

Title: Criminal Court Sentencing: The Case for Specialist ‘Young Adult’ Courts

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Abstract

Treating young adults (18-25-year olds) as a distinct group within the criminal justice system is receiving growing support. This paper asks three specific questions. Should specialist young adult courts be introduced so that young age and developing maturity are considered with more consistency across court sentencing; should social background factors be taken into account when appraising culpability and have the 2019 ‘sentencing guidelines’ that give judicial direction for sentence mitigation gone far enough? The paper argues significant gains in sentencing policy have been made, but a specialist young adult court model would ensure a dedicated response to this age group and would foster a shared courts working culture that pursues the common goals of rehabilitation and social pedagogic interventions.

Keywords

‘young adults’, criminal courts, sentencing, social justice, maturity, sentencing guidelines

Introduction

‘Young adults’ (18-25-year olds)¹ in the criminal justice system are receiving focused attention in a number of jurisdictions. This is linked to the emergence of scientific evidence associating these years as a particular stage of neurological and psycho-social development that impacts ‘maturity’ and influences patterns of criminal behaviour. Studies located in developmental psychology find the behaviour of this age group aligned to elevated risk-taking, pleasure seeking, prioritisation of peer-group activity and with less impulse control and rational thinking (Steinberg *et al*, 2015). In England and Wales, in 2019 young adults aged ‘18 to 24’ made up a fifth (21%) of those serving community-based penalties (Ministry of Justice, 2019) and in 2022, 15% of the adult prison population were in the young adult age category (Prison Reform Trust, 2022). Yet, this age group make up eight percent of the general population (NOMIS, 2019), illustrating disproportionality and raising questions on criminal justice system responses. International comparisons illustrate alternative approaches are possible with better opportunities for social and economic inclusion than current penal practice relies.

¹ Various age bands are applied to the category of young adults across different criminal justice initiatives, laws and practices. For instance, 18 to 20-year olds are targeted in some programmes and older ages, such as 18 to 25-year olds are included in others. In this paper, when not referring to a specific programme, for general consistency, the term young adults refers to 18 to 25-year olds.

In most justice systems, young people become the jurisdiction of the adult criminal court at age 18. Though, linked to the scientific research on developmental im(maturity), there is growing support for young adults to be treated as a ‘distinct group’ within the criminal justice system and for the welfare-oriented, rehabilitation approach applied within youth justice extended to this older age category. It is emphasised that developing maturity does not necessarily link to chronological age and the threshold of 18 for transfer to adult justice is unhelpful in much criminal law decision-making (Emanuel *et al*, 2021). Arguments linked to the evidence on developing maturity suggest special considerations of criminal responsibility and culpability are necessary for this age (Farrington *et al*, 2012) and that assessment measures to gauge maturity in some contexts might be needed (Lapp, 2019).

This paper will critically discuss justice system reform in regard to young adults with a particular focus on court sentencing. Specifically, to learn from international legal policy in relation to this age group and to advocate for the creation of specialist young adult courts as utilised in New Zealand (NZ) and in Brooklyn, New York City. It will argue that a young adult courts model would enable a more uniform response to the needs of this age group. The paper also calls for further research that will allow better insights into the sentence experiences of young adults.

The UK is separated into the three separate justice systems – E&W, Scotland and Northern Ireland- each with their own statutory powers, laws and practice. Young adult justice reform is taking place across the UK², however, the English and Welsh justice system is the focus of this paper.

The sentencing stage of the criminal justice process is of fundamental importance. This is due to the far-reaching impact sentence decisions have on people’s immediate and longer-term lives and reputation. There is a growing body of literature on the sentencing of young adults, nonetheless there is little that specifically links to sentencing in the E&W justice system. This leaves unanswered questions on alterations that could be made to improve ‘justice’ at this stage; furthermore, changes that are more attuned to the developing maturity and particular life-stage of this age group. This discussion is of greater necessity when coupled with the often precarious and vulnerable upbringings of many young people in the justice system. Backgrounds of family dysfunction and time spent growing up in state ‘care’ are common (Fitzpatrick and William, 2017), leaving an absence of conventional support and significant coping difficulties.

The central underpinning questions of this paper therefore are:

- should specialist young adult courts be introduced so that age and developing maturity are considered with more consistency across the court sentencing system?
- given many young people in the criminal justice system come from backgrounds of family disadvantage, should attention be paid to these factors when appraising culpability and devising sentences?
- have the 2019 E&W sentencing guidelines, that give direction for mitigation such as lack of maturity and ‘unstable upbringing’ gone far enough? What further changes would enhance a young age and life-phase response?

² Scottish sentencing guidelines effective from January 2022 direct ‘sentencers’ to consider those up to age 25 due to lower maturity (Scottish Sentencing Council (2021).

