

# **Overarching principles: Sentencing offenders with mental disorders, developmental disorders, or neurological impairments**

## **Response to consultation**



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# Contents

<b>Foreword</b>	<b>5</b>
<b>Introduction</b>	<b>6</b>
<b>Research</b>	<b>8</b>
<b>Applicability of the guideline</b>	<b>9</b>
<b>Title, language and terminology</b>	<b>9</b>
<b>Section one - general approach</b>	<b>10</b>
<b>Section two - assessing culpability</b>	<b>13</b>
<b>Section three - determining the sentence and section four - sentencing disposals</b>	<b>15</b>
<b>Annex A - disorders</b>	<b>17</b>
<b>Annex B - reports</b>	<b>18</b>
<b>Annex C - Sentencing disposals: criteria and release provisions</b>	<b>18</b>
<b>Conclusion and next steps</b>	<b>19</b>
<b>List of respondents</b>	<b>20</b>

# Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on a new guideline for sentencing offenders with mental disorders, neurological impairments or developmental disorders.

As with all Sentencing Council consultations, the views put forward by all consultees were carefully considered. The range of views provided by respondents was of great value, particularly given that this is a complex area of sentencing.

As a result of this process, the general approach outlined in the consultation has been maintained but with a number of amendments made to the guideline, reflecting points made by respondents on certain issues. Section three and Annex C in particular have been revised in order to give greater assistance to courts, and there is now a new '*Effect of hospital orders, restriction orders and 'hybrid orders' and their release provisions*' section at the end of Annex C.

The guideline has benefited from the specialist knowledge of a small group of experts who looked at the guideline at various points during its development, our thanks go to Charles de Lacy, Professor Pamela Taylor, and His Honour Judge Rupert Mayo. The definitive guideline is all the better for their input on some complex areas.

The Council is confident that this guideline will be helpful to those sentencing these difficult cases.

Lord Justice Holroyde

Chairman, Sentencing Council

## Introduction

Available evidence suggests that people in the criminal justice system are more likely to suffer from mental health problems than the general population, for example, when a survey screened prisoners on arrival at prison, 23 per cent reported that they had some prior contact with mental health services.<sup>1</sup> Given the prevalence of offenders with mental disorders, neurological impairments or developmental disorders coming before the courts, the Sentencing Council decided to produce a draft guideline, to give assistance to the courts in this difficult area of sentencing.

In April 2019 the Sentencing Council published a 13-week consultation on a draft guideline for sentencing offenders with mental disorders, neurological impairments or developmental disorders. During this time a roundtable seminar was also held by the Magistrates Association (MA) and the Prison Reform Trust (PRT) to discuss the draft guideline.

The response to the draft guideline was favourable. Many respondents to the consultation welcomed the Council's decision to produce a guideline in this area of sentencing. In total 110 responses were received for the consultation; with some submitted by email and letter, and some responses submitted online.

Since the consultation the Council has noted the recent emergency legislation to deal with the Covid-19 pandemic. Some parts of the legislation, if enacted could apply to the guideline. As the sections that might apply are not currently in force the guideline does not need to be amended. Going forward the Council will monitor developments closely, and will make any such amendments to the guideline as necessary.

In addition, following the Independent Review into the Mental Health Act, the Council understands that the Government's intention is to bring forward new mental health legislation when parliamentary time allows. The majority of the detailed information on legislation is contained within annexes B and C in the guideline. Annexes A-C do not form part of the guideline, and within each it states: *This information provided below is correct as of the date of the guideline coming into force on 01/10/2020. It does not form part of the guideline.*' This approach is similar to that taken with the appendices within the Guilty Plea

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<sup>1</sup> <https://www.nao.org.uk/wp-content/uploads/2017/06/Mental-health-in-prisons.pdf>.

guideline, the flowcharts contained there provide an illustration of the operation when it was published in 2017, they do not form part of the actual guideline.

