are taken from magistrates' anonymous responses to the survey.

Maturity as a mitigating factor

Key findings

Of those who provided additional comment about a lack of maturity as a mitigating factor:

- Half felt a greater focus on the issue of maturity would be beneficial;
- A significant minority had reservations about a lack of maturity being more frequently raised, with the principal concerns relating to:
 - a) how lack of maturity could be evidenced reliably, and the dangers of its use as artificial mitigation;
 - b) that if it were defined too broadly it could be claimed in mitigation by too many offenders to be practicable;
 - c) the fact it could introduce a potential conflict with consistency in sentencing.
- Magistrates raised the issue that a lack of maturity was not restricted to the young adults they see before them, but could be an issue for older adults as well.

Of those commenting, around half had a positive attitude towards taking maturity into account during the court process.¹⁰⁰ While also often mentioning challenges in relation to considering maturity in the court context, there was general feeling among these responses that 'more focus on immaturity within the magistracy would be beneficial to all'.

It was notable that in the responses, some magistrates mentioned their youth court or other professional experience with young adults as giving both a greater understanding of the issue and an ability to handle lack of maturity in adult court. For example, one magistrate said that 'those magistrates who sit in youth court are probably most aware of the issue and feel more able to assess the situation'

From this perspective the 'cliff edge' at 18 years old was seen as problematic: 'Defendants in this age range are often little different from those seen in the youth court. 18 is an arbitrary cut off age. Just because they turn 18 does not mean they are mature'.

Around a quarter of respondents were, however, more ambivalent, indicating that while they did not discount maturity as a factor, they had reservations about increased consideration of the issue.¹⁰¹

Two of the most frequent doubts raised were as to how lack of maturity could be evidenced reliably, and the related danger of its use as 'artificial mitigation'. For example, one respondent queried 'what kind of 'immaturity' report would be provided, written by whom and how robustly evidenced such a document might be', while another noted that it 'must be very clear that 'immaturity' is correctly established and not used as artificial mitigation'.

The issue of artificial mitigation was expressed more strongly by some, with the suspicions that 'it could be added to mitigation by any defence lawyer', or that raising a lack of maturity was often 'just trying to hoodwink the bench into lenient sentencing'.

Other respondents noted that if defined broadly, a lack of maturity could be claimed in mitigation by too many offenders to be practicable. That 'for most (male) defendants between 18-24 immaturity is a fact of life and the main reason they are there anyway.'

A further related issue raised was that many offenders who magistrates see display a lack of maturity, regardless of their age. So the same case for mitigating due to a lack of maturity could be 'made for a large number of defendants who may be much older in years, but not in maturity'. As, another magistrate commented, '[t]here are many adults well onto their thirties and forties who demonstrate immaturity in decision making'.

¹⁰⁰ 42 of 88 comments that expressed a view.

¹⁰¹ 20 of 88 comments that expressed a view.

Fairness and equity concerns and the importance of remembering victims in the criminal process also prompted reservations. One magistrate, having noted that '[w]e may mitigate already for immature individuals throughout all court processes as a bench' added that the bench must also 'maintain being fair and equitable to all offenders regardless of their immaturity and based on the facts and seriousness of the offences'. Similarly, another commented that while '[i]mmaturity needs to be dealt with along the lines of dealing with someone with learning difficulties. [...] We have victims to consider too'.

There were also a significant number of respondents who felt that a lack of maturity should not become a more common mitigating factor, and that young adults should not 'have their cake and eat it' enjoying the rights of adulthood without the responsibilities. In this vein, the point was made that '[m]agistrates can be appointed at age 18! We are being encouraged to recruit young magistrates but we are now being asked to consider an 18 – 25 year old as immature. The system cannot have it both ways.'

While these respondents were aware of the complexities of the issue, they tended to favour maintaining a clear youth/adult binary approach in the criminal justice system. For example, some respondents noted that this was 'a difficult issue because there is a binary choice between adult and youth. Society doesn't recognise an in between stage' or similarly that this 'country like most others treats 18s and up as adults. Like any such bright line it is arbitrary and imperfect; but such a line is essential and we must respect it.' One respondent further worried that failing to mark the change at 18 years the same way for all could create 'a two-tier justice system which would effectively sanction not growing up'.

There were also concerns that the possibility of treating 18-25-year olds differently could lead to slippage with all 18-25-year olds being considered less mature by default; 'just as there are very immature 18-year olds, there are also mature ones'. Interestingly, a comment from a young adult magistrate also opposed any default consideration of young adult lack of maturity: 'As a magistrate that falls within the age bracket of interest, I'm not readily drawn into immaturity being a significant mitigating factor when sentencing.'

Defining and assessing lack of maturity for use in court

Key findings

In relation to the information and assessments magistrates needed to make appropriate decisions in court, comments suggested:

- Magistrates needed help distinguishing between issues of maturity and other vulnerabilities.
- Reliable and robust assessments were key in assisting magistrates to respond appropriately to a lack of maturity.
- Magistrates recognised the importance of this issue in relation to making good sentencing decisions, particularly as it related to successful rehabilitation.

One commonality across many of the respondents was the difficulty of applying the concept of maturity in the court context, and in separating it out from other factors. Two responses captured these concerns well.

First, one summed up many of the doubts around defining maturity for use in court:

How do we actually identify immaturity? [...] What sort of offences are likely to be involved? Does it really impact defendants' understanding of the court process etc or is it that it just makes them more likely to offend (impulsive behaviour, poor decision making etc). Should it actually affect sentencing? Is it not too nebulous a quality to affect a sentence which is essentially quantitative?

Secondly, another respondent commented on the importance of a clear definition for identifying lack of maturity and effective sentencing:

Emotional immaturity, below average IQ/intelligence, and a careless/irresponsible attitude (showing off, sense of entitlement etc) can be easily confused. Some guidance on, and means of distinguishing between them would be helpful. An intelligent but careless/irresponsible defendant can be jolted into growing up by a court's insistence of compliance with bail conditions, adjournment dates etc with a stated expectation that the defendant is quite capable of doing so. Below average IQ defendants cannot respond beyond their mental age, and this needs to be taken into account. Emotionally immature defendants need to have their underlying issues addressed or they may never improve.

Or as another magistrate put it:

I think the individual circumstances of each defendant should be considered when deciding whether their age is a mitigating factor in the offence. I do think it is important, for defendants in this age bracket, to try and find a sentence which gives them the best chance of rehabilitation and a life away from crime.

Difficulties in assessing maturity from the bench given the time and information available were also raised. One respondent noted that: 'It is very difficult to gauge the maturity or otherwise of a defendant in a brief court appearance. The Bench relies heavily on being informed by the other court users of potential problems.' Giving consideration to maturity was also noted to be hindered as '[i]t is very difficult to tell, from the bench, what is attributable to immaturity, and what is due to a lack of education or specific learning difficulties'.

In this context another respondent stressed that the 'provision of full pre-sentence reports when appropriate in sentencing decisions remains an important aspect of judicial decision making' noting that 'the concerning rise in the number of oral reports [...] can mean that this vital aspect of developmental maturity is potentially being overlooked'.

An increased need for representation in court for less mature defendants was also identified, as '[u]nrepresented defendants are particularly vulnerable', with one magistrate noting that '[s]ometimes I feel this group would benefit from Legal Aid when sometimes it is not available to them'. Another suggested that 'perhaps under a certain age they must be represented? Sometimes we are faced with a complete lack of acceptance of proceedings that can only be described as childish.'

Summary

The survey questions covered two main areas: how often maturity was raised as a relevant issue in magistrates' courts, and by whom, as well as how confident magistrates were in dealing with maturity as an issue, and what factors would increase their confidence in this area.

Magistrates were also asked where else in the court process magistrates felt maturity was a relevant factor, and for any other comments they had on the issue.

The general results from the survey questions were:

- Maturity was not regularly raised as an issue for decisions relating either to defendants' participation in the court process or to sentencing.
- Where maturity was raised, this was most often by the defence, followed by the probation service.
- Magistrates and legal advisers did raise any lack of maturity as an issue, but this was not identified as common practice.
- Most magistrates had some confidence in their ability to handle maturity as an issue. However, less than a quarter were very confident in this ability.
- The two main factors that would improve magistrates' confidence in handling maturity were:
 - a) more information about the offender;
 - b) more understanding on the impact of lack of maturity (particularly in relation to the culpability for an offence)

- Magistrates expressed a clear preference that additional information on the lack of maturity of an offender as a mitigating factor should come from the probation service.
- Lack of maturity was also seen as an important factor for other court decisions, most notably decisions on bail.

The two main topics that were raised in the form of open comments were how to ensure lack of maturity as a mitigating factor was dealt with fairly, and what definitions and assessments of maturity were needed by magistrates to assist them in their decisions.

In summary, of those who provided additional comment about immaturity as a mitigating factor:

- Half felt a greater focus on the issue of maturity would be beneficial
- A significant minority had reservations about a lack of maturity being more frequently raised, with the principal concerns relating to:
 - a) how lack of maturity could be evidenced reliably, and the dangers of its use as artificial mitigation;
 - b) that if it were defined too broadly it could be claimed in mitigation by too many offenders to be practicable;
 - c) the fact it could introduce a potential conflict with consistency in sentencing.
- Magistrates raised the issue that a lack of maturity was not restricted to the young adults they see before them, but could be an issue for older adults as well

In relation to the information and assessments magistrates needed to make appropriate decisions in court, additional comments from the survey suggested:

- Magistrates needed help distinguishing between issues of maturity and other vulnerabilities.
- Reliable and robust assessments were key in assisting magistrates to respond appropriately to lack of maturity.
- Magistrates recognised the importance of this issue in relation to making good sentencing decisions, particularly as it related to successful rehabilitation.

Focus groups

Introduction

The second stage of the research project was to organise three focus groups with sitting magistrates, to discuss the themes raised in the survey in more depth. To ensure geographical diversity, we decided to hold three focus groups across England and Wales. We held the groups in London, York and Cardiff; areas which we felt provided a geographical spread and which were also easily accessible by public transport. The London focus group was held in the MA head office, and the York and Cardiff focus groups were held in York Medical Society and the Clayton Hotel respectively, both of which were in central locations. The groups took place over an afternoon, with lunch and a coffee break.

The participants for the focus groups were recruited in three ways. Firstly, we contacted any members who indicated in the survey that they were interested in taking part in the focus groups, and invited them to take part in the focus group which was nearest to them. Secondly, we put a piece in MA ENEWS, our email newsletter, advertising the focus groups, which widened up the invite to all of our members, not just those who completed the survey. Thirdly, it was harder to fill the York and Cardiff group places, so we sent out emails to MA branches local to York and Cardiff, in order to fill the last few spaces. Thirteen people attended the London focus group, seven people attended the Cardiff focus group and eight people attended the York focus group.

The first half of the groups involved an open discussion on the topic of maturity, where participants discussed their understanding of maturity and how it influenced offending behaviour; their experiences of seeing maturity in court; and if and how they thought that maturity should be taken into account in the sentencing process. This discussion allowed participants to compare their experiences, and bring in their own expertise from their personal and professional lives.

The second part of the groups revolved around carrying out a sentencing exercise and then discussing the outcomes. Here we split the group into sub-groups of two or three to consider a case study. The aim was firstly to bring a very practical element to the discussion, and secondly to prompt discussion of how gender and ethnicity might intersect with issues of maturity, given the disproportionality found in sentencing by these characteristics. To enable the second aim, the cases used for the exercise varied by gender and ethnicity across the sub-groups but were the same in all other ways. Comments from the discussions prompted by the exercise have been integrated into the considerations of the focus groups overall below.

Information received on maturity

Overall, participants felt that a lack of maturity was infrequently raised as an issue in court, so they only occasionally received information on it. Asked if they generally received enough information about any lack of maturity, in York the first response was 'we don't get anything', while in Cardiff it was 'I would say no'.

Where magistrates said they did receive information on a defendant's or offender's maturity it generally came from two principal sources – defence solicitors and the National Probation Service. One magistrate explained that they got information on maturity 'in two forms: we'd either get it as something quite high up the list of priorities in the defence solicitor addressing us or if there's been a report by the Probation Service then we will definitely have had some information on that'.

