

Sentencing Guidelines and Information Committee

Guideline Development Procedure

This document sets out the procedure of the Sentencing Guidelines and Information Committee in developing sentencing guidelines.

Functions of the Sentencing Guidelines and Information Committee

The Sentencing Guidelines and Information Committee was established by Part 3 of the Judicial Council Act 2019. The functions of this committee are set out in the 2019 Act and include the following:

- the preparation and submission of draft sentencing guidelines to the Judicial Council;
- the monitoring of the operation of sentencing guidelines;
- the collation and dissemination of information on sentences imposed by the courts as it sees appropriate; and
- the conducting of research on sentences imposed by the courts.

Membership of the Sentencing Guidelines and Information Committee:

The Sentencing Guidelines and Information Committee consists of 13 members of whom eight are Judges nominated by the Chief Justice and five are lay persons appointed through the Public Appointments Service.

The importance of sentencing guidelines

Sentencing guidelines can be used as a valuable resource for judges as well as a range of criminal justice stakeholders. Guidelines can assist judges when making a sentencing decision in an individual case. They may be used as a source of information by the prosecution and defence as well as those involved and impacted by the sentencing process including victims, witnesses and defendants. Guidelines may enhance levels of public awareness on sentencing and the rationales for imposing a sentence in an individual case.

Different types of sentencing guidelines

Guidelines can address a wide range of different aspects of the sentencing process. Guidelines may be developed to address specific offences, such as assault, rape or manslaughter. The Committee may also produce guidelines dealing with important sentencing issues that may be relevant across a wide range of offences, for example, guidelines addressing the reduction of a sentence arising from a guilty plea or guidelines on the sentencing of young people. Sometimes, more than one guideline may be relevant in an individual case. For example, in an assault case the guideline specific to that offence may be used by the trial judge but if there is a domestic violence component to the offending, a guideline on domestic violence may also be incorporated by the sentencing judge.

Commitment to best practice

In developing guidelines, the Sentencing Guidelines and Information Committee takes an evidence-based approach. This means that the Committee will conduct relevant research, engage with key stakeholders, as well as examining best practice in other jurisdictions. This will inform the work of the Committee in creating guidelines that reflect best practice. The Committee believes that this approach will contribute to enhancing consistency and fairness in sentencing decision-making.

