

Sentencing Council meeting:
Paper number:

16 April 2021
SC(21)APR05 – What next for the
Sentencing Council – miscellaneous
issues
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1 ISSUE

1.1 This paper considers the responses to miscellaneous questions in the consultation. Many of the issues that arise have already been covered at previous meetings or are due to be covered under other headings. The purpose of this paper is to 'sweep up' any points not covered elsewhere and to ensure that members have an overall view of the range of points made by respondents.

1.2 Consequently although this paper is rather long, much of the content is for information only.

2 RECOMMENDATION

2.1 That the Council notes the range of responses to the consultation and:

- Considers what other sources of external funding could be explored;
- Agrees that the points raised regarding the extent to which guidelines are meeting the statutory duties relating to consistency, victims and public confidence are covered by existing work streams;
- Considers whether to invite feedback from within the digital guidelines;
- Considers how the importance of consultation responses can be emphasised;
- Agrees to continue to work with the Judicial College to ensure users are prepared for the introduction of new guidelines.

3 CONSIDERATION

Consultation question 5:

Are there other sources of funding or funding models that the Council should consider pursuing in order better to fulfil its statutory duties?

3.1 Thirteen respondents made comments or suggestions in response to this question. Several made reference to general issues of underfunding in the criminal justice system. One magistrate suggested that the Council should receive funding from every department it supports through its work. Two respondents suggested that fines or the victim surcharge should be used to fund the Council. One simply stated that additional funding should be secured.

3.2 Others made more detailed comments:

In fulfilling statutory duties, it is important the Council is funded by the government, while retaining the necessary independence from the Ministry of Justice, judiciary and other stakeholders. A commercial model is clearly inappropriate for a body setting sentencing guidelines, so other sources of funding should be approached with caution. **Magistrates Association**

The Council's budget clearly needs to be substantially expanded if it is to undertake fully its statutory duties. Its current budget of £ 1.3 million pounds compares to the HMPPS budget of £4.3 billion. The introduction of the guideline on bladed articles and offensive weapons offences, which came into effect on 1 June 2018, was estimated to result in a need for around 80 additional prison places per year at a net cost of around £2.5 million—almost double the Council's budget. Given that the Council is such a key driver of MoJ spending, it deserves much greater investment and a priority should be to make the case for this in the forthcoming Spending Review. **Transform Justice**

The SC should lobby central government for greater resources to permit it to discharge its duties more fully. In a number of areas, including local sentencing statistics, the Council could be more productive, but only if awarded additional funds. Perhaps the SC could explore the possibility of securing philanthropic and research council funds – either directly, which may be problematic, or indirectly, through partnerships with NGOs and academia? There are precedents, such as the award in 2016 to a consortium of academics from the ESRC and the College of Policing for developing the 'What Works Centre for Reducing Crime'. **Sentencing Academy**

The Council should have the confidence to present its importance to Government to justify more Government funding. (Is Government convinced of its importance?)
Professor Nicola Padfield

Both these policy imperatives [work needed to engage BAME groups more and to distil findings on the effectiveness of sentences] could form part of the evidence base to make the case for additional funding for the Council. **Professor Andrew Ashworth**

3.3 In response to the question on ways the Council's analytical work could be improved there were responses relating to collaborating on research which could have an impact on this issue:

Transform Justice considers it is important for the Council to obtain [evidence as to reasons for these disparities] so it can take action to remedy any possible discrimination. It may be appropriate for a university or external organisation to undertake the necessary research although ensuring full cooperation from the judiciary will be essential.

T2A is encouraged by SC's statement that it may be possible for it to take some of these areas for research forward through more collaborative work with academics and external organisations. The Alliance would welcome a discussion with the Council about potential collaboration and making available T2A's extensive research and practice material.

3.4 Dr Carly Lightowlers suggested that the importance of research into disparities in sentence outcomes potentially warrants an independent approach (such as commissioning academic researchers) which in turn can assist with public confidence and the Council's openness to scrutiny and commitment to its Public Sector Equality Duty, the Female Offender Strategy and the recommendations of the Lammy review.

