

# The Sentencing Process Guideline

## Scottish Sentencing Council report on public consultation exercise

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## Chair's foreword

### Rt Hon Lady Dorrian, Lord Justice Clerk, Chair of the Scottish Sentencing Council



The Scottish Sentencing Council was established in October 2015 as an independent advisory body to promote consistency in, and understanding of, sentencing, including through the preparation of sentencing guidelines for the courts.

In our first business plan we set out our priorities for the Council. As part of that we indicated that, as a first step, we would develop guidelines on the general principles and purposes of sentencing, and on the sentencing process: a commitment which we reaffirmed in our second business plan, published in October 2018. The first of these guidelines, 'Principles and purposes of sentencing', was approved by the High Court of Justiciary in October 2018, and came into force in November 2018.

I am now pleased to be able to confirm that the second of these guidelines, 'The sentencing process', will shortly be submitted to the High Court for its consideration. This is a guideline which sets out the various steps taken, and some of the factors which may be taken into account, by judges in making a sentencing decision.

Our intention is that, taken together, these first two guidelines will provide a framework for every sentencing decision in Scotland, as well as informing the development of a further general guideline, on the sentencing of young people, and providing a basis on which to develop future offence-specific guidelines. In addition, it is our hope that these guidelines will promote consistency in approach, and help to explain to the public how sentencing decisions are made.

There have been many complexities to take into account in the development of this guideline. The guideline takes into account the many statutory requirements that apply to courts when imposing sentences, as well as the not insubstantial body of case law. We have carefully considered court practice so as to ensure the guideline, which will apply to all sentences passed in Scotland, does not introduce undesirable outcomes. And because of the interaction between this and offence guidelines, we have had to undertake a significant amount of preparatory work and testing to ensure that it is fit for that purpose, as well as being of assistance to the judiciary and in explaining sentencing more widely.

Ahead of submitting the guideline to the High Court, however, we consider it important to reiterate that the Council took an early decision to consult publicly on all of our draft sentencing guidelines. We consider that seeking views from across Scotland is a vital part of the guideline development process, helping ensure that any guidelines issued are of assistance both to the judiciary and to the wider public. As part of that commitment, in June 2019 we commenced a public consultation on a draft version of

this guideline. I am delighted to introduce, on behalf of the Council, this report on that public consultation exercise, setting out our views on the key points raised, and indicating how we have adjusted our approach as a result.

In particular, the guideline which we will submit to the High Court:

- Gives greater prominence to the harm caused to any victim or victims, as a key part of the overall assessment of seriousness;
- Removes the mitigating factor pertaining to the offender being in employment, to minimise the risk that it might operate against those of a lower socio-economic status;
- Includes all three of the main statutory presumptions against the imposition of a custodial sentence (passing a sentence of imprisonment on a person aged 21 or over who has not previously been sentenced to imprisonment or detention; imposing custodial sentences of under 12 months; and passing a sentence of detention on a person aged under 21) with the intention of enhancing public understanding of this part of the sentencing process; and
- Amends the aggravating factor relating to the taking of alcohol or drugs, to make it clear that self-induced intoxication is the target of this factor. In addition, the guideline has been amended to clarify that the lists given are of “possible” aggravating and mitigating factors: whether to treat intoxication (or anything else) as an aggravating factor in any individual case will, in the Council’s view, always be a matter for the court in its consideration of all of the circumstances of that case.

I am very grateful to all the members of the Council, past and present, who contributed to this work, particularly those who served on the committee overseeing the development of the guideline. I would also, on behalf of the Council, like to thank all those who took the time to consider the consultation and to offer their views. Your contributions, and your interest in the work of the Council, are greatly appreciated.

## Introduction

### Public consultation exercise

1. The Scottish Sentencing Council launched a public consultation on its second draft guideline, 'The sentencing process', on 12 June 2019. The consultation ran for three months, with views invited by 6 September 2019.
2. 41 responses were received from a wide range of organisations and individuals. We have published the responses from the organisations, along with those from individuals who gave their consent for this. An analysis, conducted independently by Dr Rachel McPherson of the University of Glasgow, examines each of the questions posed by the consultation and summarises the key points and themes.
3. The Council is grateful to everyone who took the time to consider the guideline and respond. It is committed to consulting publicly on all of its guidelines.

