

# CRIMINAL JUSTICE

## Expanding the utilisation of suspended sentences on young adults in deterring reoffending

Megan Loxton\*

### Introduction

The UK's Youth Justice System exists with the '...principal aim...to prevent offending by children and young persons.'<sup>1</sup> This distinct system was first introduced in 1998<sup>2</sup> following extensive research dating back as far as the Gladstone Report and Lushington Committee of the 1890s - both of which had highlighted the need for a separate approach to youth justice.<sup>3</sup> In the modern day, this system provides a set of sentencing guidelines, overarching principles, and criminal punishments for young offenders distinct to those available to adults. The legitimacy of such a system is largely underpinned by the recognised cognitive differences between adults and children, and the impact such a difference has on offending behaviour.

Colloquially, it is recognised that a 'child' describes any person under eighteen years old, and an 'adult' describes any person aged eighteen or over. Legally however, three different age categories of offender are recognised, which determine which set of rules, procedures, and guidelines must be used in legal proceedings. With the existence of such separate systems, it is essential that such categorisations exist, to ensure that cohesion, consistency and legitimacy are upheld in UK criminal proceedings and the wider legal system. Hereafter referred to as a 'child', the law determines that anybody '...under the age of [ten] years can[not] be guilty of any offence'<sup>4</sup>. Whilst such individuals can consequently not be charged with having committed any criminal offence, they may be given a local child curfew or child safety order for any suspected criminal involvement to protect the welfare of themselves and wider society.<sup>5</sup> The second categorisation, hereafter referred to as that of a 'young offender', describes offenders '...above the age of 10... but below the age of 18.'<sup>6</sup> In dealing with such an age group, courts must give sufficient consideration to the principle aim of preventing youth offending<sup>7</sup>, alongside the '...welfare of the child or young person'<sup>8</sup> when making sentencing decisions. The legal standing of such considerations highlights historical attempts to balance justice and welfare-based approaches to youth justice.<sup>9</sup> Finally, the law recognises an 'adult', to include any individual aged eighteen or over and will sentence them as such.

In recent years however, support has grown for the addition of a fourth recognised category of offender for those aged between eighteen and twenty-one, hereafter referred to as 'young adults'. Such reforms have been campaigned for largely on the basis that the immediate shift between the welfare-orientated youth justice system and punitive-focused adult system upon an offender reaching eighteen years of age is too harsh. This movement also highlights that the absence of a middle-ground approach causes a lack of legal acknowledgement for those making the transition between childhood and adulthood and does not effectively capitalise on this demographics' enhanced capacity for rehabilitation that could otherwise lead to a crime-free-future. The implied solution for such an issue would be a remedy/system blending these two approaches to effectively recognise, represent and address the needs and developmental status of such offenders. This dissertation will explore the proposal that suspended

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\* LLB year 3, Coventry University

<sup>1</sup> Crime and Disorder Act 1998, s.37(1).

<sup>2</sup> Ibid

<sup>3</sup> Adam Crawford and Tim Newburn, *Youth Offending and Restorative Justice*, (1<sup>st</sup> edn, Willan Publishing 2011) 6

<sup>4</sup> Children and Young Persons Act 1993, s.50.

<sup>5</sup> Crawford and Newburn (n 3)

<sup>6</sup> Peter Joyce and Wendy Laverick, *Criminal Justice: An introduction*, (4<sup>th</sup> edn, Routledge 2023) 163

<sup>7</sup> CDA 1998 (n.1)

<sup>8</sup> CYPA 1993 (n 4) s.44(1).

<sup>9</sup> Martin Stephenson, Henri Giller and Sally Brown, *Effective Youth Practice in Youth Justice*, (2nd edn, Routledge 2011), 2.

sentences are a remedy effectively combining the welfare and punitive approaches of the adult and youth justice system and are consequently capable of bridging the gap between these two systems.

Suspended sentences are custodial sentences defined by the Sentencing Act 2020, as ‘...an order providing that a sentence of imprisonment or detention in a young offender institution... is not to take effect unless... an activation event occurs...’<sup>10</sup> The term ‘activation event’ describes situations in which a defendant has committed a further offence in the UK during the operational period or violated any community requirements imposed by the order.<sup>11</sup> Once this has occurred, the courts have the authority to impose the custodial sentence and send the defendant into custody.<sup>12</sup> As a sentence introduced in 1967,<sup>13</sup> eligibility requirements for imposing such a sentence have changed over the years, with requirements for ‘exceptional circumstances’ in 1991,<sup>14</sup> and removal of such in 2003.<sup>15</sup> The maximum sentence length eligible for such an order has also changed, reducing to one year in 2003<sup>16</sup> and returning to two in 2012<sup>17</sup>. Under the current system, a sentence may only be suspended if it has crossed the custody threshold (due to its nature as a custodial sentence) and has a term of ‘...at least six months and...not more than two years.’<sup>18</sup> The courts may also impose community requirements during this term, aimed at facilitating rehabilitation of the offender and reparations to the local community<sup>19</sup>.

Under the current system, as custodial sentences are only given to young offenders in the most serious cases,<sup>20</sup> such offenders are not eligible for suspended sentences. Offenders between the ages of eighteen and twenty-one however, may receive a suspended sentence when facing a term of detention in a young offenders’ institute,<sup>21</sup> or adult prison, provided that the term does not exceed two years. This dissertation proposes that expanding young adult offenders’ eligibility for suspended sentences would effectively increase their rates of imposition in order to grant more young adult offenders an opportunity to take responsibility for their own rehabilitation and address their offending behaviours. It is believed that this age-demographic in particular would be engaged by such a scheme, based on their unique stage of development and the impacts that a custodial sentence may have on their future prospects.

In exploring this motion, the first chapter will identify the aims and principles surrounding both the adult and youth justice systems to identify the gap in approaches and the underlying issues with treating all offenders over the age of eighteen as adult. The second chapter will then discuss why suspended sentences may be the perfect remedy for bridging this gap, using analysis of international examples before exploring how such an idea may work in practical application. The final chapter will then identify the potential challenges such a reform may face and evaluate the extent to which their influence could diminish the effectiveness of such a solution. Finally, the conclusion will explore all areas discussed in order to come to a reasoned decision as to whether a unique approach to this age group is justified, and whether the expansion of suspended sentences imposed upon this demographic would be effective in reducing reoffending rates.

### **Minding the gap between youth and adult sentencing**

The UK’s youth justice system exists to establish and uphold criminal policy and processes tailored to the welfare needs of young offenders, yet its effectiveness is hindered by the abrupt transition to the punitive adult system imposed once an offender turns eighteen. Such an immediate shift is ignorantly

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<sup>10</sup> Sentencing Act 2020, s.286(1).

