

Sentencing Council

Sentencing Council meeting:	25 June 2021
Paper number:	SC(21)JUN07 – The ‘<i>What Next for the Sentencing Council?</i>’ consultation response document
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1 ISSUE

1.1 The approach to presenting the actions emerging from the ‘*What Next for the Sentencing Council?*’ (‘Vision’) consultation response/strategy documents.

2 RECOMMENDATION

2.1 That the Council agrees the proposed approach and high-level themes to be covered in the response/strategy documents; this will enable us to work on the detail of the documents in time for a late September publication date.

3 CONSIDERATION

3.1 The Council discussed the actions arising from the Vision consultation at the May meeting. This discussion included a categorisation based on prioritisation and resources and in the context of the Council’s current core ‘business as usual’ work.

3.2 In the meeting, it was agreed that a thematic approach, rather than a list of priorities, would be the most suitable approach to presenting the actions the Council wishes to take forward. In doing so, we can flag high level work areas for the future, and then highlight specific actions within those areas. This has the benefit of enabling us to indicate relative priorities for future work without being so specific that we cannot retain flexibility in the

workplan for other work that may arise. It also helps to align our response to the themes contained in the original consultation and the questions that respondents answered.

3.3 We have therefore worked on drafting a high-level statement of intent that has a series of strategic objectives sitting underneath it. These objectives align with the themes put forward in the consultation; others reflect themes that emerged as strong issues in the responses – for example the need to more strongly embed consideration of equality and diversity issues in the Council’s work.

3.4 The draft statement of intent and strategic objectives at this stage for the Council’s consideration are set out below. If the Council are content with these, we will set them out in a consultation response document, alongside our discussion on the responses we received to the consultation and our rationale for the actions we plan to take forward. Alongside this, we also plan to publish a standalone strategy document that would contain these strategic objectives and more detail on the associated actions.

3.5 **High level statement of intent:** *The Council will maintain its independence as the body that produces sentencing guidelines for England and Wales, which is committed to drawing on a broad evidence base, being open and responsive and preserving the confidence of the public.*

- **Strategic objective 1:** *The Council will focus on the development of sentencing guidelines to promote consistency and transparency in sentencing*
- **Strategic objective 2:** *The Council will work to enhance and strengthen the data and evidence that underpins its work*
- **Strategic objective 3:** *The Council will fully embed consideration of all relevant equality and diversity issues across the entire range of its work*
- **Strategic objective 4:** *The Council will consider the impact of all aspects of its work on public confidence and will work to strengthen public confidence by improving knowledge and understanding of sentencing and the criminal justice system*
- **Strategic objective 5:** *The Council will have regard to the relative effectiveness of sentencing and seek to enhance the ways in which it raises awareness of the relevant issues*

Question 1: Is the Council content with a thematic approach to drafting the Vision consultation response document?

Question 2: Is the Council content with the above draft statement of intent and strategic objectives for its future work?

3.6 Underneath the strategic objectives we propose providing more detail on the activities we will undertake to realise these intentions/aims (some of which will necessarily overlap between the different themes). These will cover the actions that have been agreed over the last few Council discussions on the Vision. Annex A provides some information on how these might be drafted, although it should be noted that this is for illustrative purposes only: if the Council agrees with this overall approach, we will work further on this and consider carefully the type of wording that we adopt and the level of detail that it would be appropriate to include.

3.7 Given some of the discussion at the May Council meeting in relation to the difficulty of specifying exact priorities and timings for work (e.g. some areas are contingent on the successful completion of other areas, there may be issues with availability and quality of data and there may be staffing issues in the future), we would suggest that do not specify the exact timing of most of the actions. However, where it has been agreed that the work should be commenced within a year of publication of the response document (the category 1 high priority list from the May Council paper), we suggest indicating that the work is considered to be high priority for the Council and will be commenced as soon possible. This will provide some information on relative priorities without starkly flagging that other areas may be regarded as “lower” priority.

