

Sentencing Council meeting:
Paper number:

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**SC(21)MAY05 – Prioritisation of ‘Vision’
actions**
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1 ISSUE

1.1 Prioritisation of the actions agreed in Council meetings to discuss responses to the ‘*What Next for the Sentencing Council?*’ (‘Vision’) consultation in relation to current and future workplan priorities.

2 RECOMMENDATION

2.1 That the Council considers the relative prioritisation of actions set out in this paper along with the proposed timescales for the work. This will feed into the consultation response document that is scheduled for publication in early September.

3 CONSIDERATION

3.1 The Council has been considering the responses to the Vision consultation in meetings since November 2020. The areas discussed include responses in relation to future guideline areas, prioritisation of guidelines, communication and public confidence, analytical work, the role of the Council, and work in the area of effectiveness of sentencing. As result of these discussions, a number of actions have been agreed.

3.2 The agreed actions need to be considered alongside all other work that the Council is currently undertaking or has scheduled (the Council’s ‘core’ work). Given the resources available to the Council (particularly in terms of staffing resources, but also financial resources to commission external work), it will not be possible to progress all actions – at least not in the short or medium term – and decisions will therefore need to be made regarding the relative importance between different areas of work.

3.3 This paper sets out the Vision actions and proposes a categorisation based on relative priority as suggested in the previous Council meetings: Group 1 actions cover high

priority actions or those requiring relatively immediate action; Group 2 covers more medium priority actions, as well as those that can be conducted on a more ongoing basis so do not require immediate scheduling or a need to stop work on other areas in order to accommodate them. Other areas within this group can be considered on a case-by-case basis and scheduled when there is available capacity. Group 3 actions then cover those that were agreed in previous meetings to be lower priority or that did not require further action. The paper also recommends broad timings for starting work on the basis that in order to address most of the main suggestions arising from the consultation, work will need to be staged. It also outlines some of the actions that are already underway and that therefore do not need to be discussed at this stage, as well as some potential further areas to consider for the future.

The Council's core work

3.4 A large proportion of the Council's work is what we have identified as core work. This covers the whole range of work that is necessary for developing the guidelines that are already included in the workplan and for ensuring the smooth operation of the Council and Office. For the policy team, this includes guideline development and revision (from initial scoping through to implementation), responding to policy enquiries, and working with other teams in the office as necessary. It also includes some actions that were raised in the consultation but that had already been initiated by the Council (e.g. considering sentencing data on different demographic groups as part of guideline development and adding wording into guidelines to flag these issues if necessary).

3.5 For the communication team it covers work on the website and digital guidelines, press work, social media work, proof reading consultation documents, and responding to enquiries. For the analytical team, it covers work on resource assessments and statistical bulletins, provision of data to policy leads for guideline development, road testing exercises, scheduled evaluations¹, and scheduled publication of data². It also covers specific data collections in courts to obtain the information needed for guideline development and evaluation. Members of the team also cover the budget work for the Office and Council.

3.6 All teams also have to set aside resource to feed into activities such as work on the Annual Report, Business Plan and corporate activities. We also need to retain flexibility to respond to work that arises outside of the workplan (for example, if there was to be the need

¹ Analysis of data on breach offences and on bladed articles and offensive weapons offences is already underway. A small-scale evaluation of the Imposition guideline is already scheduled for 2021 and will be needed to feed into the breach evaluation.

² Work to clean, quality assure and publish our data on drugs offences is already underway.

for a new digital tool for magistrates and or when changes to legislation impacts on the workplan).

3.7 A large proportion of each team's work is therefore allocated to this core, 'business as usual', work. However, because policy officials are more directly deployed on guideline development work and revision, we estimate that a slightly higher proportion of their work is directed towards this. In contrast, whilst the Communication team and Analysis and Research team have a large proportion of core work, they also have some more standalone, project based, work. Some of these require a relatively large amount of resources - for example, developing a new You Be the Judge tool, developing materials for schools, previous redevelopment of the website, undertaking specific research projects on cumulative impacts, judicial attitudes, consistency etc (note that policy colleagues would also feed into all of this work, but would not necessarily lead on it).

