

Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. Part of the Council's remit¹ is to conduct public consultations on guidelines for the sentencing of offenders.

Why youths?

The predecessor body to the Sentencing Council, the Sentencing Guidelines Council (SGC) published a definitive guideline *Overarching Principles – Sentencing Youths*, in November 2009. It also produced offence-specific guidelines for youths within its definitive robbery guideline, published in July 2006, and within Part 7 of its definitive guideline on the Sexual Offences Act 2003 which was published in April 2007.

In December 2013 the Sentencing Council published new adult guidelines for sexual offences and in January 2016 new adult robbery guidelines. In producing both of these adult guidelines the Council decided that it would be inappropriate to produce new youth guidelines as part of the same project as it was considered that sentencing youths required a different approach. The existing SGC youth sexual offence guidelines, and robbery guidelines, therefore remain in force. The Council recognised that youth sentencing guidelines have now become piecemeal and dated and so committed to reviewing youth sentencing as a stand alone project in order to produce up to date, consolidated guidance.

As part of this package the Council decided to review and update the *Overarching Principles* document, to provide a comprehensive and accessible document on the general principles to be applied when sentencing youths.

Which offences are covered by the guideline?

The *Overarching Principles – Sentencing Youths* guideline covers general principles for sentencing a youth for any offence.

The offence-specific guideline on sexual offences covers **all** sexual offences committed by a person under 18, and will replace the guidelines produced by the SGC in 2007 that covered only those offences which have a lower maximum penalty when committed by a person under 18.

The offence-specific robbery guideline covers **all** types of robbery offending committed by those under 18 and will replace the SGC youth robbery guideline, produced in 2006.

¹ ss.118 – 136 Coroners and Justice Act 2009

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of as many people as possible interested in the sentencing of young offenders.

However, it is important to clarify that the Council is not consulting on the legislation upon which youth sentencing is based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

A summary of the consultation questions can be found at Annex A.

What else is happening as part of the consultation process?

This is a 12 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment. The online questionnaire and these documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

The review of the youth justice system

In September 2015 Charlie Taylor was asked to lead a departmental review of the youth justice system for the Ministry of Justice. The purpose of the review is to examine evidence on what works to prevent youth crime and rehabilitate young offenders, and how this is applied in practice. The review is also expected to look at how the youth justice system can most effectively interact with wider services for children and young people; and question whether the current delivery models and governance arrangements remain fit for purpose and achieve value for money.

In February 2016 the terms of the review were extended to examine the way young offenders are dealt with in court, and the sentences that are available to tackle their offending.

The Sentencing Council will carefully consider the final report, due to be published in July 2016 alongside the responses to this consultation.

Part one: Overarching issues and the context of the guidelines

Principles for sentencing youths

The principles surrounding the sentencing of youths differ significantly from the sentencing of adults. In particular, when dealing with young offenders sentencers must have regard to:

- the principal aim of the youth justice system which is to prevent offending by children and young people; and
- the welfare of the young offender.

Sentencers also have at their disposal different sentencing options designed to address the needs of the youth justice system.

Background to *Overarching Principles*

There is currently an existing *Overarching Principles – Sentencing Youths* guideline, published by our predecessor body the Sentencing Guidelines Council (SGC) in 2009.

Initial social research showed that this guideline is generally well received by sentencers although there were limitations on its functionality and accessibility. Therefore the aim of the Sentencing Council in reviewing this guideline was not to alter significantly the content but rather to update the guideline, and make it more accessible by adding flowcharts and tables that are easy to use. This research also indicated that although the guideline was liked it was not always used as it did not provide full guidance on all sentencing matters. Therefore the Council was keen to ensure that this revised guideline is comprehensive, in order to be the most useful tool possible for sentencers and practitioners.

While this draft *Overarching Principles* guideline does not apply to any specific offence it should be applied when sentencing for any offence that involves an offender aged under 18. Robbery and sexual offences are dealt with separately within this draft and these guidelines should be used in conjunction with these overarching principles.

The draft guideline provides information on the key principles of the youth justice system, allocation, determining a sentence, sentences available to the Court and breach of orders.

The development of the guideline was supported by research, including social research with sentencers, to help inform both the content and the structure of the guideline. Input was also provided by key stakeholders throughout the drafting process.

Background to offence-specific guidelines

Sexual Offences

There are currently six youth sexual offence guidelines which were produced by the SGC in April 2007. They cover the following offences.