This paper

i) Builds on the research of Emanuel *et al* (2021) on the changes within the sentencing guidelines of E&W to consider a wider set of factors connected to young age and maturity, Moody's (2021) research that identifies problems relating to assessing maturity in the magistrates' courts and the recommendations for a tailored young adult court model by Thomas and Estep (2015) to improve elements of 'procedural justice' by facilitating active participation in proceedings and understanding of complex legal processes. This paper adds to this research by highlighting how the existing adult courts do not sufficiently address the needs of young adults and that a specialist courts model would ensure a dedicated response to this age group and would foster a shared courts working culture that pursues the common goals of rehabilitative sentencing and social pedagogic interventions.

ii) Examines criminal policy internationally for young adults and gives details from specialist young adult courts. The underpinning principle is that juvenile sanctions focused on 'treatment', rehabilitation and social pedagogy are more effective at reducing re-offending and carry better chances of interrupting criminal careers (Schmidt *et al*, 2021).

iii) Draws on previous courts research carried out by the first author that involved courtroom observation and interviews with lower court magistrates (Ward, 2016)³. A number were serving in the youth and family courts and in the adult courts and had previous professional careers working with young people 'in need'. This evidence is used to advance the argument that the courts and sentencing frameworks of E&W could better acknowledge the 'unfinished development' and vulnerability of many young adults in the criminal justice system.

iv) Draws on the conceptual linking of social justice and criminal justice advanced by others. For instance, Heffernan connected the high prevalence of people from poverty and adversity in the 'misdemeanour courts' of the USA as an example of social justice inequalities. He asks whether 'rotten social background' disadvantage through no fault of the person, such as 'disorderly childhood, poverty, fatherlessness, racial oppression and emotional illness' could be used in personal mitigation for some lower-level offending (*ibid.*:65). Writing later, Henham (2018) argues that retributive sentencing is a hallmark of sentencing policy in E&W, where instead social justice should be a key objective. Henham states 'not only are sentencing policies excessively punitive, they effectively ignore the impact of poverty and inequality on criminality. He says aiming for greater social justice in sentencing could reverse this trend (*ibid.*:1). These points are applicable to this paper's discussion as we suggest social justice and inequality issues should be considered within the context of court sentencing, and that rehabilitative and social pedagogic interventions should be prioritised to account for the life-phase of young adults.

Background

Justice system reform is taking place across different countries in recognition of the young adult life-phase and the different needs of this age group, as well as the life-long implications of a criminal record. This includes the removal of criminal convictions received in youth so that stigma association and future life chances are not reduced, sentencing frameworks that apply the 'juvenile law' to upper age thresholds (21-23 years) as in the German, Dutch and Croatian systems (Matthews *et al*, 2018) and the formation of specialist policies within probation to

³ Thirty three magistrates serving were interviewed between August 2014 and November 2015. Approval was received from Middlesex University School of Law research ethics committee.

support young adults under community supervision (Ministry of Justice/HMPPS, 2022; Grimshaw, 2017).

A range of criminal justice practice is emerging in E&W that supports a shift towards a separate system for the young adult age group and growing evidence on what age and developmentally-appropriate service provision should comprise. Recommendations for better practice in court judging that takes account of maturity have been made (Howard League, 2017) and prosecution (Helyar-Cardwell, 2013) and adult sentencing guidelines (Emanuel *et al*, 2021) have been altered. Procedural changes in the way 17-year olds under Youth Offending Team supervision transfer to adult probation system has also occurred. This is so they are better prepared for monitoring under the adult regime (Youth Justice Board, 2021), that is less defined by developmental and ‘welfarist’ principles. However, further change is required at the courts and the sentencing stage.

The topic of sentencing young adults has been discussed in the legal field in the UK and elsewhere for some time, connected to understandings of neurological development and associations with crime desistance (Loeber and Farrington, 2012; Barrow Cadbury Trust, 2005). The ‘age-crime curve’ is a well-established concept and is present within arguments in favour of system reform for young adults. Research findings across countries show that for those who offend, the age of onset is typically 12 to 13 years, peaking for males at 17 and slightly earlier for females at 15, before significantly decreasing in the early to mid-twenties. Psychological explanations relate crime desistance to the psycho-social development of maturity and cognitive functioning (Steinberg *et al*, 2015; Moffit, 1993) *ie.* temperance, perspective, emotion-regulation and impulse control, as well as peer and partner aspects. Sociological interpretations link crime desistance to the enhanced responsibilities that come alongside attaining adult status, for instance completing compulsory education, securing employment, gaining financial independence, autonomous living and establishing intimate partner relations. Greater responsibilities assist to constrain previous ‘risk’ behaviours and anti-social tendencies (Hill and Bosick, 2017). Conceptualised as ‘emerging adulthood’ by Arnett (2000), the ages between 18 and 25 are interpreted as a complex, unsettled life-stage as adult milestones are navigated. It is compounded by the lengthening of time taken to achieve adult role responsibilities compared to previous periods. Delay into the mid to late twenties is said to impact the development of maturity and have consequences for crime desistance, with continued patterns of offending among some (*cf.* Lapp, 2019).

Thus, justice system reform arguments are linked to the reality that most criminally involved young people cease offending by their early to mid-20s, are responsive to interventions due to ‘malleability’ at this age and that intervening with age and developmentally appropriate services helps facilitate desistance pathways. In respect to this evidence, critics have put forward suggestions for reform. These include extending the jurisdiction of the youth courts to older aged young people, the creation of specialist young adult courts, introducing a ‘maturity discount’ or dealing with young adults in court on a case by case basis through individualised assessments (Farrington *et al*, 2012: 743). Commentators on US justice policy note increased attention on the sentencing of young people as a result of the harsher sentencing laws introduced in the 1990s following a rise in youth violent crime. Laws transferring ‘juveniles’ to the adult courts were introduced making them subject to more severe adult sanctioning. Loeber and Farrington (2012) referred to this as the ‘unplanned overreach of the justice system’ (*ibid.*: 11) and argued transfer into the adult system should not be driven by offence seriousness, but by the maturity of the person.

