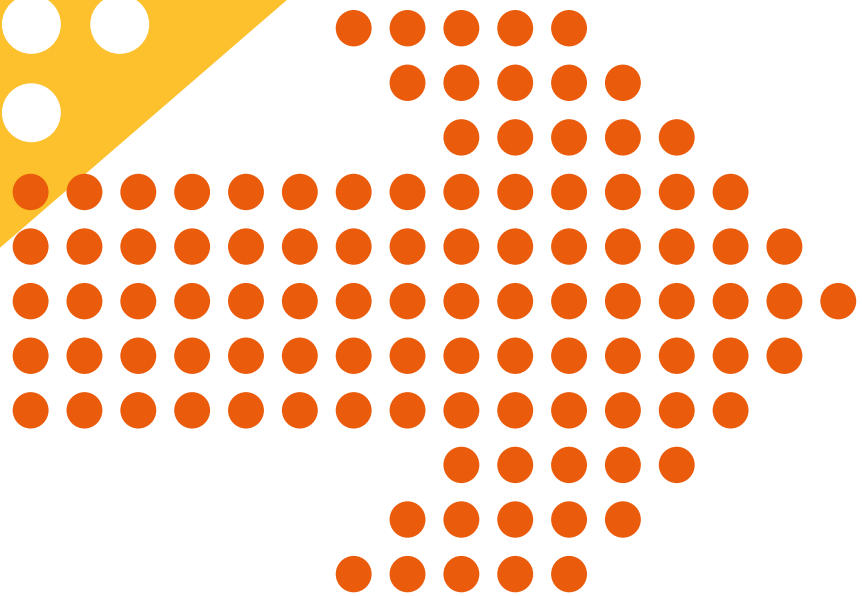




Transition to
Adulthood



YOUNG ADULTS ON REMAND

A Scoping Study for T2A

Rob Allen



is convened
and funded by:



ABOUT TRANSITION TO ADULthood (T2A)

T2A is a broad coalition of organisations, which evidences and promotes the need for a distinct approach to young adults (18-25 year olds) throughout the criminal justice process. Building on the work of the 2005 Commission on Young Adults and the Criminal Justice System, the T2A Alliance was convened by the Barrow Cadbury Trust in 2008. T2A has produced more than 40 research and policy reports, and has worked with researchers, experts, professional bodies, policymakers and service users to make its case for change.

www.t2a.org.uk

www.barrowcadbury.org.uk

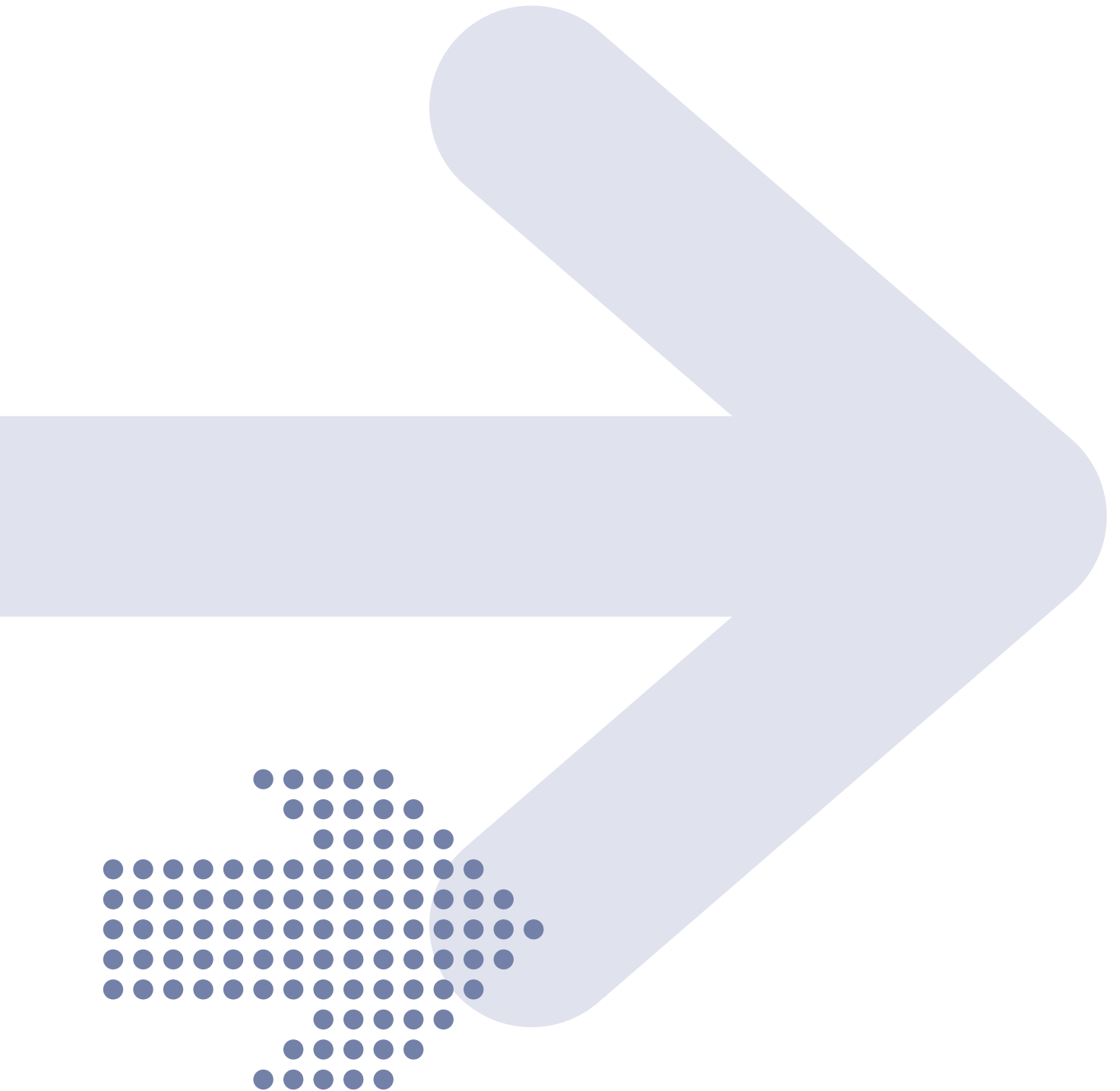
ABOUT THE AUTHOR

Rob Allen is an independent researcher and consultant in the field of criminal justice and prisons. Rob was director of the International Centre for Prison Studies (ICPS) at King's College London from 2005 until 2010 and was a member of the Youth Justice Board from 1998 to 2006. He has written widely on youth and criminal justice in the UK and abroad. In 2013 he wrote 'Young Adults in Custody – the way forward' and in 2016 'Meeting the needs of young adult women in custody' for T2A. Rob was Chair of the T2A Alliance from 2008-10.

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1. INTRODUCTION

For the last 15 years, T2A has undertaken a range of work designed to bring about responses to young adults in conflict with the law which properly reflect their developing maturity. Young adulthood is a distinctive period of development. T2A has amassed an irrefutable body of evidence about advances in behavioural neuro-science that have found that the typical adult male brain is not fully formed until at least the mid-20s, meaning that young adult males typically have more psychosocial similarities to children than to older adults.

The Justice Committee concluded in 2018 that “there is a strong case for a distinct approach to the treatment of young adults in the criminal justice system” and that “dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood”.¹ Given the growing backlog in courts and the highly restricted regimes in prisons during the COVID-19 pandemic, it is particularly timely to consider the case for reform of remand arrangements. Extended Custody Time Limits, introduced in September 2020 in response to the challenge of managing court delays, threaten to leave “thousands of people who have not been sentenced to prison at risk of languishing in jail for even longer during the pandemic”.²

The recognition of the need for a distinct approach to young adults has already led to a number of important reforms in criminal justice. Among the most significant are the expanded explanations in Sentencing Guidelines about how age and immaturity can affect both a young adult’s responsibility for an offence and how a particular sentence may impact on them. The new guideline – which came into force in October 2019 – says that “either or both of these considerations may justify a reduction in the sentence.”

