Department of Justice

An Roinn Dlí agus Cirt

Männystrie O tha Laa

www.justice-ni.gov.uk

Summary of Responses

Sentencing Review Northern Ireland Consultation

Content Page

Content	Page
Introduction and Background	2
The Consultation Process	2
Overview of Responses	4
Summary of responses and comments	4
Chapter 1: Principles and Purposes of Sentencing	5
Chapter 2: Public Perceptions of Sentencing	9
Chapter 3: Sentencing Guidance	14
Chapter 4: Tariff Setting for Murder	24
Chapter 5: Unduly Lenient Sentences	31
Chapter 6: Community Sentencing	33
Chapter 7: Hate Crime	40
Chapter 8: Attacks on Frontline Public Services	43
Chapter 9: Crimes against Older and Vulnerable People	46
Chapter 10: Driving Offences Causing Death or Serious Injury	49
Next Steps	64

Introduction

1. This document provides a summary of responses to the Department of Justice's consultation on the review of sentencing policy in Northern Ireland.

2. The purpose of the consultation was to invite views on the wide range of sentencing policy issues applying to adult offenders discussed in detail in the consultation paper. Sentencing policy relating to child offenders was not part of the review.

3. The consultation did not cover sentences handed out in individual cases, as that is a matter entirely for the independent judiciary.

Background

4. In June 2016 the then Justice Minister, Clare Sugden, announced a Sentencing Policy Review in Northern Ireland.[1] This was the first review of sentencing policy in Northern Ireland in over a decade and as such a number of areas were identified for review. These included:

- the principles and purposes of sentencing;
- public perceptions of sentencing;
- sentencing guidance;
- tariff setting for murder;
- unduly lenient sentences;
- community sentencing; and
- sentencing for hate crime; attacks on frontline public services; crimes against older and vulnerable people; and offences causing death by driving.

5. The full consultation can be viewed at https://consultations.nidirect.gov.uk/doj-corporate-secretariat/sentencing-review-northern-ireland

The Consultation Process

6. The Review team conducted significant desk research, considering information from many common law jurisdictions around the world. It also held a series of engagement events and individual meetings with relevant organisations, statutory

[1] https://www.justice-ni.gov.uk/news/justice-minister-announces-sentencing-review

agencies, academics, stakeholders, victims and offenders; and developed the consultation paper in collaboration with a range of experts in the field of sentencing.

7. In conducting this review, the Review Team was guided by a general principle that any sentencing law should reflect not only the harm caused, but also the level of blame of the offender. While the actual sentence will be a matter for the judge to determine, the aim of this review is to provide a legislative framework for the judiciary which reflects the seriousness of offending and the culpability of the offender while delivering a sentence which can be viewed as "appropriate, fair, consistent and effective".

8. Given the complexity and variety of the issues to be reviewed, the consultation was divided into 10 distinct subject chapters, each of which could be considered as a standalone consultation in its own right. The intention was to encourage maximum engagement from the public and to enable respondents to focus on those areas of most interest.

9. The consultation was launched on the Citizen Space public consultation platform via a press release on 28 October 2019, and was publicised on social media over the duration of the consultation.

10. Notification of the launch was e-mailed to those who had attended pre consultation events; a link to the consultation was distributed to key stakeholders; and a media strategy promoted public awareness of the consultation and ways to respond.

11. Eight public engagement events were held across Northern Ireland in Belfast (2), Enniskillen, Londonderry, Craigavon, Cookstown, Ballymena and Newry.

12. The consultation period was extended to 3 February 2020 to facilitate greater engagement from key stakeholders and other members of the public, taking Brexit negotiations and the Christmas period into consideration.

13. A number of issues were raised in responses which require further consideration before a settled way forward can be finalized.

14. The Department has therefore decided on a two-stage approach to its next steps: publication of this summary of responses to provide interested parties the opportunity to consider the overall responses; while the Department continues to develop recommendations with the benefit of projected costings, where appropriate, and discussion with stakeholders who raised issues requiring further detailed consideration.

15. The Department's conclusions and proposals for moving forward will follow once this further work is complete.

16. The Department of Justice is grateful to all of those who took the time to respond

Overview of responses

17. A total of 227 responses were received:

- Of these, 210 questionnaires were completed online via Citizen Space. All Citizen Space responses are anonymous.

- Citizen Space allowed respondents to select those questions they wished to answer, and provided a space for written response in addition to tick box answers. In most cases a small number of respondents provided written reasoning in addition to completing the tick box answers.

- 17 separate written responses were also received.

- Around 200 of the 227 people who responded to the consultation chose only to answer the questions posed at chapter 10 (Sentencing for driving offences causing death). This was one of the most emotive areas included in the consultation, and had gained significant public and media attention following a small number of tragic cases in recent years.

18. A number of those who provided written responses did not provide direct 'yes/no/no view' answers. Where a clear indication of views on an issue was expressed we have included this in our overview count of responses for each question.

19. In providing detailed written responses a number of respondents addressed a range of sentencing issues, some of which had not been included in the consultation. The Department has taken note of all comments received and will reflect on those responses which raised additional on ancillary issues as part of its consideration of the next steps.

Summary of Responses and comments

20. The following paragraphs summarise the responses received to the consultation questions. A full report of all responses, including the full text of all written responses received can be found at the appendix.

Chapter 1: Principles and Purposes of Sentencing

21. This chapter sought views on the need for a clear statement of the principles and purposes of sentencing. It suggested the principles of proportionality; fairness; to use punishment sparingly; and transparency. The purposes of sentencing might be: punishment; protection of the public; deterrence; rehabilitation; and reparation.

22. The consultation questions and answers were as follows.

Q.1 Do the proposed principles provide the appropriate standards for sentencing?

- 29 respondents answered this question.
- 15 respondents indicated 'yes', with some qualifications.
- 6 respondents indicated 'no'.
- 3 respondents indicated 'no view'.
- 5 respondents partially agreed with the proposed principles.

23. There were 18 written comments in answer to this question. The majority were in favour of a clear statement of principles of sentencing, underlining the value of improving understanding, consistency and clarity. Acknowledgement of the importance of hearing the victim's voice in the sentencing process was welcomed, along with a recognition of the difficulties faced by the sentencing judge in balancing the competing interests and needs of victims and offenders.

24. Of those who commented, there was unanimous support for the principles of proportionality, fairness and transparency. There was some discussion about the meaning of each of these terms.

25. A number of respondents took issue with the language of the principle to "Use punishment sparingly", which they felt was unclear. Suggestions included replacing it with "Use a rehabilitative approach"; "Consistency"; "Respect fundamental rights and freedoms"; or "Effectiveness".

26. It was noted that the term "punishment" can have different meanings for different people, and often this is associated with incarceration. While a number of respondents welcomed the sparing use of imprisonment (provided appropriate alternatives are in place), all were agreed that every sentence must include a punitive element.

27. One respondent considered the sentencing process too complex for a single definition of principles and purposes, and that restorative justice should underpin all of the principles.

28. It was suggested that "parity" should be included as a principle, to ensure that similar sentences would be imposed for similar offences committed in similar circumstances. It was suggested this would provide clarity and consistency and further boost public confidence in the sentencing process.

Q.2 Are there other principles that should be included?

- o 21 respondents answered this question.
- o 11 respondents indicated 'yes'.
- o 4 respondents indicated 'no', although some qualifications were suggested.
- o 6 respondents indicated 'no view'.

29. There were 10 written comments in answer to this question, largely re-enforcing the comments made in response to Question 1, falling into the following broad categories:

- Public confidence – while acknowledging that this is referenced within each of the consultation proposed principles, one respondent called for public confidence to be a principle in its own right. Consistency was also regarded as important to achieving public confidence, while flexibility and individualisation were also flagged.

- Victim input – a suggested principle was that victims should have a say in the sentence imposed. While the judge should continue to make the final decision, the proposition was that the victim's wishes should be followed in the absence of overriding considerations. Another respondent wished to see restorative justice at the centre of sentencing.

- Effectiveness – one respondent considered effectiveness, meaning the prevention of re-offending through successful rehabilitation was a key principle. A rehabilitative approach was also seen as key, with incarceration as a last resort. Seeking the same outcome, but through deterrence, another respondent wished to see "robustness" as a principle.

- Fairness – one respondent considered that fairness should be carefully defined to include gender considerations; acknowledgment of the legacy of the Troubles; and to take account of people's needs as well as rights.

Q.3 Are the proposed purposes of sentencing appropriate?

- o 26 respondents answered this question.
- o 15 respondents indicated 'yes', although some qualifications were suggested.

- 7 respondents directly answered ‘no’.
- 2 respondents directly answered ‘no view’.
- 2 respondents partially agreed with the proposed purposes.

30. There were 16 written comments in response to this question, largely supporting the proposed purposes, subject, as one respondent pointed out, to the overriding need to maintain judicial discretion. There was some discussion of the meaning of each, and the difficulty of realising such aspirational purposes in reality.

31. A number of respondents focussed on rehabilitation and reparation and the weight afforded to the trauma experienced by victims of crime. While it was acknowledged that the purpose of rehabilitation is to prevent re-offending, a common theme was that the prevention of future harm should be expressly mentioned in the purposes of sentencing.

32. On reparation one respondent reflected that wider discussion of all types of reparation would be welcome.

33. While all were in favour of rehabilitation, there were mixed views on whether this should receive prioritisation.

34. One respondent made the point that it may not be possible to rehabilitate some offenders. In those cases a focus on punishment and protecting the public was needed. Another stated that insufficient attention was given to public protection.

35. The terminology of “punishment” was questioned by one respondent who would have preferred “redress” as a more useful concept, with benefits to victims, the offender and society more widely.

Q.4 Are there any other purposes which should be included?

- 20 respondents answered this question.
- 7 respondents indicated ‘yes’.
- 7 respondents indicated ‘no’.
- 6 respondents indicated ‘no view’.

36. There were 6 written comments in response to this question. Suggestions for further purposes were:

- redress rather than punishment;
- restoration;
- minimising the traumatic impact on victims/preventing further harm;

- effectiveness in preventing or reducing reoffending; and
- denunciation - one respondent considered it important to highlight one of the purposes of sentencing as a mechanism for expressing disapproval of offending behaviour.

37. One respondent, while agreeing with the proposed purposes, made the point that flexibility must be retained to take account of changing attitudes over the passage of time.

Q.5 Should a definition of the principles and purposes of sentencing be created in legislation?

- 25 respondents answered this question.
- 19 respondents indicated 'yes'.
- 4 respondents indicated 'no'.
- 1 respondent indicated 'no view'.
- 1 respondent recommended further consideration.

38. There were 12 written comments in response to this question.

39. Eight of the 12 strongly supported a statutory statement, believing this would enhance sentencing policy by facilitating consistency, providing clarity and a greater understanding of how sentencing decisions are reached, and consequently increasing public confidence in the process.

