

A qualitative exploration of the attitudes of young people to the sentencing of young people in Scotland

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Research prepared for the consideration of the Scottish Sentencing Council. The views expressed are those of the authors and participants and do not necessarily represent those of the Council.



A QUALITATIVE EXPLORATION OF THE ATTITUDES OF YOUNG PEOPLE TO THE SENTENCING OF YOUNG PEOPLE IN SCOTLAND

“Like I feel like everything that they've got is really good.”
(Irena, Focus Group 16)

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Executive summary

1. The Scottish Sentencing Council (the Council) prepared a draft guideline for the sentencing of young people in Scotland. The draft guideline would be applicable for a young person under the age of 25 in Scotland. Within the draft guideline there are five overarching sections:
 - Principles and purposes of sentencing a young person;
 - Assessment of Seriousness;
 - Identifying the most appropriate sentence,
 - Features of an appropriate sentence,
 - Sentencing range
2. As part of developing the draft guideline the Council wanted to explore the views and opinions of young people across Scotland. In May 2019, the University of the West of Scotland was commissioned by the Council to explore the opinions of young people, including young people with convictions, on sentencing and the draft guideline. This research was carried out during the period July 2019 to January 2020.
3. In total, sixteen focus groups (n=16) with sixty-six young people (n=66) were carried out across Scotland. Seven focus groups were carried out with young people currently within the criminal justice system and nine were carried out with young people recruited through youth work organisations. Of the sixty-six participants, thirty-three identified as male, thirty-one identified as female and two preferred not to say.
4. All focus groups used a vignette based workshop depicting different sentencing stories related to the draft sentencing guidelines. Participants were prompted with additional questions to gather their opinions before the draft guideline was shared with the group, further opinion was then sought on their responses to the specific draft guideline. Twelve of the focus groups were carried out by the two UWS researchers and four were carried out by youth workers using the social media platform WhatsApp to allow for wider geographical cover and to engage with the researchers simultaneously. The findings suggested overall agreement with the draft guidelines with participants highlighting some areas for consideration and suggestions to incorporate more elements into the draft guideline.
5. Having a primary purpose of sentencing for young people based on rehabilitation was supported throughout the cohort. Those who had lived experience of the

criminal justice system believed that making amends should be a secondary purpose whilst young people recruited from youth work organisations thought protection of the public to be the second purpose of sentencing.

6. With regards to the principles of sentencing and the factors: maturity, capacity for change and the best interests of the young person, participants were in general agreement, but in determining the maturity and age of a young person it was believed that young people were so diverse in their circumstances that, in addition to biological and psychological factors, social factors and roles should also be taken into account. There was also a belief between participants that there should be a graduated approach to age rather than a cut off age between youth and adult justice systems. Some of the cohort argued that a welfare led approach should be applied to all within the criminal justice system to assist in reducing offending.
7. There was general agreement with the information requested to identify the appropriate sentence, yet interviewees suggested some additions. Participants considered childhood family circumstances and relationships to be very important and believed that there should be broader understandings of what Adverse Childhood Experiences are and how they can be experienced differently. Participants also believed that information should be sought about who else would be affected by the sentence including: peers, family and dependents. In addition to these suggestions, participants believed that elements that would impact the young person's ability to complete the sentence are important, including – employment, education and poverty levels, and that young people should be spoken directly to in regards to their ability to complete the sentence and the gathering of information. Importantly, participants believed that any information gathered on the young person (excepting previous convictions) should not be used to justify a harsher sentence.
8. With regards to the features of sentencing, the young people welcomed the proposal that sentences should aim to reduce stigma. One of the most important ways in which stigma was discussed centered on criminal convictions and disclosure processes, which sentencers have very limited control over. Participants expressed the view that having a criminal conviction requiring disclosure for low-level offences was only about continuing punishment and was antithetical to the provision in the draft guideline that rehabilitation should be a primary consideration. Reducing the likelihood of stigma in a young person's life was viewed as the most important feature of sentencing. This was followed by:

- benefit society by reducing the possibility of further offending, and
 - give the young person the opportunity to understand the consequences of their offending behaviour
9. When presented with a range of sentencing options, for the interviewees, social isolation was identified as one of the most damaging things for young people to experience and staying in the community regarded as one of the best options. Therefore a community payback order with supervision was often viewed to be the best option within the range of sentences provided. This was the preferred type of sentence due to the assistance of a social worker in addressing the needs of the young person and having someone to listen to them. This was closely followed by deferred sentences and admonishment. Prison, and the experience of prison, was generally felt to be punishment without learning, which was viewed as adverse to the rehabilitation ethos. However, most groups also believed prison had a purpose for high severity offences when considering the protection of the public. Restriction of Liberty Orders (RLOs), unpaid work orders and fines were also commonly discussed as sentences that were not viewed to work in rehabilitating as the relationship was about control and compliance rather than addressing the causes of offending.
10. Mentors, mentoring, and counselling were discussed as one of the main areas missing within the justice system. This was due to the often unmet need of mental health support that interviewees believed was a problem for those within the justice system. Therefore having a sentencing option that would provide mental health support as part of an integrated sentence was suggested by participants.

Introduction

11. The Scottish Sentencing Council (the Council) is an independent advisory body created in 2015 under the Criminal Justice and Licensing Act (Scotland) 2010. The Council carries out a range of work concerning sentencing in Scotland. The Council's responsibilities include:
 - preparing sentencing guidelines for the courts;
 - publishing guideline judgments issued by the courts; and,
 - publishing information about sentences handed down by the courts.
12. Sentencing guidelines may relate to the principles and purposes of sentencing, sentencing levels, the particular types of sentence that are appropriate for particular types of offence or offenders, and the circumstances in which the guidelines may be departed from. They may be general in nature, or relate to a particular category of offence or offender, or a particular matter relating to sentencing (Criminal Justice and Licensing Act (Scotland) 2010). In the Council's first business plan (2015-2018), it set out the first areas for sentencing guidelines, which included general principles and purposes of sentencing, and on sentencing young people.
13. In setting out reasons for addressing the sentencing of young people as one of the first guidelines, the Council argued that a guideline in this complex area had significant potential to improve public education and confidence, and that sentencing provided an important opportunity to consider how harmful behaviour by young people can be best addressed (Scottish Sentencing Council, 2015). Areas for consideration included the potential effects of different types and levels of sentence on young people, and how the young person's personal circumstances could best be taken into account. In particular, the Council identified age and maturity and experience of trauma or bereavement as relevant factors, common to many young people who have committed an offence.
14. The Sentencing Young People Committee is one of four working group committees currently in place, and is charged with overseeing the development of a guideline on the sentencing of young people. A draft guideline is currently in development (Scottish Sentencing Council, 2018a). Before submitting this to the High Court of Justiciary, the Council must publish this draft guideline and consult the Scottish Ministers, the Lord Advocate, and other persons it considers appropriate (Criminal Justice and Licensing (Scotland) Act 2010). The Council is also able to conduct, or commission, research to assist in the development of guidelines and to assist in



assessing public understanding and awareness of sentencing related to specific topics (Scottish Sentencing Council, 2018a).

15. In May 2019, the Council released an invitation to quote for a qualitative exploration of the attitudes of young people, including young people with convictions, to the sentencing of young people. University of the West of Scotland submitted a successful tender to undertake this research. This report publishes the findings from this research, undertaken across Scotland from July 2019 until January 2020.
16. The proposed research from UWS stated the following aim:

The aim of the project is to explore the attitudes of young people, including young people with convictions, to the sentencing of young people. The project should specifically explore themes and issues that arise out of the Council's draft guideline on sentencing young people.

17. The Council was specifically looking to engage with young people, including young people with convictions, around the topics covered by the draft guideline on sentencing young people. This research provided an important opportunity for the views of young people to feed back into the development of the guideline and draw on their experiences.

Methodology

Research design

18. The main methodological approach applied throughout this research was a qualitative approach, which used a vignette-based workshop to elicit young people's opinions on sentencing young people in Scotland and the proposed sentencing guideline. A vignette is a small descriptive impressionistic scene, which focuses on one particular topic or moment to give an impression of that moment. Vignettes can be used to evoke emotions, recall memories or create focused in-depth discussions about a particular topic. Vignettes are commonly used in circumstances in which research aims to discuss sensitive issues (Caulfield & Hill, 2014) or working with groups which don't typically engage well with traditional research (Valentine, 2009). They are typically followed by a series of questions, which broaden the boundaries of discussion. This method allowed us to move away from more traditional forms of interviewing which are typically considered problematic for young people (Kara, 2015). Working closely with the Scottish Sentencing Council, vignettes depicting specific stories were developed around sections from the draft guideline on sentencing young people (please see appendix one). During the time period between this research being carried out and the publication of this report, the draft guideline used to inform this research was amended for the purpose of release for public consultation. The "consultation draft guideline" (please see appendix two) uses different wording. For clarity, the vignettes developed and participant's responses within this document were drawn from the original draft guideline, henceforth known as "the pre-consultation draft guideline". Throughout this report any reference or changes incurred with the consultation draft guidelines are highlighted. The vignettes developed from the pre-consultation draft guidelines were on the following areas:

- Principles and purposes of sentencing
- Background information
- Features of sentencing
- Range of sentencing, and
- Age range

19. A vignette was designed to cover each of the above sections, with a view to gaining an understanding of the experiences and opinions of young people in relation to each of these areas. Vignettes were then built upon using a series of questions, or providing further aspects of the story, to elicit participants' opinions and experiences.

The case vignettes (please see appendix three) and accompanying questions were constructed so that we were first able to gather the young people's opinions on an issue, before then providing further information that (if given earlier in the focus group) might have led them towards any one particular response. Reflecting this, the point at which responses were given by the focus group participants has been factored into the analysis. Below is an example of the vignette which explored the details required by way of background information:

Suzie is 18. She destroyed some furniture and set fire to the bin in her residential home. Suzie is charged with criminal damage and fire-raising and is being sentenced. The judge wants to choose a sentence that helps Suzie change her behaviour. The judge knows a lot of information about the offence, but not very much about Suzie.

Q1: What type of information about Suzie do you think is important for the judge to know to choose the right sentence?

20. Each vignette was read aloud to the participants and then a series of questions allowed for wider discussion. Some vignettes were supported with cards as visual aids. Focus groups took between 45 minutes and 90 minutes dependent on the number of participants in the groups. As a thank you for participation in the focus group, participants were provided with vouchers for high street food retailers, or cakes and biscuits. Usually participants decided which they would prefer, although in some cases this was determined by the nature of the interview setting.

Recruitment

21. The research was intended to gather data that captured the views of young people from different age ranges and locations across Scotland, and with different (or no) experiences of the justice system. To do this, youth groups, high schools and criminal justice organisations were contacted. Attempts were made to include a range of young people who were care experienced, have additional support needs, were currently serving a community sentence, were currently detained, had previous experience of the criminal justice system, had been victims of crime, were from both rural and urban areas, and who were politically active.
22. This was achieved within the data set and a diverse cohort provided a rich data set for comparison. Participants were recruited from nine local authorities across Scotland. In five local authority areas the researchers arranged two vignette based



focus groups – one with a youth group (although in one area the youth work group was cancelled on two occasions due to lack of participants, leaving no time for it to be rearranged) and one with young people currently in the criminal justice system on a community sentence. These local authority areas were:

Glasgow, Dundee, Edinburgh, North Lanarkshire, South Lanarkshire

Focus groups were also carried out in:

West Lothian, Perth and Kinross, Dumfries and Galloway, and Highland

23. In addition, one focus group with serving male prisoners and one with serving female prisoners was carried out. Unfortunately, it was not possible to conduct focus groups in any secure care facilities or in a young offenders institution (although some of our participants had experience of these).
24. To allow for wider geographical participation across Scotland two types of focus groups were carried out: researcher-led and youth worker-led. Both types used the same vignette-based methods, but the youth worker-led focus group was conducted using WhatsApp technology to record and share the data. The use of WhatsApp was included in the design, in recognition that engaging with young people in the manner in which they converse is important (Leyshon, DiGiovanna, and Holcomb, 2012), both in attracting participants to the focus groups and in collecting high quality data. WhatsApp is the most commonly used communication application in smart phones with young people (Montag et al, 2015). Youth workers carried out the vignette workshop whilst recording the discussion using WhatsApp technology and shared the recording with the researcher allowing end to end encryption to occur therefore keeping the data confidential and anonymous.
25. For all focus groups, recruitment of participants was always undertaken through gatekeepers within host organisations. Ethical approval was sought and granted from the University of the West of Scotland, along with each of the five local authorities where criminal justice organisations delivering community sentences were contacted, and the Scottish Prison Service. Where required, data sharing agreements were put in place.
26. Researcher-led criminal justice groups were hosted by prisons, local authorities and other relevant delivery organisations. Youth work organisations were identified through the researchers' existing professional networks and through internet searches. Recruitment of organisations specifically to undertake youth worker-led

groups was completed in a number of ways: snowball sampling, posters, and promotional material about the project distributed through youth work channels. Snowball sampling is a non-probability sampling technique in which existing participants are asked to recruit participants from their networks (Morgan, 2008). Youth groups that were contacted directly by the researchers were asked if they knew of other suitable groups or if they could pass the information along throughout their networks to aid recruitment. Unfortunately, recruitment was a slow process and, due to the short timescales, only four of the sixteen focus groups were conducted in this manner.

27. The use of Whatsapp as a method was very useful in ensuring geographical reach and allowing voices of young people such as those in Highlands and Islands to be included. Yet, recruitment was slower and the technique required additional engagement with the youth worker to ‘train’ them in how to elicit opinions without leading the young people towards what workers considered appropriate responses. The first two youth worker led focus groups were shorter in length and the participants did not go into depth concerning their feelings. This was highlighted during analysis and further instruction was given to the following two youth worker led focus groups, including a data sheet on how to use Whatsapp and a Skype phone call on how to elicit rich data prior to the focus group being carried out. The following two focus groups were of similar length and yielded in-depth responses so it is expected that had there been more time this would have been a viable method in eliciting a rich data set with groups.
28. To allow us to compare differences between those groups who exclusively had lived experience of the criminal justice system and those who didn’t, we named the focus groups who were recruited from criminal justice groups “CJ focus groups” and those from youth work organisations “YW focus groups”. This was for ease of identification. However, it should be noted that some young people recruited through youth work organisations also had experience of being sentenced by the criminal justice system.

Overview of participants

29. In total, there were 16 focus groups across Scotland: seven focus groups with young people currently within the criminal justice system, and nine focus groups with young people in the community. The mean number of participants in each focus group was four; in a small number of cases, only one young person attended on the day, so an

interview was conducted instead of a focus group. These are still referred to as 'focus groups' below, in order to protect anonymity. Overall, 66 participants took part in the study. They were aged between 14 and 25, with the mean age being 18.7 years old. The majority of participants were White or White Scottish (n56), although there was a small representation from other ethnicities: Scottish Asian (n3), Polish (n1) and Other (n2).

30. The table below shows, based on gender, whether participants have ever been sentenced within a court and if they have ever been a victim of a crime. The decision to request data on victimisation was only taken at a later stage, so data is only available from focus group 6, which accounts for the high numbers of missing data (MD) for whether participants had been a victim of a crime.

Table One: Demographic Breakdown by Gender Split

Gender	Ever been sentenced			Been a victim of a crime		
	Y	N	M/D	Y	N	M/D
31 females	4	21	6	13	6	12
33 males	18	12	3	8	7	18
2 prefer not to say	1	1	0	0	0	2
66 participants	23	34	9	21	13	32

31. Interestingly, for those for whom we have data, a greater proportion of females (68%, 13 of 19) than males (53%, 8 of 15) reported being victims of crimes. More males (60%, 18 of 30) than females (16%, 4 of 25) were sentenced in court. Excluding the missing data, a greater proportion of the cohort have been victims of crime (62%, 21 of 34) than have experience of being sentenced within a court (40%, 23 of 57).
32. This has important implications for the following data as the majority of the cohort does not have lived experience of being sentenced by the justice system or of the range of sentences, or awareness of the implications that many of the sentences have. In addition, we did not ask those who had been victims of crime to report on whether the crime had been dealt with by a court. This is a limitation of the study as many of the participants' views will not be based on lived experience of the justice

system but rather may reflect the more punitive public narratives on sentencing of young people that pervade the public arena, which tends to inform public perceptions of sentencing practices (Tufts and Roberts, 2002). It was expected that those who did not have experience of the justice system would be the most punitive but this did not occur. The main difference occurred in the age of the participants, with the groups with the youngest members of the cohort displaying more punitive perceptions of sentencing than those with more mature participants. One other difference between the CJ and YW groups was that YW groups were more likely to emphasise protection of the public, thinking more readily about very serious offences. Yet, there were no major differences in approaches or opinions with both the CJ and YW groups having a small minority of individuals which displayed more punitive perceptions.

Data analysis

33. All data gathered were transcribed verbatim and anonymised, pseudonyms were applied throughout the report and names were given to participants randomly. The decision was taken to present quotes from the young people in the language they use, including local dialect, slang, and the use of swearing. This decision was taken for a number of reasons. Qualitative research is underpinned by the theoretical assumption that meaning is constructed through language and social interaction, and is inherently contextual. Transcribing the focus groups verbatim minimises the risk of discrepancies between participants' intended meanings and our interpretations that can compromise the rigor of the findings (Witcher, 2010), and offers transparency to the audience. In addition, the aim of this research was to give voice to the young people who participated, and in doing so we committed to using their words wherever possible. The data were analysed using a form of thematic analysis. Thematic analysis is a well-established analytical approach and has been used fruitfully in criminology and the wider humanities to study public perceptions (see for example, Girling et al., 2000), beliefs, values and experiences (Braun and Clarke, 2008; Mason, 2003). The transcripts of the focus groups were analysed using Nvivo 12. Data analysis and data collection were concurrent (Charmaz 2006). The first five transcripts were coded by both researchers by engaging in a close reading to identify initial coding categories. Initial categories were compared and consolidated and duplicate codes removed to create a coding framework. This framework was then used for analysis of the additional transcripts, which were divided between the researchers. New codes were still allowed to emerge during the later stages of analysis which were not captured in the initial coding framework.



