

# What next for the Sentencing Council?

Response to consultation



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# Foreword

2020 marked the 10th anniversary of the Sentencing Council. On reaching this milestone, we undertook a review of what we had achieved so far and sought views on what our priorities should be for the next 5 to 10 years. On behalf of the Council I would like to thank all of you who took the time to provide valuable contributions to this process.



It is clear from the responses to the consultation that the Council is seen as an important and integral part of the criminal justice system. We are committed to fulfilling the duties set out for us in legislation as well as undertaking other work that helps enable the courts of England and Wales to take a clear, fair and consistent approach to sentencing and promotes awareness and understanding of sentencing among victims, witnesses, offenders and the public.

We have published a strategy document alongside this response document. In that strategy we set out the priorities, objectives and supporting actions for the Council over the next five years. These take into account the statutory duties of the Council, responses to the consultation and the resources we have at our disposal. We have also responded to consultees' comments by placing a consideration of issues around equality and diversity at the heart of our work and exploring ways in which we can address any concerns that might arise where it is within our power and appropriate for us to do so.

This document sets out the rationale for the actions we plan to take forward. I hope that you will find this a useful account of the Council's aims and priorities as we enter our second decade.

A handwritten signature in black ink that reads "Tim Holroyde". The signature is written in a cursive style with a long, sweeping underline.

Tim Holroyde  
**Lord Justice Holroyde**  
**Chairman of the Sentencing Council**

# Summary

In 2020, having met our initial goal in our first 10 years to provide guidelines for the most frequently sentenced offences, we ran a consultation: *What next for the Sentencing Council?* on what our priorities should be for the next 5 to 10 years.

It is clear from the responses to our consultation that the Council is seen as an important and integral part of the criminal justice system. We remain committed to fulfilling the duties set out for us in legislation:<sup>1</sup> producing guidelines that provide the courts with a clear, fair and consistent approach to sentencing and promoting awareness and understanding of sentencing among victims, witnesses, offenders and the public.

This document outlines the responses we received in relation to the 28 questions in the consultation and associated issues. We have carefully considered all submissions made over the intervening 12 months and set out our response to these here, along with the objectives and actions we plan to take forward (or have already taken forward) as a result. As many of the issues raised cut across several different areas, we have presented these thematically.

Overall we found there was broad support for the Council's view that the production and revision of guidelines ought to remain the key focus. However, some respondents to our consultation felt that the Council could add more value by emphasising some of the other aspects of its remit. Our strategic objectives therefore reflect an expansion of the range of work that we undertake, whilst still retaining a primary focus on guidelines.

We have also devoted a specific objective to work in the area of equality and diversity. This reflects the broad range of comments and suggestions from consultees on related issues which will help us to take forward and enhance the work we are already undertaking on this subject.

Our strategic objectives for the next five years are included throughout this document and in our strategy document that is published alongside it<sup>2</sup>. They take account the statutory duties of the Council, responses to the consultation, and the resources we have at our disposal. They will inform the Council's business plan for the next five years, which will be updated annually.

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<sup>1</sup> Coroners and Justice Act 2009 (see Annex C for further details).

<sup>2</sup> <https://www.sentencingcouncil.org.uk/publications/item/strategic-objectives-2021-2026/>.



Our five strategic objectives for the period 2021–2026 are as follows:

### Sentencing Council strategic objectives 2021–2026

- Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines
- Strategic objective 2: The Council will ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it
- Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit
- Strategic objective 4: The Council will consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues
- Strategic objective 5: The Council will work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public

The ongoing annual business plans will set out in more detail how the individual priorities falling under each strategic objective will be delivered each year. The plans will also provide more precise timings for actions. Given the nature of our work and the increasing volume of legislation relating to sentencing that is being produced, the Council needs to retain the ability to respond flexibly to meet any urgent future demands. We will, therefore, review our strategic objectives and underpinning actions at least annually at the time we publish each year's business plan. This will allow us to consider whether wider events or priorities may require us to amend any of the dates indicated or to reflect any new priorities that may have arisen as a result of external circumstances.

# Section 1: Introduction

## 1.1 Background

The Sentencing Council for England and Wales was set up as an independent non-departmental public body by the Coroners and Justice Act 2009.<sup>3</sup> The Council's main overarching objectives are to: promote a clear, fair and consistent approach to sentencing; produce analysis and research on sentencing; and work to improve public confidence in sentencing. The legislation sets out a number of duties that the Council must fulfil and a range of functions that may be carried out (see Annex C).

The production and revision of guidelines (including analysis and research and communication activity to support guidelines) has formed a large part of the Council's focus. At the time of issuing the consultation in 2020, we had produced 27 sets of definitive guidelines encompassing 145 separate guidelines that cover 227 offences, as well as guidelines on eight overarching topics. As of 1 November 2021, the Council had produced 32 sets of definitive guidelines encompassing 172 separate guidelines covering 261 offences, as well as guidelines on nine overarching topics.

2020 marked the 10th anniversary of the Sentencing Council. On reaching this milestone, the Council was satisfied that we had largely delivered what we initially set out to achieve, and felt this was a natural point at which to take stock of progress and look forward to what our priorities should be for the next 5 to 10 years.

In anticipation of reviewing our achievements and future priorities at the 10-year point, we put in place some early work to consider:

- the statutory duties set out in the Coroners and Justice Act 2009;
- the independent review of the Council, conducted by Professor Sir Anthony Bottoms;<sup>4</sup>
- the report from a Tailored Review undertaken by the Ministry of Justice;<sup>5</sup> and,
- commentaries published on the Council's work throughout the last 10 years (for example, from academics or interest groups).

In the autumn of 2019, Sentencing Council officials undertook a series of informal discussions with internal and external partners in the criminal justice system and those with an interest in sentencing to discuss a range of issues that could feed into this consultation. These issues included the Council's achievements over the first 10 years, the way in which we have interpreted and addressed our statutory duties, where gaps may exist in our work, and suggestions for future areas of work.

In total, we conducted 26 meetings: 16 meetings with Council members who served on the Council in 2019; seven meetings with external representatives (from external judicial

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<sup>3</sup> Coroners and Justice Act 2009 (see Annex C for further details).

<sup>4</sup> Bottoms, A. (2018) *The Sentencing Council in 2017. A report on research to advise on how the Sentencing Council can best exercise its statutory functions*, Sentencing Council. See: [The Sentencing Council in 2017: A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions](#).

<sup>5</sup> Ministry of Justice (2019) *Tailored Review of the Sentencing Council of England and Wales*. See: [Tailored Review of the Sentencing Council of England and Wales \(publishing.service.gov.uk\)](#).

bodies, special interest groups and former Chairs of the Council); and three meetings with groups of academics in the field of sentencing (these covered nine people).

The outcomes of these informal discussions were fed back anonymously to the Council who decided that, as part of our 10-year anniversary, we would issue a consultation to seek the wider views of all those with an interest in our work on what the Council's future objectives and priorities should be, while recognising the practical constraints of our limited budget and the necessity of focusing foremost on our statutory responsibilities. We also scheduled a one-day conference as an opportunity for people to come together and discuss the Council's achievements and potential future work.

## **1.2 The consultation**

The consultation was published on 10 March 2020 and was initially scheduled to be open for a period of three months. However, given the difficulties incurred by the global pandemic, the consultation was extended until 9 September 2020 to give respondents sufficient time within which to submit comments.

The one-day conference – scheduled for April 2020 – was postponed because of Covid-19. We initially rescheduled for July 2021 but then took the decision to cancel because of the ongoing restrictions and uncertainty caused by the pandemic.

## **1.3 This document**

This document outlines the responses we received in relation to the 28 questions in the consultation and associated issues (see Annex B). We have carefully considered all submissions made over the intervening 12 months and set out our response to these here, along with the actions we plan to take forward (or have already taken forward) as a result. As many of the issues raised cut across several different areas, we have presented these thematically.

The themes feed into five strategic objectives that we have identified as key priorities for the Council for the next five years. These objectives are included throughout this document and in our strategy document that is published alongside it.<sup>6</sup> They will inform the Council's business plan for the next five years, which will be updated annually.

The ongoing annual business plans will set out in more detail how the individual priorities falling under each strategic objective will be delivered each year.

It should also be noted that given the nature of our work and the increasing volume of legislation relating to sentencing that is being produced, the Council needs to retain the ability to respond flexibly to meet any urgent future demands. We will, therefore, review our strategic objectives and underpinning actions at least annually at the time we publish each year's business plan. This will allow us to consider whether wider events or priorities may require us to amend any of the dates indicated or to reflect any new priorities that may have arisen as a result of external circumstances.

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<sup>6</sup> <https://www.sentencingcouncil.org.uk/publications/item/strategic-objectives-2021-2026/>.

# Section 2: Summary of responses

There were 36 responses to the consultation covering the following range of individuals and organisations.

## 2.1 Breakdown of respondents

Type of respondent	Number of responses
Academic	5
Charity/ not-for-profit organisations	6
Government departments/ agencies/ Select Committee	5
Legal professionals	1
Magistracy	9
Member of the public/ unknown	10

## 2.2 Overview

The consultation asked 28 questions across six broad areas:

- Overarching general issues;
- Developing and revising sentencing guidelines;
- Analysis and research;
- Promoting public confidence;
- Costs and effectiveness in sentencing; and,
- How we work.

A full list of the questions is included in Annex B.

Respondents submitted comments in relation to specific areas and questions of interest to them, including other helpful comments that were not in response to a particular question.

Many of the responses cut across several areas; in setting out our response, while we sometimes reference specific consultation questions, we have taken a thematic approach.

## Section 3: Overarching issues

The consultation asked a number of questions regarding overarching issues relating to the Council and our work and where we have to date focused our efforts.

### 3.1 Prioritisation of work

Questions 1 to 4 focused on the prioritisation and balance of the Council's work: question 1 asked whether the Council was right to continue to focus on the statutory duties it had prioritised to date (broadly speaking: developing guidelines, monitoring and evaluating guidelines, and promoting public confidence); question 2 asked about the Council's current focus on guideline development and revision; question 3 asked if respondents felt the Council should focus on other activities and question 4 asked for views on the balance between guideline work and other activities.

We set the context for this section of the consultation by providing the Council's provisional view: that we should continue to focus on the development and revision of guidelines, which is the area where we feel we can add most value.

#### Responses to the consultation

There was some overlap between responses, and so the following looks at responses across all four questions. Given that some highlighted areas that respondents felt were worthy of a greater focus in the future, there is also overlap with information covered in other sections of this document.

Overall, in relation to the prioritisation of its work, many respondents felt that the Council's approach to date had been right; in relation to whether the Council was right to focus on the statutory duties we have prioritised to date, several respondents answered 'yes' to this and did not elaborate.

However, there were areas where some respondents (including those who said the current prioritisation was sensible) felt the Council could focus on to a greater extent. This included a greater focus on monitoring and evaluation, the promotion of public confidence and work in the area of equality and diversity. Comments included:

*The Committee recognises that the Sentencing Council has, up to this point, primarily focused on producing sentencing guidelines. This should continue to be a core part of the Council's work. However, now that many of the guidelines for high-volume offences have been produced, the Committee recommends that the Council rebalances its priorities so that it can dedicate more resources to evaluating the impact of guidelines, producing research and analysis on sentencing trends and promoting public confidence in sentencing.... The Sentencing Council's statutory duties suggest that the Council should play a role in evaluating Government policy and Bills. **Justice Select Committee***

*We agree that the Sentencing Council (SC) should continue with its current priorities of guideline development, including the development of new guidelines, the replacement of Sentencing Guidelines Council guidelines, and the monitoring, evaluation and revision of existing SC guidelines. Additionally, we encourage the SC to engage more fully in work that promotes public confidence in sentencing, although we recognise the resource limitations upon the Council. **Sentencing Academy***

*Whilst we agree that the focus should be primarily on the statutory duties, we also think there could be merit in the Council carrying out additional research on trends or practices, in order to identify and then correct inconsistencies or unfairness in matters which would not otherwise be addressed. **The Insolvency Service***

*We would agree. Offences and legislation can/ will change over time and it is important that such guidelines are monitored and evaluated to reflect the changes and that public confidence is maintained. **Justices' Legal Advisers and Court Officers' Service**<sup>7</sup>*

*I feel that a more robust approach is needed to evaluating the effectiveness of guidelines...as I often hear magistrates commenting on issues with guidelines yet this does not seem to be captured unless a magistrate takes the time to respond to a consultation...Also, belief that public confidence comes from the existence of guidelines ignores the fact that a great many people will neither devote their time to read them, have the interest to read them or sadly, be capable of reading and understanding them. **Magistrate***

*...more should be done in terms of measuring different experiences of sentencing in relation to protected characteristics (age, gender, race, sexual orientation, gender identity, disability, religion and belief etc.) as both victims and perpetrators. **Diverse Cymru***

Question 2 elicited similar responses, both in support of the current focus of the Council's work, as well as in favour of our undertaking work in other areas; these areas tended to mirror those cited above:

*This is the high value work of the Council and I think that most, if not all, of the Council's resources should be spent on the guidelines. **Magistrate***

*The production and revision of guidelines has always been at the core of the Council's work and we believe this should not change, nor should its importance be detracted from. **Justices' Legal Advisers and Court Officers' Service***

*Yes, please continue, I feel you do excellent work. The Guidelines are much better than when I first became a JP 17 years ago. **Magistrate***

*The YJB supports the Council's primary focus on guideline development and revision. We believe that the way in which the Council has prioritised these matters, given available resource capacity and the need to balance specific demands is correct and should continue. We make some suggestion[s] on areas of consideration for the Council that fit with this approach in detail. **Youth Justice Board***

<sup>7</sup> Formerly the Justices' Clerks' Society.

*Production of sentencing guidelines is the core work of the Council, supporting sentencers in ensuring that sentencing is consistent, fair and proportionate, while not preventing sentencers from exercising their discretion and addressing the specifics of individual cases. It is also essential that the impact of guidelines on sentencing practice is monitored to ensure that they are both being applied appropriately and that they are having the intended impact. So analysis and research about existing guidelines is vital.... The final function of promoting awareness of sentencing and sentencing practice among the public also has value. **Magistrates' Association***

*On the whole, the Sentencing Council has prioritised guideline development and the monitoring and evaluation thereof, which seems appropriate. However, now that several guidelines are in place covering most volume offences, perhaps further attention ought to be paid to ensuring rigorous monitoring and evaluation of these in terms of the impact on equality. Whilst monitoring of existing guidelines does occur, there is less ongoing monitoring with reference to protected characteristics in favour of offence specific analysis...(a missed opportunity). Whilst sentencing guidelines are aimed at encouraging consistency, elsewhere I have argued they may indirectly standardise practice in a way that is contrary to equality and the ideals of social justice. **Dr Carly Lightowlers***

One magistrate called for an expansion of the number of guidelines produced, as well as an expansion of the harm, culpability, aggravating and mitigating factors included in them. The Insolvency Service said they “would like to see the Council turn their focus to providing guidelines for the more unusual or ‘niche’ offences, such as those that the Insolvency Service regularly prosecute, where sentencers are particularly assisted by guidelines in relation to offences that they do not often have to address.”

Professor Andrew Ashworth also commented as part of his consultation response that if resources were an issue, some areas were important enough to warrant a reprioritisation of other areas:

*If the Council is right in saying that the only way that it could accommodate the work needed to engage BAME groups more and to distil findings on the effectiveness of sentences is to cut back on guideline production, then I would prefer some slight slowing of guideline production in order to ensure proper attention to these other two policy imperatives. **Professor Andrew Ashworth***

## **Council actions**

We have considered in detail the responses regarding the focus and balance of our work, how we have allocated resources with regard to our different statutory duties and what other areas of work we might usefully undertake in the future. The actions we consider we need to undertake are set out in the following sections of this document, as well as in the accompanying five-year strategic plan that is published alongside it.

Both these documents show that we plan to focus our work in the next five years on five strategic objectives; these align with the broad areas of:

- guideline development and revision;
- research and analysis to support the whole range of the Council's work;
- exploring and considering work around equality and diversity;

- consideration of issues relating to effectiveness of sentencing; and,
- promoting public confidence.

The third objective around diversity, which reflects work already being undertaken by the Council, has been included as a specific objective in recognition of the strength of comments that we received on this topic and in acknowledgement of the importance of work in this area.

Our five strategic objectives for the period 2021–2026 are as follows:

### Sentencing Council strategic objectives 2021–2026

- Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines
- Strategic objective 2: The Council will ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it
- Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit
- Strategic objective 4: The Council will consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues
- Strategic objective 5: The Council will work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public

More details of actions in relation to these areas, and that address some of the points raised above, can be found in the relevant sections of this document.

## 3.2 The role of the Council

### Responses to the consultation

Some respondents felt that the Council should take a more proactive role in ensuring that the sentences handed down by the courts are ‘effective’ (and as such that these are supported by evidence suggesting that this is the case and that this is communicated to the public); these should be sentences that take all the aims of sentencing into account.

*The SC should consider the ‘effectiveness’ of the sentencing system. **Professor Nicola Padfield***

*The Council should review the category ranges in offence-specific guidance and the structured approach to sentencing more generally. The stepped structure should require sentencers to have regard to the effectiveness of the sentence in addressing all the purposes of sentencing (Criminal Justice Act 2003, section 142) and the likely impact of the proposed sentence. **Howard League***



*I think there should be a primary focus on guideline development and revision but coupled with reinforcement of what it is that the guideline aims to achieve. It is easy to suggest that certain offences should have a fine not imprisonment or a community sentence, but explain why as too often in the media you hear judges expressing their disgust at having their hands tied and only being able to pass limited sentences. **Magistrate***

Some respondents also went on to specifically link this to the need for the Council to take into account recent trends with the prison population and, if necessary, seek to address these:

*We strongly believe that the Sentencing Council should adopt a stated aim to curb sentence inflation and undertake a periodic review of sentencing trends in relation to specific offences. This would greatly assist with determining the causes of sentence inflation and improve the effectiveness of sentencing guidelines in addressing it. The process may also help to identify areas where existing guidelines or legislation require amendment. **Catholic Church Bishops' Conference***

*The Prison Reform Trust believes that the Council has an important (but as yet unfulfilled) role in addressing the problems of prison over-use and sentence inflation. In our view, where the Council has been strongest is in the development of guidelines. While the current guidelines are not without fault, they have undoubtedly [brought] a greater degree of consistency and transparency to the sentencing process. By extension they may have to a limited extent contributed to public confidence in the criminal justice system. Where the Council has been weaker is in the areas of its wider remit relating to promoting public confidence and awareness of sentencing practice, as well as some aspects of its monitoring and oversight of sentencing guidelines. Arguably these areas were not given sufficient priority in its founding statutory remit, and so were not given the attention or resource required, particularly in the context of austerity. Our response to this consultation is informed by this general view. **Prison Reform Trust***

*The Council has focused its efforts on ensuring that its guidelines reflect, and thereby institutionalise for good or ill, current sentencing approaches (Roberts and Ashworth 2016, 340)...The Council should pause its programme of guideline development so that it can focus its work on doing all it can to mitigate these costly adverse developments over the past ten years...In this new programme of work the Council should focus on addressing the neglect of its duty to have regard to the cost and relative effectiveness of different sentences in producing guidance (Coroners and Justice Act 2009 (s120(11)(e))). The Howard League urges the Council to construe this duty with integrity. **Howard League***

*Transform Justice considers that the priority for the Sentencing Council in the coming years should be to take a range of measures to challenge and reduce the sentence inflation which has taken place since 2010...A priority for the Council should be to rethink its approach to guidelines in order to stabilise or reduce levels of punishment. The Council should be recalibrating the going rate for certain offences to address the inflation in sentence lengths that has taken place in recent years, in most cases in the absence of any change in primary legislation. **Transform Justice***

Other responses indicated a desire for a more active and public role for the Council on all issues related to sentencing: that the Council should be a body that both responds to public debates on such issues, but that also takes a role in helping lead them:

*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***

*When there are crises of sentencing policy, the Council steps back, or is invisible... 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***

*Now that the Council is an established part of the criminal justice system it must reflect on the degree to which it can be responsive to such events and assert its position at the forefront of sentencing guidance in this jurisdiction. **Sentencing Academy***

The Justice Committee also suggested a more proactive role for the Council in contributing to public and parliamentary debates on sentencing. They propose that the Council could “proactively [publish] information or analysis on sentencing that is topical and relevant to public debates on sentencing”. Other respondents picked up on the related idea of the Council as a ‘myth-buster’:

*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 necessitate the Council being more assertive in responding to factors which undermine public confidence, including correcting inaccurate and misleading commentary as well as to promoting accurate commentary. **Prison Reform Trust***

*It is the role of the SC to take [a] strong leadership role in correcting Government misinformation. **Professor Nicola Padfield***

For two academics, achieving this may take a more fundamental review of the Council's objectives and remit and how this is communicated:

*Ideally, the SC's statutory role would be refreshed in the light of experience. It is a bit disappointing that in this consultation we don't hear whether there are ways in which you would like to change your 'terms of reference'. In this exercise, the Council should not feel constrained by its current statutory duties, but should work on the assumption that Parliament could be persuaded to update them. **Professor Nicola Padfield***

*Although the Council has been in existence for some 10 years now, there remains considerable ambiguity about its place in the criminal justice system. The relationships between the Council and the Court of Appeal, and the Judicial College, are shrouded in mystery. The Council seems content to allow the Court of Appeal to set sentence levels rather than re-appraising them, even when (as in manslaughter cases) this involves a steep upward curve. When there are crises of sentencing policy, the Council steps back, or is invisible. **Professor Andrew Ashworth***

The Justice Select Committee also suggested that:

*The Sentencing Council's statutory duties suggest that the Council should play a role in evaluating Government policy and Bills. Section 132 of the Coroners and Justice Act 2009 provides a statutory mechanism whereby the Lord Chancellor can refer a policy proposal or Bill to the Council. The provision outlines that the Council would then evaluate the effect the proposal would have on the resources required for prisons, probation and youth justice services. This power is yet to be used. The Committee would recommend that the Government uses this power, and that this in turn could enable the Council to develop its capacity to inform sentencing policy. **Justice Select Committee***

However, the Committee also went on to acknowledge that “*In practice, it may be difficult for a quasi-judicial body to perform this watchdog role. Nevertheless, the Committee would suggest that there is considerable merit in the independent and expert Sentencing Council proactively publishing information or analysis on sentencing that is topical and relevant to public debates on sentencing.*”

The Sentencing Academy also acknowledged some of the constraints facing the Council, focusing on the area of public confidence:

*The SC provides a vital function in the sentencing regime in England and Wales. The guidelines provide greater transparency and predictability, and should enhance consistency and promote greater public confidence in courts. Whether (or to what extent) these objectives have been achieved is not yet fully known, as we discuss later in this response. Developing the guidelines and enhancing them through revision constitutes the Council's core function. To the extent that public confidence does increase as a result, 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***

## **Council actions**

Some of the points raised here are discussed in later sections: for example, we discuss the work we plan to do in the area of effectiveness of sentencing in our section relating to strategic objective 4. This includes how we plan to be more transparent about the evidence we have considered and how this has fed into guideline development (see section 7). We also plan to consider whether any changes are required to highlight to sentencers the need to consider issues relating to effectiveness of sentencing: this will be considered in light of research work.

