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Parole for children and young adults¹

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A parole hearing is an important event for anyone. For children and young adults it can be both overwhelming and a major turning point. Children and young adults make up a relatively small number of cases that the Parole Board has to consider. However, the complexities of parole for young people are radically different from the issues that affect adults. Many young people facing parole have grown up in custody. Although they are often characterised as difficult to manage they are a vulnerable group for whom a distinct and holistic approach is essential.

Law and science have long recognised that children should be treated differently. More recently, this recognition has been extended to young adults aged 18 to 25, based on the evidence that young people are developing and not fully formed until the age of 25, and therefore capable of change in a shorter period of time. Just as youth can be a time of enhanced recklessness, it is also the most likely time for desistance: put simply most people grow out of crime as they reach fully fledged adulthood. Robust risk assessment cannot ignore these factors.

The Parole Board has made significant adaptations to its processes in recent years to bring itself into line with established and emerging thinking in these areas. For example, in 2010 it introduced an oral hearings policy for children and in 2017, a pilot scheme for young adults. It has also commissioned youth specific guidance to assist members in adapting their approach to young people. The Howard League's specialist legal team for children and young adults in prison has observed several instances where a distinct, proactive approach by the Parole Board has quite literally transformed young people's lives. Through the Howard League's participation

work, young people have told us that while parole can be 'scary', it can also be a welcome opportunity to tell their stories and formally mark their progress.

Yet more could be done. Examples from other forums could be followed, such as the Mental Health Tribunal, where every case involving a child must include a specialist 'child and adolescent' member, and criminal proceedings, where there has been an increased focus on how to achieve effective participation. Parole Board reviews for young people could be further adapted to ensure that children and young people effectively participate in the process and achieve better outcomes commensurate with their risk.

The parole experience for young people — a chance to speak direct truth

As of 1 February 2018, there were around 190 active Parole Board cases concerning young people aged 21 or under, representing just under five per cent of the total Parole Board caseload. The Howard League for Penal Reform's legal team is the only front line legal service that specialises in representing children and young adults aged 21 and under before the Parole Board. Over the last three years, we have received over 143 new enquiries about parole through our 'access to justice' service. In addition to legal work, the Howard League undertakes participation work to provide a voice for young people involved in the criminal justice system.

The Howard League's experience from legal and participation work suggests that young people facing parole are understandably overwhelmed by the parole process. The nature of the scrutiny that young people face during parole, which focuses entirely on risk, contrasts to the sentencing process where the focus is on mitigation. Factors such as immaturity, which are recognised as mitigating for the purpose of sentencing, are viewed as factors that increase risk of harm for the purpose of parole.²

Whilst adults have had the opportunity to develop and experience life in the community, young people who face parole are likely to have grown up in custody. A process which determines your liberty will be stressful for anyone,

1. This article has been prepared by the author with input from the legal team at the Howard League for Penal Reform, with special thanks to Marie Franklin. Throughout the article, the term 'children' refers to under 18s, the term 'young adults' refers to 18 to 25 year olds unless otherwise stated and the term 'young people' refers to both children and young adults.
2. Howard League and T2A (2017) Judging Maturity: Exploring the role of maturity in the sentencing of young adults. Available at: <https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf> [accessed February 2018].

but considerations relating to future risky behaviour in the community are particularly difficult for young people. A young person who has never had a job or had to budget will find it hard to imagine how they will cope with these things on release, let alone manage romantic relationships (possibly for the first time) while under criminal justice supervision. The sensitive nature of the questions and the formal environment of a panel of three strangers and every key person in your life watching you can be traumatic for a young person convicted of serious crimes, which may include sexual offences. The sheer pressure of the situation can fog the young person's understanding and ability to speak out.

Young people have told the Howard League about the 'paper-self' which follows them through the criminal justice system.³ This indelible record of all the mistakes in their life is the primary representation of themselves that they feel professionals see. It is therefore not surprising that when we asked young people who have had oral parole hearings to comment on their experience, several have conveyed the importance of the process for them to get their side of the story heard. One young person told the Howard League that 'you get to go over everything in custody, you get to explain yourself, show remorse and give a better understanding of yourself.'