Therefore, this was followed by a final analysis workshop, in which additional codes, not previously identified, were discussed, and the original grouping of codes into sub-themes and themes was reviewed and revised. Specific categories and codes were grouped under overarching themes associated with the draft guideline:

Sentencing Purposes, The Meaning of Offending, The Meaning of Rehabilitation, Background Information, Features of Sentencing, Sentencing Range, Age and Maturity

34. Critically with focus groups, comparison is made across the groups, rather than between participants within groups, in case the identified theme was a product of that particular social interaction. The data were analysed with a view to identifying any differences between the views expressed in those focus groups conducted in community settings and criminal justice settings.

Findings

35. In this section the findings that emerged from our analysis of the data are presented. First, a number of overarching themes are presented. These are: understandings of age and other important factors; a strong sense of justice (both in terms of justice and re-balancing for the victim, and fairness in sentencing); and the meaning of offending for young people. These themes provide important context for understanding the subsequent sections, which present the findings that were directly related to specific aspects of the draft guideline. These are presented alongside the relevant sections of the draft guideline. During discussions with interviewees they used the term prison to refer to both prisons in general and young offenders' institutions, which hold young people between 16-21 years. All following discussions and use of the word prison by participants refers to being detained within a custodial setting of either prison or a young offender's institution.

Overarching Themes

Age and other factors

36. The first thing to note is that it was clear during the focus groups that the terminology being used, which reflected the terminology used in the draft guideline, was causing confusion. The term 'young person' often appeared to conjure up the image of a child under 18 among interviewees. It frequently had to be reiterated by researchers that they were talking about young people over the age of 16, and beyond 18 (if participants felt this was relevant). Due to this and how participants wanted to be viewed the researchers suggest that consideration be given to using the term 'young adult' in the guideline and accompanying publications. This also reflects some participants' desire to have their adult status, reflected by adult responsibilities, acknowledged as some of the participants were parents, held stable jobs and had their own accommodation for a number of years, so these social roles factored into their social identities and how they wanted to be seen and treated within society.
37. Despite this, all but one of the groups (FG 3 CJ) described ways in which young people, aged 16 and over, were different to older adults, which was further evidenced through the insights that the young people gave into their own lives. The way that this difference was framed often differed across participants and across groups. Many of the young people offered support for the idea that young people may not always make good decisions or think so carefully about consequences,

describing themselves (albeit often jokingly) in terms such as “stupid”, “daft” and “naive”:

Patricia - If you're younger [than 21], like you'd be dumb and you didn't really know what the fuck you're doing. It's like they do, young people do dumb shit all the time. Like they commit murder or they, they do drugs, they drink in public, Like everything that's on the fucking list. You get people that's done all that shit and they end up not having any jobs in the future. (Focus group 15 YW)

38. Some young people articulated the difference between young people and older adults in terms of personal factors such as the accumulation of (self-) knowledge and life experience, saying that “Ye're still a youth at that age, you know. I mean ye're still learnin' yerself” (Focus group 2 CJ). Only rarely (FG 2, 16) were these differences articulated by drawing on contemporary public narratives on scientific understanding about physical or neuro-psychological development, as emphasised in Guideline 3.

Ellie – their brain is still developing so they do have a greater capacity to learn where their mistakes could go wrong and the best way to live their life, I think. (Focus group 16 YW)

39. In other cases, the difference between young people and older adults was articulated in terms of material structural inequalities, such as their failure to (yet) achieve a range of social markers, such as stable employment and housing, reliance on others and their relative poverty.

Alison - I think with older people it has to be more, quite like, you've had your chance, you've learnt a lot more than younger people have, there are more serious things like fines where they've managed to like build up actual a stable amount of money, hopefully, em, like they probably got proper jobs, they've probably, eh, like got their own house. Em, things like that. So, if they get a fine, it's not going to, it's gonna be a direct impact on them rather than a young person's families or just kinda, just... (Focus group 5 YW)

40. These discussions highlighted the widely acknowledged protracted transition to adulthood in late-modern society (Healy, 2013) and its fragmented and liminal nature, having left behind childhood, but not yet achieving traditional markers of full adulthood (Valentine, 2003).

41. Relational factors were another way in which young people were differentiated from older adults. This specifically related to the susceptibility of young people to peer pressure, which is recognised within the pre-consultation draft guideline, under the principle that 'maturity' should be factored into decision-making, but also included the value placed on peer relationships.

Julien - So I got until 10 [on my curfew], which was better than seven. So I go for dinner, it's a thing that I do, that's my social thing. I go for dinner, have dinner with friends, we have a chat, it's what we do, and there's times where we could be going for dinner and we could not be getting out until, like, not finishing until half eight. We normally eat in the centre of town, then I've got that hour and a half where I'm like, oh shit, I need to get home, I need to be home now. And there was a couple of times where it's like, panicking, like, pure, absolutely rushing to get home, because if you're, like, a second after, even if you aim for being home at nine o'clock, fine, that's fair enough, but there'll be the odd occasion where you're like, shit, it's after nine, I need to get home rapid. (Focus group 10 CJ)

42. The consequence of this is that the experience of being on a curfew and tag is different for this young person, whose valued supportive relationships are outside of, rather than within, the home. One final way in which young people differed from (at least some) older adults was in their perceived ability to understand social norms and to communicate with the court environment in the expected manner.
43. So the young people that we spoke to recognised personal, structural, relational and other social factors which made them different from older adults, and which were relevant to the sentencing process and sentencing options. These differing social roles and ties that were indicated as markers of maturity for the young person can be remarkably different across young people, with some having held jobs, been parents and held their own tenancy for years whilst others have not yet experienced any of these social factors. Therefore consideration that all of these should contribute to an understanding of how 'maturity' should be factored into the sentencing process be given, (please see the pre-consultation draft guideline paragraph 7 within principles of sentencing). Nevertheless, many of the young people identified other factors which were equally or more important in thinking about sentencing. These included the nature of the offence, the person's previous offending and the presence of factors such as mental illness or learning disabilities, which were perceived to reduce culpability for the offence or to play into an understanding of age as being more than just a number.

44. All groups felt that it should be the age that you committed the crime, rather than the age that you were at court, which was relevant for the application of the draft guideline - although one group highlighted that the age and circumstances at court would need to be considered for choosing the appropriate sentence.
45. There was considerable disagreement among the young people that we spoke to about the age at which the draft guideline should cease to apply, with a small number of people suggesting that they should be treated as any other adult would from the age of 16, while other responses included 18, 20, 21, 24 and ranged up to the age of 25 (with tentative discussions around this being up to 30, and with 40 being used as a clearly different phase). The variation in responses implicitly reflects what some participants articulated explicitly, which was that there was no one age at which you turn from being a young person to an adult, and that this instead should be understood as a graduated process of moving from one phase towards another. Consequently, it was felt by the young people that 'cliff edges' in terms of how young people should be treated should be avoided.

Susan- It's not like young people should be trea'ed like adults. It's that, like coz if you hit 22 you're then seen as an adult so then sen'encin's different but you've still got the same mentali'y because you're not that far from the young person so it should be that the adults who are trea'ed like young people in that sense, not the other way round.

Alison - I don't feel like there should be a hard border between a young person and adult. (Focus group 5 YW)

46. As with the conversation above, some participants expressed support for a more welfare-focused approach for all, extending this to older adults. Conversely, there was also a strong feeling that young people needed to experience consequences to their actions if they were going to learn. This provides support for the upper age limit in the pre-consultation guideline, which applied up to the age of 25, and for consideration to be given to a graduated approach, which avoids sharp differences in treatment between youth and adult justice.

Strong sense of justice

47. The finding that at least some young people saw age as being secondary to other factors such as the nature of the offence is linked to a broader theme of a strong sense of justice among the young people that we spoke to. This was expressed in two main ways: through recognition that the sentence should benefit the victim and through a desire for fairness in sentencing.
48. When asked about what sentences should be trying to do for the victim, responses included explicit statements that they should “bring justice to the victim” and responses about rebalancing and repair: that they should be showing something was being done in response to the offence, that they should be repairing the harm done (see section Principles and purposes of sentencing and discussion on making amends), that the victim should also be listened to and that help should be provided to the victim as well as the person who had offended.

SA - What should they be trying to do for the victim?

Thomas - Give the victim reassurance that they are being given justice for what happened to them.

SA - And what do you mean by that?

Thomas - Like, they should feel that it's not just going ignored, that they're getting the revenge that they want.

Sharon - Less severe [than that] [laughing]. Some cases might not be like that, some people want, want to see them getting the help they need.

SA - Okay.

Sharon - And then the victims should also get the help they need. (Focus group 14 YW)

49. Although the general guideline on ‘Principles and purposes of sentencing’ recognises the impact on the victim, there was no reference to the victim in the pre-consultation draft guideline for the sentencing of young people, although such a reference is now made in the consultation draft guideline. The findings of this research offer some support for the inclusion of this in subsequent versions.
50. The way that age was viewed as shaping (or not) the purposes of sentencing is discussed in more detail in the Principles and purposes of sentencing below. However, one of the strongest counter views to the theme that age should be important in sentencing came from one young woman who herself had personal

experience of the criminal justice system but who had also been the indirect victim of a very serious offence, which had resulted in the death of her child's father:

Samantha – the boy that done it [...] he pled guilty to culpable homicide and he only got four years [...] so I 'hink that's disgustin'. He's took, not just ma partner's life away, he's took ma life...

Rowena - And the weans'.

Samantha - ...because I never touched a drug before that... (Focus group 3 CJ)

51. This was then contrasted unfavourably to the women in the group's own experience of being sentenced:

Samantha - This is whit ah mean. They're jailin' us for silly wee 'hings but folk lit that's actually took a young boy's life away...

Claire - Mmhmm, aye. (Focus group 3 CJ)

52. The importance placed on fairness in the sentencing process was expressed in some form across almost all of the groups, with people expressing views along the lines of:

Josia - There shouldnae be like wan rule for wan person and another for the other, know what I mean? (Focus group 2 CJ)

53. This was most clearly articulated by a participant in one focus group of criminal justice experienced men:

Johnny - They [the people who write the social work reports for the court] don't need to care at aw. Nae cunt has tae fuckin' care man. Ah widnae care aboot them. They jist have to be fair. Be fair. Don't care. Right there's yer motto man. Johnny - Stick by it man, stick by it.

Wes - I like that.

Johnny - Everyb'dy's askin' ye ae care. Innit but it's aw aboot bein' fair man. (Focus group 7 CJ)

54. This belief in a fair and equal justice system is common and reflects findings in the literature about the importance of procedural justice, one relevant aspect of which is that decisions must be based upon consistently applied legal principles and the facts of the case, and that there must be transparency and openness about what

these rules and procedures are and how they are being applied (Tyler and Sevier, 2014).

55. There are challenges to achieving this in the context of an age-graduated system, where there is no clearly shared view as to the point at which someone becomes an adult. However, the strong finding (discussed in Range of sentences) about the importance of personalising the sentence to the young person's needs, situation and the circumstances surrounding the offence, also strongly suggested that conceptions of fairness were more nuanced than seeing this as being determined by the nature of the offence alone. The key will be in ensuring that the draft guideline clearly articulates the principles behind age-informed and age-appropriate sentencing and the process for achieving these. One way in which the draft guideline currently attempts to do this is through the articulated principles of 'maturity' and 'capacity to change' (discussed in paragraph 7 of the draft guideline).

The meaning of offending to young people

56. Before moving onto young people's views on specific aspects of the draft guideline, it is useful to discuss how young people understood offending, and its causes. This provides important context in which to understand their views on the guideline.
57. One important finding was that some degree of offending - specifically fighting - appeared to be considered normal for many young people. One of the case vignettes that we gave the young people to discuss involved a fight at a youth centre, where someone was punched in the head (see appendix three). No information was given about the consequences of this action, and it was also left ambiguous as to whether their friend was the perpetrator or the victim of this action. Although there was acknowledgement that "violence is a bad thing", it was clear that many of the young people we interviewed saw this offence as not being particularly serious, although often this was tied to assumptions of reciprocity in terms of participation in the fight and that no one had been seriously hurt as a result (which isn't necessarily the case with such an action):

SA - [Summing up discussion so far] so [you would give a] deferred sentence and ideally you wouldn't get a conviction?

Mohsin - Yeah, that would be the best out of anything that I'd choose that over anything there...

Gilbert - [Speaking over [Mohsin] Especially for somethin' so minor...

Mohsin - Yeah. (Focus group 6 CJ)

58. A similar discussion can be seen in one of the youth work groups:

JM - Yeah. So [you would give] a deferred sentence, why do you think that?

Margaret - Cause it was just, like wasnae that serious. Like naebody died, it's just like a fight, so...

JM - Do you think that's important, like the seriousness of it?

Margaret -Aye.

Margaret - It's still obviously important that it's still a fight in the case but obviously if it's not been anybody who's been killed or anything like that. (Focus group 12 YW)

59. These discussions highlighted a tension in the young people's understanding of the purposes of sentencing. Despite the fact that the primary purposes of sentencing identified by the young people were related to reducing offending in the future (rehabilitation or protecting the public), it was clear that many of these discussions were underpinned by the philosophy that what mattered for the purposes and nature of sentencing was the consequences of the action, rather than the action or behaviour itself:

Dwight - I'd dae a restorative justice [sentence] for that, me personally, because it's no, know what I mean? It's a wee argument. Somebody that's punched. As long as there's nae damage. It depends on the damage and that's it, know what I mean?

Josia - That's it. If it's a scuffle then....

Dwight - If it's a wee punch...

Josia - ...compared to a....

Dwight - I could punch him and he'd get a black eye, same, vice versa, he punched me and gave me a black eye [inaudible].

Josia - Or you could continue on and cause serious damage tae the person, know what I mean. It aw depends on the significance o' the injuries. (Focus group 2 CJ)

60. Again, similar discussions also came up in response to another case vignette, "Suzie", who had set a bin on fire in a residential home. Again, no information was given about the consequences, but the assumption was often that this would be minor (although fire-raising is accompanied by the risk of significant harm).

61. Another related way in which the young people who took part in the focus groups frequently characterised offending was as an “accident” or a “mistake”, one which the person should be allowed to move past. However, as with the discussions above, there were recognised limits to this:

Participant - Yeah, coz murder's not exactly a fuck up (Focus group 5 YW)

62. Another common shared understanding of offending was that it was always the result of underlying reasons.

SA - Ok, so...

Claire - Has she goat, like she should hiv...

Sue - She's no' gonna start a fire for nothin' really, is she?

Claire - Ah know.

Sue - There's obviously...

Rowena - [Speaking over Sue] There's obviously a reason behind it. Obviously it's no' acceptable because ah don't think it's acceptable...

Claire - Naw, ah don't think it is either but there's obviously reasons...

Rowena - There's obviously reason's behind it. They don't dae...

Sue - ...They don't commit crime for the sake of commitin crime. There's...

Claire - ...Could they not...

Sue - ...because...

Claire - ...There's reasons...

Sue- ...There's things goin' on in their life, in their heid, do you know what I mean.
(Focus group 3 CJ)

63. The conversation above came up in a discussion related to Suzie, and involved a group of women involved in the criminal justice system, so there may well be a gendered dimension to this interpretation. Nevertheless, this theme could also be discerned elsewhere in the discussions.

Alistair - There's obviously a reason why they're wanderin' roond commi" in these crimes so there's obviously a reason ta find out why. It's like that could be one o the maist impor'ant 'hings. Whether it's someone's men'al health or just they're naturally angry. (Focus group 4 CJ)

64. As articulated by Alistair, this then linked to understandings of the purpose of sentencing and the meaning of rehabilitation- that both were related to identifying and addressing the reasons behind offending.

JM - So, what dae ye think more generally, not just in this case, what d'ye think if yous were ae design your own sen'ence, what dae ye think works in helpin' young people change their behaviour?

Darryl - Trea'ment requirement or order.

Craig - Ah think the clue's in the name. Treatment. Because it, like it could be someb'dy wi', ah dunno, it could be that someb'dy was stealin' stuff for drugs or they were stealin' stuff because they wan'ed ae go out and drink or some'hin like that. Well, then if you were tae mibby take a moment and realise, because ye're like, folk our age like to go out and drink, yeah, but there's a not a lota time where folk actually then feel compelled that they need to steal. Lik, if ye kin, ye cannae afford it, ye cannae afford it. Folk just kinda like ok I'll wait til next week but folk are actually goin' out tae steal the drink tae actually get drunk and there's probably somethin' like underlyin issues that they kinna feel that they need tae drink tae like escape somethin' or somethin' like that. So, like if you were to treat the underlyin' issue it would obviously treat the kinna problem. (Focus group 8 YW)

65. As this quote shows, participants' understanding of offending as being a response to unmet needs was to a certain extent in tension with their normalisation of (at least some) offending. Nevertheless, where offending was understood by participants to be a response to unmet needs, in many cases it was viewed as a normal (if not acceptable) response to problems. However, as in the quote above, there were certain people and/or incidents of offending to which this view was not extended. It may well be that it is these cases in which participants regarded protecting the public as gaining increasing prominence as a purpose of sentencing, which will be discussed in the next section.

Principles and purposes of sentencing

Primary purposes

66. The Council published the sentencing guideline on Principles and purposes of sentencing in 2018, which set out the general principle that "Sentences in Scotland must be fair and proportionate" and identified the following purposes of sentencing: Protection of the public; Punishment, normally resulting in loss; Rehabilitation; Giving the person the opportunity to make amends; and Expressing disapproval of offending behaviour (Scottish Sentencing Council, 2018b).