3.8 The one exception to this is those areas of work where it has been decided that no action is necessary. It will be important to be transparent in the response document that this will be the case and to provide a rationale for this decision. We will therefore include a section relating the small numbers of actions to which this applies.

Question 3: Is the Council generally content with the approach as outlined above?

4 IMPACT AND RISKS

4.1 It will be important to ensure that we provide a full and justified explanation in the consultation response document for all the decisions that have been made. If not, this may attract criticism that the Council has not fully taken account of the views put forward and is not being responsive to recommendations. This could undermine confidence in the Council and the decisions it takes.

4.2 It will also be important to be seen to be actioning those areas of work that are flagged in the document as higher priority. We have already placed these on the Office's planning spreadsheet and are currently working on how best to resource these.

ANNEX A: Potential approach to categorising the actions from the Vision

Please note: this is a draft and provided as an example; the text and detail may change and will be available for comment in the full draft documents, to be circulated in due course.

High level statement of intent: *The Council will maintain its independence as the body that produces sentencing guidelines for England and Wales, which is committed to drawing on a broad evidence base, being open and responsive and preserving the confidence of the public.*

Strategic objective 1: *The Council will focus on the development of sentencing guidelines to promote consistency and transparency in sentencing*

In order to achieve this, we will:

- Prioritise the Council's available resources on the policy, analysis, research and communication work that supports the development of guidelines (whether new or revised).
- Update our criteria for the development and revision of guidelines to ensure these reflect all of the relevant considerations. *[NB we may add more detail here once the criteria have been agreed]*
- Consider at the outset of each guideline project whether to draw on external expertise to inform its development.
- Consult publicly on draft guidelines and renew our efforts to ensure that our consultations draw responses from a broad range of interested groups and individuals, including criminal justice professionals, academics, victims and offenders.
- Undertake an annual consultation on cross-cutting and minor revisions to guidelines to ensure they remain relevant and up to date.
- Liaise with the Judicial College to determine the best way to ensure end users are prepared for the introduction of new guidelines, with an aim of shortening the period between publication and implementation of a definitive guideline.

- Provide a mechanism for users to submit rapid feedback on any errors or difficulties with guidelines.
- Make corrections and minor uncontentious amendments to guidelines as issues are drawn to our attention and publish a log of all such changes.

Strategic objective 2: The Council will work to enhance and strengthen the data and evidence that underpins its work

In order to achieve this, we will:

- Review our approaches to data collection and the sources that we currently draw upon; this will include exploring with HMCTS opportunities for accessing information recorded on the Common Platform.
- Review our approaches to resource assessments and evaluations and the way in which we measure and interpret “impact”.
- Dedicate more resource to collecting and analysing, where possible, data on groups with protected characteristics, and then publishing this. Where data permits, we will undertake in-depth analytical work on the potential impact of specific sentencing guidelines on different demographic groups.
- Commission independent external contractors to undertake a project to review a sample of the Council’s guidelines and processes for the potential to cause disparity in sentencing across demographic groups.
- Undertake an evaluation of the Council’s expanded explanations to explore how these are being interpreted and applied by sentencers in practice.
- Undertake a small study to explore sentencers’ view on the *Totality* guideline.
- Continue our current 2021/2022 evaluation work and then prioritise evaluations of the Council’s intimidatory guideline and domestic abuse guidelines; thereafter evaluation of other guidelines will be undertaken as resources permit.

- Support the development and revision of sentencing guidelines through the use of relevant qualitative research techniques. This will include considering the need for research with victims, offenders and other relevant groups on a case by case basis, as well as local criminal justice professionals.
- Consider how best to measure and undertake research on some of the Council's more cross-cutting duties. As part of this, we will: collate relevant evidence on issues related to effectiveness of sentencing and publish the outcome of this synthesis on a biennial basis; consider how best to measure consistency of sentencing; and undertake a review of relevant local area data and consider how best to make use of this in the Council's work.
- If resources permit in the future, we will re-run previous public confidence survey questions to obtain a measure over time.
- If resources permit in the future, we will consider reviewing the relevant data in respect of potential work on multiple offences.
- Prepare the data from our bespoke data collections, as resources permit, and then publish these.
- Seek opportunities to collaborate with academics and external organisations to broaden the range of analytical work we can input into and draw upon.

