

## MEETING OF THE SENTENCING COUNCIL

12 OCTOBER 2012

### MINUTES

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<u>Members present:</u>	Anthony Hughes (Deputy Chairman) John Crawforth William Davis Siobhain Egan Henry Globe Gillian Guy Alistair McCreath Katharine Rainsford Julian Roberts Keir Starmer Colman Treacy
<u>Apologies:</u>	Brian Leveson (Chairman) Anne Arnold
<u>Advisers present:</u>	Paul Cavadino Paul Wiles
<u>Observers:</u>	Suzi Carberry (CJS Efficiency Programme) Ruth Coffey (Legal advisor to the Lord Chief Justice) Helen Judge (Director of Sentencing and Rehabilitation, Ministry of Justice)
<u>Members of Office in Attendance</u>	Michelle Crotty (Head of Office) Jackie Burney Bee Ezete Azhar Hasham Robin Linacre Emma Marshall Ameer Rasheed Helen Stear Trevor Steeples Vanessa Watling

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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 14 September were agreed subject to amendments.

## **3. MATTERS ARISING**

- 3.1. The Council were informed that following Tim Godwin's departure at the September meeting, arrangements are being made to make a temporary police representative appointment to the Council, pending a full recruitment process in early 2013.
- 3.2. The Deputy Chairman congratulated the Office of the Sentencing Council which has been shortlisted for a Guardian Public Services Award in the evidence-based policy making category for its work on the drug offences guideline. The Awards showcase innovation and best practice across the public sector and winners will be announced in November.
- 3.3. The Council discussed a request received from the Magistrates' Association asking for the Council's responses to public consultations to be published on its website. The Council agreed to this request.

## **4. DISCUSSION ON WORK PROGRAMME – PRESENTED BY MICHELLE CROTTY, HEAD OF OFFICE OF THE SENTENCING COUNCIL**

- 4.1. The Council considered the revised work programme for the year ahead particularly in the light of the expedited timetable for work on the guideline on fraud, money laundering and bribery offences. The Council discussed the plan for forthcoming Council meetings and how to make the best use of its limited time. It was noted that the work programme is heavy and challenging with little contingency for slippage or additional requests for guidelines. It was agreed that to make best use of the time available, expertise would be drawn upon from both within the Council by creating sub-groups as necessary and from outside the Council by seeking advice from experts in the field.
- 4.2. The Council discussed its priorities for the next three years and it was suggested that the criteria for prioritising which guidelines to take forward should be based on the principles identified by the Council when it was first established.

### **ACTION: CRITERIA FOR PRIORITISING WHICH GUIDELINES TO PROGRESS TO BE CIRCULATED AT NOVEMBER COUNCIL MEETING.**

- 4.3. The Council noted the importance of continuing its work on a guideline on guilty pleas as this is a statutory requirement and potentially impacts upon many cases. It was also noted that the revised work programme may impact upon the review of the Magistrates' Court Sentencing Guidelines which is already underway.