The Council's intention is that if any changes to legislation were necessary, these would be made to the relevant parts of the annex without the need to consult on these changes.

## Breakdown of respondents

Type of respondent	Number
Charity/voluntary organisation	13
Judiciary (2 representative bodies and 1 individual response)	3
Legal professionals (2 collective responses and 9 individual response)	11
Magistrates (2 collective responses, 32 individual responses)	34
Members of the public	13
Other	5
Parliament	1
Police	1
Government	1
Academics	8
Victims' representative group	1
Anonymous responses	4
Medical professionals	11
Probation	4

## Research

Early on in the development of the guideline analysis was undertaken of 25 Court of Appeal Criminal Division (CACD) cases which discussed issues relating to the sentencing of offenders with mental health disorders. This helped to identify what guidance had so far been given by the CACD on these matters, and to help understand the key factors influencing sentencing decisions in these cases.

Research was also undertaken to help with the development of the guideline and explore its potential impact. In particular, there is no comprehensive data source on offenders with mental health conditions, or about how these conditions affect court processes and sentencing practice. With little such information available, research was required to explore how sentencers might respond to the guideline and how it might affect sentencing practice.

A total of 29 sentencers (13 Crown Court judges, 3 district judges and 13 magistrates) took part in a two-stage exercise, designed to see whether sentencing behaviour might change as a result of using the new guideline. In the first stage (carried out before publication of the draft guideline), sentencers were asked to complete hypothetical sentencing exercises online. All these scenarios concerned offenders who suffered from mental health difficulties. In the second stage, which took place several weeks later, following publication of the draft guideline, sentencers were asked to re-sentence the same cases during an interview, but this time using the new draft guideline to aid their decision-making. Participants were also asked their views on the guideline and were asked what general effects they thought it might have.

The guideline was generally well-received and there were no discernible effects on sentencing behaviour in this simulation, although participants did express some views about general changes they thought the guideline might have. These findings have informed the final resource assessment published alongside the definitive guideline and this consultation response document.

In a supplementary exercise carried out at a magistrates' training day, around 30 magistrates also sentenced a s.2 harassment<sup>2</sup> case using the draft guideline (which they had been sent in advance). They carried out the exercise in pairs or small groups, and filled out a questionnaire which detailed not only the sentencing process, but also their

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<sup>2</sup> Section 2 of the Protection from harassment Act 1997



own views on how the draft Overarching Principles had affected their decision-making. Magistrates reached consistent end sentences which were similar to those given for the same scenario in the interviews with magistrates and district judges discussed above, and most felt they had given more consideration to the offender's mental health as a result of consulting the guideline.

## **Applicability of the guideline**

The Council had proposed that the guideline would only apply to offenders aged 18 and over, and not for offenders under 18. This is because mental health and related issues can be substantially different in both diagnosis and impact for children and young people than for adults. It was proposed that instead courts should refer to the *Overarching principles: Sentencing children and young people guideline* for sentencing offenders under 18 who have a mental disorder or impairment.

Some respondents disagreed with this proposal, and suggested that the guideline should be extended to include guidance for children and young offenders, or that a new separate guideline should be created for those under 18. The Council considered these comments carefully, but decided that the guideline should remain for offenders over 18 only. In taking this decision the Council had noted the individualistic approach taken to the sentencing of children and young people in the relevant guideline, with the focus on the offender, not the offence. Moreover, as the whole sentencing framework for the under 18s is different from adults it would not be appropriate to include guidance for under 18s within this guideline.

In addition the paragraph setting out the applicability of the guideline has been made clearer on this point. For the avoidance of doubt, it states that the guideline must not be used for offenders under 18, a change to the wording consulted on which had said that the guideline '*does not apply to*' offenders under 18.