However participants told us that the level of information received varies both pre- and post-conviction and by area. It was discussed that getting information about maturity at different points in a case was important for different reasons. It was agreed that information about maturity pre-conviction could affect a defendant's ability to participate in a hearing – especially where a defendant was unrepresented at first hearing, or where reasonable adjustments might be necessary to ensure a fair trial. It was thought that receiving the same information post-conviction was necessary so that magistrates could ensure any mitigating factors were properly considered.

Before conviction, if there was one, magistrates largely said they did not often receive any information on a defendant's level of maturity. In York, it was put this way: 'There's no report produced before they come before you so you just see them at face value', with other participants there agreeing that 'you just look at body language and try to work it out' and 'we've got to work this out that's where the problem is'.

If the issue of maturity was raised pre-conviction then participants reported it would normally be by the defence, as put in London: 'from my perspective, the only person who mentions their age or anything else is their advocate if they have one.' This last comment was important because the increasing number of unrepresented defendants was identified by all focus groups as a significant problem in general, and for this issue in particular.

Discussion in both York and Cardiff demonstrated how identification of a lack of maturity was being left to be picked up and dealt with in an ad hoc fashion, where it was even recognised. In York:

If you've got an intuitive bench, you very quickly all of you will say there's something not quite right, slow down, calm down, we really want you to see the duty solicitor we are not happy about this and so you almost insist [...] and it's amazing when they come back in and the duty solicitor puts something to you and you think gosh, we'd have had no idea about that if we'd not really more or less insisted that they saw the duty.

However, it was pointed out that this required the presiding justice to engage with the defendant directly, which it was agreed was something that rarely happened in adult court. All groups were aware of the difficulties of assessing maturity, or of even getting much sense of a defendant more generally, from the bench. The problem of defendants 'masking' real feelings was mentioned across the groups. In particular, defendants appearing confident in court or showing 'swagger' was understood to reflect both that 'they are nervous' and that 'the briefing they have had for their court experience has not come from duty [the duty solicitor] or something like that....it has been word of mouth, on the street, from their mates'. As put in York, it's the 'difference between totally streetwise and mature', which can be very hard to assess from the perspective of the bench.

In Cardiff, it was reported that duty solicitors were very helpful in responding to concerns being raised in this ad hoc manner:

Our duty service is very good and even if it's something trivial for an unrepresented defendant the usher will notify somebody and the defence lawyers will give ten minutes of their time to assist the people and knowing that they're never going to get paid for it.

However all of this was acknowledged to take time, and, repeatedly across all groups, the time pressures on the courts was raised as impacting negatively on the likelihood that they would receive information on maturity. In York, as part of the same discussion about the bench picking up on an issue, one magistrate said:

If you've got 14 cases to see and get through in a morning or whatever, then you tend to rush things through sometimes, and you don't have time to delve and find the reason for their actions.

And a magistrate that might suggest should we, you know I've seen it where the chairman has said we've got a heavy list, we haven't got time to be social workers, more or less, let's push on. And so you almost actively have to not probe otherwise you wouldn't get through the workload, would you?

Time was also acknowledged as a significant factor in limiting how effective a duty solicitor could be in these cases, in London it was pointed out that, 'people are given five minutes where they meet the duty solicitor.'

In relation to receiving information about lack of maturity post-conviction, the main source mentioned was PSRs from the probation service. Here the picture was of significant variation in the level and quality of information provided on maturity.

York participants discussed how 'a really good PSR I think helps us in terms of sentencing and we always know certain authors with the PSRs you will get some really insightful comments about a lack of consequential thinking skills or whatever.' However, with report writers 'some are better than others', '[s]o again you get an inconsistency'.

This was reflected in discussion among London group participants. Again, not all magistrates had the same experience: as some participants discussed the lack of information they got on the maturity of an offender, one participant said:

I think I must be very fortunate. [...] I have a very good probation team supporting us with reports, when we do require reports. [...] when we are sentencing a younger person, 25 and under, I often now, in my probation reports, we do hear about maturity, particularly about things we have just been hearing.... things like reasoning, emotional management, emotional maturity and so forth.

Another concurred:

We do get the opportunity to deal with each individual, and we do have extensive reports, and we do have all the background information presented to us. So our feedback to probation is pretty good. They.... we keep them on their toes as far as adult probation reports are concerned as well.

And yet a colleague from the same geographical area responded:

I don't find that.

This significant variability in the amount and quality of information on maturity found in PSRs was something also identified by recent HMPPS research that we heard about during our roundtable event discussed below.

Where magistrates were happier with information received and more confident in requesting more information or that certain issues be considered, it was the strength of the relationship with local probation services that was felt to be most important.

The London group discussed this factor most extensively. In common with comments from the probation roundtable discussed below, some magistrates felt there was very little relationship between the bench and probation in their area. For example: 'Well in [my area], probation, I don't know them'.

However another participant discussed how their positive relationship worked:

I think the message here is that there is a lack of consistency. [...] In [my area] which is that we have informally spoken with probation, and through some formal channels, but we have become friendly with the probation team. And said to them, look, when you are doing these, it would be helpful to have some additional information. And the head of the probation team at [area] has worked very hard with her team, saying, look the bench need...focus in on these specifics for them. Don't do the waffle stuff, let's get some very good reports.

Others explained how their relationship had been built over time, highlighting the importance of regular contact: 'we go and sit with probation at least four times a year'. As well as conscious efforts to take the time to build relationships:

What we did was we introduced into the basic training for new magistrates, we got probation in to do a slot. And probation... it was a really weird response because probation said, we had never been asked to do this before. And they put quite a lot of effort into it. They did a couple of hours about what probation does, how we can help you, what you can do now.... and it built a bond quite quickly now that probation feel really integrated into the work of the court. Whereas, I have visited other areas....no names, no pack drill... where probation seemed to be cast adrift, and just called in on a click of the finger...can you immediately do this for us?

From these group discussions, this relationship between bench and probation seemed very significant and key to ensuring the information about a young adults' developing maturity could be fully considered in the courts. As one participant put it: 'It is that constant integration, working... that team bit, if you like. And it gets the best for the defendant as well'.

Magistrates' understanding of maturity

Many of the participants started from a reflex understanding of maturity as related to a knowledge of right from wrong. This starting point was often the case even where a participant was developing their thoughts against this understanding as they spoke, for example: 'From a very early age, even four or five, children know right from wrong but that doesn't necessary mean they're mature.'

However participants also realised that the distinction between right and wrong happens at such an early age that it was not a useful definition of maturity in relation to adult court proceedings. This was borne out by magistrate experiences, with one participant noting that in youth court, 'with rare exceptions for particular crimes, they know that what they've done is wrong. They might not know the consequences and they might not know what's going to happen afterwards but they know that they've done that act and they've done wrong – they've got a sense of right and wrong by then.'

As discussions progressed, participants also often returned to this base point of knowing right from wrong to clarify their thoughts, with reference also being made to the age of criminal responsibility. In Cardiff a participant wondered whether by saying a young adult was 'being immature are we implying that someone has a mental age of less than 10, because that's the age at which you are deemed to be responsible'. While in London a participant noted that you can say 'to a 10-year-old, do you know the difference [between right and wrong] And they say, 'of course I do'. So where do we go from there?'

In a similar vein, reference was made to the age at which people could legally marry and 'that they are considering bringing the voting age down to 16', which 'seems to imply that the powers that be think that at 16 you are capable of making rational choices and are aware of the consequences of your actions.... and we're saying it's probably later than that, and yet they're thinking of bringing the voting age down'.

While magistrates always progressed on to the more sophisticated understanding of maturity discussed below, their initial focus on linking maturity to knowing right from wrong seemed to indicate one of the challenges of incorporating the concept of maturity into criminal justice. This is because the system is premised on responsibility for offending being primarily related to an understanding of right and wrong, and the ability to think rationally.

Age and maturity

All three discussions around what magistrates understood lack of maturity to mean concluded that knowledge of the difference between right and wrong was not a good assessment of maturity. All the focus groups moved towards a definition based on a relationship between age and behaviour: 'we all have in our brains, what would I expect of a 24 year old, or a 30 year old or a 17 or 18 year old – OK, maybe someone will be over here and someone will be over there, but there's a broad definition of what is acceptable behaviour.'

This discussion also referenced the very varied levels of maturity seen across the young adult cohort. Participants often described family members or other members of their social networks – 'relations, friends, children of friends that sort of thing' – and the clear differences in maturity between young people of the same age. One magistrate gave the example of their 'two granddaughters a few months apart in age – both 15. One's 10 and one's 27.'

Across the groups there was a general conclusion that could be summed up by one participant who said 'there's no hard and fast rule to when somebody is mature. There's 16-year-olds who are extremely mature and some 25-year olds are very immature, so I think it depends entirely on the individual.'

The variability across age ranges was also raised as extending the young adult age range. All three groups raised the issue of noticeably less mature older adults appearing in their courts.

Maturity as a normative concept

Magistrates were generally aware of maturation being by definition a process and that there was a normative element to defining maturity. All groups noted that assessing a lack of maturity implied judging an individual against a clear, established definition of maturity. It was discussed that this was challenging for two reasons – firstly because it was very difficult to clearly define what 'maturity' meant or looked like, and secondly due to the fact that 'judging maturity is making a value judgement'. One Cardiff participant put this succinctly when summing up their discussion on this point by saying: 'Maturity is a social construct then, isn't it.'

Magistrates also discussed how social changes might affect these normative expectations. In the Cardiff group there was a particularly clear discussion of social change and how it impacted on perceptions about maturity. The example was given that there was a perception that the age at which young people started to take on adult responsibilities (such as getting married, having children or buying their first home) was increasing. Some participants said they saw young people delaying taking up these responsibilities:

Participant 1: Our perceptions of what a 25-year-old would have been doing 20-30 years ago is very different from a 25-year-old now.

Participant 2: When I was that age, I owned my own house, and no 25-year-old would probably be able to do that nowadays.

Participant 3: My colleague was saying – lots of people were married at 24, 25, with their own family. Well, my son's 24 and I still think of him as ... it's all relative isn't it.

But this was not the experience of all participants:

Participant 4: Well, my 23-year-old granddaughter who runs her own home, her own business, and she's pregnant. I like, I class her as mature.

In the London group, a similar discussion focused more on employment, noting that 'you have got this constant generational change in perception. And certainly in the place of work now, things have changed so greatly maybe over the last three decades that you are dealing with people in this age group of 18 to 25-year olds – very differently than you would have dealt with somebody in this age group maybe only 15 years ago.' Some participants felt it was important for the justice system to reflect the social changes, with one magistrate saying 'I don't see why we shouldn't be the same within the court environment and look at reviewing what we are doing. Because the world has changed around the courts system.'

The London group also discussed the importance of taking on adult responsibilities in relation to 'having quite a few ex-service personnel under the age of 25 who are coming through court for minor offences.' They noted that 'they find it very difficult to organise themselves. They have been organised, some of them, for example, have been boy soldiers from the age of 16 and they have always had somebody in uniform telling them what to do, when to get up, go to bed, what to eat, who to shoot...'. The importance of this in relation to the court system was that, 'they haven't had to take responsibility and accountability for their own actions, other than when they are drunk, because somebody has always been there doing it for them. It has been institutional.'

Aspects of maturity

Participants discussed and largely agreed that there were different aspects to maturity, and that individuals can be mature in one area and not in others. Many of the aspects identified fit into the Steinberg model of psychosocial maturity, split into the three elements of temperance, perspective, and responsibility; though they were not discussed in relation to the model by the participants, and different groups discussed some aspects more than others.

Although magistrates did not use the term 'temperance', participants did discuss maturity as including the ability to control one's actions and emotions, saying that offenders 'know the difference between right and wrong, but just lack the impulse control'. Lack of maturity was linked to an understanding that if you are immature, then 'at that moment you can't stop yourself'.

There was also a reference to perspective being very relevant – both in relation to someone understanding an offence within a wider context or perspective and in relation to being able (or willing) to consider the impact of offending on others. Lacking a longer-term perspective was raised as a key indicator of a lack of maturity: 'consequential thinking is a massive one. They know that it is wrong to break the law and they know that undertaking the course of action that they have done has broken the law but they don't understand the consequences of doing that.' Taking another's perspective was also seen as an important component of maturity. Where this was discussed at most length, in the Cardiff group, this was described as empathy and placed as central to their understanding of maturity: 'I think that's how I would define maturity. How much empathy has someone got?'

