

Principles and Purposes of Sentencing

Consultation Analysis - Executive Summary

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Consultation on the Principles and Purposes of Sentencing

Executive summary of the analysis of the responses to the consultation

The Research Shop

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Introduction

1. The Scottish Sentencing Council (the Council) was established in 2015 as an independent advisory body to promote consistency in sentencing, including through the preparation of sentencing guidelines for the courts.
2. The Council opened a public consultation on its draft guideline on the principles and purposes of sentencing on 1 August 2017, with views invited by 27 October 2017. Rather than being exhaustive, the draft guideline aims to capture general foundational elements which underlie all sentencing decisions. The consultation paper was sent to a wide range of organisations and individuals and can be viewed at:
<https://www.scottishsentencingcouncil.org.uk/media/1512/principles-and-purposes-of-sentencing-consultation.pdf>
3. The Council believes that a guideline on the principles and purposes of sentencing will increase public awareness and understanding of how sentencing decisions are reached.

Overview of the consultation responses

4. There were 60 responses to the consultation – 35 from individuals and 25 from organisations. Some of the individuals identified themselves as involved in criminal justice in a professional capacity. Amongst the organisations were offender support and representation services; community justice bodies; legal practitioner groups; other justice system professional groups; victims' groups; and others.
5. Forty six respondents chose to submit their responses using the online system set up for this purpose. Fourteen respondents submitted their responses in emails, some using the response form provided in the consultation document, and others providing commentary in free text. Twenty nine respondents chose to have their response and name published; fifteen asked for anonymity, although were content for their response to be published; six respondents did not want their name nor response to be published; ten respondents did not indicate their choice.

Views on the distinction between a “principles” and “purposes”

6. Fifty one of the 56 respondents who provided a view agreed with the Council’s approach to distinguishing between a “principle” and a “purpose” of sentencing. The distinction was considered to be helpful in bringing clarity to the process of sentencing and provided a useful, shared vocabulary for moving forward. A few respondents commented that the distinction should provide greater certainty and consistency in sentencing which will lead to greater efficiency in the criminal justice system, for example, for those providing advice to clients.

Views on the core principle of sentencing

7. Forty nine of the 56 respondents who provided a view agreed that there should be an overarching principle of “fairness and proportionality”. The most common reason given was that this overarching principle would help to maintain balance in sentencing, to reflect a variety of different needs, including the best interests of the community, impact on victims, and rehabilitation of offenders.

Views on the supporting principles¹

8. Forty seven of the 58 respondents who provided a view agreed that the supporting principles are appropriate. The supporting principles were perceived to be broadly consistent with the overarching principle and helpful in expanding on this. Forty two of the 56 respondents who provided a view perceived the supporting principles to be expressed clearly and accurately.

9. In relation to the first supporting principle, a recurring view was that more detail is required on what constitutes “relevant factors”. There was qualified support for the second supporting principle, which some respondents suggested may not be needed if the other principles are applied. Two main views on the third supporting principle were that some of

¹ Six supporting principles were proposed. (i) All relevant factors of a case must be considered including the seriousness of the offence, impact on the victim and circumstances of the offender. (ii) Sentencing decisions should treat similar offences in a similar manner. This helps aid consistency and predictability. (iii) Sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case. (iv) Reasons for sentencing decisions must be stated as clearly and openly as circumstances permit. (v) Sentencing decisions must be made lawfully and sentencers must have regard to any sentencing guidelines which are applicable. (vi) People should be treated equally, without discrimination.

its terminology required further definition; and there may be circumstances, for example, in domestic abuse settings, when the principle should be overridden. Supporting principle four was strongly supported and perceived to have the potential to help victims, in particular, to understand sentencing decisions. Little comment was made on supporting principle five, although this was considered important in the context of non-mandatory guidelines. Greater elaboration was requested on supporting principle six in terms of clarifying what equal treatment looks like, and whether the principle refers to those with protected characteristics only, or extends further.

Views on the purposes of sentencing

10. Forty five of the 55 respondents who provided a view agreed with the approach to the purposes of sentencing. Amongst those who disagreed, several suggested that the guideline should present a hierarchy of purposes in order to promote consistency in sentencing. Thirty eight of the 55 respondents who provided a view considered that the proposed purposes are expressed clearly and accurately.

11. Respondents were divided on whether the proposed purposes of sentencing are appropriate. None of the offender support and representation services perceived the purposes to be appropriate. Several other categories of respondent had mixed views.

12. Whilst a few respondents explicitly welcomed the inclusion of **punishment** as one of the purposes of sentencing, others suggested that punishment describes more a means to an end, rather than constituting an end in itself. The purpose of **reduction of crime** through effective **rehabilitation of offenders** received much support from respondents, with repeated suggestions for it to stand alone as a purpose, rather than be sub-ordinated under the heading "Reduction of crime". A common theme to emerge from views on the purpose of **reduction of crime** by imposing **preventative measures** and by **detering** offending behaviour, was that the deterrent effect of sentencing may not be as effective as the deterrent effect created by the likelihood of being detected and prosecuted. The proposed purpose of **reflecting society's disapproval of an offender's behaviour** attracted most comment, with the majority of those providing a view disagreeing with its inclusion on the grounds that societal views on acceptable behaviour are subject to change and influence. There was much support for the purpose of **giving the offender the opportunity to make amends**. A few suggested that this, along with rehabilitation of offenders, should be the priority for judges when sentencing.

Views on the efficient use of public resources

13. There were mixed views on the approach to the efficient use of public resources set out in the draft guideline, although 31 respondents out of the 55 who provided a view agreed with the approach. The most common reason for disagreeing with the approach was that cost should not be a determining factor in sentencing.

14. Forty four of the 56 respondents who provided a view agreed that it is appropriate to consider efficient use of public resources during the sentencing process. A few of the individuals emphasised the importance of this in view of what they perceived to be the high costs of the sentencing process. Other respondents, from community justice and offender support and representation services, supported the proposal as encouraging more innovative and considered use of community sentences over other options, such as custody.

Views on the potential impacts of the guideline

15. Forty two of the 55 respondents who provided a view agreed that the guideline would lead to an increase in public understanding of how sentencing decisions are made, although many suggested that increased public understanding would depend on how the guideline is communicated and promoted.

16. Thirty five of the 52 respondents who provided a view agreed that the guideline would lead to an increase in public confidence in sentencing, mainly on account of the guideline helping the public to understand more about the judicial decision-making behind sentences, and providing greater transparency in sentencing. Others, however, suggested that the guideline by itself may have little impact on the public without supporting efforts to engage and educate the public. A few respondents considered that the tabloid press may be more influential in influencing public opinions on sentencing.

17. Respondents did not envisage significant costs arising from the introduction of the guideline, with several suggesting that the net effect could be cost-savings. A common view was that benefits would emerge from the guideline, the main ones being greater awareness and understanding of sentencing and the considerations which the sentencer has to take into account; and greater transparency and clarity in sentencing.

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