Department of
Justice

An Roinn Dlí agus Cirt

Männystrie O tha Laa

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Sentencing Policy Review

Consultation

Way Forward

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Background

The DOJ concluded a public consultation on its Sentencing Policy Review in February 2020.

2. A total of 227 responses were received to the 68 questions posed in the consultation document. The majority of responses were received in respect of Chapter 10 driving causing death or serious injury and the Review Team would like to thank those who responded for investing their time to provide views.

3. The Review process was of considerable complexity, covering 10 discrete and separate sentencing policy issues of concern. These were:

- The purposes and principles of sentencing;
- Public perceptions of sentencing;
- Sentencing guidance;
- Tariff setting in murder cases;
- The unduly lenient sentencing regime;
- Community sentencing;
- Sentencing for attacks on public servants;
- Sentencing for hate crime;
- Sentencing for attacks on the elderly or vulnerable;
- Sentencing for offences of causing death by driving.

4. A summary of responses is available at https://www.justice-ni.gov.uk/sites/default/files/publications/justice/summary-of-responses-sentencing-review.pdf. Responses discussed the questions posed, raising some other interesting issues and ideas. As expected, the initial analyses of responses confirmed that a number of issues required further research and engagement with consultees and key stakeholders.

5. The Review Team has also been monitoring developments both in Northern Ireland and in neighbouring jurisdictions, including the proposal in England for "Harper's Law", which seeks a mandatory life sentence for any killing of a police officer; the introduction in Scotland of a new offence of attacking a retail worker; the establishment in July 2020 of an Irish Sentencing Guidance and Information Committee; the September 2020 Westminster White Paper on "A Smarter Approach to Sentencing"; proposals in England for change to sentencing for serious driving offences; and the outcomes of the independent review of hate crime legislation in Northern Ireland.

6. Early work has also been undertaken to assess the resource implications and feasibility of proposed recommendations.

7. The Minister has considered and agreed recommendations in respect of each area of the Review, as set out in this paper.

Chapter 1: Principles and Purposes of Sentencing

The review considered that a clear understanding of the principles and purposes of sentencing would: improve awareness, understanding, clarity and public confidence in sentencing; provide a definitive benchmark and foundation encouraging consistency in sentencing decisions; and ensure compliance with international obligations.

2. This could be achieved by means of administrative guidance or by a legislative statement.

3. In England and Wales the purposes (but not the principles) of sentencing are set in legislation. They are: punishment; reduction of crime (including by deterrence); reform and rehabilitation; protection of the public; and making reparation. The review proposed that the same purposes be adopted for Northern Ireland.

4. The proposed principles were that sentencing should be: proportionate; fair; used sparingly; and transparent.

Consultation questions

5. The consultation asked:

- Do the proposed principles provide the appropriate standards for sentencing?
- Are there other principles that should be included?
- Are the proposed purposes of sentencing appropriate?
- Are there any other purposes which should be included?
- Should a definition of the principles and purposes of sentencing be created in legislation?

Consultation responses and discussion

The need for a statement of principles and purposes of sentencing

6. Improved clarity and awareness was widely welcomed, with 19 of the 25 respondents who answered this question favouring a legislative statement of principles and purposes of sentencing.

7. Those who were opposed to such legislation cited restriction on the ability of the judiciary to give individually tailored sentences, and the complexity of sentencing. They suggested guidance as the better approach. One respondent recommended further research to help decide which approach is better. One recommended including review points to assess the impact of such legislation.

8. Normally the flexibility and relative ease and speed of adjustment of an administrative approach is seen as a benefit. However, in the context of seeking greater clarity and understanding, these attributes may not be desirable. In contrast, the permanence and visibility of a legislative statement may be more effective in achieving our stated aims.

The Minister has agreed:

- **The purposes and principles of sentencing be set out in legislation; and**
- **Sentencers should be required to have regard to the principles and purposes when making sentencing decisions.**

Principles of sentencing

9. Respondents were divided on the suggested principles of sentencing, with only 15 of the 29 who answered this question agreeing with all those set out in the consultation.

10. Those who commented unanimously supported the principles of proportionality, fairness and transparency.

11. The principle that punishment should be used sparingly caused some concern. Respondents felt it was unclear, as "punishment" can have different meanings to different people. While all agreed that every sentence should contain an element of punishment, it was considered important to distinguish between this and incarceration, which should be used sparingly where suitable alternatives exist.

12. A number of alternative suggestions were put forward. These included that sentencing should: be consistent, effective, flexible, robust; respect fundamental rights and freedoms; use a rehabilitative approach; achieve parity (similar sentences for similar offences in similar circumstances); and promote public confidence.

13. The Review Team considered each of these suggestions and concluded that each would already be achieved through the application of the other widely supported principles and purposes put forward in the consultation.

14. A final suggestion was that sentencers should follow victim's wishes in the absence of other over-riding considerations.

15. One of the core concerns of the consultation was to better recognise and give weight to victims' perspectives. This is a sensitive part of the review, with not all victims sharing the same views.

16. The Review Team considered that the principle of fairness should strike a balance between the defendant and the victim's positions, and that neither the victim nor the defendant's wishes should take precedence for the purpose of the fundamental principles of sentencing.

The Minister has agreed:

- **The principles of sentencing should be that it is: proportionate; fair; and transparent.**

Purposes of sentencing

17. Of the 26 respondents who answered this question, 15 supported the proposed purposes of sentencing.

18. An important over-riding need to maintain judicial discretion was again highlighted, and some respondents questioned the practicality of achieving such aspirational purposes.

19. A common theme was that sentencing should be used to prevent future offending and harm, again focussing on the impact on victims, and, where possible, to restore or provide for reparation.

20. Various points were made, offering varying degrees of support for each of the proposed purposes, with much discussion of the meaning of each.

21. One respondent challenged the use of the term "punishment", preferring the concept of "redress" indicating benefit to victims, the offender and society more widely. Other suggested purposes were restoration and denunciation – one respondent considered it important to express disapproval of offending behaviour.

22. The criminal justice system is working hard to change the narrative around sentencing, and move away from the seemingly constant call for "heavier sentences". However, the Review Team recognised that punishment and deterrence remain important aspects of sentencing.

23. While concerns about the concept of punishment were acknowledged, particularly among the restorative justice supporters, the Review Team did not consider that a statement of the purposes of sentencing which did not include punishment would be generally accepted.

24. As regards deterrence, there appears to be a disconnect between society's perception of how sentencing should be used to deter and the effective use of sentencing. As illustrated by responses to the crime survey, the majority of respondents considered that longer sentences were the answer to reducing offending rates.

25. However, international research shows that the level of sentence available generally does not have a significant impact on a person's decision whether to commit the offence or not. Many offences are committed without significant pre-meditation and risk assessment on the offender's behalf. Where an offence is planned, research suggests it is the risk of being caught, rather than the likely sentence that influences decisions.

26. In keeping with the Programme for Government, one of the Department's key aims is to have a safe society, and one way to achieve this is by reducing (re)offending. The Review Team considered this can best be achieved through the development of sentences that aim to address behaviour, and consequently reduce reoffending. Accordingly, deterrence is seen as an important purpose of sentencing, albeit perhaps not in the way people traditionally expect.

27. The concepts of redress and restoration closely align with the proposed purpose of "reparation" included in the consultation. The Review Team considered that the term "reparation" adequately reflects the underlying intention.

28. It was also considered that an element of denunciation can be recognised in the concept of punishment, and should be reflected in a definition of the term if used in legislation.

The Minister has agreed:

- **The purposes of sentencing should be punishment, protection of the public, deterrence, rehabilitation, and reparation; and**
- **In a statutory definition of these terms, punishment should be defined as appropriately recognising the disapproval of society of the offence in question.**

Chapter 2: Public Perceptions of Sentencing

29. The review recognised that sentences are often seen as being 'too lenient', or considered 'soft' on offenders, leading the public to blame sentencing for crime levels. Yet research shows the challenging nature of sentences for offenders, and that there is little evidence that tougher sentencing helps to rehabilitate offenders or reduce further offending.

Consultation Questions

30. The Review considered the impact of media reporting of high profile and exceptional cases; the barriers to understanding created by both the complex and unfamiliar legal language often used; and the lack of public awareness of the sentencing *process*.

31. It also looked at the important issue of victims' experiences of the criminal justice system, specifically seeking views on how the provision and use of victim impact statements and community impact statements could be improved to assure victims that they have been heard.

Discussion and responses - Communicating with the public

32. Of the 18 written comments received, all but one agreed that outreach and communication between criminal justice organisations and the courts and the public should be strengthened to aid understanding and public confidence.

33. Respondents were supportive of the suggestions made, highlighting in particular the need to work closely and regularly with the media, and give out clear and easily understood information. Our suggestions for a communications plan included:

- publishing judgments or summaries and giving explanations of factors behind sentences to offenders, victims and the press;
- developing, improving and promoting materials designed to inform and educate the wider public on justice matters, with a particular focus on sentencing. For example:
  - A 'jargon buster', to set out simple definitions and explanations of justice and sentencing terminology and language;
  - 'You Be the Judge' type videos, to provide insight and explanation behind court processes and procedures, and the necessary consideration to be taken into account in determining sentences;

- ‘Sentences Explained’, to set out what different sentences are, for example: what are the main community orders; what is a life sentence and how does it operate; how are licence conditions managed; and

- Publishing crime data in accessible language and, where possible, explaining trends and what justice is doing to address specific crime types.

34. A number of further specific suggestions along similar lines were received, the majority of which could be considered as part of an administrative programme of outreach and communication which could be developed in conjunction with criminal justice partners. Some may correlate with the work of the Department’s Victims and Witnesses Branch and the proposed Victims and Witnesses Strategy. They included:

- outreach to older people and other focus groups;
- use of different communications approaches for different audiences;
- online interactive forums;
- television advertising;
- engagement with and training of the voluntary sector and those specialist services who work with victims, survivors and offenders;
- the establishment of a multi-agency sentencing communications group to develop and promote a shared narrative;
- briefings with elected representatives;
- media briefings;
- reporting stories of success;
- positive engagement with schools;
- providing information on what works (e.g. the high cost of incarceration compared with the cost and effectiveness of community sentencing);
- keeping victims informed throughout the process (via PBNI, Victim Support and other victim services); and
- adopting existing guidelines developed for media engagement elsewhere.

35. In addition, broadcasting court proceedings and imposing a duty on judiciary to explain sentences were suggested. Neither of these is a novel suggestion:

- there is limited provision for proceedings in the Supreme Court to be broadcast, although the broadcast of Northern Ireland court proceedings has previously been considered and discounted; and
- there are a number of instances where a court is required by statute to give reasons for a particular decision.

