

# YOUNG PEOPLE IN TRANSITION IN THE CRIMINAL JUSTICE SYSTEM

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**Evidence review**  
**April 2023**

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# Young people in transition in the criminal justice system

## Evidence review

### About the project

The [Young People in Transition in the Criminal Justice System](#) project is a three-year project by the Alliance for Youth Justice (AYJ), funded by Barrow Cadbury Trust, examining the experiences of children and young people turning 18 while in contact with the justice system, exploring issues spanning the youth and adult criminal justice systems and wider support systems. The project will develop understanding and recommendations for policy and practice by viewing critical issues which have their roots in the youth justice system and continue into young adulthood.

There are three priority thematic focuses for the project: racial injustice; safeguarding young people at risk; and custody. The project builds on the work of the [Young Women's Justice Project](#), in which the Alliance for Youth Justice in partnership with Agenda Alliance [examined](#) transitions for young women. This evidence review sets out the policy context for transitions and summarises existing research evidence and data. This evidence base will inform the project's research priorities and development of thematic policy briefings.

### About the Alliance for Youth Justice

The AYJ brings together over 75 organisations, advocating for and with children to drive positive change in youth justice in England and Wales. Members range from large national charities and advocacy organisations, to numerous smaller grassroots and community organisations. The AYJ brings together the expertise of its members and provides ways for them to shape decision-making, working to influence policy, legislation and practice to address issues affecting children caught up in crime.

The AYJ advocates for distinct systems, services and support that treat children as children first and foremost - underpinned by social justice, children's rights and a focus on positive long-term outcomes. AYJ aims to promote widespread understanding about the underlying causes of children coming to the attention of the criminal justice system, and champion approaches that enable them to reach their full potential.

### About the Barrow Cadbury Trust

This report was made possible by support from the Barrow Cadbury Trust. The Barrow Cadbury Trust is an independent, charitable foundation committed to bringing about a more just and equal society. Transition to Adulthood (T2A) is convened and funded by the Barrow Cadbury Trust. It campaigns for a distinct approach for young adults (18-25) based on their ongoing maturation. Barrow Cadbury Trust charity number: 1115476

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## Executive summary

This evidence review, part of a three-year project by the Alliance for Youth Justice (AYJ), funded by Barrow Cadbury Trust, summarises the policy context and existing evidence on young people turning 18 in the criminal justice system. The project has three thematic focuses: custody, safeguarding young people at risk, and racial injustice.

Young people continue to mature into at least their mid-twenties, impacting their behaviour and needs, and necessitating a distinct criminal justice response. Yet policy and practice for older children and young adults often fails to recognise this. Despite gaps in the literature, it is resoundingly clear that young people turning 18 while in contact with the justice system face a steep cliff edge, leaving them at risk of harm and continued contact with the criminal justice system.

As young people transition into adulthood and move from Youth Offending Teams to Probation, how they are supported changes significantly. Key relationships are lost, contact levels drop, resources and support reduces, and the overall ethos switches from a focus on welfare to enforcement. Transfers are not smooth, information is not picked up, and Probation services may not be tailored to young adults.

This is far from the only transition impacting young people at this time. Young people in the justice system are highly vulnerable with prevalent experiences of violence, abuse, mental ill-health, substance misuse, and the care system. As they turn 18 many services change or fall away at the same time. Racially minoritised young people, girls, and neurodiverse young people face significant structural disadvantages, concerning outcomes, and particularly destabilising transitions. A holistic and intersectional view of transition must therefore be taken. To stop young people falling through gaps at 18, lessons should be learnt from examples at home and abroad of continuing support to 25.

### Young people in transition in custody

As young people in custody transition into adulthood, they face a transfer from the children's secure estate into adult custody. Although the children's secure estate faces many significant challenges, the difference between the children's estate and the adult estate is stark and unsettling. Time out of cell plummets, consequences are harsher, restraint procedures are more severe, resourcing significantly decreases, and involvement of professionals and support services may drop off. Outcomes for young adults in custody are very concerning and there is little, if any, distinction between their treatment and older adults.

Harsher sentencing of older children means an increasing proportion of children in custody are likely to face this transition and spend significant time in the adult estate. It is unclear how these young people are being prepared for this and supported to achieve key milestones to aid development.

There is a lack of coherence around decisions on which establishment young people transition to, and young people aren't being placed depending on where their needs can best be met. As transfers occur, information about young people's vulnerabilities and needs may be lost. Particular difficulties are faced around resettlement for young adults who entered custody as children, settling into newly adult lives, with many services changing at once.

There is no rationale behind the current make up of the estate which sees some young adults held in designated establishments, in separate wings, or mixed within adult prisons. A lot needs to be learnt from different approaches used and piloted domestically and abroad. Whatever form of custody young people transitioning into adulthood are held in, enhanced and tailored support is needed.

## Safeguarding young people at risk in transition

Many children and young people in the justice system are at risk of harms such as criminal exploitation, that can lead to their involvement in crime. This positions young people between safeguarding and criminal justice systems, which are too often failing to recognise and appropriately respond to victimisation, particularly as children turn 18 and become young adults. Young people becoming care leavers are especially vulnerable at this time.

Neither the children's nor adult's safeguarding systems have been built for the distinct needs of older children and young adults, and upon approaching and turning 18, young people who have been accessing support tend to see this withdrawn, despite harms continuing. Failures to safeguard young people as they transition into adulthood leave them at risk of harm and contact with the justice system.

Children and young adults coming to the attention of the justice system as a result of exploitation are being criminalised. As children affected by criminal exploitation grow up, and particularly as they legally become adults, perceptions shift from them being a 'victim' to a 'perpetrator'. Mechanisms like the National Referral Mechanism and modern slavery legislation that should protect victims from unfair prosecution are often failing to do so.

The gap between child and adult safeguarding, and the gap between safeguarding and criminal justice systems must be bridged to protect young people in transition. Transitional Safeguarding offers a solution to the shortcomings of current safeguarding systems, by applying a more age-appropriate and needs-appropriate approach to protecting older children and young adults from the harms they face. A shift in attitudes on criminal exploitation, akin to that previously seen on sexual exploitation, is necessary to increase identification of victims, improve the use and effectiveness of support mechanisms, and prevent unjust criminalisation of young people.

## Racial injustice in transition

Racial disparities in the criminal justice system and wider society mean racially minoritised children are more likely to be criminalised and receive longer sentences and thus are disproportionately likely to experience the transition from youth to adult justice systems. Racial inequalities experienced in childhood mean they may be more likely to transition from a point of greater vulnerability, and can also leave racially minoritised young adults facing additional barriers to desistance.

Racially minoritised young people are less likely to be appropriately supported through the transition to adulthood, as:

- Adultification bias affects perceptions of culpability and vulnerability, impacting the approach of services and the support that is offered
- A lack of trust and confidence in the justice system impacts young people's engagement
- Services lack cultural competency and support offered may not be suitable for the specific needs of racially minoritised young people
- Specialist voluntary and community sector organisations, that can play a key role in addressing these shortcomings and providing tailored support, are often not available

Racially minoritised young people may therefore see the effects of the cliff edge at 18 compounded by deficits in support before, during, and after transition, which may leave them more vulnerable to continued contact with the criminal justice system.

The voluntary and community sector can bridge the gap between statutory services at 18, and organisations led by the communities they work with are critical in ensuring specialist support is available for racially minoritised young people. Much more needs to be done to facilitate the involvement of Black and racially minoritised-led organisations in supporting this particularly failed group of young people at this particularly tumultuous time in their lives.

## Introduction

It is well established that while turning 18 legally designates young people as 'adults', maturation continues well beyond 18, into at least the mid-twenties. As children grow up and turn 18, the shift in roles, responsibilities and expectations can be unsettling for many. For children who turn 18 while in contact with the criminal justice system, the transition into young adulthood is particularly disruptive and destabilising.

Young people in contact with the justice system are some of the most vulnerable in society, often with experiences of poverty, violence, abuse, exploitation, discrimination, mental ill-health and neurodevelopmental disorders, and the care system. Not only will they experience the transition from youth to adult criminal justice services, but many other elements of their lives will change at the same time, and support systems such as mental health provision, safeguarding services, social care, and housing support change or too often drop off. The lack of continuity in support many young people experience during this time can leave young people at risk of harm, hamper progress, and contribute to their continued involvement in criminal justice.

In recent years, there has been a growing trend to see children in contact with the law as children first and foremost. Yet, this philosophy has not been applied to children who turn 18 in the system who often go from being seen as children to young adult 'offenders'. The transition from being viewed and treated as a child to an adult can begin before 18 for many. Sixteen and 17-year-olds in particular begin to be viewed as more culpable and more deserving of harsher punishments rather than welfare-based responses. Support may be designed with younger children in mind, or may be harder to come by altogether. On turning 18 and legally becoming an 'adult', perceptions of culpability harden significantly, and focusses on welfare that should be present in child-centred

systems fall away considerably. Once a young person transitions into adult systems, provision too often fails to be distinct and sensitive to the needs of young adults, despite clear evidence this is necessary, both due to immaturity and the prevalence of vulnerabilities.

Young adulthood is a particularly difficult age where young people may struggle to navigate new systems, be susceptible to manipulation and exploitation, and engage in 'risky' behaviour. But it's also an important opportunity for desistance, as it's a time where many young people naturally stop offending, and they are learning and growing, making them particularly amenable and open to change. Getting the transition from child to young adulthood right for young people in contact with the justice system is therefore critical. But while there has been an increased recognition of this need to take care around transitions among policymakers and in the literature, an age-appropriate, measured response to young people in transition has not yet been realised.

Special attention needs to be paid to certain groups of children in contact with the justice system transitioning into adulthood, and this project focuses on three groups in need of consideration. Young people in custody face particular challenges as they navigate transition within a custodial system that fails to keep them safe and meet their needs. Racially minoritised young people face cumulative discrimination that impacts their experiences of transition and the support and services surrounding them. Young people at risk of harm, particularly those affected by criminal exploitation and those in care, face increased risks as transitioning to adulthood impacts how well services identify victimisation, and whether they are safeguarded rather than criminalised.

This evidence review sets out available information on who the young people in transition in the criminal justice system are,

how transitions may be experienced, and how they could be improved. It seeks to identify what the evidence shows about where policy and practice should be reformed to improve experiences and outcomes for older children approaching transition into adulthood, as well as where adult systems are failing the young people who transition into them, and could benefit from the application of policy, practice and principles inherent in youth justice.

Throughout this review, in keeping with domestic legislation and the UN Convention on the Rights of the Child, 'child' refers to anyone under the age of 18. 'Young adult' refers to anyone aged over 18. We use the

term 'young people' and 'adolescents' when points apply to both older children and young adults, and when referring to those experiencing the transition into adulthood around 18. We use the term 'racially minoritised'<sup>1</sup> throughout this literature review when referring to groups that have been minoritised and marginalised as a result of their racialised or ethnic identity, including Black, Asian, mixed heritage, Gypsy Roma and Traveller, and other groups. Where made possible by the literature, we seek to disaggregate and separately identify the unique experiences of different groups. Other terms may be used if taken directly from the literature.

## Who are the young people in transition?

### Numbers

Statistics on the number of children who transition from childhood to young adulthood while in contact with the justice system are not available. However, the following statistics shed some light on how many children and young people may experience the transition:

- According to the Youth Justice Board, in 2014/15 6,500 young people were due to turn 18 before the end of their sentence.<sup>2</sup> In 2018 it was noted that every year there are over 2,000 movements of young people from Youth Offending Teams (YOT) or the youth custodial estate into the adult system.<sup>3</sup> The number of children in the youth justice system coming up to their 18<sup>th</sup> birthday has decreased since these figures were reported: from 12,404 17-year-olds cautioned or sentenced in 2014/15, to 7,168 in 2018/19, to 5,044 in 2021/22.<sup>4</sup>
- 37% of children cautioned or sentenced in 2021/22 were 17 years old. 80% were aged 15-17.<sup>5</sup>
- On average there are around 620 young people supervised by the adult Probation service who are on a Youth Rehabilitation Order (YRO, community sentences given to children). On average, every three months, around 45 young people begin a YRO being supervised by the adult Probation service.<sup>6</sup>
- In 2021/22, 269 young people transferred from the children's to the adult's custodial estate.<sup>7</sup> Over half of children in custody are 17 years old.<sup>8</sup> On average there were 256 17-year-olds in custody in 2021/22,<sup>9</sup> and 68 18-year-olds held in the children's secure estate.<sup>10</sup>
- There are 50,813 young people aged 18-20 sentenced in 2021/22 (compared to 11,388 10-17-year-olds).<sup>11</sup> There were on average 3,240 18-20-year-olds in custody in 2021/22.<sup>12</sup> It is not possible to determine how many of these young people had previously been in contact with the youth justice system.
- The true scale of child criminal exploitation is unknown, let alone how many children transition to young adulthood while involved. In 2021/22, 10,140 children had child criminal exploitation identified as a factor in their Children in Need assessment.<sup>13</sup> In 2022 there were 3,013 children referred to the National Referral Mechanism as potential victims of criminal exploitation, and 1,487 referrals for over 18's.<sup>14</sup> This includes 1,875 referrals regarding a potential child victim of county

lines, and 351 referrals for potential adult victims of county lines.<sup>15</sup> In 2019 the Children’s Commissioner for England estimated there were 27,000 children at high risk of gang exploitation who had not been identified by services.<sup>16</sup> There are concerns that during the pandemic risks to children and young people of exploitation increased.<sup>17</sup>

## Characteristics

Given data on the children who transition to young adulthood while in contact with the justice system is unavailable, their exact demographics and needs are unclear. However, information that is available on the characteristics of children in contact with the justice system can paint a picture of the young people likely to be experiencing this transition, and the factors and vulnerabilities likely to impact their experiences. This shows a clear need to consider intersectionality in young people’s experiences of transition – recognising how a young person may be subject to different types of discrimination and structural disadvantage that can interact with and compound each other.<sup>18</sup>

- 32% of proven offences by 15-17-year-olds, and 28% by 17-year-olds specifically, are categorised as violence against the person. Sixteen per cent of proven offences by 17-year-olds are motoring offences, 14% drugs, 7% criminal damage, and 5% each are theft, public order and robbery.<sup>19</sup> 84% of proven offences by 15-17-year-olds receive a gravity score of 1-4 out of a possible 8, where 8 is the most serious offence.<sup>20</sup>
- 28% of children in the youth justice system are racially minoritised; 11% are Black.<sup>21</sup>
- 86% of children in the youth justice system are identified as boys, 14% as girls.<sup>22</sup>
- YOT assessments on the needs of sentenced children aged 15-17 show the large proportions with a range of assessed concerns, including: safety and wellbeing 90%; substance misuse 78%; mental health 71%; speech, language and communication 70%; learning and education, training and employment 66%; significant relationships 64%; parenting 53%; family behaviour 53%; accommodation 49%; physical health 47%. The prevalence of the vast majority of YOT assessed concerns increased between the year ending March 2019 and March 2020,<sup>23</sup> the latest statistical release, all of which will most likely have been exacerbated by the impacts of COVID-19.<sup>24</sup>
- 32% of children cautioned or sentenced for an offence are a Child in Need, rising to 38% for serious violence offences, and 60% where offending is prolific.<sup>25</sup> 57% of children on YOT caseloads are either currently or have previously been a Child in Need, 36% at some point have had a Child Protection Plan, and 15% a care order.<sup>26</sup> 45% of 15-17-year-olds on YOT caseloads have a care history, and 17% are ‘Eligible children’: 16-17-year-olds currently in care who have been looked after for 13 weeks since the age of 14.<sup>27</sup>
- 80% of children cautioned or sentenced for an offence are recorded as having Special Education Needs or Disabilities (SEND) at some stage in their lives, rising to 87% for serious violence offences, and 85% where offending is prolific.<sup>28</sup>
- Data on the number of children in the youth justice system who are victims of exploitation is unavailable, however a thematic inspection by HM Inspectorate of (HMI) Probation on the experiences of Black and mixed heritage boys in the youth justice system found almost a third of cases involved criminal exploitation.<sup>29</sup>
- The Edinburgh Study of Youth Transitions and Crime longitudinal study identifies a ‘strong inter-relationship’ between poverty, offending and justice contact in the teenage years and early adulthood, and states: ‘Persistent involvement in violence in the teenage years is associated with social adversity, including difficult family backgrounds, social deprivation, problems at school, various health issues, risky lifestyles, substance abuse, self-harm and crime victimisation’.<sup>30</sup>

