

Sentencing Young People

Report on Scottish Sentencing Council Conference

Falkirk, 28 April 2017

Overview

1. The [Scottish Sentencing Council](#) announced in its [Business Plan](#) for 2015-18 that one of the first sentencing guidelines to be developed would focus on the sentencing of young people. We understand that the sentencing of young people is a complex area and that there are opportunities to consider how offending behaviour can be addressed.
2. We have committed to wide stakeholder engagement to inform the development of all our guidelines. To that end, we held a conference on 28 April 2017 to enable us to listen to and learn from a variety of organisations and individuals with an interest in the sentencing of young people. Our work to develop a guideline on sentencing young people is at a very early stage and we intend to use the information gathered at the conference to inform further consideration of this topic in due course.
3. This report sets out the main topics discussed and points raised by delegates at the conference. It is not intended to be an exhaustive account of the discussions held and it should be noted that the views expressed do not necessarily reflect those of the Scottish Sentencing Council.
4. Organisations and individuals from across the justice sector and beyond were represented at the conference, including key criminal justice organisations, third sector bodies, and academics.

Purpose and outcomes

5. The conference was split into two parts. During the morning session, a number of individuals gave presentations on topics relating to the sentencing of young people, focusing both on practical experience and current research in this area. An overview of these presentations is available at **Annex A**.
6. In the afternoon session, delegates were asked to reflect on these presentations and to discuss a number of topics in detail during 3 facilitated workshops focusing on:
 - Principles and purposes of sentencing young people
 - Approaches to sentencing young people
 - Information knowns and unknowns
7. Views were sought in a variety of different areas, including in relation to who should be considered a young person for the purposes of sentencing, the potential effects of different types and levels of sentence on young people, and how the personal circumstances common to many young people who commit offences should be taken into account in sentencing (such as age, maturity, trauma or bereavement).

Summary of workshop discussions

8. To facilitate open discussion, the event followed the [Chatham House Rule](#), which means that no delegates are identified either by name or organisation in this report.

Workshop 1: Principles and purposes of sentencing young people

Questions discussed

- i) What are, or should be, the key principles and purposes when sentencing young people?*
 - ii) Should more weight be given to some principles and purposes than others? For example, should there be an overarching principle or purpose?*
 - iii) What exceptions are there, or should there be, to the presumption against custodial sentences for offenders under the age of 21? For example, should the presumption dis-apply to persistent young offenders, or for particular types of offence?*
9. The discussion around what might be key principles and purposes when sentencing young people was framed, in part, by a list of potential areas which, at the time, were under consideration by the Council for inclusion in its general Principles and Purposes of Sentencing guideline, which will apply to all offences and offenders. The draft guideline is now available on the Council's [website](#).

Key points raised by delegates

- To ensure fairness, a tailored approach is vital – level of maturity and mental development should be taken into account when making sentencing decisions, even if this leads to otherwise very similar cases being treated differently.
- Rehabilitation should be emphasised, potentially as an overarching purpose; the aim should be to improve the situation.
- Welfare of the young offender should be considered as an additional purpose – the disposal should do as little harm as possible. Sentencing should be about seeking to address needs, rather than purely focussing on the young person's offending behaviour.
- Removing or de-emphasising punishment as a purpose should be considered.

- “Efficient use of public resources” may not be an appropriate consideration when sentencing young people – this could suggest that lack of financial resource could influence the sentence and this was not something that should be in the sentencer’s mind.

General discussion

i) What are, or should be, the key principles and purposes when sentencing young people?

10. There was broad agreement that most of the principles and purposes being considered for inclusion in the Council’s general guideline on this topic are also relevant in relation to sentencing young people, although many delegates felt that the emphasis placed on some of these could change significantly (see (ii) below).
11. There was considerable discussion relating to the concept of fairness and what this might mean in the context of sentencing young people. Many delegates expressed the view that in order for sentencing to be fair, a more tailored approach than that applying to older offenders is necessary – in particular, taking into account the individual’s level of maturity and mental development and treating them accordingly when making a sentencing decision. It was suggested that this may be at odds with the concept of consistency in the proposed general principles and purposes guideline, or at least that the factors considered in assessing whether cases are similar would have to encompass areas such as maturity.
12. Transparency was felt by many to be a vital principle, particularly in ensuring that young people understand what is happening during the sentencing process and what their sentence is.
13. Rehabilitation was discussed in some detail, with general agreement that this is a key purpose of sentencing young people; ensuring that offenders are provided with the opportunity to change their behaviour and reintegrate into communities is vital.