The Minister has agreed:

- **A multi-agency working group be established to develop and implement an administrative programme of engagement taking into account the review proposals and other suggestions made;**
- **Consideration of victim centred recommendations should be taken forward, engaging in particular with the DoJ chaired Victims and Witnesses Steering Group in its development and implementation of the victims and witnesses strategy, and inputting to the development of the "My Justice Journey" video; and**
- **The Review Team engages with judiciary and Northern Ireland Courts and Tribunals Service to re-explore the potential for broadcasting court proceedings and requiring judges to explain sentences.**

Discussion and responses - Improving victim personal statements and community impact statements

36. There were 25 responses on these issues, with the majority considering more should be done to raise awareness of both types of statement, particularly in the lower courts.

37. A strong preference in favour of allowing victims to decide whether they wish to have their victim statement read out in court, or wish to address the court personally was reported and it was felt important that judges should acknowledge any statements to assure victims that their views are being considered.

38. A number of respondents also lobbied for the victim's views to be an influential part of the sentencing decision.

39. Some shortcomings of the victim personal statement were identified, including a concern over the ability to assess their veracity and accuracy.

The Minister has agreed:

- **The issues raised should be taken forward in conjunction with the Department's Victims and Witnesses Branch, engaging in particular with the Victims and Witnesses Steering Group in its development and implementation of the victims and witnesses strategy; and inputting to the development of the "My Justice Journey" video.**

Chapter 3: Sentencing Guidance

40. This chapter explored respondents' views on the different types of guidance available to the courts to assist with sentencing, how the appropriate sentence is or should be produced and whether guidance should be followed, or considered by the courts in each case. It also sought views on the creation of a specific body or organisation responsible for such guidance, and what its role and membership should be.

41. The guideline cases recognise that this sentencing task is fact-specific and not a mathematical exercise. Sentencing judges are expected to have regard to the guidance available and a judgment should explain how the guidance was applied or why it was considered appropriate or just to differentiate from the guideline case.

42. The number of actual respondents covering these questions did not exceed 19 and for many questions it was fewer. Most interest focussed on the statutory duty that should be placed on sentencing judges in respect of sentencing guidelines.

Developments since Review completed

43. Since the consultation was completed there have been some developments across the common law based justice systems included in the initial review. Some have potential to inform the choices made for addressing public concerns expressed about perceived leniency, lack of consistency or transparency in sentencing in Northern Ireland.

44. A major development was the establishment of a Judicial Council in December 2019 for the Republic of Ireland. The four main pillars of the Judicial Council's remit are to achieve excellence in the performance of judicial functions, high standards of conduct among Judges, an independent Judiciary, and public confidence in the judiciary and in the administration of justice. The Council is an independent body whose members are all of the judges in Ireland and who constitute a separate and independent branch of Government.

45. The Council has established a number of committees including a Sentencing Guidelines Committee.[1] The Sentencing Guidelines and Information Committee was established in July 2020. Membership is composed of eight judicial members[2] and five lay members (for a four year term) appointed by Government.

46. The appointments were made following an independent Public Appointments Services selection process. The lay members include a retired Director of the Irish

[1] The other committees are the Judicial Studies Committee and Judicial Support and Welfare Committee (10th February 2020). The Judicial Support Committees for the five judicial tiers is to be established by 31st March 2020. The Personal Injuries Guidelines Committee (due by 28th April 2020) and Judicial Conduct Committee: (30th June 2020).

[2] The judicial members are nominated by the Chief Justice and include one judge from each of the 5 court tiers or jurisdiction.

Probation Service[3], a Retired Garda Assistant Commissioner[4], 2 legal academics[5] and the current Senior Assistant Director of the Public Prosecution Service for Northern Ireland.[6]

47. The establishment of a Sentencing Guideline Council for Victoria, Australia, is still awaited despite the consultation process during 2018. A recent visit to the Sentencing Advisory Council's website disclosed that its research continues to be widely cited in a variety of reports, peer-reviewed journals and judicial decisions. The benefit of its role in conducting and providing research both to courts, where it can assist in case law developments[7], and policy-makers, providing them with the information required to pursue sentencing reforms grounded on evidence, can be gleaned from its annual reports.

48. However, it is clear that, unlike its UK counterpart, there will not be judicial membership of any sentencing guideline council established. The Supreme Court for Victoria strongly opposed such a development, considering it undermined the independence of the judiciary. The appointment of retired members of the judiciary is the more likely option.

49. While the Scottish Sentencing Council still has only one published guideline, work has continued on four others. Two have been consulted on but are not yet finalised. The process is slow, taking up to 18 months for preparation of a draft guideline for consultation, and a further lengthy period from closure of the consultation to finalising the guideline, although this may be impacted by Covid.

50. The Sentencing Council for England and Wales continued to publish new guidelines and consult on draft guidelines throughout this period. A recent development relates to a systemic data collection exercise in the magistrates' courts regarding the factors playing into sentencing for the offence of shop lifting.

[3] Mr. Vivian Geiran;
[4] Michael O'Sullivan
[5] Dr. Diarmuid Griffin and Dr. Sinéad Ring
[6] Marianne O'Kane
[7] A development in case law was the 2018 Court of Appeal decision, concerning a 2017 High Court decision addressing sentencing for incest which indicated that while important to treat like cases alike, current sentencing practices are 'just one factor' to take into account and should not anchor sentencing practices to inadequately low levels. The Court of Appeal not only overturned all past case law suggesting that inadequate sentencing practices should be increased incrementally, but affirmed not only should courts immediately uplift sentencing practices where they have been declared to be too low but that approach applies to all offences for which an uplift has been declared.

51. The recent White Paper "A smarter approach to Sentencing" acknowledged the role the Sentencing Council in ensuring that sentences set by the law are properly and consistently considered. The government indicated that its intention to retain judicial discretion, and that the ability to impose the sentence judiciary determine is warranted.

Consultation Questions – Power of the Court of Appeal to issue guideline judgments

52. The consultation asked:

- Should the power and remit of the Northern Ireland Court of Appeal to issue a guideline judgment be established in legislation?
- Should the Northern Ireland Court of Appeal be required by statute to consider relevant information on sentencing before issuing a guideline judgment?

Discussion and responses

53. There was strong support amongst respondents for establishing in legislation the role of the Northern Ireland Court of Appeal (NICA) for making guideline judgments. There was less consensus on the issue of whether the Court of Appeal should be required to take account of relevant sentencing information as part of a guideline appeal case. This was the only specific additional task or requirement included in the public consultation.

54. The Bar Council and Public Prosecution Service (PPSNI) perceived legislating for NICA to provide guideline judgments as beneficial while the Law Society saw no need for this provision. The deficiencies highlighted in the consultation document of relying on guideline judgments, in particular fact specific and the inability to refresh guideline cases unless or until a suitable appeal arises before the court, were emphasised in the PPSNI response.

55. Both legal professions opposed the Appeal Court being required to take account of other relevant material, although the relevance of such material when creating a sentencing guideline was acknowledged. There is no equivalent or similar provision within the nearest neighbouring jurisdictions.

56. The report which established the LCJSG as a sentencing guideline mechanism included an observation that guideline judgments might arise "where statistical evidence suggest that previous guidance is no longer appropriate or requires adjustment".[8] This suggests that the judiciary may be open to receiving statistical evidence or representations based upon such material where it could be relevant to the appeal before the court. However the opposition expressed by practitioners can be expected to arise if, or when, such material is sought to be introduced.

[8] 'Monitoring and developing sentencing guidance in Northern Ireland', A report to the Lord Chief Justice from the Sentencing Working Group 23 June 2012, page 6, paragraph 3.1.

57. The Review consultation document highlighted some additional features that exist in other common law jurisdictions. These include the NICA being obliged to allow the prosecuting and legal aid authorities to make representations before issuing a guideline judgment. In one non UK jurisdiction a sentencing guidance body is empowered to provide to the Court of Appeal a written view on whether a guideline judgment is required, and that Court of Appeal is required to have regard to the view expressed. The responses received indicate that there may be advocacy groups who might wish to engage with the NICA on specific offences or category of offences.

58. It is proposed that engagement should be conducted at the behest of the Attorney General or the PPS, where they conclude that it is appropriate in the interests of justice. It is proposed that the NICA would have a discretion on whether to receive such representation and the weight which should be attached to it.

59. Views on these matters were not sought in the public consultation exercise. Firstly the Review Team wished to avoid raising an inaccurate perception that a decision had already been made to establish in legislation the remit of the Court of Appeal for guideline judgements or to establish a different sentencing guideline mechanism. Secondly similar statutory provisions do not exist within the United Kingdom.

60. At least one respondent noted the possible benefit of a statutory mechanism for a prosecuting authority to request the issue of a guideline judgment, rather than awaiting a suitable case for challenge. The analysis of current guideline cases indicates that statutory provision is a common source for guideline cases.

The Minister has agreed the following be set in legislation:

- **the remit of the Northern Ireland Court of Appeal to provide guideline judgments or review guideline judgments, including a power for the Court of Appeal to identify and issue such judgments as the need arises or for specific offences or categories of offence;**
- **power for the Attorney General or Director of Public Prosecutions to apply for a guideline judgment;**
- **the specific persons or bodies the Court should consider hearing from in regard to the need for a guideline judgment or its review;**
- **potential contents of a guideline judgment; and**
- **power for the Court of Appeal to take account of relevant information on sentencing where it considers that is warranted.**

Consultation Questions – Sentencing guidance mechanism

61. The consultation asked:

- Should a sentencing guidance mechanism be established that builds on the current arrangements, namely, guideline judgments and the work of the Sentencing Group?
- Should the membership of such a sentencing mechanism include criminal justice stakeholders?
- Should non-judicial members of a sentencing guidance mechanism compete for selection based on their relevant expertise, knowledge and skills?

Discussion and responses

62. On the current sentencing guidance mechanism, a substantial majority favoured improving current arrangements. Many were dissatisfied with the current level of transparency in sentencing. Not all believed that the improvements required legislation or the creation of a body akin to the England and Wales Sentencing Council.

63. There is no evidence to counter the argument that perceived deficiencies and weaknesses identified in the existing sentencing guidance mechanism cannot be mitigated through engagement with the Lord Chief Justice and establishing alternative arrangements for research and analysis work on sentencing.

64. While not all respondents favoured legislation to build on the work of the LCJSG, the majority favoured establishing a mechanism, to conduct analysis and research on (a) sentences imposed and (b) guidelines and their impact.