## **Title, language, and terminology**

A number of respondents agreed with the title of the draft guideline; '*Overarching principles: sentencing offenders with mental health conditions or disorders*', and some did not. Some wanted the word 'disorders' removed, saying it was pejorative and had little meaning outside of the law. A large number wanted to see explicit reference to developmental disorders and neurological impairments. A small number thought the word

vulnerable should be used instead so suggested: '*Overarching principles: Sentencing vulnerable offenders*' or '*Overarching principles: Sentencing of mentally vulnerable offenders*'. The Royal College of Psychiatrists (RCPsych) and other individual psychiatrists thought that the word 'conditions' should be removed from the title, as there are no conditions that cannot also be described as disorders, and that disorders is the better term to use as it is used in Mental Health Act (MHA) legislation.

The Council considered all these comments and decided to change the title to: '*Overarching principles: Sentencing offenders with mental disorders, developmental disorders, or neurological impairments*'. The Council felt the title should use factual language which reflects legislation and be clear as to what the guideline covered.

Some respondents commented on the importance of inclusivity of language within the guideline. Headway, the brain injury charity, for example, commented that mere references to 'conditions or disorders' within the guideline tacitly excludes acquired brain injury (ABI) or other developmental disorders. Some parts of the guideline did have full references to 'mental health conditions, neurological impairments and developmental disorders'. However it wasn't practical to do so at every point in the guideline when referring to the range of conditions covered, but by not doing so the Council agreed that it risked confusion as to what is included within a brief reference.

The guideline now generally refers to 'disorders and impairments' for ease of reading within the text, but there is now a footnote to paragraph two which reads: '*For ease, the guideline does not necessarily list all impairments and disorders each time in the guidance, but refers to 'impairments or disorders', but this should be taken to include all relevant impairments and disorders including those listed in Annex A.*'

## **Section one- general approach**

Dr Walvisch, an Australian academic, suggested that paragraph one should make it clear that the guideline applies to any offender who has a condition or cognitive impairment at the time of the offence or at the time of sentencing. This is because some of the principles only apply when there is a link between the condition and the offending, e.g. reduced culpability, or the impact of the sentence given the offender's present condition. Dr Walvisch and the Justices' Clerks' Society (JCS) suggested that this paragraph should be amended so that it takes a more inclusive approach, stating that as drafted in the consultation version it appeared that the list of conditions at Annex A to the guideline is an

exhaustive one. The Council agreed with these points and has amended paragraph one accordingly.

The Howard League for Penal Reform took exception to the drafting of paragraph one, commenting:

*'It is a concern that the first substantive paragraph of the proposed guidance states that "the mere fact that an offender has such a condition or disorder does not necessarily mean that it will have an impact on sentencing." This sends out the wrong message and undermines the significance of the guidance from the outset. The presence of a mental health problem is clearly relevant information that ought to be considered as part of the sentencing exercise. It would be most concerning, if not discriminatory, if the presence of mental disorder were to have no impact on sentence at all and it is therefore concerning that the guidance opens with this caveat without any further explanation or qualification'.*

By contrast, the Council of H.M District Judges wanted the same sentence questioned by the Howard League to be emphasised in bold, stating that courts can become fixated on a diagnosed condition when the impact of that diagnosis would, and perhaps should, be limited. This wording had been deliberately drafted so that sentencers were guided to take a proportionate approach, given the prevalence of these issues. The Council considered that these were both important points, and so has amended the wording in a separate paragraph, paragraph two. This reads that impairments or disorders should always be considered by the court, but will not necessarily have an impact on sentencing.

Respondents generally liked paragraph two (this has become paragraph three in the definitive guideline), particularly the text at the start, with comments mainly reserved for the bullet points that followed (now paragraph four). There is now a new bullet point at the start of the list following a suggestion by the MA that there should be a reference to disorders fluctuating, that although someone may appear well during a trial, this may not represent their mental state at the time the offence was committed. 25 Bedford Row suggested that there should be a reference to the fact that it is common for some offenders to disagree with diagnoses, to lack insight into their condition, or be unwilling to accept they have a condition. There is now a new reference to offenders being unwilling to accept they have an impairment or disorder in bullet point four.

