

Scottish Sentencing Council: 'Sentencing young people' guideline consultation

Victim Support Scotland (VSS) is the leading charity dedicated to helping people affected by crime across Scotland. Victim Support Scotland provides information, practical help, emotional support and guidance through the criminal justice system. We offer support to people who directly experience any type of crime including murder, terrorism, rape and sexual assault, domestic violence and hate crime. Our support also extends to friends and families of victims.

VSS support services are available regardless of if the crime has been reported to the police or not. Part of our role is to support people to report what has happened to the police, if they wish to do so. VSS empowers people to cope with the aftermath of a crime and find the strength to move on with their lives. Our dedicated volunteers, supported by paid staff, in our national and local offices across Scotland, as well as our teams in the Sheriff, High Courts and some Justice of the Peace Courts, helping provide high quality support to those affected by crime.

Victim Support Scotland represents the voice of people affected by crime. We influence key national policy decision-making to champion victim and witness rights and improve support services. We advocate for positive improvements within the criminal justice system, working alongside our partners in the key criminal justice agencies, the third sector and local organisations.

Q1) Do you agree or disagree that a principle-based approach to the guideline is the right approach?

- Agree
- Disagree

Please provide any reasons for your answer.

Somewhat agree.

Victim Support Scotland support grounding the sentencing guidelines in a principle-based approach which allows for a consistent approach across Scotland and different crime types in tackling offending behaviour. Sentencing guidelines play a pivotal role in futureproofing to enable the criminal justice system to keep step with public thinking. This is especially important as society gains greater understanding of the role and value of rehabilitation as opposed to sentencing solely as a means of punishment.

However, guidelines must also be evidence-based in terms of what sentencing outcomes seek to achieve for victims who have been impacted by harmful behaviours and activities by others. Doing so is vital to building a rights-respecting approach for children and young people in conflict with the law which does not place the needs of victims in conflict with the treatment of perpetrators.

Q2) Do you agree or disagree that the guideline should apply to people under the age of 25?

- Agree
- Disagree

Please provide any reasons for your answer.

Somewhat agree.

Research conducted by the University of Edinburgh which was commissioned by the Scottish Sentencing Council found that ‘the adolescent brain continues to develop into adulthood and does not reach full maturity until approximately 25-30 years of age,’ and that the ‘very nature of brain development during the transition to adulthood is often at the root of the risk-taking behaviour which can cause further damage to the already vulnerable younger brain.’¹

While these findings should not be dismissed, it is important to highlight that the long-lasting and often devastating impact of crime is often felt by the victim, irrespective of if the crime has been committed by a child, young person or adult. Maturity and age are subjective but must not detract from justice being served to people affected by crime.

Further to this, there are key factors that should be considered from a criminal justice perspective that suggest more thought needed towards the impact of cultural milestones upon development. For example, a young person is likely to have moved out of the family home, reached the age at which they can legally sit their driving test and purchase alcohol, left the education system and/or gone on to higher education, are eligible to vote, can be recruited for service in the armed forces and are likely to have entered the workplace. All of these will have significant impact on the maturity of a young person aged 17 versus someone aged 25-30 who has encountered these changes. Guidelines that consider the impact of age and development within this age bracket may be required following the current consultation.

In particular relation to driving offences, it is important to note that all individuals are required to pass a competence test in order to be deemed safe to drive a vehicle. Age is not the determining factor in offences which result from careless or dangerous driving. More consideration is needed as to how the sentencing guidelines can be applied in such instances or if it is appropriate for them to be waived.

Q3) If you disagree that the guideline should apply to people under the age of 25, at what age should the guideline cease to apply?

Please provide any reasons for your answer.

The review of research undertaken by the University of Edinburgh found that ‘brain development may be delayed or hindered by other factors such as mental disorders and distress, adverse childhood experiences, traumatic brain injury (“TBI”), and alcohol and

¹ <https://www.scottishsentencingcouncil.org.uk/news-and-media/news/research-indicates-the-brain-does-not-fully-mature-until-you-are-at-least-25/>

substance use' and noted that there is a 'well-established correlation' between TBI and antisocial behaviour and violent offending. In particular, it finds that a TBI suffered during adolescence can be more damaging as it interrupts the development of the brain.²

This would suggest that 25 is an arbitrary cut-off point for the application of the guidelines that requires a grounding in further evidence if it is to be applied in a way which meets the needs of all parties.

Victim Support Scotland have concerns from a victims' perspective about consideration being given to people aged 25 and under regarding their brain development and 'emotional maturity' when it comes to sentencing decisions. For example, in cases of sexual assault, to say the person had not reached emotional maturity until 25 could have a serious impact on both the sentencing outcome and the emotional wellbeing of the victims.

Q4) Do you agree or disagree that the relationship between this guideline and the 'Principles and purposes of sentencing' guideline is set out clearly?

- Agree
- Disagree

Please provide any reasons for your answer.

Victim Support Scotland appreciate the rationale behind the assertion in the draft guidance which states that:

'Rehabilitation is a primary consideration when sentencing a young person. Young people should be provided with the opportunity to change, and to move away from past offending behaviour. The judge should therefore seek to reduce, through rehabilitation, the risk of reoffending, and to identify the features which are likely to make the sentence particularly effective.'