3.5 Consideration is already being given to working collaboratively with academics and to exploring the potential for external funding for public confidence work, such as the Legal Education Fund. We have successfully made a case to the Ministry of Justice for additional funding for 2021/2022 of £150,000 in real terms in addition to funding to cover You be the Judge (although some of this will be swallowed up by the need to accommodate inflationary pressures on our core budget). We have flagged that we may come back with additional business cases in year for more funding for specific projects depending on the priorities that the Council agrees to pursue as part of our 'vision' work.

Question 1: Is the Council happy to explore sources of non-government funding (in addition to any further funds from MoJ that might be made available)? If so, are there any sources of funding (other than those covered in paragraph 3.5 above) that should be investigated?

Consultation question 6:

Are there any other broad matters that you would like to raise, or comments you wish to make on the Council, that are not covered by your answers to any other questions?

3.6 Eleven respondents made comments in response to this question. Some of the responses have already been discussed by the Council at previous meetings and others are covered under different headings in this paper.

3.7 The remaining suggestions appear to be outside the Council's remit:

- The Council should issue guidance on the appraisal system for magistrates;
- There should be better explanations and communication from the police when investigating cases particularly in relation to victims being required to hand over their phones etc.;
- The Sentencing Council should be watching the changing nature of workplace hazards particularly in the construction industry.

Consultation question 7:

What are your views on the extent to which the Council, through the development of sentencing guidelines, meets the duties to have regard to:

- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims; and
- the need to promote public confidence in the criminal justice system?

Please suggest any ways in which you think this could be improved.

3.8 There were a total of 23 responses to this question. Some responses simply expressed satisfaction with the way that guidelines fulfil these criteria. The Justices Clerks Society commented:

Developing sentencing guidelines fulfil the primary purpose of promoting a consistent approach to sentencing. They also improve transparency, thus contributing to promoting public confidence in the criminal justice system.

3.9 In contrast Professor Nicola Padfield stated:

I believe that public confidence is not 'promoted' simply by creating guidelines which 'promote consistency'.

3.10 Where there were more detailed comments they are considered below under each sub-heading.

Meeting the duty to promote consistency through the development of guidelines

3.11 A magistrate felt that generally guidelines do promote consistency in sentencing, but that some magistrates take a 'generalised approach based on previous experiences, particularly when dealing with common offences (e.g. theft or traffic offence)' with little consideration of aggravating and mitigating factors. 'I think more emphasis in each offence is needed rather than overarching approaches as it is not clear why some offences have an overarching approach and others have a specific approach'.

3.12 An individual commented: 'The consistency in sentencing is actually based on the judge's discretion in the end, which unfortunately can be biased and in some cases need to be put in media for actual justice to occur.'

3.13 Diverse Cymru made suggestions for the greater involvement of people with one or more protected characteristics in the work of the Council, in order to ensure consistency in sentencing. This was raised in the November paper on diversity and is one of the matters being considered by the equality and diversity working group.

3.14 The Magistrates Association (MA) were supportive of the way the Council consults in the development of guidelines and works with them in other ways such as attending MA events and contributing to MA publications. They suggest that this could be further developed to ensure all their members are aware of new sentencing guidelines as they are published and understand the rationale and intention behind them (see further paragraph 3.57 below). They suggest the Council should do more work to assess the impact of sentencing guidelines in magistrates courts, as this is crucial in ensuring that guidelines are being implemented consistently and having the intended effects. They recognise that such work would require the provision of the necessary resources.

3.15 The Council has enhanced data collection in magistrates' courts over the last few years and we are now exploring ways in which data collection more generally can be enhanced, including opportunities through the common platform.

3.16 Transform Justice made a link between consistency and effectiveness (effectiveness is being dealt with in a separate paper).

The most important goal of sentencing should be effectiveness and that guidelines should promote a consistently effective approach by courts. There is a case for guidelines prescribing sentencing ranges which provide appropriate levels of punishment

and in particular requiring courts to respect the upper limits of those ranges. However, courts should be permitted and indeed encouraged to sentence below the range if it is in the interests of the reform and rehabilitation of those who have committed crimes or the making of reparation to victims. These are two of the statutory purposes of sentencing which have received inadequate attention from the Council in its work to date.