<sup>11</sup> *Ibid*, s.3.

<sup>12</sup> *Ibid*, sch 16, s 13(1).

<sup>13</sup> Criminal Justice Act 1967, s.39

<sup>14</sup> Criminal Justice Act 1991, s.5(2(b)

<sup>15</sup> Criminal Justice Act 2003, s.189(1)(b)

<sup>16</sup> *Ibid*, s 189 ss 1

<sup>17</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.68(1).

<sup>18</sup> SA 2020 (n10) s.2.

<sup>19</sup> SA 2020 (n10) s.292.

<sup>20</sup> Sentencing Council, ‘Types of Sentences for Children and Young People’ (2023)

<<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/types-of-sentences-for-young-people/>> Accessed 19<sup>th</sup> March 2024

<sup>21</sup> SA 2020 (n 10) s.264.

unrepresentative of the mutual vulnerabilities and incomplete cognitive development coexisting between young offenders and young adult offenders. This chapter will compare the aims and principles guiding the adult and youth justice systems and resultant contrasting sentencing options. Such comparison will then be used to argue that a new, unique approach is needed for young adult offenders' to effectively bridge the gap between the welfare and punitive approaches of the respective systems. This suggestion is made on the basis that a smoother transition between the two approaches would facilitate more effective punishment better capable of reducing reoffending rates within this demographic.

### *The differing aims of the adult and youth justice system*

The UK's youth justice system upholds binding recognition of the inherent cognitive and developmental differences existing between young and adult offenders and ensures that such differences are reflected in sentencing decisions. Owing to such differences, the youth system principally focuses on the deterrence of crime and reoffending by young people as encompassed by the legislative aim '... of the youth justice system to prevent offending by children and young persons...' <sup>22</sup> In balancing such a preventative goal with the practical challenges of youth offending, the system also aims to protect '...the welfare of the child or young person' <sup>23</sup> at all stages of legal proceedings. In comparison, the adult justice system aims to '...deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent.' <sup>24</sup> Such a statement highlights a more punitive approach to justice rooted in the belief that punishing offenders for their criminal wrongs will best protect the public and provide justice for victims. In pursuit both systems' respective aims, supporting aims and principles have naturally developed and been established by way of guidelines for decision makers and differing sentencing options.

In support of the welfare-based approach to the youth justice system, a significant focus is placed upon the rehabilitation of young offenders' – encouraging them to address their offending behaviour and make positive changes to reduce the likelihood they will commit further offences. The case of *Kinlan and Boland* <sup>25</sup> set the precedent, in support of this aim, that when sentencing courts must '...take account of the young offender's lack of maturity, capacity for change and...best interests. Rehabilitation is an important consideration.' Such an aim is central to the treatment of young offenders within the youth justice system, with the guidelines further establishing that youth sentences '... should focus on rehabilitation where possible.' <sup>26</sup> Such an aim exists in recognition that whilst the impressionable nature of young offenders can lead to increased propensity to commit offences, it can also pave the way for rehabilitation of factors driving offending behaviour. It is highlighted however, that the effectiveness of such measures is heavily dependent upon the defendant's level of personal-motivation and engagement with such programmes. It is clear that '...passive involvement is not enough' <sup>27</sup> and that if offenders are not '...engaged, the programme is unlikely to be successful' <sup>28</sup>. Somewhat similarly, the Sentencing Act 2020 enshrined 'the reform and rehabilitation of offenders' <sup>29</sup> as one of the key purposes of sentencing those aged over eighteen for the purposes of reducing the likelihood of reoffending. The effectiveness of such an aim is somewhat limited however, as it exists alongside other aims surrounding 'the punishment of offenders' and 'the protection of the public.' <sup>30</sup> Balancing such aims means that whilst offences deemed less severe may enjoy a non-custodial order with rehabilitative requirements, many

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<sup>22</sup> CDA 1998 (n 1).

<sup>23</sup> CYPA 1933 (n 4) s.44(1).

<sup>24</sup> The National Archives, 'Aims and Objectives' (2010)

<[https://webarchive.nationalarchives.gov.uk/ukgwa/20100920201828/http://www.cjsonline.gov.uk/aims\\_and\\_objectives/](https://webarchive.nationalarchives.gov.uk/ukgwa/20100920201828/http://www.cjsonline.gov.uk/aims_and_objectives/)> Accessed 1<sup>st</sup> June 2024

<sup>25</sup> *Kinlan and Boland v HM Advocate* [2019] 7 WLUK 166

<sup>26</sup> Sentencing Council, 'Sentencing Children and Young People Definitive Guideline' (2017)

<[https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide\\_FINAL\\_WEB.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide_FINAL_WEB.pdf)> Accessed 20<sup>th</sup> March 2024

<sup>27</sup> Martin Stephenson and others 2011 (n 9) 73

<sup>28</sup> *Ibid.*

<sup>29</sup> SA 2020 (n 10) s.57 (c).

<sup>30</sup> SA 2020 (n 10) s.57 (a) and (c).

more offenders will face imprisonment than their youth counterparts despite having committed the same offences, thus this aim is lesser achieved.

In enforcing such an aim, two sentencing options exist focusing mainly on rehabilitation of young offenders. The first of these is a youth rehabilitation order,<sup>31</sup> a form of community sentence with one or more requirements aimed at addressing factors driving the committal of offences. There are eighteen available requirements,<sup>32</sup> from which the court will select which to impose based on the individual offender and the facts of the case. The second is a referral order,<sup>33</sup> a form of restorative justice by which offenders meet with a panel and arrange a contract of commitments lasting between one and three years also aimed at addressing offending behaviour.<sup>34</sup> The only rehabilitative sentence available to offenders over the age of eighteen however, is that of a community order<sup>35</sup>. Operating similarly to a referral order, the court may impose one or more requirements aimed at addressing the offenders' conduct but is uniquely bound to '...include at least one... imposed for the purpose of punishment.'<sup>36</sup> The presence of this requirement unique to the adult system is highly indicative of the retributive approach taken in comparison to the youth system.

