

MEETING OF THE SENTENCING COUNCIL

16 NOVEMBER 2018

MINUTES

Members present:

Tim Holroyde (Chairman)
Rob Butler
Rosina Cottage
Rebecca Crane
Rosa Dean
Julian Goose
Heather Hallett
Max Hill
Maura McGowan
Alpa Parmar
Beverley Thompson

Apologies:

Mark Castle
Sarah Munro

Representatives:

Chief Constable Nick Ephgrave for the police,
Phil Douglas for the Lord Chancellor (Director,
Offender and Youth Justice Policy)

Members of Office in
Attendance:

Steve Wade (Head of Office)
Mandy Banks
Lisa Frost
Eleanor Nicholls
Caroline Nauth-Misir
Ruth Pope

1. MINUTES OF LAST MEETING

- 1.1. The minutes from the meeting of 19 October 2018 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed two Kosovan judges who were observing the meeting.

3. UPDATE ON THE SENTENCING CODE – PRESENTED BY LAW COMMISSION

- 3.1 Professor David Ormerod and Sebastian Walker from the Law Commission updated the Council on the progress of the Sentencing Code, which was welcomed by members.

4. DISCUSSION ON MENTAL HEALTH – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered a revised draft of the guideline, which had benefited from the input of a small group of experts, including academics, charities, and the medical profession. The Council agreed that the guideline should only apply to offenders aged over 18 and also discussed issues relating to offenders who have privately funded healthcare and treatment plans.
- 4.2 The Council noted that the publication of the report of the independent review of the Mental Health Act was due in December, and considered the potential implications for the guideline were changes to legislation to be recommended.

5. PRESENTATION ON HEALTH AND SAFETY EVALUATION – PRESENTED BY CAROLINE NAUTH-MISIR, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered the findings from an assessment of the definitive guideline covering health and safety, corporate manslaughter, and food safety and hygiene offences. The Council noted that the guideline appeared to be working well and agreed that it did not need to be reviewed at this time. It was agreed that it would continue to be monitored using data from the Ministry of Justice.
- 5.2 The Council agreed to publish the findings from this assessment by the end of March 2019.

6. DISCUSSION ON ASSAULT – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council agreed that the revised guidelines for section 20 GBH/wounding and ABH should share the same culpability factors. Wording of culpability factors was agreed and transcript analysis

findings regarding which factors are relevant to the most serious offences were considered.

- 6.2 Harm models were also agreed for GBH and ABH. The Council agreed that, as Parliament has determined that the offences share the same statutory maximum sentence, they are distinct offences and the Council should not seek to provide for assessing harm as a continuum between the offences and sentences should be set accordingly. Sentence levels were agreed.
- 6.3 A number of aggravating and mitigating factors were agreed and it was decided that early testing of the revised draft guidelines should be undertaken with sentencers to identify any issues with factor application and proportionality of sentences.

7. PRESENTATION AND Q & A WITH NATIONAL CRIME AGENCY – PRESENTED BY NATIONAL CRIME AGENCY

- 7.1 Richard Prosser, Coordinator of the NCA's Expert Evidence Team (Drugs and Firearms Trafficking), gave an interesting and informative presentation to the Council on current and emerging drug offending and threats. He particularly focused on purity, how the sentencing guidelines are currently used, the challenges facing law enforcement agencies, and emerging threats from new types of offending and new drugs. He also provided a view on some areas which were under discussion at this meeting: supply directly to users and exposing others to more than usual danger.

8. DISCUSSION ON DRUGS – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council discussed the guideline for offences of "Permitting premises to be used for drug-related activity" under s8 of the Misuse of Drugs Act 1971. The Council heard that this guideline was, for the most part, working well and no major changes were needed.
- 8.2 The Council agreed to some small changes to culpability, in relation to exploitation, and to some changes relating to frequency/duration of the drug-related activity, to ensure consistency with current sentencing practice. The Council also agreed to present the starting points and ranges differently, to be consistent with other guidelines.
- 8.3 The Council then discussed changes to the assessment of harm for the importation/exportation, supply/possession with intent to supply and production/cultivation offences. Following information from Mr Prosser's presentation, and with input from the CPS, the Council agreed to minor changes to the wording of guidance on "supplying directly to users", and on how to approach cases where the offender has exposed others to more than usual danger, recognising that this can include harm to drug users, to others involved in the drug-related activity, and to unconnected third parties.

8.2 The Council agreed to maintain the current approach to assessing culpability and harm, but to make some changes to culpability factors relating to financial or other advantage, and to add in new culpability factors relating to exploitation of children and vulnerable people. The Council also made some small changes to aggravating and mitigating factors.

9. DISCUSSION ON GENERAL GUIDELINE – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

9.1 The Council continued reviewing the draft guideline in the light of consultation responses. Amendments were agreed to clarify aggravating and mitigating factors. It was agreed to expand the information relating to sentencing young adults. The expanded explanations of factors in this guideline will form the basis of those for offence specific guidelines which will be consulted on in 2019.