Transform Justice

3.17 The Prison Reform Trust points out the difficulty with assessing consistency.

The guidelines rightly prioritise consistency of approach over outcome, since there may be justifiable differences in outcome for similar cases, depending on the circumstances and needs of the individual defendant. Inevitably this makes the task of assessing whether the Council is fulfilling its statutory remit to promote consistency difficult, since it relies on being able to measure justifiable differences in outcome between case.

Nonetheless, it is important that the guidelines retain this focus on consistency of approach, and not aim to produce an aggregate level of consistency between cases. Furthermore, it is important to recognise that consistency is a “slippery concept” which may work against other important principles such as equity and proportionality. **Prison Reform Trust (PRT)**

3.18 PRT go on to discuss the findings in the assault and burglary guideline evaluations that sentences for some offences had increased unexpectedly and argues that ‘the purpose of a guideline is to set sentencing levels, and if there is a pre-existing upward trend for the particular offence, and the guideline recommends (broadly) the existing sentencing levels, then the intention of the guideline is to stabilise the upward trend’. This something that relates to the issue of how we measure success which in turn relates to what the Council defines as effective (effectiveness is being dealt with in a separate paper).

3.19 There was a call for more evidence on the link between guidelines and consistency.

The SC has yet to adequately document the contribution of its guidelines to promoting a more consistent approach to sentencing. To date, the principal source of insight into the effects of the guidelines has been the academic literature. A small number of academic studies have suggested positive impacts on consistency, but a more comprehensive evaluation involving multiple guidelines is necessary. Of the three duties identified in Q7, this one is the most important. Promoting consistency is a key statutory duty of the Council, one we believe is being promoted by the offence-specific and overarching guidelines. But the informed public might reasonably ask whether the guidelines regime has achieved this goal, and to what extent. Research should also explore variation in the degree to which consistency has been promoted; some sources of guidance may have been more useful in this regard than others. One way of exploring the impact of the guidelines would be to compare, for a limited number of offences, sentencing in England and Wales and Scotland. No offence-specific guidelines have been issued to date in Scotland, and so it can serve as a useful comparator for the SC guidelines. **Sentencing Academy**

3.20 As was discussed at the March meeting, a report on consistency will be published later this year and there is more work to be done on developing a methodology to measure consistency (as flagged above by the Prison Reform Trust, the chosen measure –

consistency of approach rather than outcome – is difficult to measure and so further work is needed before an assessment of consistency can become as standard part of our analytical work).

Meeting the duty to have regard to the impact of sentencing decisions on victims through the development of guidelines

3.21 A magistrate commented that victims are often not present in court to hear the reasons for sentences and guidelines do not necessarily reassure victims as they often will not be aware of the mitigation taken into account. As a consequence victims often feel that the criminal justice system is ‘soft’. Another magistrate made a similar point: ‘I think the guidelines help us to fulfil these criteria well but we need to be better at communicating the reasons for our sentences to victims, especially if they are not in court when sentence is passed.’

3.22 One respondent commented on guilty plea reductions, noting that although it speeds up the process where it is clear that the offender is guilty ‘it leaves a bad taste for those victims’. They suggest that there should be better protection for vulnerable victims ‘if the sentencing decision was light’.

3.23 The point made earlier by Diverse Cymru about engaging with a wider range of people also applies to the impact on victims.

3.24 The MA were supportive of the work already done to consider the views of victims but suggested that more research was needed. As discussed in previous papers, we will consider the need to undertake such research on a case-by-case basis.

3.25 Transform Justice felt that more could be done by referring to restorative justice in guidelines (this again relates to the issue of effectiveness which is being dealt with in a separate paper):

As for the impact of sentencing decisions on victims, there is a need for the Council to recognise that greater levels of punishment are far from the only way to satisfy victims. There is good evidence that problem solving and restorative justice (RJ) approaches can be effective for victims and offenders. Victims’ satisfaction with the handling of their cases is consistently higher among those who attend restorative justice conferences, compared to those dealt with solely by standard criminal justice processes, usually the courts. In December 2012, the Council discussed a request from the Restorative Justice Council for guidelines to be issued in respect of a provision in the Crime and Courts Bill on deferring sentence for convicted defendants who fulfilled a restorative justice programme. The Council agreed that guidance on the appropriate approach can be included in individual guidelines as necessary. There has however been very little mention of RJ in guidelines since then.

