3.1. In our system of justice, responsibility for the legislative framework for sentencing lies with Government but it is independent judges who decide individual sentences.

3.2. This is often a complex task, requiring judges to balance multiple factors to meet the need for individualised justice. These include details such as: the particular circumstances of the offence; the offender’s life and prior conduct; and the harm caused to victims and to the broader community.

3.3. While discretion in sentencing is essential to judicial independence, sentencing guidance has been developed to assist judges by providing a structure for applying that discretion. It can also improve transparency and a consistency of approach when judging offences of similar magnitude.

3.4. This guidance, which takes different forms across jurisdictions, includes sentencing statutes, guideline judgments, sentencing guidelines and sentencing information systems. There are also differing sources ranging from elected legislative bodies, Appeal Courts and sentencing advisory or guideline organisations.

3.5. The Review considered a variety of guidance models to assess whether current arrangements for Northern Ireland can benefit from sentencing guidance arrangements operating elsewhere.

Role of Sentencing Guidance

3.6. The Northern Ireland Court of Appeal has stated that:

“Consistency in the sentencing process is an important aspect of fairness. Fairness also requires that the particular circumstances of individual cases are taken into account in determining the appropriate outcome.”

From time to time there can be a tension in seeking to satisfy these requirements.\(^1\)

3.7. While there is limited research into consistency in sentencing,\(^2\) it is important for public confidence that the process used by judges is perceived as being fair

---

\(^1\) R v McCaughey and Smyth[2014] NICA 61
\(^2\) Pina Sanchez J, ‘Consistency in Sentencing: A Research Perspective’ (2016) Sentencing News Issue 3, 9-11 notes 'To date, only a handful of academic studies have sought to explore the concept of consistency and how it has been affected by the issue of definitive guidelines.'
and transparent, and does not appear to treat people differently without good reason.

3.8. The role of sentencing guidance, identified by Tata,³ is to help the sentencing process achieve:

- legal equality including the promotion of genuine consistency in sentencing (which does not equate with uniformity of outcome);
- greater predictability in sentencing patterns (linked to potential efficiency gains in prison planning);
- transparency in policy and sentencing;⁴
- the promotion of public confidence in sentencing; and
- moderation or change in penal direction.⁵

3.9. In Northern Ireland guidance is primarily provided through a combination of guideline judgments issuing from the Northern Ireland Court of Appeal and sentencing guidance issued by the Lord Chief Justice’s Sentencing Group⁶ (the Sentencing Group). The work of the Sentencing Group is detailed later in this chapter.

Guideline Judgments

3.10. Guideline judgments are normally delivered by higher level courts, such as the Northern Ireland Court of Appeal. Any judgment has the potential to become a guideline judgment. Whereas a sentencing judgment normally only determines the outcome of the case in question, a guideline judgment also provides

---

⁴ In England and Wales as Crown Court had been under no obligation to publish sentencing remarks in each case, guidelines were considered a way of improving transparency and accountability of sentencing decisions – Mandeep K Dhami, ‘Sentencing Guidelines in England and Wales: Missed Opportunities?’ (2013) 76 (1) Law and Contemporary Problems 289, 290.
⁶ The bi-annual reports of 2012, 2014 and 2016 describe the functions of the Sentencing Group as including ‘advising the Lord Chief Justice as to topics for his ‘Programme of Action on Sentencing’; production and advising on review of sentencing guidelines for the Magistrates’ Courts in Northern Ireland; identifying and advising the Judicial Studies Board as to suitability of NI Court of Appeal judgments for inclusion on the Judicial Studies Board Sentencing Guidelines and Guidance website and liaising with the Judicial Studies Board as to the training of the judiciary on sentencing practice and the dissemination of sentencing guidelines.
guidance to the lower courts and indicates the appropriate approach to take in similar cases.

3.11. The lower courts are not required to follow the guidance provided by guideline judgments.\(^7\)

3.12. The Northern Ireland Court of Appeal has clearly stated that guidance to sentencers is “not prescriptive…not a strait jacket.”\(^8\) However, guideline judgments are highly influential, representing, as they do, the views of the most senior and experienced judiciary, using their legal knowledge of statute and case law to inform and establish a clear precedent.

