

# Sentencing young people

## A Scottish Sentencing Council consultation

### Analysis of responses

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

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## Executive summary

1. The Scottish Sentencing Council (the Council) is developing a guideline on the sentencing of young people. As part of this process, a public consultation sought views on a draft guideline. Key themes from an analysis of the responses are summarised below.
2. The consultation contained 22 questions and was open for responses from 8 February to 21 August 2020. A total of 280 responses were received from 239 individuals and 41 organisations (third sector organisations, local authorities, justice delivery bodies, bodies representing different groups within the judiciary and the legal profession, and 'other organisations'), although not every respondent answered every question. The analysis of responses showed that there were often contrasting views expressed by organisations and individuals on the issues under consideration.
3. As with all consultations, respondents were 'self-selected', and the views submitted are not necessarily representative of those of the wider public.

### Overall response to the draft guideline

4. Across the responses, there were a number of recurring themes. These included:
  - Opposition from many individuals to an age-based approach to sentencing or one that applied up to age 25, and to an approach perceived as favouring the interests of offenders at the expense of victims and communities.
  - General support among organisations and some individuals for the guideline and the broad evidence-based, person-centred approach proposed, along with calls for appropriate resourcing, training, and provision of services, and a joined-up response to offending by young people.
  - The need for clear linkages between the guideline on young people's offending and other guidelines.
5. Respondents (mainly organisations) also offered a range of specific detailed comments or suggestions on aspects of the guideline or the wording used.

## The approach to the guideline and application of the guideline (Question 1–3)

6. Overall, 45% of respondents agreed at **Question 1** with the principle-based approach proposed for the guideline. However, organisations were almost unanimous in their agreement while nearly two-thirds (63%) of individuals disagreed.
7. Respondents who agreed generally endorsed the rationale set out in the consultation paper for a single guideline that applied across all offences (e.g. that this approach was simple, straightforward, and avoided repetition, potential complexity and confusion). This group also supported the evidence-based approach taken in developing the guideline, the person-centred, welfare-based approach advocated, and the emphasis on rehabilitation and the capacity for change amongst young people involved in offending behaviour.
8. Those who disagreed mainly said they were opposed to an age-related approach to sentencing, and / or the proposed age threshold for the guideline. Individuals often also saw the guideline as being 'soft' on offenders, at the expense of victims and wider society. The few organisations that disagreed or expressed reservations about the approach taken by the guideline wanted a greater focus on the interests of victims, raised issues relating to specific types of offences (gender-based violence and serious driving offences), or thought the guideline should adopt an approach which is more evidently rights-based.
9. Most respondents (71%) disagreed at **Question 2** that the guideline should apply up to the age of 25. However, while 94% of organisations agreed with the proposed threshold, 81% of individuals disagreed.
10. Those who agreed endorsed the neurological and other evidence presented, and highlighted the lack of maturity of under-25s and the effect of childhood trauma. They also said the greater capacity for young people to change merited a different approach to sentencing than that adopted for adults. In most cases, those (mainly individuals) who disagreed said that the proposed age threshold was out of alignment with other age-related laws and milestones, and rejected arguments based on the maturity of young people. This group also said that sentences should prioritise punishment, deterrence, and the interests of victims and communities.
11. The most common alternative age thresholds put forward at **Question 3** were 16 and 18, each of which were proposed by just over a third of respondents (mainly individuals). In both cases, these ages were said to represent the start of 'adulthood'.

## The principles and purposes of sentencing a young person (Questions 4–9)

12. Overall, 54% of respondents agreed at **Question 4** that the relationship between the guideline on sentencing young people and the existing guideline on the principles and purposes of sentencing was clear. Organisations were more likely than individuals to say that the relationship between the two guidelines was clear. However, it was apparent from the comments that respondents understood this relationship differently.
13. Organisations who disagreed thought that the young people’s guideline should ‘stand alone’ without reference to other guidelines, or that clarification was needed about how the two guidelines should be used together in practice. Some saw them as potentially conflicting, while others were unsure if the new guideline was intended to be considered in addition to, or instead of, the current sentencing guideline. Individuals who commented on this issue either said that the relationship between the guidelines was clear, but they did not agree with the content of the young people guideline, or that the relationship between the guidelines was unclear.
14. Just over a third of respondents (37%) agreed at **Question 5** that the draft guideline provided enough information about the factors to be considered in sentencing young people.
15. There was a lot of overlap in the comments made by organisations agreeing and disagreeing at this question. In general, organisations endorsed the information provided, they called for the inclusion of information about why each factor was important, or they called for other factors to be considered. The most common view among individuals was that the information provided was clear and sufficient, but they did not agree with it.
16. The most frequently suggested additional factor that should be considered when sentencing a young person (put forward at **Question 6**) was that of childhood trauma (or adverse childhood experiences (ACEs)). Respondents (mainly organisations) often saw this as *the* crucial factor, pointing out the strong association with subsequent offending.
17. At **Questions 7 and 8** respondents were divided on whether rehabilitation should be given greater emphasis than other purposes (51% agreed, 49% disagreed), and / or should be the **primary** consideration (55% agreed, 49% disagreed) when sentencing a young person. On both questions, organisations almost unanimously agreed, while individuals were evenly split in their views.
18. Organisations saw an emphasis on rehabilitation as (i) consistent with a human rights framework, (ii) likely to reduce reoffending, (iii) able to address adverse early life experiences, and (iv) likely to benefit both the individual and society. Occasionally, organisations (both those who agreed and disagreed) highlighted factors related to the

seriousness of a crime, and the need to protect victims and the wider public which may mean such an approach was not appropriate.

19. Individuals generally wished to see greater emphasis on the needs of victims or saw punishment as the primary purpose of sentencing. Individuals also thought the emphasis on rehabilitation should depend on the seriousness of the crime. There was a view that while rehabilitation might be a prime consideration, it should not be the *only* consideration.
20. In addition, there were four main views at **Question 9** on other purposes of sentencing that might be emphasised in the guideline. These related to (i) making amends, (ii) public protection, (iii) justice for victims, and (iv) punishment. While points (i) to (iii) were mainly discussed by organisations point (iv) was mainly discussed by individuals.

### **The assessment of seriousness (Question 10)**

21. A majority of respondents (55% overall) agreed that the section in the guideline on the assessment of seriousness was helpful, although organisations were more likely than individuals to do so. Those who agreed thought the section was clear and accessible, and would be useful in highlighting (i) the need to take account of the seriousness of a crime and the impact on victims, and (ii) the difference in assessing culpability in younger and older people. Those (mainly individuals) who disagreed argued that age (or maturity) was not relevant to assessing the seriousness of a crime or its impact on victims. However, some organisations thought that age and maturity were relevant to culpability, but thought that this was a separate issue to the seriousness of a crime. Some suggested culpability should be considered alongside other factors relevant to sentencing a young person.

### **Identifying the most appropriate sentence (Questions 11 to 15)**

22. Paragraph 13 of the draft guideline set out examples of the type of information a judge might use when deciding on the most appropriate sentence for a young person. Respondents were asked (**Question 11**) if they agreed or disagreed that this information was of most relevance in these decisions. Overall, 38% of respondents agreed and 62% disagreed. Organisations were divided in their views on this question (46% agreed / 54% disagreed) whereas nearly two-thirds of individuals (63%) disagreed. Regardless of how they answered the closed question, respondents suggested additional information / advice that should be available to a judge in reaching a sentencing decision. However, some individuals argued that the only information

required by the judge was whether the young person was guilty, the nature of the crime, and the impact on the victim.

23. At **Question 13**, 44% of respondents overall agreed with the proposed features of an appropriate sentence for a young person as set out at paragraph 15 of the draft guideline. However, while 71% of organisations agreed, three-fifths (60%) of individuals disagreed.
24. Irrespective of whether respondents answered 'agree' or 'disagree', they often suggested additional points for inclusion in the list at paragraph 15 and specific changes to the wording or ordering of the existing points. Two recurring views were that sentences should (i) provide an opportunity to make amends (if appropriate in the circumstances) and (ii) consider the needs of the victims.
25. Overall, 39% of respondents agreed at **Question 14** with the approach for deciding on a sentence set out in paragraph 17 of the guideline. However, while most organisations agreed (89%), the majority of individuals (69%) disagreed.
26. Those who agreed thought that the guideline provided clarity on the approach to be adopted, although some emphasised the importance of properly resourced sentencing options and appropriate support services being available. Respondents generally agreed that custodial sentences should be seen as a 'last resort' although some stressed that it was right that they should continue to be used in particular circumstances.
27. Those (mainly individuals) who disagreed made four main points related to (i) concern about age 'discrimination', (ii) the need to take account of offending history, (ii) the role of punishment, and (iv) how this section related to existing guidelines and judicial discretion. Organisations that disagreed raised issues related to the interests of victims, or particular serious offences, or made specific points about the wording of the section.
28. **Questions 12 and 15** asked about the referral or remittal of cases involving young people under 18 to the children's hearing system where it is competent to do so. Overall, 55% of respondents supported referral for advice, and exactly half (50%) agreed that judges should consider remittal of cases for disposal. However, while organisations were unanimous (or near unanimous) in their support on both points, individuals were split in their views on the first question (51% agreed), and a majority disagreed on the second question.
29. Organisations often focused on the child centred, rights- and welfare-based approach of the children's hearing system in explaining why they thought cases should be referred or remitted. The one organisation that disagreed at Question 12 wanted the provision to be strengthened to say that *all* cases involving a young person under 18 should be considered by a children's panel in the first instance – unless this was prevented by



statute. There was also a recurring view that the proposal on remittal for disposal should be strengthened to ensure remittal of all cases involving children under 18 where it is possible to do so.

30. Comments from individuals suggested some confusion about both Question 12 and 15, and the age group to which the relevant provisions would apply. The views of individuals on these two questions should therefore be treated with caution.

### Potential impacts of the guideline (Questions 16 to 21)

31. Most respondents (83% overall) agreed at **Question 16** that the guideline would influence sentencing practice. However, while organisations and some individuals were positive about this, most individuals did not welcome this.
32. Almost all organisations (97%) agreed at **Question 17** that the guideline would increase public understanding of sentencing, while most of individuals (69%) disagreed. However, some respondents pointed out that greater *understanding* did not necessarily mean greater *agreement* with decisions. Individuals who disagreed that the guideline would increase understanding largely said this because they anticipated the sentences imposed as a result of the guideline would be 'soft' or out of step with public opinion.
33. In terms of increasing confidence in sentencing, most organisations agreed (88%) at **Question 18** that the guideline would be helpful, while individuals (85%) disagreed. Organisations (and some individuals) argued that increased understanding of the sentencing process would lead to increased confidence; some also said that, in time, reductions in offending would further bolster confidence. In contrast, most individuals rejected this view – some said that persisting discontent with sentencing decisions and increased offending by young people would *decrease* public confidence.
34. Across this group of questions (**Questions 16 to 18**), it was common for organisations (and some individuals) to say that the impact on sentencing practice, and public understanding and confidence, would depend on resourcing, the adoption of a 'joined-up' approach across services, and active promotion of the guideline to the public.
35. **Questions 19 to 21** asked for views on the draft impact assessment issued with the draft guideline, and the likely costs and benefits more generally of introducing of guideline.
36. Most organisations (77%) agreed with the identified impacts in the impact assessment, while most individuals (71%) disagreed. Respondents, mainly organisations, who commented on specific aspects of the impact assessment expressed concerns about the limited anticipated impact on sentencing decisions, the perceived underestimation of the impact on social work services, and the availability of rehabilitation services for



offenders. For individuals, key concerns related to (i) potential impacts on victims and communities, and (ii) costs associated with an increase in crime and more complex legal proceedings.

37. More widely, organisations identified the following benefits: more consistent, and appropriate sentencing and better outcomes for young people; reduced offending; longer term cost savings for the justice system and other public services; and improved understanding of and confidence in sentencing. The costs identified by this group – for the justice system and wider public sector – were seen as necessary in achieving the benefits.
38. In contrast, individuals mainly said that there would be no benefits, other than for offenders (who would be treated leniently) or those who might gain from an increase in crime (e.g. lawyers). This group also thought the guidelines would lead to additional financial costs for the justice system and social costs for society.

# 1 Introduction

1.1 The Scottish Sentencing Council (the Council) has undertaken a public consultation to gather views on a draft guideline on the sentencing of young people. This report presents an analysis of the responses received to the consultation.

## Background

1.2 The Scottish Sentencing Council is an independent body established in 2015 with the aim of (i) promoting consistency in sentencing practice; (ii) assisting the development of policy in relation to sentencing; and (iii) promoting greater awareness and understanding of sentencing policy and practice. One of the Council's key functions is to produce guidelines to promote consistency in sentencing in Scottish courts. Guidelines can be 'general', and cover all offences, or 'specific' and cover a particular offence or group of offences.

1.3 The Council's business plan for 2015–2018<sup>1</sup> stated the intention to produce an initial set of three general guidelines to provide a high-level framework for sentencing in Scotland, and to create a firm foundation for subsequent guidelines. The Council's business plan for 2018–21 reported progress on this intention. It noted publication of a first guideline on the principles and purposes of sentencing and preparation of second guideline on the sentencing process:

- The Principles and Purposes of Sentencing (approved in October 2018) sets out the core principle of sentencing in Scotland, which is that sentences must be fair and proportionate, and the main purposes of sentencing which may include protection of the public, punishment, rehabilitation, giving the offender the opportunity to make amends and expressing disapproval of offending behaviour.
- A sentencing process guideline has been consulted on but has not yet been approved for use in the courts. This guideline provides a framework which applies to all sentencing decisions. It explains the steps taken when courts decide what sentence should be imposed, and the various factors considered in reaching a sentencing decision.

1.4 The Council's business plan for 2018–21 also reported ongoing development of a draft guideline on the sentencing of young people, which forms the basis of the current consultation. Once finalised, this third guideline will sit alongside the two other general guidelines that have already been produced by the Council.

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<sup>1</sup> Scottish Sentencing Council business plans can be accessed at:  
<https://www.scottishsentencingcouncil.org.uk/publications/>

- 1.5 In addition, the Council is currently preparing specific guidelines on causing death by driving, rape, sexual assault, and possession of indecent images of children.

### **Guideline on the sentencing of young people**

- 1.6 The sentencing of young people has been identified by the Council as a complex issue. The Council has stated that the sentencing of young people requires a more individualistic approach, to take account of the specific circumstances of each young person – including experiences such as childhood trauma and bereavement – as well as issues of maturity and culpability, and the capacity for rehabilitation. The proposed guideline on the sentencing of young people is intended to:

- Increase public knowledge and confidence by explaining the process of sentencing a young person and how it differs from sentencing an older person
- Increase understanding by ensuring that young people and others interested in a particular case know what is happening during the sentencing process and what the sentence is
- Assist judges and lawyers in the criminal courts, particularly through identifying the main factors that should be considered when sentencing a young person
- Promote consistency in the sentencing of young people.

- 1.7 The development of the draft guideline began in 2017, and has been informed by a number of research and engagement activities as follows:

- A conference (in April 2017) involving a range of organisations and individuals with an interest in the sentencing of young people
- Focus groups to explore public views of youth offending
- A review of literature on youth offending and sentencing in Scotland and elsewhere
- A review of evidence concerning brain development in young people
- Consultation with judges across Scotland
- Consideration of relevant High Court judgments on appeals against sentence
- A workshop with members of the Scottish Youth Parliament (in October 2019).

## The consultation

- 1.8 Sentencing guidelines prepared by the Council must be submitted for approval by the High Court of Justiciary. Prior to this, the Council is required to consult with Scottish Ministers and the Lord Advocate, and with ‘such other persons as the Council considers appropriate’. In order to meet this obligation, the Council conducted a public consultation with the aim of gathering the views of individuals and organisations with an interest in the proposed guideline on sentencing young people.
- 1.9 A consultation paper, *Sentencing Young People: A Scottish Sentencing Council Consultation*, was published on the Council’s website on 28 February 2020, along with a copy of a draft guideline and a draft impact assessment.<sup>2</sup> The consultation closed on 21 August 2020, with the period for the submission of responses extended beyond the original date of 22 May because of the Covid-19 pandemic.
- 1.10 The consultation paper contained three parts. Part 1 outlined the background to the guideline, the reason for a specific guideline on sentencing young people, and the approach taken in developing the guideline. Part 2 explained the various sections of the guideline and set out the consultation questions in this context. Part 3 contained a full list of the consultation questions.
- 1.11 The consultation contained 22 questions: 16 two-part questions comprising a closed (tick-box) question and an open question inviting respondents to explain their answer; and 6 single-part questions inviting comments only. Questions focused on the following issues:
- The approach to the guideline (Question 1)
  - The proposed age group to which the guideline will apply (Question 2 and 3)
  - The principles and purposes of sentencing a young person (Questions 5 to 9)
  - The assessment of seriousness (Question 10)
  - Identifying the most appropriate sentence (Questions 11 to 15)
  - Potential impacts of the guideline (Questions 16 to 21).
- 1.12 A final question (Question 22) invited any other relevant comments.
- 1.13 Responses to the consultation will help inform the final version of the guideline submitted to the High Court for approval.

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<sup>2</sup> <https://consultations.scottishsentencingcouncil.org.uk/ssc/young-people/>

1.14 Further research and engagement work was undertaken immediately before and during the period of the public consultation. This involved (i) focus groups with young people, including some who had committed offences and were involved in the criminal justice system<sup>3</sup>, and (ii) engagement meetings with stakeholder organisations with an interest in the sentencing of young people. Views gathered through these activities are not included in the analysis presented here but will be considered by the Council alongside the findings presented in this report in finalising the guideline.

## About the analysis

1.15 This report is based on a robust and systematic analysis of the responses to the consultation. Frequency analysis was undertaken in relation to all the closed questions, and qualitative analysis was undertaken in relation to the comments submitted in response to each question. The aim of the qualitative analysis was to identify the main themes and the full range of views submitted in response to each question or group of questions, and to explore areas of agreement and disagreement in the views of different groups of respondents.

1.16 Not all respondents answered every question, and some made comments in relation to a question without ticking a response at the relevant closed question. If a respondent's reply to the tick-box question was clearly stated in their written comments, the response to the tick-box question was imputed. The tables throughout this report include such imputed responses.

1.17 The results of the analysis are presented for each consultation question. A table showing the result of the quantitative analysis is included for each closed question, indicating the balance of opinion among respondents for each consultation question. The results of the analysis of qualitative comments for all questions are also shown. Unless otherwise stated, the views of those who agreed (or said 'yes') at the closed question are presented first, followed by the views of those who disagreed (or said 'no').

1.18 As with all consultations, the views submitted and presented in this report are not necessarily representative of those of the wider public. Anyone can submit their views to a consultation, and individuals (and organisations) with a keen interest in a topic – and the time, ability and capacity to respond – are more likely to participate in a consultation than those who do not. This self-selection means that the views of consultation participants cannot be generalised to the wider population. For this reason, the main focus in analysing consultation responses is not to identify how many or what

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<sup>3</sup> Sixteen focus groups (a mix of online and in-person) were conducted with young people. Planned focus groups with young people in custody could not be carried out because of the Covid-19 pandemic.

proportion of respondents held particular views, but rather to understand the range of views expressed.

## The report

1.19 The remainder of this report is structured as follows:

- Chapter 2 presents information on the respondents to the consultation and the responses submitted.
- Chapters 3 to 8 present findings from the analysis of the responses to each of the consultation questions.

1.20 Two annexes to the report present a list of organisational respondents (Annex 1), and information on the number of responses to each consultation question (Annex 2).

## 2 Description of the responses and respondents

2.1 This chapter provides information about the respondents to the consultation and the responses submitted.

### Number of responses received and number included in the analysis

2.2 The consultation received 283 responses. However, three respondents submitted two responses. One respondent submitted two identical responses, one of which was removed; one respondent submitted an original and a revised response with the original response being removed; and one further respondent submitted two different responses which were combined to create a single amalgamated response. This process resulted in the removal of three responses.