67. Within the draft sentencing guideline for the sentencing of young people it states that the judge should have regard to these when sentencing a young person. However, it also states: "Rehabilitation is a primary consideration when sentencing a young person." This is the first time that the Council has emphasised a particular purpose of sentencing in any of its guidelines.
68. Of the CJ groups, there was broad agreement that rehabilitation should be one of the primary purposes of sentencing for young people. As one participant explained: "If there's nae rehabilitation in it, whit's yer point in it?" (Focus group 7 CJ). However, almost all of the CJ groups recognised a significant role for other purposes as well, especially protecting the public, making amends and expressing disapproval. Most respondents saw the primary purpose of sentencing as driven by reductive arguments (Cavadino et al., 2013) about reducing offending in the future. But in their discussion of 'making amends', members of most of the CJ groups (FG 2, 4, 6, 7, 9) acknowledged possible benefits from repairing the harm caused in the past, for example through repairing relationships, paying back damage caused, or meeting the person affected by the offence. Almost everyone within the CJ groups suggested that punishment - usually seen as synonymous with the use of prison without a significant public protection rationale - was unhelpful or counter-productive.

Julien - Showing disapproval and rehabilitation.

JM - Why you picking them?

Julien - Cause you've got, like, if you've done something wrong, you have to show that it's wrong. Punishment isn't always the best way of doing things, in my opinion. It's working with someone to show them, like, what they've actually done wrong, and then working with that to change it so that they don't do it ever again. Punishment is just like, whap, no, you don't do this, bad, and then it's not really changing their opinion and their view, it'll just make them probably want to do it again. (Focus group 10 CJ)

69. One exception among the CJ groups to the emphasis on rehabilitation was the sole group made up of women within the criminal justice system, who placed greater emphasis on protecting the public - albeit that they indicated that this would depend on the crime committed. This may reflect the high levels of victimisation experienced by women in the criminal justice system (Prison Reform Trust, 2017).

SA - You think protecting the public.

Rowena - Aye.

SA - Why do you think that?



Claire - Because they could do...

Rowena - Ye cannae go oot, ye can go oot there and like expect tae hurt somebody and get away wi' it.

Claire - And 'hink it's awright.

Sue - Aye, of course ye cannae but it's...

Rowena - ...There's YOs at 18, 19-year-old like murderin' people an' aw that.

Sue - Aye, but like that, if it's a serious crime then I say aye fur that but see like just daft wee sentences like a theft and that, I don't think you should be jailed fur it. They should try and...

Rowena - Aye, they should try and dae somethin' else for them. (Focus group 3 CJ)

70. In addition, as in the discussion above, two other groups also indicated that the purposes of sentencing couldn't be separated from the nature and circumstances of the crime committed, with this issue being raised by other groups in relation to the role of age in determining purposes.
71. Of the YW groups, views on the primary purpose of sentencing were more mixed, both within and between groups. All of the five purposes were seen as relevant by at least some participants, but rehabilitation (FG 1, 5, 11, 13, 15, 16), protection of the public (FG 1, 12, 13, 14, 15) and making amends (FG 5, 8, 16) were seen as particularly important. Some of this was linked to the different types of offence that the participants had in mind. Discussions around protection of the public among both the YW groups and the CJ groups were often associated with incidents of very serious harm, or were related to discussing young people convicted of sexual offences. It is perhaps not surprising, given the prominence within the media of such cases, that these cases came more readily to mind for those who had not been sentenced within the criminal justice system. It is also worth noting that this research was conducted in the same year as the sentencing of a young person for a high profile sexually motivated murder of a young child.
72. Views on punishment by YW groups were also mixed, with participants in two groups holding the view that punishment could make young people angry and potentially make reoffending more likely (FG 5, 11). Participants in two other groups felt that punishment was important, but where this was the case it was framed in terms of protecting the public and reducing reoffending (FG 14) or learning for the future (FG 12):

Thomas - Yeah, they're [protecting the public, punishment, expressing disapproval] the most effective, by far.

SA - Okay, and what makes you say that?

Thomas - Because, why would, so if you were to get rid of all forms of punishment and people were just to run wild, the world would be a really unsafe place, so protection of the public, it's the only, it would be the original reason for, like, the kind of primal reason for wanting to punish people who break the law, because, like, telling them that that's wrong by punishing them and, like, convincing them not to do it again, that isn't of any importance when, if it's not keeping anyone safe, if you ask me. (Focus group 14 YW)

73. In other words, concepts of punishment were linked to preventing offending in the future rather than a retributive response to offending in the past. In fact, members of the group above went on to acknowledge an important role for rehabilitation, especially when responding to offending by young people. Another participant, who felt rehabilitation, protecting the public and expressing disapproval were the relevant purposes, expressed a similar view:

Chad - Because it's important for people to know that it's not acceptable behaviour. You know, everyone deserves to be safe or feel safe in public and not have to feel that they have to worry about everyone else. And, you know, punishment is not about making other people suffer but it's, you know, rehabilitating of their behaviour and making sure they don't do it again. And, you know, helping them (Focus group 13 YW)

74. Alternatively, one group who favoured 'making amends' as the purpose of sentencing highlighted that punishment - unlike making amends - did little for the victim, but they acknowledged that in some serious cases (e.g. murder) making amends might not be possible, and so punishment may be required as an alternative.

The meaning of rehabilitation

75. Overall then, across all of the groups, rehabilitation was most frequently viewed as the primary purpose of sentencing for young people:

Alison - I suppose like, rehabil, like imagine them all like a circle. Rehabilitation is like in the middle of the circle and then like every'hin else is like around it so

you can't really fix other stuff unless you've fixed like the main thing at the bottom, do you know what I mean.

Susan - Coz you could do everything else but if the person's not going to change their ways, what's the point?

Alison - Yeah, they'll move back.

Terry - You feel like you need to get to like the root of the cause.

Alison - Yeah.

Terry - ...It's like rehabilitation's like the root before you can fix all the other stuff.
(Focus group 5 YW)

76. However, the responses from the young people also suggest that rehabilitation can mean slightly different things to different people.
77. The pre-consultation draft guideline appeared to interpret rehabilitation as providing young people: "with the opportunity to change, and to move away from past offending behaviour. The judge should therefore seek to reduce, through rehabilitation, the risk of reoffending, and to identify the features which will make the sentence particularly effective." (p.3). This way of framing 'rehabilitation' within the draft guideline focuses on providing *opportunities* for change and creating sentences which are *effective* in reducing the chance of reoffending. This suggests a slightly different emphasis than some conceptualisations of rehabilitation within the criminal justice system, in which rehabilitation can sometimes be constructed as 'treatment' or 'interventions', which 'do something *to*' people in order to bring about change (McNeill, 2006). Nevertheless, this is still framed in terms of reducing the risk of offending, rather than supporting the person along a path towards change. In our prompt card we defined rehabilitation as 'change behaviour: activities or other options to help the young person change their behaviour in the future, so that they move away from offending'.
78. In response to the interviewer's prompt, some people explicitly suggested that it was less about changing behaviour than other factors, such as providing help (FG 3) and changing people's way of looking at things (FG 7). Some respondents conceived rehabilitation as working out the reasons behind offending (FG 2, 3, 5) and many emphasised the provision of help for needs and the building of strengths: for example, sorting out money, finding purposeful activities, and changing their life (FG 2, 3, 4, 6, 16). Others stressed a collaborative process of working *with* someone (FG 3, 4, 10). Finally, three groups (FG 5, 6, 16) expressly linked rehabilitation to non-judgmental responses, which avoid labelling processes that might hinder attempts to make a legitimate income in the future.

Mohsin - Just say if you've went and got convicted you're like, you know what, if I go, for example, if ah go apply for a job to work in the bank, they're gonna see ma record; they're not gonna take me on. [...] But just see if you get like a chance of, you, say, they give you a chance to fix up your behaviour then you can do that and then take it from there. (Focus group 6 CJ).

79. Another group said:

Roisin - I think that the rehabilitation and change behaviour would be the best one to try and help the young person understand what they did wrong and give them help when changing their different behaviour. And give, maybe give them an understanding on why they need to [change] and give them support and not make them feel excluded and that they're so different and that it's okay. And being [...] a more positive approach than a negative approach. (Focus group 16 YW).

80. This suggests that, in prioritising rehabilitation over other purposes, young people were choosing what they saw as a collaborative process, providing help to address the reasons for offending and building human and social capital. This has echoes of a 'desistance-focused' approach (McNeill, 2006).

Age and the principles and purposes of sentencing

81. The draft guideline suggests that age should affect the purposes of sentencing, or at least the hierarchy of these purposes. One question that was put to the focus groups of young people was whether and how age should affect the purposes of sentencing. The majority of participants in nine focus groups suggested that the purposes of sentencing should be different for young people, although they sometimes struggled to differentiate between the purposes of sentencing and the type/length of sentence in these discussions, suggesting e.g. that sentences "should be lighter on younger people" (Focus group 7 CJ). The view that the purposes of sentencing should be different for young people was the predominant view across the YW groups (FG 5, 8, 11, 13, 14, 15, 16) and held by three of the CJ groups (FG 2, 4, 7). However, this was not unconditional; a number of the CJ groups (FG 6, 7, 9) highlighted that it depended on what the person had done, while one of the YW groups (FG 5) also highlighted the importance of whether the person was a first time or a repeat offender.

82. Five groups, three CJ (FG 3, 9, 10) and two YW groups (FG 1, 12), and a dissenting voice within another group (FG 14) suggested that the purposes should be the same for young people and older adults, while one further CJ group wavered (FG 6):

Sharon - But then it seems like, oh, if you're, like, 18 and done a crime, and a 40-year-old's done a crime, or whatever, like, why should they [18 y.o.] be focused on making a change and then they [40 y.o] should just be punished? It makes it sound like there's a huge stark difference when really it should be about making change for everyone that's committed a crime. It doesn't matter on their age. (Focus group 14 YW)

Julien - I mean, like, I mean someone's who's 20 and does their first-time offence, and someone who's 45 and does their first-time offence, it's fundamentally the same thing. They probably are in the same position. (Focus group 10 CJ)

83. Towards the end of the discussion around the purposes of sentencing, we informed the young people that: "The Sentencing Council's draft guideline suggests that rehabilitation should be the main aim of sentencing for young people as they have the most capacity for change". This relates to the principles of sentencing in the draft guideline, in which maturity and capacity for change are both explicitly stated as factors to be taken into account. The groups were then asked what they thought of this; most groups agreed:

Alistair - Eh, a 'hink that's bang on the nail. (Focus group 4 CJ)

84. However, those who had considered that the purposes should (or at least might) be interpreted the same for young and older people, drew attention to capacity to change among older adults and the severity of offences committed by a small number of young people:

Gilbert - I just feel like young people do have the chance to change but so do older people as well, so...

JM - Mmm.

Gilbert - ...I re, ah, ah think it's just based on what, how, how bad the crime is you've done which decides your...

Mohsin - Mmm (agreement). (Focus group 6 CJ)

85. Even where young people did believe that the purposes should be different for young people and older adults, there was evidence of support for "a more rehabilitative approach to the adult prison systems as well, and the like sentencing



and the punishments" (FG 16, YW). The findings in this section relate to the overarching themes about conceptualisations of age and the relative importance of other factors and fairness in sentencing.

Age and the Assessment of Seriousness

86. The initial project design did not directly ask the young people about the assessment of seriousness, or about perceptions of culpability. However, there are a number of findings that are relevant to this section, including over-arching findings on age and other factors and the meaning of offending to young people. On the one hand, it is clear that young people identified important ways in which they differed from older adults, and that they viewed some offending as less serious, normal or, or at least as a normal response to problems, and as an "accident" or "mistake" that the young person should be allowed to move past. However, young people also held a strong sense of justice, on behalf of the victim and in terms of fairness in sentencing across different age groups - although there was recognition that what was fair depended upon more than just the offence and included acknowledgement of the young person's circumstances and needs.

Information

87. Reflecting the findings reported in other sections that young people viewed offending as always having underlying reasons and the importance of providing help for needs, it was felt by the young people that we spoke to that the court needed to understand the reasons behind the offence.
88. Most groups agreed that the court needed the information outlined in the pre-consultation draft guideline, i.e. addiction or accommodation issues, the physical and mental health of the young person, and whether the young person is or has been in care. Mental (ill-) health and other psychological problems were particularly mentioned as being important, reflecting the widely held belief among the young people who took part in the focus groups that mental health in general was an important issue and that it was important in understanding offending among young people (although research suggests that the relationship between mental health and crime is complex and contested (see for example Peay, 2011).

89. This information was seen as being important in ensuring that appropriate support was in place, and that there would not be significant barriers to the young person completing the sentence. One CJ group explicitly raised concerns that information on homelessness should not be used to justify imprisonment. The findings suggest that consideration should be given to stating in the guideline that information that reveals problems around the named issues should be used to ensure appropriate support, and not to justify a harsher sentence.
90. Childhood family circumstances and relationships were also considered to be particularly relevant information. Within this, the young people emphasised the need to consider relational circumstances both past and present. Information about the person's upbringing, past relational experiences and trauma and abuse (within or outside of the family) were all considered to be relevant to understanding how offending may have come about. The young people were clear that while important, backgrounds in care were not the only relevant indicators of having experienced significant adverse circumstances in childhood, with a potential relationship to offending. As one young person put it: "...it could just be like, coz they could, coz if they've not been in care they could still have a shit upbringing." (Focus group 5 YW). On this basis, it is requested that consideration be given to broadening the examples given in paragraph 13 of the guideline, to explicitly include reference to: "childhood family circumstances or other challenging experiences in childhood, including, but not limited to, whether the young person has been in care". The examples given by the young people suggested that this should be interpreted more broadly than narrower conceptualisations of "adverse childhood experiences", to include other factors such as trauma outside the family, bereavement, bullying, and growing up in poverty. It is suggested that "adverse childhood experiences" in paragraph 7 of the guideline, be interpreted similarly broadly.
91. Information about current relationships (including the absence of them), specifically family and peers, could also point to current challenges that may have led to offending. However, information about relational supports was also felt to be relevant to understanding protective factors which could protect against re-offending. Young people also highlighted the need to understand who else might be adversely affected by the sentence, specifically children and other dependents, and how these relationships may make some form of sentences inappropriate for the young person. Young people suggested that consideration be given to broadening the examples given in paragraph 13, to explicitly include reference to: "current relationships including peers and family, including any children or dependents".

92. Having information on educational background and employment circumstances were also deemed to be important by a number of groups (FG 1, 5, 8, 10, 11, 14), although there were differing views on why this was important and how this information should be used. Educational settings were identified as being a site of potential underlying problems, such as bullying and stress. Some groups suggested that sentences that interfere with employment or education should be avoided. This also came up in discussions around one of the presented case vignettes, where we described how 'Suzie' had dropped out of college while on a community payback order. While some groups identified this as a negative outcome of her sentence, other groups seemed less concerned by this, since she had made progress in other areas deemed to be more important.
93. Educational background was occasionally seen by some YW groups (FG 8, 11, 14) as speaking to the person's character and as to whether or not this was a "one-off" mistake or an indicator that offending related to more entrenched problems. This could also be seen in some discussions with regards to understanding upbringing and parental offending. This raises some concerns because it is also known that those young people disadvantaged through poor quality local services and challenging home circumstances (which may explain poor behaviour or attendance at school) might find themselves with the additional disadvantage of being seen as more problematic and so deserving of harsher sentences. This was in tension with views expressed (often by the same people within the same focus groups), that there should be support for trauma:

Damien - Aye, aye, fucking people's lives are fucked up. That's why they do these things. I went and had to go do this thing wae [national youth work organisation] as part of mine and all they did was try to help me so something like that.

Lucy - Aye, there should be an extra [another type of] sentence for trauma, they should help people get better.

Schafa: And their education

JM - What about their education and how would you use it?

Damien: If they were bad in school, or wirnae trying or that then...

Lucy - Aye, like if they were bad in school and were causing it then I'd gie them harsher sentences (Focus group 11 YW)

94. In line with the belief that sentences should be personalised to the young person's needs, situation, and the circumstances of the offence, there appeared to be a general consensus that the courts should have all the information necessary to understand these i.e. the court should try to gain a comprehensive picture of the

young person's life in order to choose the best possible sentence to avoid future offending. Although in most cases they were not asked directly, almost no young people (from either the CJ or YW groups) raised concerns about the acceptable limits of information-sharing and about the rights of young people to keep some information private from the court.

Susan - I think the court needs to know, like, everythin' like is relevant just so that they can make the most informed decision on what's gonna be best to move forward. But, like, I mean it's not like, there's not gonna be much harm in them kindo knowin' every'hin' that they need, they neety know because it is literally just for that person's benefit even though they probably don't see it. (Focus group 5 YW)

95. However, one young person did suggest that they had found it distressing when private family information had (unknown to them) been sought out by the social worker. In terms of how the information could be used to choose the correct sentence, the young people highlighted how - as well as enabling help to be provided to meet needs - information could make it clear where a certain form of sentence was *not* appropriate. This was often linked to age-related structural factors and inequalities that meant that there were important areas of their lives where they had no or reduced control, for example around housing, finances and education (e.g. exams).

SA - And how would you use those informations in terms of choosing a sentence, if you were judge?

Thomas - Well, if she's sofa-surfing [as in the case vignette example], restriction of liberty is definitely not appropriate.

Sharon - No, she doesn't have a stable, anything stable around her at all really. (Focus group 14 YW)

96. The findings suggest that consideration should be given to also including within the guideline the need to request information on the impact of other external factors such as structural inequalities that reduce young people's control over their lives, and which may impact on their experience of - and ability to complete - a sentence. This would enable support for completion to be put in place or an alternative sentence given, although the finding above suggests that alternative should not mean harsher.

97. Most of the groups expressed the view that it was important to speak to the young person directly (FG 1, 2, 3, 4, 5, 6, 7, 9, 10, 13, 16). In addition, most suggested that it was important to speak to other sources, both formal (such as schools, doctors, social workers, employers and the police) and informal (family and friends). However in a small number of cases concerns were raised about *misinformation*, whether that information came directly from the young person...

Liz - But the thing is though if you're askin' her and it's comin' from her mouth, you don't know if shes lyin'.