### Council response

4. The findings from the public consultation exercise informed our work to finalise the guideline, which will be submitted to the High Court of Justiciary in 2021 for its consideration.
5. The purpose of this report is to set out the Council's views on some of the most common matters raised during the public consultation exercise and to give an indication of how the guideline submitted to the High Court will differ as a result. Should the guideline be approved by the High Court (either as submitted or with modifications), it will be published by the Council shortly afterwards.
6. We have deliberately focused on addressing those matters which appear to be of most interest to respondents. While not all points raised are covered in this report, all of the responses received have been considered.
7. **Part 1** of this report sets out the Council's views on the public consultation exercise, including the actions which will be taken as a result.
8. **Part 2** explains the likely next steps in relation to the guideline.
9. The original consultation paper, associated documents, responses, and analysis can be accessed [here](#)

## Part 1: Response to public consultation exercise

### Approach to providing views

10. The Council's views on the key points raised in relation to each part of the draft guideline are set out below. We have also indicated how the guideline submitted to the High Court for approval will differ as a result of these, and what other action may be taken.
11. While a brief summary of the key points raised is provided, we suggest that you refer to the consultation analysis for further context.

### General

#### *Examples and explanations*

12. One of the most frequently-made suggestions was that the guideline should provide examples of the application of a part of the process, such as sentencing for multiple offending, sentence discounting, or consideration of time spent in custody.
13. By the same token, some respondents asked for greater explanation and, on occasion, justification of certain parts of the process, such as the sentencing consequences of a plea of guilty, or time spent on remand in custody before sentence.
14. The Council understands the reasoning behind these suggestions, and has given them careful consideration. On balance, though, it has concluded that this guideline is, by its very nature, intended to be a general one, applying to every sentencing decision in Scotland; and, therefore, largely descriptive of the process on that general level. If the guideline were to provide examples of how it might operate in practice that might have the inadvertent effect of restricting the discretion of the judiciary, which this guideline is not intended to do, or misleading readers as to the likely effect of the guideline. Where the Council wishes to make provision in relation to specific offences, or classes of offender, it will do so in guidelines designed for that purpose.

15. In addition, the Council considers that a guideline of a general nature is not the most appropriate vehicle for providing a justification of aspects of the sentencing process, particularly when they are simply statements of legal requirements for courts when sentencing (e.g. the requirement to take into account a guilty plea), or reflections of day-to-day sentencing practice.
16. One of the Council's statutory objectives is to promote greater awareness and understanding of sentencing policy and practice. However, it is not restricted to doing so through its guidelines, which are only one part of its work. The Council maintains a website which aims to be a comprehensive resource of information on sentencing in Scotland. In addition, it engages extensively with stakeholders and with the wider public, and provides materials for schools to be used when educating young people on the criminal justice system.

#### *“Offenders”*

17. The Council has also considered whether this guideline should refer to “offenders”; or, alternatively, whether a word such as “persons”, or phrase such as “people who are being sentenced”, should be preferred. It has, however, taken the view that “offender” is used in its ‘Principles and purposes of sentencing’ guideline; and that, as these general guidelines are intended to be read together and to apply to every sentencing decision in Scotland, there is a strong argument in favour of consistency of language across these two guidelines. In our ‘Sentencing young people’ guideline and our offence-specific guidelines the Council will give further consideration to the most appropriate terminology for those guidelines.
18. It follows from the Council's wish that its guidelines should be read together that, as far as possible, the Council wishes to avoid repetition of material across guidelines. So this guideline does not, for example, contain a definition of what a “fair and proportionate” sentence is – an issue raised by one respondent – as the Council has already set this out in paragraph 2 of its guideline ‘Principles and purposes of sentencing’.