Strategic objective 3: The Council will fully embed consideration of all relevant equality and diversity issues across the entire range of its work

In order to achieve this, we will:

- Set up a dedicated Council working group to oversee work in this area and with the specific objective of advising on and steering work to ensure that all relevant issues are considered and actioned (where appropriate) across the whole range of the Council's work. The group's remit will encompass all the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation in relation to both victims and offenders, and as relevant to sentencing or a specific area of the Sentencing Council's work.

- Where data is available, dedicate more resource to collecting and analysing and data on groups with protected characteristics and then publishing this. Where data permits and resources are available, we will undertake in-depth analytical work on the potential impact of specific sentencing guidelines on different demographic groups.
- Provide tailored references in guidelines to evidence of disparity if this is found to exist, with a reference to the Equal Treatment Bench Book and the need to apply guidelines fairly across all groups of offenders.
- Commission independent external contractors to undertake a project to review a sample of the Council's guidelines and processes for the potential to cause disparity in sentencing across demographic groups.
- Broaden out the scope of the Council's target audience, to include reaching victims and offenders from relevant demographic groups, as well as criminal justice professionals working in organisations that represent different demographic groups. We will also, where possible, support the development and revision of sentencing guidelines through the use of qualitative research techniques with these individuals and groups.
- Include in the criteria that the Council uses to decide if a guideline should be developed or reviewed a specific point about evidence of disparity in sentencing between different demographic groups or evidence of disproportionately severe or lenient sentencing for a category of offence or category of offender.
- Ensure that Council members and Officials from the Office of the Sentencing Council (OSC) are aware of, and receive, relevant information in the area of race relations, diversity and inclusion and that this is updated as necessary. The Council will action any relevant recommendations emerging from the externally commissioned research work in this area

Strategic objective 4: The Council will consider the impact of all aspects of its work on public confidence and will work to strengthen public confidence by improving knowledge and understanding of sentencing and the criminal justice system

In order to achieve this, we will:

- Broaden the scope of the Council's target audiences for consultation, in particular to reach: BAME audiences; offenders, victims and people under probation supervision; and individuals and organisations representing groups with protected characteristics. We will also engage with Local Criminal Justice Boards and use this as an avenue for seeking more local and regional views on consultations.
- Extend our reach into schools, working in partnership with other organisations such as Young Citizens, Youth Justice Board and the Magistrates' Association.
- Work more in partnership with other organisations to take advantage of their audience reach and existing networks.
- Work with the Justice Committee to establish regular evidence sessions on the work of the Council, as well as further outreach work with parliamentarians.
- Undertake work to include a more simplified introduction into consultation documents that is more easily accessible to the Council's non-expert audiences.
- Provide more information about the issues the Council considers when undertaking its work and in particular the importance of consultation responses for the development and revision of guidelines.
- If resources permit in the future, we will re-run previous public confidence survey questions to obtain a measure over time.

Strategic objective 5: The Council will have regard to the relative effectiveness of sentencing and seek to enhance the ways in which it raises awareness of the relevant issues

In order to achieve this, we will:

- Collate and consider the relevant evidence on issues related to effectiveness of sentencing as part of guideline development and revision.
- Publish a synthesis of relevant evidence related to effectiveness of sentencing on a biennial basis from autumn 2022.
- Consider whether the Imposition guideline needs any additional text to highlight to sentencers the need to consider issues relating to effectiveness of sentencing.
- Consider undertaking research with offenders to understand which elements of their sentence may have influenced their rehabilitation.

Note: there is an additional action of seeking further sources of funding, which we plan to discuss more fully in the consultation response document, rather than in any specific section here (primarily because it is interlinked with all of the above - if we managed to secure extra funding in any area, we could add to the actions above, undertake them in more depth or undertake them at an earlier stage).