65. There was a desire to see increased outreach to the wider public, for example seeking a public view on guidelines, as well as a wider range of non-judicial membership within any sentencing guidance mechanism.

66. The creation of a new sentencing guideline mechanism is connected to the 2012 Ministerial commitment to conduct a review of the Lord Chief Justice Sentencing Group (LCJSG) to assess its effectiveness as a sentencing mechanism. This review, which would have to be conducted in accordance with the principles set down in the Cabinet Office guidance on Tailored Reviews is still to be progressed.

67. The outstanding elements of the review of the LCJSG include engagement with stakeholders and an element of independent “critical friend” to provide rigor to the review and recommendations. In the most recent tailored review of the Sentencing Council for England and Wales, that independent element was provided by Philip Golding the Chief

Executive of the Law Commission, and in the review of the Criminal Cases Review Commission by a "challenge panel".[9]

68. Both these elements had been postponed until completion of the public consultation. Given the ongoing pressures to achieve recovery of the criminal justice system in the wake of Covid, it is difficult to justify prioritising this outstanding element of the review at this time.

69. The establishment of an independent organisation such as that established in Scotland in 2015 would be accompanied by a significant cost[10] which would have to be justified within a very different financial situation for public expenditure from that existing when the consultation took place.

70. An added complication is that responses from Northern Ireland's political parties[11] on the consultation show a lack of consensus on the need for a sentencing guidance mechanism, such as a sentencing council. They also expressed divergent views on the involvement of criminal justice stakeholders in such a council. However, the role of a sentencing guidance mechanism has been linked (by the Northern Ireland Court of Appeal, the Lord Chief Justice and various academics) with improving transparency, consistency of approach and public confidence in sentencing. The LCJSG objectives include providing greater transparency in sentencing practice, enhancing community engagement, promoting public confidence and consistency in sentencing.

71. The document which led to the establishment of the LCJSG indicated that these objectives would not be the product of a single source but multiple factors which contribute to improving consistency in sentencing. Those include guideline judgments along with judicial training: statistics on sentencing; and the role of Director of Public Prosecutions in directing undue leniency referrals to the Court of Appeal.

72. At this point, there is insufficient available evidence to support the case for a sentencing guideline body akin to those established in Scotland or England and Wales.

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[9] The challenge panel consisted of the Chief Executive of the Parole Board, Martin Jones, Nicola Hewer, Director, Family and Criminal Justice Policy (MoJ), Director of Campaigns from The Howard League for Penal Reform, Andrew Neilson and Alison Wedge the Senior Responsible Officer and Head of the ALB Centre of Expertise (MoJ).

[10] The Scottish Sentencing Council was established as a body corporate but even with all support stemming from the Scottish Court and Tribunal service (SCTS), and the IT equipment and support, rent, telephones etc. being a subsumed expense within the Court service, the secretariat staffing costs for that organisation, by March 2018 were about £300,000. This figure does not include costs re services and accommodation as more difficult to quantify as relate to shared floor or rooms within SCTS building. The SCTS service did receive an uplift on their budget which reflects the level of bid submitted by Council. The Council Secretariat submits a bid for SCTS board to consider. There is an allocated £200,000 for direct expenditure but the small number of mainly "expert" staff within their fields means there is a gap or inability to cover for missing staff. The SCTE essentially hired staff to support the work of the Council.

[11] Only two political parties furnished responses – Official Unionist Party and Sinn Féin.

However, it is notable that the stated objectives for the LCJSG align with the desired outcomes expressed during the consultation.

The Minister has agreed to:

- **building on the current administrative sentencing guidance mechanism to address the matters raised by consultees which could improve transparency, understanding and confidence in sentencing in Northern Ireland.**

Consultation Questions – compliance with guidance

73. The consultation asked:

- Should a statutory duty be placed on relevant sentencing judges requiring them to have regard to sentencing guidelines; or to follow sentencing guidelines?
- Should judges have power to depart from sentencing guidelines in the interests of justice?
- Should judges be required to provide reasons for departing from sentencing guidelines?

Consultation discussion and responses

74. Judicial discretion is an essential element of judicial independence in a democracy and the public or political debate generally concerns how much discretion is appropriate. The responses received indicated a clear majority in favour of creating a statutory duty accompanied by a judicial discretion to deviate from the guideline in the interests of justice.

75. There was a majority in favour of the obligation to "have regard". Some respondents, in the interests of transparency, wished to see the judiciary being required to provide reasons when deviating from a guideline "in the interests of justice". The recent legislation in the Republic of Ireland permits the judiciary to derogate from guidelines where satisfied it is in the interests of justice and reasons are provided. Requiring the provision of reasons for derogating from a guideline could reduce the risk of this statutory duty creating an unwarranted additional avenue of appeal by offenders.

76. While criminal offences will have maximum penalties set by Parliament, a variety of factors contribute to the final sentence handed down to an individual in court. A single offence may attract a wide range of penalties depending on the circumstances of the case. In Northern Ireland the LCJSG currently only provides guidelines for offences being dealt with in the magistrates' courts while the Crown Court generally obtain their guidance from Northern Ireland Court of Appeal guideline case.

The Minister has agreed:

- **a statutory duty be placed on the relevant judiciary**[12] **to require them to "have regard" to sentencing guidelines or relevant guideline cases unless satisfied that to do so would be contrary to the interests of justice; and**

- **the court should be required to give its reasons for departing from relevant guidance.**

[12] Currently there are only magistrates' courts guidelines issued by the Lord Chief Justice Sentencing Group.

Chapter 4: Tariff Setting for Murder

77. This chapter explained the current system by which, a Judge upon a conviction for murder must impose a mandatory life sentence upon the offender and then later conducts a "tariff" hearing which determines the minimum period of custody the offender must be detained in prison before being considered for release on life licence by the Parole Commissioners.

78. The current starting points for determining a tariff as well as tariffs relating to specific categories of murder cases in Northern Ireland were set out, and the approach to starting points adopted in other similar common law jurisdictions was detailed.

79. There are guideline cases provided by Northern Ireland Court of Appeal (NICA), some of which were detailed in the consultation. The Director of Public Prosecutions can refer a "tariff"[13] to the Court of Appeal for undue leniency, as can an offender where they consider that the tariff imposed is "wrong in law".

80. The guideline cases recognise that this sentencing task is fact specific and not a mathematical exercise. Sentencing judges are expected to have regard to the guidance available in determining the tariff and their judgment on tariff should explain how the tariff was reached.

81. Statutory set or fixed tariffs, including the provisions in Republic of Ireland, were discussed in the Consultation document. However, statutory set tariffs were excluded from the Review as they were deemed to unduly fetter judicial discretion.[14]

Consultation Questions

82. The Review questions were essentially concerned with 2 choices:

- whether the process should remain unchanged; or
- to legislate to provide for a more regulated approach to tariff setting.

Discussion and responses

83. The numbers of respondents covering these questions did not exceed 15 and for many questions there were fewer. There was a minimal difference of view on the adequacy of the current starting points used by the courts but support was expressed for legislating for statutory starting points. A very small number referred consistently to the England and Wales approach.

84. In relation to different starting points for different category of victims, responses showed a clear division of views. Those opposing variety of starting points based on a

[13] The tariff represents the appropriate sentence for retribution and deterrence and is the length of time the prisoner will serve before his case is sent to the Life Sentence Review Commissioners who will then assess his suitability for release on the basis of risk.

[14] Sentencing Review Northern Ireland: A Public Consultation – paragraph 4.20

specific class of murder or victim noted the courts' use of aggravating factors currently to reflect such harmful acts of violence. Some clearly recorded their opposition to any different starting points depending on the victim as felt that all life should be valued equally. The majority of those who favoured a different starting point for specific victims advocated 30 years to be that starting point.

85. In response to the question of including other victims over and above the three categories expressly identified in the consultation a lesser percentage answered in the affirmative.[15] Those who garnered a mention included: victims killed through persons driving under the influence of alcohol or drugs; older, vulnerable (those with a serious learning difficulty) or disabled people; rape victims; domestic violence victims; and victims with a protected characteristic, provided that was the motivation.

86. The final issue raised in the area of tariff setting for murder concerned the existing Whole Life Tariff (WLT). This sentence has been used rarely in this jurisdiction. Views were sought on whether, if legislating for statutory tariff starting points, WLTs should be retained or replaced with either a tariff of 30 years or a tariff in excess of 30 years. The responses were equally balanced between retaining or replacing the whole life tariff. The comments provided generally reflected that balance.

87. More than one respondent favoured retention or maintaining the current arrangements, preferring to rely on judiciary selecting the appropriate tariff on a case by case basis. Others favoured replacing it with a specific tariff but wished for the tariff to be higher than 30 years. Some favoured it as a tariff for specific offences, such as perpetrators of domestic violence, while others preferred to see WLT replaced with a 50 to 100 years tariff so offender would die in prison. A number expressed the view that the WLT is at odds with the core principles of society and undermines the rehabilitative role that is supposed to exist alongside imprisonment.

Developments since Review completed

88. Since the consultation was completed there has been considerable media and political interest in the mandatory tariff available in the Republic of Ireland upon conviction for the intentional murder of a Garda officer. The Assembly debate on sentencing for assaults on frontline workers, also touched upon that sentence. The debate provided an opportunity to draw attention to the similarity in the likely sentences, in practice, between both jurisdictions. There is a 30 year NICA guideline tariff for such incidents in Northern Ireland. There are additional proofs required for this Irish very specific offence and the mandatory 40 years is accompanied by up to 25% discount available for good behaviour.

89. Further developments in England and Wales were included in the September 2020 White paper "A smarter approach to Sentencing". The UK Government announced its intention to bring the premeditated murder of a child within the Whole Life

[15] 40% in favour to 60% against including additional categories of victims.

Order (WLO) statutory starting point. The murder of a child accompanied by sexual or sadistic motivation is already within that category. Judges will still retain discretion to depart from the statutory tariff starting point and impose a minimum tariff considered to be the most appropriate and just sentence.

90. It is also proposed that the general exclusion of adults under 21 years, from a WLO is to be retained, but a narrow and focused change will be introduced. This change will permit judges the option of imposing a WLO for these offenders (aged 18 to 20) in "extremely exceptional" cases. The criteria for such circumstances awaits elaboration.

