

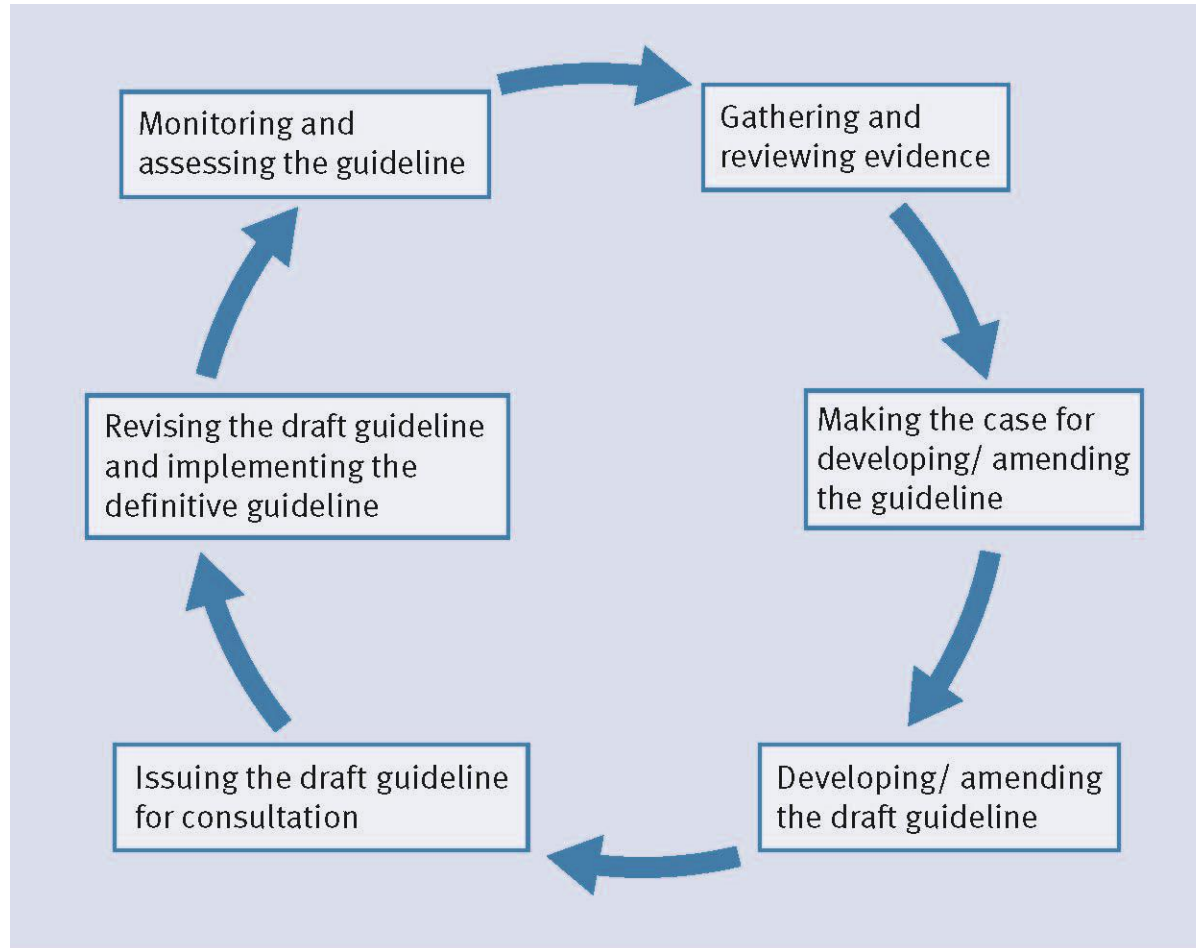
Sentencing
Council

Sentencing Council for England and Wales

**Promoting a clear, fair and consistent
approach to sentencing**

January 2023

- Set up to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary
- Statutory obligations – three main areas of responsibility:
 - Developing sentencing guidelines and monitoring their use
 - Assessing the impact of guidelines on sentencing practice
 - Promoting public confidence in the criminal justice system through sentencing guidelines
- Plus other cross-cutting areas, including:
 - Consistency in sentencing
 - Effectiveness of sentencing in preventing reoffending



- The Council has committed to five strategic objectives between 2021 and 2026:
 - Consistency and transparency in sentencing
 - All Council work is evidence-based
 - Effectiveness of sentencing
 - Public confidence in sentencing
 - Equality and diversity

- Two main types of guideline
- We have produced 184 offence specific guidelines and nine overarching guidelines
- Mainly new guidelines at varying stages of development:
 - Motoring and aggravated vehicle taking
 - Underage use of knives
 - Intimidation
 - "Drug driving" is the highest volume offence that the Council is currently developing an offence specific guideline for, with 13,315 adult offenders sentenced in 2020.
- Also re... of community and custodial sentences

Did you know...?

"Drug driving" is the highest volume offence that the Council is currently developing an offence specific guideline for, with 13,315 adult offenders sentenced in 2020.

- Secondary legislation to support the Sentencing Guidelines Act 2017, including the Sentencing and Parole Act 2020 and the Sentencing and Parole (Amendment) Act 2021
- Large scale evaluation of the impact of the Sentencing Guidelines Act 2017 on sentencing practice and outcomes
- Difficulties in sentencing practice, including the impact of the Sentencing Guidelines Act 2017 on sentencing practice and outcomes
- Addressing sentencing disparities, including the impact of the Sentencing Guidelines Act 2017 on sentencing practice and outcomes
- Current sentencing practice, including the impact of the Sentencing Guidelines Act 2017 on sentencing practice and outcomes
- Scoping studies to explore the impact of the Sentencing Guidelines Act 2017 on sentencing practice and outcomes
- Additional work published in 2021 to explore the impact of the Council over its first 10 years

Did you know...?

In a survey of sentencers conducted for the Council in 2019, 75% of sentencers who had started sentencing criminal cases before 2011 thought the Council's guidelines had improved fairness, 85% thought they had improved transparency and 87% thought they had improved consistency.

Electronic court data collection to evaluate guidelines

- Administrative data sources do not provide everything needed
- New data collections to fill gaps
- Current data collection to date (excluding the data collection that started running earlier this week).

Did you know...?

The Council has collected around 280,000 forms across all of its data collections to date

Current collection launched on 9 January and will run until 30 June

Currently exploring future ways of collecting more data

- Statutory duty to have regard to the cost of different sentences and their relative effectiveness in reducing reoffending
- Literature review on effectiveness of sentencing published in September 2022

- We are currently

Did you know...?

A Ministry of Justice study showed that the re-offending rate is about 4 percentage points higher for immediate custodial sentences of less than 12 months than for community orders or suspended sentence orders.

years

- Committee

Public confidence

- Statutory duty to have regard to the need to promote public confidence in the CJS when developing guidelines and monitoring impact
- Interpreted more widely as sentencing
- Range of work on:
 - Public education and participation
 - Making sentencing more accessible and easy to understand
 - Promoting confidence in guideline development
 - Measuring success in increasing public confidence

Did you know...?

In a 2022 survey of 2,000 adults, 67 per cent of respondents said that awareness of the existence of guidelines had a positive impact on their confidence in the fairness of sentencing.

- Increased focus on placing equality and diversity at the heart of the Council's work
- All guidelines link to the Equal Treatment Bench Book
- Wording in guidelines to flag potential disparities
- Endeavouring to collect more data
- External work on
- Keeping abreast

Did you know...?

The first guidelines to contain specific wording referencing ethnic disparities in sentencing were the firearms guidelines, which came into force in January 2021.

Challenges remain

- Ensuring guidelines have a positive impact
- Ensuring we can measure the impact of guidelines
- Increasing public knowledge and confidence
- Filling gaps in guidance/ guidelines
- Ensuring guidelines provide fair treatment for all

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www.sentencingcouncil.org.uk

[@Sentencing_CCL](https://twitter.com/Sentencing_CCL)

**University of
Hertfordshire UH**

Equality and Diversity In the Work of the Sentencing Council

Qi Chen, Mateja Vuk, Chamu Kuppuswamy, and Diana Kirsch

13 January 2023

University of Hertfordshire **UH** by the Sentencing Council as part of its EDI commitment
A study commissioned by the Sentencing Council as part of its EDI commitment

Presentation outline

- Introduction and methodology
- Key findings about guideline structure and sentencing approach
- Key findings about sex, age and race
- Key findings about other equality, diversity and inclusion (EDI) factors and the broader work of the Sentencing Council
- Key recommendations

1. Introduction and methodology



Scope

- Robbery
- Theft
- Harassment
- Sentencing Guideline for Children and Young People



Goals

- Guideline structure and sentencing approach
- Disparity, EDI factors, and sentencing guidelines
- Broader work of the Sentencing Council



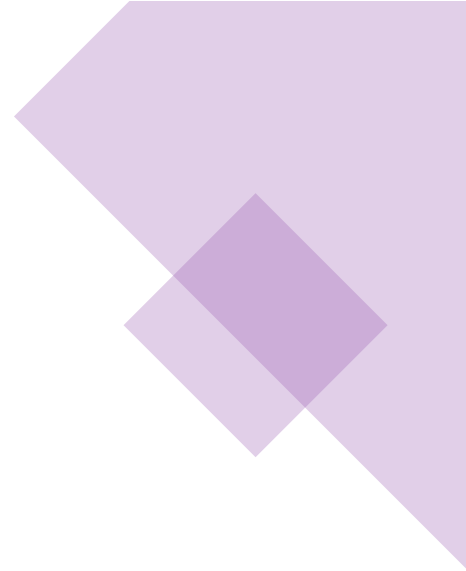
Methods

- Text analysis
- Co-production
- Crown Court Sentencing Survey Data analysis

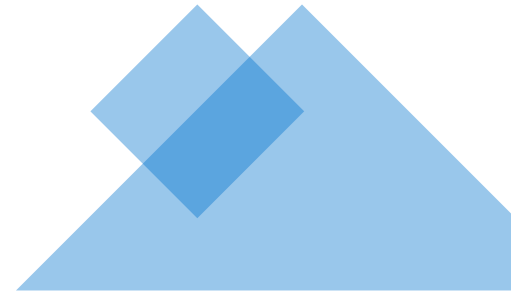
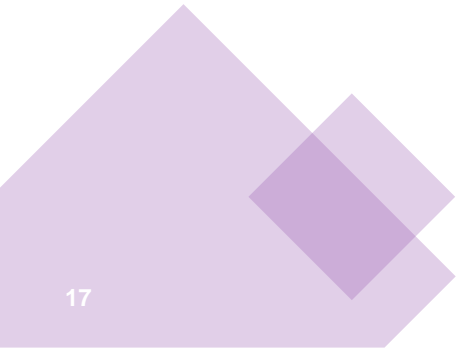


Limitations

- The CCSS data is quite old
- It only captures the principal offence
- Some factors in the CCSS form were different from the actual guidelines
- Guidelines updated since
- The number of co-production partners is quite small; self-selected sample



Key findings



2. Guideline structure and sentencing approach

➤ Do sentencing guidelines take a balanced approach to upward and downward factors?



