



Bar Council response to the Sentencing Council consultation paper on Expanded Explanations in Sentencing Guidelines

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Sentencing Council consultation paper on Expanded Explanations in Sentencing Guidelines.¹
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. The purpose of the project which is being consulted upon is twofold:
 - i) to embed additional information into offence specific sentencing guidelines to make it easier for users to access relevant information; and
 - ii) to make changes to wording in some guidelines to improve consistency and clarity across guidelines

¹ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Expanded-Explanations-consultation-FINAL.pdf>

5. The consultation concerns both the concept of embedding such additional information, and the detail of the proposed additional content.

6. We note that the expanded explanations “*are designed to reflect current best practice rather than to alter sentencing practice.*” No new aggravating or mitigating factors are identified in the consultation, the focus of which is rather on how the relevance of these factors could perhaps be better understood. Accordingly, while we have considered a number of examples of how the expanded explanations are intended to work in practice - on the user-friendly “test website” - we have not conducted a detailed analysis of the content.

7. We can however offer the following observations as to the content:

i. First, we note with approval the reminder that attaches to each potential aggravating or mitigating factor that: “*Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence.*” As a court works its way through the relevant guideline, this simple but important point risks being forgotten.

ii. Secondly, we agree that the use of standard explanations rather than offence-specific explanations is appropriate. As noted in the consultation, the aggravating and mitigating factors that are the subject of this exercise (for example the aggravating factors of relevant previous convictions or an attempt to conceal / dispose of evidence, or mitigating factors such as the existence of genuine remorse) may apply to a range of offences and therefore need to be of general application.

8. As to the concept, we are supportive of the overall aim of this project, which is to “*provide easy access to relevant information without interfering with the ability of the court to sentence appropriately on the facts of the case before it.*” While the existing sentencing guidelines already provide a considerable degree of clarity, any increase in the ability of court users and the general public to understand the basis upon which those convicted are sentenced is to be welcomed.

9. The sentencing tribunal will retain an important degree of discretion as to how the guidelines are applied in each individual case - by apportioning weight to relevant aggravating and mitigating factors, after first identifying what they consider to be the appropriate starting point within the applicable range of sentences of the offence under consideration, and thereafter considering any credit resulting from a plea of Guilty. The use of expanded explanations is likely to benefit public understanding of the sentences handed down by the courts following the careful process set out above.

Bar Council²
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For further information please contact
Eleanore Hughes, Policy Analyst, Regulatory Issues and Law Reform
The General Council of the Bar of England and Wales
289-293 High Holborn, London WC1V 7HZ
Direct line: 020 7611 1443
Email: EHughes@BarCouncil.org.uk

² Prepared for the Bar Council by the Law Reform Committee.