3.13. The issue of guideline judgments was described in the report establishing the Sentencing Group as ‘an important function of the Court’, either ‘because it is a new offence or where trends in society or new statistical evidence suggest that previous guidance is no longer appropriate or requires adjustment’.\(^9\)

**Northern Ireland**

3.14. In some jurisdictions, legislation empowers the relevant Courts to provide guideline judgments. The powers can allow the Courts to identify and issue such judgments as the need arises, and can allow the judgments to deal with specific offences or categories of offence or wider sentencing issues.

3.15. This is not the case in Northern Ireland where judgments considered suitable for publication as guideline judgments are identified by the Sentencing Group.

3.16. The judgments are then placed on the judiciary-ni website,\(^10\) and are listed under a specific offence heading; under a specific sentencing issue, such as discount for a guilty plea; or under multiple headings.

**Other Jurisdictions**

3.17. In England and Wales the Court of Appeal’s role in issuing guideline judgments has been largely superseded by the statutory creation of the Sentencing

---

\(^7\) Any view expressed by the appellate court which is not related to the strict facts of the case is not binding on the lower courts as such guidance is classified as ‘obiter dicta’. The Latin term ‘obiter dicta’ means ‘things said by the way’. It is generally used in law to refer to incidental remarks, observations, or opinions articulated by a judge or supplementary opinions by a judge that are not essential to the actual decision as they are not binding on a lower court.

\(^8\) The Queen v Conrad T Doole [2010] NICA 11; paragraph 5-7; [https://www.judiciary-ni.gov.uk/sites/judiciary/files/decisions/R%20v%20Doole%2020%28Conrad%20Trafford%29%2020%2010%20NICA%202011%2029.pdf](https://www.judiciary-ni.gov.uk/sites/judiciary/files/decisions/R%20v%20Doole%2020%28Conrad%20Trafford%29%2020%2010%20NICA%202011%2029.pdf)


\(^10\) [https://www.judiciary-ni.gov.uk/](https://www.judiciary-ni.gov.uk/)
Council for England and Wales (referred to as the Sentencing Council)\textsuperscript{11} and its predecessors.\textsuperscript{12}

3.18. The main roles of the Sentencing Council are dealt with in more detail at paragraphs 3.48 to 3.50, but include the issuing and monitoring of sentencing guidelines.\textsuperscript{13}

3.19. The Court of Appeal is empowered to propose to the Sentencing Council offences or categories of offence which it considers require new or revised guidelines while retaining power to provide guidance in a sentencing judgment.\textsuperscript{14}

3.20. In Scotland legislation expressly empowers the relevant Appeal Courts to give or review a guideline judgment.\textsuperscript{15} Only a few judgments have been issued under these powers.\textsuperscript{16}

3.21. The Scottish Sentencing Council, established in 2015,\textsuperscript{17} now has responsibility for issuing sentencing guidelines. It is anticipated that new guidelines will gradually fulfil the need for sentencing guidance from the Scottish appellate Courts. Further detail of the role and duties of the Scottish Sentencing Council are found at paragraphs 3.52 to 3.54.

3.22. Ireland, like Northern Ireland, relies solely on its Court of Appeal to provide sentencing guidance for the lower courts. Ireland has no statutory definition or requirements for guideline judgments. Instead, a series of judgements in April 2018\textsuperscript{18} acknowledged the senior Appeal Courts’ important role in offering general sentencing guidance, and placed an express obligation on prosecutors to draw judicial attention to sentencing practice.

