

Name

Steve Kirkwood

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?

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?

No

Please provide any reasons for your response.

I disagree that punishment should be a purpose of sentencing. Punishment ought only to be a means to an end, not an end in itself. That is, punishment may be used as a deterrent, both at the individual and the general level, and in doing so it may also function to communicate society's disapproval of the behaviour (purpose 5c - denunciation). It may also help address feelings of retribution among victims and wider society. However, I am not convinced that it makes sense to say that punishment is or should be a purpose in and of itself. Redefining punishment as a possible means of achieving the intended outcomes would bring greater clarity to the purposes of sentencing, and in particular the purpose of imposing punishment. Moreover, having punishment as a purpose of sentencing may lead to, or support, the use of particularly harsh punishments without having to appeal to any clear purposes for doing so. In my view, it would be better to clarify the role of punishment in sentencing and how it may be used to help achieve the intended purposes of sentencing, rather than describing it as a purpose in itself.

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?

No

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.

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

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

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

I agree that 'Giving the offender the opportunity to make amends' should be a purpose of sentencing. To achieve this, I would suggest that restorative justice processes - such as facilitating meetings between those responsible for a crime and those harmed by a crime - would be necessary to establish how best for the person to make amends. Moreover, the restorative justice process itself may allow the person responsible for the crime to make amends (for example, through offering an apology). Resources ought to be provided to ensure that restorative justice services are available and processes need to be agreed on how these should interface with the sentencing process. There are some good examples of such practices internationally; for example, the use of restorative justice in New Zealand may be informative of how this could work in Scotland.