3.26 The Prison Reform Trust agreed that the Council should take account of the impact of sentencing decisions on victims in the development of guidelines. They note that studies show that victims' views are shaped by the way their case is handled, and that many victims express a strong interest in ensuring that, if possible, the offender does not commit further offences. They go on to say:

Evidence suggests that there is some overlap between what victims and defendants value in terms of their experience of the criminal justice system. [] From the perspective of both victims and offenders, therefore, there is scope for guidelines to both promote fairness and consistency and support the process of desistance to reduce the risk of future offending.

It is unclear why there is not a corresponding duty on the Council to consult with defendants. Doing so would help both to uncover areas of the guidance that were perceived by defendants to be unclear or unfair. It would also assist the Council in developing its remit to consider the effectiveness of sentencing. We endorse Anthony Bottoms recommendation that the defence 'voice' on the Council, along with expertise on mental health and addictions, should be strengthened through either membership or advice. Arguably, however, the Council should go further. People with lived experience of the criminal justice system should be routinely consulted as part of the process of developing guidance. The risks to defendants experiencing sentencing as a fair process are currently very severe, given difficulties in accessing competent legal advice, and the absence of any intermediary assistance for defendants with learning difficulties or disabilities. A stronger voice for defendants and a greater concern for their perception of fairness is wholly complementary to the Council's proper concern for victims – an unfair process does a disservice to all concerned.

3.27 The issue of engaging more with those with lived experience of the criminal justice system is considered below at para 3.49

3.28 The Sentencing Academy agreed that the Council is meeting this duty in relation to victim impact as guidelines contain many victim-related factors, but felt that it could possibly do more by developing overarching guidance on Victim Personal Statements. This suggestion was mentioned at the December Council meeting and will be further explored when we evaluate the expanded explanations.

Meeting the duty to have regard to the need to promote public confidence in the criminal justice system through the development of guidelines

3.29 A magistrate cautioned that public confidence should be distinguished from pandering to populism. A magistrate who is a former police officer commented that there is a low level of public awareness of sentencing guidelines and suggested more should be done with social media to highlight what they aim to achieve. Another magistrate felt that 'speed and creation of guidelines is much too slow. The lack of understanding of numerous issues

by magistrates when there are no guidelines is often appalling and leads to a lack of support from the public’.

3.30 The point made earlier by Diverse Cymru about engaging with a wider range of people also applies to public confidence. Transform Justice again made a link with effectiveness (covered in a separate paper) and PRT made a link to consistency.

As for public confidence, if the Council gives greater weight to effectiveness in the development of its guidelines, this will provide a sound basis for promoting public confidence. When the Council launched its breach guideline in 2018, its press notice stated, “New guidelines introduce robust approach to sentencing of breaches of court orders.” Transform Justice considers such an approach unhelpful given the term “robust” is generally associated with increased punitiveness. An effective approach is surely what the Council should be encouraging and promoting, not simply a tough one.

The Council should also revise its perverse position that when considering the appropriate length for a sentence of imprisonment a court must not consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender’s release. The Council should be looking to promote effective sentencing by courts, which means that all of the components of a sentence whether served in prison or the community should be taken into account. **Transform Justice**

The development of sentencing guidelines has undoubtedly bought a greater degree of consistency and transparency to the sentencing process. By extension they may have contributed to public confidence in the criminal justice system. However, evidence from public confidence research commissioned by the Council suggests that the impact of the development of guidelines on public confidence in general has been limited. **Prison Reform Trust**

3.31 The issue of public confidence more generally has already been discussed at the January Council meeting and actions are being taken forward.

Question 2: Is the Council content that issues raised above are covered by existing work streams?

Consultation question 10:

Can you suggest practical ways in which the flexibility afforded by delivering guidelines in a digital format could be used by the Council to improve guidelines?