3.23. Legislation was recently passed to establish a sentencing guidelines mechanism for Ireland (further detailed at paragraphs 3.40, 3.41 and 3.55).\textsuperscript{19}

\textsuperscript{12} The legislation which created the Sentencing Council for England and Wales also abolished the predecessor organisations, the Sentencing Guidelines Council and Sentencing Advisory Panel.
\textsuperscript{14} Coroners and Justice Act 2009; section 124 (3) to (8).
\textsuperscript{15} Criminal Procedure (Scotland) Act 1995; sections 118 (7) High Court and 189 (7) Sheriff Appeal Court.
\textsuperscript{16} There have been five guideline judgments from the High Court and one from the Sheriff Appeal Court. The current 6 guideline judgments are available on the Scottish Sentencing Council (SSC) website together with a selected list of other useful sentencing cases.
\textsuperscript{17} Criminal Justice and Licensing (Scotland) Act 2010, Part 1: https://www.legislation.gov.uk/asp/2010/13/part/1
\textsuperscript{19} Judicial Council Act 2019, section 7 (2) (h); https://data.oireachtas.ie/ie/oireachtas/act/2019/33/eng/enacted/a3319.pdf
3.24. Guideline judgments also feature in a number of Australian states\textsuperscript{20} where legislative provisions set out who\textsuperscript{21} can apply for a guideline judgment,\textsuperscript{22} their content and what is expressly prohibited in them.\textsuperscript{23} The legislation may require the Court to ‘have regard to the need to promote consistency of approach in sentencing and the need to promote public confidence’\textsuperscript{24} when considering whether to issue or review a guideline judgement.

3.25. The relevant Appeal Court may not always have discretion as to which parties may participate when issuing a guideline judgment. In Victoria, for example, the Victoria Sentencing Council\textsuperscript{25} monitors and conducts research on sentencing issues which can be provided to judiciary, policy makers and the public. The organisation gives a written view to the Court of Appeal on the need to give, or review, a guideline judgment.

3.26. The Court of Appeal is required “to have regard to any view the Council expresses”.\textsuperscript{26} It is also obliged to allow the prosecuting authority and the legal aid authority to make representations before issuing a guideline judgment. Similar provisions exist in some but not all Australian states.

3.27. While both sentencing councils within United Kingdom can publish information and conduct research on sentencing matters, research will not be specific to any particular case, nor are the courts required to allow them participation before the issue of a guideline judgment.

\textit{Please see Consultation Questions: No. 9 - 10}

\textsuperscript{20} Victoria (Vic), New South Wales (NSW), Western Australia (WA), South Australia (SA).
\textsuperscript{21} Statutes often provide guideline judgments may be made after an application from a party to the appeal, or by the court on its own initiative.
\textsuperscript{23} In Victoria statute expressly prohibits making guideline judgments in relation to appropriate level or range of sentences for a particular offence or class of offences.
\textsuperscript{24} Queensland - Penalties and Sentencing Act (1992) (Qld) as amended in 2010, section 15 AH.; Sentencing Act 1991 (Vic) Part 2AA, section 6 AE (a) and (b).
\textsuperscript{26} Sentencing Act 1991 (Vic) section 6AD (a) and 6AE (c).
Sentencing Guidelines

3.28. Sentencing guidelines\(^{27}\) are generally created and published by an organisation established for that specific purpose. They may be provided for in legislation or may be produced under non-legislative arrangements.

3.29. Some researchers argue that there are two critical elements required for sentencing guidelines to be effective.\(^{28}\) One is that guidelines need to be sufficiently detailed and prescriptive to actually provide guidance for courts at sentencing.

3.30. The second is a ‘statutory requirement for sentencers to follow the guidelines – or provide reasons why this is not desirable’.\(^{29}\) In this regard, United States based research demonstrated that when guidelines are purely advisory rather than presumptively binding on courts, sentencing practices generally remained unaffected.\(^{30}\)

Northern Ireland

3.31. In Northern Ireland, the Sentencing Group was established in 2010 to ‘monitor and consider the provision of guidance for sentencers’. This included, specifically, the issue of guidelines to the Magistrates’ Courts, the first of which issued in 2011.\(^{31}\)

3.32. The guidelines are not legally binding but are a relevant consideration for the judge when sentencing adult offenders. As well as applying in the Magistrates’ Courts, they apply for appeals against sentence from that jurisdiction or when the Crown Court is sentencing an offender for a (lesser) summary offence along with more serious offences that are required to be dealt with in that Court.