3.8 An estimated 90% of the policy team's time is taken up with core work; for the communication team the proportion is 80% and for the analytical team, 75-80%. This means that the scope at present to take on additional work arising from the Vision consultation is limited.

3.9 The prioritisation and timing of work set out below is predicated on retaining these levels of core work in order to continue to develop guidelines at the current pace as set out in the workplan (and to undertake all the additional functions needed to ensure the Council and Office function effectively). If we retain this resource input into our core work, then it will only be possible to also cover the higher priority (Group 1) actions below in the more immediate future. If, however, the Council feels that there are some actions in Group 2 or Group 3 that need to be prioritised more highly, then we would need to reconsider the balance of core work against this additional work. In practice, this is likely to mean slowing down the pace of guideline development (potentially working on slightly fewer guidelines at same time or lengthening the time we take to produce them to free up more time for officials) or revisiting our approaches to some work/ exploring whether we can do anything differently.

3.10 Once the Council has been able to consider the proposals in this paper, we will ask for confirmation that it does wish to retain the current proportions of input into core work and is happy with the grouping of Vision actions and associated timings. If adjustments need to be made, then we will come back with more detail on this and a revised timescale for actions at a subsequent meeting.

Group 1 actions arising from the Vision consultation

3.11 There were a number of areas arising from the Vision discussions that it was agreed should be taken forward as high priority. Some of these are already underway and will be the subject of future Council discussions:

- Conducting further work in the area of equality and diversity: a Council working group has been set up and we are currently procuring work on equality and diversity in the work of the Sentencing Council. We also now routinely analyse and publish more data in this area which is considered as part of guideline development.
- The need to undertake a small exploratory study to look at the totality guideline. This has now been completed and the findings will be fed back to the Council in due course.
- Consideration of the need to broaden out the scope of the Council's target audience, in particular to reach offenders and people under probation supervision: the Communication team is currently working on this and initial ideas have been discussed with the Equality and Diversity working group. This review also encompasses the action to include on our mailing lists Local Criminal Justice Boards and to use this as an avenue for seeking more local and regional views on consultations³.
- To extend our reach into schools, working in partnership with other organisations such as Young Citizens and the Magistrates' Association. The Council has previously identified school-age children and young adults as priority audiences, and respondents to the Vision consultation were keen to see the Council do more work in partnership with other organisations to extend our reach, in particular to children and young people.
- A review of the criteria on which guidelines should be developed/ revised and the need to make more explicit reference to calls from interested parties in the policy for making minor changes; it was agreed that we should also consider the mechanism by which parties are able to feed back. This work is currently being taken forward and is likely to be brought back to the June Council meeting for consideration.

³ Note that there was also a discussion around the need to reach out to victims more. The Council felt that victims are already integral to the work of the Council, although victim groups will be considered as part of the review of our audiences.

- To undertake an annual consultation on cross-cutting and minor revisions to guidelines. This work is underway and will be discussed in a separate paper at this meeting.
- To consider at the scoping stage of guidelines whether there is any external expertise that should be drawn upon. This has often happened in the past and policy officials will ensure that the Council considers it at the initial stages of every guideline in future.

3.12 For the remaining high priority areas (presented in the table below), we will need to find specific additional resource as these have not yet started. Due to the fact that a lot of this work will largely fall to the analytical team (which is currently understaffed and will experience some changeover of staff in the next year), we have proposed broad start dates that will allow us to stage the work and resource it over time rather than immediately.

3.13 All of the broad dates do, however, involve starting this work before September 2022 and most involve completion of the work by this date. We think that it is important that we can demonstrate that the Council is responding to the key points from the consultation and that we should therefore specify that high priority actions will all be started (and most completed) within a year of publication of the consultation response document.