19. The Council has simplified the table at the start of the guideline, which is now a one-page summary of the steps in the process. Further explanation and guidance in respect of each of the steps is to be found within the text of the guideline.

## **The assessment of seriousness**

### Question 1

20. Question 1 of the consultation sought views on the guidance on assessing seriousness, by reference to culpability and harm.

21. Among those who responded to this question there was a high level of support for the Council's approach. Respondents raised the issue of whether the explanation of harm given in the guideline made it sufficiently clear that, for the purposes of the assessment of the seriousness of an offence, harm is not necessarily limited to physical harm (for example, in the case of domestic abuse).

22. The question of whether sufficient emphasis had been given to the position of the victim, particularly in regard to the assessment of the level of harm, was also raised by more than one respondent.

23. One respondent suggested that, as domestic abuse offences are frequently prosecuted at summary level, the guideline's emphasis on the assessment of seriousness might lead to such offences being "downgraded". This concern was also linked to the guideline's explanation of harm. The Council considers, however, that the court's assessment of seriousness, which will take all of the information before it into account, is always taken on the same basis – by assessing culpability and harm – and is independent of the prosecutor's decision as to which court a case will be prosecuted in.

24. Some respondents raised additional factors which might apply when courts are assessing culpability. The Council, however, considers that the guideline makes it clear that the list of factors which might bear on culpability is not exhaustive, and



that courts can therefore take into account other factors which they regard as relevant.

*What does the Council intend to do?*

25. The word “physical” has been removed from the guideline’s explanation of harm. This is intended to make it clear that harm includes, but is not limited to, physical harm, and covers other forms of harm. Greater emphasis has also been given to the impact that an offence has on any victim, including a list of examples of the sort of factors which might bear on the assessment of harm.

### **“Double-counting”**

Question 2

26. Question 2 asked whether the guideline’s approach to avoiding “double-counting” is appropriate.
27. By “double-counting” the Council means that, when a factor is taken into account in the assessment of seriousness, it should not thereafter also be treated as aggravating or mitigating the sentence at step 3 in the sentencing process.
28. Although respondents generally supported the guideline’s treatment of this issue, some suggested that the guideline was not sufficiently clear about this – for example, the term “double-counting” does not itself appear in the draft guideline.

*What does the Council intend to do?*

29. The Council has clarified the point, and the expression “double-counting” now features in the guideline.

### **Aggravating and mitigating factors**

30. The consultation asked several questions about this aspect of the draft guideline.

### Question 3

31. Question 3 asked whether the guidance on aggravating and mitigating factors is helpful. Respondents generally agreed that it is.
32. One respondent wondered about the division between this part of the guideline and the assessment of seriousness. The Council agrees that the distinction between factors which contribute to the assessment of seriousness on the one hand, and aggravating or mitigating factors on the other, can sometimes be a matter of nuance. But the essential point is that they should not be “double-counted”: that is, included as part of the assessment of seriousness, and then again as aggravating or mitigating factors.
33. One respondent thought that it should be made clear that neither of the lists of general aggravating and mitigating factors is in any order of priority. The Council agrees with this.

### Question 4

34. Question 4 asked whether the general aggravating factors set out in what was then annex A are appropriate. Most respondents agreed that they were.
35. One suggested re-ordering the annexes so that annex A covered statutory aggravations, with annexes B and C dealing with general aggravating and mitigating factors, and the Council accepted this suggestion.
36. Several respondents raised the question of whether intoxication through alcohol or drugs should always be treated as an aggravating factor, and whether including it in the list of general aggravating factors gave it an equivalent status to other factors in this list, which (possibly unlike intoxication) are, and should be, almost always treated as aggravating. In particular, concern was raised about whether inclusion in this list could make it less likely that a sentence aimed at addressing the cause of offending might be selected.
37. The Council considered this in some detail. It ultimately concluded, though, that intoxication should remain on the list of aggravating factors, as there will

undoubtedly be some cases in which it is properly treated as one by the court. It has made a minor amendment to the text of the guideline to make it clear that the lists in the annexes are of “possible” aggravating and mitigating factors. And it has clarified that what the guideline intends to cover is self-administered intoxication. Whether to treat intoxication as an aggravating factor in any individual case will, in the Council’s view, always be a matter for the court in its consideration of all of the circumstances of that case.

