

# Young Adults Member Guidance

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## Document History

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## 1. Introduction

1.1 This guidance focuses on information and advice concerning parole reviews for young adults aged between 18 and 21 (inclusive). This distinct group of prisoners, who are still in the process of maturing and who are often vulnerable, deserves particular attention during the parole process.

1.2 The term “young adult” is applied at the point the Secretary of State refers the case to the Parole Board. This can mean that, by the time a parole review is convened, a prisoner classed as a young adult may have reached age 22. In any case, much of this advice can be applied to older prisoners in an age group up to 24/25 or beyond because they can still be maturing in neurological and psychosocial modes. The guidance can also be applied in cases where offences were committed by children or young adults up to age 25 who have now reached adulthood.

1.3 The guidance refers to relevant legislation but focuses on the Board’s policies and on best practice to help ensure procedural fairness for this cohort. It offers practical advice to panels at the Member Case Assessment (MCA) stage, when setting Panel Chair Directions (PCDs) for oral hearings, and when acting as Duty Member. It also addresses best practice for a young adult’s oral hearing.

1.4 Panels may wish to consult other guidance, including both the *MCA Guidance* and the *Oral Hearing Guidance*, as needed. Separate guidance on children is currently being revised and will be available on *Sharepoint* in due course. Hyperlinks to other guidance will be included on their first appearance but not in subsequent mentions.

1.5 Annexes to this guidance set out supporting information and specific situations which may confront a panel. Links to the annexes can be found in the contents page and section seven but not from every mention.

1.6 The text of this guidance has benefitted from submissions by the Howard League for Penal Reform; the Youth Justice Board; and advice from the Transition to Adulthood Alliance (T2A), an initiative of the Barrow Cadbury Trust which supports research into young adults.

### QUICK REFERENCE: AGES

- For policy purposes, a young adult is formally defined as a prisoner aged 18 to 21 (inclusive) at point of referral by the Secretary of State
- For prisoners in the 21 to 24/25-years old group, this guidance can beneficially be followed because many similar considerations apply
- This is also the case when dealing with prisoners over 25 who committed index offences as a child or young adult
- Parallel guidance is being developed concerning children in the parole system under the age of 18

## QUICK REFERENCE: PRESUMPTION FOR ORAL HEARING

- Parole Board policy is for a *presumption* that an oral hearing will be directed for a young adult between the ages of 18 and 21<sup>1</sup> whenever release on the papers is not possible
- This policy is enlarged upon in the section concerning practice for MCA panels

## 2. Definitions and Age Bands

2.1 This guidance uses the term 'young adult' to refer to a prisoner aged between 18 and 21 (inclusive) at the point of referral by the Secretary of State. While this group (alongside children in custody) may be regarded as being particularly vulnerable, the principles set out here can be applied whenever they are considered relevant to those up to the age of 24/25. Indeed, some prisoners referred by the Secretary of State as 18 to 21-year old young adults will have reached age 22 by the time panels commence a parole review. The same principles can also be borne in mind where the prisoner committed a crime as a child or young adult but is now classed as an adult.

2.2 The terms 'child' or 'juvenile' refer formally to a person under the age of 18 as defined by section 105 of the Children Act 1989. This guidance does not cover children and juveniles.

2.3 Potential overlap when referring to children, adolescents, juveniles, or young adults is recognised. The House of Commons Justice Committee has considered this issue. Details are set out at Annex A of this guidance. In its 2016 report<sup>2</sup> on the treatment of young adults in the criminal justice system, the Committee:

*"...defined adolescence as the period between the ages of 10 and 24 and noted that late adolescence is used interchangeably with young adulthood to refer to a distinctive phase of development occurring between the ages of 18 and 24. These various definitions are reflected in the evidence presented to us, in which several different age ranges are used for 'young adults', while others had a preference not purely to define maturity by age. Nevertheless, the majority referred to young adults as 18 to 24 year olds. There is confusion too in the categorisation of young adults by the Ministry of Justice: for example, they variously define them variously as aged 18 to 20, as 18 to 24, and as 'adults' for different purposes."*

2.4 Although young adults do not enjoy the same level of protection in law afforded to children, it is recognised that they may not attain full maturity on reaching 18 and may be especially vulnerable. In terms of sentencing, the Lord Chief Justice recognised this in the case of Clarke (2018)<sup>3</sup>:

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<sup>1</sup> This policy is currently suspended during COVID-19 arrangements, but the principles can still be applied

<sup>2</sup> Justice Committee "The treatment of young adults in the criminal justice system" Seventh Report of Session 2016–17 HC 169 Published on 26 October 2016

<sup>3</sup> R. v. Clarke [2018] EWCA Crim 185, para 11

*"Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in R v Peters [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101 is an example of its application: see paras [10]-[12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research<sup>4</sup> is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."*

2.5 In addition, Sentencing Council guidance<sup>5</sup> acknowledges that many young people who offend either stop committing crime, or begin a process of desisting from risky behaviour, in their late teens and early twenties. Moreover, severe mental illnesses are strongly associated with adverse childhood experiences<sup>6</sup>. Young adults in custody often have psychological needs or neurological disabilities which may have gone undiagnosed, and which leave individuals vulnerable or open to exploitation.

2.6 With this in mind, the Howard League for Penal Reform and the Transition to Adulthood Alliance have taken the position that 'young adults' are a distinct group and should include individuals up to the age of 25 or beyond.<sup>7</sup>

2.7 This is in line with developments in neuroscience. In December 2011, the view that young adults are still maturing well into their 20s was endorsed by the Royal Society<sup>8</sup>:

*"Neuroscience is providing new insights into brain development, revealing that changes in important neural circuits underpinning behaviour continue until at least 20 years of age.... There is huge individual variability in the timing and patterning of brain development. This could be taken to imply that decisions about responsibility should be made on an individual basis at this stage of development."*

2.8 More information about the science concerning maturation is at Annex B and some causes of disruption to the process are described at Annexes B & G.

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<sup>4</sup> For example: *The Age of Adolescence*: [thelancet.com/child-adolescent](http://thelancet.com/child-adolescent); 17 January 2018

<sup>5</sup> <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles>

<sup>6</sup> <https://academic.oup.com/schizophreniabulletin/article/38/4/661/1870563>

<sup>7</sup> Emanuel, David, Mawer, Claire and Janes, Laura (2021), 'The sentencing of young adults: a distinct group requiring a distinct approach', *Criminal Law Review* 3, 203-217

<sup>8</sup> *Brain Waves Module 4: Neuroscience and the law*, published by the Royal Society, December 2011, Page 13

### **3. Young Adults in the Criminal Justice System**

3.1 Access to a range of court outcomes and support services ceases on a person's eighteenth birthday. This is irrespective of the degree an individual has developed and matured. Additional support and the use of alternative interventions, including restorative justice and Child and Adolescent Mental Health Services (CAMHS), can no longer be formally maintained. There are no specific protections set out in the Equality Act 2010 for young adults. General provisions applying to age are the same as those for all adults.

3.2 The overrepresentation of young adults in the criminal justice system when compared with the general population can generally fuel perceptions of discrimination. The disproportionate balance of people from Black, Asian and minority ethnic (BAME) backgrounds in custody and amongst the young adult cohort exacerbates the potential for feelings of unfairness and perceived discrimination. This issue is discussed in the following section and in Annexes A & C of this guidance.

3.3 In the parole process, the emphasis must remain on fair treatment and use of procedures which can help counter potential bias. Support for improving procedures, taking into account the particular needs of young adults, comes from research into how criminal courts could adapt formal processes to factor in the specific needs of such prisoners. The evidence is that improving the perception of procedural fairness in the courts is likely to reduce reoffending for this cohort.<sup>9</sup>

3.4 Information relating to devolved matters in Wales and consideration for Welsh-speaking young adults is found at Annex J to this guidance.

#### Sentencing

3.5 For children and 18 to 20-year olds, most determinate sentences will have been handed down as sentences to be served in Young Offender Institutions.

3.6 Indeterminate detention is at Her Majesty's Pleasure (HMP) or was imposed as Detention for Public Protection (DPP).<sup>10</sup> Applicable offences are found at section 89 of the Power of Criminal Courts (Sentencing) Act 2000. These sentences of "detention" (rather than terms of "imprisonment") have certain additional elements, including entitlement to seek a tariff review at the halfway point. A sentence of Custody for Life can be imposed on those aged over 18 but under 21 at the time of an offence of murder.