Both the MA and PRT felt that the wording of the bullet point regarding co-morbidity and drug and/or alcohol dependence was unclear. They commented that the relationship between substance misuse and mental health was complex, the MA suggested splitting the text into two separate bullet points, and making the point that some offenders may present with drug/alcohol dependence, which is masking an underlying disorder. The Council agreed that these were important points, and has split the text into bullet points five and six, with a new reference to the fact that drug and/or alcohol dependence may mask an underlying disorder.

A number of respondents commented and raised concerns on the final point in the list (in the consultation version), which had read '*sentencers should be wary of acting on the basis of self-diagnosis or on diagnosis from those unqualified, which alone will rarely be sufficient*'. JUSTICE suggested that it should state that diagnosis is the role of suitably qualified medical professionals. The Council decided to reword this bullet point, and has split it into two, firstly to say that a formal diagnosis won't always be required, (given the range of disorders offenders can have, some clearly not requiring a formal diagnosis) but that where it is, it is for experts to do. The rest of the bullet points consulted on remain unchanged.

Paragraph three in the consultation version has now become paragraph six in the definitive version. A small group of respondents expressed some concern regarding the proposals that non-expert information could be used. The Council considered these concerns and altered the wording to read: '*a report may be unnecessary if existing, reliable and up to date information is available,*' with the emphasis on 'may' in italics.

Paragraph four in the consultation version has become paragraph seven in the definitive guideline. Since the consultation the amendment referred to in the consultation has been made to the Criminal Procedure Rules, which came into force in April 2020. The paragraph has therefore been updated to reflect this change to Rule 28.9.

Paragraph five has become paragraph eight in the definitive guideline. Most respondents agreed with the inclusion of this paragraph, with suggestions mainly around ensuring offenders could understand the sentence and any requirements. The paragraph remains mostly unchanged, with a couple of additions. There is now a reference to courts ensuring that any ancillary orders, such as restraining orders, are capable of being understood by the offender, and a reference to the fact that clarity of explanation is also important for victims in order that they can understand the sentence. This last reference has been included following a suggestion from the Victims Commissioner, who in her response to consultation had said that she would like to have seen greater consideration of the impact of sentencing

decisions for these offenders on their victims. She stated that victims can struggle to understand what the sentences mean when they are handed down.

Paragraph six in the consultation is now paragraph five in the definitive guideline. This paragraph attracted few comments, a member of Northumbria Community Rehabilitation Company (CRC) suggested rewording the start of the paragraph to read: '*The Council considers it important that courts are aware of relevant cultural and ethnicity considerations and offenders within a mental health context.*' The Council agreed that this paragraph is an important one, and has adopted similar wording to that suggested to go at the start of the paragraph. Moreover, the Council decided to revise this paragraph in its entirety, to offer more guidance on these important issues. The revised text also now includes reference to gender, refugees and asylum seekers within a mental health context, and is drawn from material from the Mental Health Foundation.

Paragraph seven has now moved to become paragraph 28 in section three of the definitive guideline. This paragraph attracted a lot of comments by respondents, partly as the intention of the paragraph caused some confusion. The paragraph has been reworded to make it clearer on the key points, and is entitled 'Treatment outside of the NHS', a suggestion made by the JCS. The wording regarding restraining orders in this paragraph caused concern for the MA and PRT, both questioning why the specific reference to them in this context, there was also a concern that they could be used disproportionately against people with vulnerabilities. Some respondents, including the Criminal Law Solicitors' Association (CLSA) were concerned with offenders having capacity to understand the restraining order, that the instructions must be clear and workable. It was suggested that this information about restraining orders should be in a separate paragraph. The Council agreed and this is why this reference was moved to paragraph eight, as discussed above.