Craig - [- Aye ye would need tae, you would need to elaborate [sic, investigate] (Focus group 8 YW)

98. ...or from other sources:

Dwight – Coz a lot of a stuff is eh lit, for example, ma, ma, some o' ma' personal stuff, it's a lot o' shite that's been written doon. It's no' even accurate so then I'm being judged on this bullshit that they've wrote because that's their opinion. It's no' even accurate; it's just their opinion but ahm judged oan that and ah huv been judged on that, you know, and I find that wrong, know what I mean.

Josia - A lot o' the time it is, it's based on their opinion and what they think.

Dwight - What they think, exactly. (Focus group 2 CJ)

99. As is apparent in both quotes above, this was considered to be a key reason why it was important to consult multiple sources, as well as the young person themselves. As well as reducing the likelihood of misinformation, getting information from multiple sources might reduce the chance of young people having to repeatedly go over information that was painful and meant that young people could have someone to speak for them, if they found this a challenge.

Julien -The person should be asked. Like, the criminal justice social work report is good cause my dad was in with me when we did mine, and my dad did kinda most of the talking, cause I'm really bad at talking at times. And, well, I was shit scared, I'm thinking oh God, what if I say something wrong, I'm probably getting put up in the clink. It's always good to have an outsider's opinion on what happened and what they should do, and why it happened. It was an accident. I still can't get over the fact it was an accident. (Focus group 10 CJ)

100. A very different type of information that was needed related to the point made in the draft guideline that the sentencer should gather information as to "whether any

proposed sentence will be effectively implemented, and what steps can be taken to increase the likelihood of effective implementation" (paragraph 13). Our findings suggest that sentencers need to have a strong understanding of the quality of local provision of sentencing disposals, and there should be mechanisms for sentencers to demand improvements in quality. This was rarely brought up by young people explicitly in our discussions of background Information but was apparent from two emerging findings from other areas of the focus group discussions. First, it was clear from both the YW groups and the CJ groups that the quality of the sentencing disposals provided for young people was viewed as important. However, second, it was clear from those with criminal justice experience that the quality of provision varied from geographical area to area.

101. The quality of sentencing disposals emerged as a finding in two main ways, specifically in terms of community service and the activities that the young person would actually be involved in and its benefit to the local community, and in terms of supervision and its ability to provide help to meet the person's needs. These were both issues where there were apparent disparities in terms of provision, as will be clear from the discussions below.

Sentencing Range

102. The full range of sentences that are available to judges were not shared with participants during the case vignettes. These examples of disposals were provided to the focus groups:

Admonition; deferred sentences; fines/compensation orders; prison, anti-social behaviour order; supervision order; unpaid work; restriction of liberty; and treatment requirements or orders which could include: alcohol, drugs and mental health.

103. It was not possible to share a full list of possible disposals available to judges. Examples of disposals that were not included were:

Caution; deportation; disqualification (e.g. from driving or keeping animals); exclusion order from licensed premises; football banning order; forfeiture and confiscation; mental health order; sex offender notification requirement; sexual offences prevention order.

104. Discussion of the range of sentences was framed in the context of rehabilitation being the main aim of sentencing. As was evidenced within the understanding

offending section, the majority of participants believed the reasons young people offended were due to having unmet needs, adverse childhood experiences and mental health issues. These beliefs must be taken into consideration when discussing the range of sentences available to young people as this understanding of offending behaviour meant that when considering how to rehabilitate a young person this involved meeting their needs. Therefore the data presented below is in regards to rehabilitation being the main aim of sentencing.

105. Where offending among young people was understood as a result of having unmet needs then, correspondingly, sentences which aim to rehabilitate were seen as focused on meeting these unmet needs and much of the participants' discussions regarding a sentencing range were constructed around this notion. The following subsections will discuss participants' perceptions of what they believed worked in sentences and which elements of sentences helped change behaviour, followed by elements of sentences that they felt worked against the aim of rehabilitation.

What worked in sentencing young people

106. In light of this understanding of offending, one of the main ways in which young people believed a sentence would be successful would be to ensure that it was personalised to the young person's needs, the context of the offence or their situation at the time of sentencing. When discussing the young person's needs and situation, they were referring to their physical and mental health, their housing situation, finances, their current work or educational situation and any dependents. It was discussed that, to ensure the person was able to complete the sentence, each of these areas had to be discussed. Understanding the circumstances of the young person's life in line with paragraph 7 of the guideline was viewed as important by the interviewees:

Terry- If she reoffends she certainly went the wrong way round it [colloquialism - she has dealt with it incorrectly] and if she can't complete it they've given her too much tasks. They've not thought about her actually livin' life. They've thought right this needs done, do it. (Focus group 5 YW)

107. In addition to the sentence being tailored to the person's personal circumstances, it was also felt by the young people that the sentence should also be linked with the crime committed and whether the young person had learned the consequences of their actions; the view was commonly expressed that the sentence's consequences

should be linked to the crime committed. For example, a person who commits theft should be made to pay back money or time to the person they stole from, or graffiti should result in unpaid work in the community. While predominantly linked to discussions around making amends as a purpose of sentencing, the young people suggested that linking the sentence to the crime could also have rehabilitative potential, helping the young person to learn that actions have consequences. The sentence should be proportionate to the crime and the person's circumstances:

Dwight - There's, there's no' a lot of hings tae dae, know what I mean, and if they dae get involved in silly wee hings, know what I mean, there's mibby one person might need locked up. It disnea mean the e'er person might need locked up. They might just need a bit o' guidance. It aw' depends on, on the crime. I've, a' depends on the crime, I believe, know what I mean. (Focus group 2 CJ)

108. All young people in this study were in agreement with paragraph 18 that stated that custodial sentences should be a last resort for young people. For the interviewees, social isolation seemed to be one of the most damaging things for them. Staying in the community was regarded as one of the best options for young people, enabling them to address the areas that affected their offending behaviours. Interviewees consistently picked community sentences as their most preferred choice of sentencing, except in the interest of protecting the public. Enabling a young person to stay in the community meant offending behaviour could be addressed and environments adapted to create pro-social lifestyles. In contrast, if they were removed from the community, they would be unable to enact change in the outside environment, limiting the rehabilitation and reintegration process. Consider Sue discussing how drugs were one of the main factors in offending for her, and that when she was removed from the community she was unable to affect her environment which stayed the same on her return. So for Sue, she wasn't able to go through a process of change in the community where she would build new networks and supports. Her community stayed the same and she was then released back into it:

Sue - Well, ye get sentenced and then comin' in. Like, ahm, ma problem is drugs an' ye're comin' in and ye're goin' straight back oot to the same area so ye're just gettin' back intae the same circle...

Sammantha - Stuff...

Sue - ...the same environment

Sue - ...back in for various, back in for shopliftin' and aw that, ye're back in fur the same thing again. I've been in and oot the jail since 16 year aul'. (Focus Group 3 CJ)

109. Those who had received community sentences with supervision orders spoke gratefully of the chances that they had received in regards to being able to stay in the community, as it had helped them to maintain relationships with their families, peers, and address the reasons behind their offending behaviour.

Alistair - Mmm. You know what ah mean, but it's like, because I got that chance to be oot and aboot, it did help us tae learn fae ma mistake but it's like ah don't know, there's, a few o' ma mates have even been sen'enced for some o' their crimes and it's like some o' them ah do understand. You know, like house breakin', things like that ah've seen a few o' ma mates go doon the wrong road and it's a shame but it happens. (Focus Group 4 YW)

110. Community and being able to pay back to the community, particularly if the offence had affected the community in some way, was viewed positively across both types of group. Participants who had received orders that allowed them to have meaningful engagement with the community, spoke of their orders in terms of helping them, through helping others. Chad, who hadn't been sentenced before, also recognised this through his discussion of one of the vignettes, which spoke about community sentencing. Consider how he frames community, and how important it is not to disrupt that connection:

Chad - She (Suzie from the vignette) got through her, her alcohol problem. She's getting to see someone about her mental health which is definitely important. She, through the community work I guess she's, you know, had an understanding of how important community is and how important, you know, not to disrupt that is. I...the, the bit about the college is upsetting, I would say. (Focus Group 13 YW)

111. Albeit, two of the younger groups recruited through high schools did think prison was a viable option, the majority of the groups - whether victims, young people with convictions or with no links to the criminal justice system - tended to hold views exemplified by Dwight's quote, below, which sums up why they thought rehabilitation was best occurring in the community for young people. Here Dwight was responding to one of the suggested features of sentencing in the draft guideline (see paragraph 15):

Dwight - "Build positive relationships with the young person and society", aye. End o' the day, aw the young, every young person deserves a chance and ah believe every young person's good at somethin', know what I mean. It's jist they might no' believe it theirsel' at the time an' they're surrounded by peer pressure; need tae be a sheep because, know what I mean, that they, they're jist young and stupid, innit. Know what I mean, ye never know. Everybody's got hidden talents. Ye can gie up and be very successful, know what I mean, but they're stuck to their concrete jungle, innit. (Focus group 2 CJ)

112. This was based on a belief that learning consequences could occur when they were allowed to address issues within their environment. Being in the community meant they could make amends, reintegrate and rehabilitate, whereas if they were removed from the environment this learning would occur less:

Ryan- Aye but like when ye come oot like ye see folk that are like, go ae like mad schools (approved schools) an' that. Like when they get kicked oot they just end up worse than they wur when they went tae them. (Focus group 1 YW)

113. This supports the understanding of young people within paragraph 7, regarding the maturity of the young person and their capacity for change. Young people are in the process of identity formation, which is shaped through their environment and their interactions with others; being situated within the community allows them to change and adapt within it. There are various arguments about desistance journeys for young people, with different schools of thought variously arguing that young people mature out of crime (where maturity is ill-defined, but often linked to physical maturation), or that it is structural changes and the achievement of social roles, or that it involves cognitive transformation (of attitudes and self-identity) (Weaver, 2019). Yet Giordano et al (2002) argue that for desistance journeys to begin both cognitive changes and environmental/structural changes are required, and these are much harder to achieve if the individual is removed from the community.

114. Supervision, as part of a Community Payback Order (CPO), and deferred sentences allow for young people to change within the community, giving young people time to consider the consequences of their actions and make positive changes within their lives. This has also been found in evaluations of problem solving courts (Eunson et al 2018) and deferred sentence courts (MacDivett, 2008; Miller et al, 2019) within Scotland, highlighting how young people may engage differently with the range of sentences than older adults. In response to both the case vignette examples, and general questions, community sentences were regarded as the most preferable sentences, but they were not viewed equally throughout the focus groups with some

preferred over others. Supervision as part of a CPO, was viewed to be the most preferred type of sentence due to the assistance of a social worker in addressing the needs of the young person and having someone to listen to them. Having regular meetings with an individual who cares about the young person and will help young people address their needs was viewed as the most likely option to help young people rehabilitate. This participant had consistently chosen a supervision order in response to the different vignettes and associated questions, on the basis of his own experiences. Here he explains why he thinks it would also be useful for Suzie:

Julien - Cause she [Suzie - case vignette] needs help basically, to be talked to. Unpaid work, yeah, fair enough, it'll give back to the community cause she has done a bad thing and she has done it and a community payback order is probably the easiest thing out of all that to give her, but the supervision order will help her, which is the important thing, helping people. (Focus group 10 CJ)

115. Supervision orders were thought the most likely to help a young person address issues within their lives that lead to offending, again linked to the belief that unmet needs was the main reason that offending comes about:

Chad - Support, definitely just support and helping them. You know, show them that what they're doing is wrong. Trying to, you know, get through to them and not put them down in any way. Just help, help them, you know, through everything. (Focus group 13 YW)

116. Having someone there who listened, and could help navigate systems such as housing or benefits, was viewed as helping stabilise the young person's life much more than the other sentences were able to. It was felt that this allowed for young people to begin moving towards rehabilitation and reintegration, which is why it was viewed as the most appropriate sentence:

Josia - So, I'd, as long as ye agree wi' the rehabilitation part n that beciz, a lot of the people don't get listened tae. And when ah wiz younger ah used to dae daft we 'hings because I wisnae bein' listened tae so I wouldn't be listened tae, just for however it can be, you know, in school an' all that so and then I wid dae, I wid dae bad things fur it to be highlighted, know what I mean? There are some people might just no' be gettin' help. I mean, know what I mean? Naebody's listenin' to him at that, they dae their time so that's why, for example, know what I mean, she, she [inaudible] somethin' so ridiculous, know what I mean? Like, they will be avoidin' stuff ah 'hink (Focus group 2 CJ)

117. It was believed by the young people that pairing a supervision order with other requirements which would help aid the desistance process was the most beneficial approach for young people, as it would allow them to address the reasons behind offending, whilst helping stabilise the young person's life to enable them to stop offending in the future:

Craig - If you pair it though, if ye pair it with for example like treatment or a supervision order well then in the time that ASBO hits, if you paired if, for example with a supervision order with a social worker then that gives the social worker time to kinda mibby address some o' the issues while the ASBOs in place so then hopefully not all in the cases but, hopefully then by the time the ASBO is finished...

Cheryl - ...they're not gonna do it again.

Craig - ...they're then not gonna then return back to that kinna... It gives them kinna like a, a buffer zone like where they know that they person's still not like fuckin' goin out drinkin' every night when, and then they're comin' tae their social worker and then talkin' about how they need tae stop drinkin'. They can at least say, OK, ye can't drink for say six months so that we can actually work on it rather than just kinda you know up down up down up down. (Focus group 8 YW)

118. But it was felt by the participants that engagement with the worker whether that was a social worker or a third party had to be meaningful, and the relationship between the worker and the young person had to be based on mutual respect and listening to and acting upon the young person's needs and wants, rather than the relationship being based around supervision and control. When the relationship was based around these latter elements it did not work, so ensuring that appropriate support structures are in place is important. This reflects findings from desistance research that desistance is best achieved by working through helpful, supportive relationships (McNeill et al. 2012), and that valued and high quality supervision involves relationships that are respectful, non-judgmental, trustworthy, reliable, flexible, honest, supportive and encouraging (Rex, 1999) and provides help to overcome practical obstacles and build social supports (Shapland et al., 2012).

119. Paragraph 16 of the pre-consultation draft guideline stated that the "The judge should clearly explain the sentence to the young person to increase the likelihood of the sentence being effective. In appropriate cases, the judge should consider fixing review hearings to monitor the young person's progress in complying with the sentence." Participants agreed with the sentiment of engagement to ensure completion but indicated that when relationships were based on control and

compliance, they were less likely to work. Therefore in light of participants' feelings the researchers suggest that the word monitor be changed to evaluate within paragraph 16 to move away from relationships based on control and supervision.

120. It was recognised on more than one occasion from the CJ focus groups that, with pressures on the justice system, workers found it difficult to devote time and energy to assisting with young people's problems. We are not suggesting that there should be an increase in orders, but rather that the orders which are imposed take into account what would be best in addressing the needs of the young person. This was particularly felt to be the case when workers with high workloads were dealing with such complex issues and needs, and this aligned with the belief that there should be more integrated options within the community payback with supervision order to allow for more third party assistance to lighten the load:

Dwight - I 'hink, see, to be honest, right, mah personal opinion as well wi', wi' the system and that, they, they're no giein, they're no' giein' the professions enough money. There's no' enough, no' enough, there's no' [intake of breath] much support fur lit individual people and ah understand it is, be, it be hard for every, lit, for the prison to look at every individual case and, and try and manage them but there should be a lot more money put, eh, put intae it beciz, if no', I don't, know what I mean, I don't see the point in it. Beciz ye're wasting mair moneh daein a vicious cycle wi' somebody who's in an' oot every few months then just, I, actually puttin' them intae somethin'...There should be mair rehabilitation places in, ootside for people wi' mibby addiction issues, mental health issues, em, specially mibby if they've been, sexual history, abused, stuff lit that. (Focus group 2 CJ)

Dillan - Seven days in a week an' you're dealin' wi' twe"y-two cunts and ye're traein dae everythin' fur them if they've got drug and alcohol addictions or whatever else they've goat wrang wi' them. There's no enough time in the, the week tae deal wi' aw that. (Focus group 7 CJ).

121. The majority of the participants in this study believed that to stop young people offending their complex needs required addressing. These needs were mostly centered around social supports (relating to the finding outlined above that young people were viewed to have less control over their lives in many areas), mental health, addiction or counselling supports and housing needs. Most of the young

people discussed how they viewed complex relationships and trauma within families as catalysts for offending behaviour.

Alison - ...If they em are in a group of people that are not good for them like em like the, they could be from abusive partners to just toxic friends that are quite like go pick up that fing, go, just drink another bot, like, sort of things like em it might be not necessarily them that's the only impact but the relationships around them because if you do not deal with those relationships, no matter like, if you, they can try and help them as much as you can but if those problems of the relationships are still there, it's slowly gonna come back. So you would need to think of a way to either deal with the like the, like the friendly relationships an' you guys also need to get some help or let's take you away from those relationships and find you somefing new. (Focus group 5 YW)

122. It was felt that, due to their age, levels of maturity and traumatic experiences, that having someone there, such as - but not necessarily - through a supervision order, was how the young person would learn the error of their ways. It was felt that young people had to believe that change was possible. That is in line with paragraphs 6, 7, 8 and 9 regarding how young people have more capacity to change, that sentencing should take account of their personal and social circumstances, and that the main purpose of sentencing young people should be rehabilitation. Rehabilitation as the main consideration of sentencing is a particularly effective and welcome change to the sentencing of young people, although - as was discussed in principles and purposes of sentencing- other purposes were also viewed as being relevant.

Chad - Rehabilitate them definitely. Try and show them the error of their ways, definitely. Give them hope, I'd say. So don't, don't make situations worse for them. You know, show them that, you know, there's, you know, there's other ways to go around life instead of all these bad ways, negative ways. Support, definitely just support and helping them. You know, show them that what they're doing is wrong. Trying to, you know, get through to them and not put them down in any way. Just help, help them, you know, through everything. (Focus group 13 YW)

123. Personalising sentences to meet the person's needs and circumstances and having meaningful relationships within the community setting were considered to be the most effective approach in achieving paragraph 10 and ensuring that young people



are rehabilitated. The next section will discuss the range of sentences that participants felt did not assist with rehabilitation.