Co-production: different opinions held by civil society partners, lawyers and sentencers



CCSS data analysis: Seriousness of crime (most influential factor) – previous convictions and other upward factors – downward factors (least impact on sentencing outcomes)

	Percentage of words in the upward cluster	Percentage of words in the downward cluster
Street Robbery	12.1%	4.5%
Theft general	10.9%	5.8%
Harassment & Stalking	13.5%	3.9%

2. Guideline structure and sentencing approach

➤ Do upward factors lead to disparity in sentencing?



Being in a
group



Previous
convictions



Compliance/offence
committed while on
bail or licence

- All three upward factors were significant in adult robbery cases, although 'gang or group membership' was only significant in relation to receiving a longer custodial sentence.
- For robbery committed by children and young people, having 'previous convictions' was also a strong predictor of receiving immediate custody; 'Gang or group membership' was not significant, contrary to the co-production partners' perceptions. Offences committed on bail or licence were also not significant.
- In harassment cases, the only significant upward factor was 'offence committed on bail or licence'. The other two factors were not associated with either sentencing outcome.
- In theft offences, the findings are mixed.
- No strong or consistent evidence for racial disparity

2. Guideline structure and sentencing approach

➤ Do downward factors lead to disparity in sentencing?



Determination to
address



Remorse



Mental disorder and/or
learning disability

- All three downward factors were significant in adult robbery cases, and they were associated with both sentencing outcomes. Among them, 'physical or mental illness; mental disorder and/or learning disability factor' was the strongest mitigator against immediate custody.
- For robbery committed by children and young people, two of the downward factors were not significant for either outcome, and it was not possible to test the third.
- In theft offences, all three factors were significant in mitigating against immediate custody. Among them the factor of 'determination to address addiction or offending behaviour' was the strongest. However, these factors were not associated with shorter custodial sentences. The same applies to harassment.
- No strong or consistent evidence for racial disparity

3. Sex, race and age

Sex/ gender



There were mixed views about gender and sentencing disparity among co-production partners.



Current expanded explanation on 'sole and primary carer' does not say the carer is necessarily a woman/mother.



No evidence that women who are carers receive longer sentences. Male gender is associated with longer sentences and higher odds of receiving immediate custody for robbery and some types of theft.

3. Sex, race and age

Race/ ethnicity



The perception of co-production partners was that ethnic minorities are disadvantaged in sentencing. Sentencers argued that they are less likely to plead guilty but are treated equally in plea reduction.



Special provision in the guideline on guilty plea reduction allows discretion in cases with late guilty pleas.



No strong evidence of sentencing disparities for ethnic minorities, either directly, or through the impact of other factors. However, other research has reached different findings when examining different types of offences.

3. Sex, race and age

Age



The co-production partners' view was that certain young defendants are treated as adults because of their physical appearance. Judges argued they use their discretion with young adults.



The Sentencing Guideline for Children and Young People states it applies to 'those aged under 18 at the date of the finding of guilt'.



Age has a minimum and inconsistent effect on the likelihood of immediate custody but has a much stronger effect on the length of sentence.

4. Other EDI factors and broader work of the Sentencing Council

➤ Is it race, socio-economic background or both?

- We used factors such as 'difficult/deprived background' as proxies of socio-economic background. This is enabling but not ideal
- The downward factor 'difficult/deprived background' does not seem to be significant in the sentencing of robbery or theft offences
- Inequality in the assessment of 'good character and/or exemplary conduct'.
- Inequality in the accessibility of mental health treatment, addiction treatment and similar services

➤ Visibility, criteria and confidence building

- Visibility and accessibility of expanded explanations
- Criteria for guidelines evaluation and revision.
- Engagement with civil society organisations and the general public.



Key recommendations

5. Summary of recommendations

- Add an extra step to the existing approach in adult guidelines requiring sentencers to carry out a final review of the sentence, with downward factors and the offender's personal circumstances in mind.
- Conduct further research into why some of the downward factors do not seem to have an impact on sentencing outcomes, especially in robbery committed by children and young people.
- Obtain and analyse more recent data that oversamples offenders from ethnic minority backgrounds to explore further the disparity between some co-production partners' accounts of racial disparity and the result of CCSS data analysis.
- Further explore the impact of gender on sentencing.
- Collect a larger volume of data than is currently available in order to analyse for intersectionality effectively.

5. Summary of recommendations

- Improve the visibility of expanded explanations on the webpage.
- Take a more integrated approach to sentencing guidelines development and revision.
- Increase the use of case studies in public communication and education.
- Improve the wording and expressions in the existing guidelines, for example, decoupling 'pregnancy' and 'maternity' from medical condition, redrafting the expanded explanation of 'remorse' to include learning and communicating difficulties and cultural differences.

Any questions?

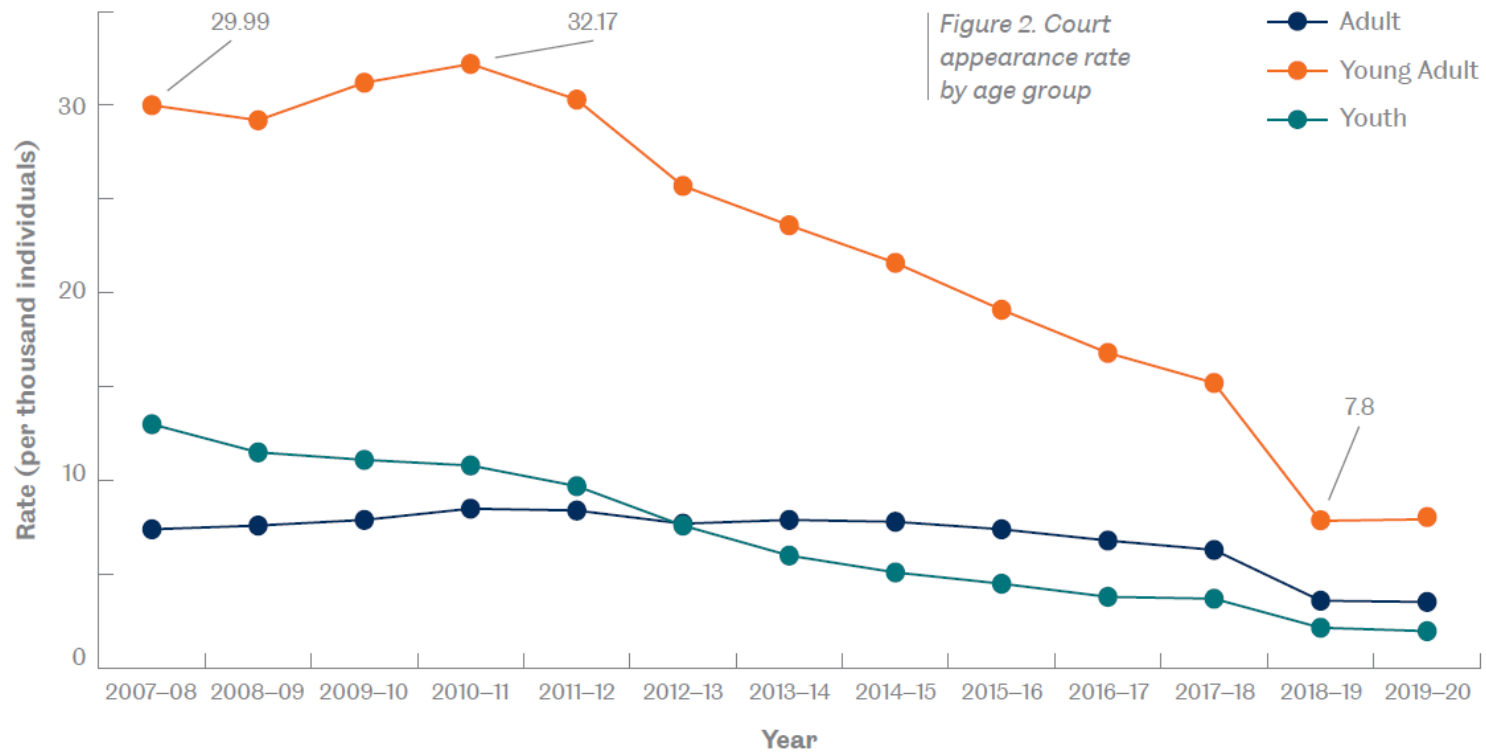
Young adults in court in England and Wales: Shrinking numbers and increasing disparities