## Spotlight on maturity

'Maturation', summarised by the Ministry of Justice and HM Prisons and Probation Service (HMPPS), is 'the broad term that describes the various developmental processes through which an individual reaches adulthood. It includes the interactions between physical, intellectual, neurological, emotional and social development. Maturity is shaped by personal life experiences, individual characteristics and in some instances, neurodevelopmental disorders.'<sup>31</sup>

There is clear, widely accepted evidence on cognitive and emotional development which explains that while societal structures tend to designate young people as 'adults' as soon as they reach 18, maturation is in fact a slow process that continues well beyond the eighteenth birthday, into at least the mid-twenties.<sup>32</sup> Maturation can be hindered by many factors common in young people in conflict with the law, including adverse childhood experiences, traumatic brain injury, alcohol and substance use, and psychiatric and neurodevelopmental disorders.<sup>33</sup>

Transition into adulthood does not necessarily occur in a linear or orderly fashion, influenced by critical moments in life around school, work, family, housing, involvement in crime, social identity and the culture and institutional structures that shape experiences.<sup>34</sup> Critically, experiences within the youth justice system itself can 'stall' the natural maturation process.<sup>35</sup> Young people will therefore reach maturation at different ages, but cognitive immaturity persists as the brain continues to grow until as late as 25-30-years-old.<sup>36</sup>

The parts of the brain responsible for core cognitive abilities necessary for prosocial behaviour, goal planning, and weighing up long-term and short-term costs and gains, are the last to develop.<sup>37</sup> Research shows this impacts on consequential thinking, impulse control, empathy, remorse, and creates challenges in planning, evaluating risks, and adapting to changed circumstances, leading to poor problem solving, information

processing, decision making, and risk-taking and sensation seeking behaviours.<sup>38</sup> Young people can also be more sensitive to emotional stimuli, particularly if they have adverse childhood experiences.<sup>39</sup>

Such behaviours connected to immaturity increase the chance of contact with the justice system. A widely recognised age-crime curve shows a typical pattern of offending.<sup>40</sup> Crime rates typically increase as children get older, peak at 18-20, and most young people who commit crime stop as they mature into adulthood.<sup>41</sup> This includes those who have committed serious or violent offences and those who had persistently committed crime.<sup>42</sup> Young people who continue to offend into adulthood are 'significantly more vulnerable' than those who stop in childhood.<sup>43</sup>

Research presents early childhood, adolescence, young adulthood, and later adulthood as distinct stages of maturation.<sup>44</sup> Evidence highlighting that young adults are typically more psychologically and socially similar to children than to older adults,<sup>45</sup> and have high potential for desistance,<sup>46</sup> offers important insight into how the criminal justice system and wider services should respond appropriately.

Criminal law sets out that justice processes should be proportionate, and to do so they need to take into account culpability.<sup>47</sup> The youth justice system strives for an approach that recognises this and the vulnerability of children because of their age, needs, and developmental immaturity.<sup>48</sup> It should take into consideration the age-crime curve, that most children naturally mature out of crime as they grow up, and therefore allow and support children to move on from past mistakes. Given the implications of the evidence on maturation, it follows that similar considerations should be applied to the response to young adults, with commentators calling for distinct sentencing principles, for example.<sup>49</sup>

Considering the non-binary process of maturation, court judgments have recognised the arbitrary nature of the barrier that exists at 18, stating that ‘reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing’,<sup>50</sup> as 18-year-olds are not ‘invested overnight with all the understanding and self-control of a fully mature adult’,<sup>51</sup> and while eighteenth birthdays are significant, they are not indicative of, nor do they suddenly accelerate, a young person’s level of maturity, insight and understanding.<sup>52</sup>

Literature highlights concerns about the transition and the stark change in support at 18<sup>53</sup> being determined by ‘adult’ or ‘child’ status, rather than by need.<sup>54</sup> As will be explored in this evidence review, despite the evidence that maturation continues well

beyond 18, and young adults being increasingly recognised in literature as a distinctly vulnerable group, especially during transitions,<sup>55</sup> too often systems and services for older children and young adults fail to recognise this. Legislation passed in 2022 created whole life sentences for 18-to-21-year-olds,<sup>56</sup> for example. This punitive move demonstrates how far there is to go for the government to take into account maturity in creating criminal justice policy.<sup>57</sup> And while the concept of maturity as a sliding scale has seen some traction, it has recently also seen a regressive turn in policy for older children, with differences in maturity used to justify significantly increasing certain sentence starting points for older children,<sup>58</sup> and disqualifying 16 and 17-year-olds in care from the same protections afforded to younger children.<sup>59</sup>

## Young people in transition in the community

When a child in contact with the criminal justice system turns 18, their supervision may transfer from YOT to Probation services.<sup>60</sup> HMI Probation identifies this transition as a ‘cliff edge’ that is ‘not always managed well’, at an ‘especially difficult time for young people’.<sup>61</sup>

### Youth Offending Teams compared to adult Probation

HMI Probation summarises key differences between the youth and adult systems: ‘The adult system offers less frequent contact and support, provides fewer targeted interventions, such as speech and language or [Child and Adolescent Mental Health Services], and is built on a more punitive model.’<sup>62</sup> The Association of Directors of Children’s Services, Association of YOT Managers, and Local Government Association summarise: ‘the enforcement-based approach of adult Probation services differs greatly from the ethos and practical support offered by YOTs’.<sup>63</sup> There is a big

shift in the expectations on young people and the approach of services:

- YOTs focus on addressing children’s risks and needs, whereas the focus of Probation is on criminal justice, public protection, and punishment.<sup>64</sup>
- YOTs are obliged to develop intervention plans specifically designed to aid desistance from crime<sup>65</sup> and ‘promote a pro-social identity’, support that is not required of Probation services.<sup>66</sup>
- YOTs tend to take on more of an advocacy role and may focus on outreach with young people, taking a more flexible approach to encourage a child’s participation and engagement, for example by liaising with family and peers, or collecting the child and bringing them to the YOT.<sup>67</sup> Fewer resources tend to be available for Probation.<sup>68</sup>
- YOTs also tend to be more accommodating in responding to children not complying with sentencing conditions. They usually give two warnings before

initiating breach proceedings for noncompliance, while Probation will usually initiate breach proceedings straight away.<sup>69</sup>

- YOTs are obliged to take a multi-agency approach to deal with the needs of the whole child.<sup>70</sup> YOTs must work with staff from social care, education, health, and police. They do so with varying degrees of service integration, and may have health and mental health practitioners embedded in their team, who can assess and treat children and make referrals for specialist support if necessary.<sup>71</sup> This type of provision is not available in Probation services, and services provided in-house by YOTs will need to be transitioned to external services. Inspectorates note these external providers 'might or might not have expertise in work with young adults'.<sup>72</sup>

### **YOT to Probation transition**

The Joint National Protocol for Transitions in England<sup>73</sup> and the Youth to Adult Transition Principles and Guidance for Wales<sup>74</sup> set out the key roles, responsibilities and processes YOTs and the Probation Service should follow, and principles for good practice. Case management guidance sets out information for YOT practitioners on how to manage transitions.<sup>75</sup> These documents highlight the transition from YOT to Probation as a critical time, and set out the need to ensure a smooth experience, considering what support is needed and the need for a trauma-informed, person-centred approach. Research on young people's experience of the transition is scarce, with most evidence provided by inspection reports. What evidence is available shows the transition is far from smooth.

Inspections have found inconsistency in when young people are transferred to adult services versus remaining with YOTs, and it is not clear that these decisions are based on professional judgment and assessment of individual needs and circumstances, rather than operational processes and general expectations.<sup>76</sup> While some YOTs try to retain 18-year-olds, particularly if a young person is

deemed vulnerable for example due to disability or care experience,<sup>77</sup> others aim to transfer all eligible cases to adult services as soon as they turn 18.<sup>78</sup> Young people are not always adequately informed or involved in these decisions.<sup>79</sup>

Issues were highlighted by 2012 and 2016 thematic inspection reports around insufficient timely sharing of information between YOTs and Probation, as well as with other agencies the young person is engaging with,<sup>80</sup> a concerning lack of contact with YOTs after transfers occurred;<sup>81</sup> and a lack of oversight, poor organisation and poor recording impacting the smoothness of transitions.<sup>82</sup> Although new guidance on transitions has since been issued, transfers continue to be found to be 'not properly supported',<sup>83</sup> and concerns continue to be raised about information sharing and the information Probation chooses to retain and respond to.<sup>84</sup> Literature raises particular concerns about information sharing for neurodiverse young people,<sup>85</sup> especially without a formal diagnosis, where failures to properly take account of information from childhood is resulting in reasonable adjustments not being made by Probation, as well as childhood experiences of care, mental health services, and risks to the young person not being considered.<sup>86</sup> The 2021 annual report on YOT inspections highlighted a number of YOTs with Probation officer secondment posts vacant, part-time or long-term absent, with difficulties identified with recruitment, impacting on effective transitions.<sup>87</sup> An updated thematic inspection on transitions by HMI Probation is scheduled for 2023-24.<sup>88</sup>

Overall, literature highlights that the vast difference between YOTs and Probation, including the loss of key relationships, drop in contact levels, reduced access to support services, and a lack of specific support following transition, is destabilising, harmful, increases young people's vulnerability and their likelihood of breach and reoffending.<sup>89</sup> Young people in the justice system who are particularly vulnerable and in need of more, tailored support, including girls, those with

care experience, SEND and mental health difficulties, may experience the change between YOT and Probation as particularly destabilising.<sup>90</sup> It is noted that transitions are usually considered 'in a very narrow sense' to mean the 'direct transfer of responsibility' from children's to adult agencies, overlooking broader issues.<sup>91</sup> This cliff edge at 18 may exacerbate vulnerabilities and increase the likelihood a young person continues to be involved in the justice system as they transition into adulthood.

### **Young adults and Probation**

As noted by HMI Probation, the adult criminal justice system 'assumes a level of self-efficacy that the research suggests is not commonly present among those in or exiting the youth justice system at the age of 18'.<sup>92</sup> Young adults on Probation caseloads are at the highest risk of breach,<sup>93</sup> and transition is associated with issues around sentence compliance.<sup>94</sup> The transition to adult Probation is a particularly vulnerable time but also a key time for desistance.<sup>95</sup>

Evidence sets out that the system young people transition into needs to be able to respond to their needs and provide age-appropriate support to prevent ongoing involvement in the criminal justice system.<sup>96</sup> However, literature raises concerns the criminal justice system does not adequately address the distinct needs of young adults.<sup>97</sup> There is no recent national analysis of provision across Probation services that is suitable for young adults, but literature notes variation.<sup>98</sup> While work has been undertaken by services to improve their approach,<sup>99</sup> and there are examples of good practice including 'young adult teams',<sup>100</sup> literature raises concerns that Probation is not resourced to deal with immaturity,<sup>101</sup> while young adults are not equipped to deal with adult systems.<sup>102</sup>

In February 2022 a new policy framework for the Probation Service Management of Young Adults recognised the 'substantial and increasing body of evidence that Probation's approach to working with young adults should, where possible, be distinct to reflect

the particular needs of this age group in order to secure positive outcomes.<sup>103</sup> It sets out helpful guidance on taking into consideration maturity and other key factors including race, gender, neurodiversity, trauma, and care experience. Guidance for Probation produced by Clinks with T2A on effective approaches for young adults, referenced in the official transitions protocol,<sup>104</sup> also highlights how to tailor services to specific groups such as young women, racially minoritised young people, those with disabilities and care leavers.<sup>105</sup> Evidence of the 2022 framework's impact and the extent of tailored support across Probation services is not currently available.

### **Young people turning 18 before their case goes through court**

Young people who allegedly commit offences as children but do not have their cases heard until after their eighteenth birthday face a particular injustice in the transition to adulthood, as they are dealt with and sentenced as adults.<sup>106</sup> This is mostly caused by delays to justice, already growing in recent years and exacerbated by COVID-19.<sup>107</sup> Rob Butler MP introduced a Private Members Bill on the subject in 2021.<sup>108</sup> He explained the situation: 'At the moment, the justice system treats a defendant according to their age on the date they first appear in court and enter a plea. The consequence of this is that if someone commits an offence aged 15, 16 or 17, but do not get to court until after their 18th birthday, they are treated as an adult. That immediately affects both the type of court that deals with them and the range of sentences available. But the repercussions do not stop there, because there can be an impact on the chance of rehabilitation and the likelihood of getting a job, with the prospect of forever having to declare a mistake from the past. It is no exaggeration to say that the consequences can last a lifetime, because in our justice system there is a cliff edge when people reach their 18th birthday, and it is a very steep cliff.'<sup>109</sup>

The reading of Rob Butler's Bill, which aimed to reform the system to ensure all those who commit offences as children have their cases heard in the youth court and access to youth sentencing provisions, notes public backing for the change from the Youth Justice Board, Justice Select Committee, Children's Commissioner for England, the Association of YOT Managers, Magistrates Association, Just for Kids Law, T2A, and the National Association for Youth Justice.<sup>110</sup>

For children's criminal cases in 2021/22, it took on average 149 days between the committing of an offence and the case first coming to court - an increase from 129 days in 2019/20 (pre-pandemic) and 65 days in 2010/11.<sup>111</sup>

## Solutions

There is growing support for taking a distinct approach to 18-25-year-olds in the criminal justice system.<sup>112</sup> The literature highlights support for extending provisions currently offered to children to those over 18, in particular extending the YOT model up to the age of 25.<sup>113</sup> Falling caseloads for YOTs relative to Probation provide justification for this proposal,<sup>114</sup> and given the success of YOTs relative to Probation in addressing the needs of young people and diverting them from the justice system, it is thought it would save money by reducing reoffending into adulthood.<sup>115</sup> Examples are noted of less binary and more flexible approaches adopted in other jurisdictions around retaining young people in children's services beyond 18,<sup>116</sup> which the UN Committee on the Rights of the Child commends,<sup>117</sup> as well as other UK departments extending entitlements to support for vulnerable groups such as young people with SEND up to 25 years.<sup>118</sup> Evidence is highlighted that if YOTs retain young people past 18, children's social care services are also prepared to continue working with them.<sup>119</sup>

However, not all commentators have been supportive of extending the YOT remit upwards, raising concerns around specific statutory entitlements for children and arguing

that it may dilute the response to children.<sup>120</sup> Ex-youth justice Minister Dr Phillip Lee argued the transition at 18 is suitable given the societal context of adulthood beginning at 18.<sup>121</sup>

There are calls for more support around the point of transitions, in order to limit the 'arbitrary removal of all individually focused support' upon turning 18, including better support within the justice system itself, as well as improved external support around mental health, substance misuse, education, and housing.<sup>122</sup> Government guidance for Probation services highlights the need to consider partners and third sector organisations that could help support the transition from YOTs,<sup>123</sup> and research into girls' experiences specifically has highlighted the importance of involving the voluntary and community sector.<sup>124</sup> These organisations often provide support for older children and young adults, bridging the gap of transition at 18. A report by the AYJ and Agenda on transitions for girls calls for commissioning of gender-sensitive services to support girls in transition, including specialist services led by and for Black and minoritised groups.<sup>125</sup> This evidence review explores further the role of the voluntary sector in its examination of racial justice in transitions.