What doesn't work in sentences

124. Interviewees all believed that to encourage rehabilitation the offence had to be addressed and some type of consequence given to ensure that learning from the offence occurred. However, there was a general feeling that more punitive approaches, such as prison, which were frequently thought by participants not to address the causes of offending behaviour, were not suitable for the rehabilitation of young people. Two people in two focus groups (FG1 and FG12) believed that prison could change behaviour if it was long term but these were the exception to the norm, as there was a general belief that prison did not work except as a last resort and in the interests of public protection. Interestingly, Restriction of Liberty Orders (RLOs), unpaid work orders and fines were also commonly discussed as sentences that did not work in rehabilitating. These beliefs were held by most groups but those who did not have experience of the criminal justice system tended to believe that all sentences worked dependent on the situation. What follows will discuss the participants' perceptions of why they believe that these sentences do not work, in order of: prison, RLOs, unpaid work orders, fines. It will then discuss how relationships with workers affected the ability to complete a sentence.
125. Prison and the experience of prison was generally felt to be punishment without learning, which was antithetical to the rehabilitation ethos. Prison was understood as an inappropriate place for young people due to the detrimental environment and a belief that the impact of being in prison had the ability to cause further offending. Secure accommodation units¹ were rarely mentioned, but where people had experience of these they were considered to not be as detrimental, which was linked with the focus of secure units on addressing the causes of offending and the needs of the young person:

Dwight - I think secure units for wee 'hings like that. Secure units are good beciz time away in a secure unit, an', as secure units stand, there's a lot mair facilities and stuff for them to be addressed, know what I mean. Where a wee period like a six month period wid dae a lot o' good there, know what I mean, know what I

¹ Secure accommodation units differ from young offenders institutions. They are typically used to house young people who are a significant risk to themselves or the community and most are placed there on welfare reasons rather than offending. They are residential units that restrict the liberty of those under 18.

mean... A secure unit, it's just beciz, ahm just sayin' secure unit, because it's no' prison, right; it's naewhere near as bad as prison but there's a lot o' rules to be adhered tae. So, ye're still no' in the community. But you kin go oot intae the community but obviously ye neetae go back there rather than ye're oot on yer ain. So, it can gie ye that wee bit o' reflection plus there's mair, there's mair, like, staff there tae mibby help you realise things, know what I mean. (Focus group 2 CJ)

126. Many of the people who had experience of prison viewed it as a site of trauma itself due to the additional loss they had experienced as a result of their incarceration:

Claire - I don't hink we should get punished any mair. We're in the jail for it.
Rowena - But it's no' an easy place. We're losing some people. I've lost my, I've no' gettin' to see ma weans.

Claire - We've lost family and that.

Rowena - Ma family huv aw fell oot wi' me. I've lost everythin'

Claire - Aye, ye've lost yer money, ye've lost yer weans. Some folk are too scared to go back oot into normal society. (Focus group 3 CJ)

127. These sentiments reiterate the importance that participants placed on sentencing within the community, as people can continue and maintain relationships and build upon the positive support structures they currently have. Some participants, but not all, within focus groups thought that no one under 18 (FG9, CJ), or under 20 (FG6, CJ) should be given a custodial sentence. One young man in Focus group 7 CJ thought no young person should be put in prison, no matter the offence, but most groups believed prison had a purpose particularly for high severity offences and when considering the protection of the public. The other occasion it was considered that prison would work was as a last resort for those who, after receiving a range of other sentences, did not change their behaviour. In line with paragraph 18, participants' perceptions of prison was that it should be 'a last resort' (Focus group 5 YW) and only for certain people with convictions.

128. This was related to the belief that young people - due to their age, levels of maturity and lack of control over structural elements in their lives - could engage differently with sentences than their adult counterparts. Consider Paula's discussion of the differences in young people and how rehabilitation should be the main aim:

Paula - I think it, I can see their point wi' the whole rehabilitation thing with younger people because they do something like then they're much more likely to do it in the future, if they don't get rehabilitated immediately. While if they do it while they're still young, it's far less likely to happen in the future as they get older

because the rehabilitation will have sunked in far more deep if you're younger rather than you're older. Because you're older you're much more stubborn and you don't wanna listen to anybody. You're like, 'fuck you, I don't want, I don't have to listen to you, I'm, I'm old' and what not.

Eric - I have to say I'm kinda agreeing with Paula here. (Focus group 15 YW)

129. The belief was that prison isolated the young person from society, cut them off from social supports and limited rehabilitation. Some participants felt that prison resulted in further offending due to the environment being situated around control rather than rehabilitation or addressing needs.

Eddie - I 'hink if you're, if you get treated like an animal you're gonnae act like one.

Lucy - So prison's kinda tough.

Lucy - And people, rather than helping them...

Eddie - Aye prison's no helping...

Lucy - ...making them worse.

Eddie - ...'hink aboot it, people get stabbed in it, in the prison, or slashed. And then they come oot worse and then they start dain' it tae other people and then go back in. Focus group 11 YW)

130. Prison acted as a site of trauma for those participants who had experienced it. The feelings that prison generated caused a buildup of frustration and anger that, when their incarceration was finished, resulted in a release of these emotions and a loss of control due to the situations that they were in. Talking from his own experience, Scotty said:

Scotty - There's no point in it but coz see if some cunts locked in a cell aw day they're just gonnae come oot and go fuckin' wild, aren't they no? (Focus group 9 CJ)

131. Tags were mostly spoken of in a manner which indicated that they were viewed as being less likely to change the offending behavior of the young person, as they did not address the causes of offending, and as the focus of these orders are on supervision and compliance. These two elements were viewed as being detrimental to completion of a sentence due to participants' belief that offending behaviour resulted from unmet needs which needed to be addressed. Interviewees who had experience of electronic monitoring discussed tags in similar terms to prison. Although our prompt card explicitly asked about RLOs, when young people talked about their experience of tagging, or of friends' experience, we did not ask them to

distinguish between home detention curfews (HDC) or restriction of liberty orders (RLOs) when they were discussing tags. These are the two most common electronic monitoring (EM) orders provided in Scotland (G4S, 2016) but within this report it is expected that the majority of young people discussing tags will be discussing RLOs, as young people aged 16-25 account for 31% of RLOs (n965), in comparison to 19% (n272) of HDCs (G4S, 2018) in Scotland. One of the main reasons for RLOs being discussed negatively by those who had experienced them directly or indirectly was due to the impact of social isolation and stress that they could cause:

Julien - Like, having witnessed an RLO, it's the most stressful thing in the entire world.

JM - So you would remove them?

Julien -Yeah, I mean, I wouldn't remove them for certain people, but it's definitely an alternative to prison. When I got it, I don't know. But anyway, like, it is an alternative to prison but it's so stressful if you want to try and live your life, it's horrible. (Focus group 10 CJ)

132. As Julien discussed above, although RLOs were viewed negatively there was a general belief among the interviewees that they were viewed as a lesser evil than prison. This view, and the reasons behind it, echoes that of criminal justice social workers (CJSW) in Graham and McIvor's (2017) study. This study explored the views of practitioners on electronic monitoring in Scotland, and, similar to our participants, CJSWs felt that since technical management of EM is outsourced to private companies, the focus of the order was on control and containment rather than rehabilitation and reintegration (Graham & McIvor, 2017). Many of the participants felt that because the sentence was not addressing the causes of offending, the offending behaviour would only pause during the sentence and in some cases create a buildup of emotion which would be released once the tag is removed resulting in further offending:

Johnny - Coz that's whit ah'm sayin' aboot the tag. 'Hink aboot the anger that would build up fae the tag, know, gettin' seven ae seven. Ye widnae be able ae see cer'ain people an' aw that at cer'ain times. It distracts ye fae daein so what. 'Hink aboot the anger that's buildin' up maybe behind that an' aw that compared tae lit another punishment. (Focus group 7 CJ)

133. Or Josia discussing how it just stops the offending behaviour whilst being monitored.

Josia - A lot o' the time ye see the tag disnae work. They breach it, cut it aff a' the time, know what I mean? Eh, it disnae always, like in their mindset it disnae

always mean that it's gonnae keep them indoors or whatever, know what I mean?
A lot a' the time they just say aw my pals are oot there so... (Focus group 2 CJ)

134. EM was viewed as causing young people to become more isolated and less able to engage with others socially. Social isolation, when linked with any of the sentences discussed, was viewed as hampering rehabilitation. This is supported by wider research into desistance from crime, which emphasises that desistance is achieved as much through supportive informal relationships as it is through professional ones (McNeill et al., 2012; Weaver, 2016). The impact of social isolation for young people has wider effects, and is known within wider research to impact young people in a similar manner as a physical threat, and can cause mental health problems for young people (Qualter, Brown, Munn & Rotenberg, 2010). Judges should be aware that sentences that cause social isolation are likely to affect young people more adversely, which could result in lower completion rates, and should be used as a last resort if the aim is to rehabilitate and reintegrate.
135. There is not enough research on EM. In particular, the lived experience of those who do not complete it, the impact of third party enforcement (Graham and McIvor, 2017; Moss, 2018) and the completion rates of young people all require further exploration, in order to evaluate if young people engage with EM differently than older adults. The lived experience of those who discussed it within this study indicated that it had been a negative experience within their lives which caused stress due to social isolation. The focus of the order being control and supervision meant that rehabilitation and reintegration was left by the wayside, although this is set to change with the introduction of the Management of Offenders (Scotland) Bill which, in line with recommendations made by the working group and accepted by the Scottish Government, will direct that EM will be used:²

in more integrated ways, alongside a range of supportive measures, to help prevent and reduce further offending and promote desistance among people with convictions. (Scottish Government, 2016, p5)

136. One of the younger participants who had received a tag had received it along with supervision and his perception of it was more positive, indicating that when used as part of an integrated approach it could have positive effects. Yet, as Graham and McIvor's (2017) study highlights, EM will be delivered by a third party company which has the impact that criminal justice social work is unable to control the quality

² At the time of writing this has not been enacted in full. In October 2019 provisions (section 16) relating to home detention curfews and other particular restrictive measures came into force. The other sections of the bill are still provisional.



of the order. This is something which requires evaluation as young people in this study discussed the quality of the order and the relationships being built as very important in the success of the sentence. This was discussed primarily in terms of unpaid work and supervision orders.

137. Community service (unpaid work) in Scotland in its original form was to fulfill specific sentencing aims comprising punishment, rehabilitation and reparation, whilst reintegrating the person with convictions through their continued presence in the community (McIvor, 2010). Within the draft guideline the primary purpose of sentencing is rehabilitation, yet each of the aims for community service remains the same, as punishment for the young person is the removal of the young person's free time. But it is how this time is spent that will aid rehabilitation and it was in this area that interviewees most discussed inequality within the justice system. This was discussed in terms of the quality of unpaid work being provided, the supervision relationship, and the amount of time spent with the young person to address the causes of offending. In some cases, unpaid work and supervision was viewed as a tick box exercise in which rehabilitation took a back seat. The following quote from a discussion within a focus group about their experiences of unpaid work highlights how the quality of the relationship shapes their views of the process:

Allan - Ah just go in an see a worker fur an hoor.

Scotty - Mate, naw it's like, naw it's like ten a'clock in the mornin' and ye go up and see them for five minutes on a Friday mornin'.

Scotty - Aye a dae that every Friday

Allan - Dae ye, aye, ah've git that.

Scotty - Half nine in the mornin'.

Allan - Ah hate it but so ah do, coz the fact ye go up and ye sit, ye say hi and they tell ye go, ah just...

Scotty - Ye go in and they ask they ask whit did ye do...

Bill - See kiz ahm Villapark tae anothertown, aye.

Allan - Ah am. So 'hink how much ae a trek that is in the mornin' fur a five minute meetin'. (Focus group 9 CJ)

138. The quality of the unpaid work and the meaning that was attached to it defined whether it aided rehabilitation. It was believed that if the offence was linked to the community then an appropriate sentence was paying the community back, or if the work that they were engaging in was meaningful then it would meet the other aims other than just punishment. However, orders that were based on "tick box" or compliance were not viewed as helping with reintegration or rehabilitation:

Scotty - Ah don't understand workin' fur the council for fuck all when ye dae some'hin' bad. It's no' as if ye went, mibby if ye did vandalism.

Bill - Coz ye caused a crime in the communi'y. Ye've goatae pay back tae them mate fur workin' fur them.

Scotty - See if it wiz vandalism or a [inaudible] sitting oot, it makes sense, go oot an fix whit ye've done mibby but no', em... (Focus group 9 CJ)

139. Unpaid work could have negative unintended consequences for young people such as further entrenching them within poverty, due to the costs associated with attending. The young men in this focus group discuss how they give up eating lunch so that they can pay to attend their order:

Johnny - So, ye don't eh, it is a good cause which ye're daein' wi' this one [this placement] but the other wans are no', but this wan's lit it's no' funded by [the] Council so it's actually a good 'hing kinda gettin' done at this one, but the other wans ah don't know. Ah 'hink communi'y service isn't really worth it at a'l naw?

Wes - You know, like you know you have to pay for like, they should get up like passes, you know, like when, when and one more thing, you know, lunch which we pay our own money and sometime like people doesn't have it. Not gonna lie. See me today, I should get a like, ah supposed to get money yesterday which ah, like, you know, the usually send it to my thingy and ah was gettin' late and where I stayed they got me a taxi and like it was like, even I got late here any. Ah was worried but ah had no money for thingy so like you know buses and eh, lunch. Ye gettin' me like lunch...

Johnny - Let ye go, see if, see if ah wiz to phone ma work on the day and go...

Wes - ...we pay all own money and you know ah had thing, well last time ah was like what the fuck, I'm doing community work here, 41 hours and when I get angry, I just pay my money and get food...

Dillan - See if ah wiz tae phone ma worker the day and go look ah've, look ah'm skint know what ah mean, I'm no' gonnae be able ae eat the day, I cannae go inae communi'y service she would be like that, well ye huv tae... (Focus group 7 CJ)

140. The group also discussed how breaching an unpaid work order results in further offending.

Dillan - ...you're here ae make sure that ahm stayin' away fae crime, that's it. Know what ah mean. That's all you're here fur. They shouldnae be fuckin' breachin' ye fur stupid shit like that. Ma probation [criminal justice social] worker

tried tae dae it tae us the other week because ah missed an appointment wi' the housin'. (Focus group 7 CJ)

141. The impact of breaching is wide ranging and results in secondary offending, which can result in an escalation in terms of the sentence given. As with EM, this brings into question the suitability of this sentence for young people as they appear to engage with it differently than older adults. This could be related to the lack of support they have in regards to attending, the pent-up emotion and difficulties encountered with attending, or due to it being viewed as not assisting with rehabilitation.
142. Interviewees also discussed how too many sentences when grouped together sometimes resulted in them giving up as it seemed overwhelming and unmanageable in lives that are already chaotic.

Bill - [Speaking over JM] Well, they gie so many hings in the wan order know what ah mean. [Inaudible] the year, the free hings - the tag, probation [supervision], they should just gie ye wan hing oan an order instead o like three different hings man.

JM - Is it too hard?

Bill - It's brutal. (Focus group 9 CJ)

143. Or when, as part of their sentence, there are a lot of requirements and appointments, and confusion over whether or not attending these appointments count as breaches. One young man discussed how his social worker had made an appointment with a housing officer for him and when he did not attend it was deemed a breach of his order. Sue below discusses similar issues in which she is overloaded by appointments related to her order:

Sue - D, I was on a DTTO and they're too, too much. It's too many appointments. It's like three and four appointments a week. So, you've only got five days...

SA - Yeah.

Sue - ...where, where they were, do you know what I mean? You're at appointments every day. (Focus group 3 CJ)

144. This is particularly problematic when considering that some young people have less control within their lives, less ability to maintain a high level of appointments, and fewer support structures which would assist them in this regard. This again links to the structural inequalities experienced within their lives and how sentences can adversely impact these areas. In line with paragraph 13 (Information) and

paragraph 16 (engagement with young person to increase the likelihood of completion) of the guideline, this strengthens the suggestion in the Information section above that consideration should be given to also including within the guideline the need to request information on the impact of other external factors, such as structural inequalities that reduce young people's control over their lives, and which may impact on their experience of - and ability to complete - a sentence.

145. The participants' comments regarding the negative outcomes associated with accumulation of sentences, large number of appointments and requirements attached to sentences resulting in difficulty completing sentences and further creating problems within young people's lives is a consistent finding within the literature concerning young people's engagement with the justice system. It is widely recognised that too much contact with the justice system can reduce positive outcomes for young people. In light of these findings the researchers suggest that consideration be given to an additional provision within the sentencing range section requesting: In appropriate cases the use of cumulo sentencing be applied and if possible sentences to run concurrently to help increase the likelihood of completion. Cumulo sentencing allows for one sentence to be given for all the offences committed, provided they are on the same complaint or indictment.
146. In association with structural inequalities within young people's lives, fines or other financial penalties³ were believed to cause further inequality with little rehabilitative effect.

Scott - I don't think, I don't think a fine would obviously change anything. It's just like you're paying money and that's it. They can still go back and do it again if you know what I mean.

JM - Okay.

Scott - It's just means your losing money in a way.

Drew - Aye exactly, but some people cannae like afford that. (Focus group 12 YW)

147. In two focus groups (FG1 YW and FG 5 YW) they discussed how having a financial penalty could cause further offending due to entrenched poverty.

JM - You don't think fines, compensation much...?

Ryan - ...ye don't wahnty gie yer money away.

³ For simplicity, in discussion with participants, fines and compensation orders were discussed interchangeably, with the difference in purpose being brought out through discussion (rather than through the use of different terminology).