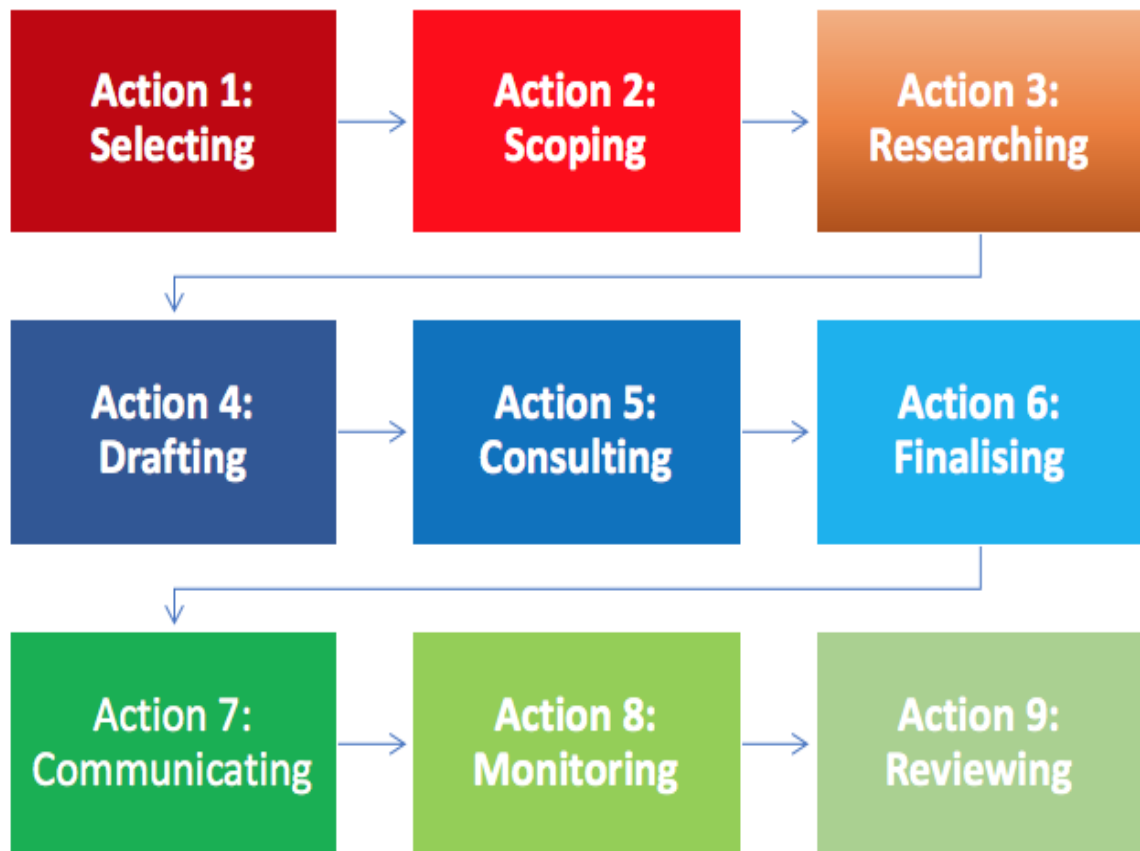
The Sentencing Guideline Action Plan

The Sentencing Guideline Action Plan sets out the procedure that the Committee will follow in developing sentencing guidelines. The Action Plan detailed below was informed by the legislative framework as well as an assessment of best practice in other jurisdictions.

Part 3 of the Judicial Council Act 2019 states that the functions of the Sentencing Guidelines and Information Committee include the preparation of draft guidelines and the dissemination of approved guidelines to judges and others. The Committee is also required to gather and collate data on sentencing and conduct research on sentencing. Once a guideline becomes functional, the Committee has a role in monitoring that guideline. In the performance of its functions, the Committee may also organise seminars, conferences and meetings to facilitate the dissemination of information on guidelines or to assist in the discharging of any of its other duties. The functions detailed in the legislative framework are reflected throughout the stages of the Action Plan.

In developing a procedure for the creation, implementation and monitoring of sentencing guidelines, the Committee was particularly influenced by the framework of the Scottish Sentencing Council and its document 'How Guidelines Are Developed'. The Scottish framework provides a clear, logical and transparent approach to guideline development and this approach has been adapted in parts to the Irish context, while accounting for local contingencies relevant to sentencing in Ireland. While the Action Plan will be employed as the framework for the development of sentencing guidelines in general, there may be instances where an abridged or divergent approach will be necessary in developing a specific guideline. Indeed, as the Committee develops and gains greater experience, it may make changes to the Action Plan and the procedure for developing guidelines. In that sense, this is a living document that may be changed or modified over time.

The Sentencing Guideline Action Plan



Action 1: Selecting

The Sentencing Guidelines and Information Committee selects the guidelines which it will focus on developing in its Strategic Plan. Decisions on the development of specific guidelines may also be taken following consultation with members of the Judicial Council or on its direction.

Action 2: Surveying

The Sentencing Guidelines and Information Committee will conduct an initial scoping exercise to determine whether a guideline should be developed. This will involve establishing a working group (drawn from the committee membership) to conduct an analysis of the area. External experts may be consulted with to assist the working group. In analysing the area, the working group may do the following:

- Gather and analyse the existing research and data available on the area;
- Gather and analyse any academic research conducted in the field, as well as publications from state agencies and the NGO sector;
- Conduct an initial assessment of the potential benefit of the guideline to judicial decision-makers, criminal justice stakeholders and the public;
- Examine experiences and best practice in other jurisdictions in developing this type of guideline;
- Conduct an initial feasibility study in undertaking to develop this guideline, including the advantages and challenges in developing and implementing the guideline.