Research into the experiences of young people with SEND transitioning into adulthood highlights pilots of Transitions Teams across YOT and Probation, initiatives supporting young people either side of the transition, believed to have the potential to reduce the risk at this 'peak time' for breaches and reoffending, for all young people but especially those in need of additional support in adjusting to the different approach of Probation.<sup>126</sup>

A pilot was announced in 2021 for a Transitions to Adulthood Hub in London, 'a community-based holistic service for 18-25-year-olds on Probation in Newham and 17-year-olds transitioning from the Youth Offending Service to adult Probation.' The Hub aims to 'provide wrap-around support tailored to young adults' distinct needs and

informed by maturity assessments in order to reduce reoffending, improve mental health and support young adults to make positive life choices.<sup>127</sup> Once evaluated, if successful, the intention is to roll the approach out nationwide.<sup>128</sup>

Solutions have been proposed to address the injustice of young people who turn 18 before their day in court for an alleged childhood offence being treated and sentenced as adults. Rob Butler MP has called, via Private Members Bill, for all these young people to be 'subject to the jurisdiction of the youth court

and to youth sentencing provisions'.<sup>129</sup> Just for Kids Law in particular has suggested: amending the 'relevant date' for criminal records to be the date of committing the offence rather than conviction; applying statutory time limits on charging and trying offences allegedly committed by children; expediting investigating and trying cases involving 17-year-olds; ensuring diversionary schemes remain available when children turn 18; and strengthening Sentencing Guideline wording on dealing with those who have passed an age threshold, and placing that on a statutory footing.<sup>130</sup>

## Young people in transition in custody

When a child turns 18 while in custody they may transfer from the children's secure estate into the adult estate. Very occasionally a child may be 'starred up' - moved into the adult estate before turning 18.<sup>131</sup> There is no specific legal bar on young adults remaining in the children's secure estate and some 18-year-olds (and occasional reports of 19+) remain – for example if they are completing their sentence soon or if they are awaiting transfer.<sup>132</sup> Due to capacity issues in the adult custodial estate,<sup>133</sup> the Youth Custody Service in December 2022 confirmed a move away from presuming transition to the adult estate by an eighteenth birthday, instead looking to transition up to nineteenth birthdays where appropriate.<sup>134</sup> This is expected to lead to a significant increase in the number of 18-year-olds held in the children's secure estate.

Changes to legislation in recent years have meant older children have been subject to increasing mandatory minimum custodial sentences and terms. Sixteen and 17-year-olds are included alongside adults in provisions for mandatory custodial sentences for certain offences.<sup>135</sup> The Police, Crime, Sentencing and Courts Act 2022 contains provisions aiming to increase the use of such sentences; moved the custody release point, or 'minimum term', from halfway to two-thirds of certain sentences; and amended the

starting points for minimum custodial terms for murder committed as a child, significantly increasing them in most cases.<sup>136</sup> An increasing proportion of children in custody are 16 or 17 years old, and average custodial sentence lengths increased 88% between 2012 and 2022, from 12 to almost 23 months.<sup>137</sup> Literature highlights that a 'growing trend of penal populism' is 'resulting in increasingly younger prisoners serving increasingly longer sentences'.<sup>138</sup> An increasing proportion of children in custody are therefore likely to face the transition to adult custody, and spend significant time in the adult estate.

The transition into the adult custodial estate is described by the Ministry of Justice and HMPPS as a difficult time for young people involving a 'significant change in environment, regime and peer group', which 'can be unsettling for many young people who may be particularly vulnerable during this stage of their custodial journey', particularly if the transition is not managed well.<sup>139</sup>

### Youth custody compared to the custodial estate for young adults

Children in custody can be held in Secure Children's Homes (SCH), Secure Training Centres (STC), or Young Offender Institutions

(YOI) for under 18's. Young adults can be placed in any adult prison, or in one of two YOIs for young adults: Feltham B for 18-21-year-olds and Deerbolt for 18-24-year-olds (until recently a third YOI for 18-21-year-olds existed at Aylesbury, and it is now a prison holding young adults aged 18-27).<sup>140</sup> Two sites – Parc and Feltham – have facilities for both children and adults on the same site.<sup>141</sup> Although the children's secure estate faces many significant challenges,<sup>142</sup> arrangements intend to take into consideration the distinct needs of children.<sup>143</sup> Youth estate settings each have their own rules,<sup>144</sup> designed with children in mind. YOI rules also apply to 18-20-year-olds in prison, while prisons more broadly are governed by the Prison Rules 1999.<sup>145</sup> Different standards of care apply.<sup>146</sup>

A young person transitioning from the children's to the adult estate will experience 'considerably different' supervision,<sup>147</sup> with many changes including in healthcare provision, family contact and visits, policies around restraint, searching, adjudication and behaviour management, and lower staffing ratios meaning staff are not so readily available,<sup>148</sup> and are less able to build positive relationships and understand and respond to young people's needs.<sup>149</sup> One of the biggest changes experienced in practice is time out of cell, which reduces significantly.<sup>150</sup> Literature also highlights harsher consequences and a substantive change in the severity of restraint that can intimidate and shock young people who have transitioned from the children's estate.<sup>151</sup> The significant increase in the size of adult establishments compared to youth establishments is noted as potentially daunting, as well as the significant decrease in resourcing, and the significant increase in autonomy and responsibility, although some children in custody look forward to this.<sup>152</sup> A report by HM Inspectorate of Prisons (HMI Prisons) report on girls in custody summarises the difference, that those transitioning go 'from a routine that kept them unlocked and occupied every day to having minimal time out of their rooms and no education, work or other meaningful activity or engagement with peers or staff.'<sup>153</sup>

Sentence planning in the children's estate should take place each quarter,<sup>154</sup> whereas for young adults, except for annual reviews for those on life sentences, there is no prescription other than if significant changes occur.<sup>155</sup> Offender Management in Custody (OMiC), introduced in 2018, creates a new model for working with adults in prison, assigning a Prison Offender Manager (POM) in custody to carry out case management.<sup>156</sup> While YOTs would be involved in regular planning meetings with children in custody, the Probation service in the community will not be involved in internal planning for over 18s.<sup>157</sup> Children in custody should receive visits from their YOT on a monthly basis, while there is no similar requirement for Probation.<sup>158</sup>

Commissioning arrangements with service providers differ, with the likelihood being that fewer resources will be available in the adult estate,<sup>159</sup> and access to services such as those addressing substance misuse, social care and mental health may be lost.<sup>160</sup> Involvement of other professionals in work with young people once they've transferred is less consistent than in the children's estate.<sup>161</sup>

## Youth custody to adult custody transition

There is little information in the public domain regarding how well the children's secure estate prepares children facing long sentences for a future in the adult estate, including in supporting the achievement of key milestones children in the community would experience that aid maturation and development. This is of particular concern as literature highlights how being in custody impacts natural maturation and the development of positive identities, that missing important life experiences contributes to a feeling that you 'leave custody the age you went in'.<sup>162</sup>

The Joint National Protocol for Transitions in England,<sup>163</sup> the Youth to Adult Transition Principles and Guidance for Wales,<sup>164</sup> Youth Justice Board case management guidance for YOTs,<sup>165</sup> and a Ministry of Justice and

HMPPS policy framework for the secure estate<sup>166</sup> set out information on how and when transitions between the youth and adult secure estate should happen. The Ministry of Justice and HMPPS transitions policy framework was only recently implemented, so evidence on its effectiveness is not available. Literature highlights how the transition from youth to adult custody is a period of increased vulnerability for young people, where additional support is needed.<sup>167</sup> Although examples of good preparation for transition and good communication have been noted,<sup>168</sup> young people have reported that even though transfers have been discussed, they felt 'unprepared for the reality of the move' once it happened.<sup>169</sup> A 2022 thematic report on girls' experiences in custody highlighted that 'most of what she was told would happen did not materialise' upon transition.<sup>170</sup>

Insufficient planning and information sharing, insufficient resources, and issues in transferring supervision from YOT to Probation including delays in assigning Probation workers are noted in the literature as leading to interruptions in sentence planning and the delivery of interventions after young people transition to the adult estate.<sup>171</sup> While it is not mandatory and should depend on individual needs, in practice inspectors highlight that most who are eligible are transferred from YOT to Probation while in custody.<sup>172</sup> Literature has highlighted a double transition between the youth to adult estate and from YOT to adult services which creates two potential opportunities for information to drop off.<sup>173</sup> HMI Prison's thematic report on girls raised concerns about a lack of awareness in the adult estate about vulnerabilities and whether young people have come from the children's estate,<sup>174</sup> and an inspectorate review on neurodiversity highlighted concerns about relevant information not being routinely picked up upon transfer.<sup>175</sup> Staffing issues within Probation have been noted as creating problems in assigning a worker to a young person in custody, but it is also noted that if a YOT holds on to a young person, this can create issues in ensuring the correct adult

assessments have been undertaken in order for the young person to access interventions.<sup>176</sup> Inspection reports highlight young people are not always visited by Probation after transition,<sup>177</sup> and there are deficits in work with health, education, employment and training, to ensure services are continued.<sup>178</sup> The majority of this literature examines the situation before the introduction of OMiC moved responsibility for case management from Probation in the community to a dedicated Probation role inside prison,<sup>179</sup> and there is no literature exploring the impact of this on the transfer of cases from YOTs.

It is unclear what proportion of the young people transitioning from the children's to the adult estate are placed in young adult designated YOIs versus general adult prisons. One report found the majority of young people interviewed transferred to general adult prisons.<sup>180</sup> Literature highlights a 'lack of coherence' in decisions regarding which establishment young people are transitioned into,<sup>181</sup> and young people receiving no information about where they will be placed.<sup>182</sup> The Ministry of Justice and HMPPS transitions policy framework states a young person should be placed in 'the adult site identified as the most suitable'.<sup>183</sup> In practice inspectorates report 'no reason, other than geography, why one type of setting would be chosen over another' for young adults, with the lack of clarity making it 'impossible for establishments to plan for this group', undermining the development of provision.<sup>184</sup> Inconsistencies are also noted in when young people transition, with some waiting 'substantial periods' to move, including due to prisons refusing to take young people from the children's estate.<sup>185</sup> This can lead to young people being placed wherever will accept them rather than where can best meet their needs, and has 'clear implications for their subsequent management and behaviour'.<sup>186</sup>

Inspection reports also highlight institutions receiving young people may have no specific support for young people transitioning.<sup>187</sup> For

girls, there are no designated young adult YOIs for young women,<sup>188</sup> and the fact there are fewer establishments for women can mean young women are often held further away from home, making transition 'particularly abrupt'.<sup>189</sup> Even though practice around young women's transitions was noted as 'fine' in a 2022 thematic on girls in custody, the report notes: 'In all cases, young women were moved to adult environments where the delivery of interventions was much reduced, further adding to their vulnerability'.<sup>190</sup> Research on young people with learning disabilities and autism raises concerns that vulnerable young people with additional needs may be placed on Vulnerable Prisoner Wings which they feel can make them more vulnerable, due to the other prisoners present.<sup>191</sup>

This evidence review has found no information regarding the experiences of young people who turn 18 while remanded to custody. Forty per cent of those in the children's secure estate are on remand, and more children in custody are detained on remand compared to any other legal basis for detention.<sup>192</sup> The designated young adult YOIs Feltham B and Deerbolt only hold convicted young adults,<sup>193</sup> and therefore any young person on remand transitioning into the adult estate will not be entering dedicated provision. The lack of information about the experiences of those on remand is particularly concerning given racial disparities are highest for the remand population: 30% of children remanded to custody in 2022 were Black, and 50% of Black children in custody are there on remand.<sup>194</sup>

### **Young adults in custody**

Young adults in custody have some of the most complex and challenging needs of those in prison,<sup>195</sup> and experience poorer outcomes than older adults. They are more likely to self-harm, be placed on basic regimes, be involved in violence, face adjudications, and experience restraint and segregation.<sup>196</sup> They have worse relationships with staff, attendance at education and work, and

engagement with behaviour management schemes.<sup>197</sup> Under half report their experience in custody makes them less likely to reoffend,<sup>198</sup> and three-quarters are reconvicted within two years of release.<sup>199</sup>

The disproportionate representation of racially minoritised people in prison is highest among young adults, and racially minoritised young people in particular report more negative experiences than non-racially minoritised young people, including being: less likely to be treated as an individual, nearly three times as likely to be restrained, over three times as likely to have recently been segregated, less likely to be supported by staff to achieve custody plan targets, and less likely to feel their experience makes them less likely to offend.<sup>200</sup> Significant concerns are raised about the prevalence of neurodiversity in the prison population<sup>201</sup> and the inappropriateness of adult custody for neurodiverse young adults, the lack of available support and the hugely detrimental impact on their wellbeing.<sup>202</sup> Literature also highlights the increased vulnerability of young adult care leavers in prison, including the impact of receiving less external support.<sup>203</sup>

The Probation service policy framework for young adults sets out some information on custody,<sup>204</sup> but there are no specific prison service instructions or policy frameworks for young adults in custody.<sup>205</sup> Despite YOI rules applying to 18-20-year-olds, in practice there is no evidence their experience in almost all cases is different to that of older adults.<sup>206</sup> The development of a Young Women's Strategy was confirmed in the 2021 Prisons Strategy White Paper.<sup>207</sup> There remains no published progress on this but it is understood it is still planned. In 2021 inspectors noted that there is no national strategy for young adults,<sup>208</sup> A brief, unpublished strategy is now in place for 2022-25, which provides welcome overarching principles and acknowledgement of the distinct needs of young adults and approach that is needed, but contains little detail on responding to the needs of specific groups such as young adults with SEND and care leavers, and makes no mention of racial

disparity. Inspectorates highlight a 'lack of a coherent response at the national level', with the 'absence of any planning' leading to a reduction of services for young adults, to a point where 'most receive no specific provision at all'.<sup>209</sup>

A maturity screening tool is in place to determine whether support in relation to maturity should be in place. Of the young adults who have had an assessment, almost two thirds were highlighted as having these support needs.<sup>210</sup> Meeting maturation needs is identified as a vital component of rehabilitation, yet delivery of support falls 'far short' of assessed needs.<sup>211</sup> Only 2% of those assessed as needing it are accessing the Choices and Changes programme, the only tailored intervention available for young adults.<sup>212</sup>

HMI Prisons summarises: 'We have found, for nearly all young adults, that there is no difference between how [young adults] and adult prisoners are treated in custody, and that no additional thought is put into the type of establishment in which they are held.'<sup>213</sup>

Outcomes for young adults were so worrying that in 2015 the Harris Review into self-inflicted deaths of 18-24-year-olds in custody was carried out.<sup>214</sup> The Harris Review concluded that lessons were not being learnt from deaths, and a 2021 thematic inspection on young adults in custody shows that lessons have not been learnt from the Review.<sup>215</sup> The inspection found only three quarters of young adults had an OASys (Offender Assessment System) assessment, to determine their needs and risks, and there was no evidence of any provision, support or behaviour management systems tailored for young adults.<sup>216</sup>

There were previously more young adult designated YOIs but as these establishments have since begun holding all ages, only around 6% of 18-25-year-olds in custody are held in a designated establishment.<sup>217</sup> In most adult prisons, young adults are a minority, and some but not all prisons have blocks or units designated for young adults.<sup>218</sup>

Inspectors highlight no rationale for the establishments which make up the estate for young adults.<sup>219</sup> The evidence raises questions about which type and set up of establishment is best to hold young adults, given there are concerns about both dedicated young adult and general adult establishments, and the need to balance factors such as closeness to home with having a distinct regime.<sup>220</sup> However, the Justice Select Committee in 2015 highlighted that the decommissioning of dedicated provision had a destabilising impact on prisons.<sup>221</sup>

There is no literature available on whether young people who transition out of the children's estate fare better or worse in dedicated vs general adult provision, however it is clear from the evidence that whatever type of establishment young people transition into, there must be dedicated and distinctive provision tailored to meet young people's needs.