Education was felt to be an important part of this process. It was noted by some delegates that consideration should be given to the offender's strengths and potential, not just their offending behaviour. A distinction might be drawn between the offending behaviour and the offender themselves; trying to stop the former shouldn't result in harm to the latter.

14. It was suggested that welfare of the young person should be considered as an additional principle or purpose; this should be a key consideration when sentencing and recognising this may better reflect the UN Convention on the Rights of the Child (UNCRC).
15. There was some discussion around whether ensuring the efficient use of public resources (which is one of the areas under consideration for inclusion in the general principles and purposes guideline) is an appropriate consideration when sentencing young people; this might imply that lack of financial resource could influence the sentence and it was suggested that this was not something that should be in the sentencer's mind if the aim is to rehabilitate and ensure the welfare of a young person. Use of custody may be cheaper than alternative options with a focus on rehabilitation, but offer worse outcomes over a longer period.
 - ii) Should more weight be given to some principles and purposes than others? For example, should there be an overarching principle or purpose?
16. Many delegates were of the view that rehabilitation should be an overarching purpose, given the potential to address and resolve offending behaviour at an early stage in an individual's life.
17. On a similar theme, it was suggested that proportionality and parsimony (only taking such action as is necessary) might be considered overarching principles, with prison only being used in exceptional circumstances.

18. Delegates also discussed whether certain principles and purposes should be given less prominence in relation to young people. In particular, there was considerable debate around the appropriateness of including punishment as a purpose. Some delegates felt that, given evidence that punitive approaches are less effective and cause more harm than focusing on rehabilitation, this could perhaps be removed entirely; it was suggested by some that this may be acceptable even to victims of crime, on the assumption that the primary concern of many is simply that the young person does not repeat their behaviour.
 19. However, it was noted that the complete omission of punishment as a purpose may be at odds with the views of the public (with some debate around whether the Council should be reflecting public opinion or trying to change it) – and that some measure of censure is necessary. Many reflected that this issue could perhaps be dealt with by de-emphasising punishment as a purpose of sentencing young people, rather than omitting it altogether.
 20. Some similar points were made in relation to denunciation (the idea of reflecting society’s disapproval of certain behaviour as a purpose of sentencing); again, this was felt by some to be less appropriate with regard to the sentencing of young people.
- iii) What exceptions are there, or should there be, to the presumption against custodial sentences for offenders under the age of 21? For example, should the presumption dis-apply to persistent young offenders, or for particular types of offence?
21. There was general support for the existing presumption against custodial sentences for those under 21, though it was suggested by some delegates that the options for non-custodial disposals are fairly limited in some circumstances. There were no recurring themes emerging with regard to possible exceptions to the presumption; indeed, it was suggested by a number of delegates that it would not

be appropriate to define exceptions and that the presumption should continue to apply in all cases.

Workshop 2: Approaches to sentencing young people

Questions discussed

- i) What current approaches to sentencing young people in Scotland work or don't work?*
- ii) Are there any approaches not currently implemented in Scotland which should be adopted when sentencing young persons?*
- iii) Should lack of maturity be regarded as a factor when sentencing young persons? If so, should it be a factor which is recognised as diminishing their culpability?*
- iv) Should there be particular consideration of a young person's welfare/personal circumstances? And if so, which factors should be taken account of when sentencing?*

Key points raised by delegates

- There is no one-size solution – sentences need to be tailored to the individual.
- Sentencing can be seen as a process rather than an event; might it be possible for judges to have more of an ongoing role in dealing with individual offenders?
- Concern was raised at the suggestion that lack of maturity should diminish culpability – there were questions as to whether that changed the nature of the offence being charged. Possible legal issues could arise if a young person's culpability was held to be different to an adult's.
- There was no consensus on whether lack of maturity should be a factor – it was recognised that the extent will vary depending on the particulars of the offence and offender.