38. Moreover, the Council is clear that if intoxication is regarded as an aggravating factor in a case this does not in any way rule out the possibility of a court adopting, in its sentence, a problem-solving approach to address the underlying cause or causes of offending behaviour, thus reducing the possibility of re-offending and contributing to the protection of the public.
39. Nor, in the Council’s view, is the guideline’s treatment of intoxication as a possible aggravating factor incompatible with listing a willingness to “address... any drug (or) alcohol issues” as a possible mitigating factor. Self-administered intoxication and a willingness to address drug or alcohol issues can co-exist in a case, and courts remain free to balance their presence when deciding on the most appropriate sentence.

#### Question 5

40. Question 5 asked about the list of statutory aggravations in what was then annex B.
41. Most respondents were supportive. One suggested that links to the relevant provisions would be of assistance to the reader, which is something the Council will address when the guideline has been approved and is on our website.

#### Question 6

42. Question 6 asked if any additional aggravating factors should be listed.

43. A significant proportion of individual respondents suggested additional factors. The Council considered these suggestions carefully, but took the view that most of them – for example, aggravations specific to driving offences – should form part of offence-specific guidelines rather than one such as this, which is intended to be of general application.
44. One respondent wondered whether the aggravation relating to “transgender identity” should refer instead to “gender identity”. The wording used by the Council, however, reflects the present wording of the statute from which this aggravation derives.

#### Questions 7 and 8

45. Question 7 asked about the mitigating factors set out in annex C, and question 8 asked if any additional mitigating factors should be listed.
46. There was some support from respondents for the inclusion of a mitigating factor specifically relating to adverse childhood experiences (ACEs). The Council gave this suggestion careful consideration, but decided not to include such a reference.
47. In doing so, it was mindful of the fact that these lists are not exhaustive; that, therefore, the guideline does not operate to prevent courts from giving appropriate mitigatory weight to ACEs where that is thought to be appropriate; and that it is presently preparing a guideline specifically on the topic of sentencing young people, where it might give further consideration to the effect of ACEs on that particular class of offenders. The guideline on sentencing young people, like the guideline on the sentencing process, will be a general guideline, which is to say that it will apply to every sentencing decision involving a young person.
48. Some respondents wondered whether the inclusion of a mitigating factor about employment was discriminatory, and was likely to operate against those of a lower socio-economic status, who are less likely to be in employment, perhaps through no fault of their own. This might in turn lead to members of this group being sentenced more harshly, thus increasing any marginalisation.

49. The Council reflected carefully on this point, and ultimately was minded to remove this factor from the guideline. In doing so, however, it reaffirmed that in general these lists are not intended to be exhaustive; and that there may well be cases in which the employment status of the offender, or for that matter their willingness to pursue training or educational opportunities, form part of the whole circumstances of a sentencing decision and are quite properly taken into account in reaching that decision.

*What does the Council intend to do?*

50. The annexes have been re-ordered. The aggravating factor relating to intoxication has been amended to make it clear that self-administered intoxication is the focus of this factor, and the mitigating factor relating to employment has been removed.
51. The language of the guideline has been adjusted to make it clear that the lists of aggravating and mitigating factors are examples of factors which *may be* taken into account by courts in sentencing, and that whether any factor is aggravating or mitigating will depend on the circumstances of the case. In addition, the guideline provides that neither list is in any order of priority.
52. The list of general aggravating factors in the guideline has been reviewed, and some of them are now listed instead as examples of the sort of factors which might form part of the court's assessment of seriousness. It is intended that this will make the distinction between these parts of the guideline clearer.

### **The headline sentence**

#### Questions 9 and 10

53. Question 9 asked about the guidance on selection of the headline sentence, and question 10 asked about the guideline's approach to multiple offending.