3.7 More information about sentencing can be found in the *Member Guidance on Types of Cases* which can be found by clicking the link or searching on *SharePoint*.

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<sup>9</sup> Centre for Justice Innovation and T2A (2018): *A Fairer Way, Procedural Justice for Young Adults at Court*

<sup>10</sup> The DPP sentence was abolished under LASPO in 2012 but not applied retrospectively

## Location in the prison estate

3.8 There are 14 dedicated Young Offender Institution (YOI) locations in England and Wales and another 23 facilities which share a site in the adult estate. Most young people are held in a YOI catering either for 15 to 17-year olds, or for those from 18 up to their twenty first birthday, though some discretion about this exact cut-off exists. Establishments in the second category can accommodate 15 to 17-year olds, alongside 18-year olds but in separate facilities on site. Prisoners serving indeterminate sentences of detention (rather than determinate periods of youth custody) are also differentiated from other young adults.

3.9 In some instances, a young adult deemed especially vulnerable can be held in a Secure Training Centre or Secure Children's Home beyond the age of 18.

### *Prisoners turning 18*

3.10 For YOI residents, this means that children turning 18 may remain in the same establishment, although they will move to a different wing until they reach the age of 22. Though older than 21, some young adults may remain in an YOI because they have limited time left on their sentence to serve.

3.11 A number of formal transitions may occur around age 18:

- if in the children's secure estate, prisoners may be transferring to the young adult or adult estate
- if under the supervision of a community Youth Offending Team (YOT), they may transfer to the Probation Service whose support is generally less diverse and less intensive
- if in care, a young person may be at the point of moving towards independent living
- eligibility for release on temporary licence (ROTL) may differ depending on the holding establishment.

### *Prisoners turning 22 and beyond*

3.12 The principles found in this guidance can apply to prisoners turning 22 and beyond. For them, additional developments can include:

- the possibility of transferring from a YOI to the adult estate
- the ability to apply to the responsible local authority for a personal adviser if over 21 and up to 25.<sup>11</sup>

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<sup>11</sup> Under previous legislation, local authorities were required to provide care leavers with support from a Personal Adviser until age 21, with that support continuing up to 25 if a care leaver was engaged in education or training. This support was not available to care leavers aged over 21 who were not in education, training or employment. However, the Children & Social Work Act 2017

3.13 This approach recognises research on young adults which shows adult maturity is not necessarily reached as a matter of course at 18, 21 or 24/25 years of age. People develop differently. However, the effects of legislation attenuate beyond 21 and do not necessarily take account of whether an individual is ready to function as a fully independent adult.

#### Supervision in the community

3.14 When a young person reaches 18, supervision in the community transfers from the community Youth Offending Team (YOT) to the Probation Service. Protocols are in place to facilitate this transition<sup>12</sup>.

3.15 However, it is likely that the YOT worker will have the most in-depth knowledge and understanding of the young person and will be involved in providing information for the parole review.

#### HMPPS and PPCS

3.16 HMPPS has dedicated teams focusing on children and young adults as prisoners and dealing with their management, custody, and treatment (see paragraphs 3.8-3.15 above).

3.17 In terms of their parole considerations, the Public Protection Casework Section (PPCS) has specific information on children. However, there is no bespoke guidance for young adults, who, in the main, will be case managed as an adult and will follow the relevant adult Policy Frameworks.

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*introduced a new duty on local authorities to provide Personal Adviser (PA) support to all care leavers up to age 25, if they want it.*

<sup>12</sup> *Joint national protocol for transitions in England – GOV.UK ([www.gov.uk](http://www.gov.uk))*

## 4. Fairness

4.1 Young adults make up a disproportionate sector in the custodial population. As recently calculated, they comprised 16% of those in custody<sup>13</sup> against 9.4% of the national population.

4.2 Generally, Black, Asian and minority ethnic (BAME) individuals of all ages are overrepresented in the criminal justice system, making up 26% of those detained in establishments compared to 14% of the overall population (see the Lammy review, page 3)<sup>14</sup>. BAME young adults are further disproportionately represented in custody among the young adult cohort. Young BAME prisoners often feel they have not been treated fairly in custody and report feelings of discrimination<sup>15</sup>.

