

Public attitudes to sentences for environmental and wildlife offences: findings from a mixed methods research project

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Summary

- The Scottish Sentencing Council commissioned research to explore public perspectives of sentencing for environmental and wildlife offences. The researchers conducted seven two-hour focus groups with 55 people and an online survey of 1,053 adults to explore public views of the subject matter.
- In the survey, asking whether, in general, sentences are too lenient, about right, or too harsh, 52% responded that they did not know. Of the rest of respondents, most said that sentences were too lenient.
- In the focus groups, most said some sentences were too harsh and some were too lenient. If pressed to only pick one option, most said they were too lenient. This raises important methodological questions for interpreting survey responses on this question, and work should be done to explore when and/or why such views arise in various contexts.
- It was generally felt that sentencing overall was not transparent. In both the survey and focus groups, self-reported knowledge of sentences for environmental and wildlife offences was very low. Additionally, self-reported knowledge of sentencing disposals available for these offences was low in the focus groups. Therefore, work to further communicate how sentencing (e.g. via ancillary orders) may achieve aims such as preventing reoffending may be useful.
- The survey and focus group findings suggest that what the participants desire from sentencing is complex. Focus group participants suggested that their overall aspiration was a fair and effective system of sentencing (meeting various objectives), rather than a simple demand for more severe sentences. Consequentialist penal aims such as rehabilitation, restoration of the environment, and preventing future offending were seen as important objectives of sentencing in response to environmental and wildlife offences.
- In discussions about sentencing, the focus groups sought information on factors commensurate with those noted in caselaw, the general Scottish guidelines, and the English and Welsh guidelines.
 - Focus group participants said that the harm caused/risked by an offence and culpability for that offence were important factors that should be considered at sentencing. Indeed, focus group participants were keen to know whether or not offences were committed intentionally or how reckless/negligent an offender was. Some also suggested that certain offenders (e.g. large organisations) had a duty of care or responsibility and that breaching this could be an aggravating factor.
- Focus group participants suggested that clear public communication about environmental and wildlife offences could enable potential offenders to understand the consequences/harms of what they might be about to do, especially where the full risks to the environment may not be immediately obvious. However, it was felt that some offenders may already be aware of the harms/risks.

- Fines were an area of complexity. Fines were seen by members of the public as both ineffective in some cases (as ‘a slap on the wrist’), but as meaningful in other cases.
 - A recurring theme was that groups had a strong sense that it should not be cheaper to offend than it is to break the law. Accordingly, it was felt that decision-making about financial penalties should consider benefits accrued both indirectly as well as directly from offences.
 - There was a concern that fine amounts could be set too low, especially for corporate offenders. However, details of how fines are set helped, at least partially, to assuage this concern.
 - In the case of corporate offenders, some were concerned that the costs of fines might be passed on to consumers.

1 Introduction

The Scottish Sentencing Council was established in October 2015 as an independent advisory body following the Criminal Justice and Licensing (Scotland) Act 2010. As part of its business plan, the Council is currently working on a suite of sentencing guidelines that includes coverage of environmental and wildlife offences. To this end, the Council commissioned research to explore public perceptions concerning how environment and wildlife offences should be taken into account at the point of sentencing. This follows an earlier report commissioned by the Council examining the domestic and international legal, jurisprudential and empirical literature on sentences for environmental and wildlife offences.¹

This research was especially significant for three reasons. Firstly, as the literature review commissioned by the Council suggests, there is limited insight into public opinion of sentences for these offences in Scotland or the UK.² Secondly, many environmental and wildlife offences result in financial penalties. This is different to some of the other offences the Council has examined, where sentences of imprisonment may be more likely. Therefore, this was an opportunity to explore public views about cases that are less likely to be dominated by discussions about imprisonment. Thirdly, an interesting component of environmental and wildlife offences is that they are diverse and cover a wide range of crimes of varying seriousness. Indeed, some environmental and wildlife offences may be said to be quasi-regulatory in nature and predominantly committed by corporate entities (i.e. companies). Therefore, this research is important to issues around environmental and wildlife offences and for shedding light on matters the Council may wish to consider when devising guidelines in other areas (e.g. those entailing financial penalties or those offences committed by corporate entities).

To carry out this research exploring public perceptions, we employed a mixed methods design. We conducted qualitative focus groups and a quantitative online survey. The methodology and main findings are detailed below.

2 Methodology for qualitative focus groups

The qualitative work to understand public opinion entailed seven focus groups that lasted two hours. Five groups were run in person at the University of Glasgow School of Law. The venue

¹ Antonio Cardesa-Salzmänn and Donald Campbell, 'Literature Review of Sentencing of Environmental and Wildlife Crimes' (Scottish Sentencing Council 2020)
<<https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/environmental-and-wildlife-crime>>.

² Cardesa-Salzmänn and Campbell (n 1).

was equipped with a projector for slides and a digital drawing board for noting key points of the discussion for later reference. Two of the groups took place online using video conferencing software. The purpose of this was to allow for the inclusion of those who may struggle to attend physically (e.g. those with disabilities and those located outside central Scotland).

For each group, we sought to have approximately eight participants. To allow for redundancy and 'dropouts', we aimed to recruit nine persons for each group. Across all groups, we had between seven and nine participants, and, in total, we had a sample of 55 people across the seven focus groups. Our recruiter, Plus4, used experienced regional supervisors, and participants were recruited in line with our aim for sampling to be as close as possible to nationally representative in terms of gender, age, socioeconomic groups, and ethnicity. We achieved groups representing a broad spread of the population. In our groups, 29 participants identified as female and 26 as male. In terms of ethnicity, most (40) identified as 'white Scottish.' In terms of age, 11 were between 20-27; 10 were between 28-34; ten were between 35-45; ten were between 47-60; and fourteen were over 60. In terms of socioeconomic groups, 12 were AB/B; 19 were C1, 13 were C2, and 11 were D/DE/E.³

2.1 Structuring the sessions

In designing the structure for the focus groups, we drew on the previous research commissioned by the Council.⁴ Based on prior work, it was suspected that public knowledge and understanding of sentencing for environmental and wildlife offences could be limited and so we elected to use short scenarios to supplement the general questions. The expectation was that scenarios would help shift the focus of discussion from the vague and abstract to a more specific and detailed examination of (perceived) core issues in different contexts. Indeed, in previous work on sentences following a guilty plea, short scenarios proved to be effective.⁵ Since we suspected knowledge of environmental and wildlife offences to be low, we used various scenarios that covered a range of different situations. To inform the scenarios we explored reports of cases and offences in Scotland, Ireland, and England and Wales.

³ Social Grades are one metric research may consider when seeking to achieve a nationally representative sample. By ensuring broad representation among groups, research can seek to minimise sample bias. As the Office for National Statistics explain, "[Social Grade is a socio-economic classification. This is a way of grouping people by type, which is mainly based on their social and financial situation.... Social Grade has six possible classes: A, B, C1, C2, D and E.](#)"

⁴ Cardesa-Salzmänn and Campbell (n 1).

⁵ Jay Gormley, Julian Roberts and Cyrus Tata, 'Public Attitudes to Sentences Following a Guilty Plea: Findings from a Mixed Methods Research Project' (Scottish Sentencing Council 2025) <<https://www.scottishsentencingcouncil.org.uk/publications>>.

Moreover, a range of factors that might influence public opinion were identified from caselaw and literature to explore as and when they were raised in groups.⁶

While we could not cover every possible wildlife and environmental offence, we sought a broad range of scenarios that would cover key points upon which the Council would find information useful. As such, we sought scenarios exploring varying degrees of seriousness; different offences; different offenders (individuals, corporate bodies, and serious organised crime groups); etc. Ultimately, nine scenarios were created in consultation with the Council.⁷ Given the number of scenarios, not all could be covered in every session. Therefore, the aim was to cover each scenario in at least four groups. The number of times each scenario was covered is noted in the table below.

⁶ This included the factors previously identified by the English and Welsh Council in their guidelines.

⁷ See the appendix.

Scenario	Times discussed in groups
1	5
2	5
3	5
4	4
5	6
6	5
7	4
8	4
9	5

Given that this was not an area the public was likely to be familiar with, and that it can be rather technical, we also wanted to explore if/how/when contextualising information might assist the discussion. For this reason, Scenario 1 (see Appendix 1) noted charges against both a company and charges against a director. Scenario 1 also provided factual information on the types of pollution, as well as some expert evidence on the impact of this. Likewise, other scenarios provided some comment on the potential impact of the offences (e.g. Scenario 9 on the risk to the native peregrine population). In some groups, additional details or clarification could be provided if relevant. For example, in discussing Scenario 6, one group questioned whether mussels contained pearls, and this was clarified. Additionally, some also wondered what ecological value (if any) mussels provided. After the group had discussed among themselves (with most concluding that being protected suggests some ecological benefit), the moderator might ask what their views would be if mussels, as filter feeders, played important ecological roles in water quality.⁸ Similarly, the ecological role of bats could be (briefly) explained if helpful.