In terms of reversing any observed trends in the prison population, we do not feel that this is the Council's role. We do have a duty to have regard to the costs and effectiveness of sentencing, and each guideline is accompanied by a resource assessment that estimates its likely impact on the prison population. However, we are mindful when producing guidelines that there are a number of statutory aims of sentencing. Sentencing levels are also the result of a wide range of variables, including what Parliament has set as the maximum penalty for an offence and the case mix coming before the courts.

Legislation over recent years has clearly indicated Parliament's intent that sentencing for a number of crimes should be more severe than at present – at least for the most serious

examples of such cases. In our response to the Justice Select Committees' inquiry (*Prison population 2022: planning for the future*),<sup>8</sup> we set out our opinion on this issue and this remains the case: that “*absent an explicit statutory remit, the Council is of the strong view that were it to seek, artificially and unilaterally, to raise or lower sentence levels without good cause – whether in general or for specific offences – it would rapidly lose the confidence of sentencers, a broad range of public opinion, and no doubt a significant body of opinion within Parliament.*”

That said, when we feel there is sufficient evidence to encourage a change in sentencing approach, we will take action, as was the case with the Drug offences guidelines we published in 2012. These guidelines introduced more lenient sentences for so called ‘drug mules’ after the Council was persuaded that very often such offending was as a result of very serious coercion or manipulation of the persons concerned. Similarly, our guideline for sentencing children and young people makes clear that a custodial option can only be imposed as a measure of last resort. Our Imposition of community and custodial sentences guideline sets out the criteria that must be met before a custodial sentence (including a suspended sentence) can be imposed. Guidelines will continue to promote alternatives to custody in appropriate situations where a community sentence may provide a greater prospect of rehabilitation.

In terms of our role in responding to public and parliamentary debates and ‘myth busting’, the Council debated this matter at length. We are of the view that there is a narrow line between educating the public – which we feel is properly within our remit – and commenting on live policy issues – which we feel is not. We are a body that is, by statute, comprised of a majority of judges, including at the most senior levels. It is therefore, in our view, inappropriate for us to express strong views on policy matters that Government may be considering or that may result in legislation being brought forward.

On those matters that we feel are within our legitimate remit, we put out information as part of our communications work and regularly publish analytical work that highlights trends in sentencing and evidence relating to our guidelines. In addition, as highlighted in the section on promoting public confidence (see section 8), we engage with parliamentarians principally through our relationship with the Justice Select Committee. We give evidence at Select Committees when invited to do so, and we have recently agreed with the Committee that the Council will in future attend regular evidence sessions. We plan to start these in the first quarter of 2022. Further work to educate the public and raise awareness of sentencing matters is set out in more detail as part of our strategic objective 5.

We also discussed the mechanism under section 132 of the Act, which places a duty on the Council, if requested by the Lord Chancellor, to assess government policy or proposals likely to have a significant effect on correctional resources. Generally such requests have very rarely been made. The Council has undertaken work of this nature previously, at the request of the then Lord Chancellor, in relation to reforms to suspended sentences under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Were ministers routinely to make such requests, additional resources would be required as the work can be significant. As framed, section 132 seems clearly to envisage the Council carrying out such assessments specifically if requested. As a matter of practicality, the Council feel that assessments of the impact of Government policy on correctional resources is often better done by departmental analysts. Rarely will there be a policy that has only a limited impact as regards the effect on sentencing, which is the Council’s primary area of expertise. Given that such policies are likely to be cross-cutting and have an effect on a number of

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<sup>8</sup> [Written evidence - The Sentencing Council of England and Wales \(parliament.uk\)](https://www.parliament.uk/evidence/written-evidence/the-sentencing-council-of-england-and-wales).

aspects of the criminal justice system the Council's general view is that assessments of the overall impact are better carried out by those whose analytical expertise (and indeed datasets) covers the full range of areas of policy. The Justice Select Committee may well have been alluding to such issues when it acknowledged that there are practical difficulties with the Council as a body routinely undertaking such assessments.

### 3.3 The structure and governance of the Council

#### Responses to the consultation

There were no obvious common themes on the specific makeup of the Council but respondents did seem to feel that Council members should have specialist expertise and 'lived experience':<sup>9</sup>

*...given that the vast majority of cases are sentenced in magistrates' courts and the different experiences of magistrates in, for example, urban and rural areas, we would welcome an increase of magistrate members on the Sentencing Council (in addition to, as currently, a district judge) to give a broader range of views. **Magistrates' Association***

*There is a case for reviewing the criteria for membership of the Council, including whether the judicial members should form the majority (currently eight of the 13 members are full or part-time judges, and the President is the Lord Chief Justice). People with expertise in mental health or addiction, or the media and ex-offenders could make good candidates for membership. The prison system should also be represented, for example by the head of HMPPS. Without the involvement of HMPPS, it is hard to see how the Council can properly understand the impact of sentences on the agencies which implement them.*

**Transform Justice**

*We endorse Anthony Bottoms' recommendation that the defence 'voice' on the Council, along with expertise on mental health and addictions, should be strengthened through either membership or advice. **Prison Reform Trust***

*The fact that there [is] no disabled representative reviewing the sentencing guidelines is a glaring omission...20% of the population have disabilities and equality issues... the committee [sic] should set up a sub-committee drawing upon truly disabled members of the Magistracy to review the hidden impact on the disabled and ethnic communities... Use magistrates who are members of these communities. Have a more diverse Sentencing Council. **Magistrate***

A magistrate respondent, valuing consistency, thought that the term of office for a Council member should be five years. In terms of the Council's structure, Professor Padfield also had the following suggestion:

*It is worth revisiting Professor Ralph Henham's suggestion in his *Sentencing Policy and Social Justice* (2018) that regional Sentencing Councils should be established, not least for training purposes and to keep sentencers abreast of "social cost factors". **Professor Nicola Padfield***

<sup>9</sup> There was no specific question asked on this issue in the consultation.

## Council actions

The Council's membership is constrained by the requirement in Schedule 15 to the Coroners and Justice Act 2009 to have eight judicial members (which includes one lay magistrate) and six non-judicial members, with the non-judicial members requiring experience or expertise in certain specified areas (criminal defence; criminal prosecution; policing; sentencing policy and the administration of justice; the promotion of the welfare of victims of crime; academic study or research relating to criminal law or criminology; the use of statistics; or the rehabilitation of offenders).

However, there are other ways – aside from formal membership of the Council – that will ensure we draw on the necessary expertise in our work. Where the Council has considered it would be of particular value, we have in the past sought the advice of outside experts to help inform guidelines (for example on the guidelines covering health and safety offences, sexual offences, and the overarching guideline on sentencing offenders with mental disorders, developmental disorders, or neurological impairments). Other external experts have also, on occasion, addressed Council meetings or at other times joined working groups with officials and Council members. We have found this input to be invaluable in progressing our work and, given the responses in the consultation, are now formalising the need to consider this for every guideline in development or that is being revised. We have therefore added the following action to our strategic plan:

Action	Provisional timing
Ensure that we draw fully on all relevant perspectives by formally considering at the outset of each guideline project whether to bring in additional external expertise to support a guideline's development	Ongoing from June 2021

In terms of attracting people with disabilities or those with minority voices to apply to become a Council member, all our advertisements carry the wording: *“Applications are encouraged and welcomed from women, members of ethnic minorities, and people with disabilities. There is strong commitment to equality of opportunity in the appointments process for all those who are eligible”*.

The maximum length of tenure, both in terms of initial appointment and the cumulative length of tenure after any re-appointments, of Council members is set by statutory instrument (the Sentencing Council for England and Wales (Supplementary Provisions) Order 2010). Generally members are appointed initially for the maximum initial term of three years, and in practice, some members of the Council have had their three-year terms renewed. When there is a delay in filling a position, it is often the case that the existing member continues to serve on the Council until a replacement is found.

Regarding regional councils, to establish them would require primary legislation, and such bodies would, in our view be practically and financially difficult to establish. There would need to be a clear view of what the intended outcomes were. For example, there is a need for guidelines to be used consistently across all courts regardless of their location and so the role of regional councils in ensuring that uniformity and consistency of approach would need to be considered carefully. Under the current statutory regime, we try to guard as much as possible against the Council being too London-centric. Our advertisements are clear that members do not need to be based in London to apply, we make a concerted effort to make sure our consultations are promoted across all areas of England and Wales,

and we ensure where possible that our research covers different areas and regions. We will also be adding Local Criminal Justice Boards to our distribution list as a means of ensuring we obtain a local and regional perspective.

### 3.4 Sources of funding

#### Responses to the consultation

The consultation noted the resource constraints that we face: the Council itself consists of 14 members, is supported by an office of 17.1 full time equivalent members of staff<sup>10</sup> and has a small financial budget.

Question 5 therefore asked whether there were any sources of funding that the Council should consider pursuing in order to better fulfil its duties.

Thirteen respondents made comments or suggestions in response to this question. Several made reference to general issues of funding in the criminal justice system. One magistrate suggested that the Council should receive funding from every department it supports through its work. Two respondents suggested that fines or the 'victim' surcharge should be used to fund the Council. One simply stated that additional funding should be secured.

Others made more detailed comments:

*In fulfilling statutory duties, it is important the Council is funded by the government, while retaining the necessary independence from the Ministry of Justice, judiciary and other stakeholders. A commercial model is clearly inappropriate for a body setting sentencing guidelines, so other sources of funding should be approached with caution. **Magistrates' Association***

*The Council's budget clearly needs to be substantially expanded if it is to undertake fully its statutory duties. Its current budget of £1.3 million pounds compares to the HMPPS budget of £4.3 billion. The introduction of the guideline on bladed articles and offensive weapons offences, which came into effect on 1 June 2018, was estimated to result in a need for around 80 additional prison places per year at a net cost of around £2.5 million - almost double the Council's budget. Given that the Council is such a key driver of MoJ spending, it deserves much greater investment and a priority should be to make the case for this in the forthcoming Spending Review. **Transform Justice***

*The SC should lobby central government for greater resources to permit it to discharge its duties more fully. In a number of areas, including local sentencing statistics, the Council could be more productive, but only if awarded additional funds. Perhaps the SC could explore the possibility of securing philanthropic and research council funds – either directly, which may be problematic, or indirectly, through partnerships with NGOs and academia? There are precedents, such as the award in 2016 to a consortium of academics from the ESRC and the College of Policing for developing the 'What Works Centre for Reducing Crime'. **Sentencing Academy***

*The Council should have the confidence to present its importance to Government to justify more Government funding. (Is Government convinced of its importance?). **Professor Nicola Padfield***

<sup>10</sup> As of 1 April 2021 there were 15.1 full-time equivalent (FTE) members of staff in post.

*Both these policy imperatives [work needed to engage BAME groups more and to distil findings on the effectiveness of sentences] could form part of the evidence base to make the case for additional funding for the Council. **Professor Andrew Ashworth***

*We do not consider it reasonable for the Council to be expected to deliver on its statutory remit without sufficient resource to do so. Neither is it reasonable for the Council to be expected to prioritise between different duties, all of which are important for performing its proper role and function. We endorse Anthony Bottoms' overarching recommendation that "the Council is attempting to fulfil its pivotal role in the criminal justice system on a very limited budget which – like the budgets of most public sector bodies – has been cut in recent years. These financial constraints mean that the Council does not have the means to fulfil adequately all its statutory duties. It is hoped that the Council might be able to use this Review to argue for an increased budgetary allocation". **Prison Reform Trust***

In response to the question on ways the Council's analytical work could be improved there were also suggestions that related to collaborating on research:

*Transform Justice considers it is important for the Council to obtain [evidence as to reasons for these disparities] so it can take action to remedy any possible discrimination. It may be appropriate for a university or external organisation to undertake the necessary research although ensuring full cooperation from the judiciary will be essential. **Transform Justice***

*T2A is encouraged by the SC's statement that it may be possible for it to take some of these areas for research forward through more collaborative work with academics and external organisations. The Alliance would welcome a discussion with the Council about potential collaboration and making available T2A's extensive research and practice material. **Transition to Adulthood***

Dr Carly Lightowlers suggested that the importance of research into disparities in sentence outcomes potentially warrants an independent approach (such as commissioning academic researchers), which in turn could assist with public confidence in the Council's openness to scrutiny and commitment to its Public Sector Equality Duty, the Female Offender Strategy and the recommendations of the Lammy review.<sup>11</sup>

## **Council actions**

Given the constraints on our resources, we regularly seek opportunities to work in ways that will maximise the impact we can have. Some of this has involved seeking more financial funding from the Ministry of Justice (MoJ) and in 2021/22, we successfully made a case for additional funding to cover such activities as developing an updated version of the sentencing tool 'You be the Judge' and also broadening some of the research activities that we are able to commission from external parties.

Some of our work in this area involves seeking opportunities to collaborate on work. As outlined in the section 5 that discusses our analytical work, collaboration with academics is something we already do when the opportunities arise. We welcome approaches to collaborate, and endorse relevant projects for external funding, where these will help to further our understanding of sentencing and sentencing guidelines. We are also currently

<sup>11</sup> *The Lammy Review: An independent review into the treatment of, and outcomes for, Black Asian and Minority individuals in the Criminal Justice System. See: [The Lammy Review \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).*



in discussions with the partnership between MoJ and CAPE (Capabilities in Academic Policy Engagement) headed up by University College London (UCL), to explore the possibility of a funded research fellow to work with us on analysis of ethnicity data. We will continue our engagement with external academics/ organisations in the form of seminars and workshops when relevant. We are committed to investing time into broadening out the range of analytical work we contribute to and will continue to seek opportunities to collaborate with academics and external organisations.

# Section 4: Developing and revising sentencing guidelines

Question 7 to question 12 of the consultation (see Annex B) asked about issues related to developing and revising guidelines.

As set out in the consultation document, guidelines have always been at the core of the Council's work and the Council has statutory duties to have regard to various matters when developing guidelines. They are underpinned by evidence of current sentencing practice relating to the nature of offending, characteristics of offenders and the effect on victims. The consultation sought views as to the extent to which the Council was fulfilling those duties specifically in relation to the need to promote consistency in sentencing, the need to have regard to the impact of sentencing decisions on victims, and the need to promote public confidence in the criminal justice system.

The responses to this were wide ranging and have fed into actions considered throughout this document.

The centrality of guidelines to the Council's work is reflected in the following strategic objective:

**Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines**

## 4.1 Guideline areas to prioritise

### Responses to the consultation

The consultation asked questions about which offence specific and overarching guidelines the Council should develop or revise.

There was no real consensus regarding which new offence specific guidelines the Council should develop. The rationale for suggestions also varied: some people felt a guideline was needed because an offence was common, others because an offence was uncommon (and thus unfamiliar to sentencers), whilst others were clearly making suggestions specific to their particular area of interest or expertise.

Several of the suggestions related to guidelines that were already under development at the time (such as assault on emergency workers and modern slavery offences) or those that were already on the Council's two-year work plan such as causing death by dangerous driving and drug driving. Other suggestions related to offences that the Council had already included on a long list of areas for future consideration (such as kidnapping/false imprisonment, blackmail, forgery, wildlife offences, data protection offences, hacking, and prison offences).

Finally, there were suggestions which the Council had not previously considered for inclusion in our work plan: these included murder, insolvency offences and new sexual offences (such as 'upskirting').

In terms of overarching guidelines, there was much more consensus. The most frequently called for guideline/ guidance related to sentencing female offenders. Those who raised it noted the evidence on sentencing outcomes for this group and some of the specific issues they may face during periods of imprisonment (which linked for some to effectiveness of sentencing).

Some also suggested there would be value in producing a guideline on sentencing young adults and/ or further guidance on the issue of age and maturity (beyond that already included in the Council's expanded explanations). The Prison Reform Trust also suggested guidance on sentencing sole or primary carers to provide clear guidance to the court *"regarding its duty to investigate caring responsibilities of defendants and to take these into account in sentencing decisions."*

*Proactively explore improvements to sentencing of women offenders. It is already well established that prison has especially poor outcomes for women....as they are often the primary carers of children, their imprisonment has an exceptionally harmful impact on families...It must surely be timely for the Sentencing Council to undertake further analysis of options such as the greater use of women's centres, to tackle complex needs and support rehabilitation. **Catholic Church Bishops' Conference***

*As part of the wholesale review to prevent disparity and alongside addressing issues of racial disparity, the Howard League urge the Council to prioritise how it can ensure a distinct approach is taken at sentence to the sentencing of young adults. Whilst the charity welcomes the expanded explanation of 'age and/ or maturity' it does not go far enough to ensure young adults are not discriminated against at sentence. The arguments for a distinct approach to women at sentence are overwhelming. **Howard League***

*PRT is a member of the Transition to Adulthood (T2A) Alliance and shares its view that there should be a separate overarching guideline for sentencing young adults up to age of 25. Evidence suggests that the 20 to 25 year-old age group are most likely to desist from offending. Therefore, developing a guideline in this area would go some way to meeting Anthony Bottoms' recommendation to more closely match guidelines to the process of desistance. **Prison Reform Trust***

Transform Justice and the Prison Reform Trust felt there should be guidance on the purposes of sentencing. Transform Justice pointed to the General guideline, which says that courts need to consider which of the five statutory purposes of sentencing it is seeking to achieve through sentence. They flag that in the case of more than one being relevant, there is no guidance about how courts should go about selecting the purpose for a particular case.

A small number of respondents also felt that the Totality guideline should be revisited. The Sentencing Academy cited the fact that a number of academics have criticised this guideline for providing insufficient/ minimal guidance for courts, and Professor Andrew Ashworth stated:

*It is arguable that simply to state that the total sentence should be ‘just and proportionate’ does not amount to a guideline on totality, since it gives no clue as to the process by which the court should find its way to a total sentence that meets this test. Many cases (in the Crown Court, probably the majority) involve multiple offences, thus requiring the court to deal with the question of totality. This, in turn, has a considerable effect on the overall sentence – notably, in the Crown Court, the length of prison sentences. Assessing the total sentence is a vital issue, both for the offender and for the use of imprisonment, and the Council ought to return to this topic. **Professor Andrew Ashworth***

Other suggestions for overarching guidelines/ guidance were raised by just one respondent each. These included:

- sentencing procedure and practice;
- more guidance on victim personal statements;
- assessment of dangerousness;
- the use of location monitoring;
- sentencing older defendants;
- the custody threshold;
- the weight given to aggravating and mitigating factors;
- applying guidance on intoxication, including why alcohol or drug intoxication constitutes an aggravating factor; and,
- ‘totting up’ penalty points (which has already been done).

### **Council actions**

As stated in the following action, we will continue to promote consistent and transparent sentencing as part of our wider statutory duties:

Action	Provisional timing
Support consistent and transparent sentencing by continuing to produce and revise guidelines in accordance with published criteria. Specific guidelines produced or revised will be a result of the Council’s annual discussions on priorities and will be included in annual business plans.	Ongoing

Some of the suggestions put forward by respondents have already been taken up or are on the Council’s work plan for the near future.

It should be noted that guidelines take an average of around two to two and a half years to develop, depending on the number of offences included and the complexity of the issues involved. Given that the Council already has a full workplan, it will be possible to pursue only a small number of the suggestions in the immediate future. The Council also needs to retain the flexibility to respond to any wider or more urgent issues (for example any legislative changes that impact on guidelines and our work and where there is some urgency to the need to reflect those changes in guidelines).