40. One respondent suggested including regular review points to assess the impact on sentencing policy if a legislative statement were to be created.

41. Two notable exceptions were concerned that such a move would restrict the flexibility needed by the judiciary to give appropriate sentences individually tailored to each case. Guidance was suggested in the alternative.

42. One respondent, while supporting a clear statement of purposes and principles, advocated further research to assist in the decision whether to embed such a statement in policy or create new legislation.

Chapter 2: Public Perceptions of Sentencing

43. The Department recognises that sentences are often seen as being ‘too lenient’, or considered ‘soft’ on offenders; leading the public to blame sentencing for the level of crime. Yet there is little evidence that tougher sentencing helps to rehabilitate offenders, reduce further offending, or provide justice to victims.

44. Public perception is largely driven by information available in the media, often focussing on high profile cases. This can lead to a disconnect between perceptions and reality. The Department is concerned that a failure to provide relevant and good quality information to the public may perpetuate inaccurate perceptions.

45. Compounding this, legal language is complex and hard to understand; and there is little public understanding of the sentencing calculation process. A number of past studies have shown that when people have all the information available to the court they would often recommend lesser sentences than those actually imposed.

46. This chapter looked at where gaps in public understanding arise. The consultation sought views on how the Department could improve public awareness and understanding of the sentencing process, to promote better informed views and opinions and improve public confidence in sentencing.

47. It also looked at the important issue of victims’ experience 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.

Q.6 Are there other methods of communicating with the public, not identified in this chapter that would help to improve knowledge and perceptions of sentencing matters?

- 27 respondents answered this question.
- 17 respondents indicated ‘yes’.
- 2 respondents indicated ‘no’.
- 5 respondents indicated ‘no view’.
- 2 respondents indicated strong support for improving communication, without suggesting other methods.
- 1 respondent considered public perceptions to be accurate.

44. There were 18 written comments in response to this question. 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.

Many respondents recognised the complexity of changing the narrative to a positive message of what works and how new approaches can improve outcomes. It was acknowledged that to many people "sentencing" equates to prison and that awareness and understanding of alternatives is low. Consequently, to change attitudes will take time and commitment.

45. 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.

46. One respondent criticised the chapter as being premised on the assumption that public opinion is wrong, whereas the public may be right, and the criminal justice system needs to change to ensure sentences are imposed in line with the public's expectations.

47. Suggestions to improve public knowledge and perceptions included:

- broadcast of court proceedings;
- outreach to older people and other focus groups;
- use of different communications approaches for different audiences;
- online interactive forums;
- reporting of benefits of alternative sentence options – for example the reduced recidivism, benefits to communities and victims of community sentences and restorative approaches;
- television advertising;
- more regular consultations on sentencing, with ample time to respond;
- engagement with and training of the voluntary sector and those specialist services who work with victims, survivors and offenders;
- information videos for victims and witnesses;
- the importance of explaining the impact of mitigating and aggravating factors;
- 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 who should be automatically kept updated);
- a statutory duty for judges (including those in the magistrates' courts) to explain sentences and the reasons behind them, including provision of a written report to the victim and offender, with appropriate IT solutions to enable this in all courts;
- the Judicial Communications Office was signposted as a useful data resource; and
- adopting existing guidelines developed for media engagement elsewhere.

Q.7 Can any steps be taken to improve the provision of a victim personal statement to the court and its use?

- 25 respondents answered this question.
- 15 respondents indicated 'yes'.
- respondents indicated 'no'.
- 8 respondents indicated 'no view'.
- 2 respondents supported options to highlight victims' views, but gave no specific suggestions.

48. There were 13 written comments in response to this question. Most were concerned with the lack of awareness of the option to make a victim personal statement, particularly in the lower courts.

49. A strong preference in favour of allowing victims to decide whether they wish to have their victims statement read out in court, or wish to address the court personally was reported both in responses to the consultation and directly from a number of victims themselves. It was felt important that judges should acknowledge any statements to assure victims that their views are being considered.

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

51. The key shortcomings of the scheme were identified as: lack of communication; lack of clarity; inaccurate advice; and the negative consequences of victim personal statements being discoverable in evidence.

52. The short time-window for making the statement, between verdict and sentence if it is not to be used in evidence, limits a victim statement's operability in the majority of magistrates' courts cases - where these stages can happen almost simultaneously.

53. Other suggestions illustrated a widespread lack of awareness around victim personal statements. They included:

- ensure that victims are aware that they are entitled to make a statement;
- provide training to ensure the facility is being maximised;
- research their use to identify barriers and obstacles, and make recommendations to simplify the process;
- create a duty on the prosecution to give information and to make clear who will assist;
- seal victim personal statements until sentencing, or if this is not possible, recommend that victims are told prior to completing a statement that it can be used in evidence;
- enlist voluntary organisations to help victims in creating a victim personal statement. This can save on money and police resources, while also ensuring that a victim can be supported through the process;
- complete statements pre conviction and share them with PBNI for reflection in pre-sentence reports.

54. One respondent urged caution in relation to the ability to assess the veracity and accuracy of victim impact statements.

Q.8 Can any steps be taken to improve the awareness or use of community impact statements?

- o 24 respondents answered this question.
- o 11 respondents indicated 'yes'.
- o 0 respondents indicated 'no'.
- o 9 respondents indicated 'no view'.
- o 4 respondents supported improving the awareness of community impact statements, but gave no specific suggestions.

55. There were 10 written comments in response to this question, acknowledging a lack of awareness about community impact statements and their limited uptake to date.

56. Suggestions to improve this included:

- information should be factored into the broader messaging about sentencing to raise awareness;
- camera footage of statements being used would raise awareness. The Commissioner for older people reiterated an earlier recommendation to engage with it on the potential utility of community impact statements;
- increased training and resources; and
- guidance should be developed.

Chapter 3: Sentencing Guidance

57. 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 guidance, and what its role and membership should be.

58. A sizeable number of those who provided a written response chose to answer only one or more selected questions or alternatively provide general or specific commentary on the subject matter addressed within the chapter or questions. A small number chose not to provide any response on the matters raised within this chapter. Where a response of any sort has been provided we have included relevant comments or that response to the identified appropriate question.

Q.9 Should the power and remit of the Northern Ireland Court of Appeal to issue a guideline judgment be established in legislation?

- 12 respondents answered this question.
- 10 respondents indicated 'yes'.
- 2 respondents indicated 'no'.
- 6 respondents indicated 'no view'

59. A majority of those who addressed the specific question favoured legislating for NICA to provide guideline judgments as they considered it helpful to provide up to date guidance to sentencing judges. Others indicated that such power should be established in legislation. One respondent specifically saw no need for such legislative provision.

60. Some respondents highlighted a number of deficiencies with reliance solely on guideline judgments for the Crown Court. Others considered them of limited benefit. Perceived shortfalls included the fact specific nature of the judgment and that many guideline judgements are of some vintage. A few expressed the belief that including in legislation a mechanism for DPP to request or seek a review of a guideline judgment might ensure guideline judgments retain their relevancy.

61. One respondent commented that, while the idea is good in principle, a legislative provision should not be used to facilitate appeals on the basis of process failure, thus allowing new delay into the criminal justice process.

62. Some respondents welcomed legislation if it would reduce inconsistency in sentencing and improve public confidence. More than one respondent highlighted their concern in particular around sentencing for domestic violence offences.

63. A number of respondents working within the criminal justice system considered it inappropriate to express a view on legislating on a power for the Northern Ireland Court of Appeal to issue guideline judgments or on a sentencing guidance mechanism. One respondent who provided commentary on this chapter but with no specific comments relevant to this question was viewed as providing no answer.

Q.10 If yes to Q.9, should legislation require the Northern Ireland Court of Appeal to consider relevant information on sentencing before issuing a guideline judgment?

- 11 respondents answered this question. In addition one respondent who opposed legislation in the preceding question but did not comment on this question other than record it as not applicable, was deemed to have indicated no to this legislative provision.
- 7 respondents indicated 'yes'.
- 4 respondents indicated 'no'.
- 5 respondents indicated 'no view'.

64. There were some who, while favouring legislation to provide the Northern Ireland Court of Appeal with power to provide guideline judgments, did not favour including in that legislation provision to take into account information on sentencing. Some supported the provision provided the information was provided by expert witnesses or was not mandatory. At least one respondent considered it could or should be utilised when creating a sentencing guideline judgment.

65. Reasons for support included views that input from other sources could lead to better informed decisions. Some felt it could promote consistency and improve public confidence in the sentencing process.

66. Opposing a requirement to take other relevant material into account one respondent stated that experience showed the Court of Appeal, comprising of 3 senior judges, has sufficient knowledge and experience to consider all relevant factors.

Q.11 Should a statutory duty be placed on relevant sentencing judges requiring them to have regard to sentencing guidelines; or to follow sentencing guidelines?

- 15 respondents answered this question. One respondent opposed any statutory duty being placed on judiciary as it had no concern guidelines would not be observed.
- 8 respondents indicated for a duty to have regard to sentencing guidelines.
- 6 respondents indicated for a duty to follow sentencing guidelines.
- 3 respondents indicated 'no view'.

67. There were respondents who expressed concern that requiring the judiciary to follow sentencing guidelines might turn sentencing into a "tick box" exercise. Another, while not addressing specifically the question, expressed support for a sentencing framework. This respondent considered it had potential to contribute to reducing discrepancies and improving consistency but did not want to see a requirement placed on the judiciary which would not allow them to take account of mitigating circumstances of an offender.

68. Those respondents in favour of the duty to have regard to guidelines generally considered it would provide greater flexibility and discretion to the judiciary, ensuring appropriate sentences are imposed on a case by case basis.

69. Those who preferred a duty to follow guidelines thought this was the best way to improve consistency, remove ambiguity, minimise uncertainty and provide improved transparency and public confidence in sentencing. Many favoured the provision be accompanied by a requirement to provide reasons if departing from the guideline.

70. Reservations expressed included that the duty to have regard might add to ambiguity as to how the Sentencing guideline was to be applied which would dilute the purpose of guidelines. Another respondent while supportive in principle of a duty to follow, was concerned the provision would not open an avenue of appeal or delay in the dispensing of justice.

Q.12 Should sentencing judges have power to depart from sentencing guidelines in the interests of justice; or having provided reasons for that departure?

- 19 respondents answered this question.
- 14 respondents indicated the interests of justice option.
- 5 respondents indicated judiciary be required to provide reasons if departing from the guideline. 3 of those 5 respondents preferred to have this as an additional requirement to the interests of justice option.
- 3 respondents indicated 'no view'.

71. At least one respondent expressed concern that guidelines might unduly restrict judicial discretion in that judges would be simply required to apply the guideline rather than allowing a judge to set the sentence. Those who supported a power to depart from guidelines in the interests of justice were in the majority.