To structure the discussions, details of the scenarios were gradually revealed to participants, and the details were such that the offence scenarios were aggravated and mitigated in various ways by providing respondents with further information. As with prior research, the approach adopted was commensurate with legal consciousness work that seeks to explore perceptions

⁸ Note that some molluscs (such as “zebra mussels”) are an invasive species.

without assuming that participants possess official legal notions and definitions.⁹ Indeed, for the most part, to avoid confusion, offences and legislation were not specified in detail.¹⁰ Thus, the scenarios were starting points, and flexibility was allowed in the discussions. We were also keen to avoid the research being seen as a quiz or lecture with right or wrong answers. Instead, as we told participants, there were no right or wrong answers; all we were seeking was to understand what the public knows and thinks. We were particularly interested to see what factors the public might focus on or request more details about as an indication of what they felt was important. We analysed the focus groups using thematic analysis. All participants are anonymised and no real names are used.

3 Views about the aims of sentencing for environmental and wildlife offences

Prior research on public opinion about sentencing has so far tended to include offences where there are direct victims or where there is no ability to undo the harms caused (such as in the case of death by driving research).¹¹ While many environmental and wildlife offences have direct victims and/or irreparable harm, it is not invariably the case. Thus, there is a significant benefit to exploring if/how the public may view the aims of sentencing in the context of environmental and wildlife offences. We approached this by first asking general questions about the aims of sentencing and then asking about environmental and wildlife offences specifically. Additionally, we had our scenario discussions to further this dialogue.

Participants were asked, 'when someone is convicted of a criminal offence, what should the sentence aim to achieve?' In other words, this question probed participants' views about the purpose of sentencing generally. A range of answers were given, and a note was made of these for further reference throughout the session. In Zoom groups, this was by verbal reminders and for in-person groups, answers were written on a digital writing board.

⁹ For example, see Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998).

¹⁰ The main exception was the Hunting with Dogs (Scotland) Act 2023 was explicitly noted as it is a fairly recent piece of legislation and it was useful to explore if it was well known (it was not).

¹¹ Susan Reid and others, 'Public Perceptions of Sentencing in Scotland: Qualitative Research Exploring Causing Death by Driving Offences' (Scottish Sentencing Council 2021) <<https://www.scottishsentencingcouncil.org.uk/media/b1fhx3r/20210216-perceptions-of-sentencing-for-causing-death-by-driving-final.pdf>>; Rachel McPherson and Cyrus Tata, 'Causing Death by Driving Offences: Literature Review' (Scottish Sentencing Council 2018) <<https://strathprints.strath.ac.uk/65983/>> accessed 21 October 2021.

Sometimes new aims would emerge later in the discussions, and these would be added to the board. The aims noted were varied and included (in no particular order):

- Justice (for some respondents, this could include traits such as timeliness and transparency);
- rehabilitation;
- public protection;
- incapacitation;
- deterrence;
- denunciation;
- punishment;
- helping people with (criminogenic) needs;
- education;
- taking into consideration the circumstances of the offence and offender (including the previous record)
- restricting the ability to offend in the future (e.g. being banned from the relevant industry).

The responses here reflect those from other research on public opinion.¹² These responses also align with those in the Council's principles and purposes guideline.¹³ However, it is noteworthy that aims such as education seemed more prominent in the scenario discussions. This seemingly reflected focus group participants' views that some (but by no means all) people may either not know an offence exists or may not fully appreciate the harm it causes. Indeed, some participants even suggested that schools might better educate young people, such as by taking them on trips to the Highlands.¹⁴

An interesting aspect of the group discussions is the way in which the public speaks about sentencing aims. The discussions could move fluidly between aims and the participants often made connections between them. For example, public protection was one aim that groups commonly identified. Yet, it was felt that public protection could be achieved in a variety of ways. For example, the aim of incapacitation is noted under the heading of public protection:

¹² Gormley, Roberts and Tata (n 5).

¹³ Scottish Sentencing Council, 'Sentencing Guideline: Principles and Purposes of Sentencing' (2018).

¹⁴ The Highlands cover about ten-thousand square miles in Northern Scotland and is by far the largest area. Despite its size, the estimated population [is two-hundred and thirty-four thousand](#). It is known for its scenic countryside landscapes, amongst other things. Therefore, it can be regarded as an excellent place to explore nature and relevant to education about wildlife and the environment.

I think public safety as well. Some people just need to be kept away from the public because they're too dangerous to be in sight.

In other discussions, participants felt that public protection could be sought through means such as rehabilitating offenders. As a result, it is important to consider what the public means when they use certain terms and how they may consider the aims of sentencing to be linked.

Interestingly, denunciation could be linked to deterrence. Deterrence can mean different things, and literature has noted this.¹⁵ In some cases, deterrence can mean criminalising conduct or sentencing it in a certain way that will prevent some people from offending. This latter understanding of deterrence aligns with marginal sentencing deterrence theories, which focus on if/how the severity of a sentence affects the decision to offend.¹⁶ Of course, there are questions about if/how/when marginal deterrence works, but, in terms of public views, it seems a desirable aspiration if possible. Yet, in discussions, deterrence was also linked to expressing disapproval of conduct and the need for denunciation. For example, groups tended to be less favourably disposed towards reducing the sentence because of a guilty plea as the conduct became aggravated (e.g. by revealing details of previous criminal history and/or intentional offending). Part of the reason for this reluctance was due to the desire for 'deterrence', where the term came to approximate denunciation or 'calling out' the wrongdoing. Thus, there are interesting points to consider concerning the way members of the public connect and speak about different sentencing aims.

3.1 Views about environmental and wildlife offences

Participants agreed that environmental and wildlife offences were an important matter. In discussing the issues posed by environmental and wildlife offences, the groups tended to discuss offences they were aware of. These included offences within their communities (e.g. fly-tipping), offences related to charity work (e.g. with conservation efforts for endangered animals); and offences reported in the media (e.g. the Sycamore Gap tree felled at Hadrian's Wall that, at the time of the focus groups, was extensively reported on). Issues noted included harms such as pollution, animal abuse, and upset to people. It was also commonly noted that these offences could have wider impacts on the environment or human health.

¹⁵ Paul H Robinson, 'The Difficulties of Deterrence as a Distributive Principle' in Paul H Robinson, Stephen Garvey and Kimberly Kessler Ferzan (eds), *Criminal Law Conversations* (Oxford University Press 2011) <<https://doi.org/10.1093/acprof:osobl/9780199861279.003.0005>> accessed 9 May 2024.

¹⁶ Jay Gormley, 'Reconceptualising the Effectiveness of Sentencing: Four Perspectives' (Sentencing Council of England and Wales 2024) <<https://www.sentencingcouncil.org.uk/publications/item/reconceptualising-the-effectiveness-of-sentencing-four-perspectives/>>.

In terms of how the public debated sentencing for environmental and wildlife offences, consequentialist aims were prominent. The discussions in focus groups were nuanced and considered. While knowledge of sentencing practice was limited, a key theme was that the public (based on these groups) was not only concerned with punishment. Indeed, overall, the desire of the public was for a fair and effective system of sentencing (meeting various objectives) rather than a simple demand for ever more severe sentences. As Ronald¹⁷ noted at the outset of the discussion:

I think it's [the criminal justice system] alright. Bear in mind, one hundred years ago for something simple like stealing a loaf of bread to feed your family, you used to get your hand chopped off. And you know it was kind of brutal, whereas now it's a lot... I think it's a lot better. As with anything, it always needs improvement.

For instance, preventing offending was noted as an aim for environmental and wildlife offences. This seemed to reflect participants' desire to prevent the harm these offences can cause. For example, Gavin was somewhat wary of deterrence as a general aim. While he did not disapprove of deterrent sentences (in the sense of general deterrence), in general, he cautioned it had to be balanced with other aims such as justice/fairness:

I think deterrence is always kind of a tricky one because that's kind of punishing someone on behalf of someone else. It's not really focusing on the person's kind of... It's like adding an extra punishment to deter other people rather than just on what they've done.

Yet, in discussing environmental and wildlife offences specifically, he noted that, "before I said deterrence wasn't really an important [aim] but I think it actually is for this sort of thing." Additionally, some offences were thought to be repairable, but some were thought to be permanent. As Perry noted:

I think with things like the birds [such as protected species like peregrine falcons] and stuff... If you do away with these species, you'll never see them again.

Where the offence was rectifiable, there was a strong desire that, at a minimum, a sentence should put things right as far as possible. For example, in Scenario 1, it was commonly thought that the offenders should be made to clean up the pollution/waste.

There were further ways in which groups expressed the perceived importance of consequentialist aims when dealing with environmental and wildlife offences. Notably, groups were often interested in the causes of offending and whether criminal or non-criminal solutions might be best suited in some cases. Desirable options included preventing offenders from

¹⁷ Pseudonyms are used to refer to all participants.

being company directors and ongoing monitoring to ensure compliance with the law. Interestingly, education was commonly discussed. Education was something of a hybrid solution that it was thought could be achieved either via a criminal sentence or non-sentencing means. For example, in some cases, participants suggested education could be achieved via a non-sentencing option, such as greater school education about the environment. In other cases, it was thought a criminal sentence might serve to educate offenders and (if publicised) the public. A common theme from these discussions was a view that some¹⁸ offenders may fail to fully appreciate the harm caused by their actions. Indeed, this view, that education is important, may reflect the fact that the harms of many environmental and wildlife offences were thought to be less apparent than other offences and that there may not be a direct victim. Similarly, in group discussions, there were repeated instances of debates about whether or not some people (but by no means all) would be aware that certain conduct was illegal and again, education here was thought important.

