

Submission to the Department of Justice's 'Sentencing Review Northern Ireland: A Public Consultation'

Extern is the leading social justice charity across the island of Ireland and has worked with people in and around the criminal justice system for over 40 years.

We welcome the Department of Justice's 'Sentencing Review Northern Ireland: A Public Consultation' and the opportunity to comment on sentencing policy in Northern Ireland.

Overall we very much welcome the aims and objectives of Chapters 1-3. In relation to the principles and purpose of sentencing we would like to point to a conclusion of The Law Reform Commission's ['Report on Sentencing'](#), which expresses dissatisfaction about the aims of sentencing, recommending '... restraint in the distribution of sentence. Since criminal sanctions involve pain and deprivation, they should be used all the more sparingly if we are uncertain of their benefits either to society or to its individual members' (1996, p. 6).

The Review document too makes reference to using punishment sparingly, noting that 'harsher punishment does not necessarily help to address offending behaviour' (p. 3). A sentencing however, should be proportionate to the seriousness of the offending behaviour.

We would also contend that sentencing needs to consider the impact on the rights of children (see for example: UK Parliament Report ['The Right to Family Life: children's who's mothers are in prison'](#)).

We would like to highlight the importance of an 'Outreach and Communications Plan' noted in Chapter 2 'Public Perceptions of Sentencing'. There is an obvious disconnect between criminal justice agencies and the public in relation to sentencing in particular, concerns around fairness and consistency.

Our submission emphasizes the importance of reparation and the use of restorative justice practices. We believe that restorative justice can address unmet needs of both the person harmed and the person who has caused the harm, such as giving voice to victims, and an opportunity to the perpetrator to take greater responsibility and 'give something back'.

Rather than answer all the questions within the Review we have focused on those with which we have an informed and professional opinion on. Reflective of the dilemma of The Law Reform Commission we do not feel we are in a position to comment on whether sentence lengths, and tariff lengths, should be increased, decreased or remain the same and have therefore not answered questions which seek opinion on sentence length.

Chapter 6: Community Sentencing

Q.31 Should greater use of community sentences be made by the courts as an alternative to short prison sentences?

Yes	Yes	No		No View	
<p>Please provide reasons for your response.</p> <p>Research has shown that short sentences do not result in a reduction in the risk of re-offending as the individual.</p> <p>Often a short custodial sentence may result in the loss of accommodation, employment / benefits and a breakdown in family relationships and can have a very negative impact on the individual making it more likely that they will reoffend on release as they have no means of supporting themselves in the community.</p>					

Q.32 Should all community orders include a restorative or reparative element?

Yes	Yes	No		No View	
<p>Please provide reasons for your response.</p> <p>When an individual can make a connection between their actions and the harm caused to another person there is a greater chance that they will make different decisions in the future regarding repeating the same behaviour.</p> <p>Even where a victim chooses not to be involved in a restorative process the person who has harmed should consider what actions they can take to make reparation. This could include writing a letter of apology to be held on file for the victim or undertaking community service for an organisation or charity of the victim's choosing.</p> <p>Research has demonstrated that restorative justice works best in cases where there has been serious harm caused and indeed Justice Gillen in his review of responses to sexual offending has recommended that restorative approaches should be used in these cases.</p>					

Q.33 Should the public be made aware of the benefits achieved through unpaid work and reparative activities as a result of community sentences?

Yes	Yes	No		No View	
<p>Please provide reasons for your response.</p> <p>Unpaid work / service to the community has made enormous contributions to local areas and communities and organisations such as PBNI and YJA need to demonstrate the impact of these unpaid hours in a way which doesn't identify or stigmatise the individuals who have completed these hours. A clear cost benefit analysis needs to be in place so that the public have a sense of how much it would have cost to undertake the work if people were employed to undertake it.</p> <p>Some good examples previously were the work that was undertaken on Divis and Black Mountain in constructing a boardwalk. There was a sign in place which informed walkers that it had been built by individuals on community service.</p> <p>Graffiti cleaning in Belfast City centre again if the costs of this could be quantified this would be helpful in changing the narrative for those who have offended and showing they can make a useful contribution to society.</p> <p>Care will need to be taken within local communities where ex-offenders are working so that individuals completing community service can remain low key and that members of the public understand that community service is additional to any existing services that are in place – it is not replacing paid posts.</p>					

Q.34 Is there value in non-justice agencies becoming involved in the delivery of programmes for use in community sanctions?

Yes	Yes	No		No View	
<p>Please provide reasons for your response.</p> <p>Individuals who have caused harm and offended against individuals and society come from communities and following any custodial sentence will return to those communities. Often they are stigmatised and excluded from community organisations and services and need support to make the transition from prison to independent living. Organisations such as Probation and the Youth Justice Agency are limited in their ability to deliver interventions / programmes and the community and voluntary sector has skilled committed staff who can and do deliver programmes both within the custodial setting and in community to support desistance from offending.</p>					

Extern provides a range of different services for offenders and ex-offenders both in custody and the community, including training and employment opportunities, Approved accommodation for medium to high risk ex-offenders being released from custody and a Floating Support Service to help individuals maintain their tenancies within the community. Extern also deliver counselling support, interventions relating to addiction and benefits advice and would welcome the opportunity to directly deliver programmes as part of community sentences.