Through their discussion, the groups all developed understandings of maturity that included some aspect of responsibility, with one participant saying 'it's the ability to take responsibility for your actions and be fully informed of the consequences of your actions and the willingness to take responsibility for them. Something like that.' In this respect, while magistrates found the prevalence of no comment interviews and a refusal to engage during the court process frustrating, they also recognised this might be a symptom of a lack of maturity, as it could be linked to a reluctance to consider or accept responsibility for actions, to 'not owning up to the error of your ways'. Susceptibility to peer group pressure and falling under the influence of an older individual was also seen as relevant. For one participant in York 'peer group pressure – that's the big one we see most often in immaturity'.

Ethnicity, gender, and maturity

Ethnicity and gender were only raised in response to the sentencing exercise, where different subgroups carried out sentencing exercises, which were the same except the gender and ethnicity of the offender were changed for each subgroup. It was noticeable that the sentencing across the groups was remarkably consistent and did not vary by gender or ethnicity. However the discussion following the sentencing exercise did prompt some discussion around whether gender or ethnicity were relevant factors in relation to lack of maturity.

Gender and maturity

Focus group participants had relatively little to say on the relationship between the gender of the offender and maturity. Overall, there was a common sense understanding that young women matured more quickly than young men, though there was also an awareness on the part of those putting this view forward that they had no research or evidence to support it. It was sometimes stated as a simple generally accepted fact, and other times as based on experience: 'I found there's a far greater prevalence of immaturity in younger men I think, in court', with the response 'with two sons, I wholeheartedly concur'.

As with much of the discussion, magistrates noted that they were aware they were not experts on the issue of maturity, and were therefore aware of the dangers of assuming too much. Having started a discussion on this issue, the London group largely stopped when one participant cautioned against stepping into a professional arena and applying armchair psychology.

Magistrates also made the case that from their position, the gender of the offender should not matter or be considered, in the sense of it pre-judging or creating assumptions when considering the evidence related to the individual offender.

However, after prompting, further discussion introduced the fact that the need for fairness was a significant issue here – as elsewhere in discussion of maturity more generally – with the point clearly made that young women should not receive longer sentences because they were perceived as more mature. The Cardiff group worked this through saying:

Participant 1: Men do kind of mature later than women so you could end up having – I think a guideline which is kind of...

Participant 2: The fact you're a male is a mitigating factor [laughter]

Participant 3: That wouldn't be right would it!

In London, discussion did move towards consideration of the different needs of young women in the criminal justice system. Here, though, the issue of the relative infrequency of young women appearing before most magistrates was raised. In common with other less frequently seen cohorts, it was felt that it would be difficult to train all magistrates for every specific issue that arose, as the infrequency of appearance would mean training would be less likely to have been put into practice and therefore less likely to have been retained. Overall, the feeling after the group discussed the issue was that magistrates should not bring any assumptions into their decision-making, but should consider individual cases on their merits, relying on specific relevant information brought to their attention about an offender.

Ethnicity and maturity

Discussion on the relationship between ethnicity and maturity was also limited, prompted only by the sentencing exercise discussed in the introduction. As with gender, the feeling was that ethnicity should not generally matter, and cases should be considered individually on their merits. Magistrates simply stated that it should not, and did not matter to their deliberations and decision-making. As with gender, they approached each case on its individual merits so characteristics per se did not factor in their considerations. One participant in the London group did note that defendants from Black, Asian and Minority Ethnic (BAME) backgrounds might worry that their ethnicity affects the sentence, but that this did not happen in practice. While this was clearly an artificial exercise (simply stating ethnicity in the case given) this does suggest that any training or awareness raising aimed at tackling disproportionality in relation to sentencing outcomes for people from BAME backgrounds must work with the grain of this approach, demonstrating how contextual information feeds into the individual circumstances of a case.

The Sentencing Council's expanded explanation of 'lack of maturity'

Toward the end of the group discussions, participants were also given the Sentencing Council's newly-published expanded explanation of lack of maturity as a mitigating factor. All groups agreed that this explanation gave clarity and helped move towards concrete implications for use. Magistrates also felt that it summarised for them much of what had been discussed earlier in the groups: in York 'It reflects the conversation that we've had today'; in Cardiff it 'quite accurately reflects what has been discussed today'.

However, magistrates also expressed a desire for insight into the evidence supporting the explanation, so they could better understand the issue and therefore assess the evidence presented to them. Overall, while magistrates were confident in their ability to assess individuals if given the time and information to do so, they also noted that they were dependent on the expertise of professionals providing expert assessments to get that information. They felt they needed at least an overview of the research on maturity to be able to understand and assess the relevance of an expert opinion and evidence provided to support it.

Sentencing options

There was then a discussion, which linked the information magistrates received and their understanding of maturity together to look at whether particular sentencing options were available and appropriate for a young adult, given their maturity.

The participants all understood that this was an age group where getting the sentence right could make a big difference to an offender's future. In London, the role of the right sentence and support for an offender was put very clearly:

It makes sense to look at the capability for change in this age group, as in youth, you stand much more chance of behaviour.....changing behaviours and attitudes with effective input from probation. And good support. The chances of preventing reoffending and actually changing their lives around is so much higher at that stage rather than locking them up or giving them heavy community orders that are not actually going to change a lot.

There was also an understanding that often the sentencing options that were actually available, especially custodial ones, would not solve the problems underlying offending, and that responses to certain court orders (especially those focused on punishment) might also be affected by maturity. In Cardiff, the group discussed how children often continued poor behaviour despite being repeatedly punished, and needed explanation and guidance to change, and even with support, they still found it difficult to control impulses. In London, the link was made to 'how we look at previous convictions – these influence sentencing, but the fact of having them could be a sign of immaturity in young people, showing if they aren't learning from previous behaviours, consequences of actions'.

There was a frustration evident among magistrates that even when it was clear that previous sentences had not worked to change behaviour, there were not appropriate alternative options available. In York, when discussing how an appropriate sentence could help those with a lack of maturity, this was acknowledged to only be possible 'if you knew more about them and there were slightly more tools in the box. And again it comes back to resources with probation, where you obviously need to tailor more bespoke sentences 'cos they've not responded to the conventional DRR or whatever and you sort of think, short of sending them to prison for six weeks, what on earth do I do with them?'

This pressure on probation was seen by all the groups of magistrates to restrict the options they had in sentencing. Bluntly in Cardiff, when discussing options for rehabilitation through the probation service, one member of the group said these were options 'in the days when we had a probation service'.

There was frustration with the limited impact an identification of maturity problems could actually have, as appropriate sentencing options were often not available. One participant said, 'should we be spending so much time working on this when the reality is, it is not going to have a major impact at the end of the day?'

The need for information on the offender's stage of development and how a particular option might provide an opportunity for change was made clearly in the London group when discussing attendance centres. One participant explained that in their area 'we have been encouraged for some of our younger offenders to send them into attendance centres where they get people to look at critical thinking. But it appears to be random as to when we choose to do it or not'. Another participant responded 'Well, it is very rarely recommended by the probation report'.

Following on from this it was noted that 'something like an attendance centre might be extremely effective when applied to an offender who is at that particular point in their development where they can take on that information and learn from it. But if you have missed that little chink, by three months either way, then it isn't going to be effective at all.'

Magistrates who also sat in youth courts noted that '[w]e have much better information in youth court about the programmes on offer', and on how these programmes would help in 'dealing with issues like impulsivity, anger management, cognitive skills and so on. It tends to be spelt out by the youth offending team'. However, they were also aware of the practicalities of trying to do this in adult PSRs, partly due to the time pressures on probation services. It was noted that these issues did not 'tend to be a) consistently identified or b) the solution spelt out in adult pre-sentence reports [...] that maybe comes back to your point, about taking 40 minutes to do it. You can't actually go into that detail.'

The need to balance priorities in sentencing more generally was also seen as significant in relation to considering a lack of maturity as a mitigating factor. In London, there was concern over how 'we reconcile fairness in the overall scope of things, when you have the Single Justice Procedure' and its expansion beyond low level offences. There was seen to be a conflict between this 'standard approach, in other words you tick the box' and an approach that says, 'hang on a minute, magistrates should be looking at their maturity' and making 'that individual assessment of that individual case'. The discussion continued to raise the need to balance 'we have to be consistent' with consideration of maturity '[a]re we consistent or are we individual?'

From these discussions it was clear that the magistrates understood the significant positive impact the right sentence could have in changing an offender's behaviour. Overall, though, they reported not receiving enough information for this to routinely happen, and agreed they needed more information to be provided to them so they could understand how a proposed sentence related to any specific maturity issues identified. There was also a general sense of frustration that the sentencing option 'tools' needed to respond appropriately to a lack of maturity impacting of offending behaviour were not available.

Lack of maturity as a common or exceptional mitigating factor

Focus group discussion supported the suspicion raised in the Justice Committee report that currently a lack of maturity is only reliably raised in exceptional cases. While magistrates in some areas seemed to regularly receive information on maturity in PSRs, the overall picture from both the survey and focus groups was that maturity was not routinely or regularly raised in magistrates' courts when dealing with young adults.

However, focus group participants were clear that most magistrates would take any issues of maturity that were raised seriously, they 'would stop and think', not only in cases of 'extreme immaturity'.^{102,103}

For the issue to be raised more regularly by the bench itself, training is needed not only to support understanding of the issue, but also to increase magistrates' confidence in raising it. As one participant said: 'I think a lot of magistrates do think about this, do care about this, but are maybe not confident enough to say, what about this?' As another put it, getting the training right 'is a really big deal, because all of us care'. As with other issues, such as mental health, regular refresher training of it as an issue to consider – 'even an email' – was also seen to be important if magistrates are to more frequently raise the issue independently in court.

Overall, magistrates in our groups felt maturity should be more commonly considered. All groups at one point or another came to the point of agreeing that most crime dealt with in a magistrates' court involved vulnerable defendants in some way, including those who were less mature as well as those with mental health or cognitive problems. This led, however, to discussion of further concerns around the fact that if most defendants in magistrates' court were either less mature or vulnerable, then how should courts respond appropriately. In York, one magistrate commented that 'you can almost controversially say, that the fact that they have broken the law indicates that they are immature'. In Cardiff, one

¹⁰² Justice Committee 2016 *op. cit.* para. 77

¹⁰³ This was acknowledged not to be universal, that some magistrates were more likely to view only more extreme immaturity as a mitigating factor, and 'don't feel that they are there to be a social worker' There was a feeling there may be a generational element to this, with some feeling it was 'particularly older members of [the] bench [...] who are still of the view that, never mind, they knew what they were doing, so we will just give them what is in the book'.

participant 'playing devil's advocate', similarly suggested that 'everyone who's in front of us has some kind of something or other because they've chosen to commit those offences [...] those of us who have got impulse control and control of our actions don't appear on that side of the bench'. The immediate response of 'that is the danger of course' also indicated that magistrates were not entirely comfortable with this idea.

The Cardiff group were most explicit in extending this consideration beyond just a lack of maturity – though all groups did this – citing statistics that '40% of the prison population have an IQ of less than 80', and that 'we know that 80% plus of the people who appear in front of the courts have at least one form of mental health [problem] and 60% have more than one I think is the figure. It's fundamental'.

The Cardiff group also had some expertise on adverse childhood experiences (ACEs) within the group. The issue that 'because they're damaged because of that experience they've had in their formative years so the brain connections aren't being made', and that 'these adverse childhood experiences they actually damage the brain so you can't develop some of those rational or rationalisation of thoughts or of actions', was discussed and understood as an additional factor separate from the normal process of brain development. One participant having listened to these explanations noted that 'that's not simple immaturity'.

On the other side of the same issue, there were also concerns that the likely high prevalence of a lack of maturity among the young adults appearing in court might lead to the lack of maturity mitigation simply becoming a default reduction in sentence for this age group. This was something most participants were uncomfortable with. As with all aspects of these discussions, magistrates were keen to ensure fairness in sentencing decisions, but also wanted to understand and treat offenders as individuals. A default reduction in sentence for young adults seemed to run counter to both of those instincts, with the preferred option described as an 'opt in, rather than an opt out' approach to mitigation for a lack of maturity.

