

CENTRE  
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INNOVATION



## A fairer way

Procedural fairness for  
young adults at court

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# Executive summary

**This paper, along with the supporting communication resources, sets out the rationale and method for implementing and testing a procedurally fairer way to hear the cases of young adult defendants in the criminal courts in England and Wales.**

## *Evidence for a fairer way*

In England and Wales, we need to do better at reducing reoffending among young adults aged 18 to 25. Not only are they over-represented in our justice system, taking up a disproportionate amount of resources, but they are often also continuing to offend, with 75% of young adults released from prison being reconvicted within two years and those serving community sentences having the highest breach rates of any adult age group on such sentences. Explanations behind the over-representation of young adults in these figures include the realities of brain development in maturation, higher levels of neuro-disabilities, relative propensity of young adult offenders to have experienced trauma, changes in social and economic contexts and criminal justice contact that introduces barriers to the natural desistance process.

Procedural fairness is a cost effective intervention that has been shown to reduce reoffending in a number of jurisdictions. Procedural fairness research has consistently shown that when people feel they have been treated fairly by an institution— when they understand what to expect and what is going on and feel listened to and respected, even when decisions go against them— they are more likely to obey its decisions. In the context of offending, this means less crime and fewer victims.

## *Designing a fairer way*

Recognising the imperative to develop new ways of responding to young adult offending, a number of countries have already made a start in treating young adults as a distinct population. Although there have been some changes in practice within England and Wales, there remain significant areas of the criminal justice system that have failed to recognise young adults' distinct needs, including allocation to and treatment within the courts. An initial feasibility study, commissioned by the Barrow Cadbury Trust in 2015, suggested a more procedurally fair, distinct court process for young adults was possible in line with the evidence and adult legal framework, and had the potential to reduce reoffending. However more work was needed to co-design the detail of the process with practitioners and young people.

For the following twelve months, multi-agency groups in five areas in England and Wales that responded to a call for interested sites – Coventry, Ipswich, Leicester, Northampton and Swansea – met regularly to develop a model through which practice could be adapted in line with the evidence. Their work was undertaken according to the principles that it should respond to local need, involve young adults and their families, hear from victims, use evidence to inform developments and share learning as they progressed. They considered operational constraints, the current policy context, numbers and profiles of young adults and the views of practitioners and young adults in assessing potential improvements to processes before, during and after court around the core components of procedural fairness.

*[“There has got to be something better.”](#) (Young adult with experience of court)*

The young people who shared their experiences of magistrates' court through this project revealed a huge amount. They described positive experiences, negative experiences and many suggestions for how they felt the process could be improved. But while few talked about dissatisfaction with the sentences they received, all highlighted the importance of understanding the process more clearly, their wish to feel they were treated with respect, and their desire to have a meaningful voice. All described – without knowing the terminology – the basic components of procedural fairness. All described the simple means by which their trust in the justice system could be enhanced.

### ***A fairer way***

The result of the work across the five sites is a recommended model that could be tested and evaluated against its aims. In this model, all young adults aged 18 to 24 at date of charge being prosecuted either through the Crown Prosecution Service or National Probation Service (for breaching existing orders) and scheduled to appear at magistrates' court would be eligible, regardless of anticipated plea. Exceptions would be made for some cases such as those on remand or in existing specialist courts. The model includes the following core features:

- Providing better information to young adults before attending court;
- Grouping young adults' hearings into a nominated sitting each week, using an existing Transforming Summary Justice court sitting and in line with existing timescales;
- Holding a pre-court meeting on the nominated day to identify any communication needs, reports to be prepared, and those known to be unrepresented;
- Preparing young adults for the opportunity for direct engagement with the bench;
- Ensuring timely probation reports are completed that take into account maturity in line with the current probation instruction;
- Enhancing engagement during the hearing itself through such means as having practitioners in the room with an understanding of young adults' specific needs, checking young people's understanding more effectively, explaining the roles of those in the court room where appropriate and giving young adults an opportunity for direct engagement with the bench;
- Following up after hearings to check understanding and next steps; and
- Supporting voluntary take-up of community services that are available locally to tackle wider needs that may be contributing to offending behaviour.

### ***Delivering a fairer way***

In recognition of the fact that good implementation is a prerequisite for effective delivery, the sites also identified what would be needed to test the model. This involves a ten step plan covering:

1. Convening the right people;
2. Securing senior sign-off;
3. Agreeing timescales;
4. Producing a local protocol;
5. Determining the quality assurance process;
6. Developing a local communications plan and briefing arrangements;
7. Producing localised information for young people;
8. Briefing all relevant partners;
9. Beginning the adapted issuing process; and
10. Holding the first young adult court sitting.

To support implementation, the Barrow Cadbury Trust has made template documents, advice and support, and contribution towards implementation costs including consultancy support available upon application to the Centre for Justice Innovation. It has also tendered for an independent evaluator to test the impact of the model. At the time of writing, securing the appropriate research approvals for this evaluation is on hold while the Ministry of Justice, the court service and the senior judiciary consider whether they wish to test the model.

In summary, a practical and feasible model has been developed for how the process of attending court could be adapted to respond more effectively to the well-evidenced specific needs of young adults. There is good reason to believe this model has real potential to contribute to reduced reoffending by, improved outcomes for, and better lives among those young people coming into contact with the justice system. Our remaining aspiration is for the model to be tested by the courts in order to measure whether this potential can be realised.



# Evidence for a fairer way: the case for a distinct approach to young adults at court

## Crime, offending and young adults

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If we want to reduce crime and have safer communities, we need to do better at reducing reoffending for young adults (individuals between 18 and 25). Young adults are only 10% of the general population but, while recognising an overall decline in recent years, in some areas they still account for 30% to 40% of the criminal justice population at any one time. From absorbing disproportional amounts of policing time to making up a large volume of the probation and prison populations,<sup>1</sup> young adults are over-represented in our criminal justice system and take up a disproportionate amount of its resources. Moreover, young adult men are responsible for a disproportionate amount of serious crime. Young adult men are more likely to be involved in crimes like robbery and are more likely to serve sentences for violent or acquisitive offences than older men.<sup>2</sup>

And yet, despite their over-representation, the criminal justice system is currently doing a poor job of reducing their offending. Young adults represent 28% of all the offenders who re-offend. 75% of young adults released from prison are reconvicted within two years.<sup>3</sup> Young adults serving community sentences have the highest breach rates of any adult age group serving community sentences.<sup>4</sup> The poorest outcomes are typically for young adult Black and Muslim men and care leavers, each of whom are over-represented in the system.

If we want to reduce crime by breaking the cycle of persistent offending, focusing on young adults is an effective place to start.

## Understanding the distinct nature of young adult offending

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So why are young adults so much more likely to be involved in crime and be in contact with the criminal justice system than older adults? Many years of large scale criminological research have observed that, across a wide range of jurisdictions, offending behaviour<sup>5</sup> peaks in the mid-teens before dropping steeply at the onset of young adulthood, then declines more slowly.<sup>6</sup> This phenomenon is known in the research literature as the age-crime curve.<sup>7</sup>

It is therefore not surprising that we see so many more young adults in the adult criminal justice system than we see in the general population. There are a number of reasons which explain this age-crime curve and identify what is behind the over-representation of young adults in the crime figures and in the criminal justice system:

- *Brain development in maturation:* studies of brain development in young adulthood suggest that impulse control, reasoning, and decision-making capabilities are in formation until the mid-20s.<sup>8,9</sup> In typical brain maturation, temperance – the ability to evaluate the consequences of actions and to limit impulsiveness and risk-taking – is a significant factor in moderating behaviour and the fact that its development continues into a person's twenties can influence antisocial decision-making among young adults.<sup>10</sup> As the system to regulate 'reward seeking' is still evolving, this affects how young adults judge situations and decide to act, including consequential thinking, future-oriented decisions, empathy, remorse, and planning.<sup>11</sup>