On completion, the working group will present a document to the Sentencing Guidelines and Information Committee with recommendations based on this scoping exercise. The Committee will then make a decision on whether to develop this guideline.

Action 3: Researching

At this stage of the process, the Sentencing Guidelines and Information Committee will begin the research process that will input into the drafting of the guideline. This process will be overseen by the working group established in Action 2.

The Sentencing Guidelines and Information Committee is committed to creating guidelines that are informed by research on sentencing. The working group will conduct a more detailed assessment of the available research and identify any relevant gaps in the research. The Committee may commission research to assist the Committee in gathering relevant evidence that will inform the drafting of the guideline, particularly where there are significant data deficits. The type of research conducted may vary from guideline to guideline. Examples of research that may be conducted would include:

- An analysis of the existing judicially developed guidelines in Ireland;
- Administrative data collection on the area of sentencing being examined;
- Interviews with relevant stakeholders including judges, victims, offenders and those involved in the prosecution and defence;
- Surveys examining judicial, stakeholder or public attitudes.

Guidelines cannot be drafted in a vacuum. Accordingly, the Sentencing Guidelines and Information Committee will take provisional decisions at this point, informed by the research, concerning what sentencing policies and practices should be reflected in draft guidelines to be prepared in the next stage. These provisional decisions will fall to be reviewed in stage 7 with the benefit of the views of interested parties obtained during the consultation process at stage 6.

The data and findings will help inform the drafting of the guidelines.

Action 4: Drafting

On completion of the research and provisional policy and practice development processes the Sentencing Guidelines and Information Committee will produce a draft guideline. This draft guideline will be published alongside a document that will provide an annotation to the guideline that will detail the findings and decisions arising from Actions 3 and 4 and how these findings influenced the draft guideline.

Action 5: Consulting

The Sentencing Guidelines and Information Committee is committed to consulting with key stakeholders in the process on the draft guideline. The Committee may conduct a public consultation process engaging with individuals and organisations that are interested in or have expertise on this aspect of sentencing.

The Committee may conduct consultation with the judiciary on the draft guideline. This may include “road-testing” a proposal to ensure that the objective of the guideline is clear and is understood. Consultations with various interest groups may include the use of individual interviews, surveys or focus groups.

The findings from this process will assist the committee in gathering evidence and expertise that may help inform the formulation of the final draft guidelines.

Action 6: Finalising

Following the completion of the above steps, the Sentencing Guidelines and Information Committee will review its earlier provisional sentencing policy and practice decisions, modify them where necessary, and produce the final draft guideline taking account of any such modifications. The Committee will also provide a supporting document detailing the findings from the guidelines development process and the approach taken in finalising the guideline.

The draft guideline will be presented to the Board of Council for review as per section 23(2)(a) of the Judicial Council Act 2019.

Action 7: Communicating

Following the acceptance of the guideline *via* the Judicial Council Act 2019, the Sentencing Guidelines and Information Committee will publish the guideline. The Committee will disseminate the guideline and any relevant information to the judiciary. The Committee may also organise conferences, seminars and meetings for members of the judiciary with

the purpose of providing information and training on the application of guidelines in individual cases.

The Committee will endeavour to bring the guideline to the attention of interested parties as well as engage in communication designed to bring public awareness to the guideline.

Action 8: Monitoring

The Sentencing Guidelines and Information Committee will monitor the guideline when it becomes operational. This may include the collation of data on sentencing and the analysis of this data to determine the impact and effectiveness of the guideline. The method by which a guideline will be monitored will depend on the specific guideline. The Committee may disseminate findings from this monitoring exercise to the judiciary and the public.

Action 9: Reviewing

The Sentencing Guidelines and Information Committee may decide to review an existing guideline and submit amendments to this guideline. Amendments may be necessary as a result of a range of factors and may require the Committee to re-engage with some or all of the actions detailed above. Actions required for the review process will be taken on a case-by-case basis.