

MEETING OF THE SENTENCING COUNCIL

25 JANUARY 2013

MINUTES

<u>Members present:</u>	Brian Leveson (Chairman) John Crawforth William Davis Siobhain Egan Henry Globe Gillian Guy Anthony Hughes Alistair McCreath Katharine Rainsford Julian Roberts Keir Starmer Colman Treacy
<u>Apologies:</u>	Anne Arnold Lynne Owens
<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, 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 Robin Linacre Nick Mann Lissa Matthews Catherine Motteram Ruth Pope Ameer Rasheed 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 14 December were agreed, subject to amendments.

3. MATTERS ARISING

- 3.1. The Chairman expressed thanks to those Council members who are assisting with the consultation on sentencing sexual offences by acting as spokespeople and by chairing events. He also thanked Hughes LJ who had appeared before the Justice Select Committee on 23 January.
- 3.2. The Council discussed a request to make further savings from its budget and the impact that could have on its work plan.
- 3.3. Council members were invited to attend the final of its second mooted competition for LPC and BPTC students. It will take place on 13 March 2013 at the Royal Courts of Justice and will be chaired by Treacy LJ.
- 3.4. The Council were updated about the process of appointing new members to the Council now that the three year appointments have come to an end.

4. ANALYSIS AND RESEARCH UPDATE – PRESENTED BY JULIAN ROBERTS

- 4.1. The Council heard a presentation on a paper produced in response to the guilty plea data provided in the Crown Court Sentencing Survey official statistics publication for 2011. This showed the distribution of guilty plea discounts given according to the stage of the court process that the plea was entered. The Council discussed the changes in this area since 2011, such as early guilty plea schemes and removal of committal hearings, and considered whether these might have an impact on the conclusions drawn in the report. It was suggested that the report as it currently stands does not give the full picture of how guilty plea discounts are applied and therefore it would be useful to undertake more research and interviews with judges as part of the consultation on the draft guideline on guilty pleas.

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

- 5.1. The Council received an update on the initial findings from the fraud road testing and research.
- 5.2. The Council considered the model for confidence fraud which had been revised following the discussion at the December meeting. The approach is for the sentencer to consider the offender's role and the sophistication of the

offence as part of culpability. Harm will be a two stage test, firstly to consider the amount and then to consider the impact on the victim. The sentencer would need to balance the characteristics of the offence to come to a fair assessment.

- 5.3. The Council discussed multiple offending and it was suggested that in trying to reflect the overall criminality of the offence the sentencer should have regard to the totality principle.
- 5.4. The Council considered how to ensure the guideline gives enough assistance to magistrates sentencing frauds of under £5000. It was suggested that text could be included to give additional guidance to magistrates. It might also be helpful to use a lower starting point in the lowest category of harm.
- 5.5. The Council discussed how best to address risked loss firstly where the offender intended to defraud more than he actually obtained and secondly where the offender intended to repay the amount defrauded. It was suggested that the harm would be the actual loss or the creation of a real risk of loss and should be included at step 1, whilst the offender's intent should be considered at step 2. The Council considered a model which directs the sentencer to drop down a category.
- 5.6. There was a discussion about aggravating and mitigating factors. It was suggested that the mitigating factor of 'an early act of assistance' should be given greater prominence in complex cases. It was also suggested that the guideline should indicate that where there are relevant recent convictions this is likely to result in an increased sentence.
- 5.7. The Council considered a draft guideline for banking fraud and noted that where the identity of a deceased baby was used to perpetrate the fraud it could cause deep distress to the parents. The guideline should reflect that the offence could have a serious detrimental effect on other parties, as well as the person who lost the money.
- 5.8. The Council discussed the sentencing ranges for banking fraud as compared to confidence fraud and considered whether sentence ranges should be higher for confidence fraud. It was suggested that confidence fraud and banking fraud should be incorporated into one guideline for consideration at the next meeting.

ACTION: CONFIDENCE FRAUD AND BANKING FRAUD TO BE INCORPORATED INTO ONE GUIDELINE FOR CONSIDERATION AT THE NEXT MEETING.