However, this fails to acknowledge the impact that the actions of the young person have had on their victim and that some rehabilitation measures, such as those based in a community which both occupy, place the needs of the perpetrator ahead of the needs of victims. In doing so, this has the potential to add to the trauma which the victim has experienced. The impact of this should not be underestimated.

It is vital that, when accounting for the age and maturity of the perpetrator, that this does not result in an unclear, watered down or unjust process of sentencing does not emerge.

Q5) Do you agree or disagree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person?

- Agree
- Disagree

Please provide any reasons for your answer.

² <https://www.scottishsentencingcouncil.org.uk/news-and-media/news/research-indicates-the-brain-does-not-fully-mature-until-you-are-at-least-25/>

The information laid out in paragraph 7 only appears to be in relation to how the sentence will impact upon the perpetrator and not given consideration to how the same factors will have impacted on how the victim has been affected.

It is unclear as to whether considerations to a person's socio-economic background and education level will be accounted for in sentencing. In the example of Lavinia Woodward, a 24-year-old Cambridge University student who stabbed her boyfriend with a bread knife in 2017, was not handed a custodial sentence on the basis that it 'could damage her prospects of a medical career.'³ Judge Ian Pringle who presided over the case stated himself that this was an "exceptional" move.

If sentencing guidelines are to be truly effective, they must be applied equally and not place the impact of sentencing on future prospects of some young people above others on the basis of their privileges. Neither should these considerations in relation of the prospects of the perpetrator be in competition with considerations made as to the same provisions as their victim, even more so if they are also a young person.

Q6) If you do not agree that paragraph 7 of the guideline gives enough information about the factors that should be taken into account when sentencing a young person, what additional information should it provide?

Please provide any reasons for your answer, including any examples that you feel should be included.

See response to Q5.

Q7) Do you agree or disagree that rehabilitation should be given greater emphasis than other purposes of sentencing in this guideline?

- Agree
- Disagree

Please provide any reasons for your answer.

Disagree.

Rehabilitation should be considered where it is also the best course of action for the victim and take their needs into account throughout any action intended to aid the rehabilitation of the perpetrator.

This should be the determining principle regardless of the age of the perpetrator.

Q8) Do you agree or disagree that rehabilitation should be a primary consideration when sentencing a young person?

- Agree
- Disagree

³ <https://www.theguardian.com/uk-news/2017/may/16/oxford-university-lavinia-woodward-stabbed-boyfriend-may-avoid-jail>

Please provide any reasons for your answer.

See response to Q7.

**Q9) Which, if any, other purposes of sentencing should be emphasised in this guideline?
Please provide any reasons for your answer.**

The present Scottish Government’s Taskforce is committed to putting “victims at the heart of the Criminal Justice System”. In sentencing the court should give more consideration to the level of physical and psychological harm caused to the victim/s and their family as comes across in for example, Victim Impact Statements.

In determining an appropriate sentence much weight is placed on the offender’s mitigating circumstances, for example, the effect of offenders’ sentence on family, employment, determination to address drink/drug issues etc. there is a delicate balance to be struck. The continuing traumatic effect of any crime can present continuing challenges for victims and their families.

The impact of crime on a person has little correlation to how ‘serious’ the offence is determined to be by the criminal justice system. Giving more weight to the Victim Impact Statement scheme would help to address this imbalance and allow victims to speak to how they and their families have been affected as a result of a crime.

Q10) Is the section on the assessment of seriousness helpful?

- Yes
- No

Please provide any reasons for your answer.

Victim Support Scotland does not support the statement in the draft guidelines that: ‘the maturity of a young person will generally be lower than that of an older person, it follows that the culpability of a young person will also generally be lower than that of an older person being sentenced for a similar offence.’

As referred to in response to Q2, driving licences are granted on the basis that a level of competence has been demonstrated and found to be at an appropriate level. Therefore, the culpability of any driver is determined by this and not their maturity.

Q11) Do you agree or disagree that paragraph 13 of the guideline identifies the information which is of most relevance to sentencing a young person?

- Agree
- Disagree

Please provide any reasons for your answer, including any examples that you feel should be included.

The Scottish Sentencing Council should give further consideration to making a similar range of information and reports on the victim available to enable a judge to have sufficient

information available on all the parties involved, not just the perpetrator, in order to impose the most appropriate sentence.

Q12) Do you agree or disagree with paragraph 14 of the guideline stating that cases should be referred to a children's hearing for advice where it is competent to do so?

- Agree
- Disagree

Please provide any reasons for your answer.

Agree.

Q13) Do you agree or disagree with the proposed features of an appropriate sentence for a young person set out at paragraph 15 of the guideline?

- Agree
- Disagree

Please provide any reasons for your answer.

Disagree.

The proposed features set out in paragraph 15 do not examine how reintegration and rehabilitation strands should be considered alongside the needs of the victim/s. There are also no provisions made for appropriate notification that may not be achieved or eligible under the current terms to qualify for the Victim Notification Scheme.