Another young adult who responded to a question about what comes into your head when you think about parole found that as well as feeling a host of negative emotions it was a 'chance to speak direct truth' (see image).

A Parole Board oral hearing can present a unique opportunity for young people to participate actively in important decisions about their future with the decision makers themselves. It can be an incredibly important turning point for young people.

Children and young adults require a distinct approach

In order for a parole review to be effective and fair, let alone reach its potential as a positive turning

point in a young person's journey, a distinct approach, adapted to the specific needs of the young person, is required.

The needs of children

Childhood is a time when significant biological, physical, intellectual, psychological, social and emotional changes take place. A child is defined in law as someone under the age of eighteen.⁴ The age of criminal responsibility in England and Wales begins at ten, even though the same cohort of children is not considered responsible enough to have sex until the age of 16 or vote until they are 18. As of November 2017, there were 912 children in prison. The child prison population has decreased by two thirds in the last decade. However, a higher proportion are serving sentences that may attract parole reviews.

As Mr Justice Munby (as he then was) noted, '[children in custody] are, on any view, vulnerable and needy children'.⁵ He drew attention to the high proportion that were either in or had left care, had serious mental health problems, had drug or alcohol dependencies and had no educational qualifications. A child in custody is likely to have experienced trauma, abuse or neglect. Not only are they likely

to have come from disadvantaged backgrounds, but custody may have an adverse effect on them. Young people in prison often experience extended periods of isolation, excessive levels of violence and self-harm, as well as restricted access to education. In the community these events would result in child protection action, care proceedings or even criminal charges against parents. Yet such features appear to be endemic within the prison estate for young people. The Chief Inspector of Prisons found that in 2017 there was not a single establishment that they had inspected in England and Wales in which it was safe to hold children and young people.⁶ As David Lammy highlighted, children in prison come disproportionately from BAME backgrounds: the latest statistics from the Ministry of Justice show that 45 per

A process which determines your liberty will be stressful for anyone, but considerations relating to future risky behaviour in the community are particularly difficult for young people.

3. Howard League for Penal Reform (2015) *You can't put a number on it: A report from young adults on why in criminal justice maturity is more important than age*. London: T2A. Available at: http://www.t2a.org.uk/wp-content/uploads/2015/07/HL-Report_lowerres-1.pdf [accessed April 2017].
4. Children Act 1989, section 105.
5. R (Howard League) v Secretary of State for the Home Department and the Department of Health [2002] EWHC 2497 (Admin), Para 10.
6. HMIP (2017), HM Chief Inspector of Prisons for England and Wales annual report 2016 to 2017 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf [accessed February 2018], pp 9.

cent of children in prison are from BAME backgrounds, compared to just 18 per cent in the general population.⁷

Risk assessment for children is fundamentally different, in recognition of their distinct needs and stage of development. Specialist tools exist to assess risk in children. For example, children with a history of violence may be assessed using the Structured Assessment of Violence Risk in Youth, a tool that factors in both risk and protective factors for children.

The needs of young adults

A growing body of criminological, neurological and psychological evidence led the House of Commons' Justice Committee to conclude that young adults' characteristics and needs make them distinct from older adults in terms of both their needs and their outcomes.⁸ The neurological and psychological evidence that development of the frontal lobes of the brain does not cease until around 25 years old is particularly compelling. It is this area of the brain, which helps to regulate decision-making and the control of impulses, that underpins criminal behaviour.⁹ In terms of brain physiology, the development of traits such as maturity and susceptibility to peer pressure appear to continue until at least the mid-twenties.¹⁰ It is now accepted that adolescence lasts until the age of 24.¹¹ As a consequence, while there is no legal definition of young adults comparable to the definition of a child, the distinct needs of young adults aged 18 to 25 in the criminal justice system are now widely recognised, largely as a result of extensive work by the Transition to Adulthood (T2A)

initiative and its T2A Alliance (a coalition of 16 leading criminal justice, health and youth charities) working to develop and promote evidence of effective policy and practice for young adults in the criminal justice system.