In relation to this approach, magistrates were also aware of their unique position in the system, and that they needed to follow a structured decision-making process in sentencing that started with considering the offence. They noted that, as their 'starting point is the crime', they started from 'the symptoms' of a lack of maturity, rather than the offender themselves. Within this, a lack of maturity 'is only offender mitigation, not offence mitigation' (that is, restricted to stage two of sentencing). Starting from this point, magistrates were clear that punishment, and the perspectives of victims and the public were also part of the consideration of the issue. All groups mentioned the need to 'consider the impact on the person who has suffered the crime [...] what would their response be to us mitigating on the grounds of immaturity'.

Magistrates were also clear that any claim of a lack of maturity as a relevant factor had to be evidenced. There were concerns from participants across the groups that presentation of lack of maturity could seem like 'they are giving excuses, [...] you sort of feel as if they are using it as justification for what [they] did'. Magistrates' experience of dealing with large volumes of cases also led to concerns about the potential cynical use of a lack of maturity as a mitigating factor, that it might become the next 'buzz phrase', overused in mitigation and 'associated with excuses and concessions for the defendant which magistrates get tired of'.

From these concerns, all groups agreed that to support the magistracy taking a lack of maturity among young adults seriously, there had to be an assessment they could be confident in, that could justify a consideration of a lack of maturity in sentencing. An often-given example was of a medical certificate, 'for a mental impairment you can get a certificate saying that, you can't for immaturity'. The concern was to ensure that magistrates were presented with a specific professional judgement that there was a lack of maturity 'so solicitors can't use it in that sort of weaponised way'.

This last point highlighted that magistrates were aware that they were not, and could not be, experts across the board, and therefore relied on information from experts. Information on a lack of maturity was another element to 'go into the mixing pot as considerations when giving a sentence'.

These discussions suggested that while a lack of maturity was only being raised as a mitigating factor in relatively exceptional cases, this was not due to decision-making by magistrates that it was not relevant or important. Magistrates were against any default assumption of a lack of maturity in young adults, but seemed open to it being a common factor among the young adults who appeared before them. If a lack of maturity is to be more commonly presented as a mitigating factor in court, then, it must be supported by an assessment that magistrates can be confident in, and related to the offending behaviour in such a way that makes it clear how it factors as a consideration in sentencing. If magistrates are to raise it more frequently as an issue themselves, training is needed to increase their confidence in doing so.

Magistrates' role in managing pressures and priorities

The various pressures on courts, and sometimes conflicting priorities that magistrates have to manage was discussed in relation to being a challenge in ensuring more attention was given to young adults' level of maturity in courts.

It was clear that whenever they thought about the practicalities involved in giving more consideration to maturity, pressures of time and of resources for other actors, such as the probation service, immediately sprang to mind for magistrates. Similarly, while aware of the great potential benefits of getting sentencing right for a less mature young adult, participants were clear that this also had to be balanced with the need to deal with cases in a timely manner and to sentence consistently (which included taking account of all sentencing principles such as punishment and deterrence).

As well as the clearly defined requirement for cases to be dealt with in a timely manner, one issue mentioned relatively frequently by all groups was the pressure on them to get through cases quickly, with heavy listings as the norm. Here the role of legal advisers was raised as particularly key, with them often being seen by magistrates to be pushing for quicker resolution of cases. For example, in York, in response to a discussion around the fact that 'you've just got to give as much time as necessary' to cases, another participant responded that 'the legal adviser can be quite key with that as well' as sometimes 'a legal adviser puts a little bit of pressure on' perhaps saying 'can I remind you that we've got a very heavy list, your worships'.

In London, discussing the pressure to 'deal with them on the day' from some legal advisers, one participant said that a bench they were on 'almost had a row with one, because he didn't want us to go out, to deliberate. And I said, no, we cannot be doing this, this is wrong'.

However, the York group of magistrates were aware that there was also 'pressure on legal advisers to result in court, and fewer courts running, so we are getting these humungous lists with 30 or 40 cases and you expect us to finish them all by noon and then you get an afternoon list with that number.'

The difference with youth court was brought out again, where one participant had the following experience: 'one of my legal advisers said to me, [...], you know you are not in youth court, don't you? [...] because I was taking longer. Because I was engaging with people'. However they also acknowledged that 'to be fair, if you look at, you know, a youth court you might deal with six young people in a morning. You have got a lot more time. In a busy remand court, you are dealing with 26 or 30 people.'

It was not just the pressures on court time that featured in the discussions. Magistrates were aware that greater consideration of maturity would be expecting more of services such as probation, who they knew were already under considerable pressure. In York, it was noted that it would be a real strain for 'the probation service because of their lack of resources, trying to stand every case down for a stand down report.' In London, it was agreed that this was one cause of a lack of information 'particularly in adult pre-sentence reports [is] because we have massive pressure upon probation officers.'

As discussed in the section on sentencing options above, magistrates were also aware of having to balance sentencing priorities, and that consideration of maturity impacted on this too. In Cardiff, the point was made that what is important for young adults 'when you're making your sentences is that balance between punitive and rehabilitation. I think that's where maturity has the biggest impact is how you balance the punitive element compared to the element around that individual being supported so they don't commit further offences'.

All magistrates in the groups were aware of getting the balancing of these pressures right, and that doing so could make the system much more effective in reducing offending. A comment from a London participant ably summarised the overall feeling of the pressures involved, and magistrates' desire to get this right:

Yes, we are put under too much time pressure. Yes, we want to punish, yes, we want to do all those things we are being told to do. But actually the reason we are all worried about immaturity is because that 19-year-old, if we deal with them properly, won't be back when they are 20.

Young adult participation in court

A lack of maturity can also affect a young adult's ability to engage in court, impacting on their right to participate effectively and fairly in any hearings. All three focus groups discussed difficulties that young adults may have in court in relation to participation. When prompted to consider what specific problems might be associated with a lack of maturity, the discussion often moved on to more general problems young adults may have in understanding and engaging with the court process which intertwined with any issues with maturity they may have.

In London, a link between maturity and language was drawn as 'for many of these young people who come in, they automatically see a gap in maturity between us and them, and the language used in court just reinforces that.' As discussed in Cardiff though, 'to a point it doesn't matter whether they don't understand because of a lack of maturity or whether they don't understand because they've got an impairment', as either way it was agreed to be important for magistrates to increase their understanding of the process.

The problem of 'archaic language' throughout the criminal justice process, from arrest onwards, was raised in the London group: 'they [police] said they will read them the caution and they may know about the caution previously from having heard it on television or something else but they don't actually understand it. They hear the words, but there is not understanding'.

This problem was seen to be particularly relevant in relation for pronouncements of sentence. A London participant pointed out that there 'is a lot of evidence that many defendants in both youth and adult leave court not understanding what the sentence of the court is....and that seems to me to be absolutely fundamental.' In York, when this problem was acknowledged, it was suggested that there was therefore a need for a court sentence to be explained 'outside of the court itself where somebody could sit down with them for five minutes and just say 'this is what it's going to be like' and that would make so much difference I'm sure it would in helping them understand what's going on.'

The importance of pre-court preparation to understanding and engagement was also explained in York:

before they are in front of you in court they need to have things explained, they need to have some understanding of what the processes will be, and that's why you need to intervene before they come in and before they get a sentence which you said they may not have actually done it, but because they can't articulate the circumstances, you may find them guilty.

Defence lawyers were seen as vital in helping prepare defendants for their appearance in court, advising them on appropriate appearance and behaviour. This was something participants felt to be particularly important for young adults, but again, they agreed that time pressures reduced the scope for the defence to fulfil this role.

Participants also put forward examples of good practice on how they ensured those appearing before them understood proceedings when they were in court. At its simplest, this generally involved explaining the sentence in straightforward language after the pronouncement, with one London participant saying that 'If you cannot describe in words of one syllable what the sentence of the court is, so the person understands that they are going out with a probation order or a referral order, or whatever it might be, then we have failed in our duty'. In York, it was noted that 'a number of benches now will say 'can you tell me what your understanding is of what I've just said''. It was agreed that this was preferable to just asking somebody whether they had understood, as they may feel pressured to say yes, or may think they have understood, but missed certain elements of the sentence.

Overall, the groups felt that the court process was not easily comprehensible to young adults. In London, this was put strongly: 'we desperately need, maybe special arrangements for young adults in court, or at least we click in to a different mode with young adults, having been suitably trained on maturity and language. And then we have very simple rules, and very simple language about how we conduct ourselves, as presiding justices'.

All groups, however, made the point that the issue of ensuring parties understood the process (especially the sentence) was an issue that affected many people in court, regardless of age or maturity. In London, it was suggested that 'The legally binding pronouncement is not actually understandable to ordinary people...', while in York, they wondered 'what would be the cut off, you can think of people in their 60s that you are seeing before you' with similar difficulties

comprehending the situation. In Cardiff, it was similarly suggested that you must 'also do it with middle-aged and older people in the adult court', as 'whether they're 18 and 2 days or whether than 90 and two days if they're failing to understand in court', then this was a problem.

From these discussions it was clear that magistrates had concerns over how well those before them understood the process and, in particular, the expectations on an offender of any court ordered sentence. While the focus was on the maturity of young adults, where the problem was seen to be most acute, it was also seen to be a far wider issue. A point raised in York about simpler language and ensuring comprehension was typical: 'Shouldn't that be for everybody though? Whether they are considered to be mature or immature?'

Transition from youth to adult court

All the focus group discussed the fact that in looking at young adults who were less mature, the distinction between youth court (which deals with children and young people under the age of 18) and adult court was stark. Issues raised included the fact that there was no interim or grey area for young adults in their late teens, but that they were treated as adults, which meant using different sentencing guidelines, as well as the process in court being very different.

Those magistrates with experience across both youth and adult courts highlighted the 'arbitrary cut off' point between youth and adult systems at 18, noting that 'there's nothing magical about 18 is there?'. Magistrates discussed that there had to be a cut-off point somewhere, whether 'we have this absolutely demarcated line at 18, or 26. But then somebody will say that 26 is too early, we've got to have a break point.' This led to consideration of the need for some form of 'transfer from youth into adult'. In Cardiff, one participant considered that given that 'the law used to say 14 you were legally responsible then we had 21 was sort of acknowledged by most people in society. Psychologists will say the teenage brain doesn't mature until 26, there's nothing magical about 18 is there so why can we not have a sliding approach?'

In York, the idea proposed was 'a system where we say everybody up to 18 gets dealt with in youth court like this, everyone between 18 to 26 goes through a slightly different form of court, you might have some youth court things, and you just have to accept that you are saying everyone up to 26 more likely than not is going to have some immaturity.' In London, one participant supported a similar idea, and noted that 'the Centre for Justice Innovation were trying to run three pilots, which were, going to be termed transition to adulthood courts'.

One issue that magistrates considered as key in relation to the current system, where there was argued to be a strong cut-off between youth court and adult court, was the shift in sentencing priorities. In York, it was explained that the Sentencing Council guidelines clearly set out the two completely different approaches to be taken in relation to an offender under the age of 18 or one who is 18 or older. In youth court, they are 'expected to try and come up with a tailored sentence that is designed to help that person because the overarching principles, the key one, is to prevent reoffending, and then we also have to take into account the welfare of the young person, not punishment'. With different overarching principles, however, 'we don't necessarily tailor sentences as much in the adult court', so the balance between punishment and rehabilitation in sentencing also shifted abruptly. As discussed in relation to the sentencing options available for this cohort above, it was understood by magistrates that it was precisely getting this balance right, and the need to tailor sentences accordingly, that could make a significant difference to less mature young adults.