## Resettlement

Young adults who have transitioned from the children's to the adult secure estate and are now leaving custody face particular difficulties in resettlement. As well as facing the usual difficulties in adjusting lifestyles that all those leaving custody grapple with,<sup>222</sup> extra difficulties arise as young adults who entered custody as children must 'settle back into' newly adult lives. They will often experience several significant transitions from youth to adult services. Literature highlights care leavers and young women as being at particular risk of falling through gaps in support upon leaving prison.<sup>223</sup>

Many will have entered custody supervised by a YOT, and be leaving custody to be supervised by Probation services. At the same time, evidence highlights the complexity of cases where young people leaving custody who had been receiving multiple services such as children's social care, mental health, substance misuse, and education, training and employment support, will experience the loss of their rights and access to these

services, or will need to undergo multiple transitions into adult services at the same time, often facing different expectations and with little preparation.<sup>224</sup> HMI Probation highlights how crucial the YOT is in ensuring these changes are managed as smoothly as possible.<sup>225</sup>

HM Inspectors note that if a young person is to move to Probation supervision for release from custody, new relationships need to be built and the young person needs to meet new adult services workers before release,<sup>226</sup> but evidence shows this is not always the case.<sup>227</sup> A thematic inspection about resettlement found mixed evidence, including good practice where a Probation supervisor meets a child in a YOI prior to release to set up services, and concerning practice where the first time Probation staff meet with the young person is in their final meeting before leaving custody, or even transition occurring in the days post-release.<sup>228</sup> A thematic inspection of OMiC has raised significant concerns about the support adults leaving custody are receiving, both pre- and post-release.<sup>229</sup>

Inspectors question whether a transfer from YOT to Probation for resettlement is necessary or in the young person's best interests, and highlight that the transfer is required if a young person is being sent to Approved Premises (residential units for those released from custody deemed to require extra supervision to manage risk).<sup>230</sup> Concerns are raised around Probation staff having 'little knowledge' around managing Detention and Training Orders, the most common custodial sentence for children, but likewise YOTs who retain young people post-18 while in custody not knowing how to manage extended licence supervision.<sup>231</sup>

Preparing young people for resettlement will, according to the evidence, inevitably be more difficult if they are held in establishments where they don't feel safe, where conditions and experiences are more negative than those they experienced in the children's estate.<sup>232</sup> The passing of the Police, Crime, Sentencing and Courts Act 2022 also raises

concerns that resettlement will become harder, as provisions increasing the proportion of sentences that people spend in custody from half to two thirds reduces the time a young adult can be supported in the community post-release. T2A notes: 'after spending their young adulthood in custody there will be less time to build stability in employment, accommodation and relationships which are known to have the greatest impact on subsequent offending.'<sup>233</sup>

A big concern around resettlement of young adults is the higher rates of breach of licence or supervision conditions and subsequent sanctions and recall to prison.<sup>234</sup> A key discrepancy and dilemma is noted in the evidence. Depending on when a young person turns 18, they will be subjected to significantly different post-custody supervision. A young person turning 18 the day after their release from custody will have served their whole sentence, while a young person who turns 18 the day before their release will be subject to up to a year's Probation supervision.<sup>235</sup> This has significant consequences for the likelihood of breach, leading some to argue that longer supervision in this instance is unfair. At the same time however, some would argue that young people leaving custody need longer periods of supervision. 'Beyond Youth Custody' notes the general tension 'between enhancing support to vulnerable young people leaving custody without increasing the risk of non-compliance and return to court and custody'.<sup>236</sup> Guidance for Probation management of young adults highlights that practitioners 'should consider the impact of a return to custody on their maturity and explore alternatives' where appropriate.<sup>237</sup> Inspectorates and Probation service guidance note that racially minoritised young adults are disproportionately recalled to custody, and highlight practice guidance issued in 2020 that includes advice on countering bias in decision-making and maturity assessments, and the need to apply procedural justice principles.<sup>238</sup>

## Solutions

A variety of potential types of custody for young people transitioning into adulthood are suggested in available literature. However, the Justice Select Committee in 2016 noted the lack of evaluation and evidence regarding what set ups work best for young adults in custody, and recommended piloting different approaches.<sup>239</sup> The T2A alliance has highlighted the developing Prisons Strategy<sup>240</sup> and prison building programme<sup>241</sup> as an important opportunity to do so.<sup>242</sup>

One proposal is reversing the decline of designated young adult YOIs. The majority of witnesses in the Justice Select Committee inquiry into young adults were supportive of keeping young adult YOIs, and the Committee recommended extending the age range upwards to include more young adults.<sup>243</sup> Dedicated young adult wings or transition units at adult prisons are also noted as worthy of exploration. The Prisons Strategy White Paper notes a pilot currently underway for a young adults transition unit at HMP Deerbolt. The unit reportedly aims to take a bespoke approach to supporting young men's complex needs and rollout of similar units is intended if the pilot is a success.<sup>244</sup> T2A highlights dedicated wings previously proposed at HMP Nottingham and HMP Bedford for the government to consider in developing its Prisons Strategy.<sup>245</sup>

Another option is mixed establishments where a children's YOI is co-located with an adult or young adult establishment, such as HMP and HMYOI Parc. A thematic inspection on transitions in 2014 noted young people in these establishments were 'generally positive' about their transfer within the establishment, and noted easier continuity of treatment with health services, for example.<sup>246</sup> A 2022 thematic inspection on girls in custody noted suggestions from the girls to ease transition including units for over 18's at SCHs.<sup>247</sup> Ideas like secure schools for children could also be explored for young adults, or increasing the use of residential placements.<sup>248</sup>

Literature suggests solutions should be identified by considering approaches in other jurisdictions. Examples highlighted include Hydebank Wood Secure College in Northern Ireland, 'specific, properly resourced young adult provision' where inspectors note better experiences than in England,<sup>249</sup> the German model of mixed campuses holding children and young adults together, requiring careful management;<sup>250</sup> and Russia exploring allowing young people to stay in the children's estate if behaviour is good.<sup>251</sup> Articles welcome that distinct facilities for young adults are often available and stretch to 21 years old in Europe, but for some jurisdictions provision extends to 24 and even 27-year-olds.<sup>252</sup> The UN Committee on the Rights of the Child commends countries that employ a more flexible approach around turning 18 and recommends young people who turn 18 in youth custody be allowed to stay there.<sup>253</sup>

It is clear from the evidence that whatever form of custody young people transitioning into adulthood are held in, enhanced and tailored support for this age group is needed,<sup>254</sup> and young people need to be involved in decisions. HMI Probation in 2021 recommended a national strategy for young adults in custody, to ensure assessment of needs and maturity, distinct and fully resourced provision, young adults being held in the establishments best able to meet their needs, and improved relationships, behaviour management, and access to education, training and work.<sup>255</sup> It is unclear the extent to which the unpublished strategy for young adults that has been drawn up by HMPPS achieves this. It is also suggested support could be enhanced through specialist staff training,<sup>256</sup> by applying policy frameworks used for children in custody to young adults or drawing up young adult specific frameworks;<sup>257</sup> or through the creation of a body similar to the Youth Justice Board, focused on driving reform and introducing guidance for young adults.<sup>258</sup> The literature highlights specific attention is needed to improve policies and outcomes for racially minoritised young adults, through improved monitoring and actions taken to prevent

discrimination,<sup>259</sup> and for young women, by ensuring availability of good practice and appropriate interventions.<sup>260</sup> The 'Being Well Being Equal' coalition, a campaign for young men in prison, is calling for urgent action to improve and tailor wellbeing services for young adults, particularly paying attention to the needs of young Black men.<sup>261</sup>

As young people transition from the youth to the adult estate, commentators call for additional support around emotional and behavioural maturity,<sup>262</sup> and for a less rigid and arbitrary approach to the split between systems and agency boundaries for children and adults.<sup>263</sup> It is suggested that transition could be improved by developing a specific youth justice standard on management of transition, monitored via inspections, paying particular attention to care leavers and racially minoritised young adults.<sup>264</sup> For the growing cohort of older children increasingly receiving longer custodial sentences, who transfer into the adult estate facing a far off release date, commentators identify a need to improve support, particularly around transition and mental health.<sup>265</sup> Given the evidence on maturity, the Scottish Sentencing Council recommends stringent age ranges should not be used in sentencing guidelines.<sup>266</sup>

To improve the experiences of young people leaving custody, literature highlights the need to recognise the distinct resettlement needs of those who have spent their late childhood and then early adulthood in custody,<sup>267</sup> and the

need for early identification of community-based support.<sup>268</sup> Staff training is recommended for the provision of age-appropriate services for young adults that have transitioned from children's services.<sup>269</sup> To ensure continuity of care, a single consistent worker supporting the young person is recommended.<sup>270</sup> To this end, inspectorates note that, if it is deemed a young person needs to be sent to Approved Premises, being able to do so without requiring Probation supervision would allow YOTs to continue supporting more young people.<sup>271</sup> However, the inspectorate also stated concerns about the safety of young adults in Approved Premises.<sup>272</sup> To reduce reoffending and recall, young adults recommend that every regional Probation director should have to produce a specific Reducing Reoffending Plan for Young Adults, and that Probation should take a more flexible approach around Probation requirements and initiating breach proceedings.<sup>273</sup>

Finally, young people report receiving better support from the voluntary and community sector rather than from prison or Probation – support that is tailored to their needs and aspirations with workers who understand their lives.<sup>274</sup> They report that these workers also help in navigating both emotional and practical challenges around resettling from custody into the community.<sup>275</sup> Support from the voluntary and community sector can cross arbitrary age boundaries, smoothing the cliff edge around 18.<sup>276</sup>

## Safeguarding young people at risk in transition

Children in contact with the justice system are commonly at risk of harm, from abuse and maltreatment both within their home and outside the home.<sup>277</sup> Their involvement in crime may be a direct or indirect result of this harm.<sup>278</sup> Adverse experiences and intersecting vulnerabilities including SEND, poverty, and being in care, prevalent among children in the youth justice system, make

them more vulnerable to abuse and exploitation as they grow up.<sup>279</sup> Harms outside the home, in particular serious violence and criminal exploitation, are a growing concern.<sup>280</sup> These risks 'awkwardly position young people at the interface between safeguarding and justice systems',<sup>281</sup> leading to 'unacceptably and unnecessarily high' social and personal

costs.<sup>282</sup> As children at risk of these harms approach and turn 18, how these systems are set up and equipped to deal with the transition to adulthood may increase vulnerabilities, fail to recognise and appropriately respond to victimisation, and result in young people being criminalised rather than safeguarded.

## Protecting vulnerable children and young adults from harm

Local authorities must look to safeguard any child where there is reasonable cause to suspect they are suffering, or are likely to suffer, significant harm, or are not likely to meet a reasonable standard of health and development without support.<sup>283</sup> Agencies have various safeguarding duties to assess children's needs and provide support, and children may be subject to Child in Need Plans, Child Protection Plans, or be taken into care to be legally 'looked after' by the Local Authority.<sup>284</sup> The adult safeguarding system sits under a different statutory framework, with different principles, priorities and thresholds for support.<sup>285</sup>

Almost half of children in the youth justice system have a known history of contact with children's social care, including 9% on Child Protection Plans and 12% taken into care via care orders.<sup>286</sup> A third of children cautioned or sentenced for an offence were at some point a Child in Need.<sup>287</sup> As they age through adolescence and into young adulthood, the harms they are at risk of may change or evolve but many harms, and their effects, continue.<sup>288</sup> The literature raises several concerns about the transition to adulthood for young people in need of safeguarding support, set out below.