The negative effects of custody for young adults are demonstrated by the high number of self-inflicted deaths by young adults in custody and the extremely high reoffending rates.¹² Between 2006 and 2016 there were 164 deaths of 18-24 year olds in custody; 136 of which were self-inflicted.¹³

While the numbers of young adults in custody has dropped significantly in recent years, sentence lengths are increasing and the number of young adults from BAME backgrounds is disproportionately high.¹⁴ In his review on race and the criminal justice system, David Lammy identified youth justice as the area of biggest concern.¹⁵ T2A has highlighted the particular needs of young Muslims within the criminal justice system.¹⁶

The legal framework supporting a distinct approach

Children

Both domestic and international law recognise the need to treat children differently from adults and there is a wide range of legal duties catering to the needs of children. The UN Convention on the rights of the Child ('the UN Convention') sets out a raft of specific rights that apply to children and has been signed by every nation in the world except for the United States.¹⁷ Its provisions include the need to ensure their best interests is the primary consideration in every decision that affects them,

7. Lammy, D. (2017) Lammy review: final report, An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. Available at: <https://www.gov.uk/government/publications/lammy-review-final-report> [accessed February 2018].
8. Royal College of Psychiatrists (2015) Written evidence submitted by the Royal College of Psychiatrists to the young adult offenders inquiry, HC 937, 13 October 2015 [online]. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html> [accessed February 2018], pp 7.
9. Blakemore S-J, Choudhury, S (2006) Development of the adolescent brain: implications for executive function and social cognition. *Journal of Child Psychology and Psychiatry*, 47:3, 296-312; T2A and University of Birmingham (2011) Maturity, young adults and criminal justice: A literature review. Available at: <https://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf> [accessed February 2018].
10. Royal College of Psychiatrists (2015) Written evidence submitted by the Royal College of Psychiatrists to the young adult offenders inquiry, HC 937, 13 October 2015 [online]. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html> [accessed February 2018].
11. T2A (2018) 'Adolescence now lasts from 10 to 24' scientists say. Available at: <https://www.t2a.org.uk/2018/01/19/adolescence-now-lasts-10-24-scientists-say/> [accessed February 2018].
12. Harris, T. & the Harris Review panel (July 2015) *Changing Prisons, Saving Lives: Report of the Independent Review into Self-Inflicted Deaths in NOMS Custody of 18-24 year olds*. London: Her Majesty's Stationery Office [online]. Available at: <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2015/07/Harris-Review-Report2.pdf> [accessed April 2017].
13. Ministry of Justice (2017a) Safety in Custody quarterly: update to September 2016 [online]. Available at <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2016> [accessed April 2017].
14. T2A (2017) Dramatic fall in the number of young adults in prison and serving community sentences. Available at: <https://www.t2a.org.uk/2017/09/12/dramatic-fall-number-young-adults-prison-serving-community-sentences/>
15. Lammy, D. (2017) Lammy review: final report, An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. Available at: <https://www.gov.uk/government/publications/lammy-review-final-report> [accessed February 2018].
16. T2A (2016) Young Muslims on Trial: A scoping study on the impact of Islamophobia on criminal justice decision-making. Available at: https://www.t2a.org.uk/wp-content/uploads/2016/03/Young_Muslims_on_Trial.pdf [accessed February 2018].
17. The UN Convention on the Rights of the Child.

that children in conflict with the law are treated with dignity and that they are only detained for the shortest appropriate period of time.¹⁸ Although the UN Convention is not directly binding in English law, the courts have held that, when interpreting human rights contained in the European Convention on Human Rights, it can be relied on to interpret and inform the extent to which the human right has been breached.¹⁹

A number of English laws that apply specifically to children are highly relevant to Parole Board decision-making since they affect plans to manage risk. It is well established that a lack of suitable accommodation and support is a major factor that will contribute to an increased risk in reoffending. The Children Act 1989 requires local authorities to protect and care for children in their area such that no child in England and Wales should legally face the prospect of release into the community without an address and suitable support in place. A proactive approach is often required on behalf of the child to ensure that a plan materialises before a parole review. Fortunately, this is one area where legal aid remains available.

