

**Name**

Robert Edward Mackay

**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?**

Disagree

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

There should be a distinction between purposes and principles. However, this should be achieved in another way.

Purpose defines the scope of an action, especially intention. Principle defines how the action is carried out. Purposes serve to establish a practice such as sentencing. Principles are derived from purposes and tell us how a practice is to be carried out. Therefore, the section on Purposes should precede that on Principles.

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

No, it should be another principle

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

It is not clear how a principle can be composed of two elements without defining what each element means and how they are connected to each other. Thus, fair by whose standards? Proportionate to what comparator? (Thus proportionality could be simply 'an eye for an eye'.) Should they be presented as two governing principles?

Whatever the definitions, both the desire for fairness and for proportionality derive intentionally from an overarching purpose or purposes. These could be for instance to ensure a sense of legitimacy and public acceptance. As the text stands, although there is recognition that purposes and principles are connected, it not clear how they are connected.

A further overarching principles is suggested: The inclusion, insofar as is possible, of all affected by the offence in dialogue about the restoration of harm done, subject to the authority of the judge as final decision maker.

**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.**

The supporting principles are broadly consistent with the overarching principle(s).

**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?**

In relation to the additional overall principle of restoring harm, sentencers should take into account any recommendations from deliberations involving the offender and the victim and others in sentencing decisions. (See also Q7 below at 5(d.))

**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.**

Agreement is general but slightly qualified. In each case those purposes that are relevant should, rather than may, apply.

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

No

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

On 5(a), punishment is not a purpose but a class of sentence. To punish is action rather than a type of intention. So what is the intention? Simply inflicting legalised harm is meaningless. It can only be justified in relation to purposes of public protection or amendment of behaviour or other purposes of sentencing.

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

No

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

On 5(d), there is some dispute within the restorative justice community about whether restorative justice sits outside, alongside or inside the criminal justice system. There is, however, an authoritative view that restorative justice is a principle of justice that sits within criminal justice, and that it can be expressed by restorative practices which are engaged as part of a pre-sentencing process.

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

Sentencing should be subject to the principle of effectiveness. This means that sentences which, on the basis of sound penological research, are found to be unable to deliver relevant sentencing outcomes or purposes should not be imposed. A similar principle is found to be operative in most professional environments, from engineering to medicine.

A further aim for sentencing should be the promotion of responsibility on the part of the offender.

**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?**

Disagree

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

The text mentions efficient and effective use of public resources. Whilst I agree that efficient use should be a desideratum, there should be some onus on sentencers not to impose sentences that are ineffective. See Q9 above.

**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.**

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

The application of principles relating to restorative justice and effectiveness of sentencing could incur additional transitional costs. These would be offset if crime were to be reduced. Furthermore they are likely to improve victims' experience of the criminal justice system, especially in more serious cases.

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

There could be an increase of confidence among the public at large and victims of crime. A major prize would be the de-politicisation of sentencing and a reduction of legitimacy for those who wish to exploit the fear of crime and to stoke authoritarian attitudes in the community.

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

What is the definition of 'young people'?

There are several points that arise from this question.

1. What should be the relevant ages for differential treatment by the criminal justice system?
2. How does one attribute culpability and responsibility in relation to age?
3. Are there sentences that are more or less appropriate to people of different ages?
4. Do the purposes and principles and apply equally across age boundaries?