54. There was general support for the guideline's approach to the selection of the headline sentence, although one respondent wondered whether the guideline was sufficiently clear regarding the meaning of the term as understood by legal practitioners. The Council accepted this point.
55. There was more debate around the guideline's approach to multiple offending. While some respondents welcomed the fact that the guideline set out the distinction between concurrent, consecutive, and cumulo sentences, some were critical of what they saw as insufficient explanation of why a court might prefer one approach to another in a particular instance, noting in particular that it might be difficult for victims of crime to understand why a court had chosen a particular course of action.
56. The Council gave this careful consideration. Ultimately, however, it took the view that as the guideline is intended to be an overview of the sentencing process in general it would be difficult to be more specific about the precise circumstances in which courts should act in particular cases without running the risk of inadvertently limiting the discretion of courts. The main consideration, in multiple offence situations as in others, continues to be that the overall sentence must be fair and proportionate – a phrase which, as already noted, is defined in the Council's guideline on the principles and purposes of sentencing, and includes a requirement to consider all of the relevant factors of a case including the seriousness of the offence, the impact on the victim and others affected by the case, and the circumstances of the offender - and it is a matter for the court to select the sentence or sentences which will comply with that requirement.

*What does the Council intend to do?*

57. Greater emphasis has been given to the need for courts to ensure that the total sentence must always be fair and proportionate, both in situations of multiple offending and otherwise.

## Sentence discounting

### Question 11

58. Question 11 asked about the guideline's approach to sentence discounting.
59. As already noted, one respondent raised the question of whether the draft guideline had sufficiently clarified what is meant by the term "headline sentence", and the Council has taken steps to address this.
60. Where there were apparent concerns about the guideline's treatment of discounting, they tended on closer examination to relate to the concept of discounting itself. The requirement to take a guilty plea into account in sentencing is enshrined in statute, and the Council is obliged in turn to reflect that in its guideline. In addition the general approach that courts should take in relation to discounting has been laid down by the High Court. It should be noted, though, that the Council's present business plan envisages that it will develop a guideline specifically about sentence discounting.

## Time spent in custody

### Question 12

61. Question 12 asked about the guideline's approach to consideration of time spent in custody. Once again this was generally well received, with some requests for practical examples, and some concerns relating to the justification for the existence of this statutory provision.
62. One respondent wondered about the guideline's use of the phrase "have regard to", but this is the phrase used by the relevant statutory provision.

## Ancillary orders

### Question 13

63. Question 13 asked about the list of ancillary orders in annex D. Respondents were generally supportive of the guideline's approach.

#### *What does the Council intend to do?*

64. Having reflected further on what is meant by "ancillary order", the terms of the guideline have been amended to make it clear that such orders are imposed by the court, rather than by automatic operation of law. The requirement to comply with the notification requirements which follows on conviction for certain sexual offences has, accordingly, been removed from the list of ancillary orders in annex D, as this requirement follows as a matter of course on conviction and sentence for certain offences.
65. However, the Council is aware that it is regarded by many with an interest in individual cases, or with sentencing in sexual offences as a whole, as a highly significant part of the overall disposal in such cases. Accordingly, a reference to it has been added in a footnote.
66. The victim surcharge, the compensation order, and the enforcement order have been added to annex D as examples of ancillary orders.
67. Some thought was given to whether this section should be expanded further, to provide additional clarification on various (non-ancillary) orders such as disqualification from driving, and the parameters for the court's imposition of discretionary orders. However, the view has been taken that to do so would considerably increase the complexity of this part of the guideline, and would perhaps detract from its general nature.