.....
¹ The treatment of young adults in the criminal justice system <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2015/young-adult-offenders/>

² <https://howardleague.org/blog/custody-time-limits/>



While it is not clear whether the Sentencing Guidelines explanations have yet led to the development of age appropriate sentencing, the Sentencing Council identified “the potential for the guideline to lead to further decreases in {custodial} sentencing for adults aged 18 to 25.”³

By contrast, there has been no analogous action taken in respect of the treatment of young adults at the pre-trial stage of criminal proceedings. Young adults remanded in custody can be deprived of their liberty for many months, often experiencing very impoverished regimes and being placed at risk of violence and self-harm.

The aim of this paper is to identify whether the specific developmental needs of young adults are taken into account by courts when making decisions about whether to remand defendants into custody.

In particular it looks at:

- whether there are provisions in the law which require a distinctive approach to young adults at the remand stage of criminal proceedings
- whether the criminal justice agencies and courts consider the maturity of young adult defendants when making decisions about remanding them
- the adequacy of alternatives to remand in custody available for young adults, particularly young women, people from BAME backgrounds and defendants with mental health problems
- the impact of proposals made by the Government, including those in the White Paper ‘A Smarter Approach to Sentencing’, on young adult bail and remand decisions and
- what measures could be taken to improve the distinctiveness of remand arrangements for young adults

.....
³ <https://www.sentencingcouncil.org.uk/wp-content/uploads/General-and-expanded-explanations-resource-assessment.pdf>



2. TRENDS IN YOUNG ADULT CUSTODIAL REMAND

In 2018 almost 3,000 18 to 20-year olds were remanded to prison before trial and almost 2,000 were held in custody between conviction and sentence. In September 2019, almost 1,000 in this age group were in prison custody on remand. Numbers in the 21 to 25 age range are significantly higher although the published data does not enable them to be separately identified. Data on the length of time spent on remand is hard to obtain, but it has recently been estimated that the mean period is about 40 days.⁴

Chart 1 shows that the numbers of 18-20 year olds remanded to custody over the course of a year more than halved over the last decade. This partly reflects falls in the number of criminal proceedings during that period. The rate of 32.2 court appearances per thousand 18 to 24 year olds in the population of England and Wales in 2010-11, dropped by 53% to 15.2 per thousand in 2017-18.⁵ The total number of convicted offenders (of all ages) fell from more than 1.4 million in 2009/2010 to less than 1.2 million in 2019/20, a reduction of 17%. For more serious offences, the decline has been almost 40%.⁶

But the declining numbers remanded to custody may also reflect changes in the law – in particular the introduction of measures in 2012 designed to limit custodial remands to cases where there is a real prospect of a custodial sentence in the event of conviction.⁷

Chart 2 shows that the numbers of 18-20 year olds held on remand in prison on any one day has also fallen but less sharply than the numbers received over the course of a year.

Chart 3 shows that there has been an even less sharp fall in the number of 21-24 year olds on remand in prison. Chart 3 also compares trends in young adults held on remand with the numbers of children under 18 detained before trial. The average population of children on remand has also declined but at a slower rate than the fall in custodial sentences for this age group. The latest NAYJ State of Youth Justice Report has found “a further worrying growth, of around one third, in the number of children remanded to the secure estate over the past two years (from 2018-2020). As a consequence, the proportion of all children in the secure estate subject to remand has risen over that period from 21% to 28%”.⁸ Troublingly too, in 2017/18, Black, Asian and Minority Ethnic children on average, made up 57% of the youth remand population, compared to 41% in 2010/11.⁹

4 <https://questions-statements.parliament.uk/written-questions/detail/2020-09-23/94574#>

5 Hughes N and Hartman T (unpublished), Young adults in court: shrinking numbers and increasing disparities

6 Data from Criminal Justice Statistics – Quarterly update: the year ending March 2020 Table Q3.3 - Offenders found guilty at all courts by offence group, 12 months ending March 2010 to 12 months ending March 2020 <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2020>

7 (see para 14 below)

8 Bateman 2020 The state of youth justice 2020 An overview of trends and developments <https://thenayj.org.uk/cmsAdmin/uploads/state-of-youth-justice-2020-final-sep20.pdf>

9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881317/tackling-racial-disparity-cjs-2020.pdf



Despite the welcome decline in the numbers of young adults remanded in custody, there is scope for reducing them yet further. In the year ending March 2020, 15% of untried admissions of adults to prison were for drug offences, 13% for theft and 12% for summary offences. For women, the largest group was theft offences which accounted for 19% of untried admissions.¹⁰

In the 12 months to March 2020, of the 51,000 defendants – of all ages – remanded in custody by magistrates, most – more than 33,000 – were sent for trial or committed for sentence in the Crown Court. Of the remaining 18,000, 4,500 were acquitted and more than 6,000 received non-custodial sentences.¹¹ A recent research study by Ed Cape and Tom Smith found that “nearly half of those people who are kept in custody at some stage before their trial or sentence were either found not guilty, or if found guilty, were given a non-custodial sentence”.¹²

Specific data is not available about the extent to which young adults remanded to custody subsequently receive a custodial sentence but in the case of children under 18 and women of all ages, the majority do not. In the year ending March 2019, over two thirds of children under 18 remanded to youth detention accommodation did not subsequently receive a custodial sentence.¹³

The number of young women remanded to custody is much smaller than men; there were 147 untried admissions of 18-20 year old women during 2019. In 2019, 39% of adult males in the Crown Court were remanded in custody compared to 23% of adult females¹⁴. A recent study has found that “almost two-thirds of women (in all age groups) remanded to prison by magistrates are either found not guilty or are given a community outcome.”¹⁵

10 Offender management Statistics Receptions Table 2b <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>

11 Criminal Justice Statistics - year ending March 2020 Table 4.4 Defendants for trial by court type, type of remand and outcome of proceedings, 12 months ending March 2020 <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2020>

12 Cape, Ed and Smith, T. (2016) *The practice of pre-trial detention in England and Wales: Research report*. Project Report. University of the West of England, Bristol. Available from: <http://eprints.uwe.ac.uk/28291>

13 Howard League 2020 Ending the detention of unsentenced children during the Covid-19 pandemic

14 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888657/remands-crown-court-tool-2019.xlsx

15 <https://howardleague.org/wp-content/uploads/2020/07/Rethinking-remand-for-women.pdf>



Data shows that larger proportions of defendants from minority ethnic groups were remanded – either on bail or in custody than those from white groups.¹⁶ In 2018, a smaller proportion of white defendants (38%) were remanded in custody at Crown Court compared to defendants from minority ethnic groups. The groups with the highest proportion of defendants remanded in custody were Black (46%), Chinese or Other (46%) and Mixed Ethnicity (45%). Black and Chinese or Other defendants were 22% each more likely and Mixed Ethnicity defendants were 18% more likely to be remanded in custody than white defendants “a trend which has been relatively stable over the last 5 years”.¹⁷

This may explain why Black and Minority Ethnic groups are over-represented among those remanded to custody in Crown Court cases. The table below shows that one in five of all those remanded to custody in 2019 were BAME. Of those in the young adult age range, as with children, the proportion is one in three, as it has been for the last four years.¹⁸

Moreover, “despite Black defendants being more likely to be remanded in custody at Crown Court, they are less likely than white defendants to go on to receive an immediate custodial sentence at the conclusion of proceedings”.¹⁹

YEAR	2015	2016	2017	2018	2019
Total RIC	39,138	35,216	32,938	31,138	31,680
Of whom BAME	8,561 (22%)	7,693 (22%)	7,044 (21%)	6,426 (21%)	6,408 (20%)
Children	576	455	509	512	526
BAME Children	219 (38%)	192 (42%)	186 (37%)	191 (37%)	170 (32%)
Young Adults	3,972	3,389	3,177	3,067	2,897
BAME Young Adults	1,214 (31%)	1,065 (31%)	1,073 (34%)	988 (32%)	928 (32%)

16 MoJ Statistics on Race and the Criminal Justice System 2018

17 Ibid

18 Data from MoJ (2020) Criminal Justice System Statistics publication: Remands at the Crown Court: Pivot Table Analytical Tool for England and Wales, December 2015-December 2019, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