72. A small number recorded that the interests of justice should be accompanied by a requirement to give reasons for any departure from the guideline.

73. A respondent while not addressing specifically the question expressed a preference to see a judicial discretion to depart from guideline judgment where there was strong mitigating circumstances which likely included an "interests of justice"

assessment. This was included in the respondents who indicated in favour of interests of justice option. The same respondent suggested an additional proviso, "where there were justifiable reasons to do so".

74. Those who favoured providing reasons when departing from a guideline perceived the absence of judicial reasoning can leave the decision more vulnerable to potential challenge and criticism. Nearly all expressed the view it could improve transparency.

Q.13 Is there sufficient transparency in sentencing within Northern Ireland?

- 19 respondents answered this question.
- 4 respondents indicated 'yes'.
- 15 respondents indicated 'no'.
- 2 respondents indicated 'no view'

75. Three respondents didn't answer the specific question but commented. One noted the establishment of a Sentencing Council for Northern Ireland, based on the England/Wales model would enhance transparency and understanding of sentencing. Another was in support of moves to improve public understanding on how mitigating circumstances impact or influence judges when sentencing. They supported any moves to improve transparency especially on mitigating circumstances.

76. A third recorded their support for establishing an organisation similar to those in England and Wales or Republic of Ireland that would promote understanding of sentencing principles as the current perceived lack of fairness, consistency and wide disparities in sentencing undermines public confidence. These were all included within the 'no' responses to this question.

77. Those who considered there is sufficient transparency cited:

- judgments are delivered in open court;
- the requirement of Article 6 of the European Convention on Human Rights to provide reasons for decisions;
- the publication on judiciary-ni website of judgments from a range of important cases often accompanied by a press release;
- the role of legal representatives to explain processes to parties.

78. One respondent suggested that the issue might be more one of correct interpretation of judicial reasoning than access to it. For those who considered transparency insufficient, the concerns centred around:

- the accessibility of judgments or guidance;

- the ease of location of information;
- the complexity of sentencing;
- lack of awareness; and
- a need for more engagement to improve understanding of sentencing.

79. Suggestions for improvement included:

- publication of judgments on a social media platform;
- provision of information to assist understanding;
- public consultation by the Sentencing Group;
- publication of comparative statistics with neighbouring jurisdictions; and
- the use of clear guidelines rather than complicated guideline judgments.

Q.14 Should a sentencing guidance mechanism be established that builds on the current arrangements, namely, guideline judgments and the work of the Sentencing Group?

- 17 respondents answered this question.
- 10 respondents indicated 'yes'.
- 7 respondents indicated 'no'.
- 4 respondents indicated 'no view'.

80. There were some who while favouring building on the current arrangement also expressed support for greater change. A small number commented that any mechanism designed to assist in the sentencing process should be considered favourably. Many supported a research element being included and identified a benefit for the development of meaningful sentencing policy.

81. At least one considered a research function would allow for an evidence based approach to sentencing which might take account of criminogenic factors. Others felt a research or monitoring role for the Group as to when and why guidelines are departed from could provide robust evidence which might assist increased consistency. One respondent perceived resourcing the sentencing group to undertake analysis and research would assist the evolution of the group and accompanied with an outreach function improve community understanding.

82. Of those who recorded opposition to improving the current Sentencing Group arrangements, at least one expressed confidence that it adequately delivers in terms of transparency, consistency, public confidence and guidance for the judiciary. Others expressed a desire for a new mind-set as tougher sentences were required.

83. Three respondent who specifically stated they considered the establishment of a sentencing council similar to that found in neighbouring jurisdictions were recorded as not being in support of building upon the current arrangements. One respondent who supported establishing a sentencing council highlighted the need to carry out costs analysis before any decisions would be taken.

Q. 15 If yes to Q.14, should the mechanism be created in legislation?

- 12 respondents answered this question.
- 10 respondents indicated 'yes'.
- 2 respondents indicated 'no'.
- 7 respondents indicated 'no view'.

84. Unusually there were no comments provided on citizen space for this question. For many who were in favour of legislation, they considered clarity on statutory objectives and functions would produce a more effective outcome in transparency and consistency. Some considered that it would bring the benefit of involving other stakeholders.

85. One respondent indicated there was no real reason why there could not be legislation but they didn't think it was necessary as there was no evidence to suggest that legislation would improve sentencing or transparency. This response was recorded as support for legislation as the same respondent expressed a desire that any changes assisted transparency, improved sentencing, did not slow down delivery of justice or vulnerable to interpretation so that it becomes a source of appeal.

86. Two respondents who commented in the preceding question that the mechanism be established in legislation or the same as England and Wales model were included within the yes responses. Not all who responded yes to the preceding question indicated a preference on legislation so were recorded as no view.

Q. 16 If yes to Q.15, should the legislative purposes include the promotion of consistency of approach and public confidence in sentencing?

- 13 respondents answered this question.
- 11 respondents indicated 'yes'.
- 2 respondents indicated 'no'.
- 7 respondents indicated 'no view'.

87. There were respondents who did not answer the question as they had indicated no support for any legislation in the preceding question. They were included in the number indicating 'no'.

88. A number of respondents provided comments indicating support for any measure whether in legislation or not that can address public confidence should be explored. Some sought the establishment of a sentencing council with aims to promote consistency in sentencing or increase public confidence. All of these were included within the yes responses.

89. Most respondents who wished to see a Sentencing Guidance mechanism saw it as modelled to secure public confidence in sentencing. Views were expressed in varying ways but included aims such as:

- increasing public understanding,
- promoting greater consistency.
- increasing consistency while maintaining the independence of the judiciary
- ensuing greater transparency while being independent of the judiciary.
- securing accountability.

90. One respondent described these purposes as "obvious" objectives for a sentencing guidance mechanism.

Q.17 Should any mechanism established in Northern Ireland for providing sentencing guidance carry out the following ancillary functions:

- *analysis and research on sentencing;*
- *research on the impact of any guidelines or guidance judgments issued;*
- *outreach to the community to improve understanding of the sentencing process; or*
- *other.*

- 15 respondents answered this question.
- 11 indicated support for analysis and research as a function.
- 12 indicated support for research on the impact of guidance as a function.
- 12 indicated support for outreach functions.
- 5 indicated support for 'other' functions.
- 4 indicated no view.

91. The majority of respondents who indicated views on this question were supportive of all three of the suggested ancillary functions.

92. A small number who commented without answering the specific elements of the question were recorded as indicating support for all or some of the functions. Those comments included statements of support for establishing a sentencing guidance council with remit to monitor impact and undertake detailed research and analysis on guidelines. General comments to establish a sentencing council based on the England and Wales model was interpreted as an indication for similar functions as discharged by the England and Wales Sentencing Council.

93. One or two respondents indicated they supported a limited or more targeted research role for any sentencing guidance mechanism established for Northern Ireland. Suggestions included restricting the undertaking or collection of research to "effective sentencing" or research on particular groupings such as women. Making the research information available to the judiciary was also proposed. These responses were recorded as supporting analysis and research on sentencing. The desire to focus on particular groupings was recorded as supporting "other" functions.

94. Other suggested functions included:

- making information on effective sentencing available to sentencers
- cross border engagement with the newly established Judicial Council in the Republic of Ireland;
- gathering information as to public expectations on sentencing and what level they should be.

95. Benefits identified from these functions included the ability to mirror good practice from other jurisdictions, a systemic review of high quality research could assist development of meaningful policy, research could make sentencing policy more transparent and less confusing for victims of crime as well as the general public.

Q.18 Should Northern Ireland criminal justice agencies, such as the Public Prosecution Service, Police or Probation Board be included in or excluded from a sentencing guidance mechanism for Northern Ireland?

Which bodies should be included or excluded and why?

- 16 respondents answered this question.
- 12 respondents indicated support for inclusion of criminal justice agencies.
- 4 respondents indicated 'no' to inclusion of criminal justice agencies.
- 5 respondents indicated 'no view' on inclusion or exclusion of criminal justice agencies.

96. It was unfortunate that a separate option for inclusion or exclusion of criminal justice agencies was not provided for consultees but the comments provided within the responses received evidenced support for inclusion of criminal justice agencies.

97. Some expressed the view that exclusion was not the practice elsewhere or might place the mechanism at a disadvantage by excluding important views and experience. More than one respondent perceived no conflict of interest. Where respondents indicated by comment that they considered criminal justice agencies should remain outside sentencing guidance mechanisms or that the decision should be left to the existing sentencing group the response was recorded within the 'no' responses.

98. Some respondents who did not answer the specific question but expressed support for involvement of other professionals such as forensic psychiatrists were recorded as supporting inclusion of a wider stakeholder representation within a sentencing guidance mechanism. Those who supported establishment of a model like England and Wales were recorded as supporting inclusion of criminal justice agencies.

99. While it was clear the majority of respondents supported the inclusion of non-judicial members on a sentencing mechanism, more than one respondent expressed concern about possible conflict of interest. While some saw no bar in principle given practices in other United Kingdom jurisdictions, one respondent who expressed the view 'we learn from experience of other jurisdictions' was recorded as a no view. Equally, respondents who indicated requiring more time on the issue or who identified favouring establishment of a sentencing council without further comparison to a specific model were recorded as a no view.

Q.19 Should prospective non-judicial members of a sentencing guidance mechanism compete for selection based on their expertise, knowledge and skills relevant to sentencing and criminal justice?

- 15 respondents answered this question.
- 10 respondents indicated support for competitive selection of non-judicial members.
- 5 respondents indicated they did not support competitive selection of non-judicial members.
- 7 respondents indicated no specific view on competitive selection of non-judicial members.

100. There was a clear majority who agreed with the selection and inclusion of non-judicial members based on knowledge, experience and skills relevant to sentencing and criminal justice. At least one favoured knowledge assessed against relevance to the law or other relevant qualities.

101. One respondent proposed that no formal qualifications should be required but instead applicants should have the “appropriate background” so they can contribute at an appropriate level. This response was recorded as supporting the proposed question.

102. One respondent who indicated requiring more time on the issue to consider how such membership might conflict with current roles or impact on public perception was recorded within the no views. Another, while expressing no view on the question, commented that non-judicial members are unnecessary and would create unjustifiable expense. This respondent appeared unaware that the current sentencing guidance mechanism already has a limited non-judicial membership, based on relevant experience or knowledge of criminal law including sentencing and/or victims concerns.

103. Another respondent within the no view number appeared unaware that within the United Kingdom both established sentencing councils conduct a selective application process for non-judicial members following public advertisement.

Chapter 4: Tariff Setting for Murder

104. This Chapter sought to explain what the public and an offender can expect when they hear the Judge deliver a life sentence to an offender. 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. The approach to starting points adopted in other similar common law jurisdictions was detailed.