## **Section two- assessing culpability**

The large paragraphs eight and nine in the consultation version of this section have been split into a number of smaller paragraphs, now numbered 9 to 14, to make the presentation of the text easier to read. The majority of the text consulted on has been retained, new and amended text is discussed below.

There have been some changes to language, Dr Walvisch and Professor Peay (of the LSE responding in a personal capacity) both suggested that the word 'responsibility' should be replaced with the word 'culpability'. They said that whilst the words are used

interchangeably, there are differences between the two, and that culpability was the appropriate word to use as the court is now thinking about culpability for the purposes of sentencing.

Dr Walvisch also suggested taking an inclusive approach to defining the conditions that may affect sentencing. He argued this is important as the key question is whether the offender's mental functioning was sufficiently impaired and connected to the offending, so to reduce culpability or not, not what specific disorder they had. The Council agreed and paragraph nine now reflects this. He also suggested that the proposed wording regarding a causal connection between the condition and the offence was not as clear as it could be, and suggested that it should be reworded to say that culpability will only be reduced if there is a sufficient connection between the offender's impairment or disorder and the offending behaviour. Headway also questioned the use of the words causal connection, and Dr O'Loughlin from the University of York stated that causal connections can be difficult to demonstrate. The Council agreed that Dr. Walvisch had provided helpful rewording on the point, and this now forms paragraph 11.

Respondents expressed considerable concern regarding the proposed wording on expert evidence, in paragraph nine of the consultation guideline, the MA were concerned that the value of expert evidence is under-valued. Birmingham Law Society, the Criminal Bar Association (CBA), and the London Criminal Courts' Solicitors' Association (LCCSA) also expressed concerns. The Council considered these concerns carefully, but was mindful of what the court said in para 51 of *R v Vowles*<sup>3</sup>, that sentencers should not feel circumscribed by psychiatric opinion. Nevertheless the Council did make some alterations to the wording, now in paragraphs 13 and 14. This is to emphasise that expert evidence will often be very valuable, and that the sentencers should state, where appropriate, their reasons for not following an expert opinion.

Paragraph 10 of the guideline at consultation gave a list of questions to help decide the level of culpability. The majority of respondents were supportive of this approach, with some suggestions for amendments, and comments that more guidance would be helpful. However the LCCSA stated that they did not feel the approach would be helpful to courts, that a list of questions does not offer any meaningful guidance as to the approach to be taken. Some sentencers commented that the questions were not easy to answer, and that too much judgement was left to the sentencer. The Law Society suggested instead to adopt the concept of 'degree of responsibility retained', used in the manslaughter by

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<sup>3</sup> R v Vowles [2015] EWCA Crim 45

reason of diminished responsibility guideline. They argued this may a less prescriptive approach in relation to complex mental disorders. The Council considered this carefully, but concluded it would not be workable, as the manslaughter guideline was designed for a specific offence, whereas this is an overarching guideline which will be read in conjunction with other guidelines, elements of which may be different. As the general view supported the approach consulted on, the Council decided to retain that basic approach, with some amendments.

JUSTICE and the RCPsych expressed concern that the list would turn into a template, and suggested making it clear that the list is non-exhaustive, and that the applicability of the questions will vary in individual cases. Diverse Cymru also thought it would be helpful to say that the non-exhaustive list 'may be helpful as a starting point'. The Council agreed that these were all useful suggestions and so there is a new paragraph 15, reflecting these suggestions.

The Council of H.M District Judges suggested that the bullet points that followed paragraph 10 (now under paragraph 15) needed to be framed 'at the time of the offence', as the answers are relevant only if they relate to the effect, if any, on the decision making at the time the offence occurred. The Chief Magistrate also made a similar point. The Council agreed this was a relevant consideration, and has reflected this in the revised list. The first two bullet points in the definitive guideline are similar to the ones consulted on, just phrased slightly differently. A number of respondents expressed concern about the bullet points in the consultation regarding premeditation and attempts to minimise wrong doing, saying the approach taken to these complex issues was too simplistic. The Council thought there was merit in the points made and so these bullet points have been removed. Instead there is a new third bullet point which is a more open ended question, asking if there are other factors which reduce culpability.