## Unsuitable safeguarding systems

Neither the children's nor adult's safeguarding systems have been built for the distinct needs of older teenagers.<sup>289</sup>

It is increasingly recognised in literature that the care and child protection systems are designed with young children in mind, and do not always work well for older children.<sup>290</sup> This raises particular concerns given older children

make up a rapidly increasing proportion of the number of children in contact with children's social care. Adolescents are now the largest and fastest growing cohort of children in the care system,<sup>291</sup> with 9-17-year-olds making up two thirds of the care population.<sup>292</sup> The increase in the number of older adolescents entering care has been particularly sharp: between 2011/12 and 2019/20 the number of 15 and 16-year-olds coming into care increased by 150% and 285% respectively.<sup>293</sup> Literature highlights how adult safeguarding has a useful focus on empowerment and participation, not currently emphasised in practice around safeguarding older children.<sup>294</sup> Not only are safeguarding policies and practice not designed for older children, in some cases they actively exclude 16 and 17-year-olds from protections afforded to younger children.<sup>295</sup> For example, children aged 16 and 17 in care can be placed in unregulated accommodation that doesn't follow care standards,<sup>296</sup> and Child Abduction Warning Notices (CAWN) - police tools to help disrupt exploitation - aren't applied to 16 and 17-year-olds.<sup>297</sup>

Literature also raises concerns that 18-year-olds entering the adult safeguarding system encounter services that are not designed for their age group.<sup>298</sup> For example, adult approaches may not adequately account for evidence on maturity that shows adaptation to adult roles and responsibilities continues well past 18 into at least the mid twenties.<sup>299</sup> Young adults in need of safeguarding support often face many intersecting and interconnected harms, which literature argues require a holistic approach, where attention is paid to experiences in childhood and structural disadvantage, rather than just focussing on formally defined care and support needs.<sup>300</sup>

The most common and increasingly cited concern in the literature is that safeguarding systems are not designed to respond to the types of risks and harms that young people experience.<sup>301</sup> Adolescents are particularly affected by harms outside the home,<sup>302</sup> at risk in a broad range of social contexts, rather

than within the home in a family context as younger children mainly are.<sup>303</sup> Literature exploring these contexts highlights the detrimental impact of extra-familial risks like exploitation on young people's emotional, physical and mental wellbeing, and how these risks may drive involvement in offending, drug and alcohol misuse, and going missing; undermine access to education and other services; and negatively impact family relationships.<sup>304</sup> The Independent Review of Children's Social Care ('Care Review') highlighted the complexity of these cases, where 'children are open to numerous services, are both victims and perpetrators, and face harm from different and harder to manage sources'.<sup>305</sup> Harms are often intertwined, for example young people at risk of criminal exploitation may also be harmed by sexual exploitation,<sup>306</sup> and young people are increasingly at risk online where it is harder to identify and respond to.<sup>307</sup>

There is a growing recognition of girls being at risk of child criminal exploitation, and of boys being at risk of child sexual exploitation, but both have previously faced gender-based biases leading to under-identification.<sup>308</sup> Black and mixed heritage boys 'appear to be more vulnerable to harm from criminal exploitation',<sup>309</sup> with almost a third of Black and mixed heritage boys on YOT caseloads recognised as victims.<sup>310</sup> This is particularly concerning given research on child sexual abuse found racism and cultural stereotyping among safeguarding professionals can lead to failures in identifying and responding to the abuse of Black children.<sup>311</sup>

The literature is clear that the distinct risks children and young people face require a distinct safeguarding response,<sup>312</sup> one that reflects time spent with peers outside the home and the weight of different extra-familial relationships.<sup>313</sup> Unfortunately, the literature is also clear that the existing system fails adolescents facing harms outside the home,<sup>314</sup> and the government accepts this is the case.<sup>315</sup> The Care Review concluded the current system, designed to respond to issues arising within the home,<sup>316</sup> is unsuitable, not

working, and stigmatising parents.<sup>317</sup> Concerns are raised about safeguarding responses being too reactive rather than proactively disruptive, with children only accessing support when exploitation has already taken root.<sup>318</sup> Traditional tools like Child Protection Plans may not work well,<sup>319</sup> and traditional interpretations of child protection can lead to children being sent home by police without referrals for support,<sup>320</sup> or to children receiving no further action decisions from social workers following referrals.<sup>321</sup> The Care Review found that government departments and safeguarding partners have no shared understanding of the issue, and a failure to grasp the complexity of adolescent cases has led to ineffective, confused responses, a lack of accountability, and different parts of children's social care, justice and health systems 'responding differently to the same teenagers', leading to confusion and gaps in support.<sup>322</sup>

A growing recognition of the complex harms older children experience, and the failure of safeguarding systems to protect them, has seen positive movements in policy and practice in recent years. The Department for Education and Child Safeguarding Practice Review Panel have stated that the care system is starting to adapt to children at risk of extra-familial harm, and many local authorities are developing various approaches with support and investment from the Department for Education, with some good practice emerging, but other areas lagging.<sup>323</sup> For example, a contextual safeguarding model, which seeks to address the structural limitations of traditional child protection and better understand and respond to social dynamics, is being adopted in some areas,<sup>324</sup> although evaluation notes shortcomings in national policy reforms that would facilitate the model's adoption.<sup>325</sup> The government's response to the Care Review summarises several recent or upcoming changes which it believes will provide adolescents the intensive, tailored support they need, including supporting the development of multi-agency practice principles, local pilots of an alternative child

protection pathway, and updating the Working Together to Safeguard Children statutory guidance.<sup>326</sup>

The distinct risks older children face may well continue as a child turns 18, but while statutory guidance highlights both children and 'vulnerable adults' may be victims of exploitation,<sup>327</sup> literature mainly focuses on the child safeguarding system's response. Little information is available about how well adult safeguarding recognises and responds to young adults facing harms like exploitation that may have originated in childhood. However, adult social care is designed to support adults with formally defined care and support needs,<sup>328</sup> and no similar programme of investment and support for developing new approaches to adult social care has been provided as noted above for the children's sector.<sup>329</sup> Professionals have highlighted a safeguarding gap in the protection of victims of criminal exploitation, calling for contextual safeguarding approaches.<sup>330</sup> The Chief Social Worker's annual report in 2020 noted there is 'some way to go in adult social care to understand how to respond to sexual and criminal exploitation'.<sup>331</sup> As is explored below, eligibility criteria may exclude many young adults from support altogether.

### A cliff edge in support at 18

Upon approaching and turning 18, young people who have been accessing support to keep them safe tend to see this withdrawn, despite evidence on harms and their effects continuing into adulthood.<sup>332</sup>

Notable differences between the thresholds for child and adult services contribute to this 'cliff edge'.<sup>333</sup> While child safeguarding duties apply wherever a child is suffering or is likely to suffer significant harm, adult safeguarding duties only apply to those at risk of abuse or neglect who have needs for care or support which prevent them from being able to protect themselves.<sup>334</sup> 'Needs for care or support' are only eligible for statutory support if they 'arise from or are related to a physical or mental impairment or illness', mean the person is unable to achieve multiple outcomes like

maintaining a habitable home, engaging in work, looking after themselves or a child, and if this will likely significantly impact the adult's wellbeing.<sup>335</sup>

Research by The Children's Society in 2018 found less than 3% of 16 and 17-year-olds designated as Children in Need saw their cases transfer to adult services.<sup>336</sup> While statutory guidance on criminal exploitation acknowledges 'vulnerable adults' may be victims,<sup>337</sup> and guidance for Probation workers notes that if a young adult has been subject to safeguarding arrangements as a child they should assess needs to determine if statutory safeguarding responsibilities apply,<sup>338</sup> neither acknowledge the criteria for adult safeguarding that mean many experiencing these harms may not be eligible for support.<sup>339</sup> Authorities can choose to provide support to meet needs that are not deemed eligible.<sup>340</sup> However, the Chief Social Worker for Adults has raised concerns that the configuration of services stands in the way of adult social care improving its response to those at risk of exploitation who have turned 18, with services often only able to support a young person if they have a disability.<sup>341</sup>

Commentators highlight the disparity between the cut off in support at 18 for those who have experienced adversity and trauma and have received safeguarding support as a result, compared to other cohorts of young people.<sup>342</sup> Care leavers and young people with SEND, for example, are entitled to some support until 25, while there are no similar automatic entitlements for young people who were a Child in Need or had Child Protection Plans.

Statutory safeguarding guidance sets out details on how transitions into adult services should be handled and planned for in advance,<sup>343</sup> and resources and principles for effective transitions are set out by the National Institute for Health and Care Excellence and others.<sup>344</sup> In practice however, literature raises concerns that poor planning and services not being flexible or responsive enough leaves young adults

falling through gaps, and ultimately that the child and adult systems operate 'broadly separately' and are 'conceptually and procedurally different', arguably making it harder for professionals trying to navigate providing effective support.<sup>345</sup>

As the failures of safeguarding arrangements to protect young people transitioning into adulthood has become increasingly recognised, support for a transitional safeguarding approach has emerged.<sup>346</sup>

Transitional safeguarding is 'an approach to safeguarding adolescents and young adults fluidly across developmental stages which builds on the best available evidence, learns from both children's and adult safeguarding practice and which prepares young people for their adult lives'.<sup>347</sup> A knowledge briefing co-produced by the Chief Social Worker for Adults, Research in Practice, Association of Directors of Adult Social Services (ADASS), British Association of Social Workers (BASW) and others, aimed at all those involved in adult social work, sets out the need for transitional safeguarding and how it can be made a reality, and notes that many local areas are seeking to adopt these approaches.<sup>348</sup> While this demonstrates encouraging buy in among the sector, where some areas have tried to develop adult safeguarding responses that better recognise harms don't stop at 18,<sup>349</sup> they have faced challenges due to the different legislative frameworks and thresholds.<sup>350</sup>

### *The cliff edge for care leavers*

When a child in care - legally 'looked after' by children's services - turns 16, they can choose to leave care, and when children in care turn 18, they must become a care leaver. A number of legal duties around the care and protection of the young person are no longer in place, and financial and housing support falls significantly.<sup>351</sup> Guidance sets out information on preparing a child and supporting the transition at 18.<sup>352</sup> Care leavers are entitled to some continuing support: a personal adviser must be available (until 25 if they wish); an assessment must have been carried out to determine what

advice and support is needed and a pathway plan must be made for accessing this; 'Staying Put Arrangements' can be made for those in foster care who wish to continue living there (until aged 21); and 'Staying Close' provides an offer of move-on accommodation and support for young people leaving children's homes.<sup>353</sup> However, many care leavers are not accessing support they are legally entitled to.<sup>354</sup> The government response to the Care Review confirms ambitions for expanding support for care leavers, including around accommodation and employment, increasing the care leaver allowance, and extending Staying Put to age 23.<sup>355</sup>

Outcomes for care experienced people are 'extremely poor', including financial vulnerability, poor physical and mental health, and premature death.<sup>356</sup> A third of care leavers become homeless within 2 years of leaving care, two fifths of 19-21-year-old care leavers are not in employment, education or training (NEET), and an estimated 24% of people in prison have spent time in care.<sup>357</sup>

Care leavers are often forced to live independently much younger than those without care experience.<sup>358</sup> Care experienced young adults report having to 'rapidly mature in order to adjust and survive',<sup>359</sup> facing adult expectations and learning to be self-reliant at a young age.<sup>360</sup> They report feeling insufficiently prepared, automatically 'cut off' at 18, with no continuity of support.<sup>361</sup> They highlight how isolating the experience can be, and how challenges can escalate quickly into debt, homelessness and contact with the criminal justice system.<sup>362</sup> Literature notes how the 'premature and abrupt' transition to adulthood can influence involvement in crime.<sup>363</sup> Girls in the justice system are more likely than boys to have care experience and therefore be facing the cliff edge of leaving care as they transition into adulthood.<sup>364</sup> Similarly, children with SEND and Black and mixed heritage children are disproportionately likely to have care experience, and be in contact with the justice system.<sup>365</sup>

## Young people left at risk

The evidence is clear that while support often ends when a child turns 18, abuse and exploitation do not.<sup>366</sup> The effects of harms experienced in childhood, and many of the systemic and environmental factors that make a child vulnerable, continue into adulthood and may intensify.<sup>367</sup> Exploiters are known to target those they consider vulnerable,<sup>368</sup> and may perceive the cliff edge in support as an additional vulnerability, meaning turning 18 itself may put young people at heightened risk from abusers.<sup>369</sup> Failures to safeguard older children and young adults from the harms they face and help them to recover from trauma results in 'unmet needs and costly later interventions', leaving young people at greater risk of becoming involved in or struggling to move away from crime.<sup>370</sup>

## Protecting vulnerable children and young adults from criminalisation

When young people come to the attention of the criminal justice system for offences they may have committed as a result of victimisation and exploitation, the system should pick up and respond appropriately to this. Overall the children's system appears to have made some strides in recent years in recognising the prevalence of victimisation and the need to avoid criminalisation, with an increased focus on diversion and child-centred approaches, for example. In particular for cases of criminal exploitation, the National Referral Mechanism (NRM) provides a framework for identifying and referring potential victims to ensure they receive appropriate support, and a statutory defence was introduced in 2015 against the prosecution of modern slavery victims. However, the literature raises concerns about how well the criminal justice system recognises and responds to the victimisation of older children, and particularly young people once they have turned 18, set out below.

## Perceptions of victimisation

As children involved in crime as a result of abuse or exploitation grow up and become

young adults, views among policymakers, practitioners and the public on victimisation shift. The literature highlights how adolescents may be seen as perpetrators rather than victims of harm, and how this perception is often binary in a way that does not reflect the complex reality of exploitation.<sup>371</sup> Behaviour older children are engaging in may be seen as 'lifestyle choices', with adolescents treated as if they have the same agency as mature adults.<sup>372</sup> Perceptions of whether a young person is a victim or not may be influenced by narratives in the media and government,<sup>373</sup> and by biases around class,<sup>374</sup> and race such as adultification (see this evidence review's section on racial injustice).<sup>375</sup> Young people impacted by criminal exploitation may be more likely to be perceived as perpetrators because they do not meet the criteria for 'ideal victims'.<sup>376</sup> Literature argues that people who 'most readily are given the complete and legitimate status of victim' will be 'weak (often the very old or very young), blameless, carry out 'a respectable project' and victimised by a 'big and bad' offender who is unknown to the victim'.<sup>377</sup>

Research shows that the ability of practitioners to identify older children and young adults as victims rather than perpetrators is made more complicated by the fact young people do not necessarily consider themselves to be being exploited.<sup>378</sup> Manipulation, coercion, complex relationships with their exploiters, being disempowered by circumstances such as needing an income, feeling indebted, and having a lack of trust in authorities may make young people uncooperative, reluctant to engage with professionals, and protective of those exploiting them.<sup>379</sup> Young people may reject the label of 'victim' and seek to emulate the attitude and lifestyle of those who have groomed or coerced them, all of which can make it harder for practitioners to recognise vulnerability and respond appropriately, even if policies prioritise safeguarding.<sup>380</sup> Research raises concerns that children with SEND are not only at particular risk of exploitation but needs may be undiagnosed, creating

difficulties in identifying victimisation,<sup>381</sup> as well as highlighting that neurodiverse children may not perceive themselves as exploited.<sup>382</sup>

The shift away from perceiving young people as victims is particularly acute at 18, when legally a young person becomes labelled as an adult, rather than a child: 'Upon turning 18, overnight, they will cease to be defined as a victim of child abuse and may instead be viewed as an adult with capacity to make such choices. Their circumstances and vulnerability are entirely unchanged by their birthday, but they are suddenly, no longer 'everybody's business'.<sup>383</sup>

### Criminalising victims of exploitation

Shifting perceptions of victimisation and the current formation of the safeguarding and criminal justice systems result in vulnerable children and young people who are involved in criminal behaviour being treated as perpetrators and punished for abuse they are receiving.<sup>384</sup>

The literature notes an increased understanding of child criminal exploitation in recent years.<sup>385</sup> YOT workers and police officers reportedly demonstrate awareness of children's vulnerability to exploitation particularly in relation to county lines drug dealing.<sup>386</sup> Documents highlighting exploitation and promoting diversion and safeguarding, such as the government's 2018 Serious Violence Strategy, 2022 statutory guidance for the Serious Violence Duty, and National Crime Agency (NCA) reports, reflect this improved understanding.<sup>387</sup> Examples of good practice among police forces focussing on trauma and diversion are highlighted.<sup>388</sup>

However, research by organisations such as The Children's Society and Barnardo's who work to support victims of criminal exploitation shows that too often children continue to be criminalised, with law enforcement typically taking precedence over the appropriate safeguarding response.<sup>389</sup> Research highlights a lack of consistency from professionals like police and YOT workers in identifying criminal exploitation and what crimes could be connected,<sup>390</sup> perhaps due to

a lack of training,<sup>391</sup> lack of resources,<sup>392</sup> and lack of a statutory definition of criminal exploitation.<sup>393</sup> Commentators set out the critical need for defence lawyers to identify exploitation and raise it as a defence or in representations to the Crown Prosecution Service to prevent prosecution, and difficulties and inconsistencies in doing so.<sup>394</sup> Literature highlights that age, gender, ethnicity and background, including care experience, may affect how professionals respond,<sup>395</sup> and argues that continued criminalisation may 'partly reflect the British Government's increasingly conservative and punitive youth justice approach, which tends to ignore or downplay structural conditions facilitating youth offending while assuming rational choice as the main explanatory factor for offending'.<sup>396</sup> Inspectors in 2014 noted that 'gang-involved' older children in YOTs can be perceived as a threat to younger children, and this can make YOTs more likely to transfer these children into adult services as soon as possible.<sup>397</sup>

There is far less policy focus on young adults being criminalised as a result of exploitation and the need to avoid this. NCA and Home Office guidance on criminal exploitation provides examples of factors that increase vulnerability to exploitation, such as being homeless, trafficked from abroad, having adverse childhood experiences or having been in care,<sup>398</sup> however does not mention young adults who began being exploited as children and have transitioned into adulthood. Commentators note that upon turning 18, the 'age-bound and eligibility-led' constructs of the safeguarding system mean many young adults may be criminalised rather than safeguarded,<sup>399</sup> and argue that assumptions should not be made that turning 18 means someone cannot be 'manipulated, coerced and controlled to undertake criminal activity'.<sup>400</sup>

T2A highlights that 'young adults who may now be involved in relatively serious drug-related offending activities may themselves have been exploited as children before child exploitation became a policy priority.