91. The Northern Ireland Court of Appeal in April 2020 issued a guideline case which considered the Whole Life Tariff in conjunction with the calculation of discount for "assisting police" under the statutory framework established within the Serious Organised Crime and Police Act 2005.[16]

92. The Appeal Court reaffirmed the guidance provided in R v Hamilton [2008] NICA 27 which established the sentencing judge must be satisfied: (i) to the criminal burden of proof of any aggravating factors taken account of; (ii) after all material factors considered that a "very lengthy finite term…is not sufficiently severe;" and (iii) there is no doubt the offender needs to be kept in prison for life.

93. In addition to these requirements the NICA clarified that it was not acceptable for a sentencing judge to take account of whether or not a WLT had previously been imposed for the category of offences. The Appeal Court indicated that where there were mitigating factors which moderated the sentence downwards but the offending conduct fell into the WLT category, then the appropriate minimum terms before mitigation factors are applied "will normally be 40 years".

Discussion and recommendations

94. Overall the consultation responses suggested the desire to see legislation on this aspect of sentencing was higher than those who preferred to remain solely reliant on the common law. There were a number who considered the Northern Ireland starting points should at least align with those in England and Wales. However, this would be difficult as the Northern Ireland current lowest starting points were indicated by majority to be inadequate yet they exist for those adults in England and Wales who are under the age of 21.

95. The aim of the Review Team was to align the options against the agreed purposes and principles of sentencing. There is an equal importance for public confidence that the process used by judges is perceived as "fair and transparent and does not appear to treat people differently without good reason".

[16] The Queen v Gary Haggarty; Director of Public Prosecutions Appeal [2020] NICA 22;

96. The Consultation document in other chapters recorded that "while discretion in sentencing is essential to judicial independence", sentencing statues and guidance already exist with the aim to improve transparency and a consistency of approach when judging offences of similar magnitude.

97. Guidance takes different forms in different jurisdictions but includes sentencing statutes, case law, sentencing guideline organisations and Sentencing information systems.

Consultation Questions

98. The consultation asked:

- Are current starting points adequate?
- If not should legislation for different starting points be introduced for Northern Ireland?
- If so what should they be?
- Should the Whole Life Tariff be retained or replaced; and
- If replaced, what would be the replacement tariff?

Discussion and responses

99. There was a small majority which considered the current starting points as inadequate. The same message of insufficient transparency of the sentencing process was received in this area as in other areas covered by this Review. In some ways this made the decision to legislate for the base statutory starting points relatively straightforward. However, proposing what the legislation should contain was more complicated.

100. There was a clear majority in the responses for establishing starting points in legislation with some also wishing to see aggravating and mitigating factors included. The majority view was that at least 15 years should be the basic starting point where no other aggravating factors exist.

101. In Scotland the relevant appeal court rejected the suggestion that the starting point for the punishment part in most murder cases was 12 years.[17] In the same case the court endorsed earlier case law that indicated that certain murder cases might be of such gravity that the punishment part should be approximately 20 years, such as where the victim was a child or a police officer acting in the course of his or her duty, or where a firearm was used.

[17] HM Advocate v Boyle and Others, 2002 SCCR 1036, paragraph 14

102. The current approach in this jurisdiction has been to take account of the youth or immaturity of an offender as a mitigating factor relevant to the offender rather than the offence. Age of an offender is also included in England and Wales statute as a mitigating factor for the offence.

103. The choices considered included: align with England and Wales on all aspects; align with Northern Ireland current case law without modifying the case law to reflect England and Wales distinction for adults under the age of 21; or adopt a less stringent categorisation of the multiple tier of tariff starting points as in England and Wales, moving to a three tier arrangement which reflects existing Northern Ireland guideline cases.

104. The benefit of placing starting points on a statutory footing is that this would allow for restricting the 12 years starting point solely to adults under the age of 21.

105. Including a proviso that the judge may not apply the starting point if it does not seem appropriate or just would maintain a substantial discretion and flexibility for the judge once an appropriate starting point is identified. The judge could still reflect on all the circumstances of each case and the offender to determine the appropriate and just sentence. The usual mitigating factor of the age of the offender could be disapplied where it had played a part in the decision of the base starting point – to avoid double impact of the youth of the offender.

106. As reflected in the majority of responses in favour of legislation and seeking an increase in tariffs from the current position, legislation should increase the current basic starting point for all adults aged 21 plus. The Review Team considered this could become 15 years where there were no aggravating factors, directly aligning with England and Wales legislation as well as Scottish case law.

107. Legislation could also facilitate, as some respondents proposed, aggravating factors which are currently reflected in guideline cases. However, the legislative approach in England and Wales, which has multiple factors recorded in statute, was not seen as desirable. Recording multiple aggravating and mitigating factors in statute risks producing an undesirable rigidity of approach. It could also invite an increase in appeals on the grounds that something indicated by the judge as an aggravating was not set down in statute.

108. The current system facilitates the sentencing judge in identifying any or all factors which they consider, in the factual circumstances presented to them, aggravated the offence. There have been academic critiques of the Criminal Justice Act 2003 provisions and in particular the conspicuous absence of explanation and rationale about

what factors warrant a whole life tariff (WLT) by the Courts where two or more factors exist that warrant a 30 year term.[18]

109. Some academics and practitioners consider that the inter relationship between the various categories including a multiple victim murder (without additional aggravating factors[19]) being placed in the same category as the murder of a single police officer is questionable.[20] Others comment that it is difficult to extrapolate from Parliamentary debates on the passage of the Act why a murder perpetrated for an ideological cause points to a WLT[21] unlike the murder of two or more people.

110. A lack of identifiable rationale can also be observed from a review of a number of England Court of Appeal (CA) cases concerning the imposition of a WLT. Against this background, and in an effort to avoid a rigidity of approach, it is proposed that in Northern Ireland we maintain an approach akin to what was available in case law. Legislation would be used to create a more generic higher starting point of 20 years for those factors already identified in case law.[22] This would have the benefit of aligning with Scottish case law for some of those factors. It is also not out of sync with the current starting point (25 years E&W) where knife is not only used by someone to kill but they took it to the scene.

111. In light of the most recent consideration given by the Northern Ireland Court of Appeal in 2020, it is clear the judiciary considers that the WLT does have a role to play even if it may be used in "rare" cases. The judiciary sitting in that case reiterated that the Courts view is that the WLT should only be utilised where there is no doubt that an offender must be kept in prison for the rest of their life. This aligns with England and Wales case law. Since the introduction of Whole Life Orders (WLO) into England and Wales the courts have emphasised that they should be reserved for the few truly exceptionally serious murders.

112. No equivalent to the WLT exists in Scottish law but the law does provide that the punishment part of a life sentence for murder may be any period of years and months even if it is likely that the period will exceed the remainder of the prisoner's life.[23] To date, the longest punishment part given in Scotland is 37 years.

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[18] Barry Mitchell "Identifying and Punishing the More Serious Murders", [2016] Criminal Law Review, Issue 7 pages 467- 477

[19] CJA 2003, Schedule 21 para 5 (2)

[20] B. Mitchell, "Multiple-victim Murder, Multiple Murders and Schedule 21 to the Criminal Justice Act 2003", (2011) 75 (2) Journal of Criminal Law 122.

[21] CJA 2003 Schedule 21 para 4 (2)

[22] Exceptionally high culpability, victim particularly vulnerable, professional killing (planned); political motive or motivated by victim's having any protected characteristic; where the victim's killing was related to sustained history of domestic violence culminating in [insert words from caselaw], where the victim was providing a public service, victim was a child, evidence of sadism or sexual motive, the Murder with a firearm but not directly involved in the shooting.

[23] Section 2 (3A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993

113. One principle established in England and Wales guidelines is that a guilty plea should not lead to a reduction if the case is otherwise sufficiently serious to warrant a WLO.[24] This would have to be mirrored in Northern Ireland for the judiciary to be released from the well-established principle as well as the current provision in Article 33 (1) of the Criminal Justice (NI) Order 1996.

114. Legislating to place flesh on matters which a court should be satisfied upon before imposing such a sentence will increase transparency. The legislation would also provide an opportunity to flesh out those matters which might fall to be considered by a Minister of Justice when deciding to exercise the existing discretionary power which provides the only prospect of release if, and when, a WLT is imposed. Currently, the discretion is exercised to accord with the obligation on public authorities acting in the context of the Human Rights Act 1998, to interpret and apply the relevant legislation in a Convention-compliant way.

115. The power vested in a Minister is to "direct release as being appropriate". There is currently no statutory or administrative guidance within Northern Ireland on what might prompt that power to be exercised. There is guidance published for the exercise of the discretionary power vested in the Secretary of State for Justice to release a prisoner where there are "compassionate grounds".[25] The Review Team considered it appropriate to recommend the introduction of an obligation to consult and publish guidance on the use of the current discretionary power.

The Minister has agreed that legislation be introduced to provide

- **12 years becomes the starting point for adults under the age of 21, unless the judge was satisfied that it was not appropriate or just;**
- **the usual mitigating factor of the age of the offender would not apply where age plays a part in the selected starting point,**
- **15 years becomes the starting point for adults aged 21 and older where there are no aggravating factors;**
- **20 years becomes the starting point for murders with identified exceptional culpability;**
- **exceptional culpability will reflect factors already identified in Northern Ireland case law;**
- **the whole life tariff will be available for "rare and exceptionally serious murders"**

[24] Sentencing Guidelines Council, reduction in Sentence for a Guilty Plea, (2007), para 6.6.
[25] S 30 Crime (Sentences) Act 1997

- **where a whole life tariff is imposed, the judge is required to be satisfied beyond reasonable doubt that the offender must be kept in prison for the rest of their life;**
- **that a guilty plea will not lead to a reduction if the case is otherwise sufficiently serious to warrant a whole life tariff;**
- **an obligation to publish guidance on the power vested in a Minister to "direct release as being appropriate".**

Chapter 5: Unduly Lenient Sentences

116. This chapter explained the current system by which, for a specified list of offences, the Director of Public Prosecutions may refer a sentence which he considers unduly lenient to the Court of Appeal for reconsideration. It noted the piecemeal approach which has been taken in relation to the specified list, resulting in a confusing and inconsistent status quo.

Consultation Questions

117. The consultation asked whether the Director of Public Prosecutions should have the power to refer:

(i) all sentences imposed in the Crown Court (including those imposed in summary cases where the defendant elected for jury trial); or

(ii) all sentences imposed in the Crown Court and sentences for offences with a maximum penalty of 12 months' imprisonment or more when tried in a magistrates' court?

Discussion and responses

118. Eighteen respondents answered this question, with no clear preference emerging.

119. Those who favoured (i) cited consistency, maximum impact and improved confidence in sentencing. To make all Crown Court sentences referable would simplify the current arrangements and make them easier for the public to understand; and it was neither necessary nor desirable to extend the scheme to sentences imposed in the magistrates' courts for the reasons outlined in the consultation document.