The abrupt transition in culture from youth to adult courts was felt to be a particular problem for the cohort of young adults with prior experience in the youth justice system. The transfer presented challenges for those young adults because 'they've got no awareness of an adult court, they expect them still to be the setup of a youth court because that's how they've been, their experience of courts'. One participant noted that if they expect 'we are going to call them by their first name, and perhaps be a bit gentle with them, and take a different approach.... And they are rabbits in the headlights...ill-prepared for it in every way.' The approach moves from one completely focused on the young person, their welfare and understanding where 'the only person in the room who needs to know anything, really, is the defendant', to the formality of an adult court with all the challenges for a young adult described above. Knowing what a defendant's previous experience in youth court would have been like was held to be especially useful in cases such as 'when you've got someone who's 18 years and two days old'.

Lessons from youth court

One of the strongest messages from the groups was the great value that magistrates who sat in both youth and adult courts found in their experience and training for youth court in respect of handling issues of maturity in adult court. One London participant explained early in the discussion that 'you have a better understanding of the features of immaturity as a youth magistrate'. Approximately half of the participants had this mix of experience and, in all three groups, youth courts were often held up as model with a lot to learn from. As one participant noticed in York, 'those of us who sit on the youth court have got this tendency to keep drawing comparisons between the youth court and the adult court [...] and I make no apology for that'.

The three main advantages that magistrates raised as coming from experience sitting in youth court were: a greater insight into a lack of maturity due to experience dealing with under-18s; that youth magistrates were used to adapting procedures so that young people were not awed by the process or the language; and that as youth presiding justices, they were used to engaging with young people directly.

As discussed earlier, it was a common observation that 'you have a better understanding of all the different features of immaturity as a youth magistrate' not least from the experience of reading 'the probation reports [that] go into more helpful detail about how the immaturity has affected culpability'.

As discussed directly above, magistrates thought considering adopting some of the culture of youth court was also worthwhile. As described in York:

post Bulger, we put into practice a form of justice in the youth court which was meant to be more explanatory, to reduce some of the power differentials between the sentencer and the person. I mean what we are saying what may people around the table seem to be saying we should be doing all of that for all defendants, you know we should be explaining how the court's going to work, we should be probing into their background.

The final benefit of experience in youth court considered by all groups was engaging with young people directly, which was seen as one potential way of ensuring a young adult's immaturity was considered by the court. All those who sat in youth court found this practice helpful and felt it should be encouraged more in adult court. One London participant described the difference of approach, noting that 'when I trained for youth court, the first focus of the training was about engagement. And there is never any discussion of engagement in the adult training. And if they are represented, even if it is just by duty, in the adult court, you don't have an opportunity to engage with the defendant because the discussion is always with the lawyer'.

While it was always also pointed out that, as an adult court magistrate, they were able to engage directly with a defendant if they wanted – 'we can. There is nothing stopping us' – it was agreed that such direct engagement was unusual. One participant in the London group remarked that 'I have never seen anyone do it. And even if they want to speak, they are told to speak through their advocate.'

Those who had engaged directly with young people in adult court felt it was worth taking the time to do so. In York, it was agreed that 'solicitors hate it, absolutely hate it', but 'then you start to get the truth.' Youth court experience was seen as key, with participants agreeing that 'a good chair in a youth court will always get more from the discussion'.

Across all groups, while it was agreed that more direct engagement was desirable in adult court, it was acknowledged that it was important that it was done well. It is 'an additional skill that a presiding justice will need and some can do it some can't.' It was also noted that magistrates had to have reasonable expectations when engaging directly with young or less mature people, especially if there was a wider context of a lack of trust in authority figures. As a London group magistrate explained: 'the guy who doesn't want to speak to me, actually doesn't want to speak not to me not because of me but because he has never in his whole life had any control over the system whatsoever, so why the bloody hell should he bother?'.

Integrating youth court experience

While youth court practice was often mentioned as a good example of how to deal with less mature defendants or offenders, it was agreed by all the groups that it was not possible just to transfer this practice across to adult court, not least because it was seen as doubtful '[w]hether or not the resources that we have at the moment in the adult court would allow

you to go to the same level'. Nevertheless, the underlying principles were seen in all groups as potentially valuable, and from these discussions, one of the most consistent recommendations magistrates made was that all magistrates should at least observe youth court proceedings so they could learn from the approach taken in dealing with young people.

Several participants suggested that all magistrates should have youth court training, or that all benches dealing with young adults should have a youth court trained magistrate sitting as part of the bench, though the practical and resourcing difficulties of these suggestions were also recognised. In York, it was observed that: 'When you are sitting as an adult bench but one of you is a youth magistrate, I find that you often get a more nuanced appraisal because the youth magistrate is very used to doing that and you have a lot more training in it [but] I'm not saying listing can always accommodate that.' In London, the 'short term' suggestion was that 'there should be a youth qualified magistrate sitting on the sentencing bench for anyone up to the age of 25... I know that sounds a bit radical'.

In York, an alternative proposal was that at the very least 'chairs should have to do both [youth and adult] then so that they see both sides of the judicial system', and that this was already being considered, not least because adult magistrates often dealt with youth remand hearings, 'so they're looking at observations and more youth training for chairmen'.

Summary

The overall feeling among the participants was that magistrates were able to assess those before them 'in the round', if given the time and necessary information. One participant in York, summing up their discussion to that point, made this point well: 'all the things we've said is just the way a court should be run. What's the difference between good sentencing and sentencing taking account of immaturity? We've just given a panacea for what should happen in a court, which I agree with: more time, more consideration, more explanation – which we would want to do for absolutely everybody wouldn't we?'

From these focus groups, it was clear that magistrates were keen for a better understanding of young adults' developing maturity and its relationship to offending. They were clear that they 'don't need all the information' or to become experts but that they did need to understand the issue, because it was another part of their role 'to try and get it right' in sentencing. Training would be able to build on a good intuitive understanding of the issues developed from their experience as magistrates. During the discussions, many of the aspects of psychosocial maturity and the underlying elements of the relationship between a lack of maturity and crime outlined in the literature review above were discussed, and it was clear magistrates had a sense of the main elements and issues.

Magistrates were also clear that training should be a process involving other court actors if there were to be the necessary culture change to allow greater consideration of an offenders' level of maturity. 'Behaviour and attitude change is much more likely with good support and input from probation', with a significant role seen to be played by legal advisers by all groups, 'HMCTS need to be training legal advisers, some legal advisers are red hot on this sort of thing and some wouldn't recognise maturity if it hit them between the eyes, like magistrates'. Experience had shown the value of joint training, but most important was that all participants were confident that they all understood the issues and took them seriously.

Overwhelmingly though, magistrates' knowledge of maturity was derived from experience, usually a mix of personal, professional and court experience. Approximately half of the magistrates in our discussions also sat in youth court, and all found this experience and associated training invaluable in understanding and handling the issue in adult court. It was felt that it would be helpful to learn from practice in youth court, with proposals put forward including a transitional approach so that young adults were treated as a distinct cohort and ensuring adult magistrates had training about the approach taken in youth court (especially if they were presiding in court). The benefits of youth court in tailoring their approach to children and young people included sentencing focusing on the welfare of the young person, and the process being tailored towards ensuring young people could understand and participate in the process effectively.

In addition to the additional training provided, youth magistrates also felt that the level of information they received about individuals in youth court was much greater than in adult court. This, they felt, better enabled magistrates to make an individual assessment of the person before them. The importance of magistrates being provided with robust and evidenced information pertaining to a lack of maturity was seen as fundamental to allowing magistrates to respond appropriately by ensuring fair and effective participation of young adults, as well as sentencing appropriately. It was agreed that there should be an assessment process conducted by a professional, in which they could be confident. This was to prevent the mitigating factor of a lack of maturity becoming 'associated with excuses'.

In relation to sentencing appropriately, magistrates were clear that being given detailed information about the maturity of an offender, and how it might have impacted on their offending behaviour, was key. It was agreed that the provision of PSRs was variable, but where it worked well, magistrates found it invaluable. They appreciated that current pressures meant it was challenging for probation to take the time to do a more detailed assessment, and it was agreed that magistrates should take responsibility of asking for more information, if it was needed. Magistrates also noted frustration that even where a lack of maturity was identified, there were rarely sentencing options available that were specifically targeting the cohort of young adults- including thinking skills or similar programmes that could help improve behaviour influenced by developing maturity.

It was clear that all the focus groups felt the solutions to responding appropriately to a lack of maturity in criminal court were understood as:

- A cross-agency/party understanding of the impact of immaturity on offending behaviour;
- Training that provided general background about developing maturity as well as linking the issue with the specific role, and decisions for magistrates;
- Magistrates must be provided with robust assessments to inform decision-making;
- Appropriate sentencing options should be available, specific to the cohort of young adults;
- Lessons should be learnt from youth court, and consideration should be given of how to provide a gentler transition from youth to adult court.

However, all participants understood that increasing pressures on all court staff, as well as reduced resources, meant that it was becoming more difficult to ensure the criminal justice system was able to respond appropriately to maturity as an issue.

Roundtable: The view from the probation service

Introduction

The final element of the research conducted was a roundtable, which was held to gather views on the issue from other actors involved in the criminal court process. The roundtable brought together representatives from Her Majesty's Prison and Probation Service (HMPPS), community rehabilitation companies (CRCs), youth offending teams, and defence solicitors with experience in representing youths and young adults.¹⁰⁴ There were two main aims: to hear the experiences of the participants in relation to what they saw in court, and to get their views on the role of magistrates in responding to a lack of maturity in respect of criminal processes.

Firstly, the roundtable discussed the current state of assessments and presentation of maturity in magistrates' courts from their perspectives, including what worked well, and what were the challenges faced in presenting immaturity in court. Secondly, we gathered the responses of participants to the key issues raised by magistrates during the first two parts of the research, as well as discussing what role magistrates could play in improving the consideration of maturity in the system.

Overall the discussion reflected the broad sense found in the Justice Committee reports (referenced above), that there was general acceptance of the evidence that maturity was an important issue for young adults, and an enthusiasm to address how this was relevant within the criminal justice system. However, attendees to the roundtable found there were difficulties transferring this into practice, not least due to a significant reduction in resources over the last few years.

It was also noted that it was an important point in time for the MA to be discussing immaturity, as other organisations were evidently in the process of developing their response to the issue, including carrying out their own research and putting in place training programmes. It was therefore agreed to be a good time for magistrates to make their contributions to the topic. HMPPS in particular said they were working to improve the information on young adult maturity in the system, and saw a key role for magistrates in creating demand for this within the court process. For this to happen they said there needed to be greater awareness and training for magistrates on maturity issues. As one participant described the current problem, magistrates 'don't know what they don't know'.

The principal points from the discussion are set out below.

Understanding maturity

- A common understanding of young adult's developing maturity, and its significance, was developing across the sector and magistrates must be part of this development.

Understanding of young adult maturity was seen as uneven but developing across the sector. For example, it was noted that PSRs were currently variable in respect of the attention given to the issue but guidance had been provided for those writing PSRs as well as a number of events being run to raise awareness on the issue among probation staff. Similarly, one participant described training prison officers, who before taking part struggled to understand why 'these men who had been imprisoned were acting like [their] 12, 13, 14 year old son'.

Magistrates' understanding of maturity as an issue was therefore reflective of other professionals working in the criminal justice system. It was therefore suggested that there was an opportunity for magistrates to play an important role in developing the understanding of the relevance of young adults' developing maturity and its impact on the criminal justice system. Communication between magistrates and the probation service was raised as important within this process, as it was agreed that currently the probation service centrally did not always have a good enough sense of what magistrates wanted from their reports.

¹⁰⁴ The Magistrates Association would like to thank all those who took part in the roundtable for their generosity in giving of their time and expertise. The roundtable proceeded under the Chatham House rule so where points are referenced that may identify who made them, this has been approved by said individuals.

A HMPPS's sentencer survey for 2019 was referenced as having identified frustration among sentencers with the perceived 'leniency of the probation service', finding they were 'too offender focused [and] lacked victim focus'. It was therefore raised as very important that sentencers understood why probation made the recommendations they did. It was suggested there should be a dialogue on the significance of an offender's lack of maturity between probation and sentencers: taking account of the fact their focus may be different, with probation focusing on managing risk and rehabilitating an offender, but magistrates needing to take a wider view in sentencing, considering the offence and harm caused as well as the individual characteristics of an offender.