---

\(^{27}\) The working definition utilised for sentencing guidelines is a document issued by an organisation whose main function is to assist judges in the sentencing exercise with a view to promoting consistency in sentencing and increasing public confidence in the criminal justice system. Sentencing guidelines may provide judges with starting points for sentences where the circumstances of the case differ, or identify a range of sentences that may be appropriate depending on the seriousness of that offence. They may also set out the aggravating or mitigating factors to be taken into account in particular cases.


\(^{31}\) The guidelines are for the most significant categories of volume offending within that jurisdiction. They can be found on the judiciary-ni website: [https://judiciaryni.uk/magistrates-courts-sentencing-guidelines](https://judiciaryni.uk/magistrates-courts-sentencing-guidelines)
Other Jurisdictions

3.33. Different statutory requirements for the application of the sentencing guidelines have been created, applied or replaced within the UK. They are summarised in Table 4.

Table 4: Statutory Requirements for the Application of Sentencing Guidelines

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Statutory Duty</th>
<th>Exception</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scotland (since 2015)</td>
<td>The court must have regard to relevant guidelines</td>
<td>Unless the court considers and states the reasons for departing from the guideline.</td>
</tr>
<tr>
<td>England and Wales, before the Sentencing Council was established</td>
<td>The court must have regard to relevant guidelines</td>
<td>The court could depart from them so long as the reasons for departure were explained in court</td>
</tr>
<tr>
<td>England and Wales, since 2010 when Sentencing Council was established</td>
<td>The court must follow relevant guidelines</td>
<td>Unless the court is satisfied that it would be contrary to the interests of justice to do so</td>
</tr>
</tbody>
</table>

3.34. While the current statutory duty to ‘follow’ sentencing guidelines may seem more restrictive than the duty to ‘have regard’, a certain flexibility or discretion remains available to the judge. Statute provides that the judge is permitted not to follow the guideline if it ‘would not be in the interests of justice’. When applying this exception the court will set out its reasons.

3.35. The Court of Appeal in England and Wales expressed support for this flexibility when it recently advised that sentencing guidelines are not to be applied mechanistically or construed as a statute.32

3.36. The change in England and Wales from a requirement to ‘have regard’ to the guidelines to having to ‘follow’ them reflected criticism that having regard had led to ambiguity about how the sentencing guidelines were to be applied. This ambiguity was reflected in conflicting Court of Appeal (Criminal Division) decisions as to whether they were to be applied barring unusual circumstances; or they were “guidelines no more no less”.34

32 R v Tata Steel UK Ltd [2017] EWCA Crim 704; paragraph 47.
33 R v Last and others [2005] EWCA Crim 106; paragraph 16.
34 R v Peters and others [2005] EWCA Crim 605; paragraph 3.
3.37. The Scottish approach could be viewed as similar in substance to the duty initially applied in England and Wales. Whether the Scottish experience will replicate similar concerns addressed by the Court of Appeal in England and Wales remains to be seen, given the duty has yet to be tested in that jurisdiction.

3.38. While the current approach in England and Wales may be perceived as being somewhat stricter than the Scottish one, it is more transparent as to the expectation placed upon the judiciary, and at the same time remains in line with the view expressed by the Northern Ireland Court of Appeal that “excessively prescriptive guidelines, whether imposed by the Court or by any statutory body, would frustrate the sentencer’s duty to decide the case before him or her justly on the merits”.35

3.39. One result of the statutory obligation on the judiciary to follow guidelines in England and Wales is that both defendant and prosecutor are permitted to appeal a sentence on the ground that the court has failed to adhere to the sentencing guideline without good reason.36

3.40. In Ireland, the Judicial Council Act 201937 has, for the first time, made provision for a Council whose functions will include the adoption and publication of sentencing guidelines produced by a Sentencing Guidelines and Information Committee.

3.41. The Act provides for the courts to ‘have regard’ to the sentencing guidelines, unless satisfied that it would be contrary to the interests of justice to do so. In such a case the court will be required to give its reasons.38

3.42. In 2007 legislation made provision in New Zealand39 for judges ‘to sentence in a manner consistent’ with a sentencing guideline, provided it was not contrary to the interests of justice. The legislation was never commenced and was repealed in 2017.

