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Response to	<b>Sentencing Council Expanded Explanations Consultation</b>
Issued by	<b>Sentencing Council</b>
Link to consultation	<a href="https://www.sentencingcouncil.org.uk/consultations/expanded-explanations-consultation/">https://www.sentencingcouncil.org.uk/consultations/expanded-explanations-consultation/</a>
Notes	<b>For additional information please contact Jo Easton at jo.easton@magistrates-association.org.uk</b>

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## Consultation questions

- 1. Question – What is your name?**
- 2. Question – What is your email address?**
- 3. Question – What is your organisation?**

The Magistrates Association

- 4. Question – What are your views on the inclusion of the proposed additional material on fines, community orders and custodial sentences within all relevant guidelines?**

We welcome the inclusion of the proposed additional material on fines, community orders and custodial sentence, and also includes some useful reminders regarding the principle of fines imposition. It is also useful for a link to be provided for the Imposition of community and custodial sentences. However, we believe it would be helpful to include a section on the use of electronic monitoring in relation to imposing community orders.

We do, however, suggest that this information may be more usefully set out after the details of aggravating and mitigating factors, at the end of Step 2.

We are concerned with the reference to the fact that PSRs “should be completed on the same day to avoid adjourning the case” as it is important that any decision to adjourn is made on the specific circumstances of the case. Where possible, PSRs can be completed on the day, but it is important the court adjourns where appropriate.

- 5. Question – Do you agree that the Imposition guideline should be amended to include a link for forthcoming guidance on when to order a PSR?**

We agree that the Imposition guideline should be amended to include a link to forthcoming guidance on when to order a PSR. It is important that courts get appropriate information before sentencing, and the guidance sets out the situations where it is likely that more time will be needed to gather information.

It will be important for the link to be updated to ensure it is to the most recent guidance.

**6. Question – What are your views on the inclusion of the proposed expanded explanations for these statutory aggravating factors? Do your views relate to any particular offence(s)?**

We believe it is useful for the guideline to set out statutory aggravating factors.

**7. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A1, A2 and A3? Do your views relate to any particular offence(s)?**

*A1: Commission of offence whilst under the influence of alcohol or drugs.*

We welcome the explanation that if someone is addicted to alcohol or drugs, then the fact they were intoxicated at the time of the offence may not be seen as voluntary. It is useful to remind sentencers that being addicted to alcohol could be a vulnerability, and therefore may not aggravate a sentence.

*A2: Offence was committed as part of a group*

We found this explanation to be helpful.

*A3: Offence involved use or threat of use of a weapon*

Whilst we appreciate the aim of providing further guidance to sentencers, we do not feel the explanation will be that helpful in relation to this factor which is often a difficult one for sentencers to negotiate.

**8. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A4, A5 and A6? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors A4, A5 and A6.

**9. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A7, A8 and A9? Do your views relate to any particular offence(s)?**

*A7: Abuse of trust or dominant position*

We do not believe the use of the word ‘factual’ is necessary before the word ‘situation’.

*A9: Vulnerable victim*

We question the statement ‘culpability will be increased if the victim is made more vulnerable by the actions of the offender’. We recognise that targeting a victim specifically or persisting with the attack would increase culpability, and that these are already included in the guideline, but we emphasise that making a victim more vulnerable by specific actions would increase harm caused, not the culpability of the offender.

**10. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A10, A11 and A12? Do your views relate to any particular offence(s)?**

*A11: Other(s) put at risk of harm by the offending*

We suggest that including an example of putting other(s) at risk of harm by the offending would be helpful.

**11. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A13, A14 and A15? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors A13, A14 and A15.

**12. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A16, A17 and A18? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors A16.

*A17: Offence committed in custody*

We note that it is quite difficult to sentence offences committed in custody, as magistrates must comply with the totality principle, including cases where an offender is already serving a long prison sentence.

We support the proposed expanded explanations for aggravating factors A17.

**13. Question – What are your views on the inclusion of the proposed expanded explanations for aggravating factors A19, A20, A21 and A22? Do your views relate to any particular offence(s)?**

*A19: Offence committed in a domestic context*

We believe that it may be useful if the explanation states that there are older guidelines where the fact that an offence occurs in a domestic setting is not explicitly mentioned as an aggravating factor, and that where any offence is committed in a domestic setting or where there is an existing personal relationship between the victim and offender, magistrates should refer to the overarching guideline. However, we note that the link to the Overarching Principle regarding domestic abuse and the prevalence guidance would be a helpful reminder, especially when the offence may not be obviously domestic abuse related, or where some offences are common and a local approach to the sentencing might be tempting.