George - Right, mmh, naw but, but then that might resort into other criminal activi'y. (Focus Group 1 YW)

148. The effect of financial penalties on rehabilitation was thought to be small with financial penalties only being a suitable sentence if it was to pay back monies to a victim or the community, as the interviewees thought that specific sentences should fit specific crimes.
149. Although supervision was regarded as the sentence most likely to rehabilitate young people, the relationship that occurred was important. If, as discussed above, it was based on just meeting requirements then it was viewed as being unlikely to work. Braithwaite's (2003) work on motivational postures highlights that when people are complying due to instrumental reasons such as fear of breach, deference to authority, or other constraints they are less likely to result in change which would address the causes of offending (Robinson and McNeill, 2008). Only in a few cases was supervision discussed negatively and this was more related to the relationship between the young person and the social worker being distrustful as it was felt that they were only involved to ensure compliance and were 'waiting' to report the young person for a breach. This was viewed not to aid rehabilitation as for the young person to change they had to be honest about the events occurring in their lives. If the relationship was based on compliance then this depleted trust due to the social worker being expected to report misdemeanors.
150. It must also be recognised that some young people will have had negative experiences with children's and family social workers in the past, so social workers did not always play a positive role within the lives of those who have contact with the criminal justice system. In fact, in some cases social work was viewed with distrust and some discussed not wanting to engage:

Claire - Aye but obviously there's folk int thaе that's goat different hings fae social work...

Sue - Ah've got ma weans took aff me fae social work. Ah've got the same reasons as you Claire but no' aw social workers are the same....

Sue - Well, see the social workers, but, like is it social work or is it a criminal justice social worker?

Sue - ...they shoulnae be, huv that name coz that name...

Claire - Aye.

Sue - ...means that people don't wahnt tae go n see them because they're social work. (Focus group 3 CJ)

151. So although supervision via social work was viewed by many participants as one of the best sentences for rehabilitation, in some cases it was not. In line with Guideline 16 in ensuring best practice there should be some engagement with the young person either between the judge or on the criminal justice social work report regarding how they would engage with specific sentences. In fact in some cases as part of supervision young people were given requirements to attend mentoring or attended youth groups. These types of requirements, when part of an order, were always discussed in positive terms. It is likely that this is due to the relationship not being based on compliance and supervision but instead on addressing needs and stopping offending behaviour.

Terry - Like they're on my back all the time.

Susan - ...social workers like youth workers somehow might be better.

[Sounds of agreement] (Focus Group 5 YW)

Dillan - Every single year there's weans gawin' inae college and there's other people goin' inae college tae dae stuff that they wahtae be, help the communi'y and dae stuff like that. Ah know pleddy a people and workers in hostels that they take the time and the effort and they, they really make it their, it's their life tae go and help people. There should be an organisation fur lit criminals where aye, as you said, there should be mentors and that's who's gonnae try and help ye instead o that stupid social work mob beciz they don't huv a fuckin' clue, they don't. (Focus group 7 CJ)

152. Mentors, mentoring, and counselling were discussed as one of the main areas missing within the justice system and in particular when discussing what was missing in the range of available sentences. It was believed that sentences that had a support element, particularly around addressing mental health needs, would support a young person's rehabilitation due to the focus of the relationship being about moving forward and building supports in their lives. This focus on improving the mental health of young people who offend, and having sentences that would improve mental health, was discussed across each of the focus groups within this study, highlighting the negative impact that poor mental health has on young people in contemporary Scotland. Having a sentence that integrated mental health support such as counselling which supported young people who had drug and alcohol problems would assist in rehabilitation. Consider this discussion of young women who had been trying to access support to address their offending behaviour and deal with the trauma they had experienced:

Rowena - ...but have asked tae see mental health when they're no' wahntin' tae deal wi' it; they want tae deal wi' ma addiction issues. It's took me seven year tae wahnt tae deal wi' this and they're no wahntin' tae speak to me aboot it so ye don't get the help in here that you should, ye, ye could get, ye can get ootside. They say that they supports are there.

Samantha - [Speaking over Rowena] I'm the sa, ah've been askin' them, ah've been askin' them for counsellin' since I wis 16 year auld and ah've still no' goat it. (Focus group 3 CJ)

153. Mental health needs for young people are often unmet (Audit Scotland, 2018) as illustrated in Rowena and Samantha's discussion. This is further compounded when discussing young people who have convictions or have been looked after, accommodated or in care. Young people who have experience of custody are three times more likely to experience mental health problems and those young people who were looked after or accommodated are six times more likely to experience mental health problems (Hill and Scott, 2016). Participants felt that having a sentencing option that would provide mental health support as part of an integrated sentence would aid the desistance process, and the young people identified that these supports were missing within the criminal justice system:

Lucy: She should be getting like, I don't know what are they called interventions, help with her mental health. Trauma interventions or counselling is that right?

Schafa: Aye, look (points to blank square on sentencing sheet) there, there's a box missing for it. (Focus group 11 YW)

154. Having interventions based on mental health was viewed positively as were social supports such as mentoring or befriending. Whereas prison was viewed as a site of trauma, the control and compliance which RLOs and unpaid work orders were situated around was felt not to work for young people. Supervision orders, mentoring⁴ and orders which addressed young people's needs were thought to be the most effective sentences. It must be highlighted that young people throughout the whole project always wanted to ensure that justice was met, that there were consequences to actions, and that the best outcome was that the young person learned through consequence. Yet, to achieve rehabilitation and ensure future offending stopped participants felt the sentence must address the causes of offending by meeting the young person's needs.

⁴ Please note that mentoring as a sentence was suggested by the young people and is not currently an available sentence.

Sentencing Features

155. Within the draft guideline there were six features of sentencing discussed but, for clarity in the focus groups, participants were given seven examples of the features. The feature “reduce the likelihood of the young person being stigmatised unnecessarily, and/or failing to comply with the sentence,” was split into two sections:

The ability to complete the sentence, and

Reducing the likelihood of stigma.

156. Due to the differences within these features, and the different responses related to them, the researchers suggest that these are separated within the guideline. One CJ group and one YW group did not attend to the features section within the focus group due to time constraints. Therefore the following discussion of the features of sentencing is based on the responses of fourteen of the focus groups. The following table details the response of each of the focus groups when presented with the features and asked which they thought were important and why.

Table Two Response to Features of Sentencing

Feature of Sentence	CJ Focus Group Number	Youth Focus Group Number	Total
Reduce the likelihood of the young person being stigmatised unnecessarily	4, 7, 9, 10	1, 5, 8, 11, 14, 16	10
Benefit society by reducing the possibility of further offending	6, 7, 10	5, 12, 8, 14, 16	8
Give the young person the opportunity to understand the consequences of their offending behaviour	2, 6, 7	5, 1, 12, 8	7
Increase the likelihood of aiding the reintegration of the young person into society	7, 9, 10	1, 8, 14	6
Address the underlying causes of that behaviour	6, 7	11, 14, 16	5
Assist in developing or maintaining positive connections between the young person and society	0	5, 12, 11, 14	4
Reduce the likelihood of the young person failing to comply with the sentence	7, 8	13	3



157. Reducing the likelihood of stigma in a young person's life was, in both types of group, most commonly identified as the most important feature. This is not surprising given all the groups discussed the negative impacts of stigma on young people's lives and the adverse effects of it. The only group which did not discuss reducing stigma for people with convictions was the focus group which comprised of a group of young people with additional support needs who discussed being the victim of stigma and how it affected them personally. The narrative of young people with convictions being seen as thugs and being treated as "folk devils"⁵ in society was discussed, in particular how that impacted people's perceptions of young people as a group:

Craig - Yeah, ah think, ah think it's a lot easier for people to kinna jist brand a whole generation of young people as criminals without seein' like the pos'i've impact it has beciz like when there's probably more, beciz there's more adults that are committing probably more crimes. It's almost like there is that, just that stigma that literally all young people are just little shits because they've, they're developin'.

Liz - It's like [short pause] what young people are bein' branded as and these criminals who deserve to be locked up when really all they're doin' is commi"n pe"y crimes. Then when ye get a net, like an...

Craig - Ah think it's...

Liz - ...a grown up like...

Craig - Ah think it's the shock value. I think it's the shock value of mibby hearin' that a young person has commi"ed this crime like or so a 12-year-old has broke into the shop and set a fire. It's like holy shit ah can't believe a 12-old did that and it sticks wi' someb'dy more as opposed to aw this 36 year old guy broke in a shop, set a fire and folk are gottae go...(Focus group 8 YW)

158. Although the young people welcomed the proposal in the pre-consultation draft guideline that sentences should aim to reduce stigma, one of the most important ways in which stigma was discussed was around criminal convictions and disclosure processes, over which sentencers have very limited control. Participants expressed the view that that having a criminal conviction requiring disclosure for low-level offences was only about continuing punishment and was antithetical to the pre-consultation draft guideline's primary purpose of rehabilitation – as well as the broader aims of supporting desistance and reintegration (Anderson, 2019).

⁵ A folk devil is an individual or group portrayed within society or media as deviant outsiders who are a threat to the social order and are blamed for social problems or crimes. (Cohen, 2002)

Participants believed that “fair enough if it was a really, really, really, really, really, really bad thing” (Focus group 10 CJ) such as murder or rape, then criminal convictions met the principle of protecting the public. However, it was felt that the majority of offences committed by young people were not in this category.

159. The stigma of a criminal conviction was viewed as a negative labelling process, which could create nihilistic attitudes towards themselves and their position within society, and stop positive identity development. Consider how Julien needs to convince himself not to internalise that he is a bad person and how he uses humour in attempts to alleviate the shame he feels:

Julien - Yeah. We make a joke about the fact that I'm a criminal, but...A lot of people would be looking at it and go, oh, you've [unclear words], you're a bad person. I'm not. I really am not a bad person, I had an accident and got the book thrown at me. (Focus group 10 CJ)

160. The biggest area discussed in terms of criminal convictions was the impact that requirements around disclosure had on stopping young people entering the labour market. It was agreed across all sixteen focus groups that criminal convictions presented a barrier for young people from getting work.

Liz - They've still got that on their back, they've still got that on their conscience like when they're applyin' for jobs when they're, when they're wantin to go uni or whatever, they've still got that criminal record. (Focus group 8 YW)

161. This was viewed as important particularly as young people were just at the beginning of their careers and many did not have experience of working, which could potentially prevent them from entering the labour market altogether. There was substantial support for sentences that could help build skills, relationships or experience that would link young people into employment, to try and limit these potentially serious long-lasting consequences. The consistent theme across the focus groups of the negative impact of the disclosure of criminal convictions also suggests that in aiming to ‘reduce stigma’ the courts might wish to consider sentencing in such a way as to reduce the period during which the offender has to declare the conviction.

162. The other two features which were regarded as most important by participants were:
 - Benefit society by reducing the possibility of further offending, and,

- Give the young person the opportunity to understand the consequences of their offending behaviour

163. These discussions were closely aligned with what participants discussed regarding the purposes of sentencing, which were identified above as reducing re-offending through rehabilitation, and protecting the public. It is clear to see these sentiments being replicated within the features of sentencing. Re-integration was closely linked with reducing the stigma associated with offending, which makes sense in relation to the interviewees' beliefs about social isolation and the importance of being in the community:

Sharon - No, I feel like these are quite good (the features). I think, like, the reintegration into society and that, these are also really important.

SA - So the building relationships between the young person and society.

Sharon - Yeah, cause they might feel totally apart from society. And, like, unpaid work, that sort of thing might get them more, that little bit more integrated. (Focus group, 14 YW)

164. This would explain why both the CJ and YW groups discussed reintegration in terms of being classed as important. Interestingly, the one aspect which CJ groups did not mention as being an important feature, but the YW groups did, was linked to building positive relationships within society. One young man discussed how he felt that this was related to the fact that the sentencing options available were not suitable to meet this feature:

Dillan - Naw, ah don't agree wi' that wan. Whit sortae positive fuckin' relationships are ye gonnae build fae gawin' ae communi'y service, the jail or what, whatever else ye wid get. (Focus group 7 CJ)

165. Dillan makes a good point that participants in other groups also discussed, certain elements of the sentencing range such as the stigma associated with criminal convictions, electronic tags and the breaches associated with unpaid work and electronic monitoring do not fit with the main purpose of rehabilitation or with the features of sentencing that aim to reintegrate, reduce offending, reduce stigma and build positive relationships with society. These features are incongruent with certain aspects of the sentencing options and may require further consideration as to whether these features can be achieved within the current sentencing range.

166. Three groups in the cohort discussed elements that they felt were missing when discussing what the features of sentencing should be. Focus groups five and eleven

discussed how a feature of sentencing that attempted to provide positive social supports into a young person's life would be beneficial. Again, this is linked to how they viewed the causes of offending as consequences of unmet needs. So if positive social supports were put in place then the sentence would meet the aim of rehabilitation:

Susan - Like givin' them some'hin' good like a wee like, like a fing that doesn't seem like it's a punishment.

Alison - Givin' some'hin' to look forward to.

Susan - Recommend things to do like but then that's, could be maybe somethin' they could work on with like their social worker or that if they've got one. Like some'hin' that's about them where they can like, just like unwind and really quite, this is what pissed me off this week so like I wanna punch fuck out o' this person but I'm gonna come and I'm gonna like make her and it's gonna maybe like help not punch fuck out of this person so I don't get another like sen'ence.

Terry - It could be like group work stuff or whatever likes of you had a group of like offenders or whatever, like, they obviously don't need to all go to like talk about what they did or whatever but it's just...(Focus group 5 YW)

167. Both of these groups, when discussing a feature of sentencing, wanted a sentence introduced which assisted young people to have positive social supports which were linked to a social group or programme for young people with convictions. Such approaches would be broadly in line with desistance-focused processes, which move beyond providing help for needs but focus on building strengths, human and social capital (McNeill, 2006). Focus group one, in a similar vein, thought young people required more social supports but rather than it being about social groups, they identified the missing feature as a focus on improving the physical and mental wellbeing of the young person by having someone there to support and listen to them.

Helen - Someb'dy ae talk tae.

JM - Someb'dy ae talk tae?

Helen - People ae be there.

Shona - Men'al health.

Shona - Like supportin their men'al health.

JM - People, people ae be there fur them. Yeah? (Focus group 1 YW)

168. Each of these suggested features of sentencing would support paragraph 7 of the guideline which refers to improving the outcomes for the young person by taking into account their living environment, physical and mental health and adverse childhood



experiences. Currently the only provisions in the draft guideline which addresses these areas are within the Information section which would relate more to the criminal justice social work report. So by having a feature of sentencing which addresses these areas could encourage the judge to take these into account when deciding a sentence. Therefore consideration be given to the introduction of a new feature of sentencing along the following lines:

Aim to improve the physical and mental wellbeing of the young person

Discussion and Conclusions

169. The aim of this research project has been to explore the attitudes of young people, including young people with convictions, to the sentencing of young people. Specifically, the research sought to explore themes and issues that arise out of the Council's draft guideline on sentencing young people. This research was undertaken with a view to exploring the views of young people in Scotland. Here we summarise overarching themes emerging from the focus groups, before presenting the young people's views on each aspect of the sentencing guideline in turn:

Overarching themes: age and other factors, a strong sense of justice & the meaning of offending

170. The young people identified important ways in which they differed from older adults. The draft guideline (especially paragraph 2) highlights the understanding of physical and psychological development as a reason for adopting a different approach to sentencing for young people. The young people we spoke to also identified important ways in which they differed from adults, but highlighted alternative differences. They emphasised personal differences related to self-learning and to their understanding of the world, their place within it, and the consequences of their actions. They also described structurally determined differences such as lack of financial and housing security, and relational differences, not only in the potential to be influenced by peers or exploitative relationships, but also in the value that they placed on these relationships. This way of conceptualising differences between young people and older adults is also supported by the academic literature from other fields, such as sociology and geography, which highlights the protracted transition to adulthood in late-modern society (Healy, 2013) and its fragmented and liminal nature, having left behind childhood, but not yet achieving traditional social markers of adulthood (Valentine, 2003). It is important that these broader social understandings of maturity are taken into account within the guideline. These are potentially implicitly recognised within the guideline, which states that "Judges should not rely solely on age when determining the maturity of a young person", but could be made more explicit.

171. There were certainly examples where young people described how they did not always make the best decisions or think so carefully about consequences. The young people who participated in the study did not read the language within the draft guideline, and so did not comment directly on this. However, the language in the

guideline emphasises physical and psychological differences between young people and older adults, which differed from young people's own understandings of how they are different, which frequently focused on other factors, notably less access to material resources. There is a risk that this emphasis on physical and psychological differences could be considered stigmatising or alienating to young people, and this may be something to explore further in the public consultation. The participants of the focus groups also made it clear that young people were adults, and in some cases had adult responsibilities, such as children, which they wished to see recognised. The term young person was often associated by our participants with people under the age of 18, and as suggested above, it may be more appropriate to refer to these young people as 'young adults'. Although beyond the Council's remit, such an approach would be supported by having a clear definition of a 'young adult' across the system (as part of the Scottish justice system's 'whole system' approach for people who offend), such as in the clear distinction given in Nordic systems between child, young person, and young adult (Lappi-Seppälä, 2011).

172. There was no clear consensus among participants as to the age at which someone should no longer be treated as a young person, and there appeared to be no shared understanding of the age at which adulthood was reached - although this may reflect the differences in the young people's own ages. Instead, the transition to adulthood appeared to be understood as a gradual progression, rather than any sharp cut off. Consequently, it was clear that the young people did not support 'cliff edges' in terms of moves from youth to adult justice and in sentencing practice. Additionally, young people also identified that many older adults had capacity to - and should be offered the opportunity to - change. Conversely, they emphasised that young people also needed to learn that actions, such as offending, have consequences, although these consequences should not stop them from moving forward.

Principles and purposes of sentencing

173. Overall, across all of the groups, rehabilitation was most frequently viewed as the primary purpose of sentencing for young people. However, some groups (or some members within groups) felt that other purposes were equally or more important, especially protecting the public and making amends. This suggests that, overall, the young people who took part in this study support paragraph 10 that: "Rehabilitation is a primary consideration when sentencing a young person." It also provides support for paragraph 5, since this allows for the sentencers to also consider the

broader purposes of sentencing. It should be noted that there was very little support for punishment as a purpose of sentencing for young people, and where there was any it was expressed in reductivist terms, which viewed it as a mechanism to protect the public or to help young people learn consequences.