Consequently, they may now have reached the current position they occupy within drug offending groups (in which they might be seen as having a significant or leading role) because they were not identified as having been exploited and 'rescued' at a younger age.<sup>401</sup> Young adults who have been victims of exploitation as children and continue to be involved in criminal activity may experience a shift from being viewed by the criminal justice system as an exploited child to being an exploiter themselves. Home Office guidance even states that under 18s can perpetrate exploitation.<sup>402</sup> However there is a dearth in literature exploring this.

Research by Hestia on adult victims of criminal exploitation provides a key insight, and highlights that it is common for the young adults accessing their service to have been criminally exploited as children, most commonly county lines.<sup>403</sup> Police, lawyers, local authorities, voluntary sector organisations and victims agreed that vulnerability is often overlooked by the criminal justice system and adult victims of criminal exploitation are frequently criminalised, which can be due to victims not disclosing information; police failing to examine personal circumstances and childhood experiences, potentially due to lack of resources; and professionals viewing adults as culpable despite victimisation.<sup>404</sup>

The NRM exists to identify and support victims of exploitation,<sup>405</sup> and Section 45 of the Modern Slavery Act 2015 provides a statutory defence against prosecution for certain offences committed because of exploitation.<sup>406</sup> If a person receives a positive NRM decision ('conclusive grounds' that they are a victim), then the Crown Prosecution Service must take this into account when deciding whether to prosecute, although they can challenge the decision.<sup>407</sup> The number of both children and adults referred to the NRM as potential victims of exploitation has increased significantly since the NRM's introduction.<sup>408</sup> This may reflect improved recognition of victimisation, particularly recently around county lines exploitation,<sup>409</sup>

an increasing number of victims, or a mixture of factors. Over 40% of referrals are for child potential victims, who are most commonly referred for criminal exploitation.<sup>410</sup> 13% of all referrals are flagged as county lines, three quarters of which are for boys.<sup>411</sup>

While these mechanisms exist to protect victims, many may fall through the gaps, may never be successfully referred, or may be prosecuted and convicted despite having an NRM referral underway or concluded.<sup>412</sup> The Child Safeguarding Practice Review Panel concluded that the NRM is not well understood, inconsistently used by the Crown Prosecution Service and the courts, and its original purpose 'does not always fit well with the circumstances' of criminally exploited children.<sup>413</sup> An organisation supporting adult victims of exploitation in the UK found over half had spent time in prison for crimes committed during exploitation, and highlighted a lack of awareness and understanding among both victims and criminal justice practitioners of the Section 45 statutory defence.<sup>414</sup> Practitioners have described how, due to shortcomings in the NRM process and a lack of support available in the community, criminalisation can be resorted to 'as a safeguarding strategy', with research concluding that recognition of victimisation 'does not represent a possibility for the meaningful reversal of the 'offenderisation' of children'.<sup>415</sup> Research on neurodiverse young people in the justice system highlights how information about a childhood NRM referral does not always get communicated to adult justice services, and adult services 'do not appear to consider criminal exploitation to the same degree' as children's services.<sup>416</sup>

Recent developments including the Nationality and Borders Act 2022<sup>417</sup> and *R v Breani [2021] EWCA Crim 731*,<sup>418</sup> put the NRM's ability to protect victims at increased risk. Home Office guidance on modern slavery protections has been updated to reflect changes in the 2022 Act, increasing evidence requirements thus raising the threshold for positive NRM decisions, and disqualifying certain people from support with

two broadly defined and wide reaching exceptions.<sup>419</sup> Those who have turned 18 in particular are disadvantaged by new provisions for disqualification if it is believed an individual has claimed to be a victim of modern slavery in 'bad faith', which 'thankfully, at least' do not apply to children following resistance and campaigning in the children's rights sector.<sup>420</sup>

Delays are also undermining the NRM.<sup>421</sup> In 2021 the average number of days for a conclusive grounds decision was 568 days.<sup>422</sup> These delays in the NRM process cause significant issues in ensuring victimisation is recognised ahead of prosecution, particularly for young people approaching their 18<sup>th</sup> birthday.<sup>423</sup> Practitioners supporting children in court report uncertainty around whether cases can and should be adjourned to await NRM decisions,<sup>424</sup> but if a case is delayed and a child turns 18, they may have to face the adult rather than youth justice system.<sup>425</sup> A Home Office pilot is underway devolving decision making around whether children are victims of modern slavery to local existing safeguarding structures,<sup>426</sup> and there are emerging positives in reducing delays and improving decision-making.<sup>427</sup> A similar pilot does not exist for young adult cases. Independent Child Trafficking Guardians, providing advocacy for child victims, are being slowly rolled out nationally, and providing this support beyond a child's eighteenth birthday where required is being piloted.<sup>428</sup>

Children do not need to consent for a NRM referral whereas adults do,<sup>429</sup> and the threshold for whether the Section 45, Modern Slavery Act 2015 statutory defence against prosecution is applicable is different for children compared to young adults.<sup>430</sup> An adult must be compelled to do the offence, where the compulsion is attributable to exploitation, whereas a child must have done the offence as a direct consequence of being exploited.<sup>431</sup> The higher threshold requiring compulsion leaves young adults more vulnerable to conviction.

## Spotlight on becoming a care leaver in the criminal justice system

As care experienced children in the youth justice system turn 18 and become care leavers while also transitioning into the adult justice system, this extra degree of destabilisation may exacerbate physical and mental health needs and increase the need for support.<sup>432</sup> The stricter and more punitive approach taken by Probation compared to YOTs, and the stigma many care experienced young people face,<sup>433</sup> may exacerbate feelings care leavers report of having 'no space to get it wrong'.<sup>434</sup>

YOT case management guidance sets out the importance of identifying care experienced children and sharing that information upon transition,<sup>435</sup> Probation service guidance on young adults highlights the difficulties care leavers face and the importance of identification and potential need for additional support,<sup>436</sup> and the HMPPS strategy for care experienced people sets out steps for identifying and addressing care leavers' needs and states that identification of care experience has improved.<sup>437</sup> However, literature highlights a disconnect between the care and justice systems, and that care leavers in the criminal justice system are often an 'invisible minority', who are 'abandoned and given least support when they are at their most vulnerable', leaving care leavers at significantly greater risk of re-offending.<sup>438</sup> Literature raises concerns about problems in the identification of care leavers,<sup>439</sup> a lack of practitioner awareness, knowledge and confidence in knowing how to respond to care leavers' needs and what support they may be eligible for,<sup>440</sup> and the added complexity of working to support care leavers due to the need to work with a wider range of agencies.<sup>441</sup>

The policy disconnect between the criminal justice system, which classes those who have turned 18 as adults, and the care system, which should continue to provide support beyond 18 up to 25, is noted to create the potential for confusion for criminal justice professionals working with young people

navigating both systems, leading to failures in the support provided to care leavers.<sup>442</sup>

## Solutions

### *Safeguarding young people*

The concept of 'Transitional Safeguarding' has emerged to address the shortcomings of the current 'binary' safeguarding systems for children and adults, seeking to remove the arbitrary cliff edge in support at 18 and apply a more age-appropriate and needs-appropriate approach to protecting adolescents from the harms they face.<sup>443</sup>

Learnings from the literature on Transitional Safeguarding are not just applicable for improving the safeguarding system, but could be applied more broadly in considering improving how the criminal justice system works with young people in transition.

The key principles of Transitional Safeguarding are being evidence-informed, coming from an ecological or contextual perspective, being developmentally attuned to adolescence, taking a relational approach that recognises the impact of trauma, being equalities-oriented, and highly participative.<sup>444</sup> Taking an intersectional view, considering how structural disadvantage affects safeguarding and justice outcomes is key.<sup>445</sup> Transitional Safeguarding advocates for services that bridge the gap between childhood and adulthood, for example services designed for anyone aged up to 25, specifically designed for 16-25-year-olds, or services that focus on enhanced support for young people at risk of certain types of harm regardless of age limits or formal eligibility thresholds.<sup>446</sup> It calls for strategic partnership working, highlighting the number of partners relevant to the safeguarding of young people in transition, including child and adult safeguarding partnerships and boards, Health and Wellbeing Boards, Violence Reduction Units and youth justice partners, where greater alignment and synergy could be promoted.<sup>447</sup> Literature highlights the need for more nuanced understandings of risk, vulnerability and agency when working with this age group.<sup>448</sup>

Transitional Safeguarding calls for the children's and adults' safeguarding systems to look to and learn from each other, highlighting how key principles in adult safeguarding could 'arguably usefully be applied' to older children, and vice versa.<sup>449</sup> 'Drawing down' some elements of safeguarding adults such as a focus on participation and empowerment may be more suitable for older children and have the potential to smooth transitions, while 'drawing up' elements of the children's systems, for example where innovative Contextual or Complex Safeguarding approaches are being applied, could make adult safeguarding services better able to meet young adults' needs.<sup>450</sup>

The literature also calls for the safeguarding system to look to and learn from several initiatives and innovative approaches to safeguarding adolescents. For example, some mental health and SEND services are taking a more transitional approach and extending support beyond 18,<sup>451</sup> some local authorities are forming new multi-agency approaches to protecting young people from serious violence,<sup>452</sup> and multiple children's and adults' safeguarding services are taking a more contextual and transitional approach.<sup>453</sup> The literature highlights system changes are required to facilitate new approaches,<sup>454</sup> and the Department for Education acknowledges work needs to be done to identify and spread good practice.<sup>455</sup> The Innovate Project is exploring innovative practices like the use of trauma-informed practice, Contextual Safeguarding and Transitional Safeguarding, to build an evidence base and create frameworks for developing new approaches.<sup>456</sup>

Other solutions in the literature focussed on improving the experience of young people at risk transitioning into adulthood include the Care Review highlighting the need for a 'more dogged approach' to building relationships and encouraging young people to engage with services<sup>457</sup> and a bespoke child protection plan for criminal exploitation which the government has said it will pilot.<sup>458</sup> Commentators have called for all 16 and 17-

year-olds referred to children's services to receive a holistic assessment of needs to prevent harms escalating and persisting into adulthood, with transition planning for Children in Need and those on Child Protection Plans made a statutory requirement.<sup>459</sup> Regarding care leavers, the literature has proposed extending the leaving care age beyond 18,<sup>460</sup> and called for a named support worker with more flexibility to support young people leaving care during and after transition,<sup>461</sup> which could help a young person in the criminal justice system navigate a number of changes.<sup>462</sup>

### *Improving the criminal justice response*

Bridging the gap between the criminal justice system and safeguarding systems is an important solution cited in the literature for preventing the criminalisation of victimisation, including criminal exploitation.<sup>463</sup> Better integration of social care and criminal justice becomes twice as important for young people transitioning into adulthood, who are also at risk of falling through gaps between child and adult systems. However, the Public Accounts Committee highlights a reluctance in government to provide strategic leadership to address the fragmented policy landscape to address the needs of vulnerable adolescents that overlap mental health, education, care and criminal justice systems.<sup>464</sup>

In addressing the response to criminal exploitation, inspectorates and other commentators have highlighted the need for a significant shift in culture among police and other justice professionals, like that seen previously in relation to child sexual exploitation.<sup>465</sup> Charities have called for a statutory definition of child criminal exploitation to improve shared understanding of what amounts to criminal exploitation and reduce the risk of arrest and prosecution, noting that while the proposed definition applies to children, work needs to be undertaken alongside this to ensure the vulnerability of 18-25-year-olds is recognised.<sup>466</sup> The Child Safeguarding Review Panel has called for a review examining whether the NRM is an effective mechanism for identifying criminal exploitation of children and protecting them from prosecution, examining practitioner awareness of the NRM, consistency in decision-making, and the impact of positive decisions.<sup>467</sup> Ultimately, commentators have argued that the most feasible way of preventing the criminal exploitation of young people for drug distribution, and therefore reduce their criminalisation as a result, is to legalise drugs.<sup>468</sup>

## **Racial injustice and the transition to adulthood**

Racially minoritised young people in the criminal justice system face cumulative disadvantage, and understanding their experiences of transition is critical in seeking to address this. Disparities in the youth justice system and wider society mean racially minoritised children are disproportionately more likely to experience a transition into the adult justice system in comparison to their White counterparts. This not only means general issues around transitions will disproportionately negatively impact racially minoritised young people, but also the factors that influence racial disparities are likely to

persist, or be exacerbated, as a child progresses into adulthood, and impact their perceptions and experiences of criminal justice and their outcomes. Despite this, there is a dearth of literature examining the experiences of racially minoritised children transitioning to adulthood while in contact with the criminal justice system.

### **Disproportionately likely to experience transition**

Black, mixed heritage, and Gypsy or Irish Traveller children in particular are

overrepresented across the youth justice system, from first contact with police through to custody.<sup>469</sup> Racially minoritised children face discriminatory policing,<sup>470</sup> disparities in access to diversion,<sup>471</sup> and early help services,<sup>472</sup> and institutional racism impacts criminal justice processes and outcomes.<sup>473</sup> Black children in particular receive harsher sentences compared to White children for the same offences.<sup>474</sup>

From a young age racially minoritised children are disproportionately at risk of experiencing a 'school to prison pipeline'.<sup>475</sup> Gypsy, Roma and Traveller and Black Caribbean children are the demographics at greatest risk of school exclusion<sup>476</sup> and are overrepresented in pupil referral units,<sup>477</sup> where education outcomes are far lower than mainstream education,<sup>478</sup> and children are at increased risk of exploitation and feeling socially excluded and disillusioned from the belief that safeguarding and educational systems are there to help them.<sup>479</sup> An HMI Probation thematic inspection found 60% of Black and mixed heritage boys on YOT caseloads had been excluded.<sup>480</sup>

This means that racially minoritised children are disproportionately likely to transition to adulthood while in contact with the justice system and experience the cliff edge explored in this evidence summary. It also means that prior to turning 18, they are more likely to have missed out on the structural safeguarding and educational opportunities available in mainstream education,<sup>481</sup> and are more likely to be transitioning from a point of greater societal vulnerability and disadvantage.<sup>482</sup>

### **Less likely to be appropriately supported through transition**

A number of factors that influence a racially minoritised young person's entrance to and experiences of the criminal justice system interact to impact access to suitable support before, during, and after transition. Support that bridges the gap at 18 can be critical in helping to smooth transitions,<sup>483</sup> and as such if racially minoritised young people receive less support at this time, this may make transition to adulthood an even more tumultuous time, potentially leaving them at

greater risk of increased vulnerability and continued involvement in criminal justice system.