Perhaps the most influential principle of these respective systems surrounds the distribution of custodial sentences. Both adult and youth offenders may be made subject to a mandatory custodial sentence<sup>37</sup> if found guilty of serious offences such as murder.<sup>38</sup> In discretionary decisions however, the youth justice system aims to minimise the distribution of custodial sentences to young offenders, reserving such to a '...measure of last resort... when the offence is so serious that no other sanction is appropriate'<sup>39</sup> in the interests of welfare. Such an objective is supported by the courts' binding obligation to take '... steps for removing... [young offenders]... from undesirable surroundings...'<sup>40</sup>, of which it is widely accepted that detention facilities qualify. In practice, such an objective is achieved by guidance that they are to consider '...any factors that may diminish the culpability of a child or young person'<sup>41</sup> alongside the harm caused in determining a sentence. The establishment of this principle within the youth sentencing guidelines often enables the courts to reduce the severity and length of sentences imposed, consequently minimalizing the number of custodial sentences given to such offenders. The justification for such reductions comes from growing scientific evidence suggesting that the incomplete nature of young offenders' cognitive development and maturity cause flawed decision-making and a more impressionable nature – heightening their propensity to commit offences. It is however highlighted by the case of *BKY*<sup>42</sup> that certain offences such as murder necessitate such a sentence, and the age of the offender cannot outweigh the severity and necessity for deliverance of justice and public protection. Contrastingly, the adult system has long held a more punitive approach, with the aforementioned aim of 'the punishment of offenders' and 'the protection of the public'<sup>43</sup> more frequently justifying the imposition of custodial sentences.

In pursuit of minimising the imposition of custodial sentences against young offenders,<sup>44</sup> the courts may add an intense supervision and surveillance requirement to a youth rehabilitation order for offences punishable by imprisonment to whom the only other option is a custodial sentence. When its imposition against a young offender over the age of twelve is justified, such is usually passed in the form of a detention and training order<sup>45</sup> with a term between four months and two years. Such an order involves

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<sup>31</sup> SA 2020 (n 10) s.173.

<sup>32</sup> SA 2020 (n10) s.174.

<sup>33</sup> SA 2020 (n 10) s.83.

<sup>34</sup> Sentencing Council 2017 (n 26).

<sup>35</sup> SA 2020 (n10) s.200.

<sup>36</sup> SA 2020 (n10) s 208(10).

<sup>37</sup> SA 2020 (n10) s.399.

<sup>38</sup> SA 2020 (n810) sched. 21.

<sup>39</sup> Sentencing Council 2017 (n 26)

<sup>40</sup> CYPA 1993 (n4) s.44.

<sup>41</sup> Sentencing Council 2017 (n 26).

<sup>42</sup> *R v BKY and others* [2023] EWCA Crim 1095.

<sup>43</sup> SA 2020 (n10) s 57(2).

<sup>44</sup> (As required by) United Nations Convention on the Rights of the Child, Art. 37(b)

<sup>45</sup> SA 2020 (n 10) s.233.

imprisonment within a ‘...secure children’s home, a secure training centre, or a young offender institution ...’<sup>46</sup> In extreme cases, a sentence of extended detention or detention for life may be imposed, assuming that the court considers that the offender poses a ‘...significant risk of serious harm to members of the public from them committing further specified offences<sup>47</sup>.’ Such cases are exceedingly rare, however. Custodial sentences are much more commonly given to adult offenders, with legislation requiring that to meet the custody threshold, offence/s must be ‘...so serious that neither a fine alone nor a community sentence can be justified<sup>48</sup>’. Such sentences range from those which are determinate, by which an offender will likely only serve half of the term imposed,<sup>49</sup> to life sentences carrying a minimum term.<sup>50</sup>

Finally, the youth justice system seeks to facilitate seamless reintegration of young offenders into society following completion of their sentence. Such an aim exists on the basis that where successful, such will minimise the likelihood of young offenders’ reoffending and the reduce the negative impact of their sentence on their future ‘...prospects and opportunities...’<sup>51</sup> A general consensus exists that educational programs/orders which ‘...encourage children and young people to take responsibility for their own actions and promote re-integration into society...’<sup>52</sup> will prove most effective in facilitating such integration. It has frequently been suggested that restorative justice disposals providing ‘...an alternative way of responding to offending behaviour... aiming to restore victims, encourage offenders to take responsibility... [and] reintegrate offenders into the community...’<sup>53</sup> are most effective in achieving such an aim. The legislative aims of the adult system do not mention reintegration of offenders but do aim to facilitate ‘the making of reparation by offenders to persons affected by their offences<sup>54</sup>’. Such an aim somewhat suggests a restorative justice focus rather than one of reintegration – further highlighting the victim-focused approach of the wider adult justice system. Under the current system this seems limited in its effectiveness as the main restorative justice disposals used are costs granted to victims by the court and conditional discharge requirements.<sup>55</sup> There are, however, systems in place to ensure that adult offenders are released and sent back into society gradually and in a way that minimises the risk to the public as far as is possible.

The reintegration of youth offenders who have faced detention is made smoother by a transitional period after they have served half of their sentence during which they are made subject to supervision and training until the completion of the sentence term.<sup>56</sup> Somewhat similarly, adult offenders are released from custody after having served half of their custodial sentence on licence unless their conduct deems them in exception.<sup>57</sup> On licence, they will stay at an approved address and be made subject to conditions such as a curfew, aimed at protecting the public and reducing the likelihood of reoffending, until completion of the remainder of their sentence term.

The above comparisons highlight the stark differences in nature between the youth and adult criminal justice systems. The adult system takes a more punitive approach largely aiming to protect victims and the public, where the youth system is more occupied with protecting the welfare of the young offender and promoting rehabilitation to reduce the likelihood of reoffending. As a consequence of these

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<sup>46</sup> Steve Wilson and others, *English Legal System* (4<sup>th</sup> edn Oxford University Press 2020) p774

<sup>47</sup> Sentencing Council 2023 (n 20).

<sup>48</sup> SA 2020 (n 10) s.230(2).

<sup>49</sup> Sentencing Council, ‘Determinate prison sentences’ (N.D) <<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/determinate-prison-sentences/>> Accessed 5<sup>th</sup> March 2024

<sup>50</sup> Sentencing Council, ‘Life Sentences’ (N.D) <<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/life-sentences/>> Accessed 7<sup>th</sup> March 2024.

<sup>51</sup> Sentencing Council 2017 (n 26).

<sup>52</sup> Sentencing Council 2017 (n 26).

<sup>53</sup> Katherine Doolin, ‘But what does it mean? Seeking Definitional Clarity in Restorative Justice’ (2007) 71 *Journal of Criminal Law* 427.

<sup>54</sup> SA 2020 (n10) s 57(2)(e).

<sup>55</sup> Sentencing Council, ‘Restorative Justice’ (2020) <<https://www.cps.gov.uk/legal-guidance/restorative-justice>> Accessed 28<sup>th</sup> May 2024.