In the light of the suggestions made, the Council undertook research into the operation of the Totality guideline and we have published a report of the findings.<sup>12</sup> Having considered these, the Council will conduct a full review of the Totality guideline and we expect to consult on proposed changes next year.

Action	Provisional timing
Review the Totality guideline in the light of research findings and make any necessary changes	Consult on draft guideline by October 2022

The other areas that the Council feels should be considered more fully are the sentencing of female offenders and the sentencing of young adults. These are issues that have already been addressed in the expanded explanations to aggravating and mitigating factors so the Council has undertaken to prioritise an evaluation of these in order to assess what more may need to be done in these areas.

## 4.2 Criteria for developing and revising guidelines

### Responses to the consultation

The consultation proposed revised criteria for the development and revision of guidelines, and 15 respondents commented on this. Around half of those who responded felt the criteria overall were generally acceptable and appropriate. However, there were various comments (including from those who were generally in support of the criteria) about how they could be refined or changed.

The proposed criteria made reference to a request from a “substantial body of interested parties” and one recurring theme was that this was an ill-defined term and that it might set the bar too high. There was also a concern that the proposed 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).

*The inclusion of the attorney general [sic] or appeal court as a source of information ignores the limited number of cases they will actually consider and the tendency to be the most serious and which will affect the least proportion of the general public. Similarly, the second criteria then uses ‘substantial body of interested parties’ as a defining point, but what does that mean? Who will decide what constitutes substantial? As the criteria stands, it could be the case that one case from the appeal court attracts more attention than a number of lower but reoccurring cases that affects considerably more people. I would remove the first two criteria and add to the remaining three criteria ‘where concerns are raised by interested parties’. **Magistrate***

<sup>12</sup> Brewer, B. and Cardale, E. (2021) *Exploring Sentencers’ Views of the Sentencing Council’s Totality Guideline*, Sentencing Council. See: <https://www.sentencingcouncil.org.uk/publications/item/exploring-sentencers-views-of-the-sentencing-councils-totality-guideline/>.

*[Some] criteria suggested...should not be used because they are open to bias or are open to subjective interpretation...(i.e. 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).* **Professor Mandeep Dhani**

*The second point could be rephrased for clarity, as it is not clear whether it references a body that represents a substantial group of interested parties or a substantial number of different groups. It is important not to set this criteria as an unnecessarily high bar. For example, if a significant number of magistrates raise concerns about a particular guideline, this would be a clear indication that the Council should consider reviewing that guideline.*  
**Magistrates' Association**

*What does a 'substantial body' in this context mean?...This needs clarification. Could it be one or a small group of organisations that for example represent many thousands, tens or hundreds of thousands or millions of members?* **Member of the public**

The Prison Reform Trust suggested the 'substantial body' criterion was altogether insufficient and could have unintended consequences: *"The inclusion of this criteria as it stands, for instance, could risk the Council's workplan being hijacked by populist interests, if a tabloid newspaper got behind a campaign to change sentencing guidelines in a particular area"*. They recommended a more wholesale revision/ expansion of this criterion to include reference to the statutory purposes of sentencing and to addressing disproportionate outcomes for people with protected characteristics.

Several respondents addressed the criterion: "evidence indicates that existing guideline(s) have had a problematic, unintended impact on sentencing severity". Diverse Cymru said it was important that impacts on sentence severity and consistency specifically included identifying and addressing existing and potential inequalities.

The Prison Reform Trust welcomed this criterion, citing assault and burglary as a good example of where we have revised guidelines when unintended impacts have been found. However, they felt that the criterion needed to be refined in order for it to be more effective. This would include reconsidering the definition of a "problematic, unintended impact on sentence severity" because, in their opinion, increases in severity may be problematic even if intended; the definition of 'problematic' should include concerns about proportionality and impact on available resources, and be broadened to include the wording *"problematic and/ or unintended"*; and there should be clarification around what is meant by 'unintended'".

Transform Justice said that guidelines should urgently be reviewed if there is an indication that they have led to an unanticipated increase in the severity of sentences, including where they have failed to stabilise a preceding upward trend.

Transform Justice also commented that guidelines should be adjusted in response to various changes that may occur. They cited as examples changes in the law that increase the proportion of a sentence served in custody; when the overall punitive weight of a sentence increases (e.g. when mandatory post-release supervision was introduced for

sentences under 12 months); and when issues such as Covid-19 may lead to more overcrowding in prisons.

More generally, Professor Mandeep Dhmi felt that the main criterion on which the Council chooses to develop or revise a guideline should be empirical evidence – not only in relation to the criteria already included, but also in relation to the reasons for departures from guidelines, evidence on the most effective format for guidelines and ‘what works’ in terms of achieving the aims of sentencing. Another academic – Professor Padfield – felt that guidelines for more common and more serious offences should probably be prioritised over others.

**Council actions**

The Council found the responses very helpful, especially those that suggested how issues of equality and disparity could be incorporated into the criteria. We committed to the following action:

Action	Provisional timing
Ensure that all relevant issues are taken into account when considering guidelines for development, or evaluation, by reviewing and updating our guideline development/ revision criteria.	Completed; published in August 2021

Taking into account the points made by respondents, alongside the practical issues of evidence, resources and external factors, we have agreed revised criteria, which have been published on the Council’s website and are included below:<sup>13</sup>

**Our criteria for developing or revising guidelines**

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:

- 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.
- Existing guideline(s) have become significantly out of date because of amendments to legislation or other external factors.
- 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).
- 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:

<sup>13</sup> <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/our-criteria-for-developing-or-revising-guidelines/>.

- evidence of inconsistency in the sentencing of an offence or group of offences;
- evidence of inequality in sentencing between different demographic groups;
- evidence of sentencing being too high or too low for a category of offence or category of offender; and/ or,
- 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.

### **4.3 The policy for making minor changes to guidelines and ways in which the flexibility afforded by digital guidelines could be used to make improvements**

The Council's existing policy for making limited modifications to guidelines covered:

- clarifications or corrections to substantive errors or omissions;
- amendments made to reflect changes in legislation; and,
- updates to information or terminology in a guideline.

Depending on the scale and nature of the changes, the policy set out whether the Council would consult on these changes. Examples of more substantive changes in the past include the addition of references to the Equal Treatment Bench Book in all guidelines (consulted on as part of the expanded explanations project) and updates to reflect the introduction of the Sentencing Code, which we did not consult on.

The consultation asked whether the current policy could be extended, in particular to cover situations where interested parties make a case to improve an existing guideline short of a full revision. We also sought practical suggestions for taking advantage of the flexibility afforded by digital guidelines to make improvements.

#### **Responses to the consultation**

There was a mixed reaction to the idea of expanding the policy for making changes to existing guidelines.

Those in support felt this could be an efficient way of making changes: for example, Diverse Cymru felt that such an approach could address identified inequalities more quickly, and a magistrate said that such changes would be useful in circumstances where sentencers put forward ideas to help improve the usability of a guideline. The Sentencing Academy also supported the proposal, noting that amendments could easily and efficiently be incorporated into online guidance and highlighted for sentencers. However, they said it would be important that such rapid review is limited to matters on which the Council has concluded there is unlikely to be a wide array of views.

Others had wider concerns about expansion of the policy. The Magistrates' Association, while welcoming the flexibility of the current situation, expressed concern about an expansion of this beyond "*small, non-substantive changes*". They said the full public consultation process is an important part of the way the Council works: it links to public



confidence in the legitimacy of the guidelines and ensures all stakeholder views can be considered.

The Prison Reform Trust were also concerned about any loosening of the criteria and the risk that substantive changes to guidelines could be made based on the views of a particular interested party without going through the formal development process (that includes assessment of resource implications and consultation). If the Council did choose to loosen the criteria, it was felt that there would need to be *“clear criteria to judge the merits of each case, including criteria for what types of changes would and wouldn’t be permitted as part of a more limited review....any form of limited review should still include a [resource] assessment and a process of consultation”*.

This was also a concern from a magistrate who reiterated a point made in relation to the earlier question around the difference between acting on an issue raised by ministers or the Court of Appeal, versus those raised via magistrates with experience of *“a more repetitive problem”*. He felt that it *“is not necessarily the case that the policy should be expanded in scope, but more about what level of concern will trigger the response and at what point will that be deemed ‘substantial’?”*.

The Justices’ Legal Advisers and Court Officers’ Service, (formerly the Justices’ Clerks’ Society), gave qualified support to the idea, saying that they agreed there should be a policy for making changes to existing guidelines that fall short of a full revision. However, they believed that this should be restricted to where there has been an acknowledged difficulty with an aspect of a guideline and an interested party makes a case to improve an existing guideline.

Those putting forward suggestions for improvements to digital guidelines included magistrates suggesting that the format could be improved, particularly with reference to the tools (such as a fine calculator, pronouncement card builder etc). Two magistrates suggested that guidelines could be more automated. Another magistrate said that : *“The digital format is not that user friendly to be honest. Those of us who had paper printed guidelines found them easier to use and to find”*.

There was a recognition that digital guidelines make updates much easier and while some respondents said that it was easier to find digital guidelines, others criticised the search function. Professor Nicola Padfield said *“I think there is a real danger (as was pointed out by the Triennial Review) that this flexibility makes the website difficult to navigate: for me, this is a significant problem”*. The Magistrates’ Association commented that *“the search functionality is not optimised”*.

There were also suggestions for improving the signposting of overarching guidance:

*The Council should consider using hyperlinks more effectively, especially in relation to signposting to additional guidance or case law. Another important aspect is ensuring there is consistency across all guidelines, including explanatory material and overarching guidelines. Electronic guidelines makes it easier to update language or terminology, so there are no gaps or inconsistencies. Again, hyperlinks can be used to signpost sentencers, without having to duplicate text unnecessarily, so it is clear what they should be referring to in relation to a particular issue. An example would be to make it clear when sentencers should be referring to overarching guidelines on offences in a domestic setting or the new mental health guideline. **Magistrates’ Association***

*One benefit of delivering guidelines in a digital format has been the ability to cross refer to other useful areas of guidance such as the Equal Treatment Bench Book. One concern raised by Anthony Bottoms in his review of research is that overarching guidance tends to be underused by sentencers compared to offence specific guidance. One way to remedy this would be to improve signposting between offence specific guidelines and overarching guidelines. For instance, any reference to mental health in relation to culpability or mitigating factors should include a link to the overarching guidance in this area. **Prison Reform Trust***

Transform Justice welcomed the introduction of expanded explanations and suggested that more detailed material should be provided through drop-down boxes in guidelines in a similar way. *“For example, the Council has made clear [in the note that was issued about sentencing during the Covid-19 emergency] that ‘in accordance with well-established principles, the court...should take into account the likely impact of a custodial sentence upon the offender’. More detail could be provided about those principles, what kind of impact the court should be looking at and how it should identify it, e.g. through a pre-sentence report”.*

The Magistrates’ Association made this suggestion:

*There should be a mechanism for sentencers/ legal advisers to feed back to the Sentencing Council on an ongoing basis when in particular cases they are surprised by where the guidelines are taking them or there is a lack of an adequate guideline. This could be an interactive process that does not interfere with the independence of the judiciary. It might also be useful if the Sentencing Council considered indicating on each guideline when it was last reviewed, including a note highlighting if sentencers should be aware that the law may have changed in respect of the guideline and it has yet to be updated. **Magistrates’ Association***

## Council actions

The Council has considered these comments and, as a result, has published a revised version of its policy for making changes to guidelines on its website.<sup>14</sup>

### Minor changes to guidelines

As well as developing new guidelines or completely revising guidelines, sometimes the Council identifies issues that can be resolved without a full revision. These fall into two main categories:

1. Updates or correction of minor errors that can be made without consultation. These changes are made as and when needed and noted in a log. They include:

<sup>14</sup> <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/our-criteria-for-developing-or-revising-guidelines/>.

- clarifications or corrections to substantive errors or omissions that can be made in a way that gives effect to the Council's original intention (which has already been consulted on);
- amendments made to reflect changes in legislation that will not have wider implications for the guideline(s);
- updates to information or terminology in a guideline that will not have wider implications for guidelines.

Read the [detailed policy](#) for minor corrections.<sup>15</sup>

2. Amendments to update or correct guidelines that require consultation. The Council will hold an **annual miscellaneous consultation** to cover:

- clarifications or corrections that were not covered by a previous consultation;
- amendments made to reflect changes to legislation where there are decisions to be made on how these will be applied to guidelines;
- updates to information or terminology in guidelines that may have a wider impact
- interim guidance pending a revision of an existing guideline or development of a new guideline.

The changes covered in the annual miscellaneous consultation may relate to individual guidelines or apply across many guidelines.

The broad timetable for the annual consultation (which may be subject to alteration) is:

- At any time – guideline users and other interested parties provide feedback to the Council on changes that may improve guidelines. The Council also monitors guidelines, case law and changes to legislation with a view to any changes that may be needed.
- May to July – the Council considers the issues and discusses how these can be addressed.
- September to November – public consultation on the proposed changes.
- December to January – the Council considers the responses to the consultation and makes changes to the proposals.
- April – a response to the consultation is published and the changes come into effect.

This policy of holding an annual consultation on miscellaneous amendments has already been put into practice, the first of these having been launched in September 2021.

A feedback mechanism that enables guideline users to send comments directly to the office went live on 24 September 2021: the feedback option can be found at the bottom of every guideline page and users are already providing comments via this mechanism.

If feedback from guideline users suggests changes should be made to a guideline, the Council will consider whether the changes are significant enough to warrant consultation and, if so, will include the changes in the annual consultation on miscellaneous amendments to guidelines. Minor revisions and corrections to guidelines will be made

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<sup>15</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/2019-02-04-Policy-for-changing-guidelines.pdf>.

when the problem is pointed out to the Council and noted on the revisions log which is published on the website.

There were other interesting ideas and comments that the Council will seek to take forward when time and resources allow. For example, it was suggested we could work on making the guidelines more accessible to users with a visual impairment. It was also suggested that we could improve and add to the tools for sentencers we have made available through the website. We consider this suggestion in section 9.

The Council has committed to three actions relating to amending and correcting guidelines and in respect of its digital tools:

Actions	Provisional timing
Ensure guidelines remain relevant and up-to-date by undertaking an annual consultation on cross-cutting and/ or minor revisions to guidelines.	Consultation to be issued annually from September 2021
Ensure minor uncontentious amendments to guidelines, that do not require consultation, are clear and transparent to all users by publishing a log of these.	Published as changes are made
Enable users to feedback on guidelines by providing a mechanism to report errors or difficulties.	Completed: feedback function available from September 2021

## Section 5: Analysis and research

Analysis and research are integral to ensuring the Council develops guidelines that meet the aims and objectives of the Council and contribute to all stages of the guideline development process. We draw upon a range of different data sources, as well as undertaking our own research to inform our work (both quantitative and qualitative).

Question 13 to question 18 (see Annex B) asked about issues relating to the Council's analytical work.

On the general question about whether the Council had correctly prioritised its duties in relation to analytical work (question 15), very few people responded (although also see the responses to question 1 to 4, outlined in section 3 that address the issue of the Council's overall prioritisation of its work).

Of the small number that did specifically address this question, there were contrasting views.

The Magistrates' Association felt that the *"correct balance has been achieved in this regard"*, whereas, the Prison Reform Trust felt that work to evaluate guidelines should be prioritised more highly than work on developing new guidelines. The Justice Select Committee also felt that whilst guidelines should continue to be a core part of the Council's work, it should rebalance *"so that it can dedicate more resources to evaluating the impact of guidelines, producing research and analysis on sentencing trends and promoting public confidence in sentencing"*.

One member of the magistracy had a contrasting view however and stated that *"the sentencing guidelines are the priority"*.

Despite the small number of responses to this specific question, the fact that we received a large volume and diversity of comments in relation to analytical work across the six questions indicates how important this area is seen to be in terms of the overall functioning of the Council. It also contextualises the overall feeling that some aspects of this work need to be strengthened and that it should be adequately resourced. In their response to the consultation, the Justice Select Committee said that:

*Improving the quality of information and analysis on sentencing, including the sentencing decision process and on sentencing outcomes, should be a key priority for the Sentencing Council over the next decade. **Justice Select Committee***

As a result of the importance placed on this work by many respondents, the Council is committed to prioritising this area of work and has allocated one of its five strategic objectives to analytical work:

**Strategic objective 2: The Council will ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it**

As stated in the following actions, we will continue with our ongoing analytical work in support of both guidelines and our wider statutory duties:

Actions	Provisional timing
Support the development and evaluation of guidelines by continuing to access and analyse sentencing data - including on impacts and resources - and ensure this is understood and informs Council decision-making.	Ongoing
Provide evidence and analysis to support the Council's work across all of its statutory duties.	Ongoing

In addition, we are committing to a range of further actions as discussed below.

## 5.1 Accessing data

### Responses to the consultation

Respondents called for the Council to collect more data (mainly quantitative, but also qualitative), and broaden out some of the analysis it conducts.

Some respondents called for the Council to embark on a more ambitious programme of data collection, analysis and publication. Some felt that an exercise akin to the previous Crown Court Sentencing Survey (CCSS),<sup>16</sup> a census survey of sentencing decisions in the Crown Court, should be resurrected across all courts.

*We believe that an increased use of data collection exercises in the magistrates' courts could assist the Council's analytical work. **Justices' Legal Advisers and Court Officers' Service***

*Sentencing Council to facilitate ongoing data collection and monitoring of sentencing, ... Given that ongoing data collection about sentencing practice is key to monitoring the operation and effect of sentencing guidelines... it is regrettable that the CCSS was ended... **Dr Carly Lightowlers***

There was also a call to increase access to data to facilitate external work in the area of sentencing.

<sup>16</sup> Between 1 October 2010 and 31 March 2015, the Council conducted the CCSS, a census survey in all Crown Courts collecting data on the majority of offences sentenced. The CCSS was a paper-based survey and was completed by the sentencing judge. It collected information on the factors considered by the judge for the principal offence involved in the case, including harm and culpability, aggravating and mitigating factors, sentence starting points, final sentences and guilty plea reductions.

*The SC's Crown Court Sentencing Survey (CCSS) was very useful in stimulating external research. The publicly available database has been used by a significant number of scholars...The Sentencing Council discontinued the survey in 2015 and replaced it by periodic, bespoke data collections. If these data were made publicly available, they would also be useful to external researchers. Otherwise researchers will have to work with data which is too old. **Sentencing Academy***

Some people also flagged the need for more qualitative work (although that this was at odds with others' views, who clearly felt that the focus should be on larger scale quantitative work). For them, this was essential to provide in-depth information on the issues and experiences relevant to different groups.

*I am convinced that you should do a lot more small-scale qualitative research. The Sentencing Council and its staff (as well as judges and magistrates, as part of their training) should spend more time speaking with offenders and their families, and victims, to understand what works, and what people consider to be appropriate punishments. **Professor Nicola Padfield***

*There should also be more qualitative work done in this area to ensure that fair and consistent sentencing is applied across all groups. **Diverse Cymru***

*When producing guidelines, the Council should interview those who have been convicted, as they did in relation to drug mules.<sup>17</sup> This would help ensure that the human consequences of sentencing decisions are fully considered. **Transform Justice***

*The Council were rightly lauded for their consultation work with drug 'mules' in preparation of the drug offences guideline. This should be the norm. The Council cannot fully weigh the likely impact and effectiveness of its guidance without input from those affected. **Howard League***

Professor Padfield also advocated more analysis of sentencing remarks of court cases. Dr Lightowlers also encouraged more of this work, including increasing access to the transcripts that we hold.

## **Council actions**

The Council has already started considering the way in which it collects data. We are continuing our discussions with HMCTS and colleagues working on the Common Platform<sup>18</sup> to explore ways in which we can draw on data from administrative court systems to supplement our own collections. This may also include returning to larger, more ongoing, data collections in order to collect and analyse larger volumes of data. However, this would be resource intensive for the Council and so we have prioritised the actions in this consultation to reflect the need to slightly slow down some areas of work in order to accommodate this. It should also be noted that even if we were able to collect

<sup>17</sup> Marshall, E. and Moreton, K (2011) *Drug 'mules': twelve case studies*, Sentencing Council. See: [Drug 'mules' twelve case studies \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk).

<sup>18</sup> The Common Platform is a digital case management system. It allows all parties involved in criminal cases, including the judiciary, solicitors and barristers, the Crown Prosecution Service and court staff, to access case information.

larger volumes of data, there may be offences or certain sub-groups for which we could still not collect sufficient volumes to carry out meaningful analysis.

We are also committed to publishing as much of our data as possible. The first of our datasets from a bespoke collection in magistrates' courts – on theft from a shop or stall – was published in December 2020. We are now working on preparing data on drugs and robbery offences for publication in 2022. As the work involved in cleaning, quality assuring and publishing these datasets is substantial and we feel we need to prioritise the collection of more data over its publication, the timing of any future data publications will depend on our available resources. The Council will, however, consider providing access to our data to academics and researchers prior to its publication if it is satisfied that the data is in a format that can be shared and that it would be used for work that will directly improve understanding in the area of sentencing. This would be subject to approval of the research aims and methodological approach and on the basis of fulfilling the requirements of the relevant data sharing agreements.