3.43. A common feature across many of the jurisdictions examined by the Review was the existence of a statutory duty requiring some form of compliance with sentencing guidelines.

36 The test for appealing was and remains that the sentence was manifestly inadequate or manifestly excessive, in other words unjust and disproportionate; see R v AO [2016] EWCA Crim B4.
38 Judicial Council Act 2019, section 92.
3.44. Recent research would suggest that it is beneficial to have such a duty, and that sentencing guidelines have not proved detrimental to the individualisation of sentences.\textsuperscript{40}

\textit{Please see Consultation Questions: No. 11 - 12}

\textbf{Sentencing Guideline Organisations}

3.45. As previously indicated, sentencing guidelines generally issue from a body or organisation tasked with producing them.

3.46. In Northern Ireland the non-statutory Sentencing Group’s objectives include: promoting public confidence in sentencing; providing greater transparency in sentencing practice; enhancing community engagement in sentencing issues; and promoting consistency in sentencing for similar offences in similar circumstances, while remaining proportionate to the geographical area and value for money.\textsuperscript{41}

3.47. The Group’s functions include issuing guidelines to the Magistrates’ Courts as well as publishing the guideline judgments of the Court of Appeal. Its Magistrates’ Courts Sentencing Guidelines are produced by a judicial-only sub-committee\textsuperscript{42} which consults with the District Judges (Magistrates’ Courts).

3.48. The duties of the Sentencing Council for England and Wales (Sentencing Council) are set out in the Coroners and Justice Act 2009. In preparing sentencing guidelines, the Council is required to consult with specified bodies and such other persons as it considers appropriate. It must have regard to sentences imposed in England and Wales and the need to promote consistency and public confidence in sentencing. The Council must monitor the operation and impact of any guidelines\textsuperscript{43} when creating or revising guidelines; the impact of sentencing decisions on victims; and the cost and relative effectiveness of different sentence types.\textsuperscript{44}

3.49. The Council is also required to promote awareness of sentencing practice and other sentencing matters. In discharging its duties the Council actively seeks to engage public opinion in its work and has stated its aims as: to promote a clear, fair and consistent approach to sentencing, primarily by issuing

\textsuperscript{40} Julian Roberts, Jose Pina-Sanchez and Ian Marder; Individualisation at Sentencing: The Effects of Guidelines and ‘Preferred’ Numbers (2018) 2 Criminal Law Review 123.

\textsuperscript{41} Sentencing Group’s Programme of Action on Sentencing.

\textsuperscript{42} Chaired by the Presiding District Judge (Magistrates’ Courts).

\textsuperscript{43} Coroners and Justice Act 2009; s 128


\textsuperscript{44} Coroners and Justice Act 2009; s 120 (11) http://www.legislation.gov.uk/ukpga/2009/25/section/120
guidelines; to produce analysis and research on sentencing; and to work to improve public confidence in sentencing.

3.50. A recent review of the Sentencing Council identified the benefit such an organisation can achieve where research on current sentencing practice as well as the impact of guidance is embedded into its methodology.

3.51. This was illustrated by the Council’s recent response to concerns that the courts were failing to impose suspended sentences in accordance with the relevant guideline. The Council engaged extensively to ensure the guideline was embedded into protocol, and action was taken by the Council Chairman to caution sentencers against the use of suspended sentences “as a more severe form of community order”.

3.52. The Scottish Sentencing Council, established in 2015 under the Criminal Justice and Licensing (Scotland) Act 2010, issued its first guideline in 2018. Its guidelines must be approved by the senior judiciary before they can take effect. The guidelines can be approved in whole or in part, and with or without modifications.

3.53. Similar to the Sentencing Council, the Scottish Council’s statutory objectives include: promoting consistency in sentencing practice; assisting the development of sentencing policy; and promoting a greater awareness and understanding of sentencing.

3.54. Its guidelines must be accompanied by an assessment of the likely costs and benefits of implementation and the likely effect of the guidelines on the criminal justice system generally.

3.55. The role of the new Irish Sentencing Guidelines and Information Committee will primarily be to: prepare and monitor the operation of sentencing guidelines; and to collate and disseminate sentencing information.