## Imposing sentence and giving reasons

### Question 14

68. Question 14 asked about whether step 8, on imposing sentences and providing reasons, was helpful.
69. There was general support, from those who commented, for the concept of some explanation of sentencing decisions being given. Some respondents wondered whether the guideline should direct that written reasons for all sentencing decisions must be kept.
70. One response identified that the guideline provides that reasons should be given “as clearly and openly as circumstances permit”, and once again asked that examples of where this might apply be given. The Council, for the reasons previously given, does not intend to do that, but notes that it anticipates that courts will act proportionately in this as in other areas of the sentencing process. In addition there may be circumstances where courts are in possession of confidential or sensitive information pertaining to the offender, or to someone else involved in the case, and might properly take the view that full and open disclosure of this information is not appropriate even if it has a bearing on the sentencing decision.

## The overall structure of the guideline

71. Questions 15, 16, 17, and 18 asked about the overall process as set out in the guideline.

### Question 15

72. Question 15 asked whether the overall process set out is appropriate. Once again there was general support for the way in which the guideline is framed. One respondent, while echoing that support, wondered whether the guideline might benefit from an additional annex listing all available sentencing options. The Council has given this consideration, but has ultimately concluded that might mean

that the guideline would need more frequent revision than might otherwise be the case. It will instead continue to ensure that the information on its website about the various kinds of sentences available to courts in Scotland is comprehensive and up-to-date.

73. Several respondents, both under this question and others, wondered about the order and content of the steps: specifically whether steps 1 (assessment of seriousness) and 3 (aggravating and mitigating factors) should in fact be amalgamated; or whether some of the matters considered at step 3 should more properly form part of step 1.
74. The Council gave this careful consideration, as it is fundamental both to this guideline and to forthcoming offence-specific guidelines. It concluded that the sequence of steps is appropriate.
75. The Council also notes that it is in the nature of a general guideline, such as this one, that when specific examples are given – such as aggravating and mitigating factors, and factors bearing on seriousness – they will not apply to every case covered by the guideline. It accepts, though, that even in a general guideline some of the factors which had been listed in the draft as aggravating and mitigating perhaps more appropriately belong in the assessment of seriousness.
76. One respondent suggested that the victim notification scheme should be mentioned. Although the Council accepts its significance, it takes the view that it is not a part of the sentencing process itself.

*What does the Council intend to do?*

77. As already noted above, some of the factors previously listed as aggravating have been moved, and now provide examples of what the courts might in certain cases take into account in assessing the level of harm.

## Question 16

78. Question 16 asked whether there should be any additional steps in the process. Respondents made a number of suggestions here.
79. One proposed that the guideline should contain specific reference to certain provisions in law which constrain the imposition of custodial sentences, noting that to do so would assist in public understanding of why, in certain circumstances, a sentencing court might decide to impose a non-custodial sentence. This might be an additional step, or it might be incorporated in an existing step. Although the Council does not intend to introduce an additional step to cover this, it agrees with the suggestion in general.
80. Another respondent suggested that some contextual information about wider aspects of the justice system, explaining how a case gets to the point of sentencing, would be useful. The Council takes the view that this is outwith its remit, and in any event not something which should be in a sentencing guideline.

### *What does the Council intend to do?*

81. The guideline now contains specific reference to three statutory provisions which affect the imposition of custodial sentences (imprisonment and detention) by courts.

## Question 17

82. Question 17 asked if the steps in the guideline are in an appropriate order. As well as the points raised above about the sequence of the steps, one respondent wondered whether the consideration of sentencing in multiple offence cases, presently step 4, should in fact take place after, or at the same time as, consideration of any discount as a result of a guilty plea, presently step 5.

*What does the Council intend to do?*

83. The Council accepts that this will always be an issue which requires careful and nuanced consideration by the sentencing court. It takes the view that the overall question, at every step of the sentencing process, must be whether the sentence being imposed is a fair and proportionate one, and while it does not propose to alter the order of the steps it considers that giving this greater emphasis will help to ensure that fairness and proportionality are fundamental to the process. It has amended the guideline to that end.

Question 18

84. Question 18 asked if the material in the guideline is expressed clearly and accurately. Some respondents suggested that the language used is sometimes complex, and not always clear to members of the public and others who are not legally qualified, although no specific examples of this were given. The Council has considered this, and will continue to do so, throughout the drafting process for this and other guidelines. It always tries to ensure that its guidelines are readily comprehensible, although at the same time they must be legally robust.