3.32 There were comments from magistrates suggesting that the format of the digital guidelines could be improved, particularly with reference to the tools (such as fine calculator, pronouncements etc). One magistrate suggested that guidelines could be more automated whereby the sentencer selects the relevant factors and the guideline then calculates the suggested sentence. Another suggested something similar, an ‘interactive program to take you through the guidelines would be great to come to your starting point and range. If this was available on court iPads it could then be linked into the fines calculator too’. By contrast

another magistrate was clear that any improvement to digital guidelines should not sacrifice the need for judgement and discretion.

3.33 There was a suggestion that examples of how a guideline could be applied to a fictitious case would be helpful to magistrates. There were comments that some magistrates are not very computer literate and that the use of hyperlinks or drop down menus can be difficult for them. This is in contrast to many of the comments below which recommended the greater use of links.

3.34 There was a recognition that digital guidelines make updates much easier and while some respondents said that it was easier to find digital guidelines, others criticised the search function. Professor Nicola Padfield said 'I think there is a real danger (as was pointed out by the Triennial Review) that this flexibility makes the website difficult to navigate: for me, this is a significant problem'.

3.35 One magistrate said that the digital guidelines should be made available in visual and audible formats to take account of diversity on the bench. This is an issue that was briefly discussed at the January meeting and the practicalities of doing this will be given further consideration.

3.36 Diverse Cymru suggested links between different guidelines and guidance relating to equality issues. This is something that we are already doing to some extent and the Equality and Diversity Group may make further recommendations. The 'preventing discrimination project' which we are still hoping to procure will pick up on this issue as it will involve reviewing the language and wording in the guidelines.

3.37 The MA made a number of suggestions:

The Council should consider how it can improve the way that its guidelines are formatted for use on court tablets. The vast majority of the time, magistrates need to use the guidelines on their tablets but our members report that it is not as easy to do so with the available app as it could be. The sentencing guidelines app should therefore be developed to make it as intuitive and straightforward to use as possible. There would be benefits, in achieving this, in involving magistrates in its development.

Also important is establishing how magistrates search for offence guidelines, to ensure the appropriate guideline can be quickly found. Currently the search functionality is not optimised.

The Council should consider using hyperlinks more effectively, especially in relation to signposting to additional guidance or case law.

Another important aspect is ensuring there is consistency across all guidelines, including explanatory material and overarching guidelines. Electronic guidelines makes it easier to update language or terminology, so there are no gaps or inconsistencies.

Again, hyperlinks can be used to signpost sentencers, without having to duplicate text unnecessarily, so it is clear what they should be referring to in relation to a particular issue. An example would be to make it clear when sentencers should be referring to overarching guidelines on offences in a domestic setting or the new mental health guideline

3.38 On a similar point PRT said:

One benefit of delivering guidelines in a digital format has been the ability to cross refer to other useful areas of guidance such as the Equal Treatment Bench book. One concern raised by Anthony Bottoms in his review of research is that overarching guidance tends to be underused by sentencers compared to offence-specific guidance. One way to remedy this would be to improve signposting between offence specific guidelines and overarching guidelines. For instance, any reference to mental health in relation to culpability or mitigating factors should include a link to the overarching guidance in this area.

3.39 Transform Justice welcomed the introduction of expanded explanations and suggested that more detailed material should be provided through drop down boxes in guidelines in a similar way. 'For example, the Council has made clear [in the note that was issued about sentencing during the Covid-19 emergency] that "in accordance with well-established principles, the court ..should take into account the likely impact of a custodial sentence upon the offender". More detail could be provided about those principles, what kind of impact the court should be looking at and how it should identify it e.g. through a pre-sentence report'.

3.40 The Justices Clerks Society suggested any changes made to guidelines could be highlighted in a different colour, to draw attention to the fact a revision has been made since the full guideline was introduced. This is an interesting suggestion but it would be difficult to administer and could cause confusion. We do publish a log of minor revisions to guidelines which gives an audit trail of any changes.

3.41 On a related issue the MA made this suggestion:

There should be a mechanism for sentencers/legal advisers to feed back to the Sentencing Council on an ongoing basis when in particular cases they are surprised by where the guidelines are taking them or there is a lack of an adequate guideline. This could be an interactive process that does not interfere with the independence of the judiciary. It might also be useful if the Sentencing Council considered indicating on each guideline when it was last reviewed, including a note highlighting if sentencers should be aware that the law may have changed in respect of the guideline and it has yet to be updated.