- 5.9. The Council discussed a proposed model for sentencing possessing, making or supplying articles for use for fraud. It was noted that the narrative included in the current guideline has assisted sentencers, but there was a risk that as technology progressed, the narrative would become out of date.

6. DISCUSSION ON MONEY LAUNDERING AND BRIBERY OFFENCES – PRESENTED BY LISSA MATTHEWS, OFFICE OF THE SENTENCING COUNCIL

- 6.1. The Council considered a draft model for money laundering and bribery offences.

- 6.2. It was noted that there are different ways of committing the offence of money laundering. The Council discussed the challenges of producing a guideline which covered these different types of offending. The Council felt that the guideline should consider the sophistication of the operation at culpability and the amount of money laundered and who was defrauded at harm. However, where the substantive offence carried a maximum of less than 14 years, the sentence would need to be adjusted to ensure that the penalty for laundering was not higher than that for the substantive offence.
- 6.3. The Council noted that there is guidance from the Court of Appeal on how to sentence money laundering where the primary offender and the money launderer are the same person and also where they are not, and it would be useful to review those judgments.

7. DISCUSSION ON BENEFIT AND REVENUE FRAUD OFFENCES – PRESENTED BY AMANDA WILLIAMS, OFFICE OF THE SENTENCING COUNCIL

- 7.1. The Council considered a draft guideline for sentencing benefit and revenue fraud, both of which were informed by the draft confidence fraud guideline. Council discussed which factors were better placed in step 1 or step 2.
- 7.2. The Council considered whether very large benefit frauds should be treated as section 1 Fraud Act offences as these represent a different type of conduct. Removing very large frauds from the draft guideline would allow it to include more detail on smaller frauds which would assist magistrates.
- 7.3. There was a discussion about charging policy for benefit offences. It was suggested that it would be helpful to write to the DPP requesting information about the prosecutorial policy particularly at the higher and lower ends of the range of offending.
- 7.4. The Council considered the issue of notional benefits where the offender had committed fraud but would have been entitled to claim another benefit. It was noted that there was inconsistency in the way this was being addressed by sentencers. It was suggested that the burden on the prosecution to calculate the notional benefit could be too great and therefore it should be included as mitigation at step 2. The onus would be on the defence to calculate the notional benefit.
- 7.5. The Council discussed the aggravating and mitigating factors. It was noted that the current guideline included financial pressure as a mitigating factor. It was suggested that financial pressure neither increases nor decreases an offender's culpability; but where it is exceptional and not of the offender's own making it may, in very rare circumstances constitute mitigation.
- 7.6. It was noted that there is a stringent administrative system for clawing back benefits obtained fraudulently and in some cases the administrative penalty could be more severe than the court's. It would be useful to know how the administrative penalty system works alongside the court system.
- 7.7. Council considered the draft guideline for revenue fraud and whether the categorisation of the offences should be changed. It was suggested that there be separate guidelines for offences with a maximum of 7 years'

imprisonment, for section 1 Fraud Act offences which carry ten years and for Cheat the Revenue which has a maximum of life imprisonment. It was agreed that draft guidelines would be prepared for the next meeting for discussion on this point.

ACTION: PREPARE DRAFT GUIDELINES FOR DIFFERENT TYPES OF REVENUE OFFENCES FOR CONSIDERATION AT THE NEXT MEETING.

8. DISCUSSION ON CORPORATE FRAUD – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

8.1. The Council considered the approach for the model on sentencing corporate offending and what factors would make the offending organisation more culpable, such as how high up in the organisation the crime went, the extent of the failure of corporate governance and any abuse of a dominant position.

8.2. The Council discussed the harm factors for this type of offending and suggested that for bribery the harm would be the value of the contract that would have been obtained and for fraud the harm would be the value of the fraud. It was suggested that the sentence should be linked to the value of the harm, rather than to the turnover of the company.

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

9.1. The Council agreed to sign off any amendments to the draft consultation paper out of committee.