Prof Nathan Hughes, University of Sheffield

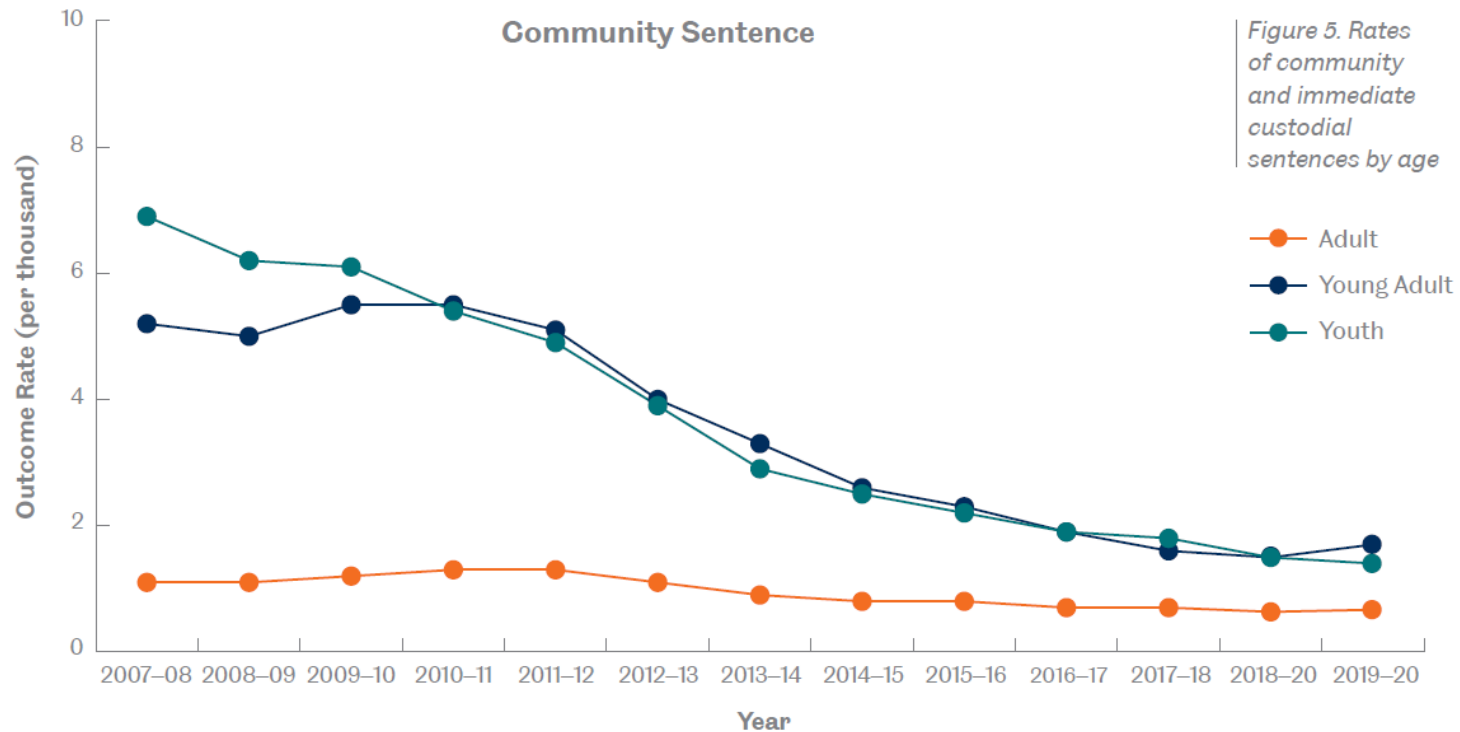
Prof Todd Hartman, University of Manchester



