



Scottish Sentencing Council consultation – 'Sentencing young people' guidelines

August 2020

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

Includem fully supports the principle-based approach to sentencing. The guideline clearly demonstrates how young people are different to fully mature adults and how this impacts on their decision making, levels of culpability and ability to make changes. We consider that it is important that this principle is consistently applied to all young people regardless of the type of offence and a principle-based approach is the best means of achieving this.

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

Includem fully supports the guideline applying to all young people under the age of 25. Our experience in supporting young people in conflict with the law evidences that most young people grow out of offending behaviour by their mid-twenties, particularly if they are supported to do so. We have seen first-hand the devastation for young people that a sentence has when it does not consider the levels of culpability, the willingness to make changes and fails to ensure that there is a focus on rehabilitation. For many, these sentences trap young people in a cycle of offending at a significant personal cost and a cost to the wider society.

Includem welcomes the depth of the University of Edinburgh review of research commissioned by the Scottish Sentencing Council which confirms that the adolescent brain continues to develop into adulthood and does not reach full maturity until approximately 25-30 years of age. That as a result young people have increased risk-taking and emotionally driven behaviour until the areas that assist with cognitive abilities and self-control are fully developed. We believe that this research along with CYCJ's recent work "Rights Respecting? Scotland's approach to children in conflict with the law" supports the need for a new approach to sentencing children and young people based on a better understanding of what age-appropriate responsibility looks like.

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

N/A

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

Agree. Includem considers that the guideline is clear in establishing that rehabilitation should be given greater emphasis over the other purposes of sentencing.

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?

We think that the guidance on the best interests of the young person could be strengthened.

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?

Includem would like to see greater emphasis on understanding the social context of the young person and the impact this has on their decision making. There is a statement that judges should take into consideration the young person's living environment, any adverse childhood experiences and any physical and mental health issues. This is given as an example of considering the best interests of the young person, with the guidelines suggesting it should be the primary consideration for those under 18. Includem would argue that the history and current experiences of the young person and therefore what is in their best interests should be the primary consideration for all young people, not just those under 18, and in particular those who are care experienced or have communication needs, both of which are overrepresented in the prison population.

We know that experiencing a bereavement in childhood significantly increases the risk of offending. A study by the CYCJ found that of 33 young men serving a sentence in a young offender institution, 91% had experienced a bereavement and the rates of traumatic and multiple deaths was high. As such, Includem considers that bereavement should be explicitly mentioned in the information required by the judge as a mitigating factor and an indication that the young person needs support to resolve the trauma as part of the rehabilitation support.

One young person told us that they were successfully completing a community-based sentence until they suffered a bereavement: *"Unfortunately, due to personal bereavement I have been struggling with addictions and have offended again. I felt I had no option to have my say and let them know why it happened. All they did was look at my record and said I wasn't complying and then gave me a custodial sentence."*

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

Includem agrees that rehabilitation should be given greater emphasis than other purposes of sentencing. Although we recognise that it is outwith the remit of this consultation, we would comment that our experience tells us that judges need to be knowledgeable of local services and

confident that the support is available before they will consider a community based or rehabilitative sentence. There is not an even distribution of services and resources across Scotland and this may affect how this principle is applied and could lead to a post code lottery for young people. Includem would like to see an audit of services available to support the sentences envisaged by this guideline and appropriate levels of funding to ensure that the right services are there to support all young people achieve the primary purpose of the sentence – rehabilitation.

We would like to see the introduction of more Problem-Solving Courts such as that currently in place in Aberdeen or the use of Structure Deferred Sentences, such as those being undertaken in South Lanarkshire. One of our staff said this of a young person they were supporting: *"There were absolutely some occasions where the information was carefully considered, and alternative routes explored to prevent custodial (eg. tag, increased support by Includem, problem solving court). This young person had considerably high levels of additional needs and Criminal Justice Social Work were able to put a successful case forward for charges being taken to Aberdeen Sherriff Court's Problem Solving Court which allowed for a much more supported approach focussed on intervention and rehabilitation rather than punishment."*

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

Includem would support rehabilitation being the primary consideration when sentencing a young person. We would like to see these principles extended into clear guidance on when (if ever) it is appropriate to remand a young person and how this decision supports the rehabilitation of a young person, who may indeed be innocent of the charge.

