

Name

Centre for Youth and Criminal Justice

Publication consent

Publish response with name

Q1) Do you agree or disagree with the Council's approach to the distinction between a 'principle' and a 'purpose' of sentencing?

Agree

Please provide any reasons for your response.

Centre for Youth and Criminal Justice (CYCJ) believe that the distinction made in the proposed guidance is an appropriate one. By clearly outlining the steps sentencers must follow in relation to each case before them with regard to fairness and proportionality alongside defining the varying purposes of sentencing this should support a greater degree of transparency and consistency in understanding sentencing decisions. This setting out of the principles provides a foundation for a system of belief or chain of behaviour that encourages and reinforces consistency; that whilst the purpose of the sentence may vary however, the principle and its application will always be the same.

Q2) Should there be an overarching principle of "fairness and proportionality"?

Yes

Please provide any reasons for your response.

Ensuring that sentencing is both fair and proportionate must be both the underlying and overarching principle of sentencing guidelines. Whilst recognising that media reporting particularly in relation to emotive situations may often influence the public perception of sentencing this highlights the need for transparency of the rationale underpinning sentencing. Within the overarching principle of fairness and proportionality is the importance of upholding the balance between recognising the impact upon victims without jeopardising the fairness towards the individual who is to be sentenced. Failure to do so may result in disproportionate sentencing weighted more towards punishment and retribution.

Q3) Are the supporting principles which underlie the overarching principle of fairness and proportionality (as listed at paragraph 2(i)-(vi)) appropriate?

Yes

Please provide any reasons for your response.

CYCJ are supportive of the principles outlined within the sentencing guidance. These principles would seem to support the overarching aim of fairness and proportionality. Further consultation regarding how that will manifest itself would be welcomed.

Q4) Are the supporting principles expressed clearly and accurately?

No

Please provide any reasons for your response.

Perhaps expanding on what would be considered relevant factors, as stated in 2 (i) would assist in establishing transparency and ensure those with no working knowledge of this area would be able to understand what is meant. The provision of victim impact statements in all cases may provide additional support to principle 2(i) in ensuring the individual effects upon victims in each case are shared with sentencers to be measured within their decisions.

It may be advantageous to consider the guidance relating to principle 2(iv) (communicating sentencing decision). Clarity as to whom the sentence is being communicated to would be beneficial to consider whether this is specific in its focus towards the person who has been convicted or the wider public, or the victim or is it to be assumed it is all these parties. Tailoring the language and tone of such communications in consideration of the capacity of an individual as well as their age and stage of development particularly with a view to under 25years when this is directed to the person who has been convicted would be supportive of this particular principle.

Regarding communication of decisions to a wider audience disseminating how people can access existing or future decisions such as on the Judiciary of Scotland and Scottish Courts Tribunal websites would be beneficial.

Q5) Are there any other supporting principles which should be included at paragraph 2?

Perhaps considering the inclusion of a principle, as in the Canadian example provided, whether there has been any evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex age, mental or physical disability, sexual orientation, or any other similar factor. The importance of detailing such a principle reinforces the message that discriminatory and prejudiced behaviour is not socially acceptable. Children, young people and adults before the court have often faced significant adversity within their life experiences, which is likely to have contributed to their

involvement in offending behaviour. These experiences can lead to compounding vulnerabilities and inequalities that increase their likelihood of continued involvement in offending behaviour and difficulties in addressing the underlying drivers for this. Therefore, may there be merit in an additional principle that considers inequality and vulnerability in the course of sentencing and seeks to avoid compounding such issues.

Whilst alluded to within the draft guidance, it may be of advantage to society to make the role for reparation and restorative justice more explicit in the guidelines. This can be beneficial for some victims and perpetrators, and help ensure victims have a clearer role within the process, whilst delivering a powerful message to those who have caused harm.

Q6) Do you agree or disagree with the approach to the purposes of sentencing as set out at paragraph 4 of the draft guideline?

Agree

Please provide any reasons for your response.