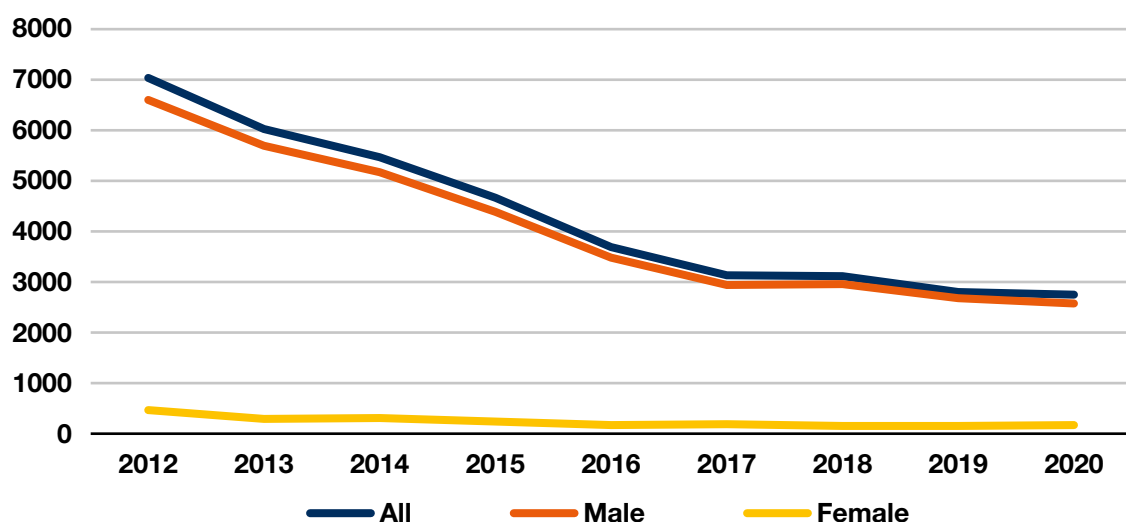
19 Amendment to the Prosecution of Offences (Custody Time Limits) Regulations 1987 (1987/299) to extend the amount of time a defendant can be held in custody prior to their Crown Court trial due to Covid-19
Equality Impact Statement



CONCLUSIONS ON TRENDS

While there have been welcome falls in the numbers of young adults remanded to custody, there is scope for reducing these further and for addressing the racial disparities in decision-making which are suggested by the statistics. Many of the defendants charged with summary offences and theft should be capable of remaining in the community pending trial.

Chart 1 Untried Admissions to Prisons of 18-20 year olds 2012-2020 ²⁰



²⁰ Data from Prisons Reception Tables Jan to March 2012 to 2020 Remand admissions into prison by type of custody, age group and sex Offender Management Statistics Quarterly <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>



Chart 2 18-20 Year Olds on Remand 2012-2020 ²¹

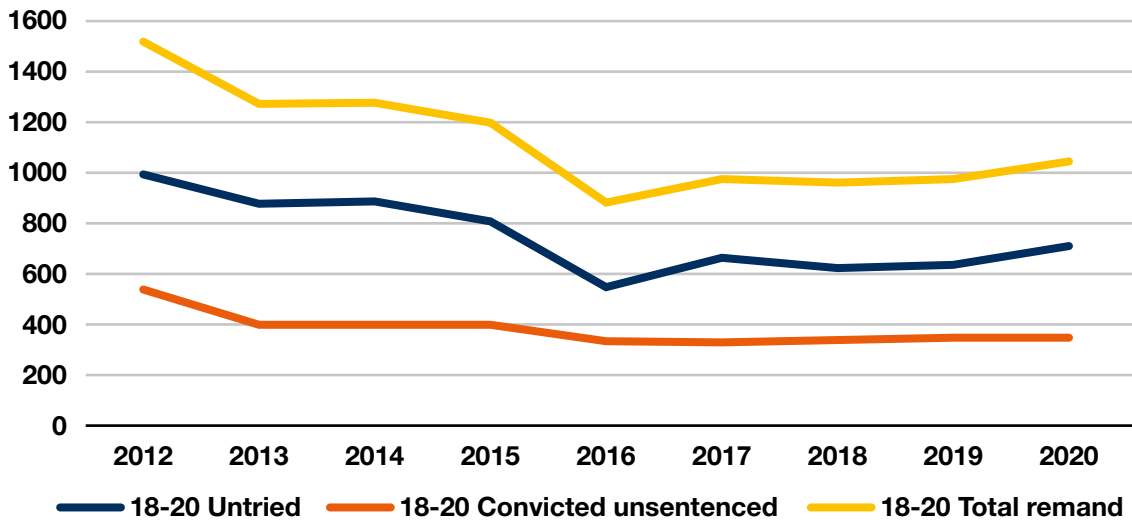
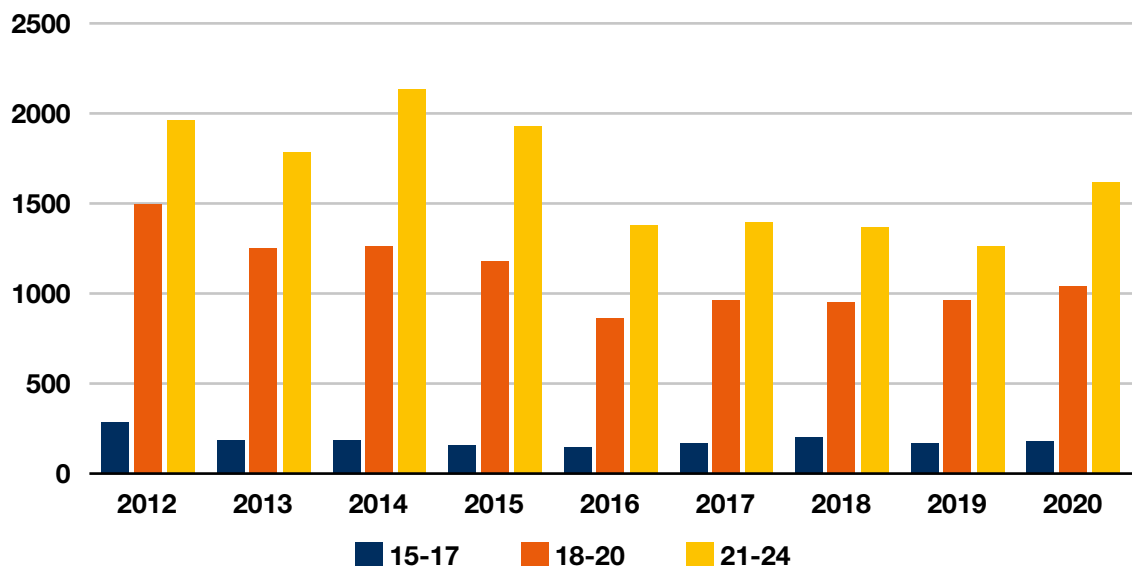


Chart 3 Children and Young People on Remand in Prison 2012-20 by Age Group ²²



²¹ Data from Prison population: June 2002 to June 2020 Table A1.1: Prison population by type of custody, age group and sex <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>

²² From Annual Prison Population:2020 Prison population: June 2002 to June 2020. Table A1.7 Prison population by type of custody, age and sex; 30 June 2002 to 30 June 2020 <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-january-to-march-2020--2>





3. LEGAL PROVISIONS

The law on bail and remand is complex but the basic structure is the same for both children under the age of 18 and for adults over 18. The decision to remand in custody or on bail is made when a case is adjourned usually on the application of the Crown Prosecution Service. The Adult Court Bench Book which provides guidance for magistrates makes clear that:

*“each application requires a judicial decision and should be considered carefully. The court needs to be satisfied that any adjournment has a clear objective and is for the shortest period necessary. It must ensure that the case proceeds as expeditiously as is consistent with the interests of justice and the right to a fair trial. Therefore, before deciding on the remand status of the defendant, consider whether the case needs to be adjourned at all”.*²³

At each hearing the court must consider whether or not the defendant ought to be remanded. A remand can be on bail or in custody. In some cases, a simple adjournment, which places no restrictions on the defendant, will be sufficient.

The starting point for most bail decisions is that the defendant has a right to unconditional bail.²⁴ The prosecutor may oppose bail and apply for a remand in custody instead if there are relevant exceptions to the right to bail. The court has an inquisitorial role in deciding about remand and a defendant should not be remanded in custody unless they are legally represented or have been given the opportunity to apply for legal representation.