- Trauma and gender are other factors that should be taken into account when sentencing young people.
- Communication is key at all stages of the sentencing process.

General discussion

i) *What current approaches to sentencing young people in Scotland work or don't work?*

22. There were some examples provided of what approaches work, from the perspective of a number of delegates involved in the criminal justice system:

- Structured deferred sentences.
- Good communication with offenders – showing respect, treating each offender as an individual and taking the time to fully explain what a sentence is and why it is being given, particularly where this is critical to compliance (e.g. in relation to conditions of a CPO).
- Problem-solving courts have had some success.
- Sentences that involved intensive multi-agency input work well – as do those that offered reward or incentivisation for young people.
- Regime that requires reviews of CPOs contributes hugely to improvement – the ongoing link between judge and offender recognises sentencing as an ongoing process not a single event.
- Use of peer mentors can have a positive effect on young people.

23. A number of delegates suggested that fines do not work as a disposal.

24. It was observed that for some young people a custodial sentence provides a break from their normal environment (which is often chaotic). There was discussion about

what this could offer as a long term possible solution, as eventually the offender would return to their previous environment.

25. It was observed that secure accommodation offers a safe environment and a change of environment, opening minds to new ways of thinking. It was thought this was a powerful idea – secure accommodation being seen as a different space and a safe space for young people and those around them.

ii) *Are there any approaches not currently implemented in Scotland which should be adopted when sentencing young persons?*

26. One suggested approach was that individual judges should remain involved with particular offenders, seeing them again if they re-offended (and it was noted that this is, to an extent, similar to the current process with review of CPOs). This would emphasise that sentencing is an ongoing process, rather than a single event.

27. It was suggested that the expanded use of electronic tagging might be useful in allowing more tailored sentences to be imposed; it was noted that this was the subject of an (at the time) ongoing Scottish Government consultation exercise.

28. Looking beyond the Council's remit, some delegates suggested that youth courts should be introduced and that a Scandinavian approach of sentencing young people to further education and training could be explored.

29. While it is desirable for sentencers to receive information about the background to the accused, there were suggestions that, in practice, Criminal Justice Social Work Reports (CJSW) do not cover information in relation to bereavement, trauma, education etc. in any great detail. Some expressed the view that, in order to provide information on these specific areas, the writing or the focus of such reports may have to change. However, it was noted that any change in practice or focus of these reports could have a knock on effect on the efficient disposal of business

30. Some delegates considered that a sentencing guideline may assist in this area, as it is likely to highlight specific areas of interest for a judge when sentencing a young person. In turn, judges may be more likely to ask about such issues when considering sentences if they are using the guideline as a tool.
31. Restorative justice was discussed to some extent, though it was acknowledged that disposals with a restorative element are currently very limited.
32. It was noted that it would be useful for individual courts to have more detail about the local availability of certain disposals, particularly where rehabilitation programmes etc. might not be universally available.
33. There was some discussion around whether more judicial training may be required around issues such as the effect of bereavement on young people. Training for solicitors may also be helpful to better recognise mental health issues in young clients.
34. It was noted that good communication with the young person is vital – they should be treated with respect and have their sentences explained simply and clearly, taking into account the possibility that they may not understand complex language. It was noted that often what can be classed as a “developmental issue” is rather an issue of communication and understanding.
35. There was some discussion around whether it may be worth considering capacity to understand rather than maturity, though it was acknowledged that this risks straying into issues not relating to young people (older people with learning difficulties etc.).

iii) Should lack of maturity be regarded as a factor when sentencing young persons? If so, should it be a factor which is recognised as diminishing their culpability?

36. There was no consensus on whether lack of maturity should be a factor – it was recognised that the extent will vary depending on the particulars of the offence and offender.

37. Some delegates did suggest it should be a factor that needs to be taken into account, and that it should be about developmental maturity rather than simply age. However, others suggested that a line *does* need to be drawn to ensure clarity, and that age is the best way to do this.

iv) Should there be particular consideration of a young person's welfare/personal circumstances? And if so, which factors should be taken account of when sentencing?

