

## MEETING OF THE SENTENCING COUNCIL

16 NOVEMBER 2012

### MINUTES

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<u>Members present:</u>	Anthony Hughes (Deputy Chairman) Anne Arnold John Crawforth William Davis Siobhain Egan Alistair McCreath Lynne Owens Katharine Rainsford Julian Roberts Keir Starmer Colman Treacy
<u>Apologies:</u>	Brian Leveson (Chairman) Henry Globe 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 for the Lord Chancellor (Director of Sentencing and Rehabilitation, Ministry of Justice)
<u>Members of Office in Attendance</u>	Michelle Crotty (Head of Office) Jackie Burney Suzi Carberry Bee Ezete Ingrid Giesinger Azhar Hasham Robin Linacre Lissa Matthews Nigel Patrick Ruth Pope Ameer Rasheed 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 12 October were agreed.

**3. MATTERS ARISING**

- 3.1. The Deputy Chairman welcomed Lynne Owens to her first Sentencing Council meeting as temporary policing representative pending full appointments process in the near future.

**4. UPDATE ON FINANCE – PRESENTED BY TREVOR STEEPLES, OFFICE OF THE SENTENCING COUNCIL**

- 4.1. The Council considered its expenditure for the first six months of the year, the projected spend for the remainder of the financial year and the budget breakdown for the next financial year. It was suggested that the Council's financial position should continue to be reviewed by the sub-group regularly with any significant variations to be referred back to the Council. An update on the Council's financial position will be scheduled for discussion before the end of the financial year and every six months thereafter.

**ACTION: FINANCIAL POSITION TO BE REVIEWED BY THE COUNCIL BEFORE THE YEAR END AND EVERY SIX MONTHS THEREAFTER.**

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

- 5.1. The Council discussed the sentencing model which had been amended following the discussion at the last meeting. The Council considered whether the draft guideline adequately assists sentencers with cases where there is a risk of harm that has not actually occurred, especially in cases where the culpability is so high that it would not be appropriate to move to a lower category. It was agreed that text should be included to explain that the assessment of risk involves the consideration of likelihood of harm and the extent of that harm were it to happen.
- 5.2. There was a discussion on how best to assist sentencers on obtaining financial information from offenders. It was noted that helpful guidance can be found in the Magistrates' Court Sentencing Guidelines and also in case law, both of which should be included in the draft guideline.
- 5.3. It was noted that the guideline includes community orders as a sentencing option although states that a fine will normally be the most appropriate sentence. It was suggested that it would be helpful to pose a consultation

question on whether more guidance should be included on the circumstances when a community order would be an appropriate sentence, namely, where it would fulfil a particular sentencing aim.

- 5.4. There was a discussion on the scope of the guideline, in particular whether it should include guidelines on health and safety offences and food safety offences given their lower statutory maxima and the existing Sentencing Guidelines Council guideline on corporate manslaughter and health and safety offences resulting in death. It was agreed that it would be helpful to consult on the Council's general approach to sentencing corporate offending in the environmental offences draft guideline, and feed responses to the consultation into the development of separate guidelines on health and safety offences and food safety offences.
- 5.5. The Council considered whether guidelines on other environmental offences should be included in the guideline. It was suggested that it would be better to list the offences and their statutory maxima and refer the sentencer to the general sentencing approach whilst bearing in mind the different statutory maxima.
- 5.6. It was agreed that it would be helpful to include text at the beginning of the draft guideline highlighting that if an application for a confiscation order is to be made, the magistrates' court will need to commit the case to the Crown Court. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.
- 5.7. The Council discussed past cases under COMAH, such as Buncefield, and considered how they would work with the proposed model. It was suggested that the guideline should indicate that a fine at or above the top of the category 1 range would be appropriate because of the high level of risk involved in these cases.

**ACTION: PRODUCE DRAFT CONSULTATION PAPER FOR CONSIDERATION BY THE COUNCIL AT THE NEXT MEETING.**

6. **CONFIDENCE AND COMMUNICATIONS SUB GROUP UPDATE – PRESENTED BY SUZI CARBERRY, OFFICE OF THE SENTENCING COUNCIL AND MARC ARCHBOLD, MINISTRY OF JUSTICE**
  - 6.1. The Council heard a presentation on the sex offences online consultation and received an update on communication matters. The Deputy Chairman expressed thanks on behalf of the Council to those members that have agreed to act as spokespersons for the forthcoming launch of the sex offences guideline consultation.
7. **DISCUSSION ON FRAUD, BRIBERY AND MONEY LAUNDERING – PRESENTED BY MICHELLE CROTTY, HEAD OF OFFICE OF THE SENTENCING COUNCIL**
  - 7.1. The Council considered the draft guideline and discussed the advantages and disadvantages of two alternative sentencing models. The first model focussed on the impact of the fraud on the victim whilst the second model mirrored the structure of the drug offences guideline with culpability determined by the role of the offender.

- 7.2. The Council considered the merits of both models, but was of the general view that the model should use the monetary value of the fraud as a key determinant of harm. Rather than focus on the role of the offender, culpability should reflect the issues sentencers frequently focus on in fraud cases such as how much was lost by the victim, how much was gained by the offender, the length of the fraud, the sophistication of the fraud and the vulnerability of the victim. It was suggested that a review of past fraud cases would be useful to extract the factors that regularly occur.

**ACTION: TO REVIEW FRAUD CASE LAW AND EXTRACT RECURRING FACTORS**

- 7.3. 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.
- 7.4. The Council considered sentencing in cases of multiple offending and suggested that it would be helpful to provide guidance to sentencers on when a cumulative sentence might go above the 10 year statutory maximum. It was suggested that it would be useful to look at judgments on that point and extract a set of principles that would assist sentencers in such cases.

**ACTION: REDRAFT MODEL 2 AND BRING FURTHER MODELS FOR THE REMAINING FRAUD OFFENCES**