On qualitative research, we routinely undertake this with sentencers as part of the guideline development process. In addition, we have undertaken research with other groups when needed (not only with 'drugs mules' as outlined above, but also victims of sexual offences, victims of online fraud, defendants in relation to the guilty pleas guideline and members of the public in relation to drug offences). It has provided valuable information to help develop the relevant guidelines. However, there can be difficulties with gaining access to victims and offenders in particular, and it can be resource intensive. It should also be noted that research is not the only avenue by which the views of different groups can be obtained. We actively promote our consultations to relevant groups, including via representative organisations and specialist media. Our consultations routinely receive responses from a wide range of individuals and groups, which help to provide the Council with access to multiple voices and diverse views and we are currently reviewing our processes to ensure invitations to respond to our consultations are reaching groups that represent people across all protected characteristics.<sup>19</sup>

We acknowledge the value that qualitative research with different groups can bring, and this is something we will continue to consider on a case-by-case basis. We have now included this as a formal consideration when starting to develop or revise a guideline.

Regarding analysis of transcripts of sentencing remarks, the Council will continue to undertake this for Crown Court cases (transcripts are not available in magistrates' courts). However, we unfortunately cannot facilitate direct access to transcripts or share any that we already hold due to data protection restrictions. However, transcripts are publicly available and so we will provide information on our website on how to seek to access these.

As a result of considering consultation responses, the Council has committed to the following actions as part of our five-year strategy:

Actions	Provisional timing
Finalise approach as to how we might access a greater volume of data via the Common Platform and explore	By September 2022

<sup>19</sup> All the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.



whether this might bring about efficiencies in the way in which we currently collect data from the courts.	
Permit access to data collected by the Council by preparing and publishing our drugs data collection.	By June 2022
Permit access to data collected by the Council by preparing and publishing our robbery offences data collection.	By September 2022
Ensure the views of all relevant parties are fully considered in the development and revision of guidelines by considering on a case-by-case basis whether additional specific qualitative research is required.	Ongoing from June 2021

## 5.2 Assessing the impact and implementation of guidelines

### Responses to the consultation

The Council already undertakes assessments of guidelines. As part of the development of guidelines, we have a duty to provide an assessment of the likely impact of guidelines on prison, probation and youth justice resources. Once the guidelines have been implemented, we then look back and assess whether they have met their intended aims, what their impact has been and whether there have been any implementation issues.

The consultation document highlighted some of the limitations on this work to date, which is largely a result of lack of resources, both in terms of data and our capacity to analyse the data we have.

The data issues often mean that our resource assessments tend to focus on prison places, as noted in the response from the Lord Chancellor<sup>20</sup> who felt that this should be broadened out to include how fine levels are used and distributed across courts, particularly in the magistrates' courts. Both the Justice Select Committee and Transform Justice also recommended that all legislative and policy proposals that could have an impact on the prison population should be subject to a resource assessment by the Council at an early stage.

In terms of assessing guidelines after they are in force, several respondents felt that we should be evaluating more of our guidelines, and also undertaking fuller and more informed evaluations, including (as flagged by the Sentencing Academy) in relation to overarching guidelines.

*The Council has neglected its duties to monitor the operation and effect of its sentencing guidelines and consider what conclusions can be drawn from the information obtained...The Council has not reliably been able to fulfil its core function of estimating the impact of its guidelines on prison and probation resources. For most of the offences covered in the arson and criminal damage guideline, for example, it was not possible to predict whether the guidelines would have an impact because of a lack of available data on how cases would be categorised under the new guidelines...Transform Justice thinks that much more priority needs to be given to assessing the resource impact of guidelines and monitoring what happens after they come into force. **Transform Justice***

<sup>20</sup> At the time of the consultation, the Lord Chancellor was The Right Honourable Robert Buckland QC MP.

*We would also suggest that more work could be done to assess the impact of sentencing guidelines once they have been implemented. This is crucial in ensuring that they are being implemented consistently and having the intended effects. This may be particularly important in magistrates' courts, where there is a large volume of cases and a relative lack of available information on sentencing decisions. **Magistrates' Association***

*We agree with Anthony Bottoms that the Council has fulfilled its statutory duty to assess the impact of every guideline "only to a limited extent"... Guidelines for high volume offences, which the Council has prioritised over the past 10 years, will have a disproportionate impact on sentencing practice overall. Therefore, it is vital that the Council has a good understanding of their impact in order to address any unintended outcomes. We therefore believe this work should be prioritised over fresh analytical work on proposed new guidelines. **Prison Reform Trust***

Some respondents also felt there was a need to assess the impact of guidelines on consistency in sentencing, as commented on by the Sentencing Academy and Professor Dhmi.

*To date, the Council's research has concentrated on projecting the impact of an impending guideline on prison capacity or evaluating the impact of an existing guideline on trends in sentence severity, including prison admissions and sentence lengths. The Council's guideline assessments have overlooked the question of consistency. **Sentencing Academy***

*The Council also needs to have a clear definition of consistency, and it should examine alternative types of consistency so it can conduct a more accurate and nuanced analysis of the 'the effect of guidelines in promoting consistency'. **Professor Mandeep Dhmi***

A few other respondents also felt that the Council needs to more fundamentally reconsider what it regards as 'success' and therefore how it interprets its evaluation evidence. This includes what we regard as 'anticipated' and 'unanticipated' outcomes, as well as the need to consider issues around outcomes related to the different aims of sentencing, including the prevention of reoffending, deterrence and reparation.

### **Council actions**

Whilst the Council undertakes analytical exercises to fill some of the data gaps and draws on data from other Government Departments and agencies where possible, we agree that our work in these areas could be enhanced by accessing more data and that exploring ways of doing this should be a priority for the future.

The work we are currently undertaking to explore ways of drawing on data from the Common Platform and the more routine consideration of the use of qualitative research with different groups, should bring about enhancements in our resource assessments and guideline evaluations. In addition, to ensure that we consider all possible issues and improvements that we can make, we have started a review of the way in which we undertake our resource assessments. This will include considering how we may be able to access data more generally, including on aspects that have been identified as problematic in the past (for example data on the requirements attached to community sentences). We plan to seek an external reviewer to input in this work and will publish it in due course.

Regarding the need to conduct more evaluations of guidelines and to ensure these also cover overarching guidelines, we are currently working on evaluations of several guidelines covering both offence specific and overarching guidelines: the Offensive weapons and bladed articles guidelines; the Breach guidelines; and the Imposition guideline. The outcomes from these evaluations will be available in 2022. We also conducted a small piece of research to gather sentencers' views on the Totality guideline as a result of comments from the consultation that suggested the guideline be revisited. The report was published in September 2021.<sup>21</sup>

We have scheduled in evaluations of three more guidelines/ guidance to start in 2022, again covering both offence specific and overarching guidelines: the intimidatory offences guidelines; the domestic abuse overarching guideline; and an evaluation of the expanded explanations.

On consistency, we have recently published two reports. The first is a review of evidence in the area of consistency of sentencing that discusses how the Council has chosen to address this.<sup>22</sup> The second outlines analysis of the impact of three guidelines on consistency in sentencing.<sup>23</sup> If we can secure sufficient data (both in terms of the volume and type of data), then we will be able to include more work on this in our guideline evaluations. We will also consider by September 2022 what further work we might do in this area by reviewing updated evidence, as outlined in our action on this below.

Finally, regarding the ways in which we define the 'success' of guidelines, we will consider this as part of our review of resource assessments and future work on evaluations. In addition, we will continue to collate research evidence around the effectiveness of sentencing and ensure that we appraise this and consider whether any changes are needed to guidelines/ guidance as a result of this. This work is something we have already been undertaking, but in response to comments put forward from some respondents, we will now publish a synthesis of the evidence we have considered. The first such publication is scheduled for September 2022.

Further information on our work to address our duties in this area, including on the costs of sentencing, are contained in our section on effectiveness of sentencing (see section 7).

Regarding the proposal that all legislative and policy proposals which could have an impact on the prison population should be subject to a resource assessment by the Council, we have considered this and feel that given our relatively narrow remit, this would not be possible or appropriate. As outlined earlier in this document, the legislation is framed in such a way that it is clear that such assessments are intended to be as a result of the Council receiving a specific request from ministers, as opposed to the Council routinely carrying out such assessments of its own volition. Additionally, as set out earlier, given the cross-cutting nature of such policy changes we feel that analysts in the relevant department would be better placed routinely to make such assessments as opposed to the Council's officials.

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<sup>21</sup> Brewer, B. and Cardale, E. (2021) *Exploring Sentencers' Views of the Sentencing Council's Totality Guideline*, Sentencing Council. See: <https://www.sentencingcouncil.org.uk/publications/item/exploring-sentencers-views-of-the-sentencing-councils-totality-guideline/>.

<sup>22</sup> Poppleton, S., Wedlock, E., Isaac, A., and Marshall, E. (2021) *A Review of Consistency of Sentencing*, Sentencing Council. See: [A Review of Consistency in Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/publications/item/a-review-of-consistency-of-sentencing/).

<sup>23</sup> Isaac, I., Pina-Sanchez, J., and Varela Montane, A. (2021) *The Impact of Three Guidelines on Consistency of Sentencing*, Sentencing Council. See: [The impact of three guidelines on consistency in sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/publications/item/the-impact-of-three-guidelines-on-consistency-in-sentencing/).

As a result of our consideration of the consultation responses in this area, we have committed to the following actions:

Actions	Provisional timing
Consider whether enhancements can be made to the way in which we measure and interpret the impact of our guidelines and our approaches to resource assessments by undertaking a review of our current practice.	By June 2022
Explore how the Council's expanded explanations are being interpreted and applied by sentencers in practice by undertaking an evaluation of these.	Start by March 2022
Inform development of the Totality guideline by undertaking a small research study with sentencers.	Completed; published in September 2021
Explore the impact and implementation of the intimidatory offences guidelines by undertaking an evaluation.	Start by March 2022
Explore the impact and implementation of the domestic abuse overarching guideline by undertaking an evaluation.	Start by March 2022
Consider what further work in the area of consistency of sentencing is needed by reviewing the updated evidence in this area.	By September 2022
Collate the relevant evidence on issues related to effectiveness of sentencing and consider this as part of work to develop and revise guidelines by undertaking and publishing a research review of the relevant evidence	Biennially from September 2022

### 5.3 Sub-group analysis

#### Responses to the consultation

In addition to the need to make enhancements to the analytical work that underpins resource assessments and evaluations, some respondents felt that there was also a need to include specific sub-sample analysis in our work. The Youth Justice Board, for example, felt that there should be a standard youth sub-sample in all data collections. Others felt that more analysis of data on groups with protected characteristics was needed.

Respondents wanted to see more analysis on the basis of age (primarily young people, but for a smaller number, older offenders), disability, religion and faith backgrounds (including the intersectionality between these), particularly in evaluations where we tend to focus more on overall impacts on sentence severity. The Catholic Church Bishops' Conference specifically mentioned concerns over the Gypsy, Roma and Traveller group, which they cited as comprising just 0.1 per cent of the overall population but 5 per cent of the male prison population.

Although there was felt to be a need to consider impacts on a number of different groups, it was most common for respondents to call for a greater focus on different ethnic groups. Given the current climate, as well as the Lammy Review published in 2017, there was a feeling that this was an area that should be prioritised in future work. The Justice Select

Committee noted that it “*is concerning that there is limited data available on important issues facing sentencers, for example racial disparities in sentencing*”.

Other comments included:

*We would suggest that, given the findings of the Lammy Review showing that Black, Asian and Minority Ethnic people experience disproportionately negative outcomes in sentencing, the Sentencing Council should consider analysing the impact on this specific demographic group. The Lammy Review also illustrates there is an endemic problem with lack of trust in the justice system amongst this group, and reducing disproportionality in sentencing outcomes could be a key factor in increasing that trust. **Magistrates’ Association***

*Given evidence of disproportionate outcomes for people from BAME backgrounds, particular priority should be given to assessing impacts on individuals belonging to this group as well as on people from faith backgrounds. **Prison Reform Trust***

*The report on [Public Knowledge of and Confidence in the Criminal Justice System and Sentencing]<sup>24</sup> is disappointing in failing to interrogate its findings on racial and socio-economic groups. Without exploring what underlies difference[s] in confidence, the information is near-valueless. **Member of the public***

The Sentencing Academy said that there should be an ethnicity impact assessment in all evaluations undertaken.

Several organisations acknowledged the more detailed work that the Council published in January 2020 on the drugs guideline.<sup>25</sup> This drew on the Council’s Crown Court Sentencing Survey (CCSS) data to investigate the association between an offender’s sex and ethnicity and the sentence imposed at the Crown Court for selected drug offences. The CCSS data allowed us to control for a number of different factors considered by judges during sentencing and thus to provide a more robust insight into disparities between groups.

This work has received positive feedback for exploring the relevant issues in more detail. It is therefore unsurprising that some people called for similar analysis to be undertaken for other offences.

*Should the Council commit to analytical research for other types of offence, similar to that undertaken in Investigating the Association for drug offences? **Professor Andrew Ashworth***

*The Sentencing Council’s 2020 report...provides an example of the important statistical analysis that the Council can produce. The Committee would encourage the Council to dedicate more resources to this work. **Justice Select Committee***

<sup>24</sup> Marsh, N., McKay, E., Pelly, C., and Cereda, S. (2019) *Public Knowledge and Confidence in the Criminal Justice System and Sentencing*, Sentencing Council. See: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>.

<sup>25</sup> Isaac, I. (2020) *Investigating the association between an offender’s sex and ethnicity and the sentence imposed at the Crown Court for drug offences*. See: [Sex-and-ethnicity-analysis-final-1.pdf \(sentencingcouncil.org.uk\)](#).

*The SC has recently published a limited analysis of sentencing differentials relating to race/ ethnicity. We urge the Council to extend this work to a wider range of offences.*

**Sentencing Academy**

## Council actions

The Council has already started putting more emphasis on impacts related to different groups. In February 2021 we set up a dedicated Council working group to take forward work in this area (see also the next section on equality and diversity issues).

Analytically, we explore differences in sentence outcomes between demographic groups for the same offence, at both the guideline development and evaluation stages. This involves examining differences in sentence outcomes and the length of custodial sentence in relation to an offender's sex, age group and ethnicity. Alongside every guideline, the Council publishes data tables containing statistics on the offences in question, and these have historically included a demographic breakdown of the number of offenders sentenced for each offence by sex, age group and ethnicity. Since the publication of the Firearms offences guidelines in December 2020, we have also started publishing further breakdowns of this demographic information and now include additional data tables of sentencing outcomes, average custodial sentence lengths (ACSL) and custodial sentence length distributions by each demographic group.

As part of this process, and to improve our statistics, we have moved from using officer-identified ethnicity to self-identified ethnicity. We believe this is a more accurate representation of an offender's actual ethnicity than the ethnicity they are perceived to be by others. It also has the added benefit of aligning us more closely with MoJ statistics publications,<sup>26</sup> which uses the same data source as the Council and includes information on sentencing using the self-identified ethnicity variable.

We will continue to explore opportunities to undertake analysis based on different ethnic groups. Where possible, this will include conducting more in-depth bespoke analysis on specific offences, such as the regression analysis performed on selected drug offences that was published in January 2020<sup>27</sup>. Where we have the data, it will also include assessing the impact on different ethnic groups as part of our evaluations, as advocated by the Sentencing Academy.

We have also recently commissioned research work on equality and diversity in the work of the Sentencing Council. This research will review any potential for the Council's work and guidelines to cause disparity in sentencing across demographic groups and how the Council can best engage with underrepresented groups to increase awareness and understanding of sentencing guidelines. Section 6 outlines our specific action in this area.

Regarding data on other protected characteristics, whilst information on sex, age and ethnicity is collected by the police and the court system, unfortunately, information relating to other protected characteristics such as sexual orientation or disability is not. There are data available that cover these additional areas but it is not possible to link these with our sentencing data so we are unable to understand what impact, if any, our guidelines may have had or may be having. However, when relevant to our work we will look into the

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<sup>26</sup> [Criminal justice statistics quarterly - GOV.UK \(www.gov.uk\)](https://www.gov.uk/criminal-justice-statistics-quarterly).

<sup>27</sup> See footnote 25.

possibility of obtaining data from other sources and building in more qualitative approaches, if needed, to explore some of these areas.

More generally, conducting analysis that breaks outcomes down by different sub-groups requires access to greater volumes of data. Our discussion with colleagues working on the Common Platform and our review of our approaches will therefore feed into ensuring we have the opportunities to explore as many sub-group impacts as possible.

## 5.4 Local area data

The Council has a statutory duty to publish, at intervals we consider appropriate, information regarding the sentencing practice of magistrates in relation to each local justice area and the practice of the Crown Court in relation to each location at which the Crown Court sits.

We carefully considered this duty when the Council was first set up but to date have not formally gathered or published information of this nature. This is mainly due to the difficulties with interpreting data produced on a local level (it could be potentially misleading if the analysis were not able to control for other factors that may have an influence: for example, the type of case load, socio-economic status of the population in the area, and the type of area).

### Responses to the consultation

The consultation asked whether there were any areas of analytical work in need of improvement or consideration for the future. A small number of respondents raised the issue of the Council's duty on local area data. Those that commented tended to feel that the rationale for not producing this type of information was inadequate and could be overcome.

*We agree that publishing misleading statistics is worse than not publishing data. However, the solution is rather to ensure that the comparisons are appropriate. Local statistics are published for a wide range of issues; sentencing statistics should not be excluded. The problem appears to be that the Council has the mandate to publish these statistics but not the resources, while the Ministry of Justice has the resources but not the mandate. The impasse should be resolved, and these statistics published on a routine if not annual basis. **Sentencing Academy***

*The reasons given are not convincing: of course "interpreting data produced on a local level would be potentially misleading" but so what? That is not a reason to hide the data, particularly given concerns about racial, sexual and class-based discrimination. Personally, I think much more local data would be useful. As long as there are the 'critical friends' with time to critique and deconstruct it. **Professor Nicola Padfield***

### Council actions

We have reconsidered this and feel that we should explore the pros and cons of work in this area further before making a firm decision about what further analysis we could do. We have therefore started exploring the options in relation to this and have allocated an action to this:

Action	Provisional timing
Consider how best to make use of local area data in our work by undertaking a review of options.	By March 2022

## 5.5 Sentencing and non-sentencing factors reports

The Coroners and Justice Act 2009 requires the Council to produce, as part of its annual report, a sentencing factors report (s130) and a non-sentencing factors report (s131).

The sentencing factors report is required to contain an assessment of the impact of the Council's guidelines on prison, probation and youth justice services. The Council complies with this by including in the annual report a summary of the resource assessments for definitive guidelines that it has published during the reporting year.

The non-sentencing factors report requires the Council to identify the quantitative effect that non-sentencing factors are having or are likely to have on the resources needed or available to give effect to the sentences imposed by the courts. These factors include the volume of offenders coming before the courts, recall, breaches (of community orders, suspended sentence orders and youth rehabilitation orders), patterns of re-offending, decisions by the Parole Board, early release from prison and remand.

The Council complies with this requirement in each annual report by providing short summaries of the data available on each of these topics, where available, and providing links where users can find further information.

### Responses to the consultation

Only a small number of respondents commented on the way in which the Council has chosen to fulfil these duties.

Transform Justice suggested that the Council had taken an overly narrow approach to these and that a *“more comprehensive analysis would be much more useful”* for the sentencing factors report and noting in relation to the non-sentencing factors report that *“the Council has not attempted to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their impact on resources”*. The Youth Justice Board also felt that more could be included on the youth jurisdiction.

### Council actions

We have considered our approach to these duties. For the sentencing factors report, we feel that the 'narrow' approach taken is necessary, given that we currently have very little information in some areas (for example, reliable data on lengths of suspended sentence orders, levels of community orders and bands of fines, and on the relative seriousness of some offences). In the future, if we are able to collect more data (a greater volume and diversity of data, including in the area of youths), then it may be possible to enhance our resource assessments, and thus to feed improvements into the sentencing factors report. Our review of resource assessments will also indicate if this might be possible.

Regarding the non-sentencing factors reports, whilst it is relatively straightforward to analyse the available data on non-sentencing factors, it is extremely difficult to identify why changes have occurred and to isolate the resource effect of any individual change to the



system. This is because the criminal justice system is dynamic and its processes are interconnected. Again, any success we have in obtaining more reliable data would help improve our ability to address this duty more fully.

This data issue, as well as our experience of embarking on more detailed versions of these reports in the early years of the Council means that at this stage, we feel that the current approach is a proportionate one and in line with the need to ensure we can resource all areas of the Council's work. As a result, we do not plan to alter our approach to these duties at this stage but will include a review of these by the end of 2023 when we know more about the type of data available to us at that time.

## 5.6 Collaborating with academic and external organisations

### Responses to the consultation

As highlighted in this document and the accompanying strategy document, the work we are able to undertake is extremely dependant on the resources available to the Council. Many respondents acknowledged this, with several respondents recommending that the Council collaborate more with external partners or seek funding from elsewhere.