3.14 It should be noted that these proposals are necessarily provisional at this stage: for some areas, we cannot precisely estimate the resources required until we have started it, and in some cases the work involved will be dictated by decisions taken at an earlier stage. For example, the resource needed for future data collections will be dependent on both the outcome of our discussions with HMCTS on the Common Platform – which are still ongoing – and decisions made as part of our work scoping out a new approach to data collection. Likewise, decisions on whether the Council needs to schedule in development of a full guideline on female offenders will be informed by the findings of an evaluation of the expanded explanations. For this reason, we will need to revisit priorities and resourcing at regular intervals.

| High priority vision actions | Proposed timing | Comments |
|--|----------------------------|--|
| Scope out future data collection methodologies and approaches | Summer/autumn 2021 | We will need to complete this in 2021 to feed into the discussions on the Common Platform |
| Seek permission to collect case identifiers as part of future data collections | Summer 2021 | We are starting to plan the next data collection and so will need to start work on this imminently |
| Review approach to resource assessments and evaluations, to include how to ensure the impact of different groups can be incorporated | From autumn 2021 | It will be important to start this as soon as possible, but it is likely to be an ongoing piece of work in 2022 whereby we make a series of enhancements to our work as necessary. This will also take account of the views of some respondents that the Council's measures of 'success' need reconsideration (i.e. can we analyse our data in different ways to look at the concept of 'impact' from different perspectives?) |
| Undertake an evaluation of the expanded explanations; as part of the consideration of the findings from this, consider if separate guidance/ a guideline is needed for either female offenders or young adults | To start in spring 2022 | Given other commitments in the analytical team, it will not be possible to start this in 2021. However, we will endeavour to start this as soon as possible in spring 2022 |
| Produce a digest of research on effectiveness of sentencing and publish this on the website | Autumn 2021-September 2022 | Publication of the digest by September 2022, and thereafter every two years |
| Provide information in the consultation response document/ website on the difficulty with publishing information on the costs of sentencing | By September 2021 | A decision was made that information on costs should not be published. However, as this was called for as part of the consultation, it was agreed that information should be provided on why the Council is not taking this forward |
| Consider the wording and position of references to the Equal Treatment Bench Book in guidelines | Summer/autumn 2021 | This will be covered as part of the research project to look at equality and diversity in the Council's work; this is a priority project and which we are currently procuring |
| Explore and seek further sources of funding | Ongoing | We will start considering this from the summer onwards, but given that different organisations have different funding cycles, it will be an ongoing piece of work |
| The Council should arrange periodic sessions with the Justice Select Committee and offer briefing sessions to MPs if required | Periodic, as required | This also links with agreed work to review the Council's parliamentary engagement strategy as part of |

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| | | developing the next Confidence and Communication strategy |
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Question 1: Is the Council content that the above actions are high priority areas?

Question 2: Is the Council content that Group 1 actions should be those that we should start within one year of publication of the consultation response document, if not before? As a result, is the Council content with the proposed indicative timings above?

Group 2 actions arising from the Vision consultation and potential other future work

Vision actions

3.15 The next set of priorities cover those actions from the consultation that were considered to be less important or urgent than others and so have been categorised as medium priority. These are considered alongside some areas of work that do not appear on the current workplan but that we anticipate will need to be included in the future. Many of these areas relate to analytical work that will be needed, in particular evaluations of current guidelines that we have not yet had the capacity to undertake.

3.16 The medium priority vision actions are set out below. Some relate to work that can be conducted on a more ongoing basis so do not require immediate scheduling or a need to stop work on other areas in order to accommodate them. Others we propose considering on a case-by-case basis and scheduling the work in for a time when there is capacity (this may mean slightly shifting items on the workplan to be able to resource it).

| Medium priority vision actions | Proposed timing | Comments |
|--|-----------------|---|
| Invest time into enhancing links with external organisations and academics and considering opportunities for future collaborative work | Ongoing | We already spend time on this but will continue to seek out further opportunities. Some of this may be facilitated by taking forward the high priority action around seeking further sources of funding |
| Work more in partnership with other organisations to take advantage of their audience reach and existing networks | Ongoing | We already spend time on this but will continue to seek out further opportunities |