For interventions to be effective Extern believes that they need to be delivered in partnership between the statutory and community / voluntary sector. We employ highly skilled and qualified Social workers and Project workers who have many years' experience of working within criminal justice and who already contribute to making communities safer through the monitoring and supervision of ex-offenders within the community. We believe that with the appropriate funding this role could be further expanded to take on direct delivery of programmes within the community.

Q.35 Should the enhanced community order be implemented as an alternative to short prison sentences of up to 12 months?

Yes	Yes	No		No View	
Please provide reasons for your response.					
The initial research has indicated that enhanced community orders are an effective alternative to short prison sentences and this should be further implemented as alternatives to sentences of up to 12 months. There should however be greater involvement of the community / voluntary sector in delivery of interventions as part of this sentence.					

Q.36 Would additional judicial involvement during community sentences benefit such orders and promote greater likelihood of change by the offender?

Yes		No		No View	
Please provide reasons for your response.					

Q.37 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?

Yes		No		No View	
<p>Please provide reasons for your response.</p> <p>All community sentences should have the option of a restorative element to ensure that the victim's needs are considered and actions undertaken by the person who has harmed to make amends. So in the case of low level offending where damage has been caused to property for example if the individual pays for the repair a conditional discharge will be imposed.</p> <p>However it is important that in this restorative option that the Probation Board for NI are not involved as it would be bringing individuals into a criminal justice system / organisation who do not need to be there. Any restorative options at the level of conditional discharge should be administered by organisations within the community and voluntary sector and not by a statutory organisation. In order to deliver this there would be a resourcing issue but the third sector could deliver this at a fraction of the cost of the statutory sector.</p>					

Q.38 Would a 'structured deferred sentence' be a useful new sentencing option?

Yes	Yes	No		No View	
<p>Please provide reasons for your response.</p> <p>A structured deferred sentence would enable the individual who is motivated to demonstrate their commitment to engaging in some form of intervention to address their offending behaviour as currently a period of deferment does not offer this. However consideration will need to be given as to the process that would be in place for the individual to be brought back to court for failure to comply with any supervision. It would be important also to consider the role of the voluntary / community sector in working with those on a structured deferred sentence as it may be the case that there are community programmes available which could assist the individual make changes in their behaviour as part of such a deferred sentence. Ideally too, a structured deferred sentence should also include a restorative element to ensure that the needs of the victim are addressed.</p>					

Q.39 Would a 'supervised suspended sentence' be a useful new sentencing option?

Yes		No		No View	
<p>Please provide reasons for your response.</p> <p>Unsure about this option as it doesn't significantly differ from existing orders such as Probation Orders, Community Service Orders etc. If the intention of the court is to impose requirements for treatment or restrictions etc could this not be done via a combination order or similar?</p> <p>If the review wishes to consider a "supervised suspended sentence" could they not consider something more radical like an adult Restorative Justice sentence which would allow all of the required elements to be included in the one order and which has the added advantage of ensuring that the victim has a voice in the process and their needs are taken into consideration.</p>					

Q.40 Would a diversionary type community intervention be appropriate for minor first time offences for adults?

Yes	Yes	No		No View	
<p>Please provide reasons for your response.</p> <p>It is available for young people under 18 years and has been proven to work for this age group. There is no reason why this should not be extended to adults and have a similar positive outcome. Extern would advocate that a fully restorative justice model should be implemented for adults at all parts of the criminal justice system from diversion through to the most serious offences.</p>					

Chapter 7: Hate Crime

Q.41 When a hate crime has been identified during the prosecution process, should prosecutors be under a duty to flag this to the court?

Yes	Yes	No		No View	
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Please provide reasons for your response.

It is important that hate crime is recognised and responded to appropriately by all of the criminal justice agencies however it is important that agencies take the lead from the victim as to their perception of the offence that has been perpetrated against them. The victim should have control over how their offence is classified.

Q.42 When dealing with a hate crime, should the courts be required to record the fact that aggravation due to hostility has been considered in the sentencing decision?

Yes	Yes	No		No View	
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Please provide reasons for your response.

This would provide greater transparency in relation to the sentencing for this type of offences and would also send a positive message to minority groups that these type of offences are being dealt with by the courts. It would also ensure that any period of supervision or interventions took this into consideration and the motivation for the offence could be addressed as part of probation supervision.

Q.43 When dealing with a hate crime, should the courts be required to explain how the fact that the offence is aggravated due to hostility has affected the sentence?

Yes	Yes	No		No View	
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Please provide reasons for your response.

Again for the reasons outlined above – transparency etc.

Q.44 Should any other changes be made to ensure appropriate sentencing for hate crimes?