*T2A is encouraged by the Council's statement that it may be possible for it to take some of these areas for research forward through more collaborative work with academics and external organisations. The Alliance would welcome a discussion with the Council about potential collaboration and making available T2A's extensive research and practice material. **Transition to Adulthood***

*The SC has conducted several seminars in conjunction with academic researchers, the last being in 2018 in conjunction with City Law School. We encourage the Council to continue this collaborative activity and the SC could identify a list of research questions for which it is particularly interested in seeking answers. As noted above, SC support for research projects conducted by academics and other organisations could be key to unlocking philanthropic/ research council funding. **Sentencing Academy***

*The Council should continue to work alongside academics to apply for funding from research councils (e.g. UKRI) to support its research and analysis as this will increase its capacity to look at a range of priority issues and base the development of guidance on [rigorous] research findings. Such external critical input from academics, adds a level of rigour and in turn public trust and support in the work of the Council. **Dr Carly Lightowlers***

Dr Lightowlers' comment about public trust in the work of the Council was echoed by an anonymous respondent who felt that engaging external organisations to undertake work would ensure a level of independence was applied to the analysis of data.

Professor Padfield, however, warned that although working with academics brings benefits, it is not necessarily resource free:

*You should encourage more academic researchers to use your data. But remember that Universities are probably even more short of money than you are.... And one risk with working with 'external organisations' is the additional costs (e.g. huge data protection issues). Working with other organisations is of course a good thing – we all need critical friends, 'deconstructors', who can peel back our onion skins and challenge our ways of thinking – but it is not a way of saving money. **Professor Nicola Padfield***

## Council actions

Collaboration with academics is something we do when the opportunities arise and in recent years we have actively invited academics to discuss particular potential research topics with us, to see whether or how the Council might be able to support such bids. We welcome approaches to collaborate and endorse relevant projects for external funding and will provide further information on our website on the type of details we require when considering these approaches. We are also currently discussing with the partnership between MoJ and CAPE (Capabilities in Academic Policy Engagement), headed up by UCL, the possibility that they may fund a research fellow to work with us on analysis of ethnicity data. We also plan to continue our engagement with external academics/ organisations in the form of seminars and workshops where relevant.

Action	Provisional timing
Continue to broaden the range of analytical work we can contribute to and draw on by seeking opportunities to collaborate with academics and external organisations.	Ongoing from June 2021

## 5.7 Other areas of research

### Responses to the consultation

There were a number of other more specific issues that respondents commented on and felt should be the subject of research. These tended to be raised by only a small number of respondents:

- Aggravating and mitigating factors: the Lord Chancellor<sup>28</sup> called for more information on aggravating and mitigating factors to be available to help improve public understanding, and Dr Carly Lightowers also felt that there should be a specific review of the impact of the aggravating factor of intoxication and how it is implemented.
- Victim Personal Statements: The Sentencing Academy felt there should be more research on Victim Personal Statements (VPS) to ascertain if more guidance is needed in this area.
- Behavioural insights: The Magistrates' Association suggested that the Council consider "*research on behavioural insights in determining how best to achieve desired behaviours through effective communication*". The Sentencing Academy also

<sup>28</sup> The Right Honourable Robert Buckland QC MP.

suggested that it would be helpful to have information on whether the guidelines are applied as intended by the Council.

- Attitudes to sentencing: Transform Justice stated that: *“Consideration should be given to undertaking more surveys and research studies to understand the complexity of attitudes to particular offences”*.
- A survey to identify further areas for guidance or guidelines: the Sentencing Academy suggested that the Council should conduct a survey with judges and magistrates *“to help identify areas of sentencing law where there is a perceived need for greater guidance. This might take the form of a new guideline or the revision of an existing guideline”*.
- Analysis of multiple offences: Professor Dhimi commented that the Council should expand its analysis which is based on data for the offender’s principal offence to also include analysis of multiple offences they have committed.

### **Council actions**

Our efforts to collect and publish more data will facilitate access to more information on different factors included within guidelines, including aggravating and mitigating factors. In addition, as outlined above, we have taken an action to conduct an evaluation of our expanded explanations that are included within guidelines. This will help to explore how sentencers’ interpret and apply different factors or whether other factors or guidance is needed (for example on Victim Personal Statements or intoxication).

Regarding research on behavioural insights, we started the process of commissioning work on user testing of guidelines in 2020. The aim of the project is to test how sentencers use, access and experience digital sentencing guidelines. The project will investigate whether digitisation of guidelines has had any impact on the way in which the guidelines are used and propose any potential changes to improve the provision of digital sentencing guidelines and ensure they are used in line with the intentions of the Council.

We issued an Invitation to Tender for this project in late 2020. Having received no bidders, we decided to delay the project until our 2021/22 budget was confirmed. We expect to reissue the Invitation to Tender in 2022 and have included this in our current workplan.

On research on attitudes to sentencing, we have in the past commissioned such work – e.g. on public attitudes to drug offences and to guilty plea reductions, and in 2019 we published ComRes research on public knowledge and confidence in the criminal justice system and sentencing.<sup>29</sup> In addition, as highlighted above, we do plan to consider qualitative research with victims and offenders on a case-by-case basis when we develop and revise guidelines. We also plan to repeat some of the survey questions included in the ComRes research to look at trends over time.

Regarding a survey of sentencers to explore further areas that warrant the development of guidance or guidelines, we feel that this consultation has given us insight in this. Our revised criteria for developing guidelines also outlines the type of factors that the Council will take into account when considering which guidelines to develop.

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<sup>29</sup> See footnote 24.

Finally, in relation to analysis on multiple offences, we do not currently have access to extensive information on secondary/ non-principal offences or the sentences imposed for them. An approach based on the principal offence is therefore considered the most effective and pragmatic way of conducting our analysis given the data that is available and the difficulties of disentangling the effect of secondary offences on the overall sentence. We do agree that this might be an area to explore in the future but have decided that we need to prioritise other areas of work in the short and medium term. Once we have a clearer idea of the data we might be able to draw from the Common Platform, we will be able to reconsider this. We have therefore not included this as a specific action in our five-year strategy but have included it in our longer-term analytical plan.

## Section 6: Equality and Diversity

Issues relating to equality and diversity were raised by half of all respondents even though there was no specific section addressing this in the consultation document and no direct question.

Most of the comments came from organisations rather than individuals or members of the public. They covered issues relating to protected characteristics, as well as different groups, including victims and offenders. Those that raised it saw it as a priority for the Council.

The Council had already identified the importance of this area and highlighted it as a priority; these responses have reinforced that view. We have therefore set up a Council working group to take forward these issues and have dedicated one of our strategic objectives specifically to the area of equality and diversity:

**Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit**

Responses cut across several different areas of our work and several different consultation questions. We have summarised the broad areas of interest below.

### 6.1 Analysis of sentencing outcomes for different groups

#### Responses to the consultation

In terms of our analytical work, respondents called for more analysis across the whole range of protected characteristics (including on the intersectionality between them) in order to explore issues of equality, diversity and disparities in sentencing. Diverse Cymru also felt that analysis should focus not only on protected characteristics as they relate to the perpetrator but also as they relate to the victim; likewise, Dr Lightowlers felt that outcomes should be analysed in terms of the sex of the victim. The Youth Justice Board commented that it would be helpful to look at providing more detailed information, including on ethnicity, in an evaluation of the guideline for sentencing children and young people.

Although evidence on all protected characteristics was seen as necessary, many respondents flagged particular groups for attention and areas where data is currently lacking. Most frequently mentioned was the need for a greater focus on the impact of guidelines on different ethnic groups: there was a feeling that this is an area that should be prioritised in future work. As noted in section 5, the Justice Select Committee noted that it *“is concerning that there is limited data available on important issues facing sentencers, for example racial disparities in sentencing”*.

One respondent also felt that the Council’s previous work on public confidence, undertaken externally by ComRes<sup>30</sup>, did not explore the issues of race sufficiently.

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<sup>30</sup> See footnote 24.

*Given evidence of disproportionate outcomes for people from BAME backgrounds, particular priority should be given to assessing impacts on individuals belonging to this group as well as on people from faith backgrounds. **Prison Reform Trust***

*[There is an] urgent need for further analytical work into racial disparities at sentencing. **Sentencing Academy***

*The report [ComRes]...disappointing in failing to interrogate its findings on racial and socio-economic groups. Without exploring what underlies difference in confidence, the information is near-valueless. **Member of the public***

As noted in the section on analytical work, a number of different areas were flagged as worthy of attention: analysis related to ethnicity, age, disabled people, female offenders, and those with different religious and faith backgrounds. A few also flagged factors such as socio-economic status and wealth as relevant. Focusing on specific groups would permit analysis at a much more granular level, particularly in evaluations where we tend to focus more on overall impacts on sentence severity.

Several organisations acknowledged the more detailed work that the Council undertook on the drug offences guidelines that was published in early 2020, and called for more, similar analysis to be undertaken. Comments in respect of this are outlined in section 5. The Youth Justice Board also felt more work of this nature should be conducted in relation to sentences for children:

*It would also be helpful to understand the layers of data that sit underneath [sentences for children], such as variations in age groups for under 18-year olds, ethnicity, regional variance etc...Building on the approach taken in the Council's recent analysis investigating sentencing for drug offences would provide insights into the weight given to specific factors beyond monitoring disparity. **Youth Justice Board***

In undertaking such analysis, some respondents called for the Council to obtain the necessary evidence to investigate the reasons for any observed findings and to take appropriate remedial action. This was problematic for the drug offences research, and a few respondents noted that more should be done.

*Even accepting the Council's own research did not control for all variables...its results are strongly indicative of a discriminatory element in sentencing for this offence. Time to take a stronger approach to eliminating what appears as discriminatory treatment of certain minority ethnic groups? **Professor Andrew Ashworth***

*There is an urgent need to follow up on the troubling findings of racial disparity found in the 2019 study investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences. The research, and other evidence, shows disparities in sentencing outcomes between offenders of different ethnicities and genders, but the Council has "no clear evidence as to reasons for these disparities". Transform Justice considers it is important for the Council to obtain such evidence so it can take action to remedy any possible discrimination. **Transform Justice***

*If CJS agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities. This principle of 'explain or reform' should apply to every CJS institution. **Prison Reform Trust***

## Council actions

We agree that more analysis on sentencing outcomes for different groups such as that we conducted on selected drug offences is a priority for us.

As already outlined in the section on our analytical work, we explore differences in sentence outcomes between demographic groups for offences covered by any guidelines in development and publish data tables containing statistics for the offences in scope. These publications have traditionally included a demographic breakdown of the number of offenders sentenced for each offence by sex, age group and ethnicity. Since December 2020, we also now publish further demographic breakdowns and include additional data tables of sentencing outcomes, average custodial sentence lengths (ACSL) and custodial sentence length distributions by each demographic group. We have moved from using officer-identified ethnicity to self-identified ethnicity in order to improve our analysis.

We are exploring whether we can extend this by doing more detailed sub-group analysis to provide a greater insight into any sentencing disparities between different groups. However, while this type of analysis is something we will undertake where we can, in practice, it will be problematic to do this for some offences and is unlikely to be possible at all for many. There are two main reasons for this:

- Many offences are too low volume to permit extensive sub-group analysis, and our current approach to data collection (shorter-term collections targeting specific offences) limits the sample sizes we have available. Even with our CCSS data, we cannot perform all the analysis we would like to: for example, in the drugs analysis mentioned above, which we published in 2020, analysis of Class C drugs needed to be excluded due to low volumes and given the relatively small number of female offenders more generally, it was not possible to explore any intersectionality between factors.
- Even if volumes are high enough to permit meaningful analysis, we do not collect data on some of the protected characteristics: religion or belief, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, and sexual orientation. MoJ administrative data also does not contain these.

While we cannot overcome the lack of data in some areas, we will endeavour to collect more data where we can, in an attempt to overcome low sub-sample sizes. Our work to draw on data from the Common Platform, the digital case-management system being introduced into magistrates' courts and the Crown Court, will help support this. This work may include returning to larger, more ongoing, data collections in order to collect larger volumes of data (however, as noted in the section on our analytical work, this would be resource intensive for the Council and so our prioritisation of actions emerging from this consultation reflects the need to slightly slow down some areas of work in order to accommodate this).

Our efforts to collect more data will also help to increase the data we have on different guideline factors, including aggravating and mitigating factors. Some of these could provide information on relevant issues where we do not have access to specific demographic data: for example, the mitigating factor of 'mental disorder or learning disability' could be useful where we do not have demographic data on disability.

Obtaining more data would allow us to conduct more detailed evaluations and to expand the type of analysis we have already started including in these (for example, some limited data on this area was included as part of the evaluation of the Sentencing Children and Young People guideline published in November 2020). It will also allow us to undertake more in-depth analysis of the type conducted on selected drug offences and published in

January 2020. We are currently discussing a project of this nature via the MoJ and CAPE partnership.

The Council is aware that collecting and analysing data in this area is only the first stage of the process. Since 2020, where our analysis has shown evidence of disparities in sentencing, we have drawn attention to that evidence within relevant guidelines so that sentencers are aware of the issues. The Council also carefully scrutinises the factors in guidelines to ensure that they do not exacerbate inequalities and seeks the views of consultees on these issues. However, we recognise that there is more to be done.

Once we have more evidence in this area, we will be able to consider what more we might do by way of understanding the underlying reasons for any findings. This might include convening a roundtable event with experts to discuss potential reasons and actions. We have also commissioned an external research project which is intended to provide further evidence for the Council to consider in this area (see section 6.5).

Regarding the ComRes research on public confidence<sup>31</sup>, we plan to repeat some of the survey questions in future years to provide a measure of change over time. At that stage, we will review the questions in the survey and assess whether they can be adapted to obtain additional information to support this area of work.

We have included the following ongoing action as part of our strategic plan:

Action	Provisional timing
Explore the potential impact of sentencing guidelines on different demographic groups and groups with protected characteristics by collecting, analysing and publishing data, where this is available, and undertaking more in-depth analytical work.	Ongoing from December 2020

## 6.2 Publishing data in this area

### Responses to the consultation

There was a call from some respondents to increase access to data. This was also something that was flagged as important in the Lammy Review.

*The default should be for the Ministry of Justice (MoJ) and CJS agencies to publish all datasets held on ethnicity, while protecting the privacy of individuals. **Prison Reform Trust***

*The SC has recently published a limited analysis of sentencing differentials relating to race/ ethnicity. We urge the Council to extend this work to a wider range of offences... We also encourage the SC to share with researchers any further data it holds in this important area so greater scrutiny can be applied to an area that is currently receiving a considerable degree of public and media attention. **Sentencing Academy***

*Sentencing Council to facilitate ongoing data collection and monitoring of sentencing, including data on protected characteristics and key demographics and facilitate the transparent release of these. **Dr Carly Lightowlers***

<sup>31</sup> See footnote 24.



## **Council actions**

Some of the responses here were more generally concerned with ensuring criminal justice organisations and government departments increase access to data. As highlighted earlier in this document, we are committed to making data available where this is possible. However, stringent measures have to be applied to ensure data is not published in a way that enables individuals to be identified; this is a rigorous and time-consuming process. This is particularly important when publishing data that is broken down into different demographic groups or different protected characteristics, as smaller sample sizes can increase the risk of individual cases becoming identifiable within it.

It should also be noted that although the data the Council collects contains some information in this area, this does not cover all the protected characteristics. Therefore, while publishing our data would meet the need for transparency, it is unlikely to address entirely the needs outlined here.

## **6.3 Undertaking more qualitative work**

### **Responses to the consultation**

Some respondents were of the view that more qualitative work should be undertaken in order to explore in depth the issues and experiences relevant to different groups (see also the section on our analytical work and on effectiveness of sentencing).

As outlined in section 5, several people commented on this area, including Professor Padfield who stated that the Council “*should spend more time speaking with offenders and their families, and victims, to understand what works, and what people consider to be appropriate punishments*” and Diverse Cymru who felt that “*There should also be more qualitative work done in this area to ensure that fair and consistent sentencing is applied across all groups. Experiences can highlight potential solutions where there are differences in sentencing in relation to the perpetrator or victim having one or more protected characteristics*”.

### **Council actions**

As outlined in our section on analysis and research (section 5), we have undertaken research with other groups when needed and we do actively promote our consultations to relevant groups, including via representative organisations and specialist media. Our consultations routinely receive responses from a wide range of individuals and groups, which help to provide the Council with access to multiple voices and diverse views. We are also currently reviewing our processes to ensure that invitations to respond to our consultations are reaching groups that represent people with all the protected characteristics (see our section on promoting public confidence for more details).

However, we acknowledge the value that qualitative research with different groups can bring, and this is something we will continue to consider on a case-by-case basis. We have now included this as a formal consideration when starting to develop or revise a guideline and have allocated an action in our five-year strategy to this. We have also committed to undertaking a scoping study to explore the ways in which we might engage with offenders in the future to understand more about their experiences of different sentences (see section 7).

## 6.4 Working collaboratively with others

### Responses to the consultation

Some respondents advised that in some areas it might be possible to obtain data in this area through collaboration with academics or external organisations. Noting that it would depend on the available funding for this, Diverse Cymru suggested that the Council could work with third-sector organisations and academic institutions to collect data

The Prison Reform trust advocated a more ambitious cross-CJS approach, as did an academic:

*We use this opportunity to highlight recommendations 1 to 4 of the Lammy review<sup>32</sup>... We ask that the Council... works with criminal justice partners to ensure a consistent approach to capturing data on religion and ethnicity, as well as other protected characteristics including disability. A cross-CJS approach should be agreed to record data on ethnicity. This should enable more scrutiny in the future, whilst reducing inefficiencies that can come from collecting the same data twice. **Prison Reform Trust***

*Further data collection, linkage and detailed (longitudinal) research of the processing of individuals through the criminal justice system and issues of intersectionality are encouraged... This is... important to allow us to follow individuals through the CJS rather than merely describe the experiences of groups at distinct stages in the system.... The importance of such work potentially warrants an independent approach (such as commissioning academic researchers...). **Dr Carly Lightowlers***

### Council actions

Our section on collaboration on analytical work (see section 5) discusses these issues more broadly. In terms of the specific comments here, as acknowledged by the Prison Reform Trust, exploring these areas would require a cross-CJS approach and joint working across a number of departments, something that was advocated in the Lammy Review.

Work already underway in MoJ may provide opportunities for data linkage of the type described by Dr Lightowlers.

In September 2019, MoJ launched its 'Data First' programme, funded by ADR UK (Administrative Data Research UK). The programme aims to make better use of the administrative data already collected across government by linking datasets from across the justice system and with other departments. This provides new opportunities for analysis to better understand users, their journeys, and outcomes across the justice system and with a range of other public services. The data is shared responsibly with the ONS Secure Research Server (SRS) to enable accredited academic researchers access for research purposes. To date, six justice datasets have been shared, providing detailed information on defendants and their pathways across the criminal justice system. Data have also been shared with the Department for Education to understand the educational

<sup>32</sup> Recommendations 1-4 of the review cover: the need for a cross CJS approach to recording data on ethnicity; matching US standards for analysis of this type of data; as a default, the publication of all ethnicity data; if it is not possible to provide an evidence-based explanation for findings, introduce reforms to address disparities. See: [The Lammy Review \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/821112/the-lammy-review.pdf).

outcomes of offenders. Further data shares are planned, and we will continue to liaise with MoJ analysts to ensure we are kept abreast of this.

We liaise with analysts in MoJ to discuss whether there are any opportunities for joint working. As a result of this, we are working with MoJ and the CAPE partnership to explore the opportunities for a funded research fellow to work with the Council on analysis in this area.

The Council will also continue to support academics with their work. We have provided letters of support for academics seeking funding from research councils to undertake work on ethnic disparities in sentencing and will continue to do so if we are approached with a proposal that we feel will further the knowledge in this area.

## 6.5 Further guidance or guidelines on equality issues

### Responses to the consultation

Regarding further guidance, several respondents felt that the guidelines should provide more information on how to take account of equalities issues.

The Howard League commented quite extensively on this. It said that the Equal Treatment Bench Book is “*poorly incorporated*” into most guidelines and flagged that even in the drug offences guidelines there is “*almost no reference to different groups’ distinct experiences of, and different responses to, criminal justice processes and the need to consider the risk of discrimination in sentencing*”.<sup>33</sup>

It advocated refreshing all guidelines/ developing new guidance in the area of racial disparity, women and young adults, reviewing aggravating and mitigating factors and potentially adding a section to all guidelines flagging to sentencers that multiple disadvantages can arise through the intersectionality of various factors. One academic also made the point that further guidance, to which guidelines can point, was needed on inequality between the sexes in sentencing.

In line with some of the comments made by the Howard League, and as highlighted in section 3, the most frequently called for guideline or guidance in this area related to sentencing female offenders. This was an acknowledgment of the evidence on sentencing outcomes for this group and some of the specific issues they may face during periods of imprisonment. Several respondents felt strongly enough to outline these issues in some detail.

Some respondents also suggested there would be value in producing a guideline on sentencing young adults and/ or further guidance on the issue of age and maturity. Other suggestions were guidelines for older offenders and sole or primary carers. Despite the fact that there are already expanded explanations in some of these areas, some respondents did not feel these provided sufficient guidance.