- *Neuro-disabilities*: there is also evidence that strongly suggests that young adults in the criminal justice system are much more likely than both the general population and other young adults to have atypical brain development, including cognitive difficulties with thinking, acting, and solving problems, emotional literacy and regulation, learning difficulties and language problems associated with Attention Deficit Hyperactivity Disorder (ADHD), autism, learning and language disorders and head injuries.<sup>12</sup> Taking head injury as an example, there is far higher prevalence of Acquired Brain Injury – estimated to be between 50% and 60% – among young prisoners compared to older prisoners.<sup>13</sup> Young adults with traumatic brain injury (TBI) are even less likely to reach full neurological development by their mid-20s and this can contribute to behavioural problems, such as conduct disorder, attention problems, increased aggression, and impulse control problems, and mental health problems such as anxiety and depression. The Centre for Mental Health has estimated that a traumatic brain injury increases the likelihood of crime by at least 50%.<sup>14</sup>
- *Relative propensity of young adult offenders to have experienced trauma*: young adults involved in the criminal justice system have often themselves been victims of crime. Many have a history of being exposed to violence, including in the home, abuse, neglect, bereavement relating to the deaths of parents, siblings and other close relatives, and criminal behaviour by parents and siblings. These traumatic events have frequently occurred from a very young age and, as they remain young, the traumatic effects may be raw.<sup>15</sup> There is evidence that the effect of trauma in childhood and adolescence compounds issues with maturation as those affected experience heightened levels of flight or fight reactions, and hence increased chances of risk-taking behaviour.<sup>16</sup>
- *The social and economic context of young adults*: there is significant evidence that life events such as becoming settled in relationships, secure employment and income, stable accommodation and developing a sense of agency (being in control of one's behaviour and thoughts) support desistance from crime. And yet broader social trends have served to prolong and disrupt the passage to adulthood for the young adults of today - the average ages associated with marriage, childbirth and independent living have significantly shifted upward in recent decades. Sociological research demonstrates that changes to societal norms have prolonged the age at which people reach these key markers of adulthood; they typically occur five to seven years later today than they did a few decades ago. Moreover, access to these desistance factors is significantly affected by specific policy variations for young adults - for example, 18 to 25 year olds are specifically excluded from receiving the National Living Wage - and by the inequality of access that groups of young adults have to these opportunities.
- *Criminal justice contact*: as the age-crime curve shows, the majority of offenders age out of crime during early adulthood and we know from desistance literature that most people age out due to factors outside of their contact with the criminal justice system (see above). However, the same research shows that prior and ongoing involvement with the criminal justice system can significantly undermine young adults' ability to desist from crime. As young people who commit crime typically stop doing so by their mid-20s, their efforts to desist can be frustrated both by the financial consequences of having criminal records, and the impact "labelling" has on their social identity. There is now significant evidence that while desistance from crime relies on a significant measure of self-efficacy, it also is dependent on individuals recognising that they have a positive, pro-social place in their community. Young adults who have had prior contact with the criminal justice system are often involved in anti-social networks who are "very happy to give them an identity."<sup>17</sup> Even low-level involvement in the criminal justice system, including receiving cautions, can have a detrimental effect on developing a pro-social identity.

This range of factors goes a long way to identifying why it is that young adults have such poor outcomes and why these needs are distinct from both children under the age of 18 and fully mature adults.

## Toward distinct provision for young adults in the criminal justice system

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Recognising the imperative to develop new ways of responding to young adult offending, a number of countries have already made a start in treating young adults as a distinct population. This has included moves to 'raise the age' (bringing young adults into the scope of the juvenile justice provisions),<sup>18</sup> change laws to ensure there is mitigation for young adults,<sup>19</sup> and a focus on more bespoke, trauma-informed and strength-based approaches for young adults who appear at court.

English and Welsh policymakers and practitioners have not been immune to the evidence and the wider developments to treat young adults as a distinct population. There have been a number of changes to practice. These include:

- The inclusion of maturity as a mitigating factor in adult sentencing decisions since 2011;
- The Crown Prosecution Service taking maturity into account as part of its public interest test since 2013;
- The National Probation Service taking account of maturity as part of pre-sentence assessments to provide a more informed assessment and proposal for the courts;
- The National Police Chiefs' Council extending the remit of its National Strategy for the Policing of Children & Young People up to and including the age of 24;
- A new maturity screening tool for use in prisons and the community to help commissioners target resources and interventions.

## A missing part of the jigsaw? Young adults and the court system

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Despite these changes, it is recognised that there remain significant areas of criminal justice practice in England and Wales which do not yet recognise young adults' distinct needs. One area to which attention turned is whether there could be improvements made to the court process for young adults.

Inspired by the differing and innovative approaches being adopted in different jurisdictions, the Barrow Cadbury Trust, as part of its Transition to Adulthood Programme,<sup>20</sup> commissioned the Centre for Justice Innovation to assess whether a distinctive young adult court process could be developed within existing legislation and resources and, if so, what the evidence suggested it should look like. This study<sup>21</sup>, published in December 2015, identified a number of conclusions.

### ***There is not a distinct court process for young adults at present***

Unlike in some other countries,<sup>22</sup> the allocation of young adults within the English and Welsh court system into the adult court system, and their treatment therein, is entirely driven by age, rather than in specific response to developmental maturity or needs. This means young adults who are developmentally distinct are treated exactly the same as older, fully mature adults.



### ***Raising the age of the youth court system to include young adults is complex operationally and politically***

A short investigation into proposals to raise the age of the youth court system to include young adults (as has been done in different jurisdictions such as the Netherlands) with policymakers and practitioners recognised that this would be politically and operationally difficult, requiring primary legislation. Moreover, a wholesale channelling of all young adults into the youth court system would not necessarily be the correct evidence-led response, not least due to the potentially harmful effects of mixing young adult and youth populations in the same court processes.

### ***A more procedurally fair, distinct court process for young adults could be effective in reducing reoffending***

The report identified research that suggests that citizens' perceptions of the legitimacy of authorities to make decisions and interventions in their lives is closely tied to the fairness of how they are treated by them or perceive they will be treated by them (a concept known as procedural fairness).<sup>23</sup> Research suggests that procedural fairness has significant instrumental value.<sup>24</sup> When people involved in the justice system encounter processes that they feel are procedurally fair, compliance with court orders, such as a court summons, goes up and reoffending, even among the most violent offenders, goes down. Procedurally fair processes tend to have four evidence-led components: clear understanding of the processes and decision making; opportunities to express voice; a sense that decisions are made by neutral arbiters; and the feeling that individuals have been shown respect.<sup>25</sup>

Research suggests procedural fairness matters for everyone but there is particular evidence that it may matter especially for young adults.<sup>26</sup> This may be because younger people are especially attuned to perceptions of unfairness and signs of respect.<sup>27</sup> Empirical research has identified that young people's perception of their sentencer has the largest influence on their views of the overall legitimacy of the justice system, even when controlling for the outcome of their case.<sup>28</sup> The atmosphere of the courtroom itself has also been found to be significantly related to perceptions of legitimacy: young people who "experienced an atmosphere of confusion and unprofessionalism tended to view the entire justice system as less legitimate" than young people who had a better court experience.<sup>29</sup> The use of complex and technical language and courts' formal setting makes it especially difficult for young adult defendants to follow, given their variable developmental maturity and brain development. The process can be difficult to understand, intimidating, and lacking in opportunity for direct engagement. These findings highlight that young people's perceptions of court procedures have a strong effect on how they view the justice system as a whole.<sup>30</sup>

### ***A more procedurally fair, distinct court process for young adults is possible***

Moreover, the report also noted that existing youth court practice embodies significant procedurally fair practices not currently present in adult court, such as increased engagement and measures to aid participants' understanding of proceedings. From reviewing the evidence, the legal framework and assessing youth court practice which could enhance the court response to young adults, the report suggested a young adult court process could have the following features:

1. specialist listings for young adults;
2. judges and magistrates presiding over the hearings with an understanding of young adults' needs;
3. family involvement at court;
4. adopting procedurally fair courtroom language and communication, that is already practised in youth court;
5. an adapted courtroom environment more conducive to engagement.

## ***There is stakeholder support for a procedurally fair distinct court process for young adults***

The study found that the majority of key stakeholders demonstrated their support both for the concept of developing a young adult court and for delivering adapted practice in line with the transition to adulthood<sup>31</sup>. It found that it would be feasible to make a number of practical adaptations in order to deliver a young adult court, although some negotiation would be needed between local partners on how to respond to several practical issues. Stakeholders also suggested a number of other options that could enhance the proposed model. These include increasing the involvement of services that can provide support, producing enhanced pre-sentence reports, and introducing post-sentence reviews for some community orders. However, the report also noted that during the scoping, attempts to engage court service administrators were not successful, stating that *“overcoming this barrier would be vital in order to deliver a court in practice.”*

## **Going local**

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While the report identified that the court process remains unreformed and that a procedurally fairer process for young adults could not only be effective but was possible without significant policy changes, the report also identified that more detailed work was needed, at a local practitioner level, to determine what this process could and should involve. Therefore, with further funding from the Barrow Cadbury Trust, we embarked on a project of work to engage practitioners and young adults themselves, as experts in what was desirable and possible, in order to co-design, in detail, what a distinct, procedurally fair court process for young adults could look like.