One staff member commented, *"I absolutely have seen young people who are remanded for the 120 days and then released at next hearing who are then often quick to reoffend. I think due to the prison service having no expectations to complete or support any rehabilitation with young people during a remand there are real gaps in any hope of mindset or understanding changing within this time."*

One young person told us, *"When I was in Polmont I felt I had no support as I was over 18yrs old. The support I was offered was only for English and Maths. I feel there should have been more emotional support offered to me. If I had had the support before offending like when I was 14yrs old, it might have helped as I was going through an emotional time in my family."*

One of our workers said this about the experiences of another young person: *"Problem Solving Court helped most effectively, as did increased support, connections and opportunities. Short periods of time in custody did not help this young person as it fed into his feeling of prison being his only worth and destiny and would undo the work completed up to that point each time."*

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

Includem would like to see the opportunity for the offender to make amends receive more emphasis for this age group. International research identifies that restorative justice is particularly effective in

reducing reoffending for young people who often find it difficult to see beyond their own circumstances. It is also more effective in helping victims move on from the harm that they have experienced. As with our previous comment, while outwith the remit of this consultation, we would like to see restorative justice services adequately funded to support this element of the purpose of sentencing.

Is the section on the assessment of seriousness helpful?

Includem would like to see consideration of any neurodevelopmental condition alongside an assessment of maturity. There are other factors apart from maturity, such as communication difficulties or poor social interactions because of a neurodevelopmental condition which reduce the culpability of a young person.

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

As previously mentioned, our experience is that unless judges have sufficient knowledge of available services and are confident that the support is available to ensure successful completion of a community-based sentence, they are less likely to impose one. Includem are concerned that including the consideration as to whether or not the sentence is likely to be implemented and what steps can be taken to increase the likelihood of implementation could result in some judges in certain jurisdictions where there are limited resources being limited in the sentences they will consider. This could result in a postcode lottery for young people who will already be disadvantaged by living in a service poor area.

Includem are also concerned about the continuity and appropriateness of services for young people as they transition into adult services. We provide the wraparound support and intervention described as the appropriate features of a sentence for young people aged up to 25. However, in many local authorities we are commissioned by Children's Services and funding for our support ends when the young person turns 18 and moves to adult services. More needs to be done to ensure continuity of relationship and support at times of transition between services when the young person is more at risk of continuing their offending behaviour. If we recognise that young people need support as their brain and complex thinking is still developing then we need to ensure that youth specific services, who are trained in adolescent brain development and are trauma informed are in place to support these young people. It is not appropriate that at 18 they move to be supported by services who are established to support adults who have different needs and ability to change.

One of our staff members told us: *"Includem support had to stop due to age restrictions in (the local authority) contract and the case being transferred to Adult services. This break in support from a service the young person had engaged incredibly well with was absolutely a cause for offending behaviours to increase again."*

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?

Includem fully support the guideline that, where it is competent to do so, cases should be referred to a children's hearing for advice. We consider that this step ensures children's rights are upheld to the best way possible.

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?

Includem fully support the features of an appropriate sentence for a young person. In our experience, delivering the support and intervention described will have the best likelihood of reducing the risks of reoffending and improving the life chances of those young people who come into conflict with the law. One young person told us: *"I don't think being judged helps people and if they tried to understand why I did offend that might have shed a different light on things and I may have got support earlier and not had a custodial."*

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

Includem are concerned about the use of the words 'different from... an older person'. We would prefer the wording to be explicit that it should be less.

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?

Includem supports the principle that, where competent to do so, the judge should remit the case to a children's hearing for disposal. Again, we consider that this is the best possible way of protecting the rights of children and ensuring that they are treated as children in need of support.

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

In our experience there are already many sheriffs and judges who apply the principles of the guideline with good outcomes for young people. However, there are equally judges who do not and we hope that these guidelines bring about changes in their practice.

One of our staff told us: *"For one young person it was absolutely evident that each court appearance, and the outcome, was dependent on the individual judge's views rather than the shared information. The solicitor was often able to predict whether a young person would be released on bail/kept in remand due to knowing which judge was on duty. The information was absolutely there but whether it was considered or not seemed to vary hugely on the judge."*

As already mentioned, our experience tells us that the sentencing outcome is heavily influenced by a judge's knowledge of and confidence in the services available to support a community-based sentence. As such, we do not think that this guideline will be enough to change practice alone. It needs to be coupled with the strategic commissioning of services which support young people to make the changes necessary to stop the cycle of offending.

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

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

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

What benefits do you think will come from the introduction of this guideline, if any?

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

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

Includem has experience of young people over the age of 18 being named in the press following sentencing which has been detrimental to their ability to rehabilitate effectively, particularly in small communities. The continuation of such practice has the potential to undermine the intent of the guideline to promote the rehabilitation of young people and recognise their ability to make changes. While again outwith the remit of this consultation, Includem would encourage the Scottish Sentencing Council and the Scottish Government to consider giving judges the ability to suppress the publication of young people's name up to the age of 25 to give them the most opportunity to make changes.