4.3 Annex C to this guidance discusses consequences of this imbalance. It also signposts research which points to some tentative but promising approaches for making rehabilitative services more responsive to BAME people's needs. Annex C also outlines some implications for the parole process.

4.4 In countering the risk of bias and the perception of discrimination, oral hearing procedures have value in demonstrating fairness and surfacing some of the barriers met by BAME young adults.

4.5 The judgment in the case of *Osborn, Booth & Reilly* (2013) UKSC 61 concerning the requirement for directing oral hearings established that fairness is a fundamental common law principle. Maturity was a key feature highlighted:

*"In matters of such crucial importance as the deprivation of liberty and where questions arise involving, for example, an assessment of the applicant's character or mental state, the court's case law indicates that it may be essential to the fairness of the proceedings that the applicant be present at an oral hearing. In such a case as the present, where characteristics pertaining to the applicant's personality and level of maturity and reliability are of importance in deciding on his dangerousness, art 5(4) requires an oral hearing in the context of an adversarial procedure involving legal representation and the possibility of calling and questioning witnesses."*

4.6 While the Supreme Court judgment in *Osborn, Booth & Reilly* concluded that considerations of maturity and responsibility have wider application, it follows that they will almost always apply to young adults.

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<sup>13</sup> Prison Reform Trust Bromley Briefing Winter 2019

<sup>14</sup> The Lammy Review *An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* (September 2017)

<sup>15</sup> Bangor University *"Black and Minority Ethnic Boys and Custody in England and Wales* (2018)

4.7 There is now clear evidence that young people's neurological functioning continues to develop until at least the age of 25<sup>16</sup> and many individuals do not fully mature until reaching at least that age. It is, therefore, entirely appropriate and in line with *Osborn, Booth & Reilly* to have a presumption that young adults who are still maturing will almost always require an oral hearing to help ensure fair treatment.

4.8 Since young adults are still maturing, research indicates that there is a greater capacity for change among this cohort. While inflicting violence at a young age may presage higher risks in adulthood, it is also the case that patterns of offending may not be as entrenched amongst children and young adults as they may be for an older prisoner<sup>17</sup>. In terms of fairness, panels should therefore exercise caution when assessing risk of serious harm: they will need to be alive to the capacity for change in young adults and should consider carefully how much weight need be ascribed to past behaviour.

## **5. Practice at the MCA stage**

5.1 Anyone facing a parole review must be treated fairly but children and young adults can present levels of vulnerability and disadvantage which demand particular care from everyone involved in their review. The Board is working to enact as best practice relevant recommendations outlined by the House of Commons' Justice Committee [see Annex A] and to incorporate the lessons and proposals flowing from reputable research. Both these avenues indicate that a distinct approach needs to be taken with young adults in the criminal justice system. Many are still maturing and hence potentially more malleable (to both good and bad influence). Commonly, they have experienced adverse circumstances in childhood and remain generally more vulnerable.

5.2 In practice, the Secretariat's MCA team identifies cases of young adults aged between 18 and 21 (inclusive) at the point they are referred by the Secretary of State. Once they are ready for review, these cases will be allocated, and the status of young adult will be highlighted on the MCA panel's cover sheet.

5.3 The first consideration for an MCA panel is to assess whether a young adult can be released on the papers. Failing this, the issue is whether adjourning with a direction for additional information to be submitted might allow a subsequent decision for release on the papers to be made.

5.4 However, there is a danger that young adult cases can be repeatedly adjourned for further information. This can lead to protracted delays which can be even more difficult for young adults to manage than more mature adults. The Board's presumption is for young adults to be directed to oral hearings if they cannot be released on the papers.

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<sup>16</sup> Evidence before the Scottish Sentencing Council in 2020 suggested maturation continues up to age 30: <https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf>

<sup>17</sup> Huesmann, L. R., Eron, L. D., & Dubow, E. F. (2002). Childhood predictors of adult criminality: Are all risk factors reflected in childhood aggressiveness? *Criminal Behaviour and Mental Health*, 12(3), 185–208

Rather than lengthen waiting times, an MCA panel might consider moving expediently to this position as soon as possible, even if all necessary information is not yet to hand but can be submitted ahead of a hearing.

5.5 The Board's statutory test for release applies equally to young adults as it does for children and adult prisoners. The test is that release or re-release can only be directed if a panel is satisfied that it is no longer necessary for the protection of the public that the person be confined in custody.