2.3 Thus, the analysis in this report is based on **280** responses (283 submitted responses minus 3 removed responses).

### About the respondents

2.4 Responses were submitted by 239 individuals and 41 organisations or groups. (See Table 2.1.)

**Table 2.1: Responses included in the analysis, by respondent type**

	Number	%
Organisations	41	15%
Individuals	239	85%
<b>Total respondents</b>	<b>280</b>	<b>100%</b>

### Organisational respondents

2.5 With regard to the 41 organisational responses, approximately one-third of these (34%) were submitted by third sector organisations. Local authorities and local government representative bodies comprised just over a fifth of responses (22%). The remaining responses were submitted by justice delivery bodies (15%), and bodies representing



different groups within the judiciary (10%) and the legal profession (7%). A small group of ‘other organisations’ made up of respondents not falling into any other categories comprised the remaining 12% of responses. See Table 2.2.

**Table 2.2: Organisational respondents, by type**

	Number	%
Third sector organisations	14	34%
Local authorities and sector representative bodies	9	22%
Justice service delivery organisations	6	15%
Judicial bodies	4	10%
Legal profession	3	7%
Other organisations	5	12%
<b>Total organisations</b>	<b>41</b>	<b>100%</b>

*‘Other organisations’ comprise those not covered by the categories above.*

2.6 Third sector respondents included organisations with a focus on children and young people, offenders, and victims of crime. Justice delivery bodies comprised national public sector bodies with a role in providing services in the justice field. The ‘other organisations’ category was made up of an academic centre and a research and practice development centre, both with a focus on youth justice, an organisation supporting children and young people’s rights, a young people’s representative body, and a campaign group advocating for the rights of victims of road accidents and their families.

A complete list of organisational respondents is provided at Annex 1.

## Responses to individual questions

- 2.7 As previously noted (paragraph 1.16), not all respondents answered every consultation question.
- 2.8 Overall, seven out of ten or more organisational respondents answered each question (with the exception of Question 3 which was targeted at a sub-set of respondents). The proportion of organisations responding to each question ranged from 71% at the closed part of Question 4 to 98% at the open part of Question 2. A large proportion of organisations (88%) also answered the closed part of Question 2 which asked about the age threshold for the guideline.
- 2.9 In contrast, the response level among individuals was more varied. Among this group, there was a consistently high response to the closed questions, with nine out of ten individuals (89% or above) answering all such questions; Questions 1 and 2 which focused on the approach to, and application of, the guideline attracted the highest response, with 98% and 99% of individuals answering each of the closed questions respectively. However, there was greater variation in the response to the open questions, with the proportion of individuals answering each ranging from 34% at Question 19 which asked about the impact assessment which formed part of the consultation, to 82% and a similar 81% at Questions 2 and 3, both of which asked about the age threshold for the guideline. Questions that attracted a lower level of response from individuals were generally those that focused on specific aspects of the content of the guideline.
- 2.10 Full details of the level of response to individual consultation questions are shown in Annex 2.

### 3 Approach and applicability (Q1 to Q3)

3.1 Part 2 of the consultation paper opened with a section setting out the approach taken to developing a guideline for the sentencing of young people. It explained the decision to develop a single general guideline that would apply across all offences. This 'principle-based' approach was intended to avoid confusion and promote simplicity; it also reflected the view that the sentencing of young people needed a different approach which did not vary much between offences. This section of the paper also explained the reasoning behind the proposal that the guideline should apply to children and young people under the age of 25, summarising the information and evidence that had informed that decision. Three consultation questions addressed the issues of approach and applicability:

**Question 1:** Do you agree or disagree that a principle-based approach to the guideline is the right approach? [Agree / Disagree]

**Question 2:** Do you agree or disagree that the guideline should apply to people under the age of 25? [Agree / Disagree]

**Question 3:** If you disagree that the guideline should apply to people under the age of 25, at what age should the guideline cease to apply?

#### A principle-based approach to the guideline (Q1)

3.2 Question 1 asked respondents if they agreed or disagreed that the principle-based approach to the guideline was the right approach to take.

Table 3.1 shows that, overall, 45% of respondents agreed and 55% disagreed. However, there were differences between the views of organisations and individuals on this question. Organisations were almost unanimous in their agreement – 94% (33 out of 35) agreed – whereas nearly two-thirds (63%) of individuals disagreed.

**Table 3.1: Question 1 – Do you agree or disagree that a principle-based approach to the guideline is the right approach?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	11	100%	–	0%	11	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery organisations	5	100%	–	0%	5	100%
Judicial bodies	3	100%	–	0%	3	100%
Legal profession	2	100%	–	0%	2	100%
Other organisations	3	60%	2	40%	5	100%
<b>Total organisations</b>	<b>33</b>	<b>94%</b>	<b>2</b>	<b>6%</b>	<b>35</b>	<b>100%</b>
Total individuals	87	37%	147	63%	234	100%
<b>Total (organisations and individuals)</b>	<b>120</b>	<b>45%</b>	<b>149</b>	<b>55%</b>	<b>269</b>	<b>100%</b>

- 3.3 Altogether, 206 respondents (37 organisations and 169 individuals) provided comments at Question 1. The sections below look first at the views of those who agreed before looking at the views of those who disagreed. It should be noted that although the consultation paper explained the ‘principle-based approach’ as one based on a general guideline applicable across all offence types (as opposed to specific guidelines for specific offences), respondents commented on a range of issues which they saw as representing ‘principles’ relevant to the approach adopted in the draft guideline. Thus, it was not always clear what respondents (individuals, in particular) were agreeing or disagreeing with at the closed part of Question 1.
- 3.4 In addition, many of the points raised at this question were relevant to subsequent consultation questions and are discussed more fully in later chapters of this report.

## Agreement with a principle-based approach to the guideline

- 3.5 As can be seen from Table 3.1, there was a high level of support amongst organisations for the principle-based approach to the sentencing young people guideline. In explaining their views, organisations generally endorsed the rationale put forward in the consultation paper, saying that a single guideline that applied across all offences:
- Was simple, clear and straightforward, and would be easy to understand and to explain to young people and the public
  - Avoided repetition and potential complexity and confusion, and offered a more ‘future-proofed’ approach, avoiding the need for review each time an offence was introduced or amended
  - Offered flexibility, and was able to be applied to all situations and take account of all circumstances
  - Was logical and appropriate as the underlying principles in sentencing do not vary much from offence to offence, and offered a clear focus on the implications of age for sentencing and the rationale for the approach adopted
  - Promoted transparency, fairness and consistency.
- 3.6 In addition, respondents, particularly those representing the legal profession, welcomed the guidance as providing a clear framework and helpful consolidated guidance in a complex area of sentencing. It was also suggested that the guideline could provide a useful reference point for consideration of other age-related criminal justice issues.
- 3.7 Individuals who indicated agreement at Question 1 often echoed the points made by organisations, with some also noting the general importance of principle-based and rights-based justice and sentencing.
- 3.8 Respondents also commented on other principles that were seen to have informed the development of the guideline. For example, they endorsed the evidence-based approach taken in developing the guideline and largely accepted the implications of the neurological and social research presented by the Council. There was also broad support for the person-centred welfare-based approach advocated, the account to be taken of maturity and individual circumstances, and the emphasis given to rehabilitation and the capacity for change amongst young people involved in offending behaviour.
- 3.9 Overall, these respondents generally welcomed the introduction of the guideline. They agreed that the sentencing of young people required a different approach and thought the guideline would provide helpful guidance for those involved in this activity.

3.10 However, alongside this general endorsement of the approach adopted, organisational respondents noted a number of caveats to their views:

- Respondents representing members of the legal profession suggested that it might be appropriate to also refer to young people in subsequent offence-specific guidelines, or that more specific guidance might be required on how different guidelines related to each other.
- Two third sector organisations offered views on the applicability of the guideline to all offences. One respondent stressed the importance of ensuring that the approach advocated was applied to all children and young people including those who have committed the most serious offences, and another highlighted the need for work to identify ‘unique’ situations where more guidance may be required.
- Some organisations – as well as some individuals – called for the evidence-based, person-centred, rehabilitative approach advocated in the guideline to be used for offenders of all ages. Particular arguments were also made for the sentencing of groups such as those with autism spectrum disorders or learning disabilities to be guided by similar principles.
- One judicial respondent highlighted the need for greater recognition of the views of victims within the guideline.

3.11 Some individuals who indicated overall agreement at Question 1 offered additional qualifications to their response in their comments. This group (just a few in each case):

- Stressed the need for the guideline and sentencing decisions to take account of individual maturity, and the different rates of maturity in males and females
- Argued that maturity and the capacity to judge risk were not relevant to the same extent in all offences, or that a rehabilitative approach was not appropriate in all cases
- Suggested the guideline needed a more victim-centred approach
- Emphasised the need for custodial sentences for some serious offences.

3.12 In addition, some individuals who indicated agreement at Question 1 voiced more fundamental concerns about the content of the guideline for young people, with comments indicating:

- Disagreement with an age-related approach to sentencing
- Disagreement with the proposed age threshold for the guideline.

3.13 These comments were similar to those made by individuals who expressed overall disagreement at this question (see paragraphs 3.17 to 3.20).

### **Disagreement or reservations about a principle-based approach to the guideline**

3.14 As shown in Table 1, around two-thirds of **individuals** indicated disagreement with the 'principle-based' approach adopted by the Council in preparing the draft guideline.

3.15 Individuals who indicated disagreement did not often comment directly on the approach of adopting a single principle-based guideline applicable to all offences, although one respondent argued that this approach was over-simplified, and suggested a modified 'middle' approach involving different guidelines for different groups of offences.

3.16 Instead, respondents generally expressed one or more of the following concerns related to the introduction of the proposed guideline:

- They disagreed with drawing a distinction between young people and older adults in the sentencing process – respondents said that all age groups (apart from children) should be treated the same in the eyes of the law and / or that age should not be a key issue in sentencing. Some highlighted the existing scope to consider the circumstances of individual cases in deciding on sentences.
- They disagreed with the age threshold of 25, should such a distinction be introduced, and drew attention to other areas in law which treated young people as adults at younger ages.
- They disagreed that young people up to age 25 lacked full maturity, or that any relative immaturity within this age group justified a different approach in sentencing. They also disagreed that early life experiences and personal circumstances should be regarded as significant factors in deciding on sentences for young people.
- They wished to see greater emphasis given to punishment and deterrence, and thought this was particularly important with young offenders as a way of discouraging further offending. In some cases, respondents expressed concern that the guideline might mean that no one under 25 would be given a prison sentence, however serious the offence.
- They wished to see the interest of victims given greater priority in the justice system.

3.17 The points above are discussed further in relation to Questions 2 and 3.

3.18 By and large, respondents in this group saw the guideline as part of a wider justice system that was seen as being too soft on crime and offenders, at the expense of



victims, communities, and wider society. These views were apparent in the responses to all of the questions in the consultation paper.

3.19 Occasionally, respondents said they did not wish to see any change in current sentencing arrangements, or they said that current provisions for children and young adults in the criminal justice system were sufficient, and that no change was therefore required.

3.20 Amongst the few **organisations** indicating disagreement or reservations about the approach adopted (either in their response to the tick-box question or in their comments), three considered the issue from a victim's perspective. While one stressed the need to take greater account of the impact of sentencing outcomes on victims in all cases, two had concerns about the sentencing of young people in very specific contexts:

- One organisation did not think it appropriate for the guideline to cover all types of driving offences, from low level offences to serious offences involving injury and death. This respondent argued that issues of maturity, culpability and responsibility were less relevant in this situation, given that drivers must pass a test of competence in order to drive on the road, and that the approach advocated did not take sufficient account of the impact on victims or families. This respondent hoped this distinction would be recognised in the Council's proposed guideline on driving offences.
- One organisation argued that the approach was not appropriate for offences related to domestic abuse and violence against women because of the complex dynamics and vulnerabilities of the victim in such cases. This respondent suggested that the wording of the draft guideline was too definitive in terms of the approach to be taken to sentencing young people and the acceptance of lack of maturity and capacity for change as factors in all cases, and called for a more conditional approach.

3.21 A fourth organisation (from the 'other' organisational category) called for the guideline to take a more clearly rights-based approach. This respondent expressed concern about the lack of references to the UNCRC (United Nations Convention on the Rights of the Child) and ECHR (European Convention on Human Rights), and about the lack of linkage to other youth justice initiatives.

## Other comments

3.22 In a few cases, individuals highlighted what they saw as the leading nature of Question 1, saying that sentencing and justice more generally should, of course, be *based on principles*. This included some who ticked 'agree' at the closed part of the question while

also noting that they did not necessarily agree with the particular principles proposed by the Council.

## Applicability of the guideline (Q2 and Q3)

3.23 Question 2 asked respondents if they agreed or disagreed that the guideline should apply to people under the age of 25.

3.24 Table 3.2 shows that, overall, just over a quarter of respondents (29%) agreed and 71% disagreed. However, there was a clear difference between the views of organisations and individuals on this question, with 94% of organisations (34 out of 36) agreeing, and a large majority of individuals (81%) disagreeing.

**Table 3.2: Question 2 – Do you agree or disagree that the guideline should apply to people under the age of 25?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	12	100%	–	0%	12	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	6	100%	–	0%	6	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	2	100%	–	0%	2	100%
Other organisations	3	60%	2	40%	5	100%
<b>Total organisations</b>	<b>34</b>	<b>94%</b>	<b>2</b>	<b>6%</b>	<b>36</b>	<b>100%</b>
Total individuals	44	19%	193	81%	237	100%
<b>Total (organisations and individuals)</b>	<b>78</b>	<b>29%</b>	<b>195</b>	<b>71%</b>	<b>273</b>	<b>100%</b>

3.25 A total of 236 respondents (40 organisations and 196 individuals) commented at Question 2. The sections below discuss, in turn, the views of those who agreed and the views of those who disagreed that the guideline should apply to those under the age of 25.

### **Agreement that the guideline should apply to those under the age of 25**

3.26 As shown in Table 3.2, a minority of respondents overall (29%) agreed that the guideline should apply to all those under the age of 25. However, amongst organisations, all but two respondents agreed. In general, organisations thought that this proposal was supported by the neurological and criminological evidence presented in the consultation paper. In particular, they agreed that the lack of maturity in those under the age of 25, the effect of childhood experiences and trauma, and the greater capacity of young people to rehabilitate and change merited a different approach to that adopted in the sentencing of adults. There was a widespread view that addressing the individual needs of young people convicted of crimes via welfare-based disposals would help reduce reoffending.

3.27 Individuals who agreed with the application of the guideline to those under the age of 25 gave similar reasons to those put forward by organisational respondents.

3.28 One individual respondent who agreed with the age 25 threshold provided detailed evidence supporting the variation in age thresholds related to different activities, a point that was commented on extensively by those who disagreed with the proposed age threshold – see paragraph 3.37).

3.29 Occasionally, respondents who indicated agreement with the age threshold of 25 at the tick-box question also put forward arguments for higher or lower cut-off points, as follows:

- Respondents mainly called for higher thresholds, arguing that this was justified by the neurological evidence on brain development. One children's organisation specifically argued for the age threshold to be 'inclusive' (i.e. to cover those 25 and under) so it was aligned with other legislation on corporate parenting and the entitlement to continuing care for care-experienced young people.
- One organisation representing the legal profession queried whether a threshold of 21 might be more aligned with public attitudes and expectations on this issue, and might also reflect current distinctions in criminal justice practice (e.g. relating to requirements for a criminal justice social work report to inform sentencing). This respondent pointed out that judges would continue to have discretion to apply the principles in the guideline to older offenders if an age of 21 was introduced.

- One justice service delivery organisation supported the applicability of the guideline to those under 25, but also urged the Council not to set a threshold any lower than 21 should the response to the consultation suggest deviation from this higher threshold.

3.30 In addition, some organisations called for flexibility in terms of the application of the guideline, or the principles on which it was based.

3.31 Respondents who indicated agreement with a threshold of 25 discussed two main areas of concern in their comments, as outlined in the following paragraphs.

#### *Differentiating between children and young people*

3.32 A range of mainly organisational respondents (local authorities, third sector and those in the 'other' category of organisations) discussed the implications of the guideline for those under the age of 18. They highlighted the fact that the UNCRC classified anyone under 18 as a 'child', and suggested that the guideline should, therefore, differentiate between those under 18 and those aged 18 to 25, and ensure that those in the younger age group were given the rights and protection appropriate to their age. One judicial organisation also commented on this issue, suggesting that the guideline could be clearer about the need, for those under the age of 18, to act in the best interests of the child, as required by the UNCRC.

3.33 It was also suggested that the guideline might (i) specifically state (at paragraph 2) that the definition of 'a young person' included 'a child up to the age of 18', and (ii) refer to both children and young people in its title.

#### *Age at offending / age at sentencing*

3.34 A number of respondents (including local authorities, third sector organisations, and organisations in the 'other' category) commented on the Council's proposal that the guideline would apply to those under the age of 25 at the time of sentencing, rather than at the time of offending. These respondents made a number of separate points on this issue, as follows:

- There should be flexibility on this matter, particularly for those close to 25 at the time of offending and just over the age of 25 at sentencing, and for those where there was a significant disparity in the age at offending and age at sentencing.
- The guideline might be applied in cases where an offender over the age of 25 had shown a capacity for rehabilitation, or where age at the time of offending could be

demonstrated to be relevant to the assessment of seriousness – a respondent raising this issue (a law reform body) suggested that a statement be included in the guideline to cover this situation: ‘This guideline applies to someone who is a young person at the time of sentencing, but should also be applied in the case of someone who was a young person at the time of offending to the extent that it may be relevant to the circumstances of the offending.’

- Young people should not be disadvantaged by delays in the criminal justice system, and that there should be protection against sentencing being delayed for those who are close to the age of 25 when the offence was committed.

3.35 An organisation representing the legal profession (that did not indicate agreement or disagreement at the closed question) also raised the issue of sentencing for historic offences committed when an individual was under the age of 25 (and of repeat offending, and the account to be taken of previous convictions and sentences in that context). They said that clarity on this issue was important for public understanding and confidence, but anticipated that this would be provided once the young person’s guideline and the Council’s sentencing process guideline were both available.

### Disagreement that the guideline should cease to apply at age 25

3.36 As shown at Table 3.2, the majority of respondents (71%) disagreed with a threshold of age 25. Individuals were much more likely than organisations to indicate disagreement, mainly because they thought a threshold of 25 was too high. There were four frequently discussed inter-linked themes identified in the comments from individuals offering this view:

- **Milestones and age-related legal thresholds:** Respondents frequently drew attention to milestones and age-related legal thresholds in arguing against an age limit of 25 for the guideline. These respondents argued that young people below the age of 25 were regarded as adults in many social and legal contexts, and that it was therefore anomalous not to do so in the criminal justice field. Respondents frequently referred to the legal age for voting in UK and Scottish elections, buying alcohol, joining the armed force, getting married, etc. They also referred to life experiences such as leaving school, transitioning to college or the workplace, buying a home or having children as markers of ‘adulthood’. They thought it was inappropriate for individuals to be treated as ‘adults’ by society or the legal system in other contexts but not within the criminal justice system.
- **The evidence base:** Respondents queried the evidence presented in the consultation paper on cognitive development, maturity, risk-taking behaviour, life circumstances, and reducing reoffending and / or did not think it provided a strong

enough basis for the proposed age threshold. Some accepted that young people may be less mature than older adults and may be affected by poor life circumstances (such as trauma and adverse childhood experiences), but they did not think this was a justification for treating all young people below the age of 25 differently from older people within the criminal justice system. Respondents did not often engage with the detail of the research presented in the consultation paper, and mainly referred to anecdotal evidence or personal observations in their responses. Occasionally, however, respondents drew attention to specific aspects of the research cited (e.g. the different rates at which different parts of the brain developed and the different rates at which individuals matured), or the interpretation of this for sentencing policy in explaining their views.

- **Responsibility and accountability:** Respondents argued that young people were mature enough to know right from wrong, and to be held accountable, as adults, for their actions before the age of 25, and that this would be undermined by the proposed guideline. There was also a view that setting the age at which young people were treated as ‘adults’ by the courts at 25 would discourage young people from behaving like adults until that point.
- **Observed behaviour and the response of the justice system:** Respondents often cited their own experience or second-hand knowledge of anti-social and criminal behaviour among young adults and children as justification for not setting an age threshold of 25. Respondents in this group were of the view that if you are ‘old enough to do the crime you are old enough to do the time’. They often suggested that such behaviour was encouraged by societal values that did not instil respect for authority, and a justice system that was perceived to be too ‘soft’. They wished to see an approach to sentencing which prioritised punishment and deterrence, and the interests of victims and communities. Occasionally, respondents said that a lower age threshold would be in line with the expectations of victims and the public and would encourage public confidence in the justice system.