### **Aims and principles of practice development work**

The aim of the project was to produce a model of a distinct court process for young adults who attend magistrates' court, which could be tested to see if it reduced their frequency and severity of reoffending. A secondary aim was to produce such a model that could be replicated more widely, without the need for any changes in legislation. Any resource implications identified throughout the development of the model were required to be limited to implementation costs only. The model itself was developed on the basis that no additional resources would be available for its delivery and therefore must be operational within existing means.

In order to achieve these aims, the model needed to be developed (and would operate, if implemented) according to five guiding principles:

- The model should respond to local need by being developed with the full involvement of practitioners within specific localities focusing on issues deemed as priorities in those areas;
- Young adults and their families should be involved in developing the model and assessing its effectiveness during delivery;
- The views of victims should be heard during development and delivery of the model;
- Components of the models should be informed by evidence;
- Those involved in developing and delivering the model should be committed to learning, continue to review, and share progress nationally and internationally to inform practice.

## **The development process: constraints, context and model development**

For twelve months commencing in the spring of 2016, multi-agency groups in five areas in England and Wales that responded to a call for interested sites – Coventry, Ipswich, Leicester, Northampton and Swansea – met regularly to develop a model through which practice could be adapted in line with the evidence. The groups comprised police, court staff, judicial office holders, probation (both NPS and CRC) and others as identified locally. The groups were supported by the Centre for Justice Innovation to collate views, review relevant research and evidence, and share their progress with the other sites.

The sites undertook two phases of activity in developing the model:

### ***Context***

- Identifying current reform, policy and operational constraints and opportunities in the courts and the wider criminal justice system that any model would need to be adapted to;
- Examining available data on the volumes of young adult offenders in their areas, as well as their profiles and needs;
- Consulting practitioners and young adults on current experiences and practice, as well as options for alternatives and specific aspects of a potential model.

### ***Model development***

- Assessing potential improvements to processes before, during and after court around the core components of procedural fairness, against research evidence and operational feasibility;
- Agreeing a recommended model to be proposed.

### ***Implementation planning***

Once the model was developed, the groups were supported by the Centre for Justice Innovation to determine the activities and the resources required to implement and test the model.

# Designing a fairer way: developing a new model for young adults attending court

## Phase 1: context

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As their first task, the multi-agency groups in five areas in England and Wales – Coventry, Ipswich, Leicester, Northampton and Swansea – all considered (i) the reform, policy and operational constraints and opportunities; (ii) volumes and profiles of young adults attending court locally.

### Reform, policy and operational constraints and opportunities

The groups identified a number of relevant reform and policy agendas that the model development was operating alongside. The implications of these agendas were considered throughout. In particular, it was clear that any new model would have to fit with the following ongoing reforms:

- *Transforming Summary Justice*: since May 2015, the Transforming Summary Justice (TSJ) programme has sought to improve how cases are dealt with in magistrates' courts across England and Wales. Its aims are to reduce delays in magistrates' courts, hold fewer hearings per case and increase the number of trials that go ahead the first time they are listed. The sites needed to consider in particular whether and how specialist listing for young adults could be compatible with the TSJ listing patterns and timescales.
- *Policing and Crime Act 2017*: the Policing and Crime Act 2017 means that there is now a presumption of release without police bail in almost all cases, including those where a suspect is arrested for a breach of bail, unless it meets strict criteria around necessity and proportionality. The sites needed to consider in particular how this would impact on the ability of the police to notify young adults of their court dates.
- *Court modernisation*: there is a large, ongoing programme to make courts fully digital. This includes a new Magistrates Rota live across England and Wales, a digital mark-up tool for legal advisers to record case results in court which is now being rolled out following successful pilots, and an online plea programme for traffic offences. The reforms also include the CJS Common Platform Programme, which began in 2014 and is a collaborative programme between HMCTS, the CPS and the Ministry of Justice to replace existing HMCTS and CPS case management systems with a single system providing access to all the material necessary to deal with cases efficiently and effectively. The sites needed to consider how this would impact on developing a bespoke young adults' court process more generally.

Alongside these considerations, the sites were cognisant of a wider range of reforms that the models needed to fit within (see Annex A).

### Volumes and profiles of young adults attending court

#### Numbers

Locally, the volumetric picture that the groups identified was consistent with national data: young adults absorbed a disproportionate amount of justice system resources across all the five sites. Despite being only around 10% of the

population, for example, in Leicestershire young adults are responsible for 39% of all recorded crime and are also estimated to be 21% of all victims of crime. In South Wales, it is estimated that nearly a quarter of all police arrests involve 18-25 year olds.

Moving to court resources, young adults are consistently between 15% and 20% of all magistrate court volume, though across all sites, the absolute number of young adults coming to court had dropped in recent years (where data was available.) We found considerable variation in the proportion of arrested young adults who were subsequently charged/summonsed to court – from around 60% in Coventry and Leicester to 42% in Ipswich.

### ***Profile and needs***

Again, consistent with national data, the vast majority of young adult offenders were men. The most common offences for which young adults in the sites were arrested varied, though acquisitive offences of theft and burglary and low-level violence (common assault) and drug offences (primarily possession of cannabis) featured as the most common offences.

Looking at the data in more depth where it was available, there was evidence that there are broadly two distinct young adult offender groups: the majority of fleeting offenders (who commit only 1 or 2 detected offences, making up around 70% to 80% of the cohort) and a much smaller number of more criminally active young adult offenders. This is consistent with the international research consensus on the age-crime curve and with Moffitt's dual developmental taxonomy.

In terms of criminogenic need, the most common factors, as assessed by the probation service, driving offending behaviour were thinking and behaviour, attitudes, and lifestyle and associates. While data in some areas also highlighted drug misuse, education and employment needs as relatively high, this prevalence of poor thinking skills, anti-social attitudes and associates is stark, highlighting what has already been found at a national level.<sup>32</sup>

### ***Cross-cutting issues***

Across the five sites, it was also acknowledged that there were significant subsections of the young adult population in question worth bearing in mind, most notably Black, Asian and Minority Ethnic (BAME) young adults, young women, and care leavers. Sites were conscious of the findings from the Young Review,<sup>33</sup> which looked at policy and practice for BAME people in the criminal justice system and established that over-representation of BAME people is particularly high for those aged 18 to 24. Further work by the Centre for Justice Innovation identified that the justice system does not command the trust of BAME citizens and that this is leading BAME defendants to make different decisions in court, most notably making them less likely to plead guilty<sup>34</sup> (and therefore more likely to be sent to prison by courts than white defendants)<sup>35</sup> and the reason for this is, at least in part, due to a mistrust in the courts and criminal justice system.

Moreover, there was an acknowledgement in the sites that young adult women were likely to be distinct from males in both their types of offending behaviour and the appropriate responses required to it — for example, it was known that females are more likely to internalise distress than men and psycho-social maturity is quicker to develop in females.<sup>36</sup>

Last, it was widely acknowledged that there was likely to be a high prevalence of care leavers in the young adult population in question, recognising that those leaving care face particularly acute challenges in desisting from offending and making an effective transition to adulthood.

## Phase 2: developing models

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In order to develop models, a range of practitioners and young adults were involved to give their thoughts about specific aspects of a potential model. While identifying the potential features of the model, they also considered whether each was core to the operation of a distinct young adult court process or complementary. Quotes from practitioners are underlined in *grey* and from young adults in *green*.

### Eligibility for young adult court process

From the outset, the sites defined young adults as young people aged between 18 and 25. While some practitioners suggested that an adapted approach should focus solely on first-time or relatively court-inexperienced young people, rather than *“persistent offenders who know the system already,”* the majority favoured an approach that would include all young people in the age range – this blanket approach being seen as having the virtue of simplicity.

Operational considerations also informed the eligibility criteria developed by the sites. It was made clear throughout that any bespoke court process for young adults would have to fit within ordinary court business and could not be a *“specialist court.”* This means that young adults would need to remain within TSJ timescales for appearing at court. It would, however, be possible to allocate young adults to appear in a TSJ court on a particular day, depending on numbers. This would enable other potential features of a model, such as specialist staff and services, to focus around that day. Existing specialist courts such as DV court would continue to take precedence and, in addition, young adults appearing on remand, via private prosecutions, as co-defendants with older adults or for summary offences via the Single Justice Procedure would also have their cases heard as they currently do, unless the court determined it would be more appropriate to allocate them to the young adult sitting.