<sup>56</sup> Steve Wilson and others 2020 (n 46), 774.

<sup>57</sup> CJA 2003 (n 15) s.244.

differences in approach, the differences in punishments are also stark and mean that an adult and youth offender charged with the same offence may receive vastly different sentences.

### *The young adult gap*

As aforementioned, the UK's criminal justice system does not currently identify young adult offenders as a distinct demographic of offenders. The consequence of this is an immediate transfer to the adult system occurring automatically upon an individual reaching eighteen years of age. The stark nature of this shift creates the opportunity for an offender committing an offence two minutes prior to their eighteenth birthday to face a different sentencing process and punishment than one who had committed the same offence two minutes prior to turning eighteen. The principle that an individual reaches full adulthood at eighteen somewhat comically implies that young people become fully mature, cognitive humans from the first minute of their eighteenth birthday, instantly eliminating any and all factors that may have diminished their culpability prior. Although exaggerative, this example highlights the abruptness of this transition and evidences a gap for a middle-ground approach for offenders aged between eighteen and twenty-one capable of acknowledging and better representing the development occurring within this developmental period.

Whilst formal recognition of young adults as a distinct category of offender has not yet been established, an undeniable degree of informal recognition pre-exists, as such offenders remain eligible for detention within a young offenders' institution until reaching the age of twenty-one.<sup>58</sup> This implies a level of legal acknowledgment of the developmental differences existing between a young and older adult offender and of the differing needs and rehabilitative potential arising as a result. Furthermore, the law identifies an offender under the age of twenty-five's 'age and/or lack of maturity'<sup>59</sup> as a mitigating factor capable of justifying reductions to the sentence imposed upon them. Inclusion of this factor in the sentencing guidelines further implies a degree of acceptance of a young adult offenders' incomplete development and of the impact this may have on their offending behaviour. These informal acknowledgements somewhat support the idea of need for a unique approach to the treatment of young adult offenders within the criminal justice system, but more formal action is needed to enshrine this and make this principle effective in practice.

### *The case for a unique approach to young adult offenders*

One of the most significant arguments for adopting an approach to young adult offenders unique to that used with older adults is based around growing evidence that an individuals' cognitive development remains incomplete at the age of eighteen. Scientific studies support the idea that the development of the '...control of impulses and regulation and interpretation of emotions, continue into early adulthood; the human brain is not 'mature' until the early to mid-twenties.'<sup>60</sup> The on-going nature of this development not only highlights the injustices that come with treating all adults as equally cognitive and culpable in criminal proceedings but also highlights the importance of training and education for this demographic in pursuit of achieving effective desistance. In support, it has been stated that dealing '...effectively with young adults while the brain is still developing is crucial... [to them] making successful transitions to crime-free adulthood.'<sup>61</sup> The implied risks of ineffective treatment failing to aid and enhance such development therefore suggest a detrimental impact on the likelihood that a young adult offender will continue to reoffend. Such suggestions highlight a missed opportunity regarding current treatment of young adult offenders and their rehabilitative potential and may explain the

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<sup>58</sup> SA 2020 (n 10) s 262(1)(a).

<sup>59</sup> Sentencing Council, 'General guideline - Age and/or lack of maturity' (N.D) <<https://www.sentencingcouncil.org.uk/droppable/item/general-guideline-age-and-or-lack-of-maturity/>> Accessed 17<sup>th</sup> January 2024.

<sup>60</sup> David Prior and others, *Maturity, young adults and criminal justice: A literature review*, (University of Birmingham Institute of Applied Social Studies 2011) 35

<sup>61</sup> Barrow Cadbury Trust, 'Lost in transition' (2004) <<https://t2a.org.uk/wp-content/uploads/2011/09/Lost-in-Transition.pdf>> Accessed 7th June 2024

overrepresentation of young adults within the criminal justice system.<sup>62</sup> It is not disputed that most young-adult offenders will have completed a greater proportion of brain development than that of a young offender. Hence, it would be unjustified to attempt to resolve the gap in representation by expanding the definition of a young offender to include those of a young adult. Instead imposing a middle-ground approach to bridge the gap between youth and adulthood is essential to maintaining a legitimate criminal justice system which best facilitates justice for all and effectively enables effective desistence from crime for such offenders.

In addition to incomplete cognitive development, it is widely accepted that milestones such as leaving education, learning to drive and moving out of the family home contribute towards a young adults' development. In recent years, such development has undoubtedly slowed, both due to societal changes and the current economic climate which makes affording these more challenging. In support of this, it has been stated that '...people no longer, if they ever did, reach all of the associated responsibilities and recognised attributes of adulthood by the age of 18. Young adults in the 21st century live at home for longer, and depend on their families financially and emotionally for longer... In fact, almost half of 18–25-year-olds still rely on their parents for money as they are unable to meet the daily costs of living.'<sup>63</sup> Such a suggestion highlights that whilst young people left education, entered the working world and became more financially independent at an earlier age in the past that is not the case in the modern world. As a direct consequence of such, it is strongly suggested that the maturity of young adults has also slowed, contributing to their heightened propensity to commit offences. The inferred suggestion made as a result is that young people are taking longer to fine-tune their maturity and self-control/regulation - attributes which it is widely accepted, drive offending behaviour.

Another significant justification for a unique approach to young adult offenders, is the suggestion that the adult system's increased imposition of custodial sentences is ineffective and even damaging to young adult offenders. With only five young offenders' institutions in the UK, it was previously highlighted that these '...are often full, many young men are placed in adult prisons'<sup>64</sup>. This issue is ongoing, with the 2021 HM Inspectorate of prisons noting that the '...lack of coherent response at national level...' <sup>65</sup> had led to young adult offenders being held within adult prisons without rationale and '... no evidence that placement decisions are made on the basis of need.'<sup>66</sup> Such statements highlight the issue of oversubscription for young offenders' institutes meaning that young adult offenders are sent to prisons with a majority of older inmates, where they are unable to receive the targeted rehabilitation and training intended by the original custodial order. As young adult offenders are innately more impressionable and likely to concede to peer pressure than their older counterparts are, such environments are both unsafe and unsuitable, potentially placing them at heightened risk of further disruption and reducing the likelihood of meaningful reform leading to a crime-free future. Furthermore, during this time in their lives most young adults are undertaking further education/courses aimed at making them more employable individuals, exclusion from which will likely limit their future prospects and make reintegration into society post-release more challenging.