Yes		No		No View	
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Please provide details and reasons for your response.

Restorative practices should always form part of the sentencing in these cases as often the victim needs reassurance that this won't happen to them

again and needs to feel safe and that justice has been done. Equally for perpetrators of hate crime offences there is often a need for education and this should form part of any disposal. PBNI have a programme for addressing this but the community and voluntary sector are working much more closely with ethnic minority communities and may be better placed to deliver education / preventive packages to people who have committed hate crimes.

Chapter 8: Attacks on Frontline Public Services

Q.45 Is the current range of offences and penalties combined with sentencing guidelines adequate to deal with assaults on those providing frontline public services in Northern Ireland (Option A)?

Yes		No		No View	
Please provide reasons for your response.					
<p>An attack on people who work on frontline public services should be regarded in the same way as an assault on anyone else – it is an attack on that human being. The impact of assaults will vary and will depend on a wide range of factors and there should be an individualised response depending on the harm that has been caused.</p> <p>Where this could be taken into consideration is in terms of the intervention that is put in place as part of community supervision or a custodial order – that the person who has caused harm is required to complete an education programme relating to the role of the various frontline services and understanding that behind the uniform there is a person who has been harmed as a consequence of the offence.</p> <p>Having a greater understanding and developing empathy for those undertaking frontline services can help reduce the likelihood of offences being repeated.</p>					

Q.46 Should the maximum penalty on summary conviction for attacks on specified public workers be increased to 12 months' imprisonment (Option B)?

Yes		No		No View	
Please provide reasons for your response.					
<p>Please see above – the penalty needs to be related to the harm caused and not just related to the uniform someone wears or the job that they do. Other “frontline staff” work for voluntary and community organisations can also be harmed by assaults by service users but would not be considered as public</p>					

workers so would not be covered by any changes considered above. Again the focus should be on looking at the harm that was caused and ensuring that any penalty takes account of this and has opportunities for the harm-doer to make amends and learn from their actions.

Q.47 If yes to Q.46, should any increased sentence for specified public workers be extended to include those involved in the provision of front-line healthcare in hospitals, prison officers, social workers and others providing direct care in the community (Option C)?

Yes		No		No View	
<p>Please indicate any occupation an increased sentence should apply and provide reasons for your response.</p> <p>There is a need to have a bespoke response to offences of assault looking at the harm caused to a particular individual and getting beyond the role that the person is undertaking.</p>					

Q.48 In other assault offences, should the fact that the victim was a specified category of public servant be made a statutory aggravating factor (Option D)?

Yes		No		No View	
<p>Please provide reasons for your response.</p> <p>As above</p>					

Q.49 If yes to Q.48, should there be an obligation to state publicly that aggravation occurred; and record both that fact and the impact the fact had on the sentence imposed?

Yes		No		No View	
<p>Please provide reasons for your response.</p> <p>Assaults are on the human being not on the role – go beyond the uniform to really understand the impact of the offence – this can only be done via a restorative approach.</p>					

Chapter 9: Crimes against Older and Vulnerable People

Q.50 Reflecting our stakeholders' views, should any new legislation deal with 'vulnerable' people, whether by age or other personal circumstances, as opposed to simply 'older' people?

Yes	Yes	No		No View	
Please provide reasons for your response.					
<p>There is a caveat to this however in that it is important not to assume that just because someone is older that they are also "vulnerable" it is important to have an individualised response to offences against people within our society and to impose sentences which reflect the harm caused. The use of victim impact statements should be used to help the person who has been harmed share the impact of the offence against them and allow them to define whether or not they consider themselves to be "vulnerable".</p>					

Q.51 If yes to Q.50, should a definition like the one found in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 be used?

Yes		No		No View	
Please provide reasons for your response.					
N/A					

Q.52 Are current guideline judgments and sentencing guidelines sufficient for sentencing purposes as they stand as regards crimes against older/vulnerable victims (Option A)?

Yes		No		No View	
Please provide reasons for your response.					
<p>There is sufficient flexibility within the system to be able to respond to the extent of the harm caused by a particular crime against a particular individual.</p>					

Q.53 Should either of the following be a statutory aggravating factor (Option B):

The vulnerability of a person (by virtue of their age or other factors)			Motivation on the basis of the victim's perceived vulnerability (by virtue of their age or other factors)?		
Yes	No	No View	Yes	No	No View
	No			No	
<p>If yes, please tell us which and provide reasons for your response.</p> <p>If a restorative approach is used to determine the sentencing the victim and perpetrator have an opportunity to share how the offence occurred, the motivator of the perpetrator and the impact of the offence on the person who has been harmed. The resulting sentence can take this into account and can be proportionate to the harm caused.</p>					

Q.54 Should a new offence of assault on a vulnerable person (by virtue of their age or other factors) be created (Option C)?

Yes		No	No	No View	
<p>Please provide reasons for your response.</p> <p>Please see detail in previous questions – this is all about providing a flexible response depending on the harm caused not simply looking at the victim characteristics.</p>					