

Name

Apex Scotland

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.

This clarifies the subtlety required in making decisions about people's lives, and offers a more human face to a legal process.

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

Yes

Please provide any reasons for your response.

This recognises that every situation is unique but also that there have to be consequences to socially unacceptable behaviours. It also strongly points to the need for a flexible approach "we do not believe that treating cases similarly means treating them in exactly the same way" which should help to challenge public and media rhetoric about a simplistic crime and punishment model. In our experience it is helpful to give people as much control over their situation as they can manage, which includes a clear explanation of why decisions that have to be made for them have been decided upon. If it is possible to encourage an appreciation of fairness and proportionality within society then that has to be a good thing.

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.

They may help counter populist responses which are based on simplistic retributinal ideas

Q4) Are the supporting principles expressed clearly and accurately?

No

Please provide any reasons for your response.

Principle 2(vi) makes an essential point about equal treatment, however if there is a disparity between the options available to the sentencer from one area to another there is likely to be significant in-equality depending upon where the case is heard and the residential circumstances of the individual being sentenced. This is already demonstrable in sentencing patterns across the country and is a source of concern because people who would benefit from specific approaches may receive less appropriate options simply because of a post-code lottery. As a principle equality is a good one, but is it possible without an equal dispersal of resources across both rural and urban areas?

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.

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

No

Please provide any reasons for your response.

Punishment as a purpose needs to encompass some notion of effectiveness in order to meet the purpose as defined. If there is little evidence that a specific punishment will deter future offending or others from considering the offence then it cannot be fair or proportional except in terms of an arbitrary eye for an eye response. It can only ever be appropriate where there is a sense that it will have some lasting effect, preferably positive.

Purpose c seems to suggest that sentencing is a flexible arrangement which is responsive to public opinion. If this is so then there is a dangerous potential that mob justice can be manipulated by the media and decision making becomes based

upon what popular view is present at any time. How can this be fair? There are many examples of media demonising certain individuals but is a crime treated differently because it has received greater media coverage?

How do we judge what is Society's approval or disapproval ? Clearly this is a complex politico-legal principle, but perhaps needs greater clarification for public consumption.

Q8) Are the purposes expressed clearly and accurately?

No

Please provide any reasons for your response.

Not clear that 5(c) is actually a 'purpose' or a statement of what justice is? Are you saying that the purpose of sentencing is to respond to public opinion? If so that seems a very dangerous way to go especially in a social media dominated and influenced society.

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

A purpose might be to
Establish a structured and proscribed set of boundaries within which an offender can address those factors which have contributed to the crime..
This would reflect the approach taken by problem solving and problem specific courts

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.

It would be helpful to note here that the greatest efficiency will be generated by reducing the number of cases going through court by investment in diversion from prosecution schemes, and by bringing forward greater use of electronic monitoring so as to reduce remanding practice.

From a behavioural perspective sentencing which takes place more than a few weeks after the arrest seems to have very little impact on the individual because they have already dissociated themselves from the action. Thus the 'punishment' is not impacting on the person's behaviour and the whole process then becomes inefficient as well as costly. It is absolutely correct to be concerned about how the public purse is used and we believe there is a need to have a more root and branch consideration

of how the system utilises the resources which it has.

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

Yes

Please provide any reasons for your response.

It is important to remember that any sense of saving public money is only valid if there is a clear expectation that the money saved will be returned to that purse for use elsewhere. It may well be that increased efficiency would be manifest by reducing the churn through courts, but this would only be in terms of reducing the backlog which may have no actual saving potential. Proving efficiency gains in this context appears somewhat complicated.

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.

It might also cause the public to question decisions more frequently as acknowledged. Academically this may be a good thing but practically could open up some very public debates.

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

Disagree

Please provide any reasons for your response.

In stating that there is flexibility in sentencing and that the individual sentencer has a degree of choice about the decision this may actually have the reverse effect of making people feel insecure. This is compounded by the potential for media and social media to play on ambiguity and sway public opinion in an unhelpful manner. There is a sense that the public is being given a say, or at least has the ability to influence, what sentences are given in some aspects of this document. It is unlikely that this would necessarily increase public confidence because confidence is often based on a simplistic appreciation of social rules and laws which goes against treating people differently according to specific circumstances or needs.

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

Potential for more appeals
Potential for longer sentencing periods due to greater need for assessment and reports

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

Greater clarity for the individual being sentenced around the reason for the approach being taken.

Sentencers feel more supported in making decisions which are most likely to result in positive outcomes

Fairness becomes a mantra for Scottish Justice and moves us forward toward a more modern and appropriate understanding of what the role of the justice system is.

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

Apex Scotland is very supportive of the aims of this consultation and broadly of the content of the document. We welcome the potential for greater emphasis on restorative and rehabilitative approaches, and the intent to be explicit about why sentencing decisions have been made. We are concerned about the extent to which public opinion can be allowed to influence legal decision making and hope that some clarification of this can be included in order to protect from political or populist influence which might undermine the principle of fairness and proportionality.