While there are slight differences in the law depending on the type of offence with which a defendant is charged, the basic exceptions to bail are that:

- There are substantial grounds for believing that the defendant would fail to surrender, commit an offence on bail, or interfere with witnesses or otherwise obstruct the course of justice.
- There are substantial grounds for believing that the defendant would commit an offence on bail by engaging in conduct that would or would be likely to – (a) cause physical or mental injury to an associated person; or (b) an associated person to fear physical or mental injury.²⁵
- It appears to the court that the defendant was on bail on the date of offence.
- Having previously been released on bail in, or in connection with the proceedings, the defendant has been arrested for failing to surrender or for breach of bail conditions.
- The defendant should be kept in custody for his own protection

²³ Judicial College 2020 Adult Court Bench Book page 35 <https://www.judiciary.uk/wp-content/uploads/2020/06/Adult-Court-Bench-Book-June-2020-1-1.pdf>

²⁴ There are special rules in cases where the defendant is charged with murder, or offences of homicide or rape where there is a previous like conviction and special cases involving drug users who test positive for class A drugs. There is no general right to bail once a person is convicted and awaiting sentence.

²⁵ Associated person is defined as spouse/civil-partner, cohabitants or those in an intimate relationship of a significant duration.



- a. The defendant is a serving prisoner
- b. It is not practicable to obtain sufficient information for the purpose of determining bail for want of time since the institution of proceedings against the defendant.
- c. Where a case is adjourned for inquiries or a report, it is impracticable to complete inquiries or make a report without keeping the defendant in custody.

Exceptions a), c) and d) cannot apply if there is no real prospect that the defendant will be sentenced to custody in the proceedings. This “no real prospect test” was introduced in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in an effort to reduce unnecessary remands in custody.²⁶

If the defendant does not pose a real risk in relation to any of the exemptions, they should be released on unconditional bail. Unconditional bail imposes an obligation on the defendant to attend court on the correct date and time but does not impose any further restrictions on them.

If there is a real – that is not fanciful – risk in relation to one or more of the exemptions, the court should consider whether it might be mitigated by the granting of conditional bail. Any conditions should be necessary to address the particular risks identified (e.g to ensure attendance at court, to prevent offending on bail, or to prevent interference with witnesses or obstruction of the course of justice). Conditions must be clear, precise, unambiguous and easily understood; practical; enforceable and reasonable.

Examples of commonly imposed conditions are: residence – to lower risks of absconding; curfew – (with or without electronic tagging) – to decrease risks of further offending; and not contacting named witnesses – to prevent obstruction of the course of justice.

If conditional bail is not considered sufficient to allay fears about the identified risks, then the court can refuse bail. In doing so, the court must state the particular exceptions which they have found and their reasons. These may include the nature and seriousness of offence, the likely sentence; the character, antecedents, associations and community ties of the defendant; the strength of evidence against them; their previous record of being granted bail; and the risk that the defendant will engage in conduct likely to cause physical or mental injury.

A defendant has two opportunities to apply for bail in a Magistrates’ Court, and a right to apply to the Crown Court thereafter. Once a defendant has exhausted these opportunities, although the court must consider the issue of bail at each hearing prior to conviction, the defendant only has the right to make a further application for bail if there has been a material change of circumstance.²⁷

Research has found that if the court remands a defendant to custody “the burden of persuading a subsequent court that they should be released often effectively shifts to the defendant”.²⁸

.....
²⁶ Schedule 11

²⁷ See Cape and Smith page 94

²⁸ Ibid page 8



There are limits on the length of time that a defendant who has been refused bail can be kept in custody before their trial. Custody time limits can be extended by the courts if there is a good reason but under emergency regulations introduced in response to the COVID-19 pandemic, the period of time that people can be held in custody awaiting trial in the Crown Court has been increased by 56 days, from 182 to 238 days for cases sent for trial²⁹. The Government has acknowledged that there is potential for the proposed change to lengthen the amount of time a proportion of defendants would spend in prison who would later be found not guilty, or found guilty but not receive an immediate custodial sentence.³⁰ According to the Equality Impact Statement produced in relation to the measure, extending the amount of time a defendant can be held in custody may pose a risk of indirect discrimination by putting Black and Minority Ethnic defendants at risk of particular disadvantage. At the very least, it is likely to compound the disproportionality that already exists within the Crown Court remand population.³¹

CHILDREN

When dealing with a child under the age of 18, the process in the early stages is largely the same as for adults although the law allows a child to be kept in custody for their own welfare rather than protection. The court must also have regard to the welfare of the youth (s. 44 of the Children and Young Persons Act 1933). This includes a specific obligation to consider a bail application, even if the court has refused bail twice and there is no change of circumstances nor any considerations which were not before the court when the youth was last remanded.³² For adults, repeated bail applications normally require a change of circumstances.

Where bail is refused, children are remanded to local authority accommodation unless certain criteria apply, in which case they are remanded to youth detention accommodation – in a secure children's home, a secure training centre or a young offenders institution.

Conditions – similar to bail conditions – can be imposed on the defendant in addition to the remand to local authority accommodation. Requirements can also be imposed on the local authority to ensure that the defendant complies with any conditions imposed, for example in relation to where the child should stay.

A remand to youth detention accommodation results when the risks of granting bail cannot be sufficiently addressed by the use of bail conditions or a remand to local authority accommodation and certain criteria are satisfied. There are two sets of criteria, either of which must be satisfied, before a youth can be remanded to youth detention accommodation.³³ The first set of conditions is effectively based upon the seriousness of the offence – limiting their application to children charged with or convicted of a violent or sexual offence or an offence punishable in the case of an adult with

29 https://www.legislation.gov.uk/uksi/2020/953/pdfs/uksi_20200953_en.pdf

30 Amendment to the Prosecution of Offences (Custody Time Limits) Regulations 1987 (1987/299) to extend the amount of time a defendant can be held in custody prior to their Crown Court trial due to Covid-19: Equality Impact Statement

31 https://www.legislation.gov.uk/uksi/2020/953/pdfs/ukspes_20200953_en.pdf

32 (R (on the application of B) v Brent Youth Court [2010] EWHC 1893 Admin.)

33 The criteria are at Annex A to this report



14 years imprisonment or more; and on the need to protect the public or prevent the committing of further offences. The second set of conditions is for other imprisonable offences, but the court can only remand if there is a real prospect of a custodial sentence and where there is a history of offending on bail or while remanded to local authority accommodation.

The Government's 2020 White Paper A Smarter Approach to Sentencing proposes strengthening the legal tests for custodial remand for children by raising the threshold for imposing such remands and requiring courts to record their rationale.³⁴

YOUNG ADULTS

In legal terms there are no special considerations in respect of young adults aged 18-20. Indeed, it was only in the 2012 LASPO that 17 year olds were included in the remand arrangements for children. Until then, they were treated as adults for remand purposes.

Whether a defendant appears in the adult or youth system depends on age at first appearance and plea. They could be 17 when they commit the offence but be dealt with as adults, an issue recently explored by Just for Kids Law and the Youth Justice Legal Centre.³⁵ The House of Commons justice Committee has been particularly concerned about:

“the effect delays will have on defendants turning 18. Delays in getting to court may increase the possibility of those who committed their offence at 17, being dealt with in the adult system, as they turn 18 whilst awaiting trial. Delays may mean that their first court appearance may not take place until they have turned 18, and thus they face being convicted as adults, which could mean longer sentences and rehabilitation periods. There is a vast gap between the youth and adult criminal justice system, and those in this position may find that they lose access to crucial youth offending services, such as diversion schemes. The Ministry should set out how many defendants currently find themselves in this position, and what is being done to address this issue”³⁶.



³⁴ <https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing>

³⁵ Timely Justice: Turning 18 A briefing on the impact of turning 18 in the criminal justice system Just for Kids Law/YJLC <https://www.t2a.org.uk/wp-content/uploads/2020/06/Turning-18-Briefing.pdf>

³⁶ House of Commons Justice Committee Coronavirus (COVID-19): The impact on courts <https://committees.parliament.uk/publications/2188/documents/20351/default/>



What the Committee did not mention is that these young people may lose access to the special remand arrangements for children. A recent report for T2A found that “once a person has turned 18, there is a much higher likelihood of a custodial remand due to the lack of bail support available”.³⁷ Sentencing Guidelines say that where an offender has turned 18 between the committing 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. There is a case for an analogous approach to be taken in respect of remand decisions.