### Information provision to young adults prior to court

There was clearly a lack of awareness from young adults about what to expect at court in advance, *“I was just told I have court in the morning - that’s it,”* *“I didn’t know what to expect,”* *“I got a letter from the police with a summons, no other information.”*

Therefore, there was widespread enthusiasm from both practitioners and young people for the idea that young adults could be given additional information prior to a hearing to help them know what to expect on the day. Suggestions varied in ambition, including establishing a text message reminder system. There were a number of suggestions for additional information to include, such as what to expect on the day, what to wear, how to speak, a picture of the court, and more about the powers that magistrates have, *“the information should describe the process right through from charge to court appearance.”* Young adults noted in particular that, *“they should tell you what time you are on.”*

Communication could also emphasise the possibility of bringing someone to support them, should they wish to do so. This information could be more user friendly and perhaps provided in a different style – with more attention to the language used (being aware of literacy issues, and avoiding potentially confusing abbreviations, for example.) This information could also include links to approved sources of more information, which could help prevent young adults getting incorrect information (from unofficial websites, friends, etc.)

Many practitioners were keen that information be given at the earliest point, at charge by the police, who across sites confirmed this was possible, *“police are able to accommodate more information to be given to young adults when bailed.”* The



ideal would be to produce this in two formats: a video for those who are bailed, *“explain the process with a short video”* and a leaflet for those who are remanded, *“something on google I can read but if in the cell, a leaflet. You have nothing better to do.”*

### **Listing and grouping young adults**

There was much discussion about whether it would be more effective to group hearings for young adults together or keep them interspersed among other cases as is the case presently.

On the one hand, grouping cases would require a change to listings that would need to be worked through with the police. It would also be necessary to remain within the Transforming Summary Justice (TSJ) timescales for scheduling hearings at court, both where pleas of guilty (GAP courts) and not guilty (NGAP courts) were anticipated. As well as involving a change to listing procedure, there were some concerns raised that if the young adults were all together, it could increase anti-social behaviour and a sense of *“bravado”* and that women may find this intimidating since the number of men is likely to be higher.

On the other hand, attempting to adapt an approach for young adults between other cases within existing proceedings would be very difficult as it would necessitate training all magistrates, sentencers having to change their approach between cases, having some means to identify young adults in advance, and less opportunity to be able to incorporate other features such as specialist staff or outside support agencies.

The more prominent view was therefore that it would be simpler, and more effective, to put all the young adults together, *“it’s very difficult to chop and change between different groups,”* *“the preferred option would be a separate young adult listing – this would avoid the bench having to adapt their approach from case to case.”* It was suggested that this would be the most effective way of delivering a distinct approach, *“a bespoke sitting would be preferable for getting extra resources or specialist staff.”*

This approach of grouping young adults to specific days was seen as dependent on the numbers being high enough to make it viable. Numbers would also dictate whether this would be in, for example, one half day or extending to two or three days a week. TSJ guidance advises that there is a maximum of 30 people in any GAP court, and 15 in NGAP. Each site reviewed its local court volume and trends and concluded that all young adults could be accommodated on one day. In courts with lower volume, other adults could also be allocated to this day.

### **Pre-court meetings**

Aided by a grouped listing, there was considerable interest in holding pre-court meetings for young adult cases. This could involve having a short meeting with court staff, probation, the CPS and defence before the sitting to share information and discuss any anticipated issues. Finding the time within current workload to do this was highlighted as a potential barrier, however it was noted that there are already similar meetings looking at listings and identifying people with particular needs so these could be used to support the young adult work. Practitioners spoken to who had experience of this approach in other projects felt this *“would be really good.”*

### **Court layout and environment**

Most of those involved in the model development, both practitioners and young adults, highlighted that the formality of adult court rooms poses barriers for young adults, including the distance from the bench, higher bench, conversations between prosecutors, solicitors, legal advisers and magistrates taking place in

front of them, and difficulties hearing and understanding. Young adults reported that not only did this seem unnecessary and designed to intimidate, “why is the room so big? And why all that woodwork?” “What difference does all that stuff make? I would like to know” but also that it led them to feel disrespected, a key component in perceptions of fairness, “they shouldn’t be higher than you; its intimidating... that’s why they are above you, because they think they are above us.”

There were also clear problems in many court rooms simply hearing what is going on. This difficulty was enhanced for those young adults in the dock, “in the box I couldn’t hear properly. I was locked in a glass cage,” “in the dock I struggled to hear and to focus because I felt more stressed.” This accords with recent research that has found that use of the dock negatively impacts on the experience of defendants and may influence the perceptions of other court participants.<sup>37 38</sup> Many practitioners agreed, “nobody can hear in adult court.” Young people suggested there were other changes that could be made, such as where they sit and who is in the room, “when you are young, you sit by your solicitor. Why does that change when I am 18?”

Many practitioners mentioned adaptations that could be made to the court room to make it more conducive to engagement with young adults. These adaptations were inspired by both the youth and family courts and include having a less formal layout, using either youth or family court rooms with features such as no docks, lower benches and tables, and incorporating “as much as possible from youth court” in terms of where people sit, and having the defendant sit down. “The more informal layout of the family court... does work – we try to get people to see us as problem-solvers rather than judges and we sit in the well of the court. It has a huge influence on the quality of the interactions. Obviously it is different in the adult court when we are judges, but standing above people looking down at them does not help.”

Yet many felt that while practice for young adults could be informed by that used in youth court, it was important to ensure this court reflected that they were nevertheless adults, “they’re adults after all,” “it is important that it is not just youth court.” Therefore it was generally agreed that the court should be characterised as an “inbetweenier” or “transition court” and there should be a combination of youth and adult court features to symbolise this.

As some features of the adult court would by law be required to remain, the model could only include youth-informed features in certain aspects. For example, it would be essential to be clear that any adaptations made would not relate to sentencing and that young adults would continue to be sentenced using adult law and sentencing guidelines. As the public and press would continue to be free to attend hearings in adult court, it would also be necessary for some of the formality of adult court to be visible.

From an operational perspective, the extent to which physical adaptations could be made would be dependent on the format of the court. Regarding layout, several people mentioned that the court buildings can be old and not very flexible. What is physically possible to adapt may therefore be limited.

Despite these challenges, if this balance could be achieved, practitioners felt it could lead to very positive outcomes, “the move from youth to adult court can be hard and a better transition could help with compliance.”

## Understanding

It is clear that both young adults and practitioners see it as hugely important that young people understand what is happening at court. Most agreed that young people can often be confused by the technical language and the speed with which the hearings take place. It was highlighted that, “some young adults

don't understand the requirements of the sentences they are given – these need to be explained much more clearly. For young people, this technical language leads to confusion, “you get random people talking, when I can hear what's going on, you don't know what they're on about,” “they speak a different language.” This confusion leads also to a feeling that they are being excluded from something they want to and should be a part of, “I want to know what is going on – it concerns me!” Many people, including young adults themselves, have also clearly expressed that it is an important function of the court to ensure they understand what is happening, “explain what is happening. It could prevent me coming back.”

It is important to note that terms that are taken for granted by professionals in the court can be misunderstood by young adults making it more difficult for them to participate meaningfully in hearings. There were numerous examples of this, but to illustrate:

- What adjournments are for, “there was an adjournment, didn't understand why”;
- What “all options” means – and subsequently, that “custody” means imprisonment, “tell them there's a possibility of prison, prepare them, be honest”;
- What the word “sentence” means, “when I hear the word sentence, I immediately think prison”;
- Why the particular sentence has been given, “knowing why a decision has been made”;
- What sentences actually involve, “they should take you through it [the sentence]... not act dumb to you, treating me like I'm stupid”;

While a small minority of professionals said that they felt clarification was the defence's responsibility, young people also reported that, “I still don't understand my solicitor, with their degrees and everything” and made mention of the current issue of increasing numbers of unrepresented defendants, “it has never been explained to me at court, except by my solicitor and you are lucky to get one of them now.” It was also suggested that relying on other professionals to explain was remiss of the court, “the judge should be responsible to tell you what [your sentence] is.”