3.42 There are a number of themes in these responses and it is clear that some respondents are more comfortable with the use of digital guidelines than others. One development worth noting is that the iPads issued to magistrates are being replaced by

laptops and so we are working with HMCTS to provide some guidance to magistrates on how to access and use guidelines on the new devices.

3.43 It will be impossible to provide the additional links that some are suggesting without making others feel that the guidelines are more difficult to use. The Council has gradually increased the number and types of links included in guidelines and it will be instructive to see the responses to the upcoming consultation on the revisions to the sex offences guidelines which proposes some additional expanded explanations at step one of those guidelines. It remains the strategy for the website that guidelines should be easy to use.

3.44 The idea from the MA of providing a mechanism for feedback is something we could take forward. There is already information on the website about how users can contact us to report problems or ask questions and we regularly get a small number of such enquiries. These often result in small changes being made (for example to search terms) to improve the digital guidelines. The Council has already agreed that it would be a good idea to have an annual consultation on miscellaneous changes to guidelines and so there could be merit in proactively seeking suggestions from users for minor amendments to existing guidelines. If this is felt to be a good idea we could explore ways of inviting feedback from within guidelines. This is something that will be easier to do once magistrates are accessing the guidelines via laptops rather than off-line iPads. There would, of course, be resource implications if we increase the amount of feedback we get from users. This could be mitigated by using an auto-response function to acknowledge receipt and indicate that the comments will be considered.

3.45 Our proposed work on user testing will investigate whether digitisation of guidelines has had any impact on the way in which the guidelines are used and may propose changes to the provision of digital sentencing guidelines to ensure they are used in line with the intentions of the Council. An Invitation to Tender for this project was issued in late 2020, but unfortunately we received no bidders. The tender will be re-issued once it is confirmed that the necessary funds are available from next year's budget.

Question 3: Would it be useful to encourage feedback on guidelines from within the digital guidelines?

Consultation question 25: Do you have views about how the Council how can improve the consultation process for regular respondents?

3.46 There were several comments from magistrates:

To make life easy for busy people, put the relevant issues and the questions about them together, briefly, so people don't how to keep referring back to another document. If you don't already, give feedback (at east in general terms) on the feedback you've received and, most importantly, what you're doing about it.

Have far simpler questionnaires. I have almost lost the will to live in completing this survey. Far too many questions and most are about much the same thing.

A question to ask here is, 'What audience are you trying to reach?' Publishing long winded technically written documents may appeal to CJS users and practitioners who work full time but to the general public and a lot of Magistrates, this viewing of material may be sporadic at best and not very interesting at worst. Sadly, my opinion of consultation documents are that they are written and presented like most legal texts, mind numbingly boring. By jazzing them up, more colour, text boxes and appealing backgrounds then the sometimes tedious subject can be made more interesting. In doing so this could be more acceptable on social media sites and a suggestion would be to do some work with universities to understand what appeals psychologically to the human mind and consult accordingly. An example I heard many years ago was during the 2nd world war, many GI's recruited from poorly educated groups in the USA were having difficulty learning rifle drills with the obvious dangers escalating in a war zone. A user pamphlet was designed as a comic book with a talking rifle with text boxes, arms and legs and pictorial explanation rather than boring text. It was a huge success and showed that understanding your audience is the starting point to designing what will appeal to them.

Reports can be more concisely written than this document. Avoid overlap of questions. The sharper it is the easier it is to engage and respond.

3.47 An anonymous respondent suggested:

More awareness of consultations to the public and more information on how it's used and the results at the end provided. More awareness and advertising of these consultations are important for the public to know and so can contribute towards it and gather as many views and thoughts as possible that truly represent what the UK population feel about the council and these issues. However, obviously criminals will want better guidelines for themselves and may take advantage of these consultations, so it's a factor to be aware of and should be ensured no favouritism occurs to benefit criminals more than victims.

3.48 Other respondents comments and suggestions were:

Working with community groups and third sector organisations that represent one or more protected characteristics is vital to ensuring that all diverse people are involved and to identifying and addressing inequalities.