38. It was suggested that trauma and gender are other factors that should be taken into account when sentencing. There was also discussion around the fact that a change in personal circumstances – for example a new job, a new partner or a child – can have a material change on behaviour, particularly for young people, and this should be taken into account.

39. It was noted that the purpose of obtaining lots of information about a young person was not necessarily to mitigate the sentence, but rather to aid understanding about why the person had reached the point that they had.

Workshop 3: Information knowns and unknowns

Questions discussed

- i) Given previous discussions on the principles and purposes of sentencing young people, what data might the Council need to gather in order to inform the development of a guideline?*
- ii) In light of previous discussions on approaches to sentencing, are there any areas which require evidential support?*
- iii) Are there areas of research or information out-with those previously discussed which may impact on the creation of a guideline on sentencing young people?*
- iv) Considering previous discussions, what data would be required to allow a fair assessment of the impact of any guidelines to be made?*

Key points raised by delegates

- An evidence based approach is vital; delegates were interested in seeing evidence of what works with regard to sentencing young people, particularly in encouraging or supporting desistance.
- Views of young people themselves should be sought.
- In order to measure the success of guidelines, it will be important to establish a robust baseline.

General discussion

40. As delegates tended to address the four topics simultaneously – for example by discussing how a particular piece of data could inform guideline development, sentencing approaches and what additional data would be required to enable these two functions – it is not helpful to separate the discussion summary by topic.

Except where noted, the themes and discussions below applied to most or all topics.

41. One of the themes arising was the value of both qualitative and quantitative data on “what works” with regards to supporting desistance in young people’s offending behaviour. Delegates highlighted in particular data available from the Edinburgh Study of Youth Transitions and Crime, flagging this as an important resource for the Council and for sentencers.
42. Delegates were also keen that young people were engaged with directly during any data gathering exercise in relation to determining what approaches work. Focus groups and one to one interviews with young people – offenders or not – were raised in several discussions. Interviews with peer mentors – young people who have desisted from offending and now support others to do the same – were also highlighted as a rich source of potential data.
43. While delegates generally felt that a baseline would be vital to ensure that any guideline could be adequately assessed for impact, they were not explicit in what measures would be required to make this work. Some noted that current Scottish Government data did not always provide the “full picture” – particularly regarding non-court disposals.
44. A number of delegates expressed an interest in and need for further data on repeat or further offending. They highlighted the difficulty in assessing desistance versus recidivism given the current measures available and felt that this limited the ability to truly identify “what works”, as well as limiting the ability to assess the impact of any guideline.
45. There was ongoing discussion throughout the workshop sessions around who should be considered a “young person” for the purposes of sentencing. There was no real consensus on this, with many expressing the view that there is no clear cut off point – that consideration of age continues beyond 18 or 21 but gradually

diminishes as a factor. There was recognition of research showing that the brain is still developing up to the age of 25, though some delegates suggested that making a persuasive case for taking this into account when sentencing may be considerably more difficult than in relation to those under 18 or 21, as public opinion may not be in alignment with this approach

46. Similarly, there was some discussion around the difficulties in assessing maturity rather than chronological age. Delegates discussed the needs of courts when considering maturity, including the possible difficulties in including an assessment of maturity when obtaining reports.
47. On a similar theme, some raised the importance of fully understanding the context of any young person's circumstances, including educational, personal and family circumstances, during the sentencing process. Again, it was acknowledged that this would increase the complexity of any reports obtained by the court and the difficulty in preparing these reports well.
48. As in the earlier workshop, delegates also discussed the importance of courts being able to access information on the availability of local programmes. Some groups considered the differing local provision to be problematic, both in terms of "what works" not being available in all areas, but also in terms of impacting consistency in sentencing.

Conclusion

49. The Council intends to consider the various points raised during the conference in its ongoing development of a guideline on the sentencing of young people. It is clear that while the overarching approach to sentencing young people has many elements in common with sentencing other offenders, there are also key differences which could have a significant impact – for example, in relation to the relative weight put on rehabilitation and punishment as purposes of sentencing; the

extent to which maturity should be taken into consideration; and the importance of clear and simple communication.