3.37 Occasionally, individuals disagreed at Question 2 because they favoured a higher threshold, which they said was justified by the evidence.

3.38 Some individuals thought that any age selected would be arbitrary, as all young people were different and matured at different rates, dependent on individual psychological and circumstantial factors. Specific attention was also drawn to different rates of maturity in boys and girls. Some argued that maturity should therefore be assessed on an individual basis as part of the sentencing process, with one respondent saying that use of the guideline should depend on such an assessment. (Some in this group nevertheless offered alternative ages at which the guideline should cease to apply – see Question 3



below). It was also argued that all cases should be considered on their merits, and judges should be able use their discretion in doing this.

- 3.39 Two organisations disagreed with an age threshold of 25 at the closed question (see Table 3.2), and two further organisations expressed reservations about this in their comments. This included three organisations representing the interests of victims, who highlighted the need to take account of the impact on victims, and drew attention to implications of applying an age-related guideline in particular circumstances. In one case, it was argued that serious driving offences merited a different approach, given that all drivers are required to pass a test of competence. In the other case the respondent highlighted the specific nature of violence against women and argued that an age-based approach was not appropriate given the complex dynamics of such cases. This respondent drew a distinction between different types of maturity and argued that ‘in cases of sexual assault, to say the person had not reached emotional maturity until 25 could have a serious impact on both the sentencing outcome and the emotional wellbeing of the victims’.
- 3.40 The other organisation disagreeing or expressing reservations was a children and young person’s organisation that based their response on the views of those who had taken part in survey and engagement work on this issue. This organisation reported mixed views on the issue, with suggestions for age thresholds ranging from 18 to 25. Overall, this organisation proposed an age threshold of 18 for the guideline, but suggested that further consideration could be given to raising this in the future.

### **Other views on the appropriate age threshold**

- 3.41 One organisation representing the legal profession chose not to offer a firm view on the age threshold as they felt this was outwith their area of expertise. However, they noted the controversial nature of the suggested age threshold, the range of different approaches taken to this issue in other jurisdictions, the implications for other parts of the justice system, and the need for careful handling, should this proposal be adopted.

### **Alternative suggestions regarding age of applicability (Q3)**

- 3.42 Respondents who disagreed that the guideline should apply to people under the age of 25 were asked, at Question 3, for their views about what age the guideline should cease to apply. This was a two-part question: the first part of the question asked for specific suggestions for alternative ages, and the second part asked respondents for the reasons for their suggestion.



- 3.43 Altogether, 181 respondents who answered 'no' at Question 2 went on to answer the first part of Question 3 (180 individuals and 1 organisation), while 166 respondents (164 individuals and 2 organisations) answered the second part of the question.
- 3.44 A total of 171 respondents (170 individuals and 1 organisation) suggested an alternative age at the first part of Question 3. (Note that this figure and the analysis below excludes nine respondents who answered '0', '100' and '100+', and one who answered '25'.)
- 3.45 Respondents suggested age thresholds ranging from 8 to 35. The four most common suggestions were that the guideline should cease to apply at:
- 12 (suggested by 11% of those who offered a response; 19 out of 171 respondents)
  - 16 (suggested 36% of those who offered a response; 61 out of 171 respondents)
  - 18 (suggested by 38% of those who offered a response; 65 out of 171 respondents)
  - 21 (suggested by 6% of those who offered a response; 10 out of 171 respondents).
- 3.46 Other ages mentioned by one or two respondents were: 8, 10, 11, 17, 20, 30 and 35.
- 3.47 The two most favoured ages were 16 and 18, both accounting for more than a third of all suggestions. By and large, those making these suggestions offered the same rationale for their preferred age: they said that this age best represented the point at which somebody becomes an 'adult' and / or was aligned with other age-based milestones or legal thresholds representing 'adulthood'. For example, those suggesting 16 highlighted the fact that this was the age for voting in Scottish elections or getting married, those suggesting 18 highlighted the fact that this was the age for voting in UK elections or the age for buying alcohol. Respondents said that there should be alignment between legal rights and legal responsibilities.
- 3.48 They also said that this was the age at which young people started making and taking responsibility for significant life decisions in other areas of their lives.
- 3.49 Respondents also repeated points made at previous questions, arguing that young people of 16 or 18 knew right from wrong, and were old enough and mature enough to be treated as adults, and accept responsibility for their actions. Indeed, respondents often said that the difference between right and wrong was learnt at a much earlier age, but that it was nevertheless right that 'children' should be treated differently within the justice system.
- 3.50 The one organisation that offered an alternative age at the first part of Question 3 suggested a threshold of 18 (as already noted at paragraph 3.41). This was a children

and young person's organisation that based their response on the findings of a survey and other engagement work they had undertaken in which a majority of participants had favoured this age threshold. The reasons cited were similar to the reasons given by other respondents suggesting this age. However, this organisation also noted some support for higher thresholds of 21, 23 and 25, and suggested that this be kept under review in the future.

- 3.51 Those suggesting age 12, and other younger ages, as the threshold for the guideline generally argued that children of this age knew the difference between right and wrong; that crime was committed by children in this age group; that this would send out an appropriate message about behaviour; or that it tied in with the current (recently raised) age of criminal responsibility.<sup>4</sup>
- 3.52 Those suggesting age 21 (an age noted as a potential alternative by the Council) put forward arguments related to issues of maturity and responsibility, life stages and experience; alignment with current age distinctions in sentencing policy and practice; and public expectations. It was also suggested that judges would still have discretion to apply the guideline beyond such an age if this was merited by the circumstances.
- 3.53 Those suggesting ages of over 25 suggested that this better reflected the evidence bases on neurological development and the ongoing impact of childhood experiences, or said that it allowed for account to be taken of individuals with learning disabilities.
- 3.54 Those who answered '0' and '100' offered similar comments to those who did not offer a specific alternative age. They generally indicated disagreement with the premise of the proposed age-based guideline, and thought that individuals of all ages should be treated the same by the criminal justice system. Some said that to do otherwise represented 'age discrimination'. It was most common for respondents in this group to say that age was not a relevant factor, and that sentencing for all offenders should prioritise punishment, deterrence and public safety. However, they also occasionally argued that the sentencing of all offenders, regardless of age, should take account of individual circumstances, including trauma and adverse childhood events, and promote rehabilitation.

The one organisation that offered comments at Question 3 without suggesting an alternative age repeated their already stated view that the guideline was not appropriate for young people involved in serious driving offences.

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<sup>4</sup> Introduced via the Age of Criminal Responsibility Act (Scotland) 2019.

## 4 Principles and purposes of sentencing (Q4 to Q9)

4.1 The consultation paper explained that the proposed guideline on sentencing young people was intended to be read alongside the Scottish Sentencing Council's already developed guidelines on the principles and purposes of sentencing and the sentencing process. As such, it was proposed that the new guideline would include links to other Council guidelines to make this clear, and would concentrate on those issues specific to the sentencing of young people. In particular, the draft guideline stated the importance of taking an individualistic approach to the sentencing young people, which takes account of a young person's maturity and personal circumstances, and their greater capacity to respond to rehabilitation. Views were invited on this approach and on the content of relevant paragraphs in the draft guideline.

**Question 4:** Do you agree or disagree that the relationship between this guideline and the 'Principles and purposes of sentencing' guideline is set out clearly? [Agree / Disagree]

**Question 5:** Do you agree or disagree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person? [Agree / Disagree]

**Question 6:** If you do not agree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person, what additional information should it provide?

**Question 7:** Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline? [Agree / Disagree]

**Question 8:** Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person? [Agree / Disagree]

**Question 9:** Which, if any, other purposes of sentencing should be emphasised in this guideline?

### Relationship between draft guideline and other guidance (Q4)

4.2 Question 4 asked respondents if they agreed or disagreed that the relationship between the guideline on sentencing young people and the existing Council guideline on the principles and purposes of sentencing was set out clearly (i.e. in paragraphs 5 to 9 of the draft guideline).

4.3 Table 4.1 shows that, overall, 54% of respondents agreed and 46% disagreed. Whilst a majority of both organisations and individuals agreed, organisations were more likely to do so (79%, 26 out of 33), whereas individuals were more divided in their views with 51% agreeing and 49% disagreeing. Among organisations, local authorities were more likely than other organisations to agree that the relationship between the different guidelines was clear.

**Table 4.1: Q4 – Do you agree or disagree that the relationship between this guideline and the ‘principles and purposes of sentencing’ guideline is set out clearly?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	8	73%	3	27%	11	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	4	80%	1	20%	5	100%
Judicial bodies	1	50%	1	50%	2	100%
Legal profession	1	50%	1	50%	2	100%
Other organisations	3	75%	1	25%	4	100%
<b>Total organisations</b>	<b>26</b>	<b>79%</b>	<b>7</b>	<b>21%</b>	<b>33</b>	<b>100%</b>
Total individuals	115	51%	111	49%	226	100%
<b>Total (organisations and individuals)</b>	<b>141</b>	<b>54%</b>	<b>118</b>	<b>46%</b>	<b>259</b>	<b>100%</b>

4.4 Altogether, 130 respondents commented at Question 4 (29 organisations and 101 individuals). In general, individual respondents did not address the question in their comments, and in some cases, their comments suggested that they may not have understood the question. The comments of organisations indicated that there were differing interpretations of the relationship between the draft young people guideline and the ‘principles and purposes of sentencing’ guideline. For example, whilst some organisations saw the young person guideline as **supplementary** to the guideline on the principles and purposes of sentencing, others saw the young person guideline as **taking precedence over** the other guideline. Some organisations called for clarity

about precisely how the young people guideline related to these other guidelines. These views are discussed in more detail below.

### **Agreement that the relationship between the guidelines was clear**

- 4.5 Among organisations who thought the relationship between the guidelines was clear, a range of points were made.
- 4.6 Most often, organisations in this group simply reiterated their response to the closed question, commenting that the relationship between the draft guideline on young people sentencing and the guidelines on principles and purposes of sentencing and the sentencing process was clear. Those providing additional comments suggested that:
- Taken together, the different sets of guidelines provided ‘a clear cohesive framework’ for implementing a ‘consistent approach’ to the sentencing of young people.
  - It was clear that the guidelines on young people sentencing should be implemented ‘alongside and in conjunction with’ the principles and purposes of sentencing guideline.
  - The links made to other guidelines allowed the guideline on young people sentencing to be kept brief and made it clear that all the guidelines are part of a series and not stand-alone documents.
  - It was helpful that the draft guideline on young people sentencing contained a weblink to the principles and purposes of sentencing guideline.
- 4.7 Occasionally, organisations asked for clarification about certain aspects of the draft guideline (covering paragraphs 5 to 9) and / or its relationship to other guidelines. Specifically, it was suggested that:
- Paragraph 7 of the draft guideline should be clarified to say, ‘The *additional* following factors should be taken into account when sentencing a young person’. This point was made by a local authority.
  - The young people guideline should state explicitly that a judge should give their primary consideration to this guideline since the principles and purposes of sentencing guideline includes additional purposes (such as punishment) which may not be appropriate for the sentencing of young people. This point was made by third sector law reform organisations.

- The section on ‘the maturity of the young person’ should be clarified; in particular, there was a concern that the current wording – that a judge should take into account the maturity of a young person ‘when deciding how much a young person should be held responsible for their actions’ – could be interpreted as undermining the concept of criminal responsibility. There was a question about whether the intention here was to allow for ‘mitigation’ or whether the term ‘blameworthy’ was meant instead of the phrase ‘responsible for their actions’. This point was made by an organisation representing the legal profession.

4.8 Individuals who answered ‘agree’ at Question 4 usually qualified their responses. In particular, it was common for individuals to say that they agreed the relationship between the guidelines was clear, *but* they did not agree with the content of the guideline (e.g. in relation to the age limit of 25, the principle of sentencing decisions being based on age, or the primary purpose of sentencing a young person).

4.9 Less often, individuals simply reiterated their view that the relationship between the different guidelines was clear, without offering any additional comments.

4.10 However, some individuals did offer suggestions for improvement:

- The guideline could be shorter and even more simply explained.
- The guideline (or guidelines) could include ‘anecdotal quotes and stories from individuals with lived experience of the criminal justice system’ to help the public better understand sentencing decisions in relation to young people.
- The draft young people guideline should acknowledge that sentencing disproportionately affects people from deprived social backgrounds, and this (rather than age) is more likely to determine a young person’s life decisions.

### **Disagreement that the relationship between the guidelines was clear**

4.11 Organisations who answered ‘disagree’ at Question 4 or who did not reply to the closed question often made similar points. This group wanted to see the relationship between the draft young people guideline and other guidelines clarified and / or made more explicit. There were two main, related views expressed by a range of organisational respondents:

- Some organisations thought the draft young people guideline should be expanded to incorporate relevant information from the existing guidelines so that it stood on its own – without having to refer to other documents. Alongside this view, there were suggestions that greater prominence should be given in the young people guideline

to: (i) the nature / seriousness of the offence, and (ii) the impact of a crime on the victim(s) as important factors to consider in sentencing decisions.

- Other organisations said that there appeared to be a conflict between the principles and purposes of sentencing guideline and the draft young people guideline – both in relation to the **principles** and the **purposes** of sentencing. These respondents were unsure whether the draft guideline was intended to be considered by judges **in addition to**, or **instead of** the current sentencing guidelines. There was a call for greater clarity about how the guidelines should be used together in practice, and which should take precedence in any particular circumstance.

4.12 Occasionally, individuals who answered ‘disagree’ at Question 4 also suggested – like organisations – that the relationship between the draft young people guideline and other current guidelines was unclear and / or that the two were potentially in conflict. For example, the point was made that the principles and purposes of sentencing guideline states that ‘people should be treated equally, without discrimination’; however, the draft young person guideline asks judges to discriminate based solely on age, while also disregarding the fact that ‘most 18- to 24-year-olds in Scotland have little difficulty in discerning right from wrong or obeying the law’.

4.13 Some individuals simply stated that the relationship between the guidelines was ‘not clear enough’, was ‘ambiguous’ or was ‘poorly explained’.

### **Factors to be considered when sentencing a young person (Q5)**

4.14 Question 5 asked respondents if they agreed or disagreed that paragraph 7 of the draft guideline provided enough information about the factors that should be considered when sentencing a young person.

4.15 Table 4.2 shows that, overall, 37% of respondents agreed and 63% disagreed. There was a similar pattern of response among organisations and individuals. In both cases, around two-thirds of respondents disagreed.



**Table 4.2: Q5 – Do you agree or disagree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	3	27%	8	73%	11	100%
Local authorities and sector reps	3	33%	6	67%	9	100%
Justice service delivery orgs	2	40%	3	60%	5	100%
Judicial bodies	1	50%	1	50%	2	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	1	20%	4	80%	5	100%
<b>Total organisations</b>	<b>11</b>	<b>33%</b>	<b>22</b>	<b>67%</b>	<b>33</b>	<b>100%</b>
Total individuals	85	37%	143	63%	228	100%
<b>Total (organisations and individuals)</b>	<b>96</b>	<b>37%</b>	<b>165</b>	<b>63%</b>	<b>261</b>	<b>100%</b>

- 4.16 Respondents were asked to give reasons for their answer. Altogether, 154 respondents provided comments (31 organisations and 123 individuals). These indicated a great deal of overlap in the views of those who answered ‘agree’ and those who answered ‘disagree’ to the closed question – both among organisations and individuals.
- 4.17 Organisations (and some individuals) often suggested additional factors that should be taken into account regardless of whether they answered ‘agree’ or ‘disagree’. These types of comments are discussed together with responses to Question 6 below. The analysis presented here focuses on *other* issues raised by respondents in their comments at Question 5.

## **Agreement with the factors to be considered in sentencing a young person**

- 4.18 There were three main types of comment made by organisations who answered ‘agree’ at Question 5.
- 4.19 Most commonly, organisations simply reiterated their agreement – in some cases without providing additional detail. However, some organisations described the list of factors as ‘comprehensive’ and thought the guideline gave a ‘concise overview of the factors’ and / or set them out clearly. Occasionally, organisations in this group commented further, saying that they welcomed the reference to the UNCRC, or they agreed that a certain factor (e.g. the maturity of the young person) was particularly important to consider in sentencing.
- 4.20 The second main comment made by organisations was that further detail or clarification was needed in relation to each of the factors about why these particular issues were important to consider as part of the decision-making process. These comments are discussed below at paragraph 4.27.
- 4.21 The third type of comment was that, although the factors listed in paragraph 7 were important, additional factors should also be considered. (See Question 6 below.)
- 4.22 Individuals were much less likely to make unqualified statements of support for the factors listed in paragraph 7 of the draft guideline. Those who did, made comments that were similar to those made by organisations (e.g. ‘comprehensive and clear’; ‘provides a good overview of the different factors that would be involved in sentencing’; ‘factors are stated clearly’; etc.).
- 4.23 However, it was much more common for individuals who ticked ‘agree’ at Question 5 to say that ‘enough information is provided’, but that they did not agree with it.
- 4.24 Very occasionally, individuals who agreed in response to Question 5 made other comments – including suggestions about additional factors that should be taken into account when sentencing a young person (see Question 6 below).

## **Disagreement with the factors to be considered in sentencing a young person**

- 4.25 As noted above in paragraph 4.17, organisations (and some individuals) who disagreed (or did not answer the closed question) at Question 5 generally did so because they wanted further information and / or suggested additional factors to be taken into account when sentencing a young person. However, a range of organisations (including judicial, legal profession, third sector children’s organisations and third sector law reform organisations) made the following additional suggestions:

- If it is considered appropriate in the case of a young person to have regard to factors such as living environment, adverse childhood experiences and physical and mental health issues, this should be set out separately from the reference to the UNCRC, since the UNCRC covers young people only up to age 18.
- The UNCRC should be better reflected across the guideline. There was also a suggestion that the point referring to the ‘best interests of the young person’ should be moved to the top of the list to emphasise its importance as a key factor in sentencing.
- Guidance should be given to sentencers on how to balance these factors – in particular, the best interests of a young person under 18, where this must be the primary consideration – against the seriousness of any offence and the other principles of sentencing. One justice service delivery organisation also cautioned that, by highlighting a young person’s capacity for change, the impression may be created that older people are incapable of change – which desistance research indicates is not the case.
- Further detail should be provided about each factor, with examples of how they should be applied in practice. The point was made that without clearer guidance, judges may interpret each principle differently (e.g. judges may have different opinions on what the ‘best interests of the young person’ are).

4.26 Among individuals, those who disagreed generally expressed one of three views:

- They disagreed that the factors proposed should be taken into account when sentencing a young person. This group thought that the only factors that should be taken into account was whether the individual was guilty or not guilty, and whether the crime was intentional or not.
- They disagreed with the concept of an age limit on assessing a person’s maturity or capacity for change. This group argued that (i) not all under-25s are immature, and (ii) older people also have the capacity to change their behaviour.
- Less often, this group simply suggested the information provided at paragraph 7 of the draft guideline was ‘ambiguous’, ‘not enough’, or ‘vague’ without providing further details.

### **Requests for clarification about factors to be considered in sentencing a young person**

4.27 Occasionally organisations and individuals identified areas where they thought clarification was needed in the draft guideline. Such comments were made irrespective

of whether the respondent ticked 'agree' or 'disagree' at Question 5 (or did not answer the closed question). Respondents asked for clarification about:

- Whether the factors listed in paragraph 7 of the young person guideline are *in addition to* the more general factors contained in the principles and purposes of sentencing guideline. A respondent from the legal profession thought this was the intention but thought it should be clear.
- This same respondent also suggested that further information should be included about what is meant by maturity of the young person being 'not fully developed' – for example, by summarising in a sentence or two the scientific research on the three identified stages of development (physical, intellectual and emotional).
- Whether there is the expectation that young people who are found (or plead) guilty should have sentencing deferred to allow for a background report to be compiled. This question was raised by a local authority.
- How the 'level of maturity' of a young person and their 'capacity to change' would be assessed by a judge / sheriff. This issue was raised by a local authority and some individual respondents. One local authority highlighted the work of their Youth Justice Social Work team in using age-appropriate risk assessments<sup>5</sup> alongside a Structured Professional Judgement approach to identify the factors that need to be considered when sentencing a young person.