For staff, the confusion caused by formal language is recognised as problematic, with everyone agreeing the court should ensure the defendants understand their sentences before they leave the court. Some probation officers reported having to explain what had happened at court and what the sentence entailed at their first appointment. Practitioners recognised that technical language could be a real barrier to understanding. They highlighted the use of jargon and long words, “try not to use it but it doesn't always happen,” complex legal language, “magistrates tend to read verbatim from sentencing guidelines – the language used is not easily understood,” the language being intimidating, “phrasing can be scary,” and varying levels of literacy and comprehension among young adults.

For magistrates, some felt their experience at family court had improved their ability to explain processes in adult court. However, there was also some concern that they were not able to be as flexible as would be helpful and that they were not always encouraged to consider the individual. Prescriptive pronouncements were raised on several occasions as problematic both if adhering to them, “by sticking to them you are just churning through the process and not looking at the person” and if considering changing them, “legal terms such as the charge will appear on their record and should not be altered... adapting language could be dangerous.” Adapting pronouncements currently goes against magistrates in appraisals, and doing so officially would require support from the Bench Training Development Committee, but some people did say a less contentious approach may be to simplify the pronouncements after reading them. This would require training for the bench.

Some lack of understanding concerns the process itself. Practitioners and young adults raised a number of areas of the process that are not always understood, though it is likely that there are others:

- The roles of defence and CPS and the relationship between the two: practitioners reported that the two talking to each other when the magistrates are retired can be confusing and disconcerting to defendants. This view was reinforced by young adults, "didn't realise they were separate," "prosecutor and defence speaking to each other. Supposed to be on my side, why are you speaking to each other? Felt let down. Like they were friends. Don't do it in front of me";
- The role of the legal adviser: some mentioned that young adults often think the court is "run by the legal adviser." They gave an example where a legal adviser "took over prosecuting" a young adult's case;
- Who everyone is in the court room, "no idea who was there," "they [court staff] should introduce themselves," "I would like to know who was who in court," "I didn't know journalists can sit in court before I asked";
- Etiquette within the court room, such as how to address the bench and when to stand.

Importantly, it was felt that court staff should ensure they are checking young adults' understanding during the process, or at least allowing them to clarify if there is anything of which they are not sure, "magistrates should ask more if defendants understand. Some benches are responsive but others can be rigid and will only speak to a defendant through their solicitor," "tried to ask questions but told [by magistrate] not to."

A further consideration for how language could be adapted comes from observing practice in the youth court. There, the bench chair made frequent explicit and implicit mentions of fairness, such as "it's fair that we hear from everyone" as well as praising the CPS and defence for mentioning the lack of previous convictions. This use of language can reinforce perceptions of fairness in the minds of young adults and help them to feel they and others have been treated fairly in the court room.

## Engagement and voice

There was support for more direct engagement with young adults from practitioners. Some felt very strongly about this, "we have lost the ideology of treating people properly." But more striking was the extent to which young adults said that for them this was the most important improvement that could be made to court, "when you plead guilty you don't get the chance to get your point across," "the worst thing about my court experience was when they read out the charges without any context."

They explained that the current system was problematic for several reasons:

- It contributes to their feeling that they are not respected, "they don't let you speak," "don't chat about me while I'm there, it's rude";
- It misses the opportunity to help the young person develop aspirations rather than be defined by their past behaviour, "should be a focus on your future not just your past";
- It gives weight to the view that the court is not looking to establish the facts but confirm what they already believe, "as soon as you are in that dock, you are guilty";
- It stops young people feeling they are being accurately represented, "no one can put your point of view across better than yourself."

Young people stressed that they were not just saying they wanted to speak, but that they wanted to be heard. The tone with which engagement took place had a strong bearing on how they felt about court, "I was told that I wasn't going to have a bright future; they look down on you." When asked what could encourage more respect at court, the view was clear, "speak to you like you are a normal person not just a criminal." Perhaps most compellingly, young adults explained how this lack of involvement currently led to their feeling disengaged from the whole process, "they could have just called me up on the phone to tell me what I'd got."

Despite this support, some challenges were raised that come along with an aspiration of increased engagement. These included the following:

- There would be tension with targets around speedy justice if engagement were to cause hearings to last longer, "it has a positive effect if done properly, what doesn't is when the person leading the engagement can't do it properly and it takes too much time";
- There is a fear that young people may say things that could hurt their case or which they later come to regret. It was noted that "the balance is hard." Some young people felt that they should be allowed to take this responsibility upon themselves, "they should let you open up and talk to you"; "if you fuck it up it's your fault, you take that risk";
- It may be asking too much of young people to express themselves in court as they can sometimes be "in complete shock" and "can't be expected to articulate themselves at 18." This is a current challenge in the youth court.

It was suggested by both practitioners and young adults that the risks associated with the latter two challenges could be mitigated by giving notice in advance that they may be asked to speak, "a reminder that you can speak or to write a letter." It could also help to give some guidance in advance about preparing what they might want to say, including possibly running it past their solicitor first.

The idea of writing a letter to the court was mentioned as a useful tool for those not confident to speak at court, "sometimes people will crumble so could write a letter," and which is used on occasion already. Some sentencers suggested they liked this as it shows the person has made an effort. It also means they can place more emphasis on particular factors, which is less the case with words spoken aloud in open court. However, as with speaking, it is important to show that if a sentencer has been given a letter, they have read it. The value of this is demonstrated well by the contrasting experiences reported by two young adults:

- "I have written a letter to my judge. He read it. It shows you are remorseful and it shows you have taken the time to think about it. I think it helped."
- "I gave a letter to a judge – he didn't read it. Someone on £180,000 a year can't put themselves in your position."

## **Informed staff**

The idea of having specialist sentencers for young adults has been widely supported, "I would like someone who wants to understand [on the bench]." This would allow them to have an improved understanding of maturity and "what this actually means" when working with young adults. It would also allow the sentencers to be trained in appropriate engagement with young adults, as well as "the sentences available and the realities of these sentences." For magistrates, there was a great deal of enthusiasm for the idea, some of whom feel they are "losing that personal touch" and feel this could be an opportunity to "deal with a person not a number on the page."

There was a suggestion that the youth bench could fulfil this function, but others felt it should also be open to other magistrates with special expertise and interest. If training is offered, one magistrate commented that he would like this to be specific to young adults and not the same training offered to youth-trained magistrates, *"they [magistrates] should have more training [on young adults specifically]"*. It would also be important to do this to reflect the fact that the intention is not to treat young adults as if they are children.

In addition to specialist sentencers, practitioners recognised that everyone who has a role in engaging with young adults attending court has a contribution to make. They suggested it could improve consistency and effectiveness if others were also allocated as specialists with appropriate knowledge regarding young adults. This includes legal advisers, lawyers including duty solicitors, and probation.

## **Family involvement**

The benefits of having family members or carers present in court was raised often. While sometimes this could be a distraction, *"laughing, gesturing, looking at phones,"* on the whole it was seen as positive by practitioners, *"I love when family members come along."* Some questioned whether young adults would want their family members there. Of the young adults involved, all who had family said they preferred them to be there, *"I like having my mum for emotional support. I feel better about it,"* even those who did not invite them, *"I don't tell anyone but my mother and girlfriend always come. They go through my letters," "I like having them there, shows you have support."*

One young adult did not feel it was clear that you could bring family with you or that they were even welcome, *"there should be something to reduce the stigma so more people feel comfortable coming to court. They're not the ones in trouble,"* while another mentioned he would prefer them to be more visible in court, *"I can't see them though as they sit behind or above me, I would like to see them."*

## **Better information for sentencers and others**

It was suggested that sentencers could consider the most appropriate sentence for individual young adults if they had better information on their needs and circumstances as well as the available programmes that might respond to these within court reports. It would also be helpful to make the bench more aware of communication difficulties.

It was recognised that the NPS court teams were beginning to include information about maturity within PSRs. It was suggested it would also be useful to have more information about the types and realities of sentences available, so that sentencers can consider the most appropriate for each young adult.

## **Support at court**

The most frequently mentioned idea for a feature that could be provided outside the court room and which was suggested by several different practitioners as well as young adults was for someone to provide wider independent support. Practitioners were clear that this support would not cover any legal issues, rather could fulfil one or more of the following functions:

- Assist the young adult to understand what would happen in the court room, *"independent support worker to ask questions";*
- Provide reassurance and emotional support where family support is unavailable;
- Accompany the young person into court to help them feel relaxed (it was suggested that if young adults were a bit more relaxed they were more likely to hear and understand more effectively);



- Signpost the young adult to advice and support for issues that may be contributing to their offending such as housing, debt or substance use. Alternatively, young people's specialist services could be invited on-site to encourage referrals.