Additionally it is vital that consultation documents are available in plain language and Easy Read and that people can submit their experiences and views to be considered without responding directly to the written consultation document. This is vital to engaging all diverse people across the protected characteristics. **Diverse Cymru**

There should be more liaison about the planned programme – especially in relation to what existing guidelines need amending, or where there is a clear lack of guidance. They should consult with stakeholders annually, setting out what guidelines are in place (a surprising number) and what their programme ahead is, so key stakeholders can influence the workplan. **Magistrates Association**

While the Council has made commendable efforts to engage a variety of organisations, Transform Justice considers that their consultations should reach a

broader audience -particularly organisations that deal with people who have been convicted. Consideration should be given to undertaking more surveys and research studies to understand the complexity of attitudes to particular offences and to draft consultation questions in a less legalistic way. **Transform Justice**

I think it would be extremely useful to have a mailing list of interested parties to which such consultations are circulated and to which people can sign up. I have to date relied on people alerting these to me out of good will and encountering them on Twitter – yet I am a sporadic user thereof and worry I may not have seen relevant notifications of such consultations. For example, my colleague Rose Broad and I would very much like to pre-register an interest in future consultations or bespoke consultations such as the Modern Slavery guideline consultation in due course and know that I will be alerted of these once they are 'live'. I believe this approach will also assist with question 26 as organisations can proactively pre-register an interest with the Sentencing Council too. **Dr Carly Lightowlers**

The SC should be encouraged to hold more consultation events. A number of such events have been held in the past targeting the academic community but a more consistent approach to such events might be helpful. These events should be opened up to as wide a group of participants as possible as this will also help inform the individual responses from attendees. **The Sentencing Academy**

Many people are deeply sceptical as to whether those who consult also listen. Publishing responses, and your response to consultations in more detail might help. **Professor Nicola Padfield**

I would be interested in exploring with the Council what mechanisms could be used to further strengthen the relationship with Parliament and the public to ensure the Council receives representations from a wide range of stakeholders, including MPs, charities and academics. I would also encourage the Council to consider what more it could do to proactively target and seek the views of specific demographic groups and victim groups affected by particular crime types during consultations on guidelines. There is strong interest amongst some parliamentarians in the sentencing guidelines and I would welcome consideration of whether the Council could host roundtables with interested parliamentarians on draft sentencing guidelines during consultation. **Lord Chancellor**

Consultation question 26: Do you have views about whether there are people or organisations we should be reaching with our consultations but are not? If so, please suggest what we can do to reach them.

3.49 There were various suggestions for greater links with:

- BAME groups
- Groups active in the area of mental health and substance abuse
- More generally with the public – perhaps through blogs, have a panel of registered members of the public
- The disabled community
- Organisations and charities supporting victims
- Trade organisations (relating to health and safety issues)
- Groups representing those with protected characteristics
- Former offenders, people with lived experience of the criminal justice system
- Defendants

3.50 Professor Nicola Padfield commented:

It is a difficult question: only a small percentage of the population is likely to engage with these sorts of written consultations, which assume so much prior knowledge. I would encourage you to hold more focus groups in prisons, and to reach out to hostels and community centres, for example. It is so important to hear the voices of those who do not have easy access to the internet.

3.51 There are several themes in the responses to questions 25 and 26, most of which have already been discussed at the January meeting. One is that our consultations are too technical. The Council has agreed that consultations cannot be simplified without sacrificing important detail, but it has been agreed that we should include an executive summary in consultations to assist users.

3.52 Another theme is that we should ensure that we are reaching all interested parties with our consultations and should make particular efforts to reach certain groups perhaps through consultation events. The Council has agreed to do this and proposals for taking this forward will be put to the Equality and Diversity sub group in May. It might be useful to include consideration of the target audience for a consultation in the Council paper at the consultation sign off stage.

3.53 The Council has already agreed to consider bringing in external expertise at the scoping stage of each guideline and we regularly engage with stakeholders at an early stage of guideline development; we could consider engaging with a wider range of stakeholders at an early stage (again this could be considered by the Equality and Diversity sub group).