CONCLUSION ON LEGAL PROVISIONS

Asked about remand arrangements for young adults, one of the magistrates in a focus group held for this study said: “It’s still a cliff edge with separate systems in terms of law and rules”. The youth justice system has both an intermediate step between bail and custody in the form of local authority accommodation; and significantly tighter criteria for detention at the pre-trial stage. Despite sharing many of the characteristics of children under 18, young adults are treated in law in the same way as older adults.

Cape and Smith’s study found that the law on pre-trial detention has become “very complex and it was not fully understood by all of the criminal justice personnel who has to implement it. Whilst the law requires judges and magistrates to fully explain to a defendant why bail is denied, with specific reference to the facts of the case and the circumstances of the defendant, this often does not happen in practice. This means that many defendants may not understand why they are being remanded in custody and leads many defence lawyers to believe that the courts favour the prosecution”. It is plausible to think that young adults in particular may struggle to understand the reasons for their detention even where these are given. Work to identify a more distinct and procedurally fair criminal justice process for young adults has identified the need for follow up after hearings with young adults asked whether they have understood what happened.³⁸

³⁷ Timely Justice: Turning 18 A briefing on the impact of turning 18 in the criminal justice system Just for Kids Law/YJLC <https://www.t2a.org.uk/wp-content/uploads/2020/06/Turning-18-Briefing.pdf>

³⁸ Centre for Justice Innovation A fairer way Procedural fairness for young adults at court https://justiceinnovation.org/sites/default/files/media/documents/2019-03/cji_a-fairer-way_digital.pdf





4. MATURITY AND REMAND DECISIONS

While the law on remand for young adults does not reflect their developing maturity, it is possible that in policy or practice the agencies involved in day to day decision making may take age and developmental factors into account.

Despite the inquisitorial nature of remand proceedings, an important role is played by the CPS which can oppose the granting of bail if they consider that one or more exceptions to the right to bail apply in a particular case.

Guidance for prosecutors lists the kind of information that they will need from the police in order to decide whether the exceptions to bail are made. These include:

- Any history of offending, absconding or witness interference whilst on bail in the current or in previous proceedings;
- Any express or implied intention to continue to offend, abscond or interfere with the course of justice and any apparent motive for doing so (for example, to obtain money for the purpose of drug purchases);
- The extent to which the defendant has continued to offend whilst subject to other Court orders and any relevant breach proceedings;
- Any previous breaches of bail conditions in earlier or concurrent proceedings or a history of absconding and failing to surrender to custody;
- Any evidence of violence or threats towards or undue influence over the victim of the crime, or other vulnerable witnesses;
- The degree of temptation to abscond (although the likely sentence cannot of itself provide grounds for a remand in custody);
- Any factors which might affect the defendant's ability to comply with bail conditions, such as drug or alcohol dependency.

Prosecutors should ensure that the victim's views are considered in deciding whether to seek a remand in custody.

The guidance requires that care be taken "with mentally disordered offenders to ensure that the risks of the future events are reduced in a way most compatible with their proper care and treatment (for example by diversion to a recognised medical treatment scheme or by a remand on bail to an appropriate probation or medical facility).



For under 18's, prosecutors should be mindful of their duty to have regard to the interests of the youth and the principal aim of the youth justice system, which is to prevent offending when considering representations in respect of bail. They should also advise the defence solicitor, the court and the youth offending team of any information on the CPS file that indicates that a youth remanded to youth detention accommodation “has any physical or emotional maturity issues or a propensity to self-harm to enable the child to be placed appropriately”.³⁹

There is no mention in the guidance of the need for any special approach to be taken in cases involving young adults. This is despite the fact that the Code for Crown Prosecutors contains the welcome requirement that when assessing whether prosecution is in the public interest, “prosecutors should consider the suspect’s maturity, as well as their chronological age, as young adults will continue to mature into their mid-twenties”.⁴⁰

Nor is there much evidence that magistrates always give sufficient consideration to the maturity of young adult defendants at the remand stage of proceedings. It is welcome that the Equal Treatment Bench Book (ETBB), which gives guidance for courts on treating people fairly, quotes the Justice Committee’s view that “dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood”.⁴¹ The ETBB contains warnings about the overuse of custodial remand for the purpose of facilitating psychiatric assessments and as a place of safety for vulnerable individuals. The guidance also makes clear that “where bail is granted subject to residence at ‘approved premises’⁴², these need to be suitable for the particular defendant”.

Although the ETBB does not express the law, judges are encouraged to take its guidance into account wherever applicable. Particularly relevant to bail and remand decisions is the recognition that “flawed interventions that do not recognise young adults’ maturity can slow desistance and extend the period of involvement in the system”. Nevertheless, the Adult Court Bench, which is used for reference at court and deals much more comprehensively with the legal and procedural issues relating to bail and remand, includes nothing about any special arrangements for young adults.

Magistrates who took part in a focus group for this study felt that youth magistrates who sit in adult court may place a higher weight on maturity, but this can be inconsistent. Youth magistrates (about 15% of JPs) may not be able to persuade their adult court colleagues of its significance. One said that he has heard colleagues say: “He’s 18 , he’s old enough to know what he’s doing”.

For the magistrates in the focus group, taking account of maturity does not necessarily mean harsher or more lenient decision-making but it does affect communication and engagement. Even if an intermediary is needed in the case of a 20 year old, indicating the defendant is vulnerable, the cut off in relation to decision-making remains, as adult court processes must be followed.

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³⁹ <https://www.cps.gov.uk/legal-guidance/bail>

⁴⁰ <https://www.cps.gov.uk/publication/code-crown-prosecutors>

⁴¹ <https://www.judiciary.uk/wp-content/uploads/2020/05/ETBB-February-2018-amended-March-2020-17.09.20-1.pdf>

⁴² Approved Premises were formerly known as probation or bail hostels.



The magistrates pointed out the significant distinction between youth and adult court, “where punishment is higher up the pecking order”. Parents are involved in the youth court – certainly for under 17s – but not at all in the adult court. The Youth Offending Team (YOT) is always in attendance in the youth court and tends to know the individual defendant well. They are proactive. There may be a probation officer in the adult court, but “they are unlikely to know the back story and are reactive”. Remand decisions are usually made quickly, and maturity is not necessarily assessed.

The views of these magistrates are supported by empirical research which has found that “the courts devote little time to pre-trial detention hearings, caused in part by high caseloads and a lack of resources. The provision of relevant information to defence lawyers, and to a certain extent to the courts, is often limited and very dependent on case summaries provided by the police. As a result, decisions are made by the courts without full knowledge of the relevant facts”.⁴³

In five respects, it seems particularly important that courts do give fuller attention to the circumstances of a young adult defendant. The first concerns the impact that a custodial remand is likely to have on young adults. Sentencing guidelines require courts to consider that “an immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.”⁴⁴ The guidelines also say that the emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

Lord Harris’s 2015 report on self-inflicted deaths among 18-24 year olds found that of the 83 young adults who died from self-inflicted deaths between April 2007 and December 2013, 29 were not serving sentences but were on remand, (including three who were convicted but waiting to be sentenced).⁴⁵ In respect of the impact of custody, it would seem logical that courts should take into account a defendant’s maturity when deciding whether to remand them to custody in the same way that they now do when deciding whether to impose a custodial sentence.

The second reason for special attention being given to young adults concerns the fact that in most cases, courts should not remand a defendant of any age to custody unless there is a real prospect that they will be sentenced to custody in the event of conviction. Arguably therefore, in reaching a remand decision courts should be considering the likely sentence – and in the case of young adults taking on board factors relating to age and maturity.

43 Cape, Ed and Smith, T. (2016) *The practice of pre-trial detention in England and Wales: Research report*. Project Report. University of the West of England, Bristol. Available from: <http://eprints.uwe.ac.uk/28291>

44 General Guideline Overarching Principles

45 Harris 2015 Changing Prisons, Saving Lives Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf>



The third argument for taking a more specialised approach to young adults flows from the Sentencing Council’s view that “an immature offender may find it particularly difficult to cope with the requirements of a Community Order without appropriate support”.⁴⁶ Taking steps to ensure that such support is in place may be as important at the remand stage as after sentencing, especially when conditional bail is granted.