*Proactively explore improvements to sentencing of women offenders. It is already well established that prison has especially poor outcomes for women....as they are often the primary carers of children, their imprisonment has an exceptionally harmful impact on families...It must surely be timely for the Sentencing Council to undertake further analysis of options such as the greater use of women’s centres, to tackle complex needs and support rehabilitation. **Catholic Church Bishops’ Conference***

<sup>33</sup> The consultation was undertaken in 2020 and therefore these comments relate to the Council’s Drug offences guideline that came into force in 2012; it has since been revised.

*As part of the wholesale review to prevent disparity and alongside addressing issues of racial disparity, the Howard League urge the Council to prioritise how it can ensure a distinct approach is taken at sentence to the sentencing of young adults. Whilst the charity welcomes the expanded explanation of ‘age and/ or maturity’ it does not go far enough to ensure young adults are not discriminated against at sentence. The arguments for a distinct approach to women at sentence are overwhelming. **Howard League***

*The Council should produce guidelines on the distinctive approach to the sentencing of women, young adults, and older offenders...In respect of women, Lord Phillips (who chaired the Sentencing Guidelines Council) has made it clear that he wished it had prepared a comprehensive set of gender specific guidelines. The current chair has said that “our guidelines are drafted in a way which is intended to be neutral as to the sex and ethnicity of an offender”. This seems at odds with the position taken by the Council in 2010 when it considered its equalities obligations and agreed that cultural factors need to be considered in the development of guidelines. Transform Justice agrees with the Council’s 2010 position. **Transform Justice***

## Council actions

As outlined above, further guidance is already being incorporated into specific guidelines where evidence of disparities has been found (as has been done for the revised drug offences guideline and firearms offences guidelines). We have also now commissioned an independent external contractor to undertake a project to review our work for any potential to cause disparity in sentencing across demographic groups. Aspects to be examined will include those such as the language used, factors, offence context, expanded explanations and structure of sentencing guidelines. The work will also consider whether any aspects of our processes of guideline development and revision have any implications for equalities and disparity in sentencing and how the Council can best engage with underrepresented groups to increase awareness and understanding of sentencing guidelines.

The potential need for guidance in the area of female offenders (and/ or sole or primary carers) and young adults is noted by the Council. These are areas that have been brought to our attention in the past and to which we have given detailed consideration.

There is relevant information on some areas, including a range of personal characteristics, within our expanded explanations, which were introduced into guidelines in October 2019. We feel that a first step towards deciding whether specific guidance is needed in these areas is to evaluate the expanded explanations and learn more about how they are interpreted and how they are being applied in practice. We have therefore included an evaluation of these into our workplan. This evaluation links to a separate action that commits the Council to include developing guidance for sentencing female offenders and young adults in our workplan, if this is found to be needed.

Our actions in this area are:

Actions	Provisional timing
Explore the potential for the Council’s work inadvertently to cause disparity in sentencing across demographic groups by commissioning independent external contractors to undertake a project to review a sample of key guidelines and processes.	By November 2021

Draw attention to any relevant issues relating to disparities in sentencing by providing tailored references to relevant information, to the Equal Treatment Bench Book, and to the need to apply guidelines fairly across all groups of offenders after reviewing evidence on disparity in sentencing for each guideline being developed or revised.	Ongoing from December 2020
Consider whether separate guidance is needed for female offenders or young adults by conducting an evaluation of the relevant expanded explanations and, if so, add this to our workplan.	To be considered as part of the evaluation of expanded explanations

## 6.6 The criteria for developing guidelines

As outlined in our section on developing and revising sentencing guidelines, a number of respondents made suggestions for how the Council's criteria for developing or revising guidelines could be improved. This also covered issues of equality and diversity; for example, Diverse Cymru said it was important that impacts on sentence severity and consistency specifically included identifying and addressing existing and potential inequalities.

The criteria have now been revised and updated in accordance with the action below:

Action	Provisional timing
Ensure any evidence of disparity in sentencing between different demographic groups is taken into account when deciding whether to develop or review a guideline by including this as a consideration in the Council's criteria for developing and revising guidelines.	Completed; published August 2021

The relevant text within the criteria is:

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:

....

- evidence of inequality in sentencing between different demographic groups

....

## 6.7 Engaging with a broader range of groups

### Responses to the consultation

Our section on public confidence outlines more details regarding how we engage with our audiences when undertaking our work. In terms of diversity issues, however, some specific comments were fed back:

*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. **Diverse Cymru***

*We also believe it is important to ensure that guidelines do not have a disproportionate impact on specific social groups. This could be done by engaging more frequently with a broad group of representative groups to ensure diversity of feedback. **Justices' Legal Advisers and Court Officers' Service***

*Should the Council redouble its efforts to ensure that BAME groups are more engaged in consultations on draft guidelines? **Professor Andrew Ashworth***

Professor Ashworth felt that this engagement was so important that it could warrant the slowing down of guideline development in order to accommodate this within existing Council resources.

### **Council actions**

Engaging diverse audiences is a priority for the Communication team. In addition, policy and communication officials work together from project initiation stage to ensure that all those people who could potentially be affected by a guideline are identified and engaged with throughout the drafting and consultation phases of guideline development. For example, when consulting on the guideline for Sentencing offenders with mental disorders, developmental disorders, or neurological impairments, we held discussions with Headway and Rethink Mental Illness. The work we plan to take forward in this area is outlined in our section on promoting public confidence.

## **6.8 Expanding membership of the Council**

### **Reponses to the consultation**

A few respondents felt that it would aid the Council's work in this area to expand its membership, or pull in more expertise, to ensure that more diverse views/ experiences can be taken account of. One magistrate felt there should be a disabled representative on the Council; another that ex-offenders should be represented or that those with expertise on mental health issues could be drawn in.

As outlined in our section on overarching issues, there were no obvious common themes on the specific makeup of the Council overall, but respondents did seem to feel that Council members should have specialist expertise and 'lived experience'.

### **Council actions**

As also discussed in the section on overarching issues, we are constrained by Schedule 15 of the Coroners and Justice Act 2009 with regards to the composition of the Council. However, we have in the past asked outside experts to attend Council meetings and used them to help inform guidelines and have now put in place a more formal commitment to consider this for every guideline in development.

We have also discussed with the MoJ Public Appointments team ways in which we might seek to bring Council Appointments to the awareness of a broader and more diverse range of candidates and will continue to consider what more can be done in this area.

# Section 7: Costs and effectiveness of sentencing

The Council's duty in relation to cost and effectiveness appears in two sections of the Coroners and Justice Act 2009. Section 120 states that the Council should have regard to the cost of different sentences and their relative effectiveness in preventing reoffending when preparing guidelines. Section 129 states that the Council may also promote awareness of these issues.

The approach currently taken to discharging this duty involves the consideration by Council members of an internal annual digest/ review of current research and evidence. This supplements Council members' significant existing expertise and experience in sentencing matters and is brought to bear in Council discussions when considering the development of guidelines. The approach was felt to be a proportionate response to the fulfilment of the Council's statutory responsibility in this area.

We asked three questions in the consultation in relation to this. These covered the ways in which we have addressed our duties in this area, whether there are any other aspects that we should consider and whether any additional research should be undertaken.

We received a number of responses in relation to these questions which demonstrates the importance of this area. Accordingly, there is work that we wish to prioritise and so we have allocated one of our five strategic objectives to this:

**Strategic objective 4: The Council will consider and collate evidence on the effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues**

## 7.1 The Council's current approach

### Responses to the consultation

Regarding the way in which the Council has addressed its duty in relation to the issue of 'effectiveness' more broadly, some respondents acknowledged the difficulties of this area, that the issue is complex and multi-faceted and that it involves issues which are broader than the Council's remit of sentencing:

*An issue we come across repeatedly is the personal circumstances of the offender including background and social status. Sadly, these factors if negative can have a debilitating effect throughout a person's life...often leading to criminality. Focusing purely on repeat offending fails to take into account social issues for an individual i.e. one size punishment fits all, and that is what we judge success or failure on. The reality is that courts see offenders with 40, 50, 60 convictions for petty theft, public order, drugs, assaults etc with a sprinkling of prison, rehab' and probation work yet are still offending. To task yourselves with assessing the success of sentencing without consideration of community intervention resources such as housing, health support and even education etc. is in my view naive. There are factors beyond mere sentencing that influence reoffending rates. **Magistrate***

*I think this is an almost impossible task. I have little confidence in the statistics on the effectiveness of community sentences in reducing reoffending and in times of austerity we don't spend nearly enough on rehabilitating offenders in prison or in the community. **Member of the public***

However, other respondents felt that the Council should go further to fulfil its duty, or had concerns about the current approach:

*You should not give up because "further work would require the Council to take a view on how it defines 'effective' within this context or what constitutes 'reoffending'". That is really basic – and crucial to any public confidence. There is a vast literature which you could bring to public attention in an engaging format (and I include the judiciary in the 'public' in this context). **Professor Nicola Padfield***

*In the year to March 2020 the average length of a prison sentence stood at its highest level for a decade – 19.6 months (MoJ 2020). In 2020 forty-eight per cent of determinate prison sentences were over four years – in 2010 only thirty-three per cent of sentences were of that length (House of Commons 2020). In relation to 'effectiveness', it is difficult to accept, in light of the developments outlined above and Ministry of Justice statistical data, the Council's assertion in the consultation paper that their current approach in this area 'seems to work'. It is equally hard to agree with the suggestion that practical difficulties and resource constraints overwhelm the Council's capacity to give due regard to this statutory duty. **Howard League***

Some respondents also specifically addressed the issue around costs and effectiveness with mixed views regarding whether our current approach was reasonable:

*We would agree with the way the Council has addressed effectiveness in sentencing and in particular the issue of costs. We agree that the cost of a sentence should not be considered when deciding upon the most appropriate disposal. We also believe that further work in this area would not add significant value. It would not only prove difficult but divert resources away from other areas of the Council's activities. **Justices' Legal Advisers and Court Officers' Service***



*The Council acknowledges that it has not fully explored the relative cost and effectiveness of various sentencing approaches to date. Were the Council able to provide greater insight in this area, it would support policy development and improve our understanding of the impacts of our policies. However, I do also understand that a greater focus on this must be considered in the context of the delivery of other priorities such as production of the guidelines and so may not be feasible.* **Rt. Hon Robert Buckland QC MP - Lord Chancellor**

*You say that “on costs, the Council has generally chosen not to address costs or cost-effectiveness in resource assessments explicitly beyond the inclusion of the costs of correctional resources. This is because in any individual case, the cost of a sentence should not be considered when deciding upon the most appropriate disposal”. Who says? I disagree strongly. If your ambition is to reduce re-offending in an economically sensible, or cost efficient way, you must consider costs. It is irresponsible not to do so. Not considering costs is not neutral in a number of ways. It also backs away from educating the public about the direct financial costs of imprisonment, as compared to other sentences.* **Professor Nicola Padfield**

Feedback regarding further work in this area of effectiveness centred on the Council needing to be more transparent about the evidence it has considered in this area; many of those who responded felt that the research digest/ review produced for the Council should be published:

*The SA believes that the Council could do more to promote more cost-effective sentencing. We agree with the Council that ‘in any individual case, the cost of a sentence should not be considered’. Encouraging individual sentencers or panels of magistrates to undertake their own cost-effective analysis prior to choosing the appropriate disposal is likely to provoke greater inconsistency, as sentencers’ views on this issue will diverge. In addition, proportionality will be undermined if disposal costs, a factor unrelated to harm or culpability, plays a pivotal role in determining sentencing outcomes. That said, the costs of different disposals vary greatly, and are a matter of public record. In addition, research by the Ministry of Justice has clearly demonstrated that short prison terms are associated with higher rates of re-offending than other, cheaper sanctions such as community orders or suspended sentence orders. The SC could consider simply making these trends (costs; effectiveness) more widely known to sentencers by publishing them on their website...All sentencers should be aware of the relative effectiveness of different sanctions at their disposal. The SC’s response to its statutory duty in this regard is to publish an ‘annual internal report’ summarising the latest research evidence regarding re-offending. This seems a rather modest step towards discharging the statutory duty. In its consultation document the Council concludes that this approach ‘seems to work’, but how do we know this, and who has determined what works? Is there any evidence or are there any examples of this information having influenced the guidelines’ sentence recommendations? We recommend the Council produce and publish a document on this subject -- possibly every other year -- and in conjunction with the Ministry of Justice. This would inform the wider community about the research findings, and also help external users understand the information which feeds into the Council's guideline construction...* **Sentencing Academy**

*Why do you produce “an annual internal document outlining the latest research evidence in this area regarding reoffending”. Not making it public might imply a nervousness about effective independent scrutiny. And why on earth is it not intended directly to influence the Council’s deliberations?...If your guidelines were ‘effective’ in reducing re-offending, we wouldn’t have the extraordinarily high levels of reconviction, about which you and the public should be very troubled. **Professor Nicola Padfield***

*Reference is made to the production of an annual internal document focused on latest research evidence regarding reoffending. The YJB understands the arguments defining ‘success in reoffending’, and appreciates that this can be a challenging area to navigate. However, we believe there would be merit in publishing the internal document that is referenced here to provide transparency around the way in which sentencing guidelines are in fact effecting reoffending rates. Of particular interest for the YJB, would also include information in relation to children, and the way in which the application of sentencing guidelines effect this (and to what extent). **Youth Justice Board***

*We have a number of concerns about this [the current] approach:*

- 1. Lack of transparency. There is no clear justification for withholding from the public domain the information on reoffending that is being circulated to Council members to inform their deliberations on the development of guidelines.*
- 2. Because of this lack of transparency, it is not clear where the evidence is being brought to bear in the formulation of a particular guideline and where it is not. It is perfectly reasonable for the Council to prioritise issues other than reoffending in relation to the development of particular guidelines. The CJA 2003 states that the process of sentencing involves a balance of five purposes, only two of which (the reduction of crime (including its reduction by deterrence) and the reform and rehabilitation of offenders) are relevant to reoffending. However, the Council should be transparent about what purposes it chooses to prioritise and the evidence, including on reoffending, that goes into informing its deliberations.*
- 3. There are a number of guidelines, in particular on the imposition of community and custodial sentences, where much of the evidence on reoffending is in favour of community over custodial disposals. For these guidelines, it is particularly important that the evidence is made clear and the Council is transparent about how it is taken into account in the development of the guideline.*
- 4. Publishing the evidence would contribute to the Council fulfilling its statutory duty to promote public awareness of the realities of sentencing and its related duty to promote public confidence in the criminal justice system.*

*Therefore, we would favour a change to the current approach, prioritising transparency and the explicit consideration of evidence on reoffending relevant to each guideline.*

*This could include: The publication of the document outlining the latest research on reoffending; The publication of any relevant evidence on reoffending as part of the impact assessment of each guideline. **Prison Reform Trust***

*In relation to effectiveness, the Council argues...that it lacks the resources to undertake research on this, that there are difficult questions of definition of 'effective' and of 're-offending', and that it is best to continue with its current approach of producing an annual internal document summarising the latest research. I have not seen a copy of any annual review, but it sounds as if this charts recent research findings without placing them in the context of effectiveness research generally...in what is one of the weakest paragraphs in the consultation document, the Council states that its current approach of bringing recent research to the attention of Council members 'seems to work'. The Council gives no evidence of whether or how it 'works.' For example, Council documents frequently refer to the need for deterrence, without any reference to the research findings on deterrence. If the Council has an internal document summarising those research findings, should it not be brought to the attention of consultees at the stage of consulting on a draft guideline?... Surely the sentencer should be given some guidance about the robustness of research findings when reliance is placed on any of the five 'purposes of sentencing. **Professor Andrew Ashworth***

In addition, some respondents felt that the Council should be more proactive with the information it has in terms of influencing the decisions that sentencers take and suggested the Council should give more prominence to rehabilitation as a purpose of sentencing.

*A framework document providing more detailed analysis of how each [sentencing] principle is achieved, and how they interrelate, could be beneficial. This could be cross-referenced in respect of certain sentences – for example, looking at what options imprisonment offers to rehabilitation. **Magistrates' Association***

*The principle of proportionality in sentencing and the statutory requirement to assess the cost and effectiveness of sentencing must be at the heart of the Council's future work...The development of any new guidelines should pay sufficient regard to the 'cost of different sentences and their relative effectiveness in preventing re-offending' (Coroners and Justice Act 2009 (s120(11)(e))...Taking short custodial sentences as an example, there is clear, uncontroversial evidence that they are ineffective, indeed that they are generally counter-productive (see for discussion Corston 2007, British Academy 2016). There is broad, cross-party consensus that the movement away from such sentences is an urgent necessity. The Ministry of Justice's own research (MoJ 2018, see also Mews et al 2015) has identified that for individuals with significant previous offending a short-term sentence raises the odds of that person reoffending by around a third in comparison to the same individual being given a community order. Far from protecting the public, short sentences are more likely to make more victims. The Council's guidance should warn against imposing counter-productive short sentences. Indeed giving proper regard to the relative effectiveness (or ineffectiveness) of short sentences the Council ought properly to be calling for their abolition. Instead, following sentencing guidance, 34,900 adult defendants were given immediate prison sentences of less than 6 months in the year to March 2019 (MoJ 2020). Without proper focus on the cost and effectiveness of different sentences there is little prospect of sentencing guidance enabling sentencers to take a proportionate and effective response to offending. Without this focus the worrying trajectory of the last ten years is likely to be replicated, with increasingly severe sentences and prisons remaining overcrowded, unsafe and ineffective. **Howard League***

*In respect of the purpose of sentencing, the Council appears to prioritise punishment and public protection, emphasising the former as the primary means of deterring and preventing crime. From its website: "While punishing the offender for the crime committed is one of the purposes, there are other important aims, like preventing crime happening in the future so more people don't become victims of the same offender." Sentencing aims to [protect] the public "...from the offender and from the risk of more crimes being committed by them. This could be by putting them in prison, restricting their activities or supervision by probation." Rehabilitation is portrayed by this narrowly unimaginative example: "by requiring an offender to have treatment for drug addiction or alcohol abuse". It is thus marginalised to the public mind, reflecting presumably its marginalisation within the Council's mind. **Member of the public***

*Some advice on the effectiveness of various community order disposals would be useful. **Magistrate***

The Prison Reform Trust outlined a number of ways in which the Council could promote these issues more fully to sentencers. These included taking forward some of the recommendations from the report by Professor Sir Anthony Bottoms in his independent review of the Council. These concerned more reference in offence specific guidelines as to the purposes of sentencing, structuring sentencing processes so that, where possible, they contribute to facilitating desistance amongst offenders, and considering research evidence on effectiveness.

The Prison Reform Trust suggested that this would mean updating guidelines or producing accompanying guidance, reviewing the structure of guidelines with the aim of prevention of reoffending in mind, potentially revisiting the format in which mitigating factors are expressed within guidelines, and including a question/ step in guidelines to address the question "is custody unavoidable?" Linked to this, it said that: "*there are still practical steps...to ensure that its guidance better supports the process of desistance and consideration of consequences. Perhaps the most significant would be to consult on an overarching guideline on the sentencing of young adults (aged 18-25), since it is the age-range 20-25 when there is the fastest deceleration of offending among persistent offenders*".

### **Council actions**

Legislation does not specify how the Council must have regard to this factor and we have considered how best to address our duties in this area on a number of occasions over our lifetime.

The approach to date of considering an internal document outlining the latest research evidence in this area has been brought to bear in discussions when considering the development of guidelines. For example, the Council considered the issues when developing its burglary guidelines and, as a result, text was included that states:

*Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.*

Similarly, the Council's Imposition guideline includes '*realistic prospect of rehabilitation*' as one of the factors that indicate that it may be appropriate to suspend a custodial sentence. In addition, since the digitisation of our guidelines, all offence specific guidelines include a drop down section on custodial sentences which include the key questions from the Imposition guideline. The same approach is taken for community orders with each offence specific guideline including the relevant principles and criteria relevant to imposing such an order.

Regarding our research digest/ review, we previously took the decision to retain this as an internal document in order to manage our limited resources: publication of documents requires extra administrative resource that we had in the past allocated elsewhere. This includes needing to quality assure and peer review documents and to format them as external publications.

However, we do acknowledge that the resources required to publish this document could be justified in the context of ensuring that we are more transparent about the evidence that we have considered and to help us promote knowledge and understanding amongst sentencers. We are therefore committing to publishing a review every two years that will outline the latest research evidence and how the Council has considered this. This will need to be in the context of the limitations of evidence in this area and the problems with interpreting this. As the Sentencing Academy flagged in their January 2021 document *The Effectiveness of Sentencing Options: A review of key research findings* (page 8),<sup>34</sup> this is a complex area:

*A common research strategy involves comparing the re-offending rates of different disposals. Drawing causal inferences from this research is challenging. Studies that compare re-offending rates by type of sentence can only show a correlation between the type of sentence and the outcome (desistance or re-offending). Many factors other than sentence type may explain offending. For example, people may have particular characteristics that make them more likely to re-offend regardless of the type of sentence imposed and certain crime categories have long been associated with high re-offending rates – again independent of the sentence imposed. Effectiveness can also have alternate meanings.*

Having considered the consultation responses, we feel that a review of the way in which we highlight the relevant issues to sentencers should be undertaken. We will therefore reconsider this as a result of the evidence contained in the research review and as part of any work undertaken to review the Imposition of community and custodial sentences guideline.