Concern was also raised about the reference to insight in the consultation version, the RCPsych calling insight a 'complex construct'. The Council agreed that the question posed had perhaps been too simplistic, but still felt it was important for the guideline to consider the issue, so there is now a new bullet point which sets out the considerations in a more nuanced way. Similar concerns were raised regarding compliance with taking medication, and 'self-medication' so these references have also been expanded upon.

## **Section three - determining the sentence and section four - sentencing disposals.**

These sections are the ones which have altered most since consultation. Dr O'Loughlin and Professor Peay responded at length on section 3, querying how the draft guideline had referred to hospital orders, s.142 of the Criminal Justice Act (CJA) 2003, and how the guideline reflects what the Court of Appeal said in *Vowles and Edwards*<sup>4</sup>, particularly around s.45A orders. The Council looked carefully at section three again in light of these comments, and has taken the opportunity to express the key points in a different order and with greater clarity. In addition, the Council decided to remove section four altogether. On looking at section four again, some of the content was duplicated in other parts of the guideline, and the Council felt the remaining text could be expressed more concisely within section three and Annex C. In addition, some content from Annex C, has been moved to section three, and vice versa. Generally, this section provides guidance, with the information now in Annex C providing a summary of the law.

The section starts at paragraph 16, with some new general principles, taken from *R v PS*<sup>5</sup>. Paragraph 17 onwards sets out the different types of disposals for consideration. These new paragraphs reflect a concern raised by some respondents that more guidance was needed at the 'lower end' of the disposal spectrum, that the draft guideline had been too heavily weighted at the 'heavier end', disposals that are not available or necessary in the magistrates courts. The Council of HM District Judges commented that an offence committed by an offender with an impairment of disorder might not require any form of therapeutic intervention, or the offence may be so minor that the logical disposal is a fine or discharge, that the guideline as drafted had perhaps inadvertently 'upped the ante'. The Council thought there was force in these comments and now the disposals start from fines/discharges, and progress to hospital orders.

Paragraph 18 includes a suggestion from the Council of H.M. District Judges, that a Rehabilitation Activity Requirement (RAR) can offer targeted work with an offender and can be more appropriate than a MHTR. Paragraph 19 takes text from underneath the Mental Health Treatment Requirement (MHTR) box in Annex C. Paragraph 20 discusses drug and alcohol treatment orders, which can be relevant in this context.

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<sup>4</sup> R v Edwards [2018] Crim 595

<sup>5</sup> R v PS, Dahir, CF [2019] EWCA Crim 2286



Paragraph 22 details considerations on the impact of an offender's impairment or disorder of custody, and is a revised version of paragraph 13 consulted on. The Council thought it would be helpful to give some further points for courts to consider when thinking about which disposals may be appropriate, these are given in paragraph 23. Paragraphs 24-26 provide brief guidance on section 37 and 41 orders, and on section 45A. Further details on the orders are now contained within Annex C of the guideline. Paragraph 27 is new text on s.47 MHA, Secretary of State transfer powers, which the Council thought would be a useful addition to the guideline. As discussed earlier, paragraph 28 is the revised paragraph seven on private treatment.

## **Annex A- disorders**

This section on common disorders and impairments, written by Professor Pamela Taylor, Chair of the Forensic Faculty of the RCPsych, was well received by consultation respondents. As this section was well received the Council decided not to make any significant changes to it, other than some minor amendments. A small number of respondents suggested other disorders that should be added, generally more rare disorders, but the Council decided against this, as the Annex couldn't hope to cover every possible disorder, the aim was to provide details on the most common disorders. In addition, some respondents cautioned against the document getting overlong and unwieldy.