Fountain *et al* (2021) queried whether attitudes differed among members of the public if presented with scientific evidence to support a distinct approach to ‘emerging adults’ in the justice system. Their study used vignettes with examples of young adult offending. Respondents were given a choice of three options -trying young adults in the youth court; creating specialist young adult courts or treating young adults on a case by case basis. The majority chose to treat young adults on a case by case basis (46.7%), effectively advocating attention to their life-stage. We can conclude from this that when provided with reliable information on crime and offending, public attitudes are less punitive and more rehabilitation-oriented than policy-makers assume (*cf.* Piquero and Steinberg, 2010).

Defining maturity

In line with advances in understandings of young adult maturity and implications for criminal justice practice, the concept of ‘maturity’ is peppered throughout professional practice and policy documents of E&W. Yet what constitutes maturity and how to assess it is not always clear. Prior *et al*, (2011) from their review, note maturity is an ‘ill-defined construct’ and not a ‘wholly objective and measurable concept’ (*ibid.* 4). However, they set out maturity is located in processes of ‘individual human development’ between adolescence and young adulthood. It involves interactions between physical, intellectual, emotional and social functioning consistent with reaching adult status. They emphasise gauging emotional and social maturation is most relevant to understandings of young adult maturity in criminal justice contexts. Conceptualisations of maturity drawn from developmental psychology emphasise three distinct aspects: ‘temperance’, ‘responsibility’ and ‘perspective’ (*cf.* Steinberg *et al*, 2015). Temperance is the ability to manage emotions and control impulses, including aggressive impulses and risk behaviours. Responsibility is the capacity to account for one’s behaviour and resist the ‘coercive influence of peers’. Perspective is the ability to consider the wider context to decisions, including others’ views and longer-term consequences (*ibid.*:3). Advances are being made within the overlapping criminal justice sectors of E&W to address low maturity, such as in the prisons and probation service, yet there is not ‘whole-system’ alignment or an overarching definition of maturity. What constitutes maturity is left largely undefined in criminal justice policy documents; sometimes conflates with the presence of ‘neurodevelopmental disability’⁴ and faces criticisms regarding accurate appraisal with elements of ‘subjectivity’ mentioned (Judd and Lewis, 2015). Points on assessing maturity are returned to later.

Despite recognition at the Justice Committee level that young adults should be treated as a distinct group (House of Commons, 2016, 2018), a Ministry of Justice (2017) response was non-committal. It stated ‘Given the dynamic nature of maturity we believe it is more important to incorporate this as a principle which informs the wider development of activity and proposed reforms rather than to develop a separate strategy for young adults based on chronological age’ (*ibid.*: 5). Thus, there appears to be divergence on the need for the implementation of special young adult provision in the E&W system.

Sentencing reform in international contexts

⁴ Different terms are used in for the range of neurological conditions found among criminal justice populations, such as communication problems; cognitive delays; behavioural problems *ie.* ADHD, autism, ‘learning difficulties’ *etc.* Terms include ‘neurodivergence’, ‘neuro/functioning disorders’, ‘neurodevelopmental disorder’ *etc.* This paper adopts the term ‘neurodevelopmental disorder’, unless referring specifically to terms employed by other commentators.

Matthews *et al* (2018) note progress in some American states (*ie.* Illinois, Massachusetts, Vermont, Connecticut) with intentions to ‘raise the age’ of the ‘juvenile jurisdiction’ beyond 18 years. The way ‘youthfulness and maturity’ has been awarded constitutional status through some Supreme Court judgements where the offence had occurred after a person turned 18 years was also commented on (*ibid.*: 2).

Matthews and colleagues (2018) summarise young adult provision across Europe with a view for potential transfer to US justice policy. Germany, the Netherlands and Croatia are identified as countries that have gone furthest with extending the juvenile law to older age young people. They associate this with protections set out within international human rights frameworks. For instance, the UN Convention on the Rights of the Child 1989 demands the right for children to be heard through effective participation in court and the UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (“The Beijing Rules”) advocates for minimal custody of young people. Matthews *et al*, argue these have ‘influenced momentum in respect to diversionary methods, minimum intervention, education, restorative justice and other constructive measures’ (*ibid.*:6.).

In Germany, selected young people up to, but not including age 21 can be sentenced in the youth courts under juvenile law instead of automatic transfer to the adult jurisdiction (Dünel and Heinz, 2017). Selection is based on meeting one of two conditions –‘if the moral, psychological and social maturity is that of a juvenile, or if the type, circumstances or motives of the offence were typical of juvenile misconduct *ie.* ‘spontaneous crimes’. Variation between German states is found, but in 2012, 2/3rds of young adults up to age 21 were sentenced as juveniles, which Matthews *et al*, argued demonstrated the ‘faith the judiciary had in using the juvenile system’ for young adults (*ibid.*:8).

Similar to the German system, the Netherlands allows for ‘flexible use’ of the law so that selected 18 to 23-year olds can be sanctioned under juvenile law instead of automatic transfer to the adult system at 18. Van der Laan *et al*, (2018) compared the social backgrounds of 18 to 23-year olds tried under the juvenile law with those under adult law. It was found, those designated to juvenile law, were more likely to have low educational and employment attainment, were more typically ‘welfare recipients’ and had more often lived in ‘institutional settings’. Moreover forensic experts specified ‘the juvenile justice group were less mature in behaviour than their chronological age, with a higher prevalence of minor intellectual impairment, lower intelligence and deficient social development’ (pg nos). This demonstrates the rehabilitation and social pedagogy underpinnings of the juvenile system was seen as preferable for young adults exhibiting ‘incomplete or delayed development’.

Croatia was noted as employing a ‘welfare model’ that prioritises educational and community rehabilitation to prevent re-offending. In 1997 the *Croatian Juvenile Courts Act* defined a young adult as ‘at the time of the criminal offence 18 but not yet 21 years’. ‘Non-judicial’ interventions were introduced, such as counselling and ‘off ramps’ to prosecution through diversion (Matthews *et al*, 2018).

