



**Response to the Sentencing Council's  
Consultation on a General Sentencing  
Guideline for Use Where There is No Offence  
Specific Guideline**

September 2018

## **Introduction**

Birmingham Law Society is the largest provincial local law society with a membership of some 5,000. It represents solicitors, barristers and paralegals working in the West Midlands area. It is currently celebrating its bicentenary.

This response is prepared by members of its Criminal Law Sub-Committee. The members of that committee are drawn from experienced defence and prosecution practitioners, solicitors, and the bar. Our co-opted members include representatives from the Crown Prosecution Service, Birmingham City Council, the Probation Service, the Legal Aid Agency and HMCTS.

As well as the answers below, we wish to add the following. We believe it is vital that these proposed Guidelines specifically state that they are subject to the Guidelines on Sentencing Children and Young People.

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### **1. What is your name?**

Birmingham Law Society

### **2. What is your email address?**

info@birminghamlawsociety.org.uk

### **3. What is your organisation?**

Birmingham Law Society

### **4. Which (if any) criminal offences are of particular interest to you in the context of this guideline?**

We are interested in all criminal offences.

### **5. Have you been able to access the digital guideline to respond to this consultation?**

Yes.

### **6. What are your views on the general guidance given at step one?**

- In general we agree with the common sense advice here, which merely reflects the courts' normal approach.
- We agree with the prohibition on taking into account draft sentencing guidelines.
- We disagree with the prohibition on taking into account sentencing guidelines that are not yet in force. Although this reflects recent Court of Appeal authority, it is our experience that courts were often assisted by referral to such guidelines, prior to the Court of Appeal guidance. Our preference is that courts ought to be able to have regard to published Guidelines prior to their implementation date, without them being binding.

- At (b) we suggest that a reminder that this is not merely an arithmetical exercise be included.

#### **7. What are your views on the additional information on harm or culpability?**

- We note that at 'Culpability', a court would be reminded that it should balance characteristics to reach a fair assessment of overall culpability, and that there is no such sentiment expressed in relation to 'Harm'. We suggest a similar reminder be incorporated here.

#### **8. What are your views on the additional information on fixed penalty notices (if relevant to you)?**

- We cannot improve upon the suggested text.

#### **9. What are your views on the additional information provided for the statutory aggravating factors?**

- We cannot improve upon the suggested text.

#### **10. What are your views on the above four factors and the additional information provided in the guideline?**

- Commission of offence whilst under the influence of alcohol or drugs
- Offence was committed as part of a group or gang
- The next factor 'offence involved use or threat of a weapon' irrelevant to many offences of violence.
- 'Planning of an offence' can be a relevant factor in many types of offending and may have already been taken into account at step one; the warning against double counting will be relevant to this factor.

- We cannot improve upon the suggested text.

#### **11. What are your views on the above two factors relating to financial gain and the additional information provided in the guideline?**

- Commission of the offence for financial gain
- High level of profit from the offence

- We suggest that the commission of the offence for significant financial gain should be an aggravating factor. This would allow the courts to use their discretion to disregard, for example, those whose offending is related to homelessness, a lack of benefits, or a drug addiction.

#### **12. What are your views on the above six factors relating to victims and the additional information provided in the guideline?**

- Abuse of trust or dominant position
- Gratuitous degradation of victim / maximising distress to victim
- Vulnerable victim
- Victim was providing a public service or performing a public duty at the time of the offence
- Other(s) put at risk of harm by the offending
- Offence committed in the presence of other(s) (especially children)

- We cannot improve upon the suggested text.

**13. what are your views on the above two factors relating to behaviour after the offence and the additional provided in the guideline?**

- Actions after the event including but not limited to attempts to cover up/conceal evidence
- Blame wrongly placed on other(s)
- We note that these characteristics are often present in offences committed by young or immature offenders. We suggest that the guideline requires sentencers to balance these aggravating factors against the maturity of the offender.

**14. what are your views on the above four factors and the additional information provided in the guideline?**

- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Offence committed in custody
- Offences taken into consideration

- We cannot improve upon the suggested text.

**15. What are your views on the above three factors and in particular the additional information on timing and location provided in the guideline?- - -**

- Offence committed in a domestic context
- Offence committed in a terrorist context
- Location and/or timing of offence

- We cannot improve upon the suggested text.

**16. What are your views on the above two factors and the additional information provided in the guideline?**

- established evidence of community/wider impact
- prevalence

- We are divided in relation to these factors. There are strong arguments in favour of local benches having a discretion in these circumstances. Equally, there are strong arguments in favour of consistency nationally. On balance, we believe it is perhaps best to exclude these factors altogether, so that they remain entirely within the discretion of the courts.

**17. are there any other aggravating factors that you think should be included in the general guideline?**

- No

**18. what are your views on separating personal mitigation from offence mitigation in guidelines?**

- Although this can often seem artificial, it is our experience that sentencers are aware of the risk of 'double counting' mitigation.

**19. What are your views on the additional information on the mitigating factors relating to no previous convictions and good character?**

- We prefer the removal of the suggestion that good character or status can amount to an aggravating factor. We accept that this can be true, especially in relation to grooming offences, we should not wish to see a creeping extension to other offences. Rather, we submit that it is a point best made in offence specific guidelines where appropriate.

**20. What are your views on the above three factors and the additional provided in the guideline? (below)**

- Remorse
  - Self-reporting
  - Co-operation with the investigation/ early admissions
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- We cannot improve upon the suggested text.

**21. What are your views on the above four factors and the additional information provided in the guideline? (below)**

- Little or no planning
- The offender was in a lesser or subordinate role if acting with others / performed limited role under direction
- Involved through coercion, intimidation or exploitation

- Limited awareness or understanding of the offence

- We cannot improve upon the suggested text.

**22. What are your views on the above three factors and the additional information provided in the guideline? (below)**

- Little or no financial gain
- Delay since apprehension
- Activity originally legitimate
- - We cannot improve upon the suggested text.

**23. what are your views on the above five factors and the additional information provided in the guideline?**

- Age or lack of maturity
- Sole or primary carer for dependent relatives
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Determination and / or demonstration of steps having been taken to address addiction or offending behaviour
- We cannot improve upon the suggested text.

**24. Are there any other mitigating factors that you think should be included in the general guideline?**

No

**25. What are your views on the usability of the digital guideline?**

It is preferable to having a printed document of such length, but a little clumsy when opening or finding additional information.

**26. What are your views on the treatment and diversity in this guideline?**

We have no submissions.

**27. Do you have any other comments to make about this guideline?**

No.