Voluntary and community sector organisations were suggested to fulfil this role. Young adults themselves mentioned that this would need to be someone that could build a relationship with them quickly, *"in prison they have trusted prisoners, for example, so could they have ex-offenders in court? Could relate to them as they have experience."*

### **Support after court**

In learning from what works with under-18s, it was raised that there are opportunities after a hearing to help young adults understand what happened and what they need to do now. It was felt that this could increase engagement with young adults and consequently lead to better engagement with orders. Suggestions of options include:

- Having someone take them aside after sentencing to ensure the young adults understand the sentence;
- Creating a leaflet explaining every sentence to give to them afterwards to take away;
- Probation either giving them their next appointment before they leave, or taking their mobile number to arrange it to avoid sending letters that are not read;
- Conducting a home visit shortly after court to talk through what breach means and that their first appointment counts towards this.

# A fairer way:

## the new model for young adults attending court

As a result of the activities described, the five sites synthesised their work to produce a recommended model that could be tested and evaluated against the intended aims. The model is described below as intended for sites who are testing it.

### Eligibility

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To be eligible for the young adult court sitting, defendants must meet the following criteria.

#### ***Location***

Be appearing for hearings at one of the magistrates' courts testing the adapted approach.

#### ***Age***

At date of charge or postal requisition, be aged 18 to 24 inclusive.

#### ***Offence type***

Be appearing in court because they are being prosecuted either through the CPS or NPS.

#### ***Anticipated plea***

Assuming other eligibility criteria are met, regardless of their anticipated plea.

#### ***Special circumstances***

Cases eligible to be heard in specialist domestic violence courts will continue to be heard in those courts. Where young adults appear on remand, via private prosecution, as co-defendants with older adults, or for offences via the Single Justice Procedure, their cases will be heard as they are currently unless the court determines it would be more appropriate to allocate them to the young adult sitting.

### Model features

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The model is made up of consistent features that will be applied to fit local circumstance. These features are as described below.

#### **Issue of process to appearance**

##### ***Providing better information prior to court***

Alongside the details of their court hearing date, young adults will receive additional information prior to attending court. This will be supplied by police at point of charge or postal requisition. In cases of breach, the information will be included in the young adult's court summons or the allocated officer (NPS or CRC) will provide it in person where the young person continues to report to probation or via post/email if there is no contact.

The additional information will serve two purposes:

1. Better prepare young adults for what to expect at court;
2. Give details of support services that are available locally to tackle wider needs that may be contributing to their offending behaviour (see *Supporting voluntary take-up of community services.*)

The information, designed by young people themselves, will cover issues including waiting times, what to wear, who will be present and what will happen in court (not specific to individual cases.) The information will suggest that the young adult considers inviting a family member or other person to accompany them in a supportive capacity. It will also signal that they may be given an opportunity to speak or prepare something in writing for the bench directly and that they should consider this in advance.

### ***Grouping young adults' hearings***

Eligible young adults will be grouped together for their hearings onto one nominated day each week, using an existing Transforming Summary Justice (TSJ) court sitting. Grouped listing ensures that all operational staff in court on the allocated day are aware of the specific needs of young adults as well as effective responses to them. Eligible young adults will continue to be brigaded into GAP and NGAP courts. Police custody sergeants and justice department staff responsible for postal requisitions will continue to schedule hearings in line with TSJ timescales of 14 days for anticipated guilty pleas and 28 days for anticipated not guilty pleas. Where in use, Niche technicians have confirmed they are able to include the young adult sittings on I.T. systems locally.

In cases of breach, the current probation breach process continues as normal. There are no adaptations to breach reports, submissions or timeliness. The only alteration is which day of the week an individual appears at court for their breach hearing. Once a breach report is submitted and approved by the breach prosecution team it is passed to a court administrator to issue a court summons. At this point in the process the court administrator will check individual dates of birth, and allocate young adults to the correct breach court day.

Where a court sitting is not filled with young adults or the appropriate timescales would be missed for an individual otherwise, older adults can also be allocated to the young adult court sitting. In cases where there are too many young adults for a court list (i.e. more than 30 GAP or 15 NGAP cases), the remaining young adults will be allocated to the next available young adult GAP and NGAP courts.

### **Appearance at court**

#### ***Pre-court meeting***

A pre-court meeting will be held prior to the court sitting. This will be led by the legal adviser and all relevant agencies may attend including National Probation Service, ushers, CPS and defence advocates. The meeting is not to discuss legal aspects of cases and will not include members of the bench. It will cover the list for the session, any needs presented by the defendants, reports that need to be prepared, seeking additional information if the young person has had previous involvement with the youth offending service, and should identify those known to be unrepresented. It will also allow for individuals to be targeted who may benefit from additional information about support services in the community outside the court process (see *Supporting voluntary take-up of community services.*)

### ***Preparing for engagement***

All young adults attending a hearing should be advised that there will be some direct engagement and checking of understanding from the legal adviser and bench. They may also be asked if they would like to add any views to those presented by their advocate. This can be provided verbally or in written form.

Defence advocates, where young adults are represented, should advise their clients of this in advance and where appropriate help them to think through how to respond in the hearing. Where they are not represented, this should be identified in the pre-court meeting and some basic information provided by an usher.

### ***Preparing reports***

In all probation reports completed on a young adult, maturity must be taken in to account. This is in line with the current probation instruction<sup>39</sup> and is not an additional requirement of this pilot. When outlining sentence proposals, report authors should also explain why such a sentence is suitable/unsuitable for this age group. Probation officers attending the pre-court meeting should highlight those who may require a report and those who are currently known to NPS or CRC. Where a young adult has had recent involvement with the youth offending service, liaison should occur.

### ***Enhancing engagement during the hearing***

The hearing itself will continue to use adult sentencing guidelines but will have regard for the specific needs of young adults in understanding and engaging with proceedings. All young adult hearings will include the following enhanced features:

- *Informed staff* – all professionals involved in the court sitting should have received additional information on the specific needs of and effective responses to young adults, the means by which the hearings have been adapted to account for these needs and their roles within that;
- *Understanding of the process* – routine checking to ensure that the young adult understands what is happening through the process, the sentence given where applicable, and the reasons for this sentence. There is an emphasis on clear language; all staff should use plain English and avoid using jargon. Where technical and legal language is unavoidable, the bench and practitioners within the court room should check understanding, and where appropriate re-phrase using clear and simple language.
- *Explanation of roles* – where required, young people should have it explained to them who is in the court room and what role each person has. Those potentially requiring this explanation should be identified through the pre-court meeting and may include those who are unrepresented or are attending court for the first time;
- *Giving young adults a voice in the process* – the court should provide an opportunity for young adults to have a voice either through a verbal or prepared statement before the bench retires. Where a pre-sentence report is requested, NPS court report writers should include direct quotes from the young adults;

- *Family involvement* – inviting a family member to court will always remain the prerogative of the individual. However, young adults will have been encouraged in advance to invite appropriate family members or other person in a supportive capacity. While not engaged with directly as part of the hearing, a family member may be invited to sit next to the young person where it is felt this could help him or her to be calmer and more fully comprehend proceedings;
- *Adapted court layout* – within the constraints of existing court buildings, efforts should be made to ensure clear lines of sight between young adults and the bench, by moving computer monitors and court staff, a reduction in the distance and height between the defendant and the bench, and young adults should be taken out of the dock unless absolutely necessary;
- *Identification of needs* – any communication needs or barriers to understanding experienced by young adults will ideally be made known at the pre-court meeting, but where not, defence advocates are asked to highlight these at the start of the hearing. In addition, where relevant, probation reports should include information on maturity and appropriate responses to young adults.