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| Undertake work to include a more simplified, accessible, introduction into consultation documents | Ongoing | Discussions are already underway on what these summaries might look like and how they can be achieved within the production process. Recommendations will be made to the Council shortly. |
| Where data permits, undertake in-depth analysis on sentencing outcomes for different ethnicities and sexes (as was done with drugs supply offences) | As needed | This is intensive and time-consuming work so could only be scheduled if we have capacity at the time. However, there will only be a limited number of offences for which this type of work could be conducted as we would need to have sufficient volumes of data in order to conduct meaningful analysis |
| Explore with stakeholders the potential reasons for any findings from analysis with groups with protected characteristics; this may include convening a workshop on equality and diversity issues | As needed | The need for this will fall out of whether we undertake any analysis, in particular analysis of the kind outlined above. We will discuss with the Equality and Diversity working group the need for a workshop in the future |
| Undertake qualitative work with victims, offenders and other relevant groups | As needed | We will consider this as part of the scoping work for developing a guideline. If resources are limited, but the work is needed, we will consider the options for conducting a smaller scale piece of work |
| Conduct extended work on public confidence | As needed | The nature and scale of this work will be discussed with the Confidence and Communication subgroup and scheduled in as resources permit |

3.17 There are also three areas of work that despite being categorised as more medium priority, we feel should be picked up within the first year after publication of the consultation document.

3.18 The first is work to consider amending the Imposition guideline to more explicitly flag issues relating to the effectiveness of sentencing. The need for the Council to undertake more work in this area was flagged by a number of consultation respondents. The main issues were discussed at the last Council meeting where it was agreed that we should in the future publish a digest on research on effectiveness on sentencing (which will be taken forward as a high priority area and published every two years). The Council also considered policy related changes in this area which included the suggestion that an additional step be inserted into guidelines to remind sentencers to consider their final sentence in the round in terms of relative effectiveness. The Council did not wish to take this suggestion forward, but instead asked that consideration be given to amending the Imposition guideline to more explicitly flag these issues. The exact timing of this work will be dependent on any imminent

legislative changes which may necessitate other changes to the Imposition guideline, but we propose that work on this is commenced in 2022.

3.19 Related to this, there was the suggestion that we could undertake research with offenders to understand more fully which elements of their sentence may have influenced their rehabilitation. This could either be conducted in relation to specific guidelines in development or as a larger stand-alone piece of work. It should, however, be noted that interview research with offenders can be more complex and time-consuming than that with sentencers or members of the public, primarily because accessing this group can be problematic (both in terms of gaining approval to access them and in terms of securing a sufficient response rate for those who are serving sentences in the community). As a result of this, whilst we do not suggest that we commit to specific research in this area at the moment, we do suggest that as part of the digest research work on effectiveness, we scope out the possibilities in this area and discuss the value of these with the Analysis and Research subgroup.

3.20 Finally, we agreed in the March Council meeting to scope out work on the analysis and publication of local area data. It was felt that this was important as it was raised in some consultation responses and is the one statutory duty that the Council has not addressed thus far. We therefore suggest that we slightly raise the priority of this and commit to scoping this out (as opposed to actually publishing data in this area) by September 2022.

Question 3: Does the Council agree that we should take forward the Group 2 actions above on an ongoing basis or as needed, adjusting the scheduling as relevant at the time?

Question 4: Does the Council agree that despite being medium priority, there are three areas of work (in relation to potentially amending the Imposition guideline, scoping out work with offenders on effectiveness and scoping out work on local area data) that we should start work on by September 2022?

Other potential future work

3.21 The work that does not arise from vision responses, but we will need to schedule in at some point in the future include:

- Evaluations of seven current guidelines that have been in force from 2018 and long enough to “bed down” in practice⁴ (note that there will be more than seven over time as the Council continues to develop new guidelines).

⁴ This covers evaluations of guidelines for manslaughter, domestic abuse, child cruelty, mental health, public order, arson and criminal damage and intimidatory offences.

- Publication of data collected as part of earlier data collections (in particular we had scheduled in work on publication of data on robbery offences for later in 2021).
- Further work on consistency, in particular on a methodology for this (this complex area is the subject of a Council report which will be published in June; in that report we flag the need for more work in this area).
- Re-running some of the public confidence survey questions that were covered as part of the previous ComRes research to provide a measure of any changes over time.
- Consideration of how best to present our statistical work, both to the Council and externally on the website.

