

Sentencing Council meeting:	29 January 2021
Paper number:	SC(21)JAN05 “What next for the Sentencing Council?” – public confidence
Lead Council member:	Vision working group
Lead official:	Phil Hodgson, 020 7071 5788

1. Issue

1.1 This paper considers the responses to the anniversary Vision consultation that relate directly to work the Council does and could do to promote public confidence. It also takes note of responses that are covered by other themes of the consultation such as legitimacy but have a significant bearing on public perceptions of, and so confidence in, the Council, the guidelines and sentencing.

2. Recommendations

2.1 That the Council considers the issues raised relating to public confidence and provides indicative responses to the questions posed; we will then review responses to all questions at the end of the process in order to balance priorities against resources.

3. Consideration

3.1 In the Vision consultation paper, we set out the Council’s reasons for resourcing work to promote public confidence and described the work we are already doing. We asked three, questions:

- which areas of activity do you think could achieve most in promoting public confidence, and why (Q19);
- are there any areas of existing activity in relation to promoting public confidence that you think the Council should do more of or less of, and why (Q20); and
- are there any other avenues we could use to inform the public about the Council and the guidelines (Q21)?

3.2 There is a consistent message running through the majority of responses: the work that the Council is already doing to promote public confidence is making an impression and is welcome but that we could be doing considerably more.

3.3 All the activities suggested by respondents have value but each has implications for our resources in terms of budget and the level of input required from the Communication team, colleagues across the office and, to some degree, members of Council.

3.4 Looking across all responses, this paper identifies themes that relate to public confidence and distinguishes between those that would fall within the remit of the Council's existing communication strategy and those that have wider implications, such as the extent to which the Council should contribute to public discussion about sentencing policy. These themes inevitably overlap with, for example, questions relating to the legitimacy of the Council. I have included them in this paper because of their potentially significant influence on public confidence in the Council and the guidelines, but have not included discussion points. Council will have opportunities to explore these themes when considering other parts of the Vision response.

SHOULD PUBLIC CONFIDENCE BE A PRIORITY FOR THE COUNCIL?

3.5 The majority of respondents agreed that:

- public understanding of and confidence in the criminal justice system is limited;
- improving public confidence is important and necessary work; and
- the Sentencing Council has a key role to play in doing such work.

3.6 In addition, respondents across the board said that the Council should consider promoting public confidence to be a priority, although each had distinct ideas as to what might be done.

Promoting public confidence in the criminal justice system, and the associated duty to promote public awareness of the realities of sentencing, are areas of the Council's remit where increased prioritisation and resource would be justified. (Prison Reform Trust)

Dedicating additional resources to educating the public would be a welcome step, bringing important clarity to offenders, victims, and wider society about the process of sentencing as well as the implications of specific sentences, thereby helping to build support for more evidence-based and effective sentencing policy. (Catholic Bishops Conference)

PROMOTING CONFIDENCE THROUGH COMMUNICATION

Media and social media

3.7 Respondents agreed that public awareness of sentencing and the guidelines had an important role to play in improving public confidence and advocated that we should continue to use both traditional and social media to reach the public, but most said that we could do more:

The MA welcomes the work of the Sentencing Council to promote new guidelines in the media and, where appropriate, to correct misleading or incorrect information. Its use of social media is also welcome, although it could be expanded. (Magistrates' Association)

Active use of social media, including engaging with other users, and proactive media work can also ensure that the Sentencing Council's work is as accessible as possible. (Magistrates' Association)

Get the TV, Radio and written press to see your very worthwhile work. (Magistrate)

More public awareness of the Sentencing Guidelines would instil more faith and confidence in our Criminal Justice system. (HMCTS)

3.8 Some respondents suggested that we could extend our use of social media to include other channels such as Facebook and YouTube, particularly to reach younger audiences. Also a suggestion that we should use Linked In to reach "decision makers in society":

The SC's social media presence is quite limited and this is an area that may offer scope to reach additional parts of the public... Other social media platforms, for example, have a wider reach than Twitter. (Sentencing Academy)

3.9 Extending our use of social media would enable us to reach wider audiences and, potentially, to engage more fully with our existing audiences by allowing us to contribute information (not opinion) to existing discussions. However, any extension of our social media profile would have significant resource implications for the Communication team and colleagues across the office.