There were other instances where the solutions suggested by participants looked beyond the criminal process. For example, in the case of fly-tipping or pollution, groups noted that financial benefits might be a reason for some to offend.¹⁹ Yet, groups also debated whether more accessible ways to comply with the law might help. As an illustration, in one group, after noting fly-tipping and cost/time as a possible reason not to dispose of waste legally, the group also agreed with Alan that:

In certain parts of Glasgow at least, you can no longer recycle garden waste. So they don't take garden waste from Glasgow in many parts... so that's one example. So what will people do, those who are managing their garden waste? What would you do? And it's not just, you know, leaves from the hedge, or whatever. Talking about actual proper garden waste.

As such, the participants were not considering punishment as the only solution to offending in their deliberations and careful attention was given to a wider range of issues, such as non-punitive ways to promote compliance with the law.

Of course, while the tone of the debates seemed to suggest a prominent role for consequentialist aims in the participants' thinking, that did not mean objectives such as proportionality in punishment were unimportant to participants. There was also a desire for individuals/companies to be appropriately reprimanded in a timely manner. Overall, there was agreement with a range of aims of sentencing. As Sarah put it:

¹⁸ However, it was thought that certain offenders (e.g. commercial entities) would and should be well aware of the harms/risks.

¹⁹ See also, Cardesa-Salzmänn and Campbell (n 1).

I think they [the different aims of sentencing the group came up with] all kind of contradict each other in some ways, but they are all needed because it's got to fit the crime. It's got to be consistent. But at the same time, as [another participant was] saying, don't take months and months of a background check. But it's obviously still got to be considered in some way to give the right sentence, I think.

Thus, even though it was felt that not every aim can be met in every case, the public still seems to support the merit of a diverse range of aims being considered. Indeed, in the scenarios, the discussion of aims was often fluid and adapted as new information was provided.

3.2 Are sentences felt to be too tough, about right, too lenient, or don't know?

Previous research in Scotland has asked respondents whether, in general, they felt that sentences were too tough, about right, too lenient, or if they did not know.²⁰ The question is a useful barometer for the overall views of groups. Online and telephone surveys have tended to suggest that most feel sentences are too lenient. Yet, these in-depth focus groups allow a deeper exploration of views than a survey would allow. One key point to emerge from the groups' concerns is how their responses may be influenced by their knowledge and understanding of sentencing (discussed later).

A second key point is that participants had nuanced views about the severity of sentencing. One group discussion provides a good illustration of this varied view seen across several groups. In this group, several participants noted the perceived variability of sentencing when asked about general views of the criminal justice system. Interestingly, this question preceded the question of whether sentences are 'too tough, about right, too lenient, or don't know'. For example, when asked for their general view, Laura noted:

I'm sort of in between, not a positive or a negative. It really depends on the actual crime that's been committed. I think a lot of things people are sentenced for are far too big for what they've done. And then there's the appalling crimes that they get just a slap on the wrist for. So, it really depends on the judge and the jury.

Similarly, Gail noted:

I think the justice system is a joke. Some people get really heavy sentences, and others, for major crimes, get less... I think it would actually be better if they put the details into a computer. And the computer decides because humans are not very good.

²⁰ Carolyn Black and others, 'Public Perceptions of Sentencing: National Survey Report' (Scottish Sentencing Council 2019) <<https://www.scottishsentencingcouncil.org.uk/media/2ctkgnpj/20190902-public-perceptions-of-sentencing-report.pdf>>; Gormley, Roberts and Tata (n 5).

Later, when the group was presented with the four options, after a discussion, the majority of participants settled on a fifth option: that some offences were too tough and some were too lenient. This tendency to select a mixed answer was also seen in other focus groups.

Given that most of the participants across all groups settled on an option not initially provided raises some important points. There is a methodological issue in how these mixed/nuanced views should be captured. Notably, it may be worth considering some way to accommodate this option in future survey responses. While changing the survey responses in this way would have the disadvantage of deviating from previous surveys (so making direct comparisons over time more difficult), it may have the advantage of better reflecting the views of the public. In particular, there is a risk that when forced to pick only between “too tough, about right, too lenient, or don’t know”, “too lenient” will be selected. When focus group participants were asked which option they would select if they had to pick only one, most (albeit reluctantly) said they would select ‘too lenient’. This could mean surveys might conceal much more complex views about sentencing. Future research might also seek to explore when and why a given sentence is felt to be severe or not. For example, several participants in groups noted examples of sentences they had read about that seemed inconsistent with each other. There was also a broad view that some types of offences were, without good reason, treated differently in terms of sentence severity, and the reasons for this were unclear. Thus, for ongoing guideline development, it may be helpful to further understand when/why a particular public view predominates and how it might be influenced by guidelines.

In general discussions (before the scenarios), it was common for more serious offences to be given prominence. This focus on serious offences possibly reflects that serious offences are more commonly reported in the media than ‘common’ offences, and this may impact the assessment of the perceived toughness/leniency of sentencing. For example, when asked about general views, Nigel noted some sentences could be lenient and that:

The justice system right now it's an absolute joke. It's just, it's just appalling... For example, somebody got caught... with 1 million pounds worth of drugs... They've only been sentenced to 36 months in prison.

Likewise, as seen in other research, offences against children attracted strong views and were spontaneously raised by some participants with reference to extreme forms of punishment. For instance, Iona noted that any offences against children deserve very harsh consequences. This view was shared by others in the group. Given that nothing in the briefing materials provided to participants touched on such offences, it seems that these issues were brought immediately to mind when participants were asked to think about whether sentencing is too tough, too lenient, or, about right. This, perhaps, reflects the types of material most likely to be discussed and reported by the media.

However, a very different picture emerged when participants were asked about sentences for environmental and wildlife offences specifically. There was no clear view about the overall severity or leniency. Indeed, as is discussed below, there was an open acknowledgement that

little was known by respondents about sentences for these offences. In part, that participants had little knowledge of sentences for wildlife and environmental offences, is not surprising given the nature of these offences. There is a diverse range of offences of differing seriousness, and many of them have historically failed to grab headlines the same way as some other offences. However, importantly, as below, it seems that the lack of accessible information and understanding about sentencing for these offences could hinder confidence in some contexts.

4 Knowledge about sentencing

4.1 Knowledge of sentencing practice

We first asked participants about their attitudes and perceptions in general before then focusing on environmental and wildlife offences. Participants were from a wide range of backgrounds and had varying experiences with the criminal justice system. The comments they offered were considered and insightful, and they engaged in careful consideration of the scenarios put before them. However, while there was a sense of some general issues such as prison overcrowding and court delays, self-reported knowledge of sentencing for environmental and wildlife offences was very low. This was a common theme and evident from the first group onwards. This varying awareness of sentencing practice (understandable given the difficulty in accessing high-quality sentencing data) appeared to be a key factor limiting the perceived effectiveness of sentencing in this area.²¹

As an illustration, at the outset, participants were asked to introduce themselves and say something about what came to mind when they thought of the criminal justice system generally (positive or negative). Harold noted:

[My] thoughts on what we are going to talk about, I am just really interested in it to be honest with you. Not got tonnes of knowledge on it... so it's good to come along and explore that further.

Others agreed. For example, Anne noted “a bit like yourself Harold, I don’t know a lot about it and it would be interesting to find out more.” Throughout all the groups, unless there was a background in the area (e.g. membership of a related charity), no participant reported having robust knowledge about environmental and wildlife offences and the disposals available.

²¹ Jay Gormley and others, ‘Assessing Methodological Approaches to Sentencing Data and Analysis: Final Report’ (Sentencing Guidelines & Information Committee, Judicial Council of Ireland 2023) <<https://judicialcouncil.ie/publication-of-sentencing-data-research-report/>>; Cyrus Tata and others, ‘Exploring Unwarranted Disparities in Sentencing in Scotland’ (Scottish Sentencing Council Forthcoming).

Participants did tend to suggest that environmental and wildlife offences should be publicised more and that the media were unlikely to cover them as more serious offences were likely to dominate. For example, one group discussed media coverage issues and shared a view that environmental and wildlife offences were unlikely to be covered. Perry noted:

I'm in a lot of environmental groups. And that's the only people that really hear a lot about them [these offences]. I think it should be publicised more because unless you go looking for it, or you know something about it, you don't hear much... Because there's always serious [environmental and wildlife] crimes going on, but you don't hear about them.

Others agreed that environmental and wildlife offences are “not going to make the bigger headlines or the articles as much.” Likewise, other groups made similar comments about the perceived lack of publicity for environmental and wildlife offences.

While varying levels of general knowledge regarding sentencing these offences may be expected, what may be slightly more surprising to some (although it is a factor noted in public opinion literature on sentencing) is the deleterious effect that limited knowledge had on confidence in sentencing. For example, in the introduction, it was common for participants to note the lack of transparency in sentencing. As Jace noted:

I don't want to continue the theme [of limited knowledge of sentencing] [the group laughed]. But all I would say is that I think that in a lot of instances, punishment doesn't fit the crime sometimes. I think that sentences are far too short for some of the most heinous crimes. I would suggest. Sometimes.

This was a common theme and, for instance, Belle noted:

All I know about the justice system is what you read in the paper, and like [Jace], it seems like sometimes the punishment doesn't fit the crime. It seems like it's a bit under pressure because there are so many court cases waiting to be heard, and the prisons are certainly overcrowded, is what you hear.