105. It asked for the public's view on how the court should determine the tariff, which is the term used for the minimum period of imprisonment an offender will serve before being considered for release under a life licence. Finally views were sought on the little used whole life tariff.

Q.20 Do the starting points currently operated in Northern Ireland adequately reflect your concerns and the culpability of the offender?

- 12 respondents answered this question.
- 4 respondents indicated 'yes'.
- 5 respondents indicated 'no'.
- 3 respondents indicated 'no view'.

106. The written responses to this question expressed a range of views. Those who supported the current starting points cited the importance of judicial discretion and the fact that tariff setting does not indicate a release date. One respondent, who didn't specifically state yes or no, commented that a normal starting point of 12 years for an adult who had taken life was a lot less than the time served by the victim. This was recorded as a no. Another respondent who marked no view for this question commented 30 years in their view was the appropriate tariff in R v Wotton and McConville. This response was recorded as a no view.

107. The common theme from the comments was that respondents were not so much concerned with starting points as with the final tariff imposed. More than one respondent commented on the terminology of life sentence being unhelpful or confusing to the public understanding and awareness of the components parts of a life sentence. A public awareness raising programme was suggested.

108. Two respondents made reference to the wide variation in average tariffs for murder between sentences in Northern Ireland or those imposed in England and Wales. At least one respondent acknowledged the case-specific nature of each sentence. Another respondent expressly wished to see the starting points in Northern Ireland aligning with those in England and Wales as in their view a general sentence of 12-14 years as seen in table 6 did not equate to a fair sentence.

Q.21 Should starting points be recorded in statute or continue to rely on case guidance from the Northern Ireland Court of Appeal?

- o 10 respondents answered this question.
- o 8 respondents indicated 'yes'.
- o 2 respondents indicated 'no'.
- o 2 respondents indicated 'no view'

109. The written comments in response to this question were split equally between those in favour of setting starting points in statute and those preferring to continue to rely on case guidance. As the question posed two options, reliance was placed on comments provided to allocate respondents who favoured legislation within the yes indications and those favouring case guidance within the no indications.

110. Those in support of legislation considered it could offer greater opportunity for them to align with public expectations. One respondent supporting legislation wished for the statutory starting point to operate as a minimum tariff.

111. Those who opted for retaining case guidance and opposed legislative starting points considered the well-established current arrangements are adequate. This response was taken as opposing legislation. This respondent expressed the view that no benefit would be achieved by moving to a legislative basis.

112. One respondent who supported starting points relying on case guidance also expressed a desire to see domestic violence and/or strangulation as identified aggravating factors which would increase the final tariff imposed. They considered legislation might be needed to allow that to be achieved.

113. Some respondents stated that they were refraining from expressing a view as they considered it outside their expertise or inappropriate.

Q.22 Should legislation introduce different starting points for Northern Ireland than currently apply?

- o 10 respondents answered this question.
- o 4 respondents indicated 'yes'.
- o 2 respondents indicated 'no'.
- o 4 respondents indicated 'no view'

114. A number of respondents didn't specifically answer this question because they had already expressed opposition to legislating for starting points and expressed the

view that they considered current starting points in Northern Ireland as adequate. These are included in those respondents who indicated ‘no’.

115. One respondent considered the starting points should at least reflect those in England and Wales to assure public confidence. Others expressed the view that current arrangements are considered to operate effectively by practitioners and need no adjustment.

116. *Q.23 If yes to Q.22, should the lowest starting point be: 12 years; 15 years; 16 years?*

- 10 respondents answered this question.
- 3 respondents indicated favouring 12 years
- 2 respondents indicated favouring 15 years.
- 5 respondents indicated favouring 16 years.
- 3 respondents indicated ‘no view’.

117. Two respondents who did not mark a specific selection to this question but had commented very clearly on earlier questions that the current arrangements were effective, adequate, fit for purpose as well as opposing starting points in legislation were recorded as favouring 12 years. Other respondents may not have answered this question as they had answered no or no view to the preceding question.

118. Two respondents considered the options offered as generic starting points were too low. They supported the starting point for any murder being 25 or 30 years. One respondent who favoured 16 years wanted judges not to be allowed to mitigate or reduce it below 16 years. This respondent expressed the view a minimum starting point of 16 years would aid deterrence.

Q.24 Should legislation introduce a range of statutory starting points for categories of victims or murders?

- 11 respondents answered this question.
- 9 respondents indicated ‘yes’.
- 2 respondents indicated ‘no’.
- 3 respondents indicated ‘no view’.

119. The written comments in response to this question, showed a clear division of respondents’ views. Those opposing legislation providing variety of starting points based on a specific class of murder or victim noted the courts’ use of aggravating factors to deal with the particular circumstances of each case.

120. These respondents generally considered the current judicial approach was adequate. Included in this number was a respondent who opposed a hierarchy of victims and expressed confidence in a sentencing judge to deal with the specific facts of each case.

121. Those in support placed importance on providing the strongest protection possible to, in particular, children and those working to keep our communities safe. Some considered that this approach would provide additional transparency and might have a deterrent value. One respondent expressed a desire that tariffs reflect the aggravating nature of domestic violence in light of the high levels of femicide recorded in Northern Ireland per 100,000 of population.

Q.25 Should any legislation to introduce a specific statutory starting point for certain murders occurring in Northern Ireland include:

Multiple Murders				*Murder of public servants like police and prison officers who are exposed to risk by nature of their employment*				*Child murders*			
20 years	*25 years*	*30 years*	*No View*	*20 years*	*25 years*	*30 years*	*No View*	*20 years*	*25 years*	*30 years*	*No View*
1	*1*	*10*	*2*		*1*	*8*	*2*		*1*	*8*	*2*

122. 14 respondents indicated a view on this question including two respondents who opposed any legislation for different starting points depending on the victim. Both those respondents recorded 'no' or referred to earlier responses provided which clearly recorded their opposition to any different starting points depending on the victim. These were deemed to be within the not answered group of respondents for this question.

123. The vast majority of respondents favoured 30 years as the starting point for each category of victim proposed in the question. One respondent described the yearly terms proposed as insufficient and wished for starting points to act as a minimum term for these types of murders. The alternative range they proposed ran from 40 to 50 years. Other respondents also proposed a variety of alternate starting points including:

- the murder of children – ranging from the death penalty, to a whole life tariff, down as far as 20 years;

- multiple murders – from a whole life tariff to 20 years;
- murder of public servants – from 50 to 30 years.

124. Two respondents marked no view as they considered the question outside their area of expertise or inappropriate for them to express a view.

Q.26 Are there any other categories of victims not listed at Q.25 which should be included?

Please specify the category or categories of victim and indicate preferred starting point: 20, 25 or 30 years and provide reasons for your response.

- 10 respondents answered this question.
- 4 respondents indicated ‘yes’.
- 6 respondents indicated ‘no’.
- 0 respondents indicated ‘no view’

125. A number of respondents commented on the additional specific categories of murder victim they considered should be recognised. A single respondent commented that they considered all life equally important and a child’s life no less important than a serving police officer. Those who mentioned additional victim categories included:

- victims killed through persons driving under the influence of alcohol or drugs. Such deaths should be equated to murder and carry a life sentence with tariff starting point to match the seriousness of the crime;
- 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.

126. The respondent who favoured linking motivation for the death to the victims protected characteristic, indicated 25 years as the appropriate starting point.

Q.27 Should any category of victim listed at Q.25 be excluded?

- 9 respondents answered this question.
- 1 respondent indicated ‘yes’.
- 0 respondents indicated ‘no’.
- 0 respondents indicated ‘no view’.

127. There was only a single comment made by those who answered this question. This respondent identified as a public servant and stated they considered public servants' lives were no more or less valuable than any other.

Q.28 Should existing whole life tariff provisions be:

- *Retained;*
- *Replaced with a tariff period of 30 years; or*
- *Replaced with a tariff period greater than 30 years*

- 15 respondents answered this question.
- 6 indicated retaining the whole life tariff.
- 1 indicated support for replacing it with a 30 year tariff.
- 5 indicated support for replacing it with a tariff greater than 30 years.
- 3 indicated 'no view'

128. There was one respondent who clearly expressed opposition to retaining the whole life tariff but failed to elaborate or express a preference between the alternative options posed. Their views are recorded within the respondents who indicated a view on retaining or replacing the whole life tariff.

129. The numbers were finely balanced between retaining or replacing the whole life tariff. The comments provided reflect that balance. More than one respondent favoured retention or maintaining the current arrangements relying on that tariff being selected if required or considered on a case by case basis. Others felt it important to retain the most severe option for the most dangerous offenders.

130. One respondent considered retention important, specifically for perpetrators of domestic violence, for whom research has shown that rehabilitation is difficult. Another preferred to see the whole life tariff replaced with a 100 year tariff to ensure persons die in prison.

131. There were some respondents who expressed reservations about retaining whole life tariffs. Apart from the respondent mentioned above who did not wish to retain whole life tariffs, expressing their belief they were not needed, others mentioned whole life tariffs should be rejected if society considers that prison is meant to be about rehabilitation.

132. Some recorded the view that the whole life tariff is at odds with core principles of society and, if used, would place an undue burden on prison custodians. One respondent, while not answering any specific questions posed in this chapter, recorded a desire to meet with the review team and considered the term life sentence is unhelpful and confusing to the general public. Others had expressed similar view

that the term leads to confusion and false expectation and speculated whether replacing the term life sentence with Indeterminate Sentence would be beneficial.

Chapter 5: Unduly Lenient Sentences

133. This chapter explained the current system by which 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 to date, resulting in a confusing and inconsistent status quo. With a view to addressing this it discussed three options for change:

- Option A – to make all sentences referable;
- Option B – to make all sentences imposed by the Crown Court referable; and
- Option C – to make all Crown Court sentences and all sentences imposed in a magistrates' court where the maximum available sentence is 12 months or more referable.

134. Option A was disregarded on the basis that it would be disproportionate. Views were sought on whether Option B or Option C was preferable. The consultation asked:

Q.29 Should the Director of Public Prosecutions have the power to refer:

- *all sentences imposed in the Crown Court (including those imposed where the defendant elected for jury trial - Option B); or*
- *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 (Option C)*

- 18 respondents answered this question.
- 6 respondents indicated Option B.
- 6 respondents indicated Option C.
- 3 respondents indicated 'no view', although one commented that decisions should not be driven by cost.
- 1 respondent supported neither option.
- 2 respondents preferred Option A.

135. There were 9 written comments in response to this question. No clear preference emerged.

136. Those who favoured Option B 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.

137. They argued that 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.

138. Two respondents had no clear preference for change, raising concerns of increased volumes of referrals meaning a possible need to review the Director of Public Prosecutions' ability to personally review every case; concerns about the impact on judicial discretion and the principle of finality of court decisions; the fact that to introduce referrals in the magistrates' courts would change the nature of summary trial, necessitating the court becoming a court of record; and concerns about the relative complexity of a referral from the magistrates' courts.

