

The Scottish Youth Parliament's response to the Scottish Sentencing Council's consultation on sentencing of young people guideline

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

Agree

Please provide any reasons for your answer.

Throughout various methods of consultation on this topic (two focus groups and an online survey), young people repeatedly told us that they felt that young people should be sentenced on a “case by case” basis. The flexibility that a principle-based approach allows will enable this to happen and, therefore, we believe that this is the correct approach.

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

Disagree

Please provide any reasons for your answer.

In an online survey in October 2020, co-developed by Members of the Scottish Youth Parliament (MSYPs) and the Scottish Sentencing Council, only 8% of the 816 respondents (aged 12-25) believed that someone under the age of 25 should be considered a young person for the purposes of sentencing. Those who gave this answer noted that cited reasons including that organisations considered “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.

At our in person workshop in October 2020 with 22 MSYPs, 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.

However, 92% of survey respondents felt that the sentencing age should be lower than this and 3 groups of MSYPs were either split or agreed on a lower age, overall we found that young people do not agree that the guideline should apply to all those under the age of 25.

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?

18 years old

Please provide any reasons for your answer.

Overwhelmingly, survey respondents told us they believed that, for the purposes of sentencing, a young person should be considered as those under 18 (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.

“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.”

We also note that 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”

In the workshop, one group of MSYPs felt that 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. Another group was split between 21 and 25 and the final group believed the age should be 23. 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).

With these views in mind, we do recommend that further consideration should be had to extending this to 25 in the future, but that the current age should be 18

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

Please provide any reasons for your answer.

When asked they thought should be taken into account by the courts when sentencing a young person, workshop participants highlighted a number of factors including the age maturity of a young person.

They also mentioned many of the factors which would be covered by the best interests of the young person consideration 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

They did not explicitly mention the capacity for change of the young person but they also didn't raise this when asked what shouldn't be included.

Some young people did also suggest 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.

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.

In terms of facilitating a public understanding of the factors that should be taken into account (particularly for young people), the best interest section could be expanded to include a wider range of factors that are included in this assessment. Examples of these can be found in the list created by MSYPs which was detailed in our answer to question 6.

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

Agree

Please provide any reasons for your answer.

When asked to rank a list of possible purposes of sentencing taken from the Council's principles and purposes of sentencing guidelines (public protection; punishment; rehabilitation; giving the offender the opportunity to make amends; and expressing disapproval of the offending behaviour) in order of priority, both the survey respondents and workshop participants ranked rehabilitation top of the list. Protection of the public also ranked high for both groups whereas punishment was ranked as the lowest priority in sentencing.

The main reasons that survey respondents noted for this being the primary consideration 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.

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

Agree

Please provide any reasons for your answer.

Please see the above answer.

Q9) Which, if any, other purposes of sentencing should be emphasised in this guideline?

Please provide any reasons for your answer.

As previously noted, young people as felt that public protection should also key factor in sentencing and should not be forgotten about. Some respondents to the survey noted that 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”.

Young people also supported giving the offender the opportunity to make amends although, again, this should not be placed above the wellbeing of the victim. One respondent noted that “trying to make amends could harm the victim’s mental status.”

Punishment and expressing disapproval of offending behaviour were generally considered less important.

One group of workshop participants suggested that another aim of sentencing should be to support those with mental health or addiction issues or who were homeless.

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

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

During a focus group with the Scottish Sentencing Council in March 2019, MSYPs were asked what factors should a judge consider when sentencing a young person. They identified all of the issues listed in paragraph 13. They also identified that the overarching needs of the young person need to be highlighted and that judges should focus on how the system could best support so they don't reoffend.

Some other factors were noted including education and employment and how certain sentences would impact the future of that young person's employment. Taking the family into account was also raised as "a main factor which should be considered" including those who may have a "family of crime, experienced sexual abuse and young people who are socially excluded".

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

Please provide any reasons for your answer.

MSYPs who participated in the March 2019 focus group mentioned the Children's Hearing System quite often as "better suited to rehabilitation and reforming" and others in the group agreed with this. It was also noted that they should "keep people out of the adult system for as long as possible – normal justice isn't really effective".

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

When asked this question in our March 2019 focus group, the participants focused on the specific kind of sentences and when they would be appropriate. However, through this they pulled out a number of the factors listed in paragraph 15.

These included:

- Reducing the likelihood of stigma and impact on mental health
- The benefits to the public in terms of risk (current and future)
- Opportunities to look at 'education and values' and a chance to understand their own offending behaviors (e.g. through restorative justice)
- Creating links to where the young person is going to be best support going forward (e.g. their community) to increase rehabilitation and integration

We also know young people more widely agree that addressing the underlying causes of offending behaviour should be a main priority when sentencing young people from the following SYP policy:

“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 12th March 2016 with 73% agreement.

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

Agree

Please provide any reasons for your answer.

Young people in March 2019 told us that they believe detention should be “an absolute last resort as it creates stigma” and “can cause poor mental health” and make a young person worse. However, it was noted this option should be taken except in cases where there is a “risk to the public” and this being the only time it would outweigh any welfare concerns.