Fourth, as the Sentencing Council has recognised, 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. This is an important consideration for courts to take into account when considering risk – although so too will be factors linked with immaturity which may make further offending more likely.⁴⁷

Finally, where a convicted offender is a care leaver, courts 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. These matters need to be considered at the remand stage of criminal proceedings as well as at sentencing because the local authority may have continuing responsibilities and may be able to contribute support which could help secure bail.



.....
⁴⁶ General Guideline Overarching Principles

⁴⁷ For example, young adults may be less able to evaluate the consequences of their actions, limit impulsivity or limit risk taking. They are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.



The kind of practical measures which courts might take in respect of young adult defendants have been explored in a recent report by the Centre for Justice Innovation.⁴⁸ Relevant elements of their proposed model to provide procedurally fairer hearings include:

- Providing better information to young adults before attending court;
- Holding a pre-court meeting on the nominated day to identify any communication needs, reports to be prepared, and those known to be unrepresented;
- Preparing young adults for the opportunity for direct engagement with the bench;
- Ensuring timely probation reports are completed;
- Enhancing engagement during the hearing itself.

CONCLUSIONS ON CONSIDERATIONS OF MATURITY

Despite strong grounds for criminal justice agencies and courts to take account of the maturity of defendants at the remand stage, requirements or guidance that they should do so are much more limited than they are at other stages of the process such as prosecution and sentencing.



48 CJI A fairer way Procedural fairness for young adults at court https://justiceinnovation.org/sites/default/files/media/documents/2019-03/cji_a-fairer-way_digital.pdf






5. ALTERNATIVES TO CUSTODY

Recent research has found that:

*“the courts make extensive use of conditional and unconditional bail, so that the majority of people facing a criminal charge are not locked up unless and until they are found guilty and given a custodial sentence. However, the use of alternatives to custody, in particular conditional bail, is limited by a lack of bail information schemes and facilities such as bail hostels. In addition, confidence in conditional bail is weakened by a lack of faith that conditions are adequately enforced”.*⁴⁹



BAIL INFORMATION

Bail information schemes, which are both court and prison based, exist to provide factual, verified information, in addition to that otherwise available, to the CPS (and the defence) to assist it to decide whether there are grounds for asking the court to release a defendant on bail rather than remand them in custody. Bail information should address the specific concerns expressed in opposition to bail and also draw attention to the defendant’s character, antecedents, community ties which are relevant to the remand decision. Bail information is not therefore, simply a case of providing details of suitable accommodation, but also looks for factors such as the defendant’s reliability, employment record, family responsibilities and support services in the community.⁵⁰

National standards for probation services state that timely provision of information to assist in decisions on bail helps to avoid unnecessary remands in custody.⁵¹ But there has been no requirement for this to be provided systematically. Magistrates in the focus group told us that what they do is “not enough, but they are limited in their resources”. The Cape and Smith Study found that a number of prosecutors were positive about what probation and bail information staff could do.⁵²

⁴⁹ Cape, Ed and Smith, T. (2016) *The practice of pre-trial detention in England and Wales: Research report*. Project Report. University of the West of England, Bristol. Available from: <http://eprints.uwe.ac.uk/28291>

⁵⁰ Prison Service Order 6101 <http://www.justice.gov.uk/downloads/offenders/psipso/pso/pso-6101-bail-info-scheme.pdf>

⁵¹ Practice Framework National Standards for the Management of Offenders for England and Wales August 2015

⁵² Cape and Smith Page 89



According to a recent parliamentary answer:

*“currently, no courts or prisons have a full and pro-active Bail Information Service (BIS) with dedicated Bail Information Officers. Although there are no dedicated bail officers, bail assessments can be requested by the Judiciary and HM Prison and Probation Service staff will acknowledge and respond accordingly. Throughout April to August, HM Prison and Probation Service (HMPPS) introduced a temporary BIS in response to Covid-19. As courts and HMPPS services begin returning to business as usual, the service remains available on a reactive basis at the request of the court”.*⁵³



11% of those surveyed by HM Inspectorate of Prisons in young adult prisons between Sept 2017 and July 2019 said that for those who need it, is it easy to get bail information.

This apparent lack of systematic bail information for adults stands in marked contrast to the approach in respect of children under 18 where Youth Offending Teams have been issued with detailed guidance on how to deal with bail and remand matters.⁵⁴ This includes action to reduce the unnecessary use of remands in custody by tackling disproportionality, with regard to sex and ethnicity, and ensuring that bail packages identify measures to address this providing community-based alternatives and consortia arrangements such as enhanced bail support, tracking systems and specialist remand fostering further reducing the length of secure remands by pro-actively securing further listings and informing legal representation of resources available improving assessments and bail information.

It is also the case that since 2013 the costs incurred when under 18's are remanded to custody are met by local authorities. The intention of shifting the entire costs of secure remands to local government was to provide a powerful incentive for local authorities to invest in alternative strategies for this group of young people. The incentive is that local authorities are allowed to keep any surplus from the remand budgets which have been devolved to them by the Ministry of Justice. Something similar is needed in respect of young adults in order to revitalise bail support for this age group.⁵⁵

53 HC Deb, 7 September 2020, cW <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/commons/2020-07-16/75233/>

54 <https://www.gov.uk/government/publications/how-to-manage-bail-and-remand/how-to-manage-bail-and-remands-section-3-case-management-guidance>

55 See Allen R Rehabilitation Devolution – how localising justice can reduce crime and imprisonment. Transform Justice 2015 <http://www.transformjustice.org.uk/wp-content/uploads/2015/12/TRANSFORM-JUSTICE-REHABILITATION-DEVOLUTION.pdf>



BAIL SUPPORT

Magistrates in the focus group for this study said that for young adults there is not as much in the way of bail support as there used to be although there are reportedly pilots schemes underway. For them, having an address is crucial. One said:

“In the adult court, the defendant is really responsible for themselves. Defence and probation may try to put together a bail package, but it is a matter of good will rather than a legal requirement”.

Accommodation was a factor mentioned by many judges and magistrates in the Cape and Smith study with one judge suggesting that a better address, an address out of the area or, if it was a young offender, a return to live with their parents’ would be good reasons to consider a release from Pre-Trial Detention⁵⁶. In their research, Transform Justice also found that lack of an appropriate address was one of the commonest barriers to a defendant getting bail and people having no fixed abode were among those most likely to be remanded in custody.⁵⁷ These findings are likely to apply as much – if not more to young adults than they do to older adults.

Lord Harris in his 2015 report was concerned that courts might feel obliged to remand in custody young adults who do not have an address to which they could be bailed and felt that this problem applied disproportionately to care leavers. He concluded that more needs to be done to ensure that young adults are not being placed in custody because they have had the misfortune to have had a history of being placed in care.⁵⁸

The report recommended that where a young adult is at risk of being placed in custodial remand for reasons that include concern that they do not have suitable alternative accommodation to which they can be remanded, the relevant local authority should either have to provide it, in something similar to the ‘Bail Hostel’ provision, or pay the costs of the custody provided through the prison service. The government rejected this proposal arguing that they had no plans to change the arrangements for accommodation and support for individuals on remand managed through the Bail Accommodation and Support Service (BASS). BASS, they said, provides accommodation and support for the target group aged 18 and over who, without the intervention of BASS would have a strong likelihood of being sent to or remaining in prison.⁵⁹

56 Cape, Ed and Smith, T. (2016) *The practice of pre-trial detention in England and Wales: Research report. Project Report*. University of the West of England, Bristol. Available from: <http://eprints.uwe.ac.uk/28291>

57 Transform Justice 2018 Presumed innocent but behind bars – is remand overused in England and Wales? http://www.transformjustice.org.uk/wp-content/uploads/2018/03/TJ_March_13.03-1.pdf

58 Harris 2015 Changing Prisons, Saving Lives Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 year olds <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf>

59 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486564/gov-response-harris-review.pdf



BASS indeed provides accommodation for a range of people who might otherwise be in prison due to a lack of somewhere suitable to live.⁶⁰ While defendants on bail are the highest priority for BASS, of the 3,925 people referred to it in the 12 months to March 2020, only 606 –15% – were on bail. Four out of five referrals were prisoners released on Home Detention Curfew.⁶¹ This is in spite of the fact that the Cape and Smith study highlighted insufficient bail hostels in their area, particularly for female defendants.