3.54 The suggestion from the MA about liaising more about our workplan was mentioned at the January meeting. The workplan has a large degree of flexibility built in, as the amount of time needed for each guideline or other project varies, staffing levels within the office can change and external factors (legislation, pandemics, general elections etc.) can disrupt the plan. There will be a paper on the Council's priorities at a future meeting and the criteria for deciding which guidelines should be developed will be discussed then.

3.55 It is apparent from some of the responses that it is not always clear how we have taken respondents' views into account. We do, of course, publish a response to every consultation where we set out the range of views and suggestions in responses and the Council's reasons for adopting them or not. These documents are necessarily detailed and technical and it is not always possible to come up with simple to understand examples of how and why the guideline has changed as a result of consultation. Perhaps though, we could do more to highlight the fact that we consider consultation responses seriously and in detail and that they are an integral part of the guideline development process. One way of doing this could be through a blog post setting out how we take views into account.

Question 4: Should the Council seek to give more prominence to the importance of consultation responses?

Question 27: Do you have views on how the Council should time the publication and coming into force of the guidelines?

3.56 There were only a few responses to this question. One magistrate questioned the policy of quarterly publication, suggesting that this could lead to delays. Another said that there should be time for sentencers to be able to look at the new guidelines before they come into force. A third felt that one month between publication and coming into force was adequate. The MA welcomed a gap between publication and coming into force and the Justices Clerks Society welcomed the predictability of when guidelines come into force for training purposes. Professor Padfield suggested that annual changes might be preferable.

Question 28: Is it the role of the Council to provide more assistance on the use and interpretation of guidelines? If so, please explain how you think this could best be achieved.

3.57 Fourteen respondents gave answers to this question. The MA said it was important for the Council to be responsive to any difficulties or challenges identified by users of the guidelines and one magistrate said that the thinking and objectives should be set out at the consultation stage and revised if necessary in a separate document to the guidelines. Professor Padfield felt that there was a need, noting that there are significant numbers of magistrates and judges who struggle with following multiple guidelines simultaneously, especially on an iPad.

3.58 Some felt that the Council could do more to help with the interpretation of guidelines. A magistrate felt that there should be more assistance with the use of the guidelines, stating that if they were more user friendly there would be fewer issues of interpretation. Another magistrate repeated his suggestion that guidelines could be more automated whereby the sentencer selects the relevant factors and the guideline then calculates the suggested sentence. This magistrate also felt that step by step examples of how a guideline should be applied to a scenario would be helpful.

3.59 Some went further suggesting that the Council should provide training. An anonymous respondent said that the Council should offer workshops or lessons on the guidelines, provide advice on the use of guidelines and 'be contacted when needed and respond promptly'.

3.60 Mandeep Dhami stated:

The Council ought to be involved in assisting on the use and interpretation of the guidelines, because it is best placed to do so, given its role in developing and monitoring the guidelines. This could be achieved by organising and delivering meaningful training for sentencers and court clerks that includes individual-level

feedback on performance (e.g., on issues such as consistency, compliance, use of extra-legal factors etc). The Council would need additional resources in order expand its role in this regard.

3.61 In contrast two respondents simply answered 'no' to this question and the Sentencing Academy stated:

We do not believe that the role of the Council is to provide more assistance on the use of its guidelines. This is a matter for individual magistrates' courts' legal advisors, individual members of the judiciary, the Court of Appeal and the Judicial College.

3.62 There was no clear theme to these responses. There clearly is a need for some gap between publication and coming into force, but no clear consensus on how long that should be. In the past we have produced examples of how a new guideline could be applied in a fictitious scenario and published these on the web site as well as sharing them with the Judicial College. More recently we have liaised with the training committee of the JCS who provide training in magistrates' courts and have worked with the Judicial College to provide training and to conduct a research exercise at the Serious Crime Seminar. As we understand it training is delivered in various ways – through face to face (or virtual) courses, on-line training modules and, particularly in magistrates' courts, much of it is devised and delivered locally. Our contact with the Judicial College is on a somewhat ad hoc basis – although the impression we have gained lately is that Covid has been very disruptive to any training programmes. We are currently in discussions with the course director for sentencing at the College regarding input into the continuation course for circuit judges and recorders.

Question 5: Should we continue to liaise with the Judicial College to determine the best way to ensure that users are prepared for the introduction of new guidelines?