5.6 When reviewing a case of a young adult, the principles and considerations, as set out in the following sections, should be applied.

#### Issuing a paper decision

5.7 Having taken due consideration of the Board's policy, as well as the principles and best practice outlined in this guidance, a panel may direct release. If this is not possible on the available evidence, which can be augmented by adjourning for additional information, then it is presumed an oral hearing will be granted.

5.8 In cases where a negative paper decision is issued at MCA stage, the panel must clearly set out in the decision that the Board's policy has been carefully considered. Panels must provide compelling reasons why an oral hearing will not benefit the prisoner, help ensure fair treatment, or enhance the processes of risk assessment and decision-making. Examples might include:

- an impractically short time until sentence end date or automatic release date in which to arrange an oral hearing
- fully convincing reasons where a prisoner has declined to participate and that, after careful consideration by the panel, an oral hearing is not required on the basis of fairness
- perhaps the imposition of a further substantial sentence.

5.9 None of these grounds are definitive in the individual case and the MCA panel must probe the facts to determine whether unfairness or injustice might follow refusal of an oral hearing. Panels should also consider the danger of a disengaged young adult merely accepting a paper decision where an adult may be more likely to request an oral hearing.

5.10 It would be extremely unusual to proceed to a negative paper decision without legal representations or a good explanation of why such representation has not been sought, or any submissions made. Advice on calling for representations is provided below [see *Setting MCA directions for an oral hearing below*]. Fully up-to-date reports about custodial conduct, progress and outstanding needs will also be needed with up-to-date and informed risk assessments and management plans that take into account any vulnerabilities or safeguarding concerns.

5.11 It may be appropriate for a social worker who has previously been involved with a care leaver to be directed to provide a report. This social worker may be named in the risk management plan found in the OASys assessment or elsewhere in the dossier. If it is not clear whether the young adult is a care leaver, this can be clarified at MCA stage by directing the Community Offender Manager (COM) to make inquiries.

5.12 If a negative paper outcome is justifiable, an example of an introductory paragraph to the decision could be:

*"This prisoner falls under the Parole Board's young adult policy for those who are aged 18 to 21-years old at the point of referral<sup>18</sup>. The presumption is to grant an oral hearing, if release on the papers cannot be directed for individuals in this age group. However, having reviewed all the facts of the case the MCA panel has determined that an oral hearing is not required and a paper decision is being issued. The rationale for this is as follows..."*

### **Parole Board policy: the presumption to direct an oral hearing**

5.13 A young adult should be released or re-released on the papers *whenever possible*. If not possible, the Board's position is that there should be a presumption (but not an automatic right) that all young adults aged 18 to 21 at the point of referral are granted an oral hearing. This is for all GPP reviews *and* recall cases<sup>19</sup>.

5.14 This means that the starting point is a direction for an oral hearing if the young adult cannot be released on the papers. If not directing an oral hearing, the MCA panel must provide clear and compelling reasons for this in its decision (see paragraph 5.12).

#### Why there is a presumption for an oral hearing

5.15 A parole review is an important event for any prisoner. Given age and stage of development, it can be a significant life-changing experience for a young adult.

5.16 The fact that young adults are usually still maturing means that they are at a stage when they are still capable of positive and long-term change. Young adulthood is a period when people are most likely to desist from offending. Annex B to this guidance sets out essential information about development and maturation.

5.17 Understanding fully where a young adult is in a journey towards desistance is a particularly nuanced task that benefits from the features and focus of an oral hearing. It provides a chance to probe and ask questions in the hearing but also provokes enhanced preparation by all participants.

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<sup>18</sup> This policy is currently suspended during COVID-19 arrangements

<sup>19</sup> This policy is currently suspended during COVID-19 arrangements, but the principles can still be applied

Compared to a paper review, convening an oral hearing can include provision of specialist risk assessments and more detailed testing of individually tailored risk management plans that meet the particular needs of the young adult. This should take into account their stage of maturity and any vulnerabilities or safeguarding concerns.