In addition to accommodation provided by BASS, there are about 2,200 beds in so called ‘approved premises’. These comprise 101 probation and independently run hostels whose main purpose is the supervision of people released from prison on licence who present a high risk of harm. They can also accommodate people on bail but when HM Inspectorate of Probation reported on them in 2017, only 0.3% of residents were on bail. The report found that people on bail “rarely meet the risk of serious harm threshold needed for a place”.⁶² It concluded that probation hostels were working well, and more were needed. The government announced in September 2020 that a further 200 beds would be created by extending and reconfiguring existing approved premises but the priority of these as well as of existing accommodation will be to supervise people leaving prison rather than providing alternatives to it⁶³.

A recent parliamentary answer revealed that the number of prisoners of all age groups that declared their accommodation status as of ‘No Fixed Abode’ on their reception into custody in each prison rose from 21,000 in 2015 to 28,000 in 2018.⁶⁴

Disappointingly, research has found that those who had received housing support from BASS were more likely to re-offend after their sentence than those who had not, and that they committed more re-offences⁶⁵. The reason for this is not known, although Cape and Smith were told by a number of judges and magistrates that they had concerns about placing defendants with drug problems in bail hostels because they feared that they are targeted by drug dealers.

60 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767313/bass-policy-framework.pdf

61 <https://data.justice.gov.uk/contracts/bass>

62 HMI Probation 2017 Probation Hostels’ (Approved Premises) Contribution to Public Protection, Rehabilitation and Resettlement <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/07/Probation-Hostels-2017-report.pdf>

63 <https://www.gov.uk/government/news/public-safety-boost-with-more-secure-accommodation-for-prison-leavers>

64 <https://questions-statements.parliament.uk/written-questions/detail/2019-05-22/257596>

65 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627515/bail-accommodation-and-support-service-report.pdf



LIAISON AND DIVERSION SERVICES

Liaison and Diversion (L&D) services aim to provide early intervention for vulnerable people, particularly those with mental health problems, as they come to the attention of the criminal justice system. The roll-out of NHS England commissioned L&D services achieved 100% coverage across England in March 2020. Research has found that “information from the L&D service could inform decisions on whether to remand an individual to custody from court”.⁶⁶ The Liaison and Diversion Standard Service Specification issued in 2019 aims to “demonstrate an understanding of the distinctive needs and characteristics of different age groups, facilitate an integrated model for the different age groups, avoiding duplication of work and supporting the transition between children and young people and adult services and responding to the needs of older people”.⁶⁷ NHS England and NHS Improvement have produced guidance on ‘Developing an all age response’ which includes a section on young adults⁶⁸. This suggests that local services should champion approaches which consider the multiple needs of young adults and makes clear that they have an important opportunity to provide CPS and other decision makers with information on maturity as well as on available packages of support.

LOCATION OF YOUNG ADULTS REMANDED TO CUSTODY

For those young adults who are remanded to custody, the magistrates in the focus group mentioned that they could be placed in a local remand prison such as Pentonville rather than a specialist facility such as Feltham. The government told the Justice Committee in 2017 that:

*“through the expansion of dual designated sites across the male adult custodial estate, the anomaly that young adults were kept on remand in adult prisons has, by default, largely disappeared. Young adults are now held on remand at dual designated sites. We understand that remanded young adults are particularly vulnerable given the potentially unstable circumstances which have led them to be remanded”.*⁶⁹



⁶⁶ The finding “received some support from work undertaken as part of the economic analysis, which found that the National L&D model diverted a higher proportion of cases away from remand compared to the local service. However, other analysis of information in the case management minimum data set found a reduction in remand that was not statistically significant. Given the high proportion of missing data, these results should be treated with caution”.
https://www.rand.org/content/dam/rand/pubs/research_reports/RR1200/RR1283/RAND_RR1283.pdf

⁶⁷ NHS England and NHS Improvement 2019 Liaison and Diversion Standard Service Specification

⁶⁸ <https://www.england.nhs.uk/wp-content/uploads/2020/01/Developing-an-all-age-response-.pdf>

⁶⁹ <https://www.parliament.uk/documents/commons-committees/Justice/treatment-of-young-adults-govt-response.pdf>



Under dual designation, prisoners aged 18,19 and 20 do not share cells with adult prisoners, unless exceptional circumstance apply and, on a case-by-case basis. Separation from adult prisoners in other areas of the prison varies by location (including separate wings).⁷⁰

Recent inspection reports have called this into question. Of the 69 18-20 year olds at Wormwood Scrubs in October 2019, 35 were on remand.⁷¹ Of the 60 18-20 year olds in HMP Wandsworth in March 2018 – a local prison where “remand prisoners were not helped to apply for bail” – 16 were on remand.⁷²

CONCLUSIONS ON ALTERNATIVES TO REMANDS IN CUSTODY

A range of evidence suggests that there may be a lack of community based provision which can act as an alternative to a custodial remand for defendants of all ages and for young adults in particular. Even where this might be available there is no systematic process for exploring its availability through bail information processes in court or prison.

70 <https://questions-statements.parliament.uk/written-questions/detail/2020-07-16/75233>

71 <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/01/Wormwood-Scrubs-web-2019.pdf>

72 <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/07/Wandsworth-Web-2018.pdf>




6. REFORM PROPOSALS

There are no specific government proposals to amend law policy or practice in respect of remands of young adults. However, there are a number of measures in place or planned which *could* have an effect on them.

The temporary extension of custody time limits in response to the effect of the coronavirus pandemic in relation to jury trials could see young adults, along with all other people in prison, spending longer in custody.

The Government has also announced that it will be:

“implementing a Bail Information Service (BIS) pilot involving a number of courts and prisons in England and Wales in the Autumn. These courts and prisons will each have a dedicated Bail Information Officer, and the pilot will aim to inform the design and delivery of a potentially full and pro-active national service. The pilot is due to be completed by Spring 2021, and HM Prison and Probation Service intends to publish a report of findings as soon as practicable after that. This will include plans on the potential extending of BIS availability across England and Wales.”⁷³ The Bail Information Service pilots will operate across seven locations in the North West (Liverpool, Bolton, Manchester x 2, Blackburn and Preston Magistrates Court as well as HMP Styal). The pilot is for men and women.”⁷⁴



⁷³ HC Deb, 7 September 2020, cW <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/commons/2020-07-16/75233/>

⁷⁴ <https://questions-statements.parliament.uk/written-questions/detail/2020-03-17/30716>



While the pilots are not focused specifically on young adults, there may be some benefits for them as a result.

So too with some of the proposals in the 2020 White Paper ‘A Smarter Approach to Sentencing’ which aim to increase the use of out of court disposals and seek to divert vulnerable people more effectively away from custodial remands and sentences. It is encouraging that the Government have said that “prisons should be places where offenders are punished and rehabilitated, not a holding pen for people whose primary issue is related to mental health”.⁷⁵

Less certain is the impact that will result from more remand hearings being held virtually from police stations and defendants participating in court hearings from prison via live links. During the pandemic “thousands of remand hearings have been heard via video, enabling hearings to continue to take place despite the limitations of social distancing”.⁷⁶

A major evaluation of video-enabled remand hearings found that hearings in video courts were generally shorter than those conducted in non-video courts with defendants less likely to have legal representation. Video court made it more challenging for defence advocates and other court professionals to assess defendant demeanour and more difficult for defence advocates to build rapport with their clients. The loss of courtroom formalities could exacerbate the sense of distancing experienced.

There was a particular concern that appearing over the video link could make defence advocates less effective, particularly in relation to bail applications. However, bail (conditional and unconditional) was more common in a video court compared to either of the two non-video court control groups. While the move to centralised remand courts afforded opportunities to deal with cases from a larger geographical area, concerns were raised by participants in the research about the importance of local knowledge (e.g. when setting bail conditions), as well as about the loss of personal ‘case history’ on defendants.⁷⁷

Uncertain too will be the effect on remand of the reunification of the probation service in 2021, although this certainly provides an opportunity to relaunch the service’s work both at the pre-trial stage of proceedings and with young adults.