139. It was suggested that a better solution would be achieved through more consistency in sentencing achieved through improved sentencing guidelines; and the possibility of judicial review of sentences in certain circumstances.

140. Two respondents called for Option A to be implemented, asserting this would provide an improved experience for victims and better public confidence in the criminal justice system more widely. In the absence of that option, Option C was the preference of one.

141. *Q.30 We would welcome your views on the provision of information and advice, at court, about unduly lenient sentencing, to better inform victims and their families on whether or not to pursue an unduly lenient sentence referral.*

- There were 9 written comments in response to this question.
- While it was acknowledged that some information is available, respondents were unanimously in favour of additional information being given.

142. Respondents also noted that 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.

Chapter 6: Community Sentencing

143. This chapter sought to increase awareness of the various community sentences currently available to the courts and their effectiveness, particularly when compared with short custodial sentences.

144. It discussed ways of improving these sentences, seeking views on the inclusion of restorative and reparative elements, and the benefits of extending the involvement of non-justice partners in their delivery, drawing on the experience of ground-breaking problem solving approaches.

145. Finally it put forward a range of suggestions for new community disposals and sought views on the desirability of introducing such new options.

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

- 23 respondents answered this question.
- 20 respondents indicated 'yes', although a number qualified their responses.
- 2 respondents indicated 'no'.
- 1 respondent indicated 'no view'.

146. There were 18 written comments in response to this question.

147. The majority of respondents were in favour of adopting this approach, recognising the limitations and difficulties presented by short prison sentences, and the relative benefits of community sentences.

148. It was noted that community sentences are not a 'soft option', and should be seen as sentences in their own right rather than an alternative to custody. One commented that it would reduce public confidence in the criminal justice system not to follow this course in light of the evidence against the effectiveness of short sentences. Other respondents, while in support of community sentences, qualified their responses with comments that:

- they must only be used where appropriate;
- programmes must address the root causes of offending and be proved to be effective at changing offender behaviour;
- offenders' engagement should be monitored appropriately;
- breaches must be dealt with robustly;
- restorative solutions are crucial;

- any changes must be accompanied by public messaging, especially cognisant of victim issues;
- such sentences should include clear explanations for the victim of the purpose of the sentence and the impact it is expected to have on the offender; and
- public and victim safety must be considered.

149. One respondent suggested the introduction of a proviso limiting the number of community sentences that could be imposed before moving to a custodial sentence for repeat offenders.

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

- 19 respondents answered this question.
- 15 respondents indicated 'yes'.
- 2 respondents indicated 'no'.
- 2 respondents indicated 'no view'.

150. There were 13 written comments in response to this question. All were in support of maximising restorative and reparative approaches, but not making them mandatory. Pointing to the success in youth courts it was considered that this approach would result in improved public confidence.

151. It was recommended that restorative and reparative elements be considered on a case by case basis. Mandatory victim participation in restorative practices was warned against, particularly in the context of domestic abuse. It was also recognised that the nature of the offending may mean that a restorative or reparative approach is not appropriate or practicable.

152. One respondent considered that the review had not been sufficiently clear as to the distinction between restorative and reparative actions, and that each needed to be separately considered.

153. One respondent suggested that automatic large fines should be payable to the victim.

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

- 18 respondents answered this question.
- 17 respondents indicated 'yes'.
- 0 respondents indicated 'no'.

- 1 respondent indicated 'no view'.

154. There were 12 written comments in response to this question. All supported the concept of providing more information to the public, building on efforts already made by the Probation Board, contending that this will improve public confidence in community sentencing and help to address the concern that community sentencing is a 'soft option'.

155. A clear cost/benefit analysis was recommended along with public signage at work locus. The point was also made that the public needs to know that this work is additional to, not replacing paid posts.

156. One respondent suggested that the Department of Justice should lead a communications project, while another called for this to be a Programme for Government initiative supported across the Departments.

157. One respondent recommended that victims should be provided with such information if they so wish. One wanted offenders' details made public, while another emphasised the importance of not identifying or stigmatising offenders.

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

- 20 respondents answered this question.
- 18 respondents indicated 'yes', although some caveats were suggested.
- 1 respondent indicated 'no'.
- 1 respondent indicated 'no view'.

158. There were 15 written comments in response to this question.

159. Respondents were strongly of the view that useful skills and knowledge from outside the justice system should be harnessed, subject to safeguards of relevant expertise, sufficient resource and choice and to a justice agency retaining overall monitoring and control.

160. The success of problem solving justice approaches was highlighted, identifying mental health, addiction, education and poverty as areas where justice traditionally has little expertise, but where the root cause of offending begins. One respondent called for the establishment of a Mental Health Court Liaison Service along with adequate resourcing.

161. 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.

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

- o 19 respondents answered this question.
- o 18 respondents indicated 'yes'.
- o 1 respondent indicated 'no'.
- o 0 respondents indicated 'no view'.

162. There were 15 written comments in response to this question.

163. It was noted that the correct name of this order is the enhanced combination order (ECO). All those who provided comments were in favour of using properly resourced 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.

164. One respondent cautioned that public confidence must be maintained, with sentence not being seen as 'soft' options. Those cases suggested as not being appropriate for an ECO included:

- for persistent repeat offenders; and
- for domestic abuse offenders where specific research is not yet available to show their effectiveness.

165. The challenging nature of ECOs was recognised, with acknowledgment that for those offenders who do not comply with the terms of an ECO, a custodial sentence could be applied where breach proceedings are brought. The importance of securing public confidence in this regard was highlighted.

166. One respondent expressed the view that here should be greater community/voluntary sector involvement in delivering ECO interventions.

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

- o 16 respondents answered this question.
- o 15 respondents indicated 'yes'.
- o 0 respondents indicated 'no'.
- o 1 respondent indicated 'no view'.

167. There were 10 written comments in response to this question, each of whom supported additional judicial involvement.

168. A number of respondents referred to the experience of problem-solving courts where ongoing judicial involvement has shown positive results. It was highlighted that this approach impacts significantly on offenders and has the added benefit of improving public confidence in the system.

169. One respondent recommended an evaluation of the Substance Misuse Court pilot before further action is considered.

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?

- o 17 respondents answered this question.
- o 14 respondents indicated 'yes'.
- o 1 respondent indicated 'no'.
- o 1 respondent indicated 'no view'.
- o 1 respondent was reticent about the proposal.

170. There were 10 written comments in response to this question. Most were in favour, although there were different opinions about the detail of such an order.

171. The following points were made:

- it would be important to factor in the offender's consent to any restorative element;
- such an order should not end up more like a probation order than a conditional discharge order;
- such orders could be available exceptionally as an option where a single piece of work was deemed necessary;
- Mental Health Treatment Requirements could prove useful in this context; and
- any restorative intervention should not be administered by the Probation Board, as it would be important not to bring such individuals further into the criminal justice system.

172. One respondent considered it inappropriate and unnecessary to add further elements to the conditional discharge, arguing its purpose is to deal with very low level offending where the offender has little or no criminal record.

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

- o 18 respondents answered this question.
- o 13 respondents indicated 'yes', although some qualifications were recommended.
- o 2 respondents indicated 'no'.
- o 3 respondents indicated 'no view'.

173. There were 12 written comments in response to this question, some strongly in favour of developing this option, some less so.

174. For those in favour, public confidence again featured as an important factor. A further opportunity for offenders to evaluate their behaviour; address the reasons for offending and in appropriate cases include a restorative element was welcomed. It was suggested that incentives for participation such as absolute discharge or a nil entry on the offender's criminal record be considered.

175. Others commented that the role of the voluntary/community sector and consequences of failing to comply require consideration; there was a view that current community options should be maximised before introducing any new ones.

176. One respondent was wholly unsupportive, with the view that such an option was weak and pandering to offenders.

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

- o 17 respondents answered this question.
- o 11 respondents indicated 'yes'.
- o 5 respondents indicated 'no'.
- o 1 respondent indicated 'no view'.

177. There were 12 written comments in response to this question, which largely followed responses to the previous question.

178. Concerns were raised that:

- non-compliance could trigger the imposition of a custodial sentence, in contrast with the current arrangements where a suspended sentence may only be implemented where further offending occurs;
- new options should not be introduced without better understanding of their impact on existing ones;
- the option doesn't differ sufficiently from community orders.

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

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

- 16 respondents answered this question.
- 12 respondents indicated 'yes'.
- 2 respondent indicated 'no'.
- 1 respondent indicated 'no view'.
- 1 respondent urged caution around the introduction of such an intervention.

180. There were 11 written comments in response to this question. A number of respondents recognised the disproportionate long term impact of a criminal record for very low level offending, and were supportive of this option, drawing similarities with youth justice where a similar option already exists.

181. One respondent was opposed to the option, considering it a weak one, while another felt that excusing criminality inevitably leads to further offending. Concerns around the needs of victims were also raised, recommending that if this option were to be adopted there should be a requirement to note the reasons for choosing it and the victim's views.

Chapter 7: Hate Crime

182. 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 had found few cases recorded as receiving an enhanced sentence.

183. Developments had taken place since 2013, but there remains no requirement to record details of an enhanced sentence in hate crime cases. The Review sought views on whether any changes are needed to the current arrangements:

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?

- 24 respondents answered this question.
- 18 respondents indicated 'yes'.
- 0 respondents indicated 'no'.
- 1 respondent indicated 'no view'.
- 1 respondent affirmed this to be current practice.
- 4 respondents gave no view, referring to the parallel independent Hate Crime Review.

184. There were 16 written comments in response to this question. A number noted the parallel Hate Crime Review being independently led by Judge Marrinan, and referred the Department to their responses to that Review.

185. In response to this specific question, there was wide support for prosecutors identifying hate crime to the court. It was considered that this approach improves transparency, allows all parties to see the offence is being treated seriously, and can inform rehabilitative work which is proven to reduce reoffending rates. It was noted that this was already normal practice, re-enforced by recently implemented prompts to prosecutors.

186. A number of other issues were raised in response to this question: one respondent considered the current aggravated sentencing approach to be inappropriate for dealing with hate or prejudice-motivated offences; another wished to see sectarian crimes dealt with as hate crimes; and a third called for the categorisation of offences to be driven by victims' perceptions.

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?

- 19 respondents answered this question.
- 17 respondents indicated ‘yes’.
- 0 respondents indicated ‘no’.
- 1 respondent indicated ‘no view’.
- 1 respondent indicated that this is already the practice.

187. There were 10 written comments in response to this question, 9 of which supported the proposal on the grounds of transparency and awareness raising, sending a positive message to victims, and enhancing public confidence.

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?

- 19 respondents answered this question.
- 14 respondents indicated ‘yes’.
- 2 respondent indicated ‘no’.
- 3 respondents indicated ‘no view’.

188. There were 10 written comments in response to this question, largely echoing the views outlined in response to the previous question.