120. Respondents were unanimously in favour of additional information being given, noting this should not be restricted to information being given at court where the stressful nature of the proceedings may result in victims not fully taking all the information on board.

121. The unduly lenient sentencing arrangements were devised to provide a safeguard to the public against significant failings in sentencing. They are exercisable only by the Director of Public Prosecutions and, in their current form, are used in a very small number of cases each year.

122. The scope for significant failings in magistrates' courts is limited, as the vast majority of maximum custodial sentences are for 6 months. Only a small number of offences attract maximum sentences of 12 months, and only criminal damage carries a higher possible sentence of 2 years.

123. The Review Team considered that an extension of the arrangements to all Crown Court sentences would result in a consistent approach for those offences considered sufficiently serious to merit trial on indictment. To extend the arrangements to some

magistrates' courts sentences would risk diminishing their purpose and adding to confusion over which offences were included.

The Minister has agreed:

- **The range of sentences that should be referable as being unduly lenient should be extended to include all sentences imposed in the Crown Court; and**
- **The issue of further information being provided about the scheme should be taken forward by the communications working group agreed in Chapter 2.**

Chapter 6: Community Sentencing

124. This chapter aimed to increase awareness of the various community sentences currently available to the courts and of their effectiveness in reducing reoffending, particularly when compared with short custodial sentences.

125. It sought views on the inclusion of restorative and reparative elements, the importance of communicating success, and extending the involvement of judicial and non-justice partners, drawing on the experience of ground-breaking problem solving approaches.

126. Finally it suggested four new community disposals and sought views on the desirability of introducing them.

127. The number of respondents answering the questions ranged from 16 to 23, with responses indicating a high level of support for community sentencing in general. Opinions diverged slightly on the suggested new disposals, and a number of responses qualified support for decisions to be taken on a case by case basis.

Consultation Question

128. The consultation asked;

- Should greater use of community sentences be made by the courts as an alternative to short prison sentences?

Discussion and responses

129. The majority of respondents, 20 out of 23, were in favour of adopting this approach in principle, recognising the limitations and difficulties presented by short prison sentences, and the relative benefits of community sentences. They also recognised that community sentences are not a ‘soft option’, and should be seen as sentences in their own right rather than an alternative to custody.

The Minister has agreed:

- **this level of support and considers this provides a strong foundation for the further development and promotion of community sentences.**

Consultation Question

130. The consultation asked:

- Whether all community orders should include a restorative or reparative element?

Discussion and responses

131. Of the 19 people who responded, 15 agreed, and all those who provided comments were in support of maximising restorative and reparative approaches. However, there was a strong sense that these should not become mandatory: While the victim's voice must be heard, not all cases are suitable for this type of intervention. This was particularly highlighted in the domestic abuse context, where victim participation was warned against. It was recommended that restorative and reparative elements be considered on a case by case basis.

132. The success of the youth courts approach was highlighted, but those working in the youth arena pointed to some difficulties arising from the mandatory inclusion of restorative or reparative elements. Those with experience of the youth courts therefore supported a case by case approach, where professional judgment is deployed to decide on the appropriate elements of a community sentence.

The Minister has agreed:

- **the inclusion of restorative or reparative elements should continue to be a matter for case-by-case decision.**

Consultation Question

133. The consultation asked:

- Whether the public should be made aware of the benefits achieved through unpaid work and reparative activities as a result of community sentences?

Discussion and responses

134. There was wholehearted support for building on work already being taken forward by the Probation Board for Northern Ireland to further develop public messaging and highlight the benefits of community sentencing. Suggestions included clear costs/benefits analysis and public signage at unpaid work locations as well as a Department led communications project or inclusion as a Programme for Government initiative.

135. The Department is concerned by indications from recent experience of crime surveys and media reporting which continue to indicate a public lack of appreciation of the value of community sentencing. This question closely aligns with the public

perceptions chapter where the establishment of a multi-agency working group to develop and implement a programme of engagement has been agreed.

The Minister has agreed:

- **a specific strand of the communications programme will focus on making the public aware of the benefits to communities of unpaid work and reparative activities. This may include impactful victim stories.**

Consultation Question

136. The consultation asked

- Is there value in non-justice agencies becoming involved in the delivery of programmes for use in community sanctions?

Discussion and responses

137. The majority of respondents who provided comments were strongly of the view that useful skills and knowledge from outside the justice system should be harnessed, subject to: safeguards of relevant professional expertise; sufficient resource and choice; and to a justice agency retaining overall monitoring and control.

138. The success of problem solving justice approaches was highlighted. One respondent called for the establishment of a Mental Health Court Liaison Service along with adequate resourcing. Another respondent agreed that it is important to support people through the justice system, but warned against third sector entities being involved in the delivery of sanctions.

139. The Programme for Government recognises the need for multi-disciplinary and cross-sectoral input to achieve the best results.

The Minister recognises the benefits of drawing on expertise provided by non-justice agencies, as has been seen through problem-solving justice work, and accordingly agreed:

- **that non-justice input to community sentence programmes should continue where this can be facilitated and managed effectively.**

Consultation Question

140. The consultation asked

- Should the enhanced combination order be implemented as an alternative to short prison sentences of up to 12 months?

Discussion and responses

141. All those who provided comments were in favour of using properly resourced enhanced combination orders (ECOs), where appropriate, as alternatives to short prison sentences. The positive results of evaluations and consequent improved public confidence in the system were cited in support of this approach.

142. This question did not go so far as to seek views on a presumption against short sentences. That approach has been in place in Scotland where a presumption against sentences of 3 months or less was introduced in 2011. There had been limited evidence of "up-tariffing" following the introduction, and at the time of our sentencing policy consultation consideration was being given to moving to a presumption against sentences of 12 months or less. This amendment has since been effected, but data on its impact as yet is too limited to provide meaningful analysis. This is an area where the Department will maintain a watching brief.

143. ECO pilots continue to roll out and the Department will continue to monitor their success. This is an area which would benefit from deeper understanding and evaluation of benefits.

The Minister has agreed:

- **The continued roll out of the ECO and to consider detailed evaluation of its benefits, both directly on reoffending rates and also the wider societal benefits of the use of this disposal rather than short term prison sentences.**

Consultation Question

144. The consultation asked:

- Would additional judicial involvement during community sentences benefit such orders and promote greater likelihood of change by the offender?

Discussion and responses

145. As with the previous questions, there was a significant level of support for this suggestion, with 15 out of the 16 who responded answering yes. The other offered no view.

146. Problem solving courts have shown the positive impact of continued judicial interest in offenders post-conviction, with high levels of compliance and personal

investment being apparent in case studies. Ongoing evaluation is expected to further support these findings.

147. In addition, the judiciary has seen first-hand the difference this can make and judges are supportive of extending this problem solving approach in cases where their involvement can make a difference.

The Minister has agreed:

- **that opportunities for further judicial involvement are explored and developed where appropriate.**

Consultation Questions - New Community Sentencing Options

148. The consultation asked:

- Should a conditional discharge sentence have the option to include community sanctions, administered by the Probation Board for Northern Ireland and/or a restorative justice element?
- Would a 'structured deferred sentence' be a useful new sentencing option?
- Would a 'supervised suspended sentence' be a useful new sentencing option?

Discussion and responses

149. While more respondents were in support of the proposed new community sentencing options than not, support was not as strong as for the other propositions in this chapter.

150. Respondents identified concerns around: who would be responsible for administering the options, noting that a statutory body would need to retain overall supervision; what the consequence of non-compliance would be; and the potential for confusion arising from an ever increasing menu of fairly similar sentencing options. One respondent was concerned that the addition of community elements to a conditional discharge would change the nature of that disposal which is intended as a simple sentence for very low level offending with no risk of re-offending.

151. On a positive note, the benefit of the ability to tailor sentences more specifically to meet offenders' needs was recognised, and new methods of providing further opportunity for offenders to evaluate their behaviour; address the reasons for offending and in appropriate cases include a restorative element were welcomed.

152. A number of suggestions on the detail of each of the proposed orders were made, including, for the structured deferred sentence, that there should be incentives

for participation such as absolute discharge or a nil entry on the offender's criminal record.

153. The option of an adult restorative justice sentence was suggested, which would ensure the victim's needs would be taken into consideration.

154. The Review Team met with key stakeholders to gain further understanding of the issues raised. The Team considers that the addition of such additional disposals would provide courts with wider options to help address the causes of offending leading to reduced reoffending and increased public confidence in the criminal justice system. The Team considers further detailed consideration of the exact mechanics of each of these options together with full cost modelling should be carried out before definite commitments are given.

The Minister has agreed:

- **that further modelling work, with the assistance of a key stakeholder working group, should be carried out before definite commitments to introduce any of these options are given.**

Consultation Question

155. The consultation asked:

- Would a diversionary type community intervention be appropriate for minor first time offences for adults?

Discussion and responses

156. Of the 16 respondents who answered this question 12 were in favour of such an approach. Many recognised the disproportionate long term impact of a criminal record for very low level offending, and drew similarities with youth justice where a similar option already exists.

157. Victims' views were raised as an issue to be recognised, with a suggestion that reasons should be given where this option was selected.

158. PSNI currently uses the non-statutory Community Resolution Notice or the statutory Penalty Notice for Disorder to address lower level offences as alternatives to reporting for prosecution. Both are limited to specified offences, but not necessarily first time offending. A diversionary community intervention with a legislative basis would provide a further option in suitable cases.

159. Recognising that further development and scoping work will be required, the Review Team considers options to address very low level offending without incurring a criminal record is in line with the direction of travel of other Departmental work, including the current review of rehabilitation of offenders arrangements.

The Minister has agreed:

- **This option will be further developed, taking into account other early intervention work being taken forward by the Department.**

Chapter 7: Hate Crime

160. This chapter examined current legislation and the practice of sentencing for hate crimes as defined in the Criminal Justice (No.2) (Northern Ireland) Order 2004. Under that legislation an increased sentence may be imposed if there is evidence of the offence being motivated by hatred. However, a 2013 report of the Northern Ireland Human Rights Commission found few cases recorded as receiving an enhanced sentence.

Consultation Questions

161. The consultation asked questions about how hate crimes could be better recognised and reflected in sentencing.

Discussion and responses

162. Judge Marrinan's final independent report on his review of hate crime legislation was published late in 2020, following public consultation and outreach events. The report made a number of recommendations in relation to a new hate crime model.