More promising are the plans to make more restrictive the legal criteria for custodial remand of children under 18. These will strengthen the “real prospect of custody test” in order to raise the threshold for a custodial remand and require courts to record their rationale when it is met; and amend the criteria for youth detention accommodation so that only a recent and significant history of breach or offending while on bail or remand can result in a custodial remand.

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⁷⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918187/a-smarter-approach-to-sentencing.pdf para 185

⁷⁶ <https://questions-statements.parliament.uk/written-questions/detail/2020-08-28/81881>

⁷⁷ Fielding N et al 2020 Video Enabled Justice Evaluation



These legislative changes, along with the development of better alternatives to youth detention accommodation, form the first elements of a broader strategy for reducing unnecessary remands in custody of children. The other elements, yet to be finalised, involve exploring how to reduce the length of custodial remand episodes; looking at the current funding structure and arrangements for local authorities covering the costs of remands; and assessing the effectiveness of data collection regarding the use of remand for children. The Youth Justice Board (YJB) has commissioned research into disproportionality in remand and sentencing, which should help better understand the reasons why disproportionality occurs in these areas. In the light of this scoping study, there is a strong case for developing a similar strategy in relation to the young adult age range.







7. CONCLUSIONS

There are strong arguments in favour of developing and advocating for a strategy to make remand arrangements more suitable for dealing with the developing maturity of young adults. That strategy will need to include four main areas: legal provisions, consideration of maturity, the development of alternatives and the improvement of data collection and monitoring, including data on disproportionality.

LEGAL PROVISIONS

The marked contrast between the criteria for custody for under and over 18's will be heightened if the legal tests for custodial remand for children are strengthened. The Justice Secretary has said that “we are clear that custody, including custodial remand, should always be used as a last resort for children, and the remand framework ensures the court considers all other options, including bail and remand into local authority accommodation, before remanding a child to custody”.⁷⁸

There is a strong case for raising the threshold for imposing custodial remand on young people aged 18-20 as well – for example by restricting them to serious offences and cases with a clear history of offending on bail – and for requiring courts to record their rationale more fully when there is no other option. More restrictive criteria could also be considered for young people up to the age of 25. There is a case too for a more frequent and effective review of remands in custody for young adults and more demanding custody time limits.

For those 18 year olds whose alleged offence was committed when they were 17, a modified version of the criteria for the remand to youth detention accommodation should be met before they can be remanded to prison.

RECOMMENDATION 1

In addition to tightening the criteria for remands in custody for children, the forthcoming Sentencing Bill should introduce specific provisions which aim to reduce unnecessary custodial remands of young adults.

⁷⁸ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/commons/2020-07-16/75233/>



CONSIDERATIONS OF MATURITY

There is no mention of the need to consider the maturity of young adults in the CPS guidance to prosecutors on bail and remand or in the Adult Court Bench Book. Both documents contain flowcharts to explain the remand procedure which could be adapted to include references to age and maturity, drawing on the material in the CPS Code for Crown Prosecutors, Equal Treatment Bench Book and “expanded explanations” of these issues in sentencing guidelines.

The profile of the maturity issue could also be raised through training, which should emphasise the importance of courts giving adequate time to remand decisions, insisting on necessary information being provided, carefully assessing the risks presented, giving young adult defendants specific reasons if bail is refused. Ensuring that young adults understand the decision, the reasons for it and the requirements of any conditions, is particularly important, in line with the principles of procedural justice.

RECOMMENDATION 2

The CPS and judiciary should incorporate a greater recognition of maturity factors in relevant guidance and courts should adapt their ways of working to ensure a fairer and distinct approach to young adults at the remand stage.

ALTERNATIVES TO REMANDS IN CUSTODY

This study has identified shortfalls both in the substantive provision of support for young adults and weaknesses in the process for making it available in a timely way.

There is a need to engage with the Probation Service, the bail information pilots and the Bail Accommodation and Support Service (BASS) to ensure that the needs of young adults are properly addressed as practice develops. There is a particular need to improve the outcomes for those housed in bail accommodation (BASS) pending trial, improve communication of its availability, and explore ways of facilitating the identification of non-BASS accommodation for those on bail. The Probation Service has developed an aide memoire for use when court reports are being completed about women. The aide memoire is designed to prompt probation officers writing pre-sentence reports to consider all areas related to a woman’s offending and to make a robust proposal for a community sentence whenever appropriate.⁷⁹ This could be extended to cover probation involvement at the remand stage of proceedings.

⁷⁹ <https://questions-statements.parliament.uk/written-questions/detail/2020-05-04/42960>



Identifying suitable accommodation should be a central part of a broader pragmatic approach among CPS, defence lawyers and probation staff to create credible and effective bail packages for young adults. Such a co-operative approach needs to be encouraged wherever possible prior to remand decisions being made in court, recognising that an immature defendant may find it particularly difficult to cope with the requirements of bail conditions without appropriate support.

RECOMMENDATION 3

Strategies should be drawn up to ensure sufficient services are available to support young adults on bail, with consideration given to transferring budgetary responsibilities for young adult defendants to a more local level in order to stimulate measures for replacing some of the costly and damaging uses of custodial remand with community-based measures.

DATA COLLECTION

While there is some data available about young adults in the remand process, it is weak compared to the information available on under 18's. In particular, information is not routinely published about young adults from the age of 21 to 25. David Lammy's review recommended that the MoJ should take steps to address key data gaps in the magistrates' court including pleas and remand decisions. This should be part of a more detailed examination of magistrates' verdicts, with a particular focus on those affecting BAME women.⁸⁰ The government reported in 2020 that "new systems are being developed to improve accuracy and consistency of data across the magistrates' court and crown court jurisdictions."⁸¹ But it is not easy to monitor trends and identify the need for intervention.

The Inspectorates of Prosecution, Probation and Prisons, and Ministry of Justice, should also focus more on the remand stage of criminal proceedings in order to scrutinise and improve practice and draw attention to the need for change.

⁸⁰ <https://www.gov.uk/government/publications/lammy-review-final-report> Recommendation 11

⁸¹ Tackling Racial Disparity in the Criminal Justice System: 2020 Update https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881317/tackling-racial-disparity-cjs-2020.pdf



RECOMMENDATION 4

More data should be collected and published to monitor bail and remand decision making in respect of young adults in order to inform efforts both to reduce custodial remands and the disproportionate application of such remands to Black, Asian and Minority Ethnic defendants.





ANNEX: A CRITERIA FOR YOUTH DETENTION ACCOMMODATION

THE FIRST SET OF FOUR CONDITIONS ARE:

1. The defendant is aged 12 or over (the age condition).
2. The defendant is charged with or convicted of a violent or sexual offence or an offence punishable in the case of an adult with 14 years or more (the offence condition).
3. The court must be of the opinion that, after considering all of the options for the remand of the child that only remanding the child to youth detention accommodation would be adequate to:
 - protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or
 - prevent the commission by the child of imprisonable offences (the necessity condition).
4. The defendant is legally represented (or refused or failed to apply for legal representation) (the legal representation condition).

THE SECOND SET OF SIX CONDITIONS ARE:

1. The defendant is aged 12 or over (the age condition).
2. The offence must be an imprisonable offence.
3. It must appear to the court that there is a real prospect that the child will be sentenced to a custodial sentence (the sentencing condition).
4. The child has a recent history of absconding while subject to a custodial remand, and the offence (or one or more of them) is alleged to have been or has been found to be committed while the child was remanded to local authority accommodation or youth detention accommodation or that the offence together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand (the history condition).
5. The court must be of the opinion that after considering all of the options for the remand of the child that only remanding the child to youth detention accommodation would be adequate to:
 - protect the public from death or serious personal injury (physical or psychological) occasioned by further offences, or
 - prevent the commission by the child of imprisonable offences (the necessity condition).
6. The defendant is legally represented or refused or failed to apply for legal representation (the legal representation condition).



Barrow Cadbury Trust

Kean House, 6 Kean Street
London WC2B 4AS
t. 020 7632 9060
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