189. One respondent gave reasons for not supporting the proposal, pointing to the carefully balanced assessment carried out by sentencing judiciary, and stating that a requirement to indicate precisely how the hostility affected the sentence might disturb this exercise.

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

- 16 respondents answered this question.
- 10 respondents indicated ‘yes’.
- 1 respondent indicated ‘no’.
- 3 respondents indicated ‘no view’.
- 2 respondents gave no view but referred to the independent Hate Crime Review.

190. There were 10 written comments in response to this question.

191. Proposals included:

- ensuring the existence of a protected characteristic was not incidental;
- taking a restorative and educational approach;
- requiring the judiciary to state in open court that the sentence is aggravated; how the sentence has been affected; and the enhance sentence; and
- ensuring that hate crimes are treated seriously.

192. There were suggestions for inclusion of additional protected category groups in the hate provisions. This issue is considered in detail in the separate review of hate crime legislation.

193. One respondent considered that a stand-alone type offence would allow a better indication of the type of offending on an offender's criminal record.

194. One respondent was interested to see any evidence that treating hate crimes differently from other criminality is effective.

Chapter 8: Attacks on Frontline Public Services

195. For a number of years there have been calls to better recognise those people whose jobs, in serving and protecting the public, put them in positions of danger. Following earlier efforts in the Assembly to widen the range of occupations enjoying specific protection, this issue remains high on the political agenda.

196. This chapter asked for views to inform the need to introduce new legislation to provide higher sentencing powers, and to widen the range of categories of those providing frontline public services to whom these might apply.

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)?

- 19 respondents answered this question.
- 7 respondents indicated 'yes'.
- 9 respondents indicated 'no'.
- 3 respondents indicated 'no view'.

197. There were 11 written comments in response to this question. Views were mixed. The majority agreed that those delivering frontline services should be protected, but not all believed that the current offences and penalties need to be changed.

198. One frontline respondent felt the current arrangements were adequate, but they would like to see more use of higher penalties within the current range.

199. One respondent called for an automatic 5 year minimum sentence for anyone who assaulted police, nurses or firefighters. Another was of the view that there should be no distinctions between attacks on frontline service providers and other human beings, but that education on the roles performed by service providers should form part of the sentence.

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

- 16 respondents answered this question.
- 11 respondents indicated 'yes'.
- 3 respondents indicated 'no'.
- 2 respondents indicated 'no view'.

200. There were 8 written comments in response to this question. Those who supported this option considered that the increased maximum sentence would help to deter this type of offending.

201. Two respondents suggested that sentences higher than 12 months should be available, while one reiterated the view that sentencing must relate to the harm caused rather than the status of the victim.

202. One respondent suggested empowering district judges (magistrates' courts) to refuse jurisdiction in cases where they deem they have insufficient sentencing powers.

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)?

- 14 respondents answered this question.
- 11 respondents indicated 'yes'.
- 2 respondent indicated 'no'.
- 1 respondent indicated 'no view'.

203. There were 5 written comments in response to this question. Three supported an extension to include further categories of those who care for communities; the other two re-iterated views made in response to the previous questions.

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)?

- 16 respondents answered this question.
- 10 respondents indicated 'yes'.
- 4 respondents indicated 'no'.
- 2 respondents indicated 'no view'.

204. There were 7 written comments in response to this question. Two referred to previous answers, reaffirming that the current provision is adequate, and that sentencing should relate to harm. Five supported this option, citing as benefits:

- identification of repeat offenders;
- its deterrent value; and
- maintenance of statistics, and so informing policy development.

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?

- 14 respondents answered this question.
- 10 respondents indicated 'yes'.
- 3 respondents indicated 'no'.
- 1 respondent indicated 'no view'.

205. There were 5 written comments in response to this question. One respondent commented that a restorative approach should be followed. The remaining four supported the proposal. Reasons for their support included:

- to help make clear to offenders why they received the sentence they did, and so deter further offending;
- to help improve public confidence;
- to improve transparency; and
- to assist with monitoring such offences.

Chapter 9: Crimes against Older and Vulnerable People

206. Following a number of widely reported attacks on older people and an earlier attempt to create new offences of assault on the elderly, this chapter asked whether special sentencing arrangements should be introduced for offences against older or vulnerable people.

207. A key issue in the chapter was whether the victim's age was the defining concern in such cases, or whether a victim's vulnerability was the crucial factor.

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?

- 20 respondents answered this question.
- 12 respondents indicated 'yes'.
- 4 respondents indicated 'no'.
- 1 respondent indicated 'no view'.
- 3 respondents indicated that further consideration of the issues is needed.

208. There were 16 written comments in response to this question. The majority were supportive of the proposed approach, commenting that all vulnerable people need equal special protection

209. Two respondents preferred to keep older people as a distinct category. One of these considered it inappropriate to put older people into the same category as drug addicts and alcoholics. The other suggested that old age and vulnerability should both be distinct categories.

210. Two respondents recognised that age and vulnerability are already taken in to consideration in sentencing, and urged no legislative change. The inflexibility of legislation to successfully cover all desired scenarios was highlighted, with a preference expressed for relying on guidelines. Three expressed a concern that further research was required, and recommended a co-ordinated response with the Review of Hate Crime Legislation.

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 (NI) 2015 be used?

- 14 respondents answered this question.
- 9 respondents indicated 'yes'.
- 0 respondents indicated 'no'.

- 5 respondents indicated ‘no view’.

211. There were 5 written comments in response to this question. It was generally agreed that a common definition, if legislation was considered necessary, would promote clarity and understanding. As with the previous question, caution was urged as to whether legislation is the appropriate response.

212. One respondent suggested it should be left to the victim to define whether they consider themselves to be vulnerable through their victim impact statement.

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)?

- 16 respondents answered this question.
- 5 respondents indicated ‘yes’.
- 8 respondents indicated ‘no’.
- 3 respondents indicated ‘no view’.

213. There were 8 written comments in response to this question, with no clear overall preference. Those who agreed that current guidance is sufficient commented that there is sufficient flexibility in the current system to be able to respond appropriately, and that age/vulnerability weighs heavily as an aggravating factor in the final sentence.

214. One respondent’s view was that guidelines may not always be understood, and, reflecting on the earlier public perceptions and sentencing guidance chapters, more could be done to educate the public on how sentencing decisions are reached.

215. Awaiting the outcome of the Hate Crime Legislation Review was again recommended.

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

(i) The vulnerability of a person (by virtue of their age or other factors); or

(ii) Motivation on the basis of the victim’s perceived vulnerability (by virtue of their age or other factors)?

- 19 respondents answered this question.
- 11 respondents indicated ‘yes’ to (i).
- 7 respondents indicated ‘no’ to (i).
- 1 respondent indicated ‘no view’ to (i).
- 15 respondents indicated ‘yes’ to (ii).

- o 2 respondents indicated ‘no’ to (ii).
- o 2 respondents indicated ‘no view’ to (ii).

216. There were 11 written comments in response to this question. Eight supported (ii), while four supported (i).

217. Three respondents fundamentally disagreed with the approach, four were in support of both (i) and (ii). Three respondents did not consider that (i) should be an aggravating factor. Two expressed no view on (i).

218. Of those who fundamentally disagreed, one considered the proposal did not address the issue sufficiently; the other promoted a restorative approach, with the sentence addressing the harm done, rather than the status of the victim dictating the sentence.

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

- o 19 respondents answered this question.
- o 10 respondents indicated ‘yes’.
- o 8 respondents indicated ‘no’.
- o 1 respondent indicated ‘no view’.

219. There were 11 written comments in response to this question. Four supported the creation of a new offence; 7 did not.

220. Arguments in favour included:

- recognition of the disproportionate impact of crime on older/vulnerable people; and
- improving consistency in sentencing, with a consequent increase in public confidence.

221. Those against said:

- they had a preference for the previous option (aggravating factor);
- they considered it unnecessary as the current arrangements are sufficient;
- the criminal justice system must respond to harm caused, and not be driven by victim characteristics;
- it is wrong to differentiate between categories of victim; and

- many other crimes are committed against older people, such as scamming and property crimes. To single out assault would fail to recognise this significant problem.

Chapter 10: Driving Offences Causing Death or Serious Injury

222. This chapter reviewed the appropriateness of the maximum penalty available for the offence of causing death by dangerous driving and other driving offences which carried a similar maximum sentence of 14 years. In addition the review consulted on instituting changes in Northern Ireland which had occurred elsewhere in the United Kingdom for the offence of causing death while driving when disqualified.

223. Highlighted earlier in this report is the lack of evidence that tougher sentencing helps to rehabilitate, reduce further offending, or provide justice to victims. At times during engagement events the legal language utilised within the courts was highlighted as playing a role in the gap in public understanding of the sentencing calculation process.

Q.55 Does the existing maximum sentence of 14 years for each of our 3 offences provide the court with sufficient powers to reflect the most serious culpability of that offending behaviour?

- 211 respondents answered this question.
- 4 respondents indicated ‘yes’.
- 207 respondents indicated ‘no’.
- 3 respondents indicated ‘no view’

224. Responses included comments that the current maximum provided no deterrent or that lengthier sentence were essential to reflect the harm caused to families and victims. The range of alternatives suggested by respondents to the current 14 years maximum included:

- A discretionary life sentence, either with or without a fixed tariff;
- a maximum of 20 years; and 2 suggested;
- a minimum sentence of 14 years, suggested by 2 respondents.

225. 38 respondents indicated a life sentence was the only sentence they thought appropriate for these offences. One respondent who didn’t answer yes or no but indicated their belief that causing death through drink or drug driving should be classed as murder was a clear indication that respondent considered the current maximum inadequate. This respondent was included within the no responses.

226. Similarly another respondent who didn’t answer any specific question but stated their support for tougher and more appropriate sentences for those convicted of drink driving causing a death was included within the no responses.

227. The majority of respondents supported an increase for the maximum sentence from 14 years, often citing that the current maximum provides no deterrent. 48 respondents recorded a desire to see the maximum sentence increased, with some indicating to at least 20 years. A number provided examples of their sense of injustice at the sentence imposed following the loss of a beloved family member.

228. Where a respondent provided only generic commentary that victims of such offences must be kept informed and provided with understanding of the reasons for a sentence and how to raise their concerns, the respondent was treated as not answering the specific question.

229. At least three quarters of the respondents recorded the view that a maximum sentence of 20 years or Life would be a deterrent.

230. Nearly a third of respondents expressed particular concern about those who drive after taking alcohol and drugs and cause loss of life or serious injury. They did not perceive that behaviour as an aggravating factor. Descriptions varied from a deliberate action on the offender's part, premeditated or behaviour justifying a far heavier sentence. Many stated that the offender pays a small price in comparison to their victim's families. Fewer than 20 respondents equated causing death while driving under the influence of alcohol or drugs with manslaughter.