Thus, in the absence of detailed knowledge about sentencing practice, it seems that confidence can be undermined and that negative messages can easily fill the vacuum.

In part, the domination of negative messages may be because of how media coverage (or at least coverage that participants recall) reports cases. Other work has highlighted issues where

any sentence other than imprisonment is described as akin to “walking free.”²² In these groups, phrases like “slap on the wrist” were common in critical discussions of sentencing. Yet, while the media was a commonly reported source of knowledge, participants could be wary that they were more likely to hear negative stories reported, as Kara noted:

I would say that most of the time you think [sentencing is] too lenient most of the time. But again, I don't think you really hear about a lot of the good or success stories.

Indeed, in some instances, where participants discussed real cases they had heard about, they noted these dispelled some misconceptions. Victoria commented:

One [case] I heard about was somebody disturbing a nest when they were getting a loft. And they were told not to do it until a certain month, because these birds... actually leave at a certain time of the year, and they had to wait, but they carried on. And they got a very heavy fine, and they got caught trying to pull the building down, even though the birds had left. That was quite... I thought they would just get away with it, but they never.

Consequently, it seems that knowledge and understanding of sentencing is key. Uncertainty may contribute to cynical assumptions about sentencing. Indeed, some viewed the lack of transparency as itself indicative of issues, whereas others noted that there was a tendency (via the media and other sources) for discourse to focus on the negative aspects. This suggests that greater transparency and communication about how sentencing decisions are made and about the resulting outcomes could help address misconceptions. Therefore, a guideline that helps to communicate principles considered in sentencing and/or sentence ranges could be of assistance.²³ Otherwise, the assumption may be that offenders ‘get away with it.’

4.2 Knowledge of sentencing disposals

In addition to limited knowledge of sentencing for environmental and wildlife offences, there was also a limited understanding of sentencing disposals more generally. In terms of knowledge, little was said about the details of the range of disposals available in Scotland. For

²² Justice Committee, ‘Public Opinion and Understanding of Sentencing: Tenth Report of Session 2022-23’ (House of Commons 2023) <<https://committees.parliament.uk/work/6741/public-opinion-and-understanding-of-sentencing/>>. See also: Colin Hockaday and others, ‘Public Perceptions of Sentencing Survey 2025: Main Findings Scottish Sentencing Council’ (Scottish Sentencing Council Forthcoming).

²³ Of course, a guideline is not a panacea that will resolve all issues with public knowledge and understanding. However, a guideline may be a useful aid – especially when combined with other knowledge exchange activities.

example, where there was often a desire for the outcomes certain disposals might provide, there was not a detailed discussion of the various requirements of a community order or ancillary orders and how they could achieve certain goals. Indeed, in some groups, suspended sentences were discussed. Given that these do not exist in Scotland (although sentences may be deferred), this suggests some potential misunderstandings about the types of disposals available.²⁴ This might further suggest that work is needed to promote a greater understanding of the disposals available in Scotland and their functions.

A further issue was that, overall, possibly as a result of limited knowledge about sentencing, groups tended to express concerns that sentences were not being implemented well. Unhappiness about implementation and transparency was commonly related to conditional release provisions and guilty plea reductions, although release provisions could also be conflated with sentence reductions.²⁵ While this is a broader issue, it still impacted the debate on environmental and wildlife offences and, thus, is relevant here. Indeed, perceptions of insufficient proportionality and transparency could overshadow the consideration of specific offences, particularly where people do not know much about them.

Notably, there was a pessimistic view that, for custodial sentences in particular, a person would serve only a fraction of what they should. In setting this out, the public tended to focus on more serious cases. For example, Sandra noted that:

I think the justice system's kind of broken. There's no real punishment for a lot of the crimes... I think that people don't really get the punishment that they deserve or they might get a sentence, and then it's shortened by quite a lot if they're good.

Likewise, another Maureen noted that:

What I find very hard to swallow is that they will be given, in inverted commas, 'a life sentence,' and... it's not a life sentence. For example, it could be like maybe 20 years, 25. And that person's getting out? And are they going to be any better, or are they still a threat to the public when they do get out? Or have they converted themselves? Are they going to be a better person? That is something we won't know. For life sentences, I believe it should be that life means life.

Importantly, this view that “life should mean life” does not simply reflect a desire for more severe sentences (although, as above, in some cases, views were expressed that sentences could be lenient). Instead, rather than a desire for greater punitiveness for its own sake, the

²⁴ Jay Gormley and others, ‘The Methodological Challenges of Comparative Sentencing Research’ (Scottish Sentencing Council 2021); Hockaday and others (n 22).

²⁵ Gormley, Roberts and Tata (n 5); Reid and others (n 11).

discussions suggested there was a desire for proportionate and transparent sentences, as well as public safety. Such discussions were common among groups. As an example, in a group discussion, Brian noted that:

I think there is also a bit as well where you see someone has got a sentence of like twenty years but then you go, 'well they're only doing ten.' That's always something people say, so you never really trust the time that people are given. There are always various circumstances where people get let out... a lot of the time, 'the sentence' never actually ends up being 'the sentence'... it can be less and people talk about [good] behaviours and whatever else, I don't know. You can't even really trust what you see.

All others agreed with this “absolutely.” Yet, this is not the same as a simple desire for more severe sentences. Instead, it reflects a pervasive sense that sentencing announces one thing, but really does another: that the sentence pronounced in court is not being served. It seems that the pronounced sentence is a sort of psychological anchor in the minds of participants about what is appropriate. Indeed, in one group, for example, in response to the comments about the reductions to sentences from 20 years to 10 years, the group discussed other aims that a sentence might seek beyond punitiveness. Precious noted that matters of age and responsibility are important:

If the person's in jail, and they actually learn that what they did was wrong, and then maybe they're not the same person in 20 years as they were when they committed the crime?

Others agreed and noted the importance of matters such as rehabilitation prospects and age. For instance, Tom added:

When you look at it like that, going into jail at 18 years old, you're still very easily influenced in a lot of ways. And the type of people you'll meet in there could have a much more negative effect in your life.

As such, while not to suggest severe sentences are never desired, the public here (as other research has found), is not “reflexively punitive” in that they did not always or only seek severe sentences.²⁶ Factors such as age/maturity can be considered. Moreover, what “life means life” and other punitive speech may indicate is something more profound about the importance attached to proportionality and transparency. While some of these issues go beyond the scope of the terms of our report here, these views suggest that exploring how to improve the perceived lack of transparency in sentencing terminology is an area worthy of further research if guidelines, (especially in an area of low self-reported awareness like environmental and

²⁶ Julian Roberts and Mike Hough, ‘Custody or Community? Exploring the Boundaries of Public Punitiveness in England and Wales’ (2011) 11 *Criminology & Criminal Justice* 181, 195.

wildlife crime), are to more effectively communicate with the public and promote confidence in sentencing.

4.2.1 The harm caused or risked by an offence

The harms caused or risked by environmental and wildlife offences can be complex and not always readily apparent. In some contexts, the focus groups suggested that fully gauging the harm caused or risked by offending could be difficult to do accurately, especially where understanding the harm required expert knowledge. As such, explaining the harms of environmental and wildlife offences and how a sentence reflects these could be beneficial.

For example, Scenario 1 presented groups with raw information about the types of waste deposited in the form of a list. It then presented groups with some contextual information about the implications of the waste being dumped in terms of water contamination, air quality, etc. This contextual information offered additional insights into the harm of the offence and influenced group discussions. Laura provides a useful illustration of how this information can be helpful.

Upon seeing the list of deposited waste, Laura thought it was relatively safe in terms of pollution compared to what they had previously speculated about. It was thought this could justify a lower sentence than they had previously advocated:

[Laura on seeing the list of items deposited] *If it was, you know, waste that could then seep into the local streams and stuff [making it more serious], I think that would have had a bigger impact than these items. But there are places for you to recycle these items. So, I personally think that... maybe I'd be a little bit more lenient with my sentence if I were the sheriff or the judge. Rather than [if this waste was] something else that could have a mass impact.*

Yet, upon having the risks explained, Laura's position changed:

[Moderator] *Just on that thought, a little bit more information. "So, it was found that the land wasn't lined with a membrane, or supplied with an appropriate liquid collection system or landfill gas extraction system. This made it likely that contaminants, such as dissolved metals, would make their way to groundwater and or local water crossings and contaminate surrounding land. It was also found that landfill gas would be produced and vent freely to air, causing offensive odours resulting in detriment to local and global air quality."*

[Laura laughing] *I'll take that back. Because, obviously, we have more of the narrative. Yep, I'll take that back.*

The moderator then asked the group if having this summary of the implications of the dumping provided more context. The answers were all affirmative and included: "I think so, yes"; "definitely, yes"; and "hook, line, and sinker, he has got to go down." Likewise, in other groups,

the contextual information about the risk of harm seemed useful. For example, in presenting the list of items deposited in Scenario 1, there was a discussion over this. However, some questioned the extent of harm caused by this waste. Later, when presented with the information about risks such as dissolved metals, almost all agreed that this made the offence more serious.²⁷

In other scenarios (such as Scenario 6 involving freshwater mussels, or Scenario 9 on the risk to peregrine falcon populations), the contextual information in the scenarios provides insight that many were not aware of. As such, the broad implication from the focus groups is that the harms of wildlife and environmental offences and responses to those harms by sentences may not always be apparent. Therefore, some explanatory material can be beneficial to the public's knowledge and understanding.