A psychosocial maturity screening tool was mentioned as having been developed by HMPPS for use across prison and probation in order to identify young adult men with maturity needs and to better respond to the needs of this group. It was noted that the tool used ten items from OASys, which mapped onto the three components of psychosocial maturity (temperance, perspective and responsibility). HMPPS had also recently conducted some work to explore how psychosocial maturity could be identified and better addressed within the PSR process. HMPPS were also working on developing some guidance for PSR writers to provide them with some information around maturity and how this could impact on sentencing proposals.

While the maturity screening tool was introduced as one source of information, it was discussed that it should not be used on its own to direct sentencing proposals. HMPPS suggested that report writers needed to make clear which aspects of maturity were relevant to the individual, how this might have influenced offending, as well as considering how this may impact on their ability to comply with or benefit from different sentencing proposals. HMPPS reported they were working on developing a common understanding based around young adults' psychosocial maturity. It was agreed that it was important that this common understanding was shared by all.

Within this understanding, it was noted that both the usual process of maturation throughout young adulthood, and impediments to the process from brain injury or adverse childhood experiences, as well as imprisonment, were important. The attendees agreed that the developing understanding of maturity must include the significance of these experiences within the maturation process.

- **The developing discourse on the issue must include other court actors, such as legal advisers and solicitors, so there was common understanding of the effect of immaturity in practice**

The important roles solicitors and legal advisers to the court had to play in ensuring a lack of maturity was raised and taken seriously was discussed.

Comments confirmed some of the earlier findings that, as magistrates were reliant on legal advisors for advice, their attitude towards maturity as a relevant factor could have real influence. The impact of when a legal adviser said something like 'I think you could do with some more information here', or 'we need to get through this list' was felt to be significant.

A representative from the defence community specialising in youths and young adults stressed that there was also a need for some consistent understanding of the implications of an assessment that an individual was immature.

It was suggested there should be a common resource which everybody could have access to and then refer to, with the example of sentencing guidelines given, to create a common understanding of the implications of a lack of maturity. It was noted that HMPPS had produced a resource pack for their staff to conduct one to one work with individuals with low levels of maturity, and there was a strong interest in sharing resources between organisations, including the MA. It was also pointed out that thought should be given to including, or at least ensuring access for, the defence community and HMCTS in any moves towards collaborative development of resources.

Training

- **Training and awareness of the importance of the issue must be practice oriented and specific to the role of magistrates, including sentencing.**

At the roundtable, it was also agreed that any common understanding developed about maturity and its relationship to responsibility for crime must be applied to the specific role of magistrates, especially sentencing.

Magistrates should understand why and how different types of sentence could aid or impede the development of maturity. For example, how a custodial sentences impacted on the development of different aspects of psychosocial maturity. In discussing how such an understanding could be used in practice, participants talked about the importance of magistrates knowing what sentences were available in a local area.

It was agreed there was much work to be done to ensure magistrates knew what sentencing options were available, including what they involved, and how they would be appropriate for the cohort under discussion. Representatives from CRCs spoke about their sentencer engagement events, designed to achieve greater understanding among magistrates, but pointed out that these were voluntary events and magistrates' attendance was not covered by the expenses provision, which was why there was usually a relatively low take up of attendance by magistrates (a roughly estimated 20% in the area concerned).

It was also suggested that more could be done to raise awareness (among both probation and magistrates) of the support available to young adults from social services, their current entitlement to support, and the disruption to support that custodial sentences could cause. A particular issue highlighted was a lack of awareness among court professionals that, since April 2018, care leavers were entitled to Personal Adviser support from local authorities up to the age of 25, precisely because of their still developing maturity. It was interesting that this entitlement was not known about by all at the attendees at the roundtable.

It was also noted that increasing understanding about what sentencing options might be appropriate for offenders with lower levels of maturity would not have a positive impact unless those options were actually available. Availability of appropriate sentencing options was seen to be particularly important to embedding consideration for maturity in the court process, to avoid a feeling that efforts to do so were futile if at the end of the process few options other than custody were in fact available.

Assessments and information about maturity

- **Magistrates were identified as having a key role to play in creating demand for high quality PSRs, including considerations of maturity, for young adults.**

Representatives from HMPPS confirmed both an overall decrease in the number of PSRs produced, and that an increasing proportion of those produced were on the day reports. Participants were concerned that where PSRs were done on the day, there was insufficient opportunity to be able to assess and capture the relevant information on a young adult's maturity and its relevance to their offending. It was noted that this obviously had a knock on effect of not providing magistrates with the right information to be able to sentence appropriately.

HMPPS research had found a significant variability in the quality of reports, with many simply stating an issue of 'low maturity' rather than giving the necessary specific information on how this impacted on behaviour and appropriate sentencing. Training was being developed to improve report writing, including ensuring the importance of including reference to maturity, even where it has been assessed as not relevant, was understood. It was pointed out that currently where maturity was not mentioned, magistrates were left unsure whether this was because the issue had not been considered, or had been considered but was not relevant.

While some participants felt that resourcing issues were probably the key driver in the decline in reports produced, participants also pointed to the importance of magistrates in creating demand for assessments to be carried out, and adequate information being provided to them. It was felt that magistrates had to be responsible for ensuring they had the necessary information to make informed and appropriate decisions. So they should be given the knowledge and confidence both to request the right information from probation and others, and to ask for more information if a PSR was of insufficient quality to give them the information they needed.

Participants discussed the need for the purpose of a PSR to be understood as a professional assessment of an offender overall, not just a tool for supporting a preferred sentence. HMPPS research had found a split in views on the purpose of PSRs among both magistrates and probation staff, with a significant number taking an instrumental view, and seeing them as a process that must be gone through to give a sentence already decided upon from the sentencing guidelines. Clearly this approach would prevent proper consideration of the relevance of an offender's lack of maturity, along with other relevant factors.

Roundtable participants felt that overall, magistrates' confidence in the probation service had fallen. One likely reason for this was suggested as the change in the probation officer role meaning they had less presence in court, and therefore it was more difficult to establish positive relationships with magistrates. This had changed the culture in courts, with one participant referring to a 'generational change' with newer magistrates not being familiar with probation officers' previous more involved role in the court process, which meant they were less likely to look to them for detailed input. While guidance and training were seen to be highly important, the need for stronger relationships, and greater trust between probation and sentencers should not be forgotten.

- **Magistrates were seen to have a central role to play in balancing the conflicting priorities in the system and developing a culture where information on maturity was requested, produced and considered**

Participants thought it was impossible to discuss the appropriate response to a lack of maturity without considering the current problems within the system, mostly related to a lack of resources and a focus on increasing efficiency. With the current HMCTS focus on streamlining court processes, there was a concern that their 'direction of travel is not aligned with engagement and rehabilitation'.

Participants were clear that sometimes conflicting incentives and priorities in the system hampered consideration of young adult maturity in court. In particular the push for speedy justice and sentencing on the day created pressures against taking the time required for adequate assessment of offenders before sentencing. Financial incentives, including set fees for legal aid solicitors, were also suggested as creating a bias against requests for delay. Magistrates were seen to play a key role in handling these pressures and conflicts, by prioritising ensuring a just process, as also mentioned by our focus group participants. Therefore magistrate understanding and confidence in dealing with issues related to maturity were seen as being able to make a significant difference.

In relation to the importance of magistrates being confident in pushing back against PSRs of poor quality, and asking for more information where necessary, it was felt that positive relationships between probation and magistrates were key. Participants felt that examples of good practice where magistrates did not allow the various pressures of resourcing and time to prevent them ensuring the process was fair, or that the necessary assessments were carried out (as needed for detailed PSRs) were usually where there were positive relationships, built on trust, between probation and the bench.

- **Direct engagement from the bench could not substitute for a proper assessment of maturity, and could be a negative experience.**

One of the issues discussed by the roundtable was whether the bench directly engaging with a young adult should be encouraged as good practice. It was agreed that this was common practice in youth court, where magistrates all had specific training in the skill of engaging with young people, but it was not seen as that common in adult court. Therefore participants felt there was inconsistent ability among adult magistrates, as they did not all have the necessary experience to engage with a young adult effectively. It was agreed that some magistrates would need a lot of guidance to be able to directly engage with young adults effectively and fairly. It was also suggested that magistrates had a poor sense of how such engagement might feel from the young adult's perspective. It was felt that it could often be a traumatic and disorienting experience for the young adults concerned. A defence solicitor explained that they made sure they took the time to prepare young people for engagement from the bench when preparing for court with a presiding magistrate who was likely to do so, as it could otherwise be an overwhelming experience for the young adult.

It was also felt that a bench directly engaging with a young adult should not rely on that engagement to assess maturity. It was pointed out that a lack of maturity could affect the way a young adult presented in court in variable ways, including leading a young adult to mask real feelings. The point was made that how someone presents in court was not a good indicator of their level of maturity. Overall, it was felt that little of complex issues such as maturity could be grasped from interactions between a bench and a young adult. This was in line with comments from magistrates in our focus groups, that it was very hard to form an impression of a defendant or offender from the bench.

Ethnicity, gender and maturity

- Issues of ethnicity and gender, and their intersections, were important to a full understanding of young adult maturity.

Issues of ethnicity, gender and intersectionality were proactively raised and discussed by participants, which is in contrast to the focus groups with magistrates. The Lammy Review and the disproportionate representation of young black men in the criminal justice system was felt to be an important reference point for any work with young adults and the criminal justice system.

Some participants also made contact with the research outside of the roundtable to both stress how important they thought these issues were, and to provide more detail on their views. For example, one participant explained that from their experience, young women tended to internalise trauma rather than, as seems more typical of young men, acting it out, and could therefore present as much more mature than they were. Another highlighted how ethnicity and gender intersected from their experience of working with young South Asian women, where in some communities the culture restricted young women's opportunities outside the home, leading to fewer opportunities for the social interaction needed for the development of maturity.

Participants did however also recognise the difficulties in training magistrates for irregularly seen, small cohorts of offenders with specific needs. Again, the solution was agreed to be for robust and detailed assessments to be carried out and presented to the court, so any issues specific to an offender can be considered by sentencers.

Summary

It was agreed that understanding maturity, and how it impacted on a young adult's behaviour, was key, but that it was also important for all actors in the justice system to have the same underlying understanding:

- A common understanding of young adult's developing maturity, and its significance, was developing across the sector and magistrates must be part of this development.
- The developing discourse on the issue must include other court actors, such as HMCTS and solicitors, so there was common understanding of the effect of a lack of maturity in practice.

This was linked to the need for more training, which should be consistent across different actors and agencies, although it was agreed that training for magistrates should be specific to their role, and provide practical support:

- Training and awareness of the importance of the issue must also be practice oriented and specific to the tasks of the system, including sentencing.

The need for magistrates to be given robust, evidence based assessments in relation to a defendant or offender's lack of maturity was seen as vital:

- Magistrates were identified as having a key role to play in creating demand for high quality PSRs, including considerations of maturity, for young adults.
- Magistrates were also seen to have a central role in balancing the conflicting priorities in the system and developing a culture where information on maturity was requested, produced and considered.
- Direct engagement from the bench could not substitute for proper assessment of maturity, and could be a negative experience.

It was also agreed that issues of ethnicity and gender, and their intersections, were important to a full understanding of young adult maturity.

Key findings and recommendations

This section sets out the key findings from the research and the recommendations to address them. The eleven recommendations identify action both for the MA and for other relevant stakeholders.

Key finding: Maturity is not regularly raised as an issue relevant to decisions relating to either defendants' participation in the court process or sentencing.

Survey results supported the existing anecdotal evidence that suggests defendant and offender maturity is not routinely or regularly raised in magistrates' courts when dealing with young adults. For a lot of magistrates, maturity is rarely or never raised: 54% of survey respondents stated it was never or rarely raised in relation to participation, with 42% of respondents stating it was never or rarely raised in relation to sentencing. The focus groups discussion revealed how varied the picture is across England and Wales. In line with the survey, most rarely saw maturity raised as an issue. However, magistrates from some areas reported much more frequent consideration of the issue in their courts.

The focus groups also revealed magistrates' perceptions were that there were many less mature individuals appearing in court that were not identified as such, with most participants agreeing that a very large number of the young adults before them may well have a lack of maturity. Our research showed a concern by magistrates that a lack of information on offender maturity in PSRs might impact on sentencers' capacity to sentence appropriately. However, the research also showed that it was even less likely that information would be provided on a lack of maturity before the court process, which magistrates felt could negatively affect less mature defendants' right to participate fairly and effectively in the court process.