Further supporting the proposals to a unique approach for young adults is that such has already been recognised and implemented in other jurisdictions. Germany was the trailblazer in such an approach, enabling cases involving young adults<sup>67</sup> to be handled in the juvenile courts from 1953<sup>68</sup>. Such eligibility

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<sup>62</sup> HM Inspectorate of Probation, 'Young Adults' (N.D)

<<https://www.justiceinspectorates.gov.uk/hmiprobation/research/the-evidence-base-probation/specific-sub-groups/young-adults/>> Accessed 1<sup>st</sup> June 2024

<sup>63</sup> Transition to Adulthood, 'Young Adults in the Criminal Justice System' (2011) <<https://barrowcadbury.org.uk/wp-content/uploads/2011/01/T2A-A-New-Start-Young-Adults-in-the-Criminal-Justice-System-2009.pdf>> Accessed 15<sup>th</sup> March 2024

<sup>64</sup> Barrow Cadbury Trust 2002 (n61)

<sup>65</sup> HM Inspectorates of Prisons, 'Outcomes for young adults in custody' (2021) <<https://t2a.org.uk/wp-content/uploads/2022/03/Young-adults-thematic-final-web-2021.pdf>> Accessed 4<sup>th</sup> June 2024

<sup>66</sup> Ibid

<sup>67</sup> Note that in Germany, this includes offenders aged 18-20.

<sup>68</sup> Josine Junger-Tas and Scott H. Decker, *International Handbook of Juvenile Justice* (1<sup>st</sup> edn Springer, 2008) 247

exists for young adult offenders able to evidence that they were ‘...like a juvenile<sup>69</sup>’ in their development at the time of offending and that the ‘...motives and the circumstances of the offence are similar to those of a typical juvenile crime.<sup>70</sup>’ The proven success of such a system has led to adoption of similar approaches by nations such as the Netherlands and Croatia<sup>71</sup>. More locally, the 2022 Scottish sentencing guidelines extended the definition of a ‘young person’ to include anyone under the age of twenty-five, to whom unique approaches to sentencing are required on account of their inherent ‘...lower level of maturity and...greater capacity for change and rehabilitation...<sup>72</sup>’.

### **Building the bridge between youth and adult sentences**

It has been established that a notable gap exists between the approaches of the youth and adult justice, and that young adults are significantly unaccounted for under the current system despite making up roughly ‘...30 to 40 per cent of [UK] cases...’<sup>73</sup> Such data suggests the current approach to young adult offenders is ineffective in deterring offending and evidences the need for a better-informed approach. This chapter will justify the position that suspended sentences are best suited to meeting the unique needs of young adult offenders, before evaluating how such may be implemented in practice and how the method selected may impact the effectiveness of such a reform.

#### *Why suspended sentences are best suited to bridge the gap*

With the incomplete nature of a young adult’s cognitive development enabling them a greater capacity for rehabilitation, it is believed that expansions in the use of suspended sentences imposed upon young adults could lead to greater success in their reform and desistance from committing offences in the future. As suspended sentences may include requirements involving rehabilitation and treatment programs, it is believed that expansions in their imposition upon young adult offenders could enable those who would otherwise be remanded in custody a chance at turning their lives around before it is too late. The uniquely flexible nature of these sentences enables a greater degree of effectiveness, as courts are able to use advice from the probation service and legal counsels to determine which programs will be most impactful to which offenders - therefore facilitating a tailored case-by-case approach. It is also believed that a suspended sentence better protects the welfare of young adult offenders by reducing the number of immediate custodial sentences imposed. The wider idea that suspended sentences are more effective than short-term prison sentences is already evidenced, with nine percent less offenders reoffending when given a suspended sentence than those given a custodial sentence in 2021<sup>74</sup>. Instead encouraging this demographic of offender to help themselves and take a degree of responsibility over their own freedom and future prospects is likely to be more effective in promoting positive cognitive development better facilitating a life of desistance from crime.

Suspended sentences also contain a punitive element in the form of enforceable consequences should an offender refuse/fail to engage with the set requirements, as they will have to return to court following which they may be sent to formally serve the rest of their custodial term immediately. Such a consequence is clearly communicated to the offender at sentencing, providing a more authoritative warning, which may aid their cooperation with such orders and therefore enhance the overall effectiveness of such a sentence in deterring reoffending. The formality of such a warning is essential to the success of this and is consequently mandated by the sentencing guidelines that state that courts must inform the offender that should the sentence have been ineligible for suspension, they would have

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<sup>69</sup> Friedrich Lösel, Anthony Bottoms and David P. Farrington, *Young Adult Offenders: Lost in Transition?* (1<sup>st</sup> edn, Willan Publishing, 2012), 21

<sup>70</sup> Ibid

<sup>71</sup> Jennifer Ward, ‘Criminal Court Sentencing: The Case for Specialist ‘Young Adult’ Courts’ (2023) 63 *The British Journal of Criminology* 1046

<sup>72</sup> Scottish Sentencing Council, ‘Sentencing Young People’ (2022)

<<https://www.scottishsentencingcouncil.org.uk/media/4d3piwmw/sentencing-young-people-guideline-for-publication.pdf>>

<sup>73</sup> House of Commons Justice Committee, ‘The treatment of young adults in the criminal justice system’ (2016) <<https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/169/169.pdf>> Accessed 4<sup>th</sup> February 2024

<sup>74</sup> Sentencing Academy, ‘The effectiveness of sentencing options (2021)’ <<https://www.sentencingacademy.org.uk/wp-content/uploads/2023/09/The-Effectiveness-of-Sentencing-Options-1.pdf>> Accessed 19<sup>th</sup> May 2024

imposed a custodial sentence to be served immediately.<sup>75</sup> Establishment of this principle within the guidelines ensures cohesiveness in decisions is upheld and leaves little room for inconsistencies and misunderstandings of what is expected of the offender. As a result, suspended sentences are able to offer offenders a final warning and chance to make better choices not dissimilar to those given in youth courts, whilst ensuring such threats are not empty and that breaches have real, enforceable consequences. It is also argued that such sentences better facilitate justice for victims than those available within the youth system, as the court requires that the offender take a greater degree of accountability for their actions and the consequences of such – also aligning such a sentence with the aims of the adult system.

### *Options for implementation*

Facilitating expansion to the number of suspended sentences given to young adults could be achieved in a number of different ways. These range from loosening legislative eligibility constraints, increasing the mitigative credit given by judges to aid eligibility and implementing overarching guidelines to promote wider usage.