At this stage of the development of sentencing guidelines, CYCJ are broadly supportive of this approach due to the importance of fairness and proportionality within the sentencing process. There is a clear recognition that the purpose of sentencing is not singular and will reflect different purposes based on the individual nature of the cases before the court. This approach to purpose does not sit in isolation and must have relatedness to the principles of fairness and proportionality. At a later date, and after more detail regarding the means by which sentencers will link the purposes and principles together in practice, CYCJ would welcome the opportunity to offer further comment.

Q7) Are the purposes as listed at paragraph 5(a)-(d) appropriate?

Yes

Please provide any reasons for your response.

5c) There is a possibility that the shifting views of what society disapproves off may result in the over-representation of certain groups appearing for sentencing increasing their marginalisation and effects of stigma.

5d) Whilst this may be out with the scope of the consultation the inclusion of restorative justice – and allied models of intervention – can play a significant role in providing victims opportunity for satisfaction at the outcome of court whilst has been shown to develop greater empathy on the part of those who have offended. Utilisation of restorative justice models can contribute to greater community adhesion and spirit.

Q8) Are the purposes expressed clearly and accurately?

No

Please provide any reasons for your response.

It is the view of CYCJ that whilst existing proposals offer some degree of explanation, greater levels of clarity is required concerning the purposes of sentencing. Punishment (5(a)) appears to focus purely on the individual appearing before court, yet does not consider the punitive effect that court sanctions can have upon the family of the offender.

Q9) Are there any other purposes which should be included?

The purposes outlined would seem appropriate and a positive aspect is the use of punishment as opposed to retribution. Shifting wider narratives is influenced by use of language and whilst the literature would appear to reflect retribution as a purpose of sentencing this has strong negative connotations whereas punishment is in line with the sense of justice and the overarching principle of fairness and proportionality.

Q10) Do you agree or disagree with the approach set out at paragraph 6 of the draft guideline in relation to the efficient use of public resources?

Disagree

Please provide any reasons for your response.

Consideration of the financial impact of any particular disposal ought to remain the provenance of local and national government. Those appointed to act as judges and sheriffs should not be required to consider this aspect of social policy when deliberating how best to dispose of a case. However, there is a role to consider the effectiveness of a disposal in and of itself, in relation to protection against further harm and rehabilitation, and sentencers have an important role in highlighting when interventions that are more effective are known but not available in their Sherifffdom.

Q11) Is it appropriate to consider efficient use of public resources during the sentencing process?

No

Please provide any reasons for your response.

Sentencing ought not be determined by the cost and resource demands of any particular disposal, but by the circumstances of the particular case before court.

Q12) Do you agree or disagree that the guideline would lead to an increase in public understanding of how sentencing decisions are made?

Agree

Please provide any reasons for your response.

The proposed guidelines are clearly presented highlighting both the principles applied to the overall aspects of each case as well as the individual to be sentenced and the possible purposes which sentencing may be seeking to achieve. Whilst the principles must all be applied in all cases, purposes may be singular or combined in order to achieve the purpose of sentencing. The public at large often misunderstands these broad, complex issues, and thus any measure that may assist in this regard should be seen as a positive step.

Q13) Do you agree or disagree that the guideline would lead to an increase in public confidence in sentencing?

Agree

Please provide any reasons for your response.

The guidelines may improve public confidence by illuminating the myriad of elements that sentencers must consider when reaching decisions in court, and how different disposals can be most appropriate in different contexts. The guidelines have the potential to lead to a greater degree of oversight of the work undertaken by sentencers and contribute to civic debate.

Q14) What costs (financial or otherwise) do you see arising from the introduction of this guideline, if any?

Should the Sentencing Council wish to take forward gaining of victim impact statements then as this practice is not currently in place this would require both financial and resource commitments.

At this time, we have no further points to add beyond those within the Draft Impact Assessment.

Q15) What benefits do you see arising from the introduction of this guideline, if any?

It will provide an opportunity to ensure consistency across sentencing as well as clarity as to the principles applied in each case in Scotland and the purpose or purposes that the sentencer is aiming to achieve.

The introduction of the guidance allows discretion to accommodate the variable factors that come with individuals yet allows the principles to be applied in consideration of these factors through the creation of systemic application of the principles and processes informed by all available information.

Q16) Would you like to make any other comments in relation to any matter arising from this consultation?

CYCJ would be keen to contribute to the development of the sentencing guidelines for children and young people as these are progressed.