4.28 Finally, the point was made by one third sector organisation that those making decisions about sentencing are subject to the same biases and social influences as other members of society. This organisation called for the guideline to be more specific about how decisions are to be taken so that sentencing decisions are not influenced by stereotypes (about gender, domestic abuse, gender-based violence and young victims).

#### **Other information that should be taken into consideration (Q6)**

4.29 Respondents who disagreed at Question 5 were asked to say, at Question 6, what additional information should be provided about the factors to be taken into account when sentencing a young person. This was an open question answered by 147 respondents (32 organisations and 115 individuals). (Note that relevant comments made at Question 5 have also been incorporated here.)

4.30 Both organisations and individuals highlighted additional factors they thought should be taken into account in sentencing a young person. The factor mentioned most

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<sup>5</sup> Short Term Assessments of Risk and Treatability: Adolescent Version (START: AV).

frequently was childhood trauma (or adverse childhood experiences (ACEs)). Respondents highlighted this as *the* crucial factor, pointing out the strong association between experiences of childhood trauma and adversity and subsequent offending. Some suggested this should be included as a separate point under paragraph 7, and thought this point should briefly outline the full range of adverse childhood experiences that are potentially relevant – including family breakdown, child abuse and neglect, experience of being taken into care, bereavement, loss, etc. Some who raised this issue called for ‘trauma-informed sentencing’, with appropriate training provided on this.

- 4.31 However, there was also an alternative view that childhood experiences of domestic abuse, in particular, are not invariably linked to the perpetration of, or experience of, domestic abuse in adulthood. Therefore, it was argued that the consideration of ACEs as a mitigating factor in domestic abuse cases should not allow male abusers to avoid responsibility / culpability for their behaviour.
- 4.32 Other factors that both organisations and individuals thought should be taken into account when sentencing a young person were:
- Mental health problems, learning difficulties / disabilities, autistic spectrum disorder, (or neurodiversity in general), ADHD and brain injury experienced by the young person, all of which could affect their decision-making ability
  - Speech, language and communication needs which have been shown to be linked to more serious violent offences
  - The young person’s experience of discrimination and negative experiences of authority (particularly for those from ethnic minority backgrounds)
  - The age of the young person at the time the offence was committed, and at the point of sentencing – particularly if a significant amount of time had elapsed between the two dates
  - The young person’s experience of poverty and structural disadvantage
  - The young person’s family circumstances (including the health and emotional difficulties of their parents / carers and / or whether the young person themselves is a parent or carer of children), the involvement of positive adult role models and the young person’s social / community bonds.
- 4.33 One young people’s organisation highlighted a range of additional factors which were considered – by young people – to be relevant in sentencing decisions relating to young people, including caring responsibilities, additional support needs, disabilities, gender, addiction issues, etc. There was also a suggestion from this group that alcohol

and drug addiction should be treated primarily as a public health issue, rather than as a reason for imprisonment.

- 4.34 A range of organisations thought that relevant research should be summarised and included in the guideline to strengthen the discussion of the factors that should be considered when sentencing a young person.
- 4.35 However, there was a contrasting view from some respondents, including third sector victim support organisations and some individuals. This group commented that the factors listed in the draft young people guideline were primarily focused on the needs and welfare of the young person. Among this group, there was a recurring view, particularly among individuals, that sentencing decisions should prioritise (i) the impact on the victim(s), their family, friends, and colleagues, and (ii) the needs of society. Individuals also thought that sentencing decisions should involve consideration of (i) the young person's specific role in committing the offence, (ii) any previous offences, and (iii) the nature of the offence / previous offences.
- 4.36 There was disagreement among respondents (including among young people who responded to the consultation) about whether the perpetrator's socio-economic background, educational level, professional standing and future career / job prospects should be factors in decisions about sentencing. On the one hand, some children's organisations and third sector law reform organisations thought the guidance on the best interests of the young person should be strengthened – arguing that consideration of the best interests of a young person is essentially a forward-looking exercise which involves considering the likely impact of a sentence on the individual's future prospects. For example, a sentence may have more of an adverse effect on a young person than an older person because it may affect a young person's future employment prospects for a significantly longer period of time, thus denying them access to an important protective factor against further reoffending.
- 4.37 On the other hand, victim support groups argued it was inappropriate to consider these factors in sentencing and thought the guidelines should be applied equally to everyone. These respondents were particularly concerned that sentencing decisions might be influenced by consideration of the 'privileges' that some young people may have. This was seen to be particularly inappropriate in cases of domestic abuse offences or gender-related violence.
- 4.38 Other, more general suggestions were that:
- The young people guideline should be a stand-alone document setting out *all* the factors that should be taken into account, rather than cross-referencing factors set out in other guidelines (i.e. the principles and purposes of sentencing guideline) or the research papers which informed the guideline. This suggestion was made by a

range of organisations, including judicial bodies, third sector organisations and local authorities.

- The guideline should contain more case studies and practical detail. These suggestions were made by individuals.

### **The emphasis on rehabilitation in sentencing young people (Q7)**

- 4.39 The principles and purposes of sentencing guideline states that the purposes of sentencing may include (in no particular order) (i) protection of the public, (ii) punishment, (iii) rehabilitation of offenders, (iv) giving the offender the opportunity to make amends, and (v) expressing disapproval of offending behaviour. The consultation paper stated that these purposes may also apply to the sentencing of a young person to a greater or lesser extent. However, the draft guideline (paragraph 10) recommends that **rehabilitation** should be given greater emphasis when sentencing a young person.
- 4.40 Respondents were asked if they agreed or disagreed that rehabilitation should be given greater emphasis than other purposes when sentencing young people.
- 4.41 Table 4.3 shows that, overall, just over half (51%) of respondents agreed while 49% disagreed. However, there were clear differences in the views of organisations and individuals on this question. Organisations were nearly unanimous in their agreement (32 out of 33 agreed), whereas individuals were more divided in their views with 44% agreeing and 56% disagreeing.



**Table 4.3: Q7 – Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	11	92%	1	8%	12	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	4	100%	–	0%	4	100%
<b>Total organisations</b>	<b>32</b>	<b>97%</b>	<b>1</b>	<b>3%</b>	<b>33</b>	<b>100%</b>
Total individuals	100	44%	128	56%	228	100%
<b>Total (organisations and individuals)</b>	<b>132</b>	<b>51%</b>	<b>129</b>	<b>49%</b>	<b>261</b>	<b>100%</b>

4.42 Respondents were asked to give reasons for their answers, and altogether, 200 respondents (35 organisations and 165 individuals) provided further comments.

4.43 Organisations and individuals who agreed in response to Question 7 made similar comments in discussing their support for an emphasis on rehabilitation. These views contrasted sharply with the views of those (overwhelmingly individuals) who disagreed at Question 7. The latter group generally questioned the efficacy of rehabilitation and / or preferred a greater emphasis on punishment in the sentencing of young people. Further detail of these views is presented below.

### **Agreement that rehabilitation should be emphasised**

4.44 Among organisations agreeing that rehabilitation should be given greater emphasis than other purposes when sentencing young people, there was a general endorsement

of the arguments set out in the consultation paper. In general, respondents thought that an emphasis on rehabilitation (i) was consistent with an international human rights framework, and with research that shows the potential for a young person to change their behaviour, (ii) was likely to reduce reoffending, (iii) provided a way to address the young person's adverse early life experiences, and (iv) was likely to benefit the individual and society as a whole. Occasionally, organisational respondents also highlighted the statement in the consultation paper that a majority of the public also believe that rehabilitation should be the most important thing Scottish courts should be trying to achieve when sentencing young people.

- 4.45 Individuals ticking 'agree' at Question 7 often made similar comments to organisations. However, individuals were more likely than organisations to also raise caveats. For example, it was relatively common for individuals to say that they agreed with an emphasis on rehabilitation 'unless the young person is posing a threat to society', or 'unless the young person is a habitual offender', or 'only in cases where rehabilitation is likely to be beneficial'. Less often, individuals in this group said that they agreed with the emphasis on rehabilitation, but thought that there should also be a punishment element to a young person's sentence to ensure 'justice for victims'. There was also a slightly different recurring view among individuals that rehabilitation should not be emphasised *only* for young people, but for *all* offenders where this is possible.
- 4.46 Organisations seldom raised these types of caveats. However, two organisations (neither of which answered the closed question) raised similar issues. The first, an organisation representing the legal profession, suggested that the guideline should make it clear that in 'normal circumstances', rehabilitation is the priority, but should also set out how this approach should be qualified in the most serious of cases where the purposes of public protection and punishment may be of greater priority. The second organisation – from the third sector – commented that rehabilitation in the context of domestic abuse needs careful consideration. This respondent highlighted the 'well-documented manipulative and controlling behaviour' of perpetrators of domestic abuse and noted that such perpetrators will frequently express a willingness to change their behaviour, but nonetheless they will continue to abuse women and children. The organisation raising this point argued that any sentencing decisions (or rehabilitation programmes) for young male perpetrators of gender-based violence should also ensure the safety of, and support for, victims.
- 4.47 A further caveat repeatedly raised by both organisations and individuals was that, if rehabilitation is to be emphasised in the sentencing of young people, then it must be properly funded and appropriate services to support rehabilitation need to be more widely available. There was also a suggestion that sentencing judges would need to be more knowledgeable about local services and confident that rehabilitation support is available. One local authority made the point that there is currently limited capacity

within the criminal justice system itself to contribute to genuine rehabilitation. There was also a call for greater investment in youth work services.

4.48 Organisations and individuals often made comments about the nature of effective rehabilitation services. Such services should (according to respondents):

- Be evidence-based, person-centred, and trauma-informed
- Be gender-informed (in the case of rehabilitation programmes for domestic abuse)
- Be delivered through multiagency co-operation, addressing welfare, housing, education, physical health, and mental health and wellbeing issues, as well as the young person's offending
- Support connectedness between the young person and communities
- Engage young people in skills-based training and in the development of safe, stable, predictable relationships
- Incorporate restorative justice approaches – giving the young person the opportunity to make amends
- Involve them in a 'buddying role' to share their story with their peers
- Provide access to therapeutic arts
- Focus on building personal strengths.

4.49 Some organisations highlighted specific types of programmes that they thought were highly effective including the use of Problem-Solving Courts (reportedly used in Aberdeen), and Structured Deferred Sentences (reportedly used in South Lanarkshire). Some third sector organisations also discussed the work of their own organisation, presenting evidence of high rates of desistance. One individual respondent pointed to the justice system in Sweden as a model for Scotland.

### **Disagreement that rehabilitation should be emphasised**

4.50 All but one of the respondents who answered 'disagree' at Question 7 were individuals. The one organisation that indicated disagreement in response to Question 7 made the following points: (i) rehabilitation should be considered where it is *a/so* the best course of action for the victim, (ii) the victim's needs should also be taken into account in any action intended to support the rehabilitation of the perpetrator, and (iii) these principles should apply regardless of the age of the perpetrator.

- 4.51 Individuals who did not think rehabilitation should be emphasised in the sentencing of young people commonly expressed the following views:
- They saw the proposed focus on rehabilitation of criminals as ‘unfair’ to victims and / or wider society.
  - They believed that rehabilitation ‘does not work’ and gives the general public the impression that the criminal justice system is ‘far too lenient’.
  - They argued that ‘actions should have consequences’, and that punishment was therefore important. (Some suggested that punishment should be the priority.)
  - They emphasised the importance of sentencing acting as a deterrent.
- 4.52 Less often, respondents in this group suggested that the emphasis given to rehabilitation should depend on the seriousness of the crime and the attitude of the offender – and thus, decisions about sentencing should be made on a case-by-case basis.

### **Rehabilitation as a primary consideration (Q8)**

- 4.53 Whilst Question 7 asked respondents if they agreed or disagreed that rehabilitation should be given greater emphasis than other purposes of sentencing in the draft guideline, Question 8 asked if they agreed or disagreed that rehabilitation should be a primary consideration when sentencing a young person.

Table 4.4 shows that the pattern of response to this question was similar to that of Question 7 above. Overall, just over half of respondents (55%) agreed while 45% disagreed, with clear differences apparent in the views of organisations and individuals. Organisations were almost unanimous in their agreement (33 out of 34 agreed), whilst individuals were divided in their views – with 48% agreeing and 52% disagreeing.

**Table 4.4: Q8 – Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	11	100%	–	0%	11	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	2	100%	–	0%	2	100%
Other organisations	4	80%	1	20%	5	100%
<b>Total organisations</b>	<b>33</b>	<b>97%</b>	<b>1</b>	<b>3%</b>	<b>34</b>	<b>100%</b>
Total individuals	112	48%	120	52%	232	100%
<b>Total (organisations and individuals)</b>	<b>145</b>	<b>55%</b>	<b>121</b>	<b>45%</b>	<b>266</b>	<b>100%</b>

- 4.54 Respondents were asked to give reasons for their views, and 196 (34 organisations and 162 individuals) provided comments.
- 4.55 In most cases respondents (both organisations and individuals) answering this question, regardless of whether they ‘agreed’ or ‘disagreed’, simply referred back to comments they had made at Question 7 (‘see my response to Question 7’, ‘see above’, etc.) without offering additional comments. Those who *did* provide additional comments often simply repeated points they had made in response to Question 7. These views are not repeated here. Instead, the focus here is on *additional* issues raised by respondents.
- 4.56 A recurring view among individuals was that rehabilitation **should** be a primary consideration, ‘but not the only consideration’; a slightly different view also offered was that rehabilitation was important, ‘but not the **most** important factor’. Respondents who made such statements did not always elaborate. Those who did, irrespective of whether they ‘agreed’ or ‘disagreed’ at Question 8, often suggested that the nature and seriousness of the crime and the young person’s willingness / ability to change were also important factors to consider. This type of comment was less likely to be

made by organisations, although one organisation representing the legal profession (which did not respond to the closed question) also made this point.

### **Agreement that rehabilitation should be a primary consideration**

4.57 Among organisations answering ‘agree’ at Question 8, the following *additional* points were made (i.e. additional to the points made at Question 7):

- The primary consideration when sentencing a young person should be what is in the young person’s best interests. This view was expressed by a local authority and a third sector organisation.
- It would be good practice for courts to have a framework for assessing a young person’s risk of reoffending and placing young people in the most relevant service / project to their level of risk. Similarly, rehabilitation programmes need to be tailored to the level of self-awareness and cognitive / executive function of the young person. These views were expressed by third sector children’s organisations.
- There was a call from one third sector children’s organisation for the guideline to include clear information on when (if ever) it is appropriate to remand a young person and how this decision would support the rehabilitation of the young person – who may, in fact, be innocent of the charge.
- Given the high social and economic cost to the public of repeated offending, rehabilitation programmes should be seen (and presented) as value for money. This point was made by a third sector children’s organisation.

4.58 Individuals who answered ‘agree’ at Question 8, and offered *additional* points (i.e. additional to the points made at Question 7) *either* expressed unqualified support for the proposal that rehabilitation should be a primary consideration when sentencing a young person *or* they said it should be a primary consideration, but *not the only consideration* as noted in paragraph 4.57 above.

### **Disagreement that rehabilitation should be a primary consideration**

4.59 All but one of the respondents who disagreed that rehabilitation should be a primary consideration in the sentencing of young people were individuals.

4.60 The one organisation disagreeing at Question 8 raised a specific issue in relation to driving offences. This organisation argued that rehabilitation (in the form of driver improvement, speed and drink awareness courses, etc.) could be of benefit for ‘less

serious, low level driving offences where there are no consequences'. However, this respondent thought that the primary purposes when sentencing a young person for any driving offence should be – in this order – (i) to deter, (ii) to punish and (iii) to rehabilitate. Furthermore, with regard to serious driving offences, the primary purpose of sentencing should be to send a clear message of deterrence to the general population of road users – in line with the Government's road safety strategy, and to protect the wider public.

- 4.61 Comments made by individuals who disagreed at Question 8 overlapped to a large extent with their comments at Question 7. This group generally focused on the importance of punishment over (or, in some cases, in addition to) rehabilitation. Some suggested that a focus on rehabilitation should depend on the nature and severity of the crime and any previous convictions the young person had.

#### **Other issues raised in relation to Question 8**

- 4.62 A small number of additional issues were raised by organisations (and one individual) as follows:
- A judicial body (which did not answer the closed question) queried the use of the term 'a primary consideration' and asked for clarity about whether it is intended 'as a matter of policy' that rehabilitation be the primary consideration.
  - An individual respondent (who did not answer the closed question) suggested that there appeared to be little consistency between the aims of the guideline as drafted, and the implications of other aspects of sentencing or the recording of convictions in the criminal justice system. This respondent noted that a young person's ability to change may be adversely affected depending on the nature of the offence they are convicted of. Examples were given in relation to sexual offences, domestic offences and driving offences. In such cases, a young person may be made the subject of registration requirements or may be disqualified from driving. Sentencing in such cases may have considerable consequences for the young person's future.
  - Finally, there was a suggestion from a third sector organisation that 'recovery' – rather than rehabilitation – should be the primary consideration when sentencing a young person. This respondent thought the term 'recovery' incorporates the concepts of rehabilitation *and* making amends to the victim(s) and wider society.



## Other purposes of sentencing for young people (Q9)

- 4.63 Question 9 asked respondents for their views about any other purposes of sentencing that should be emphasised in the guideline. This was an open question and 179 respondents (33 organisations and 146 individuals) replied.
- 4.64 There were four main themes in respondents' comments. These related to (i) making amends, (ii) public protection, (iii) justice for victims, and (iv) punishment. Each of these are discussed briefly below, followed by a summary of other issues raised by respondents at Question 9.

### Making amends

- 4.65 Among organisations of all types and some individuals there was a recurring view that one of the other purposes of sentencing which should be emphasised in the young people guideline is that of making amends. This group of respondents identified a range of potential benefits from giving a young offender the opportunity to make amends through the use of restorative justice practices, including:
- Contributing to the young person's rehabilitation and thereby reducing reoffending
  - Helping the young person to recognise and appreciate the consequences of their actions and the harm they have caused
  - Helping victims to move on from the harm they experienced
  - Promoting community confidence in the justice system.
- 4.66 There was also a suggestion that an emphasis on making amends would help to increase public support for the young people guideline. However, there was also a view that restorative justice services needed to be adequately funded to support this element of the purpose of sentencing.
- 4.67 Some respondents commented that research studies have shown that restorative justice activities are particularly effective in the context of more serious offending. However, others noted that restorative justice approaches may not be appropriate in all cases. These respondents argued that giving the offender the opportunity to make amends must not be placed above the wellbeing of the victim.
- 4.68 Another caveat was also raised by an individual who commented that more consideration needs to be given to the sentencing of young people with learning difficulties and 'lower intellectual skills' who may not be aware of their own wrongdoing, or able to understand the harm they have caused to others.

## Public protection

- 4.69 It was also common for organisations and individuals to highlight the importance of public protection as one of the purposes of sentencing for young people – although the issue was raised more by individuals than organisations. Among organisations, the issue of public protection was raised most often by local authorities, although occasionally other organisations raised it too.
- 4.70 A young people’s organisation suggested that rehabilitation, whilst important, should never be prioritised over protection of the public.
- 4.71 One local authority respondent pointed to the statement in the consultation paper that 50% of respondents in a national survey of public perceptions of sentencing thought that protecting the public was the most important purpose of sentencing. This respondent suggested that it may be worthwhile to include a paragraph in the young people guideline explaining how a focus on effective rehabilitation of young people contributes to public safety, through reduced inequality and reduced offending.
- 4.72 Among individuals, the importance of public protection was a strong theme in the comments at Question 9, and there was a suggestion that ‘releasing a violent, repeat offender back into the community achieves nothing’ and results in communities losing faith in the justice system.