---

46 Andrew Ashworth and Nicola Padfield; ‘Reviewing the Sentencing Council’ Criminal Law Review 2018, 8, 609-611.
47 Principles and Purposes of Sentencing Guideline.
48 http://www.legislation.gov.uk/asp/2010/13/part/1
49 This requirement for the Scottish Sentencing Council is similar to the obligation placed on the Sentencing Council for England and Wales.
50 Judicial Council Act 2019, section 23.
3.56. Several Australian States have created sentencing advisory organisations providing advice to governments, the courts and the community on sentencing issues.\(^{51}\)

3.57. The purposes of the proposed sentencing guideline council for New Zealand included: the promotion of consistency in sentencing practice and transparency in sentencing policy; informing and educating the public about sentencing with a view to the promotion of public confidence in the criminal justice system; and informing parliament and policy makers about sentencing, penal resources and reform options.

Consistency, Transparency and Public Confidence

3.58. Each of the approaches to sentencing guidance or guideline bodies examined claim similar aims of improving consistency, transparency and public confidence in sentencing practice while enhancing community engagement in sentencing issues.

Consistency

3.59. The Sentencing Group identifies Court of Appeal guideline judgments, judicial training,\(^{54}\) statistics on sentencing, the referral of unduly lenient sentences within legislative remit of the Director of Public Prosecutions and information from other jurisdictions (notably England and Wales)\(^{55}\) as the tools to enhance consistency in sentencing.

3.60. The role of guidelines in England and Wales has been described as defining “a common approach to sentencing, leaving the eventual outcome to the discretion of the judge based on the facts and circumstances of the case before him/her. Judges are also obliged to give reasons when departing from the guideline”.\(^{56}\)

---


\(^{52}\) The Victoria Sentencing Advisory Council functions include providing statistical information on sentencing, including information on current sentencing practices, conducting research and disseminating information on sentencing matters, consulting on sentencing matters, advising the Attorney-General on sentencing issues and providing the Court of Appeal with the Council’s written views on the giving, or review, of a guideline judgment.

\(^{53}\) Criminal Justice Reform Act 2007, repealed.

\(^{54}\) Judicial training is provided through Judicial Studies Board publications and events.


\(^{56}\) Sir Brian Leveson PC, Former President of Queen’s Bench Division at The Paramoor Lecture, 24th October 2013; ‘Achieving consistency in sentencing’.
3.61. Measuring consistency of approach, as opposed to outcome, is not easy.\textsuperscript{57} The main challenge comes from the distinguishing variables of each case that the sentencing judge must take account of when sentencing, which are not identified in current sentencing data.

3.62. Recent research conducted in England and Wales on custodial sentences for assault, burglary and robbery identified that apparent inconsistency in sentences could be related to nine common aggravating and mitigating factors specified in the relevant guideline.\textsuperscript{58}

3.63. The ability to assess or measure the consideration by the judiciary of such factors would facilitate a more informed appraisal of consistency in the application of a sentencing guideline or guideline judgments.

3.64. While the collation of such data may have cost implications, it can facilitate evidence based research to inform the judiciary and the wider public on the workings of the courts and consistency of approach to sentencing decisions.

**Transparency**

3.65. The Sentencing Council and Scottish Sentencing Council use designated websites to provide information about their work and on how they discharge their duties. Both Councils place minutes of their meetings on their websites. Consultation publications, reviews of the application of guidelines and related research are also published.

3.66. The Sentencing Council recently placed an independent evaluation on the discharge of its statutory functions on its website as well as its response to the recommendations for future areas of work. The Scottish Sentencing Council places heavy emphasis on the importance of research on its website, including a link to a postgraduate programme utilised as a research resource.

3.67. Both Councils also ensure ongoing consultations and relevant research developments in sentencing are promoted on other media tools such as Twitter.


3.68. The Lord Chief Justice has identified the work of the Sentencing Group as well as the judiciary-ni website\(^{59}\) as part of the approach adopted to achieve transparency about how sentencing is approached in this jurisdiction.\(^{60}\)

3.69. It was not possible to identify or source Irish guideline judgments on the Irish courts website, the Supreme Court of Ireland website or the website of the Irish Prosecution Service.

