

**Name**

Sheriffs' Association

**Publication consent**

Publish (Post consultation contact)

**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.**

The establishment of a core principle governing all sentencing decision with overarching effect over a non-prescriptive range of sentencing purposes will bring clarity to the sentencing exercise and help avoid any potential conflict or tension between competing purposes.

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

Yes

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

The principle is familiar, reflecting the approach already followed by sheriffs, and effective as a guarantee of a sentencing process free from external influences or personal bias.

**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.**

We welcome the flexibility provided by a non-prescriptive approach to what may constitute a purpose and to the weight to be given to each purpose identified. The circumstances of each offence and each offender may differ widely and the discretion given to the sentencer to assess such matters in a particular case can only facilitate the attaining of the overarching principle of fairness and proportionality.

**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?**

No

**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.**

We welcome the recognition that a one -size –fits- all approach to sentencing is inappropriate and accordingly that the weight attached by the sentencer to any particular sentencing purpose can and should vary in an individual case provided that the sentence arrived at complies with the core sentencing principle and the supporting principles.

**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?**

No

**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?**

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

xxxxx takes the view that the efficient use of public resources, whilst always a consideration for the sentencer, could come into conflict with the core principle should it be given the status of a purpose of sentence. The economic benefit of an early plea is already a consideration which falls within the requirement imposed by S 196 of the Criminal Procedure (Scotland) Act 1995 upon the sentencer to take account of the utilitarian value to the justice system of such pleas

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

Yes

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

Yes, insofar as provided for by S 196 and the case law arising from it. However, the weight to be given to such consideration must be tempered so that it does not conflict with the overarching principle of fairness and proportionality and the sentencing purposes suggested by the draft guidelines and by any other purpose deemed relevant by the sentencer in the particular case. Cost alone should not dictate sentence or even influence a sentencing decision so that it becomes a second best sentence.

**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.**

Whilst sentencing will remain an art rather than a science, the transparency and clarity provided by these guidelines can only increase public understanding of the complexity and nature of the considerations which a judge applies to each and every sentence.

**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.**

Understanding should give rise to increased confidence. The identifying by the sentencer and by an appellate court of the sentencing purposes taken into account in a particular case should also provide reassurance to the public that an informed, disciplined, intellectual process has been undertaken.

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

None

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

Increased public awareness of and confidence in the sentencing process. See above. A codification of principle and purposes can only be of assistance to sentencers as they approach the complex task of pulling together the diverse threads of any offence including the nature, circumstances and severity of the offence, the offender's personal circumstances and criminological profile, the effect on the victim and others involved, the sentencing options available, any applicable sentencing guidelines or relevant statutory provision and case law. Whilst a further stratum of consideration is thus imposed, the discipline it imposes should assist in achieving the best sentencing outcome. Consistency of sentence, within the limits of the multiplicity of variables arising within even apparently similar offences, may thus be facilitated.

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