## Justice for victims

- 4.73 Organisations and individuals also emphasised the importance of recognising the impact of crime on victims – and providing support to victims when sentencing a young person. Some respondents highlighted the significant harms – both physical and psychological – that may be experienced by victims and their families. It was noted that, in certain cases, these harms may amount to ‘life-long sentences’ for the victims / families. Those who raised this issue often called for greater weight to be given to victim statements in sentencing decisions.
- 4.74 Some individuals suggested that the impact on the victim should be given much more consideration in sentencing than the needs of a young offender.

## Punishment

- 4.75 Individuals were more likely than organisations to emphasise punishment as a purpose of sentencing for young people. Individuals did not generally elaborate on what they meant by ‘punishment’ although some suggested that this would involve detention

(prison or other secure unit) of some type (sometimes together with rehabilitation), 'longer sentences', full life sentences with 'no time off for good behaviour', punishment that 'fits the crime' (e.g. 'more severe' or 'stiffer' sentences for serious crimes such as knife crime, murder or rape), etc. Individuals often perceived that punishment acted as a deterrent.

- 4.76 Organisations seldom mentioned punishment as a purpose of sentencing for young people. One organisation specifically stated that, in their consultation with young people, punishment and expressing disapproval of offending behaviour were generally considered less important. However, one judicial body noted that if members of the public are to have confidence in sentencing, then punishment and the need for public protection would be essential ingredients in the process.

### Other purposes of sentencing

- 4.77 Less often, organisations or individuals suggested other purposes of sentencing should also be emphasised in the draft young people guideline, including supporting those with mental health or addiction issues, supporting those who are homeless, and providing family support.
- 4.78 Some individuals also reiterated previously expressed views that there should be no difference in the purposes of sentencing young people as compared with adults.

### Relationship between draft young people guideline and existing guideline

- 4.79 As already noted in relation to Question 4 above, there were differing understandings about the relationship between the draft young people guideline and the principles and purposes of sentencing guideline. This issue rose again at Question 9, with organisations expressing different views. For example:
- There was a view that it was not necessary to emphasise **any** other purposes of sentencing in the young people guideline because the guideline already refers to the principles and purposes of sentencing guideline, which lists all other purposes of sentencing.
  - There was a second view that the other purposes of sentencing set out in the principles and purposes of sentencing guideline were **all** relevant when sentencing a young person. Organisations generally thought that the emphasis when sentencing a young person should be on rehabilitation; however, other purposes of sentencing may need to be emphasised depending on the circumstances of the case.

- A third view was that clarification was needed about the interaction between the draft guideline and the principles and purposes of sentencing (as discussed in relation to Question 4 above).

## 5 Assessment of seriousness (Q10)

- 5.1 The consultation paper highlighted the importance of the assessment of seriousness as a factor in deciding on a sentence for all convicted individuals. It explained that the assessment of seriousness will be covered in the sentencing process guideline, and that the relevant section in the draft sentencing young people guideline was intended to highlight additional considerations which may be relevant when sentencing a young person. This was covered at paragraphs 11 and 12 of the draft guideline.
- 5.2 A single question, Question 10, asked respondents if they thought the section in the guideline on the assessment of seriousness of an offence was helpful, as follows:

**Question 10:** Is the section on the assessment of seriousness helpful? [Yes / No]

- 5.3 Table 5.1 shows that, overall, a majority of respondents, 55%, said 'yes' and 45% said 'no'. There were differences between organisations and individuals on this question. Whilst three-quarters of organisations (24 out of 32) answered 'yes', individuals were more divided in their views with 53% saying 'yes' and 47% saying 'no'. There were also differences among organisations – while a third of local authorities and all the respondents in the 'other' organisational category answered 'no', all other organisations, with the exception of one third sector body, answered 'yes'.

**Table 5.1: Q10 – Is the section on the assessment of seriousness helpful?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Third sector organisations	10	91%	1	9%	11	100%
Local authorities and sector reps	6	67%	3	33%	9	100%
Justice service delivery orgs	4	100%	–	0%	4	100%
Judicial bodies	3	100%	–	0%	3	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	–	0%	4	100%	4	100%
<b>Total organisations</b>	<b>24</b>	<b>75%</b>	<b>8</b>	<b>25%</b>	<b>32</b>	<b>100%</b>
Total individuals	118	53%	106	47%	224	100%
<b>Total (organisations and individuals)</b>	<b>142</b>	<b>55%</b>	<b>114</b>	<b>45%</b>	<b>256</b>	<b>100%</b>

5.4 Altogether, 124 respondents (33 organisations and 91 individuals) commented at Question 10. The sections below look at general comments on the section from those who answered ‘yes’ and those who answered ‘no’ to the closed question. Comments from respondents who did not answer the closed question largely expressed concerns about the section and the comments of these respondents are therefore covered in the second section below.

### Views of those who thought the section on seriousness was helpful

5.5 Respondents who thought the section on seriousness was helpful offered a range of comments including that it:

- Was clear and accessible, and that the link to the sentencing procedure guideline was useful
- Would provide a useful non-prescriptive reminder for judges that reflected case law in this area

- Highlighted the need to take account of seriousness and the impact on victims
  - Drew attention to the difference in assessing culpability in younger and older people.
- 5.6 However, some in this group qualified their overall view that the section was helpful by calling for greater clarity about the need to consider ‘harm’ and issues related to ‘culpability’ and ‘maturity’ separately. They also thought it was important for the guideline to consider additional factors and circumstances, other than just age and maturity, which can contribute to culpability.
- 5.7 There were also some suggestions (from individuals and organisations) that the language used in the section could be more user-friendly, with simpler terms or explanations provided for concepts such as ‘culpability’ and ‘maturity’.

#### **Views of those who did not think the section on seriousness was helpful**

- 5.8 Respondents who did not think that this section of the guideline was helpful frequently argued that age (or maturity) was not relevant to assessing the seriousness of an offence. Respondents offering this view included individuals and organisations who said that the impact on victims was not materially affected by the age of the perpetrator. Some organisations drew attention to particular types of offences in their comments – namely domestic abuse offences and violence against women, and driving offences – and were particularly keen that the assessment of seriousness in such cases should not be affected by the age or maturity of the perpetrator.
- 5.9 However, among other organisational respondents, there was general agreement that culpability was linked to age and maturity and, thus, was a relevant consideration in the sentencing of young people. In this context, there was a specific suggestion, put forward by local authorities and respondents in the ‘other’ category of organisations, that paragraphs 11 and 12 might be removed from the guideline, with the issue of culpability covered at paragraph 7 along with other factors to be considered by the judge in arriving at an appropriate sentencing decision.
- 5.10 Those respondents offering additional or alternative views as to how the section might be revised or amended, suggested that:
- Rather than relying on a cross-reference to the sentencing process guideline, the section should include a fuller self-contained explanation of the factors to be considered in assessing culpability and seriousness in order to provide proper context. There were suggestions that the impact on victims and repeat offending might be considered as relevant factors in considering culpability and seriousness.



- Explicit direction about the stage at which maturity and capacity should be considered in the sentencing process should be included (to differentiate the approach to be taken with young people from that to be used with older people, as set out in the sentencing process guideline).
- Other factors besides maturity could also affect culpability and should be assessed on an individual basis, and this should be covered in the guideline.
- The section should cover how maturity is to be assessed – it was suggested that the latter would require external expert input.
- Paragraphs 11 and 12 should be redrafted, and / or reordered to give greater priority to maturity as a factor in assessing culpability in young people.
- The reference to ‘character’ should be removed to avoid perpetuating negative perceptions of and outcomes for young people from disadvantaged backgrounds
- The section should refer to maturity of younger people being ‘less developed’ rather than ‘lower’ than an older person in order to convey the fluid nature of maturity.

5.11 There was also a range of more detailed comments about the language and overall presentation and coverage of the section, with some individuals criticising the text for being vague, meaningless and lacking in detail, and calling for it to be written in plain English. There were specific calls for clear definitions and further explanations of ‘seriousness’ and ‘maturity’.

5.12 As with other questions, it was common for individuals who disagreed that this section of the guideline was helpful to reiterate more general concerns about the approach advocated in the guideline.

## 6 Identifying the most appropriate sentence (Q11 to Q15)

6.1 The consultation paper invited views on the sections in the draft guideline intended to assist judges in deciding on an appropriate sentence for a young person. It set out the importance of having sufficient information to reach a sound sentencing decision and provided guidance on (i) the proposed features of an appropriate sentence and (ii) the approach to be taken in selecting from the full range of available sentences. Referrals and remittals to the children's hearing system were also covered. Six questions asked for views, as follows:

**Question 11:** Do you agree or disagree that paragraph 13 of the guideline identifies the information which is of most relevance to sentencing a young person?  
[Agree / Disagree]

**Question 12:** Do you agree or disagree with paragraph 14 of the guideline stating that cases should be referred to a children's hearing for advice where it is competent to do so? [Agree / Disagree]

**Question 13:** Do you agree or disagree with the proposed features of an appropriate sentence for a young person set out at paragraph 15 of the guideline?  
[Agree / Disagree]

**Question 14:** Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate? [Agree / Disagree]

**Question 15:** Do you agree or disagree that judges should consider remitting each case to a children's hearing for disposal, where it is competent to do so? [Agree / Disagree]

### Information most relevant to sentencing a young person (Q11)

6.2 Paragraph 13 of the guideline required judges to ensure they have sufficient information to decide on an appropriate sentence for a young person. It set out examples of the type of information and advice that a judge might use in reaching a decision. This included addiction and accommodation issues, the physical and mental health of the young person, and whether the young person had been in care. It also included whether any proposed sentence was likely to be effectively implemented and the steps that might be taken to increase the likelihood of effective implementation.

6.3 Question 11 asked respondents if they agreed or disagreed that this information was of most relevance in sentencing a young person.

6.4 Table 6.1 shows that, overall, 38% of respondents agreed and 62% disagreed. There was a mix of views on this question among organisations, with 46% (16 out of 35) agreeing and 54% (19 out of 35) disagreeing. This pattern of response was reflected in those of local authorities and justice service delivery bodies, whilst judicial bodies and ‘other’ organisational respondents were more likely to disagree than agree in response to this question. By contrast, third sector organisations were more likely to agree than disagree. The single legal profession body answering the closed question indicated agreement. Nearly two-thirds of individual respondents (63%) disagreed.

**Table 6.1: Q11 – Do you agree or disagree that paragraph 13 of the guideline identifies the information which is of most relevance to sentencing a young person?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	7	64%	4	36%	11	100%
Local authorities and sector reps	4	44%	5	56%	9	100%
Justice service delivery orgs	2	40%	3	60%	5	100%
Judicial bodies	1	25%	3	75%	4	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	1	20%	4	80%	5	100%
<b>Total organisations</b>	<b>16</b>	<b>46%</b>	<b>19</b>	<b>54%</b>	<b>35</b>	<b>100%</b>
Total individuals	81	37%	138	63%	219	100%
<b>Total (organisations and individuals)</b>	<b>97</b>	<b>38%</b>	<b>157</b>	<b>62%</b>	<b>254</b>	<b>100%</b>

6.5 Respondents were asked to provide reasons for their answers, including examples of any other information that should be included when deciding about the most appropriate sentence. Altogether, 144 respondents (35 organisations and 109 individuals) provided comments.

- 6.6 The comments indicated that those who answered ‘disagree’ in response to this question generally did so because they thought the examples given in the draft guideline at paragraph 13 – whilst appropriate – were not comprehensive. These respondents made suggestions to include additional information and advice. However, respondents answering ‘agree’ at Question 11 made similar comments – they thought the suggestions made in the draft guideline were appropriate examples, but they **also** offered additional suggestions. Less often, respondents who answered ‘agree’ simply endorsed the list given in the draft guideline.
- 6.7 Given the similarity in comments among those who ‘agreed’ and those who ‘disagreed’, the findings shown in Table 6.1 above should be treated with caution. For this reason, the analysis below does not focus on the distinctive views of these two groups, but instead sets out respondents’ views about the additional information they thought sentencing judges should obtain when deciding on the most appropriate sentence for a young person.

### **Additional information relevant to sentencing a young person**

- 6.8 A wide range of organisations and individuals (regardless of whether they answered ‘agree’ or ‘disagree’) suggested additional information that they thought was relevant when sentencing a young person, including:
- Experience of trauma, bereavement (death of a close relative), victimisation or other adverse childhood experiences (there was a suggestion that all 10 ACEs should be listed)
  - Whether they have a neuro-disability (including a learning disability, an autistic spectrum disorder, or communication impairment), have suffered a traumatic brain injury, or have co-morbid learning disability / mental health / addiction problems
  - Education experience and attainment and their potential for re-engaging in learning and improving employability skills
  - Developmental stage
  - Family circumstances, including whether they have supportive adults in their lives
  - Social work involvement and / or previous contact with a children’s hearing, including whether they are on a Compulsory Supervision Order
- 6.9 Less often, organisations and individuals suggested that the following information about the young person should also be obtained:

- Whether they have children, other caring responsibilities or financial dependants
- Income, work experience or other employment-related information
- Previous offending, including any outstanding cases
- Peer relationships
- A behaviour risk assessment (whether the young person is assessed as likely to reoffend)
- Whether any proposed sentence is likely to assist, or hinder, the young person's rehabilitation.

6.10 Occasionally, respondents also suggested that information mentioned in paragraph 7 of the draft guideline (relating to the young person's character and maturity) should be obtained by the sentencing judge. There was also a suggestion that 'the best interests of the child' should be added as the first point at paragraph 13.

6.11 There was also a view that the draft guideline should simply clarify that the list given in paragraph 13 is not an exhaustive list, and that all young people will have unique circumstances and needs that should be taken into account when sentencing.

6.12 Some local authorities and third sector organisations suggested that the capacity of the young person should be assessed – not simply to assist the court in determining a sentence – but more fundamentally to ensure that the young person is fit to participate in the legal process. Those who raised this point commented that participation by the young person at every stage of the process is fundamental to ensuring that (i) their rights are protected, (ii) their needs are fully understood by the court, and (iii) any sentencing decision is tailored to their needs. The point was also made that 'the views of the young person themselves' is a vital piece of information for the court when deciding on sentencing.

6.13 Some respondents commented on the final point at paragraph 13<sup>6</sup> and suggested that this point should also include: '... and what could be done to ensure full understanding of the sentencing decision and accompanying conditions'. Respondents raising this issue commented that breaches of sentencing conditions often result simply because the young person has not properly understood the conditions or discussed how they can be made to work in practice with respect to the young person's employment or caring responsibilities.

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<sup>6</sup> Whether any proposed sentence is likely to be effectively implemented, and what steps can be taken to increase the likelihood of effective implementation.

- 6.14 Some respondents also emphasised that sentencing decisions should not only consider information about the perpetrator, but also information about the victim(s). Such suggestions were mainly made by individuals, but also by some organisations.
- 6.15 Finally, some individuals suggested that the main information required to determine a sentence should be (i) whether the young person was guilty or not, (ii) the nature of the crime, and (iii) the impact on the victim.

### Other issues related to the information needed to determine an appropriate sentence

- 6.16 In their comments at Question 11, organisations raised a number of other related issues as follows:
- **The role of the Criminal Justice Social Work report:** Some respondents noted that Criminal Justice Social Work reports include all the information listed at paragraph 13 of the draft guideline and more. These reports aim to provide a holistic perspective on the young person, including information about their strengths, vulnerabilities, patterns of behaviour and levels of risk. One judicial organisation emphasised the importance of these reports, stating that they could not conceive of a situation where a judge would proceed to sentence a young person without having the information in a Criminal Justice Social Work report. A second judicial organisation suggested that the template for these reports could be amended to provide information about the young person's (i) maturity, (ii) capacity for change and (iii) best interests.
  - **The role of the Criminal Justice Social Worker:** One third sector organisation highlighted the fact that there is not always a good relationship between families and social workers when a young person is involved in the criminal justice system – which means that the views of accused children and young people are not always adequately communicated in social work reports. This organisation suggested that accused children and young people should be given the opportunity to communicate their views directly to the judge or sheriff *outside the courtroom* in a way that makes it possible for the young person to fully participate. This type of approach would enable assistance to be provided to the young person in expressing their views by a person deemed suitable to them and by the judge / sheriff and would allow the judge / sheriff to hear from the young person directly and ask questions if necessary. It was suggested this discussion should not happen in the courtroom prior to sentencing because it is not possible in that context to assess the understanding of an accused child or young person.
  - **The need for resources:** Some judicial bodies and third sector respondents commented that the extent to which effective local services were available to

support a range of sentencing options was currently variable. These respondents emphasised the need for investment to improve the accessibility and responsiveness of services, and to give sentencers appropriate non-custodial options.

- **The need for sentencers to have a good knowledge of local services:** A related point was made by third sector organisations who said that unless judges have sufficient knowledge of available services – and are confident that local support is available to ensure successful completion of a community-based sentence – then they are less likely to impose one. These respondents emphasised the importance of providing sentencers with accurate information about local services.
- **The need for continuity in services:** Occasionally, third sector respondents highlighted an issue with the continuity of services – where current funding arrangements mean that certain services may only work with young people under 18, at which point the young person is transferred to (less responsive) adult services. These respondents emphasised the importance of maintaining continuity to avoid a breakdown in the support provided to young people involved in the criminal justice system.

## Referral of cases to a children’s hearing (Q12)

- 6.17 Question 12 asked respondents if they agreed or disagreed that cases should be referred to a children’s hearing for advice where it is competent to do so.
- 6.18 Table 6.2 shows that, overall, 55% of respondents agreed and 45% disagreed. However, there was a clear difference in the views of organisations and individuals on this question. Nearly all organisations (97%, 34 out of 35) agreed, whereas individuals were evenly divided in their views – with 49% agreeing and 51% disagreeing.



**Table 6.2: Q12 – Do you agree or disagree with paragraph 14 of the guideline stating that cases should be referred to a children’s hearing for advice where it is competent to do so?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	11	92%	1	8%	12	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	3	100%	–	0%	3	100%
Legal profession	2	100%	–	0%	2	100%
Other organisations	4	100%	–	0%	4	100%
<b>Total organisations</b>	<b>34</b>	<b>97%</b>	<b>1</b>	<b>3%</b>	<b>35</b>	<b>100%</b>
Total individuals	109	49%	114	51%	223	100%
<b>Total (organisations and individuals)</b>	<b>143</b>	<b>55%</b>	<b>115</b>	<b>45%</b>	<b>258</b>	<b>100%</b>

- 6.19 Respondents were asked to give reasons for their answer. Altogether 150 respondents (32 organisations and 118 individuals) provided comments.
- 6.20 There appeared to be some confusion among individual respondents about this question. Some individuals appeared to understand the question to be asking about whether the young person should be referred to a children’s hearing instead of being tried through the adult justice system – whereas the question was in fact asking about whether certain cases (for children under 18) should be referred to a children’s hearing *for advice* to inform a sentencing decision made by a judge / sheriff.
- 6.21 In addition, whether they agreed or disagreed in response to Question 12, individual respondents often specifically stated that this provision should not apply to young people over the age of 16 (some said over 18), arguing that ‘children’s panels are for children’.

## Agreement that cases should be referred to a children's hearing for advice

6.22 Organisations answering 'agree' at Question 12 gave a range of reasons for their views, including that:

- Persons aged under 18 are defined as children by the UNCRC and, therefore, the holistic approach taken by the children's hearing system is more appropriate when determining sentencing
- It would ensure that the rights of children under 18 are upheld
- It would give a judge / sheriff a fuller picture of the young person before making sentencing decisions
- It would allow the sheriff the opportunity to explore disposal options through 'a more child-centred lens' which is more focused on the welfare / best interests of the child
- It would potentially reduce the likelihood of a young person becoming more involved with the adult criminal justice system, which (it was suggested) could lead to further offending.

6.23 Some organisations referred to the impact assessment accompanying the draft guideline, pointing out that courts do not currently refer a significant percentage of cases to the children's hearing system for advice. These respondents suggested it would be beneficial if this guideline changed this situation, although there was also a view that the wording of paragraph 14 would need to be considerably strengthened for this to happen. (See paragraph 6.29 below.)

