

Name

Whole System Approach Implementation Group

Publication consent

Publish (Post consultation contact)

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.

The <.....> agrees that the distinction between principle and purpose is appropriate and useful. It provides a methodical process logical as to the principles applied. However also outlining the various purposes of sentencing is valuable and again provides a clear basis that all could follow, irrespective of their agreement in relation to specific cases.

The defined distinction affords a greater degree of clarity particularly when this sits alongside the sentencers statements if they are able to evidence the principles applied and the purpose as to the sentence they have imposed. In recognition of the attached papers, which also raise questions with regard to the use of discretion this overarching principle allows for discretion within a framework that recognises the individuality of the person being sentenced and their cases as well as the understanding, skills and independence of the sentencer. By providing guidance which is expected to be adhered to this attempts to provide a balance between.

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

Yes

Please provide any reasons for your response.

This overarching principle would appear to be appropriate and in keeping with the application of the law as it has been well recognised that overly punitive sentences do not serve their intention beyond the oftentimes period of incarceration. It recognises there are many considerations to ensuring fairness and proportionality, which are not always apparent or understood by the wider public. However, ensuring that the objective of the law is balanced with the action to achieve this would appear crucial and more reflective of a just society. It is also important to reflect to the individual being sentenced the role of the court in administering fair and proportionate justice and whilst their acceptance of this is inconsequential to the sentence at that moment, it can contribute to an individual's attitude towards the

future and desistance. Research has evidenced that where people feel their sentence has been fair and explained to them that they have been more accepting even when they disagree with the sentence. This also reflects the human aspect of the law and recognises the importance of sentencing within a rehabilitative process even when that has not been the explicit purpose of the sentence.

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.

The principles outlined as stated provide a framework that sentencers must apply and consider in coming to their sentencing decision. There is a risk of outlining so many principles that the importance of each of these is lost and perceived as little more than a tick box exercise. However, with that in mind perhaps as is outlined within the Northern Ireland and Canadian examples specifying the inclusion of mitigating and aggravating factors may provide clarity for the wider audience as to their consideration within sentencing decisions.

Q4) Are the supporting principles expressed clearly and accurately?

No

Please provide any reasons for your response.

Overall the principles provide a clear understanding of what is contained within each aspect however as noted above the addition of mitigating and aggravating circumstances could be added for further clarity. Using sentencers statements to identify how the principles are applied would also support wider understanding in the manner of case examples. This would also support transparency and support those with no working knowledge in this area to understand the implementation of the guideline.

The provision of victim impact statements may provide additional support to principle 2(i) in ensuring the sentencers are fully aware of the individual impact upon victims, which can be measured within their decisions. This in itself would require additional funding and resourcing, other methods by which this could be strengthened should be explored.

In relation to 2 (iv) that merely stating the sentencing decision as openly and clearly as possible may not be sufficient for those being sentenced to understand. This is particularly prescient in consideration of those individuals with speech, language and communication needs, also children, and young adults who may have the same difficulties. Research has shown that a high proportion of the number of children (under 18years) and young people within HMYOI Polmont have previously

undetected speech language and communication needs. This coupled with the emerging developments in understanding brain development, which is not considered fully matured until approximately mid to late 20s then ensuring appropriate language, tone and direction in communicating decisions is crucial.

Whilst beyond the point of initial sentencing the platforms where sentencing decisions are available are not readily known thus building a greater awareness as to how to access these may be beneficial in provision of transparency and public confidence. This raises the question as to whom the sentence is being communicated as in recognition of deterrence or reflecting society's disapproval as the purposes then a wider audience is necessary.

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

Perhaps one further principle may be considered –

1. Outlining the sentencing options that the sentencer deems relevant to the offence the individual is convicted of. This would ensure that all sentencing options are laid before the court and reasoning as to why certain disposals were deemed more applicable which relates to purpose as well. This particular focus is being mindful of what appears the limited use of remittal to the Children's Hearing for those children aged 16 up to 17 1/2 years. As the council will be aware the United Nations Convention on the Rights of the Child (UNCRC) and European Council on Child Friendly Justice advocate children (all under 18yrs) are not dealt with within an adult system. Within Scotland, we have the Children's Hearing System as an appropriate system for children involved in offending behaviour that recognises fully their position as children and responds in a manner that reflects their understanding of the world whilst seeking to minimise risk and encourage behavioural change. Thus, highlighting why sentencers decide not to remit to this system would support transparency and perhaps identify gaps that could be addressed to shift this position. It is recognised there will be the sentencing guidelines for children and young people however, it was considered important to raise now.