Thus, sentencing approaches across different countries acknowledge the developing maturity of young adults with justice system responses located in social pedagogy and the prioritising of rehabilitation goals. ‘Raising the age’ of the youth jurisdiction as seen in these countries, has been suggested for E&W (Criminal Justice Alliance, 2011), yet has not received much discussion. US commentators, Schiraldi and Western (2015) write in favour of ‘raising the age’ policies due to the closer similarity of young adults to youth than to fully mature adults. They argue, the ‘family

court jurisdiction' could extend up to age 21 or even 25 noting this is relatively straightforward operationally. This is due to already existing youth courts, 'judges, prosecutors, defence attorneys and probation staff who are already trained to deal specifically with adolescents' and the diversion programmes that are in the youth court jurisdiction (*ibid.*:10). They add the overall declining numbers of young people prosecuted in court leaves space for young adult cases to be heard. Wherein, this paper argues the case for specialist young adult courts, 'raising the age' of the youth court is worthy of deeper debate in the E&W context.

The criminal courts, sentencing and young adults

As a first step, it is useful to set out the current courts and sentencing process to highlight the way 18 to 25-year old young adults presently proceed through the system and point to areas of promising practice, as well as areas that are lacking. At this point of young adult justice reform there is not a lot of empirical research evidence available.

In the E&W justice system, after the age of 18 people are prosecuted in the adult criminal courts. Depending on offence gravity, the case is heard in the higher-tier crown court or the lower magistrates' courts through an 'adversarial justice' process in which prosecution and defence teams present the case and legal evidence in court. Approximately 68-75% of all prosecutions are concluded through guilty pleas that proceed directly to sentencing without a trial (Welsh *et al*, 2021). Sentencing guidelines direct judges and magistrates to consider mitigating and aggravating factors to determine culpability. The probation service carries out court-ordered assessments and write pre-sentence reports (PSRs) based on individual defendant's circumstances so that sentencing judges have relevant information of personal issues, such as drugs and/or alcohol problems, mental disorder, diagnosed 'neurodevelopmental disabilities' and low maturity *etc*. It can be argued that court-based probation services inject an element of social work practice into sentence decision-making.

A range of legal and criminological research points to aspects of the adversarial justice process that is problematic for young people, those with learning and language difficulties, people with mental health conditions and those experiencing the criminal justice system for the first time. Concerns are raised in terms of equal 'access to justice' and 'due process' principles. It is set out that young adults are not suddenly able to manage the demands of the adult justice system at age 18 (Farrington *et al*, 2012) with difficulties understanding legal processes and terminology and with limited participation and engagement. Thomas and Ely's research (2018) relayed the experience of ten young adult court users who said they were 'talked about' and 'not listened to' in court. Competence in court trial processes are raised (Grisso *et al*, (2003) with it highlighted if personal mitigation in law can be justified by mental impairment, then personal mitigation for lack of maturity in younger ages should also be granted (Lapp, 2019). Cheng and Leung (2018), examined the experience of 25 young adults in Hong Kong courts. The young adults were often confused by the language and unaware of the implications of certain complex legal decisions tasked to them. The authors concluded young adults 'demonstrated a lack of understanding of the justice system, legal procedures and their own legal rights' (*ibid.* 2662).

'Expanded explanations' in sentencing

Issues specific to the sentencing of young adults is raised in some research studies.

Emanuel *et al* (2021) focused on the 'expanded explanations' added to the adult sentencing guidelines of E&W in 2019 to align more closely with the scientific evidence on developing maturity. They stated 'the expanded explanations are illustrative of remarkable recent progress in the criminal justice system' (*ibid.* 203); they added to the existing mitigating factor of 'young age

and/or lack of maturity' in the guidelines since 2011. These include a wider range of factors to be taken into account when assessing culpability. For instance, the influence of 'unstable upbringing', lack of familial presence or support, a 'care' background, 'risk' from early trauma, problem peer groups, disrupted education and school exclusion experiences. Points relating to the 'differential impact' of punishment such as prison on young adults are also included.

Emanuel *et al* used case law analysis and built on earlier Howard League for Penal Reform (2017) research that assessed whether the concept of maturity was incorporated into judges' sentence decisions. Emanuel *et al* examined 'minimum term reviews' of under 18-year olds who have been given a life sentence. They analysed judgements in which 'lack of maturity' had been applied to adjust the original sentence length leading to lesser minimum terms. They noted the judgement in *Regina v Clarke* as a defining precedent in the consideration of whether a lack of maturity could in some way explain the offending and reduce culpability. They state the 'expanded explanations' in the adult sentencing guidelines now impel 'judges to have these factors at the forefront of the sentencing process' (*ibid.* 216) and that 'there can be no excuse for the court or practitioner to overlook them to the young adult defendant's detriment' (*ibid.* 216).

However, they emphasise the central position of 'defence counsel' to advance the availability of information that judges refer to within the sentencing process through the request for assessments and PSRs on individual defendants. To some extent this acknowledges the inevitable ambiguity and disparity in the application of sentence guidelines and the interpretation of mitigating factors across different courts and judicial staff. An additional problem is that the expanded explanations are written into the broader adult sentence guidelines that apply to *all* adults, not just to young adults. The special consideration of 18 to 25-year olds within this broad approach can quite easily be overlooked. Indeed, it differs from the targeted style of Scottish sentencing. The 'sentencing young people' guidelines effective from January 2022 direct sentencers to consider issues of low maturity of young people up to age 25 (Scottish Sentencing Council (2021). Sentencing in E&W could follow suit by further adapting the sentence guidelines to focus on young adults.