The evidence from the literature review supported the intuition from magistrates that a lack of maturity was a significantly more widespread and impactful issue than currently recognised within the court process. It also supported the views of magistrates that the maturity of young adults would not always be relevant in the same way – with it being more important for some individuals and in some cases than others. The criminological, psychological and neuroscientific evidence all indicated that the process of development occurring during young adulthood could give rise to behaviour that can be linked to certain offending behaviours. However, it also indicated that the majority of young adults will rehabilitate successfully away from offending behaviours, if given the right support. Both the academic evidence and magistrates' comments reinforced the message that young adulthood is a critical time in which effective sentencing can make a real difference in relation to rehabilitation.

Recommendation 1: Greater consideration should be given to maturity throughout the process.

Overall, there must be a greater recognition of the relevance of maturity for the criminal justice system and this is especially the case for the young adult cohort. The system should better recognise that 18-24-year olds are still developing neurologically and in their psychosocial maturity, and that this has significant implications for fair participation for young adult defendants, as well as their responsibility for offending behaviour and likely response to sentencing options.

Recommendation 2: The government and the senior judiciary should consider developing distinct court processes for young adults to reflect their stage of development and make the transition from youth to adult court less stark.

The contrast between youth and adult courts was raised as a particular problem, with magistrates mentioning the arbitrary cut-off at 18, which is not related to a young adult's maturity. Overall, magistrates felt there could be some form of intervening stage between youth and adult court processes, which took account of the fact that this cohort were still developing, and therefore needed to be treated separately from older adults.

If this is not possible, and young adults are to remain in adult courts as they stand, it was agreed that magistrates should take a different approach to young adults within the existing structures. It was suggested that magistrates who currently only sit in the adult court could learn from those who also sit in youth court, especially in relation to presiding over a court process in a way that ensures young adults can participate fairly and effectively.

Recommendation 3: Liaison and Diversion schemes should assess the maturity of all young adults along with any other vulnerabilities.

Our research indicated that where magistrates are given sufficient detailed information about maturity, they are more confident in their ability to respond appropriately. It was very clear that it is therefore important for magistrates to be given clear information about how any lack of maturity was identified as relevant to the specific case in front of them.

Our research also indicated, that at the moment, magistrates most commonly saw lack of maturity being raised before conviction by defence solicitors. This is not preferable for two reasons. Firstly, it means that unrepresented defendants are at a disadvantage, as information relating to their lack of maturity is less likely to be provided. Secondly, while it was agreed that the defence may raise the issue early on, and that magistrates saw it as their role to do so, they also made it clear that this was most usually in the form of a largely unsupported statement. Several magistrates contrasted this situation to medical conditions introduced for consideration, explaining that the information they would need at this stage should be as an assessment made independent of the defence, akin to medical evidence. Magistrates are, then, looking for independent assessments to provide robust evidence on lack of maturity, so they can respond appropriately. This also reflects the fact that there was a concern among some magistrates that defence practitioners may raise lack of maturity as an issue in all cases by default.

Other court actors such as magistrates themselves, legal advisers and ushers do also currently raise any lack of maturity when they are concerned it may be an issue, but they are not trained to do so, and this is not common practice.

Magistrates preferred approach would therefore be for this information to come from independent sources and for the supporting evidence and the method of assessment to be clearly explained. It would be preferable, therefore, for Liaison and Diversion teams to carry out assessments which routinely consider where maturity is a factor and indicate clearly whether it is relevant or not.

In focus group discussions, magistrates distinguished between the levels of information received before and after any verdict. The benefit of Liaison and Diversion teams carrying out assessments is that they should be done at police stations, which would mean magistrates have the relevant information at the start of the court process and can therefore make informed decisions. This can include case-management decisions governing participation, but the maturity of the defendant may also affect bail or other decisions made earlier on in the process.

Recommendation 4: The National Probation Service should ensure that maturity is considered in all PSRs for young adults and that it is indicated where it is not a relevant issue.

Magistrates were more likely to receive information on maturity post-conviction, in a PSR. However, magistrates reported that current pressures on the system meant that PSRs were less detailed, and that there was increasing pressure to sentence without standing down for report preparation, so increasing numbers of reports were on the day, oral reports. Regardless of the format of a PSR, our research showed, the detail provided on maturity was very variable. Magistrates revealed significant differences in the level of information on maturity contained in these reports in different areas, and also discussed variability of coverage by report writer. These observations were supported in discussion with the probation service, whose research found a decline the production of written PSRs and significant variability in how the issue of maturity was covered within them.

There is evidence of good practice in some areas of the country, where magistrates reported that PSRs gave them the information they needed, including on any lack of maturity in young adults. This should be built upon and input from magistrates on how information on maturity should be presented should be considered. For example, our research showed that magistrates thought it vital that, where a young adult's maturity had been assessed but considered not a relevant factor, this should also be included in the report. Currently, where maturity was not mentioned in a PSR, magistrates said they were left guessing whether it had been considered but was not a factor, or simply not assessed. In addition, any reference to maturity should be specific to the individual and their offending behaviour, which would help answer magistrate concerns over a lack of maturity becoming a default mitigation for all young adults.

Recommendation 5: The Magistrates Association should develop a prompt to act as a reminder for magistrates to consider whether a lack of maturity is an issue for a young adult at all stages of the court process

Our research showed that even though young adults were less likely to be mature, which could impact on all stages of the court process, maturity was not presently being considered as a relevant issue for the majority of cases. It is therefore important that (along with training to be discussed later) magistrates are given a prompt to remind them that maturity should be considered in relation to dealing with young adults before them. This approach was felt to have worked well with other issues, for example, with the MA's prompt card for 'Vulnerable Persons in Court', which provides the bench with some basic statistics and information about vulnerabilities that may affect people before them.

While magistrates thought that generally the level of maturity of young adults should be taken into consideration more often, they also agreed that it was important that assumptions should not be made in relation to any cohort before them. Magistrates were very clear on their role being to assess each individual case on its merits. In addition, our research found that generally magistrates agreed that it was difficult to assess maturity from the bench, and they would be looking for an expert to carry out an assessment. So the purpose of the prompt would be to encourage magistrates to ask for an assessment to be carried out, if it had not already been done. As mentioned above, Liaison and Diversion teams should be available to carry out such assessments at any point of the court process.

Recommendation 6: Magistrates should ask for assessments of maturity for this cohort to be included in PSRs

Discussion with the National Probation Service revealed their view that magistrate requests for reports were an important driver of demand in the system. The MA should therefore take the lead in encouraging magistrates to ask for probation to carry out assessments of maturity for this age group, including adjourning cases, if necessary, where sufficient information had not been provided in a PSR.

Key finding: Developing maturity can affect fair and effective participation

Discussions among the focus groups indicated that magistrates clearly understood that developing maturity would impact on the ability of a defendant to understand and therefore engage with the court process. In particular, it was pointed out that young adults who were in their late teens might well be very similar to 17 year olds in respect of communication skills. The cut off of an eighteenth birthday to decide whether an individual was dealt with in youth or adult court was raised as having a huge impact. The different approach taken in youth court was discussed as particularly relevant here: with a focus in youth court of ensuring the process is informal and child-focused. However, in adult court, it was agreed that generally there was less engagement with defendants, as well as less flexibility in adapting the process to ensure less mature defendants could follow what was happening. In particular, the use of complex, archaic language was seen as a problem, specifically in relation to ensuring that less mature individuals can understand the outcome of a process. The impact of young adults not fully understanding a sentence, and what they need to do to comply with any orders, was raised as the main concern.

Recommendation 7: Magistrates must understand the importance of procedural fairness, and those presiding in adult court must be aware of what steps should be taken to ensure young adults can participate fairly and effectively

Magistrates were clearly aware that levels of maturity could affect the capacity of a defendant to fairly and effectively participate in the court process, especially if they were unrepresented. The importance of an assessment being carried before the first court hearing is therefore vital (see above), but magistrates then also need to be given the training to understand how to ensure fair participation.

The following are key aspects that should be included in relation to how young adults are treated in adult court to ensure fair and effective participation:

- Young adults should be supported through pre-court preparation to understand and engage with the court process. Defence solicitors often play an important role in this regard but it is important that they are given sufficient time with their clients before any hearing. Magistrates must also be aware that where young adults are unrepresented, they may not be prepared before a hearing, and the process should be clearly explained to them at the start.
- It is clear that all young adults may struggle to understand and engage with the court process due to a lack of maturity. It is therefore important that magistrates ensure all parts of the process are understood by engaging with the parties, and ensuring they are using simpler language, particularly in relation to any sentence given.
- Use of intermediaries or support workers should also be considered by magistrates for this cohort to ensure less mature defendants have sufficient support to engage with the process.

It is important to note that many of the steps that could be taken to ensure fair participation of people who lack maturity are arguably simply good practice and should be taken for all individuals. For example, explaining the process in simple language can be a benefit for all parties, especially if they are unrepresented.

Key finding: Lack of maturity is relevant to sentencing and must be considered in sentencing decisions

Our research showed that lack of maturity was relevant to sentencing in two separate ways: firstly it could impact on the responsibility of the offender, which should be considered as a mitigating factor. Secondly, lack of maturity might affect what were the most appropriate sentencing options.

In relation to the first point, our research indicated that magistrates felt the Sentencing Council's new expanded explanations provided very useful guidance on how lack of maturity should affect a sentencing decision. There were some concerns raised during the focus groups around the need for sentencers to balance various different factors, including the need to be consistent and fair as well as to respond appropriately to the individual case in front of them. It is therefore important for any training provided in support of the new Sentencing Council guidelines to enable discussion around these points among magistrates.

In using guidelines, it is important for sentencers to be aware of any relevant case law, and there are a number of judgments that can assist in providing guidance on how this mitigating factor should be used. Age is clearly seen as very relevant, with judgments stating that when sentencing 18 year olds, it is important to consider relevant youth justice guidelines, and to take account of the fact that an individual's maturity does not change automatically on their eighteenth birthday. However, the need to consider any lack of maturity as distinct from age, where it is shown to affect either an individual's understanding of the offence or their responsibility for their behaviour, is less clear. Research by the Sentencing Council showed that, when discounting age, lack of maturity was little used as a mitigating factor in crown court. This research project has shown this is similarly true in magistrates' court. There might be further scope for research to look at whether age and lack of maturity should be more clearly distinguished in relation to sentencing.

Recommendation 8: The Ministry of Justice and HMMPs should ensure that, as part of the probation reforms, appropriate sentencing options are available for young adults, including effective programmes targeted towards developing thinking skills

A concern identified during the focus groups was that, even where lack of maturity was identified as a relevant factor, and the sentence was amended accordingly, it was relatively rare for specific sentencing options to be available for this cohort, which would target their level of maturity and therefore be effective in rehabilitating them. Criminological research indicated that the young adult cohort were highly susceptible to desistance, and therefore could be successfully rehabilitated with the right support. Again, our research indicated that there was much to learn from the youth court, where specific programmes can be available as part of a sentence to support young people to develop their thinking skills. Programmes specifically adapted for young adults should be available in all areas as sentencing options.

Recommendation 9: Local sentencer-probation liaison should be prioritised, through regular meetings and provision of information made available to all magistrates to ensure they have full knowledge of the sentencing options available.

Sentencers need to know what sentencing options are available in their area (especially where there is geographical variation), and how effective they are. Previous research by the MA showed that sentencer knowledge about sentencing options was linked to their confidence in using those options. This was especially important where community options may be used as alternatives to custody.

Key finding: Tailored training on young adult maturity for magistrates can make a significant difference.

Our research found that magistrates have a good intuitive understanding of the issues surrounding young adults and their developing maturity. While they may not have a full conceptual understanding of young adults' developing maturity, their insights from their experience generally tallied with the findings of recent academic research. Training focused on their needs in their role as magistrates could help sharpen this understanding in areas of uncertainty and help clarify elements of their experience. In particular, training should explore and inform magistrates on the links between adolescent and young adult brain development and its practical implications for what magistrates might see in court in terms of behaviour.

