

## Scottish Sentencing Council

### Workshop Report: Guideline on Sentencing Young People

#### Submission from Scottish Youth Parliament, November 2019

#### Introduction

The United Nations Convention on the Rights of the Child (UNCRC) is the basis for the Scottish Youth Parliament's (SYP's) vision, mission and values. In particular, SYP embodies Article 12 of the UNCRC, which states that young people have the right to express their views freely and have their opinions listened to in all matters affecting them. As a completely youth-led charity, the words and sentiment of Article 12 have profound importance for our work.

#### Our Vision

The Scottish Youth Parliament (SYP) is the democratic voice of Scotland's young people. Our vision for Scotland is of a nation that actively listens to and values the meaningful participation of its young people. Our goal is to make this vision a reality, in order to ensure young people in Scotland grow up loved, safe and respected, and able to realise their full potential.

#### Our Mission

SYP is a rights-based charity, with members supported by all of Scotland's 32 local authorities and 11 National Voluntary Organisations.

SYP's mission is to provide a national platform for young people to discuss the issues that are important to them, and campaign for changes to the nation that they live in. We support our members in their work by training them, supporting their personal development and empowering them, using a youth work ethos.

Our democratically elected members listen to and recognise the issues that are most important to young people in every community across the country and ensure that decision-makers listen to their voices.

#### Our Values

- **Democracy** – We are youth-led and accountable to young people aged 14 to 25. Our democratic structure and the scale of our engagement across Scotland gives us a mandate that sets us apart from other organisations.
- **Rights** – We are a rights-based organisation. We are passionate about making young people aware of their rights, and ensuring that local and national governments uphold their rights.
- **Inclusion and Diversity** – We are committed to being truly inclusive and work tirelessly to ensure policymakers and politicians hear the voices of young people from every community and background in Scotland.

- **Political Impartiality** – We are independent from all political parties. By working with all stakeholders, groups, and individuals who share our values, we deliver the policies that are most important to young people.

**The initial findings from this consultation are:**

- For the purposes of sentencing, anyone under the age of 18 should be considered a young person, and consideration should be had to extending this to 25 in the future.
- When sentencing a young person, courts should **not** take into account the area the young person comes from, their education, personal wealth (unless poverty is an issue), their name, appearance or career prospects.
- When sentencing a young person, courts should take into account their addiction issues, any adverse childhood experiences, any experiences of being in care, family background, caring responsibilities, mental health and wellbeing, additional support needs, ethnic background (particularly if the young person is from a BME group), financial circumstances (including work status/experience of poverty), living in areas of deprivation, age and maturity.
- A courts' main aim when sentencing a young person should be rehabilitation. The aim of sentencing should also be to support those with mental health or addiction issues or who are homeless.
- A main priority when sentencing young people must be to address the underlying causes of offending behaviour: "*Authorities should tackle crime by working with young people to address the root causes of crime.*" SYP Lead the Way commitment, Manifesto Policy passed on 12<sup>th</sup> March 2016 with 73% agreement.
- Reintegrating into society should also be a key priority for Scottish courts: "*There should be compulsory education and training to help young offenders reintegrate into society.*" SYP Lead the Way commitment, Manifesto Policy passed on 12<sup>th</sup> March 2016 with 85% agreement.

**SYP looks forward to responding to the consultation in due course.**

## Our approach

SYP welcomes the opportunity to respond to the consultation on the Guideline of Sentencing Young People by the Scottish Sentencing Council. This response is based on the findings of co-designed questions in the **#WhatsYourTake survey** prior to SYP's 70<sup>th</sup> National Sitting in Dunfermline, Fife and the **Consultation Workshop** which took place on Sunday 27<sup>th</sup> October 2019.

The workshop was attended by **22 young people**, called 'Sentencing Young People' and co-produced by SYP's Social Security Committee Convener Ryan Kelly MSYP and Scottish Sentencing Council staff, David Ross and David Dickson.

The Scottish Sentencing Council is currently developing a guideline on the sentencing of young people, which will be subject to public consultation within the next few months. Through a series of interactive activities, MSYPs gave their views on three key questions that the Council has been considering in developing the guideline. MSYPs discussed who should be considered a young person for the purposes of sentencing, what should (and shouldn't) be taken into account by the courts when sentencing a young person and what should be the courts' main aim when sentencing a young person and what types of sentence might help achieve this. These views are summarised below.