The influence of defence counsel within court sentencing is of course necessary for any court defendant; not just for young adults. Though, as Cheng and Leung (2018) point out, younger defendants are more susceptible to disadvantage as they go through the criminal justice process. They argue '...as defendants get older they are found to be more competent to stand trial and possess a greater appreciation for their legal rights' (*ibid.* 2651). Thus, it can be argued defence counsel attuned to younger ages is especially important.

Indeed, it is only recently that mandatory training has been introduced for barristers who represent under 18-year olds in the E&W system (Bar Standards Board, 2017). A review of the youth justice system by Taylor (2016) reported from judges, magistrates and lawyers noting the quality of legal representation in the youth courts was 'often very poor' (*ibid.*:27). The mandatory training only applies to defence barristers representing youth in the crown courts with no such stipulation for advocates in the youth courts, where the majority of youth criminal cases are heard. This lack of specialist training can be seen as a significant omission in regard to the rights of young people. As greater attention is paid towards treating young adults as a distinct group within the criminal justice system, special training for legal defence counsel will be needed.

Moody (2021) also addresses sentencing in relation to young adult maturity. This was carried out with magistrates serving in the lower courts of E&W and sought to establish how maturity is applied when assessing culpability in sentencing. Notions of individual maturity were rarely

raised in courtroom dialogue between magistrates, defence counsel and prosecution and commonly it occurred after conviction rather than earlier in the process when the benefits of ‘diversion’ would have been better suited. Moody concluded, the notion of maturity and how to assess it, was ill-defined in courtroom judging and there was immediate need for improvement to professional practice to achieve the intentions of the established sentencing guidance. The study stated, it would be useful for magistrates to have ‘a more informed and sophisticated understanding of maturity and how it affects behaviour, both in court and in relation to offending or compliance with court orders’ (*ibid.*: 6). Thus, notions of maturity are not formally defined, nor overtly taken into account when assessing culpability in sentencing decisions in the lower courts. This raised the need for magistrate training that could sharpen understanding and assist to equip magistrates themselves to make full use of assessments presented by independent experts such as Liaison and Diversion teams or probation.

A probation service instruction issued in 2016 (updated in 2021) requires probation officers to consider maturity when writing PSRs for young adults (Ministry of Justice/HMPPS, 2022). The Transition to Adulthood Alliance (2013) guidance for probation practitioners ‘*Taking account of maturity*’ emphasises that developing an understanding of maturity enhances the quality and helpfulness of PSRs which can in turn lead to a ‘more effective sentence’ (*ibid.*:13). Assessing maturity at the probation stage of the criminal justice process is embedded within the existing Offender Assessment System (‘OASys’) instrument. However, OASys is designed to ascertain the ‘risk’ of individual re-offending (Prior *et al*, 2011). Thus, maturity is assessed within an instrument not specific to that purpose. Judd and Lewis (2015) criticise this approach for the lack of nuance in gauging maturity, arguing this leaves assessment open to ‘subjectivity’ (*ibid.*:70). They state ‘moving forward the introduction of a maturity assessment tool is called for in order to aid the practitioner in capturing an accurate picture of the YAO, as they start a community order’ (*ibid.* 70). This is an important point and is returned to later in the discussion on assessment and training.

Young adults in the justice system of E&W

There is a growing evidence base on what age and developmentally-appropriate service provision for young adults should comprise. Probation practice is informed by ‘risk, need and responsivity’ theory and strengths-based and trauma-informed approaches are used (McCartan, 2020). Attention is placed on developing the maturity of young adults through additional education on confidence-building, pro-social relationships, self-awareness and self-reflections through the ‘*Choices and Changes*’ resource pack (Ministry of Justice, 2021). There is some policy coherence around the high proportion of people in the criminal justice system with some form of ‘neurodivergent condition’ (*ie.* ‘communication disorders, ‘learning difficulties’, attention deficit hyperactive disorder ADHD *etc.*) with it noted that adjustments are required to meet the needs of those with such conditions (Criminal Justice Joint Investigation, 2021:6). Hughes *et al* (2012) compared the prevalence of ‘neurodevelopmental disorders’ among young people in prison with those in the general population. Much higher rates were found among those in custody⁵. There are also policy developments and funding streams to support vulnerable and criminally exploited young people relating to social risks from disrupted family background experiences and criminogenic environments. The National Crime Agency reported from police force areas across E&W in 2017 that young people from ‘care’ are actively targeted by ‘county lines’ drugs networks and are vulnerable to ‘sexual exploitation’ (*ibid.*:16). A study on ‘prisoners’ childhood

⁵ ‘Generalised learning disability’ was recorded at between 23-32% among those in custody compared to 2-4% in the general population. For ‘specific learning disabilities’, such as ‘dyslexia’ the figures were between 43% and 57% compared to 10% in the general population and for ‘communication disorders’ relating to speech, language and hearing, 60-90% of those in custody are recorded with these difficulties and 5-7% in the general population.

and family backgrounds showed 24% of the adult prison population were taken into care as a child (31% for women, 24% for men) (Williams *et al*, 2012). A Youth Justice Board report (2020) assessing the needs of children in custody, recorded 56% were currently or previously a 'child in need', illustrating the close linking between the presence of family dysfunction and entry into the criminal justice system. There is also a set of concerns connected to disparities based on ethnicity and the negative impact structural factors and embedded racisms have on life experience and pathways into offending (Borysik, 2020).

