

## Response ID ANON-PBES-N7F5-A

Submitted to 'Sentencing young people' guideline consultation

Submitted on 2020-08-21 10:11:09

### Approach to the guideline

#### 1 Do you agree or disagree that that a principle-based approach to the guideline is the right approach?

Agree

**Please provide any reasons for your answer::**

We think a principle-based approach is the right approach. This allows a flexible approach applicable to a number of different offences rather than multiple case specific procedures. We would however recommend that this has been impact assessed in case there were unique situations in which more guidance may be needed.

### Applicability

#### 2 Do you agree or disagree that the guideline should apply to people under the age of 25?

Agree

**Please provide any reasons for your answer::**

This is in line with changes to what is considered a 'young person' in other policy areas and guidance e.g. the maximum age (26) of a young person for Corporate Parenting in Children and Young People (Scotland) Act 2014, The Age of Criminal Responsibility (Scotland) Act 2019, the current consultation on the age range of those referred to children's hearings).

This is also in line with academic research evidence given in 'The development of cognitive and emotional maturity in adolescents and its relevance in judicial contexts' and its support by the Scottish Sentencing Council and the Centre for Youth and Criminal Justice.

Statistics on rates of re-offending also show that the latter are substantially higher in younger people and we therefore would hope that regarding those under 25 as a 'young person' within the criminal justice system could in turn contribute to a reduction in re-offending.

### Applicability - Other age

#### 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?

Please enter your response in whole numbers:

Please provide any reasons for your answer::

### Principles and purposes of sentencing a young person

#### 4 Do you agree or disagree that the relationship between this guideline and the 'Principles and purposes of sentencing' guideline is set out clearly?

Disagree

**Please provide any reasons for your answer::**

We think that it is clear there is a relationship between the two guidelines. However, we think that the nature of the relationship (e.g. cross-referencing between both guidelines) and how to use them jointly (e.g. which guidance should be given greater precedence in a particular circumstance) could be clearer.

#### 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

**Please provide any reasons for your answer::**

We accept that it would be difficult to produce a complete list of factors however we would welcome more detail and emphasis of the way in which these factors influence a young person's circumstances to aid the decision-making process.

#### 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?

**Please provide any reasons for your answer, including any examples that you feel should be included::**

We have no specific additional factors to suggest, but think the guidance would benefit from some more depth on why it's important the factors outlined (specifically living environment, family support, ACEs and mental and physical health issues) are considered as part of the decision-making process..

#### 7 Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline?

Agree

**Please provide any reasons for your answer::**

We think that it is right that rehabilitation is given greater emphasis than other purposes of sentencing in this guideline (in particular punishment and societal disapproval).

We think rehabilitation is particularly important for young people as there is significant potential for a young person's behaviour to be changed and the risk of reoffending reduced, particularly as a result of their still developing maturity and their capacity for change.

We do think that 'giving the offender the opportunity to make amends' is also important and considers repairing some of the harm toward the victim and wider society. For these reasons we would encourage use of the word 'recovery' instead of rehabilitation and this takes into account the perpetrator, victim and wider society.

**8 Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person?**

Agree

**Please provide any reasons for your answer::**

We think that 'recovery' should be the primary consideration when sentencing a young person - this term takes into account both rehabilitation for the young person but also making amends to victim(s) and wider society.

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

**Please provide any other purposes and any reasons for your answer::**

'Giving the young person opportunity to make amends' is the other purpose we would like to see emphasised in this guideline. We would encourage considering 'recovery' as purpose that encompasses both rehabilitation and making amends.

Please see our answers to questions 7 and 8 for more detail.

**Assessment of seriousness**

**10 Is the section on the assessment of seriousness helpful?**

Yes

**Please give any reasons for your answer::**

The provision of some context on the culpability of a young person as a result of their age is helpful and an important consideration when sentencing.

**Identifying the most appropriate sentence**

**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

**Please provide any reasons for your answer::**

Yes but some others which could be included are:

A young person's living environment in its broadest sense (particularly as this is mentioned in paragraph 7)

Family and other support

Income issues

Employment and education issues

Any adverse childhood experiences (particularly as this is mentioned in paragraph 7)

Other things mentioned in paragraph 7 of the guidelines e.g. character, maturity etc.

**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

**Please provide any reasons for your answer::**

We think that children's hearings are practised in recovery-focused justice and therefore would welcome cases being referred for their advice. Some clarity on the precedence of this advice when making sentencing decisions would be welcome.