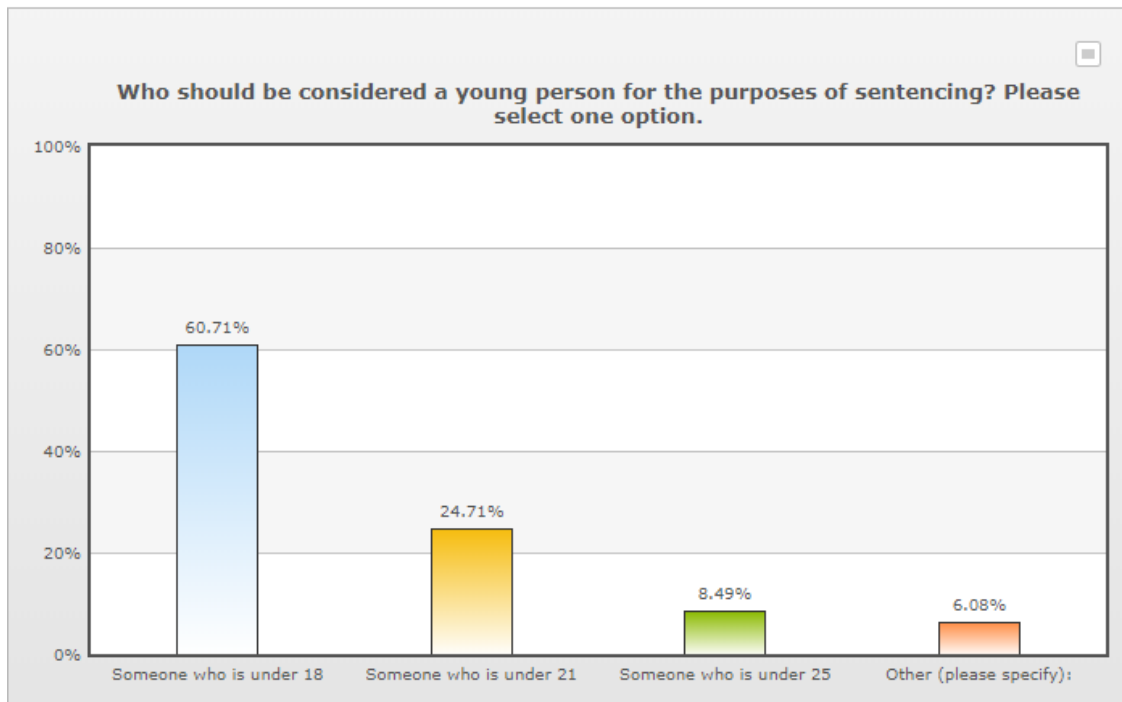
The #WhatsYourTake online survey was open from 27<sup>th</sup> September until 30<sup>th</sup> October, gathering **817 responses** from young people aged 12-25 across Scotland, from all 32 local authorities, our 11 national voluntary organisations and various others representing a diverse range of communities of interest, **'seldom heard' groups** and lived experience (including different faiths, disabilities, care and carer experience, LGBTQI+, a range of cadets, sports and environmental clubs, Shelter and Police Scotland Youth Volunteers).

## Background information of survey respondents

The majority of respondents are at school (86%) and aged 12-14 (48%) and 15-17 (42%). 55% of respondents are female, 40% were male, 2% identified as non-binary and 1% prefer to use their own term. 16% of respondents belong to minority ethnic groups.

## Findings

**Who should be considered a young person for the purposes of sentencing?  
Please select one option:**



## Online responses

The vast majority of online survey respondents report that someone under the age of 18 should be considered a young person for the purposes of sentencing (61%). Their reasons for this include young people being aware of their actions and the consequences by the age of 18 as well as society considering 18 year olds as "adults", therefore should be held accountable in the same way.

Some online responses chose a younger age range, stating that the rights you have at 16, for example the right to marry, leave school, gain employment etc., define you as a young adult, and so should apply to sentencing.

