

Name

Mary Munro

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.

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

Yes

Please provide any reasons for your response.

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.

2(i) 'and circumstances of the offender'.

This allows further consideration of means on imposing financial penalties and the possibility of introducing a formal unit fine system as endorsed and discussed in the Scottish Sentencing Commission's (2007) 'Basis on which fines are determined' and also McInnes (2004) SJ review on targeting to means.

Obviously this is a matter that would have to be developed in more detail in the 2nd general consultation on sentencing process.

See also (sorry!) Munro M and McNeill F (2010) 'Fines, community sanctions and measures in Scotland' in Croall, Mooney and Munro (eds) Criminal Justice in Scotland. Willan for a general review to that point.

2(iii) "There is only one principle in penology that is worth any consideration; it is to

find out why a man does wrong , and make it not worth his while. There is nothing to be gained by assuming that individual peculiarities may be disregarded, and there is everything to be lost thereby. If we would make the best of him we should restrict the liberty of the offender as little as possible consistent with the well-being of the community, and enlarge it gradually as reason is shown for doing so. We cann injure him without injuring ourselves, and we ought to set about to make the nest rather than the worst of him." Dr James Devon, Medical Officer HMP Glasgow (1912) 'The Criminal and the Community' John Lane. London. p 339.

2(v) The mandatory "having regard . . . applicable" is absolutely necessary. The 'unfettered discretion' of Scottish judicial culture needs to be balanced by these wider considerations.

Q4) Are the supporting principles expressed clearly and accurately?

Yes

Please provide any reasons for your response.

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

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.

It might be worth revisiting the drafting of para 4. in that ultimately the decision as to what 'purposes of sentencing' are appropriate to a particular case is the matter for the sentencer to decide. At the moment it reads if those purposes have some objective external reality.

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

Yes

Please provide any reasons for your response.

I am particularly pleased to see a cautious but welcome acknowledgement of the potential for restorative justice in relation to the 'making amends' purpose 5(d). RJ or restorative practices are properly considered as a facilitated communication between the person responsible for the harm/offence and the person/harmed.

The Scottish Government's October 2017 'Guidelines for the Delivery of Restorative Justice in Scotland' set out the principles and values that underpin that process but says nothing about matters such as the possibility of entitlement to request access to a restorative process in the context of court proceedings or indeed post sentence. Involvement in an RJ process must be voluntary and so there is no question of sentences as such involving an obligation to take part. That is not to say that the opportunity for access to RJ pre-sentence might not be considered building on positive results elsewhere, but that is more appropriately a matter for the second general consultation. It may also be that opportunities for access to RJ should be available to both victim and offender post sentence, be that CPO or custodial.

Note that restorative processes are future orientated and will consider the possibilities of appropriate restitution and changes in behaviour to promote desistance. Insofar as such outcome agreements impact on the liberty and means of the offender, it may be that some sort of judicial oversight to promote fairness and proportionality would be necessary.

Q8) Are the purposes expressed clearly and accurately?

Yes

Please provide any reasons for your response.

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

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.

Difficult one!

On the one hand it is sensible for sentencers to be aware of the cost implications to the public purse when imposing a custodial sentence for example. Also the results of Shapland's Home Office study on the costs and benefits of RJ suggested very strongly that RJ conferencing may result in significant savings in relation to future offending (Shapland et al (2008) 'Does RJ Affect Reconviction?' Ministry of Justice. London).

On the other hand, moves towards efficiency for the system must not de-humanise the process and push people caught up in it - both accused and complainants - to the margins of the process. The system needs balance 'efficiency' with a sensitivity to their needs.

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

Yes

Please provide any reasons for your response.

See response 10 above.

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

Please provide any reasons for your response.

Possibly. Although 'punishment' is listed first of the purposes it is not identified as the primary purpose and I think that this is right. However, punishment and 'justice' are equated very actively in public discourse about sentencing and so it will be necessary to address this.

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

Please provide any reasons for your response.

Depends on what political backing emerges for the changes.

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

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

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