### **Adultification**

Black children are most likely to be on the receiving end of racial discrimination known as adultification bias due to interacting racial and perceptual factors and stereotypes.<sup>484</sup> Adultification bias is when perceptions of a child's inherent 'innocence and vulnerability' are not allotted to certain children.<sup>485</sup> A 2021 thematic inspection into the experiences of Black and mixed heritage boys on YOT caseloads found evidence of adultification.<sup>486</sup> The recent case of Child Q, in which a Black child was strip searched within her school by police officers without an Appropriate Adult present<sup>487</sup> and asked to undergo intrusive checks whilst menstruating,<sup>488</sup> has raised more widespread attention to the issue of adultification and the disproportionate impact that adultification has upon Black children's interactions with the police<sup>489</sup> – with recent data obtained by the Children's Commissioner for England highlighting that 58% of all boys strip searched by the Metropolitan Police between 2018-2020 were Black.<sup>490</sup> Other serious cases such as the murder of Child C, a victim of criminal exploitation, also raise concerns about professional and societal perceptions of Black boys, and the need to consider adultification and intersectionality.<sup>491</sup>

The literature raises concerns that adultification can mean Black children in particular are considered more culpable for their actions than their peers, and concerns are raised about the resulting implications for the provision of safeguarding and support services whilst child-centred services are available to them.<sup>492</sup> As set out by HMI Probation: 'If practitioners attribute inappropriate maturity to a child, then their difficulties with or anxieties about engaging with services, which are not unusual given their young age, are more likely to be interpreted as 'choosing not to engage' or not wanting help.' – this is particularly concerning given the report goes on to state these children 'often don't know they need help, or, if they do, they don't know what it looks like until they receive it.'<sup>493</sup> An informal process of transition occurs whereby adultification bias

shapes Black and mixed heritage children's interactions with the systems around them, meaning that they are prematurely transitioned into being responded to with 'adult'-appropriate protocol, and by being excluded from child-centred procedures and provisions that may well have been offered to non-racially minoritised peers.<sup>494</sup> This lack of support can lead to contact with and escalation through the criminal justice system.<sup>495</sup>

### Trust and confidence

Racially minoritised children are more likely than White children to have had experiences with the justice system that reduce their trust in criminal justice and consequently their levels of engagement with services.<sup>496</sup> Children and young people report policing, for example, to be 'overwhelmingly racist', and highlight the long-term lack of trust that racist policing incites in the wider justice system.<sup>497</sup> This lack of trust is historic<sup>498</sup> multi-generational,<sup>499</sup> and rooted in generational trauma.<sup>500</sup>

The impact of a lack of trust in advice being received or in the fairness of the justice system can be seen with regards to disparities in access to pre-court disposals (where admission of guilt is often required), and in plea decisions, where the severe consequence is racially minoritised people receiving harsher criminal justice outcomes.<sup>501</sup> Critically for transitions, literature raises concerns that lack of trust and confidence in the justice system has significant implications for the levels of support and intervention young people receive, as children may be hesitant to engage with services or share information about their needs.<sup>502</sup>

Issues of mistrust may originate in childhood and persist and harden into adulthood.<sup>503</sup> Trust in the police for racially minoritised young adults, for example, remains lower than for their White counterparts, often rooted in their experiences of stereotyping by the police,<sup>504</sup> and evident across all justice agencies.<sup>505</sup> This ongoing lack of trust in the justice system as young people enter the adult justice system<sup>506</sup> is likely to impact their engagement with the new systems they're transitioning into.

### Lack of specialist and culturally competent services

Racially minoritised children transitioning into the adult justice system may lose out on critical, specialist support in the window in which they should have access to it due to a lack of appropriate services. Across the criminal justice system the literature raises concerns about a lack of diversity and cultural competency (the ability to understand and effectively interact and develop relationships with people from different cultures<sup>507</sup>) in the workforce, and the impact this has on the system's ability to understand and respond to the needs of racially minoritised young people.<sup>508</sup> Research by HMI Probation highlights a lack of suitable mentors for Black and mixed heritage boys on YOT caseloads, for example.<sup>509</sup> However, research also highlights assumptions being made about the support Black boys and young men need, with professionals being quick to turn to mentors or 'gangs' services rather than actually considering individual needs, experiences and relationships.<sup>510</sup>

Black and mixed heritage boys report facing a number of challenges 'specific to their ethnicity' that are 'not widely discussed or addressed' by their YOT, and few feel the programmes and interventions they are accessing meet their needs.<sup>511</sup> Likewise a thematic inspection on race equality in adult Probation highlights a lack of consideration and confidence among staff and an urgent need to 'reset and raise the standard of work' with racially minoritised people.<sup>512</sup> Black and racially minoritised girls and young women are even less likely to have experienced appropriate provision as they are minoritised on account of their age, race, and gender.<sup>513</sup>

Shortcomings in support being provided by the formal criminal justice system makes support from the voluntary and community sector (VCS) particularly important for racially minoritised young people in transition. Literature highlights the 'extraordinary' significance of the VCS – particularly when led by the communities with whom they work - in providing situationally relevant specialist support to racially minoritised children and young adults in contact with the justice system and aiding in desistance from crime, including due to the sector's unique

placement to 'reaffirm cultural identities', and ability to identify and address experiences of discrimination.<sup>514</sup> However, literature suggests that third-sector provision that is tailored to the needs of racially minoritised individuals has been particularly hard-hit by the recent, more hostile funding environment.<sup>515</sup>

Research by HMI Probation raises concerns that substantial funding cuts and the subsequent loss of youth and community services has created significant barriers to access to 'informal support provided by trusted adults within the community' and is having a 'highly significant' impact on Black and mixed heritage boys coming into contact with the justice system.<sup>516</sup> Smaller organisations working with racially minoritised groups have cited feeling 'excluded from bidding for funding due to bureaucratic and complex processes'.<sup>517</sup> Clinks annual 'State of the Sector' survey results examining trends in the VCS working in criminal justice indicate that 7% of organisations that took part have a 'main purpose...to provide services for racially minoritised people' and 15% provide 'a specific service for racially minoritised people as part of a broader remit'.<sup>518</sup>

HMI Probation found 'few services' specifically for Black and mixed heritage boys have been commissioned to work with YOTs, with 'good-quality' specialist services 'the exception rather than the rule'.<sup>519</sup> Even where VCS organisations are commissioned, practitioners were not always aware of them meaning they were 'not routinely used', and often as an 'add-on' to other interventions.<sup>520</sup> Less than a quarter of staff surveyed by HMI Probation said they always have access to the right services to meet the needs of Black and mixed heritage boys.<sup>521</sup> The research highlights organisations such as Wipers that have been commissioned by one YOT to run workshops specifically for racially minoritised young people in contact with the justice system – yet this targeted provision is rare.<sup>522</sup>

In response to the Lammy Review, HMPPS stated its intention to 'increase opportunities for specialist Black, Asian and minority ethnic organisations from the voluntary, community and social enterprise sector to innovate and deliver services' to support rehabilitation.<sup>523</sup> However, a 2021 thematic inspection on race equality in Probation found that 'links with

ethnic minority community organisations are poor', and 'organisations that can provide culturally appropriate services are rarely commissioned'.<sup>524</sup> A Race Equality in Probation action plan was published in response,<sup>525</sup> and HMI Probation notes the creation of national commissioning support roles to facilitate representation of small VCS organisations, and a national and regional register of organisations supporting racially minoritised people.<sup>526</sup> The extent to which these changes have successfully enabled specialist VCS organisations to support young adults on Probation is as yet unclear from available evidence.

### **Facing barriers to desistance**

The Ministry of Justice highlights that in 2020, for Black, Asian, and Other ethnic minority adults, reoffending rates were highest for those aged 18-20.<sup>527</sup> While several complex factors may impact reoffending rates, this statistic could in part demonstrate a detrimental impact of disparities in access to and engagement with services on racially minoritised young adults' rehabilitation from the justice system.<sup>528</sup>

Although there is a dearth in literature exploring the desistance of racially minoritised young adults from a transitional perspective, there are several disparities in the childhood experiences of racially minoritised young people that may make it harder to move on from the criminal justice system as they transition into adulthood. Crucially, racially minoritised young people face ongoing systemic issues of oppression and racism both inside and outside of the criminal justice system<sup>529</sup> which impact their day-to-day interactions and experiences, and, literature notes, may block pathways to desistance.<sup>530</sup>

Black Caribbean and Gypsy Roma Traveller children are disproportionately excluded from school, and once children have entered into the criminal justice system evidence shows significant deficits in educational provision in the community and in custody.<sup>531</sup> There therefore exists an attrition of opportunities to catch up on education as children progress in the justice system, and this may exacerbate challenges in distancing from the justice

system and reducing the 'cycle of reoffending' as they transition into adulthood.<sup>532</sup> For racially minoritised children in custody, their disproportionate representation and placement in Young Offender Institutions<sup>533</sup> - the facility in the secure estate with the lowest quality educational provision<sup>534</sup> - could result in this educational disadvantage being exacerbated as they transition into the adult estate (a period in which educational provision is also significantly reduced).<sup>535</sup> A lack of disaggregated data on the learning needs and educational outcomes of racially minoritised children or young adults creates difficulties in presenting how the disruption and continued attrition of education impacts racially minoritised young people's rehabilitation from the justice system post-transition. However, racially minoritised individuals in the adult estate have highlighted 'unfair [disadvantaged] access to jobs' in relation to their ethnicity as having a critical impact upon their rehabilitation.<sup>536</sup> Racially minoritised adults in custody were more likely than the White adult custody population to feel that education undertaken in custody would 'help them' upon their release and had a 'strong appetite' for prison education – but were less likely to say that custody staff had 'encouraged them to engage in education' and were more likely to feedback needing help to find education and employment upon release than their White counterparts.<sup>537</sup>

Black and mixed heritage boys on YOT caseloads commonly have 'high levels of unmet needs' including multiple adverse childhood experiences and mental health concerns, which have 'not always been identified or properly addressed' prior to contact with the justice system.<sup>538</sup> YOTs report they are more likely than other groups of children to have an education, health and care plan, and to have unidentified or unaddressed SEND.<sup>539</sup> Literature highlights that Gypsy Roma and Traveller children are more likely to suffer mental and physical ill health, have SEND, and be taken into care compared to the general population,<sup>540</sup> and these disparities are born out in the justice system with Gypsy Roma and Traveller children in custody significantly more likely to report health and mental health problems and having been in care.<sup>541</sup> Literature on Black and racially minoritised girls and young

women sets out evidence of harsher treatment across a number of systems including education, healthcare and criminal justice, and a failure of services to provide appropriate support.<sup>542</sup> This evidence raises concerns that racially minoritised young adults may have transitioned into adulthood with significant unmet needs and vulnerabilities, and these may become entrenched, hampering efforts to desist from crime.

### **Cumulative and compounding effects into young adulthood**

Not only do racial biases and deficits in support risk a greater number of racially minoritised children remaining, and therefore transitioning, in the justice system – but these issues of discrimination, exclusion and disengagement may compound the impacts of cliff edge transitions, and persist into the adult justice system. There is scarce literature exploring this.

The youth justice system – in which greater emphasis is placed on safeguarding and intervention<sup>543</sup> - represents the window in which most people are allotted a more welfare-based and person-centred approach in their contact with the justice system. Yet racially minoritised young adults may not have had equitable and appropriate support and sanctions as children, and carry feelings of having been systemically 'singled out' and 'targeted' by the youth justice system.<sup>544</sup> Whilst young adults are already made more vulnerable by a transition into the adult justice system, and require extra support,<sup>545</sup> racially minoritised young people may be navigating transition from a point of greater disadvantage and unmet need, and having less trust and engagement in rapidly diminishing, and progressively more punitive, services.<sup>546</sup> This not only carries the potential to exacerbate the impacts of the drop in support and shift in responsibilities for all young people at 18, but also has implications for the support the adult system must provide to redress this.

### **Solutions**

Across the literature on the criminal justice system many recommendations are made around addressing racial injustice in the system overall, including around improving

trust and confidence in the justice system, creating a diverse and culturally competent criminal justice workforce, improving data and understanding of disparities, holding racially biased decision making to account through improved monitoring and oversight, and addressing the systemic disparities and social harms that disproportionately impact racially minoritised young people and can lead to criminal justice involvement.<sup>547</sup>

To address racial bias and improve racially minoritised young people's trust and confidence in the justice system literature highlights the need for accountability and acknowledgement of racism at an individual, institutional and systemic level,<sup>548</sup> and for diversity, cultural competency, and anti-racism training to be embedded 'in the field' with community and youth work, and for all those working in criminal justice services.<sup>549</sup> Literature highlights that Black and mixed heritage boys in contact with the youth justice system value workers who are interested and non-judgemental,<sup>550</sup> and that improving the cultural competency of services would give racially minoritised children stronger more trusting relationships with staff and could increase their trust in public services moving forward.<sup>551</sup> In line with this evidence, the current pilot of a 'Transitions to Adulthood' hub in London, which aims to meet the 'distinct' needs of young adults as they transition into the adult justice system, will prioritise cultural competency training for staff to 'respond to cultural differences' and develop the 'ability to work with young adults from diverse communities'.<sup>552</sup>

The literature highlights an urgent need for the consistent presence of grassroots, voluntary sector services in the lives of racially minoritised young people.<sup>553</sup> These

services are best placed to meet their particular needs and maintain their trust in the justice system as they prepare to transition, and give them the foundational support and incite their engagement and trust moving forward.<sup>554</sup> The critical role of the voluntary, grassroots sector in providing specialist, trauma-informed mentorship and support to racially minoritised children must be acknowledged and utilised<sup>555</sup> to reinforce their trust and engagement not just in the criminal justice system but in other areas where they have been let down such as the education system, to prevent sustained disadvantage before they transition into the adult justice system.<sup>556</sup>

HMI Probation sets out the need for services working with Black and mixed heritage boys in contact with the justice system to 'understand their experience, be relatable and...[have] the right level of skill to help'.<sup>557</sup> The inspectorate's findings embody the need for the work of the voluntary sector to be embedded into the support provided to racially minoritised children 'from the beginning'.<sup>558</sup> The inspectorate recommends that YOT managers should address gaps in specialist provision, ensuring that they are either commissioning community third-sector services or delivering tailored support in-house.<sup>559</sup> To ensure that this specialist provision is accessible and sustained, Clinks recommends the commitment of long-term grant funding to voluntary organisations – particularly those led by racially minoritised individuals and communities.<sup>560</sup> The Young Women's Justice Project recommends distinct funding streams for, and the commissioning of, community-based services led by and for Black, Asian and minoritised women and girls.<sup>561</sup>

## Looking holistically at transitions

There are numerous additional experiences or circumstances common among young people in contact with the justice system that impact their transition into adulthood. Identifying these factors and understanding experiences of transition in this broader context where multiple other services may be

changing at once is important given that without acknowledgement, research and policy reform, these factors could disrupt a young person's engagement and development within the criminal justice system as they transition, and increase the likelihood of reoffending, communication

barriers, or further traumatisation. Given the multiple and complex needs prevalent among young people in the criminal justice system, it is particularly concerning that research finds multi-agency working is disjointed and poorly coordinated,<sup>562</sup> increasing the risk that a young person facing multiple transitions inside and outside the justice system will experience significant gaps in support. Research by the AYJ and Agenda Alliance on transitions for girls in the justice system, who are particularly vulnerable and therefore may be likely to be accessing more services that are changing at 18, highlight young women describing the overall experience as 'a massive gap, where they've probably gone from having loads of support... to having absolutely nothing'.<sup>563</sup> The critical impacts of young people transitioning out of children's safeguarding services or becoming care leavers are explored elsewhere in this evidence review.