- *"You can marry at 16, or buy a house. Therefore you're a young adult, not a junior."*
- *"Although a person's brain is not fully developed until they are 25 I believe that most people are considered adults at the age of 18 and thus should be given the responsibilities of one"*

- *“By the age of 18, young people should have a grasp on the concept of right and wrong and they should be provided with the same responsibilities and consequences of an adult”*
- *“If you're old enough to vote, drink, drive, etc. and be a fully functioning member of society then you should be under the same rules as everyone else.”*

25% of online respondents stated that anyone up until the age of 21 should be considered a young person for the purposes of sentencing. Explanations for this include greater life experience and responsibility by this age. Others noted that mistakes can still be made at 18 and so by raising this to 21, you are protecting young people from life changing consequences to their actions.

- *“I believe that most people at the age of 18, "young adults", are not quite ready to face the adult world yet. They might be going to college or university, or getting their first job, living on their own for the first time and learning how to be responsible for oneself. This is, of course, not true for everyone, but my understanding is that for the majority this is the case. At the ages 21/22, young adults will be at the end of studies (if they went on to study) and most likely will have had experience of living on their own for a while already, which I think is enough to make them be fully responsible for their actions”*
- *“I believe that although legally you are considered an adult at the age of 18, you still have a lot to learn and due to your age, still make mistakes. I think that by considering those under the age of 21 as a young person in regards to sentencing, you are ensuring that one mistake does not ruin their lives. Everyone is entitled to a second chance and I believe that this should be afforded to those of this age range.”*
- *“Basically up until 21 your brain is still developing and maybe you will be more rash and impulsive than otherwise”*

8% of online respondents supported anyone up until the age of 25 being considered a young person for the purposes of sentencing. Reasons for this include organisations considering “young people” up to the age of 25, including SYP, as well as research that suggests the brain has not fully developed until this age. Others noted that young people still need time to mature and adapt to adult life.

- *“Most organisations consider YP up to 25.”*
- *“Scientific research shows that the brain has not fully developed until around the age of 25.”*
- *“When you turn 18 you don't magically mature. It takes time to mature and adapt to adult life.”*
- *“I believe that a young person, although deemed as an adult at the age of 18 still has a lot to learn and has not fully lived like an adult until the age of 25.”*

*After this the young person as been in society and looked upon as an adult for some time and so should be fully recognized as an adult.”*

Some respondents reported that a specific age should not matter and instead, should be on a case-by-case basis.

- *“Shouldn't matter the age, who commits a bad crime should be punished”*
- *“Anyone who has committed a crime whatever age that may be”*
- *“I don't believe that one size fits all. As some young people could fully understand their actions and the consequences at age 16 where as some other young people cannot.”*

### **Workshop findings:**

At the workshop, young people were asked the same question. Two groups thought that it should be anyone up to the age of 25 because MSYPs represent – and are themselves – young people aged 14-25. One of these groups also said age 25 is in line with the '[Challenge 25](#)' initiative, which requires licensed premises to ask for proof of age from anyone they believe to be under 25 who may not be of age to purchase alcohol.

Another group thought that anyone up to the age of 23 should be considered a young person for the purposes of sentencing. They thought that 21 was too young and 25 too old, but that a young person should have matured by around 23. This group also felt that anyone under 16 should be treated differently by the courts, but they also noted that there may be individuals over the age of 23 whose level of maturity may need to be considered in sentencing (for example, those with additional support needs).

One group was split between the ages of 25 and 21, while the final group thought that anyone up to the age of 21 should be considered a young person because someone up to that age can be sent to a young offender's institution rather than an adult prison.

**Also at the workshop, MSYPs were asked what they thought should - and shouldn't - be taken into account by the courts when sentencing a young person.** There were many suggestions about what *should* be taken into account, including:

- family background
- caring responsibilities
- mental health and wellbeing
- any history of offending or previous convictions
- additional support needs

- age and maturity
- experience of being in care
- financial circumstances (including work status / experience of poverty)
- any adverse childhood experiences
- disabilities
- education status
- gender
- ethnic background (particularly if the young person is from a BME group)
- living in areas of deprivation
- role models / social circle / peer pressure
- addiction issues

However, it was also suggested that some of these things *shouldn't* be taken into account, such as previous convictions, the area the young person comes from, their education, their personal wealth (unless poverty is an issue) and their gender. Other things that MSYPs thought shouldn't be taken into account included the name and appearance of the young person, their career prospects, and their likes and dislikes.