- Sexual activity with a child.
- Causing or inciting a child to engage in sexual activity.
- Engaging in sexual activity in the presence of a child.
- Causing a child to watch a sexual act.
- Sexual activity with a child family member.
- Inciting a child family member to engage in sexual activity.

The SGC produced these guidelines as the Sexual Offences Act 2003 created lower statutory maxima of five years for these offences when committed by a youth (when committed by an adult the maxima are 14 years or 10 years, depending on the offence).

The Sentencing Council produced new adult sexual offences guidelines in December 2013. During the process of drafting the adult guidelines the Council considered amending the six youth guidelines and asked consultees for their views. Most consultees agreed that there should be new guidelines for youth sexual offences, but many felt that the Council should produce them as part of wider work covering the issues of youth sentencing. In addition a number of consultees felt that a direct adaptation of the adult guidelines would be inappropriate. For these reasons the Council chose to leave the guidelines as they were and come back to them under this project.

Robbery

There is currently a youth robbery guideline, published by the SGC in July 2006. This guideline sets out 'factors to take into consideration' for young offenders and includes a sentencing table which replicates the SGC's adult robbery guideline but with reduced sentences. The sentencing table is to be used for sentencing 17 year old offenders; where the court has a younger offender before them the guideline advises reducing the starting point in recognition of the offender's age or immaturity.

In drafting the new robbery and sexual offences guidelines the Council considered adopting a similar approach to that devised by the SGC for robbery, but concluded that such a guideline does not usefully assist a court in sentencing offenders younger than 17. In addition the Council wanted to ensure that sentencers had a framework to use that allowed a consistent approach to be adopted but did not prevent the sentencer from taking a very individual approach to sentencing, accounting for the offender's age and/or maturity, their previous offending behaviour, and their personal background.

Both the SGC robbery and sexual offence youth guidelines will be replaced by these new guidelines once they are implemented.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged under 18, who are sentenced on or after the date that the guideline comes into force, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

The Council’s aims

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

Approach to victims

The Council is required to consider the impact of sentencing decisions on victims of offences. The harm caused by an offence is considered at step one of the guidelines, as a principal factor of the offence. In the development of this guideline, the Council gave very careful thought to how to reflect the often devastating impact these offences can have on victims and their families. The Council considered this issue individually in the context of both types of offences that the draft guideline covers, as the offences differ very significantly.

Data analysis and research

The Council has drawn on research it undertook with youth court sentencers in 2012 to understand the general approach taken to sentencing youths. It conducted further research in 2014 using an online survey to explore the themes identified in the earlier interviews. The principal research tool was an online (self-completion) survey which sought the views of youth court magistrates and district judges on current guidance and preferences for future guidance. To supplement that research, meetings have been held with a small number of sentencers, practitioners and legal advisers.

Part three: Developing the offence-specific guidelines

Assessing seriousness

The guideline sets out a step-by-step decision-making process for the court to use when sentencing each type of offence. This means that all sentencers are adopting a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors.

The first two steps that the court follows are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE

Offence Seriousness – Nature of the offence

The first step is to consider the principal factors of the offence. The guideline sets out examples of harm and culpability factors that the Council considers are the most important in deciding the seriousness of the offence.

The guideline directs the court to consider the **offence-specific** factors relating to the culpability of the offender in committing the offence and the harm that has been caused. In considering these factors the court will be able to assess whether a sentencing threshold has been crossed. This is simply a starting point, and the guideline directs that **the fact that a sentence threshold is crossed does not necessarily mean that is the sentence that should be imposed**. This is an important message as sentencing youths is much more focussed on the individual offender, and a court must ensure that all factors, including offender-specific factors, are carefully considered before determining the most appropriate sentence in the case.

STEP TWO**Offence Seriousness – Aggravating and mitigating factors**

In order to complete the assessment of seriousness the court must consider the **offence-specific** factors that may aggravate or mitigate the seriousness of the offence.

STEP THREE**Offender mitigation**

Step three requires the court to focus upon the offender to consider the personal factors that may have played a part in the commission of the offence. The court is reminded that these factors may be sufficient to reduce the sentence from one of custody to a non-custodial sentence or from a community sentence to a different means of disposal.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Review the sentence**

Finally the court must review the sentence to ensure it is appropriate. The court is required to consider whether the sentence addresses the likelihood of an offender re-offending and the risk of that offender causing serious harm.