6.24 There were suggestions that the proposal to refer cases to the children's hearing system for advice was consistent with the Whole System Approach, and there was a call for the guideline to align with the aims and ambitions of the Whole System Approach in relation to as many under-18s as possible.<sup>7</sup>

6.25 Occasionally, organisations qualified their support for this proposal. Specifically, there were suggestions that:

- To be effective, resources would need to be available to support this change.
- If the young person has committed an offence for which the sentence is fixed by law, then seeking the input of a children's hearing may serve no purpose.

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<sup>7</sup> The Whole System Approach (WSA) is the Scottish Government's programme for addressing the needs of young people involved in offending. It aims to ensure that support for children and young people puts their – and their family's – needs first. It emphasises early intervention and prevention and involves practitioners in different agencies working together to support families and young people. See <https://www.gov.scot/policies/youth-justice/whole-system-approach/>.

- The sentencing process should not be unnecessarily drawn out. There was a view that it is easier for young offenders to see the causal relationship between a crime and sentence if one follows the other without delay.
- 6.26 Individuals who agreed often simply endorsed this proposal – ‘definitely’, ‘common sense’, ‘excellent’ – without providing further comment. Those who elaborated sometimes described their own experiences of the children’s hearing system (as a child, a panel member, or panel chair), stating that referral to a children’s hearing for advice would ensure a more individualised approach is taken, promote more of a focus on children’s rights, enable quicker intervention, and provide an opportunity for trauma-informed, monitored and reviewable support. Respondents also highlighted the expertise of the children’s hearing system in cases relating to young offenders.
- 6.27 Individuals answering ‘agree’ at Question 12 often also raised caveats, saying that referrals to the children’s panel should only be made:
- If the child is under 16
  - If the child is under 16 and it is a first offence
  - If the child is under 18
  - For minor offences that have little effect on a victim
  - To assist the judge in determining the sentence.
- 6.28 Some organisations and individuals queried the use of the phrase ‘where it is competent to do so’ in paragraph 14, suggesting that confusion may arise in relation to this phrase, and that it would be preferable to clarify within the guideline the circumstances in which it is within the court’s power to refer cases to a children’s hearing for advice. The point was also made that this type of language is ‘only appropriate for a legal audience’ and not the more general audience envisaged for this guideline.
- 6.29 Some third sector and other types of children’s organisations thought paragraph 14 should be considerably strengthened to make referral to a children’s hearing the *default* position for a young person under 18 – not only for advice, but also for disposal. Linked to this argument, there was a specific suggestion that if, in exceptional circumstances, a judge considers that referral to a children’s hearing is not required, he or she should give reasons for not referring the case.
- 6.30 There was also a suggestion that the guideline should clarify what precedence should be given to any advice from the children’s hearing system in sentencing decisions.

## Disagreement that cases should be referred to a children's hearing for advice

- 6.31 As Table 6.2 above shows, just one organisation answered 'disagree' in response to Question 12, and this organisation did so because they felt the wording in paragraph 14 was 'vague' and needed to be strengthened – as discussed in paragraph 6.29 above. This organisation wanted paragraph 14 to go even further to say that *all cases* involving a young person aged 17 or under should be considered by a children's panel *in the first instance* – unless there is a reason in statute that prevents this from happening.
- 6.32 One individual echoed this view.
- 6.33 However, it was far more common for individuals answering 'disagree' at Question 12 to make similar comments to individuals answering 'agree' – that is, that this provision should not apply to adults, by which they meant young people over 16 (or over 18).
- 6.34 Other reasons given by individuals in this group were that they considered the children's hearing system to be 'soft' in their approach and inappropriate for judging criminal cases, or they believed that 'children's hearings don't work' and 'should be scrapped' (e.g. because there is no punishment if the conditions of Compulsory Supervision Orders are breached).

## Features of an appropriate sentence for a young person (Q13)

- 6.35 Paragraph 15 of the draft guideline set out the features of an appropriate sentence for a young person. The consultation paper explained that effective sentences for young people share a number of features (six of these were listed at paragraph 15), and that these may apply to a greater or lesser degree depending on what sentence is imposed. Respondents were asked if they agreed or disagreed with the proposed features.
- 6.36 Table 6.3 shows that, overall, 44% agreed and 56% disagreed. However, there were differences in the views of organisations and individuals. Among organisations, nearly three-quarters (71%, 24 out of 34) agreed, whereas among individuals three-fifths (60%) disagreed. Local authorities and judicial bodies were divided in their views on this question, whilst most (3 out of 4) 'other' organisational respondents disagreed.

**Table 6.3: Q13 – Do you agree or disagree with the proposed features of an appropriate sentence for a young person set out at paragraph 15 of the guideline?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	11	92%	1	8%	12	100%
Local authorities and sector reps	5	56%	4	44%	9	100%
Justice service delivery orgs	4	80%	1	20%	5	100%
Judicial bodies	1	50%	1	50%	2	100%
Legal profession	2	100%	–	0%	2	100%
Other organisations	1	25%	3	75%	4	100%
<b>Total organisations</b>	<b>24</b>	<b>71%</b>	<b>10</b>	<b>29%</b>	<b>34</b>	<b>100%</b>
Total individuals	85	40%	129	60%	214	100%
<b>Total (organisations and individuals)</b>	<b>109</b>	<b>44%</b>	<b>139</b>	<b>56%</b>	<b>248</b>	<b>100%</b>

- 6.37 Respondents were asked to give reasons for their answer, and altogether 125 respondents (35 organisations and 90 individuals) provided comments.
- 6.38 Among organisations and individuals, there was a great deal of similarity between the comments of those who agreed and those who disagreed at Question 13. Both groups suggested points that they thought should be added to the list at paragraph 15 and both also suggested specific changes to the wording or ordering of the existing points.
- 6.39 Note that organisations (but not individuals) sometimes also commented on paragraph 16, as well as paragraph 15 of the draft guideline.
- 6.40 Given the nature of the comments made, views at Question 13 will be discussed under the following headings: (i) reasons for agreeing with the proposed features of an appropriate sentence, (ii) reasons for disagreeing with the proposed features, (iii) suggested changes to the list at paragraph 15, and (iv) views about paragraph 16 of the guideline.

## Agreement with the proposed features of an appropriate sentence

6.41 Organisations and individuals who gave a specific reason for agreeing at Question 13 often stated explicitly that they welcomed or supported this type of approach to sentencing young people. This group also made the following points:

- The features listed at paragraph 15 were all seen to be important features of an appropriate sentence.
- The references to reducing ‘the likelihood of the young person being stigmatised’ and the presumption that a young person should be helped to be reintegrated into society were singled out as particularly welcome.
- The features listed were all seen as likely to contribute to the young person’s understanding of the impact of their offending – and to reduce their likelihood of reoffending.
- The features were all seen to be in line with a recovery-focused justice system.
- The features were seen to be consistent with a ‘holistic approach to sentencing’.

6.42 However, there was also a suggestion from one organisation representing members of the legal profession that it would be helpful if the guideline clarified that consideration should be given to each of these issues by the sentencing court. However, in any particular case, not all considerations may be able to be given equal weight in the sentence ultimately imposed. A third sector law reform organisation suggested that the guideline should make it clear that the list of features at paragraph 15 are not exhaustive.

6.43 Some individuals who agreed at Question 13 described the features as ‘sensible’, ‘relevant’ and ‘consistent with the primary purpose of sentencing being the rehabilitation of the young person’. However, others raised caveats to their general support for the proposed features. These caveats reflected the diversity, and, in some cases, the lack of consensus in views among individuals. Those raised most often were that:

- These features should apply to *all* sentences, not just sentences for young people.
- These features should apply *only* to sentences for young people under 18.
- The features should include some recognition of the impact on the victim.
- Punishment and the protection of the public should also be included as a feature of appropriate sentencing.

- 6.44 With respect to driving offences, specifically, there was a suggestion that these features may be appropriate for drivers who have committed low level driving offences without consequences, but that the age of the offender should not be a mitigating factor in sentencing for serious driving offences.
- 6.45 Finally, there was also a call for greater investment in services that help young people to be reintegrated into their communities.

### **Disagreement with the proposed features of an appropriate sentence**

- 6.46 In general, organisations who disagreed at Question 13 did so because they wanted to suggest what they saw as significant changes to the features listed at paragraph 15 of the draft guideline. These changes included additions to the list, reordering of the list, and rewording of specific items on the list.
- 6.47 However, a small number of organisations also gave more general reasons for disagreeing with the proposed features. These respondents made the following points:
- One judicial body commented that the aim of a sentence would ordinarily be consistent with a number of the points listed at paragraph 15. However, taken as a whole, the points were seen to be 'over-ambitious and unrealistic'. This respondent provided specific examples of cases in which it would be difficult to strike a balance between the focus on rehabilitation, the general principles of sentencing and the list provided at paragraph 15. These examples included cases where it may be appropriate to publicly name a young person convicted of a serious crime, or where there may be limited sentencing options such that the risk of failing to comply may have to be balanced against the desire to avoid detention. This respondent noted that the ability to address (through sentencing) the underlying causes of offending behaviour (point 5 at paragraph 15) would depend on the nature of those causes. For example, it may be easier to address problematic alcohol use through counselling than to reverse the effect of a traumatic head injury.
  - One third sector victim support organisation noted that the proposed features set out in paragraph 15 do not examine (or explain) how the reintegration and rehabilitation of the offender should be considered alongside the needs of the victim(s).
- 6.48 Individuals who disagreed at Question 13 generally highlighted the importance of taking into consideration the impact on victims, the requirement of public protection, the need to provide a deterrent, and the importance of punishment when sentencing a young person. Occasionally this group of respondents pointed to the core principle of sentencing (set out in the principles and purposes of sentencing guideline) and



suggested that the list at paragraph 15 should incorporate this. It was also common for individuals in this group to suggest that the age of the perpetrator was irrelevant in assessing the impact of a crime.

### **Suggested changes to the list of proposed features**

- 6.49 Irrespective of whether they agreed or disagreed at Question 13, organisations and individuals made a wide range of suggestions about changes they thought should be made to the list at paragraph 15 of the draft guideline. These suggestions were often very detailed and specific, and there was not always a consistent view among respondents about what these changes should be.
- 6.50 However, there was a number of recurring themes in these suggestions, including (i) providing an opportunity for the young person to make amends (if this is appropriate in the specific circumstances) and (ii) considering the needs of the victims.
- 6.51 Some of the specific suggestions made most frequently (and with some consistency) were as follows:
- The list should be re-ordered so that ‘address the underlying causes of offending behaviour’ is the first point.
  - The fourth point should be reworded to include ‘and make amends to the person or community harmed by their behaviour’. Alternatively, a separate point could be added: ‘increase the likelihood of the young person’s understanding of the impact of their offending on the victim(s) of their crime and the harm they have caused.’
  - The introduction of the term ‘reintegration into society’ was seen as problematic as it assumes that the young person is excluded from society – which may not be the case. Some respondents suggested that this phrase should be dropped entirely, preferring to continue use of the term ‘rehabilitation’. There was also a suggestion that the word ‘society’ should be replaced with the word ‘community’ where it is used in the first, third and final points. (However, in relation to these points, there was also a suggestion that the first point is unnecessary as it is covered by the final point.)
  - The second point should be split into two separate points: (i) reduce the likelihood of the young person being stigmatised unnecessarily, and (ii) reduce the likelihood of the young person failing to comply with the sentence.
  - A point should be added which ensures that the young person’s future life chances (education, employment opportunities, etc.) will be considered. An example might

be ‘increases the opportunities for the factors known to be linked to desistance to be developed and strengthened’.

- The prevention of further offending (point 3) should not be placed above addressing the underlying causes of behaviour (point 5) or maintaining positive connections between the young person and their community (point 6). There were suggestions that the last two points should be moved to become the first two – therefore putting a greater emphasis on rehabilitation.

### Views in relation to paragraph 16 of the guideline

6.52 Paragraph 16 of the draft young people guideline makes two statements: (i) that a judge should clearly explain the sentence to a young person to increase the likelihood of the sentence being effective, and (ii) in appropriate cases, the judge should consider fixing review hearings to monitor the young person’s progress in complying with the sentence.

6.53 Five organisations commented on this paragraph, and this group made a range of points and / or suggestions for improvement, as follows:

- One justice delivery organisation welcomed the focus on providing a clear explanation of the sentence, and the provision for review. This respondent drew parallels between these provisions and those of the children’s hearing system.
- However, two local authority respondents commented that the *clarity of explanation* (whilst helpful) is unlikely to ensure effective sentencing. Rather it is the quality of the young person’s understanding that is key. These respondents suggested that paragraph 16 should be amended to ensure that judges give consideration to the young person’s ability to understand. The point was made that, depending on the individual’s maturity and their speech, language and communication needs, this may require external support.
- Two third sector victim support groups also commented on this paragraph. One suggested that clarity about sentencing decisions would be needed not only for the offender, but also for the victim(s). This respondent thought such explanations should be provided in court at the time the sentence is passed, and published explanations should also be made available. The second respondent suggested that as part of the judge’s explanation of a sentence, information about the impact of the crime on the victim should also be explained so that the offender can reflect on this.

## Sentencing options (Q14)

- 6.54 Paragraphs 17 and 18 of the guideline set out an approach for deciding on the nature and length of a sentence imposed on a young person. Paragraph 17 indicated that while the full range of sentencing options should be available to judges, the nature and length of a disposal should be different from that which might be imposed on an older person sentenced for a similar offence. Paragraph 18 stated that a custodial sentence should only be imposed where no other option is appropriate, and where such a sentence is imposed, it should be shorter than would be the case for an older person. Respondents were asked if they agreed or disagreed with this approach.
- 6.55 Table 6.4 shows that, overall, 39% of respondents agreed and 61% disagreed with the proposed approach. However, there was a clear difference between organisations and individuals on this question. Among organisations, most agreed (89%, 31 out of 35), whilst over two-thirds of individuals (69%) disagreed.

**Table 6.4: Q14 – Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	10	83%	2	17%	12	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	4	80%	1	20%	5	100%
Judicial bodies	3	100%	–	0%	3	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	4	80%	1	20%	5	100%
<b>Total organisations</b>	<b>31</b>	<b>89%</b>	<b>4</b>	<b>11%</b>	<b>35</b>	<b>100%</b>
Total individuals	65	31%	147	69%	212	100%
<b>Total (organisations and individuals)</b>	<b>96</b>	<b>39%</b>	<b>151</b>	<b>61%</b>	<b>247</b>	<b>100%</b>

- 6.56 Altogether, 114 respondents (30 organisations and 84 individuals) provided comments at Question 14. The sections below set out respondents' reasons for agreeing and

disagreeing with the approach outlined in the draft guideline, while a subsequent section sets out the more specific comments made by respondents about how the draft guideline might be revised. As with other questions, those who agreed and disagreed (and those who neither agreed nor disagreed) often made similar comments with regard to specific changes or additions they would like to see made to the guideline and these are covered together in this final section.

### **Agreement with the approach set out in paragraphs 17 and 18**

6.57 Respondents indicating agreement with the approach set out in paragraph 17 and 18 included a large majority of organisations (89%), along with just under a third (31%) of individuals. Both organisations and individuals endorsed the approach, saying that it:

- Recognised that the different factors contributing to offending in young people merited a different response in terms of sentencing
- Took into account the disproportionate negative impact that lengthy community sentences and custodial sentences can have on young people
- Was consistent with recent appeal court decisions, and reflected the statutory arrangements already in place for those under 21, and was also in line with policy on the presumption against short sentences
- Provided helpful clarity on the issue of custodial sentences
- Represented a positive and appropriate approach to sentencing.

6.58 In qualifying their agreement with the approach set out, it was common for some local authorities and third sector organisations, and some individuals, to emphasise the need for properly resourced local options for community sentences to be in place across the country, and for courts to actively use appropriate and innovative community options to keep young people out of the adult criminal justice system. The need for the sentencing guideline to operate within a Whole System Approach, and for sentencing decisions to take account of all relevant factors and individual circumstances was also noted.

6.59 Some individuals also qualified their agreement by stating that the approach should only apply to those 'under 16' or 'up to 21', 'in special circumstances', or 'only if the individual demonstrably lacked maturity'.

6.60 A range of respondents commented further on the potential use of custodial sentences. Some expressed the view that custodial sentences should be seen as a last resort and should be shorter than for an older person. This group were content that this was

reflected in the guideline. However, other respondents (both organisations and individuals) highlighted circumstances in which they thought custodial sentences still had a role – for example, in the case of repeat offenders with poor records of compliance with community disposals, or in cases involving a risk to public safety; it was also argued that the guideline should not preclude ‘full’ custodial sentences in serious cases.

- 6.61 Finally, individuals offered two differing views relating to judicial independence: on the one hand, it was argued that the approach set out in the guideline retained the independence of the judiciary and would enhance confidence in managing offending behaviour; on the other hand, there was concern that the approach gave too much discretion to judges, who may choose to impose tougher sentences in line with perceived public opinion.

### **Disagreement with the approach set out in paragraphs 17 and 18**

- 6.62 Organisations that disagreed with the proposed approach (4 out of 35 respondents) did so for a number of reasons. In two cases, the respondents said that greater weight should be given to the impact on victims and their families, and that the approach was not appropriate in the particular context of serious driving offences. In the other two cases, respondents wished to see the paragraphs strengthened, and made more specific points relating to this, and these comments are covered at paragraph 6.66 to 6.70 below.
- 6.63 The majority of individuals disagreed with the approach set out in paragraph 17 and 18. To a great extent, individuals offering this view restated points made at previous questions regarding their opposition to an age-based guideline, an age-based guideline with a threshold of 25, and / or their view that the proposed guideline represented ‘soft’ justice, and prioritised the needs of offenders over victims. These respondents repeated their views that sentencing, and the imposition of custodial sentences, should be determined by the nature of the offence and not the age or maturity of the offender.
- 6.64 Individuals making more specific points relating to sentencing options and the approach set out in the draft guideline commented on the following main issues:
- Age discrimination: Imposing different sentences on people of different ages who had committed similar offences was seen as amounting to age discrimination and as being open to challenge on that basis.
  - Taking account of offending history: Some thought that sentencing should take account of offending history, and noted that there was currently no mention of this

as a factor in the guideline; it was also suggested that a custodial sentence was particularly appropriate in cases involving repeat offending.

- The purpose of sentencing: On this issue, respondents made three different points: (i) the approach proposed sent out the wrong message to offenders / potential offenders, (ii) punishment should be a more important element in sentencing decisions and, in that context, custodial sentences should not be seen only as a last resort, and (iii) shorter sentences are not necessarily helpful as they give less opportunity for rehabilitation.
- Judicial discretion: It was argued that judges already have discretion to select the most appropriate sentence in all cases, and custodial sentences are already seen as being appropriate only when no other suitable option is available. Paragraph 18 was therefore neither necessary nor helpful. It was also suggested that the proposed approach was contradictory: while saying that the full range of sentencing options was available to judges, the paragraphs also appeared to be discouraging judges from using all those options.

6.65 Some individuals who indicated disagreement at Question 16 nevertheless accepted some aspects of the approach proposed, agreeing, for example, that:

- Custodial sentences should still be seen as a *last* option, with some also saying that they thought this should be the case for older people too
- Age should be a factor in sentencing, but should not be the determining factor
- The approach advocated may be appropriate in some cases, but not in cases involving serious offending, or issues of public protection.

### **Suggestions for how the draft guideline might be revised**

6.66 Respondents (mainly those who agreed at the tick-box part of the question, but also some who expressed disagreement) made a number of different suggestions for specific changes to the wording of paragraphs 17 and 18.

6.67 With regard to paragraph 17:

- There were a number of calls from organisations representing members of the legal profession as well as individuals for the wording of paragraph 17 to be made less prescriptive. It was suggested that, rather than saying a sentence imposed on a younger person 'should' be different to that imposed on an older person, the text should be revised to say a sentence '*may* be different...', or '*will usually* be different...' It was argued that this would allow individual circumstances to be taken

into account (e.g. in cases when lack of maturity was not seen as a factor in offending).

- There was also a suggestion from another third sector organisation that the wording should be revised to make it clear that a sentence imposed on a young person should be 'less than' rather than just 'different to' a sentence that might be imposed on an older person.