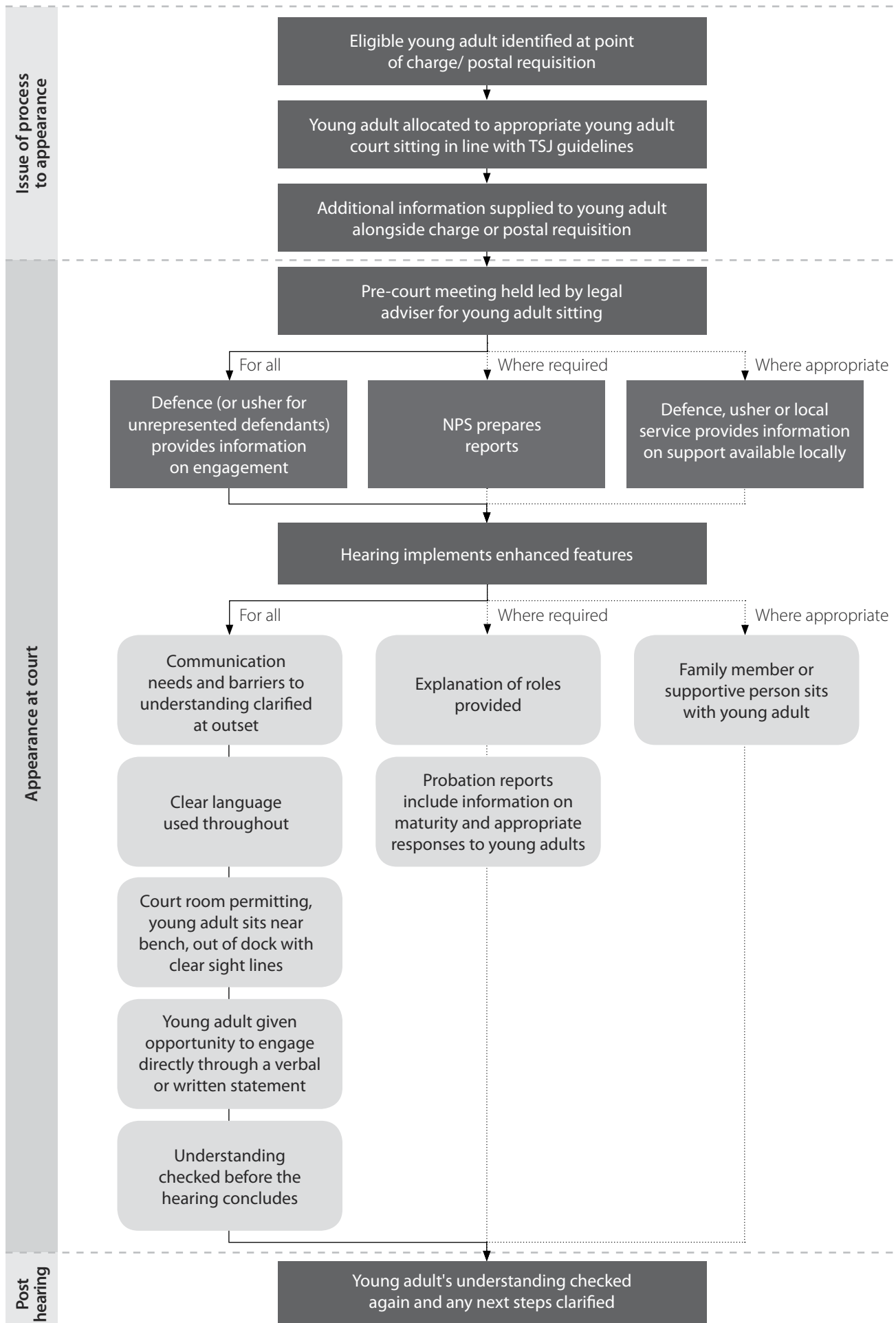
### **Post-hearing follow up**

Once a young adult leaves the court room, they will again be asked whether they understood what happened and what they need to do now. This can be done by the defence advocate or probation officer. Where applicable, probation officers should either give them their next appointment before they leave, take their mobile number to arrange it to avoid sending letters that are not read and or conduct a home visit shortly after court.

### **Supporting voluntary take-up of community services**

In addition to young adults having a greater understanding of proceedings, there are several opportunities throughout the process to increase awareness of community services that are available locally to tackle wider needs that may be contributing to their offending behaviour. This will have been provided at point of charge or postal requisition. Once at court, information can also be provided to young people when needs are made known at a pre-court meeting, via probation assessments, or during a hearing.

## Model process map





# Delivering a fairer way: how to implement the model

In recognition of the fact that good implementation is a prerequisite for effective delivery, the remaining task for those developing the model was to identify what would be required to put this model into practice. Each of the sites did so by clarifying what would be needed in their own areas to test the model.

Here, we summarise these actions as a general guide aimed at those who wish to implement the model and test its effectiveness, whether or not they have been involved during the development phase. It is important to note that these steps assume the existing model will be implemented in its entirety. If adaptations are made, some steps may be unnecessary while additional ones may be required.

## The ten-step plan

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### Step one: convene the right people

The model involves responses from a range of criminal justice practitioners and so testing the model requires full involvement from those agencies.

As a minimum, you should engage the following:

- The police;
- The office of the police and crime commissioner;
- Court staff;
- Judicial office holders;
- The Crown Prosecution Service;
- The defence community;
- The National Probation Service;
- Your local Community Rehabilitation Company;
- Any other local partner with relevant expertise in working with victims or young adult offenders.

### Step two: secure senior sign-off

It is important to start this process early, though be prepared that it may be an ongoing task as you agree further details while proceeding through the ten steps of this plan. Sign-off may be needed from individual agencies as well as through multi-agency governance structures such as criminal justice boards.

### Step three: agree timescales

Determine the start date taking into account the following:

- The full range of activities that will be needed before delivery can begin;
- Any outstanding commitments or priorities of the participating partners and how this work will be affected by these;
- Court rotas, which are planned in six-month blocks and agreed approximately three months prior to that, as well as court training programmes that can be pre-planned ahead of each financial year.

Sites involved in the model development identified a lead-in time of at least five months to undertake the necessary activities, timed to coincide with the onset of a new court rota.

#### Step four: produce your local protocol

Your local protocol is the key document you need to produce to support the adapted approach. It will contain detailed information about the approach and the responsibilities of those involved. It is intended to be a simple, clear guide for anyone involved in delivering the model. You are free to use the model as described in this paper to assist, taking into account a local volume analysis.

Based on the discussions from sites during development, we have also produced a series of questions to consider as you agree the procedures under your local protocol. These are structured in line with the model provided above.

Protocol section	Questions to be answered
Location and court schedule	<ul style="list-style-type: none"> <li>On what day(s) will the young adult hearing take place? (This will be based on how many young adults attend court locally, and which day is deemed most suitable for the sitting.)</li> <li>Which court room(s) will be used?</li> </ul>
Operational personnel and roles	<ul style="list-style-type: none"> <li>Which agencies have an operational role to play in effective delivery of the model?</li> <li>What are the names of the lead operational individuals from each of these agencies?</li> <li>What is the remit of each?</li> </ul>
Eligibility criteria	<ul style="list-style-type: none"> <li>Do all partners agree with the eligibility criteria as described in the model or are amendments needed?</li> <li>Is the agreed eligibility understood by all operational staff or does it need alternative language or examples to be provided?</li> </ul>
<b>Issue of process to appearance</b>	
Providing better information prior to court	<ul style="list-style-type: none"> <li>What information will be provided to young people? (see step seven for more details)</li> <li>Who will provide it?</li> </ul>
Grouping young adults' hearings	<ul style="list-style-type: none"> <li>Who is responsible for identifying eligible young people?</li> <li>What process should be followed when issuing charge/postal requisition/summons?</li> <li>How should this be recorded on local IT systems?</li> </ul>
<b>Appearance at court</b>	
Pre-court meeting	<ul style="list-style-type: none"> <li>Who will lead the pre-court meeting?</li> <li>When and where will it be held?</li> <li>What will be covered at the meeting?</li> <li>Who is invited to attend?</li> </ul>
Preparing for engagement	<ul style="list-style-type: none"> <li>Who will inform young adults to prepare for engagement?</li> <li>How will unrepresented defendants be informed?</li> <li>What information will be given to people about this?</li> </ul>

Preparing reports	<ul style="list-style-type: none"> <li>• What should be included in reports?</li> <li>• Is it possible to have a named contact within the YOS who can give information about those they have worked with?</li> </ul>
<b>Enhanced engagement during the hearing</b>	
Informed staff (see step six for detail on this)	<ul style="list-style-type: none"> <li>• What will practitioners who attend the young adult sitting be expected to know?</li> </ul>
Understanding of the process	<ul style="list-style-type: none"> <li>• Who will be responsible for checking understanding as the hearing progresses?</li> <li>• How will this be done?</li> </ul>
Explanation of roles	<ul style="list-style-type: none"> <li>• Which young adults may require the roles of those in the court room to be explained?</li> <li>• How will these young adults be identified?</li> <li>• Who will ensure this explanation is given?</li> </ul>
Family involvement	<ul style="list-style-type: none"> <li>• How will young people be advised that they can bring a family member or other support to court?</li> <li>• Where will that person sit?</li> <li>• What part will that person play in proceedings?</li> </ul>
Adapted court layout	<ul style="list-style-type: none"> <li>• What steps can be taken to ensure clear lines of sight between the young person and the bench?</li> <li>• How can audibility be ensured?</li> <li>• When is it appropriate to use the dock?</li> </ul>
Identification of needs	<ul style="list-style-type: none"> <li>• How will communication needs or barriers to understanding be identified?</li> </ul>
<b>After court</b>	
Post-hearing follow up	<ul style="list-style-type: none"> <li>• Who will check the understanding of the hearing once the young person has left the court room?</li> <li>• Can a probation appointment – where appropriate – be given before the young person leaves?</li> </ul>
<b>Throughout</b>	
Supporting voluntary take-up of community services	<ul style="list-style-type: none"> <li>• At what points of the process will there be an opportunity locally to refer young people to specific support such as mentor schemes?</li> <li>• What is the process for doing so at each stage?</li> </ul>

### **Step five: determine quality assurance process**

Separately to the broader outcomes being monitored by the evaluation, consider how you will ensure the model has been implemented to a high standard. This will include monitoring whether young adults are receiving the additional information prior to attending court, identifying whether pre-court meetings are happening, covering what is required, and assessing the interactions in the court room.