Evidence of the predominance of disadvantage and vulnerability among criminal justice populations is also within criminal courts research. From their research in Australia, Roache Anleu and Mack (2005), state the courts are 'barometers of government social and economic policies' and that 'the impact of these policies are exhibited in the predicament of many court defendants'. They argue 'many people who have ended up in contact with the criminal justice system as a result – perhaps not directly- of the failure of other (for example, welfare, education, employment and mental health) systems (*ibid.*: 2005: 591).

Magistrates working in the lower courts were interviewed in the first author's research (Ward, 2016) and reflected on the lives of people they encounter in court. Their comments lead us to the conceptual linking of social justice issues enmeshed as criminal justice ones. This is picked up again later for the role the courts can play within sentencing to ensure rehabilitation, social pedagogic and relationship building interventions are prioritised.

“.. a lot of them live in very difficult circumstances where they don't have money ... the vast majority of people are on benefits or they are on low paid jobs, or on casual work where they're scratching an income. It's not very often you see somebody with a wage that is anywhere near the national average. ... I think the majority of people we see in the magistrates' courts are low earners, or non-earners. (Ward, 2016 - Magistrate quote)

One long serving magistrate had set up a hostel for young men coming out of prison and commented on dysfunctional families, lack of family support and economic deprivation and also the lack of a mechanism to take such factors into account when sentencing:

they are quite immature, they are streetwise, but ...they probably have never had their vaccinations, they've no idea how to 'sign on', they have no idea how to register, they basically are kids, they are young children, who should be supported. They probably come from pretty dysfunctional families too, the ones we took in were very dysfunctional families. A lot of them were care leavers or involved in the care system. (Ward, 2016- Magistrate quote)

The following section focuses on court sentencing more explicitly to provide further context to the arguments that favour the creation of young adult courts.

Young adults in the criminal justice system in E&W

Sentencing is a fundamental stage of the criminal justice process. The decisions made by court judges impact the size and nature of the prison population, the type of community penalties assigned and the opportunities for rehabilitation-type interventions. Despite this, not much commentary within research, policy and practice acknowledges the 'lived experience' of people under sentence and even less is specific to young adults. Court statistics report by offence category -'theft offences', 'violence against the person', 'robbery', 'drug offences' -and sentences

are broken down by fines, community punishments and prison custody. Yet, few studies illuminate the extent of the requirements and restrictions within a community order and how these are managed on a day-to-day basis. For instance, living under an electronically monitored home detention curfew, being assigned to an ‘exclusion zone’ order, undertaking unpaid work in the community or the ability to pay financial penalties. Moreover, the increasing severity in sentencing observed in the E&W justice system is infrequently mentioned. The average custodial sentence length statistics (Ministry of Justice, 2020^b) report prison sentence lengths extended for most offence categories between the years 2010 to 2020, rising by between 10 and 20 months in some cases.

McNeill (2019) reports on the increasing ‘pervasiveness’ and severity of community punishments referring to a trend on ‘mass supervision’ and calls for greater societal interest in this expansion of penal power. Fitzgibbon and Healy’s (2019) cross-national study reported on people’s emotions while under community supervision highlighting feelings of frustration, infantilisation, stigmatisation, reduced citizenship, no escape from surveillance and depression. Deuchar’s study (2011) on the experiences of 20 young men on electronically monitored curfews in Scotland similarly found feelings of oppression with limited chances to build social support within this type of penalty.

Such studies highlight important information and more research on young adult experiences would allow a clearer picture on how sentence requirements and programme interventions enhance or impede rehabilitation and crime desistance pathways.

This paper now moves to present developments emerging within the specialist courts movement and the implementation of young adult courts in NZ and Brooklyn. Specialist problem-solving courts have grown in popularity across countries since the late 1980s. Drugs courts, mental health courts, homelessness courts *etc.* are set up to address health and lifestyle problems that overlap with offending behaviour and are shown to bring benefits in terms of offence reduction and as useful alternatives to prison. A commitment to specialist courts for particular offender groups (*ie.* drugs, women and persistent offenders) was highlighted in the UK White Paper ‘*A Smarter Approach to Sentencing*’ (Ministry of Justice, 2020^a) and subsequent *Police, Crime, Courts and Sentencing Bill* (H.M Government, 2021) demonstrating renewed interest in this style of courts justice. Specialist young adult courts could be added.

Young adult courts internationally

Youth justice approaches in NZ have long been rated as transformative and progressive in outlook. Restorative justice and family group conferencing methods involving dialogue, mediation and reparation for victims, have been in place in NZ since the 1990s as key crime desistance goals and adopted in other jurisdictions including the UK. The specialist court model tailored towards Maori and ‘Pasifika’ youth -Rangatahi Courts- was highlighted in the review of black, Asian and minority ethnic people in the criminal justice system of E&W for potential for policy transfer (Lammy, 2017). NZ can again be looked to for the justice innovation with the young adult court.

