

Name

Angus M.C. Skinner

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.

Q2) Should there be an overarching principle of “fairness and proportionality”?

Yes

Please provide any reasons for your response.

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

Yes

Please provide any reasons for your response.

Q4) Are the supporting principles expressed clearly and accurately?

Yes

Please provide any reasons for your response.

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

I suggest that paragraph 2 would be enhanced by including a requirement along the following lines.

‘(vi) sentencing decisions should be capable of being given immediate effect;’
[This already applies as regards custodial sentences. With community sentences there are frequent delays. When I have raised this before, in an administrative capacity, the response has generally been that the requirement is met by the provision of a social worker and an interview at Court. I consider that to be an administrative process and not a commencement of sentence. Where a community sentence is imposed then I argue some aspect of community service should be undertaken that day, whether or not it fits into some later plan for the offender’s community service. I argue that including this requirement in the overarching principle would build judicial and public confidence in community sentences. Moreover I argue that it would make the importance of the sentence clear to all participants, not least the offender.

The importance of certainty over severity in sentencing, and criminal justice generally, dates back to Robert Peel, at least. Immediacy, I argue, also matters.]

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.

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

Yes

Please provide any reasons for your response.

Q8) Are the purposes expressed clearly and accurately?

Yes

Please provide any reasons for your response.

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

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.

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.

(See Q 16) answer

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

Minimal

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

Clarity

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

If my suggestion for a focus on immediacy were adopted it would require radical change in processes. Essentially reprioritising community service from initiation of administrative processes to initiation of sentence. Administrative processes are very important in all situations. For example in hospital emergencies. Yet they are back-up. Public confidence, and thereby in many ways judicial confidence, in community sentences would, I argue, be enhanced by such a change.

On the day I write a man has been sentenced to 200 hours community service and his victims consider he has walked free. They may well have seen him outside the Court. They express their disappointment in the judicial system. Even had his community sentence started an hour before perhaps they would have expressed similar views. Perhaps not.

Starting a community sentence with some community service (work) on the day of the sentence may be seen as purely symbolic. Yet, I argue, it would be a potent symbol – to the offender, the public, the judiciary, the professionals and the academics. Moreover my assumption is that in making practical arrangements those responsible would not be able to differentiate by nature of offence, background or aptitude. Those undertaking the work would all have to rub along with politeness, an enlightened Scottish tradition.

There would be costs. What I am proposing however is organic change not mechanistic change. In my administrative experience doing new things is easy; stopping doing things the old way is difficult. A planned change would search assiduously for savings to be gained by what can be stopped, layers removed. The key is whether leaders can build a culture of reform. Blast through the inertia. There are, I argue, strong, humane, future oriented, moral and perhaps even ethical reasons for shifting the model.

Some bridging finance would be required yet I see no reason why thereafter this should lead to significant financial burdens.

Well, I have worked for reform in these areas for decades. To little good effect. All I can do is repeat. Blast through the inertia.