Question 1: Does Council consider that extending our social media activities, either by making more engaging use of our Twitter account and/or by establishing profiles on other channels should be a priority?

Public education and partnerships

3.10 Respondents were keen to see the Council do more work in partnership with other organisations to extend our reach to the public; the main focus for these respondents were children and young people. The two leading suggestions were that the Council should work more with the Magistrates' Association and Young Citizens, both of whom we are working with already. The YJB also offered us the use of their networks to reach young people:

I welcome the focus the Council has given to improving public education, particularly with young people in schools. Looking to the future, I very much support and encourage the Council to continue to advance this area of its work. (MoJ)

We would like to see the Sentencing Council focus on better outreach to children and young people via schools, colleges and universities. For example, the Sentencing Council could work with the MA's Magistrates in the Community programme (which sees magistrates engaging with children and young people in primary and secondary schools and community groups), Your Life You Choose in secondary schools and the National Mock Trial Competition, which is run by Young Citizens in partnership with the MA. Children and young people are very interested in the criminal justice system and are also very keen to know their rights and responsibilities. (Magistrates' Association)

Magistrates in the community is a way of fostering understanding amongst school children. It could be re-engineered to include local community groups and interest groups so that the message could be further conveyed and could be helped by local police officers who could convey the message about end to end justice. (Magistrate)

The ... plan to target children of secondary-school age is very welcomed by the YJB, as we believe that it is important to educate and positively engage with them at the earliest opportunity. We consider that this approach is helpful for and will empower children and may in some cases help serve to prevent their involvement with the youth justice system. The YJB has a number of networks in place connected to children across England and Wales, which may also help with the dissemination of the pack that that the Council have created. We would be happy to use our networks with children, and young adults who have lived experience of the criminal justice system, to help with the dissemination of your materials. (YJB)

The Council could engage more with the Magistrates Association and other organisations with a view to planning joint activities – for example, holding public meetings where magistrates explain the role of the lay magistracy and the guidelines to members of the public. (Sentencing Academy)

We believe that public education could achieve the most in terms of promoting public confidence. This may be an area in which a shift in resources could be justified and would not have to be at the expense of producing sentencing guidelines. (HMCTS)

Resources permitting we would, however, like to see support from the Sentencing Council for a broader range of work to inform the public about sentencing practice. (Magistrates' Association)

3.11 The Council is already contributing to the Young Citizens' national schools mock trial competitions at secondary level and is in discussion with them as to how we can contribute, in partnership with the Judicial Office, to the work they do at primary level. We have also had an initial conversation with the Magistrates' Association about how the Council could take part in their outreach activities.

Question 2: Do members think we should seek to work more in partnership with other organisations to take advantage of their audience reach and existing networks?

Question 3: If so, do members have in mind any other organisations we could partner with to reach other audiences?

Making sentencing accessible

3.12 A few respondents thought the Council could do more to make the topic of sentencing more easily understood by the public both through its use of language....:

Messaging could use clear, impartial language to promote discussion around sentencing. (HMCTS)

The Council should produce Plain English versions of its guidelines and a glossary of terms. (Transform Justice)

To the extent that it is possible, the Sentencing Council should ensure that information made available on its website and through the media (including social media) is presented in accessible language, free of jargon. (Magistrates' Association)

While guidelines will, by their nature, be technical in the way they are presented, they should still be written as clearly as possible to maximise the extent to which they can be understood by offenders, victims and members of the public. (Magistrates' Association)

3.13 ...and the use of alternative formats:

The internet, social media, audible reporting eg; talking newspapers, information produced for the blind and disabled in appropriate formats. (Magistrate)

Activities such as the short video for the public on the sentencing process are very welcome. Explaining the process in a clear, and straightforward way should be a focus of the Council. (Magistrates' Association)

It is vital that consultation documents are available in plain language and Easy Read and that people can submit their experiences and views to be considered without responding directly to the written consultation document. (Diversity Cymru)

