

MEETING OF THE SENTENCING COUNCIL

14 DECEMBER 2012

MINUTES

<u>Members present:</u>	Anthony Hughes (Deputy Chairman) John Crawforth William Davis Siobhain Egan Henry Globe Gillian Guy Alistair McCreath Lynne Owens Julian Roberts Keir Starmer Colman Treacy
<u>Apologies:</u>	Brian Leveson (Chairman) Anne Arnold Katharine Rainsford
<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) Martin Jones for the Lord Chancellor (Deputy Director, Sentencing, Policy and Penalties Unit, MoJ)
<u>Members of Office in Attendance</u>	Michelle Crotty (Head of Office) Jackie Burney Suzi Carberry Bee Ezete Ingrid Giesinger Azhar Hasham Joe Kaler Robin Linacre Nick Mann Lissa Matthews Ruth Pope Ameer Rasheed Trevor Steeples Vanessa Watling Amanda Williams

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 16 November were agreed subject to amendments.

3. MATTERS ARISING

- 3.1. Council discussed the changes made to the dangerousness provisions made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and agreed that the dangerousness guidance should be removed from the Sentencing Council website to avoid confusion.

ACTION: DANGEROUSNESS GUIDANCE TO BE REMOVED FROM THE SENTENCING COUNCIL WEBSITE

- 3.2. The Council discussed a request received from the Restorative Justice Council for guidelines to be issued in respect of a provision in the Crime and Courts Bill relating to the power to defer a sentence with a view to the offender fulfilling a restorative justice programme. The Council agreed that guidance on the appropriate approach can be included in individual guidelines as necessary.

- 3.3. Council were informed that LJ Hughes will attend and brief the Justice Select Committee on the draft guideline for sentencing sexual offences in January.

4. UPDATE ON SEX OFFENCES CONSULTATION LAUNCH – PRESENTED BY SUZI CARBERRY AND NICK MANN, OFFICE OF THE SENTENCING COUNCIL

- 4.1. The Council received an update on the launch of the consultation on sentencing guidelines for sexual offences. The launch received significant coverage which was mostly positive or neutral. The Council noted the significant amount of preparation that helped to make the launch successful and also thanked the spokesperson. The Council considered what lessons could be learnt from the launch and thought that it would be useful to engender more discussion via social media and utilise events and other opportunities such as web chats.

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

- 5.1. The Council discussed the amendments made to the model following the discussion at the last meeting and considered whether it gives sufficient guidance on the issue of confiscation proceedings for the Crown Court, as well as the magistrates' court. It was agreed that text should be included setting out section 13 Proceeds of Crime Act 2002.

- 5.2. The Council discussed the approach the guideline should take when sentencing public and charitable bodies and it was noted that it would be useful if the agreed approach could be used for future guidelines. The Council agreed that, as a general principle, a financial penalty should not negatively impact upon public services. The onus would be on the public body to demonstrate that the financial penalty would have a detrimental impact on public services. The Council agreed to consult on the approach
- 5.3. The Council considered how best to assist sentencers in ensuring that economic benefit derived from the offence is removed from individual offenders who are sentenced to community orders. It was agreed that narrative could be included stating that where the court wishes to remove any economic benefit derived through the commission of the offence and confiscation is not applied for, the court may consider combining a fine with a community order.
- 5.4. The Council discussed the draft consultation paper and proposed some further refinements to be brought back to the next Council meeting for sign off.

ACTION: CONSULTATION PAPER TO BE AMENDED AND FINAL DRAFT PRESENTED AT NEXT MEETING.

6. DISCUSSION ON FRAUD OFFENCES – PRESENTED BY LISSA MATTHEWS, OFFICE OF THE SENTENCING COUNCIL

- 6.1. The Council discussed the early findings of research commissioned through NATCEN on the effect of online fraud on victims and the suggested aggravating and mitigating factors that are emerging from this.
- 6.2. The Council considered two models for confidence fraud which had been produced following the discussion at the last meeting. The Council discussed the culpability factors and noted that a factor around 'greed' or an 'expectation of financial gain or other advantage' as a motivator will often be found in offending of this type. The Council also discussed the difficulty of ensuring that the guideline adequately deals with individual offenders as well as group offending. It was suggested that the guideline could use a similar format to the drugs guideline where narrative is added to explain that identifying the culpability factors should be considered as a whole and the court should balance them to come to an assessment of the offender's role.
- 6.3. It was suggested that the medium culpability box should be reserved for offences where the factors, when considered in the round, do not comfortably fit into higher culpability or lower culpability.
- 6.4. The Council discussed harm and agreed a two stage model. At the first stage the sentencer should consider the amount involved and at the second stage consider the impact on the victim. It was agreed that the greater the impact the higher up the range the sentence should move.
- 6.5. The Council considered whether category 4 of the guideline would provide adequate assistance to magistrates and suggested that road testing would be a useful way of assessing this.

- 6.6. The Council discussed the aggravating and mitigating factors for the offence and suggested that a prompt admission or early active co-operation with the prosecution and a lapse of time since apprehension where this is not the fault of the offender should be included as mitigating factors.
- 6.7. The Council discussed guidelines for corporate offending and noted the challenge of producing guidelines for corporate fraud cases as these are rarely prosecuted. It was suggested that it would be helpful to look at civil recovery cases and guidelines for other offences where there is case law available to consider.

ACTION: LOOK AT CIVIL RECOVERY CASES AND CASE LAW FOR OTHER OFFENCES TO INFORM THE DEVELOPMENT OF THE CORPORATE FRAUD GUIDELINE.

- 6.8. It was noted that the guideline for sentencing corporate offending will apply to a wide range of financial amounts and it was therefore suggested that instead of attempting to produce a grid to cover this wide range, a formula based on the loss should be used.