85. One respondent suggested that there should be further explanatory material which sets out the way in which prison sentences operate, with specific reference to how the release of short- and long-term prisoners works in practice. While the Council appreciates that these issues will be of importance to those involved in a case, whether as victims or as offenders, they do not relate to the sentencing process and therefore do not belong in this guideline. Information about these matters can be found on the Council's website and elsewhere.

## **The impact of the guideline**

86. Questions 19, 20, 21, and 22 are about the impact the guideline will have if it comes into force.

## Questions 19 and 20

87. Question 19 asked whether the guideline will contribute to public understanding of sentencing decisions, and question 20 asked whether the guideline will lead to an increase in public confidence. These questions can reasonably be taken together.
88. Respondents generally thought that the guideline would contribute to public understanding and, on balance, that it would lead to an increase in public confidence.
89. The issue of the guideline's language is raised here again by several respondents, as is the question of the extent to which the public will be able to locate and use the guideline.
90. As already indicated, the Council is mindful of its statutory obligation to promote greater awareness and understanding of sentencing policy and practice. It agrees that public dissemination of the guideline is something which will assist in understanding of the sentencing process. It will therefore be endeavouring to ensure that awareness of the guideline is as wide as possible on its coming into force, and that it is thereafter recognised, and readily available, as a resource for anyone who wants to know more about this part of sentencing practice.
91. The Council has a standing Communications Committee which keeps this area of its work under constant review, and it is always open to considering new initiatives which will enhance public understanding of the operation of sentencing in Scotland. In addition, that Committee is overseeing an extensive publicity exercise which will accompany launch of the guideline, once it has been approved by the High Court. Where respondents have made suggestions about how to enhance public understanding of the sentencing process and the guideline, these will be considered as part of this work, even where they have not led to changes to the guideline itself.

## Questions 21 and 22

92. Question 21 asked about costs, if any, arising from the introduction of the guideline; and question 22 asked similarly about benefits.
93. Of those who provided a response in relation to costs, most did not anticipate any increase arising as a result. Some respondents considered that there might be an increase in appeals, although without offering any substantiating evidence. Others, in fact, foresaw a reduction in appeals, and a consequential saving. And some suggested that additional time might be spent in court as a result of the guideline's introduction.
94. The Council is required to submit an impact assessment to the High Court along with the guideline, and it has engaged extensively with key justice stakeholders in preparing it. Having considered all of the responses it remains of the view that there will be no additional costs involved in the introduction of the guideline.
95. A number of respondents were of the view that the guideline will provide a variety of non-financial benefits including, for example, consistency in sentencing, increased awareness amongst victims, transparency, and clarity.

### *What does the Council intend to do?*

96. Responses discussing the impacts of the guideline have been considered and, where appropriate, incorporated into the final impact assessment for this guideline.

## **Other comments**

### Question 23

97. Question 23 invited other comments about any matter arising from the consultation.

98. A number of respondents took this opportunity. Some at this point wondered about the guideline's use of "offender", a point which has been addressed elsewhere in this report.
99. One respondent asked whether the guideline was capable of being changed. The legislation under which the Council operates provides a mechanism for guideline revision, should the Council deem it appropriate at any future stage. (Any revision requires to be approved by the High Court.) On top of that, the Council is required by law to review its guidelines from time to time.

## Part 2: Next steps

100. Having taken into account the responses received as a result of consultation, the Council must finalise the guideline and present it to the High Court for its consideration, along with the finalised impact assessment. It intends to do this as soon as it can. The High Court can approve a guideline in whole or in part, with or without modifications, or can reject a guideline, again in whole or in part. Council guidelines only come into force when they have been approved by the High Court.
101. The Council believes that this guideline will play a particularly important part in explaining to the public how sentencing decisions are made and, as mentioned above, will carry out extensive publicity upon its launch. Thereafter, the guideline will serve as a basis for the Council's promotional and educational activity as well as a useful tool for the courts and practitioners.

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