Under the current sentencing guidelines, an offender's '...age and/or lack of maturity...'<sup>76</sup> may constitute a mitigating factor justifying a reduction in the sentence term or severity. Whilst the 'age' component of such a factor is generally accepted to include those between the ages of eighteen and twenty-five,<sup>77</sup> ambiguity remains amongst sentencers as to the appropriate context and degree of credit to be awarded in relation to an offender's lack of maturity. Such uncertainty has limited the usage of this mitigative factor, with its implementation seemingly reserved to cases '...where there is extreme immaturity'<sup>78</sup>; as evidenced in a study observing that '...In almost half of all sentence appeal cases [studied] involving young adults, neither age nor maturity were considered.'<sup>79</sup> In addition, contributory to limited considerations and subsequent applications of such a factor is the fact that courts are not required to consider an offenders' level of maturity unless this is '...raised in mitigation on [the offenders'] behalf.'<sup>80</sup> The cost of such improper mitigative considerations given in the sentencing of young adult offenders cannot be understated in the context of deterring reoffending, as such reductions may be the difference between a suspended sentence facilitating impactful rehabilitation for an impressionable offender and one that is deemed ineligible.

It is subsequently suggested that expansion of the degree of mitigative credit awarded to young adult offenders on account of their age/lack of maturity during sentencing would increase eligibility for suspended sentences more effective in deterring reoffending. If implemented within the current legislative framework, such a change would enable sentences given to young adults with a starting point above the two-year maximum period for suspension, to be reduced to a term of a qualifying length, therefore facilitating their eligibility. Such a change may impact, for example, a 20-year-old offender charged with s.20 GBH,<sup>81</sup> whose involvement was lesser within an offending group (category B) but who had contributed to category 1 harm suffered by the victim. Where this offender would currently be given a starting point of three years and may be unable to receive sufficient credit to be eligible for a

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<sup>75</sup> Sentencing Council, 'Imposition of community and custodial sentences' (2017) <<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences/#Imposition%20of%20custodial%20sentences>> Accessed 20<sup>th</sup> May 2024

<sup>76</sup> Sentencing Council, 'General guideline - Age and/or lack of maturity' (N.D) <<https://www.sentencingcouncil.org.uk/droppable/item/general-guideline-age-and-or-lack-of-maturity/>> Accessed 17<sup>th</sup> January 2024.

<sup>77</sup> (See for example) Sentencing Council, 'Inflicting grievous bodily harm' (2021) <<https://www.sentencingcouncil.org.uk/offences/crown-court/item/inflicting-grievous-bodily-harm-unlawful-wounding-racially-or-religiously-aggravated-gbh-unlawful-wounding/>> Accessed 5<sup>th</sup> April 2024

<sup>78</sup> Justice Committee 2016 (n73)

<sup>79</sup> Howard League, 'Judging Maturity' (2017) <<https://howardleague.org/wp-content/uploads/2017/07/Judging-maturity.pdf>> Accessed 11<sup>th</sup> March 2024

<sup>80</sup> Justice Committee 2016 (n 73)

<sup>81</sup> Sentencing Council, 'Inflicting grievous bodily harm' (N.D) <<https://www.sentencingcouncil.org.uk/offences/crown-court/item/inflicting-grievous-bodily-harm-unlawful-wounding-racially-or-religiously-aggravated-gbh-unlawful-wounding/>> Accessed 1<sup>st</sup> April 2024

suspended sentence, provided that the Judge felt that this was proportionate and that the offender would not pose a danger to public safety, one could be imposed.

In light of the uncovered uncertainty surrounding young adult offenders' eligibility for mitigation by way of 'lack of maturity' amongst the judiciary and other sentencers, it appears that alterations to the sentencing guidelines and/or an advisory report would best facilitate the implementation and therefore effectiveness of such changes. To aid its impact, such guidance should provide a clear and unified definition of lack of maturity, the level of credit it can give rise to – particularly in cases in which a suspended sentence could be passed, and suggest ways maturity may be assessed, such as by way of a pre-sentence report. Whilst it may also be suggested that new legislation mandating considerations of this factor would bear more authority, none of the other mitigating factors are currently enshrined in this way, making such an option inconsistent and reducing the individuality of such an approach.

As mentioned above, the utilisation of suspended sentences imposed in the UK is limited by the legislative requirements set out by the Sentencing Act 2020.<sup>82</sup> Under such restrictions, only sentences of detention in young offenders' institutes for a term of no more than two years are eligible for suspension. The rigidity of this criterion significantly reduces the usage and subsequent impact of such sentences on young adults, as many offences commonly committed by this demographic have starting points and category ranges exceeding this maximum term. Consequently, it is proposed that expansion of the volume of suspended sentences given to young adult offenders could instead be achieved by extending the maximum sentence term eligible for suspension by a year for this demographic of offender. Such a change would deter reoffending by increasing the volume and diversity of sentences eligible for suspension and consequent continued supervision. As a secondary advantage, such a shift would also provide greater rehabilitative opportunities for such offenders, with the judiciary better able to impose community requirements targeted at their individual developmental needs and habits driving offending behaviour. In particular, it is widely accepted that young people are often driven to '...offending, specifically violent offending, through the psychopharmacological effects [of drug misuse],'<sup>83</sup> which it is proposed, could be effectively managed by drug rehabilitative requirements facilitating treatment under such a sentence<sup>84</sup>.

Implementation of this proposal would enable young adult offenders facing custodial sentences with a minimum term of over two and not surpassing three years to receive suspended sentences for which they are currently ineligible. Such a shift would affect, for example, a young adult offender convicted of theft in breach of trust,<sup>85</sup> having stolen a high value of goods (category 1) and determined to be of high culpability (A).<sup>86</sup> Under the current system, the lowest end of the category range being two years and six months would deem him ineligible for a suspended sentence. Should this term be extended as suggested however, he would not automatically be ineligible and could therefore be given a suspended sentence perhaps including an unpaid work requirement to make reparations to the wider community. Such expansion would also impact a nineteen-year-old having been convicted of possession with intent to supply class A drugs,<sup>87</sup> as seen in the case of *Rex and Raqab Mohammed*.<sup>88</sup> Though the Court of Appeal accepted that the defendant had been incorrectly categorised and insufficient credit had been granted on account of his lack of maturity in this case, it was unable to reduce the term to one facilitating

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<sup>82</sup> SA 2020 (n 10) s 277(2).