174. The findings suggest that rehabilitation may mean slightly different things to different people, but that overall, in prioritising rehabilitation over other purposes, young people were choosing what they saw as a collaborative process, providing help to address the reasons for offending and building human and social capital. This has echoes of a ‘desistance-focused’ approach (McNeill, 2006).
175. Guideline 6 provides that “The exercise of sentencing a young person is different from that of sentencing an older person, in particular because of the lack of maturity and greater capacity for change of a young person”, while Guideline 7 outlines the principles that the maturity, capacity for change, and the best interests of the young person should all be taken into account in sentencing. There was agreement that young people had capacity to change, but some groups also drew attention to the capacity to change of older adults, which was related to their desire for fairness in sentencing. However, the young people also identified a number of other ways in which young people were different. The nature of the offence and history of offending was also seen to be important. This suggests that there is some support among the young people who took part in our study for reframing sentencing practice in Scotland so that it is about “making change for everyone that’s committed a crime”(Sharon, FG14 YW), although also having regard to other purposes, notably public protection. Participants believed that consideration to the welfare led approach applied to young people in the pre-consultation guideline could be developed across all future sentencing guidelines.

Assessment of Seriousness

176. In terms of the draft guideline’s provisions on culpability for the offence and the assessment of seriousness (11 and 12), it was clear that young people viewed some offending as less serious, as normal, or at least as a normal response to problems, and as an “accident” or “mistake” that the young person should be allowed to move past. However, young people also held a strong sense of justice, on behalf of the victim and in terms of fairness in sentencing practice, including across different age groups - although there was recognition that what was fair depended upon much



more than just the offence and included acknowledgement of the young person's circumstances and needs.

Information

177. The young people that took part in the study widely recognised that it was necessary for the sentencer to have a comprehensive picture of the young person's life and the circumstances of the offence, in order to choose the right sentence. There was agreement that the types of information specified in Guideline 13 were appropriate, but other additional information was suggested, including information about childhood family circumstances and other challenging experiences in childhood, current family and peer relationships, including any children, and education and employment circumstances. Negative experiences in childhood, within and outside the family, appeared to capture similar experiences to the concept of "adverse childhood experiences", but was usually interpreted more broadly to include other experiences such as growing up in poverty, abuse outside the family home, bullying and bereavement. The young people highlighted how - as well as enabling help to be provided to meet needs - information could make it clear where a certain form of sentence was *not* appropriate, and make them aware of foreseeable barriers to completing the sentence. There was support among the young people that we spoke to for getting information from the young person directly, as well as from multiple other sources.
178. In addition to the information that was needed about the young person, the focus groups suggested that the quality of the sentence was important. Notably, participants felt that unpaid work in the community should involve activities that actually brought benefit to the community, and criminal justice supervision needed sufficient resources to be able to provide help to meet the person's needs. This suggests that sentencers also need to ensure that they are aware of the quality of local provision, and that there should be mechanisms for sentencers to demand improvements in quality.
179. Within this section, it was highlighted that the young people we spoke to thought that assessing and supporting the mental wellbeing of the young person was essential and, although outwith the Council's remit, consideration should be given to reviewing criminal justice social worker reports to ensure that they are routinely capturing this information.



Range of sentences

180. The overarching theme within the range of sentences section was that no one sentence fits all and that sentences should be adapted to the person's needs and circumstances. This was particularly pertinent in terms of discussions around supervision. The majority of participants discussed supervision as being the best option for sentencing young people due to its focus on addressing needs within a community setting. Sentences which were viewed as supporting rehabilitation included an avoidance of a custodial sentence, addressing young people's unmet needs, and addressing the factors which caused the offending behaviour. Being situated within the community was viewed as the best outcome for young people, as a result of how social isolation was viewed negatively by them. Supervision was discussed the most in terms of assisting rehabilitation. But some within the groups did not agree due to their negative experiences of either previous social work engagement or negative supervision relationships highlighting the need for personalised approaches to sentencing to ascertain if the particular sentence will work. Although being situated in the community was preferred, there was particular inconsistency in the quality of community payback orders, and electronic monitoring which, when viewed to be about control and compliance, was believed to not be effective in rehabilitation.
181. When asked for their views on how to support change in young people who had been involved in offending, they emphasised collaborative relational processes in which young people are provided with the help they need to change their lives, which is in line with wider findings on supporting desistance from crime (McNeill et al., 2012). Frequently, out of the options given, the young people regarded supervision as the vehicle by which to achieve this. However, McNeill (2019) has charted the dramatic increase in use of community supervision across Scotland, which has occurred alongside – as opposed to instead of – an increase in the use of prison. This increase continued until 2014 whereby a drop in convictions resulted in a drop in the numbers receiving community and prison sentences but the drop in sentences has not reduced at the same rate as convictions. So, while the findings of this research support the use of supervision for young people, consideration should also be given wherever possible to other community based sentences, which can also provide some of the aspects of supervision that young people saw as valuable. Options such as deferred sentences, or supervision in which social work set up voluntary interventions such as mentoring or counselling that can help to build meaningful relationships, provide help with needs, and build strengths, without

drawing more young people deeper than necessary into the criminal justice system were preferred.

182. The young people we spoke to supported the privileging of community disposals over custody, and the findings in this research support the Guideline 18, but as discussed these community orders can also be problematic. There were indications that young people may engage with CPOs and RLO sentences differently from adults and that the quality of the supervision tends to determine the success with young people. Some of those who had lived experience of tags spoke of the stress that they caused, and how they did not feel that they addressed causes of offending or met young people's needs, as the focus was on compliance. This was echoed in discussions about unpaid work. It was believed that when sentences were about control and/or compliance then they would be less effective, but if the focus was on addressing needs and making amends then sentences would be more effective. To further encourage moves away from relationships being based on control and compliance the researchers suggest that the word monitor be changed to evaluate within paragraph 16. The concept of breaching was also discussed in relation to these orders.
183. For those who breach orders, the outcome can be what is known as secondary offending, which further embroils young people in the criminal justice system; as McVie and McAra's (2002) longitudinal study of offending in Edinburgh has evidenced, prolonged or increased contact with the justice system worsens outcomes for young people. Unpaid work is particularly pertinent to this as recent statistics on completion of unpaid work highlights that young people under 18 have the lowest completion rates, with only 40% completing their orders (Scottish Government, 2018), yet 31% of all community payback orders are given to young people under 25 (Scottish Government 2019). With the extension of the presumption against short term sentences, the number of short term prison sentences is expected to fall and be replaced with community sentences which could lead to a rise in community sentences being given to young people. This could be problematic as we know relatively little of the lived experiences of young people who experience RLOs and unpaid work orders and the impact that these have.
184. Each of these discussions (supervision, unpaid work, RLOs) highlighted how, in order to ensure completion, sentences should be personalised to the young person. White and Graham (2010) state that when we are talking about justice in practice there should be certain principles applied when using a rehabilitation framework. The first one of these is that justice should be an active process, it shouldn't be

something that is done to us. Therefore to ensure active engagement and the ability to complete it is suggested that, in line with paragraphs 7, 13 and 16 of the guideline, the judge at sentencing, or the social worker pre-sentencing in their criminal justice social work report, should have a discussion with the young person about their ability to complete a sentence.

185. Many of those who had experience of the criminal justice system discussed how too much contact with it worsened outcomes for them. Too much engagement in lives which were already challenging was viewed as negatively affecting their ability to complete sentences. This resulted in the suggestion that consideration be given to an additional provision within the sentencing range section requesting: In appropriate cases the use of cumulo sentencing be applied and if possible sentences to run consecutively or concurrently to help increase the likelihood of completion.
186. When discussing what was missing in the range of sentencing options, participants spoke of addressing mental health and emotional wellbeing through trauma based supports or by having someone there such as a mentor or support worker. Judges should be aware of the impact of mental health, particularly in relation to the impact of trauma, and the current focus on trauma based interventions.

Features of Sentencing

187. In regards to the features of sentencing, all groups were mostly in agreement with the features of sentencing presented, with the exception of building positive relationships within society. No one within the CJ groups who had lived experience of sentencing explicitly mentioned this as being important, while Dillan thought that this feature was incongruent with the current sentencing options. This highlighted tensions between the range of sentence options and the features of sentences, particularly in terms of the features about reintegration and reducing stigma, for example through the impact of criminal convictions on young people. Stigma and the impact of criminal convictions were viewed as being damaging to young people. Reducing the likelihood of stigma was viewed as the most important feature to achieve rehabilitation for young people. In light of this, it is suggested that this feature be split into two separate features within the guideline as the two are distinctly different:

Reduce the likelihood of the young person being stigmatised unnecessarily

and,

Reduce the likelihood of the young person failing to comply with the sentence.

188. The impact of having a criminal conviction has negative outcomes for young people, particularly when they are trying to move away from offending and reintegrate into society. These young people are just beginning their career, and if they have a conviction this results in them facing many of the same problems as long time unemployed people, such as low levels of educational attainment, low self-esteem, and poor work history. Having the stigma of a criminal conviction further removes this group of young people from the labour market due to the unwillingness of employers to hire them (Aaltonen 2016).
189. Therefore, in light of the proposed features, sentencers should attempt to pick sentences that lower the stigma of a conviction for young people. There was substantial support for sentences that could help build skills, relationships or experience that would link young people into employment, to try and limit these potentially serious long-lasting consequences. Young people were supportive of deferred sentences, but felt that if a criminal conviction was still attached then this could defeat the purpose. Part 2 of the recently passed Management of Offenders (Scotland) Act 2019 includes reforms to the Rehabilitation of Offenders Act 1974 in Scotland that will reduce the disclosure period for most sentences, and offences which result in the person who offended being admonished will be spent immediately, although at the time of writing this has not yet been enacted. Stigma and the impact of a criminal conviction actively work against what we understand of the desistance process in terms of supporting changes in personal and social identity, so that young people come to see themselves differently, and - through occupation of social roles - come to be seen by others differently (Anderson, 2019). The failure to achieve desired goals such as employment can also result in a sense of hopelessness (Nugent and Schinkel, 2016). If the primary purpose of sentencing young people is rehabilitation, and reducing stigma is a feature of sentencing, then in light of these current changes the greater use of admonition, especially alongside deferred sentences, which young people viewed as constructive, could have a positive impact on suitable young people and help reduce the stigma of criminal convictions.
190. It was also suggested, based on interviewees' responses, that a new sentencing feature be introduced which would aim to improve the physical and mental wellbeing of young people. Incorporating this into the features section would further strengthen the requirement to take into account the best interests of the young person within

Guideline 7, as it would encourage sentencers to consider which sentence would have the best impact on the physical and mental wellbeing of the young person.

191. Mental health was an issue that was repeatedly raised by the young people we spoke to and, reflecting this, has been discussed throughout this report. We also consistently saw a preference for the use of custodial sentences as a last option for young people, in line with Guideline 18. This research is written at a time when suicide in prisons is at its highest since 2002, with 14 out of the 16 deaths in prisons in Scotland last year being as a result of suicide, and with suicide being the leading cause of death of young people in prison in Scotland as well as internationally (Armstrong and McGhee, 2019). During 2019, as a result of the tragic deaths of two teenagers within young offenders institutions, an independent review was carried out examining the mental health services for young people entering custody in Scotland. The recommendations suggested by the review were accepted by the Scottish Government and investment is being placed in mental health staffing supports, increasing time outside of cells and ensuring that young people are not isolated and have access to family, belongings and support (Armstrong and McGhee, 2019).
192. Having additional supports put in place is essential in ensuring the welfare of those in state care. However, there is also a need to ensure that the mental health of young people is prioritised at all stages of the criminal justice system, and that sentencers, and those writing criminal justice social work reports have appropriate training and awareness of the mental health service landscape to ensure that young people receive the support they need, and that their health is not adversely affected by the justice process. As the young people in this study indicated, community sentences such as RLOs and unpaid work orders may have unintended consequences which can adversely affect them. However, we do not know enough about the effects of these orders on the young people who experience them.

Limitations

193. A limitation of this research is that while all of the young people interviewed for this project had current personal experience of what it was like to be a young person in Scotland, only a subset of participants had experience of being sentenced by a court or indeed being a victim of a crime. Without this personal experience, young people are subject to and reliant exclusively on the same competing cultural influences and narratives that shape older adults' views about why young people offend, how we

should respond and what works in reducing the chances of reoffending. In these cases, it was evident that they were drawing on other sources to form their views. They mentioned television shows, modern studies classes, the experience of friends and neighbours, to name just a few of the influences. To understand the views of young people about their personal experiences of the sentencing process and of different sentencing options (such as electronic monitoring) would be a different piece of research. Similarly, it would be a different piece of research to understand the efficacy of specific Scottish sentences at reducing reoffending for young people. There may be benefits in pursuing such research in future.

Concluding thoughts

194. The Council expects the draft guideline will increase consistency in the sentencing of young people in Scotland. Through sentencers implementing the guideline, the sentencing of young people will become more in line with the ethos of welfarism that supports and upholds the Children's Hearings System. The draft guideline and suggested changes, if approved, would be a welcome addition to sentencing practice in Scotland. Their implementation into our justice system is indicative of a broader transition from the welfare led ethos of youth justice into the adult justice system.
195. The young people that took part in this study were broadly supportive of identifying rehabilitation as the primary consideration of sentencing, albeit with recognition that they valued a sense of security and so, in some cases, protecting the public was also seen to play an important role. Introducing a guideline which explicitly prioritises rehabilitation as the primary consideration of the sentencing of a young person is a cultural change, which alongside the other guidelines proposed by the Scottish Sentencing Council will assist in providing transparency and consistency in sentencing. Making this explicit is an important part of ensuring procedural justice, in which the rules applied – and the principles behind them – are clearly articulated. This was also important, because the young people we interviewed explicitly conveyed a strong sense of justice. Further research is required on the implementation of these guidelines within practice as the cultural practice of judicial independence is strong within Scotland and previous research has indicated that Scottish judges may be reluctant to rely upon guidelines due to the infringements it could cause on their judicial independence (Heather & McIvor, 2017). Nevertheless, it is the opinion of the authors that the draft guideline presented within is flexible enough to allow for judicial independence to still occur.



Considerations

196. Throughout this report, 15 items for consideration were put forward, these are detailed below. The majority of the suggestions or considerations put forward arose directly from the young people in response to the workshop. Five of the considerations below came from the researchers which, whilst based on discussions or interactions with the young people, did not come directly from them. Therefore for clarity, those derived from the researchers are pre-fixed with: The researchers suggested.

Applicability

1. The findings provide support among young people for paragraph 2, i which states that the guideline applies up to the age of 25, but consideration is also given to a graduated approach, which avoids sharp differences in treatment between youth and adult justice.
2. The researchers suggested that consideration be given to using the term 'young adult' in the guideline and accompanying publications.
3. The researchers suggest that if the draft guideline is approved consideration be given to a review of how the guideline is affecting practice or improving outcomes for young people in Scotland.

Principles and purposes of sentencing

4. It is suggested that young people's understandings of how they are different including personal, structural, relational and other factors, should contribute to an understanding of how 'maturity' should be factored into the sentencing process in paragraph 7.
5. It is suggested that "adverse childhood experiences" in paragraph 7 be interpreted broadly.
6. There was some support among young people who took part in our study for reframing sentencing practice in Scotland so that it is about "making change for everyone that's committed a crime"(Sharon, FG14, YW), although also with regard to other purposes, notably public protection. Therefore it was suggested that consideration to the welfare led approach applied to young people in the pre-consultation guideline could be developed across all future sentencing guidelines.



Background Information

7. Consideration should be given to stating in paragraph 13 that information that reveals problems around the named issues should be used to ensure appropriate support, and not to justify a harsher sentence.
8. Consideration be given to broadening the examples given in paragraph 13, to explicitly include reference to:
 - “childhood family circumstances or other challenging experiences in childhood, including, but not limited to, whether the young person has been in care”
 - “current relationships including peers and family, including any children or dependents”.
9. Consideration should be given to also including within the guideline the need to request information on the impact of other external factors that reduce young people’s control over their lives, and which may impact on their experience of - and ability to complete - a sentence.

Sentencing Features

10. The researchers suggested that the feature:

Reduce the likelihood of the young person being stigmatised unnecessarily, and/or failing to comply with the sentence.
Be split into two separate features:

Reduce the likelihood of the young person being stigmatised unnecessarily, and
Reduce the likelihood of the young person failing to comply with the sentence.
11. It is suggested that within paragraph 15 a new sentencing feature be introduced:

Aim to improve the physical and mental wellbeing of the young person.

Range of Sentences

12. The researchers suggest that consideration be given to an additional guideline within the sentencing range section requesting: In appropriate cases the use of cumulo sentencing be applied and if possible sentences to run concurrently to help increase the likelihood of completion.
13. The researchers suggest that consideration be given to paragraph 16, in which the word monitor be changed to evaluate.



14. That the judge at sentencing, or the social worker pre-sentencing in their criminal justice social work report, should have a discussion with the young person about their ability to complete a sentence.

Additional

15. It was requested that consideration was given in the pre-consultation draft guideline to acknowledging the impact on the victim in the guideline. In the consultation draft guideline this has now been implemented within paragraph 7.

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Appendices

Appendix One – Pre-Consultation Draft Guideline

Sentencing young people
Judicial consultation
Draft guideline



GUIDELINE ON SENTENCING YOUNG PEOPLE

Introduction

Applicability

1. This guideline applies to the sentencing of any young person on or after 1 January xxxx.
2. For the purposes of this guideline, a young person is someone who is under the age of 25.

Background

3. This guideline emphasises various factors which should be taken into account when sentencing a young person. It takes account of research into how young people develop physically and psychologically, and into the differences between young people and older people⁶. In particular, young people are generally less able to exercise good judgement while making decisions, and they have greater potential to be rehabilitated.
4. It also takes account of distinct aspects of existing Scottish law about the sentencing of young people and the treatment of young people generally, and the United Nations Convention on the Rights of the Child (UNCRC).

