

# Sentencing Council

**Sentencing Council meeting:**  
**Paper number:**

**25 June 2021**  
**SC(21)JUN08 – What next for the**  
**Sentencing Council – guideline**  
**development criteria**  
**Ruth Pope**

**Lead official:**

## **1 ISSUE**

1.1 As part of the ‘What next for the Sentencing Council’ consultation the Council consulted on revised criteria for developing guidelines. At the December 2020 meeting the Council considered the responses on the issue and agreed that further work should be done to reconsider the criteria.

## **2 RECOMMENDATION**

2.1 That the Council agrees criteria for publication on its website that reflect the factors that go into the decision on whether and when to develop or revise guidelines.

## **3 CONSIDERATION**

*The existing criteria*

3.1 The Sentencing Council website currently says:

<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/how-the-council-works/>:

### **How the Council decides to produce a guideline**

The overarching aim of the Council in publishing guidelines is to promote a clear, fair and consistent approach to sentencing. In agreeing our three-year, rolling work plan, the Council prioritises the publication of guidelines that will fulfil that aim, and schedules guideline production on the basis of one or more of the following factors:

- The Lord Chancellor or the Court of Appeal (Criminal Division) formally requests the review of sentencing for a particular offence, particular category of offence or particular category of offender and the production of a guideline.
- New legislation requires supporting sentencing guidelines.
- Guidelines issued by our predecessor body the Sentencing Guidelines Council require conversion into the Council’s step by step approach to sentencing, or current guidelines are out of date or incomplete.
- A substantial body of interested parties request a guideline to be issued for a particular area of sentencing.
- Sentencing data suggests that there may be inconsistency in sentencing for a particular offence, particular category of offence or particular category of offender.

- Evidence suggests that the guideline would have a significant effect on sentencing practice, for example the potential range of available sentences is wide and/or the number of offences sentenced is significant.
- Consideration of the resources required to produce a guideline and other work pressures.

*The criteria proposed in the consultation*

3.2 The consultation suggested the following criteria:

- The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, category of offence or category of offender, and the production or revision of a guideline.
- A substantial body of interested parties request a guideline to be issued or revised for a particular area of sentencing and there is evidence to suggest that a guideline would have a significant impact on sentencing.
- Existing guideline(s) have become significantly out of date, or new guidelines may be required because of new legislation, amendments to legislation or other external factors.
- Evidence indicates that existing guideline(s) have had a problematic, unintended impact on sentencing severity.
- Evidence indicates that there is currently inconsistency in the sentencing of an offence or group of offences.

3.3 As outlined at the December Council meeting, 15 respondents commented on the criteria. Around half of those who responded felt the criteria overall were generally acceptable and appropriate. However, there were also various comments (including from those who were generally in support of the criteria) about how they could be refined or changed.

3.4 One recurring theme was what constituted a “substantial body of interested parties” and there was a suggestion that this might set the bar too high. There was also a concern that the criteria were weighted towards more serious offences (as the Lord Chancellor or Court of Appeal were unlikely to raise issues relating to low level crime).

3.5 The Prison Reform Trust suggested the following wording:

*A substantial body of interested parties request a guideline to be issued or revised for a particular area of sentencing, and there is evidence to suggest that this would lead to a significant improvement in sentencing in this area, which:*

- *helps to deliver on the statutory purposes of sentencing, while retaining an appropriate balance between those purposes; and/or*
- *helps to improve outcomes, including addressing any disproportionate outcomes, for people with protected characteristics.*

3.6 There were helpful suggestions that issues of equality and disparity could be integrated into the criteria.

3.7 Several respondents commented on the wording: 'Evidence indicates that existing guideline(s) have had a problematic, unintended impact on sentencing severity'. There were questions as to whether it was relevant that an impact was intended if it was problematic. There were also suggestions that sentencing severity was not the only measure that should be considered.

*The proposed criteria*

3.8 Taking all of these points into account alongside the practical issues of evidence, resources and external factors, the following wording is proposed (numbering is for ease of reference – in any published version these would be bullet points to avoid appearing to demonstrate an order of priority):

The overarching aim of the Council in publishing guidelines is to promote a clear, fair and consistent approach to sentencing. In agreeing our work plan, the Council prioritises the publication of guidelines that will fulfil that aim and schedules guideline production and revision on the basis of one or more of the following factors:

1. The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, category of offence or category of offender **and** the Council considers that the production or revision of one or more guidelines is justified.
2. Existing guideline(s) have become significantly out of date because of amendments to legislation or other external factors.
3. New legislation or other external factors have created a demand for new guideline(s) among court users, and the Council considers that the necessary evidence is available to develop such guideline(s).
4. There is evidence (from the Council's own research or evaluations, interested groups or other sources) of issues relating to sentencing **that the Council considers could be addressed by the development or revision of one or more guidelines**. Such issues may include but are not limited to:
  - (a) evidence of inconsistency in the sentencing of an offence or group of offences
  - (b) evidence of disparity in sentencing between different demographic groups
  - (c) evidence of disproportionately severe or lenient sentencing for a category of offence or category of offender
  - (d) evidence relating to the effectiveness of different sentences.

A further factor that the Council will take into account in all cases is the resource available to produce or revise guidelines.

Important note: the Council is unlikely to undertake the development or revision of a guideline at a time when legislative changes that would affect that guideline are pending.

**Question 1: Are the proposed criteria the right ones?**

**Question 2: Subject to any changes – should the revised criteria be published?**

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