50. It is also apparent that considerable data already exists in relation to many of the areas discussed, including around the particular attributes of young people which suggest a different approach should be taken; how to determine exactly who should be treated as a “young person”; and what sentencing approaches may or may not be effective in relation to this group. The Council intends to investigate this existing information and research as a key step in addressing some of the questions raised at the conference and elsewhere as it continues its work on the guideline.
51. The Council would like to thank all those who participated in the conference.

ANNEX A – SUMMARY OF PRESENTATIONS

Keynote speakers

Professors Lesley McAra & Susan McVie

[Edinburgh Study of Youth Transitions and Crime](#)

‘Sentencing the vulnerable’

Professors Lesley McAra and Susan McVie, from the University of Edinburgh, began the programme with their keynote talk ‘*Sentencing the vulnerable: the impact of decision making on young people’s wellbeing, life chances and further offending*’. They presented findings from the Edinburgh Study of Youth Transitions and Crime, a longitudinal study of young people which has followed the same group from the age of 12 to 25. They compared the background and characteristics of those young offenders who have been sentenced in the criminal courts to similar individuals who have not, and provided a comparative analysis of their longer term outcomes in relation to offending, employment and general wellbeing.

Ryan Smith

Supported by [Action for Children](#)

The second keynote speaker, Ryan Smith, a peer mentor supported by Action for Children, spoke about his experience as a former offender and his decision to change his life. He focused on education as a key factor in making the transformation.

Panel speakers

The keynote speakers were followed by two panel sessions made up of a total of 7 speakers.

Dr Lorraine Johnstone

[Centre for Youth and Criminal Justice](#)

‘Psychological perspectives on sentencing youths’

Dr Lorraine Johnstone, Strathclyde University, spoke about the *'Psychological perspectives on sentencing youths'* which touched upon the developmental differences between a young person and an adult and what this means for sentencing. She also discussed the psychological impact of trauma and neglect.

Dr Gill Robinson

Scottish Prison Service

'What we know about young people in custody'

Dr Gill Robinson, Professional Advisor Young People, spoke on *'What we know about young people in custody and information on their circumstances, offences and sentences'*. She discussed statistics on the background of young people at Polmont Young Offenders' Institution including exclusion from school and experience of trauma and bereavement. She also provided figures on the crimes committed by the young offenders and the length of sentences received.

Chief Inspector Mark Leonard

Police Scotland

'The Positive Lifestyle Project'

Chief Inspector Mark Leonard, National Safer Communities Team, presented the *'Positive Lifestyle Project'*. The programme involves intensive support plans designed to assist young offenders to achieve practical goals that promote a positive lifestyle and help reduce reoffending.

Dr Claire Lightowler

Centre for Youth and Criminal Justice

'The Whole Systems Approach'

Dr Claire Lightowler, Strathclyde University, discussed The Whole Systems Approach (WSA). She outlined the evidence concerning children involved in offending, the issues they face and how the WSA attempts to respond to this. Her talk explained what has been achieved through the WSA to date, and some of the areas for further development, including greater use of the children's hearings system for 16-17 year

olds, improvements to diversion from prosecution, alternatives to custody, effective risk management and reintegration within the community.

Sheriff Andrew Cubie

Judicial Institute for Scotland

‘Individual context of youth sentencing’

Sheriff Cubie spoke on the *‘Individual context of youth sentencing’*. He discussed the statutory obligations and the developing case law involved in the sentencing of young people, highlighting a number of relevant cases.

David Strang

HM Chief Inspector of Prisons for Scotland

‘Impact of imprisonment on young people’

Chief Inspector of Prisons David Strang spoke on the *‘Impact of imprisonment on young people: relationships, identity and future prospects’*. He outlined the negative effect of imprisonment on relationships both within the family and the community; on employment, and on opportunities. He also discussed how offenders can become defined by their offence - negatively impacting their identity and self-worth.

Stephen McVey

Criminal Justice

‘Role of social work in reducing reoffending’

Stephen McVey, Service Manager, Northeast Health and Social Care Partnership, the final panel speaker, outlined the *‘Role of social work in reducing reoffending’*. He discussed the social worker’s role in addressing the risk management of offenders, addressing the needs of offenders, managing compliance and the approaches taken to both those who have been in care and to young women.