



FACULTY OF ADVOCATES

Response from the Faculty of Advocates

to

Sentencing Rape Offences: A Scottish Sentencing Council Consultation

The Faculty of Advocates is grateful for the opportunity to comment on two draft guidelines on sentencing rape offences. These cover offences of rape under section 1 of the [Sexual Offences \(Scotland\) Act 2009](#), and its common law equivalent; and rape of a young child (under the age of 13), set out in section 18 of the 2009 Act and its common law equivalent.

Our comments are as follows:

1. Faculty does not consider that the guidelines should explicitly address whether the offender is known to the victim. A sentencer will consider the degree to which an offender is known to the victim and the circumstances in which the offender may have met the victim as part of the facts and circumstances. Faculty agrees that other factors, which may indicate increased culpability or harm, such as a degree of planning, will have a bearing on the seriousness of the offence.
2. Faculty considers that further guidance should be provided in relation to historical offences. Such guidance will assist the courts in reaching sentencing decisions and promote consistency and predictability in sentencing offenders who have been convicted of committing historical offences. The guidance will also assist public understanding. Historical cases can and do attract a significant degree of public and media interest.
3. A sentencer must consider culpability in sentencing process. Faculty considers that having two levels of culpability in these guidelines will assist sentencers to achieve greater consistency and assist public understanding.
4. Faculty considers that the features of culpability listed in these guidelines are appropriate.
5. Faculty does not consider that there are any features of culpability which should be added to or removed from those listed.

6. A sentencer must consider harm caused by the offender. The core principle of the Principles and Purposes of Sentencing Guideline requires that the impact on the victim and others affected must be considered. The Sentencing Process Sentencing Guideline identifies the harm caused as part of the first step in determining the seriousness of an offence. These new offence-specific guidelines mirror the approach of those general guidelines in requiring the sentencer to consider the harm caused by the offender. Faculty considers that having three levels of harm in the guidelines will assist sentencers to achieve greater consistency and assist public understanding.
7. Faculty considers that the features of harm listed in these guidelines are appropriate.
8. Faculty does not consider that there are any features of harm which should be added to or removed from those listed.
9. Faculty has no observations to make on the sentencing ranges.
10. Faculty considers that these guidelines sufficiently address issues of public protection and risk. The guidelines complement existing mechanisms utilised by sentencers to address issues of public protection and risk by ordering a risk assessment of an offender from a criminal justice social worker and/or ordering a comprehensive risk assessment report from an accredited risk assessor.
11. Faculty considers that it is inappropriate to treat the influence of alcohol or drugs as an aggravating factor. There are compelling public protection reasons why acting under the influence of alcohol or drugs should not be treated as a mitigating factor. A direct consequence of treating the influence of alcohol or drugs as an aggravating factor would be that a sober offender would receive a lesser sentence than an intoxicated offender for the same offence.
12. For the reasons set out above, Faculty considers that commission of the offence while under the influence of alcohol or drugs should be removed as an aggravating factor.
13. Faculty considers that the mitigating factors listed are appropriate.
14. Faculty does not consider that there are any mitigating features which should be added to or removed from those listed.
15. Faculty considers that these guidelines will have a noticeable influence in sentencing practice. The existing Scottish Sentencing Council guidelines already assist legal practitioners in structuring sentencing submissions. The existing guidelines assist the courts in reaching sentencing decisions.

16. Faculty considers that these guidelines in conjunction with the Sentencing Process Sentencing Guideline will lead to an increase in public understanding of how sentencing decisions are made.
17. Faculty anticipates significant benefit arising from the introduction of these guidelines. Faculty believes that these guidelines will promote consistency in sentence, assist the development of policy in relation to sentencing and promote greater awareness and understanding of sentencing policy and practice. These guidelines will assist sentencers, victim support organisations, the media and legal practitioners.
18. Faculty has no observations to make on costs. Other organisations will be better placed to answer this question.
19. Faculty has no further observations to make.

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