There is a need to promote the guidelines more, and to produce the guidelines in accessible formats. (Diversity Cymru)

Question 4: Do members think that the Council should consider producing our publications in alternative formats:

- **for consultation; and/or**
- **for definitive guidelines?**

Explaining the realities of sentencing

3.14 A number of respondents suggested that putting a greater focus on improving people's understanding of the details of sentencing practice would be a valuable mechanism for promoting public confidence:

There is limited public understanding of sentencing practice and what factors are taken into account in deciding on an appropriate sentence. This has an impact on confidence in the justice system. As the body that develops guidelines, the Sentencing Council is well placed to play an important role – alongside other organisations working in the field – in explaining these issues to the public. (Magistrates' Association)

I do not feel that guidelines reassure victims necessarily as they often will not be aware of the mitigation taken into account. This is often quoted to me as a soft CJS and comes back to victims not understanding the longer term objective of sentencing. (Magistrate)

We believe that the best approach the Council could take to promoting public confidence would be to seek to address the lack of knowledge and understanding of the realities of sentencing exhibited by the majority of the public. This may require understanding public confidence, or the lack of it, in a more sophisticated way. (Prison Reform Trust)

Whilst I note some information on aggravating and mitigating factors is made available as part of the Annual Report, I would like the Council to consider making more of the information it collects on the impact of aggravating and mitigating factors on

sentencing outcomes publicly available. This would help to improve public understanding around the impact these factors are having on sentencing. (MoJ)

Framing messages about guidelines and sentencing using media coverage around factors that the public sympathise most with such as harm done to the victim or the seriousness of the crime, would be an effective way to challenge misconceptions or negative slants. (HMCTS)

3.15 One respondent thought that a solution to public misunderstanding of sentencing lay in more detailed sentencing remarks, albeit outside the existing remit of the Council:

Often the sentencing remarks of judges are extensively reported as are the particular of the case. What is not explained is how the decision was reached and what was considered. It is in my view vital that courts explain what they considered and why as all too often, the public raise concerns as to the inadequacy of sentencing. (Magistrate)

Question 5: Do you agree that focusing our communications on the mechanics of sentencing would contribute to greater public confidence?

Question 6: What more do you think we could be doing to correct misunderstandings?

Question 7: If sentencing remarks are outside our remit, what could we do in this area?

Reaching a wider public

3.16 A number of consultees said that involving a “wider public” in consultation and guideline development would contribute to the legitimacy of the Council and, by extension, strengthen confidence in the Council and the guidelines both among the general public and among the particular communities represented:

The Sentencing Council could also consider how to better engage with people caught up in the justice system, especially those already sentenced, so they can better understand the sentencing process. This could include engaging with those under probation supervision, as well as those in prisons. (Magistrates’ Association)

There is a need to involve a wider range of victims and perpetrators in the development of guidelines and background evidence. In particular, there needs to be wider involvement of people with one or more protected characteristics, in order to ensure consistency in sentencing for all, integrate the impacts on different victims, and

promote public confidence in the criminal justice system within all communities.
(Diversity Cymru)

Working with community groups and third sector organisations that represent one or more protected characteristics is vital to ensuring that all diverse people are involved and to identifying and addressing inequalities. (Diversity Cymru)

I would also encourage the Council to consider what more it could do to proactively target and seek the views of specific demographic groups and victim groups affected by particular crime types during consultations on guidelines. (MoJ)

Engagement with Parliament

3.17 Only one respondent, the MoJ, recommended that the Council do more to reach parliamentarians:

I very much support and encourage the Council to continue to advance this area of its work. In particular, I would be interested in exploring with the Council what mechanisms could be used to further strengthen the relationship with Parliament and the public to ensure the Council receives representations from a wide range of stakeholders, including MPs, charities and academics... There is strong interest amongst some parliamentarians in the sentencing guidelines and I would welcome consideration of whether the Council could host roundtables with interested parliamentarians on draft sentencing guidelines during consultation. (MoJ)

3.18 The Council makes considerable effort, particularly in its consultations, to reach a wide and relevant audience. Some of the consultation responses to our questions about equality suggested we should do more to engage with under-represented groups. In Ollie's paper on legitimacy, you will also be asked to consider specific questions about who we should include in our consultations but, as a matter of public confidence, respondents identified two audiences that we do not currently reach: offenders and parliamentarians.