### **Step six: develop communications plan and briefing arrangements**

You can separate audiences into five rough groups, each of which will require specific information at appropriate points:

1. Senior managers or governance bodies of participating agencies;
2. Young people who will be attending court;

3. Frontline staff responsible for court listings and issuing court summons, postal requisitions or charges to appear at court;
4. Practitioners who will be present at court (you may wish to consider the bench separately or analogously with this group);
5. Wider stakeholders.

For each group, and any others you identify, establish a communications plan that includes the following sections:

- The target audience;
- The aims of your engagement with them regarding this work;
- Your key messages;
- Methods of engagement;
- Who will lead on the communication;
- When the communication will be undertaken.

Refer back to this plan as you progress towards implementation.

### **Step seven: produce localised information for young people**

A key feature of the model is providing better information for young people prior to court at the point of charge/postal requisition. This should provide general information on what to expect at court, as well as details of local support services available on a voluntary basis for any relevant needs the young person may have.

Where possible, details of local support agencies should be identified and included within the information. Ideally, young adults themselves should be engaged in reviewing the content and design of the finished product, to ensure it covers all it needs to and is understood by them.

Ensure that your finalised version is prepared well in advance of the adapted process starting and is available to all those who need to issue it.

### **Step eight: brief all relevant practitioners**

Implement your communications plan for audience groups 3, 4 and 5. Ensure this is scheduled at appropriate times based on when the adapted approach will begin.

### **Step nine: begin the adapted issuing process**

With everyone clear on their responsibilities, those issuing summons/charges/postal requisitions can now begin to implement their part of the new process.

### **Step ten: hold first young adult court sitting**

The appointed day has arrived: hold the first young adult court sitting using the adapted process.

## Supporting resources

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As part of the development support funded by the Barrow Cadbury Trust, the Centre for Justice Innovation is able to provide the following:

1. **Template documents**

This includes briefing materials for all relevant practitioners, template leaflets for young people and sample protocols.

2. **Implementation advice and support**

A limited amount of advice and support is available for sites wishing to implement the model. This is flexible based on local needs but can include help to make the case to stakeholders, assistance creating an implementation plan or advice throughout the process.

3. **Contributions towards implementation costs**

A contribution towards reasonable incidental costs associated with implementation activities such as holding briefing sessions, printing of information, and involvement of young adults can be made upon application to the Centre for Justice Innovation. This is available towards implementation only and will not cover delivery costs.

Those interested in accessing these resources should contact the Centre, by calling 0203 735 9436 or emailing [info@justiceinnovation.org](mailto:info@justiceinnovation.org).

## Evaluation

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The Barrow Cadbury Trust has tendered for an independent evaluation of testing the model. Researchers from Manchester Metropolitan University have developed a scope for this and would seek appropriate research approvals and permissions at the point testing was approved. The evaluation has been designed to measure whether the recommended model delivers measurable changes in the following outcomes:

- Perceptions of fairness of the court;
- Practitioner perceptions of the projects;
- Victim satisfaction;
- Intermediate outcomes such as physical and mental health, housing, education and employment;
- Frequency and severity of reoffending.

# Next steps

This paper outlines why we are convinced that young adults' reoffending rates make it highly desirable to test new approaches that break the cycle of their persistent offending and give them a better chance of turning their lives around and preventing crime. It is also clear to us from the evidence that young adult offenders are distinct both from young offenders and fully mature adults, and that, therefore, any innovation requires a distinctive young adult approach.

This report highlights that there is both a growing movement to recognise this across the world and it is increasingly recognised within England and Wales. As the Justice Select Committee report on young adults states, "... *there is a strong case for a distinct approach to the treatment of young adults in the criminal justice system... Flawed interventions that do not recognise young adults' maturity can slow desistance and extend the period of involvement in the system.*"<sup>40</sup> The Government's response acknowledged that young adults have been and must remain a priority group for criminal justice agencies.

Moreover, the recent report by David Lammy MP on trust of Black, Asian and Minority Ethnic defendants in the criminal justice system stressed that "*To build trust, the challenge is to demystify decision making processes and bring them out into the open, so they can be better understood.*"<sup>41</sup>

The evidence suggests that a court process that is more procedurally fair – one marked by clear communication and in which defendants feel they have a voice – can make a particular difference to outcomes for young adults. Through their diligent work, a small number of court areas have developed a model that is operationally feasible and can be implemented within current resources and legislation.

There is good reason to believe this model has real potential to contribute to reduced reoffending by, improved outcomes for, and better lives among those young people coming into contact with the justice system. Our remaining aspiration is for the model to be tested by the courts in order to measure whether this potential can be realised.



# Annex A: court and criminal justice reform policy context

There were a number of relevant policy changes that local partnership groups considered in developing their proposed models. These were:

- *Criminal Justice and Courts Act 2015 (Single Justice Procedure)*: The Criminal Justice and Courts Act 2015 introduced the Single Justice Procedure, which took effect from 13 April 2015. The procedure allows cases that involve adults charged with summary-only non-imprisonable offences to be dealt with by a single magistrate sitting with a legal adviser on the papers without the attendance of a prosecutor or the defendant. The sites needed to consider in particular whether young adults destined by the Single Justice Procedure should continue to have their cases resolved that way or differently.
- *Transforming Summary Justice*: The Transforming Summary Justice (TSJ) programme has since May 2015 sought to improve how cases are dealt with in the magistrates' courts across England and Wales. Its aims are to reduce delays in the magistrates' courts, hold fewer hearings per case and increase the number of trials that go ahead the first time they are listed. The sites needed to consider in particular how specialist listing for young adults could be compatible with the TSJ listing patterns and timescales.
- *Transforming Rehabilitation and E3 programme*: Transforming Rehabilitation was the government's programme for reforming how offenders would be managed in England and Wales. It involved replacing the previous 35 individual Probation Trusts with a National Probation Service, responsible for the management of high-risk offenders, and 21 Community Rehabilitation Companies (CRCs) responsible for the management of low to medium risk offenders in 21 areas. Following on from Transforming Rehabilitation, an Effectiveness, Efficiency, and Excellence (E3) programme was created to ensure that the National Probation Service has consistent operating procedures, roles and responsibilities, and to improve the quality and effectiveness of practice. The sites needed to consider in particular how the split between the CRC and the NPS would be managed and how specific changes to court practice for young adults may impact on the NPS work in courts.
- *Policing and Crime Act 2017*: The Policing and Crime Act 2017 means that there is now a presumption of release without police bail in almost all cases, including those where a suspect is arrested for a breach of bail, unless it meets strict criteria around necessity and proportionality. The sites needed to consider in particular how this would impact on the ability of the police to notify young adults of their court dates.
- *Court modernisation*: There is a large, ongoing programme to make courts fully digital. This includes a new Magistrates Rota live across England and Wales, a digital mark-up tool for legal advisers to record case results in court which is now being rolled out following successful pilots, and an online plea programme for traffic offences. The reforms also include the CJS Common Platform Programme, which began in 2014 and is a collaborative programme between HMCTS, the CPS and the Ministry of Justice. This replaces existing HMCTS and CPS case management systems with a single system providing access to all the material necessary to deal with cases efficiently and effectively. The sites needed to consider how this would impact on developing a bespoke young adults court process more generally.

# Endnotes

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# A fairer way

Procedural fairness for  
young adults at court

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