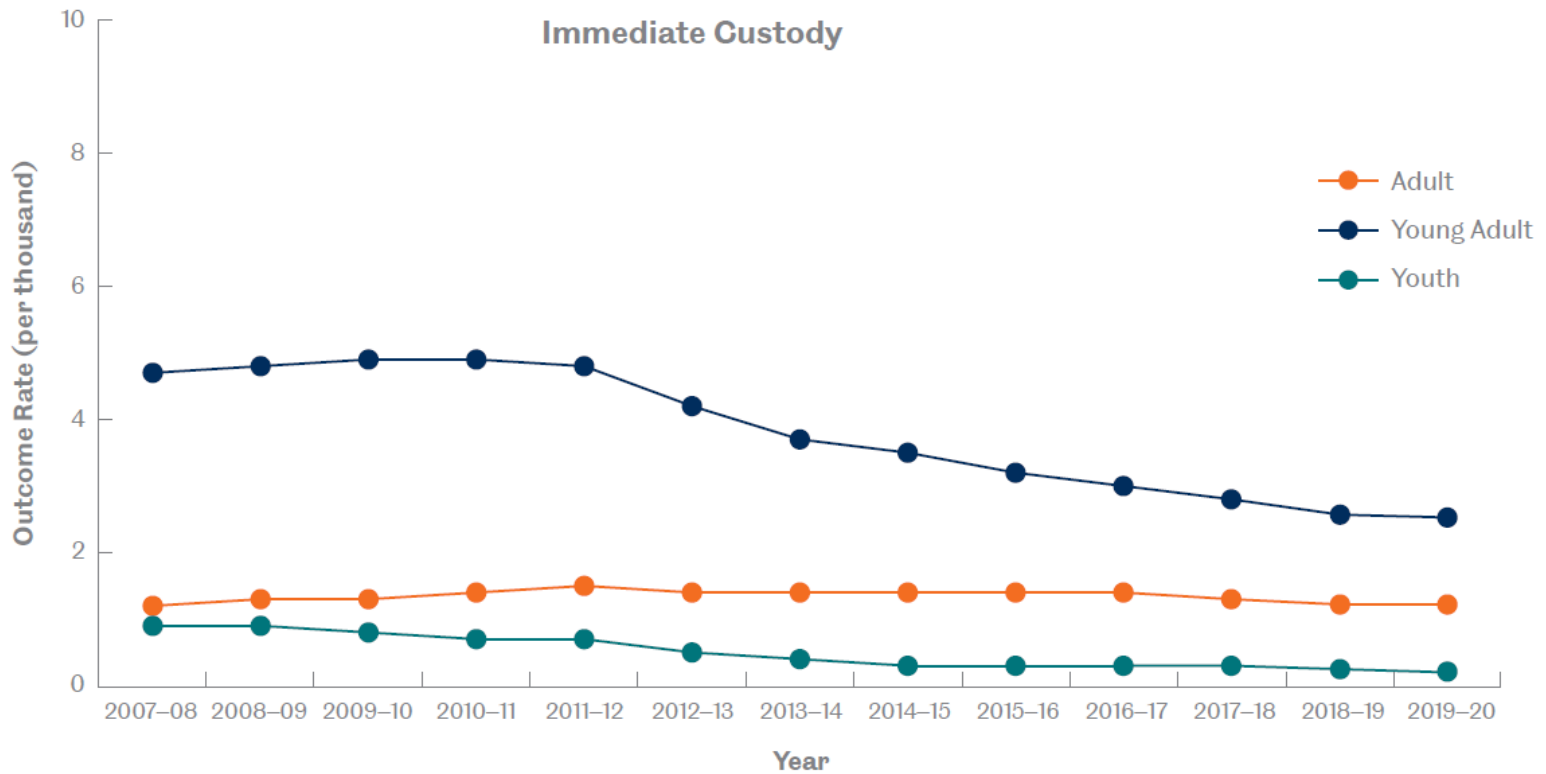
Court appearance rate by age group



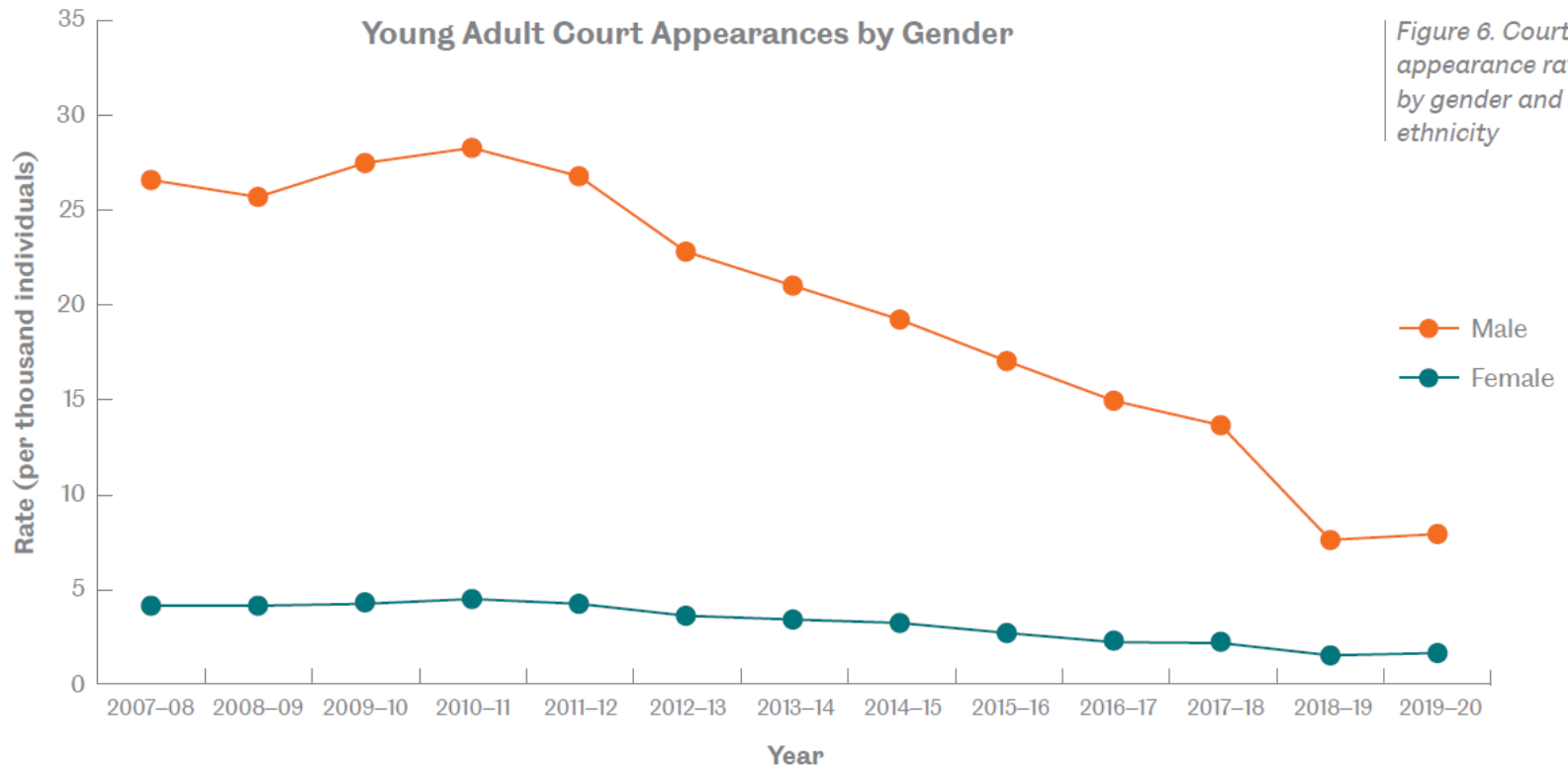
Rates of community sentencing



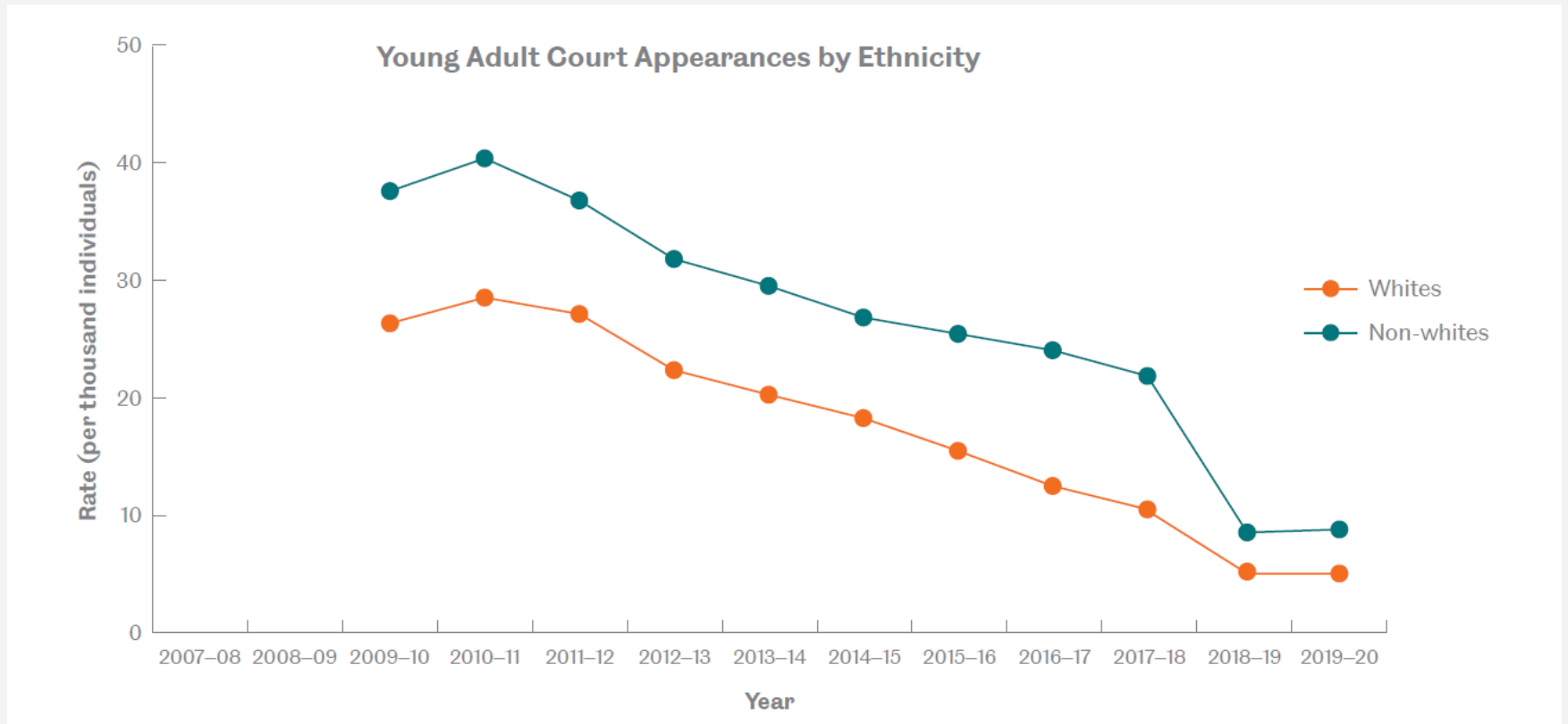
Rates of custodial sentencing



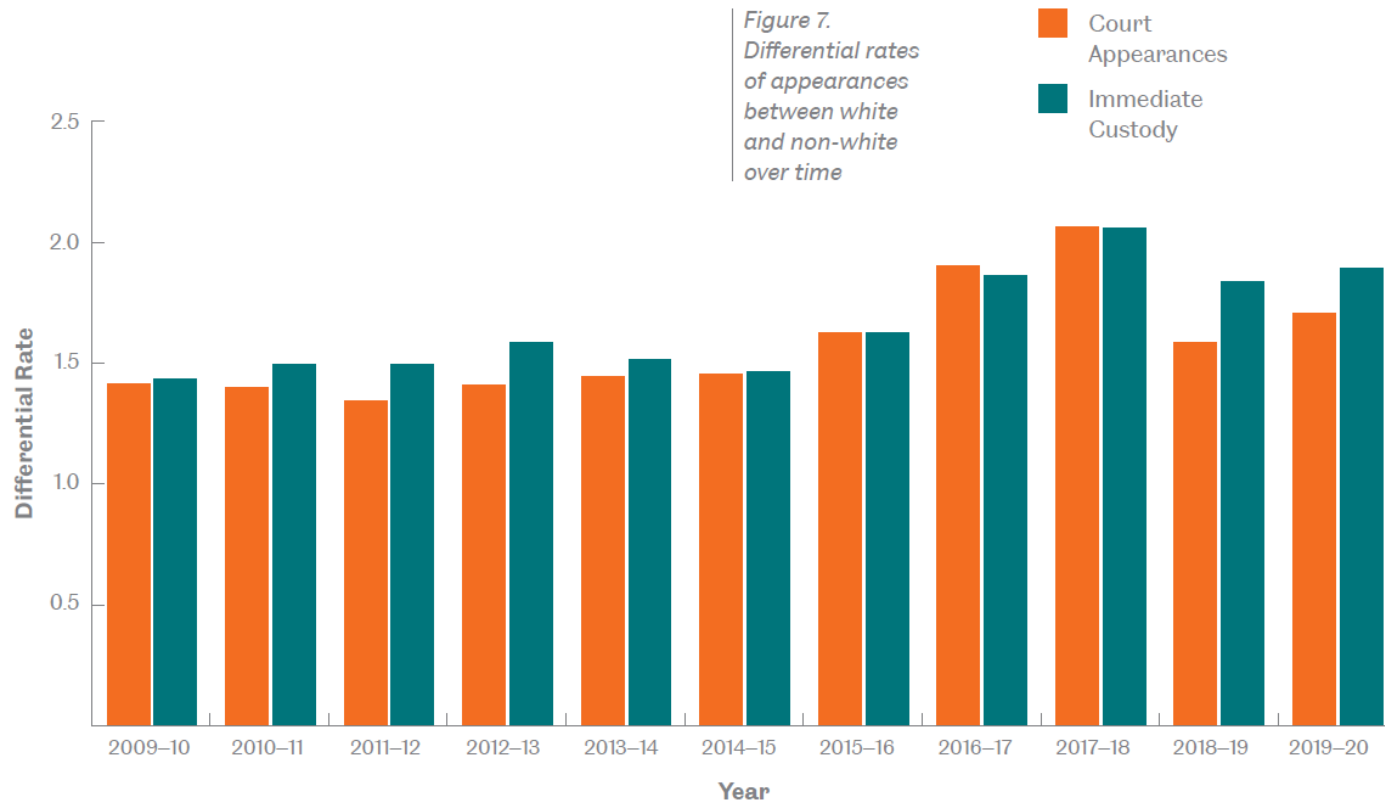
Disparities by gender



Disparities by ethnicity



Disparities by ethnicity (2)



Geographical variation

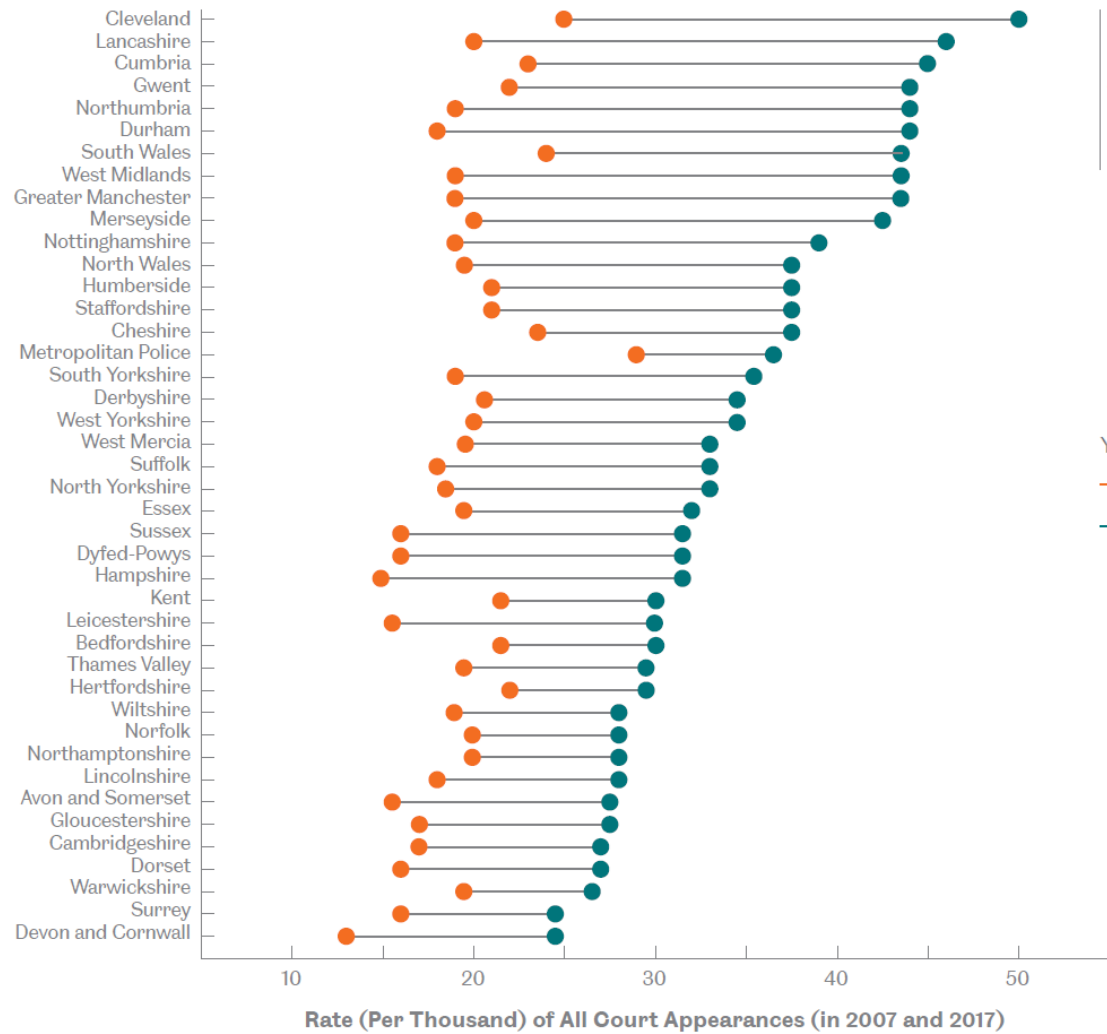


Figure 8. Comparison of young adult court appearance rates by Police Force Areas

Year

- 2017-18
- 2007-08

Why has this occurred?