**Public Confidence**

3.70. Guideline bodies can assist in the promotion of public confidence. They can act as official ‘think-tanks’ to develop policy or commission research to inform both official and general public understanding on sentencing matters requiring careful consideration.

3.71. Crucially, the guidelines are kept under review. Once a guideline is operational the focus moves to assess whether it works as expected. While the longevity of a guideline once issued can vary, there will be consultation or research to assess its application within 6 to 12 months of it coming into force.

3.72. Public confidence is recognised as an important factor. In maintaining this a former Chairman of the Sentencing Council described the focus of the Council as to “review, revise and improve”\(^{61}\) its work. In this regard the Council highlights instances where suggestions for improvement received in consultation responses have been adopted on merit.

**Training and Education**

3.73. Public confidence in sentencing can be improved by the visible provision of judicial training and education of the public. Training for judiciary is organised through independent organisations, with the relevant body in Northern Ireland being the Judicial Studies Board Northern Ireland.

3.74. The communication of training needs is a two-way process between sentencers and the Board. The Sentencing Group liaises with the Judicial Studies Board on the training of the judiciary on sentencing practice and the dissemination of sentencing guidelines.

3.75. The establishment in Northern Ireland of the judiciary-ni website is one of the steps taken to enhance community understanding and confidence in

---

\(^{59}\) The website currently provides information concerning the judiciary and signposts the latest guideline judgments as well as the work of the Sentencing Group.


\(^{61}\) Lord Justice Treacy; Criminal Law Review Conference 3 December 2015.
Outreach activities by the Sentencing Group, to increase the knowledge and understanding of the public on how the sentencing task of the courts is discharged, also contribute to building public confidence.

3.76. The UK Sentencing Councils’ websites use animated videos to inform and educate the public about the sentencing process. These include videos about sentencing on YouTube; an interactive task ‘You be the Judge’; a ‘myth buster’; and a council blog, hosting internal and guest posts.

3.77. The Sentencing Council also provides training and educational materials to promote understanding of sentencing among victims, witnesses, young people and the wider public.

3.78. In Northern Ireland there is scope to further develop existing websites to include interactive content. Links to material on the websites of the more recently created sentencing councils and advisory bodies would also be beneficial.

Membership of Sentencing Guidance Mechanisms

3.79. In 2013 the inclusion of community representatives in the Sentencing Group membership was identified as a means of “increasing public confidence” and providing a “helpful external perspective on sentencing issues”.

3.80. The Sentencing Group is chaired by a senior judicial member. Its membership, initially confined to representatives of all tiers of sentencing judiciary, now includes lay members consisting of academics from the two locally based universities and a victims’ representative. Practitioners of criminal law or those engaged within specified criminal justice organisations are excluded.

3.81. The Sentencing Council has a majority of judicial members, as will the Irish Committee, while the Scottish Sentencing Council has equal numbers of judicial and non-judicial members. Various tiers of judiciary are involved in the Councils while the non-judicial members are from a mixture of criminal justice and non-legal backgrounds.

---

64 A Lord Justice of Appeal.
65 Sentencing Council for England and Wales has 8 from a judicial background, and six non-judicial members, all with an equal role.
67 Scottish Sentencing Council has 12 members consisting of 6 judicial and six non-judicial members.
3.82. A judicial majority in membership has been seen as a key factor for the Sentencing Council for England and Wales in ensuring the Council’s independence so that it is non-political and doesn’t encroach on a function of the government or parliament. Others have argued that the equal membership model in Scotland (which had also been proposed for the New Zealand model), gives the community a greater say in sentencing.

3.83. In Australia the focus is on achieving a mixture of members to reflect broad experience in community issues affecting the courts or operation of the criminal justice system. Members include: experienced defence/prosecution lawyers; academic members; members of a victim of crime support or advocacy group or persons with knowledge of issues facing victims; and members of the police force of senior rank or who are actively engaged in criminal law enforcement duties.

Please see Consultation Questions: No. 13 - 19

---