3.22 Given the core work we are already committed to, along with the high priority actions outlined above, it will not be possible to take forward the above work immediately. We would therefore propose the following, some of which we have already discussed at previous Council meetings (the exact timing of these will also be subject to office staffing resources at the time):

- That we deprioritise some of the evaluation work in order to focus on our core work and the more immediate actions for the analytical team of scoping out new data collections, procuring research work and working on a publishable digest of research on effectiveness in sentencing. We will, however, prioritise an evaluation of expanded explanations as this is high priority, and attempt to schedule in work on evaluations of both the manslaughter and intimidatory guidelines at some point in 2022 (the rationale being that an evaluation of manslaughter will be largely transcript led and so a relatively small piece of work, and that as we have asked magistrates to collect data for us on some intimidatory offences, it is important that we are able to publicly feedback the findings from this as soon as possible).
- That we aim to prepare and publish the robbery data within the first six months of 2022; thereafter we will only publish data alongside the publication of an evaluation report. This means that we will build up a backlog of unpublished data but in the March Council meeting it was agreed that this work should not be prioritised over other analytical work.
- That we continue to look into furthering our work in the area of consistency in sentencing (given that this is a statutory duty for the Council), but that we pick this up in 2022, as resources permit.

- That we agree to re-run the public confidence questions but that we consider further the best timing for this.
- That we make no firm agreements at this stage on how best to present our statistical work in the future and that we consider this further in discussion with the Analysis and Research subgroup later this year (some of this will also depend on our ability to hire in resource for this – for example, a fixed term digital officer who could help develop tools for this type of data).

3.23 If the Council does not agree with some of the above timings/ prioritisation, we would need to either drop or slow down some of the higher priority work, explore ways in which we could more quickly increase the resources of the Council, or slow down the pace of current guideline development work. If any of these were felt to be an option, we would need to consider the overall workplan again and return with suggestions of which areas or guidelines to deprioritise.

Question 5: Does the Council agree with the prioritisation and scheduling of the future (non vision) work as set out above in paragraph 3.22?

Group 3 actions: Low priority vision actions and work requiring no further action

3.24 There were a number of recommendations that came through in Vision responses that the Council considered were more low priority:

- The need to be clearer that we cannot provide sentencing remark transcripts to external parties. It was agreed that we would explain the reasons for this on the website and provide information on accessing transcripts.
- The need to be clearer about how the Council takes account of consultation responses, possibly by way of a blog post on the website or a video.
- More analysis of the impact of multiple offences on sentencing outcomes and a review of the data and potential methodologies for this.

3.25 If the Council still feels these are low priority actions, we will note them and revisit them when we look again at priorities.

3.26 The recommendations from the consultation that the Council has flagged for no further action are:

| Vision actions requiring no action | Comments |
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| Seek wider public views as part of consultations | Members of the public are already able to respond to consultations and we do at times conduct research with the public. We are also currently reviewing the reach of our consultations with audiences that we do not routinely hear from. It was agreed that no further work to extend our reach to the general public is needed. |
| Review the way in which the Council addresses its duties in relation to sentencing and non-sentencing factors as part of the annual report | Although a small number of respondents flagged the need for this, there are difficulties with the data in this area and it is hard to isolate the impact of the guidelines specifically over and above other aspects of the criminal justice system that may also have an impact (e.g. remand decisions, parole decisions etc). The work is also time consuming. The Council therefore agreed that the current approach is a proportionate approach and should be retained. |
| Undertake a survey to establish what future guidelines/ guidance might be necessary | Given that the consultation itself asked questions about this, that the Council already has a full workplan, and it is also reviewing the criteria for developing/ revising guidelines, it was agreed that there would be no value in seeking further views in this area. |
| Undertake more work in the areas of promoting consistency in sentencing, the impact of sentencing decisions on victims and promoting public confidence in the criminal justice system | The Council discussed responses to the question that was asked in the consultation. Specific areas are already being actioned (e.g. in relation to public confidence and consistency) and so it was felt that no further work was needed at this stage. |
| Information should be published on the costs of sentencing | The Council agreed that this would not be appropriate as the cost of a sentence is not a consideration that is taken into account when deciding on a suitable sentence. Publication of data in this area could also be misleading without suitable context. It was agreed that this information should not be published but that we would provide information on the reasons behind this decision as part of the consultation response document. |
| Guidelines need to embed more information on the considerations in relation to effectiveness in sentencing. An additional step could be added into guidelines to remind sentencers to consider their sentence in the round in terms of relative effectiveness | The Council did not agree to take this forward but instead proposed that the Imposition guideline should be reviewed and text added into that to more explicitly flag these issues. |
| The Council should produce guidelines in plain English and alternative formats | The Council did not want to take forward this action as it felt it would not be appropriate and it would be too resource intensive. Instead it proposed that a more simplified, accessible, introduction should be added into all consultation documents which is being actioned. |
| The Council should become more proactively involved in public and | Some respondents called for this. However, the Council did not think this was appropriate given its role and remit |

