

MEETING OF THE SENTENCING COUNCIL

21 MAY 2021

MINUTES

Members present:

Tim Holroyde (Chairman)
Rosina Cottage
Rebecca Crane
Rosa Dean
Nick Ephgrave
Michael Fanning
Diana Fawcett
Adrian Fulford
Max Hill
Jo King
Maura McGowan
Alpa Parmar
Beverley Thompson

Apologies:

Juliet May

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)

Members of Office in attendance:

Steve Wade
Vicky Hunt
Emma Marshall
Ruth Pope
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 16 April 2021 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman noted that the data collection that had been running for four months in magistrates' courts had closed. The response rate was higher than for previous collections and this would provide the Council with valuable data. The Chairman expressed the Council's gratitude to all those involved.

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

- 3.1 The Council agreed some final modifications to the harm and culpability factors in the guideline for sentencing individuals to take account of points made by respondents to the consultation.
- 3.2 The Council considered the situation where an offence was already in the highest category of harm because of the value of the counterfeit goods and there were additional harm factors. It was agreed to add a note above the sentence table to instruct sentencers to consider moving up within the category range in such cases and to increase the top of the offence range to seven years to accommodate this.
- 3.3 In the guideline for organisations the Council made changes to harm and culpability factors at step three and aggravating and mitigating factors at step four to be consistent with the guideline for individuals. Changes were agreed to the wording on confiscation in both guidelines to aid clarity. In the guideline for organisations some wording was added at the beginning of the guideline to explain why compensation and confiscation were at steps one and two in that guideline.
- 3.4 The Council considered the resource assessment for the guidelines and noted that any impact in terms of prison and probation places would be small. It was agreed to sign off the definitive versions of both guidelines for publication in the summer, to come into effect on 1 October 2021.

4. DISCUSSION ON TERRORISM – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council discussed the terrorism guidelines for the first time since March 2020 when work was paused as a result of the introduction of the Counter-Terrorism and Sentencing Bill. This Bill was set to make significant changes to terrorism legislation which would have a substantial impact on the guidelines and so work was paused to await the full details of the changes. As that Bill has now become an Act the Council's work was able to proceed.

- 4.2 The Council discussed and agreed immediate changes that can be made to the Funding (s15-18 Terrorism Act 2000), and Failure to Disclose Information (s38B Terrorism Act 2000) guidelines to ensure that they comply with the new legislation. The changes will make clear to sentencers that these offences are now covered by the Special Custodial Sentences for Offenders of Particular Concern (SOPC) provisions.
- 4.3 The Council also discussed when to publish the 2019 revised guidelines, and it was agreed that they should not be published until the Council has revised, consulted on and finalised changes to guidelines that will be required as a result of the new 2021 Act. The Council considered that the 2021 Act changes are so significant that the full package of guidelines could be impacted and that the Council should have the opportunity to consider them all before publishing any definitive guidelines. In the meantime a note can be put on all guidelines that are now out of date highlighting the relevant provisions in the 2021 Act.

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

- 5.1 The Council reviewed all the areas of work that had previously been discussed and that had been put forward as part of responses to the consultation. This included discussing actions to address these areas and in relation to the themes set out in the consultation document. Further work is needed on these areas and to consider how best to resource them in the context of the Council's current workplan.

**6. DISCUSSION ON MODERN SLAVERY– PRESENTED BY OLLIE
SIMPSON, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council had its first discussion on responses to its consultation on a new guideline for modern slavery offences. The Council agreed various amendments to the draft guidelines following responses from consultees and research conducted with sentencers during the consultation period, including in relation to the wording of culpability and harm factors, sentencing levels for low culpability offenders, and altering some aggravating and mitigating factors. Further possible changes arising from the consultation were noted for discussion at the next Council meeting in June.

**7. DISCUSSION ON MISCELLANEOUS GUIDELINE AMENDMENTS –
PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING
COUNCIL**

- 7.1 The Council considered a range of unrelated matters relating to issues that had arisen with existing guidelines for inclusion in a consultation to

take place in the autumn. It was agreed that a similar exercise could be conducted on an annual basis, if there was a need for it.

- 7.2 The Council agreed to consult on: a minor addition to the guideline for Breach of a sexual harm prevention order; adding a reference in relevant guidelines to the need for a court to give reasons if it decides not to award compensation; changing the wording on confiscation in guidelines to aid clarity; and putting the uplift for racially or religiously aggravated offences in a separate step.
- 7.3 The Council agreed that further work should be done to explore if the expanded explanation for the mitigating factor 'Involved through coercion, intimidation or exploitation' should be revised. In response to recent legislative changes, it was agreed to investigate whether some interim guidance could be issued pending a revision of the Animal cruelty guideline and whether an amendment could be made to the Domestic abuse overarching guideline. These would be considered at the July Council meeting.
- 7.4 The Council noted that fuller revisions of guidelines or the development of new guidelines arising out of legislative changes would have to be undertaken as a separate exercise when resources permitted.