

Prison Reform Trust response to Sentencing Council consultation on sexual offences – August 2021

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

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Introduction

We welcome the opportunity to respond to these draft guidelines. We are submitting a short thematic response to the consultation, rather than responding to each individual question. We have chosen to focus on sections 3 and 4, in particular—age and maturity and sexual communication with a child.

Age and/or maturity in assessing culpability

We are pleased to see that the council clearly recognises the important roles that both age and maturity have in the commission of an offence. We support their inclusion across the whole range of sex offence guidelines. The expanded explanations included in the draft guideline are also clear and helpful.

However, we are unclear why the council has chosen to only include these at step two of the process, rather than in determining culpability in step one. As the council acknowledges in section 3: historic sex offences:

“[T]he Court of Appeal give (sic) its principled view that youth and maturity of the offender at the time of committing the offence was a matter properly to be considered as culpability, where the guidance currently treats it as personal mitigation.”

In response to clarification from the Court of Appeal in the case of *R v Forbes [2016]* the council has amended its guidance to state:

*“If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may **significantly reduce the offender's culpability.**”*

We suggest that the phrase should read “very young and/or immature”, wording used elsewhere in the guidelines and that properly reflects the evidence that maturity represents a factor distinct from age.

Given that the only difference between the conviction of a historic sex offence, and one committed contemporaneously is the length of time taken to prosecute, it is also unclear why the council has not also acknowledged the role of age and maturity for all sexual offences—historic and recent.

Furthermore, other existing sentencing guidelines also acknowledge the role of maturity in determining culpability. For example, step one of the child cruelty guidelines states an:

“Offender’s responsibility [is] substantially reduced by mental disorder or learning disability or lack of maturity.”

We would urge the council to include “age and/or maturity” at step one of assessing culpability.

Sexual communication with a child

As we have raised in earlier responses to the council, we remain concerned at the inclusion of being “under the influence of alcohol or drugs” as an aggravating factor in step two.

The link between the use of alcohol and drugs and crime is well-established. However, we do not agree with the council’s assessment that the presence of alcohol or drugs is indicative that a more serious offence has been committed. The presence of such factors is more likely to indicate a need for treatment or social care than a justification for more severe punishment.

There is clear evidence that misuse of drugs and alcohol is often related to an underlying mental health disorder, a learning disability or autism. NHS England has said that:

“...people with a learning disability and/or autism who come into contact with the criminal justice system, or those at risk of such contact, often ‘fall through the gaps’ of existing provision; [are] often excluded from mainstream mental health or forensic services because of their learning disability and/or autism, and excluded from learning disability services because they are considered too able or too high risk, or because they have autism but do not have a learning disability.”¹

Access can be particularly problematic for people from black and minority ethnic communities who experience poor mental health, and for women who commonly have histories of abuse and trauma. Consequently, individuals may self-medicate by using drugs and alcohol.

Many local areas have a reduced availability of and long waiting lists for drug and alcohol services (due to significant public health funding cuts, for which those being sentenced should not be penalised), especially for people with co-occurring mental

¹ NHS England (2017) Transforming Care: Model Service Specifications. Leeds: NHS England

health problems and/or learning disabilities. Unless these social realities are recognized, sentencing decisions are bound to have unintended unfair consequences on vulnerable and disadvantaged individuals.

In its 2019–20 annual report, HM Inspectorate of Prisons revealed that one in seven men (15%) and nearly two in five women (38%) reported an alcohol or drug problem on arrival to prison.²

The Alcohol and Crime Commission revealed that 70% of people in prison with a self-identified alcohol problem said they had been drinking when they committed the offence for which they were in prison.³

We would urge the council to remove this from the list of aggravating factors.

The council also lists “sustained or persistent communication” as an aggravating factor.

It is currently unclear in the guidelines whether sustained communication relates specifically to the process of grooming a child for the future commission of a sexual offence; or whether a pre-existing relationship with a child, which subsequently progresses to inappropriate sexual communication, would also be covered by this aggravating factor.

We would urge the council to provide greater clarity on this factor.

² HM Chief Inspector of Prisons (2020) Annual Report 2019–20, London: HMSO

³ Alcohol and Crime Commission (2014) The alcohol and crime commission report, London: Addaction