

**Name**

David Strang HM Chief Inspector of Prisons for Scotland

**Publication consent**

Publish response with name

**Q1) Do you agree or disagree with the Council's approach to the distinction between a 'principle' and a 'purpose' of sentencing?**

Agree

**Please provide any reasons for your response.**

I think it is helpful to articulate the principles of sentencing as separate from the purposes.

**Q2) Should there be an overarching principle of "fairness and proportionality"?**

Yes

**Please provide any reasons for your response.**

My only qualification to this answer is that I would have expected a core principle to have included the word "justice" in it. The administration of justice contributes to a civilised, stable and ordered society.

**Q3) Are the supporting principles which underlie the overarching principle of fairness and proportionality (as listed at paragraph 2(i)-(vi)) appropriate?**

No

**Please provide any reasons for your response.**

I agree with principles 2(i), (iii), (iv) and (v).

2(ii) If the other principles are applied, I do not think there is need to express a principle that similar offences should be treated in a similar manner. Very different circumstances of two offenders might mean their cases are dealt with quite differently (correctly) - how would this be reconciled with a "similar manner" principle?

2(vi) I would remove "equally". I agree they should be treated without discrimination,

but achieving equality does not necessarily mean treating everyone equally.

**Q4) Are the supporting principles expressed clearly and accurately?**

Yes

**Please provide any reasons for your response.**

With the exception of 2(vi) as above at Q3.

**Q5) Are there any other supporting principles which should be included at paragraph 2?**

Should the sentencer have to consider the impact of the sentence?

Such as:

- the increased likelihood of an offender reoffending if a prison sentence is imposed;
- the "unintended" harms of a prison sentence, such as the impact on the family and children of the offender, the potential impediments to future employment, or the financial impact on an offender's family of any sentence.

**Q6) Do you agree or disagree with the approach to the purposes of sentencing as set out at paragraph 4 of the draft guideline?**

Agree

**Please provide any reasons for your response.**

Especially 5(c) and 5(d).

**Q7) Are the purposes as listed at paragraph 5(a)-(d) appropriate?**

No

**Please provide any reasons for your response.**

5(a) In most cases, punishment will be an appropriate purpose of sentencing. There will be cases where very little or no punishment is required, even if the crime is serious, such as where a mother causes the death of her own child. She is unlikely to need further punishing by the state (but may warrant a prison sentence).

5(b) I think few sentences have a deterrence effect on potential offenders. The

likelihood of being detected and prosecuted has a much greater deterrence effect. For those offenders who serve repeated short prison sentences, a short prison sentence is self-evidently not a deterrent.

**Q8) Are the purposes expressed clearly and accurately?**

No

**Please provide any reasons for your response.**

5(b) For the reasons stated in Q7, I would not include deterrence in the purpose with rehabilitation.

**Q9) Are there any other purposes which should be included?**

Should protection of the public from future harm be included as a purpose of sentencing?

**Q10) Do you agree or disagree with the approach set out at paragraph 6 of the draft guideline in relation to the efficient use of public resources?**

Agree

**Please provide any reasons for your response.**

**Q11) Is it appropriate to consider efficient use of public resources during the sentencing process?**

Yes

**Please provide any reasons for your response.**

This needs to be placed in the wider context of the effectiveness of sentencing. Imprisonment is an expensive way of delivering very poor outcomes in terms of reducing reoffending.

**Q12) Do you agree or disagree that the guideline would lead to an increase in public understanding of how sentencing decisions are made?**

Agree

**Please provide any reasons for your response.**

**Q13) Do you agree or disagree that the guideline would lead to an increase in public confidence in sentencing?**

Agree

**Please provide any reasons for your response.**

**Q14) What costs (financial or otherwise) do you see arising from the introduction of this guideline, if any?**

Only if the changes result in higher tariff sentencing.

**Q15) What benefits do you see arising from the introduction of this guideline, if any?**

It is difficult to separate this consultation from the Scottish Government's announcement that they intend to extend the presumption against short prison sentences from 3 to 12 months. There will be very positive benefits from removing prison sentences of less than a year and replacing them with robust, effective community sentences. The sentencing guidelines will need to reflect this major change in sentencing policy and practice.

**Q16) Would you like to make any other comments in relation to any matter arising from this consultation?**

I fully support the Scottish Sentencing Council's objective of promoting greater awareness and understanding of sentencing policy and practice. I consider that the proposed Principles and Purposes will support this aim.

Greater awareness is needed among the public generally, but specifically among politicians and policy makers, the press and media, and judges/sentencers themselves.

I would like to see greater awareness of the impact of sentences. I am not confident that all judges are aware of the long-term damage which a term of imprisonment causes, notwithstanding the apparent attractiveness of such an option in the short term.