5.18 An oral hearing provides an opportunity to make a big difference in the lives of young adults because they can benefit from active participation in decisions affecting their future. Not only is this consistent with the *Osborn, Booth & Reilly* judgment, but it can assist in countering the risk of unconscious bias and the perception of discrimination commonly felt by young adults and especially BAME individuals within this cohort [see paragraph 4.1 onwards concerning fairness and also Annex C on equality and diversity].

5.19 Timing can be important for young adults who may be about to lose the right to access support or any age-limited opportunities, such as transition on leaving care services. Where such considerations apply, an oral hearing is a good forum for matters to be addressed swiftly and thoroughly. A negative paper decision at this stage might deny consideration of wider issues and this could adversely affect progress, individual development, and opportunities for desistance and, as a result, could limit opportunities for positive life changes.

5.20 Case studies illustrating some of the benefits of an oral hearing are at Annex D.

5.21 Potential benefits that an oral hearing can bring:

- requires agencies and professionals to review the case thoroughly in readiness for questioning and hence consider better risk management and release plans appropriate to the individual young adult
- facilitates better engagement by agencies and professionals with the young adult, enabling identification of particular needs and leading to proposals for relevant interventions or tailored sentence plans (which can include adapted programmes or other activities) or for other forms of progression and recognition
- encourages the young adult to engage meaningfully in the review where, by contrast, a paper panel can be seen as simply paperwork with no evident engagement and little meaning for the individual
- improves the chances of a qualified prison lawyer being involved in advising and representing the young adult
- helps young adults feel supported and not ignored, forgotten or isolated, as an oral hearing focuses directly and personally on them
- provides greater opportunities for young adults to feel they are getting a fair chance of parole, helping to counter the risk of bias and perceived discrimination in the system

- increases the feeling that young adults have more control over their lives and can participate more meaningfully in progress in custody
- supports and guides a young adult to a more positive position and outlook for the next review, if not released on this occasion
- facilitates exploration of developing identity and improve understanding of how the young adult's status and maturity might impact on learning and behaviour
- supports a young adult with learning or behavioural challenges (possibly undiagnosed) to express themselves more effectively than through written representations
- consequently, provides an indication of necessary additional support, such as special arrangements for understanding complex information, involvement of a speech specialist, or support from a friend or family member
- more generally, helps ensure that young adults regarded as particularly vulnerable are released to appropriate settings, if necessary with safeguarding procedures underpinned in their risk management plans.

5.22 Cases once directed to an oral hearing will not necessarily receive exceptional or priority treatment. They will be managed by the Secretariat within the general listing framework for monthly allocation. However, if an MCA panel believes a case warrants prioritisation or expedition, the usual criteria should be applied, and reasons explained clearly in the MCA directions [see the MCA guidance for further detail about prioritisation & expedition]. An example for a young adult could be that an early oral hearing decision might allow access to support for care leavers or some other time-limited service which is age-related.

#### Setting directions for an oral hearing

5.23 The principles and best practices for setting directions for any hearing are outlined in MCA Guidance and Member Guidance on Oral Hearings which can be found on *SharePoint*. However, some features are intensified when young adults face parole reviews.

5.24 Legal representation can be essential in ensuring that a young adult can participate effectively in the parole review, both on the papers or at an oral hearing. Representations from the young adult or preferably a legal representative are likely to assist in determining how to proceed and what information and support are needed.

5.25 Every opportunity must be given for submission of representations. If the young adult appears to be unrepresented, the MCA panel should ask the Secretariat to seek clarification from HMPPS on the position. If necessary, the Secretariat can contact the Association of Prison Lawyers so that arrangements can be made for a prison law firm to make contact with the young adult.

More information is set out in *Member Guidance on Representation* which can be found by clicking on the link or searching on *SharePoint*.

5.26 Young adults, like children, may access support from a greater number of agencies and services than older prisoners can. In particular, young people in (or previously involved in) the care system will have a Leaving Care Pathway Plan which should be directed for submission before an oral hearing. They will also have had an allocated care worker. This can be a social worker or a Leaving Care worker. It would be good practice in most cases to direct a report and require their attendance at the hearing. The social worker is commonly named in the risk management plan found in the OASys assessment or elsewhere in the dossier.

5.27 If it is not clear whether the young adult is or has been a care leaver, this can be clarified at MCA stage or subsequently by directing the COM to make inquiries. Information and advice about care leavers and young adults with experience of care is at Annex E.