We are please to see from the impact assessment that this would not have a substantial increase on the workload for the children's hearing system. We would hope the cost implications detailed in the impact assessment will not prove prohibitive.

**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

**Please provide any reasons for your answer::**

We agree with these and think they are all in line with a recovery-focused justice system.

We think that victim(s) should be mentioned specifically in here, similar to the 'give the offender the opportunity to make amends' principle.

We would support inclusion of a feature which considered the long-term impact on a young person's future life chances e.g. future education, employment opportunities etc.

**14 Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate?**

Agree

**Please provide any reasons for your answer::**

If there is any evidence for particularly effective sentences for young people then it would be helpful to include them in the guidelines.

**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

**Please provide any reasons for your answer::**

We think the children's hearing process is well-practised at wellbeing-focused and trauma-sensitive approach and therefore may be better placed to dispose of cases in line with these principles.

We would welcome some analysis and consideration of the impact of this proposal on the children's hearing system and partner organisations.

**Potential impacts of the guideline**

**16 Do you think the guideline will influence sentencing practice in Scotland?**

Yes

**Please give any reasons for your answer::**

We think it will influence sentencing practice, but are unsure to what degree.

We see a role for the Scottish Sentencing Council to advocate for these changes and proactively support the judiciary and others in the system to make this change.

We think that some kind of monitoring / review process will be important to understand to what degree sentencing practice has been influenced.

Previous changes to sentencing guidelines e.g. Presumption Against Short Sentences could offer some learning opportunities for how practice can be influenced.

**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

**Please provide any reasons for your answer::**

We think it will increase public understanding but are unsure to what degree, particularly in the current format of 38 pages of guidelines. The results from the national survey give an indication on how far there is to go in shifting public opinion and understanding, particularly for the sentencing of young adults.

We see a role for the Scottish Sentencing Council to advocate for these changes and proactively support the public to understand why these changes are being made.

We think that some kind of monitoring / review process will be important to understand whether public understanding has been influenced.

**18 Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people?**

Agree

**Please provide any reasons for your answer::**

We think that increasing public understanding is the first step in the process to increasing public confidence. Public confidence in the justice system is very important. For some people this guideline will increase public confidence in the sentencing of young people and for others it may decrease the confidence and reinforce a belief that the justice system is "soft".

We see a role for the Scottish Sentencing Council to advocate for these changes and proactively support the public to understand why these changes are being made and encourage confidence.

We think that some kind of monitoring / review process will be important to understand whether public confidence has been influenced e.g. Scottish Crime and Justice Survey questions on confidence in sentencing.

**19 Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have?**

Agree

**Please provide any reasons for your answer::**

On point 53, it is disappointing that only a 'small number'of sentences are expected to be given non-custodial sentences, especially regarding the aspirations of Community Justice Scotland and wider Scottish Government policy.

On point 57 in the impact assessment on the financial implications totaling to £232,000 - we would hope the Scottish Government will grant increased funding for this and that the Scottish Sentencing Council will strongly advocate for these funds to be made available.

On point 62 and 'benefits' in general, we would reassert that while the document will increase understanding, there is more work to do to make the document more accessible.

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

**What benefits do you see arising from the introduction of this guideline, if any?:**

We think it is a good step towards 'smart justice' in Scotland, particularly if there are some statutory changes to the definition of 'young person'.

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

**What costs (financial or otherwise) do you see arising from the introduction of this guideline, if any:**

From the impact assessment, there is a clear financial cost, but we would hope this is not prohibitive.

If the financial cost is not met, we think there will be a negative repercussions on

- Children's hearing system
- Community justice partnerships / local authority youth justice and other charities supporting alternative disposals

The cost, will be a positive one in terms of:

- Children's rights
- Financially and societally for Scottish Prison Service
- Financially and societally to safer communities if we reduce re-offending
- Better outcomes for families, children and young people due to community disposals

**Further comments**

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

**Q23) Would you like to make any other comments in relation to any matter arising from this consultation?:**

No

**Respondent information**

**23 Are you responding as an individual or an organisation?**

Organisation

**24 Name of person responding**

**Name:**

Hannah Dickson

**25 Name of your organisation (if responding on behalf of an organisation):**

**Organisation:**

Scottish Community Safety Network

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**30 The Scottish Sentencing Council would like your permission to publish your consultation response. Please indicate your preference:**

Publish response only (without name)

**31 We may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Sentencing Council to contact you again in relation to this consultation exercise?**

Yes