We also note that this may need updating if the Domestic Abuse Bill becomes law, and provides a statutory definition of domestic abuse.

We also point out that the link to the guideline does not work.

We support the proposed expanded explanations for aggravating factors A20, A21, and A22.

**14. Question – What are your views on the inclusion of the proposed expanded explanations for mitigating factors M1, M2 and M3? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors M1.

*M2: Good character and/or exemplary conduct*

We add that charitable work always needs to be evidenced.

*M3: Remorse*

We question the necessity of the statement 'lack of remorse should never be treated as an aggravating factor', because surely it is the case for all mitigating factors that their lack does not

aggravate an offence. We suggest that it would be more helpful for there to be a general reminder that the lack of a mitigating factor should not be treated as an aggravating factors, possibly where the warning about double counting is.

**15. Question – What are your views on the inclusion of the proposed expanded explanations for mitigating factors M4 and M5? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors M4 and M5.

**16. Question – What are your views on the inclusion of the proposed expanded explanations for mitigating factors M7, M8 and M9? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors M7 and M8.

*M9: Limited awareness or understanding of the offence.*

We note that this mitigating factor may be particularly relevant for offenders with a learning disability or who are on the autistic spectrum. The court therefore may wish to have input from healthcare specialists to identify whether these factors are relevant, and if so, how they may affect an offender's understanding of the offence.

**17. Question – What are your views on the inclusion of the proposed expanded explanations for mitigating factors M10, M11 and M12? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors M10.

*M11: Delay since apprehension*

We note that unreasonable delays are often quite hard to define. Usually the defence advocate point this out, however this means that unrepresented offenders may be at a disadvantage, and sentencers may need to consider asking appropriate questions of the offender to determine whether this factor is relevant.

We support the proposed expanded explanations for aggravating factors M12.

**18. Question – What are your views on the inclusion of the proposed expanded explanations for mitigating factors M13 and M14? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors M13.

*M14: Sole or primary carer for dependent relatives*

We agree with the proposal to include reference to pregnant offenders, and suggest that the effect of a community requirement on caring responsibilities should also be considered.

**19. Question – What are your views on the inclusion of the proposed expanded explanations for mitigating factors M15, M16 and M17? Do your views relate to any particular offence(s)?**

We support the proposed expanded explanations for aggravating factors M15.

*M16: Mental disorder or learning disability*

Good, but we suggest adding to the point 'in considering the extent to which the offender's actions were voluntary, the extent to which a mental disorder or learning disability has an impact on the

offender's ability to exercise self-control or to engage with medical services will be a relevant consideration' that it is quite common for those who struggle to engage with medical services to self-medicate through drugs or alcohol. We also suggest that more information is needed to explain the impact of a particular vulnerability on mitigation, particularly in relation to learning disabilities or autism.

We support the proposed expanded explanations for aggravating factors M17.

**20. Question – What are your views on the proposed change to this medium culpability factor? Do your views relate to any particular offence(s)?**

Seems sensible.

**21. Question – What are your views on the proposed changes regarding the presentation of maximum sentences in guidelines?**

Seems sensible.

**22. Question – What are your views on the proposed changes to the information on life and extended sentences in the Burglary and Assault guidelines? Should changes be made to the wording of this topic in other guidelines?**

n/a

**23. Question – What are your views on treating the General guideline as an overarching guideline?**

We believe that it would be best as an overarching guideline, for those offences with an offence-specific guideline. This is because this will improve consistency and ensure that the information is readily available for sentencers, who can be relied upon to only take account of relevant factors. As all guidelines will be accessed digitally via iPads, this will make it easier to move between different guidelines or pages.

**24. Which, if any, of the proposed expanded factors or other proposed changes are likely to have an effect on sentencing practice? What do you think that effect would be?**

We believe the proposed expanded factors will improve consistency, not just across different geographical areas but across similar level offences. The expansion should also improve the quality of sentencing by drawing attention to all aspects of the offence, and make it easier to refer to material more quickly. However, we do not believe the proposals will have a major impact on sentencing.

**25. Are there any other equality and diversity issues that the explanations should address?**

We note that the mitigating factor of immaturity is specifically mentioned under certain aggravating factors (such as group activity and concealing the offence), however it is not clear why these specific factors are linked to immaturity, as this should always be considered a mitigating factor.

We add that it would be a useful safeguard to add the first section of General Principles that 'special care should be taken with vulnerable and/or unrepresented defendants', to give it more prominence. We also suggest adding d) to the 'reaching a provision sentence section at the beginning'.