We have included the following actions under strategic objective 4:

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<sup>34</sup> Hamilton, M. (2021) *The Effectiveness of Sentencing Options: A review of key research findings*, Sentencing Academy. See: [The-Effectiveness-of-Sentencing-Options-1.pdf \(sentencingacademy.org.uk\)](https://www.sentencingacademy.org.uk/The-Effectiveness-of-Sentencing-Options-1.pdf).

Actions	Provisional timing
Ensure the Council continue to be informed on issues related to effectiveness of sentencing by publishing a research review of the relevant evidence.	Biennially from September 2022
Consider whether any changes are required to highlight to sentencers the need to consider issues relating to effectiveness of sentencing as a result of research work in this area and any work undertaken on the Imposition guideline.	From September 2022

On costs, we have generally chosen not to address costs or cost-effectiveness in resource assessments explicitly beyond the inclusion of the costs of correctional resources. This is because in any individual case, the cost of a sentence should not be a consideration when the sentencer is deciding upon the most appropriate disposal for that case. Instead, the appropriate sentence type should be determined based on the facts of the case, using the relevant sentencing guideline. If the Council were to publish figures on the cost of various sentence types, it might be inferred that sentencers are expected to take these different costs into account during the sentencing process, when in fact that is not the case.

We have also considered the point put forward by the Sentencing Academy that it would be helpful if we made information on the costs of different disposals (as well as trends more widely on cost-effectiveness of sentences) more widely available on our website. There are, however, difficulties with this. While information on the cost of different sentence types is published by HM Prison and Probation Service (HMPPS), an executive agency of the Ministry of Justice, the data are subject to limitations and there are nuances in the data which could easily be misinterpreted if taken out of context. For this reason, we intend to retain our current approach of not formally publishing and disseminating information on issues related to the costs of sentencing. Our work to collate and publish an evidence digest/ review on effectiveness of sentencing will provide the opportunity to consider this more broadly and so we will reconsider this again in the future if necessary.

Finally, in relation to the Prison Reform Trust's recommendation that an overarching guideline be developed on sentencing young adults, we have included an action as part of our strategic objective 3 to consider whether separate guidance is needed in this area. This will be considered as part of our evaluation of the expanded explanations that is due to start by March 2022.

## 7.2 Additional research on effectiveness of sentencing

### Responses to the consultation

Regarding the consultation question on whether any additional research should be carried out, there was broad agreement that more research into effectiveness was needed, although views varied on whether this should be undertaken by the Council.

*I do not think this is the remit of the Sentencing Council but is a piece of work desperately needed as long as it takes a holistic view. **Member of the public***

*Indeed, this should be a key focus. **Magistrate***

*Someone should carry out more research. It would be good if it was an independent body without any financial, political or management pressures - such as the Council. **Magistrate***

*The Howard League do not consider that it is necessary or practicable for the Council itself to conduct its own research in this area. There are broad areas of agreement in sentencing research to which the Council can, and must properly, have regard. **Howard League***

*It is important for sentencers to have a detailed understanding of the effectiveness of sentencing options on reducing reoffending, but in order to ensure there is no doubling up of work, the Council must liaise with other stakeholders, including Inspectorate bodies and independent researchers. **Magistrates' Association***

*Yes, if you have the time and funding. Perhaps student/ university staff can help with this. **Magistrate***

Other respondents suggested areas of research which would be useful:

*There is already a substantive body of research on the effectiveness of sentencing options such as community orders and restorative justice. Yet despite the proven benefits when it comes to rehabilitating offenders and supporting victims, they remain underutilised. We would welcome further analysis by the Sentencing Council in this area, specifically focussed on developing recommendations regarding the wider use of non-custodial alternatives in the criminal justice system. This clearly needs to be accompanied by the political will in government and parliament to implement such changes. **Catholic Church Bishops' Conference***

*We need statistical analysis of outcomes following different types of sentencing over periods of time. This is to review the effectiveness of different types of sentences. **Member of the public***

*I think much more will be learnt by qualitative research than quantitative. We all know how unreliable reconviction data is as a measure of re-offending! And the life stories of those attempting to live law-abiding lives have to be so much better understood (by judges, policy makers and the public)...The SC should consider whether it would be more effective either to publish summaries of other people's research in this area or to carry out its own. Probably the most cost-effective step forward would be to do both? **Professor Nicola Padfield***

*We would also be supportive of any research which looked at the concept of desistance, especially in relation to children. It will be noted that one of the tenets of the YJB's Guiding Principle focuses on how the YJB can work with other partners to ensure that children can develop a pro-social identity and in turn, sustainable desistance. We understand that there are constraints on the Council's resource but do consider that conducting further analysis on desistance would help the Council in the execution of its statutory functions, by enhancing the understanding of how reoffending can be reduced and sustained. **Youth Justice Board***

*Looking at ways to assess what was the intervention that gave the positive benefit, was it simply the shock of a sentence, was it providing a home, was it drugs intervention, was it financial advice on managing personal finances etc. We need to know more about what works in different situations if we are to avoid having no option but to send people to prison. I agree that short sentences do not work for most people, sadly though some people already are beyond what the system can offer and if we are to stop sending people to prison then we need to know what will work and that requires not just looking at reoffending rates but looking at the positive outcomes and what that was. **Magistrate***

*Understanding the effectiveness of various community order options would be valuable, also any regional differences. **Magistrate***

*Transform Justice also thinks that when producing guidelines, the Council should interview those who have been convicted, as they did in relation to drug mules. This would help ensure that the human consequences of sentencing decisions are fully considered. **Transform Justice***

*The Council does not appear to have the resources at present to carry out original research in this area. But the Council could work with the Ministry of Justice to publish brief research summaries with respect to various questions relating to sentencing options and re-offending. We note that there is a 'What Works' Centre involving the College of Policing. There is a clear need for some form of 'What Works' Centre focusing on the effectiveness of different disposals and the Council should play a key role in establishing and guiding such a centre. A good example of collaborative research with the Ministry of Justice (and possibly academics) involves the most effective requirements of community orders in terms of preventing re-offending... The SC is encouraged to work with the Ministry of Justice to develop a research programme which would compare the effectiveness of different conditions. **Sentencing Academy***

Some respondents expressed a wish for any further work to examine impacts for different groups:

*The Sentencing Council is made up of extraordinarily influential and knowledgeable people. I remain surprised that you haven't prioritised much more work on the 'effects' as well as the 'effectiveness' of sentencing. Discrimination is an obvious area: the impact of imprisonment on the lives of already disadvantaged people... This does not seem to have led you to take equality issues to the very heart of your agenda and your self-evaluation (when you might have chosen to go rather further than required by the minimalist Equality Act 2010 – intersectional disadvantage in the penal system is of huge concern). A small example: has the SC done all that it can to highlight the additional disadvantages faced by many women in the community stages of sentences (including the lack of Approved Premises)? Another example: should the SC encourage sentencers to explore the reality of support (including mental health treatments) available under different penal 'pathways'. **Professor Nicola Padfield***



*The goals of sentencing are multi-fold and often competing i.e., to give offenders their just deserts, incapacitate or deter them from committing crimes in the future, rehabilitate them, or enable them to make reparations. Therefore, the Council could examine the extent to which these goals are met, perhaps with reference to different sub-groups of offences and/ or offenders. **Professor Mandeep Dhani***

**Council actions**

Clearly there is a demand for more research and some respondents felt that this could be best achieved through collaboration with other organisations and academics. As noted with regards to our analytical work more generally, collaboration with academics is something we already do when appropriate and possible and we will continue to seek further opportunities for this.

In terms of more specific research in this area, we note the suggestions that we could undertake more qualitative work to explore which elements of a sentence may have influenced rehabilitation, and to what degree. Although we already highlight in guidelines where consideration should be given to imposing sentences focused on rehabilitating offenders and there are many non-sentencing factors which influence offending (such as addiction, lifestyle and other socio-economic factors), we agree that further work in this area could be valuable. It will facilitate understanding as to how sentences may be able to influence desistance and will supplement the information we already access through the previously mentioned research digest/ review.

We have therefore taken an action to consider what qualitative work could be undertaken with offenders or what further options there may be for us to engage with offenders as part of our work:

Action	Provisional timing
Consider the possibility of future work with offenders to understand which elements of their sentence may have influenced their rehabilitation by undertaking a scoping exercise in this area.	By September 2022

We have also set up a specific working group of Council members to consider issues of equality and diversity across all of our work and have allocated a specific strategic objective to this (strategic objective 3). Included within this objective is an action to explore the potential impact of sentencing guidelines on different demographic groups and groups with protected characteristics by collecting, analysing, and publishing data, and (where this is available and appropriate) undertaking more in-depth analytical work. While this will cover some of the more in-depth quantitative analysis that we would like to take forward, it also covers qualitative research that may further our understanding of various issues. This will include the impact of sentences on different groups and will be considered as part of the scoping exercise mentioned above.

Other suggestions, such as the need for more statistical analysis would be addressed through our collation of research evidence more widely. Regarding the suggestion that the Council be involved in establishing a ‘What Works’ centre as suggested by the Sentencing Academy, this is an ambitious proposal and outside of our sole remit. We will, however, ensure that MoJ are aware of this proposal.

# Section 8: Promoting public confidence

The Sentencing Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing sentencing guidelines and monitoring their impact. The Council has interpreted this duty more widely as an obligation to take direct steps to promote public confidence in the criminal justice system and in sentencing.

Questions 19 to 21 asked about our work in this area, which included asking consultees which areas of communication activity could help us achieve most in promoting public confidence, which of our existing activities should we do more of or less of, and in what other ways could we inform the public about the Council and sentencing guidelines.

There was a consistent message running through the responses we received to these questions: that the work we are already doing to promote public confidence is making an impression and is welcome, but that we could be doing more.

*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 Church Bishops' Conference***

We are, therefore, committing to the following objective as part of our five-year strategy:

**Strategic objective 5: The Council will work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public**

Among the respondents who felt that promoting public confidence should be a priority, there were differing views on what approach the Council could take to improving public knowledge and understanding of sentencing.

## 8.1 Public education and partnerships

### Responses to the consultation

Respondents were keen to see the Council do more work in partnership with other organisations so that we might benefit from their greater ability to reach certain sections of the public. The audiences of most concern 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, an education charity that works in primary and secondary schools. The Youth Justice Board (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. **Rt. Hon Robert Buckland QC MP - Lord Chancellor***

*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 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. **Youth Justice Board***

*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. **Justices' Legal Advisers and Court Officers' Service***

*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. In particular we would welcome opportunities to discuss how the Sentencing Council could contribute to existing programmes with these aims, including the MA's Magistrates in the Community Programme and the national Mock Trial Competition which is run by Young Citizens in partnership with the MA. **Magistrates' Association***

## **Council actions**

The Council is already contributing to the Young Citizens' national schools mock trial competitions at secondary level and, in partnership with the Judicial Office, we have contributed content for lessons we anticipate will be delivered at primary level in the coming year. We have also explored with the Magistrates' Association in what ways the Council could contribute to their Magistrates in the Community programme.

We agree that we should seek to work in partnership with other organisations as much as possible to take advantage of their audience reach and existing networks. As part of our confidence and communication strategy we will continue to identify and approach appropriate organisations and individuals who may be able to help us engage with our target audiences.

We have included the following ongoing actions as part of our strategic plan:

Actions	Provisional timing
Teach young people about sentencing by developing sentencing-related materials for use by organisations such as Young Citizens who already engage extensively with schools.	Ongoing
Improve our ability to inform the public about sentencing by identifying relevant organisations willing to help us engage with their stakeholders.	Ongoing

## 8.2 Making sentencing more accessible and easy to understand

### Responses to the consultation

Respondents advocated that the Council should continue to use both traditional and social media to reach our audiences, but most also said that we could do more in this area:

*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...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***

Some respondents suggested that we extend our use of social media to include other channels such as Facebook and YouTube, particularly to reach younger audiences. There was also a suggestion from one individual that we should use LinkedIn to reach “*decision makers in society*”. The Sentencing Academy commented:

*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***

A number of respondents suggested that putting a greater focus on improving the public's understanding of the details of sentencing practice and the decision-making process 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. **Rt. Hon. Robert Buckland QC MP - Lord Chancellor***

*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. **Justices' Legal Advisers and Court Officers' Service***

A small number of respondents also thought the Council could do more to make the topic of sentencing more easily understood by the public, both through our use of language and alternative formats. It was felt that doing more to present information about sentencing in clear, plain language would help increase public understanding of what can be a technical subject, and using a wider range of formats would enable us to convey that information to a greater number of people.

*Messaging could use clear, impartial language to promote discussion around sentencing. **Justices' Legal Advisers and Court Officers' Service***

*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...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...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***

*The internet, social media, audible reporting, e.g. talking newspapers, information produced for the blind and disabled in appropriate formats. **Magistrate***

*There is a need to promote the guidelines more, and to produce the guidelines in accessible formats...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. **Diverse Cymru***

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

*Often the sentencing remarks of judges are extensively reported as are the particular[s] 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***

## **Council actions**

The responses we received were extremely helpful and have helped reinforce the value of some of the activities that we already do and we will therefore continue to focus on these. The Council uses mainstream, specialist and trade media, both print and broadcast, to promote new guidelines and encourage participation in guideline consultations. To date, our media work has concentrated largely on using the opportunities offered by guideline launches and consultations. We aim to broaden our approach and actively seek more opportunities to publicise and promote understanding of sentencing guidelines and sentencing practice, including by proposing tailored content ideas to media outlets that can help us reach our target audiences.

With regards to the use of social media, we use Twitter to promote the work of the Council. Twitter is widely used by legal practitioners, commentators, criminal justice reformers and academics, as well as by the public. We use our account to announce the launch of guidelines, encourage participation in consultations, promote the analysis and research work that lies behind the guidelines and drive people to the website where they can find out more about sentencing.

We have explored the potential for extending our use of social media but, given the resource implications this would bring for our small team, we have decided that we could achieve more by way of promoting public confidence through other communication activities. We will, however, continue to consider whether other established and emerging social media channels present appropriate and realistic opportunities for us to extend our activities.

As well as approaching the mainstream media with article ideas, we will also be making greater use of the new blog pages on our website to improve public understanding of how the sentencing decision-making process works and the array of factors that are taken into account. We use these pages to publish articles explaining various aspects of sentencing, which we promote via our Twitter account.

We are also working in partnership with the Judicial Office to develop a new version of the online sentencing tool You be the Judge. You be the Judge uses dramatised stories to show the public how sentencing decisions are made in magistrates' courts, youth courts and the Crown Court. It is designed to engage audiences of all ages, in particular school-age children and young adults. We expect the tool to go online in spring 2022.

We will continue to develop the Council's new website, which has been designed specifically to engage our public and other non-specialist audiences, explaining aspects of sentencing and debunking common sentencing myths in plain, non-technical language.

In terms of using plain English and alternative formats for guidelines, the Council has considered the options but feels that there are obstacles. Sentencing guidelines are already written, as far as possible, in clear, non-technical language and are accessible to the public on our website. The Council does not think it would be appropriate to simplify guidelines further to produce them in plain English or Easy Read format. To produce guidelines routinely in other alternative formats, such as large print, would not be realistic given our overall resources, but arrangements can be made for individual users, and the website allows users to print off or create pdf copies of guidelines. However, we agree with respondents that there is value in simplifying some of our publications where possible and in providing content that is more accessible to our audiences. As a result of this, we have developed a template for more simplified introductions for our consultations, which we have been publishing online since May 2021.

Regarding the production of more detailed sentencing remarks, this is not within the Council's remit. However, as covered in the section on our analytical work, in 2022 we will be publishing information on our website about how to seek access to transcripts of Crown Court sentencing remarks.

The following actions have been included in our strategic plan:

Actions	Provisional timing
Inform public audiences, including victims, witnesses and offenders, about sentencing and sentencing guidelines by continuing to develop content for our website and seeking media coverage relating to key Council activities.	Ongoing
Make our consultations more easily accessible to the Council's public audiences by developing a template for more simplified introductions to consultation documents and embedding this within the Council's processes.	Completed May 2021

### 8.3 Promoting confidence in guideline development

#### Responses to the consultation

A number of respondents 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. Comments included:

*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. **Diverse 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. **Rt. Hon. Robert Buckland QC MP - Lord Chancellor***

Responses included suggestions for forging greater links with: Black, Asian and minority ethnic (BAME) groups; groups active in the area of mental health and substance abuse; the public; organisations and charities supporting victims; trade organisations (relating to health and safety issues); groups representing those with protected characteristics; former offenders and defendants, and people with lived experience of the criminal justice system.

### **Council actions**

We make considerable effort, particularly in our consultations, to reach a wide and relevant audience. We have a standard distribution list for our work, which includes sentencers, criminal justice reform groups, government departments, leading academics in sentencing and a number of individuals and organisations representing a wide range of demographic groups and social interests. We will also be adding Local Criminal Justice Boards to our distribution list as a means of ensuring we obtain a local and regional perspective. During guideline consultations, policy officials identify and engage with key individuals and organisations in the field to which the consultation relates, as outlined in earlier sections.

We agree that the Council needs to ensure that responses we receive to our consultations represent a wide range of views, including those of victims, offenders and individuals with protected characteristics and are, therefore, currently undertaking a review of our target audiences and how we reach them. The aim is to ensure we elicit a broader and more representative body of consultation responses to inform the development of guidelines and our work more generally. To encourage further participation in our consultations and confidence in their outcomes, we will also be including an explicit appeal for consultation responses from individuals and organisations from whom we do not routinely hear, and we will be publishing information on the website to illustrate the extent to which the responses we do receive influence the development of guidelines.

In addition, as previously mentioned in section 6.5, we have recently commissioned external research work to explore the potential impact on equality and diversity in the Council's work. This will include considering some of our working processes, including advice on how the Council can engage with groups from a variety of backgrounds including those with protected characteristics.

We also plan to ensure we draw in the relevant audiences as part of our guideline development work. We will be conducting a scoping study by September 2022 to consider



how best to incorporate the views of offenders on issues related to effectiveness of sentencing.

Actions under this specific objective are as follows (see also our section on equality and diversity and on effectiveness of sentencing for actions relating to our external research project and our scoping work to engage offenders):

Priorities	Provisional timing
Elicit a broader and more representative body of consultation responses to inform the development of guidelines by undertaking a review of our target audiences and how we reach them.	By December 2021
Illustrate for our audiences the range of issues considered by the Council when developing and revising guidelines and the extent to which guidelines are influenced by consultation responses, by publishing information about the Council's processes and procedures on our website.	By March 2022
Support the effective development of guidelines by continuing to promote Council consultations to practitioners who use the guidelines and individuals and groups who could potentially be affected by the guidelines.	Ongoing

## 8.4 Engagement with Parliament

### Responses to the consultation

One respondent 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. **Rt. Hon. Robert Buckland QC MP - Lord Chancellor***

### Council actions

The Council engages with parliamentarians principally through our relationship with the Justice Select Committee. On 2 February 2021 we gave evidence at a Justice Select Committee session dedicated to the work of the Sentencing Council and, in July 2018, gave evidence to the Committee's inquiry: *Prison Population 2022: Planning for the future*. In February 2019, the Council was also invited to appear before the Joint Select Committee on Human Rights inquiry: *The Right to Family Life: Children whose mothers are in prison*. In 2014, we also invited all Members of Parliament to a dedicated event in

the House of Commons to provide them with an opportunity to learn more about sentencing and the work of the Council.

In addition to the Justice Committee being a statutory consultee for all of our consultations, we liaise regularly with Committee clerks to ensure the Committee is apprised of our latest work. We recently agreed with the Committee that the Council would in future attend regular evidence sessions and there are plans to start these in the first quarter of 2022. We are also having conversations with clerks about opportunities to engage parliamentarians more widely.

Our action in respect of this is:

Action	Provisional timing
Increase parliamentarians' knowledge and understanding of our work including by discussing how best to establish regular evidence sessions with the Justice Committee.	Ongoing from December 2021

## 8.5 Measuring success in increasing public confidence

### Response to the consultation

Some respondents agreed that sentencing guidelines provide greater transparency in sentencing, which contributes to public confidence. However, some also commented 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.

A member of the public questioned how any evaluation of 'confidence' could be made until the Council has considered what it regards as success. They also questioned the Council's measures of 'effectiveness' and 'fairness', suggesting that these 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. **Member of the public***

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***

**Council actions**

These issues cut across other areas of the Council’s work. This includes the evaluation of our guidelines and how we measure the ‘success’ of these, as well as the work we plan to undertake to be more transparent about how we consider and apply the evidence we have on effectiveness of sentencing to guideline development and revision.

In terms of measuring aspects of this part of our work, in 2019 we published research on public confidence in sentencing and the criminal justice system. This work, undertaken on our behalf by ComRes<sup>35</sup>, included an online representative survey of 2,000 adults to provide insight into what drives the public’s attitudes and understanding of the system. It also made recommendations as to how the Council might reinforce and improve our work in the area of confidence, many of which we have already included in our confidence and communication workplan. To help us monitor our progress in this area, we plan to rerun some of the questions from this survey in 2022 and have committed to the following action:

<b>Action</b>	<b>Provisional timing</b>
Maintain an up-to-date insight into public confidence in the criminal justice system and its drivers, and explore whether there have been any changes over time, by re-running our previous survey questions and comparing findings to our previous research.	By September 2022

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<sup>35</sup> See footnote 24.