163. At present, legislation makes provision for a sentence to be increased where it is proven that the basic offence was motivated by hostility against a protected characteristic. The Sentencing Review considered the application and transparency of this model, exploring questions around the prosecutor's duty to flag that hostility was a factor; whether the court should be under a duty to record the aggravation; and the need for a requirement to explain how the sentence was affected.

164. A number of the questions posed in the independent review cross over with those asked in the sentencing consultation. Relevant recommendations by Judge Marrinan include:

- Statutory aggravations should be added to all existing offences in Northern Ireland, meaning any criminal offence could be charged in its aggravated form (Rec 2);
- If Rec 2 is accepted, the enhanced sentencing provisions would be repealed and replaced by suitable provisions (Rec 3)
- If Rec 2 and 3 are accepted, no increase in maximum sentencing for any criminal offence is required (Rec 4)
- Consequences of Aggravation – where it is proven the offence was aggravated, the court must state this on conviction; record the conviction in a way that shows the offence is aggravated; in determining the sentence, treat this offence as an aggravating factor that increases the seriousness of the offence; state where sentence is different from what court would have imposed if offence not aggravated (Rec 8).

165. A number of respondents opted not to respond to the sentencing consultation in this area, preferring to respond to the Judge's paper.

166. Judge Marrinan's consultation generated 247 responses, considerably more than the 19-24 responses to the hate crime questions posed in the sentencing review.

167. In light of the overall correlation between the 2 reviews on this point, and the significantly larger response the independent review generated, the Review Team considered the best way forward was to work with colleagues dealing with the recommendations of Judge Marrinan's review in respect of this chapter.

The Minister has agreed:

- **The Review Team will work with DoJ colleagues dealing with Judge Marrinan's review in respect of this chapter.**

Chapter 8: Attacks on Frontline Public Services

168. The Review recognised the existing offences of assault on police, fire and rescue and ambulance workers, each of which carries a maximum 6 month sentence in the magistrates' courts or 2 years in the Crown Court, and noted the wider offences of assault on "emergency workers" elsewhere in the UK and Ireland. In addition it examined the generic assault offences and their penalties (including common assault, assault occasioning actual bodily harm and grievous bodily harm) found in the Offences Against the Person Act 1861.

169. The Review noted that the original intent of the offence of assault on police officers was to carry a higher maximum sentence than that for common assault. However, due to subsequent amendments to the 1861 Act, the penalties for common assault and for the occupation-specific assault offences are now the same. Earlier Assembly attempts to create further occupation-specific assault offences (particularly for healthcare workers) were noted.

Consultation Questions

170. The consultation asked whether the existing offences, their sentences and sentencing guidelines are adequate to deal with assaults on frontline public servants, and whether any further categories of public worker should be identified for special recognition.

Discussion and responses

171. No strong preference emerged on the question of whether the current range of offences and guidelines is sufficient. However, of the 16 respondents who answered the question whether the maximum penalty in the magistrates' courts should be increased to 12 months, 11 answered yes.

172. A recent change in England and Wales created a statutory aggravating factor where a person is charged with a serious assault outside the limits of the occupation-specific offences, and the victim is an emergency worker. While sentencing guidance already makes this an aggravating factor (both here and in England and Wales), placing the matter in statute was considered to add clarity and further underline the importance attached to addressing this type of assault.

173. This model was supported for introduction in Northern Ireland by the majority of respondents, along with a requirement for the court to acknowledge and record the aggravation and the impact it has on the sentence imposed.

174. The Review Team noted that a fresh consultation was underway in England and Wales to increase the maximum available sentence for common assault on emergency workers to 2 years imprisonment, matching the Crown Court maximum already available in Northern Ireland for common assault and the occupation-specific offences.

175. It was noted that the maximum sentences currently in place allow no distinction in sentencing terms from the general offence of common assault in Northern Ireland. It is believed that the offence of assault on a police officer (the first of the occupation-specific offences to be created) was originally intended to carry a higher maximum than common assault, to reflect the nature of emergency worker's duties. However, that uplift was lost following subsequent amendments to the Offences Against the Person Act 1861.

176. Statistics showed that the maximum 6 month sentence on summary conviction is imposed with sufficient regularity to suggest that the magistrates' courts would welcome the ability to impose longer sentences in these cases. In contrast, there were no instances of the full 2 year sentence being imposed in the Crown Court, suggesting that the current sentencing range in that Court is adequate.

177. The majority of responses to the consultation reflected calls in the Assembly for tougher sentences for this type of offending. As the magistrates' courts do, from time to time, impose the full 6 month sentence it seems likely that the judiciary would make use of an increase to the summary limit. As the normal limit on the sentencing jurisdiction of the magistrates' courts is 6 months, any increase would signal that the Assembly takes this type of offending very seriously.

178. The Review Team considered that the creation of a statutory aggravating factor may not make a practical difference to the sentences imposed by the courts, as they are already obliged to consider sentencing guidance. However, placing an obligation in statute can strengthen public messaging, improve transparency and consistency, and better recognise the concerns of the public.

179. It was noted that where a statutory aggravation is created, a requirement for the court to publicly acknowledge the aggravation and the impact this had on the sentence can help the offender understand the sentence; can increase public confidence in the provision; and can assist the criminal justice system in recognising repeat offenders.

The Minister has agreed:

- **The maximum sentence available for assault on front line workers on summary conviction be increased from 6 months to 12 months;**

- **The fact that the victim of a more serious assault was a front line worker should become a statutory aggravating factor; and**

- **Where a statutory aggravating factor applies, the court should be required to publicly state this and record the impact the aggravation had on the sentence.**

Consultation Questions - Categories of frontline worker

180. The consultation asked whether any increased maximum sentence should be extended to apply to assaults on:

- Those involved in the provision of frontline healthcare in hospitals;
- Prison officers;
- Social workers; and
- Others providing direct care in the community.

181. Such a change would bring Northern Ireland more into line with our neighbouring GB and Ireland jurisdictions, each of which has a wider "emergency worker" provision covering a wide range of front-line workers.

Discussion and responses

182. Of the 14 responses, 11 were in favour of such a change. Those not in favour had previously stated the view that all assaults should be treated the same, regardless of the occupation of the victim.

Developments since Review completed - Abuse of retail workers

183. The issue of abuse of retail workers did not form part of the Sentencing Policy Review Terms of Reference but was raised with the Review Team in the context of this chapter.

184. Following considerable lobbying, a new offence of abuse of retail workers has, in January 2021, become law in Scotland, with a statutory aggravation if the abuse occurred while the worker was enforcing an age restriction on sales (alcohol, cigarettes etc.). The Home Affairs Committee in Westminster is also currently exploring whether a new offence of aggravated assault against retail workers is required.

185. The Northern Ireland Retail Consortium, Retail NI, Retailers Against Crime and Belfast City Centre Management, bodies representing retailers in Northern Ireland, wish to see similar legislation enacted in Northern Ireland. PSNI does not keep a record of this type of abuse but, according to the Consortium, abuse of retail workers is a serious problem which has increased significantly during COVID lockdown.

186. The existing assault offences found in the Offences Against the Person Act 1861 apply to retail workers as they apply to any victim; and the same sentencing guideline applies to a retail worker as to any other person providing a public service, meaning the courts already do recognise a level of aggravation associated with assaults on these workers.

187. It was considered that a programme of awareness raising and public education as well as the victim centred work already in train within the Department could go some way to alleviating the problem for retail workers.

188. The Sentencing Review considered the case for extension of additional sentencing powers for assaults on “front-line” workers, focussing on those involved in emergency services, health care, and those working closely with offenders. The Review Team considered there is a danger in extending any new measures further that the “special” status granted becomes so diluted as to become meaningless. At the same time, where a particular problem has been identified, it is important to take appropriate steps to address it.

189. The Review Team concluded that this to be an area where further consideration should be given.

The Minister has agreed:

- **A new offence of assaulting a front-line care provider or emergency worker should replace the existing 3 occupation-specific offences. This new offence would extend the range of front-line workers given special recognition to include all of the occupations highlighted in the consultation; and**

- **Further consideration be given to the extension of any new sentencing provision to retail workers.**

Chapter 9: Crimes against Older and Vulnerable People

190. This chapter discussed frequent calls for "tougher sentencing" for those who attack the elderly. In pre-consultation discussions it became apparent that a victim's vulnerability rather than age was the key concern: not all older people are vulnerable and not all vulnerable people are old.

Consultation Questions

191. The consultation asked if any new legislation should deal with vulnerable people rather than simply "older" people. If so, it offered a definition of "vulnerable", drawing on the definition recently created by the Assembly in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015. It asked if current sentencing guidance which recognises age and vulnerability as aggravating factors was sufficient, or should this be set in statute; and finally, should there be a new offence of assault on a vulnerable person.

Discussion and responses

192. Between 14 and 20 respondents answered the questions. There was a high level of support for the proposition that wider vulnerability rather than narrower old age should be protected. There was strong support for the creation of statutory aggravating factors, both on the basis of the actual vulnerability of the victim and their perceived vulnerability. There was no clear overall support for the creation of a new offence.

193. The wide definition of vulnerability in the 2015 Act includes vulnerability by reason of age as well as physical or mental disability or illness, addictions or any other reason. This allows sentencers considerable discretion and also avoids the difficulty of setting an arbitrary age in legislation. Choosing a set age that defined "older" people had been a key sticking point when the Assembly tried to introduce an offence of assault on older people before its collapse in 2017. The Review Team considered adopting such a definition would help increase consistency in the law and user understanding.

194. It was felt that the two options for creating a statutory aggravating factor each presented difficulty: some of the vulnerabilities listed would not be apparent to an offender, so it would be unfair to aggravate the sentence on the simple basis of vulnerability; however, proving the offender targeted a victim due to perceived vulnerability could present significant evidential difficulties. A combination of both of these options would provide the maximum opportunity for sentencers dealing with attacks on vulnerable people.

195. The independent review of hate crime legislation recommended a new approach to hate crime, creating a new statutory aggravation to apply to any offence committed as a hate crime. It also recommended the aggravation would extend to crimes committed due to bias, prejudice, bigotry and contempt; and it recommended the inclusion of age as a protected characteristic.

196. The Hate Crime Review Team has convened a group to take this work forward. It seemed appropriate that the Sentencing Review Team would continue to work with the hate crime team to ensure no contradiction between the development of the respective recommendations.