6.68 With regard to paragraph 18, some local authorities and respondents in the 'other organisations' category called for the inclusion of an additional statement on the need for efficient processing of cases to ensure that young people under the age of 21 given custodial sentences could maximise the time spent in a young offenders institution (YOI) rather than an adult prison.

6.69 Other respondents wished to see greater clarity on the intentions regarding the use of custody. On this point, respondents, variously, called for:

- The inclusion of an explicit statement that custodial sentences should only be used when there is no other option and / or where there is an issue of public safety, in line with the statutory protection currently given to under-21s. It was also suggested that the wording at paragraph 18 should be consistent with that used in legislation covering the use of custodial sentences for those under 21.
- Clarity that imprisonment is not a competent sentence for those under 21. Some also thought the guideline could differentiate between custody in prison and detention in secure accommodation for young people.
- Clarity on how the guideline would apply to life sentences – one organisation representing the legal profession assumed that the imposition of 'shorter' sentences would apply to the 'punishment' part of a life sentence, and queried whether certain categories of offence (e.g. terrorist offences) should be excluded from the proposed approach.

6.70 There were also occasional calls for:

- Reinforcement of the primary focus on rehabilitation at paragraph 18
- Inclusion of evidence on the effectiveness of different sentences
- Strengthening the guideline by putting an onus on judges to explain custodial sentences in writing.



## Remitting cases to a children’s hearing for disposal (Q15)

6.71 Paragraph 19 of the draft guideline states that ‘the judge should consider remitting a case to a children’s hearing for disposal where it is competent to do so’. This provision would relate specifically to young people under 18. Question 15 asked respondents if they agreed or disagreed with this proposal.

6.72 Table 6.5 shows that, overall, exactly half of respondents (50%) agreed, and half disagreed. However, organisations unanimously agreed in response to this question (33 out of 33), whilst the majority of individuals disagreed (57% disagreed).

**Table 6.5: Q15 – Do you agree or disagree that judges should consider remitting each case to a children’s hearing for disposal, where it is competent to do so?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	12	100%	–	0%	12	100%
Local authorities and sector reps	9	100%	–	0%	9	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	2	100%	–	0%	2	100%
Other organisations	3	100%	–	0%	3	100%
<b>Total organisations</b>	<b>33</b>	<b>100%</b>	<b>–</b>	<b>0%</b>	<b>33</b>	<b>100%</b>
Total individuals	95	43%	126	57%	221	100%
<b>Total (organisations and individuals)</b>	<b>128</b>	<b>50%</b>	<b>126</b>	<b>50%</b>	<b>254</b>	<b>100%</b>

6.73 Respondents were asked to give reasons for their answer. Altogether, 148 respondents (31 organisations and 117 individuals) provided comments.

6.74 It was clear that some individuals misunderstood this question and did not realise that the provision set out in paragraph 19 of the guideline would relate specifically to young people under 18. It was common for individuals, irrespective of whether they agreed or disagreed at Question 15, to say, ‘Only for children under 18’. In addition, one of the

main objections for individuals answering ‘disagree’ was that they thought this provision should not be available to ‘adults’ in their early 20s. It is possible that, if these respondents had understood this proposal would apply only to under-18s, some would have answered differently. Therefore, the findings for individuals shown in Table 6.5 above should be treated with caution.

### **Agreement that judges should consider remitting cases to a children’s hearing for disposal, where it is competent to do so**

6.75 As Table 6.5 above shows, organisations who answered the closed question at Question 15 were unanimously in favour of this proposal. Two further organisations (a judicial body and an organisation representing members of the legal profession) did not answer the closed question but provided comments which suggested support for this proposal – but with the following caveats:

- If it can be demonstrated to the sentencer that there are resources and facilities available to the children’s hearing which would be more appropriate than those available to a sheriff, then that option should be available.
- The decision about whether to remit any case to a children’s hearing should remain with the discretion of the sentencing judge.

6.76 Two other organisations representing members of the legal profession (both of whom answered ‘agree’ to Question 15) echoed the second point above that this should be a matter for the judge’s discretion, and also queried how this proposal would affect the resourcing of the children’s hearing system. One of these respondents pointed out that in cases where no significant disposal is involved, it may make sense for the court to deal with the matter without referral to a children’s hearing. This respondent also cautioned that it would be important to consider the implications of this proposal carefully in terms of the respective discretion and expertise of the courts and the children’s hearing system.

6.77 In general, all other organisations endorsed this proposal, and indeed, there was a recurring view within this group (particularly among third sector organisations, local authorities and organisations in the ‘other’ category) that this proposal should be strengthened so that *all* cases involving children aged 17 or under (some said ‘up to the age of 17.5 at the time of sentencing’) should be remitted to the children’s hearing system where it is possible to do so. The power to make such a remittal would depend on the seriousness of the offence. This view was reflected in the comments of one third sector law reform organisation who suggested that the wording of paragraph 19 should be changed to read: ‘The judge should consider remitting cases involving young people aged under 18 to a children’s hearing for disposal in all instances where

the court has the power to do so.’ There was also a specific suggestion that, because of its importance, this text should be moved to paragraph 17 of the draft guideline.

6.78 Organisations gave several reasons for their support of this proposal (both the proposal as stated in the draft guideline, and the strengthened proposal suggested by some respondents) as follows:

- Referral to a children’s hearing would allow detailed consideration of the young person’s circumstances and the offence in context – and put the young person at the centre of the process. It would enable ongoing supervision and intervention which is holistic, focused on the welfare of the child, and tailored to their specific needs.
- This was considered to be the best way of protecting the rights of children and ensuring they are treated as children in need of support. It would help reduce the likelihood of the young person being stigmatised.
- This would be consistent with the recommendations of the Independent Care Review (2020) and the findings of the Kilbrandon Report (from the 1960s which led to the creation of the children’s hearing system in Scotland). It was also in line with the aims and ambitions of the Whole System Approach.

6.79 Respondents argued repeatedly that young people should not be in adult services and that as many under-18s as possible should be kept out of the criminal justice system. They also highlighted evidence gathered by the Independent Care Review which showed that, at present, very few under-18s who appear before the adult courts have their cases remitted to a children’s hearing.

6.80 There was a recognition that, in serious cases, a young person under 18 may have to be tried by an adult court, and in these cases, respondents welcomed the general approach taken in the draft guideline that the young person should be treated differently to an adult tried for the same offence.

6.81 Other issues raised by organisational respondents were as follows:

- One third sector organisation queried whether the children’s hearing system was adequately resourced to deal with both offending and care and protection referrals. This organisation suggestion that Scotland should create a new, discrete system of youth justice for 16 to 21-year-olds.
- It was argued that the phrase ‘where it is competent to do so’ would only be understood by those in the legal profession. This phrase should be amended so that the guideline is more accessible to the general public. (Paragraph 6.77 above provides an alternative.)

6.82 Some individuals answering 'agree' at Question 15 gave similar reasons to those of organisations (listed above). However, this group were more likely than organisations to simply express caveats – mostly about the age-group to which this proposal would apply: 'for children under 18 only' (the most common view), 'only for those under 16', 'but inappropriate for people in their twenties'. Less often, individuals raised other caveats: 'only in very special circumstances' (no information was given about what these would be), or 'not for serious crimes'.

### **Disagreement that judges should consider remitting cases to a children's hearing for disposal, where it is competent to do so**

6.83 The views of individuals answering 'disagree' at Question 15 largely echoed their comments made at Question 12 (above), and indeed respondents sometimes simply said 'see my response to Question 12'. In particular, this group repeatedly expressed the same caveats raised by individuals answering 'agree' – that is, that this provision should only apply to young people under 18 (some said under 16).

6.84 Other reasons given by individuals in this group were that they believed children's hearings 'are often ineffective', and 'too lenient' because they 'do not tend to punish crimes'. Some individuals also argued that experienced judges should make sentencing decisions and should 'not have to defer to a panel of amateurs'.

## 7 Potential impacts of the guideline (Q16 to Q21)

7.1 The consultation paper included a section on the potential impacts of the guideline. This drew on the impact assessment undertaken by Scottish Sentencing Council (published alongside the consultation paper), and covered issues such as whether the guideline would influence sentencing practice, and increase public understanding of and confidence in the sentencing of young people. It also invited views on the overall impacts, costs and benefits of the guideline. The section contained six questions as follows:

**Question 16:** Do you think the guideline will influence sentencing practice in Scotland?  
[Yes / No]

**Question 17:** Do you agree or disagree that the guideline will increase public understanding of how sentencing decisions in respect of young people are made? [Agree / Disagree]

**Question 18:** Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people? [Agree / Disagree]

**Question 19:** Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have? [Agree / Disagree]

**Question 20:** What benefits do you think will come from the introduction of this guideline, if any?

**Question 21:** What costs (financial or otherwise) do you think will come from the introduction of this guideline, if any?

### Influence of guideline on sentencing practice (Q16)

7.2 Question 16 asked respondents if they thought the guideline would influence sentencing practice in Scotland.

7.3 Table 7.1 shows that, overall, a large majority of respondents (83%) thought it would. There was a similar pattern of response among organisations and individuals on this question, although agreement amongst organisations was almost unanimous (97%, 30 out of 31).

**Table 7.1: Q16 – Do you think the guideline will influence sentencing practice in Scotland?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Third sector organisations	11	100%	–	0%	11	100%
Local authorities and sector reps	8	100%	–	0%	8	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	3	75%	1	25%	4	100%
<b>Total organisations</b>	<b>30</b>	<b>97%</b>	<b>1</b>	<b>3%</b>	<b>31</b>	<b>100%</b>
Total individuals	183	81%	43	19%	226	100%
<b>Total (organisations and individuals)</b>	<b>213</b>	<b>83%</b>	<b>44</b>	<b>17%</b>	<b>257</b>	<b>100%</b>

7.4 Altogether, 177 respondents (33 organisations and 144 individuals) made comments at Question 16. This was one of the few instances where individuals and organisations indicated similar views at the tick-box question, and the only one where both groups indicated high levels of agreement. The sections below present the various perspectives of those agreeing and disagreeing that the guideline would influence sentencing practice, highlighting differences in views both within and between groups.

### Views of those who agreed the guideline would influence sentencing practice

7.5 Although a large majority of both organisations and individuals thought the guideline would influence sentencing practice, the comments indicated very different underlying attitudes among those offering this view.

7.6 Organisations were almost unanimous in their agreement that the guideline would influence sentencing practice and in welcoming this anticipated outcome; some individuals also offered this view. In their comments, some respondents in this group

noted features of the guideline that they thought would help in influencing sentencing practice, highlighting its clarity, conciseness and accessibility, the sound evidence base informing the guideline, and the fact that it built on existing approaches. In terms of how it might influence practice, respondents said that the guideline would:

- Increase understanding of the needs of young people in the justice system among the judiciary
- Bring about positive change, in the form of a more appropriate welfare-based approach for the treatment of young people, which in turn would deliver better outcomes for individuals and society
- Ensure all those up to age of 25 are treated as ‘young people’ rather than adults
- Lead to a more structured and equitable system, and greater consistency and transparency in sentencing decisions
- Change public perceptions and give the judiciary the confidence to change practice.

7.7 Some respondents tempered their response by saying they ‘hoped’ this would be the outcome, or they expressed uncertainty about the extent to which sentencing practice would be influenced, or said that any change would come about ‘over time’. Some thought that setting the threshold at 25 (rather than a lower age) was important in maximising the influence of the guideline and allowing it to have full impact on sentencing practice.

7.8 However, it was also common for respondents who thought the guideline would bring about a change in practice to say that the extent to which this happened would be very dependent on how the guideline was implemented. There was broad agreement among this group about the factors that would play a part in achieving a change in practice, with respondents highlighting the importance of:

- Appropriate information, familiarisation, guidance and training for the judiciary and others working with young people involved in the justice system. It was suggested this might include national training, cross-agency training, training covering the evidence base informing the guideline, and involving young people with lived experience of the justice system, and training on human rights and childhood trauma. With regard to the training of the judiciary, there was one suggestion that specialist sentencers might be trained to oversee cases involving young people.
- Adequate resourcing, including of community-based rehabilitation programmes and support services for young people to ensure provision across the country. It was also noted that steps would need to be taken to ensure knowledge of such programmes and services among members of the judiciary.



- 7.9 Some respondents (particularly local authorities, third sector organisations and those in the ‘other organisations’ category, along with some individuals) said that the success of the guideline would depend on wider change, and the further development of a Whole System Approach to young people in the justice system.
- 7.10 In contrast to these views, it was common for individuals who agreed that the guideline would influence practice to make it clear that this was not an outcome they wished to see. This group thought the guideline would lead to, or reinforce, a lenient approach to sentencing, with too little attention given to victims, which in turn would lead to more offending and reoffending, and a fall in public confidence in the justice system. Some who indicated agreement at the tick-box question used their comments to say that they hoped a change of practice would not come about.
- 7.11 Amongst respondents of all types who agreed that the guideline would influence sentencing practice, there was a range of diverse and divergent comments related to the status of the guideline and the role of the judiciary as factors in achieving change. For example:
- Firstly, and most commonly, respondents saw a change in practice as an inherent or logical outcome of introducing the guideline; or said that judges would be required to follow the guideline and be able to explain their sentencing decisions, with the appeal process representing an extra driver to bringing about a change in practice.
  - Secondly, respondents noted the independence of the judiciary, and said that the support of judges would be key to achieving a change in practice, with the role of the Council in securing support from judges also being noted.
  - Thirdly, there was a view that judges should have the final say about whether to follow the guideline or not – and in cases where they decide NOT to adopt the guideline, the sentencing decisions should not be subject to appeal.
- 7.12 However, some individuals were unclear about the status of sentencing guidelines, and the obligation of judges to follow them.
- 7.13 Note that some who disagreed that the guideline would influence practice also referred to judicial independence in their responses – see paragraph 7.14.

### **Views of those who disagreed the guideline would influence sentencing practice**

- 7.14 The majority of those who disagreed that the guideline would influence sentencing were individuals (see Table 7.1). It was common for these respondents to say that this was what they ‘hoped’ would happen, with some relying on judges to use their independence and not follow the guideline. In other cases, respondents hoped (or

expected) that the guideline would not be implemented at all, or simply repeated their concerns about the justice system, and the likely effect of the guideline on sentencing and offending behaviour.

- 7.15 Only occasionally did individuals think the guideline would not influence practice and express regret should this be the outcome. In these cases, individuals thought practice would not change because the approach was not radical enough, or well enough resourced, or because the training of the judiciary and the scrutiny and monitoring of sentencing practices would be insufficient.
- 7.16 The one organisation that indicated disagreement that the guideline would influence sentencing practice used their comments to say that this was a matter for the judiciary. (A few respondents who did not answer the tick-box question also made this type of comment.)

#### **Other comments at Question 16**

- 7.17 Occasionally, respondents said that any influence the guideline may have would be minimal or superficial, in terms of the language used in justifying sentencing decisions. One organisation representing the legal profession (that did not complete the tick-box part of the question) queried whether the guideline was intended to promote a change in sentencing practice or to encapsulate current sentencing practices; this respondent went on to suggest the guideline may, nevertheless, influence the practices of solicitors in preparing pleas of mitigation for presentation in court.

#### **Impact on public understanding of sentencing decisions (Q17)**

- 7.18 Question 17 asked respondents if they agreed or disagreed that the guideline would increase public understanding of how sentencing decisions in respect of young people are made.
- 7.19 Table 7.2 shows that, overall, 38% agreed and 62% disagreed. However, organisations and individuals had different views on this question. Among organisations, a large majority (93%, 27 out of 29) agreed. In contrast, among individuals, more than two-thirds (69%) disagreed.

**Table 7.2: Q17 – Do you agree or disagree that the guideline will increase public understanding of how sentencing decisions in respect of young people are made?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	8	100%	–	0%	8	100%
Local authorities and sector reps	8	89%	1	11%	9	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	3	75%	1	25%	4	100%
<b>Total organisations</b>	<b>27</b>	<b>93%</b>	<b>2</b>	<b>7%</b>	<b>29</b>	<b>100%</b>
Total individuals	71	31%	156	69%	227	100%
<b>Total (organisations and individuals)</b>	<b>98</b>	<b>38%</b>	<b>158</b>	<b>62%</b>	<b>256</b>	<b>100%</b>

7.20 Altogether, 163 respondents (33 organisations and 130 individuals) commented at Question 17, with views related to agreement and disagreement presented below. Those respondents who did not indicate clearly whether they agreed or disagreed that the guideline would increase public understanding of sentencing decisions tended to repeat points made by other respondents and their views are not reported separately.

### **Agreement that the guideline would increase understanding**

7.21 Most organisations agreed that the guideline would increase understanding of sentencing decisions, with some respondents praising the guideline for being clearly written, easy to understand, and evidence-based.

7.22 However, in most cases respondents qualified their response by saying that in order to increase public understanding the introduction of the guideline would need to be:

- Actively disseminated and promoted, with the Council and other agencies seen as having a role in this
- Accompanied by awareness raising activities to educate the public and highlight the evidence base on issues contributing to offending behaviour among young people (including ACEs and childhood trauma), and address public attitudes towards sentencing
- Widely available, and easily accessible in a range of formats for different groups (e.g. easy read, video and languages other than English) – it was also suggested the guideline could be enhanced by including case studies, and positive stories. The importance of accommodating the communication needs of young people involved in the justice system, and ensuring they understood proceeding was noted.

7.23 It was also suggested that understanding would be helped by:

- Consistency of practice
- Effective explanations of sentences given in court by judges – it was suggested that this would aid transparency and increase understanding of sentences amongst victims in particular
- Clarity about how the young persons' guideline linked to other guidelines.

7.24 Respondents often highlighted challenges to increasing understanding among the public, either because of a lack of interest in or awareness of the issue, or because of existing strongly held views, and saw this as a process that would take time. In this respect, the role of the media in influencing public attitudes and understanding was also discussed by some respondents, and it was suggested that information about the guideline could usefully be directed at the press and media.

7.25 Among individuals who agreed that the guideline would increase understanding of sentencing decisions, there were two distinct groups. A first group of individuals offered broadly similar comments to those made by organisations, as described above. A second group of individuals said that while the guideline may result in increased understanding, this did not mean that they (or people more generally) would agree with the decisions taken. (Note that some organisations also made the point that increased understanding would not necessarily mean that members of the public would agree with the sentencing decisions made.)

## Disagreement that the guideline would increase understanding

- 7.26 Most of those who disagreed that the guideline would increase understanding were individuals. In the main, comments from respondents in this group focused on the anticipated outcome of the guideline in terms of sentences imposed on young people. In this context, there was a general expectation that sentences would be ‘too soft’, and out of line with public attitudes to sentencing. Respondents said that the public would not understand how such sentences could be deemed appropriate for the offences committed, or how two people convicted of similar offences might be sentenced differently because of their age, or because of their individual circumstances. Rather than increasing understanding, respondents said the public would, variously, be ‘confused’, ‘angry’, ‘furious’, ‘horrified’, or ‘upset’ at the sentences imposed.
- 7.27 Less often, individuals who disagreed that the guideline would increase understanding said that:
- The public was not interested enough in the issue, would not read the guideline, or would not be aware of the existence of the guideline; some said that the only people with an interest in the guideline would be those who were directly affected by the issue (e.g. as victims in a criminal case).
  - The guideline was too complex, unclear or too vague for members of the public to easily understand.
  - Additional work was required to bring the guideline to the attention of the public, and to increase public understanding of the evidence base informing its development.
- 7.28 The two organisations that did not think the guideline would increase understanding of sentencing felt this could not be achieved by the guideline alone. These respondents made similar points to those made by respondents who thought the guidance would increase understanding if other factors were addressed (see paragraph 7.22).

## Impact on public confidence in sentencing (Q18)

- 7.29 Question 18 asked respondents if they agreed or disagreed that the guideline would increase public confidence in the sentencing of young people.
- 7.30 Table 7.3 shows that, overall, less than a quarter of respondents (22%) agreed and 78% disagreed. However, there were contrasting views on this issue, with a large majority of organisations (88%, 21 out of 24) agreeing and a roughly equal majority of individuals (85%) disagreeing. Among organisations, justice service delivery organisations were divided on this question, with 3 agreeing and 2 disagreeing.