Paragraph 18 goes on to state that 'if a custodial sentence is imposed on a young person, it should be shorter than that which would have been imposed on an older person for a similar offence' and the recent extension of the Presumption Against Short Sentencing, it is therefore highly likely that the victim of a perpetrator who is a young person will not qualify to register with the Victim Notification Scheme.

In relation to paragraph 16, which states that, 'the judge should clearly explain the sentence to the young person to increase the likelihood of the sentence being effective,' Victim Support Scotland would also recommend that the impact of the crime be explained in order for the experience of the victim to be reflected upon. The use of Victim Impact Statements would assist with this process.

Q14) Do you agree or disagree that the approach set out in paragraphs 17 and 18 of the guideline is appropriate?

- Agree
- Disagree

Please provide any reasons for your answer.

Disagree.

The experience of the victim and the impact on them and their family should be given greater weight to the nature and duration of the sentence than the age of the perpetrator.

Q15) Do you agree or disagree that judges should consider remitting each case to a children's hearing for disposal, where it is competent to do so?

- Agree
- Disagree

Please provide any reasons for your answer.

Agree.

Q16) Do you think the guideline will influence sentencing practice in Scotland?

- Yes
- No

Please provide any reasons for your answer.

N/A

Q17) Do you agree or disagree that the guideline will increase public understanding of how sentencing decisions in respect of young people are made?

- Agree
- Disagree

Please provide any reasons for your answer.

The general public are usually divorced from the criminal justice system and will rarely have much interest in how sentencing decisions are made unless they find themselves interacting with its processes as a victim or as a perpetrator.

With this in mind, and in relation to the response given to Q13, it is of utmost importance that judges take care to explain how they have reached their decision on the sentence which is handed down to both the victim/s and the perpetrator so they can better understand the reasoning and decision-making process.

Victim Support Scotland has heard from individuals affected by crime who have expressed that they received a lack of information about the purpose and format of non-custodial sentences received by convicted individuals, or who would want to be kept informed about the successful progression of perpetrators through community sentencing programmes. If the change in guidelines do result in any more incidences of community-based sentencing, the guidelines should account for additional resources to raise awareness among the public of these approaches and to adequately inform and support individual victims about what they entail.

Q18) Do you agree or disagree that the guideline will increase public confidence in the sentencing of young people?

- Agree
- Disagree

Please provide any reasons for your answer.

Further to the response given to Q17, by taking on board the views of victims organisations to ensure the guidelines give due consideration to the experience and impact of sentencing

upon victims, Victim Support Scotland are optimistic that these guidelines will increase public confidence in the sentencing of young people.

Given that most people have limited contact with the criminal justice system outwith being a victim or a perpetrator, the expanse of this confidence will only be amongst a limited number of the general population.

While victims of perpetrators under 25 can be any age, a substantial proportion of victims of young perpetrators are themselves also under the age of 25. Changes in sentencing practice should also ensure that adequate support is available to communicate sentencing decisions to young victims of crime and account for the support needs of these young victims and their families.

Q19) Do you agree or disagree with the assessment of the specific, identified impacts the guideline is expected to have?

- Agree
- Disagree

Please provide any reasons for your answer.

Disagree.

The impact assessment states that it is ‘anticipated that the increased emphasis on rehabilitation may result in a small number of cases being given non-custodial sentences where they may otherwise have been sentenced to a period of detention or imprisonment.’ This appears to suggest that, despite the focus on rehabilitation throughout the guidelines, non-custodial sentences are not expected to increase – this seems to be at odds with the purpose of developing specialist sentencing guidelines for young people.

It seems incongruous that the guidelines are geared towards promoting rehabilitation over custodial sentences, but do not view a shift in the size of the prison population and the need to redirect resources appropriately to be a likely impact of the guidelines. Further to this, an increase in costs for social work is only considered in relation to additional costs to provide information to allow for an assessment of maturity.

Q20) What benefits do you think will come from the introduction of this guideline, if any? Please provide any reasons for your answer.

Due care and attention will be given to the factors for consideration of both victims and perpetrators, such as those provided for in paragraph 13.

Q21) What costs (financial or otherwise) do you think will come from the introduction of this guideline, if any?

Please provide any reasons for your response.

See Q19 – increased costs at community and social work level to support rehabilitation efforts and potential need to adjust provisions offered through the prison system.

In relation to the response to Q17-18, consideration should also be given as to whether a public awareness campaign which requires allocation of funds in order to increase understanding and to improve understanding of the role of sentencing guidelines.

Q22) Would you like to make any other comments about any matter arising from this consultation?

If sentencing fails to acknowledge the impact that the actions of any perpetrator/s have had on their victim/s and that some rehabilitation measures, such as those based in a community which both occupy, place the needs of the perpetrator ahead of the needs of victims, this is a failure of the criminal justice system as a whole. In doing so, this has the potential to add to the trauma which the victim has experienced.

It is vital that, when accounting for the age and maturity of the perpetrator, an unclear or unjust process of sentencing does not emerge.