**ACTION: COUNCIL REVIEW OF THE WORK PLAN TO BE SCHEDULED ON A QUARTERLY BASIS.**

**5. DISCUSSION ON ENVIRONMENTAL OFFENCES – PRESENTED BY JACKIE BURNEY, OFFICE OF THE SENTENCING COUNCIL**

- 5.1. The Council discussed an amended sentencing model which includes a revised culpability section featuring four categories of intent ranging from deliberate offending through to offending with low or no culpability, and a harm category similar to the drug offences guideline. The Council agreed that it might be useful to include definitions of the culpability categories and narrative text to explain that these are sliding scales of culpability and harm, rather than distinct categories.
- 5.2. It was suggested that the guideline should make clear that care should be taken to ensure that where the offender is a company, the court should focus on the company's level of responsibility which may or may not be the same as the individual that carried out the offending behaviour.
- 5.3. The Council discussed whether the structure of the model adequately assists sentencers with cases where there is a risk of harm that has not actually occurred and whether the starting points and ranges for risk of harm are proportionate to those for offences where actual harm was caused. The Council discussed two approaches. The first approach was to amend the model so that, at step 1, where there is a risk of harm the sentencer should be guided to the harm category below that for actual harm of the same nature, taking into account the likelihood of the harm materialising. The second approach was to treat risk of harm and actual harm as having the same level of seriousness at step 1 and adjust the sentence at step 2 depending on the degree of the risk. It was agreed that the draft guideline would adopt the first approach, but views on the second approach would be sought in the consultation paper.
- 5.4. The Council considered how to address previous convictions and a history of non-compliance warnings and agreed that these should be dealt with as an aggravating factor with narrative text explaining that they would result in a substantial upward adjustment to the starting point.
- 5.5. The Council considered the model's deterrent effect and whether imposing a fine that seeks to remove any economic benefit derived from the offence would interfere with confiscation proceedings. The Council decided that any interference or confusion with confiscation would be limited. Given that most cases are sentenced in the magistrates' court where confiscation is not available, to not include economic benefit in the fine would either risk the offending organisation retaining its benefit or would risk more cases being sent to the Crown Court. It was agreed that the guideline should include wording to the effect that unless there are to be confiscation proceedings, sentencers should normally aim to remove any identifiable economic benefit derived through the commission of the offence.
- 5.6. The Council discussed what guidance to give to sentencers where the offender has not provided the court with assistance on ascertaining the financial means. It was agreed that sentencers should draw inferences as set out in case law.

- 5.7. The Council discussed fine levels and ranges and compared those in the model to fines that had been imposed in past cases. The Council discussed whether an increase to current sentencing practice would be an acceptable consequence of the draft guideline. Deterrence is an important aim of the guideline, especially for offences where the environment is damaged for financial gain, even if that results in a company that cannot operate without breaching the law being put out of business by a fine. It was suggested that what is needed are guidelines that give sentencers the confidence to impose an appropriate fine, even if that is higher than fines that were imposed prior to the guideline.
- 5.8. The Council considered the sentencing starting points and ranges for individual offenders and discussed whether fines are a less serious punishment than community orders. It was suggested that with environmental offences even where the community order threshold is passed, a fine may still be the most appropriate sentence. It was noted that this would be a change in the way magistrates currently approach sentencing and the consultation paper should set out the reasons for this change.

## **6. DISCUSSION ON FRAUD, BRIBERY AND MONEY LAUNDERING – PRESENTED BY MICHELLE CROTTY, HEAD OF OFFICE OF THE SENTENCING COUNCIL**

- 6.1. The Council discussed the scope of the draft guideline, offence groupings and its approach to dealing with this wide range of offending. It was noted that offending is continuously changing with different types of fraudulent schemes being invented and involving a wide range of financial amounts.
- 6.2. The Council considered what approach the draft guideline should take in its treatment of offending individuals as opposed to offending companies. It was suggested that as the determination of seriousness will be the same for both types of offender they can be dealt with in one guideline. The Council also discussed its approach to offences against the public purse and in particular benefit fraud which can often have the mitigation of need.
- 6.3. The Council discussed the current fraud guideline's approach to defining harm and suggested that harm should be defined more widely than just monetarily. This is especially relevant with offences such as identity fraud and confidence frauds where there may be a psychological impact on the victim. The Council noted that the report on the findings of research commissioned through Natcen into victims' experiences of online fraud will be available in December.
- 6.4. It was suggested that it would be helpful if the draft guideline included examples of common scenarios to help bring to life this difficult legislation.

### **ACTION: DRAFT MODEL FOR FRAUD OFFENCES GUIDELINE AND PRESENT TO COUNCIL AT THE NOVEMBER MEETING**

## **7. DISCUSSION ON SEX OFFENCES CONSULTATION – PRESENTED BY VANESSA WATLING, OFFICE OF THE SENTENCING COUNCIL**

- 7.1. The Council considered the draft consultation paper, in particular the preface and suggested that it is important that the preface sets out the challenges the Council encountered in undertaking this piece of work. The preface should

explain that the Council has taken great care over this work and has considered current sentencing practice and sought to adjust it where necessary.

- 7.2. There was a discussion on exceptional cases and how the guideline should address them. It was suggested that the guideline should be designed to capture the majority of offending behaviour and narrative would be included to assist sentencers in dealing with exceptional cases.