

Sentencing Council

The Sentencing Council welcomes this Review of how the Council can best exercise its statutory functions, and is grateful for the work undertaken, at its request, by Professor Sir Anthony Bottoms and his colleague, Dr Jo Parsons.

The Review outlines areas in which the Council has been successful since its inception in 2010 - for example, the production of many offence-specific and overarching guidelines, undertaking a large body of analytical work (including the funding of the Crown Court Sentencing Survey until 2015), and successfully demonstrating the benefits of sentencing guidelines to the judiciary and ensuring that they are widely used across the system.

However, there are also recommendations contained in the report that are designed to help the Council take forward its work and agree its future priorities as it approaches its tenth anniversary. These recommendations have been considered carefully and discussed at some length in Council meetings, along with the Council's future priorities. As a result, the Council has committed to take forward a number of initiatives that will address points raised by Professor Bottoms. In addition, there are other areas of work that were planned or already in train, which also relate to themes within the report. The Council sees the report as a living document and will continue to consider its recommendations as it refines its workplan over the coming months.

The following summary outlines those areas of work currently in train or being initiated that relate to Professor Bottoms' report:

- The appointment of a digital agency to review the Council's website, to ensure that it is as user-friendly and accessible as possible (including for victims, offenders, the public and anyone wishing to access specific information, for example statistical data); in addition, the Council plans to review the language of the website.
- The appointment of an external academic to develop a methodology for assessing consistency of sentencing and to apply this methodology to three guidelines; in addition, the Council is reviewing the way it uses and presents the data it draws on for its assessments of the impact of guidelines.
- The appointment of an external agency to examine issues of public confidence in sentencing, including how best to communicate with a variety of stakeholders, and to provide recommendations to feed into the Council's Confidence and Communications strategy.
- The fostering of greater links with the academic community, including the recent co-hosting of an academic roundtable seminar to discuss sentencing issues, which it is intending to repeat.
- A review of recent research evidence relating to effectiveness of sentencing and the agreement to update this review regularly to ensure that the Council is appraised with the latest thinking in this area and can use it to inform its considerations; in undertaking this, the Council has ensured it has linked in with the Ministry of Justice.

- The inclusion of more overarching guidelines in the Council's workplan (for example, a guideline on sentencing offenders with mental health and learning difficulties).
- The development of a generic guideline on how to sentence offences for which there is currently no guideline; this will incorporate information on the purposes of sentencing, and guidance on areas such as previous convictions, and mitigating and aggravating factors.
- The digitisation of guidelines and the provision of more explanatory material in guidelines that will assist both professional and non-professional users on various issues (e.g. on previous convictions, mitigating and aggravating factors, information on the purposes of sentencing (including on deterrence), where relevant when to draw on information from Pre-Sentence Reports, and links to other guidelines, for example the Council's *Imposition* guideline); this will also help to embed the overarching guidelines into offence-specific guidelines.
- The undertaking of a stakeholder mapping exercise and production of a stakeholder strategy; this will be updated and discussed by the Council on an ongoing basis.
- Further liaison with the police to build confidence in sentencing guidelines among this important body of potential advocates.
- Undertaking extensive engagement with stakeholders to ensure that the *Imposition* guideline – and in particular the message about Suspended Sentence Orders not being imposed as a more severe Community Order as they are a custodial sentence – is embedded into practice.
- The commitment to continue ensuring that relevant expertise is drawn upon by the Council when needed (e.g. liaison with a forensic psychiatrist as part of the development for an overarching guideline on mental health issues, the setting up of a 'solicitors' panel' to feed in views from the defence community and to advise on offender-related issues); and that relevant research evidence is utilised when necessary (e.g. on victims' views of sentencing).
- The commitment to continue ensuring the governance subcommittee of the Council takes delegated ownership of producing and monitoring the Business Plan before it is presented to the wider Council.

There are also some areas that the Council has considered, but at this stage has decided not to take forward. In some cases, this may be because available resources do not permit the work at this time; in others it may be because the Council takes a different view from that suggested by Professor Bottoms, or wishes to consider the issue further. For example, the recommendation to hold an awareness raising event for members of Parliament and for the Council to open itself up to a television documentary about its work would both require resource to take forward. In addition, whilst individual members of Parliament have shown significant interest in particular guidelines, previous more general Parliament-wide events have not garnered the same degree of interest. For now, therefore, the Council has decided that its focus for awareness raising should be on other areas suggested by Professor

Bottoms, such as liaising with the police and developing further links with the academic community. How best to engage further with Parliament or engage with the public via the media will be considered as part of future workplans. In addition, in relation to the point in the Review about the Council clarifying the relationship between the Council and the Court of Appeal, the Council does not feel that is necessary: the relationship works well, with Council being influenced by, but not bound by, Court of Appeal judgments when developing guidelines.

Professor Bottoms also recommended consideration of whether a guideline should be developed on previous convictions and/or a revision of the Council's guideline on *Totality*. In both cases, the Council feels that there is not a strong enough case for this: further guidance on previous convictions will be provided as part of the additional explanatory material being developed in the work to digitise the guidelines (see above), and for *Totality*, there is no evidence that practitioners have difficulty with this guideline.

Professor Bottoms also recommended that where an aggravating factor has a mitigating counterpart, this should always be included; also, that personal mitigation should comprise a separate step in the guidelines. The Council considers that aggravating and mitigating factors should be agreed on a guideline-by-guideline basis and that, given that many mitigating factors can relate to both the offender and the offence, separating out the two would be problematic in practice. However, the additional guidance being provided through digitisation of the guidelines should help to clarify how individual factors relate to different types of cases.

The Council will continue to progress these important areas and to keep the recommendations of the report from Professor Bottoms under consideration. It once again thanks the authors of the report for their hard work in producing such a thorough Review.