- **There has been no apparent reduction in crime**
 - Which implies reducing use of formal procedures doesn't increase crime...???
- **Deliberate scaling back of the CJS?**
 - Changes to policing practices?
 - A response to austerity?
- **A knock on from reductions in the criminalisation of young people?**

Implications

- **Better analysis and modelling requires:**
 - Detailed person/offence level data to be made available
 - More nuanced age categorisation
 - Ethnicity to be consistently and robustly monitored
 - Data to be available at local court level
- **Policymakers and professionals must understand and address:**
 - Significant geographical variation
 - The disadvantage faced by those of minority ethnic origin
 - High rates of custodial sentencing of young adults

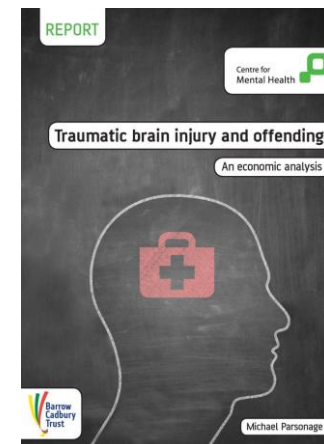
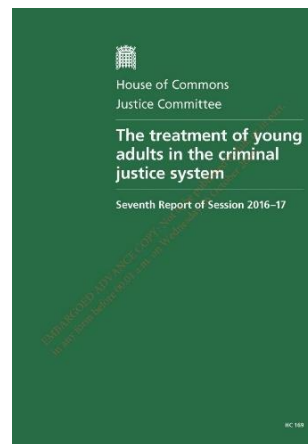
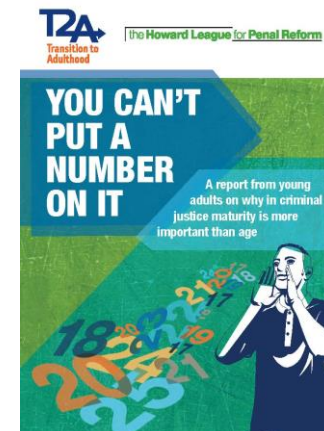
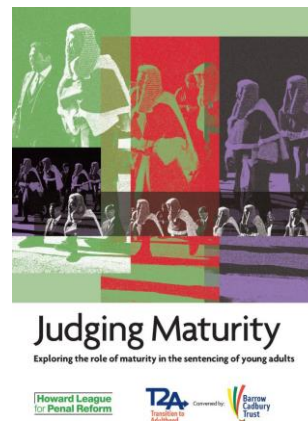
Sentencing Young Adults

Dr Laura Janes,
Consultant Solicitor, GT Stewart Solicitors and Advocates

January 2023

Young adults: a distinct group with distinct needs

- T2A work since 2008
- Two Justice Committee reports (2016, 2018)
- Neuroscientific, psychological and sociological evidence shows:
 - maturation is not complete in the majority of young people until the age of 25 and
 - young adults have higher levels of need in criminal justice system



Young adults – peak desistance?

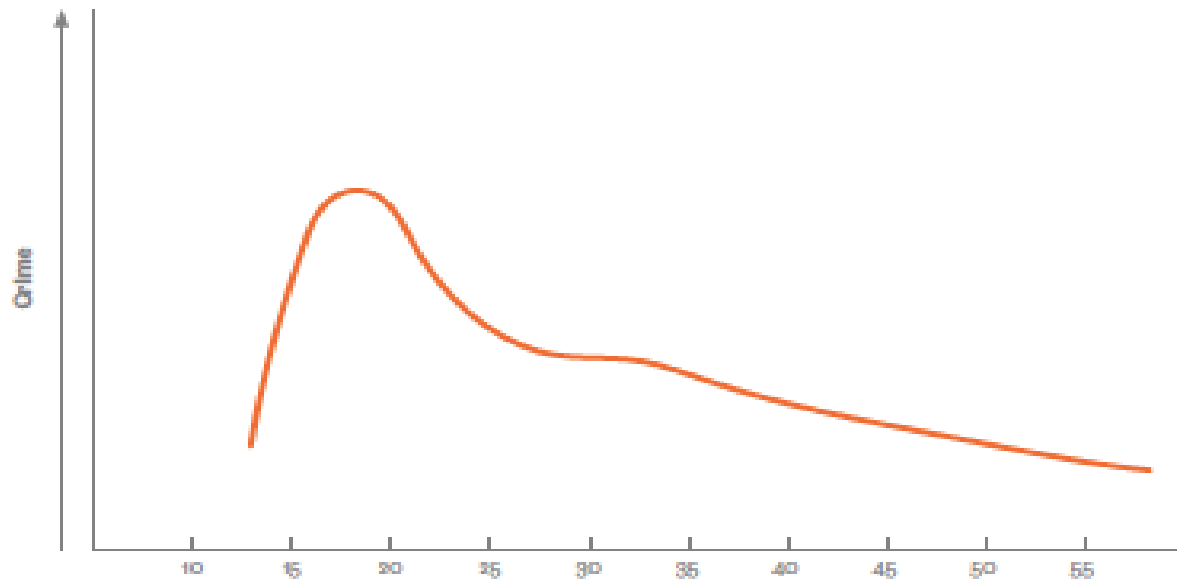
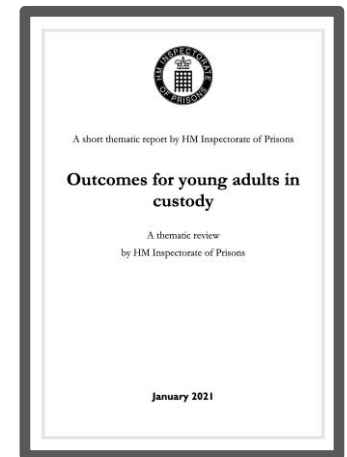


Figure 1. An illustrative example of the typical 'age-crime curve'

Source: Nathan and Hartman, T2A, 2022

Young adults in prison

- September 2019: **15,564** 18–25-year-olds in prison (HMIP, 2021)
- A **third of young adults** in prison are Black or ethnic minority (Ministry of Justice, 2019)
- **Almost half** of under 21s have been in care (National Audit Office, 2015)
- **40 per cent** young adults in solitary confinement (HMIP annual reports passim)
- Incidents of **self-harm** among young adults have increased by **3,500** between 2008 - 2018) (Ministry of Justice, 2019)
- **30 per cent** of young adults aged 18 to 20 **reoffend** within 12 months of leaving prison (Ministry of Justice, 2018; Hiller and Mews, 2018)
- Young adults have **more negative experiences** of almost **every aspect** of custody than older adults (HMIP, 2021)



R v Clarke [2018] 1 Cr. App. R. (S.) 52



Lord Chief Justice Burnett:

“Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. ... Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays.” (§ 5)

Beyond Clarke – seriousness does not outweigh immaturity

- The seriousness of the offence does not outweigh the consideration of maturity:
- In **Clarke** a teenage boy had been kidnapped, falsely imprisoned and subjected to threats. Both adult defendants had very bad records.
- **R v Ake [2018] EWCA Crim 392** - serious stabbing causing life threatening injuries.
- **R v Hobbs [2018] EWCA Crim 1003** - manslaughter of a man who had burned to death after the defendants had ignited a flare in the car in which he was sleeping
- **R v Ford (AJ) [2019] EWCA Crim 1757**, gang related domestic burglaries

Sentencing Council guideline

- General Guideline: Overarching Principles
- In force from October 2019
- STEP 2 – reducing seriousness & personal mitigation
- Expanded explanation on age and/or lack of maturity

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles>

Factors reducing seriousness or reflecting personal mitigation
(Factors are not listed in any particular order and are not exhaustive)

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Remorse
- Self-reporting
- Cooperation with the investigation/ early admissions
- Little or no planning
- The offender was in a lesser or subordinate role if acting with others / performed limited role under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence
- Little or no financial gain
- Delay since apprehension
- Activity originally legitimate
- Age and/or lack of maturity

Effective from: 01 October 2019

SC Guideline: Age and/or lack of maturity affects behaviour

- Age and/or lack of maturity can affect:
 - i. **responsibility** for the offence and
 - ii. the **effect** of the sentence on the offender.
- Either or both of these considerations may justify a **reduction** in the sentence.
- Emotional and developmental age is of **at least equal importance to their chronological age (if not greater)**.

Young adult responsibility for offending

- Young adults (**typically aged 18-25**) are still developing neurologically and consequently may be less able to:
 - evaluate the **consequences** of their actions
 - limit **impulsivity**
 - limit **risk** taking
- Young adults are likely to be **susceptible to peer pressure** and are **more likely to take risks or behave impulsively when in company with their peers.**
- Immaturity can also result from **atypical brain development**. Environment plays a role in **neurological development** and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

Impact of sentence and capacity to change

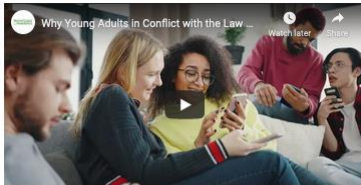
- Immature young adults may:
 - find it **particularly difficult to cope with custody** and therefore may be more susceptible to self-harm in custody
 - find it **particularly difficult** to cope with the **requirements of a community order without appropriate support.**
 - Have a **greater capacity for change**
 - be **receptive to opportunities** to address their offending behaviour and change their conduct.
- Many young people who **offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.**

Application of Clarke – Kara Baldwin [2021] EWCA Crim 417

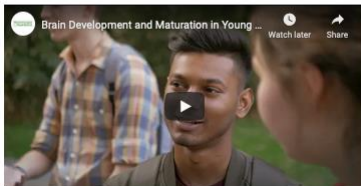
- “The approach taken by the judge did not properly reflect what was said by Lord Burnett of Maldon CJ in Clarke and others” and “...the judge was not referred to Clarke which again is unfortunate. The principle set out in the judgment of the Lord Chief Justice has been applied in many cases since 2018” (§19).
- “The evidence in this case is that the appellant was childlike, younger than her chronological age and immature. Had the judge taken those matters into account, he at the very least would have discounted the starting point to a significant degree. In the light of the available evidence, we consider that the judge should have given consideration to the principles set out in the Sentencing Council Guideline on Sentencing Children and Young People. Again he was not referred to that Guideline. The general principle that custody should be a last resort when a defendant is under the age of 18 will carry over to an 18 year old who is particularly immature. That should have applied to the appellant.” (§20)
- Sentence of 16 months' detention and impose in its place an 12 month community order
- Note presence here of a number of other factors incl neurodevelopmental disorders

Resources

Why Young Adults in Conflict with the Law Must be Treated Differently



Brain Development and Maturation in Young Adults



Prevalence of Unmet Needs Among Young Adults



Distinct Legal Considerations Apply to Young Adults



The Sentencing of Young Adults: A Distinct Group Requiring a Distinct Approach

David Emanuel QC
Garden Court Chambers, London

Claire Mawer
15 New Bridge Street Chambers, London

Dr Laura James
Howard League for Penal Reform, London

© Maturity; Sentencing Council for England and Wales; Sentencing guidelines; Young offenders

This article examines the impact of the remarkable recent progress of the criminal justice system in recognising that young adults aged 18-25 years should be treated as a distinct category of defendant for the purposes of sentencing. The authors chart the historic treatment of this issue and consider the growth of a substantial body of sentencing authorities which have established the particular importance of age and lack of maturity as a mitigating factor for young adults. These developments are now reflected in the Sentencing Council's expanded explanation of "age and/or lack maturity" as a mitigating factor with significant implications for practitioners.