In the Porirua⁶ ‘young adult list’ (YAL) court, cases of 18 to 25-year olds are listed for hearing in a special court session presided over by judges and other courts personnel (*ie.* police prosecutor,

⁶ The court structure of NZ comprises the lower ‘District Courts’ and the ‘High Court’. Almost all but the most serious cases of murder, manslaughter and ‘terrorism’ *etc.* are heard in the lower-tier ‘District Courts’ by a single sitting judge.

bail support officer, defence lawyers *etc.*) with a special interest in the needs of this age group. Its rationale was to align with the scientific evidence on developing maturity, the presence of neurodevelopmental disability and the effects of dysfunctional family and debilitating social background factors, such as ‘the trauma of sexual abuse, being brought up in a climate of family violence, drug and alcohol dependence, neglect, deprivation and a ‘poverty of care’ (Doogue and Walker, 2019: 3). The will to develop better communication with this age group through principles of ‘plain language’ and fostering clear understandings of legal processes to enable effective engagement and full participation of young adults was also an objective. Few discussions in the wider published literature, make explicit reference to how negative life experiences directly correlate (indeed have a causal impact) with offending behaviour. This is a critical omission and is a discussion that should be greatly elevated at the policy level so that we are reacting to the reality of social harms and systemic and structural problems. Fitzpatrick and Williams (2017) advance this discussion in relation to the disproportionate numbers of young people from ‘care’ in the criminal justice system.

An evaluation of the Porirua young adult court (Paulin *et al*, 2021) revealed greater levels of satisfaction among young adult court users (n=30) when contrasted with a matched sample (n=25) going through the traditional court system. Respondents reported appreciating direct communication with the judge, the checking that took place on whether they understood the sentence conditions and the interest shown in their ongoing progress. The YAL participants were almost twice as likely than the comparison group to report ‘their court experience had made them think more deeply about their future and make some positive changes in their life’ (*ibid.*: iii). Key stakeholders noted useful referrals to support services and improvements in information transfer across different courtroom actors (*ie.* defence counsel, police prosecutors, mental health workers *etc.*) that facilitated shared understandings of the complex needs of young adults in court. An evaluation measuring longer-term outcomes would enable a deeper understanding of how this particular tailored approach benefits system-involved young adults over a lengthier duration. Two additional young adult courts have opened in other NZ cities (Gisborne and Hamilton)⁷ and a nationwide roll-out is planned.

Brooklyn Court

The specialist young adult court established in 2016 in Brooklyn, (Pooler and Dalve, 2019) implements a social services-oriented response for 16 to 24-year olds to address the underlying causes of offending and as an alternative to incarceration. Justification for the court is linked to the evidence on developing maturity of this age group and to the high volume of young adult cases in the misdemeanour courts. In 2016, almost a third (29%) of the approximate 60,000 ‘misdemeanour or violation/infracton charges’ in the court’s catchment area involved those in the 16 to 24-year old age bracket (*ibid.*: 6). Specialized policies and procedures were embedded within the court’s operating framework, including dedicated judges, prosecution, defence attorneys, clinical staff and those responsible for case-management. Staff training on ‘procedural justice’ principles, ‘risk need-responsivity theory’, and understandings of developing maturity was provided.

An evaluation of the ‘Brooklyn Young Adult Initiative’ comprising quantitative case outcomes (n=944) and a survey (n=207) of young adult’s perceptions of ‘procedural fairness’ found encouraging results (Pooler and Dalve, 2019). A comparison group (n=944) going through the traditional court system was included. Young Adult Initiative participants, were less likely to receive jail sentences than the comparison group (2% v. 13%) and had a lower incidence of re-

⁷ The lead judge of the Young Adult List court -Judge Walker- was interviewed in October 2021 and April 2022.

arrest (44% v. 70% at one-year post arraignment)'. The evaluation stated 'This suggests the use of more age and developmentally-appropriate interventions (instead of traditional justice processing and sentencing) does not negatively impact public safety' (*ibid.*: vi). In other words, the young adult group treated with social services-oriented interventions, as opposed to traditional deterrent responses such as incarceration, were not any more inclined to re-offend due to the more therapeutic community-based penalties they were assigned. Additionally, the majority of Young Adult Initiative respondents felt the outcome of their case was fair (80%) and that they were treated with respect in court (87%). The evaluation concluded community-based services can be mandated with confidence and that there is no evidence alternative court orders compromise safety.

The evaluation highlighted limitations, adding that measuring changes in socio-economic or psycho-social status, is also important. It noted 'analysing education, housing, employment, and substance use data would provide for a broader measure of successful outcomes' (*ibid.*: 42). Coulsfield (2004) argued in a UK report on alternatives to custody that it is necessary to count the smaller cumulative gains made by system-involved people as for some, these are first time achievements. Broader measures of success and achievement need to be kept in mind within the creation and design of young adult court initiatives.

Thus, it is evident that young adult courts by their tailored design are better able to account for the realities of (im)maturity of 18-25-year olds than standard courts and the social risks linked to difficult family and criminogenic environments can be addressed within this dedicated young adult model. The question is do we know enough about young adult courts from which to recommend their implementation and are there downsides?

To some extent the drugs courts debates can be referred to when contemplating potential disadvantages, such as those set out by Logan and Link (2019). They highlight issues of 'selection' are critical to the success of a drugs court programme. For instance, those with more serious drugs use problems gain most from treatment-focused drugs interventions than those with lower risk drugs use lifestyles. This is in part raised by Ely *et al*, (2022) in their feasibility study on the demand for specialist young adult courts in the West Midlands. They report practitioners viewed them as a better way to integrate service provision and saw the potential to enhance perceived fairness. Though, there was shared recognition they should not undercut diversion processes and should avoid 'net-widening' and 'overdosing low-risk' young adults. Ely *et al*, conclude the enhanced monitoring and supervision implied in the specialist court model might mean it is best applied to those at risk of custodial sentences (*ibid.*: pg no's).