5 What should sentencing consider?

Within the focus groups, numerous factors were considered important points to consider in sentencing environmental and wildlife offending. Some of these points were noted as they arose in the scenarios, and others were noted when participants requested further details on matters they felt were important. In general, a wide range of factors were thought relevant and the factors the public identified as important align with those raised in case law, Scottish guidelines, and the English and Welsh guidelines (see Appendix 2).

The harm caused or risked by an offence was thought highly important in group discussions, and this was partly why contextual information about the harms was so valuable to group deliberations (see above). Additionally, the culpability of the offender was a key issue that groups discussed, and it was common for groups to wonder whether there was criminal intent, recklessness, negligence, or if the offence was one of strict liability.²⁸

5.1 Culpability

The scenarios included some offences that not everyone in the focus groups knew were criminal offences. For example, participants in several groups did not know that freshwater mussels or bats might be a protected species. When presented with such offences, groups often wanted to know if the offender knew what they were doing was criminal, as this was

²⁷ One focus group member who was uniquely familiar with environmental offences noted it was “equally serious” as they knew this information already.

²⁸ The groups did not necessarily use these precise terms (e.g. “strict liability” did not come up but proxies such as ‘no-fault’ did).

thought to be an important aspect to consider at sentencing. Where the offender had intent, this made the offence more serious in the eyes of the participants.

Age was an interesting factor for discussion within groups discussing culpability. Some felt that immaturity could be a reason to reduce a sentence. Some felt that being older could indicate someone ought to know better and increase culpability. However, in Scenario 4 (involving John and the leaking silo), groups noted assessments of culpability were complex and that the lack of a criminal record, despite their age, could suggest they have conducted their business properly and that the current offence might be characterised as a mistake. Relatedly, where the offender had a relevant criminal record, the consensus was that this should warrant a harsher sentence.

Finally, it was worth noting in terms of culpability that groups felt that certain organisations (e.g. in Scenario 2) should be aware of key risks and that they had a duty to prevent this. Several participants argued that a breach of this duty resulted in increased culpability.

5.2 Harm

The harm caused or risked by an offence was felt to be very important. A wide range of factors were considered to impact the harm of an offence, including the location of the offence. For example, in terms of pollution, if this were near schools, it was thought to make the harm caused or risked worse. However, this view was contingent on the specific case, and several participants added that even if pollution takes place in remote areas, serious harm may still be risked (e.g. if the pollution seeps into water). Groups also noted that some offences might entail consequential harms in the form of ancillary offences or distress to people. For example, in Scenario 3 (fly-tipping), it was wondered whether the offence might entail fraudulently obtaining business by claiming to be licensed to dispose of waste and whether some victims (i.e. those naively hiring or unsure how to spot a fake business) might then be at risk of prosecution or distress.

Generally, the main finding of the focus groups of note here is that while, broadly speaking, courts are considering factors the public feels are important, the public is unsure if courts do this in reality. This issue overlaps with the points highlighted about the limited knowledge and understanding people had of sentencing practice. For example, in discussing Scenario 1, several groups questioned whether a new company would be set up and offending would resume. The groups commented that there should be some way to prevent this, but did not seem aware of measures that might achieve the aims they desired.²⁹ Therefore, what may be

²⁹ Such as those noted in the English and Welsh guidelines: exclusion from entitlement to public benefits; the disqualification from industrial or commercial activities; the placing under judicial supervision or winding-up order” or disqualification from being a director of a company.

beneficial is a way to educate the public about the factors judicial sentencers consider and to explain how the specific sentence may meet the aims of sentencing, which are aims the public appears to agree with.

5.3 Guilty plea

While guilty pleas and sentencing have been explored in more depth in other research commissioned by the Scottish Sentencing Council, they were included as part of the scenarios since they feature in the Sentencing Process Guideline.³⁰

The question of if/how guilty pleas should be considered in sentencing prompted debate in focus groups. In particularly serious cases, there was typically more reluctance about reducing a sentence because of a guilty plea and the matter could be contentious. Yet, overall, the debates around guilty pleas were nuanced as groups debated the various scenarios they were presented with. For example, in discussing Scenario 4 (concerning a farm and pollution from a leaking silo), several groups had sustained discussions about the guilty plea. Most participants agreed that the guilty plea could reduce the sentence for reasons such as not wasting court time. However, guilty pleas also seemed more appropriate to consider if they evidenced remorse or acceptance of responsibility. Yet, whether a guilty plea showed remorse was thought to depend on the case.

In several groups, it was felt that a previous conviction made it less appropriate to discount a sentence. Some felt previous convictions indicated offenders were not remorseful, and some felt they made the offence more serious and that this seriousness had to be marked. In some scenarios, participants also debated whether guilty pleas could, in certain cases, be used strategically to save the offender hassle or money, or allow them to evade being held to account in court.³¹ For example, Mandie felt that:

I think this pleading guilty is a cop-out because they just can't be bothered. They don't want to go through the process of standing up and admitting... by pleading guilty she doesn't have to stand up. When she just says 'guilty' there's no jury she just gets the judge's sentence and she goes home.

³⁰ Gormley, Roberts and Tata (n 5).

³¹ See also: Jay Gormley and Cyrus Tata, 'Remorse and Sentencing in a World of Plea Bargaining' in Steven Tudor, Richard Weisman and Kate Rossmanith (eds), *Remorse and Criminal Justice: Multi-Disciplinary Perspectives* (Routledge 2022); Stewart Field and Cyrus Tata, 'Locating the Ideal Defendant: Punishment, Violence and Legitimacy' in Cyrus Tata and Stewart Field (eds), *Criminal Justice and The Ideal Defendant in the Making of Remorse and Responsibility* (Hart Publishing 2023).

There was also a concern that a guilty plea might result in cases receiving less scrutiny, and the openness of justice and public accountability might be impeded. As Grant noted of guilty pleas and resource savings:

I can see why they do it. But when you put it like that, it seems a little bit unethical, potentially, when something would benefit from being scrutinised and taken to court and having people go through it. But you're just kind of putting paid to all that, because you want to save a bit of time and save some fees. It seems a little bit unethical.

I think if it goes to court, then more people would become aware of what's happening. Because, you know, you've got social media activities... So I guess if they are not going to court, then the public aren't hearing about it and not a lot of people are going to be realising, 'oh, I didn't know that was [against] the law'.

Of course, some of these points extend beyond sentencing (e.g. guilty pleas could technically occur independently of sentencing considerations made for them), but there are at least indirect links to sentencing.

In sum, again, the discussions reflected a complex and contingent view of the role that guilty pleas should play. There was a general sense that a guilty plea might save costs and time. Mirroring earlier research on guilty pleas³², there were indications that guilty plea reductions might be more accepted in less serious cases (or cases where the offending was not intentional) and that withholding a reduction might, in part, be a form of further denouncing conduct. In terms of confidence in sentencing, what a guideline (or an accompanying explanation) might do is reassure the public that cases are scrutinised even when there is a guilty plea. Indeed, as noted below, groups seemed to find information on the court's diligence in sentencing reassuring and contrary to some negative assumptions.

5.4 How to hold an offender accountable?

Focus group participants often talked of important, but hard-to-define aspirations, such as sentences delivering justice. A key aspect of this justice was that the sentence would mean offenders were properly held accountable. Notably, several groups debated if/when fines could be effective. This is significant given that for most environmental and wildlife offences, a fine is likely a common disposal.

Fines were something of a paradox in group discussions. Often, it was generally thought that fines were ineffective at holding offenders to account. However, at different points in discussing the scenarios, a fine was desired. Interestingly, there were several reasons fines were viewed with scepticism. A key concern was that some offenders might have the means to easily pay

³² Gormley, Roberts and Tata (n 5).

so that the impact of the fine might be minimal. In some cases, it was thought that the fine might be less onerous than complying with the law, and this too was felt to be problematic. Additionally, some felt that some offenders (e.g. companies) might have the means to avoid fully paying a fine with the result that the impact on them would be minimal. For instance, Natalie noted that “if it's a big company and they're just fined, like that'll be like a drop in the ocean.” Similarly, some discussed the efficacy of sentencing large companies. Others speculated whether fines would be too small (given companies' means to pay) or whether companies might simply pass the costs on to customers. Kevin noted that:

“The big companies that do damage to the environment get away with it because they have that much money and good lawyers.....they make more money from what they do [breaking the law].”

Others, like Perry, agreed and said:

The trouble with big companies is that it's us that's paying in the long run. They're not paying the fines, it's us that's paying it. Because [with polluting rivers and lakes] the water board doesn't pay for it. You pay for it with your water rates.

These views summarise some of the key reasons why fines could be felt ineffective. However, this perception was not felt to apply in all cases. For instance, in discussing several scenarios, there were views that a large enough fine, properly implemented, could be both appropriate and effective. Thus, it would seem guideline-issuing could benefit from demonstrating to the public how fines are implemented in a way that effectively holds offenders to account. Much of this may not necessarily require a change of practice, but it could require a change in communication.