# Section 9: Ways of working

There were several questions in the consultation that focused on miscellaneous areas that relate to aspects of the Council's ways of working.

## 9.1 Consultations and Council workplan processes

### Responses to the consultation

Question 25 asked for views on how the Council could improve the consultation process for regular respondents and question 26 asked whether there were any people or organisations that we should be reaching but are not currently doing so.

There were several comments to this question from magistrates:

*To make life easy for busy people, put the relevant issues and the questions about them together, briefly, so people don't have to keep referring back to another document. If you don't already, give feedback (at least in general terms) on the feedback you've received and, most importantly, what you're doing about it. **Magistrate***

*A question to ask here is, 'What audience are you trying to reach?' Publishing long winded technically written documents may appeal to CJS users and practitioners who work full time but to the general public and a lot of magistrates, this viewing of material may be sporadic at best and not very interesting at worst. Sadly, my opinion of consultation documents are that they are written and presented like most legal texts, mind numbingly boring. By jazzing them up, more colour, text boxes and appealing backgrounds then the sometimes tedious subject can be made more interesting. **Magistrate***

*Reports can be more concisely written than this document. Avoid overlap of questions. The sharper it is the easier it is to engage and respond. **Magistrate***

An anonymous respondent suggested:

*More awareness and advertising of these consultations are important for the public to know and so can contribute towards it and gather as many views and thoughts as possible that truly represent what the UK population feel about the Council and these issues...More awareness of consultations to the public and more information on how it's used and the results at the end provided. **Anonymous respondent***

Other comments and suggestions were:

*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. Additionally 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. This is vital to engaging all diverse people across the protected characteristics. **Diverse Cymru***

*There should be more liaison about the planned programme – especially in relation to what existing guidelines need amending, or where there is a clear lack of guidance. They should consult with stakeholders annually, setting out what guidelines are in place (a surprising number) and what their programme ahead is, so key stakeholders can influence the workplan. **Magistrates' Association***

*While the Council has made commendable efforts to engage a variety of organisations, Transform Justice considers that their consultations should reach a broader audience - particularly organisations that deal with people who have been convicted. Consideration should be given to undertaking more surveys and research studies to understand the complexity of attitudes to particular offences and to draft consultation questions in a less legalistic way. **Transform Justice***

*I think it would be extremely useful to have a mailing list of interested parties to which such consultations are circulated and to which people can sign up. I have to date relied on people alerting these to me out of good will and encountering them on Twitter – yet I am a sporadic user thereof and worry I may not have seen relevant notifications of such consultations. **Dr Carly Lightowlers***

*The SC should be encouraged to hold more consultation events. A number of such events have been held in the past targeting the academic community but a more consistent approach to such events might be helpful. These events should be opened up to as wide a group of participants as possible as this will also help inform the individual responses from attendees. **The Sentencing Academy***

*Many people are deeply sceptical as to whether those who consult also listen. Publishing responses, and your response to consultations in more detail might help. **Professor Nicola Padfield***

*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. 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. 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. **Rt. Hon. Robert Buckland QC MP - Lord Chancellor***

Regarding who we should be reaching with our consultations, there were various suggestions for greater links with a variety of groups and organisations. These included Black, Asian and minority ethnic (BAME) groups and groups representing those with protected characteristics, groups active in the area of mental health and substance abuse, the disabled community, organisations and charities supporting victims, trade organisations relating to health and safety issues, defendants, former offenders and people with lived experience of the criminal justice system. Some also felt that there should be more links generally with the public, perhaps through blogs or a panel of registered members of the public.

Professor Padfield commented:

*It is a difficult question: only a small percentage of the population is likely to engage with these sorts of written consultations, which assume so much prior knowledge. I would encourage you to hold more focus groups in prisons, and to reach out to hostels and community centres, for example. It is so important to hear the voices of those who do not have easy access to the internet. **Professor Nicola Padfield***

## Council actions

As covered in the section on public confidence and communication, and in relation to similar comments, we agree that there is value in simplifying some of our documents where possible and in providing content that is more accessible to our audiences. As a result of this, we have developed a template for more simplified introductions for our consultation documents and have been using this since May 2021.

We also agree that we should do more to highlight how we take consultation responses into account in our work. We do publish a response to every consultation where we set out the range of views and suggestions in responses and the Council's reasons for adopting them or not. These documents are necessarily detailed and technical and it is not always possible to come up with simple to understand examples of how and why the guideline has changed as a result of consultation. However, we feel that it would be useful to produce some information on our website which outlines the process of considering consultation responses and shows how they are an integral part of the guideline development process.

We are also currently reviewing our distribution lists for consultations. The aim is to ensure we elicit a broader and more representative body of consultation responses to inform the development of guidelines and our work more generally. In addition, we have recently commissioned external research work to explore the potential on equality and diversity in the Council's work (see section 6). This will include considering some of our working processes, including to advise on how the Council can engage with groups from a variety of backgrounds, including those with protected characteristics. During guideline consultations, we also hold sessions with specific groups and organisations if needed.

In relation to the points about making sure we 'advertise' our consultations and other work more fully, we have recently introduced a function whereby people with an interest in sentencing and the work of the Council can sign up via our website to receive email alerts. Subscribers receive alerts when we publish new definitive guidelines and consultations, our research and analysis work, blogs and news from the Council, such as appointments of new members.

As stated in our section on public confidence, we have also committed to undertaking a review of our target audiences and how we reach them and will continue to promote our consultations to users of the guidelines and individuals and groups who could potentially be affected by them. Section 6 also outlines a range of other work we will undertake in the area of equality and diversity.

Regarding the suggestion from the Magistrates' Association about liaising more about our workplan, this necessarily has a large degree of flexibility built in, as the amount of time needed for each guideline or other project varies, staffing levels within the office can change and external factors (for example legislation and general elections) can disrupt the plan. We do, however, plan to publish a formal business-plan update twice a year as a result of producing our five-year strategic plan.

## **9.2 The timing of guidelines coming into force**

### **Responses to the consultation**

We invited views in relation to the timing of the publication of definitive guidelines and the dates that they subsequently come into force. There were only a few responses to this question.

One magistrate questioned the policy of quarterly publication, whereby guidelines come into force on one of four set days (1 January, 1 April, 1 July and 1 October). They suggested that this could lead to delays with guidelines that narrowly miss one date then must wait almost six months before coming into force.

Another said that there should be time for sentencers to be able to look at the new guidelines before they come into force. A third respondent felt that one month between publication and coming into force was adequate. The Magistrates' Association welcomed a gap between publication and coming into force in order to provide training and for sentencers to review guidelines. For similar reasons, the Justices' Legal Advisers and Court Officers' Service welcomed the predictability of when guidelines come into force. Professor Padfield suggested that annual changes might be preferable.

### **Council actions**

The position is that guidelines or changes to guidelines come into force on set dates: 1 January, April, July and October but there is no set amount of time between publication and in force dates (though we aim to leave a reasonable period to allow for familiarisation).

There clearly is a need for some gap between publication and coming into force, but there was no clear consensus from respondents on how long that should be. Given that the direct users of the guidelines amongst our respondents preferred the approach of having a gap between publication and in force dates, we plan to continue with this. We will consider what timescale is appropriate as the standard gap in most cases and provide further information on this in due course.

We have considered whether the practice of having set in force dates should be retained and have also reflected on our previous practice whereby in force dates were set three months after publication of the specific definitive guideline in question. We feel that, on balance, our current approach is preferable. As noted by the Justices' Legal Advisers and Court Officers Service, this provides predictability around when guidelines will come into force. We also plan our work carefully in order to avoid a long period between the publication of a guideline and it coming into force: in the circumstances described by the magistrate who was concerned that this might lead to delays of up to six months, in this situation we would ensure that our publication date was brought forward slightly in order to ensure that the guideline did not miss the nearest set 'in force' date.

## **9.3 Assistance on the use and interpretation of guidelines**

### **Responses to the consultation**

The final consultation question asked whether it is the role of the Council to provide more assistance on the use and interpretation of guidelines. Fourteen respondents gave answers related to difficulties or challenges identified by users of the guidelines and one magistrate said that the thinking and objectives should be set out at the consultation stage

and revised if necessary, in a separate document to the guidelines. Professor Padfield felt that there was a need, noting that there are significant numbers of magistrates and judges who struggle with following multiple guidelines simultaneously, especially on an iPad.

Some felt that the Council could do more to help with the interpretation of guidelines. A magistrate felt that there should be more assistance with the use of the guidelines, stating that if they were more user friendly there would be fewer issues of interpretation. Another magistrate suggested that guidelines could be more automated whereby the sentencer selects the relevant factors and the guideline then calculates the suggested sentence. This magistrate also felt that step-by-step examples of how a guideline should be applied to a scenario would be helpful.

Some went further suggesting that the Council should provide training. Professor Dhami stated:

*The Council ought to be involved in assisting on the use and interpretation of the guidelines, because it is best placed to do so, given its role in developing and monitoring the guidelines. This could be achieved by organising and delivering meaningful training for sentencers and court clerks that includes individual-level feedback on performance (e.g. on issues such as consistency, compliance, use of extra-legal factors etc). The Council would need additional resources in order expand its role in this regard. **Professor Mandeep Dhami***

In contrast, two respondents simply answered “no” to this question and the Sentencing Academy stated:

*We do not believe that the role of the Council is to provide more assistance on the use of its guidelines. This is a matter for individual magistrates’ courts’ legal advisors, individual members of the judiciary, the Court of Appeal and the Judicial College. **Sentencing Academy***

## Council actions

In the past we have produced examples of how a new guideline could be applied in a fictitious scenario and published these on the website as well as sharing them with the Judicial College. More recently we have liaised with the training committee of the Justices’ Legal Advisers and Court Officers’ Service who provide training in magistrates’ courts, and have worked with the Judicial College to provide training and to conduct a research exercise at the Serious Crime Seminar. Training is delivered in various ways – through face-to-face (or virtual) courses and on-line training modules and, particularly in magistrates’ courts, much of it is devised and delivered locally. We will continue to liaise with the Judicial College to ensure that we are preparing users as much as possible for the introduction of new guidelines. We are also currently in discussions with the course director for sentencing at the College regarding input into the continuation course for circuit judges and recorders.

Regarding how user friendly the guidelines are and the suggestion that there could be functions built into guidelines that assist with calculating the sentence, this is something we consider where possible and appropriate. We have, for example, recently provided a drink-driving calculator that helps magistrates calculate how long a driver’s disqualification



period will be reduced by if they complete an approved rehabilitation course; the length of any extension, if custody is imposed; the date by which the course must be completed; and the date on which they can drive again. As noted in section 4, some consultees suggested that we could provide additional tools to help sentencers apply the guidelines. In addition to the drink-driving calculator, we have already provided a calculator to work out fines and are in the process of producing a pronouncement card builder. This tool will construct a single script from any number of pronouncements set out in the order the magistrates have selected, allowing the magistrates to more easily deliver pronouncements and keep their focus on the court.

Our forthcoming research to user test the guidelines and explore how they are actually used in practice will also help to inform any future improvements we might make or separate tools that we might develop.

The Council has committed to the following action:

Actions	Provisional timing
Ensure sentencers and other practitioners have easy and immediate access to sentencing guidelines by continuing to develop digital tools that meet their needs	Ongoing

Finally, it should be noted that consultation question 6 asked whether there were any other broad matters respondents would like to raise. Eleven respondents made comments, some of which have been covered under different headings in this document. The remaining suggestions are outside of the Council's remit:

- The Council should issue guidance on the appraisal system for magistrates;
- There should be better explanations and communication from the police when investigating cases particularly in relation to victims being required to hand over their phones etc.; and
- The Sentencing Council should be watching the changing nature of workplace hazards particularly in the construction industry.

# Section 10: Conclusion and next steps

As a result of this consultation, the Council has committed to taking forward five priority areas over the next five years and a number of actions associated with these.

## Sentencing Council strategic objectives 2021–2026

- Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines
- Strategic objective 2: The Council will ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it
- Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit
- Strategic objective 4: The Council will consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues
- Strategic objective 5: The Council will work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public

These objectives and actions are summarised in our document *Sentencing Council Strategic Objectives 2021–2026*, which is published alongside this document<sup>36</sup>.

Ongoing annual business plans for the period covered by this document will continue to set out in more detail how the individual priorities falling under each strategic objective will be delivered each year.

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<sup>36</sup> <https://www.sentencingcouncil.org.uk/publications/item/strategic-objectives-2021-2026/>.

# Annex A: Consultation respondents

- Professor Andrew Ashworth
- Catholic Church Bishops' Conference of England and Wales
- Diverse Cymru
- Professor Mandeep Dhami
- Justices' Legal Advisers and Court Officers' Service (formerly the Justices' Clerks' Society)
- Justice Select Committee
- Dr Carly Lightowers
- Howard League for Penal Reform
- Information Commissioners' Office
- Insolvency Service
- The Lord Chancellor, the Right Honourable Robert Buckland QC MP
- Magistrates' Association
- Professor Nicola Padfield
- Prison Reform Trust
- The Sentencing Academy
- Transform Justice
- Transition to Adulthood (T2A) Alliance
- The Youth Justice Board
- 8 individual magistrates
- 10 members of the public

# Annex B: Consultation questions

- Question 1: Is the Council right to continue to focus on the statutory duties that it has prioritised to date (broadly speaking: guideline development, monitoring and evaluation of guidelines, public confidence)? If not, what are your reasons for this?
- Question 2: In particular, do you think the Council's current primary focus on guideline development and revision (including analysis and research and communication activities to support guidelines) is correct and should continue? Please provide reasons.
- Question 3: If you think the Council should focus more on other activities please outline those areas and the reasons why.
- Question 4: Taking account of your answers above what do you think the balance should be between guidelines (and the work that supports them) and other activities that you have identified? Please outline your reasons.
- Question 5: Are there other sources of funding or funding models that the Council should consider pursuing in order better to fulfil its statutory duties?
- Question 6: Are there any other broad matters that you would like to raise, or comments you wish to make on the Council, that are not covered by your answers to any other questions?
- Question 7: What are your views on the extent to which the Council, through the development of sentencing guidelines, meets the duties to have regard to: the need to promote consistency in sentencing; the impact of sentencing decisions on victims; and the need to promote public confidence in the criminal justice system? Please suggest any ways in which you think this could be improved.
- Question 8: What are your views on the suggested criteria (in paragraph 66 above) for prioritising the development or review of guidelines? Please suggest any additional criteria that you think should be considered or criteria you think should be removed.
- Question 9: Should the Council expand the policy for making changes to existing guidelines (short of a full revision) as outlined in paragraph 53 above? Please suggest what situations should be covered by such a policy.
- Question 10: Can you suggest practical ways in which the flexibility afforded by delivering guidelines in a digital format could be used by the Council to improve guidelines?
- Question 11: Is there a guideline for a particular offence or set of offences that the Council should develop or revise as a priority? Please give reasons.

- Question 12: Is there a guideline for a particular overarching issue that the Council should prioritise? Please give reasons and explain how best you think this could be addressed.
- Question 13: Are there any ways in which the technical aspects of the Council's analytical work could be improved? If so, please state what these might be (for example, improving the data sources we draw on or the time we give to accessing different types of data). Please be as specific as possible.
- Question 14: Are there any ways in which the focus of the Council's analytical work could be improved? If so, please state what these might be (for example, broadening out the types of impacts we evaluate – including more in relation to specific demographic groups, focusing more on assessing consistency in sentencing, or exploring the ways in which the guidelines are used in practice). Please be as specific as possible.
- Question 15: Do you feel that the Council has prioritised, either too highly or insufficiently, any of our statutory duties that specifically relate to analytical work? If so, please state which ones and give your reasons.
- Question 16: Are there any other areas that you feel the Council should be considering as part of the programme of analytical work? If so, please state what these are and give your reasons.
- Question 17: Which areas of analytical work do you feel the Council should make the highest priority? Are there any areas that you feel are so important that they warrant slowing down the pace of guideline development/ revision? Please state what these areas are and give your reasons.
- Question 18: Are there any areas of work that you feel would be more suitable for an academic institution or external organisation to undertake? If so, please state what these are and give your reasons.
- Question 19: Which areas of activity do you think could achieve most in promoting public confidence, and why?
- Question 20: 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?
- Question 21: Are there any other avenues we could use to inform the public about the Council and the guidelines?
- Question 22: Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentencing and their relative effectiveness in preventing reoffending?
- Question 23: Do you have any view on other aspects more broadly in terms of the 'effectiveness' of sentencing that the Council might want to consider and if so, how we would go about doing this? To what extent should any further work be prioritised above other areas of the Council's activities?

- Question 24: Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?
- Question 25: Do you have views about how the Council how can improve the consultation process for regular respondents?
- Question 26: Do you have views about whether there are people or organisations we should be reaching with our consultations but are not? If so, please suggest what we can do to reach them.
- Question 27: Do you have views on how the Council should time the publication and coming into force of the guidelines?
- Question 28: Is it the role of the Council to provide more assistance on the use and interpretation of guidelines? If so, please explain how you think this could best be achieved.

# Annex C: Statutory duties of the Sentencing Council

Duty under Coroners and Justice Act 2009	Description
s.119	Publish report on the exercise of the Council's functions during the year
s.120(3)(a)	Prepare sentencing guidelines about guilty pleas
S.120(3)(b)	Prepare guidelines about the rule of law as to the totality of sentences
S.120(4)	(May) prepare other guidelines
s.120(5),(6a-d), (7), (8)	Must publish draft guidelines and consult when preparing guidelines (including the Lord Chancellor and Justice Select Committee); must then publish definitive guidelines after making necessary amendments
s.120(11a-f)	<p>When exercising the function of preparing guidelines, the Council should have regard to:</p> <ul style="list-style-type: none"> <li>- The sentences imposed by courts</li> <li>- The need to promote consistency</li> <li>- The impact of sentencing on victims</li> <li>- The need to promote public confidence in the CJS</li> <li>- The cost of different sentences and their relative effectiveness in preventing re-offending</li> <li>- The results of monitoring</li> </ul>
S121 (2), (3a-c)	Guidelines should illustrate varying degrees of seriousness with which offences are committed with factors relating to culpability, harm, and other relevant factors
s.121(4a,b), (5a,b), (6a-c)	Guidelines should provide an offence range, category range, starting point, aggravating and mitigating factors and criteria for determining the weight to be given to previous convictions
s.121(7a-c)	Additional to mitigating factors are factors relating to guilty plea reductions, discounts for assistance to the prosecution, totality and these should be reflected in guidelines

s.121(10a, bii)	Starting points should relate to sentences that assume an offender has pleaded not guilty
s.122(2), (3), (4), (5), (6)	The Council must prepare allocation guidelines, issue them as draft, consult on them and then publish them as definitive guidelines; they may from time to time review the allocation guidelines; they should have regard to need to promote consistency and the results of monitoring.
s.123	The Council may prepare or revise guidelines and if urgent may dispense with the need to publish in draft and to consult (other than with the Lord Chancellor)
s.124 (1), (3), (5)	The Council may be asked to prepare guidelines by the Lord Chancellor or the Court of Appeal and it should consider doing so
s.127(1), (2)	The Council must prepare and publish resource assessments for both draft and definitive guidelines
s.127(3a-c)	Resource assessments must assess the resources required for the provision of prison places, probation provision and youth justice services
s.128(1), (2)	The Council must monitor the operation of its guidelines and consider what conclusions can be drawn, including: <ul style="list-style-type: none"> <li>- The frequency with which, and extent to which, courts depart from sentencing guidelines</li> <li>- Factors which influence the sentences imposed by the courts</li> <li>- The effect of guidelines in promoting consistency</li> <li>- The effect of guidelines on the promotion of public confidence in the criminal justice system</li> </ul>
s.128(3)	The Council should include in its Annual Report a summary of monitoring work undertaken and any conclusions drawn from this
s.129(1)	The Council must publish information regarding the sentencing practice of magistrates in relation to each local justice area; and information regarding the practice of the Crown Court in relation to each location at which the Crown Court sits
s.129(2)	The Council may also promote awareness of matters in relation to the sentencing of offenders, in particular the sentences imposed, the costs of different sentences and their relative effectiveness in preventing reoffending, and the operation and effect of guidelines
s.130(1), (2)	The Annual Report must contain a sentencing factors report which contains an assessment of the effect which any changes in sentencing practice is having on the resources required for: the provision of prison places; probation provisions; the provision of youth justice services



<p>s.131(1),(2), (3), (4)</p>	<p>The Annual Report must contain a non-sentencing factors report (and at other times the Council may publish this type of information having provided it to the Lord Chancellor). The report should cover which non-sentencing factors are having/likely to have a significant quantitative effect on resources. These factors include prison recall, breach of orders, patterns of re-offending, Parole Board release decisions, remand issues etc</p>
<p>s.132(1)(3)</p>	<p>The Council has a duty to assess the effect, and prepare a report, where the Lord Chancellor refers any government policy or proposals likely to have a significant effect on resources for prison, probation or youth justice services</p>
<p>Schedule 15</p>	<p>This outlines the constitution of the Council and the experience members need to have to be appointed</p>





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