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.

The purposes of sentencing would appear appropriate particularly given the core principle and necessity to adhere to this. It is evident that the purpose of sentencing will involve in most occasions a combination of purposes based on the individual nature of the cases before the court.

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

No

Please provide any reasons for your response.

5c) Whilst accepting that it is important that the values of society are reflected within the upholding of the law further consideration may be beneficial as societal views shift then this would suggest that sentencing in relation to these views would also shift and harsher sentences being imposed for example as was the case of drunk driving.

5d) A more formal consideration of restorative justice and its role within the sentencing process as within the Northern Ireland position may be useful. By viewing restorative justice as out with the sentencing action it fails to recognise the important role this may play in recognising the impact upon victims and opportunity for amends to be possible in a more human and personal manner. As is noted that sentencing in and of itself may not impact crime reduction though one has to acknowledge its significant role within this then that is similar with restorative justice practices as the aim is to hear the victims voice and provide an opportunity for their active participation as opposed to having little input and observing the outcome.

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?

A purpose explicitly highlighting as within the New Zealand and Canadian examples of- Promoting a sense of responsibility for and an acknowledgement of the harm caused to victims or to the community.

This would also support the inclusion and recognition of the central role restorative justice could fulfil.

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?

Agree

Please provide any reasons for your response.

It should not be a purpose or principle within sentencing decisions but it would be remiss not to acknowledge that such considerations will be taken within sentencing. By the very provision of suggested disposals within Criminal Justice Social Work Reports (CJSWRs), resources and costs will have an influence on what is outlined within possible requirements and subsequently what interventions may be available to the court.

This does raise a question over the geographical availability of resources, which will not be consistent, and the impact this may have on sentencing decisions. This is a wider issue beyond the scope of this consultation though its level of impact may be worth further exploration.

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

Yes

Please provide any reasons for your response.

Specifically in relation to sentencing then the use of steps that could reduce the impact on public resources such as acceptance of guilty pleas at earlier stages, which then removes the need for trial is beneficial.

Sentencing ought not to 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.

Clearly outlining the distinction and interconnectedness of the principles and purposes of sentencing provides a framework for understanding how these are applied. Whilst individuals may not agree with the sentence by virtue of being able to follow the process attributed and evidencing consistency in their application will go a long way to providing confidence in the decision making of sentencers. It also highlights the complexity of elements, which sentencers must grapple in order to respond to the individuality of each case before them as well as the similarities.

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.

By providing, the opportunity for greater understanding of the decisions sentencers make and what they consider in doing so will only increase public confidence if the guidelines are seen to be utilised consistently. Proposing how this will be measured may also go some way to improving public confidence by demonstrating periodic oversight of the sentencing decisions and feedback being made available on this.

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

The possibilities outlined within the Draft impact statement would appear appropriate. In recognition of the role and consideration of victims within both the principles and purpose of sentencing it may be purposeful to consider the use of victim impact statements in appropriate cases. This in itself would incur some form of financial costs and resource implications.

It would seem prudent to build in a period of review following the commencement of the guidelines to measure what has been the impact on the areas in the draft impact statement or any unidentified aspects.

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

The guideline may result in a greater sense of public confidence in sentencing where there is an opportunity to review their impact and measure whether greater consistency has been achieved. It may also develop a better understanding by the public, victims and those being sentenced of the sentencing process and the measured decisions, which sentencers must take, and all that contributes to that.

The guideline avoids stipulating specific sentences and allows for the discretion of the sentencer to use their skills, knowledge and understanding in applying the principles and purposes of sentencing within a guiding framework.

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

The noted intention of the council to create specific guidelines in relation to children and young people would be welcomed and afford an opportunity to detail in depth the factors, which the xxxx Implementation Group would hope are central to any such guidelines.

When producing such guidelines, it is imperative to reflect the importance of existing legislation concerning children including the principles of the Children (Scotland) Act 1995 and the role of corporate parenting for children within and having left care, whilst honouring Scotland's obligation under United Nations Convention on the Rights of the Child.