Young adults

The criminal law recognises young adults aged 18-20 as different from children under 18 and adults aged 21 and over. Young adults in this age bracket in prison are governed by a separate legal framework. Many young adults will also be care leavers and entitled to long term support as 'former relevant children' in accordance with the duties under the Children Act 1989. Former relevant children can expect to receive 'such assistance as their welfare requires' until the age of 21 and this can include accommodation.²⁰ In addition, care leavers over the age of 21 but wishing to pursue education or training can also expect to receive social care support until they have completed a course (provided it is commenced before they turn 25).

Parole reviews for children and young adults as a window of opportunity

The reason the law recognises children and young adults is because it is a time of genuine change. Youth can be a time of enhanced recklessness — young people typically have high levels of criminal behaviour, partly due

to their lack of maturity, their susceptibility to the pull of instant gratification and their lack of consequential thinking skills.²¹

However, youth is also the most likely time for desistance: put simply, most people grow out of crime as they reach fully fledged adulthood, often through the normal process of maturation.²² The fact that their personalities are not yet fully formed and their characteristics not entrenched in the way that older adult personalities are, means that they may find it easier to move away from criminal behaviours and reinvent themselves, particularly if they have the right support.

Young people are often recalled to prison for reasons relating to their immaturity. This is unsurprising given that traditional indicators of maturity include the ability to resist peer pressure or the ability to delay gratification.

Young adults in prison also face exceptionally poor outcomes following a period of imprisonment. As a cohort, they have limited or no access to the support and safeguards in place for children but don't necessarily have the independent living skills of older adults. This is especially the case for young people who have grown up in custody.

Recent developments in parole

The Parole Board has made significant adaptations to its policies and processes.

oral hearings policy for children

Anyone who applies for parole before the age of 18 has been entitled to an oral hearing in front of the Parole Board since 2010. The policy was developed in response to the Howard League's work. In a judicial review brought by the Howard League on behalf of K, a 14-year-old who was denied the opportunity of an oral hearing, the High Court found that common law fairness required K should have the opportunity to be heard.²³ The Court also acknowledged Article 12 of the UN Convention to be relevant in this context.²⁴ Following a number of other successful legal challenges to the failure to send children's applications to an oral hearing, the Howard League wrote to the Parole Board and asked it to adopt a policy of permitting all children oral hearings if they could not be released following a paper review. The rationale behind this is that children not only deserve the level of anxious

18. The UN Convention on the Rights of the Child, articles 3, 37 and 40.

19. R (Howard League for Penal Reform) v Secretary of State for the Home Department [2002] EWHC 2497 (Admin).

20. Children Act 1989, s23C(4)(c).

21. T2A and University of Birmingham (2011) Maturity, young adults and criminal justice: A literature review. Available at: <https://www.t2a.org.uk/wp-content/uploads/2011/09/Birmingham-University-Maturity-final-literature-review-report.pdf> [accessed February 2018]; T2A (2017) Dramatic fall in the number of young adults in prison and serving community sentences. Available at: <https://www.t2a.org.uk/2017/09/12/dramatic-fall-number-young-adults-prison-serving-community-sentences/>

22. Smith, D., McVie, S., Woodward, R., Shute, J., Flint, J. & McAra, L. (2001) The Edinburgh Study of Youth Transitions and Crime: Key Findings at Ages 12 and 13. Edinburgh: The Edinburgh Study of Youth Transitions and Crime; McAra & McVeigh (2010) McAra, Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology and Criminal Justice*, 10:2, 179-209

23. R (K) v the Parole Board [2006] EWHC 2413 (Admin).

24. The UN Convention on the Rights of the Child, articles 12.

scrutiny that an oral hearing provides in order to enable release at the earliest opportunity but also a chance to be heard. In the Howard League's experience, a key benefit of an oral hearing is that it invariably concentrates the minds of the various professionals who are required to put together plans to manage risk and support the child in the community.