The Minister has agreed:

- **Legislation should provide that the fact that a victim's vulnerability was obvious or the victim was targeted due to their perceived vulnerability is an aggravating factor.**

- **The definition of vulnerability should reflect the definition found in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015.**

- **No new offence of assault on a vulnerable person is required.**

- **The sentencing policy Review Team should continue to work with the hate crime review team to ensure any legislative changes can co-exist without contradiction or duplication.**

Chapter 10: Driving Offences Causing Death or Serious Injury

197. This chapter generated the highest number of responses, with around 200 people answering some or all of the questions. The vast majority considered the current 14 year maximum sentence for offences causing death by driving insufficient, and called for an increase to a discretionary life sentence.

198. The majority wished to maintain parity between the maximum sentences for causing death or causing serious injury by each of the driving offences, and there was strong support for increasing the maximum sentence for causing death or serious injury while driving disqualified.

199. Similarly, current minimum periods of disqualification for the offences were considered insufficient, and there was strong support for applying the disqualification period after the custodial sentence had been served.

Consultation Questions

200. In summary, the consultation asked:

- Should the maximum sentence for each of the 3 offences (causing death by dangerous driving; causing death by careless driving while under the influence of drink or drugs; or causing death by careless driving and failing to provide a specimen) be increased?
- Should a distinction in maximum sentence be made between any of the 3 offences?
- Should parity be maintained with the equivalent sentences for the equivalent causing grievous bodily injury by driving offences?
- Should the current minimum periods of disqualification be increased for these offences?
- Should the maximum sentence for causing death or grievous bodily injury when driving while disqualified be increased?
- Should restrictions apply to right to seek a reduction in any disqualification period imposed?
- Should any driving disqualification take account of the custodial component of a sentence?

Discussion and responses

201. The vast majority who responded (around 200 in total) by-passed the other chapters of the consultation and only answered questions on this topic. It is likely that most respondents were either members of families who had lost loved ones, or responded to requests from those campaigning for longer sentencing in these cases.

202. 97% of respondents considered the current maximum sentence of 14 years insufficient. Nearly 75% favoured an increase to a discretionary life sentence. There were mixed views on making a difference between the maximum sentences for any of the 3 offences examined. However a clear majority (91%) wished to maintain parity between the maximum sentences for causing serious injury with that of causing death by driving contrary to this group of offences.

203. There was equally strong support for increasing the maximum sentence for causing death or serious injury while driving disqualified. However, while 11 times as many favoured moving to 10 years as opposed to 4 years, 10 times as many favoured a different option of their own suggestion.

Developments elsewhere since Review concluded

204. The UK government announced that it intends to introduce provisions that will increase the maximum penalty for causing death by dangerous driving from 14 years' to life imprisonment; and to increase the maximum penalty for causing death by careless driving whilst under the influence of drink or drugs from 14 years' to life imprisonment.

205. It also intends to create a new offence of causing serious injury by careless driving (with a shorter maximum sentence). These changes are aimed to deal with cases where the culpability of an offender is particularly high.

206. The penalties for drink or drug-driving are reserved to Westminster, so far as Scotland is concerned, so it is likely the proposed increased sentencing powers will fall to be considered by the Scottish Parliament and extended to that jurisdiction.

207. In the Republic of Ireland recent sentencing for the death of a Fermanagh man has been criticised by his family as "too lenient"[26]. Their call on the Irish Government and judiciary to act swiftly and decisively to review maximum jail sentences for driving that leads to death[27] or serious injury on Irish roads and for judges to work within tougher, transparent sentencing guidelines, has not received a response or acknowledgement, at least publicly.

208. The aim of the Review Team was to align the options against the agreed sentencing purposes and principles as well as the guiding principle highlighted in the consultation document, namely: that any sentencing law should reflect not only the harm caused but also the level of blame of the offender.

[26] On a plea of guilty the offender was handed a three-year suspended sentence and an eight-year driving disqualification

[27] Maximum penalty for dangerous driving causing death in Ireland is 10 years and minimum disqualification of 5 years.

209. On the sentence for causing death or serious injury by dangerous driving or careless driving while under the influence of alcohol or drugs or careless driving and refusing to provide a sample, the options considered were to increase from the maximum sentence from 14 years to a maximum of 20 years, or discretionary life.

210. It was clear to the Review Team there was no option to leave the maximum unchanged. This position was supported by the responses received; the announcement of change in Westminster; and reported comments from judiciary in England on the adequacy of the current maximum of 14 years, which limited the sentence they considered appropriate where there were multiple deaths and the offender had previous relevant offending[28] or where there were "exceptionally serious kind of driving and multiple deaths"[29].

211. An increase to a 20 years maximum sentence would provide judges with sentencing powers to reflect the highest levels of culpability by drivers and align with those responses which expressed a desire for greater transparency in sentencing. This option, would see a guideline case or guidance being provided through the Lord Chief Justice's Sentencing Group to reflect the increased maximum in a revised range of custodial sentences against the existing four levels of culpability.

212. The same opportunity to provide transparency does not occur with the introduction of a discretionary life sentence as a potential maximum sentence. That would introduce the additional sentencing process of determining the tariff (the minimum period before the offender would be entitled to consideration for parole).

213. A maximum life sentence would also fall to be considered in line with the requirements of the Criminal Justice (NI) Order 2008 (which was not included in this sentencing review). This requires an assessment of dangerousness and a staged approach by judiciary: an Indeterminate Custodial Sentence (ICS) or an Extended Custodial Sentence (ECS) must be ruled out, and a discretionary life sentence should only be imposed where the offence is "an extremely grave offence and secondly it is likely that there will be further offending of a grave character".

214. During pre-consultation engagement with stakeholders there was consensus that it was desirable that maximum sentences be consistent with offences of similar seriousness, and recognition that the issue is very complex.

215. The Review Team considered the commentary reported from Ministry of Justice: that the new life sentence is being reserved "for most serious offences- even when there may be more than one death caused from same incident". The most recent White paper records the changes as "aimed to deal with cases where the culpability of an offender is particularly high".

[28] R v Jenkins [2015) EWCA Crim and AG's Ref (R v Brown) [2019] 1 Cr. App R (s) 10
[29] R v Chudasama [2018] EWCA Crim

216. One respondent proposed a different maximum for repeat offenders. In Britain we have seen the introduction of a different sentence, for example for repeat offenders who use knives or burgle. The sentence, in those instances, is a prescribed minimum subject to judicial discretion "in the interests of justice".

217. The Republic of Ireland recently introduced a minimum sentence for such offenders, where an offender reoffends within a seven year period. Some jurisdictions have prescribed longer minimum non-parole periods for repeat offenders.

218. In Northern Ireland debates within the Assembly have highlighted concerns about restricting judicial discretion by the imposition of mandatory minimum sentences. Minimum sentencing was not an issue addressed as part of the Sentencing Review. However, the Review Team considers that there is considerable merit in a sentencing judge being able to make a distinction between a first time and repeat offender which reflects the desire to retain or improve transparency in sentencing while meeting public concerns.

The Minister has agreed:

- **The maximum be increased to 20 years to reflect culpability and harm as well as transparency in likely sentencing outcome for these offences; and**

- **A discretionary life sentence should be the maximum sentence available to a judge for these offences where an offender has a previous conviction for that offence.**

Consultation Question

- Maintaining parity of maximum sentence whether death or serious injury caused

219. A small number of responses wished to "match" England which does have a lower maximum sentence where serious injury as opposed to death is the outcome. However, there was little appetite, other than within the legal professional bodies, to see a change from current Northern Ireland position, which makes no distinction between the maximum available sentences whether serious injury or death is the outcome for these offences.

220. Furthermore, judges in England and Wales have been critical of the difference in sentencing powers "where life shattering injury was caused as a result of driving with aggravating factors".

221. The Review Team concluded that there was no valid argument to change the current position.

The Minister has agreed:

- **Maintain parity in maximum sentence whether death or serious injury caused.**

Consultation Questions

222. Causing death or serious injury when driving while disqualified:

- The choice posed in the consultation was to increase from 2 years maximum to 4 years, 10 years or other.

Discussion and responses

223. The response on 'other' were all in excess of the two specific options provided which reflected the maximum sentences available in neighbouring jurisdictions. Those jurisdictions do distinguish between death (10 years) and serious injury (4 years).

224. The Review Team considered that the number of prosecutions is likely to remain low and relevant case law is unlikely to change from requiring some act or omission in control of the car which contributes more than minimally to the death.

225. Many comments received did not reflect an appreciation of the law, as set out in the consultation, and ignored the fact that the offence is not an offence simpliciter – meaning in effect, the offender is guilty if simply driving while disqualified and a death occurs.

The Minister has agreed the following recommendation:

- **To increase the sentence to 4 years maximum as that appears to provide a more proportionate range of sentence to reflect both culpability and harm.**

Consultation Question

- Changes in minimum periods of disqualification from driving following conviction for causing death or serious injury or driving while disqualified.

226. Views on longer periods of minimum disqualification were sought in England and Wales received 84% of responses indicating support.

227. The government took the view that the consultation responses were unclear on what the minimum disqualification period should be (ranging from a small increase from the current 2 years to a mandatory life ban), how it should be applied and how effective it may be as a deterrent.

228. Accordingly the government intends to give this proposal further consideration but no proposal was included in the recent announcements.

229. In Scotland, offenders must serve set periods of their disqualification before the application can be made, which generally is at least 50 % of the disqualification imposed and more where it is less than 4 years or 10 years.[30]

Discussion and responses

230. An overwhelming majority of responses to the consultation expressed dissatisfaction with the minimum periods of disqualification currently available to the judiciary.

231. Of the specific periods posed, there was 40% more support for increasing to 4 years as opposed to 3 years. There was slightly higher support for 'other', ranging from 5 years, 5 to 10 years a very small number expressed the view that anyone causing death on the roads should receive a life ban.

232. There was a similar high level of support (87%) for doubling the period for repeat offenders to 6 years minimum.

233. A small group opposed any increase, either because they considered the case was not made out for an increase or they expressed a preference to rely on judicial discretion.

234. Only one respondent suggested that any change should await the outcome of the Westminster review to be undertaken in Great Britain.

235. In Northern Ireland, as in Great Britain, the length and application of obligatory disqualification from driving, particularly for offenders convicted of causing death by driving offences, is an emerging issue with road safety campaigners as well as those bereaved by persons driving dangerously or carelessly and causing death or serious injury.

236. The courts are currently obliged to impose a driving disqualification of a minimum 2 years, or minimum 3 years if the offender has a second or third conviction for certain offences within a 10 year period.

237. The courts appear to some observers to have been reluctant to impose very lengthy or life bans. The Ministry of Justice 2016 consultation recorded this as due to a belief that the possibility of regaining a licence acts as an incentive to comply with the ban.