5.28 Considering the appropriate format and mode for an oral hearing is vital in the context of fairness. The MCA panel will need to assess whether a young adult is able to fully contribute to and follow proceedings. A telephone hearing or video-link hearing may be suitable and easier for one young adult but another might cope better with and benefit more from a face-to-face hearing. Many young adults will be able to fully follow proceedings and understand and engage remotely but others will require additional support.

5.29 The MCA panel should look for indications concerning capabilities from reports in the dossier but there is also a responsibility to make enquiries of the legal representative, establishment staff or other professionals who know the young adult's abilities or limitations well. Initial directions can be issued seeking confirmation and advice from these sources, requiring a short adjournment. This will allow fuller directions to be made on completion of the MCA, or via Panel Chair Directions or the Duty Member.

5.30 Sometimes reports in an MCA dossier indicate that traumatic brain injury has occurred, which may have a profound bearing on a young adult's previous and future behaviour. This might suggest the need for expert reports and special support. This issue is dealt with at Annex G.

5.31 Occasionally, information in the dossier or subsequent reports may indicate that the appointment of a speech and language specialist would be appropriate. Sourcing and funding for a Speech & Language Therapy (SALT) assessment are the responsibility of the prison, mediated by PPCS. This is the case for any other specialised assessment and the provision of interpreters, communication specialists and signers for any individual having a parole review. The author of an expert assessment report or a relevant practitioner may be directed to attend a hearing if this is appropriate.

5.32 More generally, the MCA panel should consider whether a young adult ought to have a keyworker or support worker in attendance. It may be helpful too for someone else such as a family member or carer to attend as an observer to provide additional informal support, where the prisoner has consented.

### *Case conferences and directions hearings*

5.33 In some instances, where the issues are complex or a range of possible report writers and witnesses is presented, it may be helpful to direct a Case Conference (for simple issues) or a Directions Hearing (for more complex issues). In the case of a young adult, it is not uncommon that a coordinated set of assessments and a wraparound service will be required before suitability for release can be determined.

5.34 A Case Conference or Directions Hearing can help resolve outstanding issues which might otherwise make a full oral hearing ineffective. A Case Conference or Directions Hearing aims to progress matters but not reach parole decisions. These procedures can provide guidance about the nature and need for future evidence and crystallise future hearing logistics. The panel does not actually take evidence relating to risk assessment and decision-making because that can only properly be provided at an oral hearing.

5.35 Advice about Case Conferences and Directions Hearings is available in MCA Guidance for members.

## **6. Practice at the oral hearing**

6.1 Panels should be familiar with the principles and best practice outlined in Member Guidance on Oral Hearings. Panel chairs and Duty Members should also follow its advice about drafting Panel Chair Directions and other forms of directions, including replying on Stakeholder Response Forms. Further relevant advice can be found in the MCA Guidance.

6.2 While all those materials are relevant when conducting any hearing, particular emphases apply to young adult cases. Given their age, maturity and stage of development, the parole review and the oral hearing will likely be a life-changing experience for young adults. Typically, they are still maturing and are at a stage in life when desistance is most likely and when they are capable of meaningful and long-term positive change. Young adults have opportunity to benefit from actively participating in decisions affecting their future and this can assist in countering the risk of bias and perceived discrimination. The particular benefits of oral hearings for young adults are set out at paragraph 5.21 and in Annex D.

6.3 The Board's statutory test for release applies equally to young adults as it does for children and adult prisoners. The test is that release or re-release can only be directed if a panel is satisfied that it is no longer necessary for the protection of the public that the person be confined in custody.

6.4 Panels planning for or approaching an oral hearing will benefit from the guidance at paragraph 5.23 onwards concerning practice at the MCA stage. This includes advice on seeking representations, involving former social workers for care leavers, and setting other directions.