The section on personality disorders attracted some comments, reflecting the differences of opinion in this controversial area. The Council decided to state that Annex A is not claiming to be the definitive source of information on disorders, and has included new wording at the start of the section to read: '*This information is only intended as general assistance to sentencers in understanding common impairments and mental disorders*'.

A few respondents suggested that the section should also refer to ICD-11 (International Classification of Diseases) as well as the DSM (Diagnostic and Statistical Manual of Mental Disorders). H.M Council of District Judges also commented on the way the controversy around DSM was referenced at consultation. The Council has now included a reference to the ICD, and has also clarified that this section is not concerned with classification systems, merely noting that sentencers may see references to these in reports.

Headway were concerned with the wording used in the section on ABI, so this wording has been replaced with text suggested by Headway. There has been some changes to the wording on autism and autistic spectrum disorder, reflecting changes in use of terminology such as Asperger's syndrome.

There has also been some minor rewording in the section on delusional disorders, and substance misuse disorders. The Council also decided that the reference to dyslexia in the section was unnecessary so it has been removed. The Council decided it would be helpful to include a list of the most commonly prescribed drugs, and what they are prescribed for, this is now to be found at the end of Annex A.

## **Annex B - reports**

The main issue raised on this section was brought to the Council's attention by the Criminal Procedure Rules Committee (CPRC). They stated that this section conflicted with the content of the Committee's existing form '[Directions for commissioning a psychiatric or other medical report for sentencing purposes](#)'. They said that to have differing guidance in the guideline and in the form was unnecessary and potentially confusing for users.

JUSTICE also noted that the guidance in the guideline and the form were different, and suggested that there should be alignment between the two. The Council considered that there was force in these arguments and has amended this section to signpost users directly via a hyperlink to the relevant form. The Council has added a note to suggest to courts that if required, they could tick the 'any other matter' box on the form, and specify information they would like included in a particular case, if it is not included in the list on the form.

The Law Society commented on the paragraph relating to s.38 orders, suggesting some clarifications, and stating that it would be helpful to outline the legal criteria for the making of a s.38 order. The Council decided to amend some of the wording and state '*before making a s.38 order the court should ensure that the statutory requirements are satisfied.*'

The Medical and Mental Health Law Research group at Northumbria University commented that the paragraph on the power to order reports in the magistrates courts was confusing and should be redrafted. The Council looked at this paragraph again and decided to remove it in its entirety. The reference to the s.19/Regulation power albeit interesting has no relevance for the purposes of sentencing.

## **Annex C - Sentencing disposals: criteria and release provisions**

This section, along with sections three and four, has seen a number of changes made post consultation. The information now within this section is mainly a summary of the law, and this section has been renamed '*Sentencing disposals: criteria and release provisions*'. In addition, there is a new section at the end, entitled '*Effect of hospital orders, restriction orders and 'hybrid orders' and their release provisions*', as the Council felt that perhaps the summary of the release provisions in the consultation version was not comprehensive enough.

As noted earlier on page 15, the information that was underneath the box on MHTRs, has been moved to paragraph 19 in section three. Some of the text that was underneath the box on s.37 orders has remained, along with some text that was within section three previously, such as the reference to the five statutory purposes of sentencing. Some of the text on the effects of the order and its release provisions, has moved to the new section at the end of Annex C.

There has been a small clarification made in the boxes on s.37 hospital orders and s.37 Guardianship orders, to confirm for the avoidance of doubt that the guideline does not deal with orders other than on conviction.

The majority of the text that was underneath the s.41 box has been moved to the new section on the effects of restriction orders and their release provisions at the end of Annex C. In addition there is some new text which gives some guidance on when it may be appropriate to consider these orders, as the Council felt there was little guidance currently in this area.

