

## MEETING OF THE SENTENCING COUNCIL

1 MARCH 2013

### MINUTES

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<u>Members present:</u>	Brian Leveson (Chairman) Anne Arnold John Crawforth William Davis Siobhain Egan Henry Globe Anthony Hughes Alistair McCreath Lynne Owens Katharine Rainsford Julian Roberts Keir Starmer Colman Treacy
<u>Apologies:</u>	Gillian Guy
<u>Advisers present:</u>	Paul Cavadino Paul Wiles
<u>Representatives:</u>	Ruth Coffey for the Lord Chief Justice (Legal advisor to the Lord Chief Justice) Helen Judge, (Director of Sentencing and Rehabilitation for the MoJ)
<u>Members of Office in Attendance:</u>	Michelle Crotty (Head of Office) Jackie Burney Suzi Carberry Bee Ezete Azhar Hasham Nick Mann Lissa Matthews Catherine Mottram Ruth Pope Ameer Rasheed Vanessa Watling
<u>Observer:</u>	Mary Waldron (Crown Prosecution Service)

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**1. WELCOME AND APOLOGIES FOR ABSENCE**

- 1.1. Apologies were received as set out above.

**2. MINUTES OF LAST MEETING**

- 2.1. Minutes from the meeting of 25 January 2013 were agreed, subject to amendments.

**3. MATTERS ARISING**

- 3.1. The Chairman paid tribute to those members who will be leaving the Council at the end of their term of appointment. The Chairman expressed thanks on behalf of the Council to Siobhain Egan, Gillian Guy and Alastair McCreath for their valued contribution to the work of the Council over the past three years. The Council received an update on the process of appointing new members to the Council.
- 3.2. The Council received an update on the Crime and Courts Bill and noted that sentencing guidelines may require review as a result of legislative changes.

**4. UPDATE ON SEX OFFENCES CONSULTATION – PRESENTED BY VANESSA WATLING AND EMMA MARSHALL, OFFICE OF THE SENTENCING COUNCIL**

- 4.1. The Council discussed the initial findings from the sex offences road testing and consultation responses. The Council noted the importance of road testing and events in the consultation process and expressed thanks to those that have participated.

**5. DISCUSSION ON FRAUD OFFENCES – PRESENTED BY LISSA MATTHEWS AND CATHERINE MOTTRAM, OFFICE OF THE SENTENCING COUNCIL**

- 5.1. The Council heard a presentation on the initial findings from the fraud road testing and research.
- 5.2. The Council discussed a draft model for section 1 Fraud Act offences. It was suggested that as fraud offences can include a wide range of conduct it may be more helpful to sentencers to incorporate banking fraud and confidence fraud into one guideline.
- 5.3. The Council discussed the differences between banking fraud and confidence fraud and considered how to ensure that the guideline is able to capture the breadth of fraudulent conduct. The Council also discussed how best to ensure that the guideline adequately reflects the impact on the victim, especially where the financial amounts involved are comparatively small.
- 5.4. The Council considered what approach the guideline should take to intended loss as opposed to actual loss, and also to frauds where there is little or no risk of loss to the victim but the offender could make a substantial gain. The Council agreed it would be helpful to have sight of examples of sentencing

these types of offences. A draft model would be presented to the April meeting to incorporate the suggestions made.

- 5.5. The Council discussed a draft model for benefit fraud and considered the culpability and harm factors for these types of offences. The Council discussed how the guideline should treat offenders who may have initially had a genuine claim that later ceased to be genuine and those whose claim was fraudulent from the outset. The Council discussed the difference between benefit fraud and larger frauds against the public purse and agreed that larger frauds should be sentenced using the revenue fraud guideline.
- 5.6. There was a discussion about aggravating and mitigating factors. It was suggested that the mitigating factor of 'exceptional hardship' should be included where it can be shown that the hardship was over and above what could be considered 'normal' for people reliant on benefits. The Council agreed this was an important point to seek views on in the consultation.
- 5.7. The Council discussed a draft model for sentencing bribery. The Council considered the harm and culpability factors involved in sentencing the offence of bribery and whether it is more serious offence to bribe a public official as opposed to a private employee as this could impact upon the public's confidence in transparency in public affairs. The Council discussed whether the sentence should reflect the level of seniority of the person that is being bribed. The Council noted the element of pressure of coercion that may feature in these offences.
- 5.8. The Council discussed a draft sentencing guideline for money laundering offences. It was agreed that consultation should be on the basis of three levels of culpability and that the harm category should take account of the antecedent offence.
- 5.9. The Council considered whether separate guidelines should be produced for conspiracy offences. It was agreed that conspiracies could be sentenced using the guidelines already envisaged. Sentence ranges for offences of cheat the revenue and conspiracy to cheat the revenue would need to include higher sentences than those for offences with lower maxima.
- 5.10. The Council considered a draft model for sentencing corporate offences. It was agreed that compensation should be considered as the first step. There was a discussion about the assessment of harm for the various offences covered by the guideline. A further draft would be considered at the April meeting.
- 5.11. Due to the pressure of the agenda written comments were invited on the draft guidelines for possessing, making or supplying articles for use in fraud and revenue fraud.

**ACTION: DRAFT MODELS AND CASES FOR CONSIDERATION AT THE NEXT MEETING**

6. **UPDATE ON THE MAGISTRATES' COURT SENTENCING GUIDELINES WORKING GROUP – PRESENTED BY VANESSA WATLING, OFFICE OF THE SENTENCING COUNCIL**

- 6.1. The Council considered the plan for review of the Magistrates' Court Sentencing Guidelines and agreed that the guideline should be reviewed thematically.