



SENTENCING  
ACADEMY

## **Sentencing Academy Response to Consultation: Miscellaneous Amendments to Sentencing Guidelines, 2023**

*29 November 2023*

The Sentencing Academy welcomes the opportunity to respond to the miscellaneous amendments to sentencing guidelines consultation. We consider this annual consultation exercise to be a helpful innovation and a sensible way to provide piecemeal amendments to existing guidelines.

This response follows the questions in the consultation in numerical order.

*Question 5: Do you agree with the proposed change to the Allocation and Sentencing children and young people guidelines? If not, please provide any alternative suggestions.*

We agree that given the current Crown Court backlog this is a sensible additional consideration to add to the allocation decision as, with the sentencing of youths in particular, unnecessary delays should be avoided.

*Question 6: Do you agree with the proposed additional aggravating factor in the Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another guideline? If not, please provide any alternative suggestions.*

Yes, we support this amendment. Supplying drugs to a child under the age of 18 should be considered aggravating to the offence when supplying it to an adult.

*Question 7: Do you agree with the proposed changes to the Fraud guideline? If not, please provide any alternative suggestions.*

We welcome the proposed changes to the Fraud guideline and we agree that such changes are necessary. However, in comparison to the guidelines for many other offences this proposed reformulation is still weaker in relation to the psychological harm that victims may suffer. Many other offence specific guidelines expressly identify psychological harm as a relevant harm factor whereas in this proposal it is reduced to an ‘or otherwise’ factor to financial harm. If, as is rightly intended, this revised formulation is designed to give greater emphasis to the emotional and psychological impact of fraud offences then we believe that expressly articulating these harms would be a helpful steer to sentencers rather than leaving them as a secondary consideration to the financial impact. Many offences, for example, can have a physical and/or psychological impact on a victim and we are used to seeing both of these factors

on the face of the guideline. We would propose that in the case of fraud offences the financial and/or psychological impact should be given similar weighting.

*Question 8: Do you agree with the proposed addition of breach of a stalking prevention order and (once it is in force) breach of a domestic abuse prevention order to the breach of a protective order guideline? If not, please provide any alternative suggestions.*

Yes.

*Question 9: Do you agree with the proposed amendments to the environmental offences guideline? If not, please provide any alternative suggestions.*

Yes, we agree with the softening of the emphasis on fines. The court has many options available to remove the financial benefit that an offender has received by committing the offence. As this has involved the commission of a criminal offence we believe that it is important that this type of offending is not reduced to merely being a cost/benefit financial analysis for offenders and a certain level of punishment is appropriate on top of the deprivation of the financial gain. In suitable cases, the imposition of a community order provides the appropriate vehicle for that additional layer of punishment.

*Question 10: Do you have any views on the likely impact of the proposed changes on sentence outcomes?*

The revised wording does still provide a steer to sentencers away from community orders, albeit a more gentle one, so we would not anticipate that this change would have a significant impact. We would hope that community orders may be more likely to be imposed in appropriate cases as a result of this revision.

*Question 11: Do you agree with the proposed changes to the expanded explanation for the mitigating factor of remorse? If not, please provide any alternative suggestions.*

We agree with the additional factors listed and welcome the research that underpins these changes. However, given the question that has been raised in the research regarding the term 'cultural differences' we hope that there will be follow up research that may address how this term is used in practice.

*Question 12: Do you agree with the proposed changes to the wording of the factor and expanded explanation for the mitigating factor of good character? If not, please provide any alternative suggestions.*

Yes, we agree with the proposed changes.

*Question 13: Do you agree with the proposed additions to the Determination and/or demonstration of steps taken to address addiction or offending behaviour expanded explanation? If not, please provide any alternative suggestions.*

We support this proposed amendment as it is important that those who are not able to seek privately-funded support are not comparatively disadvantaged in their sentencing outcome simply because of a lack of access to publicly-funded support. In practice, however, merely seeking support that has not yet been provided may be a less compelling mitigating factor compared to receiving and engaging with support which may allow an offender to positively demonstrate progress.

*Question 14: Do you agree with the proposed change to the age and/or lack of maturity factor? If not, please provide any alternative suggestions.*

We support this proposed change but it does highlight the potential complexity when dealing with the sentencing of young adults that may be better dealt with through a specific guideline for offenders of this age rather than an expanded explanation.

*Question 15: Do you agree with the proposed new mitigating factor and associated expanded explanation: Difficult and/or deprived background or personal circumstances? If not, please provide any alternative suggestions.*

Given the lukewarm reception that this amendment received in the focus groups we would suggest caution before proceeding with its introduction – particularly, as noted, that it will cover a large number of offenders who fall to be sentenced. Whilst these factors may be of greater relevance the first time an offender appears before the court, most of these factors are static and it is questionable as to whether they should provide mitigation every time that an offender is sentenced.

*Question 16: Do you agree with the proposed new mitigating factor and associated expanded explanation: Prospects of or in work, training or education? If not, please provide any alternative suggestions.*

As with the above question, a lack of discernible support arising from the focus groups is a concern. We agree that there will be issues with ascertaining the veracity of such claims and it is also not clear what is meant by a ‘substantial period of custody’: at what sentence length does this consideration become irrelevant? Six months? 12 months? Longer?

*Question 17: Do you agree with the proposed new mitigating factor and expanded explanation relating to pregnancy? If not, please provide any alternative suggestions.*

We believe that sentencers will already rightly treat this as a mitigating factor but expressly articulating the principle will do no harm. That said, absent wholly exceptional circumstances we believe that pregnant women should never receive an immediate prison sentence. The research evidence is clear that incarcerating pregnant offenders has deleterious effects. Courts have several options to hold such offenders accountable without committal to custody. These

alternatives include suspended sentence orders, intensive and punitive community orders accompanied by electronic monitoring, and deferred sentencing. Although we are unaware of any attitudes research on the subject, we believe that the public oppose incarcerating pregnant offenders. This public opposition is likely to be very strong if the public are given a choice between a term of immediate imprisonment and one of the alternatives noted here. In this sense, incarcerating pregnant offenders with the result that a birth occurs in prison is likely to undermine public confidence in sentencing and sentencers. Finally, we note the challenges created for the prison estate in accommodating such offenders. Council might also consider changes to its disposal guideline.

*Question 18: Do you agree with adding the proposed aggravating factor relating to strangulation, suffocation or asphyxiation to the manslaughter guidelines? If not, please provide any alternative suggestions.*

We agree with this proposal.

*Question 19: Do you agree with the proposed change to the aggravating and mitigating factors relating to coercive or controlling behaviour in the manslaughter guidelines? If not, please provide any alternative suggestions.*

We agree that in the absence of compelling evidence this does not require an amendment to step one.

*Question 20: Are there any equalities issues relating to the proposals that should be addressed?*

N/A.

*Question 21: Do you have any comments on the likely impact of the proposals on sentencing practice?*

N/A.

*Question 22: Are there any other comments you wish to make on the proposals?*

N/A.