Introduction

The criminal law has long recognised the need for a different approach when dealing with young people who offend.

The concept has its origins in s.103 Children's Act 1908, colloquially known as the Children's Charter. The intention of Parliament in the 1908 Act was, in the words of the government's representative, the Lord Advocate, "to shut the prison door and open the door of hope".

Historically, it has been difficult to identify what approach the law should take to youth and at what age limit any age-based approach should cease to apply. Thus, the late Lordingham began his lectures for the Prison Reform Trust in 1997:

"In a judgement twice quoted with approval by the House of Lords, an Australian judge sitting in the Supreme Court of Victoria said: "No civilized society... regards children as accountable for their actions to the same extent as adults..." The wisdom of protecting young children against the full rigour



Howard League for Penal Reform

This document sets out the principles that ought to be applied to young adults, typically aged 18 to 25, sentenced for any offence, in line with developments in case law, science and social studies. They have been devised in consultation with an advisory group, details of which can be found at www.howardleague.org

1. Young adults, typically aged 18 to 25, should be treated as a distinct category for the purposes of sentencing.

2. Young adults are still developing physically and psychologically, until the late twenties. Physical College of Physicians, 2012; S.17 v. Chan [2012] ECHR; Cm 108. The Lord Chief Justice observed:

"Having the age of 18 does not imply (consequently, S.17 does not provide) a sufficient level of maturity. The court has long been slow... Full maturity is an attribute of adulthood and not merely evidence of young people on their 18th birthday. Consideration of adulthood is a matter for the judge of fact and evidence. Medical research published on 17 January 2010 is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthday. The growth and maturation of an offender will be factors that courts may sentencing decisions, even for offenders less than 18 years of age."

3. Young adults should be categorised as a distinct category when the criminal justice system (Justice Committee 2010).

Young adults have a greater capacity for change in a shorter period of time than older adults (F. v. Long [2004] ECHR; Cm 2882; Law Commission 2003). They also have the same level of physical health (2012). 3. When a young adult is sentenced for an offence committed before turning 18, section 6(2) of the sentencing guidelines for other reasons the Court for there is no starting point the sentence shall to have been imposed on the date of offence when the offence was committed after that age. In the Howard League (2010) ECHR Cm 1082. The Court of Appeal stated: "The fact that the appellant had attained the age of 18 before he committed the offence does not of itself mean that the factors relevant to the sentencing of a young offender had a relevance limited to his age. The fact that he had been involved in a violent crime with all the understanding and self-control of an adult matters."

Young adults should be categorised as a distinct category when the criminal justice system (Justice Committee 2010).

<https://howardleague.org/legal-work/sentencing-young-adults/>

Gaps in knowledge?

Professor Nicola Padfield KC (Hon)

**Emeritus Professor of Criminal and Penal Justice, University of Cambridge
Honorary and Life Fellow, Fitzwilliam College, Cambridge**

Introduction

Thank you for this opportunity to join this debate

Gaps in knowledge:

Which gaps: so much to be learnt – but how do we prioritise?

Whose gaps: sentencers (judges and magistrates)? Policy makers?
Politicians? Prison governors? Probation managers? MAPPA? Media?

How to fill them? This is about how people learn as well as about the need for more research

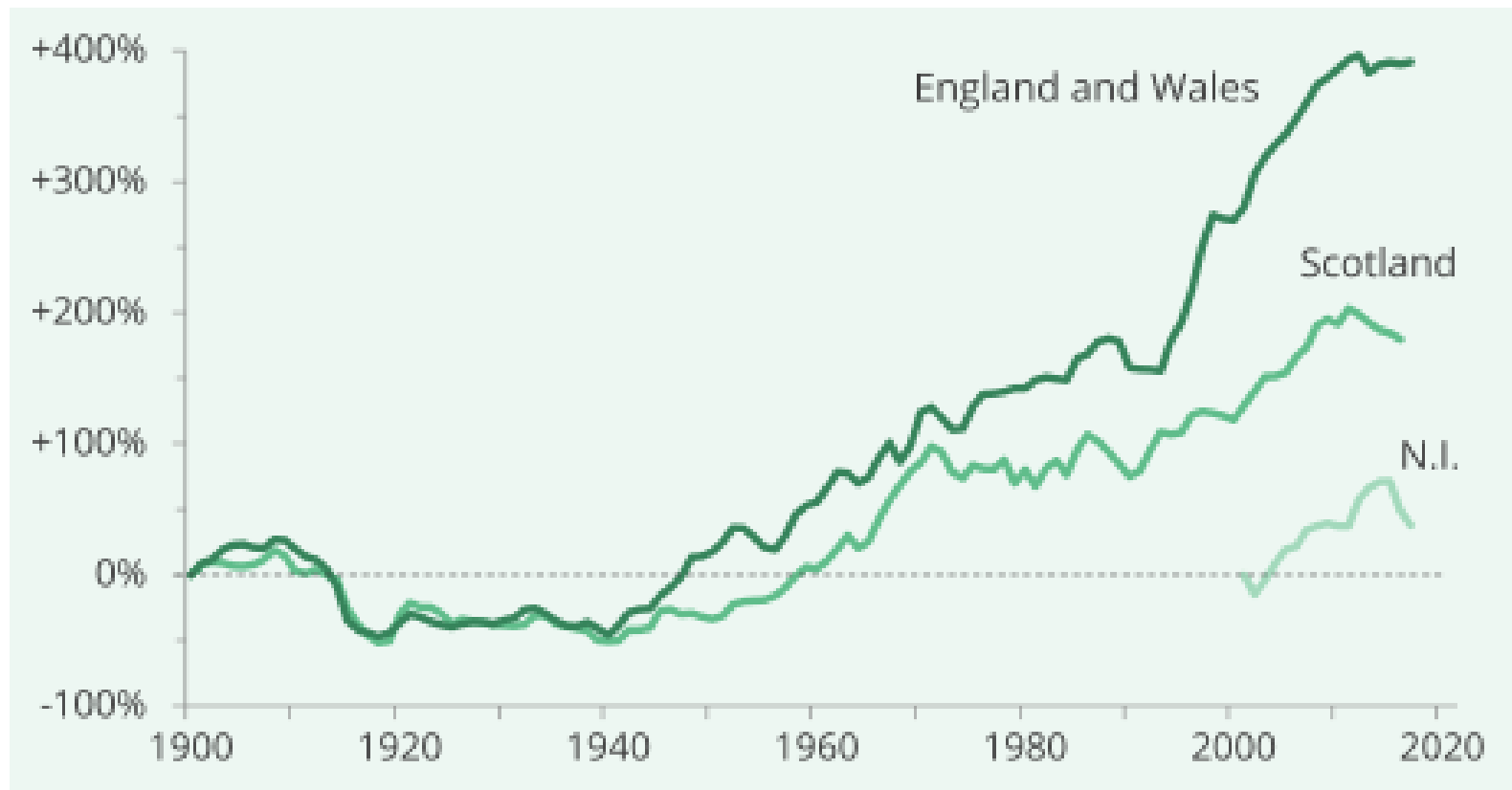
Evaluating purposes

Section 57 Sentencing Act 2000 (was s. 142 Criminal Justice Act 2003): any court sentencing an offender must have regard to the following ‘purposes of sentencing’:

- the punishment of offenders,
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders,
- the protection of the public, and
- the making of reparation by offenders to persons affected by their offences.

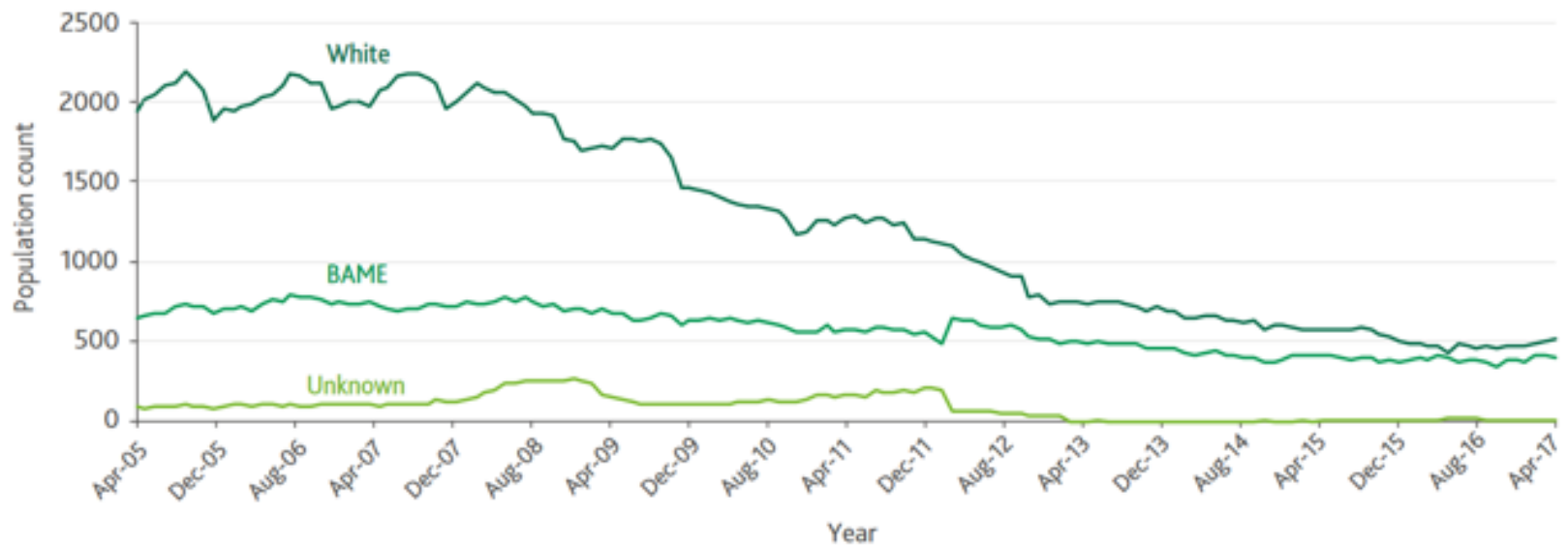
BUT no priority and contradictory? Impossibility of evaluating?