Children and young people guidance

In 2012 the Parole Board commissioned guidance for members on the specific needs and vulnerabilities of children and young adults going through the parole process. The guidance is accompanied by information about specific risk assessment tools used for children written by forensic psychologist Dr. Louise Bowers.

The young adult pilot

In 2017 the Howard League asked the Parole Board to consider a distinct policy for young adults in line with both the evidence about the specific needs of this group and following a number of cases where young adults were stuck in the system for longer than necessary due to the need to challenge decisions not to hold oral hearings. From 2nd October 2017, the Parole Board has begun to pilot a different approach to granting oral hearings at the paper review stage for young people aged 18-21 years old at the point of their referral or recall. The pilot creates a presumption (but not an automatic right) that all young adult of this age are granted an oral hearing if they are not released on the papers. Data collated by the Parole Board shows a ten percent increase in the number of cases directed to an oral hearing by the second six weeks of the pilot.

Creative approaches by Parole Board members

Creative and proactive case management can make a real difference. The Howard League's specialist legal team has found that in some instances Parole Board members have displayed a willingness to take unusual steps to ensure children and young people feel at ease and have effective hearings. Through participation work, a young adult who recently appeared before the Board told the Howard League that he was worried the Parole Board 'would twist my words'; another said that he associated the words 'interrogation' and 'scary' with parole.

Simple techniques, such as going to see the young person and their representative and introducing themselves before the hearing, or inviting the young person to see the room before the hearing starts, can make a huge difference. One experienced member who had picked up on a young adult's drawing skills referred to in the dossier, invited a particularly troubled young man to draw pictures in response to some initial questions. This set him at ease and enabled him to participate effectively.

Other panels have supported the appointment of an intermediary in cases where the young person would otherwise be unable to understand or answer questions.

In appropriate cases, members have adjourned with robust directions to ensure that an adequate release plan is in place, requesting senior representatives from children's services to attend the hearing. A parole hearing can provide a unique opportunity to mark monumental changes in outlook and achievements by young people who have worked intensively to turn their lives around. The formal hearing, often in the presence of key professionals who have worked with the young person for years, can mark that change. In appropriate cases, the Parole Board has departed from its usual convention of not providing a decision on the day — as the Mental Health Tribunal does.

In some cases, this kind of proactive approach by the Parole Board has quite literally transformed young people's lives. The fall in the numbers of children and young adults in prison provides a real opportunity to ensure that those who do appear before the Parole Board are appropriately supported to make a fresh start.

Reflections on the way forward

More could be done to build on the progress that the Parole Board has made. Effective practice developed among members should be shared and others encouraged to follow suit. At present the Parole Board does not 'ticket' members to sit on hearings for young people, as is the case for other similar bodies. For example, the Mental Health Tribunal requires that Panels involving a child include a specialist child and adolescent member. CAMHS (child and adult mental health services) panel members have regular training in law and practice affecting children: a similar approach could be adopted by the Parole Board. Alternatively, the Parole Board could include issues affecting young people as part of its regular training.

Parole Board reviews for young people could be further adapted by taking simple steps to ensure that they can effectively participate, including the use of intermediaries, using first names where appropriate, planning questions carefully, and making questions short and easy to understand by using less jargon. If Parole Board hearings cease to be confidential, effective participation for young people may be inhibited, unless an exception is made — as is the case in the youth courts.

Several young people have told the Howard League that they want the Parole Board to gain a 'better understanding of each person' before it. The best way to achieve that will be to help young people feel able to speak freely. That, in turn, will result in better outcomes for young people that are commensurate with their risk and in accordance with our legal obligations towards them.