

MEETING OF THE SENTENCING COUNCIL

16 APRIL 2021

MINUTES

Members present:

Tim Holroyde (Chairman)
Rosina Cottage
Rebecca Crane
Rosa Dean
Michael Fanning
Diana Fawcett
Adrian Fulford
Juliet May
Maura McGowan
Alpa Parmar
Beverley Thompson

Apologies:

Nick Ephgrave
Max Hill
Jo King

Representatives:

Elena Morecroft for the Lord Chief Justice (Legal and Policy Advisor to the Head of Criminal Justice)
Phil Douglas for the Lord Chancellor (Head of Custodial Sentencing Policy)
Hannah Von Dadelszen for the Director of Public Prosecutions

Observers:

Sarah Hannah (Criminal Appeal Office)

Members of Office in attendance:

Steve Wade
Lisa Frost
Emma Marshall
Ruth Pope

1. MINUTES OF LAST MEETING

1.1 The minutes from the meeting of 5 March 2021 were agreed.

2. MATTERS ARISING

2.1 The Chairman informed the meeting that he and Rosa Dean had been reappointed to the Council for another three years to 2024.

2.2 The Chairman noted that the Police, Crime, Sentencing and Courts Bill, which contains a number of provisions which relate to sentencing law, was introduced to Parliament on 9 March. The Council would continue to monitor the progress of the Bill and the likely impact of provisions on the work of the Council.

3. DISCUSSION ON TRADE MARK – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

3.1 The Council considered options for amending the guideline for sentencing individuals to ensure that in cases where there was a risk of serious physical harm this would be reflected in the sentence even when the value of the goods was low.

3.2 The Council agreed that the harm assessment should specify that in such cases category 3 harm or above should normally be used meaning that custody would always be in the range in such cases.

3.3 The Council also agreed to include some non-exhaustive examples in the high culpability factor of 'Sophisticated nature of offence/significant planning' to assist those who are unfamiliar with sentencing this offence. Aggravating and mitigating factors were added to reflect the fact that the level of profit or gain from the offending may vary. Amendments were agreed to step six to clarify the position around confiscation orders and forfeiture.

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

4.1 This was the final meeting to consider and finalise the revised assault and attempted murder guidelines. The Council reviewed and agreed changes made to the revised guidelines based on consultation responses along with a summary of the resource assessment of the definitive guidelines.

4.2 The Council finalised a number of factors in the common assault guideline and agreed that the aggravating factors of spitting and coughing should be qualified as deliberate and that biting should be included as an aggravating factor.

- 4.3 The Council agreed that the sentence uplift for sentencing assaults on emergency workers should be determined with reference to the full seriousness assessment and offence category identified, and that all aggravated offences should be incorporated at step three to ensure clarity of approach to sentencing aggravated offences.
- 4.4 The Council also considered evidence of racial disparity in sentencing for some assault offences and agreed that this should be highlighted in relevant guidelines.
- 4.5 The guidelines were signed off for publication in May, subject to review of the consultation response and resource assessment documents.

**5. DISCUSSION ON WHAT NEXT FOR THE SENTENCING COUNCIL?
– MISCELLANEOUS ISSUES – PRESENTED BY RUTH POPE,
OFFICE OF THE SENTENCING COUNCIL**

- 5.1 The paper set out the responses to consultation questions that had not previously been considered. Many of the issues that arose had already been covered under other headings and where this was the case the Council noted that these were being taken forward.
- 5.2 On the question of whether there are other sources of funding that the Council should consider pursuing to enable it better to fulfil its statutory duties, the Council agreed with respondents that sources of non-government funding should be explored but that these could not be commercial or anything that would compromise the Council's independence.
- 5.3 The Council agreed to explore the option of adding a link in every guideline to invite feedback from users. It was noted that it would have to be made clear that the Council would not respond to questions about specific cases and that the Council's ability to act on the feedback would be resource dependent.
- 5.4 It was noted that it is not always clear how the views of respondents to consultation are taken into account. It was agreed to explore ways (for example a blog post) to do more to highlight the fact that the Council considers consultation responses seriously and in detail and that they are an integral part of the guideline development process.
- 5.5 On the issue of how the Council should assist with the use and interpretation of guidelines once published, the Council agreed to continue to liaise with Judicial College to ensure that users are prepared for the introduction of new guidelines.

**6. DISCUSSION ON WHAT NEXT FOR THE SENTENCING COUNCIL?
- EFFECTIVENESS – PRESENTED BY EMMA MARSHALL, OFFICE
OF THE SENTENCING COUNCIL**

- 6.1 The Council considered the next set of responses to the consultation '*What Next for the Sentencing Council?*'. This was in relation to the costs and effectiveness of sentencing and the ways in which it currently discharges its duty in these areas.
- 6.2 The Council discussed current and potential analytical work, as well as the extent to which sentencing guidelines could potentially reflect the relevant issues. Further work in this area and the resources needed for this will be considered again at a future Council meeting as part of the overall prioritisation of future work for the Council.

**7. DISCUSSION ON FIREARMS IMPORTATION– PRESENTED BY
RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 The Council considered a draft guideline for importation offences under sections 50 and 170 of the Customs and Excise Management Act 1979. It was agreed to assess culpability in two stages: type of weapon and factors relating to role, planning and expectation of financial or other advantage. This would then lead to one of four overall culpability levels. It was agreed to base the harm model on that used in the transfer and manufacture guideline. It was decided to have two sentence tables to reflect the fact that there are two different statutory maximum sentences for these offences.
- 7.2 The Council considered examples of how the draft guideline would apply to real cases and agreed sentence levels to reflect a wide range of seriousness.
- 7.3 The Council agreed to sign off the draft guideline for consultation.