#### 6.5 When preparing for and conducting an oral hearing, panels should consider:

- taking account of specific needs and circumstances and ensuring that the young adult can take as full a part as possible in the hearing
- checking with staff and/or the representative that efforts have been made in advance to prepare the young adult by explaining the purpose and procedures of the hearing and explaining the roles of the panel and all participants
- suggesting that officials show the young adult and representative (if attending the prison) the room in advance of the hearing and that they explain who will be there and their roles, and who will be there in person or joining via remote means. This should also include if the victim will be attending in some way to read a Victim Personal Statement while the young adult is present
- describing during the hearing introduction how things will happen, explaining that the young adult may not like or agree with views which are given but that the representative can challenge evidence and that the panel makes its own mind up based on all the evidence, including the prisoner's
- using first names when addressing the prisoner if that has been checked as a preferred option
- asking straightforward questions, in short quantities and in a logical manner
- preparing the young adult for each stage of the examination before breaking down questions into smaller sections
- adjusting vocabulary and the manner in which information is conveyed by using plain language, avoiding jargon and legal terminology, and adopting the young adult's own phraseology where appropriate
- regularly checking that the young adult is following proceedings, by inviting understanding rather than simply asking if the point has been understood
- slowing the pace if necessary in the light of feedback and anyway proceeding unhurriedly, allowing the young adult to digest the question or request and have time to think about a response
- allowing the young adult to present evidence in creative ways if understanding or communication presents difficulties. Use diagrams and drawings, presenting pre-recorded material, acting out an incident, or describing parallel situations which can be interrogated by extension
- laying out the hearing room for a face to face hearing in a way that sensitively accommodates any victim presenting a Victim Personal Statement as well as the young adult who needs to see everyone but not be confronted by overly formal arrangements and social distances

- if attending the prison, the panel chair allaying anxiety by going to the waiting area ahead of the hearing to introduce themselves and confirm by which name the young adult wishes to be addressed, but handling this without raising concerns about impartiality and fairness – for example, by being accompanied by the legal representative or a member of prison staff.

6.6 The principles and best practice of risk assessment and risk management for young adults apply as they do for any case: but panels will want to pay particular attention to the needs of especially vulnerable young adults (and children) being released. This means considering with care the home circumstances of young adult being returned to families or environments where they previously suffered trauma, relationship difficulties or other adverse childhood experiences.

6.7 If being released other than to the family home, panels will want to seek advice about the appropriateness of Approved Premises, hostels, or other proposed accommodation for the young adult: for example, whether facilities and regimes can be adapted for a vulnerable person and how the COM and other keyworkers will pay particular attention to needs, perhaps through intense monitoring and supervision and through formal procedures such as safeguarding provisions.

6.8 Advice about composing questions for prisoners who may need support and additional consideration can be found on the Advocate's Gateway website: <https://www.theadvocatesgateway.org/>

#### Adjourning or concluding on the papers

6.9 In appropriate cases, a panel may adjourn a young adult's case and provide robust directions that ensure further information is submitted or an adequate release plan is put in place. Information at Annexes E & F may be relevant when experience of care and homelessness are issues. General advice about adjournments from a hearing is provided in the *Member Guidance on Adjournments and Deferrals* which can be found by clicking on the link or searching on *SharePoint*. If necessary, senior representatives from agencies such as Social Services can be directed to provide key assessments or attend a reconvened hearing.

6.10 Should sufficient evidence have been heard, the panel can adjourn with the intention of concluding the case, by making a decision on the papers. This route should be canvassed with both parties. If the submission of additional reports and plans enable a risk assessment and decision-making to be completed, the panel may issue a paper decision without reconvening the hearing. In concluding a review in this way, panels should carefully consider the fairness to and the perception of fairness and discrimination by the young adult.

## **7. Related areas**

7.1 The guidance at Annex J concerns young adults from or returning to Wales. More information about duties toward Welsh-speaking prisoners and the Welsh language is set out in the *Member Guidance on Welsh Speaking Prisoners and Duties Regarding the Welsh Language* which can be found by clicking on the link or searching on *SharePoint*.

7.2 Reference to the following areas of information has been signposted in this guidance.

- *Annex A: Advice from the House of Commons' Justice Committee*
- *Annex B: Maturation and Young Adults*
- *Annex C: Equality & Diversity*
- *Annex D: Young Adult Case Studies at MCA Stage*
- *Annex E: Care Leavers and Care-Experienced Young Adults*
- *Annex F: Homelessness and Young Adults*
- *Annex G: Traumatic Brain Injury*
- *Annex H: Assessment & Interventions for Young Adults*
- *Annex I: Restorative Justice and Young Adults*
- *Annex J: Matters devolved to Wales*
- *Annex K: Further reading about Young Adults*