There are several points that could be emphasised in some way (e.g. in a guideline) so as to manage the concerns noted above. For example, where there was a financial element to offending, focus group participants had a strong sense that it should not be cheaper to offend than it is to break the law. No participant disagreed with this view. Accordingly, it was felt that in imposing fines, the benefits accrued indirectly and directly from offences are an important consideration. Clarifying to the public that this happens seems prudent. Likewise, an interesting aspect of Scenario 1 was that participants thought it good and proper that courts might make enquiries into the finances of companies and directors. Knowing rigorous inquiries took place seemed to help counter assumptions that companies or their directors would escape justice. Therefore, a guideline in this area might help to communicate to the public that sentences do take into account a range of factors that the public considers important.

Similarly, some points were also noted in terms of the ability of individuals to pay. For example, in discussing Scenario 7 (hunting), one group debated how to hold the offender to account and whether the offence suggested they were wealthy to the extent that a fine would be an ineffectual “slap on the wrist.” One popular idea was “a custodial that was suspended sentence with the threat that if you are ever caught again, [it is] one strike and you are out!” Interestingly,

here the desire is not necessarily for imprisonment but for a sentence that holds the person accountable in meaningful ways. As such, perhaps a guideline and/or public legal education in this area might help clarify how fines result in criminal records, how they may be combined with other orders, and that repeat offenders may receive more severe sentences.

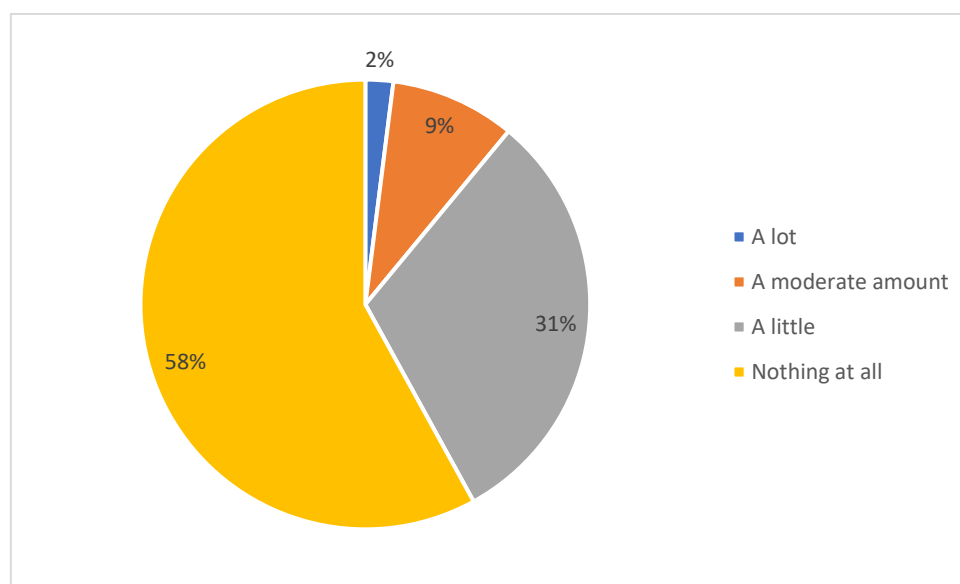
Overall, the findings from the focus groups suggest that the public wants a range of outcomes from sentencing, including that offenders are ultimately held accountable. However, perhaps the core issue is that without knowing and understanding what happens in practice, the public may be less likely to feel sentences are achieving key aims. Compounding the issue is that environmental and wildlife offences are complex, varied, and arguably even less well understood by the majority of the public than some other offences. Thus, in this context especially, clear guidelines and methods of public legal education may help to convey the reality of sentencing and thus improve public confidence. Of course, this is not necessarily a panacea, but it is, perhaps, the only place to start.



6 Findings from a representative sample of Scottish respondents

As well as conducting focus groups, discussed above, we also commissioned YouGov to conduct a survey of the Scottish public to supplement the findings from the principal research component (the focus groups). The quantitative survey draws upon a standard frame using a representative sample of 1,053 adults in Scotland.³³ Six questions were posed, and the results are set out below.

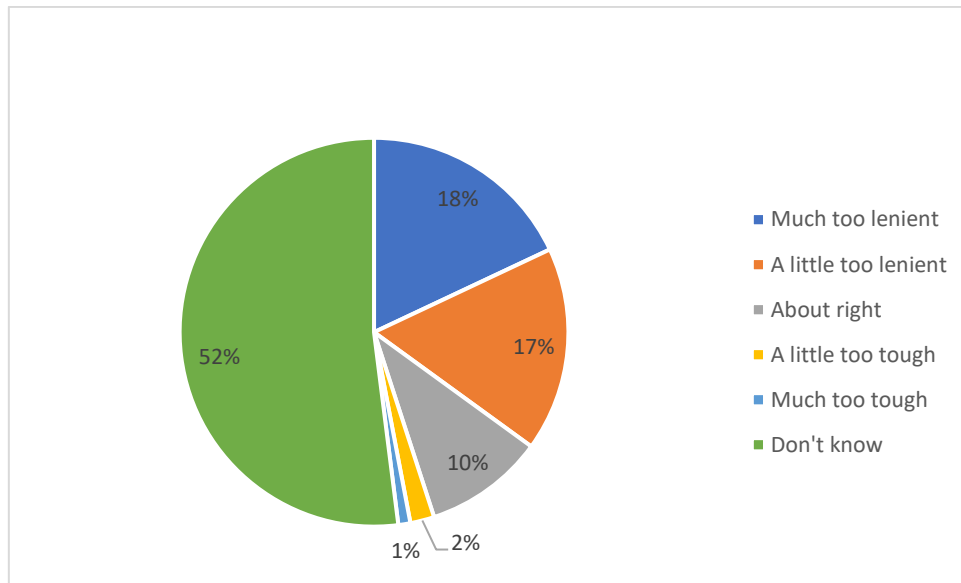
6.1 Question 1: In general, how much, if anything, do you feel you know about the sentences given to people convicted of environmental and wildlife crimes in Scotland?



Overall, approximately 90% of respondents reported knowing little or nothing at all about sentences given for environmental and wildlife offences, and only 11% reported knowing a lot or a moderate amount. However, 20% of those from the Highlands and Islands reported knowing a lot or a moderate amount about sentencing for these offences.

³³ All figures, unless otherwise stated, are from YouGov Plc. Fieldwork was undertaken between 15th - 19th November 2024. The survey was carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 16+). In terms of [recruitment](#), YouGov has a panel of millions of people to take part in surveys. Panel members are recruited from a host of different sources, including via standard advertising. For nationally representative samples, YouGov draws a sub-sample of the panel that is representative of British adults in terms of age, gender, social class and education, and invites this sub-sample to complete a survey.

6.2 Question 2: In general, would you say that sentences given by the courts in Scotland for environmental and wildlife offences tend to be too lenient, too tough or about right?

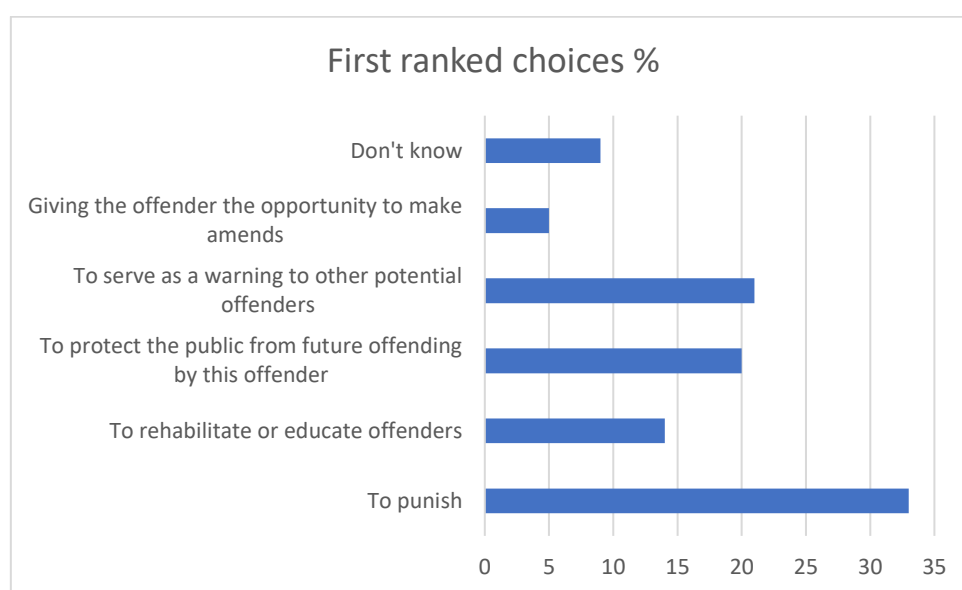


Asking about the severity of sentences imposed for wildlife and environmental offences led to most respondents (52%) saying they did not know. This contrasts with recent surveys about sentencing in general, where only 10% of people responded 'don't know'.³⁴ 35% reported their view as being that sentences are too lenient, and 13% that sentences were about right or too tough. Interestingly, 20% of those in the Highlands and Islands reported that sentences were about right or too tough.