**Table 7.3: Q18 – Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	8	100%	–	0%	8	100%
Local authorities and sector reps	6	100%	–	0%	6	100%
Justice service delivery orgs	3	60%	2	40%	5	100%
Judicial bodies	1	100%	–	0%	1	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	2	67%	1	33%	3	100%
<b>Total organisations</b>	<b>21</b>	<b>88%</b>	<b>3</b>	<b>13%</b>	<b>24</b>	<b>100%</b>
Total individuals	35	15%	194	85%	229	100%
<b>Total (organisations and individuals)</b>	<b>56</b>	<b>22%</b>	<b>197</b>	<b>78%</b>	<b>253</b>	<b>100%</b>

7.31 Altogether, 194 respondents (32 organisations and 162 individuals) provided comments at Question 18. However, there was a great deal of overlap with the comments made at Question 17; in many cases respondents simply referred back to their responses to the earlier question. As such, the analysis presented here is brief, and focuses on points not already explored.

### **Views of those who agreed that the guideline would increase public confidence**

7.32 Those who agreed that the guideline would increase public confidence in the sentencing of young people included most organisations and some individuals. Respondents in this group often made a link between increased understanding and increased confidence, and reiterated many of the points made at Question 17 about the challenges involved and steps required to increase public awareness and understanding.

7.33 In a few cases, respondents (including those representing the judiciary) highlighted reductions in offending rates among young people as a factor in whether the guideline would increase confidence in the sentencing of young people.

### **Views of those who disagreed that the guideline would increase public confidence**

7.34 Almost all of those who disagreed that the guideline would increase public confidence in the sentencing of young people were individuals.

7.35 Individuals offering this view thought the guideline would result in a system that gave less priority to punishment, deterrence and the needs of victims, and lead to lighter sentences, and fewer custodial sentences being imposed on young people, which in turn would lead to more offending behaviour. As such, this group of respondents thought the guideline would further compound an existing 'soft' approach to crime and the treatment of offenders. They also frequently said that the approach advocated was out of step with public opinion and that the implementation of the guideline and the resulting sentences would therefore *reduce* public confidence in the justice system, something that they perceived was already at a low level.

7.36 In contrast to those who agreed with the question, respondents in this group did not think that improved understanding would lead to increased confidence. Some said that the guideline may increase understanding of how decisions had been reached, but that persisting discontent with those decisions would decrease rather than increase confidence in the sentencing of young people.

7.37 Organisations that disagreed that the guideline would increase public confidence indicated that they did not think the guideline alone could achieve this. The points made by these respondents were very much in line with points made by those who agreed that the guideline had the potential to increase confidence if it was appropriately implemented, and actively promoted and disseminated.

### **Other comments relating to Question 16 to 18**

7.38 Across Questions 16 to 18, there were a range of calls for the impact of the guideline on sentencing and outcomes for young people, and on public understanding of and confidence in sentencing to be monitored, evaluated and kept under review. There was also a suggestion (from an individual) that the guideline be 'piloted' initially in a limited way, before taking a decision about rolling out more widely.



### **Assessment of specific impacts (Q19)**

- 7.39 Question 19 asked respondents if they agreed or disagreed with the assessment of specific impacts of the guideline, set out in the draft impact assessment published by the Council alongside the draft guideline.
- 7.40 Table 7.4 shows that, overall, just over a third of respondents (35%) agreed and two-thirds (65%) disagreed. There was a clear difference of views between organisations and individuals on this question. Among organisations, more than three-quarters (77%, 23 out of 30) agreed, whereas a similar proportion of individuals (71%) disagreed. Among the organisational respondents, local authorities were divided in their views on this question, with 5 agreeing and 4 disagreeing.

**Table 7.4: Q19 – Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have?**

Respondent type	Agree		Disagree		Total	
	n	%	n	%	n	%
Third sector organisations	10	91%	1	9%	11	100%
Local authorities and sector reps	5	56%	4	44%	9	100%
Justice service delivery orgs	5	100%	–	0%	5	100%
Judicial bodies	2	100%	–	0%	2	100%
Legal profession	1	100%	–	0%	1	100%
Other organisations	–	0%	2	100%	2	100%
<b>Total organisations</b>	<b>23</b>	<b>77%</b>	<b>7</b>	<b>23%</b>	<b>30</b>	<b>100%</b>
Total individuals	61	29%	151	71%	212	100%
<b>Total (organisations and individuals)</b>	<b>84</b>	<b>35%</b>	<b>158</b>	<b>65%</b>	<b>242</b>	<b>100%</b>

7.41 Altogether, 112 respondents (30 organisations and 82 individuals) commented at Question 19. Respondents commented both on the draft impact assessment as a whole and specific aspects of the content of the impact assessment, both of which are covered below. Respondents also commented on wider anticipated costs and benefits; these views are covered in the analysis of views relevant to Questions 20 and 21.

### Overall views on the draft impact assessment

7.42 There were two main (contrasting) views on the draft impact assessment. Those offering positive views (mainly organisations, although some individuals also offered similar views) described the impact assessment as clear, comprehensive, fully considered, detailed and informed; they also thought the conclusions were well grounded in the evidence presented. In contrast, those offering negative views (largely individuals) said the assessment was poor, unbalanced in its treatment of positive and negative outcomes, subjective and not based on 'scientific fact'.

- 7.43 Additionally, some respondents (including some who indicated agreement with the identified impacts) noted that the costs and benefits associated with the guideline were difficult to predict and quantify. This point was acknowledged by the Council in the draft presented for comment.
- 7.44 Some individuals said they did not have enough information or expertise to comment or said they did not have access to the draft impact assessment to allow them to do so.

### Comments on specific aspects of the draft impact assessment

- 7.45 Comments on specific aspects of the impact assessment (largely offered by local authority, third sector and 'other' organisational respondents, as well as some individuals) were offered both by those who agreed and disagreed at the closed part of Question 19, and focused on the following three main issues:
- **Sentencing decisions:** A range of respondents expressed concern that the draft impact assessment seemed to anticipate just a limited impact on sentencing decisions and had a less positive tone than the guideline itself. Respondents drew attention to parts of the guideline that referred to (i) the potential impact on sentencing outcomes overall and for specific age groups covered by the guideline (i.e. those aged 21 to 24, and those aged under 21); (ii) the number of referrals to the children's hearing system; and (iii) the number of custodial sentences imposed on those under the age of 25. On each of these points, respondents were concerned that the impact assessment assumed the guideline would not result in significantly different decisions than was currently the case. Respondents also queried the claim that the guideline reflected current sentencing practice with regard to those under 21, and that its introduction would, therefore, not result in any significant change in practice. In making their comments, respondents referred specifically to paragraphs 13, 16, 17, 26 and 53 of the draft impact assessment. Some respondents also referred to paragraph 41 which raised the possibility of judges interpreting the guideline in a way other than that intended by the Council. In this context, some respondents referred to the need for training for the judiciary to ensure appropriate application of the guideline; there was also a call for independent scrutiny of sentencing decisions following the introduction of the guideline.
  - **Social work services and funding arrangements:** Respondents (including those representing local authorities) argued that the draft impact assessment had understated the potential impact on social work and related services, and said it had not taken full account of the complexity of social work funding, and the limited scope for shifting resources around because of ring-fenced funding arrangements. Respondents queried the assumption that any impact on resources would be short

term, arguing that the changes anticipated were likely to involve some long-term costs, and noting that even short-term financial costs could have a significant impact because of the current pressures on local authority social work budgets. One organisational respondent highlighted the different priorities of different social work areas (e.g. children and families teams as opposed to justice teams) and the risk of duplication of effort and conflicting objectives if an integrated approach across social work departments was not developed.

- **Provision and funding of services:** There was some concern that the services required to deliver the change in approach were not in place – this included services to support community-based disposals, as well as additional requirements for secure accommodation if this is to be used as an alternative to prison or detention in a YOI. Respondents did not think enough account had been taken of the need for, and costs associated with, staff training and development in order to support the required services.

7.46 Other issues raised less often included the perceived need for:

- Greater consideration of, and more information on, the increased demand for and costs to the children’s hearing system – potential costs included recruitment of additional panel members, training for new and existing members as well as running costs related to additional hearings
- Greater consideration of the potential impacts on the prison and YOI system
- Greater consideration of impacts on other partner organisations such as the NHS
- A greater focus on children’s rights and wellbeing
- Fuller information and costings on available sentencing options.

7.47 There was a call for a full equality impact assessment to be carried out. Additionally, the absence of any reference to cultural considerations, gender or disability in the guideline was also noted.

7.48 For individuals, key considerations mainly related to:

- The impact of the introduction of the guideline on individual victims and communities (this point was also raised by some organisations, including those representing the interests of victims)
- The wider costs associated with an increase in crime which they thought would result from the introduction of the guideline and the advocated approach

- A predicted increase in legal costs because of an increase in legal representation related to sentencing, and an increase in appeals of sentences.

## **Benefits and costs of introducing the guideline (Q20 and Q21)**

- 7.49 Question 20 and 21 asked respondents about the benefits and costs (financial and otherwise) they thought would result from the introduction of the guideline. These were both open questions (i.e. with no tick-box part) and, given the overlap in views expressed, the responses to these questions have been considered together. The analysis presented below also takes account of the more general comments on benefits and costs made in response to Question 19.
- 7.50 Altogether, 232 respondents (33 organisations and 189 individuals) commented at Question 20 and 203 respondents (30 organisations and 173 individuals) commented at Question 21. However, it should be noted that in a significant proportion of cases, individuals used Question 20 to say that they did not think there would be any benefits accruing from the introduction of the guideline, or their comments at both questions focused on perceived 'costs'. In contrast, most organisations identified benefits and costs, but often said that the costs were necessary and worthwhile to achieve the identified benefits, or represented a short-term 'investment' for long-term gain.

## **Benefits of introducing the guideline (Q20)**

- 7.51 There were two main contrasting views on the benefits likely to accrue from the implementation of the guideline. Firstly, there was a view that the guideline would (or could) bring benefits in terms of:
- More consistent, and more appropriate sentencing of young people that took account of individual and age-related factors
  - Better outcomes for young people
  - Reduced rates of offending
  - Longer term cost savings for the justice system and other public services
  - Improved understanding of and confidence in sentencing decisions relating to young people.
- 7.52 This view was common amongst organisations, but was also shared by some individuals. However, it was also common for this group of respondents to say that

these benefits were dependent on adequately resourced services, good training of personnel, and effective communication of the guideline and the approach underpinning it.

7.53 In contrast, the prevalent view amongst individuals was that the guideline would bring no benefits, other than for offenders (who would be treated lightly by the justice system) or specific professions that might profit from an increase in crime (e.g. lawyers). Individuals were more likely to comment at Question 20 on the dis-benefits or costs that they thought would arise as a result of the implementation of the guideline, or to reiterate more general views on the guideline, the sentencing of offenders or the justice system as a whole.

### **Costs of introducing the guideline (Q21)**

7.54 Organisations and some individuals identified costs which they saw as being required for the successful implementation of the guideline and the delivery of improved outcomes for young people involved in offending behaviour. These included costs related to:

- Extra court and children's hearing time and resources
- Provision of community programmes and support services for young people to address their needs
- The preparation of court assessments and reports, covering issues such as maturity and culpability, and the full range of relevant factors identified in the guideline
- Training for the judiciary and children's panel members on the guideline and the underlying approach; training for social work staff to develop a service-wide understanding of the approach as well as to develop specific skills such as those required for preparing reports for the court; and training for staff involved in providing programmes and support services for young people
- Dissemination of the guideline and public education regarding the underlying approach to the sentencing of young people.

7.55 Respondents stressed the importance of these costs being met to ensure successful implementation of the guideline and improved outcomes for young people and society more generally. However, they also argued that such costs would be offset by savings elsewhere in the justice system and more widely as a result of less use of custodial sentences, less offending and reoffending among young people, and greater rehabilitation and improved outcomes for young people.

7.56 In contrast, the more common view among individuals was that implementation of the guideline would incur considerable additional financial costs for the justice system (including the police, the courts, social work and other public services) as a result of increased offending, and would also result in significant social costs in terms of:

- An increase in offending
- A breakdown in standards of behaviour in society
- An increase in victimisation, and a decrease in community safety and quality of life
- An erosion of trust in the justice system, and an increased risk of members of the public taking direct action as a result of dissatisfaction with the justice system.

7.57 Other views put forward by some individuals were as follows:

- The guideline and the approach underpinning it were driven by a desire to cut costs by reducing the prison population – these respondents thought this was misguided as cost should not be seen as a determining factor in deciding on suitable punishments, or because costs would simply be borne elsewhere by society.
- Any costs incurred represented a waste of money that could be better used elsewhere.



## 8 Other comments (Q22)

8.1 The consultation concluded with an open question inviting respondents to make any other comments about matters arising from the consultation.

**Question 22:** Would you like to make any other comments about any matter arising from this consultation?

8.2 Altogether, 154 respondents (25 organisations and 129 individuals) commented at Question 22. Comments at the question often repeated or reflected comments made at previous questions, regarding support for or opposition to the proposed guideline and the approach advocated.

8.3 Those offering views not already covered at earlier questions noted a range of points and suggestions related to the guideline or the wider policy response to children and young people involved in offending behaviour.

8.4 Comments on the draft guideline included that it should:

- Take full account of the recommendations of the Independent Care Review
- Give consideration to the roles of parents / carers, particularly for those under 18
- Not be introduced until services had 'recovered' from the ongoing covid-19 pandemic.

8.5 Comments on wider policy issues included calls for:

- Greater emphasis on education and early intervention and prevention work to improve outcomes for young people and prevent them from getting involved in offending behaviour
- Greater use of restorative justice, structured deferred sentences or problem-solving courts, or diversion from prosecution as a way of keeping young people out of the criminal justice system
- Raising the upper age threshold for YOIs to keep young people out of the adult prison system
- Allowing anonymity for young people involved in the justice system.

- 8.6 Some also offered views on the use of custodial and community sentences and rehabilitation services for all offenders.
- 8.7 In addition, a range of respondents offered comments (at Question 22 as well as in response to earlier questions) on the consultation paper and consultation process, and about the importance of engaging with particular groups (e.g., young people and victims) in working towards a final version of the guideline. Some organisations also indicated an interest in contributing further to the development of the guideline.

## Appendix 1: Organisational respondents

### Third sector organisations (14)

- Action for Children
- Families Outside
- Howard League for Penal Reform
- Howard League Scotland
- Includem
- Justice
- Justice Scotland
- Perth & Kinross ADHD+
- Sacro
- Scottish Community Safety Network
- Scottish Women's Aid
- Venture Trust
- Victim Support Scotland
- YouthLink Scotland

### Other organisations (5)

- Centre for Youth and Criminal Justice
- Children and Young People's Commissioner Scotland
- National Youth Justice Advisory Group
- Scotland's Campaign against Irresponsible Drivers (SCID)
- Scottish Youth Parliament

### Local authorities and sector representative bodies (9)

- City of Edinburgh Council
- Community Justice Glasgow
- Community Planning Aberdeen
- Moray Council
- Renfrewshire Council
- Social Work Scotland
- South Lanarkshire Council
- Stirling Council
- West Lothian Council

### Justice service delivery organisations (6)

- Children's Hearings Scotland
- Community Justice Scotland
- HM Inspectorate of Prisons for Scotland (HMIPS)
- Police Scotland
- Scottish Children's Reporter Administration (SCRA)
- The Scottish Legal Aid Board

### Judicial bodies (4)

- Part-time Sheriffs' Association
- Scottish Justices Association
- The Senators of the College of Justice
- The Sheriffs' Association

### Legal profession (3)

- Edinburgh Bar Association
- Faculty of Advocates
- Law Society of Scotland

## Appendix 2: Responses to individual questions

Question		Organisations		Individuals	
		n	% of 41	n	% of 239
<b>Approach to the guideline</b>					
Q1	Do you agree or disagree that a principle-based approach to the guideline is the right approach? [Agree / Disagree]	35	85%	234	98%
	Please provide any reasons for your answer.	37	90%	169	71%
Q2	Do you agree or disagree that the guideline should apply to people under the age of 25? [Agree / Disagree]	36	88%	237	99%
	Please provide any reasons for your answer.	40	98%	196	82%
Q3	If you disagree that the guideline should apply to people under the age of 25, at what age should the guideline cease to apply?	1	2%	180	75%
	Please provide any reasons for your answer.	2	5%	164	69%

Question		Organisations		Individuals	
		n	% of 41	n	% of 239
<b>Principles and purposes of sentencing a young person</b>					
Q4	Do you agree or disagree that the relationship between this guideline and the 'Principles and purposes of sentencing' guideline is set out clearly? [Agree / Disagree]	33	80%	226	95%
	Please provide any reasons for your answer.	29	71%	101	42%
Q5	Do you agree or disagree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person? [Agree / Disagree]	33	80%	228	95%
	Please provide any reasons for your answer.	31	76%	123	51%
Q6	If you do not agree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person, what additional information should it provide? Please provide any reasons for your answer, including any examples that you feel should be included.	32	78%	115	48%
Q7	Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline? [Agree / Disagree]	33	80%	228	95%
	Please provide any reasons for your answer.	35	85%	165	69%

Question		Organisations		Individuals	
		n	% of 41	n	% of 239
Q8	Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person? [Agree / Disagree]	34	83%	232	97%
	Please provide any reasons for your answer.	34	83%	162	68%
Q9	Which, if any, other purposes of sentencing should be emphasised in this guideline? Please provide any reasons for your answer.	33	80%	146	61%
<b>Assessment of seriousness</b>					
Q10	Is the section on the assessment of seriousness helpful? [Yes / No]	32	78%	224	94%
	Please provide any reasons for your answer.	33	80%	91	38%
<b>Identifying the most appropriate sentence</b>					
Q11	Do you agree or disagree that paragraph 13 of the guideline identifies the information which is of most relevance to sentencing a young person? [Agree / Disagree]	35	85%	219	92%
	Please provide any reasons for your answer, including any examples that you feel should be included.	35	85%	109	46%

Question		Organisations		Individuals	
		n	% of 41	n	% of 239
Q12	Do you agree or disagree with paragraph 14 of the guideline stating that cases should be referred to a children's hearing for advice where it is competent to do so? [Agree / Disagree]	35	85%	223	93%
	Please provide any reasons for your answer.	32	78%	118	49%
Q13	Do you agree or disagree with the proposed features of an appropriate sentence for a young person set out at paragraph 15 of the guideline? [Agree / Disagree]	34	83%	214	90%
	Please provide any reasons for your answer.	35	85%	90	38%
Q14	Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate? [Agree / Disagree]	35	85%	212	89%
	Please provide any reasons for your answer.	30	73%	84	35%
Q15	Do you agree or disagree that judges should consider remitting each case to a children's hearing for disposal, where it is competent to do so? [Agree / Disagree]	33	80%	221	92%
	Please provide any reasons for your answer.	31	76%	117	49%



Question		Organisations		Individuals	
		n	% of 41	n	% of 239
<b>Potential impacts of the guideline</b>					
Q16	Do you think the guideline will influence sentencing practice in Scotland? [Yes / No]	31	76%	226	95%
	Please provide any reasons for your answer.	33	80%	144	60%
Q17	Do you agree or disagree that the guideline will increase public understanding of how sentencing decisions in respect of young people are made? [Agree / Disagree]	29	71%	227	95%
	Please provide any reasons for your answer.	33	80%	130	54%
Q18	Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people? [Agree / Disagree]	24	59%	229	96%
	Please provide any reasons for your answer.	32	78%	162	68%
Q19	Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have? [Agree / Disagree]	30	73%	212	89%
	Please provide any reasons for your answer.	30	73%	82	34%
Q20	What benefits do you think will come from the introduction of this guideline, if any? Please provide any reasons for your answer.	33	80%	189	79%

Question		Organisations		Individuals	
		n	% of 41	n	% of 239
Q21	What costs (financial or otherwise) do you think will come from the introduction of this guideline, if any? Please provide any reasons for your response.	30	73%	173	72%
<b>Further comments</b>					
Q22	Would you like to make any other comments about any matter arising from this consultation?	33	80%	138	58%

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