Sentencing: In practice



Questions of ethnicity

Figure 1: Under 18 secure population by ethnicity 2005/05 – 2017/18*



* 2016/17 and 2017/18 data is provisional

What works to reduce re-offending?

- Most offenders (even most persistent offenders) desist, and they do so largely on their own initiative.
- Factors influencing ‘pathways into crime’ are not necessarily the same as factors influencing ‘pathways out of crime’.
- Desistance is often a gradual, fragile, obstacle-strewn process.
- The need to individualise ‘treatment’ to be effective: see Maruna and Mann (2019): programme evaluations v life stories: narratives of hopes.
- The need for understanding support and pro-social relationships: cf. lack of effective channels for resolving difficulties.
- Women have (everyone has) significantly different ‘needs’.

So we know quite a lot

And need to keep testing

Smarter sentencing means

- Recognizing that ‘one size does not fit all’
- Understanding what works to reduce re-offending
- Understanding your aims and your priorities (your values)
- Investing where it helps, and not wasting money where it doesn’t

Public education and debate really matter

My priorities?

- For SC: how people (which people?) actually use the guidelines
- For everyone (including judges): why does the prison population expand? the real impact of current sentences (through the experiences of Ds and victims – qualitative research essential in this area). E.g. worry about recall rates?
- For leaders (who? where?): how people learn: e.g. joining up judicial training; thinking about the role of the PSR; or the dangers of virtual courts. Joined-up learning?

Research/books sentencers should think about (let's all tell each other what we should be reading!)

Bromley Fact files (2022) <http://www.prisonreformtrust.org.uk/publications/factfile>

Canton, R. (2017) *Why Punish? An introduction to the philosophy of punishment*

Crewe, B. (2011) Depth, weight, tightness: Revisiting the pains of imprisonment 13
Punishment and Society 509-529

Hayes, D. (2015) The impact of supervision on the pains of community penalties in England and Wales: An exploratory study 7 *European Journal of Probation* 85–102

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Sered, D (2021) *Until we reckon*

Van der Wolf, M (2022) *Safeguarding the quality of forensic assessment in sentencing*

Thank you, again

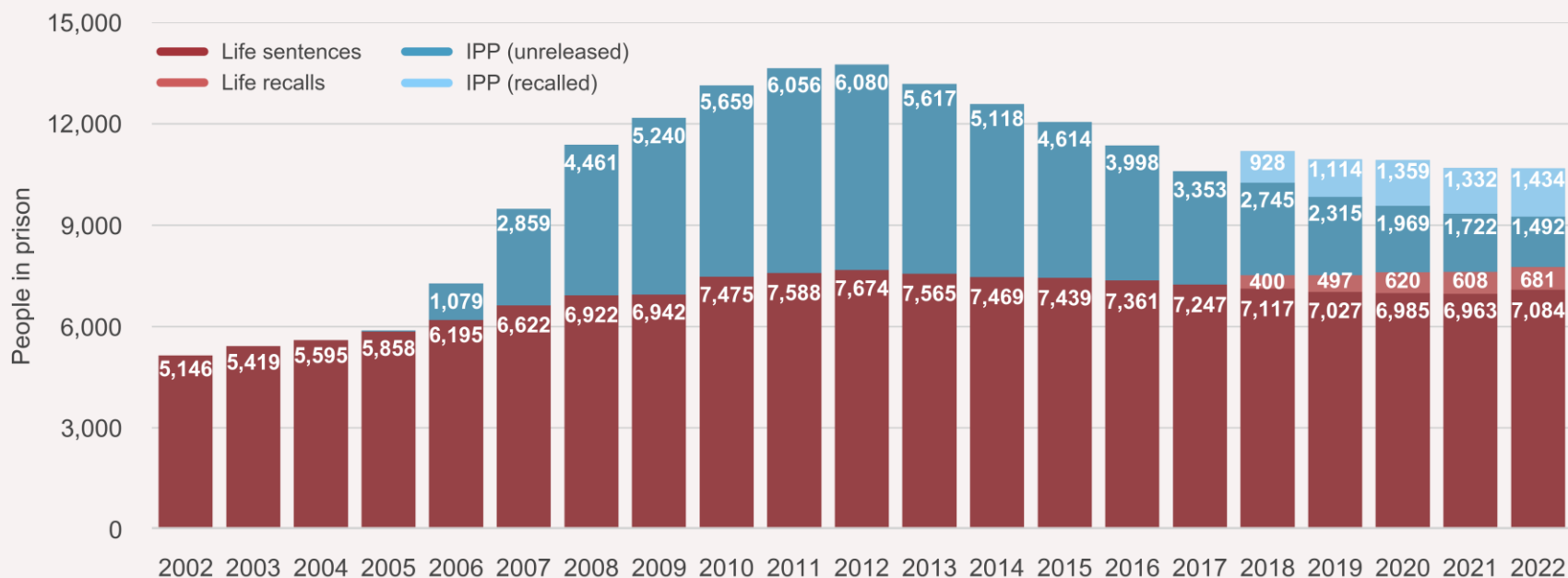
- **Questions?**
- Please do email me on nmp21@cam.ac.uk

What we know but maybe don't notice....

Sentencing Council: Sentencing seminar
13 January 2023

Indeterminate and extended sentences

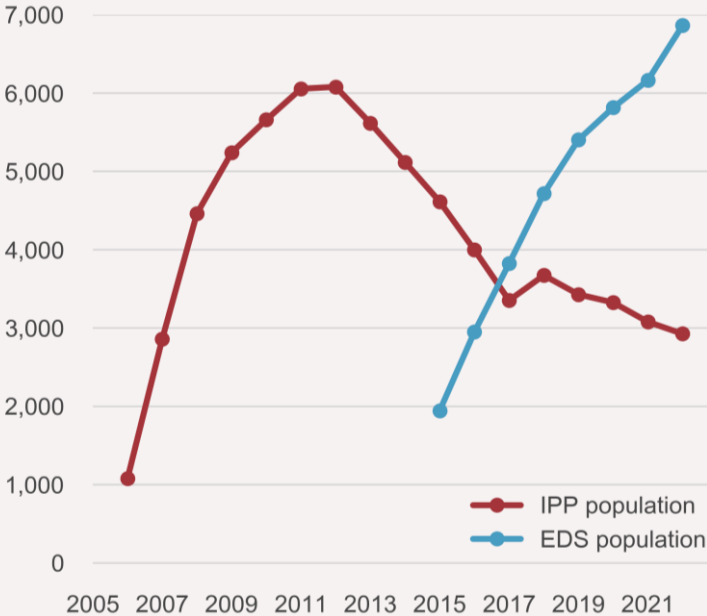
Indeterminate sentences starting to fall—but recalls are rising



Source: Offender management statistics, Prison population 2022 and Offender management statistics quarterly: April to June 2022

Indeterminate and extended sentences

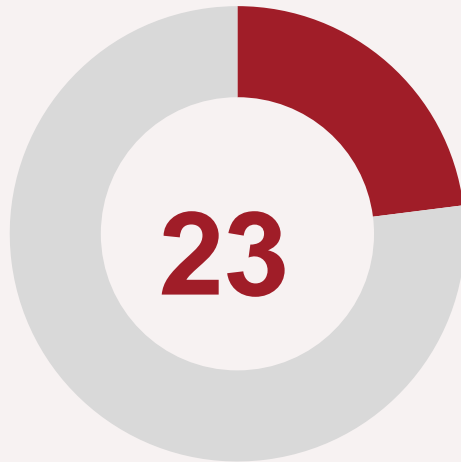
The new IPP?



Source: Offender management statistics, April to June 2022

Beyond punishment

Life sentence



Nearly a quarter of people currently in prison on a life sentence have already **served their minimum term**

On average they have spent a further **nine extra years in prison**

Beyond punishment

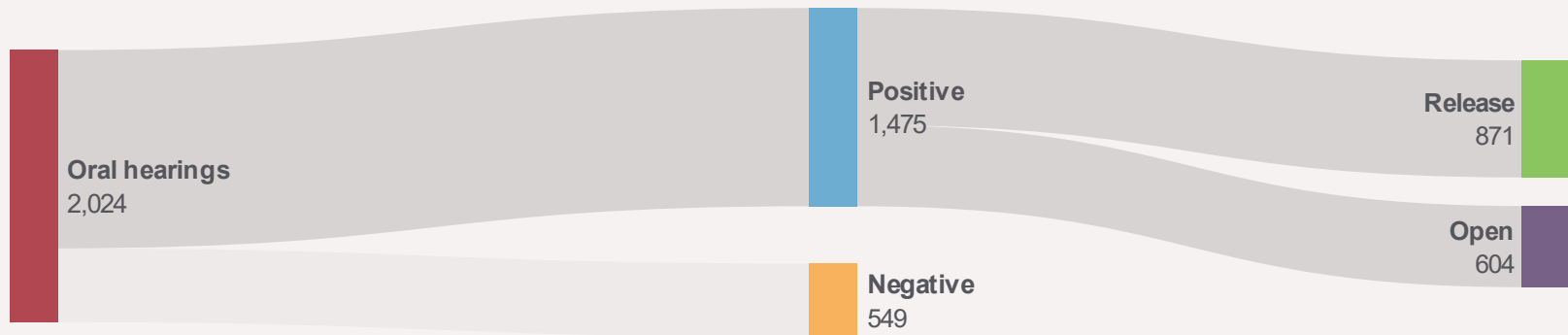
The legacy of the IPP sentence



Source: Offender management statistics quarterly: April to June 2022

Getting out

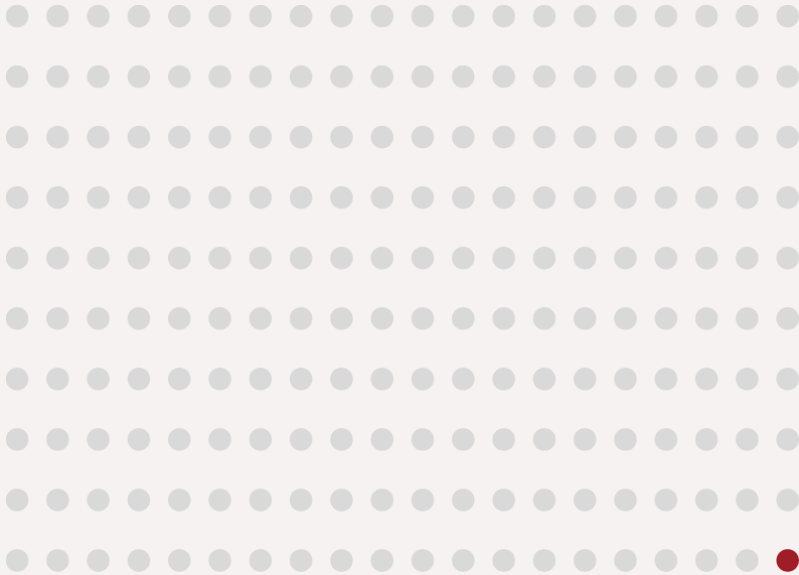
More than seven in 10 parole decisions for lifers and IPPs in 2019–20 were positive