[30] If the disqualification is for less than 4 years, the application can be made after two years. If the disqualification is for four years (but less than 10) the application can be made after half the ban has been served and in all other cases, the application can be made after 5 years.

238. Some responses commented that they opposed an increase as lengthy bans could detrimentally impact on rehabilitation through finding employment.

239. Having considered all responses, noting that there was no timescale projected for the Westminster assessment, the Review Team considered the Northern Ireland public have a reasonable and legitimate expectation that their views on change would be given genuine consideration. The Review Team identified no valid or reasonable reason not to implement changes on foot of the Sentencing Review while preserving the judicial discretion to deviate from the increased minimum where there is "exceptional" or "special reason" to do so.

The Minister has agreed:

- **The minimum period of mandatory disqualification for these offences should be 4 years, unless the Judge considers exceptional circumstances exist; and**

- **a repeat offender within a 10 year period for a second or further conviction should be subject to a mandatory minimum disqualification of 6 years.**

Consultation Question

240. The consultation asked:

- Whether removal of disqualification restrictions should be imposed on any offender wishing to remove a disqualification, and if so, what the appropriate restriction should be.

Discussion and responses

241. Seven in ten respondents considered that the judiciary should be prevented from reducing any disqualification below 2/3rd of the period initially imposed or the mandatory minimum, whichever is the greater.

242. The Review Team considered such a position maintains the balance between establishing an appropriate sentencing framework within which the judiciary operate and addressing the concerns of society reflected in the responses received, especially in regard to the number of deaths and serious injury suffered through road traffic incidents.

243. 82% expressed support for restricting the right of repeat offenders to apply to remove or reduce the disqualification imposed, until the minimum period has expired.

244. The current Northern Ireland Court of Appeal guideline cases record the purpose of disqualification is to protect the public, which includes an evaluation of the future risk posed by the offender.

245. The Review Team considered it important to retain the discretion of the judiciary to determine the merits of applications for reductions in disqualification periods, but was persuaded that prohibiting repeat offenders from seeking an early reduction in the disqualification period seemed proportionate and would serve the policy objective.

The Minister has agreed:

- **A disqualification should not be capable of being reduced below 2/3rds of the disqualification period ordered by the sentencing court or the mandatory minimum period for the offence, whichever is the greater; and**

- **A repeat offender for any of these offences will be disallowed from applying for a reduction of a disqualification imposed before the minimum period for disqualification has been served.**

Consultation Question

246. On the timing of disqualification, the consultation asked:

- Whether a driving disqualification should take account of any custodial element of a sentence.

247. This question concerns legislation which already exists but has not been commenced.[31] The legislation provides for courts when determining the appropriate disqualification period to extend that period to take account of any custodial period imposed on an offender by the court at the same time.

248. There was significant support for implementing this change.

The Minister has agreed:

- **This legislation be updated, if required, and brought into force through the aegis of the planned Sentencing Bill in the next mandate.**

[31] Sentencing Review Northern Ireland, Chapter 10, paragraph 10.73; Coroners and Justice Act 2009, section 137 and Schedule 16: (not yet commenced)

Way Forward

249. The Review Team is keen to work in partnership with key stakeholders to help create a fair, just and safe community where we respect the law and each other.

250. In taking this work forward the Review Team recognises that some of the Minister's decisions may be dealt with administratively, others will require legislative change.

251. It is considered appropriate that all legislative recommendations should be delivered together in a single focussed Sentencing Bill.

252. The timing for bringing forward such a Bill is dependent upon the Assembly's legislative programme, which is already fully committed for the remainder of this mandate.

253. The next steps for the Review Team will be to work with key stakeholders to take forward administrative recommendations, and to commence preparatory work for the sentencing bill, to go forward early in the next mandate.

Annex A- Summary of Decisions

Chapter 1: Principles and Purposes of Sentencing

1. The purposes and principles of sentencing be set out in legislation;

2. Sentencers should be required to have regard to the principles and purposes when making sentencing decisions;

3. The principles of sentencing should be that it is: proportionate; fair; and transparent;

4. The purposes of sentencing should be punishment, protection of the public, deterrence, rehabilitation, and reparation; and

5. In a statutory definition of these terms, punishment should be defined as appropriately recognising the disapproval of society of the offence in question.

Chapter 2: Public Perceptions of Sentencing

6. A multi-agency working group be established to develop and implement an administrative programme of engagement taking into account the review proposals and other suggestions made;

7. Consideration of victim centred recommendations should be taken forward, engaging in particular with the DoJ chaired Victims and Witnesses Steering Group in its development and implementation of the victims and witnesses strategy; and inputting to the development of the "My Justice Journey" video;

8. The Review Team engages with judiciary and Northern Ireland Courts and Tribunals Service to re-explore the potential for broadcasting court proceedings and requiring judges to explain sentences; and

9. The issues raised on victim personal statements and community impact statements should be taken forward, engaging in particular with the DoJ chaired Victims and Witnesses Steering Group in its development and implementation of the victims and witnesses strategy; and inputting to the development of the "My Justice Journey" video.

Chapter 3: Sentencing Guidance

10. The remit of the Northern Ireland Court of Appeal to provide guideline judgments or review guideline judgments be set in legislation, including a power for the Court of Appeal to identify and issue such judgments as the need arises or for specific offences or category of offences;

11. Power for the Attorney General or Director of Public Prosecutions to apply for a guideline judgment be set in legislation;

12. The specific persons or bodies the Court should consider hearing from in regard to the need for a guideline judgment or its review be set in legislation;

13. Potential contents of a guideline judgment be set in legislation;

14. Power for the Court of Appeal to take account of relevant information on sentencing where it considers that is warranted be set in legislation.

15. The current administrative sentencing guidance mechanism be built on to address the matters raised by consultees which could improve transparency, understanding and confidence in sentencing in Northern Ireland.

16. A statutory duty be placed on the relevant judiciary[32] to require them to "have regard" to sentencing guidelines or relevant guideline cases unless satisfied that to do so would be contrary to the interests of justice; and

17. The court should be required to give its reasons for departing from relevant guidance.

Chapter 4: Tariff Setting for Murder

Legislation be introduced to provide:

18. 12 years becomes the starting point for adults under the age of 21, unless the judge was satisfied that it was not appropriate or just;
19. the usual mitigating factor of the age of the offender would not apply where age plays a part in the selected starting point,
20. 15 years becomes the starting point for adults aged 21 and older where there are no aggravating factors;
21. 20 years becomes the starting point for murders with identified exceptional culpability;

[32] Currently there are only magistrates' courts guidelines issued by the Lord Chief Justice Sentencing Group.

22. Exceptional culpability will reflect factors already identified in Northern Ireland case law;

23. The whole life tariff will be available for “rare and exceptionally serious murders”

24. Where a whole life tariff is imposed, the judge is required to be satisfied beyond reasonable doubt that the offender must be kept in prison for the rest of their life;

25. That a guilty plea will not lead to a reduction if the case is otherwise sufficiently serious to warrant a whole life tariff;

26. An obligation to publish guidance on the power vested in a Minister to “direct release as being appropriate”.

Chapter 5: Unduly Lenient Sentences

27. The range of sentences that should be referable as being unduly lenient should be extended to include all sentences imposed in the Crown Court; and

28. The issue of further information being provided about the scheme should be taken forward by the communications working group agreed in Chapter 2.

Chapter 6: .Community Sentencing

29. The inclusion of restorative or reparative elements should continue to be a matter for case-by-case decision;

30. A specific strand of the Review’s communications programme will focus on making the public aware of the benefits to communities of unpaid work and reparative activities. This may include impactful victim stories;

31. Non-justice input to community sentence programmes will continue where this can be facilitated and managed effectively.

32. The ECO will continue to roll out along with consideration of detailed evaluation of its benefits, both directly on reoffending rates and also the wider societal benefits of the use of this disposal rather than short term prison sentences.

33. Opportunities for further judicial involvement are explored and developed where appropriate;

34. Further modelling work, with the assistance of a key stakeholder working group, should be carried out before definite commitments to introduce any of the new options are given; and

35. The option for diversionary intervention is further developed taking into account other early intervention work being taken forward by the Department.

Chapter 7: Hate Crime

36. The Review Team works with DoJ colleagues dealing with the Independent Review of Hate Crime Legislation in respect of this chapter.

Chapter 8: Attacks on Frontline Public Services

37. The maximum sentence available for assault on front line workers on summary conviction be increased from 6 months to 12 months;

38. The fact that the victim of a more serious assault was a front line worker should become a statutory aggravating factor; and

39. Where a statutory aggravating factor applies, the court should be required to publicly state this and record the impact the aggravation had on the sentence.

40. A new offence of assaulting a front-line care provider or emergency worker should replace the existing 3 occupation-specific offences. This new offence would extend the range of front-line workers given special recognition to include all of the occupations highlighted in the consultation; and

41. Further consideration be given to the extension of any new sentencing provision to retail workers.

Chapter 9: Crimes against Older and Vulnerable People

42. Legislation should provide that the fact that a victim's vulnerability was obvious or the victim was targeted due to their perceived vulnerability is an aggravating factor;

43. The definition of vulnerability should reflect the definition found in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015;

44. No new offence of assault on a vulnerable person is required;

45. The sentencing policy Review Team should continue to work with the hate crime review team to ensure any legislative changes can co-exist without contradiction or duplication.

Chapter 10: Driving Offences Causing Death or Serious Injury

46. The maximum sentence for the offences of causing death by driving be increased to 20 years to reflect culpability and harm as well as transparency in likely sentencing outcome for these offences;

47. A discretionary life sentence should be the maximum sentence available to a judge for these offences where an offender has a previous conviction for that offence;

48. Parity in maximum sentence whether death or serious injury caused be maintained;

49. The sentence for causing death while driving disqualified be increased to 4 years maximum as that appears to provide a more proportionate range of sentence to reflect both culpability and harm;

50. The minimum period of mandatory disqualification for these offences should be 4 years, unless the Judge considers exceptional circumstances exist;

51. A repeat offender within a 10 year period for a second or further conviction should be subject to a mandatory minimum disqualification of 6 years;

52. A disqualification should not be capable of being reduced below 2/3rds of the disqualification period ordered by the sentencing court or the mandatory minimum period for the offence, whichever is the greater;

53. A repeat offender for any of these offences will be disallowed from applying for a reduction of a disqualification imposed before the minimum period for disqualification has been served; and

54. Legislation on the extension of a disqualification to take account of custodial periods will be updated, if required, and brought into force through the aegis of the planned Sentencing Bill in the next mandate.