## **Mental Health**

Children in the justice system disproportionately suffer with mental health issues compared with the wider population.<sup>564</sup> YOT practitioner assessments show 72% of sentenced children have mental health needs.<sup>565</sup> Upon turning 18, young people accessing mental health services are generally discharged from Children and Young People's Mental Health Services (CAMHS). Those over 18 may access Adult Mental Health Services (AMHS), or can be directed to support via their GP, but adult statutory services have higher thresholds for access and provide different levels of support, resulting in disruptive transitions and depleted or entirely removed services.<sup>566</sup>

One study found that during the transition over 40% of young people who had been accessing CAMHS were either not referred to or not accepted by AMHS, and of those who transitioned just 5% experienced smooth transfers with continuity of care.<sup>567</sup> The age thresholds for children's mental health services can also vary between regions,<sup>568</sup> potentially causing a postcode lottery of where young people might receive more in-depth mental health aid further into their 'adult' years.

Literature raises concerns that mental health services remain ill equipped to provide appropriate support for young people in transition while in contact with the justice system: in 2015, just 17% of mental health trusts identified children in the youth justice system as being a vulnerable group in their transitions policies.<sup>569</sup> Likewise, the justice system appears ill equipped to meet young people in transition's mental health needs. Case management guidance sets out the role of YOTs in managing the transition of a child in need of mental health support,<sup>570</sup> and for children in custody, guidance sets out that additional support needs such as mental health should be considered by establishments transitioning young people.<sup>571</sup> However, in both the youth and adult justice systems, literature raises concerns about failures to provide adequate support.<sup>572</sup> For children in the youth justice system, research has concluded provision of mental health services to be inadequate,<sup>573</sup> and recommendations embody the need for more comprehensive screening and assessment for mental health to prevent unmet mental health issues or neurodevelopmental needs from remaining unaddressed and persisting, or being exacerbated, as a child progresses into the adult justice system.<sup>574</sup> For those transitioned into adulthood, research highlights mental health needs are being neglected at every stage of the adult justice system,<sup>575</sup> and recommendations embody the need for better joint working, more consistent identification and screening, clinical mental health assessments, and better prioritisation, training and awareness-raising among staff.<sup>576</sup>

## **Neurodivergence and SEND**

A disproportionate number of children and young people in the youth justice system have neurodivergent conditions or SEND needs in comparison to those in the wider population.<sup>577</sup> For example, YOT practitioner assessments show 71% of sentenced children have speech, language and communication needs.<sup>578</sup> Of individuals who had received a custodial sentence by age 23-24, 80% had been identified as having SEND at some point during school.<sup>579</sup> This has implications for their experiences in the youth justice system, and of transition to adulthood

and their interaction with the adult criminal justice system at large.

Department for Education and Department for Health code of practice for young people with SEND covers the age 0-25 and is clear that there should be flexibility and no cliff edge in support at 18.<sup>580</sup> Young people with SEND will continue to have various levels of support post-18.<sup>581</sup> For example, Education, Health and Care Plans (EHCP) can continue until a young person reaches 25, depending on the support deemed necessary and the achievement of education outcomes.<sup>582</sup> Local authorities must set out provision for those with SEND aged up to 25, regardless of whether there is an EHCP in place or not.<sup>583</sup> Young people with EHCPs up to age 25 can in some circumstances remain in children's social care.<sup>584</sup> Even still, a young person with SEND transitioning into adulthood will often be experiencing various transitions between child and adult health and mental health services, and between child and adult social care.<sup>585</sup> Given the different thresholds and levels of support explored in this evidence review, young people with SEND may see significant and destabilising changes or drop offs in care at this stage.

The literature raises concerns that a neurodiverse young person or young person with SEND transitioning into the adult justice system will enter a system that is not designed to meet their needs.<sup>586</sup> Concerns persist that there are insufficient 'suitably adapted rehabilitation programmes and options for people with neurodiverse conditions within the criminal justice system'<sup>587</sup> and that EHCPs are often not well comprehended by relevant staff, and Probation services often do not receive them from YOTs.<sup>588</sup> Inspectorates highlight 'difficulties for those with neurodivergent conditions at every stage in the criminal justice process', 'inconsistent assessments and staff training and knowledge', and 'failures to transfer or share relevant information at every stage'.<sup>589</sup> Support and understanding of SEND that was available to children in the justice system may no longer be available to young adults.<sup>590</sup> For example in police stations, children are entitled to a delegated appropriate adult to facilitate good communication and safeguarding checks,

ensuring better understanding and engagement which can impact justice outcomes.<sup>591</sup> For adults, this aid is only provided in exceptional circumstances relating to the detainee's perceived mental vulnerabilities or disorders.<sup>592</sup> Research highlights this represents a significant erosion of support, given that only a fraction of adults with SEND are identified by police officers as being 'vulnerable' and therefore requiring an appropriate adult.<sup>593</sup>

Disparities may also exist between the treatment of young people with SEND in the general population compared to those in the justice system. For example, when a child in the general population transfers into adult SEN services, their EHCP and SEN information is passed to the adult provision; young people under 19 have the right to request assessment to receive an EHCP.<sup>594</sup> However, once a young person is placed in the adult estate, the SEN duties in the Children and Families Act 2014 no longer apply.<sup>595</sup>

The adult justice system can learn from the systems and training underlying the functions of YOTs, since literature suggests that, whilst there is still a need for further development in understanding and skills related to the SEND and neurodiversity needs of children in contact with the justice system, YOT workers feed back a greater understanding of these factors than Adult Probation workers.<sup>596</sup> Furthermore, whilst there is a discrepancy in the support and services received by SEND young adults in comparison to SEND children, a greater amount of services are carried through into adulthood than for other provision, particularly in comparison to the cliff edge in the criminal justice system. The criminal justice system can learn from this relative continuity of SEND care past the age of 18.

### **Substance misuse**

Children and young people in contact with the justice system are disproportionately susceptible to issues relating to substance misuse.<sup>597</sup> YOT practitioner assessments show 76% of sentenced children have substance misuse needs.<sup>598</sup> Evidence on treatment services for children transitioning into the adult justice system is dated, however

a 2010 Joint Inspection of Youth Alcohol Misuse and Offending highlights challenges in executing smooth transitions between YOT substance misuse workers and secure establishments, and adult alcohol facilities.<sup>599</sup> The report cites ‘adult oriented’ rehabilitation services being used to attempt to engage young adults during the transition period, resulting in impaired engagement due to services being inappropriately tailored to the particular needs of the age group.<sup>600</sup> In recent years, austerity cuts and withdrawn investment to Probation services has led to a ‘significant shift in resources’ for substance misuse treatment services for adults,<sup>601</sup> which may have accentuated difficulties highlighted in the 2010 report.

In 2021 the government released a 10-year drugs plan ‘to cut crime’, which highlights drug use among children and young adults as particularly concerning, stating ‘since 2012 there has been an increase in the proportion of 16-to 24-year-olds’ reporting drug use. Despite this, while there is a welcome focus on support for children and their distinct needs, the plan does not set out specific provisions tailored to young adults.<sup>602</sup> Solutions in the literature highlight the need for adult substance misuse treatment services to identify and adapt to the needs of young adults, which differ from that of the wider adult population,<sup>603</sup> and ensure the consistency and continuity of treatments between youth and adult services.<sup>604</sup>

## Gaps in the evidence base

While there are clear lessons that can be gleaned from the literature regarding the experiences of young people in transition in the justice system, there is an overall gap in evidence exploring the experience of transition as a whole, and a lack of youth voices being supported to tell their stories. An AYJ and Agenda Alliance policy briefing as part of the Young Women’s Justice Project aimed to plug this research gap specifically for girls.<sup>613</sup> Data is not available on the numbers or characteristics of children turning 18 and undergoing the transition into the adult

## Accommodation

Half of sentenced children have concerns about accommodation flagged by YOT assessments.<sup>605</sup> Young people with care experience are particularly likely to be facing urgent housing needs.<sup>606</sup> Homelessness – or a lack of suitable accommodation – is a large barrier to young people transitioning into adult services.<sup>607</sup> For young people transitioning into the adult justice system, issues such as frequent changes in accommodation,<sup>608</sup> homelessness or unsuitable housing<sup>609</sup> can increase vulnerability to criminal exploitation or contact with the justice system.<sup>610</sup>

Until the age of 18, children’s services and the housing department are required to help find secure accommodation such as emergency housing, and help with living costs, where needed – which, until children turn 18, renders children using these services ‘looked after’. Except in cases in which the young person is a care leaver, only over-18s at risk of, or experiencing, homelessness, and who meet specific criterion such as being categorised as a ‘priority need’ due to being vulnerable or pregnant are eligible for housing provision.<sup>611</sup> Once in the adult system, young people can also be met with large challenges in accessing accommodation upon their release from custody, which can force them back into cycles of violence, exclusion, and exploitation.<sup>612</sup>

justice system, or the number of other services they are accessing at the time where they may also be experiencing transition.

Research gaps on the YOT to Probation transition may be addressed by the thematic inspection due to take place in 2023-24 on young adults on Probation and the transition.<sup>614</sup> This should include a focus on how the experiences of different groups of young people differ, such as racially minoritised young people, girls and young women, those with SEND, and care

experience. The thematic will hopefully address the gap in evidence regarding provision both in house and commissioned that is tailored to young adults and provides specialist support to the aforementioned groups, and bring together analysis of the outcomes of approaches being adopted in some services such as young adult teams.

Given current policy interest and changes around keeping 18-year-olds in the youth justice system,<sup>615</sup> evidence is needed on how many young people currently remain in YOTs beyond their 18th birthday, and their experiences compared to those who transition to Probation. Evidence must be gathered on how the increasing number of 18-year-olds to be kept in the children's secure estate impacts those young adults, as well as the children in the establishment.

Information is not available on which establishments young people in the children's secure estate are transitioning into. Until evaluation is published comparing where outcomes are best for young adults in custody, whether that be in designated young adult YOIs, the general adult estate, separate wings, sites co-situated with children's YOIs, for example, the best policy direction is difficult to determine. This research should consider the approaches adopted in other jurisdictions. Considering the proportion of children on increasingly long custodial sentences, research is needed on the steps being taken by both the children's and adult secure estates to support these young people to reach key milestones, prepare for transition and lengthy stays in the adult estate, and how resettlement practice takes the experiences of adults who entered custody as children into consideration. The increasing proportion of children in custody on remand also increases the urgency with which the complete dearth in evidence on the experiences of young people on remand who turn 18 must be addressed.

The literature highlights promising innovation around approaches to safeguarding young people at risk of extra-familial harm, and a national overview of this work would assist in the identification and spreading of good practice. Despite growing concerns about criminal exploitation, very little information is available on the prevalence of NRM referrals among children and young adults in the justice system, how these referrals are dealt with upon transition to adulthood, and how successfully they are preventing the criminalisation of young people, including whether there are disparities in the groups of young people being supported. There is a lack of exploration around whether young adults who have been victims of exploitation themselves are being criminalised for exploitation offences.

While thematics on Black and mixed heritage boys in the youth justice system and race equity in Probation are welcome, and Barrow Cadbury Trust has supported research on racially minoritised young adults,<sup>616</sup> there is a gap in evidence exploring the experiences of racially minoritised young people in transition. Research on adultification bias has in large focussed on the safeguarding system and this lens of research could usefully be applied to examining disparities in criminal justice interventions, sentencing and the approach of justice services. Given the deficits in appropriate support being accessed by racially minoritised young people in transition identified in this evidence review, more attention is needed around how to improve support, what it should look like and who is best placed to provide it. Considering the importance of the voluntary and community sector led by and focused on racially minoritised people in being able to provide trusted, tailored support, more evidence is needed on how these organisations are being funded, commissioned, and supported to support young people in transition in the justice system.

## Conclusion

Despite gaps in the evidence base on the experiences of children in the criminal justice system transitioning into adulthood, it is resoundingly clear that around the age of 18 young people encounter a steep cliff edge. The sudden shift in expectations and approach of the systems around them, and the substantial drop off and lack of continuity of support, is too often based on binary measures of age rather than on needs. This arbitrary age barrier is out of step with evidence on maturity and vulnerability and is failing young people at a critical time for desistance and preventing needs becoming more complex and entrenched. A recurring theme across the literature, not just for the criminal justice system but many of the systems surrounding young people at this age, sets out how this cliff edge exacerbates vulnerabilities, leaves young people at risk of harm, and makes it harder for young people to move away from crime.

This is a particularly destabilising time for any young person in the criminal justice system, but the prevalence of vulnerabilities including mental health needs, neurodiversity, experiences of the care system, violence, and exploitation increases the risk of young people falling through gaps. Young people in the justice system are typically facing layers of marginalisation and disadvantage, and as layers of support are removed at 18, experiences of poverty, social exclusion, gendered inequalities and racial disparities and injustices will compound the impacts of the youth to adult justice system transition. Understanding how young people's experiences will differ due to intersecting experiences of discrimination and structural disadvantage is particularly critical at the point of transition, when so many aspects of a young person's life may be changing, creating huge disruption. This necessitates taking a broad view of transition, looking beyond the criminal justice system, and ensuring a joined-up approach in policy and in practice.

While there is a welcome increased recognition in policy of the vulnerability of young people as they transition into adulthood, there is a long way to go to improve outcomes. With services too often designed for younger children or older adults, older children are missing out on vital support, and a lack of distinct provision for young adults in many cases means young people transitioning into the adult system are being set up to fail. A resource-constrained and punitive policy environment that too often adultifies young people and fails to recognise the overlap between victimisation and offending, and a lack of cross-government work for people in the justice system, creates significant barriers in improving the response to young people in transition.

The evidence presented in this review builds consensus for reimagining the approach to transition into adulthood, from proposals for extending support children are entitled to from a range of agencies up to 25,<sup>617</sup> to allowing young people who turn 18 to remain in the youth justice system.<sup>618</sup> There is plenty to learn from good practice, innovations, pilots and different approaches taken to transition across justice systems and wider support systems, both domestically and abroad. Likewise, lessons need to be learned in the adult justice system on the more needs-based and holistic approach taken to children in contact with the law. To harness this knowledge, more research and evaluation is needed, to develop the evidence on effective approaches to transition and the impacts on children and young adults.

Across the piece there is a clear need for smoother transitions and more age-appropriate support that is sensitive to the prevalent and intersecting needs of young people. Here, the voluntary and community sector can play a critical role - bridging the gap between childhood and adulthood, providing specialist support, and creating a degree of continuity at such unsettling times.

Please note the contents of this report do not necessarily reflect the views of all AYJ members

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