231. A small number thought the current maximum was appropriate with one expressing the view provided there was no 50% remission. As there is no remission[2] this was included within the yes responses. A number of responses focused on dissatisfaction with the custodial element of past sentencing. It was acknowledged within some comments that for many people 'sentencing' equates to prison, and public awareness and understanding of custodial alternatives is low. Some observed that to change attitudes will take time and commitment.

232. At least 4 respondents suggested that any maximum sentence should "match England". This is already the current position. It may be that they were anticipating proposed legislation to increase the maximum sentence within Great Britain to life for these offences.

Q.56 If no to Q.55, should the variation be for:

(i) An increased fixed period of 20 years; or

[2] Since 2010 any sentence in excess of 12 months imprisonment consists of a mandatory custodial and licence element.

(ii) A maximum sentence equivalent to that for the offence of manslaughter and other serious violent offences, namely a discretionary life sentence?

- 197 respondents answered this question.
- 37 respondents indicated favouring 20 years.
- 158 respondents indicated favouring a discretionary life sentence.
- 2 respondents indicated their opposition to either of the options posed in the question.
- 4 respondents indicated no view on both options posed in the question
- 4 respondents indicated no view on a single option posed in the question.

233. There were 91 written comments in response to this question. Four times as many respondents selected a discretionary life sentence as the number who selected an increased fixed period of 20 years. Nearly all who provided reasons supported a discretionary life sentence, with one expressing the desire for it to have no opportunity for parole. One respondent who expressed support for tougher sentences accompanied with the words "life should mean life, 4 -5 years is ridiculous" was deemed to have not answered this question as it was unclear whether the reference to "life should mean life" was directed to this chapter or question.

234. Comments included that long or lengthy sentences allow offenders the opportunity to reflect on their crimes and might drive a change in behaviour or long sentences would "deter others". Multiple respondents expressed the view that causing death by dangerous driving was arguably more intentional than manslaughter or that driving knowingly after taking alcohol or drugs was similar to manslaughter.

235. Many repeated views expressed on earlier questions in this chapter that deciding to drive a vehicle while under the influence of alcohol or drugs was a deliberate act, a conscious reckless act and an act knowingly putting other users of the road at risk of serious injury or death from their driving. More than one described a vehicle as a lethal weapon. Most respondents who expressed this view supported the life sentence option.

236. Of the 37 respondents who favoured a maximum sentence of 20 years, some expressed a hope that setting a limit of 20 years would hopefully encourage judges to consider increasing the sentence imposed, in particular, to a sentence which reflected the seriousness of harm to victims. At least two respondents wished the 20 year period to be a mandatory fixed period.

237. In contrast one respondent supporting a maximum 20 year period for first time offenders but suggested a different period for the repeat offender. In the circumstances of a repeat offender for these serious offences this respondent suggested a discretionary life sentence be available to the judge as that offender was more likely to be "dangerous".

238. Some respondents recorded concerns that current sentencing practice does not adequately recognise or reflect that victims or their families may reside in the same locality as the driver. They stated the adverse impact short sentences had on the families' grief, increasing the hurt to the bereaved or injured accompanied by the risk of meeting the offender within a short period of sentencing.

Q.57 Should a distinction in maximum sentence be made between any of the 3 offences:

Causing death by dangerous driving			*Causing death by careless driving while under the influence of drink or drugs*			*Causing death by careless driving and failing to provide a specimen*		
Yes	*No*	*No View*	*Yes*	*No*	*No View*	*Yes*	*No*	*No View*
104	*60*	*9*	*119*	*59*	*9*	*85*	*52*	*10*

- 179 respondents answered this question.
- 85 to 119 respondents indicated 'yes' for the individual offences.
- 52 to 60 respondents indicated 'no' for the individual offences.
- 9 to 10 respondents indicated 'no view' on the question.

239. There were 76 written comments in response to this question. While the variance in the numbers suggest a clear majority in favour of making a distinction between these three offences, the accompanying comments mainly indicated strong opposition to treating any one offence as less serious than the other. Just over 50% of those who commented specifically recorded opposing any distinction being made. Many described all the offences as serious.

240. The view was repeated that driving under the influence of alcohol and drugs should carry serious culpability for the outcome. A few respondents considered that driving under the influence is more serious than dangerous driving, while a few felt that refusing to provide a specimen should carry a higher maximum than dangerous driving. One respondent suggested that failure to provide a specimen, having caused death by careless driving, should automatically carry the maximum sentence to deter persons from not co-operating.

241. A couple of respondents expressed reservations on the clarity or their understanding of the question. One respondent described them all as very serious offences. This respondent in earlier responses indicated that causing death by

dangerous driving should be classed as murder so, noting their view that causing death with careless driving while under influence of alcohol or drugs is worthy of the "same tariff as for murder", their response was taken as making no distinction on maximum sentence for the three offences.

242. Most respondents expressed the view that all 3 offences should carry an increased sentence length above 14 years, with one suggesting a minimum of 30 years. Many recorded "a life for a life".

Q.58 If the maximum sentence for causing death by dangerous driving is increased, should parity be maintained by similarly increasing the sentence for causing grievous bodily injury by dangerous driving?

- o 198 respondents answered this question.
- o 196 respondents indicated 'yes'.
- o 2 respondents indicated 'no'.
- o 10 respondents indicated 'no view'.

243. There were 60 written comments in response to this question.

244. The majority registered that sentencing for these offences needed to be revised and the current maximum sentence does not provide a deterrent. One respondent, who didn't declare a yes or no, commented that if the maximum was increased for death by dangerous driving then in principle the offence for causing grievous bodily injury by dangerous driving should also be increased. This was taken as indicating yes to the question.

245. Some respondents recorded that where a victim is lucky to recover from injury or to avoid death this does not make the driving of the offender less serious, especially if they have consumed alcohol or drugs. Again responses regarding the actions of those who have ingested alcohol or drugs is described as a choice made by drivers and a denial of the responsibility resting upon all drivers for themselves and other users on the road.

246. Some comments indicated a lack of recognition that currently no distinction is made in the maximum sentence available. However, others recognised parity existed and considered that it should be maintained.

Q.59 If the maximum sentence for causing death by careless driving while (i) under the influence of drink or drugs or (ii) failing to provide a specimen is increased, should the sentence for the equivalent careless driving offences which cause grievous bodily injury also be increased?

- o 200 respondents answered this question.

- 194 respondents indicated ‘yes’.
- 6 respondents indicated ‘no’.
- 10 respondents indicated ‘no view’.

247. There were 52 written comments in response to this question. The majority expressed the view that parity of maximum sentence between all these offences should be maintained irrespective of the outcome of an offender’s actions.

248. Driving with alcohol and drugs was identified by many as a deliberate decision and not simply an aggravating factor. The outcome of an offender’s action should not diminish their responsibility for the impact they have on lives of those injured and their families. Many reflected the view that the offender pays a small price in comparison to families of those killed or seriously injured.

249. A very small number suggested that while parity should be maintained the judge should be allowed to decide on a case by case basis. This was taken to refer to judicial discretion being applied on the individual sentence in each case.

250. One respondent who didn’t opt for yes or not but commented that it appears rational for the current parity situation to be retained was included as indicating yes. Many comments reflected the view all these offences permanently impacted on someone’s life so all should be the same so far as maximum sentence was concerned.

Q.60 Is an increase to the maximum sentence of 2 years warranted for causing death or grievous bodily injury when driving while disqualified?

- 203 respondents answered this question.
- 183 respondents indicated ‘yes’.
- 20 respondents indicated ‘no’.
- 9 respondents indicated ‘no view’

251. There were 69 written comments in response to this question.

252. Nearly nine times as many favoured increasing the sentence than those who didn’t. Many expressed the view that the current 2 years is barely a deterrent when the maximum sentence is unlikely to be imposed. One respondent, who didn’t indicate yes or no, expressed a wish established that case law be respected but considered the unjustified disparity between Great Britain and Northern Ireland penalties could make an increase warranted was included within the yes indications.

253. Some felt that any increase of maximum sentence should reflect the deliberate choice to ignore the law and society’s expectations. Many considered the current 2

years was totally inadequate to punish for the lack of regard for other users of the road. Most viewed this offence as a deliberate action on the offender's part with some describing it as premeditated.

Q.61 If yes to Q.60, should the increased maximum sentence for causing death when driving while disqualified be: 4 years, 10 years, other or no view.

- 198 respondents answered this question.
- 12 respondents indicated they favoured an increase to 4 years.
- 101 respondents indicated they favoured an increase to 10 years
- 85 respondents indicated they favoured an alternative to either of the options offered.
- 7 respondents indicated 'no view'.

254. There were 83 written comments in response to this question. It is clear nearly 10 times as many who commented favoured an increase to 10 years as those who considered 4 years sufficient.

255. Within the respondents who favoured an alternative, to the 2 specific options posed within the question, the maximum sentences desired ranged from 15 years to Life. Some considered, while the maximum could be 10 years for first offence, a repeat offender should be vulnerable to a longer sentence. 20 years to Life were more often suggested than lesser periods. One response favoured 20 years as a minimum for this offence. Another didn't propose a direct alternative to those offered but considered further consideration and research on this offence was required bearing in mind the low number of prosecutions for the offence and the relevant case law.

256. While some commented that 10 years maximum was just, others described the same period as ridiculous.

257. A fair proportion repeated observations such as offenders acted in contempt of the law by being on the road while disqualified, take an innocent life and that such irresponsible behaviour warrants a sentence which might deter others.

Q.62 If yes to Q.60, should the increased maximum sentence for causing grievous bodily injury when driving while disqualified be: 4 years, 10 years, other or no view?

- 196 respondents answered this question.
- 25 respondents indicated they favoured 4 years.

- o 104 respondents indicated they favoured 10 years
- o 67 respondents indicated they favoured a different increase to 4 or 10 years.
- o 8 respondents indicated 'no view'.

258. There were 65 written comments in response to this question. There was only 2 respondents who expressed the view that the current 2 years maximum sentence was adequate.

259. One response referred back to an earlier expression of support for established case law to be respected but any unjustified disparity between Great Britain and Northern Ireland penalties could make an increase warranted. This was taken as indicating support for an increase to 4 years if Northern Ireland penalties were to be increased.

260. One respondent who favoured 10 years for causing death favoured 4 years for causing serious injury while driving disqualified. This was an exception to the majority of comments which generally desired no distinction be made and wanted to see the same maximum sentence applying whether death or serious injury was caused.

261. Nearly half of those who answered this question favoured an increase to 10 years and their comments reflected those already expressed for the preceding question.

262. Alternatives to the two options provided ranged from 2 years to life, with some specifically selecting 14, 15, 20 and 20 plus years. Many of these responses expressed a preference to see parity maintained between causing death or serious injury.