<sup>83</sup> Whitney DeCamp, 'Victim–Offender Trajectories: Explaining Propensity Differences from Childhood to Adulthood Through Risk and Protective Factors' (2018) 58, *The British Journal of Criminology*, 667

<sup>84</sup> Sentencing Council, 'Imposition of community and custodial sentences' (2017) <<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences/>> Accessed 24<sup>th</sup> January 2024

<sup>85</sup> Theft Act 1968, s 1

<sup>86</sup> Sentencing Council, 'Theft – general' (2016) <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/theft-general/>> Accessed 31<sup>st</sup> March 2024

<sup>87</sup> Sentencing Council 'Possession of a controlled drug with intent to supply it to another' (2021) <<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/supplying-or-offering-to-supply-a-controlled-drug-possession-of-a-controlled-drug-with-intent-to-supply-it-to-another/>> Accessed 23<sup>rd</sup> March 2024

<sup>88</sup> *Rex v Raqab Mohammed* [2023] EWCA Crim 1325

suspension. Under the proposed changes however, the sentence which was imposed of two years and three months would have qualified for such.

Due to the legislative status of the maximum term currently in force, implementation of this proposal would require legislative reform of s.2 of the Sentencing Act 2020, amending this requirement to specify its extension to three years for offenders falling within the young adult category. Completion of such amendments may be a lengthy process, however, due to their unique and potentially contentious approach to sentencing that would likely cause further delays due to ‘parliamentary ping pong’ between the House of Commons and the House of Lords.<sup>89</sup>

### *The impact of the method on effective deterrence*

It is consequently clear that expanding the overall use of suspended sentences within the demographic of young adults either requires reducing the length of sentences passed, or extending the maximum term eligible for suspension, to enable more cases to fall within such a criteria.

The former may prove more effective on the basis of the wider impact that increased mitigative credit given to young adult offenders in respect to their age and/or lack of maturity may have on sentencing decisions outside of suspended sentences. Over the last decade growing interest and public pressure has grown advocating for an entirely different system for young adults, with T2A leading a movement aimed at identifying and promoting the ‘...need for a distinct and radically different approach to young adults in the CJS... proportionate to maturity and responsive to specific needs.’<sup>90</sup> Such public pressure suggests that effectiveness of deterrence may also be measured by the impact on the overall classification and treatment of offenders of which it appears that mitigating factors would apply to a wider variety of young adults within the criminal justice system, not exclusively limited to those whose offences may justify a suspended sentence.

The latter, however, would bring such a unique approach into physical legislation, arguably better protecting its practical application from inconsistencies and failures to adopt such principles. Changing such legislative restrictions would implicitly better protect those between eighteen and twenty-one from flawed interventions not recognising ‘... young adults’ maturity... [Which] slow desistance and extend the period of involvement in the system...’<sup>91</sup> and subsequently ‘...approaches to holding young adults in custody...doing more harm than good.’<sup>92</sup> It is noted however that such application is less far-reaching, and that parliament may not agree to implement such recommendations, as has been their approach in the past.

In summary, it would appear that the decision as to how best to facilitate expansion of the use of suspended sentences is heavily dependent upon considerations as to whether the authority of a more limited approach would outweigh the wider-spread impact of a method more broadly applied. Both methods carry a degree of risk and uncertainty in their effectiveness, as the UK government are yet to explicitly express intention to realise young adults as a distinct group, which may make attainable changes to legislation and the sentencing guidelines more challenging. It seems fair to suggest that as the rates of offending in the young adult demographic increase annually, such a change will inevitably need addressing, but delays in such changes seem both unrepresentative and insufficient in proper delivery of justice. Assuming that such changes could be achieved however, the rigid nature of the current restrictions on suspended sentences and simultaneous confusion surrounding mitigative credit for the age and/or lack of maturity of an offender suggest that a blended approach would best secure maximised effectiveness of such changes to deterrence of reoffending within young adult offenders. Such a system would ensure expand utilisation of suspended sentences to reduce reoffending amongst

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<sup>89</sup> Steve Wilson and others 2020 (n 46) 182

<sup>90</sup> Transition to Adulthood, ‘Effective Approaches with Young Adults’ (2015) <[https://t2a.org.uk/wp-content/uploads/2015/09/Probation-guide\\_Ver4\\_sml.pdf](https://t2a.org.uk/wp-content/uploads/2015/09/Probation-guide_Ver4_sml.pdf)> Accessed 15<sup>th</sup> February 2024

<sup>91</sup> Justice Committee 2016 (n 73)

<sup>92</sup> House of Commons Justice Committee, ‘Young Adults in the Criminal Justice System’ (2017) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/419/419.pdf>> Accessed 27<sup>th</sup> March 2024

young adult offenders, whilst extending such recognition to the sentences of offenders remaining unable to receive such a sentence, creating a more cohesive approach.

### **Potential barriers to implementation**

Whilst the perceived promise of such a proposal has been evidenced, the likely concerns and questions surrounding such a proposal must now be considered in the interests of thorough investigation and reaching an informed conclusive answer to the question raised by this report. The central concerns likely to be raised following such a proposal surround stakeholder perceptions of this change and its enforceability. This chapter will review further evidence surrounding such issues, to determine the scale of the impact they may have and whether solutions are available to reduce the impact these have on the effectiveness of the proposal.

The first concern likely to be raised in response to a shift towards expansion of suspended sentences is that placing a stronger emphasis on the rehabilitation of young adult offenders may limit the sense of justice felt by victims and stakeholders following sentencing decisions. Whilst such a concern is unlikely to lead to direct opposition or protests against such a shift, it is highlighted that a ‘...degree of public acceptance of, and confidence in, criminal justice practices is clearly necessary for a well-functioning system’<sup>93</sup> without which ‘...a loss of perceived legitimacy, and support for the sentencing process...’<sup>94</sup> may harm public perceptions of the criminal justice system as a whole. As previously identified, should expansion of the imposition of suspended sentences be achieved by way of extending the maximum term of sentences eligible for suspension, offenders committing more serious offences or who have had a heavier degree of involvement in minor offences may become eligible. As this does not mean that highly dangerous prisoners or those leading high-level offences will be eligible, the public’s confidence should not reduce dramatically, as their safety continues to be protected as a priority. It appears therefore that the most significant degree of dissatisfaction following such a reform may come from victims who wish to see justice for the wrongs committed against them. In managing such concerns whilst attempting to make a greater-representative system, it appears as though the judiciary would need published guidance highlighting the continued importance of proportionality and justice for victims. If a victim’s level of harm is exceedingly high and releasing their attacker into the local community poses them or others at significant risk of harm – whether physical or psychological, it is the role of the courts to determine whether passing a suspended sentence is safe and proportional. It is also possible for the judge to handle such situations by imposing an exclusion requirement,<sup>95</sup> prohibiting the defendant from entering the area the victim resides in, as is currently possible.