Source: The Parole Board for England & Wales Annual Report and Accounts 2019/20

Getting out

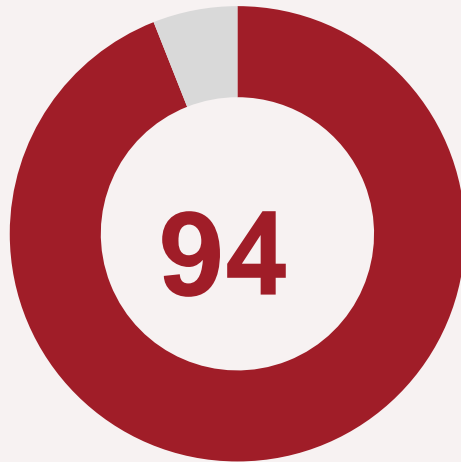
Serious further offending



Less than one of every 200 prisoners released by the Parole Board go on to be convicted of a serious offence within three years of their release

Getting out

Open conditions

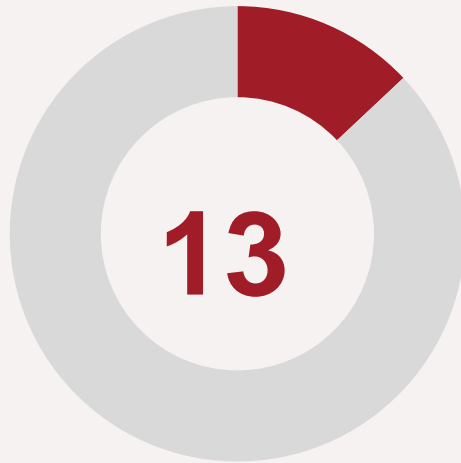


515 out of 549 recommendations by the Parole Board for a transfer to an open prison were **accepted** by the Secretary of State for Justice

2021–
22

Getting out

Open conditions

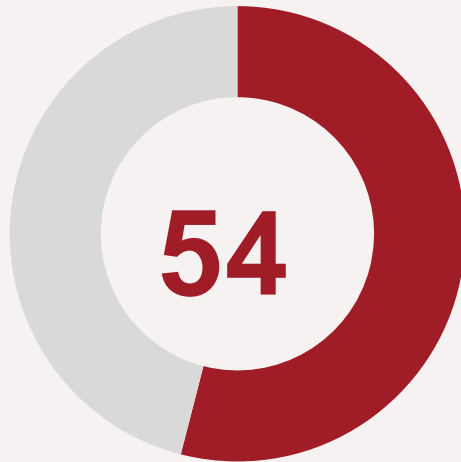


11 out of 83 recommendations by the Parole Board for a transfer to an open prison were **accepted** by the Secretary of State for Justice

April–
August
2022

Getting out

Pre-tariff reviews



133 out of 246 applications for a pre-tariff review were **referred to the Parole Board** by the Ministry of Justice

**12 months to
June 2022**

Getting out

Pre-tariff reviews

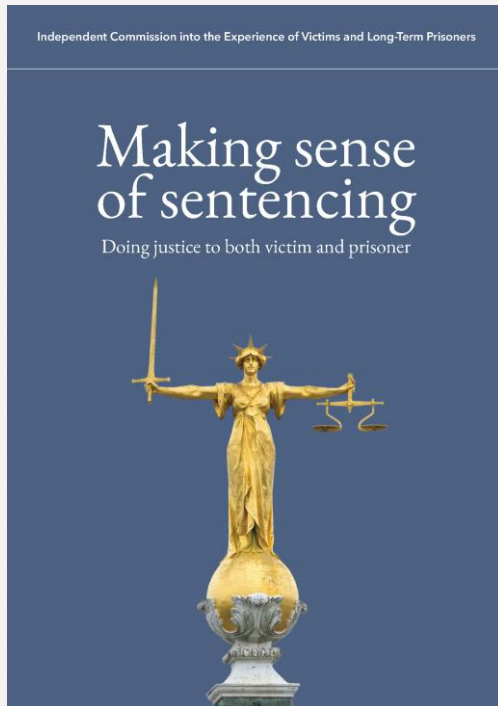


9 out of 74 applications for a pre-tariff review were **referred to the Parole Board** by the Ministry of Justice

**June–
September 2022**

Making sense of sentencing

Independent examination of how the most serious crime is punished

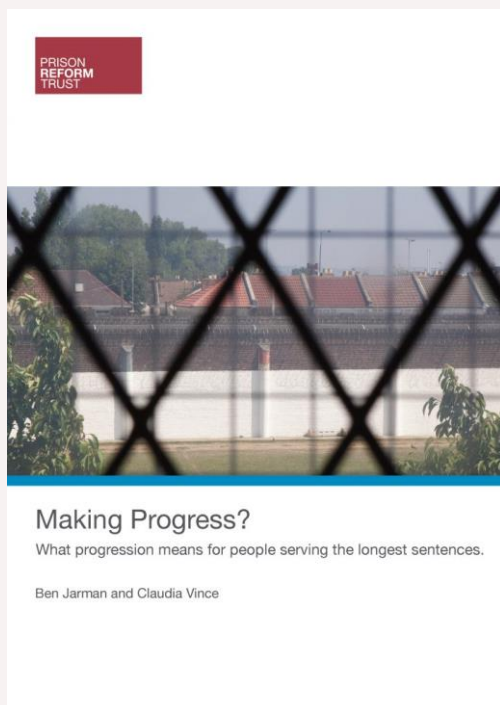


READ THE REPORT

bit.ly/sense-of-sentencing

Making progress?

Prisoner consultation on progression



READ THE REPORT


bit.ly/PRT-making-progress

Long term prisoners: the facts

PRISON REFORM TRUST

COMMUNITY FUND

Long-term prisoners: the facts
England and Wales
October 2021



In the last twenty years, the prison population has changed hugely. Sentences for more serious crimes have become longer and far more people will now spend 10 or more years in prison. Meeting the challenges of this change will shape the prison landscape for the foreseeable future.



READ THE REPORT

bit.ly/LTP-the-facts

Gaps pertaining to...

1. Location of the custody threshold
2. Victim engagement with sentencing & VPSs

Location of the custody threshold

SC Overarching Principles guideline:

- Custody cannot be imposed unless offence(s) 'so serious that neither a fine alone nor a community sentence can be justified for the offence'.
- 'There is no general definition of where the custody threshold lies ... The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.'

Threshold test is circular: custody can be imposed where nothing but custody can justifiably be imposed.

How does this 'reserve prison ... for the most serious offences'?

Location of the custody threshold

Does the circularity & ambiguity matter (generally, and to the SC)?

- Concerns about over-use of short sentences imply custody threshold, in practice, is set too low: that too many offenders are sent to custody for offences which are not 'so serious' that a lesser penalty is out of the question.
- What are the criteria by which to assess whether or not offenders are appropriately or unnecessarily incarcerated?
- Risks of inconsistency, as well as perceptions of inconsistency, in cases on cusp of custody.

Filling gaps in knowledge ...

- Secondary analysis of sentencing data to map how custody threshold is applied in practice
- Probe sentencer views, experiences of cusp case decision-making: how do they determine 'so serious', in terms of harm & culpability? How *should* 'so serious' be determined?
- Examine public perceptions of what does and does not 'justify' use of custody
- ... in order to generate options for a more specific definition of custody threshold, which would help reduce over-use of short-sentences & enhance consistency, transparency in sentencing practice.

Victim engagement & VPSs

Existing body of research on victim personal/impact statements & their functions (& associated tensions). BUT we know little about:

- What impedes effective delivery of VPSs? Surveys consistently show most victims who report crimes do not remember having opportunity to make VPS.
- Do victims understand distinction b/w explaining impact of the crime (may be reflected in sentencing) & expressing wishes on sentence (not permitted)? How is distinction understood & explained by practitioners (police, lawyers, judiciary)?
- In practice, what is extent of, & limits to, any therapeutic benefits for victims associated with use of VPSs at sentencing? Are there risks of anti-therapeutic outcomes?

VPSs and sentencing

We also know little about how VPS' influence sentencing, eg:

- How do sentencers exercise their discretion regarding whether & what parts of VPSs should be read aloud & by whom?
- How do sentencers 'take into account' information on harm from VPSs in sentence decision-making?
- How do sentencers perceive the evidential status of VPSs, & are they confident of their ability to determine the facts of the VPS?
- How is integrity & fairness of sentencing protected, regardless of whether VPS has been submitted, & its level of detail & form of presentation?

Filling gaps in knowledge ...

- Wide-ranging empirical research would be needed to address above questions.
- Questions re 'VPS & sentencing' of most direct relevance to SC & its purpose of promoting greater transparency & consistency in sentencing → interviews & survey of sentencers would provide insights
- All questions of relevance to Council's responsibility to 'consider the impact on victims of sentencing decisions'.

Gaps in knowledge

Sentencing Seminar
13 January 2023

Jessica Jacobson
Professor of Criminal Justice
ICPR, Birkbeck