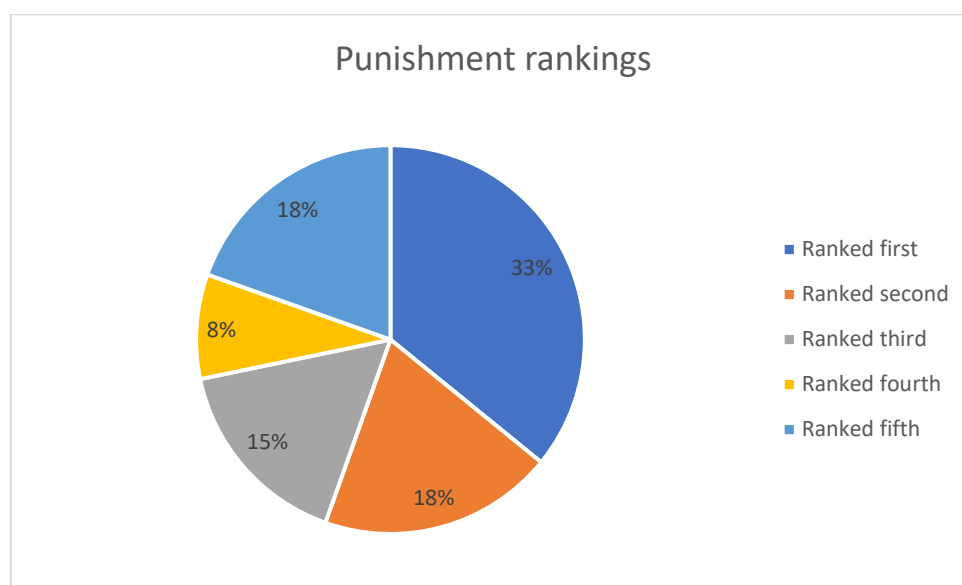
³⁴ Black and others (n 20); Hockaday and others (n 22).

6.3 Question 3: Of the following, what do you think is the most important purpose of sentencing for environmental and wildlife crimes? Please rank your answers from 1 – 5, with 1 being the most important purpose.

The options provided in Question 3 were, “to punish”; “to rehabilitate or educate offenders”; “to protect the public from future offending by this offender”; “to serve as a warning to other potential offenders”; and “giving the offender the opportunity to make amends.” The table below shows the approximate percentage of when each option was selected as a first-ranked choice.



While punishment was the most frequently selected first-option choice, it can be seen below that its positioning is complex. The pie chart shows the percentage who ranked punishment as their first, second, third, etc choice. For example, punishment was ranked fifth in 18% of cases. Thus, the relationship between punishment and other aims of sentencing is complex. Indeed, the focus groups suggested that, in the minds of participants, the aims of punishment were often intertwined.



6.4 Question 4: For people (i.e. individuals) convicted of environmental and wildlife offences, how effective, if at all, do you think fines are at...

Question 4 sought to understand the perceived effectiveness of fines as a sanction for individuals in terms of punishment, rehabilitation or education, protecting the public from future offending by the offender, serving as a warning to other offenders, and giving the offender the opportunity to make amends. The results are summarised below, showing the percentage that selected each option.

Purpose of fines for individuals	Effective	Not effective	Don't know
Punishment	27	51	22
Rehabilitation or Education	12	65	22
Protecting the Public	20	57	23
Serving as a Warning	26	52	22
Making Amends	15	61	24

6.5 Question 5: For companies (i.e. organisations) convicted of environmental and wildlife offences, how effective, if at all, do you think fines are at...

Question 5 closely mirrors Question 4 but explores the effectiveness of fines in the context of commercial entities, given some of the views raised in the focus groups. The results are summarised below, showing the percentage that selected each option.

Purpose of fines for companies	Effective	Not effective	Don't know
Punishment	23	57	19

Rehabilitation or Education	13	66	21
Protecting the Public	19	60	21
Serving as a Warning	26	55	19
Making Amends	15	63	22

The results are very similar concerning the effects of fines on both companies and individuals. The most notable difference concerns punishment. 27% said fines could be effective in punishing individual offenders, 51% said not effective, and 22% said they did not know. 23% of respondents said fines could be effective in punishing the offending company, 57% said not effective, and 19% said they did not know.

6.6 Question 6: For people (i.e. individuals) convicted of environmental and wildlife offences, how effective, if at all, do you think imprisonment is at...

Finally, Question 6 was similar to Questions 4 and 5, but in the context of imprisonment for individuals. The results are summarised below, showing the percentage that selected each option.

Purpose of prison for individuals	Effective	Not Effective	Don't Know
Punishment	55	25	19
Rehabilitation or Education	26	50	23
Protecting the Public	50	29	21
Serving as a Warning	53	28	19
Making Amends	24	54	23

The results for the imprisonment question differ from the equivalent fines question (Question 4) in that more respondents felt that various aims were more effectively met. The main outlier is the aim of making amends.

6.7 Summary of survey results

In interpreting public survey results about sentencing, care is needed.³⁵ There are some key points to note. Firstly, self-reported knowledge and understanding of sentencing was low. Low knowledge of sentencing may be associated with negative views about its effectiveness. Secondly, the survey can reflect answers to the questions posed, but it does not provide details as to why certain answers were given, which is significant given that members of the public can have nuanced views. Thus, the survey results should be understood in light of the broader literature around sentencing and public perspectives. However, for now, perhaps the most striking result from the survey is the limited knowledge about sentencing in this area.

7 Conclusion

Through conducting fourteen hours of focus groups and a socially representative survey, we have sought to understand the public's perspectives on sentencing for environmental and wildlife offences and what might, from their perspective, make these sentences effective or ineffective. However, not all areas of offending could be covered. Indeed, the possible crimes

³⁵ Gormley (n 16).

under the heading of “environmental and wildlife offences” are vast and varied. Some offences could be considered quasi-regulatory, and some are comparable to ‘ordinary’ criminal law offences. The harm caused/risked also varies considerably: some pose very serious dangers to human health, animals, and the environment. However, through general questions and nine varied scenarios to prompt discussion, we were able to analyse key issues in the public zeitgeist that will inform the Council’s work in this area. We can summarise our findings by making four points.

Firstly, in terms of what an effective sentence for environmental and wildlife offences ought to consider, in the eyes of the public, this varies based on the context. The public was keen to know more about a wide range of factors as they felt these were important for the sentence to reflect. Generally, the factors the public felt were important reflect those that would be considered at sentencing in Scotland and in the English and Welsh guidelines. Key factors included those related to the harm of the offence and the culpability of the offender.

Secondly, in terms of seeking an effective sentence, there was a keen interest in consequentialist aims such as reducing reoffending and reinstating the environment. However, there was also a desire for sentences to, in some way, hold offenders accountable. Whether and how sentences are perceived to ensure this accountability matters significantly. In the context of environmental and wildlife offences, fines are particularly important disposals, but the public was often unsure if these would actually have the effect they desired, namely holding the offender accountable. Notably, there was a concern that fines might be too low to have an impact or that offenders might subvert the impact of the fine.

Thirdly, self-reported public knowledge and understanding of real sentences for environmental and wildlife offences is low. This finding raises significant considerations for those seeking to improve public confidence in sentencing. It is also significant that when pressed for a view on the leniency or severity of sentences, where they were unsure of what sentences tend to be passed or how they are determined, the groups were likely to intuit that sentences are too lenient. Thus, promoting public knowledge and understanding of sentencing for environmental and wildlife offences seems to be a prerequisite to improving public confidence. A clear guideline (whether offence-specific or setting out key general considerations) could play a role in this.

Fourthly, public knowledge and understanding of sentencing disposals (including those available for environmental and wildlife offences) is limited. Again, this is highly significant. Many of the things the public desired from an effective sentence are outcomes that may be provided by existing disposals. However, a lack of awareness about these disposals can lead to more critical views about sentencing and the justice system more generally. Respondents tended to want to know and understand the sentencing of environmental and wildlife offences (as well as sentencing more generally). In the absence of greater knowledge, their perceptions could be overshadowed by a sense of cynicism. Thus, informing and educating the public about the range of disposals available and their impacts could be helpful.

8 Appendix 1: focus group questions

Introductions/Ice-Breaker

- Please introduce yourself and say something about what comes to mind when you think of the criminal justice system generally (positive or negative).

Opening Questions

- When someone is convicted of a criminal offence, what should the sentence aim to achieve?
- In general, would you say that sentences given by the courts, are too tough, about right, too lenient, or do not know? Why?

General Questions

- Have you heard of environmental offences?
 - If so, in what context have you heard about these?
 - What do you think of sentencing practices for these?
 - What are the key issues posed by this offence?
 - What should be the main aims when sentencing for this offence?
 - Do sentences effectively achieve these aims? Why/why not?
- (If not covered) Have you heard of wildlife offences?
 - If so, in what context have you heard about these?
 - What do you think of sentencing practices for these?
 - What are the key issues posed by this offence?
 - What should be the main aims when sentencing for this offence?
 - Do sentences effectively/ineffectively achieve these aims? Why/why not?

Scenario 1

- Martin is a company director. Both Martin and the company are convicted for keeping controlled waste in a manner likely to cause pollution of the environment or harm to human health and keeping controlled waste without a waste management licence.
- The company owned over fifty acres of land. Residents had complained to the local council that they had seen large lorries loaded with waste material going to the site. One resident said they saw lorries dumping rubbish. Another resident said that he saw lorries sitting at the entrance to the site over a period of days. Environmental officers from the Scottish Environment Protection Agency (SEPA) visited the site and discovered that a very large amount of waste had been deposited and covered over with soil.
- Waste found included: A car tyre, cardboard, carpet, carpet underlay, chipboard, clothing, electrical wiring, electrical components, electrical circuit breakers, food packaging (plastic), insulation material, laminated paperwork, metal mechanism, metal

wire, newspaper, plasterboard, plastic bottles, plastic buckets, plastic ducting, plastic hosing, plastic sheeting, plastic bags, plastic telephone handset, plastic video tapes, postal mail, paperwork, scissors, sofa cushions and wooden planks with hinges.