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| parliamentary debates on sentencing | and there was the risk of being drawn into individual cases or political debates. However, it did agree that there should be periodic appearances at the Justice Select Committee and that we should offer briefing sessions for MPs if required. |
| The Council should extend their use of Twitter and other social media | The Council considered that our existing approach to Twitter is the correct. To use the channel to engage more with other users would be a higher-risk strategy and could lead us to being drawn into discussing specific cases, government sentencing policy, political issues etc. It would also be very resource intensive for the Office. We will, however, continue to consider the potential of other social media channels to reach our audiences. |

Question 6: Is the Council content that the above areas (outlined in paragraph 3.24) should remain as low priority areas?

Question 7: Is the Council content that the above areas (outlined in paragraph 3.26) should be areas for no further action?

Future work

3.27 Beyond autumn/ winter 2022, the timings for work are less firm. We will need to regularly review workloads and capacity and adjust timescales accordingly. It should also be noted that work that will take place between now and the end of 2022 will also to some extent dictate our capacity in the longer term. For example, if the scoping of future data collections suggests that we should return to a census approach, and if we cannot extract all the data we need from the Common Platform, the resources needed to implement and analyse future collections will be far greater. Likewise, if the evaluation of the expanded explanations suggests that more guidance is needed on female offenders or young adults (areas flagged by Vision respondents), then we may need to schedule in specific guideline work in these areas, which may take resources away from elsewhere. Any cuts in budget or staff vacancies will also have an impact on resources. In addition, we have two members of staff in the analytical team on fixed term contracts; if we cannot replace this resource within the team then we will need to slow down some of our work.

Summary

3.28 This paper has outlined a number of areas of additional work, some of which are of high enough priority to warrant reprioritising other aspects of the workplan in order to accommodate them. However, there are some actions (those covered in groups 2 and 3) that we will not be able to take forward immediately or that we will need to consider on a

case-by-case basis. This is based on us retaining the current staffing input into the Council's core work (estimated to be 90% of the Policy team's time, 80% of the Communication team's time, and 75-80% of the Analysis and Research team's time). If, however, the Council wishes to take forward some of the actions in these groups more quickly, then we will need to reconsider the overall workplan and adjust the input into the core work.

Question 8 : Is the Council content to retain the estimated input into core work and to schedule in further work in relation to this?

3.29 It will also be important to build in reviews of the workplan to ensure that we can revisit priorities on a regular basis. We suggest that we formally review this with the Council twice a year.

Question 9: Is the Council content to review workplan priorities twice a year?

4 IMPACT AND RISKS

4.1 Although we have prioritised the actions arising from the vision consultation, the additional work on top of our core work still poses potential capacity issues. This will be particularly problematic if we lose any members of staff or experience any budget cuts. A regular review of the workplan will help to mitigate this and build in any necessary revisions.

4.2 It will be important to ensure that we provide a full and justified explanation in the consultation response document for all the decisions that have been made. If not, this may attract criticism that the Council has not fully taken account of the views put forward and is not being responsive to recommendations. This could undermine confidence in the Council and the decisions it takes.