

**Name**

Niall Garvie

**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.**

Without principles there can be no consistency. The purpose of sentencing is multifaceted and I am not sure that it can ever be distilled into a form that pleases everyone.

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

Yes

**Please provide any reasons for your response.**

I have said yes but the question remains "fairness" to whom and thereby what is "proportionality"? Again you will never please everyone and it is in no one's interest that you arrived at some sort of muddled compromise. Are you seeking to be fair to society, the victims (both direct and indirect) or the perpetrator? You will never please all three. Should there be a weighting of the three? It would seem that there are significant groups in society for whom justice is primal. It is about punishment of the offender and for them I doubt you would ever be able to come up with, what they would accept as, a fair sentencing guideline (certainly with regard to offences against the person). Likewise a victim may regard any sentence below the maximum as a slight on them.

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

No

**Please provide any reasons for your response.**

My numbering follows yours for ease of reference: -

(i) The circumstances of the offender are utterly unimportant other than previous criminal record. The old criminal maxim of don't do the crime if you can't take the time should always hold good.

(vi) this is obviously laudable but in practice doesn't seem to hold good if you take the perpetrator's circumstances into account. Why should someone have their ill health, age or family circumstances taken into account in their sentencing. They committed the crime therefore they deserve the punishment.

**Q4) Are the supporting principles expressed clearly and accurately?**

No

**Please provide any reasons for your response.**

See my comments re question 3

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

That custodial sentences of less than a year should not be imposed other than in circumstances of persistent breach of a non-custodial order

**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.**

Though again I suspect that you will never please everybody

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

No

**Please provide any reasons for your response.**

From Carmont sentencing in Scotland in the 1950s to studies of the death penalty post Gregg v Georgia in the USA sentencing has been shown to have little or no deterrent effect in the long term. To include it in your purposes of sentencing devalues them.

Including the fluffy term "express society's disapproval" risks making the guidelines populist and exposes them to the more lurid areas of the media and social media as failing to reflect society's disapproval when the writer believes the sentence imposed is not severe enough.

If you intend the guidelines to work in rehabilitating offenders then the focus must be on non-custodial sentences and using them effectively.

**Q8) Are the purposes expressed clearly and accurately?**

No

**Please provide any reasons for your response.**

They look like they have been written by someone who has been on too many training courses on soft skills. They are very aspirational but actually say nothing new. It's all very well having these goals but unless they are properly resourced and supported by politicians they will inevitably fail.

**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.**

The right sentence is the right sentence.

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

No

**Please provide any reasons for your response.**

Society should have to find the resources to fund the right sentences.

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

Disagree

**Please provide any reasons for your response.**

Because the people who need to read them won't read them. The editor of, for example, The Sun doesn't care about sentencing guidelines. He/she cares about that killer headline. Most of the victims of crime won't read them.

The people who will read them are the interested amateurs like me. People who have had no interaction with the criminal justice system other than, perhaps, as jurors but who are interest in how our government functions.

Do they public want to understand sentencing? If they understand it then it is more difficult to criticise it and that doesn't meet with the agenda of a lot of people.

**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.**

For the most vocal opinion formers any sentence falling between the absolute minimum on one extreme and throwing away the key on the other will bring howls of outrage. They don't want to have confidence in it so they won't. Whatever you do.

**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?**

None

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

As I get older I, sadly, get more cynical. I accept that judges are in a position where they mainly receive criticism for sentencing (lurid headlines about killers being freed to kill again spring to mind) even when an adverse outcome is not their fault but unless and until young offenders and minor offenders stop being incarcerated for trivial drugs offences etc. and thereby their progression to more serious crime arrested (pun intended) any sentencing guidelines will fail to meet any purpose other than punishment and retribution.

There should be a clear distinction between crimes against the person and crimes against property all the way through. Crimes against the person are of far more concern to the public than crimes against property.

You also need to have far more lay representation on your council. Proper lay people, ordinary members of the public. One person is not nearly enough if you want to produce guidelines which reflect our society.