In particular, magistrates' discussions demonstrated an understanding of aspects of psychosocial maturity, particularly on impulse control, consideration of longer term consequences, and taking the perspective of others. Further discussion of the Sentencing Council's 'expanded explanation' on maturity was found by all to help clarify and sharpen their thinking in this area.

Magistrates were less well informed on the aspects relating to neuroscience and criminological research, but they were clear that they did not need to be experts on all the nuances of research. Training for magistrates should, they felt, focus on giving them enough background information so they can respond to expert assessments and understand how developing maturity may affect offending behaviour. Some of the discussions at the focus groups revolved around the need to ensure a sentence was fair and specific to the individual but also balanced different factors such as punishment, deterrence and the victim's rights. Magistrates were also aware of the need to ensure a consistency of sentencing approach, which could be challenging when focusing on the individual needs of the offender.

Familiarity with concepts such as the age-crime curve and the dual systems model were not necessarily seen as required, although they might help magistrates make coherent sense of elements of their experience with young adults. For example, in both survey responses and focus groups, many magistrates seemed to find the observation that very many of the young adults before them were still developing in terms of maturity problematic for the use of a lack of maturity as a mitigating factor. Therefore, appreciating how developing maturity may affect some behaviours but not others would help magistrates understand when maturity is relevant to their decisions. Similarly, understanding the high prevalence of adolescent take up and desistance from offending behaviour may help magistrates understand how the criminal justice system can best respond to young adults' developing maturity.

Similarly, magistrates often mentioned things such as the voting age, or the age of eligibility to sit as a magistrate, as factors complicating consideration of maturity. In focus group discussion, magistrates also repeatedly returned to the idea of the age of criminal responsibility and knowledge of right from wrong, even when nominally rejecting the latter as indicating maturity. Understanding that the neurological systems associated with logical reasoning and knowledge develop at a different stage to those related to control of emotions and impulses would help magistrates better understand the impact on decision-making that affects offending behaviour. For example, it might be useful for magistrates to understand the difference between young adults acting in conditions of either high or low levels of emotional stimulus ('hot' or 'cold' decision making).

Training that helps magistrates distinguish between normal processes in the development of maturity and the impact of adverse childhood experiences (ACEs) and traumatic brain injuries (TBIs) would also help clarify their understanding of the issue. While magistrates understood that young adults were often still maturing, this issue was often confused with instances of arrested or retarded development. Greater clarity would help magistrates take account of both normal processes of maturation, and the impact of ACEs and TBIs in decision making.

Recommendation 10: The Magistrates Association should provide information for members on young adults developing maturity, focused on their needs in their role as magistrates

The MA has an important role in working with the Judicial College and HMCTS to develop and provide training materials for magistrates on the issue of maturity. We developed resources in response to this report, and will work with other appropriate agencies to encourage take up of this training. We have pulled together a number of suggestions that should be integrated into any new training:

- **Training should incorporate the Sentencing Council's Expanded Explanation on lack of maturity and supporting case law**

All participants in the focus groups found the expanded explanation very helpful in clarifying the issues they had been discussing. The explanation was developed from existing good practice, with the relevant case law also demonstrating the application of regard for a lack of maturity to sentencing.

Good awareness of both the explanation underlying the Sentencing Council guidelines on 'lack of maturity' as a mitigating factor, and the supporting case law, will help support magistrates in raising the issue in a pressured environment.

- **Training should include overviews of the research relevant on young adults developing maturity**

Awareness of the existing research on young adult maturity and offending will help magistrates clarify their understanding of the issue developed from their experience. In discussion, magistrates expressed a particular desire for an overview of the neuroscientific evidence relating to brain maturation.

- **Training should not just be online**

Magistrates gave positive feedback on existing online training related to equalities and diversity, with many suggesting training on maturity could form part of the same package.

However, magistrates also all agreed that discussing the issue with other magistrates, as in our focus groups, helped enormously in developing their understanding and in increasing their confidence in raising it as an issue in court. Magistrates also valued the chance to understand how practice varied across regions and to share best practice.

- **Where possible, training should involve other court participants**

Those magistrates with personal experience discussed the value of joint training with the probation service, particularly in understanding each other's experience and needs. Magistrates were also clear that without similar training on young adult maturity for other actors, especially legal advisors, it would be much harder to ensure courts were responding appropriately. It was therefore agreed that joint training with legal advisers would be useful to ensure a common understanding and approach.

- **All magistrates should be encouraged to observe cases in youth court as part of their training**

All magistrates who also sat in youth court felt that the training they received, and experience they gained from this, were invaluable to their understanding and confidence in handling issues of young adult maturity in adult courts. It was suggested that best practice might be for there to be a youth-trained magistrate sitting on every bench dealing with a case involving a young adult. However, it was recognised this might not be feasible, and that a better approach would be to increase all magistrates understanding and exposure to youth court practice. In particular, those presiding in adult court should receive additional training on dealing with young adults.

Key finding: Magistrates have a valuable contribution to make to the sector's discussion on improvements to the system's handling of young adults

The criminal justice system as a whole is in the process of responding to the evidence on the development of young adult maturity and its implications for criminal justice. Magistrates' general level of understanding of maturity seemed to reflect that of many actors working in the criminal justice system; with the probation service also recently conducting research and developing training on the issue. The sector as a whole acknowledges there is still improvements to be made, and it is important that magistrates are part of the discussion on changing policy and practice for two reasons. Firstly, consistency of understanding and approach is the best way forward, so there should be multi-agency discussion and co-operation. Secondly, magistrates' viewpoint on young adult maturity and offending is distinct, deriving from their decision-making role. Their decisions are structured to start with the offence, before considering aggravating and mitigating factors, giving a perspective that magistrates feel is different from others involved in the process.

Magistrates also have a key role in balancing pressures and managing relationships within the court. Again, this gives them a unique perspective to contribute. Additionally, it could be useful for magistrates to understand what other actors in the system are looking for from them. For example, it became clear from discussions with the probation service that they see magistrates as important to creating a demand for reports to include issues of maturity, and in ensuring the reports produced cover the information required for good decision-making.

Recommendation 11: The Magistrates Association should ensure there is continued dialogue on the issue with other services, especially probation and Liaison and Diversion services.

The MA has an important role to play in ensuring that the findings of this report continue to be relayed to policy-makers and practitioners working on the issue of maturity in the justice system. The MA should also continue to promote active engagement locally, regionally and nationally between the magistracy and other services that work with defendants and offenders in the justice system.

Conclusion

Both the scientific and criminological research strongly suggests that the criminal justice system should develop a distinct approach for young adults that takes into account their developing maturity. There is now widespread recognition of this among criminal justice practitioners, statutory agencies and policy makers and progress has been made in recent years in ensuring that the issue of maturity is considered across the justice system. This is most evident in the context of this report in the Sentencing Council's decision to include 'lack of maturity' as a standard mitigating factor in its guidelines.

The extent to which this, and the broader recognition of the importance of developing maturity, has affected practice in court settings has, however, rarely been robustly examined and no significant research has been carried out in magistrates' courts, where the vast majority of criminal cases are heard. The research carried out for this report therefore looked at both magistrates' knowledge and experience of the issue of maturity and what magistrates would need in a practical sense in order to make informed decisions about whether maturity was relevant to an individual's behaviour and, if so, how to respond.

The research found that maturity is not regularly raised as an issue in magistrates' courts, despite the fact that young adults are a significant cohort dealt with by magistrates and the evidence base indicates that most young adults will still have developing maturity. This suggests that a lack of maturity is not being raised in cases where it is likely to be a factor. We therefore recommend that assessments of maturity for this cohort are routinely carried out by Liaison and Diversion teams, as well as probation. Where assessments are not being carried out, magistrates should be asking for further information to inform their decision-making.

The research also found that not all magistrates are confident in responding to a lack of maturity appropriately. To address this, magistrates should be given a better general understanding around maturity – and training on this is therefore required – but also be given clear information about the maturity of an individual appearing before them as it relates to the specific case, from those with expertise and using clearly identified assessments.

In response to these findings, the MA developed materials on maturity for our members. They covered a general understanding of brain development and maturity and how it relates to the court process, including both fair and effective participation and sentencing, in relation to both an offender's responsibility for an offence and the most appropriate sentencing options for this cohort to support rehabilitation.

This project has provided invaluable insight into the issue of maturity and how it is understood and experienced within magistrates' courts. It sets out a series of important recommendations that, if taken forward, would help to improve the treatment of defendants and offenders who lack maturity, securing better participation and fairer and more effective outcomes for this key cohort.

Appendix I: Sentencing Council General Guideline – Expanded Explanations

Effective from: 1 October 2019

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Age and/or lack of maturity can affect:

- 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

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.

Lack of maturity 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.

A less mature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

A less mature 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.

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.

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). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Appendix II: Survey questions

Q1. What is your branch?

Q2. How often do you see the immaturity of the defendant/offender raised in court?

- a) In relation to decisions on ensuring the fair and effective participation of a defendant?
- b) In relation to sentencing decisions, as a mitigating factor?

Options: Very often/often/sometimes/rarely/never

Q3. In your experience, who is most likely to raise the immaturity of the defendant in relation to ensuring their effective and fair participation?

Options:

- Defence
- Crown Prosecution Service
- Probation service
- Liaison and Diversion
- Other

Please rank in order of the most likely to raise immaturity (as 1) to the least likely to raise immaturity (as 5).

Q4. If other, please list who else might raise immaturity.

Q5. In your experience, who is most likely to raise the immaturity of the offender as a mitigating factor in relation to sentencing decisions?

Options:

- Defence
- Crown Prosecution Service
- Probation service
- Liaison and Diversion
- Other

Please rank in order of the most likely to raise immaturity (as 1) to the least likely to raise immaturity (as 5).

Q6. If other, please list who else might raise immaturity.

Q7. How confident are you in responding appropriately to immaturity, if it is raised as an issue.

- a) In relation to how it affects the effective and fair participation of the defendant
- b) In relation to how it affects sentencing decisions as a mitigating factor?

Q8. What do you think would help you feel more confident in responding appropriately to ensure an immature defendant can effectively and fairly participate in court proceedings? (Please select as many as you feel are appropriate).

Options:

- More information about the offender
- More guidance
- More training
- More understanding on how immaturity
- Other (please specify)

Q9. What do you think would help you feel more confident in dealing with immaturity as a mitigating factor? (Please select as many as you feel are appropriate).

Options:

- More information about the offender
- More guidance
- More training
- More understanding on how immaturity can affect culpability
- Other (please specify)

Q10. If you answered in Q9 that you would benefit from more information about the offender, how should this information be introduced? (Please tick as many as you feel are appropriate).

Options:

- From the defence
- From the probation service
- From Liaison and Diversion
- The bench speaking to the offender directly
- Other (please specify)

Q11. Would you consider the immaturity of a defendant/offender as an important factor for other court decisions, including: (Please tick as many as you think appropriate).

Options:

- Bail decisions
- Allocation decisions
- Adjournments
- Other (please specify)

Q12. If you have any further comments on the issue, please add them here.

Q13. We will be carrying out further research on this topic over the summer via focus groups. If you are interesting in getting involved in either running or being part of these, please provide us with your contact details here.

Appendix III: Other sources raising immaturity in court

The tables below give the most frequently mentioned 'other' sources raising immaturity in relation to participation and sentencing, given in the survey of magistrates.

Table 1. 'Other' sources raising immaturity in relation to participation in court (262 responses).

Source	Number	%
Magistrate/bench	107	40.8
Legal clerk/adviser	41	15.6
Parent/family/friend	40	15.3
Accompanying adult/professional (social worker/support worker/mental health etc.)	33	12.6
Witness	25	9.5
Character reference/employer	10	3.8
Defendant	7	2.7
Police	4	1.5
Victim	2	0.7

Table 2. 'Other' sources raising immaturity in relation to sentencing (193 responses).

Source	Number	%
Magistrate/bench	102	52.8
Legal clerk/adviser	34	17.6
Parent/family/friend	22	11.4
Accompanying adult/professional (social worker/support worker/mental health etc.)	23	11.9
Witness	9	4.7
Character reference/employer	3	1.6
Defendant	6	3.1