Question 8: Should we do more to seek wider public views on guidelines at consultation stage?

Question 9: Do you agree that we should broaden the scope of our target audiences, in particular to reach offenders and people under probation supervision?

Question 10: How should the Council renew its efforts to engage parliamentarians?

THEMES WITH A BEARING ON PUBLIC CONFIDENCE

3.19 A number of themes emerged consistently across the consultation responses that have a significant bearing on how the public perceive the Sentencing Council and the guidelines but either fall outside the Council's existing communication strategy and/or have wider implications for how the Council perceives itself and its purpose.

3.20 *Members will have opportunities to discuss these themes in the paper that Ollie is presenting today, and we will return to them in later meetings as well. This paper does not seek your views on these themes but would ask that, as you consider them in the discussion of Ollie's paper, you bear in mind the impact they have on the public's understanding of, and confidence in, sentencing and the Council.*

An (the) authority on sentencing

3.21 A significant theme that emerged from several responses relates to how the Council should position itself. These all imply a more active role for the Council and perhaps a different relationship with various arms of the State:

The Council is now an established and respected body. It ought to re-appraise the appropriateness of the boundaries it has drawn for itself. Not only the implications of the coronavirus pandemic for custodial sentence regimes but also the sentencing of BAME offenders should be at the top of the Council's list. Now is the opportunity for the Council to grasp these nettles, and to show leadership on these sentencing issues of the moment. (Professor Andrew Ashworth)

The Council needs to reinvent itself as an expert body on sentencing which does not simply reflect existing norms but challenges them based on evidence of effectiveness.... These are missed opportunities for the Council to develop its role as an expert body on sentencing which can be looked to by legislators and the executive, as well as the judiciary, for information, data, research and evaluation. (Transform Justice)

3.22 The Communication team already identifies and, where possible, acts to correct misunderstandings or errors in the media. A few respondents identified a wider role for the Council, recommending that we act to correct misinformation circulating in the public domain:

[Challenging misinformation] is likely to necessitate the more assertive approach we advocate, including challenging inaccurate information about sentencing in the public domain. Such an approach is likely to pose challenges to the independence and

neutrality of the Council. However, given the extent of misinformation about sentencing spread through the mainstream and online media, sometimes actively propagated by parts of the political establishment, the necessity of such an approach can no longer be avoided. (Prison Reform Trust)

3.23 Professor Padfield recommended that the Council could achieve most in promoting public confidence by:

Encouraging Government to be much more honest in how they report crime and justice... It is the role of the SC to take strong leadership role in correcting Government misinformation. (Professor Nicky Padfield)

What is effective?

3.24 Respondents agreed that sentencing guidelines provide greater transparency in sentencing, which contributes to public confidence, but that the existence of guidelines alone is not sufficient to earn public confidence and that more clarity is required as to the intended purpose of the guidelines and how we measure success.

3.25 Professor Padfield questioned how any evaluation of “confidence” could be made until the Council has considered what it regards as success. She also questioned the Council’s measures of “effectiveness” and “fairness”, suggesting they were:

...meaningless without clarification of which of the five purposes of sentencing the public is assessing. I would therefore suggest that a pre-requisite for building public confidence must be clarifying these purposes, by way of public discussion based on well-documented and accessibly written research findings. (Professor Nicky Padfield)

3.26 Transform Justice and the Sentencing Academy also considered that our efforts to promote public confidence would be improved if the Council were able to demonstrate the effectiveness of guidelines:

To the extent that public confidence does increase as a result [of the guidelines], this is a benefit, but the SC probably has only a limited ability to engineer significant shifts in public opinion – particularly if guidelines cannot be shown to be effective in terms of reducing re-offending. (Sentencing Academy)

If the Council gives greater weight to effectiveness in the development of its guidelines, this will provide a sound basis for promoting public confidence. (Transform Justice)