Q.63 Do the current minimum periods of disqualification (2 years or 3 years for a repeat offender) remain appropriate for the causing death or serious injury driving offences which carry a maximum of 14 years imprisonment?

- o 198 respondents answered this question.
- o 16 respondents indicated 'yes'.
- o 182 respondents indicated 'no'.
- o 10 respondents indicated 'no view'

263. There were 71 written comments in response to this question.

264. The overwhelming majority of respondents indicated they considered the current minimum were not appropriate. This included the respondent who didn't tick yes or no but indicated current provisions should be increased as the general public would regard 2 years as lenient, offering no deterrent or protection to the public.

265. One respondent who expressed the view the current minimum periods were appropriate, also suggested that any change await the outcome of the Westminster review on the effectiveness of disqualification and retesting requirements to be undertaken in Great Britain. response was accepted as indicating support for the current arrangements.

266. A few responses focused their comments on the sentence for the offence rather than the period of disqualification. A very small number indicated they didn't understand the question posed.

267. While comments widely differed on this issue a few commonalties could be identified. The minimum disqualification periods most often mentioned in responses included:

- 5 years;
- 5 to 10 years; and
- 4 years or above.

268. A very small number expressed the view that anyone causing death on the roads should receive a life ban.

269. 20 respondents commented specifically that repeat offenders for these offences deserve to be treated differently in regard to the minimum driving ban available to the court. For these respondents a desire was expressed to see a substantially longer minimum ban with 20 years to life mentioned for this category of offender.

Q.64 If no to Q.63, should the minimum period of disqualification of 2 years be increased to: 3 years, 4 years, other or no view?

- 186 respondents answered this question.
- 2 respondents indicated favouring 3 years.
- 87 respondents indicating favouring 4 years.
- 97 respondents indicated favouring alternatives to 3 or 4 years.
- 14 respondents indicated 'no view'.

270. There were 83 written comments in response to this question.

271. The responses on this question are consistent with the substantial number of respondents who indicated in the preceding question they favoured increasing the current 2 years minimum to a minimum of at least 4 years or more.

272. One respondent who combined their response for questions 63 and 64 recording a preference to see no change to the current minimum period for disqualification was taken as indicating the current arrangements as appropriate and not answering this question. Another respondent who provided the same response to questions 63 and 64 indicating they could perceive no benefit in increasing the minimum disqualification periods was taken as not answering this question having indicated yes at question 63.

273. Of the largest group of respondents who favoured an alternative to those periods posed within the question, the range of alternatives specifically mentioned included 5 years (4 respondents), 10 years (10 respondents), 20 years (2 respondents) and life (40 respondents). V Nearly 50% of those who provided reasons expressed the view that a life ban was deserved or warranted especially where driving with alcohol and drugs played a role in the offence.

274. The second most favoured alternative was 10 years minimum driving ban. Some recorded the view that the current bans imposed were too lenient and failed to reflect the seriousness of the crime.

275. One respondent considered the driving ban should be at the judge's discretion but there should be guidance provided which reflected an increasing scale of disqualification periods increasing incrementally for each subsequent offence as well as the severity of the infraction.

Q.65 Should the current mandatory minimum disqualification for repeat offenders in a 10 year period be doubled from 3 years to 6 years minimum?

- 198 respondents answered this question.
- 184 respondents indicated yes
- 14 respondents indicated 'no'.
- 7 respondents indicated 'no view'.

276. There were 54 written comments in response to this question.

277. There was an overwhelming majority supporting the increase from 3 years to 6 years for repeat offenders. Comments in support of this increase included it was a significant difference and might prevent or deter repeat offending while others considered it was still insufficient or lenient.

278. A small number of respondents who indicated no preferred to leave any lengthier disqualification to be addressed as part of the sentencing exercise conducted by a Judge in individual cases.

279. One respondent who expressed the view that the case for the proposed doubling of the minimum period had not been made out in the consultation document was taken

as indicating no to the question. Another who indicated no preferred to retain current minimum disqualification periods and rely on judicial discretion. These views were very much in the minority of those who commented on this question.

280. 28 respondents recorded the view that the minimum for repeat offenders should be higher than 6 years. Many of them complained the opportunity to select other alternatives had not been offered. Within the group of respondents who made this complaint, there were 13 respondents who indicated a preference for a specific minimum period and the rest indicated no clear preferred alternative.

281. The specific minimum period preferred by this group of respondents for repeat offenders was a life driving ban. A number of these had also favoured in the preceding question increasing the minimum period of 2 years to life, which would make no distinction for repeat offenders.

Q.66 Should the power of the courts to reduce the disqualification period be limited, as in Ireland, so that it is not reduced below 2/3rds of the period or the mandatory minimum for the offence whichever is the greater?

- 181 respondents answered this question.
- 149 respondents indicated 'yes'.
- 32 respondents indicated 'no'.
- 23 respondents indicated 'no view'.

282. There were 32 written comments in response to this question.

283. Restricting offenders applying to a court to vary a disqualification period imposed at the time of sentencing had overwhelming support.

284. Amongst those who supported the proposed restriction some questioned why any variation on the initial disqualification should occur because an offender may be adversely affected, given the severity of the impact of the offender's actions on a victim and their family. 8 respondents wished to see no application for a reduction to ever be permitted. The reasons given why an offender should not be allowed to apply for any reduction included: reductions undermined the purpose of the sentence; and that judges are too easily swayed or quick to reduce penalties or too sympathetic to drivers who cry about their work but wreck the lives of innocent victims.

285. A small number suggested restricting the grounds upon which the court could entertain such applications.

286. Two respondents were opposed to adopting what occurred in "foreign countries" and expressed a preference for maintaining parity with whatever occurred in England and Wales. Another proposed no reduction should be allowed below a quarter of the

disqualification period or the mandatory minimum as opposed to the proposed two thirds.

287. One respondent unsupportive of placing a restriction on applications for removal or reduction of a driving disqualification imposed at court based this on concern about potential negative impact on offender's rehabilitation including the ability to obtain employment and/or financial constraints. Another respondent considered further information was required on the effectiveness of the Republic of Ireland arrangements. This was taken to be indicating no.

288. A variety of alternatives to the restrictions proposed including:

- benefit of rehabilitation to offenders through gaining employment could no application be entertained by a court until at least the mandatory minimum disqualification period had been served; and

- an appropriate balance between public concerns regarding individuals driving while disqualified and be maintained by limiting the restriction on judicial discretion to repeat offenders.

Q.67 Should a repeat offender for these 14 year maximum offences, or the offence of driving while disqualified, be prohibited from applying to remove any disqualification until the minimum period required to be imposed on a first time offender for that offence has expired?

- 210 respondents answered this question.
- 117 respondents indicated 'yes'.
- 13 respondents indicated 'no'.
- 13 respondents indicated 'no view'.

289. There were 36 written comments in response to this question.

290. This proposed restriction was described by many as "sensible, fair and reasonable". There was clearly more support for restricting repeat offenders from applying to vary the disqualification period imposed by the sentencing judge than had been recorded for a general restriction upon disqualified drivers. 12% more respondents supported this restriction that those who supported the restriction proposed at Q 66.

291. One respondent objected to making any distinction between first time offenders and repeat offenders as they considered the offences are too serious for such leniency.

292. A variety of alternatives to the restrictions proposed included:

- no application should be entertained by a court until at least the mandatory minimum disqualification period had been served; and
- an appropriate balance between public concerns regarding individuals driving while disqualified and the benefit of rehabilitation to offenders through gaining employment could be maintained by limiting judicial discretion to first time offenders.

293. Six respondents were opposed to any application being permitted to vary a disqualification period once imposed. While some favoured leaving it to judicial discretion, another wished for the introduction of barriers to such applications if disqualification was to act as sufficient deterrent. Three respondents indicated that only a life ban for these serious driving offences was appropriate.

294. Where the respondent didn't indicate a yes or no but provided commentary indicating they accepted prohibiting repeat offenders from seeking to reduce or remove their disqualification until the minimum period required for a first time offender has expired, that response was included in the numbers who indicated yes to the question posed.

295. One respondent considered that the question could have been made more understandable. Another who opposed such restrictions referred to the courts recognition of the potential negative impact of disqualification (financial and employment) for offenders.

Q.68 Should any driving disqualification take account of the custodial component of a sentence?

- 189 respondents answered this question.
- 124 respondents indicated 'yes'.
- 65 respondents indicated 'no'.
- 14 respondents indicated 'no view'

296. There were 39 written comments in response to this question.

297. Only one respondents who provided reasons indicated that they considered the disqualification should run concurrently with the custodial period as occurs presently. One person indicated the clarity of the question could have been improved.

298. Many comments supported commencement of the provisions highlighted in the consultation document or for a similar legislative provision to be made. A respondent who recognised the legislation in existence and the custodial period being a matter a judge is entitled to take into account in determining the duration of a disqualification

period was perceived as indicating support. One person indicated conditional support provided it applied to sentences that were 10 years or more.

299. The majority of respondents wished to see either the driving ban commenced upon release from custody or the disqualification period imposed by the sentencing judge of a sufficient length of time that all of the appropriate disqualification period would be served post the offender's release from custody. On this basis a respondent who ticked no but commented "the driving ban should commence on release otherwise it is meaningless" was included within those indicating supporting disqualification periods take account of custodial element of any sentence.

300. A variety of descriptions were provided as to the inappropriateness of current arrangements which included:-

- "makes a mockery of the disqualification",
- "not acceptable",
- "disqualification running concurrently to a prison sentence is pointless" and
- "renders the disqualification meaningless".

Next Steps

300. Before concluding its recommendations flowing from the Review the Department wishes to reflect on and resolve a number of issues raised in response to the consultation.

301. Further development work and discussion with stakeholders on a number of key issues is required, including:

- reflecting consideration of relevant developments in other jurisdictions and topical issues which are moving at pace, such as the proposed “Harper’s Law” on sentencing for the killing of public servants and the Westminster private member’s bill on increasing the maximum sentence for causing death by dangerous driving due second reading October 2020;
- post-consultation meetings with some respondents to clarify specific issue of concern and potential ways forward;
- further work on reviewing the current sentencing guidance arrangements;
- assessing initial projected costings to inform the feasibility of potential options;
- on hate crime, liaising with colleagues working on the independent review of hate crime legislation which has now concluded to ensure consistent messages are taken forward; and
- liaising with the Minister for Justice and Minister for Infrastructure (on road traffic offences) on review recommendations, to support her decision making.

302. The Review Team will be finalising its recommendations during the rest of the year, taking careful account of the consultation responses and the 7 September Northern Ireland Assembly debate on sentencing for the murder of public servants, to facilitate the Minister taking decisions on the way forward and to support the development of new sentencing legislation for inclusion in a legislative programme early in the next Northern Ireland Assembly mandate.

303. Where any improvements can be made administratively, these will be prioritised for progression as soon as practicable.