Another obstacle facing the imposition of this proposal is the history of governmental apathy regarding such reforms. The labour government first promised to ‘...extend to young adult offenders the focused and specialised attention that it had tried to provide for juveniles during its first term...’<sup>96</sup> in its 2001 manifesto, on account of the recognised similarities in characteristics present between offenders in their mid-teenaged and late-teenaged years, including ‘...immaturity, low educational attainment, poor parenting, behavioural problems, alcohol or drug problems...’<sup>97</sup> but ultimately failed to do so. Following this, a 2010 Justice Select Committee also highlighted in its findings that ‘...it does not make financial sense to continue to ignore the needs of young adult offenders. They will become the adult offenders of tomorrow. Particular effort should be made to keep this group out of custody.’<sup>98</sup> Such a report was similarly fruitless. Even in the modern day, the conservative government show similar ignorance to such an issue, failing to adopt the proposals set out by the Justice Committee on the topic of young adult underrepresentation and instead stating its commitment to ‘...developing operational

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<sup>93</sup> Anthony Bottoms, Sue Rex, Gwen Robinson, *Alternatives to Prison* (1<sup>st</sup> edn, Willan Publishing 2004) 83

<sup>94</sup> Sue Rex and Gwen Robinson, ‘Sentencing Riot-Related Offending’ (2013) 53 *The British Journal of Criminology* 234, 236

<sup>95</sup> CJA 2003 (n 15) s.205

<sup>96</sup> Friedrich Lösel and others 2012 (n 69) XIV

<sup>97</sup> Barrow Cadbury Trust 2004 (n 61) 11

<sup>98</sup> Justice Committee, ‘Cutting crime: the case for justice reinvestment’ (2010)

<<https://publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9408.htm#a23>> Accessed 5<sup>th</sup> April 2024

practice in response to maturity...<sup>99</sup> which appears unfulfilled. Such a plethora of missed opportunities to properly acknowledge and address the underrepresentation of young adults as a unique category of offenders highly suggests that the legislature do not feel that such a shift is worthy of priority. Ultimately, it is the legislative who must establish such reforms by way of legislation, failing which proposals will remain ineffective.

Conflicting judicial attitudes to such a reform may pose another obstacle to its implementation and effectiveness if passed. As previously discussed, it appears that judicial understanding of the position and significance of an offenders' age and/or lack of maturity varies under the current system, consequently requiring clarification should such a change be legislatively established. Simultaneously, whilst an incentive could be introduced to promote the wider imposition of suspended sentences upon young adult offenders, the discretionary nature of sentencing leaves unavoidable room for inconsistencies and differing approaches between courts – even when working within a guideline. It appears inevitable that some members of the judiciary would be apprehensive regarding a reform and may feel a stronger sense of concern imposing more suspended sentences. Whilst this cannot be prevented, it seems essential that should such a change be imposed, sufficient guidance be provided to the courts as to the new rules and how to balance the aims of rehabilitating offenders with protection of the public when making such decisions. Such a strategy would also not only require that suspended sentences imposed carried requirements for the purposes of rehabilitation, but that violations of these were continually enforced to ensure decisions are not unduly lenient.

## Conclusions

This dissertation has explored the stark contrasts between the adult and youth justice system, identifying a gap in legal recognition and representation for young adult offenders who cannot yet be deemed fully adult or nor still a child. This identification highlighted the need for a unique approach to the sentencing of young adult offenders to establish binding recognition of their position as more cognitively culpable than a young offender, but not capable of the same level of culpability and informed decision-making as an older adult. It was then established that suspended sentences appear to be the best remedy capable of effectively combining the youth and adult justice systems due to its unique ability to weigh up the importance of undertaking rehabilitative activity with the punitive threat of serving a custodial sentence for offenders failing to engage. It was next determined that expansions to young adult offenders' eligibility for suspended sentences would likely either need to take the form of mitigative credit capable of reducing a sentence term to one falling within the current maximum term, or expansion of the maximum term by one year to allow more cases to fall within such without being overly lenient. Both options carry their advantages and disadvantages, but the legislative status of expanding the maximum term for young adult offenders may make such a reform more influential and therefore effective. Finally, the obstacles facing such a proposal were highlighted, with the potential issues with public and judiciary perceptions of such a reform seeming manageable through guidelines and balances with the wider aims of justice to ensure change is not disproportionate or unsafe. Such analysis did however highlight the fundamental factor determining whether such a strategy could be implemented being the legislatures' position on such a matter. Whilst campaigning can and should continue to lobby for representation of this group and judicial awareness of the impact of age and/or lack of maturity will aid fairness of decisions, it is up to the legislature to determine whether or not such a strategy be trialled and implemented.

In coming to a conclusive answer as to the validity of the proposal, it appears obvious that the UK government need to follow the international examples of countries such as Germany and expand their currently limited degree of recognition as to the unique position of young adults to one that is legislatively enforced and protected in sentencing decisions. When considering whether expanding the use of suspended sentences in particular would reduce reoffending rates, the evidence also suggests that it would. This is particularly true in the current climate by-which young offenders' institutes are oversubscribed, resulting in a lack of rehabilitative opportunities for young adults facing custodial

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<sup>99</sup> Justice Committee 2017 (n92)

sentences. This conclusion is made on the basis of all of the acquired evidence highlighting the effective balance such a penalty can strike between prioritising welfare and enforcing punitive measures. It is however noted that the degree of such success would likely be dependent upon the quality of supporting advice distributed to decision makers, without which inconsistencies in application are inevitable.

The author does acknowledge, however, that suspended sentences will not be suitable for the sentencing of all young adult offenders. In the same way as currently applies to determining an offenders' eligibility for such a sentence,<sup>100</sup> it must first be determined whether an offender is likely to meaningfully engage with such a sentence, and whether they show a willingness to commit to such requirements and cease offending for the period of suspension. There is little merit in imposing a suspended sentence against an offender who has a long-standing history of non-compliance with court orders, as breach is highly likely; in the same way that the public would not be safe if an offender highly likely to reoffend received a suspended sentence. The aim of such a proposition is to make suspended sentences more accessible to offenders who have suffered poor decision-making skills, but who truly wish to make meaningful efforts to engage with the relevant services and turn their lives around for the good of their future.

The next steps required to implement such measures, should the legislature look to impose such a proposal, would likely require that local pilots take place to further evidence the success and maintenance of public safety occurring under such arrangements. Should such trials be run, they would likely benefit from governance by Transition 2 Adulthood due to their extensive knowledge of the field and pool of evidence regarding the effectiveness of approaches to justice for young adults.

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<sup>100</sup> Sentencing Council 2017 (n 26)