Devising appropriate methods for selecting young adults to specialist courts based on maturity is difficult (Loeber and Farrington, 2012:9). This in part connects to the elusive definition of maturity as emphasised by Prior *et al*, (2011) and elements of subjectivity when assessing it. There is room to learn from the Netherlands and Germany on selection and assessment processes to determine which young adults are tried in the youth or adult courts. Or, it can be argued, special selection to young adult courts should not be applied aside from exclude the most serious offences as with the Porirua YAL and Brooklyn court. Instead all 18 to 25-year olds are considered worthy of judgement within a young adult court model that incorporates understandings of lower levels of maturity. Indeed, maturity screening is undertaken by probation within the OASys instrument. As suggested by Judd and Lewis (2015) a specially crafted maturity assessment tool specific for sentence and rehabilitation planning should be designed.

This leads us to briefly set out what a young adult court would look like in the E&W lower courts. Much greater operational detail than can be provided here is needed, but a dedicated young adult court can be created by ‘listing’ all 18-25-year olds for hearing in a separate, regular courtroom session presided over by a team of dedicated and specially trained courtroom actors. Criminal culpability and sentence allocation are established in the usual way that considers risk and crime victims, yet within a framework that foregrounds young age and maturity/lack of maturity and difficult social background factors. Judicial training would embed understandings from the scientific evidence on neurological and psycho-social development that impacts maturity and influences patterns of criminal behaviour. The use of ‘plain language’ facilitating active participation in proceedings and understanding of complex legal processes is embedded in the model. Local area probation teams work collaboratively with the court to undertake maturity, risk and medical assessments and write PSRs to aid sentences attuned to the young adult life-phase and which are rehabilitation and desistance-oriented.

Indeed, there are different judicial staffing models in the E&W lower courts compared to the NZ District Courts and USA ‘misdemeanour courts’. These are presided over by professional judges who hold a degree of organisational responsibility over their courts. The E&W system relies mainly on part-time volunteer ‘lay’ magistrates working in collaboration with a smaller number of full-time salaried judges. There is intermittent discussion on expanding the role and responsibility of magistrates to maximise the skill and expertise they bring to the judging profession both from their lengthy court judging experience and transferrable skills brought over from highly-skilled professions. Aligned with the UK government interest in advancing specialist courts, using magistrates to lead and participate in the delivery and operation of these courts will be needed and indeed has been proposed (House of Commons Justice Committee, 2019: 37).

In some regard recommending an age-specific court suggests that after the age of 25 the issues raised in this paper are no longer relevant. This paper refers to the developing maturity of 18 to 25-year olds that impacts cognitive and emotional functioning and can influence offending behaviour and social risks associated with complex family backgrounds and criminogenic environments. The presence of neurodevelopmental disability among young people in the criminal justice system has also been raised and referred to as a consideration in the Porirua YAL court. Low maturity is found to be age-specific and social and emotional maturation is developed for 18 to 25-year olds through education on self-awareness, relationship-building, pro-social behaviour within probation practice. Difficult family background experiences such as histories of state ‘care’ are not age specific that cease at age 25. However, they are challenges that have more recency at younger ages. Multi-agency support services working through integrated arrangements with probation that focus on stability in housing, promoting engagement in education, training or work *etc.* can help people to prepare for life beyond the young adult years. However, the presence of neurodevelopmental disability is certainly not age-specific. The use of testing and specialist therapies required by those with these neurological conditions carries beyond the age division of 18 to 25 years. Thus, there is relevance with age-specific courts attending to the maturity and difficult social background issues facing young adults that are more acute in the young adult years than in the years beyond.

Conclusion

This paper on young adults, developing maturity and criminal court sentencing set out to answer three specific questions- Should specialist young adult courts be introduced so that age and developing maturity are considered with more consistency across the court sentencing system; given many young people in the criminal justice system come from backgrounds of family disadvantage, should attention be paid to these factors when appraising culpability and devising

sentences and have the 2019 E&W sentencing guidelines gone far enough? What further changes would enhance a young age and life-phase response?

While there have been significant and rapid gains in regard to the sentencing of young adults with changes to the sentencing guidelines, there remains room for variation in the way special considerations and personal mitigations are applied across different courts, judicial actors and geographic regions. A specialist young adult court model could ensure a dedicated response to this age group better consistency attending to maturity at the court sentencing stage of the justice process. Moreover, specialist young adult courts can embed a shared-courts working culture within a multi-disciplinary team and with dedicated and specially trained judges and magistrates who hold an interest in the life stage of young adults and that embeds welfare principles and prioritises more effective rehabilitation sentencing pathways.

The conceptualisation of social justice and criminal justice as alluded to earlier can be associated with young adult courts. These are holistic, humane responses and are preferable for the greater potential they offer to achieve improved outcomes in young adults and importantly to recognise that retributive criminal sanctions are inappropriate and futile for some people who offend. This is especially for those lacking in maturity, with drugs and alcohol dependence issues, histories of mental-ill health and young people from problematic childhood backgrounds. More research is needed that examines the difficulties many young adults face in their lives that are likely to be compounded by retributive sentencing responses. We assert that the courts have a role to play within their front-line position as sentencers.

Specialist training of defence lawyers was highlighted earlier. Given the significance of the scientific evidence on the developing maturity of young adults and the implications this has for criminal justice and culpability, defence lawyers representing young adults in court will need mandatory training to increase their knowledge and understanding.

Indeed, national level policy intentions to pilot specialist courts for particular offender groups was communicated by the UK government in the 2020 sentencing White Paper (Ministry of Justice, 2020*a*). Along with evidence from evaluation studies that demonstrate the positive impacts of young adult courts, we suggest the time is right to test this style of court justice in the criminal justice system of E&W.

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