### **What should the courts' main aim be when sentencing a young person?**

At the workshop, the final activity was about what the main aim or purpose of sentencing a young person should be. MSYPs were given a list of possible purposes of sentencing taken from the Council's [principles and purposes of sentencing guideline](#): public protection; punishment; rehabilitation; giving the offender the opportunity to make amends; and expressing disapproval of the offending behaviour. MSYPs listed these– or any other aim that they felt was appropriate – in order of priority. The most popular aim was rehabilitation, followed by protection of the public. Giving the offender the opportunity to make amends was also supported. Punishment and expressing disapproval of offending behaviour were generally considered less important. One group suggested that another aim of sentencing should be to support those with mental health or addiction issues or who were homeless.

MSYPs were then asked what features an appropriate sentence should have in order to achieve their main aim. Majority felt that addressing the underlying causes of offending behaviour was at or near the top of their list of features. Some groups felt that a lot of features overlapped or couldn't be prioritised over each other, so things like reducing the likelihood of stigmatisation and increasing the likelihood of reintegration were suggested as equally important.

Item	Total Score <sup>1</sup>	Overall Rank
Rehabilitation	2643	1
Protection of the public	2603	2
Giving the person who committed the crime the opportunity to make amends	2396	3
Expressing disapproval of criminal behaviour	1935	4
Punishment	1897	5

The table above outlines the online survey findings to this question. The majority of respondents ordered rehabilitation and protection of the public as the most important aims, with punishment as the least important. The main reasons for this include sentencing being seen as an opportunity for young people to integrate back into society, reflect on what they did wrong, reduce reoffending and provide support needed to improve lives.

- *“Young people should have the opportunity to receive help to better themselves”*
- *“Prison should be used to rehabilitate prisoners so they can integrate more easily into society, which reduces their chances of reoffending. Prison should not be punitive”*
- *“Most of all, sentencing young people should give them an opportunity to realise that what they did was wrong, in case they have not realised this themselves yet. It is a chance to allow a person to grow and become better, which is much more important than punishing them, which might even cause trauma and encourage further criminal behaviour.”*
- *“Rehabilitation, especially for young people, is vital to lessen the cycle of reoffending. Many young people who are offenders go on to develop mental health issues and addiction in adulthood. Their wellbeing and life will be dearly affected without rehab. A punitive approach to young offenders is damaging, and doesn't hold them to account but rather causes young offenders to resent the system.”*
- *“By making people feel listened to and by giving them a second chance we could also be providing them with a sort of nurture they may never have had in the past.”*
- *“As a young person in most cases it will be a one off or a stupid mistake they didn't realise was this serious, the government should be focusing on educating them on these things and providing support that they do not repeat the offense.”*

In addition to this, many respondents also criticised punishment as a main aim of courts, citing reasons such as the impact it will have on future life and the responsibility of the state in helping vulnerable people.



- *“It's always going to be a mix and will always be a case by case thing, but punishing someone so young (unless it's a particularly bad/violent crime) is bound to have so many detrimental effects which will only get worse in the future”*
- *“Everyone makes mistakes and is entitled to a second chance. I think that it is important to ensure that individuals who have taken part in criminal activity are supported to change their behaviour rather than be punished for it. If I was punished every time I did something wrong, chances are, I would not be who I am today and I believe it is the States responsibility to people to ensure that ALL are given this opportunity.”*

For those that did support punishment as a court's priority, respondents noted that this would only work with the opportunity to change and rehabilitate alongside it, *“If you break the law, you need to be punished but also given the chance to change.”*

A few concerns were expressed, however, at rehabilitation as the most important aim, especially for the public and victims. One respondent noted the problem with courts providing the opportunity to make amends, as *“trying to make amends could harm the victim's mental status.”* Others noted that rehabilitation, whilst important, should not be prioritised over protection of the public, *“the public should never be put at risk for the chance to successfully rehabilitate someone.”*

### **Contact and visit us:**

Should you wish to meet with us or update us on how the findings will feed into your work, please do not hesitate to get in touch with us using the details below.

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