Principles and purposes of sentencing a young person

5. When sentencing a young person, the judge should have regard to the Council's guidelines 'Principles and purposes of sentencing', and 'The sentencing process'.

Principles of sentencing

6. The sentence imposed must be fair and proportionate, in line with the core principle of sentencing as set out in the Council's guideline 'Principles and purposes of sentencing'. The exercise of sentencing a young person is different from that of sentencing an older person, in particular because of the lack of maturity and greater capacity for change of a young person.
7. The following factors should be taken into account:

⁶ An "older person", for the purposes of this guideline, is someone who is not a young person as defined in this guideline.

Sentencing young people
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• **The maturity of the young person.** Research has demonstrated that young people are not fully developed and may not have attained full maturity. They are generally more vulnerable to negative influences, such as peer pressure and exploitative relationships. They may therefore be less likely to make appropriate decisions and could find it more difficult to think about what may happen as the result of their actions. They may take more risks. It is important for the judge to take this into account when deciding how much a young person should be held responsible for their actions. Judges should not rely solely on age when determining the maturity of a young person.

• **The capacity for change of the young person.** The character of a young person is not as fixed as the character of an older person. A young person who has committed a crime may have greater potential to change and to move away from offending.

• **The best interests of the young person.** These should be considered in every case, and must be a primary consideration when the young person is under the age of 18, in accordance with the provisions of UNCRC. This requires the judge to take into account, for example, the young person's living environment; any adverse childhood experiences; and any physical and mental health issues.

8. The judge should always ensure that the sentence imposed takes account of the particular and individual circumstances of the young person.

9. The judge should take into account that some sentences could have more of an adverse effect on a young person than on an older person because of the young person's age, maturity, and/or personal circumstances.

Purposes of sentencing

10. Rehabilitation is a primary consideration when sentencing a young person. Young people should be provided with the opportunity to change, and to move away from past offending behaviour. The judge should therefore seek to reduce, through rehabilitation, the risk of reoffending, and to identify the features which will make the sentence particularly effective.

Assessment of seriousness

11. The judge should assess the seriousness of the offence in the way set out for all sentencing decisions in the Council's guideline 'The sentencing process': by evaluating the level of culpability and harm.

12. In assessing the culpability of a young person, the judge should have regard to the character and maturity of the young person at the time when the offence was committed. As the maturity of a young person will generally be lower than that of an older person, it follows that the culpability of a young person will also generally be lower than that of an older person being sentenced for a similar offence.



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Scottish Sentencing Council



Identifying the most appropriate sentence

Information

13. The judge should ensure that s/he has sufficient information to identify and impose the most appropriate sentence. This may include, for example, information and reports about:

- addiction or accommodation issues,
- the physical and mental health of the young person,
- whether the young person is or has been in care, and
- whether any proposed sentence will be effectively implemented, and what steps can be taken to increase the likelihood of effective implementation.

14. This should include, where it is competent to do so, referring a case to a children's hearing to obtain its advice as to the treatment of the young person.

Features of an appropriate sentence

15. An appropriate sentence should:

- increase the likelihood of aiding the reintegration of the young person into society,
- reduce the likelihood of the young person being stigmatised unnecessarily, and/or failing to comply with the sentence,
- benefit society by reducing the possibility of further offending,
- give the young person the opportunity to understand the consequences of their offending behaviour,
- address the underlying causes of that behaviour, and
- assist in developing or maintaining positive connections between the young person and society.

16. The judge should engage with the young person to increase the likelihood of the sentence being effective. In appropriate cases, the judge should consider fixing review hearings to monitor the young person's progress in complying with the sentence.

Sentencing range

17. The full range of sentencing options remains open to judges. However, the nature and duration of a sentence imposed on a young person should be different from that which might be imposed on an older person being sentenced for a similar offence.

18. A custodial sentence should only be imposed on a young person when the judge is satisfied that no other sentence is appropriate. If a custodial sentence is imposed on a young person, it is likely to be shorter than that which would have been imposed on an older person for a similar offence.

19. The judge should consider remitting a case to a children's hearing for disposal where it is competent to do so.

Appendix Two: Consultation Draft Guideline

Sentencing young people

Draft sentencing guideline

Effective from [date]

DRAFT

Applicability

1. This guideline applies to the sentencing of any young person on or after [date].
2. For the purposes of this guideline, a young person is someone who is under the age of 25.

DRAFT

Introduction

3. This guideline emphasises various factors which should be taken into account when sentencing a young person. It takes account of research into how young people develop physically and psychologically, and into the differences between young people and older people¹. In particular, young people are generally less able to exercise good judgement while making decisions, and they have greater potential to be rehabilitated.
4. It also takes account of distinct aspects of existing Scottish law about the sentencing of young people and the treatment of young people generally, and the United Nations Convention on the Rights of the Child (UNCRC).

Principles and purposes of sentencing a young person

5. When sentencing a young person, the judge must also have regard to the Council's guidelines '[Principles and purposes of sentencing](#)', and 'The sentencing process'. This guideline should therefore be read alongside those and any other applicable guidelines.

Principles of sentencing

6. The sentence imposed must be fair and proportionate, in line with the core principle of sentencing as set out in the Council's guideline 'Principles and purposes of sentencing'. The exercise of sentencing a young person is different from that of sentencing an older person, in particular because of the lack of maturity and greater capacity for change of a young person.
7. The following factors should be taken into account:

¹ An "older person", for the purposes of this guideline, is someone who is not a young person as defined in this guideline.

- **The maturity of the young person.** Research has demonstrated that young people are not fully developed and may not have attained full maturity. They are generally more vulnerable to negative influences, such as peer pressure and exploitative relationships. They may therefore be less likely to make appropriate decisions and could find it more difficult to think about what may happen as the result of their actions, including any impact on victims and others. They may take more risks. It is important for the judge to take this into account when deciding how much a young person should be held responsible for their actions. Judges should not rely solely on age when determining the maturity of a young person.
 - **The capacity for change of the young person.** The character of a young person is not as fixed as the character of an older person. A young person who has committed a crime may have greater potential to change and to move away from offending.
 - **The best interests of the young person.** These should be considered in every case, and must be a primary consideration when the young person is under the age of 18, in accordance with the provisions of UNCRC. This requires the judge to take into account, for example, the young person's living environment; any adverse childhood experiences; and any physical and mental health issues.
8. The judge should always ensure that the sentence imposed takes account of the particular and individual circumstances of the young person.
9. The judge should take into account that some sentences could have more of an adverse effect on a young person than on an older person because of the young person's age, maturity, and/or personal circumstances.

Purposes of sentencing

10. Rehabilitation is a primary consideration when sentencing a young person. Young people should be provided with the opportunity to change, and to move away from past offending

behaviour. The judge should therefore seek to reduce, through rehabilitation, the risk of reoffending, and to identify the features which are likely to make the sentence particularly effective.

Assessment of seriousness

11. The judge should assess the seriousness of the offence in the way set out for all sentencing decisions in the Council's guideline 'The sentencing process': by evaluating the level of culpability and harm.
12. In assessing the culpability of a young person, the judge should have regard to the character and maturity of the young person at the time when the offence was committed. As the maturity of a young person will generally be lower than that of an older person, it follows that the culpability of a young person will also generally be lower than that of an older person being sentenced for a similar offence.

Identifying the most appropriate sentence

Information and advice

13. The judge should ensure that s/he has sufficient information to identify and impose the most appropriate sentence. This may include, for example, information and reports about:
 - addiction or accommodation issues,
 - the physical and mental health of the young person,
 - whether the young person is or has been in care, and
 - whether any proposed sentence is likely to be effectively implemented, and what steps can be taken to increase the likelihood of effective implementation.

14. This should include, where it is competent to do so, referring a case to a children's hearing to obtain its advice as to the treatment of the young person.

Features of an appropriate sentence

15. An appropriate sentence should:

- increase the likelihood of aiding the reintegration of the young person into society,
- reduce the likelihood of the young person being stigmatised unnecessarily, and/or failing to comply with the sentence,
- benefit society by reducing the possibility of further offending,
- give the young person the opportunity to understand the consequences of their offending behaviour,
- address the underlying causes of that behaviour, and
- assist in developing or maintaining positive connections between the young person and society.

16. The judge should clearly explain the sentence to the young person to increase the likelihood of the sentence being effective. In appropriate cases, the judge should consider fixing review hearings to monitor the young person's progress in complying with the sentence.

Sentencing range

17. The full range of sentencing options remains open to judges. However, the nature and duration of a sentence imposed on a young person should be different from that which might be imposed on an older person being sentenced for a similar offence.

18. A custodial sentence should only be imposed on a young person when the judge is satisfied that no other sentence is appropriate. If a custodial sentence is imposed on a young person, it should be shorter than that which would have been imposed on an older person for a similar offence.

19. The judge should consider remitting a case to a children's hearing for disposal where it is competent to do so.

DRAFT

Sentencing young people
Draft sentencing guideline

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Appendix Three: Vignette Workshop

Background to Project.

This research is being carried out by the University of the West of Scotland to help the Scottish Sentencing Council develop and finalise a guideline for sentencing young people. Once a person has been found guilty or pleads guilty they are given a sentence by the judge, who is informed by any sentencing guidelines which apply to the case. The sentencing guideline currently being developed will be used by judges to help them make decisions about the sentencing of young people in courts, and we would like to hear your opinions and experiences to help the Sentencing Council complete this work.

One of the questions that we will consider today is about ‘who counts as a young person?’ Currently the age for a young person is under 21 in criminal courts so this is something we will be discussing throughout.

Information for Youth Worker

There are three sets of coloured card:

- blue, for the ‘purpose of sentencing’ cards for vignette one
- orange for ‘range of sentence’ cards for vignette two
- and green, for the ‘features of a sentence’ cards for vignette three.

These are prompts for handing out when you are reading out the vignettes. If you could read them out before or as you hand them out to young people it would be appreciated. If you think before doing this you need further information or background information please do get in touch and we will be able to provide further information.

Vignette One – Purposes of Sentencing

You have been given the power to change sentencing for young people in Scotland over the age of 16. There are lots of different aims of sentencing (**give out the blue cards, reading them aloud first**) and start a discussion of them.

Q1. Of these, which aims are important when sentencing young people? And why have you chosen these?

Q2. What aim is the most important? Why do you think this?

Q3. Do you think this is different for young people than older adults?

Q4. The Sentencing Council’s draft guidelines suggest that rehabilitation should be the main aim of sentencing for young people as they have the most capacity for change, what do you think of this?

****Leave the blue cards where they are****

Vignette Two – Range of Sentences

You have been on holiday. While you are on holiday, there has been a fight at your youth club between two young people, aged between 16 and 21. You know that someone was punched in the head. You know that a good friend was involved. But you don’t know if they were the victim or the offender. The case has gone to court and the offender has pleaded guilty.

Q1. Does this change your view on the most important aim or aims of sentencing?

Put blue cards away / to one side

The judge has to give a sentence to the young person. Many sentences involve combining different sentences together and most involve having a criminal conviction. **Read out and hand out the orange cards:**

The judge has to choose what things to include in the sentence, remember you don't know if your friend is the offender or the victim in this case. The judge wants to choose a sentence that helps the person change their behaviour.

Q2: What do you think would make a good sentence in this case? And more generally, what about these sentences work to help change their behaviour?

Q3: What sentences are the best for young people? Why do you think this? Are there other options we could have?

Q4: What doesn't work in sentences? (Remind them they don't need to share any personal experiences but can talk generally.)

Q5: Do you think we should have different sentences for young people and older adults?

Vignette Three – Information required in sentencing

Suzie is 18. She destroyed some furniture and set fire to the bin in her residential home. Suzie is charged with criminal damage and fire-raising and is being sentenced. The judge wants to choose a sentence that helps Suzie change her behaviour. The judge knows a lot of information about the offence, but not very much about Suzie.

Q1: What types of information about Suzie do you think it is important for the judge to know to choose the right sentence?

Suzie used to stay in the residential home as her mum was an alcoholic, but she is now sleeping on a friend's sofa. She goes to college but she feels sad a lot of the time and the GP says she is depressed. She has been drinking a lot.

Q2. What information about Suzie do you think is relevant in choosing the right sentence? (Once the person answers) And how should use this information be used to inform a sentence?

The Sentencing Council argue that addiction, accommodation, physical and mental health, whether the young person is or has been in care, and if they are able to complete the sentence (able to pay fine, or able to complete CPO etc.) should be taken into account.

Q3: Is there anything else we should be thinking of when considering young people and their circumstances?

Q4: Is there anything here that you don't think is useful?

Q5: Does the judge need to know different types of information for different cases?

Q6: Where should this information come from?

Q7: Looking again at the orange cards, what do you think would make a good sentence in Suzie's case? Why?

Vignette 4 – Features of an appropriate sentence

Based on the Criminal Justice Social Work report the judge received they decided that the best sentence for Suzie was a community sentence called a 'Community Payback Order'. As part of this order she had to go and see a social worker every week for six months and to do unpaid work in the community. The judge did this because they thought that Suzie and society would get something out of this type of sentence.

Q1: What should sentences be trying to do for young people? And what about society or the victim?

Q2: What do you think a sentence should include to help young people?

Suzie is working hard to drink less. The social worker is trying to help her get her own home and has organised a counsellor to help Suzie deal with issues in her past. But Suzie finds it difficult to go to college, do unpaid work and do all the things that the social worker asks. Suzie, although finding it hard completed her six months CPO and has vowed she will never offend again. Suzie got help to get her own home but gave up college. She is a bit worried about re-applying for college and jobs because of her criminal conviction, but knows this isn't forever it is only until her conviction is 'spent' in five years time. When it is spent, she will not have to declare this to most employers, although she might if she is working with children for example.

Q4: Do you think this was a good sentence for Suzie? Why?

Q5: What if the sentence doesn't work (i.e: if Suzie cannot complete it or she reoffends again), what should happen then?

Q6: Are there unintended consequences of sentences, If yes, how could these be avoided?

The sentencing council have stated that an appropriate sentence for young people should include:
Read out the green features of sentencing cards and hand them out.

Q7: If the main aim of sentencing is rehabilitation, which of these would the perfect sentence do?

Q8: Is there anything missing?

Concluding questions - age

Q1: Based on everything we have talked about, your own experiences of young people and what factors or behaviours cause offending, what ages should these guidelines apply to? At what age should young people just be treated like any other adult?

Q2: And should it be the age at which they commit the offence or the age at court that matters?

Q3: Should anything else be taken into account in deciding if someone should be treated as young?

Thank you for taking the time to talk to us.

Q4: Is there anything else that we should be thinking about or asking when we are talking about this?

Vignette One Blue Cards: Purpose of Sentencing

MAKE AMENDS: A chance to fix the harm done or pay the person/local community back	PUNISHMENT: Punish the young person, usually by taking something away from them (e.g. money, freedom)
PROTECTION OF THE PUBLIC: Keep other people safe	EXPRESSING DISAPPROVAL: SHOW DISAPPROVAL “Sending the message” that society does not want this type of behaviour
REHABILITATION: CHANGE BEHAVIOUR Activities or other options to help the young person change their behaviour in the future, so that they move away from offending	

Vignette Two Range of Sentence, Orange Cards

1. A DEFERRED SENTENCE	2. PRISON/DETENTION
 <p>A SENTENCE ISN'T GIVEN RIGHT AWAY THE JUDGE WILL GIVE CONDITIONS AND THEY WILL RETURN TO COURT AT A LATER DATE TO BE SENTENCED.</p>	 <p>REMOVED FROM COMMUNITY AND PLACED IN PRISON/DETENTION</p>
3. FINE/COMPENSATION	4. COMMUNITY SENTENCE: RESTRICTION OF LIBERTY ORDER
 <p>PAY THE COURT A SPECIFIC AMOUNT OF MONEY IN A SET AMOUNT OF TIME. THIS MIGHT BE GIVEN TO THE VICTIM AS COMPENSATION.</p>	 <p>HAVE A CURFEW, STAY AT HOME AT SPECIFIC TIMES (7PM – 7AM) ETC. THIS MAY INVOLVE WEARING AN ELECTRONIC TAG.</p>
5. COMMUNITY SENTENCE: ANTI SOCIAL BEHAVIOUR ORDER	6. COMMUNITY SENTENCE: UNPAID WORK ORDER
 <p>DO NOT HANG ABOUT IN CERTAIN AREAS, WITH CERTAIN PEOPLE OR PLAY LOUD MUSIC ETC.</p>	 <p>WORKING IN THE COMMUNITY FOR A SET NUMBER OF HOURS WITHOUT GETTING PAID.</p>
7. COMMUNITY SENTENCE: SUPERVISION ORDER	8. COMMUNITY SENTENCE: TREATMENT REQUIREMENT OR ORDER
 <p>SEEING A SOCIAL WORKER REGULARLY FOR A FIXED PERIOD OF TIME.</p>	 <p>GETTING TREATMENT FOR PROBLEMS SUCH AS ALCOHOL, DRUGS OR MENTAL HEALTH ISSUES AS PART OF A COMMUNITY PAYBACK ORDER, OR THROUGH A DRUG TREATMENT AND TESTING ORDER.</p>



9.ADMONISHED



NO PUNISHMENT BUT A CRIMINAL CONVICTION.

Vignette Three: Green, Features of a Sentence Cards

INCREASE LIKELIHOOD OF REINTEGRATION Reduce barriers to becoming fully included in society in the future.	ABILITY TO COMPLETE THE SENTENCE Can the young person complete the sentence for example: can they pay the fine?
REDUCE STIGMA Tries to stop the young person being labelled a criminal to stop others thinking bad things about them.	REDUCE OFFENDING Makes the young person commit less likely to commit crime in the future.
LEARN CONSEQUENCES Helps the young person learn that particular actions and behaviours are unacceptable, have a negative effect on other people and if they do them there will be a response.	ADDRESS THE CAUSES OF OFFENDING Stops the problems that were involved in the young person committing crime.
BUILD POSITIVE RELATIONSHIPS BETWEEN THE YOUNG PERSON AND SOCIETY Helps the young person feel connected to society in a positive way.	

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