- It was found that the land was not lined with an impermeable liner or supplied with an appropriate liquid collection system or landfill gas extraction system. This made it likely that contaminants such as dissolved metals would make their way to groundwater and/or to local water courses and contaminate surrounding land. It was also found that landfill gas would be produced and vent freely to the air, causing offensive odour and resulting in the release to the atmosphere of methane and carbon dioxide, thereby impacting on both local and global air quality
- Martin and the company pleaded not guilty and were convicted by a jury following a trial.
- The judge noted that, “This was a large-scale operation which involved a serious and significant breach of the legislative provisions with the real potential for danger to the environment and consequences for public health.” The judge found that the breach was driven by a desire to make a profit.
- The company had been making losses over the previous three years. The cash in the bank had reduced from £650,000 to £50,000 at the time of sentencing. It had now ceased trading and was therefore unable to commit further offences. The defence argued this in itself would have a significant deterrent effect on other companies.
- Accountants reported that the company continued to have a strong balance sheet, owning land and other assets worth £2.6 million with some £580,000 of these assets being described as ‘investment property’ which could be realised. It continued to pay quite substantial salaries to its directors. It had been able to make a substantial loan to one of its directors and repayment of that sum would make more cash available for the company. However, the defence argued many of the assets of the company were not liquid and that a forced sale in the current economic climate would result in sales at below market value with losses.
- The company and Martin had a significant record of similar convictions.

Scenario 2

- A very large organisation dealing with water and wastewater is convicted of polluting lakes and rivers with untreated sewage.
- It has a turnover exceeding £50 million.
- The incident was described by the judge as “entirely foreseeable”.
- The judge noted the conduct was not deliberate or reckless but it was highly negligent. There was mismanagement and insufficient monitoring to prevent the risk of pollution.
- The pollution had a significant adverse effect on water quality, and a significant adverse effect on human health or quality of life, animal health or flora.
- Notably, sewage with high levels of ammonia was released killing 1,132 fish and other water life.

- An investigator could smell the sewage and the water was visibly brown.
- A witness reported dead fish and sanitary products near where the pollution occurred.
- The organisation pleaded guilty at the first opportunity.

Scenario 3

- Alan starts a waste disposal business. He is paid to legally dispose of waste but instead dumps it on public lands such as roads and parks.
- Alan intentionally seeks to operate outside the regulatory regime and avoid the required licenses and the payment of Landfill Tax.
- Alan's business is small-scale and has not been running for long. He profited by £1000 by acting illegally.
- When charged, Alan pleads guilty at the first opportunity.
- Alan is 21 years old, was previously unemployed, and has no prior convictions.

Scenario 4

- John is a farmer and is convicted of water regime offences after a slurry silo discharged a large amount of effluent.
- The offence was detected following reports of dead fish. A water quality assessment took place and found elevated ammonia levels.
- This led to the officers visiting the farm and they found a cracked internal wall in the silo. Runoff was flowing downhill and into the surface water drain.
- John said that he was aware of the discharge and that eight weeks earlier he had built a wall to contain and pump out the spillage. After a month, John said that he believed that the runoff had stopped and thought the wall was still in place but never checked. It transpired that the wall had been removed – possibly by an employee or by the cattle walking over it.
- John's lawyer said he did not intentionally seek to commit an offence. Instead, his conduct was inadvertent, negligent, or careless.
- John pleaded guilty to causing a discharge of silage effluent.

Scenario 5

- Peter is a gamekeeper convicted of killing protected birds of prey and mammals by shooting, poison and snares. Peter intentionally did so because the animals can eat game bird eggs and young.
- A wildlife expert noted that "in 40 years working in wildlife management, I have never seen so many protected species dead in such a small area."
- Peter pleaded guilty to the offences at the first opportunity.

- Peter has previous convictions for failing to protect a captive bird from suffering.
- Peter is 72 years old and a carer for his 83-year-old wife who suffers from Alzheimer's.

Scenario 6

- Alice is convicted of killing freshwater mussels. She collected and opened 110 mussels to check for pearls.
- Freshwater pearl mussels are a native species and are under serious threat of decline or extinction in the north of Scotland.
- Alice says she did not know the mussels were protected.
- Alice pleaded guilty at the first opportunity.
- Alice is 33 years old and has one previous conviction for fish poaching.
- Previously she was fined £200 after fishing by means other than by rod.
- The tools used in the commission of the offence (a boat and ropes with hooks) were also forfeited.

Scenario 7

- Sally is convicted of hunting for hares with dogs contrary to the Hunting with Dogs (Scotland) Act 2023.
- The conduct was intentional for sport and came to light after she was reported by a member of the public.
- She pleaded guilty at the first opportunity.
- She is 30 years old and has no previous convictions.

Scenario 8

- Emma was convicted of illegally causing a bat nesting/breeding site to be destroyed during a demolition.
- She was seeking to remodel part of her garden and a survey confirmed a bat roost. The conduct was deliberate.
- Emma pleaded guilty at the first opportunity.
- She is 40 years old and has no prior convictions.

Scenario 9

- Alan, a part-time gamekeeper (Male 50), and his son Bill (Male 23) took protected chicks and eggs from peregrine falcon nests.
- The offence was uncovered when DNA tests on chicks and eggs found at their home showed they were wild birds not bred in captivity. This proved the chicks and eggs had been taken from wild nests and not from parent birds in an aviary.
- The birds were being sold on to wealthy clients and used for racing abroad. (Wild Scottish peregrines are highly desirable internationally for their speed and power).
- The judge said these were “wilful breaches of wildlife laws you must have been aware of and carried out for profit” and that “substantial sums of money were made from illegal sales.”
- The Police noted that “if we had allowed this practice to continue it would likely have wiped out the peregrine population in the south of Scotland.”
- Alan pleaded guilty to the offence at the first opportunity and Bill pleaded not guilty and was convicted following a trial

Closing

1. Is there anything you would like to add or that you feel we have not covered?

9 Appendix 2: non-exhaustive list of probes

For each scenario probe:

1. What are the main considerations for this scenario?
 - a. Probe harm and risk of harm (including perceived prevalence) and culpability.
 - i. Probe whether harm being realised rather than risked matters.
 - ii. Probe Deliberate, Reckless, Negligent and Low/No Culpability conduct.
 - iii. Probe aggravating factors as relevant (do not say “aggravating”):
 1. History of non-compliance with warnings by regulator.
 2. Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites.
 3. Repeated incidents of offending or offending over an extended period of time, where not charged separately.
 4. Deliberate concealment of illegal nature of activity.
 5. Ignoring risks identified by employees or others.
 6. Established evidence of wider/community impact.
 7. Breach of any order.
 8. Offence committed for financial gain.
 9. Obstruction of justice.
 - iv. Probe mitigating factors as relevant (do not say “mitigating”):
 1. No previous convictions or no relevant/recent convictions.
 2. Evidence of steps taken to remedy the problem.
 3. Remorse.
 4. Compensation paid voluntarily to remedy harm caused.
 5. One-off event not commercially motivated.
 6. Little or no financial gain.
 7. Effective compliance and ethics programme.
 8. Self-reporting, co-operation and acceptance of responsibility.
 9. Good character and/or exemplary conduct.
 - b. Probe aims of sentencing: Protection of the public; Punishment; Rehabilitation of offenders; Giving the offender the opportunity to make amends; Expressing disapproval of offending behaviour.
2. What type of sentence should be given? Why?
 - a. Probe what would be effective, proportionate and dissuasive criminal penalties in the context.
 - b. Probe factors: financial advantage achieved or envisaged by the commission of the offence; the financial situation of the legal person.
3. What are the benefits and negatives of other options?
 - a. E.g. higher or lower fines; obligation to reinstate the environment; exclusion from entitlement to public benefits; the disqualification from industrial or

- commercial activities; the placing under judicial supervision or winding-up order; the obligation to adopt specific measures to eliminate the consequences of the penalised conduct; or the publication of the judicial decision and the associated sanctions and measures.
- b. For natural persons: prison; RLO; CPO; fine; disqualification; etc.
4. What factors might have changed the type of sentence?
 - a. Probe around cost benefits of offence.
 - b. Probe prior convictions.
 - c. Probe harm caused or risked.
 5. Should a guilty plea affect the sentence compared to a not guilty plea and conviction after a trial?
 - a. Why/why not?
 - b. If making changes due to a guilty plea, what considerations would affect the size should it be?
 - c. What factors do you think the justice system considers?
 - d. (If not covered), should the timing of a plea affect the reduction.
 6. Probe any effect of mitigating and aggravating factors and ask if they would have any effect (e.g. more/less culpable conduct or lower/higher financial benefit value, first vs repeat offender, etc).

Factors for wildlife offences

- Duration and/or number of incidents of cruelty.
- Sadistic behaviour.
- Degree of significant force.
- Leading or passive role in illegal activity.
- Involvement of others through coercion, intimidation or exploitation.
- Death of animals and/or degree of suffering.
- Risks to endangered species or conservation efforts.
- Use of another animal to inflict death or injury.
- Motivated by significant financial gain.
- Sole or primary carer for dependent relatives.
- Cooperation with the investigation.

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