The majority of the text that was underneath the box on section 45A has now moved to the new section on the effects of restriction orders and their release provisions at the end of Annex C.

The text underneath section 43 and section 37 Guardianship orders is unaltered.

## **Conclusion and next steps**

The consultation has been a vital part of the Council's consideration of the guideline. Responses received from a variety of organisations and individuals have informed the changes made to the definitive guideline.

The definitive guideline will apply to all offenders aged 18 and over sentenced on or after 1 October 2020, regardless of the date of the offence.

The guideline will be available online on the Sentencing Council website <https://www.sentencingcouncil.org.uk/> for use in the Crown Court and magistrates' courts and also on the app for use in magistrates' courts.

Following the implementation of the definitive guideline, the Council will monitor the effect of the guideline.

## **Annex A:**

### **List of consultation respondents**

25 Bedford Row

Alison Giraud-Saunders

Alix Lewer

Alun Pelleschi JP

Amelia Hardern

Andrew AclandJP

Andrew Worrall JP

Anna Sowerbutts

Anon

Anon

Anon

Anon

Ashrat Karbhari

Birmingham and Solihull CSTR Steering Group

Birmingham Law Society

Caritas Leeds

Carol Colelough JP

Catholic Church

Charlotte Lucinda Surley

Clarissa Holland

CLSA

Commons

Council of District Judges (Magistrates' Court) Legal Committee

Council of her Majesty's Circuit Judges

CPS

Criminal Bar Association

Criminal Justice and Acquired Brain Injury Interest Group

Del Hunter JP

Department of Criminology - Law and Policing Teesside University

Dr Ailbhe O'Loughlin

Dr Clare Mills

Dr Jamie Walvisch

Dr Lisa Gardiner

Dr Lynne Behennah JP

Dr Nick Hallett

Dr Peter Pratt

Dr Tracey Elliott

Dr Vinaya Bhagat

Duncan Sabri JP

Edward Jones

Ele Hicks

Elizabeth Winkley-Riding

Erica Taylor JP

Fred Fearn JP

Gillian Norman JP

Graham Fitchett JP

Hafal

Helen Boden

Helena Ioannou

HHJ Rupert Lowe

Howard League for Penal Reform

Ian Pearson JP

Independent Advisory Panel on Deaths in Custody

JCS

Jean Bonnick JP

Jenny Danczak JP

Jo King JP

Joyce Weatherspoon JP

JUSTICE

Justice Committee

Justice Maxwell

Karl Bailey JP

Ken Stafford

Keyring

Kirsty Harvey

Law Society

Leslie Black

Louise Coughlin, Psychologist Close Supervision Centre (CSC)

Matthew Sanderson

Medical and Mental Health Law Research Group and Northumbria Centre for Evidence and Criminal Justice Studies

Mencap and The Challenging Behaviour Foundation

Mental Health Lawyers Association

NACRO

National Probation Service Health Leads Group

Nicky Padfield

Office of the Police and Crime Commissioner for Gwent

Patricia Nelthorpe

Patricia Thompson JP

Paul Bond JP

Paul Catley

Peter Reed JP

Prison Officers Association

Professor Jill Peay

Rethink Mental Illness

Richard English

Richard Guy OBE JP  
Richard Guy OBE JP  
Robert Buckland QC MP  
Ronnie Mackay  
Rosemary Heslop JP  
Royal College of Psychiatrists'  
Rt Hon Lord Beith.  
S K Coffey JP  
Sarah Crathorne  
Senior District Judge (Chief Magistrate)  
Simon Massarella JP  
Stephen Kane  
Sue Stewart  
Susan Hawkins JP  
Susan Wright  
Suzy Jordache JP  
T2A  
The Disabilities Trust  
The Magistrates Association  
The Magistrates Association  
Tricia Rivers JP  
Victims' Commissioner.docx  
Vivienne Barnard JP  
Wales Offender Personality Disorder Pathway  
West London Bench







